

Contractor argue 'time at large' when no EOT mechanism

Date: 23rd April 2002

Dear Sirs:

Re:
2/F

Kowloon, Hong Kong

Contract No: Sprinkler System

We refer to your letter Ref. L/2699/2002/DT dated ????, and do not agree that we should be responsible for the delay of this project.

Your clients should have been well aware of the project situation that the delay of this project was due to the unavailability of the main water supply to the proposed sprinkler system, which was obviously beyond our controls. The Paragraph 2 of the Remark as you quoted, has well addressed that the approval and the availability of the water supply was not part of our original contract obligations.

In this context, since this contract has no extension of time mechanism, the contract timing has become a situation of "time at large". In fact, so far we have been demonstrating our diligence as a competence contractor to proceed with the Works.

The timing of 24th April 2002 requested in your letter is physically impossible, and should be treated as an extra contractual requirement. Accordingly, any of your client's termination of this contract should be considered as a repudiation of contract.

By all means, please be ensured that with the available water supply we will try with our best to serve your Client toward a smooth completion of this project.

Your faithfully,

Case 1

• No EOT provision
• Time at large

1. Event caused Delay
↓
2. Beyond Control of the Contractor
↓
3. Not Contractor's fault
↓
4. due diligence
↓
5. Try to ensure smooth completion

Contractor claim EOT & protest premature LD deduction

Draft letter from a NSC subcontractor to the Architect

Dear Sirs:

Ref: Contract Reference

Claim for Extension of Time and Premature deduction of LDs.

We refer to your letter Ref. 93-223/KC/57483 dated 10th April 1999, and your letters Ref 93-223/KC/57506 and 57507 on the same date of 12th April 1999.

First of all, we protest against any premature deduction of liquidated damages since the extension of time claim is still in the process. Both your letter and does not reject the grounds of our extension of time claim but only request for further substantiation in certain formats.

✓ only if non-completion certificate is
x format of notice
x extension of time is in the process

Your attention is drawn to Clause 23 of Conditions of Contract and the amendments under Section 5.03 of the Preliminaries. Such provisions do not specify any special formats requested for any extension of time claims as your allegation of photographic records and critical path diagram etc. Our obligation under the contract for the submission of extension of time claims is to forthwith give written notice to you of the material circumstances of the delays. It shall be then up to your own consideration as the Architect, and your further reasonable requests if any, on the necessity of our further substantiation. Under the common law principle of working harmonically for construction projects, this exercise shall be interactively between the concerned parties. Without referring to any of our further substantiation, we do not see any grounds of your judgement for concluding our claim to be invalid at this stage.

Please be ensured that currently we are preparing further substantiation to justify our extension of time claim, and of course it will take time with a reasonable duration. Accordingly, if any premature imposition of liquidated damages on our contract at this stage shall be treated as a breach of contract by your client.

Yours faithfully

Case 2

• Format of substantiation
• Pre-mature LD deduction

NSC protest against unrealistic MC programme

3rd May 2000

Draft letter for a NSC Subcontractor to send the Main Contractor

Re: Contract Reference

Updated Master Programme and Extension of Time

In respect of the recent confirmation of the smart card system, accordingly, our submission has been hindered until 27th April 2000. Since the submission is critical to our whole programme, we hereby claim for 30 days extension of time accordingly.

In addition, currently our updated master programme from your side is the one Rev E dated 30th December 1999, which show our contract start date to be the early December 1999 (Activity No. 559220) and the completion of the laying of concealed conduits (Activity No. 605010). It is obvious that these activities are totally unrealistic. Therefore, your furnish of an updated master programme is essential, by which any prolongation of the builder's work shall entitle our further extension of time claims.

Your prompt action to furnish us an updated master programme is urged.

Yours faithfully.

Case 3

* updated master programme

13th May 2000

Draft letter for a NSC Subcontractor to send the Main Contractor

Re: Contract Reference

Updated Master Programme and Extension of Time

We refer to your letter Re dated 8th May 2000.

Our claim for a 30 days extension of time is subject to a variation of the smart card system. Your attention is drawn to our letter Ref. CC15688W dated 11th April 2000. In addition, our letter Ref. CC15688W (No. 8052) dated 4th May 2000 has also pointed out the delayed decision on the confirmation of the smart card system, by which it ended up the final decision from the client to be confirmed on 28th April 2000. Since the submission was critical to our progress, our working programme enclosed with our letter Ref. CC15688W (No. C7809) dated 9th March 2000 showed an activity "No 3: Equipment Submission and Approval" with a duration of 36 working days, from 14th March 2000 to 29th April 2000. Since we only got the confirmation from 28th April 2000, accordingly we should be entitled to an extension of time, for which in view of the tight schedule of this project we took our own acceleration to 30 days.

Your letter confirmed the Master Programme (Rev. E) is the current master programme. Now, the crucial problem is not the duration allowed in the programme for our own activities, but there are shifting of the builder's works and the unrealistic start date of our contract. The details of such unrealistic activities are stated in our letter Ref. CC15688W (No. 8051) dated 4th May 2000.

We are surprised to know that in view of the tight schedule of this project, the current master programme is the one dated December 1999 about 5 months ago. Bearing in mind, you, as the Main Contractor, have an obligation to provide necessary documentation for coordinating our works, which may affect our reasonable and economical deployment of resources. Accordingly, any shifting of our work due to the prolongation of the builder's works shall entitle our claiming for extension of time and loss and/or expense.

Your prompt action to furnish us an updated master programme to reflect the realistic site progress is essential.

Yours faithfully.

Continue of Case 3