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## Understanding the Eichleay Formula: Recovering Compensation From Project Delays

By Robert Mercado | Tuesday, July 27, 2021

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In the event of a delay to a construction project caused by the actions of the project owner or another contractor, the delayed contractor has the right to request compensation for the impact of the delay. One type of compensation is the ability to recover a portion of the contractor's home office overhead. The most common calculation related to this recovery is known as the Eichleay formula. This formula calculates the amount to be recovered per day, by the contractor from the owner, for the delay period.

The Eichleay formula consists of the following components:

- Total billed on the delayed project;
- Total billed for contract period;
- Total overhead for contract period;
- Days of performance; and
- Number of delay days.

### **TOTAL BILLED ON DELAYED PROJECT AND TOTAL BILLED FOR CONTRACT PERIOD**

Contract billing is used to determine the amount of work performed by the contractor for the delayed project compared to the total amount of all work performed by the contractor during the delay period. The total billed on the delayed project is the amount requisitioned to the owner of the delayed project. This amount is compared to the total contract billing for all contracts of the contractor billed during the time period of the project, from the inception of the delayed project through the completion period, including the delay. This calculation provides the percentage of work performed for the delayed project in ratio to the rest of the contractors' work performed during the period.

## **TOTAL OVERHEAD FOR CONTRACT PERIOD**

The overhead for the contract period is used to determine the rate per day that the contractor is able to request as part of the claim for the delay. The total overhead for the contract period is multiplied by the percentage of the amount billed on the delayed contract in ratio to the rest of the work performed during the contract period. It is important to note that the time period used for billing must be the same time period used for the overhead. Additionally, if the delay is on a government contract, the contractor will be required to adjust the overhead amount for items that are unallowable under the Federal Acquisition Regulations, Part 31 (FAR).

## **DAYS OF PERFORMANCE**

The days of performance are the number of days from inception of the project through the completion of the project, including the delay period.

## **NUMBER OF DELAY DAYS**

The number of delay days is the number of days the contractor has suffered compensable delays. This amount may not be the total number of days delayed. It is important for the contractor to prove that the delays claimed are a result of the owner or another contractor impacting the critical path of the project.

## **EICHLEAY CALCULATION**

As an example, a contractor has a non-governmental contract of \$2.5 million that is delayed. The contract was scheduled to last 365 days. Due to the contract owner inflicting delays on the critical path of the project, the contract was completed in 500 days (365 days originally planned plus 135 days of compensable delay). During the time period of the contract, the contractor billed on other projects \$7.5 million, bringing the contractor's total billing during the delayed contract time period to \$10 million. Additionally, the contractor incurred \$2 million in overhead expenses during the delayed contract time period.

Based on these facts, here is the calculation:

- \$2.5 million (total billing on delayed project) is divided into \$10 million (total amount billed by the contractor), equaling 25%. The 25% is the share of the contractor's work represented by the delayed contract, as compared to the rest of the contractor's work.
- The 25% is then multiplied by the total overhead incurred during the contract time period (\$2 million), for a total of \$500,000. The \$500,000 is the amount of overhead that relates (indirectly) to the contract.

- The \$500,000 is then divided by 500 (number of days it took to complete the contract), coming to a total home office overhead cost per day of \$1,000 related to this contract.
- The \$1,000 multiplied by 135 compensable delay days provides the total home office overhead damages of \$135,000 based on the Eichleay formula.

## CONCLUSION

When preparing a delay damage claim using the Eichleay formula, it is important to understand what each item in the calculation means and any adjustments that are needed (such as adjusting overhead for FAR requirements in government contracts). Seeking assistance from the contractor's lawyer and accountant to address all aspects of the Eichleay formula calculation is imperative.



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