

Delay Letter: A Template & How to Write One

Executive summary. As a contractor, the notification of delay is critical. Here are the important ingredients to a delay letter.

Why do I need one? Say you're on a project and you are losing time – you are delayed. If it's your fault, you better catch up. If it's someone else's fault, especially the Owner or your general contractor, you better let them know. In writing. And, to answer the question of "why do I need one?", that answer is because the Contract says you do and the Contract is all that matters – I don't care what that nice "let's work it out owner's representative" says. He or she will be *unavailable for comment* when it's time to mediate.



How do I notify my client? Again, do it in writing. And better than an email is a letter. A letter delivers a "this is a big and significant deal"-punch versus a lazy email cc'd and bcc'd to a dozen of your closest friends, colleagues, and unrelated project bystanders.

How do I know what's in this letter? The first step is to read your Contract. So, go do this after you read this article. You must read your Contract because it will outline what is required in a notice. If you can't figure it out, contact your lawyer – he or she can help you.

The template. If you are unable to find the required components of your notice letter, here's a good start – here are the pieces to your letter:

- Date of notice – today's date
- Recipient of notice – this person is likely not on the jobsite. Even though you talk to the project manager every day, the Contract probably says to deliver this letter to the "Officer in Charge" or "Contracting Officer" or "Director of Public Works" or "Director of Budget and Fiscal Services", et cetera.
- Body of the letter (not necessarily in this order – feel it out in the letter)
 - Provide an introductory sentence or paragraph telling them what you are going to tell them
 - Tell them you have experienced an impact in time and/or cost and use descriptors (photos, drawing references, and specification references)
 - Tell them where in the Contract you are provided relief in time or cost
 - Give them the required information by the Contract or tell them when they will have it
 - Reserve your rights to provide additional information at a later time
 - Notify them that you are available to meet at their convenience
- Closing of the letter
 - Include after your signature who else will be getting a copy of this letter and what enclosures are a part of this letter

Can you give me a sample? Here's a sample letter for your use.

April 9, 20xx

Letter No. SJC/CoC-023

Mr. John Doe, P.E., Contracting Officer
City of Columbia (CoC)
6578 Little Patuxent Parkway
Columbia, MD 21044

RE: Project No. COL-2021-67R -- Bubbling Brook Elementary School Project
Notification of Delay Resulting from Discovery of Rock

Mr. Doe:

This letter is provided to notify you in accordance with General Conditions 6.1, Paragraph B.1, of an impact to SJ Construction, LLC (SJC) in both time and cost as a result of a differing site condition discovered on the above reference project.

This morning at approximately 8.45am, SJC was excavating the elevator pit at Building R at gridline M-6 on drawing C-58 and encountered rock at approximately elevation 401.50 MSL. From the boring report entitled "January 6, 2021 Geotechnical Report of Bubbling Brook Elementary School, by GeoKings, LLC", it is indicated on borings B-11 and B-13 that soil in this location was to be silty sand. SJC encountered massive basalt which is considerably more difficult to excavate. Photos of this condition are attached in Exhibit A. This change in site conditions will impact SJC in both time and cost.

As this condition is only hours old, we cannot provide the actual time and cost impact at this time. We reserve the right to assess the impacts to SJC at a later time when the full effects of this changed condition can be evaluated.

SJC is available at any time to discuss this change with the City of Columbia – please do not hesitate to contact me at (301) 555-1212 or scott@sjc.com.

Very truly yours,

Scott Jennings
Project Manager

cc. Scott Jennings, Sr., President, SJC.
John Poindexter, Poindexter and Poindexter Law Group.
Encl. Exhibit A – Project Photos.

My story. Every contract is just a touch different, and different jurisdictions have different rules. You better know these rules or you could get stuck in waiving all of your rights to your claim because you didn't notify on time or to the right person or with the right information. There can be leeway in the ingredients of your letter, but there also can be an argument for your failure to strictly comply with the Contract. Your failure to cross every "t" and dot every "i" could be fatal.

Use my "template" as a guide, but know that it doesn't fit every situation.

Work Safe!

