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Revista de Antropología, Ciencias de la Comunicación y de la Información, Filosofía,  
Lingüística y Semiótica, Problemas del Desarrollo, la Ciencia y la Tecnología

Año 36, 2020, Especial N°

# 26

Revista de Ciencias Humanas y Sociales

ISSN 1012-1537/ ISSN e: 2477-9385

Depósito Legal pp 198402ZU45



Universidad del Zulia  
Facultad Experimental de Ciencias  
Departamento de Ciencias Humanas  
Maracaibo - Venezuela

# Work Accelerating Committees as a Means of Implementation of the Contractor's Expense in Public Works Contracts

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## Abstract

The public enterprise contract plays a vital role in developing the service providing and investment situation in Iraq, in spite of this fact, unfortunately this role may be hindered if the projects, especially in its final stages, are impeded in all cases the contract ant fails to accomplish his obligation for one reason or another. Therefore there is an urgent need to overcome this impediment by forming ad hoc accelerating committees to complete the remained unfinished works of the project at the cost of the contract without entering into the costly and complicated procedure of the withdrawal of the project.

**Keywords:** Work accelerating, committees, implementation, public works contracts

## Comités de aceleración del trabajo como medio de implementación del gasto del contratista en contratos de obras públicas

## Resumen

El contrato de empresa pública desempeña un papel vital en el desarrollo de la situación de la prestación de servicios y la inversión en

Recibido: 20-12-2019 •Aceptado: 20-02-2020

Iraq, a pesar de este hecho, desafortunadamente este papel puede verse obstaculizado si los proyectos, especialmente en sus etapas finales, se ven obstaculizados en todos los casos en que el contrato falla para cumplir con su obligación por una razón u otra. Por lo tanto, existe una necesidad urgente de superar este impedimento mediante la formación de comités de aceleración ad hoc para completar los trabajos pendientes del proyecto al costo del contrato sin entrar en el procedimiento costoso y complicado de la retirada del proyecto.

**Palabras clave:** Aceleración de trabajo, comités, implementación, contratos de obras públicas.

## 1. INTRODUCTION

In public works contracts, the contractor may make an effort to complete the work according to the terms of the contract, and reach the final stages of implementation, but he is unable to continue the implementation and complete the works for reasons beyond his control, because the terms of the contract do not allow its support and support to complete the contract implementation, the contractor is late in completing the project or implement some works contrary to the terms and specifications, (Ahmed, 1973) experiences have shown that there are many well-intentioned contractors who could not continue to implement their work due to circumstances beyond their control despite having made all possible efforts to complete the work, the contracting parties are forced to complete the works by withdrawing the work from these contractors and implementing on their expense, and they bear all the consequences of withdrawing the work from losses and delays in the implementation of the subject of the contract,

(Ammar, 2008) it granted the authority to execute the remaining works by committees to implement the breached obligations, as Article (tenth / item II / A) of the instructions for implementing government contracts No. (2) for the year 2014 stipulated that (if the contractor fails in the final stages of implementing the contract then the contracting authority can form an acceleration committee to execute the remaining works of the contractor's expense and the contractor is represented in it and imposes the administrative charges stipulated in paragraph three of this clause. (Ayman, 2013)

1. Introducing acceleration committees to implement the remaining works

The Work Accelerating Committee means the committee formed by the employer according to certain conditions to implement the obligations arising from the contract of public works that the contractor has been unable or reluctant to implement, and it is headed by at least a senior engineer with experience in the implementation work related to the project, and the engineers membership with the required competencies to implement the work in addition to an accountant provided that the number of the committee members is not less than four, including the contractor, (Hamid, 2012) and it should be emphasized that choosing the method of acceleration committees regarding the completion of the remaining works is a discretionary issue that belongs to the contracting party when it is convinced that completing the work by the acceleration committee will lead to complete the project faster than if it was done through the withdrawing work procedures. (Blaoy, 2011)

2. Distinguish between the acceleration committees and withdrawing the work in implement the remaining works

Both the Acceleration Committee method and the means of withdrawing the work are shared as temporary pressure means on the contractor to compel him to complete his obligation, and despite that, there are important differences between them, including what is related to the completion percentage, because whenever the work is in its final stages and the completion rate is advanced, the contracting party tends to complete the work by the acceleration committee because it achieves the completion of the work as quickly as possible while the procedures for withdrawing the work are long and result in many negative results if the completed works are left at a high rate because the contractor stops working, as for the approval or lack of approval of the contractor, (Hamid, 2013) the implementation of the remaining works by the Work Acceleration Committee requires the presence of the contractor's approval to complete the work in this manner, while the decision to withdraw the work is taken by one party and is the contracting authority and does not require the approval of the contractor and the right of the employer in this derives from General conditions for civil engineering works contracting, and in terms of performance bond (final insurance), the performance bond of 5% of the contract amount is extended as trusts with it after requiring the reluctant contractor to extend its validity period for the purpose of using it when needed and settling accounts. (Hamid, 2015)

3. The legal system of the acceleration committees in implementing the remaining works

The contracting authority shall take the decision to form the acceleration committee based on the text of Article (10) Item II / A of the Instructions of Implementing Governmental Contracts No. (2) for the year 2014 which states that (If the contractor fails in the final stages of executing the contract, then the contracting party can form an acceleration committee to implement the remaining works on the contractor's expense, and the contractor will be represented in it, and the administrative loads stipulated are prescribed ...). (Abdel-Majid, 1975) There are those who believe that resorting to the formation of this committee based on a text in the instructions does not provide a valid legal cover for this procedure when compared to the procedure for withdrawing the work from a contractor who has legal and contractual status, to answer this view that the formation of acceleration committees to implement the remaining works is considered one of the temporary pressure sanctions that the administration itself imposes on the contractor by force of law without stipulating it in the contract and without obtaining court permission to implement on his expense, (Aziza, 2009) whenever the administration deems that this temporary penalty is necessary to achieve the common good. Article 10 of Chapter IX of the Instructions of implementing Governmental Contracts No. (2) for the year 2014 was limited to stipulating the possibility of forming acceleration committees to implement the remaining works at the contractor's expense, but it did not organize the provisions of the work of these committees, leaving the matter to the special controls to create the acceleration committees to implement the obligations violated by contractors No. (19) Issued

by the Ministry of Planning, which detailed the provisions of the work of these committees. (Hamid, 2012)

#### 4. Conditions to forming the work acceleration committees

- The work is in its final stages

The formation of acceleration committees is required for the work to be in its final stages, according to the employer's discretion, with physical deviation and delay in implementing the work progress program approved by the contracting authority. Whenever the completion rate is advanced, the administration tends to complete the implementation of the works by the acceleration committees to ensure the completion of the remaining work as soon as possible, (Nasri, 2012) as the long work withdrawal procedures may lead to further delay and give many negative results if the completed works remain at high rates left due to the contractor stopping work , Consequently, the results of completing the work by the acceleration committees are more positive than resorting to the withdrawing method of the work and its procedures that are long in most cases. (Blaoy, 2011)

- Approving the head of the contracting authority

It is necessary to complete the work by forming committees to the implementation of the work, the approval of the head of the contracting authority is required to implement the work in this manner and upon the recommendation of the engineer supervising the work, and the technical ability of the contracting authority to implement the work remaining must be available, (Nasri, 2012) Likewise, the availability of cadres and material and administrative requirements. It is noted on the controls related to the work of the acceleration

committees No. (19) that they did not clarify the qualifications that must be available with the contracting authority in sufficient detail to form these committees and support the availability of their technical ability or not, (Abdel-Majid, 1975) similar to the controls and mechanism of action of canceled acceleration committees, which indicated forming expedition committees headed by an employee with the rank of director or chief engineer at least with experience in the implementation work related to the project and membership of the following terms of reference: (Engineers, technicians, legal, accountants, auditors, and other specializations membership according to the nature of the project), and the chairman and members of the committee must have a minimum of (10) years of experience in the field of his competence and management of projects of a similar nature, and the contractor is represented on the committee as a member in the event written acceptance of his participation. (Hamid, 2013)

- approving the contractor

Regulations N<sup>o</sup> (19) stipulated that the contractor must agree to implement the remaining works on his account by forming acceleration committees of work, the contractor will be represented in this committee in the event of knowing his place of residence, and in the event of unknown location of the residence or the contractor's failure to represent in the committee, a warning will be given to him through the notary at the address in the contract, in case of the contract does not include a clause that permits the contracting authority to send a warning directly from it and then issue a decision to withdraw the work, After that, (Aziza, 2009) a judicial permission is taken to



confirm the status quo and implement it through the contracting methods stipulated in the instructions for implementing the government contracts in effect or through the Committee to complete the work, knowing that the work completion committee is formed by the employer to complete the implementation of the obligations of the public works contract that the contractor cannot or flail of its implementation, provided that the contractor is not a member thereof, (Nasri, 2012) this committee is formed according to the special mechanism to form the acceleration committees in relation to executive matters without prejudice to other administrative and legal procedures followed in this context and according to instructions, controls, general conditions and standard documents. (Ayman, 2013)

5. The decision-making mechanism to implement the remaining works through work acceleration committees

When the contracting authority takes the decision to implement the remaining works through the work acceleration committee, it must form a technical committee to inventory and confirm the reality of the situation, in which the contractor or his representative is officially represented and this technical committee must take a set of measures, including placing the hand on the work site (Nasri, 2012) and inventory all materials on the work site or site stores as well as materials contracted by the contractor to equip them, an inventory of all mechanisms and equipment belonging to the contractor on the site and prevent them from leaving without permission from the employer, and an inventory of cadres and manpower that the contractor uses on the site with a view to the possibility of benefiting from them in the

implementation the remaining work, (Hamid, 2013) at the discretion of the contracting authority, and detecting and confirming the volume of all the work accomplished and partially accomplished according to the schedule of contracted work quantities, fixing notes and shortcomings therein, fixing the value of the completed work and the amounts received by the contractor according to the previous payments and determining the remaining amounts in the contract with fixing the amounts that the contractor deserves and has not received, and fixing the amounts owed by the contractor to other parties that have a relationship with the contractor, it is also for the contracting parties to define and organize a list of indirect works in it (uncompleted) and the remaining partly completed works, notes and shortcomings, prepare the estimated cost and complete them according to the prevailing prices, and stop calculating the late fines. (Hamid, 2012)

6. Mechanism of preparing the plan and schedule to implement the remaining works

The acceleration committee has a task to prepare a plan and timetable for executing the sluggish works and then submit it to the head of the contracting authority for ratification, provided that the plan includes details of the financial and material requirements required and the method followed by the committee in completing the work. this plan must be executive and not design because it will be prepared for the purpose of implementing what was prepared in advance by the project designer, and in this plan must also be in accordance with technical specifications and design details to reach the desired goal

which is to complete the project according to the design and the specified time for implementation. (Ahmed, 1973)

7. Mechanism for implementing the acceleration committees for the remaining works

The work acceleration committees must complete the implementation of the remaining works in the project according to the plan and schedule that they have prepared in advance, and approved by the head of the contracting authority and using the method of (execution ) on the contractor's expense who violates his obligations and according to the powers granted it, the committee can complete the implementation of the mechanisms and equipment belonging to the contractor, as well as the contractor's employees, including technicians, administrators, (Ammar, 2008) skilled and unskilled workers, and in accordance with the prevailing wages approved by the committee, in case of object the contractor of any paragraph of the prices, specifications or other, then the issue is resolved by the work acceleration committee and take a decision by a majority of the committee members, and in case the votes are equal, the side in which the committee chairman is preferred, and the instructions for the implementation of works in the implementation manner have determined secretariat No. (1) of 2014, the conditions of implementing works under this method with possibility of implementing the work by the implementation committees, and the necessity of speedy implementation according to the requirements of the public interest, and it should be confirmed on controls No. (19) related to the work acceleration committees, the work acceleration committees in the

mode of implementation are excluded when completing the work at the contractor's expense from the financial and time ceilings referred to in the instructions to implement the works in the manner of implementation No. (1) of 2014, However, (Fakhry, 1988) at the same time it stipulated that the credit of acceleration committees and implementation no more than (50) million dinars to cover the expenses with the ability of the committee to work with other methods of implementation with a mandate for sums taking into account the committee's ability to pay amounts equal to or greater than (5) five million Dinars by instruments to the owner of the relationship and according to financial contexts, (Hamid, 2013) and despite the fact that the implementation of the remaining works in the manner of implementation is a trust by the work acceleration committee, it constitutes a penalty against the contractor who violates his obligations, However, the contractor has the right to claim compensation for the damages incurred by him as a result of this situation, such as missing the legal profit, expenses, benefits and guarantees, if the administration has executed the works in an unjust right, i.e. without the necessary conditions for this implementation being met, and you can also return from the method of implementation when wants, or decides to take another measure or to return the contractor to his work. (Mahmoud, 2007)

8. Mechanism of receiving the remaining works after its implementation by the acceleration committee

After the acceleration committee completes the implementation of the remaining works, it is required for them to notify the contracting

authority in writing of the completion of the remaining works assigned to complete them until they are received initially by a fundamental receiving committee, (Nasri, 2012) the Acceleration Committee is responsible for carrying out the works satisfactorily, and has the right to reserve the executed works and to vacate its technical and legal responsibilities if they are implemented in a manner that does not conform to the specifications contracted by the original contractor, the account of the company that carries out the execution of the work and its dues will be liquidated after the project is fully implemented and the certificate of initial acceptance of the work as a whole is issued, if, after settling the initial accounts, it is found that the contractor's account is owed, then the required amounts are deducted from the suspended benefits, and in the event that they are insufficient, they are collected from the amounts of a well-executed guarantee, However, if the account of the contracted contractor is creditor, a distinction must be made here between whether his account is credited to the items that were completed on his account only, (Miftah, 2008) and the contractor is not given anything, or his account is credited after the contract is fully implemented and the project accounts are cleared from the initial receipt and the final invoice according to the approved contexts, in this case, the contractor will be given the sums due to the works executed by him before the date of referring the completion of the other works to the expediting committee with the return of the letter of guarantee of good execution in full at the final receipt, as well as the appropriate amount of administrative downloads and delays in fines if any, and the actions that he breached The contractor shall use the amounts allocated

for the implementation of the contract, and in the event that it is not sufficient, the sums due to the contractor in the contracting authority or any other amounts, including a guarantee of good execution for the contractor, will be used. (Mahmoud, 2007)

#### 9. Extending the performance bond

Performance bond (final insurances) is a guarantee for the management authority that protects the effects of the mistakes committed by the contractor during the implementation of the administrative contract, and basically decides to compensate the administration when not implementing, and confiscating this insurance represents a penalty stipulated in the contract that the management authority has to sign on the contractor if he shortens In the implementation of his obligations even if no damage was caused by this breach, it is intended to ensure that the contractor fulfills his obligations, for the administration to meet the amounts due to it from the contractor with it, and the condition of depositing insurance is an obligatory and compulsory condition for the administration that it cannot exceed, and it represents the minimum compensation, so the confiscation of final insurance does not prevent the administration from claiming compensation if the value of the insurance is not sufficient for reparation damage to management. The performance bond (final insurance) shall be submitted at a rate of (5%) of the contract amount after notification of the letter of assignment and before signing the contract, (Aziza, 2009) and this letter shall be extended as trusts with the contracting authority after asking the reluctant contractor to extend the period of its validity for the purpose

of using it when needed and settling accounts, in the event that the contractor refuses, or if the letter of guarantee in the speeding committees cannot be extended, it will be kept. (Miftah, 2008) A well-executed guarantee letter is liquidated in the acceleration committees and retained for the purpose of benefiting from it in carrying out the work that has been neglected, as a percentage of the good implementation guarantee of 5% of the contract value is allocated in a manner consistent with the value of the work violated from the total work as a percentage and proportion in In case of need, and in the event that it is not sufficient, the rest of the letter of guarantee will be referred to. (Hamid, 2013)

#### 10. Imposing administrative charges

Administrative charges are considered one of the effects of the implementation on the contractor's expense and therefore they do not exist unless the implementation is found on the contractor's expense and it was correct, and it is part of the compensation that the business owner requires in the event that the contract is executed by his department directly, and Administrative charges are imposed with no more than 20% of the cost of the work carried out executed at the contractor's expense by an acceleration committee in the manner of implementation in trust, and the highest rate is determined starting on the basis of the estimated cost of detecting the work and this amount is settled according to the actual expense. (Hamid, 2015)

## **2. RESULTS and DISCUSSION**

1. The legal basis of formation and operation an acceleration committees is the texts that are contained in the instructions that relate to delegating powers to the contracting authorities to exercise the activities set according to the relevant laws, and the lack of agreement between the contracting party and the contractor to resort to this method which does not affect the legal basis for the formation these committees and the consequences of the work.

2. The implementation on the violating contractor's expense through the formation of the acceleration committees is considered a more feasible and less harmful method when compared to the withdrawal of work and its long and complicated procedures that cost a heavy financial burdens on the administration in addition to the delay in time, however the choice of the optimal method for implementation on the contractor's expense remains estimated issue governed by contract conditions and the capabilities of the contracting authority.

3. The regulations of the work acceleration Committees No. (19) did not explain in sufficient detail the qualifications that must be available with the contracting party when forming these committees, in a manner that guarantees the availability of the technical ability of its members in the same way as the controls and mechanism of action of the canceled acceleration committees.

4. The Work Completion Committee is a committee that is formed by the employer to complete the implementation of the obligations of the public works contract that the contractor is unable or



reluctant to implement and without the contractor being a member of this committee and is formed according to the special mechanism to form the acceleration committees with regard to operational concerns and without prejudice to the procedures Administrative and other legal remaining in this context.

5. The prepared plan by the acceleration committee to complete the remaining works is executive and not design, because it is prepared for the purpose of implementing what was prepared in advance by the project designer, according to the technical specifications and design details for the completion of the project at the specified time, and this can only be achieved by preparing the acceleration committees for an experienced engineering and specialist in dealing with such cases.

6. The contracting party cannot choose the method of execution in trust unless it has the possibility of implementation in terms of material and technical requirements, and the existence of a need for speedy implementation of the work, and it is assumed that there is a need for speed in completing the work if we remember that resorting to the acceleration committees is a way to complete the implementation of the contract if what happened delays to implement the final stages of the contract.

7. The controls No. (19) related to the work acceleration committees did not give the contractor the right to claim compensation for the damages incurred by it due to the implementation in trust, if the administration implement the works in a manner that is not right, i.e. without the conditions necessary for this implementation being met, and is satisfied with stipulating a right the contractor or his

representative in the committees to expedite the reservation of the executed works and evacuate his technical and legal responsibility, as these controls did not give the contracting authority the right to revoke the method of execution by trust whenever they want, or decide to take another measure other than it or return the contractor to his work.

8. Ensuring the technical and financial competence of the contractor by reviewing the previous works executed by him and investigating information about him and reviewing the contractor's classification record and providing an adequate information base on the contractors, helps the contracting parties to choose the competent contractor in a manner that ensures the proper implementation of the contract without delay.

### **3. CONCLUSION**

We recommend that the clause first of the controls number (19) regarding the formation of the acceleration committees be amended in the following manner: ((The Acceleration Committee shall be headed by an employee with the rank of senior engineer who is more experienced with implementation work related to the project and membership of the following terms of reference: Engineers, technicians, legal, accountants, and supervisors, "provided that the experience of the chairman and members of the committee is not less than (10) ten years in the implementation of similar projects, each

according to his jurisdiction, and the contractor is represented on the committee as a member if his participation is accepted in writing").

We recommend that the aforementioned controls (19) should be included in texts that address possible cases occurring during the implementation of the remaining works through these committees, including the right of the contractor to demand compensation if the implementation is carried out without a right, and also the right of the administration to reverse the method of implementation or take another measure, or return the contractor to work.

To minimize the consequences of delaying contract execution, we recommend contracting parties to expedite the decision to execute the remaining works in the manner they deem appropriate early and without hesitation or procrastination when they have sufficient conviction and evidence that the contractor is unable or unwilling to continue to implement the work.

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Revista de Ciencias Humanas y Sociales

Año 36, N° 26, (2020)

Esta revista fue editada en formato digital por el personal de la Oficina de Publicaciones Científicas de la Facultad Experimental de Ciencias, Universidad del Zulia.

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