

MDA CONSULTING



FIRST AID FOR CONTRACTS

Prevention is Cheaper than Cure

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GCC: Strikes under GCC – WHAT CLAUSES WILL ENTITLE THE CONTRACTOR TO CLAIM EXTENSION OF TIME AND WHAT FINANCIAL COMPENSATION IS AVAILABLE?

Introduction

In the October edition of FAFC, we dealt with strikes under the NEC3 contract.

In this edition, we continue to look at strikes and how the General Conditions of Contract for Construction Works, second edition 2010 (“GCC2010”) deals with extension of time claims and the recovery of any costs incurred due to strikes.

The GCC2010 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 Practical Completion of the Works*”, he should pursue a claim to recover its time and related costs in terms of clause 10.1.

The contract does not specifically deal with strikes *per se*, but it provides some reasons for extension of time. These are set out in clause 5.12 of the

GCC2010. The most relevant clause, and which should be relied on when submitting a claim in the event of strikes, is clause 5.12.2.4, which states: “*Any disruption which is entirely beyond the Contractor’s control.*”

Strikes under GCC2010 –
What clause entitles the contractor to claim extension of time and related costs?
What about Direct Costs?

In this observers’ view, a strike, especially a strike which the contractor cannot control or avoid, should qualify as an admissible delay and an extension of time should be granted. Thus the contractor should make use of clause

5.12.2.4 and make a claim in accordance clause 10.1.

Upon the extension of time being granted, the contractor should be paid time related general items as are appropriate as provided for by clause 5.12.3, which reads “*If an extension of time is granted, the Contractor shall be paid such additional time-related General Items..., as are appropriate regarding any other compensation which may already have been granted in respect of the circumstances concerned.*”

So far so good, we have recovered the time lost due to the strike as well as the time related P and G’s costs. But what about direct costs incurred?

There is no remedy provided by the GCC 2010 that allows for the recovery of “proven additional cost” in the event of a strike occurring.

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Based on the above and in conclusion, it seems that the GCC is straightforward in its requirements to claim extension of time and time related general items due to strikes when compared to other standard form contracts like the NEC or FIDIC. There is no requirement of any predictability or foreseeability on the contractor's part. For any strike beyond the contractors' control, the contractor must timeously notify its' claim in accordance with clause 10.1 within 28 days when the strike occurred to prevent being time barred and penalized.

In many instances, engineers will argue that this is a shared risk and allow the contractor time only, ruling that an appropriate payment of time related general items is Nil. However having regard to the last sentence in clause 5.12.3, which states:

“ , as are appropriate regarding any other compensation which may already have been granted in respect of the circumstances concerned.”

Since there is no other remedy for the recovery of direct costs as “proven additional costs” available to the contractor, this should motivate the argument that an “ appropriate payment of time related general items” is to be paid in full. The basis for this calculation is provided for in SANS 1200 (where this document applies) 1200 A clause 8.2.2 which allows for recovery of the cost based on the Preliminary and General section of the bill for all the P and G resources affected by the strike stoppage.

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