

Is your Florida construction contract hurricane-ready?

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Florida's 2009 hurricane season is well under way and, for both this and upcoming hurricane seasons, Florida owners, contractors, and other construction-industry players should be well aware of the many ways that a construction contract can be made hurricane-ready. From issues dealing with shoring up the project, time delays, cost increases, and more, your construction contract should be your first line of defense (and reference) from the moment a hurricane watch is issued.

One quintessential example of a hurricane-related project delay is the time lost in both preparing for and re-mobilizing after a storm. If your contract doesn't clearly call out which party is responsible for hurricane time delays, you could easily find yourself in heated litigation over whether the delay was "unforeseeable" or outside the "control" of one party or another. Even in contracts where weather delays are specifically addressed, does the language merely refer to "abnormal" weather events? If so, are hurricanes really that "abnormal" for South Florida during hurricane season? Answering this question alone can make the difference between whether the event is categorized as an excusable or an inexcusable delay, potentially costing millions to the party on the losing end of the argument. And this is just a small example of the type of issue that can arise when interpreting a construction contract that has not been drafted with hurricanes in mind.

Consider the following issues that may arise when a hurricane watch/warning is issued in your project's area:

- Who is responsible for coordination of efforts to shore up the site?
 - What steps need to be taken to adequately and securely shore up the site?
 - Do you have a checklist to work from so nothing gets overlooked?
 - Are duties and responsibilities clearly identified across the various parties?
 - Does everyone know who they are supposed to take direction from, what they are supposed to be doing, and when?
- Once the storm has passed, who is responsible for "first-response" assessment of any damage to the site (including documenting any damage)?
 - Is there a streamlined process in place for informing trades as to the status of the site, and calling trades back to the site to resume work and/or participate in cleanup efforts?
- **Are all hurricane-related items clearly outlined in your construction contract?**

In addition to the above concerns that may arise, consider the following (just a short list, and by no means exhaustive) with respect to how your construction contract deals with hurricanes:

- Who is responsible for time lost due to hurricanes?
 - Is enough time built into the project's schedule to take into consideration time that might be lost as a result of a hurricane?
- Who is responsible for increased costs resulting from hurricanes?
 - Is compensation for weather-related demobilization, delay, and remobilization permitted by the contract?
 - What about cost escalations resulting from a reduction in available labor and/or materials?
- How does your contract address adverse weather in general?
 - Would a hurricane be classified as an "abnormal" weather event?
- Does your contract take into consideration storms that never reach hurricane strength, such as tropical storms?
- Do all parts of the contract work together (i.e., is there language to guard against inconsistent provisions which might conflict with one another to allow alternate, unintended, interpretations of the contract)?

With some careful drafting, you can attempt to cover all of these bases in the construction contract itself, or in an exhibit attached to it.

While there's no way to avoid the chaos and uncertainty that a hurricane will invariably bring to your construction project, you can at least attempt to streamline — as best as possible — each step of the way, from hurricane watch through cleanup and remobilization, that you're likely to encounter during Florida's hurricane season. •

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