

2020

COVID-19 Project Suspension Impact Checklist

大成 DENTONS



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Preface

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The growing global health emergency has already had very real impacts on the Canadian economy and the operations of Canadian businesses. Focusing on the construction industry, it is a known that the COVID-19 pandemic will cause and create significant hardship. All industry participants will be called upon to work together in assessing and mitigating operational risk under existing contracts.

In that spirit of cooperation, an emergency meeting of construction industry professionals including the Calgary Constuction Association, global law firm, Dentons, the consultants KGC, insurers, and a variety of industry experts was convened. The purpose of the meeting was to compile a list of best practices and considerations for construction professionals' deliberation in the face of unprecedented challenges the industry will experience in the coming months.

The 'Project Suspension Impact Checklist' has been designed to provide industry participants with an accessible resource in order to tackle the range of issues that present and developing circumstances may cause to be addressed. However, this is an evolving document composed in the face of an exceptional crisis. The editors are committed to providing periodic updates and revisions to the checklist which will be available via link <https://www.dentons.com/en/issues-and-opportunities/-/covid-19-coronavirus-hub>. We welcome your feedback and comments. The application of your skill and experience will also guide the checklist's evolution, and its value will be enhanced through your collaboration with fellow industry participants as present and future challenges are successfully met.

The contributors would like to thank Jeffrey White of the Results Consulting Group for inspiring the format of this document, and all other contributing industry professionals for their experience, insight and hard-work over a very short period of time.

Disclaimer: The content on this document is provided for general information purposes only and does not constitute legal or other professional advice or an opinion of any kind. Users of this document are advised to seek specific legal advice by contacting members of Dentons (or their own legal counsel) regarding any specific legal issues, or KGC Consulting (or their own consultant) regarding any construction project management issues.

Contract Review and Administration

Action	Status (N/A, Red, Yellow, Green)	Who	Resources	By When	Progress Notes
1.1 Assign responsibility for review of all forms of contract relating to each required scope of work.					
1.2 Establish and agree to a communication plan and reporting protocol with all key stakeholders. In particular ensuring that the Owner's Representative, the Contractor's Representative, and if applicable, the Owner's Consultant's Representative are proactively engaged in a review and determination of the reason(s) for project suspension. (Manage the facts, stay current, share as required).					
1.3 Review all Notice provision clauses within the Contract and determine applicability to the reason(s) for project suspension. Ensure that any required formal written notice is provided in accordance with the terms of the contract and provided to any applicable third party (i.e. Insurer or Surety).					
1.4 Review Dispute Resolution clauses within the contract and determine applicability to the reason for project suspension.					
1.5 Review Force Majeure and Material Adverse Effect clauses of the contract and determine applicability to the reason for project suspension.					
1.6 Review Warranty and Indemnity clauses of the contract and consider impacts affecting warranty administration and indemnity obligations in the context of project suspension.					

Contract Review and Administration

Action	Status (N/A, Red, Yellow, Green)	Who	Resources	By When	Progress Notes
1.7 Review all policies of insurance in respect of the place of work, Contractor's equipment, general liability and course of construction.					
1.8 Review the terms of any contract security that have been, or need be, provided by the Contractor in respect of the work.					
1.9 Review any surety/performance bonds that have been procured in connection with work undertaken on the project.					
1.10 Review all financing documentation relative to the project.					
1.11 Revisit communication plan and reporting protocol on a daily basis.					

Contract Documents, Payment, Progress of Work and Schedule

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Action	Status (N/A, Red, Yellow, Green)	Who	Resources	By When	Progress Notes
2.1 Ensure that a copy of current Contract Documents, submittals, reports and records of meetings at the place of work are in good order and available to the Owner, Contractor and Owner's Consultant.					
2.2 Ensure that the Contractor has reviewed all Contract Documents and has reported to the Owner or Owner's Consultant any error, inconsistency or omission contained therein as at the date of project suspension.					
2.3 Review the status of all development approvals, building permits and other necessary approvals and permits in light of project suspension.					
2.4 Assess the status of payments for work pursuant to the contract.					
2.5 If the contract provides for applications for progress payments determine the present status of any such application by having the Owner or Owner's Consultant identify the date of receipt of the application and/or issuance of a Certificate of Payment including the amount determined payable in accordance with the Contract.					
2.6 As at the date of project suspension determine if all accounts for labour, subcontracts, products, construction equipment and any other indebtedness which may have been incurred by the Contractor have been paid in full excepting for amounts properly retained as a holdback, or as an identified amount in dispute.					

Contract Documents, Payment, Progress of Work and Schedule

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2.7 Confirm that the proper amount has been held back pursuant to any provisions of the Contract and applicable Builders' Lien legislation.					
2.8 Assess whether any withholding of payment, in addition to required hold-backs, is justified until any remaining portion of the work is performed and Substantial Performance is achieved.					
2.9 Ensure that the Contractor updates and submits a construction schedule that indicates the progress of the work as of the date of project suspension.					
2.10 Assess, document, and quantify the value of work in any submitted but unapproved change orders, change directives or claims for a change in contract price.					
2.11 Identify and memorialize the site manpower count as of the date of project suspension.					
2.12 To the extent possible, review and inspect completed work as at the date of project suspension by arranging any necessary tests, inspections or approvals specified in the Contract Documents.					
2.13 To the extent possible, review and identify any defective work and determine whether the defect is not in conformity with the Contract Documents, the result of poor workmanship, use of defective products, or damage caused by parties at, or outside of, the place of work.					

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2.14 Determine if it is presently possible to correct defective work or alternatively value the cost of correcting any defective work.					
2.15 Assess status and progress of work to date of project suspension, and assess impact to critical path to achieving contract completion date using detailed photographs of the place of work, catalogue associated hi-lite drawings or Blue Beam mark-ups.					
2.16 Assess all outstanding scopes of work, required contractor's equipment, materials supply, status of pre-fabricated elements not yet at site.					
2.17 Ensure that the appropriate contracting party has established a communications plan with suppliers of equipment or materials.					
2.18 Record all efforts and measures taken to mitigate the cost associated with deferring remaining scopes of work, the use of contractor's equipment, the use of owner -supplied equipment, and remaining materials to be supplied, including provision for materials and equipment preservation if ordered but not yet at the place of work.					
2.19 Record any extra carrying costs and overhead costs incurred as a result of project suspension and potentially can be eligible for reimbursement by the project.					

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2.20 Assess and determine if the circumstances leading to project suspension warrant an extension of the time for performance and completion of the remaining work.					
2.21 Consider any contractual requirements for Notice associated with delays to the performance and completion of the remaining work.					
2.22 Consider delay disruption methodology and identify areas of impact as a result of delay.					
2.23 Identify revised completion date for the work and an anticipated date for recommencing the work.					

Securing the Construction Worksite

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Action	Status (N/A, Red, Yellow, Green)	Who	Resources	By When	Progress Notes
3.1 Consider and detail site access, compromised work fronts, and incomplete work as at the date of project suspension.					
3.2 Coordinate with all stakeholders and compose a lockdown and preservation plan for the place of work that ensures the protection of persons and property.					
3.3 Identify any toxic or hazardous substances present at the place of work and ensure all necessary steps are taken to dispose of, safely store or otherwise render harmless any toxic or hazardous substances.					
3.4 Determine responsibility for any disposal, storage, or other necessary means of handling toxic or hazardous substances. The responsible party will then be accountable for taking the steps outlined in 3.3 above.					
3.5 Ensure that any stakeholders that are responsible for the place of work following project suspension are aware of, and understand, applicable Provincial legislation in force at the place of work.					
3.6 Establish a demobilization plan to be put into effect following project suspension, and ensure that all costs, not otherwise determined pursuant to the contract, are memorialized.					
3.7 Establish a close out meeting with the Owner or the Owner's Consultant with respect to the place of work following demobilization.					

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3.8 Ensure that all permits, and insurance are in order and appropriate for the place of work following project suspension.					
3.9 Ensure that the place of work is appropriately secured and monitored so as to prevent any unauthorized access to the site.					
3.10 Prepare a management and emergency communications plan for the place of work and revise periodically. This plan includes identification of key contacts (with back-ups), chain of communications (including suppliers and Owner), platforms for communication (email chat groups, in person, etc.), and processes for tracking and communicating business and employee status.					

Sean Fairhurst

Partner, Calgary

P: 403 268 6803

C: 403 860 3063

sean.fairhurst@dentons.com

大成 DENTONS

Jerry Crawford, PMP, PQS, GSC

Principal Director, Calgary

P: 403 454 3890

C: 403 612 9232

jc@kgcconsulting.ca



Wm (Bill) Black, B.Sc., CEC, LEED, AP

President & COO

P: 403 830 7477

billblack@cgyca.com



Calgary
Construction
Association

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