

INSTRUCTIONS TO CONTRACTORS (Construction Contract)

Data Required to Substantiate Equitable Adjustments of Time and Time Extension

1. **Your responsibility:** You have contractually undertaken to complete the work within the period of time specified. You are expected to plan the work, order materials, employ labor and coordinate all details to ensure completion within that period. Remember, too, that because you alone are committed to the Government for completion of the work within the allotted time, you are responsible for timely performance by suppliers and subcontractors.
2. **Relief:** In the event you fail to diligently prosecute the work or complete the work within the time specified you are subject to termination of your right to proceed with the work for default and/or the assessment of damages as provided in Clause 2 of Standard Form 19 or Clause 5 of Standard Form 23–A, one of which is incorporated in the contract. However, both Clause 2 and Clause 5 provide that your right to proceed shall not be terminated nor shall you be charged with damages if delay in completion of the work arises from **unforeseeable causes beyond the control and without the fault or negligence of you, your subcontractors or your suppliers regardless of tier.** In the event you are delayed for any reason which you believe entitles you to an extension of time as provided within the contract documents, you should submit a timely request in writing to the Contracting Officer.
3. **PBS Policy and Advantages to You:** It is the policy of PBS to consider all requests or claims for additional time at the time, or promptly after, the delay occurs. Prompt time adjustment makes it easier for you to schedule remaining work within the remaining time as thus extended. It will be in your own best interest to furnish as much detailed, factual information as you can to facilitate and expedite the contracting officer's action on determination of the additional time to which you may be entitled. It will also be advantageous to comply as fully as possible with the suggestions outlined herein.

a. CONTRACT CHANGES

If you believe that you will need additional time in order to perform work required by any change order under the provisions of the Changes clause, of Standard Form 23–A or the Changes and Changed Conditions clause of Standard Form 19, your claim for equitable adjustment should be accompanied by a statement listing those portions of the work affected by the change order, the over–all effect on the project, the man–hours added, the dates on which affected work was performed, and any additional data which will aid the contracting officer to reach a prompt determination on the equitable adjustment of time. **To be entitled to an extension of time for a contact change you must demonstrate that the change will delay the completion of the contract in its entirety.**

b. DIFFERING SITE CONDITIONS OR CHANGED CONDITIONS

If you encounter differing site conditions (as described in the Differing Site Conditions clause of Standard Form 23–A) or changed conditions (as described in the Changes and Changed Conditions clause of Standard Form 19), you must notify the contracting officer promptly before proceeding with the work affected by such conditions. If the conditions are such as described in either of the applicable clauses and are such that it takes you longer to perform the affected work than it would otherwise have taken, thereby delaying completion of the project in its entirety, your request for equitable adjustment of time should be supported with factual data similar to that described above with respect to Changes.

c. EXCUSABLE DELAYS (OTHER THAN THE FOREGOING)

If your performance of the work is delayed by any of the causes specified or contemplated in Section 5 (d) of the clause Termination for Default– Damages for Delay– Time Extensions of Standard Form 23–A or Section 2(b) of the parallel clause in Standard Form 19, you may be entitled to extension of the performance period so that you will be relieved (in whole or in part) from liability for damages and from the possibility of being terminated for default. In requesting an extension of time under the provisions of either of these clauses, your submittal should (where based on any of the grounds discussed below) include the following:

- (1) **Act of the Government in its Contractual Capacity:** If your performance of the contract has been delayed for an unreasonable length of time as a result of the Government's act or failure to act in its contractual capacity (as, for example, where the Government unreasonably delays in making available Government–furnished equipment to you), you must notify the contracting officer within 10 days of the commencement of the time when lack of equipment began to cause actual delay in completing the project. If you incur unreasonable delay as a result of an order to suspend all or part of the work pursuant to the Suspension of Work clause in Standard Form 23–A, you must submit notice of delay as required by Clause 5. In all cases, although the contract clause provides that it is the contracting officer's responsibility to find facts in order to make his determination of the additional time to which you might be entitled, much or most of the data he will have to secure is available only from you. Accordingly, you can facilitate and expedite his reaching a sound and objective decision by promptly providing him with as much accurate factual data as possible, such as a statement of the portions of work affected, inclusive dates during which each portion was affected, the net loss of time from the point of view of over–all project completion and any other data which may be in your possession and which will aid the contracting officer. If you fail or refuse to provide information which the contracting officer needs, he may be forced to make a determination only after delay while attempting to discover the facts independently and on the basis of incomplete information, to your disadvantage.
- (2) **Strikes and Jurisdictional Disputes:** If you have been delayed in completing the work because of a strike or jurisdictional dispute, your request for an extension of time should include a statement of the circumstances which led to the strike or jurisdictional dispute, inclusive dates, trades involved, other trades affected, portions of the work affected, the net effect on over–all project completion time, and any other appropriate factual data.
- (3) **Unusually Severe Weather:** Weather which hinders or prevents work is not a basis for a time extension unless it surpasses in severity the weather reasonably to be expected in the locality at the particular time of year. If you file timely notice that you were delayed by weather sufficiently severe as to entitle you to additional time, you should furnish as promptly as possible thereafter a statement of the portions of the work affected, an explanation as to the reasons work was prevented or hindered by the weather if not readily apparent, the dates on which such portions of work were affected, the total number

of days by which you believe the job in its entirety was delayed, and any other information which would be of assistance to the contracting officer such as official weather bureau climatological data for several prior years.

- (4) **Late Delivery of Materials and/or Equipment:** You are expected to have assured yourself, prior to submitting your bid, of adequate and timely availability of materials and equipment. If, however, deliveries of material and equipment are delayed, you may be entitled to an extension of time if you are able to clearly establish by the submittal of copies of your correspondence and documents from you and your subcontractors that deliveries were delayed for **unforeseeable causes beyond the control and without the fault or negligence of yourself, your lowest tier supplier or your lowest tier subcontractor involved.** Such correspondence and documents should include but not be limited to a statement of the circumstances; copies of correspondence showing that prior to bidding you had had reasonable assurance of timely supply; copies of orders showing

the date placed; copies of invoices, delivery receipts and the like showing shipping or delivery dates; and copies of correspondence showing diligent attempts to obtain materials when needed from other sources.

4. **General Application:** Documentation should demonstrate that any delay was **unforeseeable and without the fault or negligence of you or your lowest tier subcontractor or supplier involved.** You will be entitled only to the additional number of days the **project is delayed in its entirety.** Furthermore, you cannot be granted additional time for a delay which is concurrent with another delay for which you have been previously granted a time extension or concurrent with delay for which you are responsible and which gives you no right to a time extension. The Contracting Officer has no authority to grant relief by extending the time specified for contract completion unless you are entitled to an extension of time as specifically provided by an existing provision of the contract.