Best Practices for Managing Construction Delays

By David Raymond, Esq.
The best practice for avoiding delay claims is to avoid changes in the project.
Owner Controls

1. **Scope of Project** – what will be built

2. **Budget** – how much will the project cost

3. **Time** – when will the project be completed
Contractor Controls

Construction means, methods, sequences, procedures, and coordinating the work
Construction Documents

**Owner:** Invest the time and money to prepare a quality set of construction documents. Drawings and specifications should be coordinated and consistent.

**Contractor:** Review the construction documents for errors, inconsistencies, interferences, ambiguities, etc. pre-bid and request clarifications.
Contract Time

**Owner:** Establish reasonable completion deadlines

**Contractor:** Confirm the contract time (commencement to completion) is reasonable
Deadlines

**Owner:** Clearly define completion deadlines – mechanical completion, substantial completion, final completion – including potential for phased completion

**Contractor:** Understand how completion deadlines are defined and the Owner’s priorities
Schedule Preparation

**Owner**: Require Contractor to prepare and submit a project schedule (including narrative explanation of the anticipated sequence and the critical work items)

**Contractor**: Prepare (and submit to Owner) a reasonable schedule that reflects the as-planned construction sequence
Schedule Review

**Owner:** Review, analyze, and understand the Contractor’s schedule, including the critical work items

**Contractor:** Evaluate the proposed schedule and understand the critical work items
Allocation of Risk

**Owner:** Define the allocation of risk for delays between the Owner and Contractor

**Contractor:** Understand the allocation of risk for delays between the Owner and Contractor

*No Damage for Delay, Force Majeuer, Waiver of Consequential Damages, Differing Site Conditions, Unanticipated Weather, Change Order Process, Key Contractor Personnel and Retention, Insurance, Performance and Payment Bonds, etc.*
Delay Claim Analysis

- Delay Event
  - Excusable
    - Compensable
      - Concurrent
        - Critical
      - Non-Concurrent
        - Non-Critical
  - Non-Excusable
    - Non-Compensable
Damages for Delayed Completion

**Owner:** Establish reasonable liquidated damages for delayed performance based on the individual project and anticipated costs if the project is not completed on time

**Contractor:** Understand the dollar amount of liquidated damages

Actual Damages?
Monitor and Report

**Owner:** Monitor the project on an on-going basis by experienced Owner’s representative

**Contractor:** Monitor the project on an on-going basis by senior management; Keep detailed daily reports that document both the normal and abnormal activities (record the facts, not inflammatory language)
Real Time Schedule Evaluation

Re-evaluate the construction schedule during the project and monitor and re-evaluate the critical path of the work.
Schedule Updates

**Owner:** Require the Contractor to submit updated schedules to reflect changes in the project, including extensions of time and delays; Require a narrative report comparing as-planned schedule with actual construction.

**Contractor:** Adjust/update the construction schedule to reflect changes in the project or the as-planned activities.
Analyze delays as they occur and resolve RIGHT THEN.
Questions?