



Republic of the Philippines  
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS  
**OFFICE OF THE SECRETARY**  
Manila



097-13 DPWH

03.19.2024

MAR 18 2024

DEPARTMENT ORDER )  
 )  
NO. 39 )  
 )  
Series of 2024 )  
# 3/19/2024 )

**SUBJECT : Approval of Work Suspension Order, Work Resumption Order, and Contract Time Extension for Civil Works Projects**

Pursuant to Proclamation No. 297, series of 2023, entitled "**LIFTING OF THE STATE OF PUBLIC HEALTH EMERGENCY THROUGHOUT THE PHILIPPINES DUE TO COVID-19**", which was issued effective July 21, 2023, it was ordered that, "All prior Orders, Memoranda, and issuances that are effective only during the State of Public Health Emergency shall be deemed withdrawn, revoked or canceled and shall no longer be in effect".

In view of this, there is a need to revise certain provisions incorporated on the department orders / issuances issued effective during the COVID-19 pandemic, in order to be appropriate/applicable in this post pandemic era.

## I. LEGAL BASES

- Annex "E" of the 2016 Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 for locally funded projects, or latest issuance
- Federation International des Ingenieurs-Conseils (FIDIC), General Conditions of Contract and Conditions of Particular Application, or any other guidelines for foreign assisted projects, or latest issuance

## II. DELEGATED AUTHORITY

The authority to issue WSO and CTE, including the determination of the inclusive period necessary for the said Orders pursuant to Sections 10.1 and 11.5 of the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184, or latest issuance, is hereby delegated as follows:

### 1. For District Engineering Office Implemented Projects:

#### Approving Official

District Engineer  
Regional Director

#### Cumulative Inclusive Period

- up to 90 calendar days (cd)
- beyond 90 cd

2. For Regional Office Implemented Projects:

<u>Approving Official</u>	<u>Cumulative Inclusive Period</u>
Regional Director	- no limit

3. For Central/UPMO Implemented Projects:

<u>Approving Official</u>	<u>Cumulative Inclusive Period</u>
UPMO Cluster Director/Bureau Director	- up to 120 cd
Undersecretary for UPMO Operations/ Technical Services	- beyond 120 cd

The approval of the request for WRO is hereby delegated to the Head of the Implementing Office (IO).

Consistent with the Cash Budgeting System, approval of requests for Contract Time Extension for locally funded projects, may be allowed within the delegated authority of the concerned DPWH Official, provided that the Revised Expiry Date should not go beyond the validity period of the funds for the project and the processing of the billing documents as well as the disbursement of funds for the project will also be taken into consideration.

The above-stated officials shall issue the corresponding Orders within the time prescribed in the DoTS.

### **III. DUTY OF THE DPWH PROJECT ENGINEER (PE)**

The preparation of the desired WSO, WRO and CTE shall remain with the concerned DPWH PE. The DPWH PE shall ensure that all supporting documents are submitted pursuant to the prevailing Department Order (D.O.) for DoTS. Likewise, all approved CTEs shall be submitted to the Bureau of Construction for updating of construction schedule in the PCMA.

The DPWH PE shall use the format prescribed in the most current policy regarding the standard forms in Project Implementation, in preparing said WSO, WRO and CTE, as may be deemed applicable.

### **IV. WORK SUSPENSION ORDER**

#### **A. Suspension of Work Initiated by the Implementing Office (Grounds)**

1. For locally-funded projects, a WSO directing the Contractor to suspend the contract work wholly or partly, for such period as may be necessary, shall be issued for the following reasons:



- a. Force majeure or any fortuitous event that has taken place, which inflicts extensive damage and/or makes it difficult to proceed with the work, such as a devastating earthquake or flood, or
  - b. Failure on the part of the Contractor to correct bad conditions which are unsafe for workers or for the general public, or
  - c. Failure of the Contractor to carry out valid orders given by the procuring entity or to perform any provisions of the contract, or
  - d. Adjustment of plans to suit field conditions as found necessary during construction, or
  - e. There exist right-of-way (ROW) problem, presence of obstructions like telecommunication pots/lines, water pipelines and electrical post/lines which prohibit the contractors from performing works in accordance with the approved construction schedule, or
  - f. Peace and order condition which makes it extremely dangerous, if not impossible to work, as certified in writing by the Philippine National Police (PNP) Station Commander which has responsibility over the affected area, and confirmed by the Department of Interior and Local Government (DILG) Regional Director, or
  - g. Other particular circumstances enumerated in the applicable clause of the contract, and such other conditions provided under item 10 Annex "E" of the Revised IRR of RA 9184, or any other applicable laws and issuances.
2. **The DPWH shall not issue a WSO if the interruption is due to intermittent conditions which renders the site unworkable, such in case of unfavorable weather condition (Rainy), weather disturbances or its effect (river swelling, storm surge, etc.).** Instead, a Monthly Time Suspension Report (MTSR) shall be issued indicating the said unworkable days and granting a contract time extension as provided in item VI(C) hereof.
  3. Considering that a certificate of site availability was issued by the IO prior to the start of the project, WSO due to ROW problem shall not be issued right at the start of contract effectivity.
  4. For foreign-assisted projects, a WSO may be issued by the IO directing the Contractor concerned to suspend the work wholly or partly under the contract, for any applicable reason/legal basis in accordance with FIDIC, General Conditions of Contract and Conditions of Particular Application, or any other applicable guidelines prescribed by the lending institution.





## **B. Suspension of Work Initiated by the Contractor**

For locally-funded projects, if the Suspension of Work is initiated by the Contractor for reasons stated in item 10.2 Annex "E" of the Revised IRR of RA 9184, the Contractor or his duly authorized representative shall have the right to suspend the operation on any/or all project or activities along the critical path of activities after 15 calendar days from the date of receipt of the written notice from the Contractor to the IO. Upon receipt of the notice, the DPWH PE shall immediately investigate the validity of the said suspension. The concerned IO shall act immediately to resolve the cause of suspension.

## **C. Monthly Time Suspension Report (MTSR)**

A MTSR shall be issued instead of a WSO if suspension/ unworkable days is due to unfavorable weather condition (Rainy), weather disturbances or its effect (river swelling, storm surge, etc.), or other conditions rendering the site unworkable occur intermittently.

The MTSR shall indicate the said unworkable days and grant contract time extension upon approval by the Head of the IO, provided that proper and complete documentation is compliant with the checklist in the DoTS for Civil Works.

If the contract has pre-determined unworkable days, it should be exhausted before granting of contract time extension. The total number of unworkable days in the MTSR shall be charged to the total number of pre-determined unworkable days in the contract and not to the pre-determined unworkable days for that month only. A Certification that the total pre-determined unworkable days of the contract has been exhausted shall be issued by the DPWH Project Engineer.

The DPWH PE or PE's Representative shall prepare the MTSR, using the format in the most current policy regarding the standard forms in Project Implementation, for approval by the Head of the IO. MTSR for the current month should be prepared and approved in the succeeding month. The Project Logbook, Weather Chart and Geotagged pictures should be attached in the approval of MTSR in order to verify the workable and unworkable days.

A certification stating the distance of the PAG-ASA weather station from the project site should be issued by the DPWH Project Engineer. If the IO finds it reasonable that the distance causes the inconsistency of the data from PAG-ASA Monthly Weather Report and Project Weather Chart, the number of attached Geotagged pictures should be at least 50% of the determined number of unworkable days.

Unworkable days due to unfavorable weather condition, other weather disturbances or its effect, as reflected in the MTSR, shall not be included in determining the cumulative number of days that the project was suspended with regard to the limits of authority in item II hereof. (*Refer to Example 1*)





#### **D. Continuance of Work Suspension Order (CWSO)**

For locally-funded projects, if the reason for the suspension was not resolved within the period provided in the WSO, the herein delegated authority shall issue, within 5 days before the lapsed of the WSO, a CWSO directing the continuance of the suspension of work under the contract.

The authority of the District Engineer and UPMO Project Director/ Bureau Director in issuing a CWSO shall take into consideration the number of days provided in the WSO. In case the cumulative number of days provided in both WSO and CWSO exceed their authority provided in item II hereof, the CWSO must be approved by the Regional Director or the Undersecretary for UPMO Operations/ Technical Services, as the case may be.

#### **E. Slowdown of Work**

Slowdown of work occurs when there are unworkable activities along the critical path, which is not due to any fault of the Contractor, or limited output of the contractor due to circumstances at the project site which are not the fault of the contractor or beyond his control, but will not cause to total suspension of the project, a derivation of the delay should be provided based on the schedule of the affected activities along the critical path.

The Contractor should inform the IO of the delay in the implementation of the project thru a letter indicating the reason based on the grounds stated in Section IV(A) hereof. A derivation should be prepared by the Contractor's PE and checked/reviewed by the DPWH PE using the format in **Annex A** hereof, for approval by the Head of the IO.

The derivation of slowdown of work should be done monthly, if there exist a ground for suspension which affects the critical activities of the project, and to be approved in the succeeding month. The Project Logbook, Geotagged pictures, Justification from the contractor regarding the slowdown of work duly acknowledged, checked and verified by the DPWH Project Engineer, latest approved construction schedule, and other supporting documents as per the most current policy regarding the Document Tracking System (DoTS), should be attached in the approval of the derivation in order to verify the delay in the implementation of the project.

#### **V. WORK RESUMPTION ORDER**

Upon the resolution of the cause or reason for the issuance of WSO or CWSO, the DPWH PE even without a request from the Contractor, shall prepare a WRO - using the prescribed format in the most current policy regarding the standard forms in Project Implementation, directing the Contractor to resume work under the contract, subject to the approval of the Head of the IO, and to the requirements of the DoTS for Civil Works checklist and prescribed timeframe.



## **VI. CONTRACT TIME EXTENSION (CTE)**

### **A. Application**

1. A corresponding CTE shall be granted only if it is in accordance with the provisions of Section 11 Annex E of the Revised IRR of RA 9184, or latest issuance, FIDIC / Conditions of Contract or any other applicable guidelines, with complete documentary requirements in accordance with the checklist of the DoTS for Civil Works. It has to be approved by the duly delegated DPWH official in view of the approved work suspension order or its continuance, subject to evaluation, among others, to consider utilization/exhaustion of predetermined unworkable days, bond extension, quit claim for damages, and their effect on the approved PERT/CPM/PDM Network Diagram schedule in order to reflect the official revised contract time and expiry date as a result of such work suspension order or its continuance.
2. The issuance of a WSO/CWSO is not an automatic basis for contract time extension. The expiry date shall only be revised if the Contract Time Extension has been duly approved by the authorized officials.
3. The request for CTE due to approved WSO, Monthly Time Suspension Report due to intermittent rainy/unworkable days and other reasons, shall be labeled in consecutive order (e.g., CTE No. 1, CTE No. 2, etc.), based from the order of occurrence of circumstances leading to such claim for CTE. *(Refer to Example 2)*
4. The CTE corresponding to the WSO may be approved by the official with whom the authority has been delegated even prior the issuance of WRO, provided that the CWSO has been approved. The WRO shall be issued by the IO, regardless of the cumulative period of the WSO and CWSO. *(Refer to Example 3)*
5. The CTE corresponding to Slowdown of Work may be approved by the official with whom the authority has been delegated even without an approved WSO provided that the cause of the delay of the implementation of the project is within the grounds stated in Section IV(A) hereof. Likewise, corresponding derivation of the delay should be provided and documentary requirements due to meritorious circumstances should be complied.
6. The IO shall act on each claim for Contract Time Extension from Contractors including investigations of the circumstances and justifications, if any, and disposition-i.e., approval/ disapproval/ reduction/ modification/ recommendation - within the prescribed time under the DoTS of each office, Section 11.1 Annex E of the Revised IRR of RA 9184, Section 20.1 of FIDIC, Section 5.a of RA 6713 (within 15 calendar days), or any other applicable guidelines prescribed by the lending institution (for foreign funded).





7. The DPWH PE shall prepare the prescribed form for Contract Time Extension pursuant to the most current policy regarding the standard forms in Project Implementation.

**B. Request for CTE**

1. The request for Contract Time Extension may be considered valid if the two (2) conditions were **both complied**:
  - Condition 1 – The request was made prior to the expiration of the contract time, and
  - Condition 2 – The request was made within thirty (30) calendar days for locally funded projects (Sec. 11.1, Annex E, RIRR of RA 9184), or within twenty-eight (28) cd for foreign funded projects (Clause 20.2.1, FIDIC Second Edition, 2017), after work operations has resumed or after the circumstances leading to such claim had arisen. (*Refer to Example 4*)

Failure to comply with the above-mentioned conditions shall constitute a waiver by the contractor of any claim.

2. The concerned DPWH PE shall issue a certification once the pre-determined rainy/unworkable days are exhausted. Said certification shall be attached in the processing of CTE. In case the contract has no pre-determined rainy/unworkable calendar days, the DPWH PE shall issue a certification stating that the contract has no pre-determined rainy/unworkable calendar days to be attached in the processing of CTE together with the copy of Special Conditions of Contract/Program of Works.

In the course of project implementation, rainy/unworkable days including work activities for the day must be properly recorded and documented in the Project Logbook, Project Weather Chart and Geotagged Pictures duly signed by the DPWH Project Inspector and Project Engineer. Any excess in the number of rainy/unworkable days pre-determined by the DPWH as indicated in the contract may be subject to additional time extension for approval of the concerned DPWH officials in accordance with their prescribed limits of authority. No corresponding time extension shall be granted due to unfavorable weather condition, if the same did not affect any critical activity.

3. The request for CTE shall be submitted to the approving official to be supported with complete and proper documents in accordance with the checklist in DoTS for Civil Works. Otherwise, the said request shall be denied.



### C. Granting of Contract Time Extension

1. The IO shall act on each claim for Contract Time Extension from Contractors including investigations of the circumstances and justifications, if any, and disposition-i.e., approval/ disapproval/ reduction/ modification/ recommendation - within the prescribed time under the DoTS of each office, Section 11, Annex E of the Revised IRR of RA 9184, Section 20.1 of FIDIC and Section 5.a of RA 6713 (within 15 calendar days).
2. A Variation Order (Extra Work/Change Order) with a corresponding additional contract time due to additional quantities, change of methodology or change of materials, should be approved by the concerned DPWH Official in accordance with the limits of authority in the most current policy in approving Variation Order. Such additional contract time due to Variation Orders shall not be covered under the limits of authority as prescribed in Section II hereof and it should not also be included in the numbering of contract time extensions due to WSO/MTSR. As such, granting of contract time extension is not necessary since the additional contract time is already reflected in the Variation Order Form. However, it shall be considered in determining the revised contract duration.

### VII. TIMEFRAME IN THE REVIEW/EVALUATION AND APPROVAL OF THE DPWH FOR WSO, CWSO, WRO, and CTE

1. All Offices concerned in the preparation, review, evaluation and approval of all requests relative hereto, shall observe the timeframe stipulated in **Annex B** of this issuance.
2. Any personnel/official of the DPWH who will take more than fifteen (15) days to submit its recommendation or decision on any request covered under this order, shall be held administratively liable.

Relative to the provisions of the D.O. on the Document Tracking System (DoTS), all requests of the Contractor shall be duly registered in the DoTS and duly recorded in the Receiving Logbook of the IO (Records Section/DoTS Center). Likewise, the *letter request* of the Contractor should be stamped with "Received" by the IO indicating therein the date and time it was received.

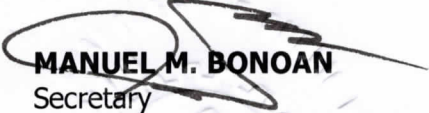
The Head of Implementing Office shall submit within thirty (30) calendar days upon the approval of CTE, a certified true copy of the approved CTE and corresponding revised construction schedule together with all supporting documents as per DoTS, to the Bureau of Construction for the eventual approval of the revised schedule in the PCMA.





Failure of the concerned DPWH personnel to implement the provisions of this Order shall, after due process, make them liable to the penalties prescribed for violation of reasonable office rules and regulations in Rule 10, Schedule of Penalties of the Revised Rules on Administrative Cases in the Civil Services dated December 2011.

This Order supersedes D.O. No. 42 Series of 2020 and shall take effect immediately.

  
**MANUEL M. BONOAN**  
Secretary

6.1.2.RMC/JML/TCA/MIP/ASB

Department of Public Works and Highways  
Office of the Secretary



WIN4W02283

(Letter head of the IO)

## Annex A

DPWH-QMSP-14-01- Rev00

### DERIVATION OF CONTRACT TIME DUE TO SLOWDOWN OF WORK (Month)

Item No.	Total duration of work	Duration for the month	Quantity	% Planned Accomplishment for the month (A)	Equivalent Planned Accomplishment (unit) (B)	% Actual Accomplishment for the month (C)	Equivalent Actual Accomplishment (unit) (D)

In view of the above, the no. of days may be granted for Contract Time Extension is <see computation below> calendar days due to <state the reason for the slowdown of work>.

Prepared by:

**PROJECT ENGINEER**  
Contractor

Verified by:

**PROJECT ENGINEER**  
Implementing Office

Approved by:

**HEAD OF IMPLEMENTING OFFICE**  
Designation

Computation:

**No. of Days = (% of Remaining Works) \* (Duration of Item of Work)**

$$\% \text{ of Remaining Works} = \frac{(A-C)}{A}$$

*\*Delete this upon printing*



## Annex B

### TIMEFRAME IN THE PREPARATION/REVIEW/EVALUATION AND APPROVAL OF: WORK SUSPENSION ORDER, CONTINUANCE OF WORK SUSPENSION ORDER AND CONTRACT TIME EXTENSION

#### 1. For District Engineering Office Implemented Projects

##### a. For approval by the District Engineer (up to 90 cd)

30 days	10 days	5 days
Request shall be submitted within 30 days after the contractor became aware of the circumstance and prior to expiry	Investigation, Preparation, Endorsement and Recommendation by the Implementing Unit (DEO)	Review/Approval of the DE

##### b. For approval by the Regional Director (beyond 90 cd)

30 days	10 days	3 days	2 days
Request shall be submitted within 30 days after the contractor became aware of the circumstance and prior to expiry	Investigation, Preparation, Endorsement and Recommendation by the Implementing Unit (DEO)	Review/Endorsement of the DEO	Review/ Approval of the RD

#### 2. For Regional Office Implemented Projects

##### a. For approval by the Regional Director (no limit)

30 days	10 days	5 days
Request shall be submitted within 30 days after the contractor became aware of the circumstance and prior to expiry	Investigation, Preparation, Endorsement and Recommendation by the Implementing Unit (RO)	Review/Approval of the RO

#### 3. For UPMO Implemented Projects (Locally-funded)

##### a. For approval by the Project Director (up to 120 cd)

30 days	10 days	5 days
Request shall be submitted by the Contractor within 30 days after it became aware of the circumstance	Investigation, Preparation, Endorsement and Recommendation by the Consultant and Project Engineer	Review/Approval by the UPMO Cluster

##### b. For approval by the Undersecretary for Operations (beyond 120 cd)

30 days	10 days	3 days	2 days
Request shall be submitted by the Contractor within 30 days after it became aware of the circumstance	Investigation, Preparation, Endorsement and Recommendation by the Consultant and Project Engineer	Review/Approval by the UPMO Cluster	Approval of U/Sec

4. For UPMO Implemented Projects (Foreign-assisted)

a. For approval by the Project Director (up to 120 cd)

42 days	42 days	7 days
Request shall be submitted by the Contractor within 42 days after it became aware of the circumstance	Investigation, Preparation, Endorsement and Recommendation by the Consultant and Project Engineer	Review/Approval by the UPMO Cluster

b. For approval by the Undersecretary for Operations (beyond 120 cd)

42 days	42 days	5 days	2 days
Request shall be submitted by the Contractor within 42 days after it became aware of the circumstance	Investigation, Preparation, Endorsement and Recommendation by the Consultant and Project Engineer	Review/Approval by the UPMO Cluster	Approval of U/Sec

5. For Central Office Implemented Projects other than UPMO

a. For approval by the Bureau Director (up to 120 cd)

30 days	8 days	7 days
Request shall be submitted within 30 days after the contractor became aware of the circumstance and prior to expiry	Investigation, Preparation, Endorsement and Recommendation by the Implementing Unit	Review/approval of the Bureau

b. For approval by the Undersecretary for Operations (beyond 120 cd)

30 days	8 days	5 days	2 days
Request shall be submitted within 30 days after the contractor became aware of the circumstance and prior to expiry	Investigation, Preparation, Endorsement and Recommendation by the Implementing Unit	Review/approval of the Bureau	Approval of U/Sec

6. For Work Resumption Order

a. For approval by the Head of Implementing Office

15 days	X days
Request shall be submitted by the Contractor within 15 days after it became aware of the circumstance	Approval by the Head of the Implementing Office

Note1: Implementing Unit is the Section implementing the project e.g. Construction, Maintenance, etc.

Note2: All days indicated herein is the maximum to complete action

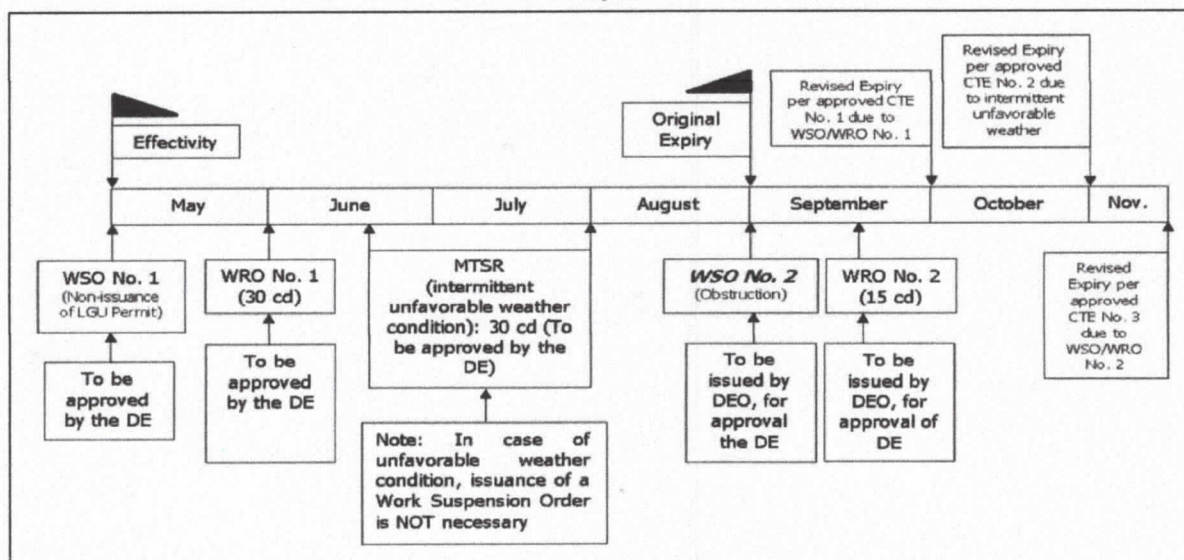
Approving Office	Number of Days to Complete Action (X days)
DEO / RO	5
Bureau / UPMO Cluster	7



## EXAMPLE 1

For example, in the following straight line diagram (Example-1), the designation for the work suspension order due to obstruction should be WSO No. 2 even though it succeeded the unworkable intermittent period due to rainy/unworkable days. In Example-1, WSO No. 2 (due to obstruction) shall be approved by the District Engineer.

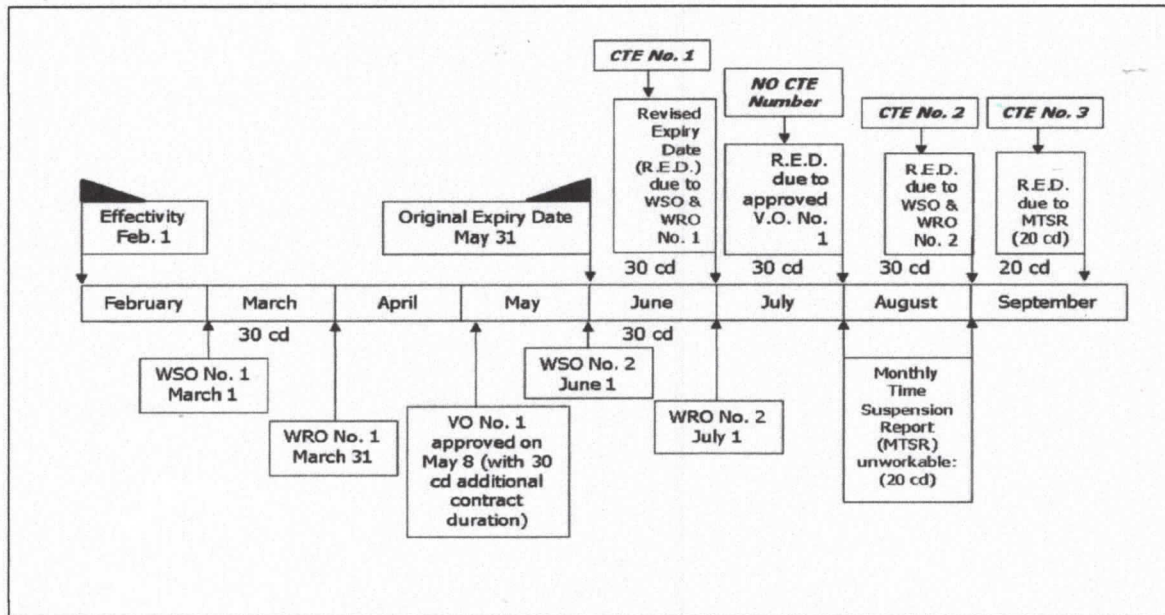
Example 1



Note: For illustration purposes, 1 month = 30 cd and the IO is a District Engineering Office (DEO).

## EXAMPLE 2

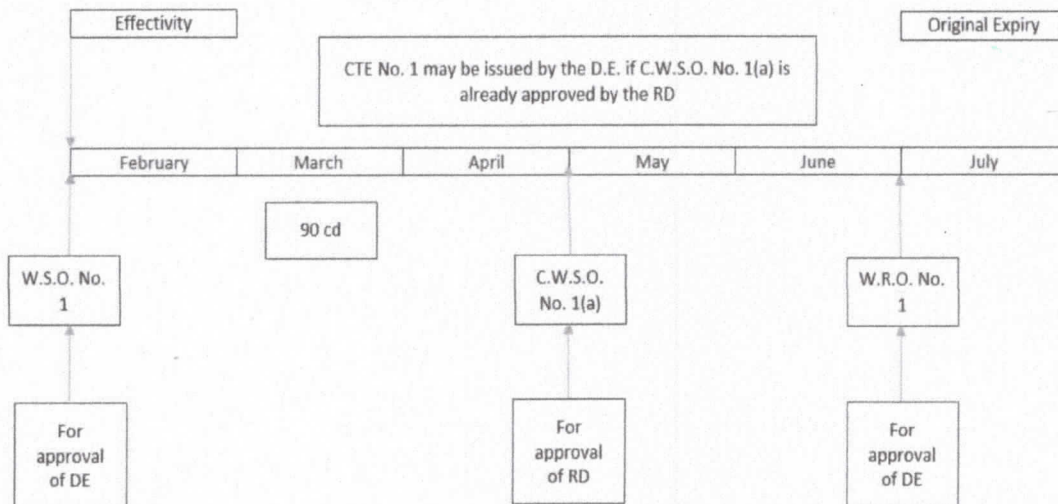
Note: The IO is a District Engineering Office (DEO).





### EXAMPLE 3

Note: The IO is a District Engineering Office (DEO).



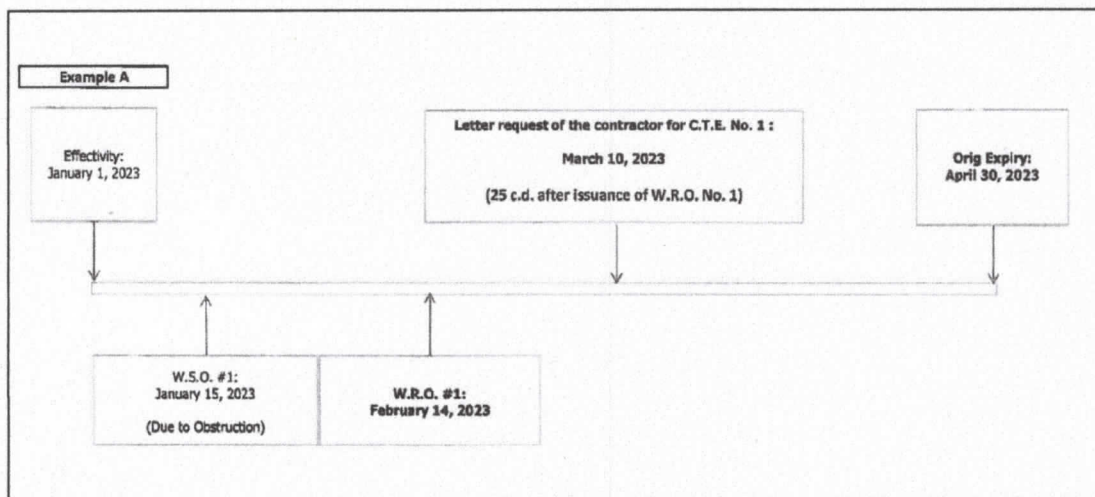
## EXAMPLE 4

### For Example 4(A):

*Condition 1 – prior to the expiry (complied)*

*Condition 2 – 25 c.d. after issuance of W.R.O. No. 1 (complied)*

**The request for CTE is valid.**



*Note: For request for CTE due to rainy/unworkable days: since issuance of WSO and WRO is not necessary, the reckoning date for this case was the last day in the covered period, as reflected on the Monthly Time Suspension Report. (Receipt of the letter of the contractor)*

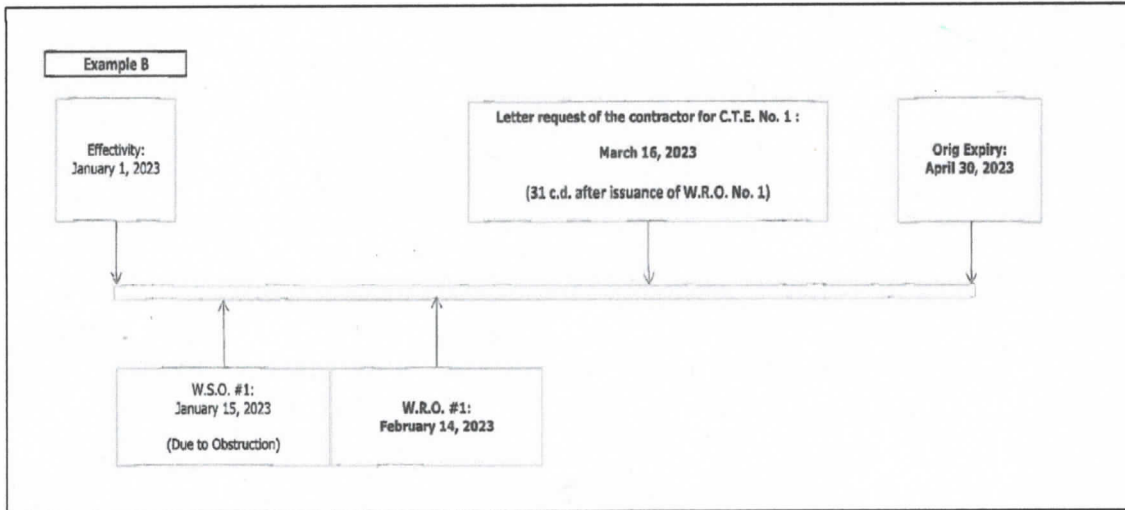


**For Example 4(B):**

*Condition 1* – prior to the expiry (complied)

*Condition 2* – 31 c.d. after issuance of W.R.O. No. 1 (not complied)

**The request for CTE is invalid.**



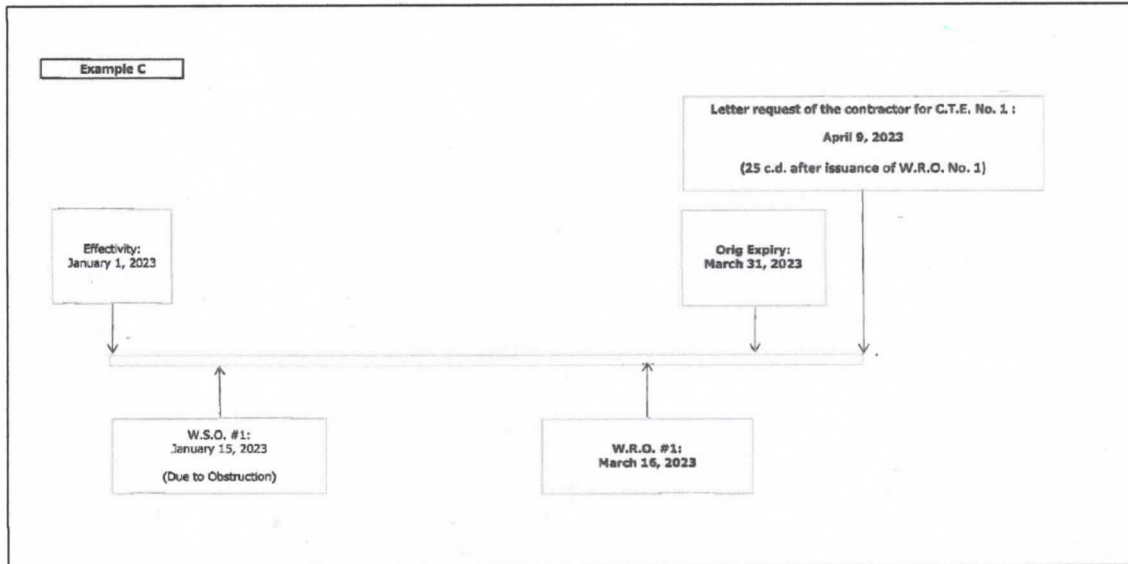
*Note: For request for CTE due to rainy/unworkable days: since issuance of WSO and WRO is not necessary, the reckoning date for this case was the last day in the covered period, as reflected on the Monthly Time Suspension Report.*

**For Example 4(C):**

*Condition 1* – beyond expiry (not complied)

*Condition 2* – 25 c.d. after issuance of W.R.O. No. 1 (complied)

**The request for CTE is invalid.**



*Note: For request for CTE due to rainy/unworkable days: since issuance of WSO and WRO is not necessary, the reckoning date for this case was the last day in the covered period, as reflected on the Monthly Time Suspension Report.*

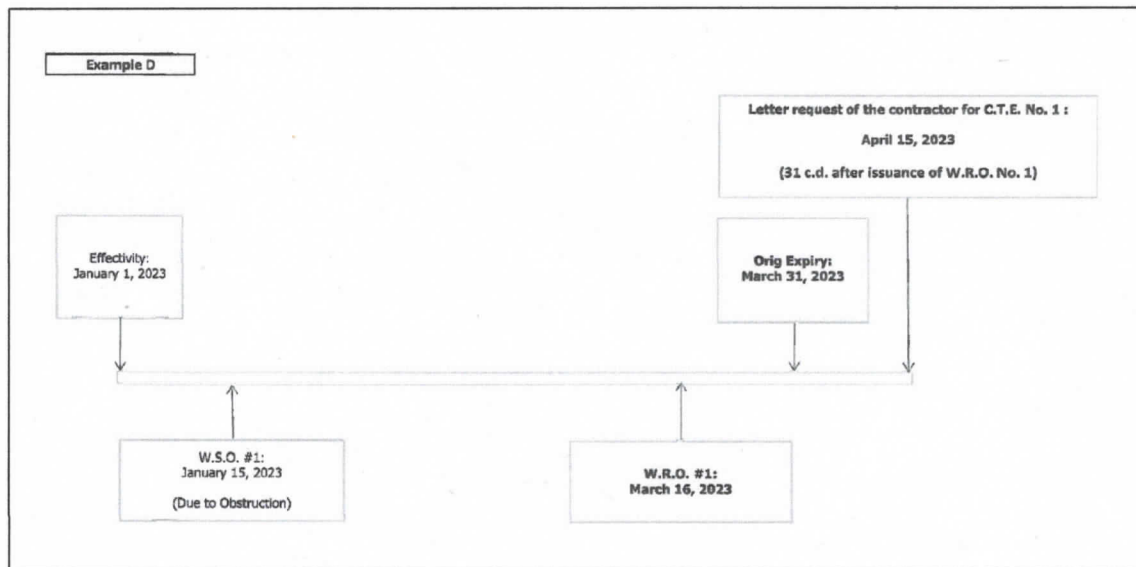


**For Example (D):**

Condition 1 – beyond expiry (not complied)

Condition 2 – 31 c.d. after issuance of W.R.O. No. 1 (not complied)

**The request for CTE is invalid.**



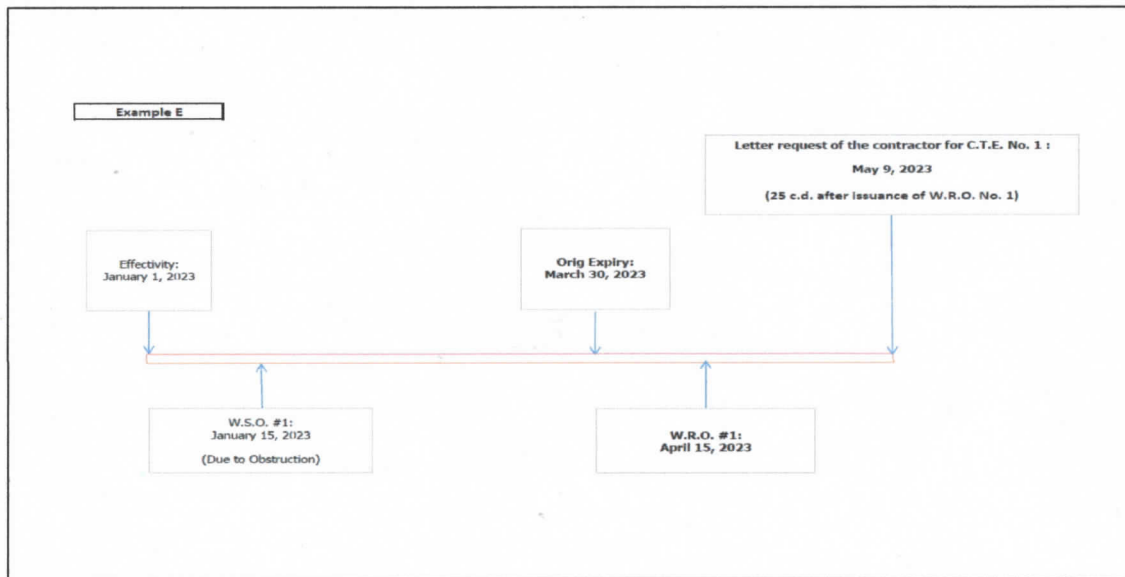
*Note: For request for CTE due to rainy/unworkable days: since issuance of WSO and WRO is not necessary, the reckoning date for this case was the last day in the covered period, as reflected on the Monthly Time Suspension Report.*

**For Example 4(E):**

Condition 1 – although the request was made beyond the expiry date, this is an exceptional case, since the problem that caused the issuance of W.S.O. No. 1 was not yet resolved at the time of expiry, and was only resolved on April 15, 2023, as per W.R.O. No. 1, hence, this condition is considered complied.

Condition 2 – 25 c.d. after issuance of W.R.O. No. 1 (complied)

**The request for CTE is valid.**



*Note: For request for CTE due to rainy/unworkable days: this is not applicable. Since rainy/unworkable days occur intermittently, there is no way that MTSR will go beyond expiry date. If the project is nearing its expiry date, it should be cut short (last day on the MTSR should be prior to or at the expiry date) in order to accommodate condition nos. 1 and 2.*

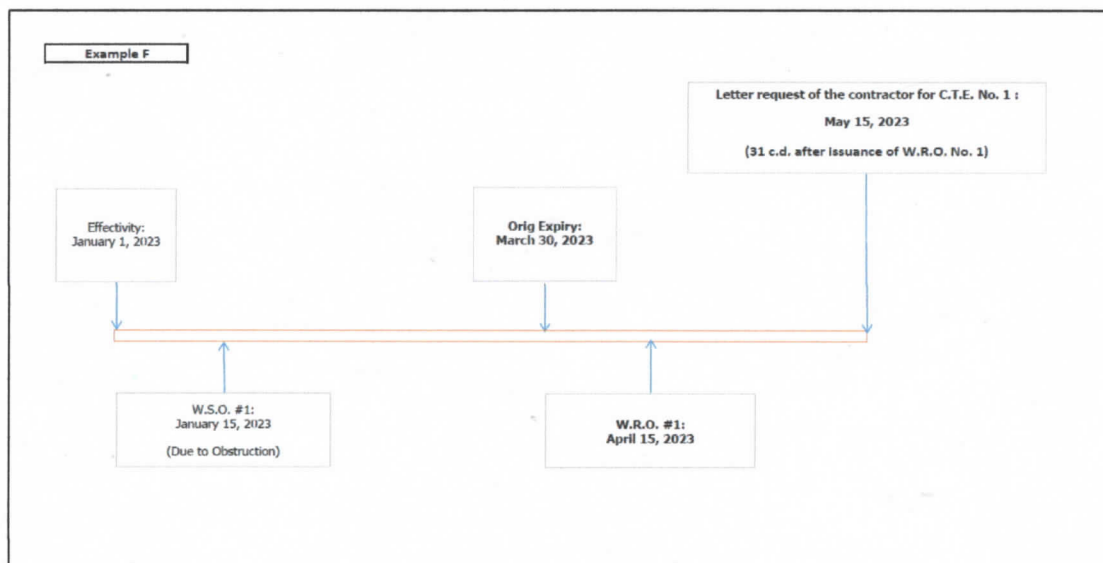


**For Example 4(F):**

Condition 1 – although the request was made beyond the expiry date, this is an exceptional case, since the problem that caused the issuance of W.S.O. No. 1 was not yet resolved at the time of expiry, and was only resolved on April 15, 2023, as per W.R.O. No. 1, hence, this condition is considered complied.

Condition 2 – 31 c.d. after issuance of W.R.O. No. 1 (not complied)

**The request for CTE is invalid.**



*Note: For request for CTE due to rainy/unworkable days: this is not applicable. Since rainy/unworkable days occur intermittently, there is no way that MTSR will go beyond expiry date. If the project is nearing its expiry date, it should be cut short (last day on the MTSR should be prior to or at the expiry date) in order to accommodate condition nos. 1 and 2.*