

Resolving Extension of Time Requests During Project Execution

A Guide for Owners, Professionals and Contractors

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Introduction

Extension of time requests can be addressed in two ways: either contemporaneously, as delays arise during the project, or retrospectively, after project completion.

Preparing a retrospective delay analysis can often prove to be a time-consuming and costly task. It is therefore generally more advantageous to demonstrate delays during project execution in order to resolve disputes as they arise and avoid the additional costs that arbitration or litigation can entail.

The contemporaneous demonstration of delays certainly requires more time and effort on the part of the contractors, as they will have to prepare supporting documents while at the same time running the project. This is also true for the owners and professionals who review these documents. While the parties may be reluctant to invest this additional time and effort, such documents can help the parties resolve disputes more effectively, or, at the very least, they can serve as a useful tool should the dispute persist to arbitration or litigation.

The demonstration of delays, when performed contemporaneously, is carried out by the contractor's project team and is reviewed by the owner's project team and/or the professionals. These individuals are the best suited to understand the project and its issues. The fact that the project teams are still actively involved in the project is one of the main advantages of dealing with delays during project execution.

Having said this, resolving extension of time requests while the project is still ongoing requires: (1) that all parties adopt a mindset conducive to resolving disputes, and (2) good project documentation.

Indeed, even the best project documentation may not be sufficient to address the impacts of delays if the parties are unwilling to come to an agreement. As such, before we discuss the key documents that can help demonstrate delays, we need to discuss the mindset with which the parties should approach the resolution of extension of time requests.

Approaching Disputes with an Open Mindset

All parties, be they contractors, owners or professionals, who will be involved in discussions regarding delays and extensions of time should adopt a mindset conducive to dispute resolution and avoid going into negotiations with a “win-lose” attitude.

In our experience, the more openly the parties approach these discussions, the more likely a fair outcome will be reached, involving less conflict or mistrust.

To that end, contractors should:

- Produce a realistic and reasonable assessment of the extension of time requested, both in terms of quantifying the delay and of assigning responsibility.
- Be mindful of self-inflicted delays and refrain from attempting to attribute these to other parties.
- Provide all supporting details for the requested extension of time.

As for professionals, they should:

- Accept responsibility for impacts stemming from design-related issues rather than attempting to attribute these to the contractor.¹
- Be fair and reasonable in their analysis of documents presented by the contractor.

For their part, owners should:

- Accept responsibility for impacts stemming from owner-requested changes rather than attempting to attribute them to the contractor.
- Be mindful that changes can have an impact on the project schedule, particularly if they are requested late in the project.
- Be fair and reasonable in their analysis of documents presented by the contractor.
- Demonstrate openness to the contractor’s position.
- Objectively consider the contractor’s extension of time request and its evaluation by the professionals. It is up to the owners to recognize these parties’ at times competing interests and to make decisions that will be in the best interest of the project.

Maintaining Good Project Documentation

Good project documentation and a strong understanding of the facts are necessary to resolve extension of time requests. Key project documents that can help demonstrate the delays include, but are not limited to, a) project schedule updates, b) schedule narratives, and c) change documents.

A) Project Schedule Updates

In most cases, contracts stipulate that the contractor must provide the owner with periodic schedule updates (usually on a monthly basis). Unfortunately, far too often, these schedule updates appear to have been prepared simply to meet the contractual requirements rather than to be used as effective planning and project management tools.

A Reliable and Realistic Schedule

In order to serve a useful purpose, project schedule updates must be reliable and realistic. They must reflect the actual progress of the project and the current plan for forecasted activities.

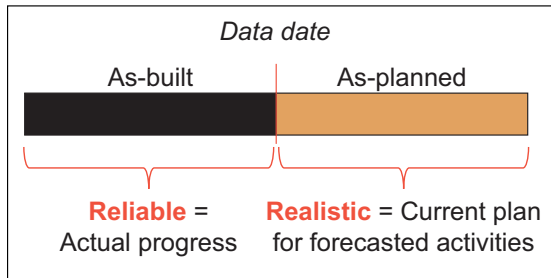


Figure 1 – A reliable and realistic schedule update

Firstly, the actual dates for activities in the “as built” portion of the schedule (i.e., the activities which took place before the schedule data date, as depicted by the black bar in Figure 1) must accurately reflect when the activities actually began and when they were actually completed.

Secondly, the “as-planned” portion of the schedule (i.e., the forecasted activities occurring after the schedule data date, as depicted by the gold bar in Figure 1) is hugely important and therefore requires careful consideration. To that end, this portion of the schedule should not show what the owner wants to see, nor should it show what the contractor wants the owner to see, but rather, it should reflect the contractor’s realistic plan for the upcoming work.

On this point, it is important to recognize that owners are at times averse to receiving schedules that show a delay to the contractual completion date, and some even refuse such schedules as they may be concerned that accepting them could be construed as an implicit acceptance of responsibility for delays or an extension of time.

In such cases, the contractor faces a dilemma:

- To provide a realistic schedule showing the true impact of issues, regardless of the party responsible for them, but risk having the schedule refused by the owner.
- To provide an unrealistic schedule which the owner will accept, but risk waiving its rights to a future extension of time claim or hinder its ability to demonstrate delays forensically. One of the ways the contractor may deal with this predicament would be to continue to document the issues and provide proper and timely notice of delays to the owner.
- To include acceleration measures in its schedule in order to meet the contractual completion date. However, once again, unless delays are appropriately articulated and the necessary mitigating measures very well documented, it may be difficult for the contractor to claim for constructive acceleration in the case that delays are excusable.

While it is up to the contractor to weigh the pros and cons of each approach, best practices dictate that schedule updates be reliable and realistic, as such schedules remain essential to ensuring proper project management. They not only allow the contractor’s project team to understand how the project is unfolding and what needs to be done to avoid or mitigate delays, but they also allow the owner and its professionals to more easily monitor the work and to better understand what is expected of them (for example, in terms of issuing drawings or reviewing the contractor’s shop drawings).

Furthermore, the project schedule is the foundation upon which the contractor demonstrates the impacts of issues that arise. If a schedule is not reliable or realistic, incorporating issues or delays will simply produce implausible results which can be easily refuted.

Inclusion of Issues into the Schedule

As good practice, the contractor should add activities to its schedule updates which represent the problems encountered during the project, as they arise. These can be important changes (including known changes which have yet to be formally issued) or any other significant delay event, regardless of which party is responsible.

The contractor should immediately incorporate issues it encounters into its schedule, even if the cause or the extent of the issue and corrective measures to be undertaken are not yet fully established. Initially, the information included for such issues would likely be summary, but as additional information becomes known, the schedule activities can be better detailed in subsequent schedule updates. It is also important that activities representing issues encountered include appropriate durations and logic relationships.

Experience of the Scheduler

The experience of a contractor's scheduler is an essential factor when developing and updating the project schedule.

A scheduler with extensive knowledge of scheduling software, but without adequate construction experience, may produce a schedule that includes constructability issues. On the other hand, a scheduler with extensive construction experience, but lacking knowledge of scheduling software, may produce a schedule that contains technical issues.

It is therefore strongly recommended that contractors ensure that they have an experienced scheduler on their project team. That said, if a contractor does not have specialized scheduling resources, hiring third-party expertise could prove to be a good investment.

For their part, it is equally important for owners and professionals to have someone on their team with a certain level of experience with scheduling software.

B) Schedule Narratives

As essential as the schedule is, it remains a complex tool that can be seen as a sort of "black box" for those who are not schedulers by trade. Properly interpreting schedules requires experience, as well as specialized technical skills.

A schedule narrative is a tool that assists in decoding the schedule while adding context and substance for the reviewer. In simple terms, the schedule narrative can be viewed as a translation tool: it takes a complex and obscure language (the graphical schedule) and translates it into a simpler, clearer and more accessible language (a written text).

Description

A schedule narrative can be presented in the form of slides or a brief report. It can be written using full sentences and paragraphs or be as simple as a bullet point list. Unless specifically stipulated in the contract, the contractor usually determines the format and structure of the schedule narrative.

The schedule narrative must be clear and concise in order to highlight the most important points of the schedule update. The use of tables and graphics can also be effective in simplifying the presentation of certain information.

The schedule narrative serves two main purposes: (1) presenting the status of the project, and (2) highlighting the main issues identified and the items requiring immediate action.

Information to Include

The contractor may choose to include the following items, among others, in its schedule narrative:

- A table showing the activities completed since the previous reporting period and the activities to be performed during the next one.
- A description of the critical path in the current schedule update.
- A table comparing the planned dates and the dates currently forecast for major project milestones.
- A list of the changes made to the schedule since the previous update (including changes to durations, the addition or removal of activities, changes to the schedule logic, etc.).
- A description of delays, problems or concerns encountered or anticipated, as well as suggestions for corrective measures to mitigate their impact.
- A summary table of action items indicating the responsible parties and the date on which each item is required.

A schedule narrative should be submitted with each schedule update.

Advantages of a Schedule Narrative

The main advantage of a schedule narrative is, without question, that it allows those who are less familiar with scheduling to better understand the information presented in the schedule updates, thus eliminating any potential confusion or ambiguity in interpreting the schedule.

Specifically for owners and professionals, the schedule narrative can provide the following advantages:

- Simplifying the schedule review.
- Receiving information on the status of the project, as well as on the main issues and potential delays, in real time, therefore providing a better idea of where to concentrate efforts and the opportunity to act quickly to mitigate impacts.
- Allowing for a better understanding of delays, their causes and their impacts, and if necessary, the opportunity to dispute the contractor's explanations contemporaneously.

Moreover, the schedule narrative offers contractors certain advantages, notably:

- Highlighting any delay caused by the owner or its professionals, who therefore would not be in a position to claim that the problem was not known.²
- Disputing a well-prepared schedule narrative which presents reasonable and realistic information is difficult.
- Forcing the contractor to exercise due diligence as schedule updates are prepared. Preparing the schedule narrative also allows the contractor's project team to better understand key areas of the project and where to concentrate efforts.

In short, disputes are more likely to be settled out of court if problems are well documented in the schedule narratives and the issues are well understood by all parties as soon as they are known.

C) Change Documents

If a change results in an impact to the project schedule, the contractor must advise the owner in its associated change documents. The contractor must also provide supporting documentation which demonstrates any additional time requested.

Performing a Time Impact Analysis (often called a TIA) is generally considered the best way to contemporaneously demonstrate the impact of a change on the project schedule. In such an analysis, one or more activities representing the change are inserted into the most recent schedule update and the schedule is then re-calculated in order to determine the impact of the change on the schedule, as illustrated in Figure 2.

It is common for contractors to indicate on change documents that the associated schedule impacts will be determined at a later date rather than provide an actual number for the days of delay they estimated. In these instances, the professional will very often cross out this type of comment and simply indicate that the change is considered not to have caused delay. Such a situation puts the parties at an impasse, hindering further opportunities for resolution.

In order to avoid this situation, contractors should prepare a Time Impact Analysis (or other schedule analysis, as required by the contract) to demonstrate the impact of a change on the schedule. Contractors

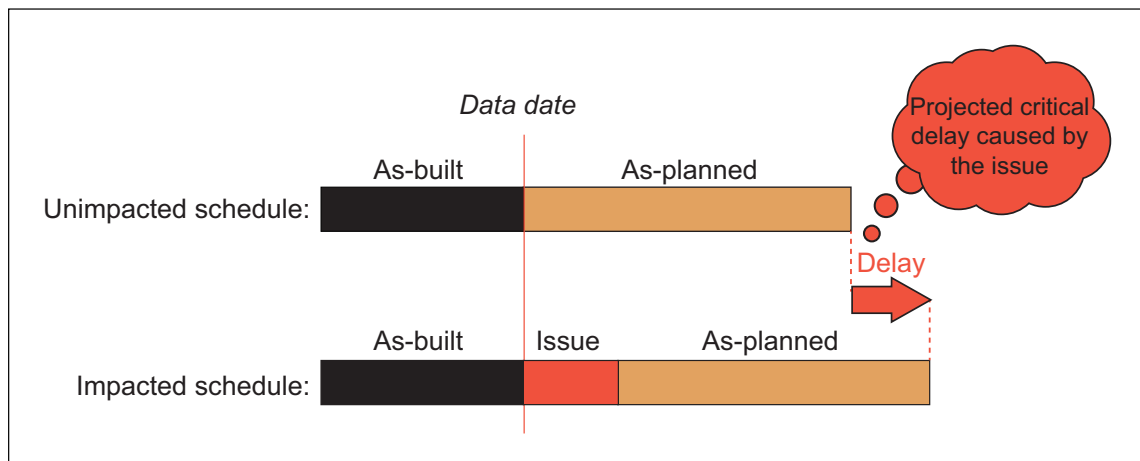


Figure 2 – Time Impact Analysis

While this may seem like a considerable undertaking, if the project schedule updates are reliable and realistic, a Time Impact Analysis can be performed relatively easily by a scheduler experienced in both scheduling software and construction.

It is often difficult to estimate the impacts of changes prospectively, and in reality, these impacts can end up being quite different from even the best estimates. Contractors should nonetheless provide owners with their best assessment of the potential impacts of a change.

should also indicate the delay calculated by the Time Impact Analysis on the change documents and ensure that all supporting documentation necessary for the owner’s (and the professionals’) review is provided. With this information, the contractor’s requested extension of time cannot simply be brushed aside, and the owner will be in a better position to make informed decisions.³

Conclusion

Proper project documentation and a strong understanding of the facts are essential to effectively resolve extension of time requests during project execution. Schedule updates must be reliable and reasonable in order to be used as the basis for demonstrating delays to the project. Furthermore, supporting documentation should be provided to owners and their professionals contemporaneously.

Perhaps more importantly, however, all of the parties involved in discussions surrounding delays and extensions of time need to be fair, reasonable and realistic in their approach to the resolution of disputes during project execution, and should remain open-minded towards the positions of all other parties.



- 1 A more detailed discussion of design issues and possible solutions to remedy these issues can be found in a recent Revay Report article by Katrina Patterson, entitled "Incomplete Plans and Specifications: Whose Problem Are They Really?" (Vol. 37, No. 1), published in February 2023.
- 2 We note that the contractor should not wait for the submittal of its periodic schedule narrative to advise the owner and/or the professionals of a delay to the project.
- 3 The concept of informed decision-making was the subject of a previous Revay Report article by Richard Nichols, entitled "Reflections on Efficient Change Order Resolution" (Vol. 36, No. 1), published in March 2022, which explains that insufficient factual information and lack of details in support of a change order extends and complicates the change order resolution process. This situation makes it difficult to evaluate whether there truly was a change to the contract, and if so, the actual impact on the performance of work.

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