

ANNEXURE-1 OF THE SCC

Provisional Time Extension and Liquidated Damages (LD)

1. Responsibility Centre:

- Project Manager, Individual Projects;
- Director, Transmission Line and Substation Department;
- DMD, Project Management Directorate;
- MD, Nepal Electricity Authority.

2. General Principles:

The time remains the essence of all major contracts awarded by NEA and all works/supply under a contract need to be completed within the stipulated time schedule. Therefore, a provision has been kept in the contract that in case of delay in completion, for the reasons attributable to the contractor, they are required to pay to the owner, a sum, as LD, calculated at a specified rate but limited to the ceiling mentioned in the Contract. The ceiling limit in the contract is 10% of the contract price or part thereof.

3. Delays and Time Extensions:

Notwithstanding the fact that time is the essence of the contract, a number of cases of delay in completion of projects are encountered. Though the reasons for delay are diverse, the contracts are finally completed beyond the contract completion period. In order to keep the contract alive, it is also necessary that extension of time is granted to the contractor for the extended period of completion. While communicating the approval of extension of time, a decision on imposition/waiver of LD, fully or partly, on account of delay in completion of work is also required to be indicated. Since the reasons for delay are generally mixed up i.e., attributable to both NEA & contractor, the issue of time extension with imposition / waiver of LD needs to be dealt with meticulously and delicately taking into account all the relevant aspects. The relevant aspects to be considered include the reasons for delay, the period of delay attributable to either parties and the loss or damages, if any, suffered by NEA.

3.1. Since the above exercise can normally be taken up only after physical completion of works, Provisional time extension will be granted with the approval from the competent authority so that the contract is alive and delayed supplies/works can be accepted by NEA. Such Provisional time extension will be without prejudice to all the obligations of the contractor under the contract and further without prejudice to NEA's right to levy LD and other rights under the Contract. Above facts will be clearly indicated in the provisional time extension letter.



3.2. In normal course, the proposal for Provisional/Interim time extension or Final extension of time along with settlement of LD shall be initiated upon receipt of request from the Contractor to that effect.

4. Guidelines for Imposition of LD:

In order to safeguard the long term and larger interest of NEA, the cases for imposition of LD need to be dealt with logically and rationally, maintaining consistency in approach. Accordingly, in the normal course, the cases of time extension/LD will be dealt with as per guidelines given hereunder.

4.1. Our Contracts have a provision for recovering compensation as LD from the Contractor for delays attributable to them in performance of the Contract, in form of a predetermined sum for each unit of time delay subject to an overall limit. Therefore, if there is a delay in execution of the contract and reasons for delay are attributable to the contractor, LD is recoverable from the contractor as per provisions of the contract. The delay attributable to the contractor must however, be analyzed in a proper manner.

4.2. In Contracts awarded by NEA, delay in performance of the Contract may be on account of one or more of the following:

- (i) Reasons attributable to the owner viz., delay in providing the work front, approval of drawings/sub-vendors, issue of owner supplied material and/or fulfillment of NEA's other obligations as provided in the Contract, etc., Increase in contract price beyond the quantity variation limit can also be considered, if felt justified.
- (ii) Reasons attributable to "Force Majeure" conditions as defined in the Contract.
- (iii) Reasons attributable to the Contractor viz, delay in mobilization, submission of drawings, finalization of sub-vendors, supply of material/equipment, fulfillment of the Contractor's other obligations under the Contract, etc.

4.3. The proposal for time extension and decision on LD shall, accordingly, contain a detailed analysis indicating reasons & period of delay on each account as outlined in para 4.2 above, along with documentary evidence thereof to the extent feasible and relevant. Based on the analysis, the period of delay due to 'Force Majeure' and for reasons attributable to NEA shall be identified. The idea of the exercise is to find out the net delay, which is attributable to the contractor. Experience of LD cases dealt with in the past tells that all the three types of delay mentioned above are so much mixed up/intermingled, with one running concurrently with another, at intermittent stages, that it becomes extremely difficult to directly identify the delay attributable to the contractor. As such, a practicable approach for working out the net delay attributable to the contractor, as described below, shall be adopted:

- (i) Total delay that has occurred in a Contract = A



(ii) Cumulative period of delay on account of “Force Majeure” = B

(iii) Cumulative period of delay on account of NEA = C

(iv) Concurrent cumulative period in (ii) & (iii) = X

(v) Cumulative period of delay on account of “Force Majeure” and NEA = B+C-X

(vi) Net period of delay attributable to the contractor, Z = A-(B+C-X)

4.4. In case the period Z, arrived at as per para 4.3 above, is not positive, the time extension, till the actual completion of the works/supplies, shall be allowed without any LD.

4.5. In case the period Z, arrived at as per para 4.3 above, is positive, the time extension, till the actual completion of the works/supplies shall be allowed with imposition of LD in terms of provisions of the Contract.

5. Provisional/Final Settlement:

Provisional Settlement:

In the normal course, the settlement of LD along with provisional/interim time extension shall be done within 90 days from approval of the provisional/interim time extension including approval and issuance of letter to the contractor.

Final Settlement:

In the normal course, the settlement of LD along with final time extension shall be done after physical completion of supplies/works as per the Contract, and entire processing including approval and issuance of letter to the contractor will be completed within 120 days of physical completion.

6. Withholding of Payments:

In cases where the works/supplies extend beyond the contractual completion, amount towards LD from the RA bills shall not be withheld/retained if adequate retention payment (over and above Performance Bank Guarantee and Advance Payment Bank Guarantee) remains to be released as per Contract. In case, it is not so, the Contractor shall furnish additional Bank Guarantee (BG) which will be utilized by the NEA to recover LD, if finally levied. The validity of such additional BG shall be 6 (six) months beyond the anticipated completion of the works/supplies under the Contract.

7. Proposal Initiation:

The proposal for final time extension including decision on LD shall be initiated by concerned execution site after obtaining comments of the concerned departments on whose account delays have been identified/pointed out by the Contractor in his request for time extension.



8. BG/Security Validity:

Once a time extension (Final or provisional) is granted, the completion period for purposes of extension of validity of BGs, securities shall be determined by the extended period of completion except if otherwise provided in the Contract.

9. Initial Delays:

In cases where, because of initial delay in providing front at site due to problems in land acquisition or other local problems or any other valid reasons not attributable to the contractor, the commencement of work by the Contractor is delayed and consequently contractual completion period needs to be extended, there will be no objection to grant extension to the completion period in the initial stage itself.

10. Record Keeping:

To properly carry out analysis of delays in execution of a contract/project, it is imperative that date wise record of various activities right from award of contract to completion of works/supplies is meticulously and systematically maintained by concerned Depts. in respect of areas under their responsibility. In line with the above, the following details shall be maintained:

- **Detailed Engineering Records:** These shall include receipt of drawings/design calculations/other technical details from the Contractor and its approval by NEA, type tests, approval of sub-vendor items involving QR; etc. and intermediate activities if relevant.
- **QA&I Records:** These shall include approval of sub-vendor of non-QR items, approval of quality plan of different manufacturer, inspection of material including issuance of Material Inspection and Clearance Certificate (MICC) based on inspection call received from contractor; etc.
- **Site Execution Records:** Execution site shall ensure that hindrance register shall be maintained and entries will be made therein on a daily basis. The hindrance register should record all the hindrances in scheduled progress of work, such as delay in release in fronts due to non-completion of work by another agency doing associated work, delay in supply of infrastructure, facilities by 'Owner' as per contract, delay in receipt of material, delay in deployment of trained/adequate manpower, non-availability of site engineer/project in charge of contractor etc., apart from the day-to-day delay. These records also shall be reviewed during the fortnightly review of the progress of the work and corrective measures shall be taken. Moreover, the entries/records in the register will be used/referred while analyzing LD cases/arbitration cases/other claims of the contractor.
- **Payment Details Records:** Execution site and the concerned account division shall maintain a Bill Register (preferably computerized) wherein date of receipt of bill, date of return of bill/intimation of discrepancies or deficiencies to the Contractor/Execution Site



(if applicable) with reasons thereof in brief, date of forwarding of authorized bill (for execution site only) and date of release of payment (for finance only) shall, inter-alia, be recorded. Concerned in-charge of the execution site and head of account division shall furnish the status as above, in regard to bills being paid on monthly basis. All cases involving release of payment after period mentioned above shall be reviewed on monthly basis.

