THE MEASURED MILE

By Matthew DeVries

How to Estimate and Value Lost Productivity Claims

When contractors seek additional compensation for changes, differing site conditions, or other delays, they must convince the project owner of the amount the contractor seeks to be paid. If the dispute is in litigation or arbitration, then the contractor must present credible evidence of the delays and the impact of those delays on the cost. Depending on the type and sophistication of the project, there can be a substantial loss of productivity. Yet, contractors may have difficulty proving the right amount of the loss of productivity.

The Measured Mile. One way to determine lost productivity on a project is by determining what is known as the measured mile—comparing the cost of "impacted" work with the cost incurred to perform the same or similar "unimpacted" work. Because the measured-mile calculation is based on comparing the impacted and unimpacted productivity on the same project, it tends to be a more accepted approach.

Traditional Steps. Applying the measured-mile method is straightforward if the contractor has kept productivity records by location, type of work, and crews. Following are some steps in the process of proving a loss of productivity claim:

1. **Identify and define impacted work, including the unit of measurement for the work.** For example, certain materials designated by the owner or architect as suitable for use in the project may not turn out to be suitable if there is a differing site condition. Under this first step, the claiming party needs to identify and define the impacted work.

2. **Identify the impacted and unimpacted time periods and project locations for the analysis.** Selecting the unimpacted (measured-mile) period and location for the project is crucial. Most common tasks on projects are constructed in different phases, at different times of the year and in different locations. In the above example, the contractor may be able to achieve a higher production after identifying and approving a different aggregate source.

3. **Carefully evaluate the difference between the two periods and select a representative unimpacted period.** Remember that a potential challenge to this approach is the argument that the unimpacted selection is not representative of the project. This is because the measured-mile method assumes all work on the project would have been performed at the same rate as the unimpacted segment.

4. **Locate and assemble job-cost records, identifying man-hours, equipment, and material used.** Record keeping is critical to calculate and support any lost productivity claim. On many construction projects, contractors must break the work down by location, activity, and event. Review records for all unimpacted work periods. Field personnel need to maintain the records in generally the same manner for the impacted and unimpacted sections.

5. **Determine whether the claim involves hours or dollars.** Then develop an unimpacted benchmark productivity measurement. An hourly approach is based on the total crew hours required to complete a work task, such as yards of concrete paved. A dollar approach is based on the total cost to complete a task, including labor costs, equipment rental, operating costs, and consumables that vary with time. Once the productivity factors and crew costs have been developed, then the contractor will simply apply these to the impacted work quantities.

Depending on whether there are changes, differing site conditions, or delays on your project, you may face a lost productivity claim. How well are you prepared to demonstrate or defend the amount of lost productivity?

ABOUT THE AUTHOR

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