

# Forensic Schedule Guidelines, UK compared to USA



Corpus Christi Harbour Bridge Replacement, Texas, USA

A personal view on the potential changes to The Society of Construction Law Delay and Disruption Protocol 2002 (SCL DDP) vs The American Association for Cost Engineers Forensic Schedule Analysis 2011 (AAACE FSA) by Systech's Toby Tyers, an English Civil Engineer located in America.



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From experience, the broad and often adopted opinion, "if it ain't broke don't fix it", can be financially advantageous to projects, but can also be considered to potentially stagnate progress. In contrast, the Dalai Lama suggests that we should open our hands to change, whilst never losing sight of our values. With the Society of Construction Law revising their Delay and Disruption Protocol, this to fix or not to fix conundrum was raised in a casual discussion as to whether any changes to the protocol should mirror the AAACE FSA, or if that would make the new protocol too classified and overly complex.

As an Englishman living in the US, the question captured my interest. My initial response was that both documents have a significant role to play in the construction industry but with very different purposes. To draw a comparison, watching Nascar or Formula 1 (the pinnacle of driving ambition) would symbolise the overview provided by the SCL

DDP and the AAACE FSA would be the handbook you read when you learn to drive. Both are important to driving success but for differing reasons.

Having worked on international projects, with an eclectic, multicultural mix of professional values, I have engaged with people embracing the "not fixing" option working effectively with others striving for change; demonstrating that harmony can be found in the most diverse scenarios. Therefore, surely, by approaching change through comparison to another country's tried and tested methods would create a safe enough path to progress for even the hardest of 'don't fix what isn't broken' advocates. Perhaps these advocates could take comfort from the fact that in order to produce the AAACE FSA, reference was made to the SCL DDP.

For me, respecting and adhering to values is important to engage all business partners through trust and I believe that trust requires understanding.

Therefore, I hope that any potential changes to the SCL DDP will provide actual examples that enhance understanding for all parties, rather than simply offering a Utopian ideal of how projects should be run. Point 10 of Rider 1 for the SCL DDP (July 2015) confirms that the document is general in nature and advocates checking the Protocol with a contract to identify any requisite departures from the Protocol in deference to the Contract. In Section 3, the SCL DDP posits a view that you should use time impact analysis (TIA) during the course of the contract. I have encountered, some

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sectors of the industry supporting a belief that the SCL DDP recommends TIA for claim situations as it is putting the claimant back in the contractual position at the time of discovery and avoiding using hindsight. However, when dealing with claims post contract the SCL DDP actually references not one but four methodologies (see Section 4). It describes their benefits and difficulties, but does not provide guidance on how to complete them. The draft of the revised SCL DDP has increased this to six methodologies which are again discussed in relation to benefits and difficulties, but without guidance on how to complete them.

Experience has taught me that being specific isn't necessarily over complicating things, it can provide a guideline to reach success. 5.8 Factor 8 of the ACE FSA recommends that consideration is given to the experience of the workforce, something that some of my colleagues would consider obvious. However, as global markets are merging and English and Americans are working together internationally

#### References:

ACE International Recommended Practice No 29R-03 – Forensic Schedule Analysis TCM Framework:  
6.4 – Forensic Performance Assessment (2011)  
Rider 1 The Society of Construction Law Delay and Disruption Protocol (2015)  
The Society of Construction Law Delay and Disruption Protocol (2002)  
The Society of Construction Law Delay and Disruption Protocol – Consultation Draft (2016)  
The Dalai Lama Book of Quotes (2016)

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more frequently, my thoughts edged towards... perhaps a greater consistency in working practices and knowledge of each role would support more efficient productivity. Since 1776 the countries have found a lot in common whilst also keeping subtle differences. For example, there's cricket and baseball or "American" football and rugby. In both instances the first is a more refined version of the latter. All great sports, with slight variations to rules and regulations that have skilled team players, contributing to success with their own skills and expertise. Therefore, just as I believe cricket was tweaked to create baseball and rugby was padded out to create American Football, we can also tweak and pad out the SCL DDP to enable our skilled team players to perform their roles more effectively.

My perception is that the ACE FSA provides additional substance through four general principles (Observation of Static Logic, Observation of Dynamic Logic, Modelled Logic Additive and Modelled Logic Subtractive) that are equivalent to the four methodologies in Section 4 of the SCL DDP. However, the ACE FSA dissects them into two further levels of implementation techniques, creating 14 separate named strategies with some overlap between the strategies. This dissection creates nine methodologies of the relevant different techniques, whilst also providing guidance to standard practices that need to be carried out across all the methodologies.

From a personal delay analyst perspective, reading and understanding both approaches, gives a more in depth knowledge and although a claim may be described as following the SCL DDP, the actual methodology could be taken from the ACE FSA. For those who do not deal with the logic of schedules, the ACE FSA may seem overly complex and too stringent on its taxonomy of methodologies, however this structured approach gives a productive, realistic guideline to the forensic scheduler/delay analyst.