
HAI VAN PASS TUNNEL PROJECT

Joint Venture of
NIPPON KOEI CO., LTD., JAPAN and
LOUIS BERGER INTERNATIONAL INC., USA
In association with
TRANSPORT ENGINEERING DESIGN
INCORPORATION (TED), VIETNAM

Project Office in Danang, Vietnam
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Ref. No. PK1A-060 - 04

Date May 10, 2004

To:

Mr. Masashi Kuroda, Project Manager, J/V of Hazama and Cienco 6

Copy to:

Mr. Nguyen Ngoc Canh, Project Manager, PMU85

1) RT1, 2) File

CONTRACT PACKAGE-IA: NORTH TUNNEL SECTION

SUBJECT: Comments on EOT Substantiation Data

Dear Sir,

Reference is made to your letter No.ENG-04-107 dated 5 May 2004.

Thank you for your submission of additional substantiation data for your EOT claim. Our comments are as follows:

Validity of EOT Claims

As stipulated in GCC Sub-Clause 44.2: Contractor to Provide Notification and Detailed Particulars;

*Provided that the Engineer is not bound to make any determination unless the Contractor has
(a) within 28 days after such event has first arisen notified the Engineer with the Employer,....*

As shown in the table attached hereto, you are claiming 14 EOT claims but only two (2) claims, CC.03 and CC.19, are provided timely notice. Although, you didn't indicate your intention of claim for "extension of time" in both notices of CC03 and CC19, we could accept the first letter informing the occurrence of the event as "notice of request of extension of time".

We understand that the Contractor's failure to notice within 28 days does not automatically invalidate his entitlement to claim and the Engineer can make determination based on the contemporary records available to him.

For your reference, FIDIC1999 stipulates as follows for the Contractor's failure of notice:

20.1 Contractor's Claims

(2nd paragraph)

If the Contractor fails to give notice of a claim within 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim.

Evaluation of EOT Claims related to Critical Path

In the above reference, you provided a chart which intends to explain the delay on the critical path of the construction schedule. After review of this presentation, we have the following comments:

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- 1) Show the critical path of the original schedule as a series of work activities and work duration of each activity. Which was the critical path, Ventilation Adit (VA) or Main Tunnel (MT)? How many days of total float difference between VA and MT was existed in the original schedule?
- 2) Critical path has been changed time to time; you should demonstrate changes of the critical path for each EOT claim for both "Before work" and "After work". Generally, it is only where there is a delay to completion that an extension of time can be awarded. The Contractor should have revised the base schedule whenever the critical path was changed,
- 3) Show the claim code on the chart with the identical description of the claim with other documents, and
- 4) Calculation of "Concurrent Delay" should be explained further in detail.

Category 5 Issues Necessary for Acceleration of Project

GCC Clause 46 deals with the events leading the delay which do not entitle the Contractor to an extension of time, but do result in a rate of progress of construction which too slow to achieve the specified rate in the original schedule. In accordance with this Clause, the Engineer has been sending notices to the Contractor requesting to take such steps as necessary to expedite progress so as to comply with the time for completion.

Please be reminded that there has been no acceleration order from the Employer and the Engineer at all.

Thank you for your cooperation. We are still under review and evaluation of the claims. We will issue our evaluation after the discussion with the Employer shortly.

Sincerely yours,

Ichizuru Ishimoto
Project Manager
Encl. List of EOT claim by PK1A Contractor

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List of EOT claim by PK1A Contractor

| No. | Claim Code No. | Description of Claim | Type of Claim | Date of Event Occurred | Notice of Claim | | Date of Event Effect Ended | Notice within 28 days | Detailed Particulars within 28 days from Notice | Interim Report 28 days Interval | Final Report within 28 days |
|-----|----------------|--|---------------|------------------------|-----------------|------------|----------------------------|-----------------------|---|---------------------------------|-----------------------------|
| | | | | | Date | Ref. No. | | | | | |
| | | | | | | | | 44.2 (a) | 44.2 (b) | 44.3 | 44.3 |
| 1 | CC.01 | Deferred Commencement of Project and Related Matters | A | 01-Oct-00 | 06-Jan-01 | ENG-01-012 | 01-May-01 | NO | ---- | ---- | ---- |
| 2 | CC.03 | Adverse Water Conditions | C | 17-Oct-01 | 18-Oct-01 | ENG-01-342 | 22-Mar-03 | YES | NO | NO | NO |
| 3 | CC.04 | Time for Additional Excavation due to 144m Extension | A | 20-Dec-02 | 15-Apr-03 | ENG-03-064 | 25-Jan-03 | NO | ---- | ---- | ---- |
| 4 | CC.05 | Time for Additional Concrete Lining due to 144m Extension | A | 18-Jun-03 | 15-Apr-03 | ENG-03-064 | 23-Jul-03 | NO | ---- | ---- | ---- |
| 5 | CC.06 | Time for Relocation of Junction Works due to 144m Extension | A | 25-Jan-03 | 15-Apr-03 | ENG-03-064 | 22-Mar-03 | NO | ---- | ---- | ---- |
| 6 | CC.10 | North Portal + 72m | C | 14-May-01 | 27-Sep-01 | ENG-01-331 | 15-Sep-01 | NO | ---- | ---- | ---- |
| 7 | CC.11 | Rockbolts in Rock Support Type I Conditions | C | 21-Sep-01 | 12-Feb-04 | ENG-04-027 | 30-Nov-03 | NO | ---- | ---- | ---- |
| 8 | CC.12 | Additional Drilling and Reduced Advance due to Rock Hardness | A | 14-Sep-01 | 12-Feb-04 | ENG-04-027 | 30-Nov-03 | NO | ---- | ---- | ---- |
| 9 | CC.13 | Overbreak due Rock Hardness | C | 20-Oct-01 | 12-Feb-04 | ENG-04-027 | 30-Nov-03 | NO | ---- | ---- | ---- |
| 10 | CC.14 | Increase in Bulking Factor | A | 20-Oct-01 | 12-Feb-04 | ENG-04-027 | 30-Nov-03 | NO | ---- | ---- | ---- |
| 11 | CC.19 | Remedial Works for Excess Geological Deformation | A | 05-Oct-02 | 08-Oct-02 | ENG-02-180 | 23-May-03 | YES | YES | YES | NO |
| 12 | CC.20 | Impact of Adit Delay on Main Tunnel Progress | A | 19-Jan-02 | 12-Feb-04 | ENG-04-027 | 22-Mar-03 | NO | ---- | ---- | ---- |
| 13 | CC.23 | Power Authority Power Failures | C | 01-Sep-01 | 05-Sep-02 | ENG-02-166 | 15-Oct-03 | NO | ---- | ---- | ---- |
| 14 | CC.25 | Consolidated EOT Request and Time-Related Cost of Delay | A | 01-Oct-00 | 12-Feb-04 | ENG-04-027 | 30-Nov-03 | NO | ---- | ---- | ---- |

Type of Claim

A: EOT is only claimed

B: Additional Cost is only claimed

C: EOT and Additional Cost are claimed