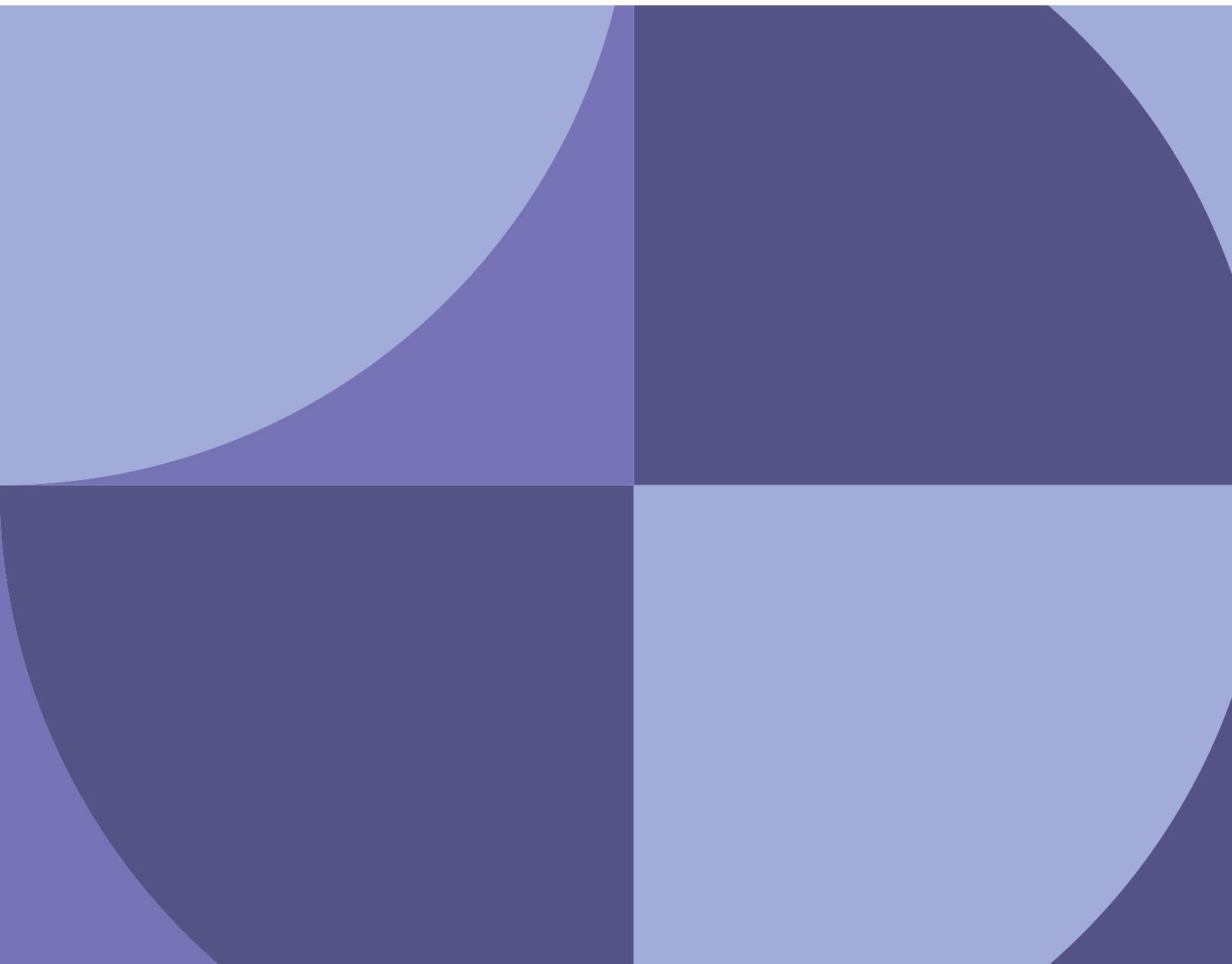




A201 Playbook for COVID-19:

Avoiding Pitfalls and Mitigating Risk on Construction Projects

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Introduction

The 2019 novel coronavirus and the disease it causes (“COVID-19”) is changing the landscape of construction projects across the country. COVID-19 orders from governors and other public officials are impacting projects by requiring new health initiatives, such as social distancing and the use of personal protective equipment, requiring residents to stay at home and self-quarantine if they cross state lines, and in some regions shutting down projects completely. The pandemic is squeezing supply chains, creating the possibility of late deliveries and price escalation as buyers compete for diminishing resources. As the economy hibernates while individuals shelter in place, funding sources for construction financing are diminishing, posing risks to new and ongoing projects. These issues create risks of delay, labor inefficiency, price escalation, nonpayment, and construction workers and on-site owner personnel becoming sick, among others. This COVID-19 Playbook discusses rights, remedies and steps to consider under AIA® Document A201™—2017 (“A201”) so you can put yourself in the best position to shape the outcome you need in light of the pandemic.

Pertinent A201 Sections

Section 2.2: Proof of Financing

A. Clause¹

§ 2.2.1 **Prior to commencement** of the Work and upon written request by the Contractor, the Owner shall furnish ... reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations ...

§ 2.2.2 **Following commencement of the Work** ... the Owner shall furnish ... reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations ... if ... (2) the Contractor identifies in writing a **reasonable concern** ... If the Owner fails to provide such evidence ... Contractor may ... stop the Work ... the Contract Time shall be extended appropriately and the Contract Sum shall be increased ...

B. Commentary and Practice Pointers

Contractors are entitled to obtain from owners proof of financing before commencing construction. Additionally, if the contractor has reasonable concerns during the course of construction, it can require the owner to provide proof of financing for its remaining financial obligations. For this and other reasons, owners should confirm financing before executing the contract. Construction lending could evaporate due to COVID-19.

Owners should also consider measuring commencement from a notice to proceed instead of the date of the contract. That way, if financing is delayed, the owner can postpone issuing the notice to proceed and protect the pricing agreed to in the contract. In that regard, contractors may want to include an outside date for the notice to proceed due to pricing, which with the passage of time could escalate due to supply chain disruptions due to COVID-19.

Similarly, for new contracts, the parties may want to consider a guaranteed maximum price with a contingency instead of a lump sum pricing model. While owners may be tempted to lock contractors into a lump sum, doing so in this environment may not be to their advantage because those contracts could include significant dollars for pandemic risks that may not materialize.

Lending concerns due to COVID-19 may provide grounds for contractors to request evidence of financing during the course of performance. Failure to provide that evidence could support work stoppages, time extensions and additional compensation. Owners should expect these requests and be prepared to respond.¹

¹ For all clauses, bold and underlining was added by the authors. Clauses have been abbreviated to focus on key points addressed in this Playbook.

Section 3.7.2: Compliance with Laws and Orders

A. Clause

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and **lawful orders of public authorities** applicable to performance of the Work.

B. Commentary and Practice Pointers

This Section obligates the Contractor to comply with lawful orders of public authorities applicable to the performance of the work. That includes governmental health orders pertaining to COVID-19, such as those requiring social distancing. Owners might assert no-additional compensation is owed for inefficiencies and other costs associated with complying with those orders because doing so is a contract requirement. On the other hand, language is sometimes added to the general conditions allowing the contractor to recover additional time and compensation for complying with new laws or orders that are enacted after the contract is executed. Contractors might find relief in that type of provision.

Section 3.8.2: Allowances

A. Clause

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .3 **whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order.** The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

B. Commentary and Practice Pointers

Allowances are open check books. Generally speaking, if an allowance item costs more than the allowance amount included in the contract sum, the owner needs to pay the contractor the difference. Given the potential for price escalation due to COVID-19, allowances are particularly risky for owners, as the actual price may be significantly more than anyone expected when the allowance amounts were set. Owners may want to have a discussion with their contractors to see if open allowances can be bought out quickly before prices escalate, and avoid or minimize allowances in new contracts for items that seem prone to price escalation due to COVID-19.

Section 3.18.1: Indemnification

A. Clause

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants ... from and against claims, damages, losses ... provided that such claim, damage, loss, or expense is attributable to bodily injury, **sickness, disease or death** ... but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them ...

B. Commentary and Practice Pointers

The contractor is required to indemnify the owner for sickness, disease and death caused by the negligence of the contractor or its subcontractors. If an employee of the contractor or subcontractor has COVID-19, comes to the site and infects the owner's employees, this indemnity clause may be triggered. The owner needs to establish the contractor acted negligently. Allowing a worker on site that is known, or perhaps even reasonably suspected, to be infected with COVID-19 could constitute negligence on the part of the contractor or a subcontractor. Negligence might also be established if the workers are not abiding by social distancing guidelines, not using personal protective equipment, or otherwise not following applicable state or local health orders.

This type of issue may be more prevalent on tenant improvement and rehabilitation work where there is the likelihood of increased interaction between the owner and construction workforce.

Article 7: Changes

A. Clause

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of **reasonable expenditures** ...

B. Commentary and Practice Pointers

When the contractor agrees on the terms of a change, the owner can use a change order signed by both parties. When the contractor does not agree on certain terms, the owner can direct a change through a construction change directive. Under both models, the parties should be aware of issues due to COVID-19.

In a change order, owners should check for reservations contractors might add stating the lump sum amount is subject to adjustment if prices escalate due to COVID-19 supply disruptions. In the same vein, contractors may want to add those types of reservations. This poses a difficult issue requiring a thoughtful solution. Although COVID-19 is now known, the full impact of it is not. As a result, forcing contractors to provide lump sum pricing with no relief mechanism for unknown COVID-19 price escalation could result in pricing with significant built-in contingencies. If prices do not escalate, the owner will have overpaid. The parties should discuss whether there is an appetite for increasing the lump sum if price escalation is demonstrated due to COVID-19, and if there is, it is critical that they craft appropriate escalation language. Owners also may want to review backup for lump sum pricing to see if contingencies were included due to COVID-19, and whether they appear reasonable.

For construction change directives, absent agreement on price, the contractor is entitled to recover the reasonable additional cost associated with performing the change. Those costs could be significant due to COVID-19 impacts. Accordingly, Owners should think twice before issuing construction change directives in the environment of this pandemic.

Section 8.3: Delay

A. Clause

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect ... ; (2) by changes ordered in the Work; (3) by ... **unusual delay in deliveries** ... or **other causes beyond the Contractor's control**; ... or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the **Contract Time shall be extended** for such reasonable time as the Architect may determine.

§ 8.3.3 This Section 8.3 **does not preclude recovery of damages for delay** by either party under other provisions of the Contract Documents.

B. Commentary and Practice Pointers

Section 8.3.1 entitles the contractor to a time extension for delays beyond its control. Some examples are provided, but the language itself is not prescriptive. Based on this language, any cause beyond the contractor's control is grounds for a time extension.

Many COVID-19 related delays could fall within Section 8.3.1 entitling the contractor to a time extension. These include Owner directed changes to overcome COVID-19 issues; permit delays because building authorities are working remotely; unusual delay in deliveries due to COVID-19, such as travel, shipment, quarantine and country shutdowns (e.g., marble or other fine stone might be held up in Italy); and delay due to inefficiencies arising out of construction workers complying with government health orders and guidance, such as social distancing, frequent wipe down of areas and wearing personal protective equipment. For example, social distancing could result in only permitting one person in a manlift at a time, necessitating more trips, eroding efficiency, and prolonging performance periods.

A time extension pursuant to Section 8.3.1 neither establishes nor prohibits entitlement to additional compensation. Monetary delay claims must find their basis under another contract clause, such as the changes clause.

Applicable case law should be reviewed. Some jurisdictions limit a party to the specific excuses listed in the contract and do not enforce catch-all language such as "other causes beyond the Contractor's control." Other jurisdictions require that non-enumerated causes must be similar to the enumerated causes in the clause.

Section 9.7: Non Payment

A. Clause

§ 9.7 Failure of Payment

... **if the Owner does not pay the Contractor** within seven days after the date established in the Contract Documents ... then the Contractor may, upon seven additional days' notice to the Owner and Architect, **stop the Work** until payment of the amount owing has been received. **The Contract Time shall be extended appropriately and the Contract Sum shall be increased** by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

B. Commentary and Practice Pointers

Section 9.7 allows the contractor to stop work if the owner does not pay it within 7 days of the date for payment established in the contract. If funding sources dry up due to the economic shocks COVID-19 is causing, owners may become unable to pay for work performed, entitling contractors under this language to stop work. Further, the contractor is also entitled to a time extension and additional compensation for the additional costs it incurs to shut down and restart its operations.

Owners may not have a ready defense to this scenario under the A201. Section 8.3, which entitles the contractor to a time extension for delays beyond its control is one-way in favor of the contractor. By that we mean it does not excuse an owner's non-performance, such as non-payment, due to conditions beyond the owner's control. There is no bi-lateral force majeure language in the A201. Further, other types of contracts that do include bi-lateral force majeure clauses, often state force majeure does not excuse a party's non-payment.

However, governing case law may provide common law defenses to an owner, such as impossibility or frustration of purpose, and therefore should be considered. Seyfarth is reviewing these defenses under the laws of all 50 states and U.S. territories.

Section 9.9.1: Owner's Partial Occupancy

A. Clause

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project ... **Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.**

B. Commentary and Practice Pointers

Section 9.9.1 allows an owner to occupy a portion of a project that is complete or partially complete before the entire project is substantially complete if the contractor consents, and that consent is not to be unreasonably withheld.

If an owner partially occupies part of the project, it might infect contractor personnel with COVID-19 or contaminate the work area, thereby requiring wipe-downs and cleanups, which interfere with productivity and increase costs.

Accordingly, a contractor may want to take these issues into consideration if asked to consent to partial occupancy and secure in writing reasonable protections against these risks. This may include indemnification for sickness, disease or death due to COVID-19 spread by the owner, similar to the protections afforded the owner under the indemnity clause in Section 3.18. If the owner's partial occupancy will result in the construction workforce following enhanced health measures to mitigate the risk of sickening the owner, the contractor might consider securing an agreement that the owner will pay for the additional costs associated with those additional measures, including related inefficiencies. In the same vein, a contractor may want to obtain an acknowledgement from the owner that those measures could cause delays entitling the contractor to a time extension, additional compensation, or both.

Section 9.10.3: Final Completion

A. Clause

§ 9.10.3 If, after Substantial Completion of the Work, **final completion thereof is materially delayed through no fault of the Contractor** or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted.

B. Commentary and Practice Pointers

A delay due to COVID-19 that occurs between substantial and final completion may entitle the contractor to payment of the remaining amount for those portions of the work that are fully complete. The clause does not address the origin of the delay, so any delay that is not the contractor's fault is arguably within the grasp of this provision. If it is safe and otherwise appropriate to close-out a project, owners may want to refrain from directing COVID-19-related shutdowns after substantial completion to avoid triggering this provision.

Sections 10.1 and 10.2: Safety of Persons and Property

A. Clause

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising **all safety precautions and programs** in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take **reasonable precautions for safety of**, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 **employees** on the Work and **other persons** who may be affected thereby;

§ 10.2.2 The Contractor **shall comply with**, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and **lawful orders of public authorities, bearing on safety of persons** or property or their protection from damage, injury, or loss.

B. Commentary and Practice Pointers

Sections 10.1 and 10.2 impose an obligation on the contractor to take measures to keep its employees and other persons nearby safe. Further, the contractor is required to comply with lawful orders of public authorities bearing on safety.

The Owner might assert safety includes not contracting COVID-19, and the contractor therefore is obligated to take reasonable measures to prevent the spread of COVID-19 at the construction site. The owner might then maintain following social distancing guidelines, requiring masks of all employees and other personal protection equipment, alternating shifts, not stacking trades in the same area of the project, and other efforts to prevent the spread of COVID-19 are contract obligations that do not entitle the contractor to additional time or money.

On the other hand, the contractor might assert safety refers to physical safety, such as not falling in a hole or off an elevated concrete slab, and the measures envisioned are things such as roping, fencing and signage. This is among several issues courts may be called upon to interpret in the context of COVID-19 obligations under construction contracts.

Section 10.3: Hazardous Materials and Substances

A. Clause

§ 10.3.1 ... If the Contractor encounters a **hazardous material or substance** not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 ... By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances **the Contractor brings to the site** unless such materials or substances are required by the Contract Documents.

§ 10.3.5 The **Contractor shall reimburse the Owner** for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

B. Commentary and Practice Pointers

When considering Section 10.3, the first question must be whether the 2019 novel coronavirus is a hazardous substance. It certainly can cause death, but is it the type of substance that was meant to fall within this provision? Searches did not yield any cases that address whether a virus or disease is a hazardous substance for purposes of Section 10.3. At the federal level, the United States Environmental Protection Agency maintains a consolidated list of hazardous substances. A search of that list for the terms virus, disease and pathogen did not yield any results. However, it did yield results for chemicals that exist in an airborne state, such as mustard gas and hydrogen chloride gas. Given the dearth of applicable case law, parties seeking to apply Section 10.3 to the 2019 novel coronavirus are likely to find themselves in uncharted territory.

For the sake of discussion only, even if the 2019 novel coronavirus were deemed to fall within Section 10.3, the inquiry does not end there. Section 10.3.4 provides that the owner is not responsible for hazardous substances the contractor brings to the site unless they are required by the contract documents. The 2019 novel coronavirus certainly is not required by the contract documents. As a result, if the 2019 novel coronavirus were introduced to a construction site through infected construction workers, as opposed to owner personnel, the Owner would not be responsible. This would seem all the more likely if the owner does not occupy the site during construction. Moreover, Section 10.3.5 identifies scenarios where the contractor must reimburse the owner for hazardous

substances. Accordingly, Section 10.3 can cut both ways, and contractors should think carefully before invoking it in the context of the 2019 novel coronavirus.

Section 10.4: Emergencies

A. Clause

§ 10.4 Emergencies

In an **emergency affecting safety of persons** or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. **Additional compensation or extension of time** claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an **emergency** endangering life or property arising under Section 10.4.

B. Commentary and Practice Pointers

Responding to an emergency that threatens the safety of persons can entitle the contractor to additional compensation. Is social distancing, wearing personal protective equipment and other actions by a construction workforce due to COVID-19 a response to an emergency? The language does not define the term emergency and no reported cases have defined this term in the context of Section 10.4. On one hand, emergencies are often considered sudden and of a limited duration. For example, in the context of a non-AIA contract, courts have held that an "emergency" is an unexpected development requiring a prompt response, and not one where the effects will be felt long term. COVID-19 would not seem to satisfy those criteria as it has been present for months and health professionals have said we can expect it will remain with us for a long time to come. On the other hand, on March 13, 2020, the President of the United States declared COVID-19 a national emergency. When courts re-open, they may find themselves confronted with this issue.

Section 11.1.2: Payment and Performance Bonds

A. Clause

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

B. Commentary and Practice Pointers

Given the financial uncertainties COVID-19 has created, owners not typically inclined to require and pay for payment and performance bonds may want to reconsider. Those bonds provide a layer of security because the surety backstops the contractor's payment and performance obligations under the construction contract. Contractors may want to check with their sureties to determine if their bonding capacity has been reduced in light of economic strains COVID-19 has caused.

Section 14.1.1: GC Termination due to Government Action

A. Clause

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of **30 consecutive days** through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an **order** of a court or other **public authority** having jurisdiction that requires all Work to be stopped;
- .2 An **act of government**, such as a declaration of national emergency, that requires all Work to be stopped;

B. Commentary and Practice Pointers

This clause allows the Contractor to terminate the contract if the work is stopped for a mere 30 consecutive days due to a government order or other action. Some government bodies, such as New York City, are ordering that work cease on certain construction projects. Given what we see in the news, it is easy to imagine those shut-down orders extending 30 days or more.

To the extent new contracts are being drafted, owners should consider modifying the 30-day period to something longer, and contractors may want to push back. For executed contracts, this language may provide a much needed escape hatch for contractors experiencing, or fearing, significant price escalation due to COVID-19 supply disruptions. The A201 does not have a general price escalation clause, and contractors would arguably have to absorb cost overruns on a lump sum contract due to prices increasing as a result of COVID-19. A Contractor could shed those losing contracts by terminating under Section 14.1.1. As discussed in connection with Section 14.1.3, contractors will also be entitled to profit on work not performed as a result of the termination. This termination provision is a major threat to owners given the pandemic, and they should proactively consider solutions.

Section 14.1.2: GC Termination due to Owner Suspension

A. Clause

§ 14.1.2 The Contractor may terminate the Contract if, **through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor**, their agents or employees, or any other persons or entities performing portions of the Work, repeated **suspensions**, delays, or interruptions of the entire Work **by the Owner** as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

B. Commentary and Practice Pointers

If the owner suspends the work for an extended period of time due to health concerns stemming from COVID-19, it could trigger the contractor's right to terminate the contract under this clause. In connection with Section 14.3, we mention the use of a side-letter for an owner-directed suspension based on COVID-19. In that letter, an owner may want to state the duration of that suspension will not count toward the time periods in Section 14.1.2.

An owner-directed shutdown may be driven by a contractor or subcontractor not adhering to state or municipal COVID-19 orders, resulting in them bringing the virus to the site and infecting others, or increasing the risk of infection. Under those circumstances, an owner may assert the contractor is not entitled to terminate under Section 14.1.2 because the suspension was based on the contractor's act or fault.

Section 14.1.3: GC Recovery for Termination

A. Clause

§ 14.1.3 If one of the reasons described in Section 14.1.1 [*Govt. Action*] or 14.1.2 [*Owner Suspension*] exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner **payment for Work executed**, as well as reasonable **overhead and profit on Work not executed**, and **costs incurred by reason of such termination**.

B. Commentary and Practice Pointers

If, pursuant to Sections 14.1.1 or 14.1.2, the contractor terminates the contract either as a result of an owner-directed suspension or a government shut-down order due to COVID-19, the contractor is entitled to be paid not just for work performed and costs associated with the termination, but significantly also for overhead and profit on work not performed. This is more generous than the equivalent FAR clause used for federal construction contracts. A contractor who looks like it may be upside down due to COVID-19 price escalation might be able to not only find a way out through the termination clauses, but also reap a profit without having to complete the project. For new contracts, Owners may want to edit this clause.

Section 14.2.1: Owner Termination for Cause

A. Clause

§ 14.2.1 The Owner may terminate the Contract if the Contractor;

- .3 **repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;** or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

B. Commentary and Practice Pointers

If the contractor repeatedly ignores state or municipal orders regarding social distancing, work restrictions and use of personal protective equipment due to COVID-19, there may be cause for the owner to terminate the contract.

Section 14.3: Owner-Directed Suspension

A. Clause

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to **suspend**, delay or interrupt the Work ...

§ 14.3.2 **The Contract Sum** and Contract Time **shall be adjusted** for increases in the cost and time caused by suspension ... Adjustment of the Contract Sum **shall include profit**. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

B. Commentary and Practice Pointers

Under Section 14.3, the owner can direct the Contractor to suspend its performance for any reason, including COVID-19. Doing so entitles the contractor to additional time and money attributable to the suspension. Unlike the equivalent FAR clause used for federal construction contracts, an owner-directed suspension under this A201 clause entitles the contractor to recover profit on its additional costs.

An owner may believe it is in the best interest of itself and the contractor's workforce to suspend the project to minimize the risk of spreading COVID-19. This may be especially true for sites occupied by the owner during construction and areas experiencing a high rate of community transmission. An owner might not view this as a suspension "without cause" or for mere convenience, as it is based on the pandemic. Nonetheless, contractors might assert that type of suspension nonetheless falls within Section 14.3.1.

Given the significant remedies afforded a contractor for an owner-directed suspension, if an owner is considering shutting down its construction site due to COVID-19, it would be beneficial to first execute a side-letter with the contractor stating the parties agree a suspension is in the best interest of everyone and that an appropriate time extension will be granted, but no additional compensation will be owed. Alternatively, an owner might offer to pay some costs, such as demobilization and remobilization, and extension costs for certain key project management personnel. Additionally, an owner should consider if it makes sense to issue a partial suspension specifying off-site work can continue, such as coordination drawings, shop drawings, other submittals and procurement and fabrication of long lead items. Allowing that work to continue will provide some revenue to the contractor and keep the team engaged in the project, which will help when the suspension is lifted. Contractors have significant leverage in this scenario, and may push back on anything less than what they could recover under Section 14.3.2.

Conclusion

COVID-19 creates numerous risks for construction project owners and contractors, including delay, labor inefficiency, price escalation, nonpayment, and sickness. Within the A201 there are numerous provisions concerning these issues. Understanding how to apply them is critical to protect your interests and avoid costly pitfalls during the pandemic. This Playbook navigates through many of those provisions and provides important general concepts to consider. This Playbook is provided for information only and is not legal advice. You are encouraged to consult with experienced legal counsel concerning your specific contract and circumstances.

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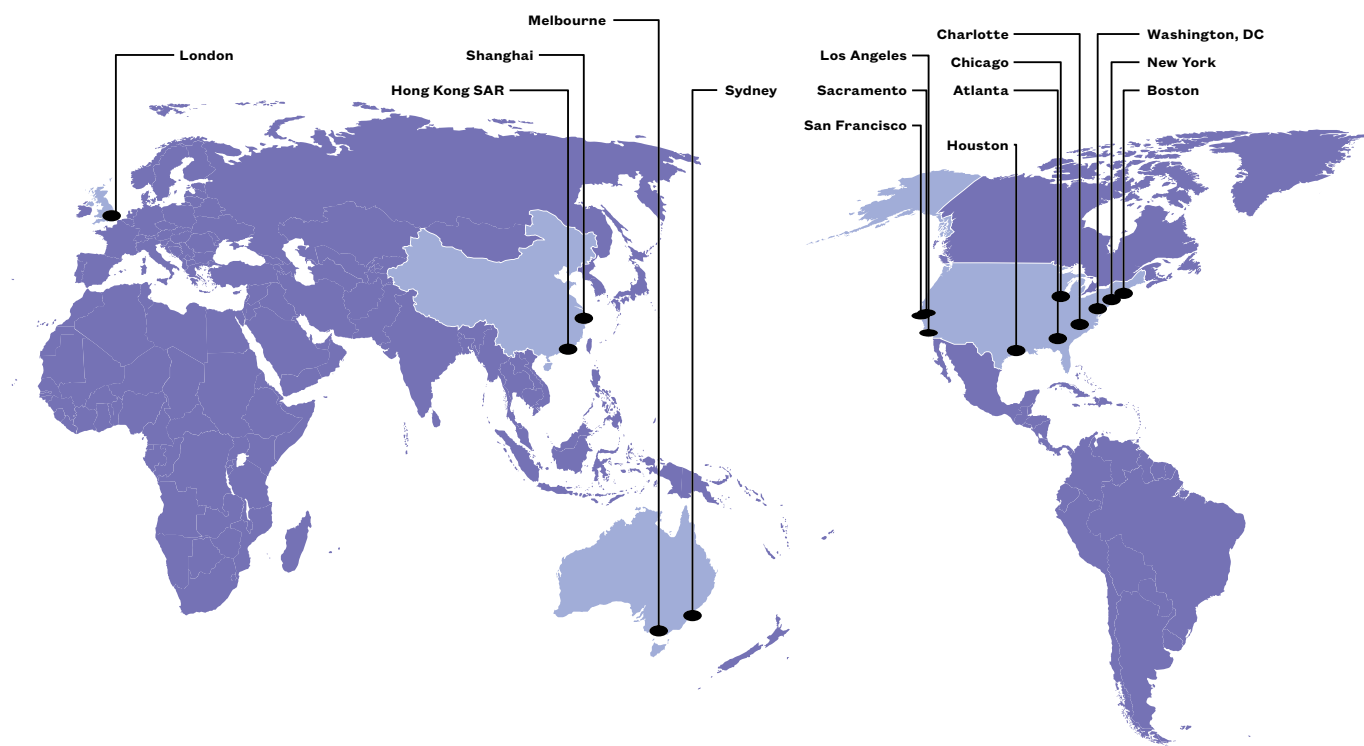
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