

GUIDING PRINCIPLES AND PROCEDURES FOR TIME EXTENSION REQUESTS

FROM: Steven Huggenberger, City Attorney's Office
Thomas Shafer, Engineering Services Manager

SUBJECT: GUIDING PRINCIPLES AND PROCEDURES (GPP) TO FOLLOW WHEN
CONSIDERING CHANGES IN TIME ON CONSTRUCTION CONTRACTS.

These Guiding Principles and Procedures should be considered supplemental to City Charter, City Ordinances, and the City of Lincoln Standard Specifications for Municipal Construction (Spec Book)

The reasons changes occur

Delays beyond the Contractor's control requiring a change order may include such things as:

A Notice to proceed is not issued far enough in advance of completion date. (Make sure to state anticipated start date, days to complete the work and completion date in the contract – See P,S,&E checklist and GPP)

Right-of-way is not yet acquired

Specified Materials are unavailable due to long order time that couldn't have been accounted for.

The City asks for a delayed start to accommodate access issues

Authority to make changes

From the 2006 City of Lincoln Standard Specifications for Municipal Construction

VII. PROSECUTION AND PROGRESS OF WORK under E. EXTENSION OF TIME

The time for completion of the work may be extended upon written request from the Contractor to the Contract Administrator, provided the request is based on delays or suspensions that are no fault of the Contractor; and such delays shall include, but not be limited to, acts or neglects of the City or others performing additional work, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God; or the request is based upon a change in the scope of the work which has been approved by the Contract Administrator. The length of such extension, if approved by the Contract Administrator, shall be the equivalent number of working days, if the contract time is expressed in working days, or the equivalent number of calendar days, if the contract time is expressed in calendar days or is expressed as a specific completion date, during which the work was suspended, or in proportion to the amount of extra work compared to the amount of the original Contract. Requests for extensions in completion dates shall be made within twenty (20) days of occurrence.

GUIDING PRINCIPLES AND PROCEDURES FOR TIME EXTENSION REQUESTS

Certain delays will not be justified for extension of time. Such delays, shall include, but not limited to:

- 1. Delays caused by a Subcontractor.*
- 2. Inadequate construction force.*
- 3. Failure to place orders for equipment or materials in a timely manner.*
- 4. Normal periods of adverse weather.*
- 5. Subsurface or otherwise concealed subsurface conditions which are not unusual.*

NOTE: All changes in the contract time shall be by change order. From the 2006 City of Lincoln Standard Specifications for Municipal Construction

III. SCOPE OF WORK C. CHANGES IN THE WORK

*The City may, at any time as the need arises, order changes in the scope of the work to be performed or the materials to be furnished without invalidating the Contract. If such changes are minor and have no effect on the amount due or the time required to perform the work, they may be authorized by the Contract Administrator. The request for such minor changes shall be documented in writing by the Contract Administrator. If such changes require an increase or decrease in the amount due under the Contract **or in the time required** for performance of the Work, an equitable adjustment shall be authorized by written change order executed by the Mayor.*

Process

1. Contractor should notify Construction Project Manager of any suspected issue that may require an extension of time as soon as possible. Contract Administrator should receive written request from contractor for time extension.
2. That written request should be review by Construction Project Manager
3. Review and Decision by Contract Administrator
4. Response Letter Signed by Contract Administrator
5. Process Change Order if appropriate

Process Guidance

1. **Contractor should notify Construction Project Manager for any issue that requires an extension of time as soon as possible. Contract Administrator should receive written request from contractor for time extension.**
 - Possible issues that should trigger the thought “This might mean a request for time extension”
 - New or Extra Work not included in the original scope or contract.
 - Unusual or Abnormal Adverse Weather Conditions
 - Encountering sub-surface conditions differing from the plans.

GUIDING PRINCIPLES AND PROCEDURES FOR TIME EXTENSION REQUESTS

Request by the Contractor to the Contract Administrator must:

- Be copied to Construction Project Manager
- Be within 20 days of issue occurring
- Be in writing
- and include:
 - Specific issue causing the delay
 - Ramifications to contractor's progress because of delay
 - Exact amount of time being requested

Examples of Contractor Requests for Time Extension:

- ◆ *We will have completed all of the work we can by the June 1st contract deadline. However we will not be able to complete all of the work called for in the original contract namely the testing and chlorination due to the additional work requested by Public Works and Utilities. This work can be completed in 15 days after we receive notice the City has secured the necessary permits. This additional time is needed to remobilize, complete the additional work, and complete the other elements (such as testing and chlorination) of the original contract.*

- ◆ *Adverse Weather Request – Normally one can expect 2 to 3 days of substantial rainfall during the month. However the amount of rainfall both exceeded expectations substantially by 8 days of rain and effected critical path operations by requiring the drying out of the subgrade for 1 to 2 days before operations could reach the same condition as before the rainfall. Therefore this additional time is needed because of the extra rainfall above what is expected and extra work effort to dry subgrade.*

2. Construction Project Manager reviews with Project Observer and Overall Project Manager

- Verify and evaluate within 5 working days with the overall project manager and project observer:
 - Is the request within twenty (20) days of issue occurring?
 - Is the issue documented? Is it noted in the Daily Reports?
- For Verification: Construction Project Manager assembles detailed documentation regarding issue from the Daily Reports. Include very specific details including:
 - Ramifications to contractor's progress
 - What did the contractor do?
 - Where did the contractor go?

GUIDING PRINCIPLES AND PROCEDURES FOR TIME EXTENSION REQUESTS

- Pertinent sketches, photographs, or pictures
- Is the item in the project's critical path?
- Did it affect both immediate and overall progress of the project?
- Does more documentation need to be assembled?
 - Are the facts of the issue correct?
 - Are the stated ramifications valid?
 - Does the amount of time seem reasonable?
 - Consider late fall / winter calendar days are not the same length or type as mid-summer calendar days.
 - Remember 1 calendar day is not the same as 1 working day
- Review with Contractor
 - Any issues needing clarification
 - Recommendations being given to Contractor Administrator
- Review with Project Sponsor within the same 5 working days
 - Issue and recommendations being given to Contract Administrator

The first litmus test on extensions is: could the Contractor have reasonably overcome the circumstance to keep the project on schedule?

Example of a recommendation to Contractor Administrator for Time Extension:

In some cases it's tough to order materials until the shop drawings are approved and it is doubtful the contractor could have sped up the fabrication process so I (the project manager) think the contractor is entitled to at least the original contract time allowed (28 days and potentially some additional time due to shorter working days and less conducive working conditions such as temperatures and moisture).

3. Review and Decision by Contract Administrator

- Contract Administrator will review the issue and recommendations within 5 working days
- Visits with Construction Project Manager as appropriate.
- Makes determination regarding request

4. Response Letter Signed by Contract Administrator

Possible Responses

- ◆ Denial Letter
 - *As Contract Administrator, After review of your request, I am denying this time request because of the following ...*
- ◆ Recommendation to process Change Order
 - *As Contract Administrator, I intend to recommend approval of this time request in the next change order.*
- ◆ Need more information / Can't make a decision at this time / or wait and address at the end.

GUIDING PRINCIPLES AND PROCEDURES FOR TIME EXTENSION REQUESTS

- *Thank you for the information provided in your request, it will be taken under advisement at time of contract completion, but for now your contract completion remains the same.*
-

Helpful Tips when considering requests for Time Extensions

- Need to act timely.
- **Time Extensions when starting contract later than expected.**
- Liquidated Damages

Note: Be aware that if you process a Change Order to a contract after the completion date has passed, we may be at risk when trying to claim delay damages or liquidated damages for going beyond completion date. This is just a sample of the case law.

RDP Royal Palm Hotel, L.P. v. Clark Constr. Group, Inc. ***168 Fed. Appx. 348 (2006)***

1. *"After reviewing the record, we conclude that the district court was correct in its conclusion that RDP waived its right to enforce the substantial completion date and "time is of the essence" provision of the contract. According to the record, RDP allowed the substantial completion date of February 28, 2000, to pass without setting a new deadline and continued issuing change orders and construction change directives requiring Clark to perform additional work. [R. Vol. 22 at 128.] RDP's conduct in issuing change orders and construction change directives after expiration of the substantial completion date of February 28, 2000, constituted waiver of the "time is of the essence" provision of the contract. See Horovitz v. Levine, 755 So. 2d 687, 688 (Fla. Dist. Ct. App. 1999) ."time is of the essence" proviso in the agreement was waived by the conduct of the parties subsequent to the agreed upon date of completion). In addition, RDP failed to set a new substantial completion date, thus it failed to reserve its right to enforce the liquidated damages provision for any date after February 28, 2000. "*