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Title : Overheads

Having dealt with problems of acceleration in this and the last two editions of The Digest, it is time we looked at another thorny problem in the claim arena Overheads.

I do not believe in general that a major problem exists with site overheads (preliminaries) when evaluating an extended site duration, provided of course the extension is for reasons that entitle the contractor/sub-contractor to be awarded costs, but there is a continuing problem and lack of clear understanding as to the evaluation of head office overheads. Reliance is continually put upon the use of formulae, the most common being Hudson's and Emden's and to some extent this use of formulae has been approved by the courts. When investigating head office overheads a number of consultants rely blatantly upon the fact that formulae have been approved by the courts and therefore why should they be questioned.

From a personal point of view, I am not entirely happy nor convinced that formulae are the way to deal with head office overheads. I don't know the answer but I have certainly doubts as to the suitability of standard formulae at all, perhaps only in the unusual situation of a single job company.

We would be interested to hear of your views!

In the next Digest we intend to consider in more depth the matter of overheads and their recovery.

We shall be fortunate also to have a contribution from Kenneth Salmon, a partner in the firm of Kirk Jackson, Solicitors from Manchester, on the subject of "Set Off".

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Author : Anthony Farrow
Title : Acceleration Part III

The first article of this series considered some of the dilemmas faced by the Employer and Contractor when contemplating acceleration. The second article reviewed items to be included in a formal acceleration agreement and considered how costs can be identified and agreed. This final article deals with matters after acceleration is under way and the resultant effects at completion.

PART III

ACCELERATING

First Phase -

'Getting Going'

The Concise Oxford Dictionary defines Acceleration as 'making quicker, gaining speed' and from physical science, 'the rate of change of velocity per unit of time'. Can such definitions apply to progress on site? Can construction speed be physically seen?

Certainly the first thing that an Employer expects to see immediately following an instruction to accelerate is a great increase in the numbers of operatives on site. He and his Consultants will walk around the site expecting to see workers at every corner, each rushing to the workforce or returning to stores at double pace to collect fresh materials . . . in fact, there is likely to be little change in site production for several weeks. Yes, overtime will be immediately established and it is easy to measure the longer working day; perhaps the site opening an hour earlier and staying open for two or three hours longer. However, there is unlikely to be a sizeable influx of labour until the Contractor has been able to procure resources. In fact, he will be unwise to increase his resources too quickly.

The Contractor's initial tasks ought to be of a planning and procurement nature. Firstly, in order to carry out his work, an operative needs to know what it is he has to do. Secondly, he needs to have the materials, plant and tools in order to undertake the work and thirdly, he needs satisfactory access to the workforce in order to carry out and complete his tasks. Therefore, the 'Getting Going' of the Acceleration process is associated with:

1. The receipt and resolution of out-standing design information (a properly thought out acceleration usually starts off with a sudden increase in the number of technical queries that requires the Consultants immediate - like yesterday - action).
1. Ordering or revised ordering (to earlier dates) of materials and plant. Sensibly, the Contractor ought to review his entire procurement programme to re-affirm that plant, equipment and materials will be available to suit the new dates.
1. Reappraisal of labour requirements, based upon changed working conditions and expected lower productivity levels. From experience, it appears that greater output and pace of working can best be achieved by the further sub-letting of sections of the works. A Contractor will usually find it easier to increase labour on site this way, by using the full-time, tried and tested operatives of other organisations.
1. Direct recruitment will be from a limited and perhaps relatively poor local labour source.

1. Bringing the above three points together, the Contractor will establish his revised detailed programmes. As noted in the second article, such a fully detailed document is absolutely essential; thorough analytical planning of what has to be done ensures that the necessary actions are put into motion as early as possible.

During the first few weeks or first month of any acceleration, the Employer should, therefore, investigate the steps the Contractor is taking to organise the acceleration, he should not concentrate upon a daily head count on site and expect to see people falling over themselves in haste to get the job built.

Second Phase -Main Acceleration

Having geared himself up, the Contractor should be achieving a marked improvement in site progress. If the parties are conducting themselves properly, weekly programme checks should be established and proper checks means just that; the Consultant not just making a cursory check of the Contractor's figures. Successful accelerations occur because both the Employer (through his Consultants and Agents) and the Contractor (and his major Sub-Contractors) are committed to making faster progress possible.

Experience shows that initial progress during acceleration will not usually achieve the planned intent and there is some concern from the Employer's camp. However, it seems that such slippage is normal perhaps occurring because the base date of the programme is prepared a few weeks before the parties commit themselves to the acceleration but by the end of the first third of the acceleration period, the Contractor ought to be on programme.

As noted in the first article, acceleration frequently fails because an underlying problem with the project remains in force. The Contractor ought, therefore, to be more vigilant in recording the problems he is encountering and notifying the Employer of any delays. Consultants may wish to continue issuing design information or variations, insisting that the Contractor is able to accommodate further change .. "after all, he is being paid extra cash to deal with such matters". However, acceleration programmes usually demonstrate an ability to make up for existing lost time - they do not normally allow for future delays - a point regularly overlooked.

Whatever form of price arrangement has been agreed for the acceleration, the Contractor will be well advised to keep records of the steps he has taken and which are incurring additional expense. These may be useful in any post acceleration audit (or claim). Similarly, the Employer will wish to see 'value for money', so his Consultants should ensure that Contractor's records are indeed maintained - both to aid their own periodic checking of the progress of the acceleration and any post acceleration audit.

Third Phase -Panic!

The likelihood of a successful outcome will depend upon the degree of acceleration being attempted, the quality of the Contractor's planning and management of the accelerated project, the imposition of delaying events and a host of other less significant matters.

For example, the labour force are only too aware of the commercial squeeze they can now apply to the Contractor and Employer, since both have an incentive to get the job complete - meaning an early end to the employment of site operatives. Therefore, expect IR difficulties.

Suppliers can miss delivery dates. Therefore, keep on their backs, with regular requests for status reports. It will be important that major plant start-up and commissioning operations occur without too many mechanical problems, so factory inspections and tests are recommended.

Awareness of the impact of variations, the issue of information, approval of working drawings and the answering of technical queries is crucial in order to manage the acceleration. If it is to

be successful, the likely effect of these matters ought to be in the minds of both parties at regular intervals not several months later, during the post acceleration audit and claim review.

However, no matter how good the design, planning and management of the project, it is likely that the unexpected will happen and this will put the successful outcome of the acceleration in doubt. The natural reaction to such situations is to Panic

- which perhaps is the right re-action if you are already working flat out! If the Contractor does anticipate that he will not achieve the end date

- he is well advised to notify the Employer as soon as this becomes apparent rather than keep up the pretence that something will happen to improve the situation. Contractors regularly report over-optimistic progress and this is one of the greatest failings in Project Management. This is a human failing because we all like to report good news not bad. However, Contractors often weaken their own extension of time positions by underestimating and then notifying an understated effect of delaying events.

Fourth Phase

Completion and Audit

Perhaps without exception, quality suffers as a result of acceleration and it affects both Contractor and Employer. In the haste to get one trade finished and another started, work is left incomplete. By pressuring operatives to finish the work quickly, workmanship standards fall and curing and drying out time is reduced, all leading to more extensive defects lists. Because all trades and Sub-Contractors are being squeezed and threatened, so as to improve their performance, inter-trade and inter-company relationships deteriorate. Consequently, co-operation between individuals reduces and more 'bloody minded' attitudes arise and wilful damage occurs. This can only be policed by increased supervision, but it cannot be eliminated.

If there is some financial incentive attached to completion, the Contractor will need to demonstrate that he has in fact achieved the Employer's goal. No doubt the Employer may try and resist this possibly developing extensive defects lists. Hence, it is in the Contractor's interest to have redefined 'acceptable completion' under the formal acceleration agreement. If he has not, then a detailed report (and photographs) on the status of the works at completion is advisable.

From the Employer's point of view, he may well be best advised to come to a final deal with the Contractor at the earliest possible date following completion. For months following completion, the Contractor will be receiving more and more bills, invoices and claims from Sub-Contractors and Suppliers associated with the acceleration and these all add to the pressure for the need of making a final loss and expense claim against the Employer. In fact, a substantial number of accelerated projects end with a loss and expense claim.

Conclusion

As a final personal view, I would make two observations on the subject of acceleration.

Firstly, I would suggest that there are too many accelerations undertaken without formal agreement and I believe the Contractor is at great financial and commercial risk in this situation.

Secondly, that the majority of Employers and Consultants, as a result of insufficient contracting experience or a lack of historical data, refuse to acknowledge the degree of disruption that flows from accelerating the construction process.

In conclusion, whilst I suspect that both Contractor and Employer do think seriously about embarking upon any major acceleration, the Contractor is sometimes blinded by the belief that he has an opportunity to make a financial killing and the Employer is blinded by the belief that all the delaying problems are now behind him and will be eliminated by acceleration. In my opinion, both are false beliefs.