Construction in the Age of COVID-19
An Owner’s Checklist for Analyzing Impacts and Strategies on Managing Projects

Donnelly Gillen and Stuart Eisler serve the needs of the built environment as attorneys in Hanson Bridgett LLP’s top ranked construction practice, based in California, with focused operations throughout the United States.

With respect to COVID-19 pandemic impacts, each project will have separate business, political, and practical issues that must be considered. The first step in this analysis is to gather the necessary information on a project-by-project basis. Owners should use this outline of Legal, Governmental, Practical, and Business considerations when assessing their construction projects.

Legal

1. What is the governing law?
   1.1 Jurisdiction Type
      1.1.1 Civil Law?
         (a) Country?
      1.1.2 Common Law?
         (a) Country?
            (i) State/Province?
      1.2 What is the venue type?
         1.2.1 Court
            (a) Federal
            (b) State
         1.2.2 Arbitration
            (a) Provider
         1.2.3 Other

2. Contract and Work Order
   2.1 Changes Provision
      2.1.1 Effect of refusal of change request
      2.1.2 Time only vs. time and cost
2.2 Force Majeure Provision

2.2.1 Does your contract have one?

(a) AIA contracts typically do not.

(b) Consensus docs do.

(c) Proprietary forms?

2.2.2 Are pandemics covered?

2.3 Frustration of purpose?

2.3.1 For contracts without force majure provisions, local law may allow parties to avoid performance where an unforeseen event undermines the purpose of the contract.

2.4 Convenience Termination

2.4.1 Notice

2.4.2 Procedure

2.4.3 Payment

2.4.4 Remedies

(a) Silent

(b) Waived

(c) Reserved

2.5 Suspension

2.5.1 Grounds

2.5.2 Duration

2.5.3 Payment

2.5.4 Potential for contractor termination after extended suspension

2.6 Notice Provisions

2.6.1 Notice Received?

2.6.2 Level of specificity required and evolution of situation

2.7 Flow Down Provisions
2.8 Damages exclusions
  2.8.1 Waiver of delay
  2.8.2 Consequential damages

2.9 Changes in law clauses
  2.9.1 Effect of orders and other governmental mandates

2.10 Disputes
  2.10.1 Venue
  2.10.2 Process
  2.10.3 Governing Law

**Governmental Action**

1. Emergency Declaration?
   1.1 Substance?

2. Shut Down Order?
   2.1 Substance?

3. Limiting Order?
   3.1 Substance

4. Governmental Relief?
   4.1 Substance

**Practical**

1. Status of Project
   1.1 Planning
   1.2 Design
   1.3 Construction
   1.4 Commissioning
   1.5 Turnover
   1.5.1 Is Owner's facilities staff permitted to work?
2. Status of government approvals
   2.1 Are government inspectors and code and permit officers working?

3. Project Criticality
   3.1 Critical to an essential business?
   3.2 Needed now?
   3.3 Possible to wait?

4. Feasibility of:
   4.1 Deferral
   4.2 Suspension
   4.3 Termination
   4.4 Resequencing

5. Likelihood of Impact/Suspension if continued

6. Availability of Insurance

**Business/Political**

1. Relationship with vendors
   1.1 Long term relationships
   1.2 Likelihood of needing further assistance
   1.3 Owner's reputation within the vendor community

2. Adverse publicity