

Acceleration Claim Basics

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Acceleration occurs when a contractor's work is expedited. A contractor may accelerate voluntarily to save money by reducing project duration, to make money by meeting an early completion bonus or moving on to the next project more quickly, or to avoid claims by mitigating its own delays and inefficiencies. Voluntary acceleration does not typically result in a claim, because it was the contractor's decision to accelerate the work for its own benefit.

Acceleration claims typically arise when the contractor makes efforts to get back on schedule after the project has suffered delays due to causes beyond its control. There are several ways in which the work can be accelerated, such as working overtime, adding labor and equipment, and re-sequencing work. These acceleration efforts result in additional costs which may form the basis for an acceleration claim.

There are two types of acceleration that may result in claims: "directed" acceleration and "constructive" acceleration. Directed acceleration occurs where the owner expressly directs the contractor to accelerate the work. In such instances, the owner will typically issue a change order with a time extension and a claim will not arise.

Constructive acceleration occurs when a contractor has a valid time extension claim, but the owner refuses to grant an extension and requires the contractor to accelerate. A contractor may have a claim for time extension due to owner changes or other project delays and disruptions for which the contractor is not responsible. The issue of who is responsible for the delay is often contested and the parties may not agree on who should bear the acceleration costs.

To have a successful constructive acceleration claim, a contractor must typically show:

1. The contractor encountered an excusable delay entitling it to a time extension;
2. The contractor notified the owner of the delay and requested a time extension in a timely manner (unless circumstances exist constituting a waiver of such a request);
3. The owner rejected the time extension request;
4. The owner directed the contractor to accelerate the work; AND
5. The contractor accelerated the work, resulting in additional costs.

Although under some circumstances the contractor need not request a time extension, the contractor should make the request anyway to avoid a defense that the contractor voluntarily accelerated or acquiesced in the owner's directive. In the request, the contractor should notify the owner that unless a time extension is granted by a designated date, the contractor would be forced to accelerate to meet the schedule. The contractor should request that the owner respond with a directive by that designated date. The request should also state that if no response is received, the contractor will assume that the owner intends for the contractor to take whatever action is necessary to meet the schedule. If the contractor follows this procedure, the owner cannot claim prejudice by lack of opportunity to preclude acceleration efforts. This kind of notice also encourages the owner to issue a clear directive that may help avoid acceleration claims.

Acceleration costs money. Contractors need to preserve their acceleration claims to avoid being left holding the bag. Contractors who question whether they may have a claim should consult with competent legal counsel. □



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