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Construction & Engineering

G8 Summit - Potential for Disruption

There has been considerable press speculation, of late, as to the potential for civil unrest across central Scotland as a consequence of the G8 summit. The summit is to take place at Gleneagles at the beginning of July. Whilst some press comment has down-played the prospect of serious unrest, and it may be that the summit passes without serious incident, the following are the facts:-

1. Between 1200 and 1500 soldiers and Royal Marines are being drafted in to bolster security services
2. Police have contingency plans to cordon off Glasgow and Edinburgh and close the Forth and Kincardine Bridges to forestall trouble.
3. All Police leave across Scotland has been cancelled for the duration of the summit.
4. Edinburgh Sheriff Court has cleared a 2 week slot before, during and after the G8 to deal with those who may be arrested.
5. Emergency holding pens at RAF Turnhouse, on the outskirts of Edinburgh, are to be prepared to house large numbers of prisoners if arrests are made.

One of the consequences of any unrest which does materialise could be that construction projects become seriously disrupted or grind to a halt. This possibility gives rise to the question of whether a contractor whose works have either been delayed or stopped by such unrest can obtain an extension of time under his contract and thereby avoid any liquidated damages for delay.

Extensions of Time

The answer to the question set out above will of course depend upon the terms of the relevant construction contract. We have considered the provisions relating to the granting of extensions of time under three of the most common standard form contracts: JCT, ICE and GC/Works.

JCT 98 Private With Quantities]

Extensions of Time under this form of contract are dealt with in clause 25.

The key question is whether the activity falls within the definition of a Relevant Event and whether Practical Completion will be delayed as a result. So could rioting

associated with the G8 summit be described as a Relevant Event?

There are 4 sub-clauses to clause 25.4 which might point to an answer:

Clause 25.4.3

'Loss or damage occasioned by any one or more of the Specified Perils'.

Riot and civil commotion are contained within the definition of Specified Peril. Therefore this clause could be used to obtain an extension of time where loss or damage to the works has occurred.

Clause 25.4.4

'Civil commotion, local combination of workmen, strike or lock-out affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any goods or materials required for the Works'.

This clause could also be used where civil commotion has affected the execution of the works. E.g. where workmen or deliveries have been unable to get to site.

Clause 25.4.9

'The exercise after the Base Date by the United Kingdom Government of any statutory power which directly affects the execution of the Works by restricting the availability or use of labour which is essential to the proper carrying out of the Works or preventing the Contractor from, or delaying the Contractor in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of the Works'.

Continues on reverse

This clause could potentially be used where access to the site is restricted by police and the contractor is not allowed to enter the site or the contractor is unable to receive a delivery of materials.

Clause 25.4.16

'The use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat'.

This clause could be used where there is no civil commotion or rioting but the police are concerned about terrorism. This could be particularly useful where works are being carried out on or close to a high profile target.

[Remember also that a contractor must use his "best endeavours" to prevent delay in the progress of the Works. The notice requirements of clause 25.2 require the contractor to give notice "forthwith" as the delay becomes reasonably apparent. This notice must identify the cause or causes of the delay and demonstrate any event which is a Relevant Event. Remember also that one of the areas commonly targeted for amendment by Employers is the list of Relevant Events and it may be that some of the above events are excluded or watered down by a project specific schedule of amendments]

ICE Conditions

Clause 44(1) has a catch all provision which provides for an extension of time where there are:

'other special circumstances of any kind whatsoever which may occur'.

GC/Works/1

Similarly clause 36(2) of GC/Works/1 provides for an extension of time where there are:

'any other circumstances (other than weather conditions) which are outside the control of the Contractor or any of his subcontractors and which could not have been reasonably contemplated under the contract'.

This clause may have its limitations as it could be argued that the effect of the G8 Summit could have been reasonably contemplated. Clearly this may depend to some extent upon where any civil unrest takes place. Whereas rioting in Auchterarder may be reasonably contemplated, rioting in Edinburgh and Glasgow may not be.

[Again, remember that Employers will often seek to watered down the protection afforded by such catch all provisions as referred to above by a project specific schedule of amendments]

Conclusions

What should you do if faced with a delay caused by unrest or potential unrest during the G8 summit?

1. For any new contracts, ensure that rioting is dealt with in the contract.
2. For 'old' contracts - dust them down and check the relevant provisions.
3. Use best endeavours to reduce the risk of delay.
4. Serve any notices of delay required under your contract.
5. Consideration ought also to be given to recoverability of costs (loss & expense).

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This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

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