



Intricacies of Construction Schedules and Claims

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Time is Money

Discussion of Best Practices for Construction Schedules and Claims Management



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3

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4

Contracts: Claim Process and Schedule Requirements

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Today's Focus

- Handling the time delays to your project
- A delay is a delay, no matter if it arises out of:
 - changes to the scope
 - materially differing site conditions
 - force majeure scenarios
- While we cannot touch on it all, today's discussions should afford you with greater expertise on how to identify, preserve and handle claims for time and money
- Improved scheduling know-how

What is a Claim?



The AIA's definition

- **A demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract.**

See § 15.1.1, AIA A201-2007

A Municipal Contract's definition

- “Claim” means a **demand** or assertion **by a contractor seeking**, as a matter of right, adjustment or interpretation of contract terms, **payment of money, extension of time**, or other relief **with respect to the terms of a contract** with the city.

VDOT's definition

- The Contractor's **written request** or demand for **an adjustment to the Contractor's compensation or to the Contract time**, for costs, expenses, or other damages, adjustment of the Contract terms, or for any entitlement available under the Contract, *made within the time, in the form, and pursuant to the provisions for claims specified in the Contract Documents.*

See § 101.01, VDOT 2016 Road & Bridge Specs.

You should also

- Review the Division 1 of the Project specifications manual to check for additional schedule and notice requirements

Asserting a Claim for Additional Time



The AIA A201-2007 requires:

- That the Contractor provide written notice [§ 15.1.2 – Notice of Claims]
- That the Claim include an estimate of cost and of probable effect of delay on progress of the Work.
- Claims concerning adverse weather conditions shall include data substantiating the abnormal conditions, that the adverse weather could not have been reasonably anticipated, and that it had an adverse effect on the scheduled construction.

See § 15.1.5, AIA A201-2007

AIA § 15.1.2 – Notice of Claims

- Requires that claims be initiated in writing **within 21 days after occurrence of the event** giving rise to such Claim **or within 21 days after the claimant first recognizes the condition** giving rise to the Claim, whichever is later.

A Municipal Contract states that

- Contractor has the burden of proof to substantiate a claim for time, including evidence that the cause was beyond the Contractor's control.
- The Contractor acknowledges and agrees that time extensions will be granted only to the extent that: (1) excusable delays exceed the available flexibility in the Contractor's schedule; and (2) Contractor can demonstrate that such excusable delay actually caused, or will cause, delay to the Contractor's schedule that will extend the Contract Time.

Municipal Contract, cont.

- The Contractor shall not be entitled to any extension of time for delays resulting from any conditions or other causes unless it shall have given **written Notice** to the Owner, **within seven (7) calendar days** following the commencement **of each** such condition or cause, describing the occurrence, the activities impacted and the probable duration of the delay.
- The Contractor's **complete claim submittal** for a time extension shall be **submitted no later than 20 calendar days after cessation of the delay** or within such other longer period as the Owner may agree in writing to allow.

The VDOT 2016 Spec. states that

- During prosecution of the work, the Contractor shall identify the causes for any delays attributable to conditions he deems to be beyond his control and shall identify the particular construction operations affected, their criticality to project milestones or overall Contract completion, and the significant dates that encompass the periods of delay. The Contractor shall furnish all such information necessary for the Department to make an adequate evaluation of any request received from the Contractor for an extension of the Contract time limit **within 3 days of experiencing such a delay.**

See § 108.04 (¶3)VDOT 2016 Spec.

If that doesn't work, then...

- The Contractor shall submit a **written** statement describing the act by the Department that allegedly caused damage to the Contractor and the nature of the claimed damage to the Engineer **at the time of each and every occurrence** that the Contractor believes to be the basis of a claim **or prior to the beginning of the work** upon which a claim and any subsequent action will be based.

See § 105.19(a), VDOT 2016 Spec.

If that doesn't work (cont.)

- “**Occurrence**” includes, but is not limited to the **Engineer’s denial of the Contractor’s timely request for time extension**, additional compensation, change order, adjustment, or other request under the Contract, or any other decision, instruction, directive, or order **that the Contractor believes will result in a claim.**”

See § 105.19(a), VDOT 2016 Spec.

If that doesn't work (cont.)

- The Contractor is entitled to compensation for a compensable delay. To request payment for a compensable delay, the Contractor shall **within 14 days after the end date of a delay event**, unless directed otherwise in writing by the Engineer, submit a written request for a change order for the Engineer’s approval. With the request, the **Contractor shall submit a Schedule Impact Analysis (SIA)** and all supporting data to objectively substantiate its request.

See § 109.05(e), VDOT 2016 Spec.

Asserting a Claim: Discussion

- Public v. Private Projects
 - Strict adherence
 - Implied v. actual notice
- Flow-Down provisions
 - How Owner/GC claim provisions impact subcontractors

Contract Schedule Requirements



AIA Schedule Requirements

- The Contractor shall **prepare and submit** for the Owner's information a construction schedule.
- The schedule shall **be revised at appropriate intervals** as required by the conditions of the Work and Project, shall be **related to the entire Project**, and shall **provide for expeditious and practicable execution** of the Work.
- The Contractor shall **perform the Work in general accordance** with the most recent schedule.

See § 3.10, AIA A201-2007

Municipal Contract's schedule requirement

- The Contractor shall **prepare and submit a reasonably practicable and feasible Construction Schedule**, showing the method by which the Contractor will comply with Completion Date requirements
- The Construction Schedule shall **use the Critical Path Method ("CPM") and** an industry-standard computer software program, such as **Primvera**. The Contractor shall use this schedule in the planning, scheduling, direction, coordination and execution of the Work.

Municipal Contract's schedule requirement (cont.)

- The Construction Schedule **shall be sufficiently complete and comprehensive** to enable progress to be monitored on a day-to-day basis.
- The Construction Schedule shall be the sole overall schedule utilized by the Contractor in managing this Project.
- The schedule must be **updated by Contractor monthly** with each progress payment application and submitted to the Owner and A/E for review with the progress payment application.

Municipal Contract's schedule requirement (cont.)

- Should Contractor fail to substantially comply with the provisions of the Contract regarding the Construction Schedule, Owner shall have the right to retain the services of scheduling consultants or experts (including attorneys if necessary in the opinion of the Owner) to prepare schedules, reports, updates and revisions of the schedule in accordance with the Contract Documents
- All costs and expenses and fees incurred by Owner in exercising its rights hereunder shall be charged to Contractor's account.

VDOT 2016 Spec. Schedule Requirements

- The Contractor shall plan and schedule the work and **shall submit his overall work plan in the form of a written Progress Schedule.**
- The Progress Schedule shall represent the Contractor's overall work plan to accomplish the entire scope of work in accordance with the requirements of the Contract.
- If the Contractor **fails to comply with any of the Progress Schedule submissions** within the time and in the manner specified, the Engineer **may withhold approval of the Contractor's ensuing monthly progress estimates** until the Contractor has satisfied the submission requirements.

See § 108.03, VDOT 2016 Spec.

Key Points

- Read your Contract and Specs.
- Know your Scheduling obligations.
 - Comply.
- Know what triggers a notice.
- Know when to submit the notice.

