

## **Risk Management for Engineering Firms in a COVID-19 Environment**

**By: Lee Wagner, of Stewart Sokol & Larkin, LLC**

**March 31, 2020**

Life in a COVID-19 environment is new for everyone. Some firms may feel that they have more questions than answers. Among others, firms have questions about: (a) how to comply with constantly changing legal restrictions and guidelines; (b) employment and HR issues; (c) setting up protocols and procedures for a safe workplace and/or continuity in a substantially remote environment; and (d) project-related risks. There are many resources (and more coming out each day) on each of these topics.

One question on everyone's mind: "What steps should we be taking to protect ourselves in connection with projects?" That question cannot be answered in a vacuum. The answers to that question will depend on the individual firm and the specific circumstances. The following notes may help to analyze the circumstances:

- *Read all open contracts.* Remember that your contracts act as the rule books for each project. You cannot comply with the rules if you don't know what the rules say. For examples only:
  - Does your contract require notice of impacts or potential impacts (related to delays or otherwise), such that prompt notice should be sent to your client right away? Make sure you comply with all notice provisions. Notices should be sent timely, to the correct person, in the correct form, and include all contractually required information.
  - What does your contract say about your scope and additional services? What is being asked of your firm in these new circumstances, and what scopes should be tracked as additional services?
  - Do you have any contract requirements that are no longer practicable or allowed? Consider schedules, site visits, and other issues. Request any amendments that are needed.
  - Consider clauses that relate to potential suspensions or a termination by any party.
- *Keep track of all impacts and additional services.* You may need to ultimately file a claim. What extra costs are you incurring? What delays are you experiencing? You cannot ask for extra time or compensation if you are not keeping track of these items in detail.
- *Evaluate each project and each project team member.* What is the stage of the project? Is the scope or schedule likely to suffer impacts? Will other project team members be able to perform per the original contracts? Is a suspension or termination likely? What will be the impacts of a potential suspension or termination? Will any projects be accelerated? Will you be prepared for any potential accelerations? What will be the impacts of an acceleration?
- *Be Proactive. Communicate and Document.* Even in a non-COVID-19 world, many project-related claims arise from a lack of communication. In times of uncertainty, communication is even more important. Clear communications and clear documentation can only benefit parties. Make sure everyone is on the same page. Document everything, including, without limitation, contract changes, policies, decisions, and discussions regarding expectations.
- *Consider Revised Plans for Site Visits.* Are site visits safe under the circumstances? Are they allowed by law under the circumstances? How can you achieve your project obligations and

goals in a safe and practicable manner? Are virtual site visits possible and reasonable? Would they be compliant with the applicable standard of care? Would it make sense to have less site visits, and/or less personnel on site for each visit, and/or to visit the site outside regular business hours? Make sure that any revised plans are consistent with contractual obligations or amend the contract to allow for the new plan.

- *Look at Insurance Policies and Consult Insurance Professionals.* Some firms may want to consider making prompt claims against their own business interruption policy. On some projects, the owner may have coverage for loss of use, business interruption and/or delay in completion, which policies may benefit one or more project team members. Make sure your changed practices in a COVID-19 world do not pose any coverage issues (i.e., require actions that may be uncovered by your policies).
- *Be Careful with New Contracts.* Don't treat new contracts like any standard contract. Consider the new market and circumstances. Address any potential concerns regarding delays, labor shortages, price escalations and other factors that should be considered. It may be hard to argue that delays and other impacts were "unforeseeable" on a new project.
- *Ask for Guidance and Resources.* Reach out to your insurance carriers and insurance professional to ask if they are issuing any recommendations or guidelines, or if they are offering any other resources that might assist in a COVID-19 environment. Some carriers are issuing sample letters to send clients and/or similar resources. If you are working with any trade organizations, ask if they are issuing any resources.

As circumstances are constantly shifting, consider designating one person at your firm to keep informed of new restrictions, guidelines, and standards, and have that person disseminate the key information to all employees.

The content above is for general informational purposes. Please consult with your insurance professionals and your own attorney(s) for use in any specific circumstance and for compliance with laws and regulations in effect in the locale of your project at the time of your analysis.

Lee Wagner is a member of Stewart Sokol & Larkin, LLC. Lee dedicates a substantial portion of his practice to the representation of design professional firms in the Pacific Northwest. Lee and his firm offer both risk management and litigation services for those in the design, construction, development and real estate industries. His contact information is: 503-347-8504; [lwagner@lawssl.com](mailto:lwagner@lawssl.com).