Reviewing the Delay and Disruption Protocol

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Bob Cooper explains the first proposed changes to SCL's protocol

THE Society of Construction Law is reviewing its Delay and Disruption Protocol, which was issued in 2002; a process that will ultimately result in the preparation of a second edition. The review was prompted by an SCL discussion in London in 2013 in honour of the tenth anniversary of the publication. The review, to which Systech contributed, included eight issues in the terms of reference. The second edition of the protocol in full will be issued once all eight issues have been reviewed.

Rider 1, published on 1 July 2015, addresses the first two issues, namely; (a) whether the expressed preference for time impact analysis (TIA) should remain as a programming methodology where the effects of the delay events are unknown, and (b) the menu and descriptions of delay methodologies for after-the-event analysis, including to incorporate additional commonly used methodologies.

As a result, SCL has changed the guidelines in section 4 of the protocol for retrospective delay analysis in their entirety and fundamentally there is no longer an expressed preference for use of TIA as a retrospective delay methodology. The amendments in Rider 1 are intended to address the concerns raised by many with regards to the current recommended use of TIA as a retrospective delay analysis tool.

The 2002 protocol (paragraph 4.16) recommended TIA as the most thorough method of retrospective delay analysis, but this recommendation was criticised as, in its purest form, it ignores the actual events that have occurred (and are known) and instead relies on the theoretical programme logic for forecasting the delay effect. As a result, it can produce outputs that are considerably different to the factual as-built records and can therefore be easily criticised in a dispute.

SCL is still advocating avoidance of the old wait-and-see approach to the assessment of extensions of time, by recommending that the assessment is carried out as early as possible after the event. If this is not possible, it is recommended that the choice of time distant delay analysis should depend on seven criteria:

- The relevant conditions of contract.
- The nature of the causative events.
- The value of the project or dispute (proportionality).
- The time available.
- The nature, extent and quality of the records available.
- The nature, extent and quality of the programme information available.
- The forum in which the assessment is being made.

Section 4 (paras 4.5-4.14) of Rider 1 provides brief descriptions on the six most commonly used methods of delay analysis and places them into two distinct categories; cause and effect, and effect and cause, according to the manner in which the analysis is carried out (para 4.4.1).

Table 1: Extract from Rider 1 (paragraph 4.5).

Method of analysis	Analysis type	Critical path determined	Delay impact determined	Requires
Impacted as-planned	Cause and effect	Prospectively	Prospectively	Logic linked baseline programme. A selection of delay events to be modelled.
Time impact	Cause and effect	Contemporaneously	Prospectively	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	Effect and cause	Contemporaneously	Retrospectively	Logic linked baseline programme. Update programmes or progress information with which to update the baseline programme.
As planned versus As-built windows	Effect and cause	Contemporaneously	Retrospectively	Baseline programme. As-built data.
Longest path	Effect and cause	Retrospectively	Retrospectively	Baseline programme. As-built programme.
Collapsed as-built	Cause and effect	Retrospectively	Retrospectively	Logic linked baseline programme. A selection of delay events to be modelled.

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The protocol further distinguishes the methods by which the critical path is established as either prospective, contemporaneous or retrospective (para 4.4.4). The delay impact is also categorised as either prospective or retrospective (para 4.4.5).

It is interesting to note that SCL is leaning away from pure reliance on software for the identification of the critical path and suggesting that:

> *"The critical path to completion of the works or milestones may on occasion be more reliably established through practical analysis of the relevant facts."*

This is indeed what I have frequently found on many projects.

The methods of analysis offered are familiar and shown in Table 1. Paragraphs 4.7 to 4.16 describe each analysis method and hopefully this will be supported at a later date with some worked examples because the descriptions alone, whilst familiar to experienced analysts, are not particularly easy to follow. In particular, paragraph 4.10 fails to explain why the as-planned v as-built method is designated a windows-based approach, or where or how the windows are placed.

There are also several derivatives[1] which are not described. SCL also mentions other methods of analysis in para 4.13 such as summary level as-planned v as-built; time chainage; line of balance; resource curve; and earned value. The reader of the protocol is left to research these methods and no comment is provided as to their suitability other than they *"may be reasonably deployed in particular circumstances having considered the criteria in paragraph 4.3."*

There are fewer changes to section 3 guidelines on dealing with disputed extensions during the course of the project. In this section, SCL maintains its 2002 recommended procedures with the application of prospective TIA during the course of the project.

Notwithstanding the above, neither Rider 1 nor the protocol is likely to form part of the contract documents on a project. It is therefore essential that the parties follow the contract conditions when dealing with delays and extensions of time and only revert to SCL if absolutely necessary.

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[1] See AACE International Recommended Practice No 29R-03 which expands this to 15 possible methods