

Construction Dispute Impacts of COVID-19

Although the pace of construction has been relatively stable since COVID-19 first started to impact the United States earlier this year, construction companies and their legal advisors have had to adapt to respond to the new virtual world with respect to managing business disputes and litigation.

The overall trends observed in 2020 have shown that litigation schedules have slowed but have continued to move forward, despite the pandemic. Courthouse closures and restrictions have been the primary cause of delays in existing litigation. New disputes appear to be slow in developing as many business leaders are focused on leading their organization through the pandemic and have often, at least for now, postponed potential disputes. It is uncertain how this will develop as the economy emerges and statute of limitations roll out. Settlements are harder to reach in the current environment as the pressure of a pending trial has been replaced with court ordered stays and delays.

Delays in adjudicating matters may result in increased damages in certain instances such as price escalations on defect claims and extended delay periods. If you are currently experiencing delays or performance challenges on a contract, it is important to ensure adherence to notification requirements and consult with legal counsel early in the process.

In the current and future operating environment, contractors may consider expanding their pursuit of government work. Construction work in the government sector can provide growth and value enhancement opportunities for contractors who do not already perform work in that arena. When looking to enter the government contracting arena, construction contractors need to be aware of a number of nuances and very specific laws and regulations that do not exist in the commercial sector. Some of these nuances include:

1. Bid protests where you win a contract – but losing bidders can challenge the award;
2. Terminations for convenience where the government can cancel a contract for any reason;
3. Significant levels of cost transparency in many contracts;
4. Contracting officers must sign off on any scope or pricing changes if a contractor wants to get paid; and,
5. Very complex rules around contract funding limitations and contractor ethics requirements.

The most important takeaways for construction companies considering the pursuit of government projects is the intentional up-front effort to bring executives, business development, accounting, estimators and project personnel up to speed with the unique requirements and ensure compliance is maintained throughout the bid process and construction work. Taking such measures may help to avoid potential disputes and litigation situations related to compliance issues.

For more information about construction litigation, be sure to watch DHG's webinar, [State of Construction Litigation](#) or reach out to us at construction@dhg.com.

YOUR CONTACTS:

Erik Lioy
Partner, DHG Construction
erik.lioy@dhg.com

Brian Burns
Partner, DHG Construction
brian.burns@dhg.com

The information set forth in this article contains the analysis and conclusions of the author(s) based upon his/her/their research and analysis of industry information and legal authorities. Such analysis and conclusions should not be deemed opinions or conclusions by DHG or the author(s) as to any individual situation as situations are fact specific. The reader should perform its own analysis and form its own conclusions regarding any specific situation. Further, the author(s) conclusions may be revised without notice with or without changes in industry information and legal authorities.

© 2020 Dixon Hughes Goodman LLP. All rights reserved. DHG is registered in the U.S. Patent and Trademark Office to Dixon Hughes Goodman LLP.