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Preparing for a Construction Project Shutdown During the Coronavirus Pandemic



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Construction

In addition to issues regarding the viability of future projects, the coronavirus pandemic has created concerns whether if, or when, your current construction project may be shut down.

Given the recent governmental shut down orders in Boston and the counties surrounding the Bay Area, and the new shelter-in-place order for the entire state of California, the issue is here, now.This week, Boston became the first city to shut down all construction work sites. Although small crews are being retained for general safety and security purposes, the majority of construction workers are being told to stay home.

Not surprisingly, Boston is not alone. Multiple counties around the San Francisco area, which have also seen an influx of construction projectsrecently, have instituted various construction bans, and now there is a state-wide shelter-in-place order. New York City is considering implementing one as well. Taking this into consideration, owners and contractors should have individual and joint plans in place if their construction project is ordered to shut down.Any shut down of a project may leave the project team with little or no opportunity to even secure the site.

Project shut downs or terminations resulting from COVID-19 are generally a result of one of the following scenarios:

Orders by Governmental Authorities

In places like Boston and California, city, state or county authorities have ordered the termination of most construction. An order has multiple exceptions for things like emergency roadwork, utility work and work relating to safety and essential businesses. All of these exceptions, in addition to others, are somewhat vague when it comes to residential construction.

The goal is to allow the governmental authority to have the flexibility to allow for construction that seems important or necessary, without too many statutory restraints.Typically, parties are given a few days to shut down projects and secure worksites. The orders are commonly for short time periods, with the option to renew.

Shutdowns by Building Owners

In Chicago, buildings have been shut down by landlords because of a tenant or visitor contracting the virus after visiting their buildings. In those situations, construction within the building has been shut down as well, pending a deep clean of the premises.These types of shut downs tend to be shorter in duration when compared to governmental orders, but with less notice.

Shutdowns by Project Owners

Given the uncertainty surrounding the virus and the extent of damage it may cause on a business, some owners have become increasingly uncomfortable with work on their premises and have stopped construction for a set duration or until further notice.These types of shutdowns are commonly related to owner sentiment, fears of adverse impacts on a business, or to comply with existing orders.They may be done under termination for convenience provisions or based on force majeure provisions.

Shutdowns by Contractors

Finally, contractors, to protect employees or due to lack of sufficient workforce, may shutdown their business operations for a set duration.Situations such as this require thorough knowledge of the contractual terms and conditions, as well as any imposed order, to understand how such a shutdown may impact your project.These may be based on force majeure provisions, and the contract will determine if contractors are merely entitled to time extensions as their remedy or whether they are entitled to other “damages.”

While Chicago and most other geographic areas of the country have yet to implement any such orders like Boston or California, it is important that both owners and contractors begin to consider termination or suspension plans.

Though the possibility of a shutdown to the Chicago construction industry is uncertain at this time, contractors, laborers and suppliers should be proactive and have a response plan in the likely event of a shutdown. Understanding your options and knowing how you will react in certain hypothetical situations before they occur can greatly increase your chances of surviving any type of shutdown, no matter how long it lasts.

What You Can Do Now

At a minimum, the parties need to do the following:

1. Be familiar with the contract terms regarding:(a) what constitutes an event of force majeure; (b) whether the sole remedy for a force majeure delay is an extension of time or is the contractor entitled to additional “damages” for demobilization, remobilization, price increases, and the like; and (c) what do termination and suspension of work provisions provide if there is not government shutdown.
2. Have a contingency plan that takes into account: (a)what will happen to your business if the project is stopped (relocation plans, product production or development issues, employee status, and other issues); (b) orderly shutdown and site security procedures.

Hopefully, shutdowns will be minimal and only for the short term. However, both owners and contractors have to end each workday with a plan in place in the event that particular day is the last one on the project for a while.