

Preventing Disputes in the Construction Phase

Since we achieved our goals from the pricing and contracting posts, contracts are now in place with some important milestones achieved:

- A clearly defined scope
- An achievable price
- Baseline metrics and practical procedures to process changes
- Procedural "guardrails" to expedite and reduce the cost of dispute resolution

Achieving these milestones has positioned everyone for success. You documented agreement between the parties on what needs to be done, how long it will take and how much it will cost. If something changes, you have procedures and baseline metrics to efficiently process, approve and incorporate them.

The construction phase of a project incorporates a new and difficult element of risk to manage - execution. Execution means not only installing the work according to the plans and specifications but also in accordance with the schedule and in cooperation with the other contractors. Failing any of these requirements can certainly lead to a claim or worse, a dispute. So, how do we reduce the risk of execution claims and disputes during the construction phase?

Delay Risk = Dispute Risk

The saying that "time is money" is particularly true of construction projects. The duration of the project drives the contractor's cost for staffing, temporary facilities, insurance and more. The duration of the project drives the owner's cost for property taxes, loan interest, project administration and more. As a result, schedules are necessarily aggressive. The high cost of delays necessitates contract terms with time limits and consequences for late delivery. So, we have the perfect setup for a dispute baked in from the get-go - aggressive goals and strict accountability. In other words, achieve the best-case scenario...or else!

But there is another problem, schedules change. All the time. If you feel the delay is not your fault, you want to recover your costs. While it may be easy to establish that a delay is not your fault, assigning accountability correctly is often challenging. Delays can be difficult to pin to one action, inaction or party to the contract.

Delay = Dispute Risk Continued...

Even if you can make a reasonable argument as to the source of the delay, that party will surely have some examples of things they were counting on that didn't go their way. So, a reasonable strategy to avoid a dispute is to focus our efforts on strategies that avoid delays.

The planning IS the work

Throughout this Guide I have referred to bandwidth as the single most important resource to avoid cost increases and delays. When staff is distracted by issues that were missed or incorrectly planned in a prior phase, they are necessarily limited in their capacity to deal with today's challenges or plan for the future. This cycle tends to repeat, and the risk of claims and disputes grows exponentially. This lack of bandwidth is often the actual reason for the error or omission behind a delay.

It is the worst feeling to open up the spec book or contract and realize you have missed a requirement. In your gut you know the mistake could create delays and additional, unrecoverable costs. At the very least, the superintendent and affected trades are not going to be happy with you.

We can avoid that sinking feeling, delays and blame through efforts to incorporate notices and related approvals into the schedule. A key strategy is to cause formal preconstruction meetings for every major trade to occur at least 30 days prior to their scheduled mobilization date. Be sure to make the agenda purposeful (more on this in Tip #4) and include time in the schedule to get clarifications and approvals for issues discovered.

Here are some topics that are often left out of schedules that can cause delays:

1. **Design-build private / public utilities.** Ask each utility provider what needs to happen and what you need to do to get temporary and permanent services to the project - especially permanent power, water and gas.
2. **Specialty designs.** Many projects will have separate designers and/or testing agencies involved in critical path activities. Complex assemblies require mock-ups, extensive approvals and inspections before trades can go into full production.

Topics that are often left out of schedules that can cause delays continued...

3. **Brand inspections and approvals.** Retailers, hotels and restaurants often require inspections and approvals from the franchise at certain milestones during construction. Requirements can include rough-in inspections, certifications and notice prior to scheduling the opening date.
4. **Specialty jurisdictions.** If your project includes a swimming pool or food service, there are permits, specialty equipment and inspections that may not be detailed in the design or specifications.
5. **Historic renovations.** Your project may require state and/or federal approvals and notices in order to grant the benefits to the owner. Miss the notice and the owner loses a lot of money.
6. **Environmental.** Erosion control, tree protection and sensitive areas such as wetlands often require preconstruction meetings, submittals, inspections and other requirements that come with severe penalties and delays if they are not met.
7. **Submittals, RFIs and change orders.** The process of mobilizing a new trade always leads to questions, new information and potentially change orders that take time to process. Anticipate the time necessary to discover and resolve design and change order issues prior to mobilization.

The difference between what people have to do for you and what they can do for you is all the difference in the world.

The life of a project manager and superintendent is mainly comprised of finding and solving problems created by other people. Even if you are completely committed to the project, some of the people you are counting on are one hassle away from looking for an exit. Think of the problems we endure as withdrawals from the project's emotional bank account and recognition of achievements as deposits. Staying in the "green" helps everyone operate at their highest level. Operating in the "red" reduces our intellectual resources, motivation and dedication.

When I was young in this business, the reward for extra work was keeping your job and perhaps expediting a promotion to the next pay grade. Today, team members need more than a hope for financial gains and a lack of recognition will get you an empty trailer, fast.

The difference Continued...

Finding ways to recognize the efforts of individuals and companies on your team builds the goodwill you need to earn favors you will need to get to the finish line.

Make the mundane purposeful...

Some of our least favorite tasks, conducting meetings, writing reports, taking photos and notes, are often the key to avoiding delays, claims and disputes. The best way to change this perception is to realize the power of the activities we engage in for maximum benefit:

1. Use meeting agendas to cause a meaningful review of the requirements so that any issues are discovered with time to resolve.
2. Brainstorm the most common cost and delay risks with each trade and develop strategies to avoid or mitigate.
3. Make sure all meeting agenda items result in a task that is assigned to a team member with a deadline tied to the risk of costs and delays.
4. Plan out who will take photos, how often and for what purposes. Documenting progress, issues, and change order work is critical information you can only get in real time and a lack of this documentation is a serious challenge to avoiding or prevailing in a dispute.
5. Collect daily reports from contractors and/or capture data about how many workers are on site each day. This information will complement your photo strategy and save time when resolving disputes about production and change order work.

These documents, when optimized, are powerful tools to avoid last minute emergencies and delays. Agendas control the scope and flow of a conversation - the person writing the agenda is in control of the meeting. Notes and assignments timely distributed create a written record and timeline you will need to demonstrate accountability. Photos and logs that are purposeful are powerful tools to avoid, validate and prevail on a claim.

A focus on avoiding delays through early planning, finding hidden requirements that could trip you up, keeping up morale and getting the most out of your management tools is an effective way to avoid disputes. A project built on time is usually profitable and unlikely to result in expensive and exhausting disputes.



5R **Construction Phase Resources:**

An effective construction phase relies on a singular focus on preventing delays through effective and timely procedures. Getting a head start planning major work activities provides time to discover and resolve issues while preserving bandwidth of team members for activities underway. Happy and motivated team members are high performing and loyal. These resources empower this strategy with time-tested examples, templates and procedures.

- **Sample Preconstruction Meeting Agenda** - Example structure and best practices for establishing expectations, discovering and resolving issues and securing timely approvals to support production. [Click here](#)
- **Team Building Best Practices** - Meaningful programming to improve morale and performance. [Click here](#)
- **Technical Support** - Get 3cd to help your team incorporate and facilitate these strategies and procedures on your project. [Click here](#)