

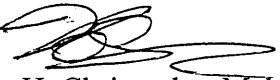
**Office of the County Attorney  
Montgomery County, Maryland**

**MEMORANDUM**

April 7, 1998

TO: Dilip Pandya  
Construction Section  
Department of Public Works and Transportation

VIA: Marc P. Hansen, Chief *MPH*  
General Counsel Division

  
FROM: H. Christopher Malone  
Senior Assistant County Attorney

RE: "No Damages for Delays"-Clause

**Background**

You have requested our advice on the "No Damages for Delays" clause used in County contracts. (Encl.). You state that you believe that the clause is ambiguous.

**Applicable Law**

Section 11B-22 (c) of the County Code provides:

A construction contract awarded under a competitive sealed bid must not prohibit the payment to a contractor of actual and direct damages that result from a delay in completing the project within contractual time limits if the delay is caused by the County unless the County acted to:

- (1) protect the public health or safety; or
- (2) conform to law.

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### **Analysis**

Paragraph 1. of the clause provides that a contractor may not make a claim or charge or be paid for damages for any delay, disruption, inefficiency or hindrance from any cause whatsoever. The paragraph then lists three delays included within the words "any cause whatsoever." One of those delays is a delay caused by the County.

Paragraph 2. sets forth an exception to paragraph 1. Paragraph 2 allows a claim for damages caused by the County provided all of the conditions of paragraph 2. are satisfied. One of the criteria is that the delay is not caused by actions taken by the County to protect the public health or safety, or to conform to the law.

### **Conclusion**

We conclude that the clause is not ambiguous. In addition, the clause complies with Section 11B-22(c) of the County Code.

cc: Edgar Gonzalez, Chief, Engineering Division  
James Ellis, Chief, Construction Section  
John Harris, Chief, Contracts Unit

Bid No. \_\_\_\_\_  
MCDPW&T Project No.  
MSHA Contract No.  
FAP No.

**\*\*NOTICE TO BIDDERS\*\***

**NO DAMAGES FOR DELAYS**

1. No charges or claims for damages may be made by the Contractor or paid to the Contractor for any delay, disruption, inefficiency, interference or hindrance from any cause whatsoever, whether foreseeable or not, including (i) acts or omissions by the County, its agents, employees or consultants, (ii) contract documents that are negligently prepared or contain inaccurate statements, or (iii) force majeure and circumstances beyond the Contractor's control. The sole remedy for delays, disruptions or hindrances will be non-compensable time extensions for completion of the work.
2. This provision does not apply to claims that meet all of the following conditions:
  - (i) The claim arises under a contract awarded under a competitive sealed bid;
  - (ii) The claim is for actual and direct damages incurred as a result of a delay in completing the construction project which is the subject of this contract;
  - (iii) The contract establishes a specific time limit for completing the construction project and the claim is for critical path delays that prevent achievement of substantial completion of the contract within that time limit;
  - (iv) The delay for which damages are claimed is caused by the County; and
  - (v) The delay is not caused by actions taken by the County to protect the public health or safety or to conform to law.

**EXTENSION OF TIME**

A time extension may be granted only for an excusable delay that is beyond the Contractor's control and occurs without the Contractor's fault or negligence. No time extension will be granted in the absence of a written claim for the time extension. The claim must be received by the Department within 15 days after the date of the alleged cause for extension of time occurred. All claims for a time extension must state specifically the amount of delay that the Contractor believes to have been incurred and must include an analysis of how the delay affects completion of the project. If a claim for a time extension, including the facts and analysis specified above, is not received by the Department within the prescribed time, the claim is waived. No compensation must be paid for any time extensions.