



ADDRESSING THE PANDEMIC

Surety Concerns - When Reviewing Contract Clauses

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 **EXPERTS ANTICIPATE THE COVID-19 PANDEMIC WILL HAVE A MAJOR IMPACT ON THE CONSTRUCTION INDUSTRY.** It is important for contractors to be diligent in understanding the impact and what they can do now to protect themselves and their balance sheets.

For protection, contractors should look into the extension of the time/delay clause associated with new work/contracts. Many projects are already getting delayed. Contractors should make sure they would be allowed extension of time or additional compensation if projects get delayed due to quarantines, labor shortages, material/supply delays and/or price escalations that could occur. ►►

When entering into new contracts, the force majeure-type provisions/arguments might not work as COVID-19 is no longer seen as “unforeseeable.” If possible, contractors should expressly address it by incorporating something similar to the below into future contracts/bonds.

“Contractor shall not be held liable for any impacts, delays, labor overruns, material overruns and/or cost overruns related to its Work stemming from the current flu epidemic, and/or COVID-19 (Coronavirus epidemic) as defined by the United States Centers for Disease Control and Prevention. Contractor shall further be entitled to a change order for any and all time and costs associated with said epidemic(s).”

Contractors should also review their existing contracts to confirm they would have protection/relief on current projects paying close attention to the force majeure clause. Would the delay fall under the definition? Would the delay fall under another listed event? In either occurrence, the delay clause should outline how to put the owner/obligee on notice of delay and how to document the effects (time/costs).

During this unprecedented time, contractors should stay up-to-date on the news and effects of the COVID-19 pandemic. We encourage our contractor partners to start dialogue with both their surety agent and construction attorney now as they will be helpful resources when navigating these challenges.



QUESTIONS CONTRACTORS SHOULD CONSIDER NOW

Below are some questions to consider when analyzing the risks associated with COVID-19.

- ▶ What is your contingency plan for a work stoppage?
- ▶ Would the project delay fall under the force majeure clause definition?
- ▶ Would the project delay fall under another listed event?
- ▶ Have you evaluated material/sub/equipment supplier’s contracts to determine your rights in the event there are delays in receiving their services?
- ▶ How do you mitigate the risks of material price volatility?
- ▶ How long will subs and suppliers lock their prices?
- ▶ What will be the impact on the labor supply in your region?
- ▶ Have you verified the financing on all private work in current backlog?
- ▶ Are you monitoring and preserving lien rights where appropriate?
- ▶ How will you address a possible reduction in revenues?
- ▶ What areas of overhead can be reduced immediately? What about long term reductions?
- ▶ Do you anticipate changes in your estimating philosophies?
- ▶ Will your bank change their terms and conditions at renewal for your bank line of credit?
- ▶ What is the plan if your bank LOC is reduced or not renewed?
- ▶ Do you anticipate changes with your debt structure to increase working capital?
- ▶ Will your CPA be delayed in the preparation of your financial information?
- ▶ Do you work closely with a construction attorney to mitigate the risks of project delays?
- ▶ Do you have insurance coverage for any type of delay event?
- ▶ What additional health and safety protocols have you put in place to protect your employees from the virus? ■

