



# Avoiding Construction Delay Claims with Key Project Controls



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**No matter how prepared you are, construction projects are bound to take twists and turns that are not part of the original plan. These may be minor hurdles – like conflicting drawings – that can be addressed on the spot or major curveballs – like significant design gaps or differing site conditions – that threaten to throw an entire project off track. This is the reality of construction and why it is no surprise that delay claims are common throughout the industry.**

Project delays extend project delivery dates, drive up project costs, and sour productive relationships with ill will. According to HKA's Sixth Annual CRUX Insight Report<sup>1</sup> and based on the survey responses received, changes in scope and incorrect design are the top two causes of construction claims or disputes in the Americas. The data reviewed indicates that the extra time sought by contractors in these claims would prolong schedules by more than half (58.8%) of their planned duration, and disputed costs typically reached nearly one-third (32.3%) of a project's value.

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While you do not have control over conditions that were not disclosed or anticipated at bid time, you do have control over how a project is managed and which practices are in place to keep timelines and budgets

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<sup>1</sup> HKA, Sixth Annual Crux Insight Report: Forewarned is Forearmed, 2024 (available at <https://www.hka.com/crux/>).



in check. The importance of employing the right project controls cannot be overstated. In fact, project controls are one of the most significant determinants of a project's success.

Good project controls highlight early warning signs and provide critical information to stakeholders, allowing well-informed decisions to be made in a timely manner. In all likelihood, if the project schedule is reliable, potential delays will be identified early. These delays can then be clearly communicated or mitigated, allowing time extensions to be requested or negotiated before they become bigger issues.

## Critical Construction Project Controls

Project controls encompass everything from scheduling and budgeting to quality control and risk management. Any and all effective project controls are important. However, in consulting with owners and contractors on delay claims for almost 20 years, the majority of cases I have seen can be traced back to a handful of recurring issues where specific project controls either fall short or are altogether absent. Following core best practices that proactively address these risks can significantly reduce the likelihood of delay claims and subsequent disputes.

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### Know Your Contract

Even though it flies in the face of reason that a contractor or owner would not be familiar with its own contract, when dealing with legal documents that include hundreds of pages of specifications, digesting all the details can be an arduous task. Before you sign on the dotted line, make sure you know your responsibilities.

- **Dive deep into the exact parameters of the project scope.** This is the first step toward ensuring your team is set up to deliver. It usually requires consulting with subcontractors to learn how they plan to approach their part of the project and then determining how to sequence the work most efficiently within the overall project. With this information in hand, verify your preliminary schedule is still feasible and realistic or adjust it accordingly.
- **Be on the lookout for conflicting design information.** Unfortunately, inconsistencies in contractual language are common, so it's important to keep an especially close eye on discrepancies between the main contract and information subsequently specified in other contract documents. One example would be to compare work hours stated in the main contract with those noted on approved permit drawings in the appendices. I have heard more than a few contractors embroiled in delay claims say they only had enough time to review primary specifications during bid time and not thoroughly compare information in the appendices. If you find discrepancies, ask for clarification, ideally during the bidding process, to avoid potential disputes down the road.
- **Familiarize yourself with your responsibilities regarding notice.** For both public and private projects, contracts stipulate the requirements for notifying the owner about potential impacts on schedule and cost. For example, the Washington State Department of Transportation's 2024



Standard Specifications<sup>2</sup> require contractors to submit requests for time extensions no later than 14 days after a delay occurs. If the engineer requests an updated schedule, the contractor then has 14 days to follow up with additional information. If the contractor fails to give proper notice, it potentially forfeits its ability to recover damages that may result from the delay.

Even though requirements vary from state to state, they are regularly cited in contracts across the country. Creating notice flowcharts and putting them in highly visible places for all team members to see is one of the best ways to ensure you do not miss important contractual deadlines and jeopardize your entitlement to recover funds.

## Invest in Creating — and Maintaining — an Accurate Schedule

No one questions the importance of delivering a project on time. Yet, construction project schedules are sometimes viewed as a contract formality that is out of touch with day-to-day work rather than a functional tool that serves as a mathematical model of a project's progress. There is no better system for anticipating, managing, and mitigating delay impacts than an operational, continually updated schedule.

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- **Design a project schedule that works for everyone.** Building a schedule that sits on a shelf is an exercise in futility, but it can happen, especially when there is a disconnect between the project management team in the office and the superintendent running the jobsite. In such cases, data in the scheduling model does not accurately reflect what is happening in the field. As a result, you may have a project that goes sideways very quickly without a heads-up.

Consider a situation like this: Construction on a new building is underway, and the project manager is reporting that the project is on time week after week. There are a few delays that the project manager believes will be resolved; however, the field superintendent insists that the delays are impacting progress. When the project schedule is adjusted with the correct logic and input from the superintendent, the project is projected to be 130 days behind schedule. By the time the contractor starts reporting that it is losing time, the owner is blindsided, there is no easily traceable change that would support entitlement, and legal action is far more likely to ensue.

- **Make sure your scheduler has the proper skill set.** Scheduling should be owned by someone familiar with current scheduling practices, which have evolved enormously over the past few decades. The scheduler must have the education and knowledge to effectively manage this living document. This includes knowing how to collaborate with the superintendent and other leadership so the schedule accurately depicts the sequence in which work will be performed. It also entails collaborating with subcontractors to ensure scopes of work are well defined and understood and any interrelationships between other scopes of work are captured and modeled.

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<sup>2</sup> Washington State Department of Transportation, Standard Specifications for Road, Bridge, and Municipal Construction (M 41-10), 2024 (available at <https://www.wsdot.wa.gov/publications/manuals/fulltext/M41-10/SS.pdf>).



- **Update the schedule regularly.** Keeping the project schedule up to date throughout the project is as important as setting it up properly. With an accurate view of where the project stands at any given juncture, you can look ahead and work in partnership with the owner to navigate any incurred or potential delays using agreed-upon strategies like resequencing, constructive acceleration, or time extensions.

## Prioritize Communication and Documentation

Proactive communication and documentation go hand in hand. Gathering and organizing information – and getting it to the right people at the right time – can significantly impact your ability to prevent delay claims and prove you are entitled to an extension of time or compensation.

- **Communicate frequently with all parties.** Ongoing communication with subcontractors, suppliers, designers, and owners is critical for identifying and addressing potential issues as early as possible. It is especially important to communicate with owners regarding contract-required notice of potential delays and other pertinent information. The regular sharing of information is what enables owners to make sound business decisions.

Suppose the owner wants to change a light switch but does not realize that doing so will affect the electrical rough-in on each floor, disrupt work on other floors, and delay the timeline. Making sure these impacts are understood allows the owner to determine whether a change is worth the time and expense. The same logic applies to more significant scenarios such as implementing extensive design changes or managing unforeseen site conditions.

- **Document everything.** Documenting progress by taking photos, preparing daily reports, and keeping meeting notes throughout construction facilitates this type of communication. Many contractors see documentation as ammunition for disputes; however, because it provides a clear record of events, documentation may ultimately help avoid disputes. Thorough documentation is an essential measure, even when things are going according to plan. Remember that just because you don't have an issue now does not mean there won't be one in the future that may prompt a forensic investigation.
- **Use a reliable job cost accounting system.** Cost tracking can aid in the early identification of project issues or cost overruns. Identifying minor problems promptly often leads to easier resolution. Using a reliable job cost accounting system is recommended to track costs for base scope and project changes. Segregating these costs within your tracking system is a best practice that helps provide a clear view of how unforeseen conditions can impact a contractor's or subcontractor's costs and production rate.

In the case of an excavation project, cost tracking could illuminate how an excavator's work was affected by the discovery of contaminated soils, allowing the excavator to evaluate its production rate before, during, and after the incident. This visibility is vital to the excavator's case for recouping losses.

Following these best practices does not guarantee delay claims will be avoided altogether. However, reaching a favorable resolution as quickly as possible is typically much easier with these project controls in place. If a claim goes beyond negotiations, do not hesitate to have a third-party expert evaluate the issues on your behalf. The sooner you bring them in, the sooner a resolution may come.



## About the author

Kandace Zimmerman is a Partner at HKA and has more than 20 years of experience in contract and claims management. She has been appointed as an expert and assisted the named expert on numerous occasions.

Kandace has provided expert testimony in a jury trial, supported clients in arbitration and mediation, and provides project-level advice and support to clients to recognize and resolve potential claims issues, analyze schedule issues, and mitigate and avoid disputes for projects with values up to \$500 million. Kandace's expertise includes delay, cost impact and disruption analysis, labor productivity, calculation of damages, and contract termination.

Kandace holds a BS in Mathematics from Seattle University. She is a certified Planning and Scheduling Professional with The Association for the Advancement of Cost Engineering (AACEI).

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