هيئة كفاءة الإنفاق والمشروعات الحكومية
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Project Schedule Claims Procedure

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1.0 PURPOSE

The purpose of this procedure is to provide guidelines with respect to handling of Contractor Claims.

It is of utmost importance for Projects to strive for a reduced amount of claims though:

- Clear contractual terms, with incentives to drive contract performance
- Award to contractors that are competent for the task, with good track record.
- Timely approval by Project of contractor baselines.
- Clearly defined scope of work to contractors during bidding, and especially at award.
- Changes to be handled expeditiously and negotiated and formalized before work starts
- Contractor correspondence is expeditiously dispositioned in writing and resolved
- Effective weekly contractor meetings with good participation by all parties, including management.

This procedure was written to address the schedule aspects of the claims.

This procedure applies to works performed under all Government construction projects executed throughout the Kingdom of Saudi Arabia.

2.0 SCOPE

All projects that involve works by other parties through contracts will have to address prevention of claims, claims analysis, and claims resolution.

3.0 DEFINITIONS

Definitions	Description
Time Impact Analysis	The evaluation of a delay in an agreed or approved schedule to determine net impact of intermediate or final milestones for purposes to schedule claim discussions
Delay	Slips in time of any activity in the schedule
Impact	Slip of a commercially agreed milestone
Baseline Schedule	A fixed project timeline that is used for tracking progress upon the project plan and budget or contract performance. It measures the project performance in the major aspects. It becomes the basis to determine schedule deviations. The Original Baseline is the first formal issuance of the agreed/approved schedule. The Current Baseline is the baseline updated with approved Scope Changes.
Current Forecast Schedule	Regular schedule update, based on current baseline and incorporation of current status and current forecasts. Current schedule forecasts are not a commitment by the contractor, but merely an indication of what he expects will occur if things continue as they are.

Refer to document “EPM-KPP-PR-000001 Project Planning and Scheduling Definitions and Concepts Procedure” for general definitions.

4.0 REFERENCES

1. EPM-KPP-PR-000001 - Project Planning and Scheduling Definitions and Concepts Procedure

5.0 RESPONSIBILITIES

5.1 Contracts Administrator

Responsible for communications with Contractors, keeping good record of all instructions to Contractor.

5.2 Lead Project Planner

Responsible to accept, approve or reject contractor schedules timely. Also responsible to review contractor claims from a scheduling aspect, and schedule claim analysis when required. Provide analysis to contract administer.

6.0 PROCESS

6.1 Introduction

Claims have become a pervasive element of dealing with contractors. Reasons for this are:

- Pricing and required completion durations have become more and more competitive
- More aggressive fast track approaches have created issues like: poorly defined scope, late engineering, incomplete engineering, late delivery, concurrent work, etc.
- The industry in general is paying more attention to risk management and allocation. Claims have become big business for attorneys and consultants, which in turn drive the industry into more and more mutual claiming

Claims have several things in common: important financially, almost always schedule related, and expensive to handle as they involve complex investigation and analysis.

Claims are often won on the ground of one party having had better documentation of the events than the other.

In order to avoid and address claims, Project planners and schedulers need to be

- familiar with the Contractor's contracts
- Accept contractor schedules expeditiously, especially the contractor's baseline schedule
- Track all deliverables owed to the contractor and make sure they get delivered to them in timely fashion
- Document all events where a contractor is late, has not mobilized the planned resources, is not timely schedule updates, schedule updates are not reflective of reality, …
- Participate in the contractor's Kick-off meeting, and the regular status meetings with contractors
- Keep records like meeting minutes and reasons for schedule changes.

It needs to be understood that the contractor has rights, and respecting those rights will foster a smoother relationship and a more efficient outcome.

One of those rights is the contractor's right to finish early.

6.2 Contractual Considerations

6.2.1 Review and Accept verses Approve

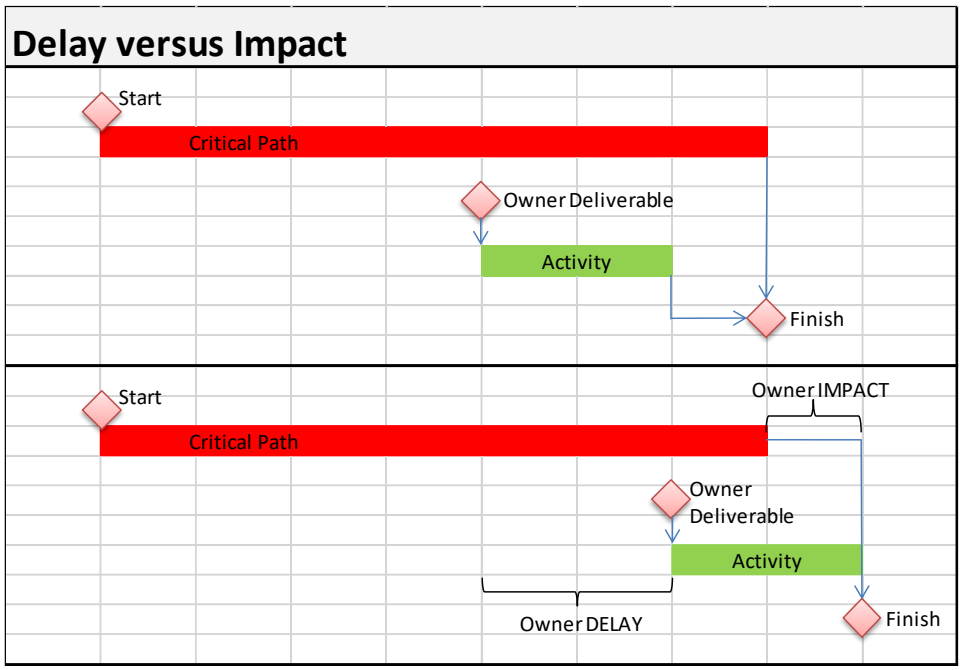
Care needs to be taken in reviewing and accepting contractor schedules as it could have commercial implications. Project review contractor plan and schedule on a regular basis, with supporting basis documents. Where there is lack of clarity, the project should always ask for further information and clarification.

Project can accept the schedule as compliant to milestone requirements, suitable level of detail, adequate resource considerations, reasonable scheduling approaches, adequate critical path(s), etc.

The project should be cautious in approving the contractor's schedules. Schedule approval can be used by contractors to relief themselves from responsibilities and consequences of schedule errors not detected by Project.

6.2.2 Delays and Impacts

Not all delays are necessarily contractor impacts. Delays need to be evaluated in the schedule by a Time Impact Analysis. An Impact is usually defined as causing the critical path or the end date to move to the right.



In the simple Time Impact Analysis example above, the delay caused a 50% impact to the contractor.

The example above would infer that delays that do not generate an impact cannot be the basis for schedule-based claims. This is not the case. Contracts fully address impacts to critical path, but fail to address aggregation of large number of delays that eventually impact the end date by virtue of the "bow wave" effect which delays so much work towards the end date which makes it impossible to complete the project per the baseline schedule given the contractors staffing and construction equipment plans.

6.2.3 Impact Types

It is important to read and understand the contract as it is the primary tool to establish if delays are excusable or non-excusable, compensable or non-compensable.

The definition of each impact is as follows:

Non-Excusable: Impacts that could have been reasonably avoided by Contractor

Excusable: extensions of time for unforeseeable events beyond the contractor's control. Excusable delays can be either compensable or non-compensable depending on the contract. Non-compensable delays usually include:

- Acts of God (Force Majeure), including fires, floods and epidemics
- Acts of public enemy
- Acts of Owner or those under his control
- Strikes or other labor issues
- Embargos
- Unusually severe weather

Compensable delays that include payment in addition to time extension may include:

- Failure to provide access according to plan
- Failure to review documents in agreed time spans
- Failure to coordinate with other contractors
- Ordering changes in means and methods of contractor work execution
- Owner acts that stop or disrupt contractor's execution of work.

Cardinal Change: Contracts should include means to address variations in quantities to adjust scope. Variances are normal to a certain point. But when excessive change is imposed on the contractor, a renegotiation of the contracts might become necessary. That is defined as cardinal change. The condition that the contract is not executable anymore based on original execution plans and schedules.

6.2.4 Float Ownership

Owner of Total Float: In general, the contractor is owner of his float. Contractor has the right to finish early and be compensated for full contract value even if demobilizing early. Unless contract specifies otherwise.

Owner of Free Float: Delays can have an impact on contractor's ability to perform the job. It is not a solid argument to state that a contractor was not impacted because, for example, a delayed deliverable to the contractor, had free float in contractor's schedule. It might be entirely possible that the contractor had prepared receiving this deliverable, had mobilized resources, and now will incur inefficiencies due to changed conditions.

6.2.5 Schedule Acceleration

Accelerations can be grouped as follows:

- At Owner's (Project) written request. This generates extra revenues for contractor, but mostly is of great benefit to Owner.
- Contractor's request. Contractor can request to accelerate and provides notification to Owner of such. Owner needs to agree (or not) to this acceleration, as owner deliverables become more "urgent" to deliver on time, or might even be requested earlier. Owner should seriously consider these acceleration requests, even putting owner in a more stretched position, as normally finishing earlier produces Project level cost saving, or at the very least, increases certainty of outcome.

- Contractor's Voluntary. Contractor might decide to accelerate to obtain bonuses, or to reduce risk of paying Liquidated Damages. Contractor is not required to notify owner, but cannot expect owner to accelerate deliverables or claim impacts based on accelerated schedule.
- Owner Inadvertent or constructive: statements interpreted by contractor as instructions to accelerate, and act accordingly. Owner has to ensure that transmittals, minutes of meetings, and the like do not contain statements that can be interpreted as having requested an acceleration.

6.2.6 Early Completion

Any contractor has the right to complete his work early. Key points to consider when addressing early completion:

1. Obligations of all parties to support or not support early completion
2. Beneficial use of the facility
3. Right to compensation for early completion or delays by others preventing early completion.

6.3 Critical Path Impact Analysis Techniques

There are different techniques to evaluate schedule impacts. Although each methods has strengths and weaknesses, but they all strive to do the following:

- Show that the contract baseline schedule was good, supported by a good plan, and included all conditions that could have been reasonably been anticipated
- Demonstrate that events were outside of Contractor's ability to control or mitigate with available resources impacted the baseline schedule
- Provide a fully proven and documented quantification of the time and cost impact

The choice of techniques depends of the nature of the impacts to be proven and/or the preference of the expected decision makers.

The Schedule Impact Demonstration Techniques mostly used are described below.

6.3.1 Window Analysis

This approach selects time periods (windows) and used fragnets (subsets of schedule activities) for the key events that characterize the window, to illustrate the impacts in each significant period/window of the job. This way, a clearer picture of the main reasons for delay can be developed and presented.
It is normally better to conduct the initial analysis without trying to predetermine the windows, and then define the windows later for presentation purposes. The approach:

- Can be based on Baseline or Current schedules
- Uses time periods termed as windows
- Determines critical path(s) for the window
- Calculates Window delays
- Eventually determines overall contract/project delay

6.3.2 The But-for/Collapsed Actual

In this approach the client delays are deleted from the Actual schedule, so that theoretically what is left should be the schedule the contractors should have achieved had it not been for client delays. This approach:

- Compares As-Built schedules
- Deletes client caused delay to show what would have been
- Claim is based on difference between both versions

The problem with this approach is that the Actual schedules are many times not properly maintained in order to run the “except for client delay” Actual schedule, especially due to the prevalent (but nefarious) use of “progress override”.

6.3.3 Impacted As-Planned

This approach starts with the baseline schedule, adjusted for any change due to client additions and delays. This approach can be combined with the windows analysis.

- Based on As-Planned
- Adds to the As-Planned schedule all client impacts
- Difference in recalculated completion milestone(s) is the claimed net impact

6.3.4 Total, or Modified Time

This approach uses the As-Built schedule and removes all impacts attributable to the contractor. The resulting schedule assumes that the remaining schedule illustrates the magnitude of the owner impacts. This approach is used where Client impacts have been many, disruptive, cumulative, defying individual analysis. It is not normally an accepted practice with clients, arbitrators, mediators and courts, so it can only be successful if it has a compelling story.

6.4 Other considerations

Other considerations to take into account using any of the techniques above

6.4.1 Similar Period Consideration

This consideration deals with the changed conditions of work the delays by others has forced contractors to perform work in.

6.4.2 Concurrent Delay Consideration

Concurrent delays arise frequently in schedule disputes when multiple parallel activities are delayed by more than one responsible party. Because both parties delay happened at the same time is argued that delays cancel each other, eliminating recovery of time extension costs. In complex schedules, it is usually easy to find activities with little or no float that occurred in parallel with the alleged impacted activities.

Arbitrations and Court decisions on concurrent delay in general state:

- The client cannot be expected to pay for the contractor’s extended schedule costs the contractor would have incurred anyway.
- The contractor cannot be expected to maintain the contract completion date, and the client forfeit’s Liquidated Damages

If a contractor argues that his concurrent delays to the client are because contractor knew of client delays and there was no point in adhering to original schedule, then contractor will need to produce contemporaneous documentation (correspondence, minutes of meeting, reports, etc.) that demonstrates such a decision.

6.4.3 Bow-Wave effect

This occurs when the number of non-critical activates have delayed to such an amount that the available resources are incapable to complete them in timely fashion.

6.5 Schedule Claim Analysis Process

Even if several approaches exist to perform a schedule analysis, there are basic principle questions that need to be always addressed:

- What is the agreed plan
- What is current status at the moment of delay
- What is the delay
- What caused it and who is ultimately responsible
- What is the magnitude of the impact
- Consult commercial and/or contracts team for help.

Verify correct Baseline Schedule has been used: errors arise for a number of reasons, including a multiplicity of target schedules and differences between project schedules and contractor commitments.

Verify proper updates of Current Schedule: If current schedule updates are used, they need to be a correct representation of status at time of delay, with no omissions that could influence the analysis

Clarity: schedule analysis can be complex if performed within the Level 3 automated schedule, therefore schedule impact analysis are performed on higher level “before and after” summary schedules. In any case, the level of detail needs to be appropriate to depict the impact.

No unjustified alteration of schedule durations and logic: changed activity durations or logic is unacceptable unless adequately explained.

Concurrent delays: search for concurrent delays to reduce or overthrow contractor’s claim

Bow-wave effect: Is the contractor suffering from a resource issue due to other self-inflicted delays that actually will not allow him to finish on time anyway? This would be a form of concurrent delay.

6.6 Schedule Impact Related Compensations

Several types of financial impacts can result from a schedule claim from a contractor:

Acceleration Costs: in case contractor was asked to accelerate to recover delays

Productivity Impact Cost: increased resources can produce issues with worker productivity due to density and construction logistics.

Extended overhead costs: the extra cost of the contractor office and site establishments.

Increased permanent equipment maintenance cost: if required by contract.

Escalation: contractor's centroid might have moved to the right

Bonus: depending on contractual terms and bonus calculation methods

Liquidated Damages (avoided): by granting a time extension, the LD calculation will be decreased

Consequential Damages (avoided): normally exist if LDs are not used in contract

Interest: cost of working capital

Claim preparation costs: check contract terms

Schedule Contingency: If contractor uses explicit schedule contingency in the schedule, any reduction of schedule contingency to mitigate the impact of external delay impacts is considered compensable.

7.0 ATTACHMENTS

N/A