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Project Records from a Delay Analysis Perspective

The importance of maintaining records in construction projects is often misunderstood, since in many cases records are used primarily as a claim tool. However, this contradicts the actual purpose of maintaining records which is the management and control of the works. In an ideal world, records would assist the parties in avoiding disputes and costly legal procedures. This is one of the reasons why most contract forms set out specific requirements for contemporaneous records to be maintained throughout the course of the project.

However, construction disputes are common and often the parties turn to experts to untangle the project's "conundrums". When it comes to time related disputes, good record keeping acts as an insurance policy. Reliable and consistent contemporaneous records will serve as important tools to identify the cause of delays.

On the other hand, poor records will have the opposite results. It is not unusual for the contractors to issue unsubstantiated EOT and/or disruption claims, without providing enough evidence in relation to the causes of delay. In these specific cases, the rejection of the EOT claim from the contract administrator is the only way forward.

There are various records which can be used as evidence for time related disputes. Monthly progress reports, daily diaries, emails and revised programmes are only some that should be maintained during the project. Even though the majority of contractors and consultants/clients have record keeping systems in place, the records that delay experts are often provided with are insufficient. This is not only the case in smaller projects, where there are greater challenges to justify large costs to manage contracts, but even in medium and large projects the documents provided also commonly lack detail and consistency.

Armed with insufficient evidence, delay analysts face difficult challenges in identifying the reasons behind project delays. This is often the case in disruption disputes where detailed, daily data is required to prove the loss of productivity due to a client's instruction.

It is also very common that due to the lack of detailed records, delay analysts are required to spend significant amounts of time processing the received data, which unavoidably increases the cost. By way of example, one of the first steps of delay analysis is often the preparation of a high level as-built programme of the project. Whilst this sounds a relatively simple process, it is often difficult to accumulate detailed as-built records that will assist in the preparation of a reliable as-built programme. This can mean it is necessary to make reasoned assumptions in respect of as-built dates that could impact on the conclusion of the analysis.

In order to mitigate this risk, both parties should maintain quality as-built progress records. The records should be as detailed as possible, clear and represent the actual progress of the project and the activities at the time they are issued. The progress data should also be accompanied by photographs which evidence the recorded progress. Photographs are ideal records if they are date-stamped and taken regularly, and if it is clear what they demonstrate.

Moreover, it would be useful if progress records were distributed and agreed/signed between the parties to represent a true record of progress as the project develops. It would also be ideal if there was a contractual provision in this regard, since this would help the parties to agree on the project's factual matrix at an early stage. The above would be very useful in cases of termination or in cases where disputes carry on for many years after the completion of the project.

Any delay event should also be clearly recorded in the contemporaneous documents such as: monthly progress reports, weekly updates, minutes of meetings, letters and programme updates. Furthermore, there should be a detailed schedule containing all the necessary information in relation to each delay event (i.e. date of occurrence, area impacted, impact and time period of the event). This would be helpful, in the case of a time dispute arising, in identifying whether or not a specific event affected the project's overall completion date. Similarly, as before, the event schedule should be distributed between the parties and ideally be agreed.

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The continuity of records throughout the project's duration should also be ensured. Very often, gaps in the contractor's/consultant's records are observed; for example where progress updates are not completed regularly, minutes of meetings and programme revisions are not issued and photographs are taken infrequently. This discontinuity of records is commonly observed in the last months of projects and affects the delay analyst's ability to identify the causes of delay. Finally, the progress records should be as consistent as possible. The progress reports, the programme updates, the minutes of meetings and other documents should ideally be presented in the same format throughout the project. This will reduce the processing time required with records for the purposes of a delay analysis, and therefore the cost, should a time dispute arise.

As far as the progress records are concerned, there should be an agreed policy in place of how the achieved progress of the activities/project is measured. Today, it is not unusual for the contractor to measure the actual progress of the works differently from the engineer/consultant. This causes confusion, extra effort and subsequently extra cost when performing a delay analysis, since assumptions need to be made for the actual progress of the works.

To summarise, keeping reliable and consistent records throughout the project is necessary for the proper management of the works. Also, a mutually agreed record keeping policy would be beneficial, not only throughout the construction phase, but also in the event that a time dispute arises. Having the factual matrix of the project agreed would save great time and cost and, in a way, simplifies the dispute process.

If you require any further information, please contact Haris Katostaras at hariskatostaras@hka.com.