

CONTRACTOR'S APPLICATION FOR AN EXTENSION OF TIME

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To my beloved mother and father

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ABSTRACT

Invariably an evaluation of extension of time (EOT) will be made based on the information submitted by the contractor such as work programme and architect's instructions. Lack of information of delay is one of the common mistakes by the contractor in the application of EOT and this can lead to obstacles in prompt settlement of claims for EOT. The objectives of this research are: to identify the information that needs to be considered in evaluating extension of time application; to identify the common mistakes by the contractor in the application of extension of time; and to identify the ways to reduce the mistakes by the contractor in the application of extension of time. The methodology of this study includes literature reviews, data collection and analysis. Data is gathered from responses of questionnaire survey with professionals involved in the construction project. The research findings indicate that insufficient quality of information and poor presentation of the application to show how the progress of the work has been delayed remained as the highest common mistakes. This research highlights the ways to reduce the mistakes to speed up the evaluation process in order to establish the contractor's entitlement for EOT and also to avoid disputes about contractor's entitlement for EOT. In conclusion, the mistakes could be best controlled or reduced by the implementation of a document management system.

ABSTRAK

Penilaian lanjutan masa biasanya dibuat berdasarkan maklumat yang diserahkan oleh kontraktor seperti program kerja dan arahan arkitek. Kekurangan maklumat kelambatan adalah salah satu kesilapan biasa oleh kontraktor dalam permohonan lanjutan masa dan ini boleh membawa kepada halangan untuk penyelesaian segera tuntutan lanjutan masa. Objektif-objektif kajian ini adalah: mengenalpasti maklumat yang diperlukan dalam menilai permohonan lanjutan masa; menenalpasti kesilapan-kesilapan biasa oleh kontraktor dalam permohonan lanjutan masa; dan mengenalpasti cara-cara untuk mengurangkan kesilapan tersebut. Kaedah kajian ini termasuklah kajian literatur, pengumpulan data dan analisis. Data diperoleh daripada maklumbalas kajian soal selidik dengan professional yang terlibat dalam industri pembinaan. Penemuan kajian menunjukkan bahawa ketidakcukupan kualiti maklumat dan kekurangan dalam permohonan untuk menunjukkan bagaimana kemajuan projek menjadi lewat adalah kesilapan-kesilapan yang tertinggi. Kajian ini memfokuskan kepada cara-cara untuk mengurangkan kesilapan tersebut untuk mempercepatkan proses penilaian dalam memberikan hak kontraktor terhadap lanjutan masa dan juga untuk mengelakkan pertelingkahan tentang hak kontraktor terhadap lanjutan masa. Kesimpulannya, kesilapan-kesilapan tersebut dapat dikurangkan dengan melaksanakan sistem pegurusan dokumen.

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CHAPTER 1

INTRODUCTION

1.1 Introduction

Provision of EOT is made in building contracts for architects/ S.O to grant EOT for the completion of the work where delay due to certain specified causes has occurred. The contractor should be compensated with the time he suffers loss due to causes outside his control. The clause in the standard form requires the contractor to inform the architect/ S.O in writing of the delay fact when he realizes that the progress of the works is delayed. A contractor should be required to supply information about the delay, including identifying the event that led to the delay in order to take into account by the evaluator and to determine whether the contractor is entitle to EOT or not. Lack of information of delays is one of the common mistakes by the contractor in the application of EOT and this can lead to obstacles to prompt settlement of claims for EOT. Besides that, there are other common mistakes that need to be identified and after that knowing the ways to reduce the mistakes.

1.2 Background of the Study

The contractor's obligation is to carry out and complete the works before or on completion date (Nor Ainah, 2001). An employer could impose liquidated damages for contractor's failure to meet the completion date as a result of delaying circumstances. Such delaying circumstances can be of three types which are delays caused by the contractor, delays caused by neutral events and delays caused by the employer or his agents (Sundra Rajoo, 1999).

A delay in the building work may arise from a number of causes as mentioned before which may prevent completion by the agreed date. Some events are beyond the control of the builder and it is considered not to take into accounts would be unfair. Instead, the contractor should be compensated with the time that has been lost and this compensation is what is termed as 'extension of time' (EOT) in contract administration (Manson, 1968; Hashim, 2001).

Most building contracts contain express provisions for time extension to be granted by the architect in the event of delay that permitted in the contracts. Provision of EOT is stated in the standard form of contract, clause 23 PAM 98, and clause 43 PWD 203A. The operation of EOT provision modifies the obligation of the contractor to complete the works by the date for completion specified in the appendix, and his liability to pay liquidated damages for late completion. EOT is given with the view to extend the contract period and it is given solely to replace the time lost to the contractor. EOT will not be given if the delay is caused by the contractor. By this reasoning, EOT is not given on contractual ground to help the contractor to complete the work because EOT is a right in the building contract and not a privilege (Hashim, 2001). It imposes a duty on the architect to grant 'a fair and reasonable EOT for completion of the works' in specified circumstances.

EOT shall be exercised by the architect upon the concurrence of the event, upon knowledge of the contract programme and before the final certificate. However, because the EOT clause comprehends delays due to causes of many kinds, it may not be necessary to grant an EOT before completion, in exceptional cases example a strike mean to last beyond the contract date and the extend delay could not be known until after the contract time had expired (Lim, 1998).

The evaluation to derive at the EOT entitlement can indeed be a complex subject especially when there is more than one delaying events (Entrusty Group, 2006). Invariably, an evaluation of EOT will be made based on the programmes submitted by the contractor (Kevin, 2005). Besides the programmes, the contractor is advisable to provide relevant information related to delays such as variations and architect's instruction for references, towards consideration for EOT (Lim, 1998). The strength of the contractor's case will depend on the quality of his information (Brian, 1997).

A contractor should be required to supply facts about the delay, including identifying the event that led to the delay. The contractor must also provide proof of the events that were allegedly responsible for the delay. The matter of proof is one frequently overlooked by potential litigants in their enthusiasm to formulate arguments as commented by Keith Pickavance (Nicholas, 2005):

‘Poor quality of project documentation leads to poor factual evidence and presents serious difficulties in identifying the rights of the parties’.

Poor factual evidence such as lack of information of delays is one of the contractor's mistakes in the application of EOT and this can lead to obstacles to prompt settlement of claims for EOT.

EOT needs serious deliberation and consideration when it is applied to construction projects. There are risks that failure to accurately assess delays to completion of a construction contract will result in unnecessary extensions to the completion time, excessive delay-related costs, or disputes about a contractor's entitlement to EOT or delays costs. Therefore, it is important by the evaluator to consider and refer all the information that related to delays, which can assist them in evaluating EOT application (BLR, 1985). It will be prudent to seek advice about the procedures and all the information that needs to be submitted for EOT application from an architect, engineer or a quantity surveyor, who act as an evaluator when a contractor wishes to apply EOT in relation to delays.

1.3 Problem Statement

The contractor's duty is to give the architect as much information as he can about the cause of delays and so assist the architect in performing his duty, as mentioned in clause 23(1) PAM 98, '*the notice (for extension of time) shall contain sufficient information and reason why delay to completion will result*'. The contractor's failure to provide information if requested is one of the contractor's mistakes in the application of EOT. No action would be taken by the employer if the contractor failed to submit such information unless the actions are stated in the contract. The contractor's failure to provide related information of delays puts himself at a disadvantage on proof of entitlement to EOT.

The next mistake is the submission of work programme by the contractor is not detailed and unrealistic. In Malaysia, generally, the programme of works as prepared by the contractor is usually not detailed, not realistic or not have the activities properly linked to show the critical path. It is usually used for 'show' only more than anything else which is the cause of many incidents where EOT was not

granted even when the contractor rightly has its entitlement to EOT if a proper programme of works was presented and all the information related to delays was provided (Entrusty Group, 2006).

1.4 Research Aims and Objectives

The aim of this study is to identify and recommend the best way to reduce the common mistakes by the contractor in the application of extension of time. To achieve this aim, the following objectives have been identified:

1. To identify the information that needs to be considered in evaluating extension of time application.
2. To identify the common mistakes by the contractor in the application of extension of time.
3. To identify the ways to reduce the mistakes by the contractor in the application of extension of time.

1.5 Research Scopes and Limitations

Basically, this research project focuses on explaining provision of EOT in PAM 98 and PWD 203A standard form of contract. Furthermore, several common law cases related to EOT will be used to support explanation and arguments. The scope of this research also will be focusing on the study of the information that needs to be considered by the evaluator in evaluating EOT application. This research is

limited to professionals (evaluator) working in quantity surveying, architecture and civil engineering firm located in Johor Bahru area. Besides, the study would be made to determine the common mistakes by the contractor relating to the information on the application for EOT. Hence, the view of the Quantity Surveyor, Architect and Engineer to reduce the mistakes is essential towards improving the current mistakes of the contractor in the application of EOT.

1.6 Importance of the Study

From the facts as mentioned before, it can be concluded that all the information related to delays are very important to assist the evaluator to recommend or grant EOT to the contractor. The contractor needs to provide sufficient information in order to assist the evaluator in the evaluation process. It is important to identify the information that needs to provide by the contractor in order to get 'a fair and reasonable extension of time'. This research is not only focused to the information that related to the work programme, but it is also considered other relevance information (supporting documents) that caused delays to take into account by the evaluator and to determine whether the contractor is entitle to EOT or not.

One of the common mistakes that occurred in EOT application is when the information related to delay was not provided by the contractor. Besides, there are other mistakes that need to be identified to avoid risk of failure to accurately assess delays in the application of EOT and after that knowing the ways to reduce the mistakes. With this study, the contractor could indeed benefit from this study's outcome and have more knowledge about the improvement of the preparation for EOT application in order to speed up the evaluation of the architect to establish contractor's entitlement for EOT and to avoid disputes about contractor's entitlement for EOT.

1.7 Research Methodology

A few stages of work need to be carried out in order to achieve the stated objectives. Implementation of the stages of work is arranged to ensure the research can easily be done and impressive. This approach is to ensure that all relevant information can be collected and precisely analyzed. Stages of work for this research are elaborated as follows:

1. Planning and pre-discussion

The process involved in this stage is survey need to be carried out to identify area of study, for example the study in the aspect of construction contract and all the relevant issues. Detail discussion with supervisor can assist to find out idea about the area of study to be done. Next process is to determine project topic and objectives and state the scope and limitation of project to achieve the objectives.

2. Pre-Study

Pre-study is carried out to get a clear description about the research. The literature reviews provide useful guidelines and information on EOT provision in construction contract. Those literature reviews were also used to guide the process of extracting the idea and relevant issues, and to easily prepare the research process.

3. Identify Data

Data that needs to be identified is primary data and secondary data to fulfil the research objectives.

4. Data Collection

This process is the most important process to do the research. All the data collected is arranged into a form that can be studied easily. Data collection for this research can be divided to two types:

a) Primary Data

Collection of primary data is an important process to get the source of information and for the purpose of analysis. It has been obtained from questionnaires of the quantity surveyor, architect and engineer as a practitioner, who has extensive experience and knowledge in evaluating EOT.

b) Secondary Data

Secondary data has been obtained from reading and studying from printed materials such as standard form of contract (PAM 98 and PWD 203A), books, journals, articles, previous study, and seminar papers to study the information of delay and EOT in construction contracts. Those literature reviews were also used to guide the formation of questionnaire design.

5. Analysis of Data

Primary data is analyzed in order to achieve the research objectives. Besides, summary and suggestion of the research are prepared based on the results from the analysis. The methods to analyse the data are detailed elaborated in chapter 4 to ease the process of analysing data.

6. Writing and Completion

All the information will be arranged to understandable form for the purpose of writing before submission to the supervisor. Next is correction process before documentation process can be done. Finally, the complete project is ready to be submitted on the submission date.

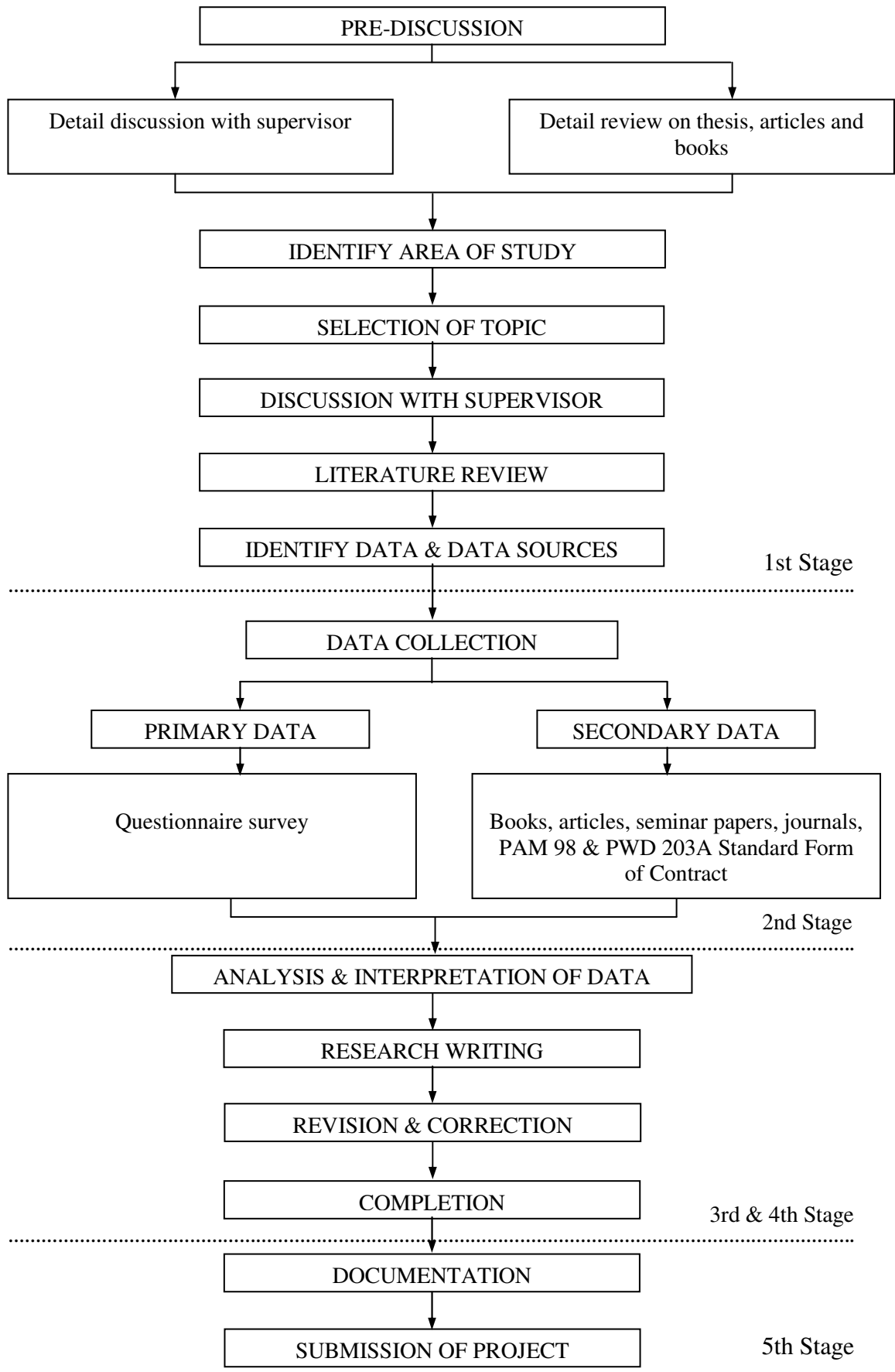


Figure 1.1: Research Methodology