

To our contractor clients:

The coronavirus crisis is just beginning to cause effects on the construction industry that should continue to reverberate for many months, if not longer. To help navigate these treacherous waters, Cohen Seglias wants to assist its clients with some helpful forms. First, contractors should conduct a thorough review of their current to ensure that they are well prepared to ride out the storm. In doing so, focus on provisions relating to delay, such as the *force majeure* clause, notice and suspension rights. Also, see if your agreements allow for escalation on the cost of materials.

Once you are aware of the requirements of your agreements, the below forms can be used for the purpose of delay notification. We have also included language to put in proposals on private projects. **Note:** Do not amend bid forms on public projects. Finally, a number of our clients have been requested to provide the project owner or construction manager with expected costs in case of a suspension, so we have included a response letter as well as a chart to assist in the breakdown of impact costs.

The forms below for both contractors and subcontractors are as follows:

- NOTICE TO GENERAL CONTRACTOR OF POTENTIAL DELAY
- NOTICE TO GENERAL CONTRACTOR OF ACTUAL DELAY
- NOTICE TO OWNER OF POTENTIAL DELAY
- NOTICE TO OWNER OF ACTUAL DELAY
- PROPOSAL LANGUAGE FOR PRIVATE BIDS
- RESPONSE TO OWNER REQUEST FOR IMPACT
- RESPONSE TO CONTRACTOR'S REQUEST FOR IMPACT
- SAMPLE LIST OF IMPACT COSTS

Understand that these forms may need to be revised to fit your particular circumstances. The attorneys of Cohen Seglias stand ready to provide you with assistance, when needed. Please do not hesitate to contact us.

Stay safe,

John A. Greenhall
Chairman of Cohen Seglias'
Construction Contracts and Risk Management Group

NOTICE TO GENERAL CONTRACTOR OF POTENTIAL DELAY

[Subcontractor's Letterhead]

Via Email [and however Notice is required to be sent by Subcontract]

Contractor Name

Contractor Address

Re: COVID-19 and Notice of Potential Delay

Dear _____:

Pursuant to Section ____ of our Subcontract, we are required to notify you if we reasonably anticipate a Delay, which includes a force majeure event like the Coronavirus pandemic. As you all know, the information from the CDC, World Health Organization and Federal, State and local government authorities is changing almost hourly. While [Subcontractor] has not currently felt any impact, as the COVID-19 (Coronavirus) health emergency continues to evolve, we have growing concerns regarding its future impact on our labor force and disruptions to timely delivery of material. We will certainly continue to keep you apprised of any issues that may develop during these uncertain times and would welcome the opportunity to work together to develop risk avoidance and mitigation strategies with you and the Owner.

[Subcontractor] reserves all rights that it has under the Subcontract to an extension of time for any delay that is caused by this Force Majeure event.

NOTICE TO GENERAL CONTRACTOR OF ACTUAL DELAY

[Subcontractor's Letterhead]

Via Email [and however Notice is required to be sent by Subcontract]

Contractor Name

Contractor Address

Re: COVID-19 and Notice of Delay

Dear _____:

Pursuant to Section ____ of our Subcontract, we are required to notify you if we are facing a Delay. At this time, [Subcontractor] is being delayed by the Coronavirus pandemic, which is outside of [Subcontractor's] control and constitutes a force majeure event. While the information from the CDC, World Health Organization and Federal, State and local government authorities is changing almost hourly, [Subcontractor] and the Project as a whole has been impacted by the present COVID-19 health emergency as follows:

-
-
-

Moreover, we continue to have concerns regarding this virus' future impact on our labor force and disruptions to timely delivery of material.

At this time, it is impossible to notify you of the direct impact that the COVID-19 will have on Project costs and schedule. Our suggestion is for [Contractor] to schedule a teleconference among all of the subcontractors, the Owner and the Architect to discuss the response to the virus, risk avoidance, mitigation strategies and the impact on the schedule. Whether you schedule such a call or not, [Subcontractor] will submit its costs associated with this impact upon the conclusion of this national emergency.

In addition, [Subcontractor] reserves all rights that it has under the Subcontract to an extension of time for any delay that is caused by this force majeure event.

NOTICE TO OWNER OF POTENTIAL DELAY

[Contractor's Letterhead]

Via Email [and however Notice is required to be sent by Contract]

Owner Name

Owner Address

Re: COVID-19 and Notice of Potential Delay

Dear _____:

Pursuant to Section ____ of our Contract, we are required to notify you if we reasonably anticipate a Delay, which includes a force majeure event like the Coronavirus pandemic. As you all know, the information from the CDC, World Health Organization and Federal, State and local government authorities is changing almost hourly. While [Contractor] has not currently felt any impact, as the COVID-19 (Coronavirus) health emergency continues to evolve, we have growing concerns regarding its future impact on our labor force and disruptions to timely delivery of material. We will certainly continue to keep you apprised of any issues that may develop during these uncertain times and would welcome the opportunity to work together to develop risk avoidance and mitigation strategies with you [and the Architect/Construction Manager/other prime contractors].

[Contractor] reserves all rights that it has under the Contract to an extension of time for any delay that is caused by this Force Majeure event.

NOTICE TO OWNER OF ACTUAL DELAY

[Contractor's Letterhead]

Via Email [and however Notice is required to be sent by Contract]

Owner Name

Owner Address

Re: COVID-19 and Notice of Delay

Dear _____:

Pursuant to Section ____ of our Contract, we are required to notify you if we are facing a Delay. At this time, [Contractor] is being delayed by the Coronavirus pandemic, which is outside of [Contractor's] control and constitutes a force majeure event. While the information from the CDC, World Health Organization and Federal, State and local government authorities is changing almost hourly, [Contractor] and the Project as a whole has been impacted by the present COVID-19 health emergency as follows:

-
-
-

Moreover, we continue to have concerns regarding this virus' future impact on our labor force and disruptions to timely delivery of material.

At this time, it is impossible to notify you of the direct impact that the COVID-19 will have on Project costs and schedule. Our suggestion is for [Owner] to schedule a teleconference among [the Architect/Construction Manager/other prime contractors] to discuss the response to the virus, risk avoidance, mitigation strategies and the impact on the schedule. Whether you schedule such a call or not, [Contractor] will submit its costs associated with this impact upon the conclusion of this national emergency.

In addition, [Contractor] reserves all rights that it has under the Contract to an extension of time for any delay that is caused by this force majeure event.

PROPOSAL LANGUAGE FOR PRIVATE BIDS

NOTICE: THIS PROPOSAL IS CONTINGENT ON A LACK OF IMPACT BY THE CORONAVIRUS NATIONAL EMERGENCY. Given the existence of the coronavirus pandemic, [Contractor/Subcontractor] will use its best efforts to staff and supply this project to be able to hit the scheduled completion date but reserves its right to seek an excusable extension of time if [Contractor/Subcontractor] or its subcontractors and suppliers are unable to maintain planned crew sizes due to the illness, supply shortages or governmental restraints on business, travel and/or assembly. To the extent that the project is suspended pursuant to the terms of the proposed [Contract/Subcontract], we intend to seek additional costs associated with the suspension.

RESPONSE TO OWNER REQUEST FOR IMPACT

[Contractor's Letterhead]

Via Email [and however Notice is required to be sent by Contract]

Owner Name

Owner Address

Re: COVID-19 and Request for Quantification of Impacts

Dear _____:

Thank you for your [letter/email/phone call] of _____, 2020, requesting [Contractor] to provide [Owner] with expected impacts to the Project caused by the coronavirus pandemic. At this time, it is impossible to notify you of the entire, direct impact that the COVID-19 will have on Project costs and schedule. With that said, [Contractor] is attaching to this correspondence a list of its weekly general condition costs. [Owner] should note that this listing does not include any inefficiencies caused by the [slowdown/suspension] of the Work or any suspension related costs, including but not limited to, any general condition costs of our subcontractors or charges from our suppliers relating to warehousing.

Since this national emergency will have an impact to the critical path of the Project, we must assume a day-for-day extension to both the substantial and final completion dates. As this impact winds down, we should consider the use of a recovery schedule. If acceleration is needed, however, [Contractor] will attempt to limit the additional cost as best as possible.

We will certainly continue to keep you apprised of any issues that may develop during these uncertain times and would welcome the opportunity to work together to develop risk avoidance and mitigation strategies with you [and the Architect/Construction Manager/other prime contractors]. In addition, [Contractor] reserves all rights that it has under the Contract to an extension of time for any delay that is caused by this Force Majeure event as well as any costs beyond the costs listed in the attachment.

RESPONSE TO CONTRACTOR'S REQUEST FOR IMPACT

[Subcontractor's Letterhead]

Via Email [and however Notice is required to be sent by Subcontract]

Contractor Name

Contractor Address

Re: COVID-19 and Request for Quantification of Impacts

Dear _____:

Thank you for your [letter/email/phone call] of _____, 2020, requesting [Subcontractor] to provide [Contractor] with expected impacts to the Project caused by the coronavirus pandemic. At this time, it is impossible to notify you of the entire, direct impact that the COVID-19 will have on Project costs and schedule. With that said, [Subcontractor] is attaching to this correspondence a list of its weekly general condition costs. [Contractor] should note that this listing does not include any inefficiencies caused by the [slowdown/suspension] of the Work or any suspension related costs, including but not limited to, general condition costs of our subcontractors or charges from our suppliers relating to warehousing.

Since this national emergency will have an impact to the critical path of the Project, we must assume a day-for-day extension to both the substantial and final completion dates. As this impact winds down, we should consider the use of a recovery schedule. If acceleration is needed, however, [Subcontractor] will attempt to limit the additional cost as best as possible.

We will certainly continue to keep you apprised of any issues that may develop during these uncertain times and would welcome the opportunity to work together to develop risk avoidance and mitigation strategies with you, the Owner [and the Architect/Construction Manager/other subcontractors]. In addition, [Subcontractor] reserves all rights that it has under the Subcontract to an extension of time for any delay that is caused by this Force Majeure event as well as any costs beyond the costs listed in the attachment.

SAMPLE LIST OF IMPACT COSTS

Cost Description	Monthly Cost	Weekly Cost
Insurances		
Bond costs		
Car and travel expenses		
Small tools		
Office equipment and supplies (copies, computers, printers, phones, cell phones, printers, etc.) at the site office		
Photocopying and document reproduction at the site office		
Project photos		
Telephone/computer/email and fax services at the site office		
Safety – inspections, reports and equipment		
Taxes		
Dumpsters		
Temporary site utilities required during construction		
Temporary job site toilets		
Temporary job site identification or signage		
Jobsite fencing		
Jobsite trailer		
First aid station/Eye wash station		
Staff (remaining on stand by due to uncertain duration of impact)		
Superintendent		
Sr. Project Manager		
Project Manager		
Project Executive		

Foreman		
Safety & QC Coordinator		
Layout		
Surveying		
Watchman		
General clean up		
Material Hoist Only		
Other Hourly Employees		
Rental Equipment (remaining on stand by due to uncertain duration of impact)		