

JBCC ADVISORY NOTE: EDITION 6.2

DOCUMENT/S

Principal Building Agreement Minor Works Agreement (Clause 17.0)

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23.0 REVISION OF THE DATE FOR PRACTICAL COMPLETION - Weather

23.1 The **contractor** is entitled to a revision of the date for **practical completion** by the **principal agent** without an adjustment of the **contract value** for a delay to **practical completion** caused by one or more of the following events:

23.1.1 Adverse weather conditions

INTERPRETATION

What is adverse weather?

Although generally interpreted as such, the word "adverse" in subclause 23.1.1 does not refer only to rain. The Oxford SA Concise dictionary describes adverse as "harmful, unfavourable" (weather)

Thus, extremes of temperature, strong or gusting winds, hail storms and other forms of intemperate weather would obviously all qualify as "adverse". However, light overnight rain could also qualify as "adverse"

In the **agreement** the contextual usage of the term "adverse weather" relates to a climatic condition that inhibits progress towards **practical completion**. Therefore, it could include light overnight rain that affects excavation work in foundations or on high-rise structural steel components that may become slippery and dangerous to work on. Conversely, heavy rain during working hours at the completion stage of the contract could well be excluded should it not cause a delay that would affect the **practical completion** date

Further examples of adverse weather and the effects thereof which could delay the works

- ❖ Low temperatures that cause the water in plaster, mortar or concrete to freeze resulting in damaged or defective material having to be removed and the work redone
- ❖ Strong winds around high-rise buildings that cause working conditions to become hazardous. At the coast this condition can and often does affect the use of tower cranes
- ❖ Strong or gusting winds that inhibit the erection of long span steel or metal roofing sheets
- ❖ Resultant soggy ground conditions during excavations due to earlier or overnight rainfall. The consequential delay may be evident only a day or two later and could persist for an extended period
- ❖ Hail storms that cause damage to the **works**

23.0 REVISION OF THE DATE FOR PRACTICAL COMPLETION (Continued)

The above examples are but a few of the delays to practical completion that could be occasioned by "adverse weather"

Exceptionally inclement weather

In certain contract documents the description "exceptionally inclement weather" is used. This has led to many disputes as the **contractor** is required to prove that the rainfall or other weather conditions that delayed the **works** was exceptional. To do this, accurate site rainfall and other weather records had to be kept and compared with the average conditions for that time of the year for that particular locality

Historical rainfall records (where available) had to be obtained from a recognised weather station to verify the **contractor's** claim. Typically, **site** rainfall records were required to be compared with those of the nearest weather station, often kilometres away. Where rainfall, temperature or other records were obtainable, these were frequently not a true reflection of the weather conditions at a particular **site** even where this was close to the weather station

It is now generally recognised that highly disparate microclimates can and do exist within a few hundred metres of each other and that the "exceptionalness" of adverse weather often has no relationship to the delay caused

Consequently, JBCC does not deal with the inappropriate "exceptionalness" of adverse weather. Users are therefore advised not to change the wording of 23.1.1 to include "exceptional"

Claiming a delay

In making a claim for a delay the **contractor** must follow the procedures prescribed in subclauses 23.4.1 to 23.4.2 and 23.5

A delay caused by adverse weather is not automatically granted - the **contractor** must satisfy the **principal agent** that:

1. The progress of the **works** towards **practical completion** was delayed
2. All reasonable practical steps were taken to avoid or reduce the delay (*NOTE: This does not imply that the **contractor** was obliged or required to "make up time" or accelerate in any way*)
3. The delay claimed would be a delay to **practical completion** (i.e. impact on the critical path of the **contractor's** programme)

*It is important that the **contractor** notes that the claim must focus on the delay caused and not on the quantum or severity of the weather condition. The mere fact that it rained on a particular occasion is not grounds for an extension of the **construction period***

SUGGESTED ACTION

The **employer/agents** must take into account the anticipated extensions of time that are likely to be granted to the **contractor** due to adverse weather or any of the other conditions listed in setting the **practical completion** date. This requires that the **contractor's practical completion** date stated in the **contract data** should be set at the date derived by "back dating" from the **employer's** required "occupation date" of the project by the anticipated extensions