

## 6 Compensation events

### CORE CLAUSES

**Compensation events 60** Compensation events are events which, if they occur and do not arise from the *Contractor's* fault, entitle the *Contractor* to be compensated for any effect the event may have on the Prices. A compensation event will normally result in additional payment to the *Contractor* but in a few cases may result in reduced payment.

Compensation events are listed in the core clauses. Further compensation events are stated in Options X2, X12 and X19 (the latter lists a further seven compensation events). The main list is in subclause 60.1; this includes events (1) to (14).

Option Z may be used by the *Employer* to insert additional compensation events. The effect of such additions is to transfer the financial risk of the events from the *Contractor* to the *Employer*. The event must be described precisely.

Changing the Service Information 60.1  
(1)

Changes to the *service* are made by a *Service Manager's* instruction to change the Service Information. The authority given to the *Service Manager* for this purpose is in subclause 14.3. Changes may comprise deletions from, or additions to, the Service Information. There may be many reasons for changing the Service Information, e.g. a change made to eliminate an illegality or impossibility (Clause 18) or to resolve an ambiguity or inconsistency (Clause 17).

The clause states two exceptions to a change to the Service Information being a compensation event.

- The procedure for accepting a Defect is stated in Clause 43. An instruction to change the Service Information after acceptance of the *Contractor's* quotation under subclause 43.1 is not a compensation event.
- A change to the *Contractor's* plan made at his own request is not a compensation event. The clause also gives precedence to the Service Information in part one of the Contract Data over the Service Information in part two of the Contract Data. Thus the *Contractor* should ensure that the Service Information he prepares and submits with his tender as part two of the Contract Data complies with the requirements of the Service Information in part one of the Contract Data. (See also notes on subclause 21.2.)

Access (2) The *Employer's* obligation to provide the right of access is stated in subclause 31.1.

Provision by the *Employer* (3) The Service Information should give details of anything which the *Employer* is to provide, such as equipment, Plant and Materials, and of any restrictions on when it is to be provided. The *Contractor* is required to include this information in his plan under subclause 21.2.

Stopping work (4) Subclause 32.1 gives the *Service Manager* authority to instruct the *Contractor* to stop or not to start work. There are several reasons why the *Service Manager* may wish to give such an instruction, e.g. for reasons of safety.

Work of the *Employer* or Others (5) The Service Information should give details of the order and timing of work to be done by the *Employer* and Others. The *Contractor* is required to include this in the information on his plan under subclause 21.2.

**Revising the Task Order programme** X19.8 This clause lists the matters which are to be shown on a revised Task Order programme. It should record the actual progress achieved on each operation and the reprogramming of future operations. It should also show the effects of implemented compensation events. If a compensation event affects the timing of future operations in Providing the Service, a revised plan indicating the effects is to be submitted as part of the *Contractor's* quotation (subclause 62.2). The revised programme should also show proposals for dealing with delays, Defects and any changes the *Contractor* wishes to make.

The *Service Manager* should note, in reviewing a submitted revised programme, any changes to the dates by which the *Employer* is required to provide information, facilities, access, etc. He should be prepared to accept a programme with earlier dates if this is acceptable to the *Employer*. After acceptance, any subsequent failure by the *Employer* to meet these earlier dates is a compensation event (subclause X19.10(4)).

**Compensation events** X19.10 The *Service Manager* has the authority to change a Task Order in the same way that he can change the Service Information. Such a change must result in a change to the Prices agreed for the Task Order. The change is assessed in the same way that other compensation events are assessed.

The second compensation event deals with a situation where the *Contractor* starts work in good faith (perhaps where the work is urgent) before he receives the Task Order. If, in such a case, the *Contractor* incurs costs which he would not otherwise have incurred if the Task Order had been issued before the starting date, those costs may well be reimbursed as a compensation event.

The fifth compensation event deals with failure by the *Employer* or Others to comply with the Task Order programme. This emphasises the need for the *Service Manager* to check carefully the relevant dates in any programme submitted by the *Contractor*.

The sixth compensation event is an event commonly described as 'force majeure'.

X19.11 This subclause outlines the procedures for dealing with compensation events affecting a Task Order and their consequences. If a compensation event has the effect of delaying the *Contractor's* activities in performing the Task, the *Contractor* is required to revise the programme and show the effects of any delay.

## Option X20: Key Performance Indicators

X20.1 Key Performance Indicators (KPIs) are being increasingly used as a means of improving efficiency and encouraging better performance by contractors with a view to continuous improvement. KPIs are provided for in Option X12 where partnering arrangements are in place. This Option X20 can be used when Option X12 is not used. The procedure in Option X20 requires the establishment of performance targets and regular reporting by the *Contractor* of his performance measured against the KPIs.

X20.5