

General Contractor Strategy Checklist

The construction industry will be one of the many sectors hard-hit by the impacts and disruptions from Coronavirus (Covid-19). Construction general contractors are faced with unprecedented uncertainty caused by wide-spread project shut downs, labor and material shortages, subcontractor performance issues and defaults, and questions about the application of contract and insurance language. While understanding these problems is a prerequisite to defining solutions, there are several best practices that contractors should consider now to prepare for a recovery that will happen.

Imperium has prepared the following checklist for general contractors to consider.

- 1. Develop a strategy for different impact-period scenarios by assessing internal and external risks, and then defining and prioritizing actions. Update the strategy frequently.**
 - » Consider the financial viability of owners, subcontractors, and vendors.
 - Consider who can withstand a severe impact and for how long as a basis for go-forward decision making and communication tones.
 - » Evaluate each project.
 - Develop a spectrum from *financially strong* to *potentially insolvent* for all projects.
 - Determine where each project fits along that spectrum.
 - » Assess project team.
 - Project team retention, based on project "history" knowledge and expertise
 - Redundancy of project personnel; ability to backfill staffing in the event of virus exposure among project team member(s). (Critical in leadership roles.)
 - Ability to relocate staff to active projects
 - Added staffing needs as project(s) re-start
 - » For projects that may struggle financially or potentially become insolvent – consider alternate measures.
 - Requests for financial guarantees for owners.
 - Assistance with prompt or interim payments for struggling subcontractors and vendors.
 - Evaluation of replacement or supplemental forces.
 - Ensure timely notices are given based on contract and insurance requirements.
 - » For those that are financially strong – promptly discuss potential alternatives depending upon the outcome, duration, and impact of the event.
 - Consider some or all of the actions noted for higher risk projects noted directly above.

- » Evaluate and prioritize decision making within the context of the project and corporate exposure.
 - If your resources are limited – put the necessary resources where they are needed the most and where they will make a difference.
 - Ensure adequate resources are dedicated to contemporaneously give notices, document schedule and cost impacts, manage work forces, and proactively consult with legal and risk management advisors.

2. Assemble a 'Response' Team

- » The response team should have dedicated responsibility to coordinate action throughout the organization relating to the pandemic and its impacts to projects.
- » Depending upon the size of the organization, the size and participants on this team may vary. Team members may include members of: executive management, financial, legal, operations, and risk management.
- » Identify applicable project representatives for each project empowered and accountable for carrying out the corporate action.
 - Prioritize information needed from project representatives, such as estimates to complete, labor/subcontractor issues, project status (cost and schedule) at the beginning of the impact, project management summaries regarding pending changes/claims/notices/owner directives, among others.
- » Identify external advisors such as legal, insurance, surety and performance security and claims consulting; place "on-call" as needed to ensure availability.

3. Physical Project Sites

- » Follow proper and recommended health and safety practices to ensure worker and public safety.
- » Strictly follow all government restrictions and instructions.
- » If faced with a project shutdown:
 - Properly secure the site.
 - Make-safe all ongoing operations and conditions.
 - Thoroughly and accurately document project status.
 - Video / Photographs / Aerial Photographs.
 - Annotated progress plans.
 - Secure the project administration trailer/office.
 - Safeguard all computers, IT, and confidential documents.
 - Assume you will not be able to return to your project office for an unknown length of time.
 - Make sure you have possession of, or access to, critical documents and items, such as:
 - Insurance policies,
 - General Contracts,
 - Subcontracts,
 - Project diaries,
 - Project directories and key contacts,
 - Other critical documents.

4. Notice Requirements

- » Review contracts, subcontracts, and insurance policies and understand applicable provisions.
 - Seek guidance and assistance from counsel, insurance brokers, and consultants as may be necessary.

- » Submit all necessary notices to applicable parties.
 - Understand and strictly comply with format, recipients, and requirements.
- » Verify whether one notice or multiple notices may be required.
 - Often best to note that your notice will 'remain as a standing notice'.
- » Typically best to note situation is evolving and that impacts are yet unknown and unable to be currently or fully identified or quantified.
 - This is applicable especially in cases where a contractual term may require quantification of impacts within a certain timeframe.

5. Collaboration with Owners, Subcontractors, and Vendors

- » Evaluate each project and project team.
 - In other words – "If this pandemic does not end quickly, who will be cooperative moving forward and who are we likely to end up in a dispute with?"
- » Develop a spectrum from *collaborative* to *potentially adversarial/hostile* for all pending projects.
 - Determine where each project fits along that spectrum.
- » Develop a separate spectrum for each project in order to evaluate project team participants.
 - Determine where each/critical project team participant fits along that spectrum.
- » For those that are collaborative – promptly discuss potential alternatives depending upon the outcome, duration, and impact of the pandemic.
 - For those that may be hostile or adversarial – consider more aggressive actions to protect your rights and strictly comply with all of your obligations.

6. Applications for Payment

- » Promptly submit all necessary payment applications so that they are up to date.
 - Do not wait until progress at the site resumes.
 - To the greatest extent possible, make sure they comply with project requirements.
 - If there is no ability to conduct the typical 'pencil review', submit in final form.
- » Verify that progress reflected in the pay application is consistent with the progress at the site.
- » Include all pending changes and requests.
- » Consider status and value of onsite and offsite stored materials or those being procured.
- » Depending upon the outcome of the situation and how a project may or may not resume, this current pay application may be the critical measure of the value of the project when construction ceased.
 - Consider the owner's evaluation of the general contractor's progress, as well as the general contractor's evaluation of the subcontractors' and suppliers' progress.

7. Schedule Status

- » Review and verify understanding of all applicable contract provisions relating to scheduling and updates.
- » Completely and thoroughly update the schedule status.
 - Accurately evaluate incomplete and pending work at the site.
 - Accurately evaluate incomplete and pending deliveries.
 - Accurately evaluate incomplete and pending submittals and approvals.
- » Evaluate the impact of changes to the work.

- » Prepare a narrative to accompany the schedule update.
- » Include and annotate relevant photographs, videos, and other substantiating documents to validate progress.
- » Ensure that the schedule status update is consistent with the current application for payment.
- » Assemble and maintain contemporaneous issue file documents (emails, meeting minutes, schedule updates, etc.) to support positions on delay causation, entitlement, and quantification.

8. Supply Chain, Procurement, and Deliveries Evaluation

- » Evaluate the current status and potential disruptions to the supply chain, including availability, current lead time, location (in warehouse or in transit), estimated delivery dates, etc.
- » Expedite all pending approvals and outstanding procurement matters.
- » Determine ability for current vendors to meet future demand.
- » Evaluate potential cost impacts due to disruptions and communicate to Owners.
- » Consider possible alternatives to overcome supply chain disruptions.
 - Promptly communicate with Owner and Vendors to identify and determine acceptable alternatives.

9. Project Management Status

- » "Make sure your house is in order, current, and complete."
- » Analyze all pending and unsubmitted changes and requests.
 - Focus on bringing all outstanding and time-critical matters up-to-date.
 - Identify changes with exposure – those submitted but unapproved and/or proceeding while being priced.
- » Pending RFIs should be prioritized now based upon need at project re-start.
- » Shop drawings and approvals should be prioritized based upon need at project re-start.
- » Bring all up to date and communicate to necessary parties.
- » Prioritize action items.

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