



**US Army Corps
of Engineers®**

ENGINEERING AND CONSTRUCTION BULLETIN

No. 2008-23

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Subject: Developing, Analyzing and Implementing Adverse Weather Policy for Construction Contracts

Applicability: Guidance

1. References:

- a. ECB 96-13 Developing and Analyzing Adverse Weather Data
- b. ER 415-1-15 CONSTRUCTION TIME EXTENTSIONS FOR WEATHER
- c. UFGS SECTION or MT SECTION 01 32 01.00 10 PROJECT SCHEDULE
- d. FAR 52.249-10 – Default (Fixed-Price Construction) (Apr 1984)

2. This Construction Bulletin is a reissue of Reference 1a. It restates the requirement to follow the methodology provided in reference 1b. for the development of adverse weather data incorporated into each construction contract (with the exception of dredging described below). Consistent application and implementation of Reference 1b. is problematic as evidenced by contractor complaints of inconsistent application and interpretation by USACE and development of local contract administration manuals and clauses that vary the meaning and intent of ER 415-1-15 and the Special Contract Requirement (SCR) TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER. While weather related time growth represents only about 5% of all time growth, it is important to follow consistent practices across the Command and minimize surprises to our industry partners.

3. Difficulties in consistently applying and administering the unusually severe weather SCR at Reference 1.b. arise from not reasonably assessing what constitutes normal adverse and unusually severe weather; inconsistent application of policy when awarding weather related time extensions; and inconsistent application of the SCR after the original (or adjusted) contractual completion date but before the actual completion date.

4. Each project is unique with respect to the potential for weather impacts if any. Reference 1.b. defines normal adverse and unusually severe weather and the process of developing an anticipated adverse weather data schedule. The SCR and weather schedule act as a risk sharing mechanism for schedule performance impacts due to unusually severe weather which is not defined in reference 1.d. Locally modified SCR's that define unusually severe weather solely in terms of low probability high impact catastrophic events such as hurricanes and tornadoes are not authorized for use because they transfer the preponderance of weather related schedule performance risk to the contractor and may result in higher risk transfer related prices to the Government. The unusually severe weather SCR and methodology described in reference 1.b. is an equitable risk sharing mechanism applicable to all military and civil works construction projects. It does not apply however to dredging projects or projects which are highly dependent on river stages or to project locales where no reliable historic weather data is available.

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5. The occurrence of unusually severe weather as defined at 1.b. does not necessarily result in entitlement to an excusable non-compensable time extension under the Default Clause. At any given time during project execution, a small fraction of all NAS schedule activities are actually driving the calculated completion date and therefore on the most critical or “longest” path. NAS schedules must be statused at least monthly by the contractor to determine what activity is driving or pacing the project at each update. A weather related time extension is only awarded if the actual weather is in fact unusually severe and impacts the progress of activities on the longest path. Any such delay should be inserted as a frag-net into the NAS, logically tied to predecessor and successor activities as appropriate and the schedule recalculated. The time extension granted in calendar days should be based on the new calculated early finish date as a result of the added unusually severe weather frag-net. It is irrelevant if the contractor is ahead of or behind schedule when it experiences unusually severe weather. If future weather dependent activities on the longest path are pushed into months with more anticipated adverse weather, consideration should be given to granting additional unusually severe weather time. Conversely, if they are pushed into months with less anticipated adverse weather, consideration should be given to granting less unusually severe weather time.

6. If the project is not substantially complete on or before the current contractual completion date (the original contractual completion date adjusted for excusable time extensions including weather time extensions), the unusually severe weather SCR continues to be operative. The NAS must continue to be statused at least monthly by the contractor and any unusually severe weather related impacts to longest path activities evaluated as previously described. Time extensions are granted for all excusable delays including delays for unusually severe weather even after the current contract completion date. The goal should always be maintenance of a current and accurate NAS schedule for the purpose of proving contractor entitlement to time extensions and government entitlement to liquidated damages.

7. Point of contact for ECB is Paul Parsonault, CECW-CE, 202-761-5533.

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KIM D. DENVER
Director, National Contracting Organization
United States Army Corps of Engineers

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JAMES C. DALTON, P.E.
Chief, Engineering and Construction
Directorate of Civil Works