

Rights Arising From Coronavirus-Related Project Shutdown

The remedial measures enacted to combat the coronavirus could cause projects to be shutdown. It is vitally important to know your rights in the event of a project shutdown. This client advisory addresses suspension, termination, and extension of time issues and the contract provisions triggered by their use. These topics are addressed below by referencing provisions of the A201 given it is the most widely used contract document. The provisions referenced, however, likely have counterparts in other contracts.

Most contracts have a suspension clause. For example, A201, § 14.3.1 states the Owner can “without cause . . . suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.” Under A201, § 14.3.2, the Contractor would be entitled to an adjustment to the Contract Time and Sum upon resumption of the work.

Under A201, § 14.4, the Owner can terminate for convenience “at any time” and “without cause”. The Contractor’s remedies under such a termination are set forth in A201, § 14.4.2.

The Contractor has the right to terminate the Contract under A201, § 14.1.1. A201, § 14.1.1 limits those rights, however, to four particular events. Germane to the current situation are: “Issuance of an order of a . . . public authority having jurisdiction that requires all Work to be stopped” and an “act of government, such as a declaration of national emergency, that requires all Work to be stopped.”

A201, § 14.1.2 also permits the Contractor to terminate if the project is delayed “in an aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.”

Importantly, under either A201, § 14.1.1 or A201, § 14.1.2, the Contractor’s remedies are recovery for Work executed “as well as overhead and profit on Work not executed, and costs incurred by reason of such termination.”

Contractors might also find relief in the form of an extension of time under A201, § 8.3.1. This Section permits an extension of time due to several factors including “causes beyond the Contractor’s control”.

Regardless of whether the project is suspended or terminated or the Contractor simply seeks an extension of time under A201, § 8.3.1, it is essential that the “notice” requirements be strictly followed. A failure to strictly comply with notice requirements may render an otherwise valid claim void. Indeed, the party that fails to give notice may be exposed to a breach of contract claim. For example, even if the Contractor has an absolute right to terminate under either A201, § 14.1.1 or A201, § 14.1.2, but fails to comply with the notice requirements, then it may be exposed to a breach of contract claim based upon abandonment.

Notice requirements typically specify who must receive notice, how the notice must be served, and when the notice must be served. For example, under A201, § 1.6.1, notice “shall be provided in writing to the designated representative.” Moreover, under A201, § 1.6.2, notice shall be effective “only if delivered . . . by certified or registered mail, or by courier providing proof of delivery.” Likewise, claims for an adjustment to the Contract Time or Sum must strictly follow the mandates set forth in A201, § 15 including, without limitation, A201, § 15.1.2 and A201, § 15.1.3 that specify the deadlines for making such claim.

In summary, the coronavirus has the potential to disrupt project schedules. It is imperative that you understand your rights and requirements should such a disruption occur.

Date Created

March 18, 2020