



DEPARTMENT OF ADMINISTRATIVE SERVICES

Division of Real Estate and Construction Services

450 Columbus Boulevard
Hartford, Connecticut 06103

To: Construction Managers at Risk and General Contractors
From: Division of Real Estate and Construction Services, Department of Administrative Services
Date: April 22, 2020

Re: Department of Administrative Services Construction Projects

The Department of Administrative Services (DAS) appreciates the seriousness of the current situation resulting from the COVID-19 virus. It remains committed to working with its Construction Managers at Risk and its General Contractors (Construction Contractor) to address the challenges presented to us. As you know, construction work has been deemed essential under the Governor's Executive Order. DAS projects, moreover, concern important State buildings and critical infrastructure. DAS' instructions to Construction Contractors to date has been that work should proceed in accordance with the CDC and OSHA Guidelines. Executive Order No. 7V provides further guidance for the implementation of rules that allow for the safe conduct of Work. DAS expects that each Construction Contractor will implement such practices on its job site. It is a credit to the Construction Contractors who have been able to do so on DAS projects. These Construction Contractors have assessed the risks and devised practices, in consultation with the safety professionals, so that the work may progress in a safe fashion. While it is the Construction Contractor's responsibility, under the Contract Documents, to take actions as may be necessary to mitigate or eliminate delay where possible, DAS is willing to assist you in the development of plans, approaches and alternatives to minimize the impact of the COVID-19 virus on a project's schedule.

If a Construction Contractor, despite taking these and other steps to mitigate the effect of the COVID-19 virus on its project, can definitively prove that the progress of the Work has been delayed due to the COVID-19 virus event, and that such delay may be excusable under the Contract Documents, then it needs to provide notice to DAS and adhere to the requirements of the Contract Documents. Article 4.5 of the General Conditions provides:

If the Contractor is delayed at any time in the progress of the Work by acts of God, such as fire, or flood or any action, injunction or stop order issued by any court, judge or officer of the court or any other court action beyond the Owner's control, then the Contract Time may be extended by Change Order for such reasonable time as demonstrated by the Contractor's Schedule and as the Owner may determine that such event has delayed the Work. In any event, the granting of an extension of time shall be solely within the discretion of the Owner.

It is the responsibility of the Construction Contractor, therefore, to demonstrate that current conditions constitute a basis for an excusable delay under the terms of the Contract Documents. It is the Construction Contractor's responsibility, further, to provide the relevant documentation in support of its claim of delay to the schedule and the need for an extension of time. Pursuant to Article 38.5.7 of the General Conditions, the Construction Contractor must provide, "the specific dates and number of Days for which it [extension of time] is sought, and the basis or bases for the extension sought,..." and it must submit a critical path method, bar chart or other type of graphical schedule that supports the extension.

Article 4.6 provides that "Except as otherwise may be provided herein, an extension of time shall be the Contractor's sole remedy for such delay. No payment or compensation of any kind shall be made to the Contractor for damages because of hindrance in the orderly progress of Work caused by the aforesaid causes." Article 4.7 reinforces this point by providing that such delays shall not, under any circumstances, be construed a compensable delays.

It is the responsibility of the Construction Contractor to demonstrate and prove the existence of an event for an excusable delay under the terms of the contract, that such an event is the cause of the delay and that there is a need for a specific extension of the Contract Time. DAS, of course, is willing to entertain such requests, but the Construction Contractor needs to provide the requisite information in accordance with the Contract Documents. Should DAS agree, in its sole discretion, to the extension of time, a change order will be issued for the time extension only. This will be the Construction Contractor's sole remedy under the terms of the Contract Documents, and no payment or compensation shall be made to the Construction Contractor, including no payment for escalation of material prices over those originally carried by the Construction Contractor or its subcontractors in their original bid. The delay and subsequent extension of time shall not constitute a suspension of the Work by DAS under Article 33 of the General Conditions.

If DAS finds the delay claims to be unsubstantiated, the time and costs associated with the reviewing and addressing the unsubstantiated delay claim may be back charged to the Construction Contractor.