

MDA CONSULTING



FIRST AID FOR CONTRACTS

Prevention is Cheaper than Cure

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Introduction

The GCC and more particularly the contract data make provision for special non working days to be inserted / completed by the employer.

The special non working days, as defined in the contract data, are usually public holidays or a selection of public holidays and the year-end break.

These special non-working days are added to the completion duration for the works per clause 5.1.1 of the GCC.

The question asked by a number of contractors and which we attempt to answer in this article, is whether the contractor gets the opportunity to include normal weather days (being a contractor's risk) as special non-working days in the contract and that normal weather days are, or can be, treated as special non working days under the contract and be added to the duration for completion?

The GCC contract provisions

In order for us to answer the question we need to look at the contract provisions of the GCC and the actual reason for inserting special non-working days.

The GCC does not deal with special non-working days in much detail except for defining such in the contract data. What is clear is that special non-working days are days on which there will be no work on site.

Can normal weather days be treated as special non working days in the contract and added to the date for completion?

The GCC does not specifically deal with normal weather days. The GCC only deals with abnormal climatic conditions and as an event / circumstance which will entitle the contractor to claim an extension of time. See Sub-clause 5.12.2.2.

The GCC provides for the contractor to claim an extension of time in certain circumstances. The determination of the contractor's entitlement can be seen as a 3-tier test process.

Sub-clause 5.12.1 provides that, if the contractor considers himself entitled to an extension of time for circumstances of any kind whatsoever which may occur that will, in fact, delay the practical completion of the works, the contractor is entitled to claim under and in accordance with sub-clause 10.1. This sub-clause sets out the first test for extension of time as an entitlement to the contractor for circumstances of any kind that will, in fact, delay practical completion.

Normal and abnormal weather conditions are not defined in the GCC but a norm to determine the crossover point from normal to abnormal should be agreed to between the parties. This norm is established in sub-clauses 2.1.2.2 and 2.1.3 respectively where it

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is a requirement that the contractor inspects the site and surroundings and should be knowledgeable about the climatic conditions of the site and how it would affect the carrying out of the works. For example, if rainfall were experienced either by intensity or frequency, on site that could not have been foreseen from the available rainfall records of the area in which the site is located, then it would be seen as abnormal rainfall and entitle the contractor to an extension of time.

The second test for granting extension of time is the actual delays that the abnormal climatic conditions caused. This must be recorded and agreed by the parties in accordance with sub-clause 10.1.3. For example, abnormal rainfall would not affect work on the critical path that must be carried out inside a building project like plastering, painting after the roof has been erected and made the area weather proof and such like.

The third test for granting an extension of time would be, whether the abnormal rainfall did, in fact, delay achieving practical completion. For example, if the contractor accelerates on his own and achieves practical completion before or on the due completion date, he would not be entitled to an extension of time.

Some employers try to overcome the problem of deciding the norm for normal rainfall (i.e., the number of days that are at the Contractors risk) by specifying a formula or alternatively stating in the contract how many days should be allowed for. Under the NEC contract, the number of days that are at the contractors risk and the intensity of the weather is measured by reference to a storm with a 10-year period of return.

Conclusion

Special non-working days are days that the parties agree to that no work will take place on site. Normal weather days cannot be included or treated as special non-working days as there is no guarantee that no work will take place on site on those days. Normal or abnormal weather days are dealt with as and when it happens.

Special non-working days are also taken into account when calculating stipulated time periods (as well as the time for completion) for example the 28-day period within which to submit the contractor's claim (see sub-clause 10.1). Why should weather affect the time at which the contractor's claim is submitted? The one has no influence on the other and such a suggestion defies logic.

It is clear from the above, with specific reference to sub-clauses 2.1.2.2 and 2.1.3, that the GCC includes and *defines* normal weather days as a contractor's risk. The contractor should make adequate provision / allowance for normal weather days in its programme prior to commencing with the works.

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