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18 – 21 FEBRUARY 2023
RIYADH FRONT EXHIBITION AND
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Project Management: A Lawyer's Perspective

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18 February 2023

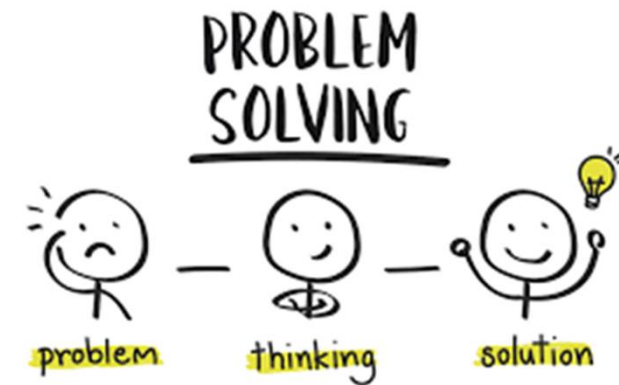
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Introduction

Agenda

- Typical issues that arise on a Construction Project
- Practical tips for mitigation and avoidance
- Questions



Typical issues

- Variations / changes in scope
- Delay and Extensions of time for completion (EOTs)
- Liquidated damages (LDs)
- Money Claims:
 - Prolongation
 - Disruption
- Defective works
- Subcontractors



Variations / changes in scope



Variations are a common source of disputes and raise questions such as:

- Was the contractor's scope in fact varied?
- Was a change instructed?
- Did the Employer comply with the relevant contractual requirements?
- How is a variation valued?
- Must the parties agree the value of a variation before progressing the additional works?

Delay and Extensions of time for completion (EOTs)



- Delay isn't uncommon in construction projects. Typical causes may include:
 - Contractor management and performance problems
 - Changes to the scope of the works or design
 - Approvals from authorities
 - Unavailability of labour, materials, and equipment
 - Defective specifications and designs
 - Weather conditions
- If a contractor thinks its performance has been delayed, the main remedy is an extension of the time in which to complete the works (an EOT).
- Prolongation costs

Liquidated damages (LDs)

Usually, though not always, if a Contractor does not complete the works by a specific date, it is in principle liable to pay the Employer a pre-agreed rate of damages relating to delay, known as 'liquidated' damages or LDs.

An EOT relieves the contractor from liability for delay LDs by pushing back the time for completion.



Typical Money Claims (Contractor)

Prolongation Costs

Disruption Costs



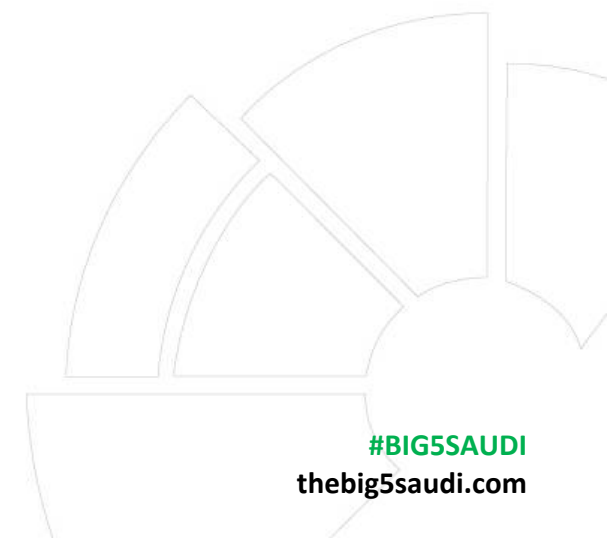
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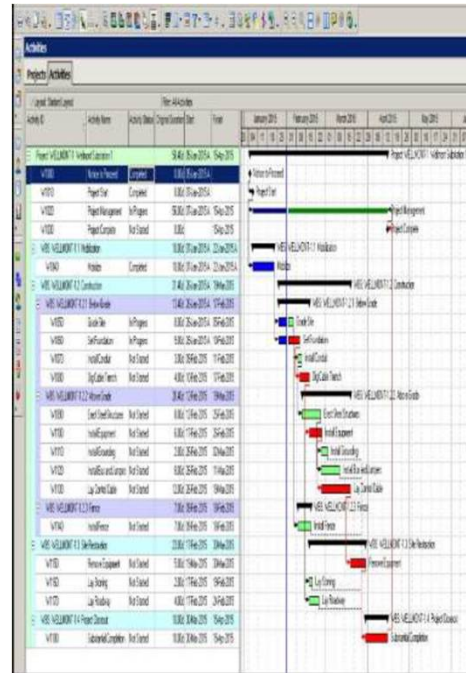
Defective Works



1. Practical tips for mitigation and avoidance – Consistency of contractual terms / know your contract



2. Practical tips for mitigation and avoidance – Project records and document management



MINUTES OF MEETING – 39 (WEEKLY PROGRESS MEETING)

MEETING INFORMATION			
DATE:	08/09/2015	LOCATION:	INCO SITE OFFICE SALA AL-AMMAN
TIME:	8AM WEL AM	OWNER:	INCO INTERNATIONAL (KCO)

ATTENDEES LIST			
S.N.	Name of Party	Position	From
See attached Attendance			

HIGHLIGHTS			
Sl.	Meeting Items	Action By	Action Date

PROGRESS SCHEDULE

- 1. Remaining pipe rack hardware
 - Done the remaining, provision it around 200 in pipe rack in between the bridges.
- 2. INCO informed that current piping progress is 14% Working joints and 1200 pieces of fit up have been completed for 4" piping.
- 3. INCO informed that 478 welding joints and 510 pieces of fit up have been completed for 4" piping.
- 4. INCO advised that civil final finishing and water up work is going on.
- 5. A steel area is remained without cradle barriers due to (SPL) work there.
- 6. INCO informed that 7 of the loop support erection out of 8 are completed.

ENGINEERING

- 1. Accept for the I&E design and is closed, I&E design is under development.

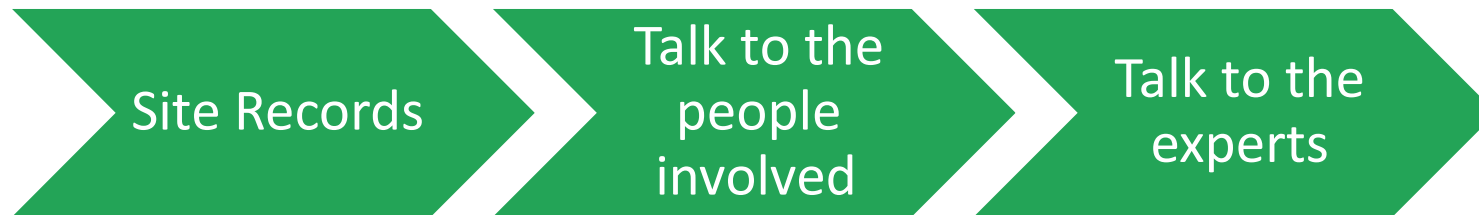
PROCUREMENT

- 1. INCO informed that the balance procurement to complete are as below:
 - CCTV items
 - SCADA RTU
 - JETTY Power Distribution Panels
 - JETTY manual valves (4 pieces of through conduct type)
 - Pipe for clearing and pre-commissioning
- 2. INCO P&I advised INCO needs to submit Drawing & design calculation for slab cast.

Rev 01, 06.11.2014



Preserving and gathering evidence

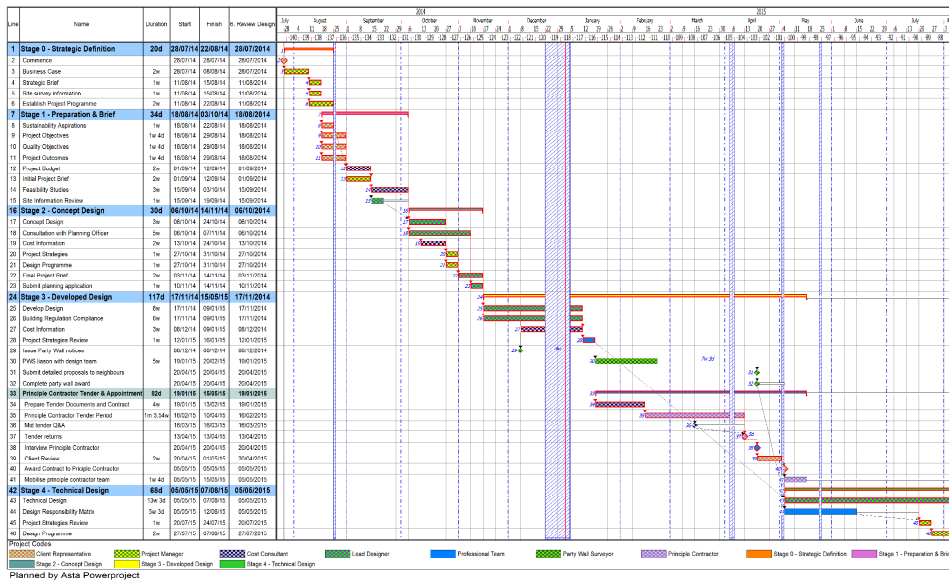


- Programmes
- Reasons for delay
- Photos of defects
- Marking up plans with defects
- As-Builts
- Materials records
- Minutes of meetins

- Get the facts now, not later
- Record observations on site
- Get their site diaries

- Get expert views on what evidence they need
- Invite the other side to inspect with experts, client reps
- Third party observation/tests

3. Practical tips for mitigation and avoidance – Programmes



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4. Practical tips for mitigation and avoidance – Contractual Notifications Requirements



A clause requiring the parties to give notice of any delay (and its entitlement to an extension of time) within a certain time period, and which encourages efficient contract administration

Parties therefore need to follow the contractual notification procedure, failing which the claim may be time-barred or waived.

5. Practical tips for mitigation and avoidance – Look ahead: sub-contractors



- Employers – avoid a blind spot
- **What goes up, will come down (and vice versa):** the Employer needs to understand what is happening at the subcontractor level

6. Practical tips for mitigation and avoidance – Analysing Delay – get it right



Prospective Analysis – Cause and then Effect

Theoretical “estimation” of the impact of delay

Retrospective Analysis – Effect and then Cause

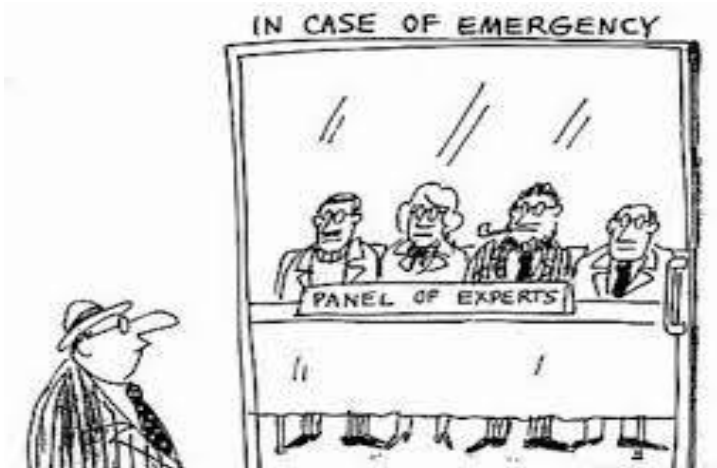
Factual “calculation” of the impact of delay

6. Practical tips for mitigation and avoidance – Analysing Delay – get it right



Method of Analysis	Analysis Type	Critical Path Determined	Delay Impact Determined	Requires
Impacted As-Planned Analysis	Cause & Effect	Prospectively	Prospectively	<ul style="list-style-type: none"> Logic linked baseline programme. A selection of delay events to be modelled.
Time Impact Analysis	Cause & Effect	Contemporaneously	Prospectively	<ul style="list-style-type: none"> Logic linked baseline programme. Update programmes or progress information with which to update the baseline programme. A selection of delay events to be modelled.
Time Slice Windows Analysis	Effect & Cause	Contemporaneously	Retrospectively	<ul style="list-style-type: none"> Logic linked baseline programme. Update programmes or progress information with which to update the baseline programme.
As-Planned versus As-Built Windows Analysis	Effect & Cause	Contemporaneously	Retrospectively	<ul style="list-style-type: none"> Baseline programme. As-built data.
Retrospective Longest Path Analysis	Effect & Cause	Retrospectively	Retrospectively	<ul style="list-style-type: none"> Baseline programme. As-built programme.
Collapsed As-Built Analysis	Effect & Cause	Retrospectively	Retrospectively	<ul style="list-style-type: none"> Logic linked as-built programme. A selection of delay events to be modelled.

7. Practical tips for mitigation and avoidance – Early engagement of Experts



8. Practical tips for mitigation and avoidance – Know your options

- Negotiation
- Mediation
- Expert Determination
- Arbitration
- Litigation
- DAB



9. Practical tips for mitigation and avoidance – Reserve your rights



Reserve your rights first, act later



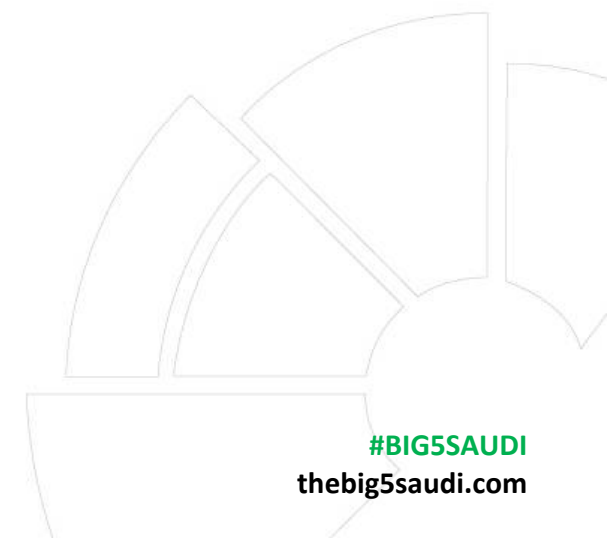
Be specific as to what rights you are reserving!



Communicate in writing and repeat, repeat, repeat



Don't delay!



Questions



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THANK YOU

