

# Agenda

Construction bonds nature and purpose Bid bond Performance bond Labour and material payment bond Lien bond

Delay

Delay claims – contract time

Compensable & excusable delays

Requirements to provide notice of delay

Concurrent delays

Damages/additional compensation

### Construction bonds nature and purpose

- Bond = special form of contract in which one party, the surety, guarantees performance by another party, the principal, of certain obligations.
- The obligee is the party to whom obligations are owed.
- Bonds are a form of security for construction risks.
- Not insurance! law of suretyship, including material change to risk.
- Indemnity Agreement typically the surety requires the principal (and its major shareholders) to indemnify the surety against any loss.

## Bid bond

Principal:	Tenderer.
Obligee:	Tendering authority.
Usual Amount:	10% of bid/tender price.
Risk:	Failure of contractor to enter into construction contract after bid acceptance by owner
Requirements:	Surety required to pay difference between amount of tenderer's bid and next lowest bid, up to maximum amount specified in the bond.
Enforcement:	For CCDC bid bonds, legal action must be commenced within six months of the date of the bond.

#### Performance bond



Principal:	Contractor.
Obligee:	Owner.
Amount:	50% of Contract Price.
Risk:	Default in performance of the contract.

#### Performance bond

#### Requirements

- Obligations are triggered when principal is in default.
- Obligee must give surety timely notice of claim.

#### Enforcement

- Surety will conduct thorough investigation as to the alleged default
- Surety options to pay the bond amount, remedy the default, complete the contract, obtain a bid to complete the contract.
- Significant change in risk (e.g., material change in contract time) may release surety from its obligations.
- Legal action within two years from the date on which final payment under the contract falls due.

# Labour and material payment bond



Principal:	Contractor or subcontractor
Obligee:	Owner or contractor
Claimants:	Subcontractors/material suppliers.
Amount:	50% of Contract Price.
Risk:	Non-payment.

## Labour and material payment bond

#### Requirements

- Non-payment for 90 days after the Claimant's last work or material supply.
- Surety obliged to pay claimant face value amount owed by principal, up to available amount of bond.
- Surety entitled to any defences to payment available to principal/contract (e.g., deductions for deficiencies or other set-offs).

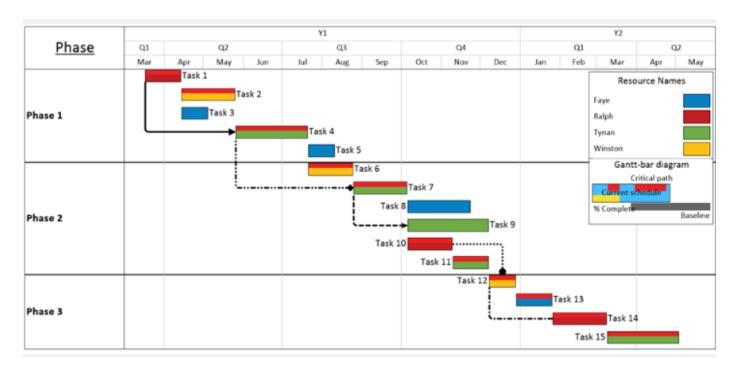
#### Enforcement

- Obligee must file claim under bond within 120 days after the Claimant's last work or material supply, for non-holdback, or within 120 days of when payment in full should have been made, for holdback.
- Legal action within one year of the date on which the Contractor ceased work.

### Lien bond

Principal:	Contractor.
Obligee:	Registrar of the Court or Contractor's lawyer in trust.
Claimants:	Lien Claimants.
Amount:	Lien amount.
Risk:	Non-payment of lien judgment.
Requirements:	Surety required to pay lien claimant if lien found to be valid and principal does not pay amount ordered by the Court.
Enforcement:	Lien claimant to file claim of lien and commence action pursuant to limitation periods set out in the Limitation Act and the Builders Lien Act.

# **Delay Claims**



## Causes of Delay

An event that causes extended time to complete all or part of a project

- 1) Design process
- 2) Material delivery
- 3) Performance of work

## **Entitlement to Delay Damages**

- Owner's entitlement: damages due to late completion of a project by a contractor
- Contractor's entitlement: damages and/or extension of time due to factors beyond the contractor's control
- Compensable vs. Excusable Delays



## Compensable Delays

Where one party is contractually entitled to recover damages from the delaying party

- Delaying party is the sole cause of the delay
- No concurrent delays

# **Concurrent Delays**

- > Two or more events occur at the same time, each of which would have been sufficient to have caused the delay.
- > Result in an excusable time extension but no damages.



## **Excusable Delays**

- Not attributable to the fault of any party. Entitles a party to an extension of time.
- > Typically, these are events that are unforeseeable and are not a result of the control, fault or negligence of the contractor.
- Ex: unusually severe weather, strikes, fires, floods.

## Excusable Delays – Cont'd

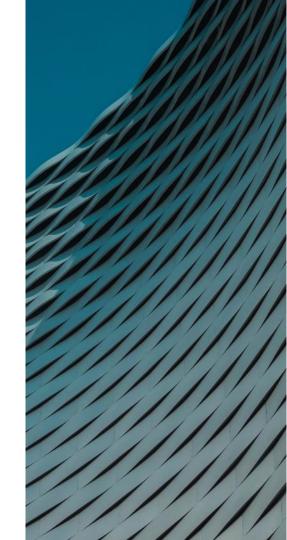
- May or may not be compensable depends on the wording of the contract.
- CCDC2 6.5.3: The contractor shall not be entitled to payment for costs incurred by excusable delays, unless they result from the actions of the Owner, Consultant or those for whom they are responsible.

#### The Critical Path

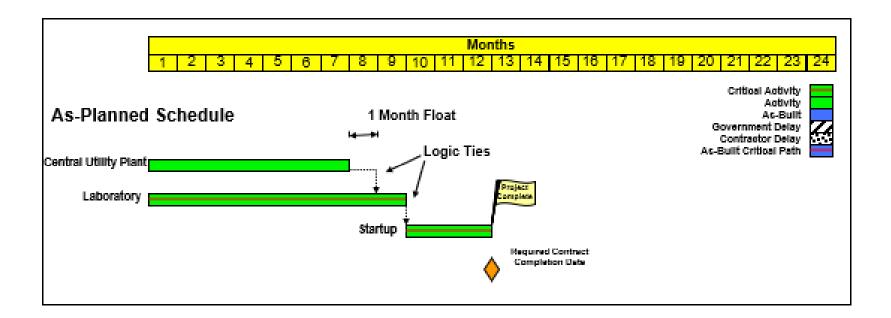
- > Delays claimed by a contractor must impact the critical path of the project.
- > The longest path through the contract completion date.
- ➤ If an activity on the critical path is delayed, the project's completion date will be delayed.

#### **Float**

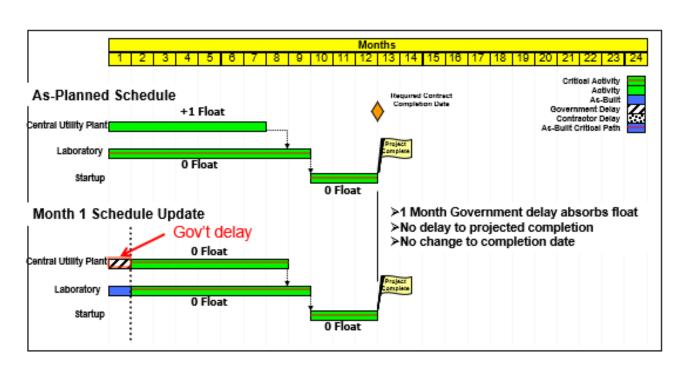
- > Critical path activities typically have zero float.
- > The available slack time in an activity or project schedule.



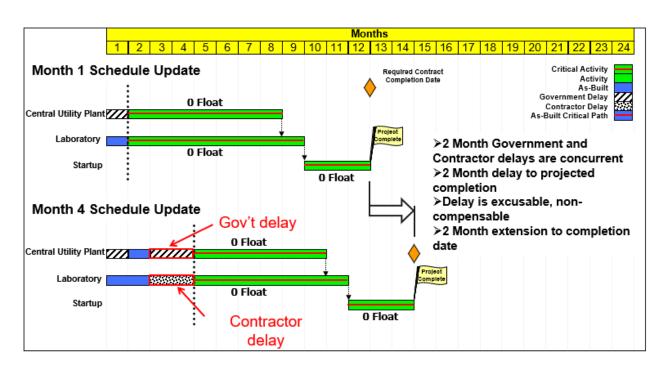
#### **As-Planned Schedule**



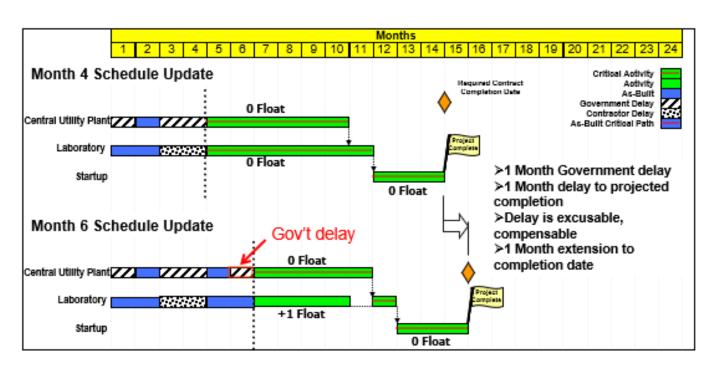
## Noncritical Delay Absorbing Float



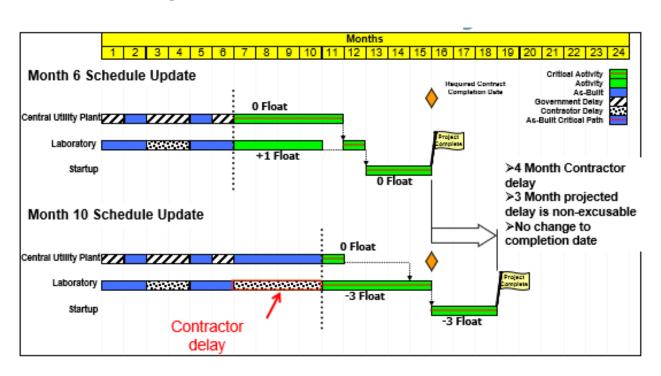
## **Concurrent Delay**



## **Government Delay**



## **Contractor Delay**



#### **Notice Provisions**

➤ CCDC2 6.5.4: contractor must give notice of a delay claim within 10 working days to be entitled to claim time extension.



#### Notice Provisions - Cont'd

- > CCDC2 6.6.1: contractor must give "timely notice" of monetary claims.
- CCDC2 6.6.3: party making the claim shall submit a detailed account and grounds for claim to the consultant "within a reasonable time".

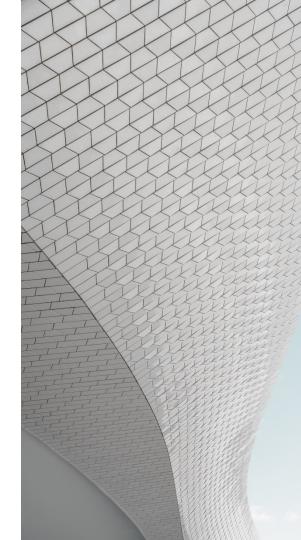
# **Delay Damages**

> A claim for costs that arise from inefficiencies created by delays



#### **Contractor Costs**

- > Time-driven costs
- > Escalation costs



#### **Owner Costs**

- Extended project oversight costs
- Increased construction financing costs
- Lost profits



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Successful risk navigation

# Thank you. Any questions?

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