

0080604 Prosecution and Progress
COMMENTS FROM INTERNAL/INDUSTRY REVIEW

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Comment: (8-12-10) Address granting of holidays due to suspensions of 8-6.4 when holiday is observed on a day different from day identified in specs - The way the revision is written, it implies that for a given holiday of Independence Day or Veteran's Day, a Contractor would need to request to work on both the actual Holiday and the Observed Holiday. That's fine, but if the schedule intended on work scheduled for both days, could they be entitled to two Holiday time extensions for each? Perfect example is last year 2009 Fourth of July, where the 4th was on a Sunday and the observed holiday was the 5th. I suggest the text should read "...preceding Memorial Day; Independence Day (or Observed date); Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day; Veterans Day (or Observed date); Thanksgiving Day; the Friday, Saturday and....." In addition, this revision is a great time to add a statement that clearly indicates that a holiday is not to be granted when the contractor was not planning to actually work. For example, just because Thanksgiving is a four day weekend, if the Contractor's work week is 5 weekdays per week, they should only get a time extension for the time falling in the five day work week, and not get Saturday and Sunday. There is a lot of confusion with this. The suggested change to this section to address this would be: "Contract time for Holidays will be adjusted in accordance with 8-7.3.2, provided the Holiday is on a normal work day as determined in the Contractor's schedule." OR "Contract time for Holidays will be adjusted in accordance with 8-7.3.2, except the Contractor will not be entitled to holiday suspension days occurring on non-normal work days."

Response:

"That's fine, but if the schedule intended on work scheduled for both days, could they be entitled to two Holiday time extensions for each?" That is correct. If the contractor initially intends to work on both the actual Holiday and the observed Holiday but is unable to do so per the specification, then the contractor could be entitled to a time extension for both the actual Holiday and the observed Holiday, provided the conditions of 8-7.3.2 are met.

Additionally the suggested change to address granting of time extensions when the Holiday or observed Holiday falls on non-normal work day is already addressed by 8-7.3.2. The intent of 8-6.4 in conjunction with 8-7.3.2 is only to grant time extensions to the contractor for Holiday Suspensions in those instances when the Suspension meets the following criteria (**emphasis added**):

The Department will grant time extensions, on a day for day basis, for delays caused by the effects of rains or other inclement weather conditions, related adverse soil conditions or suspension of operations due to holidays that prevent the Contractor from productively performing controlling items of work resulting in:

(1) The Contractor being unable to work at least 50% of the normal work day on pre-determined controlling work items due to adverse weather conditions, holiday suspension;

Thank you for the review and comments.

Richard Hogue

Comments: (8-25-10) The proposed change to this section is appropriate. As a CEI PA working with multiple Districts and Operations Centers, we have received differing direction on how holidays are to be granted based on the Contractor's schedule. Based on the second paragraph of 8-7.3.2 it appears the intent is to grant time extensions on a day for day basis for the duration of all mandatory holiday work suspensions. Some offices require the schedule show work through the required holiday suspension period in order to be eligible for additional time, and some require the schedule show the suspension period. Those that require work be scheduled through the required work suspension period also differ on how time is granted - some grant all days within the holiday period based on the requirement to suspend operations and some will only grant days for the contractor's normal work week. (If a holiday period includes a weekend and the contractor only works Mon - Fri, others will only grant time for the week days affected.) We have also received direction that no days are eligible if the contractor shows the suspension period in his schedule - the reason being the contractor is not eligible for time because he did not intend to work during the mandatory work suspension and therefore there is no impact on the controlling work items. Recommendation 1: If the intent of the second paragraph of 8-7.3.2 is to grant time on a day for day basis for mandatory holiday work suspensions, separate this paragraph from the method of calculating time for other delays affecting the schedule and amend the reference in 8-6.4 appropriately. Recommendation 2: Amend the second paragraph of 8-3.2 to include showing the mandatory holiday work suspension periods in the schedule. By doing so, the multitude of interpretations should be alleviated and the direct impact of these required suspension periods will be clearly defined.

Response:

The intent of 8-6.4 in conjunction with 8-7.3.2 is only to grant time extensions to the contractor for Holiday Suspensions in those instances when the Suspension meets the following criteria (emphasis added):

The Department will grant time extensions, on a day for day basis, for delays caused by the effects of rains or other inclement weather conditions, related adverse soil conditions or suspension of operations due to holidays that prevent the Contractor from productively performing controlling items of work resulting in:

(1) The Contractor being unable to work at least 50% of the normal work day on pre-determined controlling work items due to adverse weather conditions, holiday suspension;

Regarding this comment "Based on the second paragraph of 8-7.3.2 it appears the intent is to grant time extensions on a day for day basis for the duration of all mandatory holiday work suspensions.", the second paragraph of 8-7.3.2 states(emphasis added):

Whenever the Engineer suspends the Contractor's operations, as provided in 8-6, for reasons other than the fault of the Contractor, the Engineer will grant a time extension for any delay to a controlling item of work due to such suspension. The Department will not grant time extensions to the Contract for delays due to the fault or negligence of the Contractor.

This paragraph does not address the Holiday suspensions mandated by specification 8-6.4 but rather this paragraph addresses suspensions of contractors operations as directed by the Engineer.

In your review comment you raise several different scenarios and we would like to take this opportunity to address each as follows:

“Those that require work be scheduled through the required work suspension period also differ on how time is granted - some grant all days within the holiday period based on the requirement to suspend operations....” This would only be correct if the contractor's schedule demonstrates that the contractor intended to perform Controlling Items of Work for every day of the Holiday suspension referenced in 8-6.4.

“Those that require work be scheduled through the required work suspension period also differ on how time is grantedsome will only grant days for the contractor's normal work week. (If a holiday period includes a weekend and the contractor only works Mon - Fri, others will only grant time for the week days affected.)” This would be correct if the contractor's schedule demonstrates that the contractor did not intend to perform Controlling Items of Work for every day of the Holiday suspension referenced in 8-6.4.

“We have also received direction that no days are eligible if the contractor shows the suspension period in his schedule - the reason being the contractor is not eligible for time because he did not intend to work during the mandatory work suspension and therefore there is no impact on the controlling work items.” That position would be correct since the Holiday suspension mandated by 8-6.4 had no impact to the contractor's performance of Controlling Items of Work.

Thank you for the review and comment.

Comments: (date)

Response:
