

Contract Modernization

Force Majeure, Relief Events and Compensation

Alberta Infrastructure has listened to its industry partners. Our new, modernized contracts include substantial changes to better align with industry needs and ensure a more balanced approach to project risk.

Disclaimer: This document is for information and context only. It is not legal advice and must not be used as a substitute for reviewing the applicable contract, legislation, or seeking professional legal counsel. Where interpretation is required, the executed contract and governing law prevail.

Background

Force Majeure provides time relief for exceptional events beyond a party's control that prevent or render performance impossible. What constitutes a Force Majeure is precisely defined in the Contract, and in general terms includes the following:

- War
- Invasion
- Insurrection
- Armed conflict
- Act of foreign enemy or entity
- Revolution
- Terrorist act
- Blockade
- Interference by military or paramilitary authorities
- Hostage taking
- Armed interference
- Embargo
- Nuclear explosion
- Contamination by ionizing radiation
- Extreme Weather (events so exceptional they have not occurred at the nearest recorded location in the previous 10-year period and could not reasonably be anticipated or mitigated)
- A disaster as defined under the *Emergency Management Act* (Alberta)
- Epidemic
- Pandemic
- Quarantine restriction
- General Strike (province-wide or nationwide strike/lockout/slowdown/work stoppage not directed at the contractor, its subcontractors, or suppliers, and not specific to the construction industry, which materially impedes performance)

Force Majeure Events are for events that render the performance of the contract impossible for a specified number of days in the contract. If a Force Majeure occurs time relief is granted, and therefore Liquidated Damages would not be triggered solely as a result of the Force Majeure delays.

If the project is delayed due to Force Majeure, the project is afforded additional time to ensure the work is completed, as close to schedule as possible. A Force Majeure delay does not result in changes to Fixed Fee for Service costs or the Contract Price.

Relief Events are different than a Force Majeure. A Relief Event is a defined list of exceptional risks not assumed by the contractor and can yield time and cost relief, subject to notice and mitigation requirements. Relief Events are set out in Schedule 19 and include, but are not limited to:

- Designated Change in Law
- Environmental Damage or Degradation
- Unknown Pre-Existing Contamination
- Province-Caused Delays or Breaches
- Third-Party Protest or Disruption Directed at the Province
- Tariff Relief Event
- Changes Required to Comply With New Regulatory Obligations

If a project is disrupted by a Relief Event, the contractor is eligible to both time and financial compensation. In the case of a Relief Event, the Fixed Fee for Services is not adjusted, rather the Contract Price is adjusted and may change through the contract's pricing mechanisms. Relief Event compensation is limited to costs incurred.

Other unforeseeable issues (not defined within other contract mechanisms) that require scope, schedule, or price modifications are to be dealt with through Change Orders/Change Directives.

What we heard

Force Majeure

There is an imbalance in the contract as the Province can force acceleration (at contractor's cost) or charge liquidated damages for any delay, but there is only relief for a delay if that delay wholly prevents the work for more than the specified number of days in the contract. Industry identified concerns regarding financial or schedule penalties for things they cannot control. For example, the exclusion of 'General Strike' under Force Majeure transferred risk from the Province to the Contractor, despite a General Strike being out of the Contractor's control.

Relief Events

There was concern that potential Relief Events may be considered Force Majeure, potentially cancelling the contract and limiting financial relief available to the contractor. In addition, concerns were raised regarding the threshold for increase to be considered a relief event, with Industry indicating 1% was too high of a threshold to trigger relief events.

Compensation

Industry was unclear of how Force Majeure and Relief Events may impact project compensation. There was also a lack of clarity on the grace provided due to Force Majeure and Relief Events.

What we did

Amended the definition of Force Majeure to include a General Strike.

Additional clarity was provided to better show the differences between Relief Events and Force Majeure events.

Relief Events were revised for better certainty with respect to a Change in Law, notice timelines, and adjustments to the Contract Price where permitted.

Modernized contracts will reduce the minimum threshold for Relief Events to be considered from "...1% of the Estimated Value of the Work or \$50,000, whichever is less..." to \$10,000.

For construction projects with an estimated duration of 24 months or longer, a 10-day delay is required before a Force Majeure can be claimed. For projects with an estimated duration of under 24 months, a 5-day delay is required before a Force Majeure can be claimed. The delay period may vary from these timeframes as the time period is determined on a project-by-project basis

Why we made the change

The modernized provisions ensure exceptional, uncontrollable events are treated fairly and that risk allocation better reflects real project conditions.

Updates to Force Majeure provide clearer, more practical access to time relief, such as recognizing a General Strike and reducing the duration needed to trigger relief, so contractors are not penalized through acceleration or Liquidated Damages when delays arise from extraordinary circumstances. Distinguishing Force Majeure from Relief Events also clarifies when only time relief applies and when both time and cost relief may be appropriate.

Refinements to Relief Events, including lowering the cost threshold and clarifying how defined risks are handled, create a more predictable and transparent path for contractors to recover legitimate, documented costs. This ensures the Province, rather than the contractor, bears the risk for exceptional events and mandatory changes that materially impact project delivery.