

IDLE EQUIPMENT AND FACILITIES COSTS ATTRIBUTABLE TO A DELAY CAUSED BY A CHANGE IN THE WORK CAN BE RECOVERED BY THE VENDOR

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Decisions of the GPO Board of Contract Appeals have clarified the rules applicable when there is a government delay. The longstanding GPO rule continues to be that, if the government is late furnishing materials, the vendor's only remedy is to get additional time to produce the work. Contract Terms extends the schedule by one workday for each day the government is late, plus an additional grace day for the each day the government is late, up to a maximum of three grace days. The vendor is not entitled to additional monies, or the right to restructure the schedule outside of the automatic extension provisions.

An exception to this rule arises in situations where the government is extremely late, and it would be unreasonable to simply extend the schedule by several days, because the original time frame for production has been dramatically changed (such as where the government is several weeks late with camera copy in a recent situation). In this type of situation, the original schedule is usually said to be "abandoned" and the parties agree on a new schedule or the GPO cancels the job. A long delay alone does not entitle the printer to additional money.

However, these rules change dramatically when there is a change in the work. If a change in the work causes a delay, in many situations, the government will be liable to pay the contractor for idle equipment and facilities costs occasioned by the delay which resulted from the change. For example, suppose the printer is ready to go on press tomorrow morning with a medium-sized run. Late this afternoon, the printer receives a call from the GPO advising him that the agency has some major changes, that they will be forwarding those changes hopefully tomorrow afternoon, and the printer should hold up production until he receives the changes and makes the necessary corrections. If the printer cannot acquire additional work to fill that idle time, the printer may recover the unabsorbed cost created by having the equipment and or facilities idle while waiting for the change or making the change. See, *Appeal of New South Press and Associates*, GPO BCA 25-95.

The rules and the application of the rules in this delay caused by a change situation are complex. Government personnel and vendors need to speak to their Counsel for advice. However, both the buyer and the printer need to keep in mind that making last minute changes can cost money not only for the changes, but also for the delay which those changes created.

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