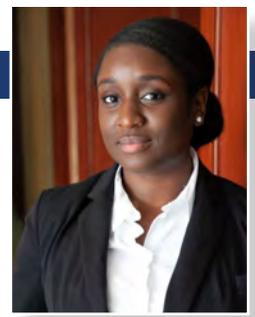


Supply Chain Shortages and Soaring Gas Prices Effect on the Construction Industry



By Veronica Hickey and Aissa Dorange

As we move through 2022, supply chain shortages have not slowed down. Presently, major construction materials are available in short supply and are experiencing excessive shipping delays, which results in astronomical pricing for those materials. Add in high gas prices, and the effect on the construction

board. Understanding who is responsible and working out those issues before they arise leads to more peaceful resolutions.

Alternative Supplies

One way to cut down on delays and increased costs is to look at alternative materials and supplies. When the parties

use fixed price contracts in order to give their consumer the comfort of a price guarantee. However, fixed price contracts generally leave the increased costs to the contractor. In order to mitigate the risk to the contractor, a price escalation clause may be inserted into a contract, shifting some of the risk and maintaining an ability to complete the project.



industry is dramatic. For instance, since December 2021, the cost of lumber has almost tripled, and delivery of wall insulation can take up to six months more than what has traditionally been expected.¹ This has added to the short supply of inventory on new construction and we are experiencing the mid-2000s on steroids. Performance of construction in accordance with time and price contracted for has become almost an impossibility, frustrating contractors and consumers alike to the point of unnecessary litigation.

While we wait for the proverbial bottom to fall out, certain terms in construction contracts have become more important. Planning ahead and giving these terms consideration before issues arise is in the best interest of all parties. Everyone loses when price increases and delays trigger a dispute that cannot be rectified. The contractor loses the job, and the consumer will ultimately spend more money and face further delays to get a new contractor on

are drafting their contracts, they should discuss their willingness to deviate from the initial plan should materials become scarce. A consumer may want to decide which custom elements of their build are most important, agreeing to be flexible with other elements depending on availability.

To account for low availability of supplies, consumers and contractors have been settling on alternative materials, such as applying different types of insulation, rather than the more common petroleum-based ones, or using concrete planks instead of metal trusses.² In some cases, contractors have combatted lumber issues by utilizing steel framing in place of wood.³

Importantly, consumers will need to hire contractors who have experience with substitute materials to ensure proper installation.

Price Escalation Clauses

Many experienced contractors

Boiler plate language should be replaced with detailed terms addressing the risk allocations. Negotiations can occur to make all parties agreeable to the terms. For example, a contractor can take responsibility for up to a certain percentage of price increases, or the parties could split the increase. Regardless of the agreement, the contractor should always provide notice to the consumer and have him or her sign a change order. Price escalation clauses can help manage expectations, as parties learn that prices are likely to change. Additionally, these clauses can eliminate disagreements since each party will be prepared for their own potential risks.

Parties should also give consideration to timing and force majeure clauses, as well as be aware of the shortcomings of those terms. A consumer should know that what is “reasonable” as far as delays is now much longer than a few years ago. And contractors should be aware the force majeure provision cannot be relied upon as a catchall. The line for what is “unexpected” is faint as we are two years into a pandemic, with a war occurring overseas and a dearth of qualified labor in the industry.

For now, price increases associated with the materials shortages and



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shipping costs are inevitable. If contractors and consumers negotiate these considerations at the outset of a contract, it should avoid disputes if faced with bumps in the road due to shortages and increased costs. While controlling the current shortages is

impossible, negotiating these terms can at least help contractors and owners feel better prepared for the challenges ahead.

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