

## How to Spot, Deal With, and Move Past a Delay

K. Brett Marston  
Spencer M. Wiegard  
Jeffrey E. Fuchs



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### Hypothetical Problem

- Your company is working on a project and discovers a latent design issue that will likely require significant design input to correct, which in turn will result in significantly more materials and labor.
- Your relationship with the Owner (or GC, for subs) is already strained.
- On top of it all, your NET is maybe 3%.

## Significance of a Construction Schedule

- Why is a Schedule important at this juncture?
- How can a realistic, accurate schedule aid in your assessment of this problem?

## Initial Review of the Problem

- Without a schedule (or, without a regularly and accurately maintained schedule) how are you going to determine the extent of the impact of this event?
- How do you convey that information to the Owner/GC?

## Initial Review of the Problem using an Accurate Schedule

- Reveals that the design issue will likely result in 45 days of additional work.
- This will push the completion date 23 days past the Contract Completion Date.
- Your general conditions and home/field office overhead are costing you \$1250/day.
- Contract has Liquidated Damages at \$500/day.

## Now what do you do?

- Under the AIA 201-2007?
- Under the Municipal Contract?
- Under the VDOT Contract?
- Project Specifications Div. 1
- **Know your Contractual Requirements.**
  - Make a checklist of dates/requirements

## What about Subcontractors?

- How do you handle a delay claim, especially when your subcontract has a flow-down provision?



## What is the law in Virginia?

- **The Contract is the law to live by.**
- Notice requirements are strictly construed and strictly applied.
  - AMEC Civil
  - American Bridge
  - Coleman Adams
- How this impacts you → comply with the contract.



## Giving an Effective Notice

- A notice needs to comply with the contract.
  - Content
    - Factual statement
    - Supporting data
  - Timing
    - Within the appropriate timeframe
  - Delivery
    - Send it the way the contract requires, and then every other way.

## Content of a Notice

- Write so that an outsider (judge, jury, uninvolved Owner) can understand the project, the issue, and the remedy.
- Provide supporting data as Contract requires
  - Schedule analysis
  - Photos
  - documentation

## Timing Conflicts

- How do you handle the conflicting deadlines?
  - For time delays, VDOT 2016 Spec. states:
    - Contractor to submit its request for an extension of the Contract time limit **within 3 days of experiencing such a delay**. (§ 108.04 (¶3))
    - Contractor shall **within 14 days after the end date of a delay event**, submit a written request for a change order, along with a Schedule Impact Analysis (SIA). (§ 109.05(e))
    - Contractor to submit a written Notice of Intent to File a Claim **at the time of each and every occurrence, or prior to the beginning of the work**. (§ 105.19(a))

## “Each and Every Occurrence”

- What does that mean?
- Should I submit a Notice every time it rains on the jobsite?
- Do I wait until the weather culminates into “abnormal” weather conditions?
- Cumulative Impact Claims?

## Record Keeping

- Important to substantiate and prove your claim.
  - Daily logs
  - Photos/video/as-built
  - Third-party testing/inspection
  - Tracking progress in the schedule



## Use of Schedules to Prove Claim

- Effectiveness
  - Tracks the details of the project
  - Empirically illustrates delays to the project

## Key Points

- Read your Contract and Specs.
- Maintain an accurate and reliable schedule.
- Evaluate each and every possible delay.
- Don't wait until the end to deal with a delay, it will likely be too late.



**Questions?**

