



AGC
THE CONSTRUCTION
ASSOCIATION

Building Contractors – Preparing yourself and your jobsites for the Impacts of COVID-19

May 14, 2020

Part Two:

Reopening Projects Previously Shutdown

Part 2 of 2 in a webinar series presented by AGC of America

Presenters



Ronald D. Ciotti, Esq.
Partner, Construction & Public Contracts
Hinckley, Allen & Synder LLP



Bryan Kelley, Esq.
Vice President-Legal
Howard S. Wright, a Balfour Beatty
Company



Robert Majerus, Esq.
Vice President & General Counsel
Hensel Phelps

This session will address:



- Project Security
- Schedule Impacts
- Determining Financial Viability Post-COVID-19
- Workforce Issues Post-COVID-19
- Budget Effects
- Cash-flow Effects
- Supply Chain Effects
- Planning to Reopen
- Inspection and Permitting

Project Security



How does COVID-19 effect job security for previously started projects?

Technical Effects

- “Essential Work” was work in progress
- For States that suspended/restarted commercial work, “existing” work restarted with limitations
- “New” work is the odd person out

Practical Effects

- Fewer options when there is a hole in the ground



Project Security



How does COVID-19 effect job security for previously started projects?

Amicable Impacts

- Owner request for lengthened pay cycle
- Owner request to extend length of suspension required before contractor can terminate for convenience
- Work slow-down
- De-scope
- One-time handle on costs

Disputed Impacts

- Refusal to pay or intent to challenge/require claims
- Premature subcontractor claims (creates GC pinch)
- Changes project dealings – more formal and guarded



Scheduling



Delays

- **Known:** day-for-day (possibly more) for period of suspension
- **Developing:** productivity impacts – both during ramp up and after

Ramp-up effects

Phased/intentionally slowed start-up

Re-sequence of work to prioritize “allowed work”

Change in worksite practices

Change in crowding/spacing



Scheduling



Tracking Costs due to COVID-19

- Future/Unknown
 - Infections/Incidents
 - Changes in law
 - Subcontractor Business viability
 - Supplier business viability
- Segregate job costs due to COVID-19



Determining Financial Viability



Owners

- Contract terms on providing financial assurance
- Lender/Owner relationship
- Review past due receivables; identify high-risk clients
- Escrow account with 2 to 3 months billings



Determining Financial Viability



Subcontractors and Suppliers/Vendors

- Managing subcontractor notices
- Don't allow subcontractors to bill ahead
- Joint check process
- Bond/Subcontractor Default Insurance (SDI)



Workforce Issues Post-COVID-19



- Initially, craft seemed more willing to take a short break
- As stay-at-home orders lengthened, more craft going back to work
- Increased OSHA complaints
- Tension – work vs. protection
- Misinterpretation of Rules

Budget Effects



- Driver (contract may entitle GC to money, but if not in budget = fight)
- Bidding future work: is it included, not included, alternate, allowance – are any of these capable to predict in the next 12-24 months?
- Consider subcontractor approach when jobs in progress where buy-out not yet completed

Cash-Flow Effects



- Late pay
- Slow-down
- Slides
- Cancellations
- BUT, prompt pay more important to subs than ever

Supply Chain Effects



- Subcontractors to reach out to vendors re: materials
- Long lead items
- Be aware of material origins
- Border quarantines, etc.
- Value Engineering (VE)/Substitution issues

Planning to Reopen



- Protocols for every element of COVID compliance
- Mapping out walking lanes
- Reorganizing break rooms, schedules
- Stock up on PPE/cleaning supplies
- Communication is key
 - Uniform/similar policies across projects
 - Consistent response
 - Keep decision maker group small
 - Keep the Owner well informed
- Schedule contingency

Inspection and Permitting



- Delays should be expected
- Communication with Owners/Contracting parties critical



Questions?