

Owner COVID-19 Construction Project Considerations

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As a result of the global COVID-19 pandemic, owners with active construction projects are now facing a tsunami wave of issues that in many cases must be immediately addressed. Some of those issues are ones that have been encountered before and others are new and unique. But even if it is an issue the owner has addressed many times before, the current industry context is completely new and unique, often requiring new answers and approaches than what was done before. The following is a checklist of the various issues and considerations that may be encountered by an owner with an active construction project. As with resolving any problem, the first steps are always to identify and prioritize the issues. Hopefully, this checklist will help you with those initial steps.

1. Confirm the status of all local, state, and federal stay-at-home, quarantine, suspension, curfew, and social distancing orders that may impact operations at the project site, as well as any exemptions to those orders for essential services or other authorized basis.
2. Review the construction contract, especially those provisions addressing delay, changes, force majeure, suspension of work, and claims. Determine the respective obligations of the parties to continue performance of the work.
3. Promptly respond to any inquiries, notices, or claims submitted by the contractor. Keep all lines of communication with the contractor open. Avoid a bunker mentality and encourage a cooperative work environment among all parties. Require compliance by the contractor with all contract terms, especially those for claims and delay.
4. Monitor the status of all permits. If the work is suspended, how long will the permits stay open? What minimum level of activity is necessary to keep the permits open? What is necessary to reactivate a permit?

5. What needs to be done to safely demobilize and shut down a suspended project? What will be necessary to safely remobilize and start back up a suspended project? Develop demobilization and remobilization plans with the contractor.
6. Monitor the status of all project insurance (owner, contractor, and subcontractors), especially the builder's risk/property insurance. Confirm no lapses in coverage during the suspension. If there are any lapses, how can they be filled to the extent necessary?
7. Review insurance policies as possible funding sources for suspension and delay claims (e.g., business interruption insurance). Identify and comply with all policy notice requirements.
8. Review with the contractor the sources of labor, materials, and equipment that will be necessary to complete the project. Identify those items that may not be readily available after the suspension is lifted and consider appropriate alternatives and workarounds to those items.
9. To the extent the contractor is continuing work at the project site, confirm the contractor has established adequate safety protocols in full compliance with all CDC and other applicable governmental orders and regulations. Confirm the contractor and all subcontractors are in fact complying with all those protocols.
10. If the project is not self-funded, check and confirm the adequacy and continuation of all project-funding sources. This is especially true for projects where work will continue. If the work continues, the funding must continue. How do the loan documents address a suspension in the work? Are there any conditions in the loan documents that would allow the lender to stop funding?
11. Are there any collateral impacts to the owner regarding the completion of the project? For example, turnover to a tenant, closing with a subsequent purchaser, or replacement of existing facilities. If so, the contracts associated with those matters need to be carefully reviewed and analyzed (especially with respect to any force majeure provisions that might excuse strict performance), and an action plan must be developed to mitigate and minimize those collateral impacts.
12. Consider applying for PPP or other applicable state or federal loans/grants.

Authored By



George J. Meyer

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