

BUSINESS CASE
World Commerce and Contracting
CCM EXPERT CERTIFICATION - 2021

**IMPLEMENTATION OF THE
EXTENSION OF TIME (EOT)
EXPERT EVALUATION TEAM
IN CONSTRUCTION PROJECTS**

By Jerry Pessah



IMPLEMENTATION OF THE
EXTENSION OF TIME (EOT) EXPERT EVALUATION TEAM
IN CONSTRUCTION PROJECTS – Jerry Pessah -

PREFACE AND BACKGROUND INFORMATION

Would you invest US\$ 1.89 Million to obtain US\$ 107.11 Million in savings?

That is what happened in one of our Construction Projects in 2017. **Similar results (or better) can be replicated to other projects.**

The creation of the Extension of Time (EOT) Expert Evaluation Team started in Kuwait in 2017; estimated project value of US\$ 3.3 Billion – Oil & Gas Refinery Expansion.

It was the decision of the Project Director, Business Manager and the Contracts Manager that a special team of experts must be fully dedicated to evaluate, analyze and mitigate costs of Extension of Time from Subcontractors, as those delays, complex in nature, represent potential hundreds of millions of dollars in potential claims, arbitrations and very expensive legal processes.

The Project's management team decided to fund US\$ 1.89 Million in 3 years to bring 3 experts in Claims Management and Forensic Schedule Analysis to evaluate, analyze, recommend, and negotiate assessments of entitlement of Subcontractors EOT request. **Refer to sections 3 & 6 for details.**

No previous team in the Corporation has done or developed what the EOT Expert Evaluation Team of Kuwait has done and accomplished. **The objective of this business case is to demonstrate why the implementation of the Extension of Time Expert Evaluation Team in projects is of high importance and needed, and to get the projects director's approvals to implement it in their projects.**

Based on the successful results obtained in the first Kuwaiti project after the incorporation of the Expert Team, Senior Management decided to transfer the same program to a second project, also in Kuwait for about double the size of the first one.

The Project Director is highly recommending the implementation of the EOT Expert Evaluation Team to expand the results and continue the implementation of the program across the Corporation based on its tangible benefits and results.

As of today, the results of the two projects in Kuwait were replicated in other project in Canada (LNG Canada – US\$ 14 Billion) and just a few weeks ago a presentation of the program with details was done to several Contract Directors in a Mining & Metal Project in Peru to evaluate whether or not present it to the Client for implementation in a near future. The Directors were impressed and will present to their client to incorporate the program.

The implementation of the EOT Expert Evaluation Team is mainly project driven, however other scenarios can be evaluated for smaller projects to optimized operative costs.

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1. INTRODUCTION

Assuming that no Claims for delays may occur during the execution of a construction project or making the assumption that we can avoid them is non-realistic.

In construction projects, Subcontractor's Claims for Delays for Extension of Time (EOT) are risks that are considered complex in nature and expensive to evaluate, quantify and negotiate as a consequence of multiple impacts that occurred throughout the execution of the work.

With a specific focus on Subcontractor's Claims for delays, it is factual that Subcontractors have become sharper in claims development with proper substantiation, and therefore it is required to provide a special consideration to Claims Management, particularly related to Subcontractor's request for compensation for Extension of Time (delays) which are potentially the most costly claims for projects.

The lack of a dedicated expert team in projects to avoid, manage and mitigate Claims for Delays for Extension of Time **may cost tens or hundreds of USD\$ millions more** in potential settlements that could be avoided with the support of the Expert Evaluation Team AS IT WILL BE DEMONSTRATED in this Business Case.

The following Business Case is built on **PROVEN results of US\$ 269 Million in savings obtained in a project between 2017 and 2019 after the implementation of the Expert Evaluation Team, and demonstrates the benefits of cost and added-value of creating and implementing the Team comparing to its implementation and operative cost.**



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2. PRELIMINARY CONCEPTS

2.1 WHAT IS THE EXTENSION OF TIME (EOT) EXPERT EVALUATION TEAM?

Is a special team inside of the Projects' field Contracts Management department, highly experienced in Contracts, Claims Management and Project Controls dedicated only to manage the entire process related to Subcontractor's request for additional compensation for DELAYS (Extension of Time) that occurred during the execution of a project.

The Expert Evaluation Team, along with evaluating, assessing and recommending potential payments of Subcontractor's delay claims based on contractual, technical and commercial merits must develop all processes, procedures, forms and formats to support the entire process from beginning to end.

2.2 TARGET AUDIENCE OF THIS BUSINESS CASE

The target audience of this Business Case are Project Directors, Business Managers, Project Contract Managers or and Functional Executives of the Corporation.

2.3 IMPLEMENTATION OF THE EXPERT TEAM

The FIRST Extension of Time (EOT) Expert Evaluation Team was implemented in Kuwait between 2017 and 2019 in one of the two USD\$ Multibillion Refinery Expansion Projects.

The results and details obtained are shown in the Executive Summary.

The results and success were so relevant that it was replicated and currently implemented and running on the second Mega Project in Kuwait.



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3. EXECUTIVE SUMMARY

In large construction projects there are always delays between contractors and subcontractors depending on the scope of work of each party, their responsibilities, and interactions. These delays are normal and are always the subject of intense negotiations between the parties in order to arrive at a compensation figure or not as the case may be.

In multi-million dollars projects these delays are very complex and it is difficult to evaluate who is responsible for a particular delay. It is equally difficult to agree what the potential compensation should be and almost always the compensation being discussed is very large

The financial impact to one company or the other to pay such delays can be huge, so it is extremely important to quantify and evaluate properly the request, contractually, technically, and commercially.

What do we need?	To create a special team of experts to evaluate the request for compensation for delays from subcontractors.
Why do we need it?	To avoid overpayment which can total millions of US\$ or ending up in expensive litigation.
What is the cost of that Expert Team?	Approximately US\$ 0.84 Million for 2 experts for 2 years in a small project
What savings can we expect?	Approximately US\$ 11.16 in small project
What are the risks?	Virtually none. Any new costs are pre signed off by the project Any transition costs (between projects have already been signed off by supply chain This is a proven model which delivers results for us



SUMMARY

Small Projects

We can reasonably expect the following figures for an average small construction project and the savings would be significantly higher for larger projects

- **Estimated Project Value:** US\$ 300 Million
- **Estimated Claims:** US\$ 48 Million
 - Potential Payment without the Expert Team:** US\$ 28.8 Million
 - Potential Payment with the expert Team:** US\$ 16.8 Million
- **Cost of the Expert Team:** US\$ 0.84 Million

Estimated Savings without the Expert Team: $US\$ 48 - 28.8 = US\$ 19.2$ Million

Estimated Savings WITH the Expert Team: $US\$ 48 - 16.8 - 0.84 = US\$ 30.36$ Million

EXTRA SAVINGS WITH THE EXPERT TEAM = $US\$ 30.36 - 19.2 = US\$ 11.16$ Million

Mega Projects

The results below have been taken from a real construction project and show the scale of opportunity for our business.

- **Estimated Project Value:** US\$ 3,300 Million
- **Claims RECEIVED:** US\$ 400 Million
 - Potential Payment without the Expert Team:** US\$ 240 Million
 - Payment MADE:** US\$ 131 Million
- **Cost of the Expert Team:** US\$ 1.89 Million

Potential savings without the Expert Team: $US\$ 400 - 240 = US\$ 160$ Million

Savings DONE with the Expert Team: $US\$ 400 - 131 - 1.89 = US\$ 267.1$ Million

EXTRA SAVINGS WITH THE EXPERT TEAM = $US\$ 267.1 - 160 = US\$ 107.1$ Million

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4. PURPOSE AND KEY OBJECTIVES

4.1 THE PURPOSE OF THE BUSINESS CASE

1. To obtain Project Director's approvals for funding the implementation of the Extension of Time (EOT) in Construction projects across all business units of the corporation.
2. To demonstrate the multiple additional value (not only cost) the Extension of Time (EOT) Expert Evaluation Team can bring to the Corporation.
3. To demonstrate the USD\$ Millions in savings that can be achieved by incorporating and implementing an Extension of Time (EOT) Expert Evaluation Team in Construction Projects with a marginal investment and operative costs versus not having the Team.

4.2 KEY OBJECTIVES OF THE EOT EXPERT EVALUATION TEAM:

- Provide Assessment of Entitlements for compensations and recommendations.
- Allows Senior Management to make decisions based on the Assessments and recommendations.
- Assists the negotiation team in developing a negotiation strategy, and participate in the negotiations as required.
- Improves predictability of the financial forecast of the project by providing forecast values of potential payments of Subcontractor's Claims for Delays for Board of Directors' decisions.
- Provides expert support to Contract Administrators in terms of Claims Management.
- Provides training to multiple stakeholders and to the Contract Management community.



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5. STAKEHOLDERS & EXAMPLES

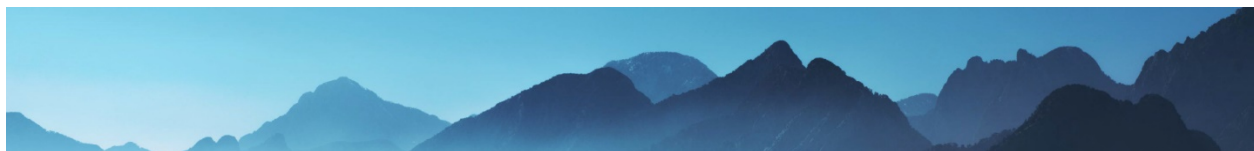
5.1 MAIN STAKEHOLDERS INCLUDED

The Expert Evaluation Team must coordinate and interface with different Stakeholders throughout the a) acknowledgment and Receipt of the Subcontractor’s request, b) evaluation, and c) recommendation for the compensation process as follows:

Stakeholder	Participate in Evaluation Meetings	Provide Analysis	Include Input in Recommendation	Presentation to Project Director	Negotiations w/ Subcontractor
Contracts Management	YES	YES	YES	YES	YES
Project Controls	YES	YES	YES	YES	AS NEEDED
Construction	YES	YES	YES	YES	AS NEEDED
Evaluation Expert Team	YES	YES	YES	YES	AS NEEDED
Senior Management	OPTIONAL	OPTIONAL	OPTIONAL	YES	OPTIONAL



Specific Flowcharts and RACI (Responsible, Accountable, Consulted, and Informed) Charts with processes and procedures will be developed for each Project.



5.2 EXAMPLE: ACTUAL CASE # 021: Claim for Time Delay (Extension of Time).

- Original Contract Value: US\$ 43.19 Million.
- Original Completion Date: 17.1 months.
- Claim: Additional indirect cost (personnel, operation and facilities): **US\$ 16.2 Million.**
- Extension of Time: 11.8 Months from Original Completion Date (including COVID-19 impacts).

The Subcontractor requested compensation for additional indirect cost including personnel, operational cost, overheads, offices and facilities, catering and transportation, etc.

Based on the evaluation performed by the Expert Evaluation Team:

Subcontractor	Company
The Subcontractor did not perform a detailed Schedule Delay Analysis to justify the delay, only simple narrative of “alleged” delayed activities.	The Company performed a recognized and required Schedule Delay Analysis by itself.
The Subcontractor’s report was not based on Critical Path methodology and/or any prospected or retrospective technique, which are the ones technically needed to prove delays.	Detailed Critical Path methodology was used.
Since no proper Schedule Delay Analysis was performed, the Subcontractor assumed that Company is 100% responsible (compensable) for entire Extension of Time (incorrect assumption).	Company obtained: a) Company culpable of 44% delays b) Subcontractor culpable of 8% delays c) Concurrent culpability (both) 48%.

The previous detailed and proper analysis from the Company demonstrated that Company caused only 44% of the delays differently than Subcontractor’s request for a 100% delays.

The Subcontractor’s submission:

- Was not properly prepared, substantiated or supported. No narratives or explanations provided.
- Contains multiple incorrect Contractual interpretations technically and commercially.
- No detailed analysis of the cost incurred and/or damages and no proper quantifications of such damages; no copy of receipts or backups.
- Mathematical errors and general calculations.
- Contradictions on different data and sources used.

The Company's proposed compensation was based on its detailed technical analysis, rates and prices for compensation in alignment with the Contract provisions, and data obtained from formal sources agreed by both parties.

Results:

After Company presenting factual results and documentation properly proven and analyzed, and demonstrating Subcontractor's flaws and inconsistencies on its submission:

Claim Amount: US\$ 16.2 Million
 Amount Closed: US\$ 3.97 Million (Subcontractor agreed)
Savings: US\$ 12.23 Million (75% Claim amount)

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6. FINANCIALS

6.1 THE ESTIMATED COST OF A DEDICATED EOT EXPERT EVALUATION TEAM VERSUS OUTSOURCING

The estimated cost to maintain a minimum team of two (2) Experts per month (Contracts and Claims Manager and Forensic Schedule Analyst), including office space, office utilities, maintenance, fees, and others IN HOUSE (*) has been estimated between US\$ 360,000 to 420,000/year as follows:

Item	Description	Cost/Month	Quantity	Cost/Month	# Months	Cost/Year
1	Salary per Expert	12,500 – 15,000	2	25,000 to 30,000	12	300,000 to 360,000
2	Office Facilities (full)	1,000	2	2,000	12	24,000
3	Office Supply & others	1,000	2	2,000	12	24,000
4	Transportation/others	500	2	1000	12	12,000
TOTAL		15,000 – 17,500		30,000 to 35,000		360,000 to 420,000

All information in USD\$

(*) without Project Benefits.

Considering maintaining 3 years the Expert Evaluation Team with 2 Experts, the total estimated operative cost is:

Cost in 3 years for the Expert Evaluation Team	=	US\$ 1.08 Million to 1.26 Million
		versus US\$ 269 Million in savings of potential delay claims (*)

(*) refer to item F – Executive Summary

OUTSOURCING:

It is definitely possible to outsource this service where great knowledge, experience and support can be obtained. However, comparing to an expert outsourcing firm from the cost point of view, prices average around US\$ 40,000/Month PER EXPERT or equivalent to US\$ 80,000/Month per two (2) Experts, which, comparing to the In-House cost/year it results in **MORE THAN 2 TIMES** higher.

DISADVANTAGES OF OUTSOURCING:

In addition to the extra cost, the outsourcing will not provide the interaction required with the stakeholders and the contract community, and will not provide any training to reduce and mitigate cost and schedule impacts in the future.

It is the accumulation of experience and the dissemination in the wider team that ultimately drives results that may not even be able to get through outside experts.



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7. RESOURCES

7.1 NUMBER OF EXPERTS NEEDED AND PROFESSIONAL PROFILES

The number of experts needed will depend on:

- The size and complexity of the project.
- The number of potential Claims for Delays expected to be received from Subcontractors.
- The time available to complete the evaluations (assessments).
- The complexity of the Claims and the details that needs to be evaluated.

For small projects a minimum of one (1) Contracts and Claims Management Expert and one (1) Forensic Schedule Analyst Expert is needed, while for medium, big or mega projects the team could be around 2 to 3 Contracts and Claims Management Experts, and 1 to 2 Forensic Schedule Analyst.

Despite some disadvantages, there is also a possibility for small projects to share Expert Evaluation Team with other bigger projects.

Professional Profiles:

1) The Contracts and Claims Management Expert profile.

This position requires years of experience in both office and project site, pre and post award activities, and requires years of experience in Claims Management and Dispute Resolution, Contract Management, and also knowledge of Engineering and Construction areas in order evaluate the Subcontractor's Claims from different perspectives and considerations.

The Contracts and Claims Management Expert must also have strong understanding of legal terms and conditions and be able to discuss with lawyers and/or arbitrators and support the evaluations.

Leadership skills with excellent oral and written communication skills are necessary.

2) The Forensic Schedule Analyst Expert

This position requires years of experience in Project Controls, Project Planning, Forensic Planning and delay analysis. Specifically familiar with the Retrospective Window Slice Analysis Observational Methodologies based on Critical Path. Excusable (Compensable and Non-Compensable) and Non-Excusable analysis and expertise in Primavera 6.

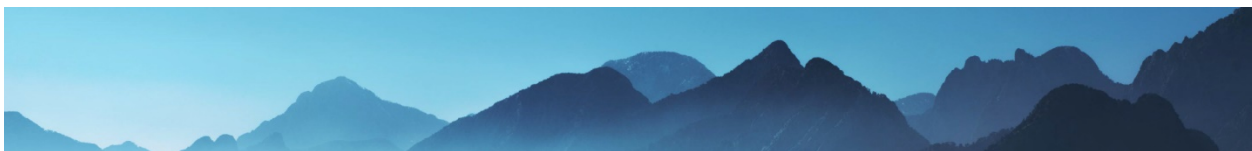
The Expert shall have ample knowledge with Mediation and Arbitration rules and familiar with the American Association for Cost Engineers (AACE) and Society of Construction Law (SCL), Delays Analysis protocols and techniques, detailed programming and progress monitoring of major projects, forensic planning and delay analysis, and must recommend solutions or recovery plans to schedule or cost impact or delays.

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8. BENEFITS

8.1 THE BENEFITS OF HAVING AN EOT EXPERT EVALUATION TEAM

- ❖ Plays a key role in securing additional million of US\$ in savings that cannot be achieved without the Extension of Time (EOT) Expert Evaluation Team.
- ❖ Brings higher chances of actually concluding an amicable settlement with Subcontractor based on its professional and factual analysis, reducing the Project's risk of incurring in additional Dispute Resolution or Litigation costs.
- ❖ Contributes to reduce cost exposure avoiding potential Dispute Resolution, but if it is unavoidable, provide a strong technical, contractual, and commercial basis if pursuing Dispute Resolutions that cannot be done without the Expert Team.
- ❖ Provides a supportive role (via its Subcontractor's evaluations and analysis) to Prime Contracts in case that an Extension of Time Claim would be needed to be sent to the Client.
- ❖ Standardizes the evaluation criteria for Extension of time (delays) and procedures across all areas of the Project to obtain faster approvals on recommendations from Senior Management.
- ❖ Trains new people to expand the expertise across all business of the Corporation.
- ❖ Creates technical database with information that will allow to improve future evaluations.



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**8.2 POTENTIAL MASS SAVINGS FOR THE CORPORATION BY IMPLEMENTING
THE EOT EXPERT EVALUATION TEAM GLOBALLY.**

For a small moderate project of US\$ 300 Million and considering an average of 20 Projects, the following Mass Results could be obtained.

PROJECT SCALE	SMALL - MODERATE PROJECT	
	AMOUNTS IN US\$ Million	
PROJECT VALUE	300.00	
NUMBER OF PROJECTS	20.00	
TOTAL PROJECTS VALUE	6,000.00	
A SUBCONTRACTS VALUE	2,400.00	40% of the Project Value
B CLAIMS FOR SUBCONTRACTORS FOR DELAYS	960.00	40% of the S/Value
	WITHOUT EXPERT TEAM	WITH EXPERT TEAM
Claims for Delays	960.00	Claims for Delays 960.00
Estimated Payment (60% Claims)	576.00	Estimated Payment (35% Claims) 336.00
Estimated Savings	384.00	Estimated Savings 624.00
PROJECT DURATION	2 YEARS	
NUMER OF EXPERTS	2.00	
COST OF EXPERT TEAM/YEAR (IN US\$)	0.42	
	WITHOUT EXPERT TEAM	WITH EXPERT TEAM
TOTAL COST	0.00	TOTAL COST 0.84
ESTIMATED FINAL SAVINGS	384.00	ESTIMATED FINAL SAVINGS 623.16

Where potentially ADDITIONAL combined savings of US\$ 239.16 Million could be made.



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9. RISKS AND PROBLEMS

The main risks and problems of not having the Expert Evaluation Team are:

Potential cost leakages. Incorrect results and potential high payments recommended could compromise or eliminate the project's profits or bring significant losses as result of:

- Insufficient experience in Contracts and Claims Management.
- Incorrect profile of the person to perform the assessment and analysis.
- Lack of dedicated time to perform a full Contractual, Technical, and Commercial analysis.

9.1 POTENTIAL RESULTS WITHOUT THE EXPERT EVALUATION TEAM

The problems and risks of not having and EOT Expert Evaluation Team as described in Section 9 including the lack of experience, lack of dedication to fully, and exclusively evaluate Contractor's claims for delays and others, will definitely affect the results of potential payments and savings for the project.

A quick example of potential results between having the Expert Evaluation Team and not having is as follows:

PROJECT SCALE		SMALL - MODERATE PROJECT	
AMOUNTS IN US\$ Million			
PROJECT VALUE	300.00		
A SUBCONTRACTS VALUE	120.00	40% of the Project Value	
B CLAIMS FOR SUBCONTRACTORS FOR DELAYS	48.00	40% of the S/Value	
WITHOUT EXPERT TEAM		WITH EXPERT TEAM	
Claims for Delays	48.00	Claims for Delays	48.00
Estimated Payment (60% Claims)	28.80	Estimated Payment (35% Claims)	16.80
Estimated Savings	19.20	Estimated Savings	31.20
PROJECT DURATION	2 YEARS		
NUMBER OF EXPERTS	2.00		
COST OF EXPERT TEAM/YEAR (IN US\$)	0.42		
WITHOUT EXPERT TEAM		WITH EXPERT TEAM	
TOTAL COST	0.00	TOTAL COST	0.84
ESTIMATED FINAL SAVINGS	19.20	ESTIMATED FINAL SAVINGS	30.36

It is clear to see that even in a small-moderate project ADDITIONAL savings of US\$ 11.16 Million (US\$ 30.36M – 19.20 M) can be LOST without having the Expert Evaluation Team, making a total of US\$ 31.20 Million savings.

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9.2 POINT OF FAILURE OF THE BUSINESS CASE AND PESTLE ANALYSIS.

The only point of failure for the implementation of the Extension of Time Expert Evaluation Team in multiple projects is the limited number of personnel with skills and expertise to carry out this work. It is critical to have incremental skilled staff and, based on previous results the Business Cases allows that.

Based on the special and unique scope of services this Expert Team provides, mainly the PESTLE analysis is not applicable as no launching a new product or technology will occur. The only 2 elements that have been considered are the Political factors and the Economic factors.

In terms of the Political factors, it is extremely important to have the support of Senior VPs to “sell” the product to Senior Management in the Corporation and other Project Directors; **which was done.**

In terms of the Economical factors, the results obtained in both Projects in Kuwait, and the implementation of similar programs in other Projects should provide the approval elements.



10. REPORTING AND EVALUATIONS

10.1 TYPE OF EVALUATIONS AND ASSESSMENT PERFORMED BY THE EXPERT EVALUATION TEAM

- a) Review all available technical and commercial information related to the Extension of Time and evaluation of cause and effects that impacted the execution of the work.
- b) Detailed Schedule Delay Analysis and evaluation to determine the Compensable and No-Compensable times for delays, and what were the critical activities that impacted the work.
- c) Determination of the compensable cost to the Subcontractor (if entitled) for the “compensable” time obtained from the schedule analysis and based on the Contract provisions and prices.
- d) Determination of labor and equipment hours lost during the execution of the work and causes that affected the project’s productivity.
- e) Calculation of compensable Labour and Equipment and appropriate cost for loss of productivity
- f) Evaluation of all items related to indirect resources (Staff, Facilities, Overheads, etc.) and calculation of compensable and appropriate cost for indirect resources for the “compensable” time.
- g) Review and analyze Direct and Indirect resources, its relationships and performance of behavioral analysis.

10.2 MAIN DELIVERABLES TO BE OBTAINED FROM THE EXPERT EVALUATION TEAM:

The following are the main deliverables from the Expert Evaluation Team after initiating the evaluation of Subcontractor’s submissions:

- 1) The Assessment of Entitlement (AOE) and
- 2) The Schedule Delay Analysis (SDA).

Both previous documents must include all items evaluated including narratives, sources used for the evaluations (technical, contractual and commercial), analysis, graphs and calculations.

The Assessment of Entitlement must include expert recommendations and suggestions for compensation, mitigation strategies and potential savings and will be presented to Senior Management for approval before the negotiation with the Subcontractor begins.

The quality and the level of details included in both documents must be robust and sufficient to be discussed and reviewed with Lawyers if an amicable negotiation cannot be reached with the Subcontractor and/or to be used in case of Arbitration or Litigation.

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11. CONCLUSIONS AND NEXT STEPS

“I believe the benefits are beyond the cost” BY Mr. M.U. – SVP – Project Director – Projects in Kuwait.

Based on:

- a) The proven results of saving US\$ Millions for projects after negotiating with Subcontractors the results obtained from the Expert Evaluation Team’s Assessment of Entitlements for delays.
- b) The potential of obtaining mass savings for the Corporation supported by a training program if the Expert Evaluation Team is implemented on a Global basis.
- c) The benefits of consolidating all data and results obtained from the Assessment of Entitlement to use in different countries and regions.
- d) The benefits to standardize the entire Extension of Time request process and evaluation criteria across all Business Units of the Corporation and
- e) The benefits beyond the cost,

IT IS RECOMMENDED to create and implement an Expert EOT Evaluation Team in projects.



“Jerry - absolutely, no doubt that you have my full support, also to take it further into the Corporation.”

PATH FORWARD.

To establish a series of conference calls with Functional Leaders the Chief Procurement Officer and Projects Executives to evaluate the feasibility of implementing the EOT Expert Evaluation Team and to establish time frames.