SUSPENSION OF WORK CLAUSE

Recovering Costs for Government-Caused Work Stoppages

SUSPENSION OF WORK

The Suspension of Work clause, found in FAR 52.242-14, provides that if the contracting officer orders the suspension, delay or interruption of the contract for an ***unreasonable period of time***, an adjustment will be made. This standard contract clause is intended to allow the contractor to be compensated for delays or suspensions, *without profit*, so long as the contractor did not cause the delay.

A fixed-price construction or architecture-engineer contractor may therefore be entitled to increased costs related to the government's suspension, delay or interruption of all or any part of the work called for under the contract. The suspension, delay or interruption may either be the result of an express order to suspend the work, or a "constructive" suspension of the work.

To clarify, a constructive suspension of work occurs when the Contracting Officer stops work (without an express order) and the Government is responsible for the work stoppage. In other words, a constructive suspension is "an act of the Contracting Officer in the administration of this contract, or the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified)." *Id.*

In short, a constructive suspension is usually granted only when the Government has caused the delay. However, even in the absence of Government fault, constructive suspensions have been found when a delay lasts so long that the contractor cannot reasonably be expected to bear the risk and costs of the disruption and delay. *Merritt–Chapman & Scott Corp. v. United States*, 192 Ct. Cl. 848, 852 (1970).

Typical circumstances that are considered to be constructive suspensions of work include:

- Delay for the "convenience" of the Government
- Delay in issuance of Notice to Proceed
- Delay in site availability
- Delay caused by interference with contractor's work
- Government delays in issuing approvals
- Delay in inspection of work
- Delay is issuing Changes
- Other miscellaneous Government act that result in delays

A claim for costs under this provision, however, will not be allowed unless the contractor asserts the claim in writing, including the amount, "as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract." FAR 52.242-14(c).

Additionally, if the suspended, delayed or interrupted work is a constructive suspension, the contractor must also notify the Contracting Officer in writing of the act or failure to act at issue "as soon as is practicable after the termination of the suspension, but not later than the date of final payment under the contract." *Id*.

Additionally, failure to submit timely notice under FAR 52.242-14(c) may result in the denial of the costs that were incurred more than 20 days prior to the notice, even if the contractor submits its request for an equitable adjustment "as soon as practicable" after the reopening of the work.

ELEMENTS OF RECOVERY

In order to recover under the Suspension of Work clause, a contractor must show that:

1. Contract performance was delayed;
2. The government directly caused the delay;
3. The delay was for an unreasonable period of time; and
4. The delay injured the contractor in the form of additional expense or loss.

John A. Johnson & Sons, Inc. v. United States, 180 Ct. Cl. 969, 986 (1967). However, a contractor is only entitled to recover under the Suspension of Work clause when the government's actions are the *sole* proximate cause for the contractor's additional loss, and the contractor would not have been delayed for any other reason during that period. Therefore, contractors cannot recover under the Suspension of Work clause if the delay in question was *concurrent*.

WHAT IS REASONABLE?

The requirement that the delay must be for an "unreasonable amount of time" before it is compensable raises the question – what is reasonable? A determination of what amount of time is reasonable highly depends on the specific facts and circumstances of each situation. For example, delays stemming from conflicting specifications, defective specifications, or the inclusion of a wrong labor standard have been deemed unreasonable (and therefore compensable). Conversely, delays in issuing a Notice to Proceed or award of the contract, or short delays (one month) in granting approvals for complex drawings have been considered reasonable by the Boards (and therefore, not compensable).

CONCLUSION

Finally, under the Suspension of Work clause, no adjustment will be made for a suspension, delay, or interruption "for which an equitable adjustment is provided for or excluded under any other term or condition of [the] contract." FAR 52.242-14. In many instances, delays that fall under the Suspension of Work clause are also compensable under the Changes clause. This can be advantageous to contractors, however, because the Changes clause allows for recovery of profits, where the Suspension of Work clause does not.

Therefore, ultimately bringing a claim under the correct FAR clause(s) is key to maximizing a contractor's recovery for delays, and can be the difference between full recovery and rejection of the claim.

In the end, you will be glad you made the call; by the way, it's a FREE CALL.

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