

# ACCELERATION IN CONSTRUCTION

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# What is ACCELERATION IN CONSTRUCTION?

- Acceleration in construction contracts occurs whereby a contractor is compelled to deploy additional resources, re-sequence activities in his program in order to complete the project at an earlier completion date.
- There are 03 types of acceleration on construction projects i.e. directed acceleration, constructive acceleration and voluntary acceleration



# 01. DIRECTED ACCELERATION

Directed acceleration occurs when the Employer or Engineer issues a specific order to the contractor under the contract provisions to;

- complete the project earlier than the originally scheduled completion date,
- re-sequence the work and/or utilize overtime, additional shifts, and/or extra engineering or construction labor, supervision, or equipment to complete the base contract work plus additional or changed work within the original contract time
- re-sequence the work and/or utilize overtime, additional shifts, and/or extra engineering or construction labor, supervision, or equipment to make-up for contractor-caused delays that threaten the on-time completion of the project. These measures can result in costs being incurred that would not otherwise have been required.



## 02. CONSTRUCTIVE ACCELERATION

- Constructive acceleration occurs when a contractor encounters excusable delay during its performance of the contract work, such as design changes, added scope, unusually severe weather, differing site conditions, force majeure, or owner-caused delays.
- Thus, the contractor is entitled to a time extension equivalent to the time of excusable delay
- The contractor is constructively accelerated when it is not granted the time extension. The contractor must then decide whether to accelerate its performance to meet the mandated completion date.
- If the contractor is compelled by such circumstances to accelerate its performance, it may be entitled to recover damages based on a theory of constructive acceleration.



## 03. VOLUNTARY ACCELERATION

- Voluntary acceleration occurs when a contractor unilaterally decides to accelerate its own work in contrast to directed acceleration or constructive acceleration,
- A contractor is not entitled to damages and a contractor may voluntarily accelerate its work out of necessity, i.e., to make up lost time for the contractor's own delays or to complete its own work
- To determine whether a constructive acceleration condition exists, one must look at the facts of each particular case. Generally, a request, as opposed to a directive, to accelerate is sufficient to constitute a constructive acceleration order.
- Sub-clause 8.3 give the the Engineer the power to instruct the contractor to accelerate the work, particularly if the contractor is falling behind due to its own performance problems.

# COSTS



- Where a contract provides for acceleration, payment for acceleration should be on the basis of the terms of the contract.
- Where a contract does not provide for acceleration then the Parties must agree on what measures are to be undertaken and what records are to be kept/maintained prior to acceleration
- Where acceleration is agreed, then the Contractor is not entitled to claim prolongation compensation for the period of the employer delay avoided by acceleration.

# PROGRESS REPORTS



- Sub-Clause 4.21 sets out detailed requirements at paragraphs (a) to (h) of information which must be included in the reports.
- The Contractor is required to provide detailed descriptions of progress, equipment and personnel as well as photographs, charts, test results, procurement and manufacture, contractual notices and claims , safety data and other statistics.
- Information connected with environmental and public relation activities is also necessary.
- Sub-clause 14.3 (application for interim payment certificates) requires that the contractor submits the progress reports along with the application



# NOTICES

There are 58 obligations under the FIDIC red book for the Parties or the Engineer to give notice under the FIDIC 1999 red book i.e. Contractor: (33) Employer or Engineer (19) Either Party (06)

Notices generally fall into the following categories:

- Notice that an action required or permitted under the Contract has been, or will be, taken
- Notice that an event has occurred which could cause, or is causing, delay
- Notice that an event has occurred which could cause, or is causing, the occurrence of additional cost
- Notice that the Contractor considers that the Contractor is entitled to an extension of time



# NOTICES

(Cont.)

- Notice that either Party considers that the Party is entitled to additional payment from the other Party
- Notice of instructions by the Engineer or the Employer
- Notice of an error or default by one of the Parties
- Notice of agreement or determination
- Notice of disagreement or dissatisfaction

# NOTICES – REQUIREMENTS

*Sub-Clause 1.3 (Communications)* requires:

- notices to be in writing
- notices to be delivered by the means stated in the Appendix to Tender
- notices to be sent to the addresses stated in the Appendix to Tender
- that all parties are sent copies of notices.

Generally the Notices in the 1999 FIDIC contracts stipulate time frames which must be complied with. And use phrases such as;

- ‘Promptly’ ,
- ‘As soon as practicable’ ,
- ‘Not less than (a stipulated number of) days’ ,
- ‘Not later than (a stipulated number of) days after the Contractor became aware, or should have become aware, of the event or circumstance’

## CLAUSE 20.1 – NOTICES TIME BAR

Sub-Clause 20.1 (*Contractor's Claims*) provides that:

*'If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Engineer, describing the event or circumstance giving rise to the claim. The Notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.'*

*'If the Contractor fails to give Notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim...'*

This constitutes a “condition precedent” or “time bar” and generally contractors must ensure that the contractually required notices are issued promptly and without delay.



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