

Managing Concrete Projects: Concrete/Steel Price and Delivery Volatility Risks

ASCC Position Statement #45

The building industry periodically experiences supply fluctuations for essential concrete construction materials, including cement, fly ash, aggregates, reinforcing steel, lumber, and fuel. Cost fluctuations can include time and dollar impacts due to supply chain breakdowns, trade wars, tariffs, natural disasters, pandemics, and government and environmental regulations. Unpredictable and unstable market factors are beyond the control of the concrete contractor and make it difficult to maintain the costs and schedules reasonably anticipated at bid time.

Proactive Risk Management

Whenever possible, early involvement of the concrete contractor and their major product suppliers during project design can optimize the ability of the owner's design and construction team to manage the material supply chain. Early dialogue regarding pricing levels, mill orders, availability of price lock mechanisms, and delivery date projections can maximize benefits to the owner and help minimize project risk. It's also possible to quote the quantity and cost of some materials as allowances. According to AIA Document A201®-2017, "General Conditions of the Contract for Construction," § 3.8.2.3, whenever costs are more than or less than allowances, the contract sum is adjusted accordingly.

Establishing timely and accurate project schedule milestones is critical to managing supply, labor, and material costs. To maintain the original project schedule, timely product decisions by the owner and design team and a streamlined submittal and approval process are mandatory to assist the contractor in effective early purchasing to minimize the risk of price increases and delays.

AIA Document A201-2017, § 9.3.2, provides for payment "of materials and equipment delivered and suitably stored on the site." In addition: "If approved in advance by the Owner, payment may similarly be made for materials and equipment off the site at a location agreed upon in writing." Purchase of materials at the start of the project protects both owner and contractor from cost increases and supply shortages. These AIA provisions allow for early purchase and payment for materials and equipment stored both on and off site.

"Emergencies" declared by state governors would also invoke a clause in AIA Document A201-2017, § 10.4, that provides for "additional compensation or extension of time claimed by the Contractor on account of an emergency."

Industry Practice Recognizes Delays Beyond the Contractor's Control

AIA Document A201-2017, § 8.3.1, states that if the contractor is delayed at any time in the commencement or progress of the work by causes beyond the contractor's control, and the architect determines the delay is justified, then the contract time shall be extended for such a reasonable time as the architect may determine. Two items cited in this section are "unusual delay in deliveries" and "unavoidable casualties." These items specifically relate to concrete and reinforcement delivery and transportation challenges in the ready mixed industry with the shortfall of drivers. Thus, AIA Document A201-2017 provides for an equitable adjustment for delays and time extensions for "causes beyond the Contractor's control."

Provide Equitable Price Adjustments in Contract Language

Consider contract language to equitably distribute the risk sharing among all parties. ASCC recommends adding contract language to address these issues. An example is shown in the following. It is provided to initiate discussion and negotiation and should not be construed as legal advice. ASCC recommends contractors retain legal counsel to develop or review contract language appropriate for their projects. One possible contract language clause could be:

(Client/Contractor/Owner) acknowledges that material prices can fluctuate unexpectedly, and Subcontractor has no control over such material price fluctuations. Subcontractor shall order material quantities for the job and shall be paid for all materials stored for use on the job. Subcontractor shall store materials specifically identified for the job in a manner that is agreed to by (Client/Contractor/Owner), and all costs of storage shall be reimbursed to Subcontractor as a cost of the work.

If Subcontractor material costs increase, then Subcontractor shall be entitled to a change order for these cost increases.

In accordance with AIA Document 201-17, § 7.3.8, it is customary for deductive changes to be the actual net cost, not including overhead and profit. ASCC concrete contractors will assess market conditions, evaluate current product supply, analyze vendor quotes, and work with the general contractor or construction manager to help minimize the owner's risk and deliver a successful concrete project. Achieving this objective requires cooperation among designers, concrete contractors,

general contractors, and owners. If this risk is not addressed, contractors will build contingencies into their bids, likely increasing the owner's costs and the potential for unnecessary disputes during the project.

If you have any questions, contact your ASCC contractor or the ASCC Technical Hotline at (800) 331-0668.

Acknowledgement

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