

# JBCC ADVISORY NOTE: EDITION 6.2

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## DOCUMENT/S

**Principal Building Agreement**  
**Nominated Selected/Subcontract Agreement**  
**Minor Works Agreement**  
**Small & Simple Works Contract**  
**Direct Contractors' Contract**

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**DISCLAIMER** *The purpose of this publication is to give advice on the most effective use of the JBCC documents. Advice is given in good faith and JBCC disclaims all liability for any loss, damage or expense that may be incurred through acting on such advice*

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## ADMINISTERING EXTENSION OF TIME FOR PRACTICAL COMPLETION

### 23.0 REVISION OF THE DATE FOR PRACTICAL COMPLETION

23.1 - 3 The first three sub-clauses of Clause 23.0 list the circumstances for which the contractor would be entitled for a revision of the date for practical completion by the principal agent without or with an adjustment of the contract value for a delay to practical completion

The remainder of Clause 23.0 deals with how to administer the process of extension of time, which will be discussed hereinafter. Clause 24.0 deals with the penalty that may be imposed by the employer where the contractor fails to bring the works to completion by the due date

23.4 Should a listed circumstance occur [23.1-3] which could cause a delay to the date for **practical completion**, the **contractor** shall:

23.4.1 Take reasonable steps to avoid or reduce such delay

23.4.2 Within twenty (20) **working days** of becoming aware, or ought reasonably to have become aware of such delay, give notice to the **principal agent** of the intention to submit a claim for a revision to the date for **practical completion**, failing which the **contractor** shall forfeit such claim

23.5 The **contractor** shall submit a claim for the revision of the date for **practical completion** to the **principal agent** within forty (40) **working days**, or such extended period as the **principal agent** may allow, from when the **contractor** is able to quantify the delay in terms of the **programme**

23.6 Where the **contractor** submits a claim for a revision of the date for **practical completion** the claim shall in respect of each circumstance separately state:

23.6.1 The relevant clause [23.1-3] on which the **contractor** relies

23.6.2 The cause and effect of the delay on the current date for **practical completion**, where appropriate, illustrated by a change to the critical path on the current **programme**

23.6.3 The extension period claimed in **working days** and the calculation thereof

23.7 The **principal agent** shall, within twenty (20) **working days** of receipt of the claim, grant in full, reduce or refuse the **working days** claimed, and:

23.7.1 Determine the revised date for **practical completion** as a result of the **working days** granted

23.7.2 Identify each event and the reference clause for each revision granted or amended

23.7.3 Give reasons where such claim is refused or reduced

23.8 Where the **principal agent** fails to act within the period [23.7] such claim shall be deemed to be refused. The **contractor** may give notice of a disagreement [30.1] where the **principal agent** refuses a claim, alternatively reduces a claim, or fails to act

## **24.0 PENALTY FOR LATE OR NON-COMPLETION**

24.1 Where the **contractor fails** to bring the works, or a section thereof, to **practical completion** by the date for **practical completion [CD]**, or the revised date for **practical completion**, the **contractor** shall be liable to the **employer** for the **penalty [CD]**

24.2 Where the **employer** elects to levy such **penalty** the **employer**, or the **principal agent** on instruction from the **employer**, shall give notice thereof to the **contractor**. The **principal agent** shall determine the **penalty** due from the later of the date for **practical completion [CD]**, or the revised date for **practical completion**, up to and including the earlier of:

24.2.1 The actual or deemed date of **practical completion** of the **works**, or a section thereof [23.7.1]

24.2.2 The date of termination [29.8]

24.3 The **principal agent** shall include the **penalty** in regular interim **payment certificates** from the date on which the employer's entitlement to **penalties** commences

## **INTERPRETATION**

The JBCC agreements contain express or implied duties and obligations to be performed by the employer (or his agents) and the contractor (or his subcontractors). The agreements do not set out in detail how these duties and obligations should be performed. It is self-evident that the employer must give access to the site and provide information in sufficient time to enable the contractor to carry out the works by the due completion date. The contractor must give reasonable notice of delay or of any claim, and the principal agent must decide whether the contractor would be entitled to a revision of the date for practical completion

Claims for extension of time (EOT) probably cause more disputes than any other contractual or technical issues. Major obstacles to prompt settlement of EOT claims are:

- The erroneous assumption that an EOT entitlement is automatically linked to additional payment
- Late, insufficient or failure to notify the delay on the part of the contractor
- Failure to recognise delay at the appropriate time and keeping of contemporary records
- Failure to regularly update the programme so that the effects of delay can be monitored
- Poor presentation of the claim to indicate the effect on the construction programme
- Failure, on the part of the employer's agents, to attend to the delay claims of the contractor properly and timeously
- Pressure, on the part of the employer, to complete on time, irrespective of delays that may have occurred

This Advisory Note will not provide detailed information on how to prepare a successful EOT claim by the contractor, nor how the principal agent must deal with such claims, but will only set out broad guidelines on the formulation, presentation, and adjudication of EOT claims

Sub-clause 23.4.2 do not require the contractor to do more than give written notice of delay whenever it becomes apparent that the progress of the works is being, or is likely to be, delayed. A very strict obligation, however, is for the contractor to meet the deadline of 20 working days in which to submit his notice, as failing to do so such claim shall be forfeited

In any initial EOT claim, whether or not there is a requirement to give details and particulars, it is good practice by the contractor to include the following:

- A description of the cause of delay and the contractual provision which is being relied upon for the extension

- The date when the delay commenced and the period of delay (full details to be provided later when the contractor can quantify the delay – see sub-clause 23.5)
- A narrative of the event(s) and effect(s) on progress
- A statement requesting an EOT for the delay to practical completion, with or without an adjustment of the contract value

Sub-clauses 23.5 - 6 require the contractor to submit details of the extension period claimed and the calculation thereof. He must do it within 40 working days when able to quantify the delay and this may be problematic, as the impact of the delay can be ongoing for a considerable time during the construction period. Some aspects to include in the claim are:

- A summary of records and particulars relied upon (with copies included in an appendix)
- A diagrammatic illustration showing the status of the programme, progress, and current completion date prior to the commencement of the delay
- A diagrammatic illustration showing the effects of the delay on progress and the completion date
- A statement on how the delay reduced the float in the programme (if relevant)
- A detailed calculation of the impact of the delay in working days on the completion date

Generally, the contractor would only be entitled to an EOT claim if the delay is caused by the employer or by neutral events. The general principle in law is that the contractor would not be entitled to claim for EOT or loss and expense, if the delaying event is as a result of the contractor's own actions. EOT is a very vital provision in any construction contract. This provision affects the degree of the contractor's liability to pay for penalties (see Clause 24.0) if there is a delay in the date of practical completion

Various analytical methodologies have been developed over the years as aids for contractors to determine the extent of the delay, and to guide practitioners in the assessment of EOT claims. However, many problems are encountered in practice in the application, preparation, and assessment of EOT claims. In many cases these problems might result in disputes. Although there is no research data to support it there is the general understanding that more than twenty percent of all claims that end in dispute are as a result of EOT claims

Sub-clause 23.7 requires the principal agent to grant in full, reduce or refuse the claim within 20 working days of its receipt, giving reasons where such claim is reduced or refused. Where the principal agent fails to act within this period the claim shall be deemed to be refused, and the contractor may give notice of a disagreement where the principal agent reduces or refuses a claim (sub-clause 23.8). This allows the contractor to commence the dispute procedure as provided for in clause 30.0 should he wish to do so. The declaration of a disagreement cannot be opposed on the grounds that the principal agent has not made a decision, as there is a deemed provision for that

In his book entitled *Construction Delay Analysis Simplified – The South African Edition*, Dr. Hendrik Prinsloo developed a step-by-step guide for the analysis and formulation of delay claims by making use of decision tree analyses. The frameworks can be used to assist in providing a platform to standardise the assessment of delay claims and may contribute to expediting the evaluation process. As a result of the standardisation, it may also contribute to an improved perception of fairness in the evaluation of delay claims, which will hopefully lead to the reduction in claims being subjected to dispute resolution. This book can be purchased either as a hard copy or a soft copy from the Association of South African Quantity Surveyors

## **SUGGESTED ACTION**

Especially on larger projects, the magnitude of time-related costs can easily run into millions of rand. With so much at stake, it is understandable that delay claims are a major source of disputes in the construction industry. The proper assessment of delay claims is therefore essential so that the parties can deal with it without having to resolve the dispute in expensive and drawn-out arbitration or litigation processes

JBCC, in order to assist the parties in the better understanding of how to administer EOT claims, has decided to initiate monthly webinar training lectures, entitled *Extension of time and the functions of the principal agent*. The lectures will contain in the first session detailed information on particulars how to present, support and assess delay claims. This will be followed by a detailed discussion on what the role is of a principal agent in order to properly attend to his administration functions in terms of the JBCC agreement. The first of these lectures is scheduled for the 16<sup>th</sup> of May 2023 and will be presented by Prof Tinus Maritz and Gerard Damstra on extension of time and functions of the principal agent, respectively