

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.

About Imperium

Imperium Consulting Group, LLC, is a specialized advisory business that works with clients to better manage commercial risks as well as resolve complex claims and disputes. Employing a multi-disciplined approach with engineers, forensic schedulers and accountants, Imperium has vast expertise in construction, project auditing, government contracts, FEMA and commercial contract disputes. Imperium also provides insurance claims preparation services and recovery strategies related to Builder's risk, property damage, business interruption, surety, subcontractor default, and delay-in-start-up.