

Research Article

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Comparison of time extension provisions between the Joint Contracts Tribunal and Iraqi Standard Bidding Document

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Abstract: Many contractors face challenges in completing the project on time due to delays arising for various reasons, including reasons beyond the contractor's control, such as force majeure, exceptionally bad weather conditions, changes, etc. As a result, contractors submit a time extension claim to make up for lost time and set a later completion date to complete the project. Each contract has its terms for the extension of time (EOT). Therefore, the objective of this article is to study the provisions for extending the time when the reasons are beyond the control of the contractor according to Iraqi Standard Bidding Documents for Procurement of Works (SBDW) and the Joint Contracts Tribunal (SBC/Q 2016). The article also aims to show the extent of the difference between the two contracts in applying these provisions. The study found that when submitting a claim in the Iraqi SBDW, the contractor shall consider the notifications relating to it as per the specified period. Therefore, they will not be considered if claims are submitted after that period. In SBC/Q 2016, submitting a claim notice is not required to gain additional time. Therefore, the failure to provide notice does not forfeit the right to claim additional time. This study enhances the contractor's knowledge of the terms related to the EOT under the two contracts, reducing the disputes resulting from a misunderstanding of these provisions.

1 Introduction

In all construction project contracts, a contract is entered to complete the project at a specific time stipulated in the contract. The contractor is obligated to complete the project within this period. Still, contractors often face many delays during construction, making them fail to finish the job on schedule. Delay is a very big problem that construction projects suffer from in Iraq. Here, a very small percentage of construction projects have been completed within the contract period, especially in the last period, due to the country's conditions. This leads to negative effects on society, particularly on the economic side of the country [1]. Countries worldwide, especially Iraq, suffer from the problems of delaying the completion of a stage of the project or the completion of the entire project [2]. Delays occur commonly in construction projects, and assessing the impact of delay is sometimes a contentious issue [3].

The term “delay” refers to the amount of time a portion of a construction project is prolonged beyond what was initially anticipated due to unforeseen events. The delay arises from two situations [4] stated as follows:

- 1) Either from within the contractor's organization, which is essentially those events caused by the contractor for which he is legally responsible. This, in turn, leads to the employer's entitlement to a lump sum compensation obtained from the contractor due to the delay.
- 2) Or due to the employer, which leads to the contractor's entitlement to obtain additional time to complete the work. Therefore, the extension terms are used to compensate the contractor for the lost time and extend the completion date without the obligation to pay compensation.

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1.1 Iraqi Standard Bidding Documents (SBDs)

SBDs, procurement planning forms, performance indicators, a guide for archival processes, and other models have been released by the Iraqi Ministry of Planning to regulate government contracting processes at the federal level [5].

The Iraqi Ministry of Planning, in cooperation with the World Bank, issued 18 standard tender documents. These documents were released in March 2014 and considered indicative, which became mandatory in 2016. The Ministry of Planning defined the standard documents as international documents of an Iraqi nature that consider the interests of the work and the bidder since they include instructions and provisions for each type. Furthermore, the documents also include compliance with the principles of economy, transparency, and efficiency in implementing the projects [6].

One of the documents used in this study is the Standard Bidding Document for Public Competitive Bidding for Public Works Execution Contracts (SBDW).

1.2 Joint Contracts Tribunal (JCT)

In 1931, The Royal Institute of British Architects and the National Federation of Building Trades Employers created the JCT. JCT produces its range of standard forms (e.g., master contracts, sub-contracts, consultant agreements, and other agreements) and is widely used in the UK. Its first release was in 1977. Later, many updates were released over the years, and the last update was in 2016 [7].

The 2016 edition included nearly 12 family contracts, one of which is the SBC/Q 2016 contract, which in its overall structure is the most similar to that of the JCT group. In addition, three versions were included (in quantities, without quantities, and in approximate quantities). The difference between these issues lies in the documents on which the contract amount is based [8].

Several previous studies dealt with the study of time extension according to the standard forms of contracts, where Fawzy and El-adaway [9] discussed time extension provisions under the following standard contracts (AIA, Consensus DOCS, EJCDC, FIDIC, World Bank, JCT 2011, and NEC). El-adaway *et al.* [10] also conducted a study of time under contracts ([JCT] Design and Build Contract of 2011, the World Bank Conditions of Contract included in

the Standard Bidding Documents for Procurement of Works [SBDW], FIDIC, and AIA).

There are no studies that dealt with the analysis of the provisions for extending the time if the delay is beyond the contractor's control, under the SBC/Q 2016 contract and the Iraqi SBDs (Standard Bid Document for Public Competitive Bidding for Public Works Execution Contracts).

2 Methodology of comparison

This is an exploratory study to find out the time extension provisions in the General Conditions of Contract (SBDW) recently used in the construction industry in Iraq and the contract SBC/Q 2016 used in the UK.

In this study, the authors relied on:

- 1) Evaluating and assessing the contract extension provisions for both contracts.
- 2) Making a comparison table between these two contracts highlighting the key variations in the general criteria connected to time extensions.
- 3) There were interviews with project and contract managers from large and small businesses in private and public organizations. They were questioned about using Iraqi standard documents in construction.
- 4) A schedule of the procedures connected to these provisions is needed by the two contracts to help contractors comprehend the rules for extending time and reduce disputes that arise from misunderstanding these provisions.

SBC/Q 2016 was used in this study because it is the latest edition of the JCT suite. Additionally, authors choose the SBDW and SBC/Q 2016 contracts because both contracts are for large companies for which the employer has full technical documentation and schemes available. This includes tables of quantities and technical specifications to ensure that the comparative characteristics required for this study are available.

3 Results and discussion

Below is the analysis of the Iraqi Standard Document (SBDW) [6] and the JCT (SBC/Q 2016) [8]. Table 1 compares the two contracts' extension of time (EOT) provisions.

Table 1: Comparative analysis for JCT (SBC/Q 2016) form of contract 2016 and Iraqi SBDW

SBDW	SBC/Q 2016	Comparison
<p>Clause (8) Subparagraph (4) The Iraqi SBDs in Clause (8.4) stipulate a set of reasons that give the contractor the right to extend the time limit, taking into account Paragraphs (20-1) as follows:</p> <ol style="list-style-type: none"> The changes; Any of the other reasons that allow additional time to be given; Extremely unfavorable weather conditions; As a result of an epidemic or a shift in government policies, there is an unanticipated shortage of staff or implementation requirements; <p>Any delay or resistance brought about by the employer or anyone associated with him.</p>	<p>Clause (2) Subparagraph (29) The relevant events are:</p> <ol style="list-style-type: none"> Variations Architect/Contract Administrator's instructions The failure to take control of the site or any part covered by Paragraph (2.5) Taking into consideration what is mentioned in the paragraphs of the item "Antiquities" Executing works in inaccurate quantities due to the inability to determine their quantities correctly Subject to what is stated in Paragraph (4.13), "The contractor's Right to Suspend" Any default on the part of the employer or his representative, except for default issued by the contractor and his representative Performance of work by a legal contractor concerning his legal responsibilities or his failure to perform the work Unusually bad weather circumstances Any specified peril-related loss or damage Civil unrest or the use or threat of terrorism, as well as associated authorities' activities in the case of such an occurrence or danger Labor issues arising from the strike Exercising legal authority after the base date A named specialist going bankrupt or being bankrupt There is a case of force majeure 	<p>In the standard Iraqi documents, concerning subparagraph (b), "Under any of these circumstances, any reason for delay would justify an extension of the period of completion". This paragraph indicates several reasons found in several paragraphs in separate places for these conditions that justify time extension. Among them are as follows:</p> <ul style="list-style-type: none"> Clause (1) Subparagraph (9) Clause (2) Subparagraph (1) Clause (4) Subparagraph (7) Clause (4) Subparagraph (12) Clause (4) Subparagraph (24) Clause (7) Subparagraph (4) Clause (8) Subparagraph (9) Clause (10) Subparagraph (3) Clause (13) Subparagraph (1) Clause (13) Subparagraph (7) Clause (16) Subparagraph (1) Clause (17) Subparagraph (4) Clause (19) Subparagraph (4) <p>It is evident from this that in the Iraqi SBD, the reasons for the delay that led to the EOT were not limited to one clause. Instead, these reasons were indicated in separate places for these terms and under different names.</p> <p>In contrast to SBC/Q 2016, the reasons for the delay in extending the time are clearly stated in one clause.</p> <p>In addition, SBC/Q 2016 did not explicitly define the term force majeure. Here, it did not mention the events that fall within its scope, unlike Iraqi standard documents in which force majeure is expressly defined in Clause (19) Subparagraph (4) and the events considered force majeure.</p> <p>SBC/Q 2016 includes Clause (2) Subparagraph (28.6.1) and Clause (2) Subparagraph (28.6.2), which clearly indicate the obligation of the contractor to avoid or prevent delays, including delay for which the employer is responsible.</p> <p>In the Iraqi Standard Documents, there are no clear and explicit clause obligating the contractor to avoid or prevent delays.</p>
Not available	<p>Clause (2) Subparagraph (28.6.1) "The contractor shall use his best efforts to avoid delays in the progress of the works or any section, regardless of cause, and avoid the works or section's completion being delayed or further delayed beyond the relevant Completion Date."</p> <p>Clause (2) Subparagraph (28.6.2) In the event of a deferment, the contractor shall perform all that the Architect/Contract Administrator may reasonably require for the purpose of continuing to complete the work.</p>	
<p>Clause (20) Subparagraph (1) (Paragraph 1)</p>	<p>Clause (2) Subparagraph (27.1) When works or the department are delayed, the contractor must inform the Architect/Contract Administrator by</p>	<p>In the Iraqi Standard Documents, the contractor is bound by a specified time frame to give notice of the claim for an additional period (within a date not</p>

(Continued)

Table 1: Continued

SBDW	SBC/Q 2016	Comparison
<p>If the contractor feels he is entitled to more time, he must notify the Engineer of the incident giving rise to the claim for the additional term within 28 days of the risk event.</p>	<p>sending a notice including the material circumstances, the reasons for the delay and specifying which event, in his opinion, is significant.</p>	<p>exceeding 28 days). Moreover, the notice must be given as mentioned in Clause (1) Subparagraph (3) “Communications.” Meanwhile, SBC/Q 2016 has no specific time limit set for the contractor to provide notice of delay. The contractor’s timely provision of notice is not a prerequisite for eligibility for an EOT. As a result, failing to comply with the conditions of the notice will not prohibit the contractor from obtaining additional time.</p>
<p>Clause (20) Subparagraph (1) (Paragraph 2) “If the contractor fails to provide notification within the stated timeline, the completion term will not be extended, and the employer will be released from the obligation.” If this is not the case, the requirements of this paragraph will apply.</p>	<p>Clause (2) Subparagraph (28.5.1) The Architect/Contract Administrator has the right, not later than 12 weeks from the date of practical completion, to postpone the tasks or section completion beyond the date that was previously fixed, taking into account anything appropriate, provided that it is before the date of practical completion and after completion of business or oath. The Architect/Contract Administrator must do so in the following cases: 1 – when reviewing a previous decision, 2 – if the relevant event was determined by the contractor in advance, and 3 – if the relevant event was not specified by the contractor.</p>	<p>In the standard Iraqi documents, submitting a claim notice within 28 days is a prerequisite for the contractor’s eligibility for an EOT. In the absence of such notice, he is not entitled to claim an extension of lost time. In SBC/Q 2016, the Architect/Contract Administrator was given authority under Clause (2) Subparagraph (28.5) to review the overall position with respect to time extensions within 12 weeks. In this review, the architect must consider all circumstances, including relevant events. Decisions he deems fair and reasonable are either by setting a date after completion or (for relevant omissions) setting an earlier date. Therefore, this clause gives a “safety net” of some kind to the contractor if he has not been notified of the claim.</p>
<p>Clause (20.1) (Paragraph 3) Obliging the contractor to make a full and comprehensive claim for the grounds that led to the claim within 42 days of his awareness of the conditions that led to the claim and to extend the time.</p>	<p>Clause (2) Subparagraph (27.2) The contractor shall notify the Engineer of the projected impacts of each incident, as well as an estimate of the delay duration for the works or section.</p>	<p>In the Iraqi Standard Documents, the contractor is specified with a time limit for the purpose of submitting a detailed claim to the Engineer.</p>
<p>Clause (20.1) (Paragraph 4) If the event or condition that gave rise to this claim has a long-term influence, then:</p> <ol style="list-style-type: none"> The detailed claim that was presented will be treated as a provisional claim. Each month, the contractor must submit further interim claims. Here, each noting the amount claimed and/or the time of cumulative delay, as well as any other supporting facts reasonably necessary by the Engineer. The contractor shall submit his claims by the last 28 day after the date of the incident or circumstance’s impact or within any other time offered by the contractor and accepted by the Engineer. 	<p>Not available</p>	<p>In SBC/Q 2016, the contractor was not constrained by a specific time limit for the purposes of submitting a detailed claim. In the Iraqi standard documents, the continuing impact events are clearly indicated in Clause (20) Subparagraph (1). In SBC/Q 2016, there was no clear indication regarding events with continuing impact.</p>

(Continued)

Table 1: Continued

SBDW	SBC/Q 2016	Comparison
Clause (20.1) (Paragraph 5) The contractor shall keep all records required to prove any claim, whether on-site or at any other place acceptable to the Engineer.	Not available	Iraqi standard documents obligate the contractor to keep records to prove the status of the claim. In SBC/Q 2016, this condition was not provided to the contractor.
Clause (20.1) (Paragraph 6) The Engineer shall, within 42 days of receiving the contractor's notice, respond to it either with approval or rejection, and the Engineer shall have the right to require the contractor to send other necessary details.	Clause (2) Subparagraph (28.2) The Architect/Contract Administrator shall notify the contractor of his judgment in relation to any notification under Section 2.27 as soon as reasonably practical (whether or not an extension has been granted) and in any instance within 12 weeks of receiving the requisite particulars. If the period between receipt and completion is less than 12 weeks, he will make every attempt to finish the job before the deadline.	In Iraqi standard documents, the Engineer is limited to responding to the contractor's notification of the claim of acceptance or rejection within 42 days from the date of receiving the loan claim, and the Engineer's decision is in accordance with Clause (3) Subparagraph (5). In SBC/Q 2016, the Architect/Contract Administrator is obligated to respond to the contractor's notice within 12 weeks.
Not available	Clause (2) Subparagraph (28.4) The Architect/Contract Administrator may advance the date of completion of works or section to the date previously fixed under the Clause (2) Subparagraph (28.1) or by prior agreement, but provided that it is subject to the two clauses, which are Clause (2) Subparagraph (29.6.3) and Clause (2) Subparagraph (28.6.4).	The Architect/Contract Administrator is permitted under this clause to reduce the time extension previously issued under Clause (2) Subparagraph (28.3), and the Engineer may then give written notice to the contractor specifying the early completion date. In other words, if the work is omitted after the extension has been granted, the Architect/Contract Administrator may set an early completion date by written notice to the contractor.

Table 2: The procedures for claiming extensions of time by contractors under Iraqi Standard Document [6] and JCT (SBC/Q 2016) [8]

Contract	Procedure	
Iraqi standard documents	<i>Contractor's obligations</i> If the event has a non-permanent effect, then	<ul style="list-style-type: none"> • The occurrence of the event. • The contractor shall send a notification of the claim within 28 days of becoming aware of the occurrence of the incident or should have known of it. • The contractor shall send a detailed claim within 42 days of becoming aware of the event.
	<i>Contractor's obligations</i> If the event has a lasting effect, then	<ul style="list-style-type: none"> • A previously submitted detailed claim is considered a temporary claim. • The contractor shall continue to send temporary claims (every month) and any details reasonably requested by the engineer. • Sending the final claim within 28 days from the date of the end with respect to the effect resulting from the event.
JCT (SBC/Q 2016)	<i>Contractor's obligations</i>	<ol style="list-style-type: none"> 1. The occurrence of a deferred event. 2. Sending a notification to the engineer when it becomes clear that the works or the department are late or are likely to be delayed. 3. Sending a detailed notification of the expected effects of each event and an estimate of the expected delay by exceeding the end date. 4. Inform the architect/contract manager of any material change in potential delay or other details.

A work extension was enabled by both the Iraqi SBDW as well as JCT (SBC/Q 2016) contracts if the delay was not the contractor's fault. An extension of completion time was provided by SBDW under Clause (8.4), "Extension of Completion Period," which offers a list of reasons. Moreover, contractor claims are handled under Clause (20.1), which involves the contractor's claim submission procedure.

Clause (2) Subparagraph (26–29) of the SBC/Q 2016 contract deals with extended time. When the architect/contract manager specifies a revised completion date, the delay event is referred to as a "related event" in all types of JCT, in which the term is "Adjustment of completion."

According to Table 1 of the Iraqi standard documents, if the contractor does not submit the claim notice within the time specified, which is 28 days from the date of the event that led to the claim, he forfeits his right to an extension since the Iraqi standard documents regarded submitting the claim notice as a prerequisite for an extension.

According to SBC/Q 2016, a claim submission time frame was not specified. Here, the contractor was not required to acquire an extension since SBC/Q 2016 in Clause (2) Subparagraph (28.5) required the architect/contract manager to assess the time within 12 weeks of practical completion irrespective of whether the contractor issued an extension notice or not.

In the Iraqi documents, the contractor should pay close attention to the circumstances that allow him to extend the project completion date if events outside his control cause the project to be delayed. These events are spread throughout these requirements, making it difficult for the contractor to discover and reference them; contrary to SBC/Q 2016, where all these events are collected in one clause so that it is easy for the contractor to find and refer to them.

SBC/Q 2016 grants an EOT if a portion of the work is delayed rather than after the practical completion date as stipulated in Iraqi standard documents. However, the date of completion of work may be estimated by the engineer if it is prior to the date of practical completion, as permitted by Clause (2.28.5). Consequently, the architect/contract manager shall analyze the works in which delay occurred whether or not the contractor filed the extended notice, therefore guaranteeing the contractor the right if notice of the claim is not provided.

To establish the claim, the contractor must be aware of standard contract clauses that permit time extensions. Steps to request a time extension under Iraqi Standard Documents and SBC/Q 2016 are outlined in Table 2.

4 Conclusions

On-time completion is an indicator of project success, yet certain projects are frequently delayed for causes beyond the contractor's control. As a result, the contractor must file for a time extension. To prepare a time extension application, the contractor must first identify the contract provision that allows for the claim. Thus, this article guided the contractors on how to extend the time and identify associated clauses under two contracts, Iraqi SBDW and JCT (SBC/Q 2016).

To this effect, if the contractor does not comply with the provisions of the claim notice within the time frame specified for him, which is 28 days from the date of the occurrence of the event that led to the claim, leads to losing his right to extend the time, according to the Iraqi standard documents. In SBC/Q 2016, the contractor is not required to specify a specific time frame for submitting the claim and did not make it a prerequisite for obtaining an extension.

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