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Scheduling Specification Can Make Or Break Delay Claims

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Insight — 2/9/2004 12:00:00 AM

Almost any substantial construction claim will include a major delay component. In fact, more often than not it is the damages that are to be attributed to delay that result in disputes among owners and contractors. Despite case law emphasizing the importance of critical path methodology to establishing legitimate delay claims (see *Morrison Knudson Corp. v. Firemen's Fund Ins. Co.*, 175 F.3d 1221 (10th Cir. 1999)), all too often construction contracts pay scant attention to the scheduling specifications.

Failure to adequately address scheduling issues and the specifications is a major mistake. Without tight control on scheduling issues, both owners and contractors are at the mercy of relatively undisciplined and subjective delay analyses. Many disputes could be avoided, or at least greatly streamlined, through the use of more detailed and tighter scheduling specifications.

A specification that merely requires a contractor to provide a schedule with critical path activities clearly delineated is grossly inadequate both for contract administration purpose and claims management. Of course, it is necessary that a contractor provide a project schedule and schedule updates and schedule revisions. But an adequate scheduling specification will also specify the applicable scheduling software to be used, designate a scheduling representative, describe in detail the required submittals and long lead-time materials or equipment and describe in detail the documentation and reporting requirements throughout the life of the contract.

A good scheduling specification will cover at least the following:

- the scheduling method, CPM, and the level of activity and logic detail required for schedule approval;
- the critical intermediate and final completion milestones;
- resource, especially cost, loading by activity and provisions for evaluating earned values based on schedule updates;
- procedures for periodic updates and documentation of ALL changes in the schedule made since the last update; and
- the level of detail and analysis required for claims of delay or extension requests by the contractor and when such analysis must be presented.

The scheduling specification also should state expressly that "float" is an asset of the project and not for the exclusive use or benefit of the owner or the contractor. To avoid later contention, the contractor's right, or lack of

right, to early completion should be addressed.

The specification should provide for regular updates, preferably weekly, of progress against the schedule and of anticipated work in the near future. Such updates can be an extremely effective management tool for both contractors and owners and should be a regular item on the agenda of weekly project meetings.

Properly implemented, a good scheduling specification protects both the owners and contractors. A thorough, detailed and well planned project schedule forces the project management staff to plan ahead on the project, the first step to a well-managed job. Timely and well thought-out updates force early analysis of issues that affect progress (and project margin) and strategies for managing the downstream impacts of those issues, whatever their source. It's just good project management, but it also has the benefit of placing you in the driver's seat with complete information impeccably documented if a dispute does arise.

While it will not resolve disputes over fault or causation, a carefully crafted scheduling specification should, if carefully followed, make identification of actual delay issues, and the events they relate to, much simpler. Good schedule management can dramatically simplify the discussion of delays by putting the focus on only the truly meaningful issues. Removing the dispute from this process should, by itself, greatly simplify the resolution of disputes on a project.

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