

Annex [I] – Rules for Submitting Claims

1. General Principles

- (a) The submission of a Claim by the Contractor shall be subject to the provisions of the Contract and of this Annex.
- (b) A Claim is not admissible unless the Contractor can justify an entitlement on the basis of the Contract. The Contractor shall indicate the ground for the Claim and provide all the information and evidence necessary to demonstrate that the conditions of the ground for the Claim are fulfilled.
- (c) The reimbursement of any additional Costs claimed under this Annex is only admissible for actual Costs incurred, unless otherwise agreed with Fusion for Energy. The Costs must be reasonable and they must have a direct causal link to the event/circumstance giving rise to the Claim.
- (d) A failure to provide information as required by this Annex and by the Model of a Contractual Claim may lead to the rejection of the Claim or of part of it on formal grounds.

2. Submission of a Claim - Content

- (a) The Contractor shall submit a Claim using the template referred to as “*Model of a Contractual Claim*” attached to this Annex as Appendix I. The Contractor shall always detail as a minimum the following elements:

Summary of the request

[An executive summary of the request, specifying how many days / weeks of extension of time the Contractor requests and / or how much additional payment the Contractor requests]

Facts

[Details of the event or circumstance giving rise to the Claim]

[Mention of the date when the alleged effects of the event or circumstance giving rise to the Claim have ceased]

[List of evidence to which the Contractor relies upon to substantiate the above]

Contractual and/or Legal basis

[Mention of the cause of action, by indicating and quoting the contractual entitlement of the Claim under a specific article of the Contract and / or legal basis of the claim under the applicable law to the Contract]

[A clear and reasonable explanation as to why the conditions of the contractual and/or legal basis for the Claim are fulfilled]

Detailed description of the Cost impact

[Demonstration that the event/circumstance described has caused the alleged effects (additional Cost and extension of time) to the Contractor, i.e. causation]

[A clear explanation as to why the claim gives rise to the indicated monetary amount]

[For each Cost item, a clear explanation as to why it is linked to the event and circumstances and clarification on the basis of the calculation of the indicated amount]

[Indication for each Cost item of the evidence relied upon to substantiate it]

[Description of the measures taken to mitigate Costs]

Detailed description of the schedule impact

[Demonstration that the event/circumstance described has caused the effects (additional Cost and extension of time) to the Contractor, i.e. causation]

[A clear explanation as to why the claim gives rise to an extension of time accompanied by a brief explanation of the basis of the calculation made and his analysis of the critical path, i.e. which milestones/sections are impacted and calculation of the extension of time]

[Description of the measures taken by the Contractor to minimize the delay claimed]

[Reference to evidence where applicable]

Documents referred to by the Contractor

[A list of all the attached documents submitted for the purpose of substantiating the claim]

Sworn Statement

[In line with the Contractor's burden of proof principle, a claim shall always incorporate a sworn statement declaring that:

[1] all documents, statements and any other additional arguments are consistent and linked to the event/circumstance giving rise to the claim and to the Contract;

[2] Costs claimed have not been already recovered by the Contractor through other claims, deviations, amendments or similar acts;

[3] The Contractor commits to provide any additional information needed to complete the assessment of the Claim, if so requested by Fusion for Energy.

- (b) The Contractor shall bear the burden of proof with respect to the conditions of admissibility of the Claim and its substantiation. In particular, the Contractor shall provide detailed evidence of the circumstances of the delay/additional Cost impact incurred as a result of extra work, changes, default or omission attributable to Fusion for Energy or to any other events/circumstances giving rise to the Claim. For this purpose, the Contractor shall submit a portfolio of evidence supporting its Claim as well as clearly linking the evidence to the statements and arguments made in the Claim.
- (c) In the absence of the required supporting evidence, Fusion for Energy is entitled to reject parts of the delay/Costs for which evidence is missing or incomplete.

3. Specific Rules for Requests for Additional Payment

A Claim for additional payment shall clearly identify each Cost item.

The Contractor acknowledges that rates included in the Contract Annexes cannot be accepted as evidence or quantification of incurred Costs, since they are not actual Costs but rates which contain elements, such as contingencies for risks, which cannot be considered as Costs.

- (a) Direct Costs

The Contractor shall support its statement of incurred direct Costs as follows:

(i) Labour Costs:

The Contractor shall provide at least a list including:

- (1) Names and responsibilities of all Staff deployed to perform the additional activities resulting from the event or circumstances giving rise to the Claim. The Staff shall correspond to those listed in the approved Quality plan, save duly justified exceptions.
- (2) Brief description of the additional activities performed by each of the above Staff;
- (3) The number of additional working hours worked by each person;
- (4) Additional accommodation, travel and other expenses incurred by the Staff, if any.

All the incurred Costs foreseen in this category shall be evidenced with pay slips, timesheets, invoices, tickets and any other similar or equivalent documentation, unless otherwise agreed by Fusion for Energy.

(ii) Material Costs:

The Contractor shall provide a list including the additional material bought due to the event or circumstance giving rise to the Claim.

All the incurred Costs foreseen in this category shall be evidenced with invoices or equivalent documentation, unless otherwise agreed by Fusion for Energy.

(iii) Plant and Equipment Costs:

The Contractor shall provide a list including the additional equipment bought or hired due to the event giving rise to the Claim.

All the particulars within this category shall be properly evidenced. Where the equipment is owned by the Contractor, the Contractor shall provide a market survey to show that the applied rates reflect reasonable market rates (that would have been used if the equipment has been leased under market conditions), unless otherwise agreed by Fusion for Energy.

(iv) Subcontractor's Costs (level 1 and level 2):

The Contractor shall provide a list including:

- (1) The Subcontractor's evidence to prove the additional work performed by Subcontractors and the incurred corresponding Costs.
- (2) The Contractor's assessment of the Subcontractor's evidence (assessing the additional work performed by the Subcontractor)
- (3) A list specifying the corresponding Costs incurred by the Contractor.

(v) Any other direct Cost not included above may be accepted only if it is duly justified and substantiated by the Contractor and if supporting evidence is provided to demonstrate the actual additional Cost incurred as a direct consequence of the event or circumstances giving rise to the Claim.

(b) Overhead Costs and Similar Charges.

Claims containing overhead Costs or similar charges shall specify which, among those Costs, are Contract overheads Costs and which are head office overheads Costs (HOOC).

- (i) Contract overheads Costs cover all the Costs incurred due to the running of the Contract but that are not directly related to a particular item of work. For example:

- (1) Contract insurances, performance bonds;
- (2) Additional consumables;
- (3) Factory supplies;

Claims containing Contracts overheads Costs shall be justified by the Contractor and substantiated with supporting evidence. They shall be reimbursed on the basis of actual Costs incurred.

The Contractor must provide a justification for each Cost item forming Contracts overheads Costs.

Contract overheads Costs can only be recovered in case of a delay attributable exclusively to Fusion for Energy, unless the provisions of the Contract allow the Contractor to recover Costs even if the delay is not attributable to Fusion for Energy.

Head office overhead Costs (HOOH) are Costs incurred by the Contractor related to the administration and general operations of his business, including but not limited to head office staff, rental of head office premises, Contractor's all risk insurance, tendering for new projects, communication expenses, postal charges and office supplies together with all other global Costs.

In case of a delay exclusively attributable to F4E or when the Contract allows the Contractor to recover Costs even when the delay is not attributable to F4E, the head office overhead Costs may be recovered using the following formula:

$$\text{Head Office Overheads (4\%)} \times \text{Contract Sum} / \text{Contract Period}^1 \text{ (weeks)} = \text{Value of recovery of overheads per week of delay}$$

The percentage that shall be used for the calculation of HOOH shall be 4% (four per cent).

- (ii) HOOH can be accepted only if duly explained, evidenced and if the Contractor establishes that it suffered damages as a result of a delay, by demonstrating that it was prevented from performing other work that would have increased its direct Cost base and allowed it to absorb the overhead Cost associated with the delay.

- (iii) As an alternative, the Contractor can use a higher percentage than 4% (four per cent) provided that the following two conditions are fulfilled:

1. The proposed percentage (%) corresponds to the Contractor's actual head office overheads identified from the audited accounts of the Contractor (the average percentage for overheads for the previous 3 years shall be used). In this regard, a financial statement from a certified independent auditor shall be provided by the Contractor unless otherwise agreed by Fusion for Energy;

¹ Contract period shall mean the initial contract duration as foreseen in Annex B.

and

2. It is demonstrated that the Contractor was unable to mitigate damages by taking on new work during the delay period.

(c) Concurrent delay in relation to Costs

Where two or more delay events arise, of which at least one is at Fusion for Energy's risk and at least one is at Contractor's risk (Concurrent Delays), and the effects of the concurrent Delays are felt at the same time), and the Contractor incurs additional Costs as a result of them, the Contractor can only obtain a compensation if it is able to separate the additional Costs incurred as a result of the delay caused by Fusion for Energy's risk event from those incurred because of the Contractor's risk event.

(d) Mitigation of Costs

The Contractor shall use reasonable endeavours, in accordance with the standards defined in the Contract, to avoid and minimise the costs which will be subject to the Claim.

(e) Profit

Request for profit is admissible only where payment of the profit is not excluded in the Contract.

Calculation of the profit is made by taking into account all the relevant circumstances of the case including the prices set out in the Contract, the Contractor's Tender, accounting documents of the Contractor and the proven normal practices in the sector.

4. Specific Rules for Requests for Extension of Time

- (a) In a Claim for extension of time, the Contractor must demonstrate how the delay affects the critical path and the Contractor's ability to meet the final milestone of Annex B.
- (b) Critical path assessment must be provided separately for each Claim and cannot be referred to in the progress report.
- (c) Where two or more delay events arise, of which at least one is at Fusion for Energy's risk and at least one is at Contractor's risk ("Concurrent Delays") and the effects of the Concurrent Delays are felt at the same time, the delay caused by the Contractor's risk event shall not reduce any extension of time due.
- (d) Entitlement to an extension of time does not automatically lead to entitlement to compensation (and *vice versa*).
- (e) The Contractor is not entitled to an extension of time if and to the extent that the Contractor fails to use reasonable endeavours to minimize the delay.
- (f) Delay analysis:
 - (i) The delay analysis is made primarily in accordance with the time impact analysis method. This method involves determination of a delay impact induced on the chain of activities affected by the Fusion for Energy's risk event(s). The planning to be used as reference for additional of the delays shall be an agreed contractual baseline programme. The following steps must be taken:

- (1) The latest agreed programme shall be updated to the point immediately before the occurrence of the Fusion for Energy's risk event accounting for any

acceleration/mitigation measures already officially instructed by Fusion for Energy;

- (2) The programme should be updated to reflect the Contractor's reasonable, realistic and achievable plans to recover any delays that have occurred;
- (3) The activities and durations resulting from Fusion for Energy's risk event must be manually integrated into the Primavera (.xer) programme file;
- (4) The impact on the achievement of the last milestone must be recorded and each risk event justified using correspondence, monthly reports or any formal historical record formally submitted by the Contractor throughout the works. The durations used to quantify the risk events should be substantiated and explained in the Contractor's Claim.

- (ii) If the Contractor considers another method of delay analysis to be more suitable for its Claim, it shall justify its position and obtain the agreement of Fusion for Energy.

5. Causation

The Contractor shall demonstrate the direct causal link between the event or circumstance described and the effect (incurred Cost or delay) for the Contractor.

The Contractor shall demonstrate that the event or circumstance for which Fusion for Energy is liable has caused the Contractor to incur Costs or a delay the Contractor would not have otherwise suffered, if the event or circumstance had not occurred.

6. Claims from Subcontractors

Fusion for Energy may reject any direct or unassessed Claims from Subcontractors.

The Contractor shall manage any claim of the Subcontractor prior to submitting its own Claim to Fusion for Energy. The Contractor shall justify the causation between Fusion for Energy's activities and the damage suffered by the Subcontractor.

7. Miscellaneous

(a) Any Cost and expense incurred by the Contractor for preparing and submitting a Claim is not a recoverable Cost.

(b) Finance charges and interest on extra capital required to fund Costs arising from Claims shall not be recoverable.

(c) Global claims are Claims without attributing delay and / or actual Cost incurred to an individual event or circumstance. Global Claims are not admissible and Fusion for Energy has the right to dismiss them. The Contractor cannot submit an overall evaluation of loss / expense / delay under a number of events, without demonstrating a direct specific causation, but rather inferring a global link.

7. Sworn Statement

The Contractor bears the burden of proving the conditions for the admission of a Claim. Without prejudice to the rules on burden of proof, a Claim shall incorporate a sworn statement declaring that:

- a. all documents, statements and any other additional arguments are consistent and linked to the event/circumstance giving rise to the Claim and to the Contract;
- b. Costs claimed have not been already recovered by the Contractor through other claims, deviations, amendments or similar acts;
- c. The Contractor commits to provide any additional information needed to complete the assessment of the Claim, if so requested by Fusion for Energy.

Appendix I

MODEL OF A CONTRACTUAL CLAIM

Name SURNAME

Company Name

[Address]

[Postal Code CITY]

[Country]

Recipient

Fusion for Energy

Place, [Date]

Reference:

Subject:

Related documents:

Attachments: N/A

Dear Sir,

Summary of the request

[An executive summary of the request, specifying how many days / weeks of extension of time does the Contractor request and / or how much additional payment does the Contractor request]

Facts

[Details of the event or circumstance giving rise to the Claim]

[Mention on the date when the alleged effects of the event or circumstance giving rise to the Claim have ceased]

[List of evidence to which the Contractor relies upon to substantiate the above]

Contractual and/or Legal basis

[Mention the cause of action, by indicating and quoting the contractual entitlement of the claim under a specific Article of the Contract and / or legal basis of the claim under a specific provision of the applicable law to the Contract]

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Detailed description of the schedule impact

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Documents referred to by the Contractor

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[1]

[2]

[3]

Sworn Statement

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[3] The Contractor commits to provide any additional information needed to complete the assessment of the Claim, if so requested by Fusion for Energy.

Signature