

Opinion

CONSTRUCTION SCHEDULE IN CONTRACTS.

The timely performance of the construction work is one of the most important elements of a successful construction project, and correspondingly, is one of the heavily focussed on areas of a construction contract. Even on small or medium-sized projects, the cost of delay can range from tens to hundreds of thousands of dollars per day. To enforce the requirement for timely completion of the work, a construction contract typically includes one or more milestone dates that the contractor must achieve or a Construction Schedule that the contractor must follow. In the simplest case, the only milestone in a construction contract is for the contractor to achieve substantial performance of the work by a specified date. This is appropriate in cases where the owner primarily cares that the project is completed on time and is less concerned about the specifics of how it is done on time. In other cases, particularly where parts of the work must interface with elements outside the contractor's scope, there may be interim milestones or a more detailed Construction Schedule that the contractor is contractually obligated to follow.

A construction contract will often either include a Construction Schedule as an attachment or require the contractor to prepare one shortly after execution. Even though the contractor's timely performance obligations may be limited to specified milestones, a Construction Schedule is still a valuable tool as a contract document for a number of reasons. Firstly, it provides a basis upon which to measure progress, so the owner can track the likelihood of timely completion. Without a schedule, it is difficult or impossible for the owner to assess whether the project is proceeding as it should be, and it will take longer to identify delays. As a result, there would be fewer acceleration options available to deal with them. Secondly, it provides the owner with advance notice of when its obligations will need to be fulfilled to preserve the schedule, such as finalizing certain design decisions or supplying equipment to the contractor that the contractor is required to install. Thirdly, in the event of delays, it becomes one of the tools available to assist in tracing the source of the delay, which can be important to determining whether the delay is compensable under the contract.

Given that the Construction Schedule is a valuable tool, for projects of a longer duration, there is often an obligation to update the schedule monthly or on some other period. There is often a tension between the owner, who wants a detailed, up-to-date schedule that can be used to measure progress on a daily basis, and a contractor who does not want to expend the resources to keep revising the schedule, nor expose itself to the degree of scrutiny that a very detailed schedule would permit. In any event, it is important for a construction contract to make clear that updating the Construction Schedule does not change the contractually committed milestones.