

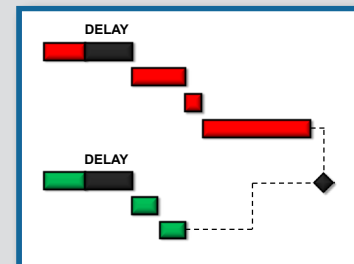
# An Allegation of “Concurrent” Delay – Is it True?

A one-page guide to navigate discussions of “Concurrent” Delay

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- ▶ The concept of “Concurrent” delay frequently causes confusion.
- ▶ “Concurrent” delay is also a topic that may have massive financial implications.

While a host of literature and theories exist, we frequently encounter misconceptions about “concurrent” delay. To aid project teams in navigating this challenging topic, Civic CM prepared this one-page summary to help focus your discussion of concurrency and enhance your ability to resolve “concurrent” delays.



## What is “Concurrency” or “Concurrent” Delay?

“Concurrent” delay generally refers to two independent Critical Path events that cause delay to a completion milestone. And although sometimes sporadically mentioned in construction contracts and specifications, it is rare that “concurrent” delay is explicitly defined, thereby leaving parties uncertain about how to treat potentially “concurrent” delay.

While the concept appears simple – two separate impacts causing delay – in practice it is often not and should be fully vetted before offering up any form of settlement for delay.

Perhaps the most common misconception of “concurrent” delay can be summarized in this example:

An Owner delayed the Critical Path of the project by 100 days. Additionally, other non-critical Contractor delays also occurred, which happened to finish 75 days later than planned. Owners often assert that the Contractor's delay is “concurrent” with the Owner's delay therefore, offsetting its 100-day delay with the Contractor's 75-day delay. Accordingly, the Owner may offer 25 days of compensable delay.

At face value this application, often referred to as “functional” concurrency theory<sup>1</sup> appears reasonable. However, proper application of Critical Path Method scheduling rarely supports “offsetting” Critical Path delay with non-critical path work. The entire objective of Critical Path Method scheduling is to identify the longest path (i.e. Critical Path) of work that controls the completion date. The Critical Path and only the Critical Path can cause delay including “concurrent” delay events.<sup>2</sup> Therefore, the notion that non-critical path work can concurrently cause delay to a project is simply not true. To be concurrent, both delays must be critical.

## Concurrency Guidelines

Every “concurrent” delay situation demands specialized attention. Here are some guidelines to determine if you are experiencing a concurrent delay:

- 1) Review your contract for any references to “concurrent” delay, including contract terms such as “Critical Path,” “Concurrent,” “Delay,” “Float,” and time extension request requirements.

- 2) Does your CPM show two-independent Critical Paths of work? If not, is there another path of work that is near-critical (sometimes defined within 5 days of float relative to the Critical Path)? If the answer is no, a “concurrent” delay does not generally exist.
- 3) Independent non-critical path delay, occurring at the same time of Critical Path delay, is not sufficient evidence to demonstrate “concurrent” delay.
- 4) Was the alleged “concurrent” delayed work reasonably able to cure? If yes, then it is unlikely that “concurrent” delay exists. In other words, if an alleged delay can be easily corrected, (i.e. no-cost crew-re-sequencing), then it is unlikely that this work was truly a “concurrent” delay.
- 5) The threat of Liquidated Damages can have a powerful influence on delay recovery strategy. Sometimes a party will agree to waive the assessment of Liquidated Damages based on a misunderstanding of what really constitutes a “concurrent” delay. While this waiver may appear attractive, do not let the looming threat of Liquidated Damages deter you from performing an objective analysis that may result in your recovery of damages and time.

Hopefully, these summary guidelines above will help you decide if you have a true “concurrent” delay that may entitle you to additional compensation.

1. AACE RP 29R-03, 2011, pg. 104 “Literal Concurrency vs. Functional Concurrency”: Under the Literal Theory, the delays have to be literally concurrent in time, as in “happening at the same time.” In contrast, under the Functional Theory, the delays need to be occurring within the same analysis period.
2. Society of Construction Law Delay and Disruption Protocol – 2nd Edition, 2017, “For concurrent delay to exist, each of the Employer Risk Event and the Contractor Risk Event must be an effective cause of Delay to Completion (i.e. the delays must both affect the critical path).”

## About Civic CM

We are a focused group of dedicated scheduling, claims, and construction management professionals.

Visit our website and contact one of our professionals with questions about this topic or to learn more about how we support challenging construction projects.

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