



# Client Advisory Bulletin

## COVID-19 Preparedness

Updated: April 21, 2020

We have prepared this bulletin to share Colliers Project Leaders' current perspective on the risks that COVID-19 poses to Canadian construction projects. This bulletin is a useful starting point for the analysis of specific actions needed to address the unique aspects of each project. As the COVID-19 situation evolves, we will continue to update this bulletin with new, relevant information.

### STATUS

The risk to construction projects in Canada is elevated as public health officials are recommending increasingly restricted social isolation. The Public Health Agency of Canada (PHAC) currently reports that the number of COVID-19 cases is growing daily, as it is in most countries around the world. The public health risk is rated as high and COVID-19 is considered a serious health threat.

Small construction projects with a short duration could be significantly affected. Larger construction projects that are planned to last a year or more should expect a lower overall impact. As the immediate challenges of responding to COVID-19 are addressed, we expect the construction industry to stabilize.

### RISKS

Below are the most important real property project risks related to the COVID-19 pandemic.

#### 1) Provincial governments may further restrict construction activities

Most provinces have now declared states of emergency and some, including Quebec and Ontario, have issued orders requiring construction sites that are not considered essential to shut down. Other provinces may follow suit if current initiatives to curtail the growing infection rates are not effective. British Columbia still considers construction sites to be essential services, although it has published [Guidance to Construction Sites Operating During COVID-19](#).

Where provinces have ordered construction sites to shut down, it is likely that Contractors will claim delays. If the Contractors are working under Canadian Construction Documents Committee (CCDC) contracts, they may trigger provisions in the contract that require the Owner to accept a schedule extension and pay reasonable costs incurred by the Contractor. Other construction contracts, such as those typically used in Quebec, may have a *Force Majeure* clause that could apply to a Contractor's claim. Owners should get legal advice to determine if a provincial shutdown would require the Owner to pay the Contractor's costs and what types of costs would be considered reasonable in the current situation.

## 2) Municipal officials may require non-essential workers to stay home

A number of municipalities have closed their offices, which may impact ongoing government operations including the issuance of permits and the conduct of inspections. Owners should ensure that plans are in place to address the following:

- a. **Disruption to permitting processes** – Some municipalities, including Toronto, have closed their building permit operations. Others, like Vancouver, Edmonton, Winnipeg, Mississauga and Halifax, are accepting permit applications through email or web submissions. Owners should confirm the status of building permit offices in their location. If permits are not being accepted or processed, Owners should expect the start of construction to be delayed.
- b. **Disruption to building inspections** – The unavailability of building inspectors may require construction projects to stop at key stages before work is concealed. The City of Toronto has implemented a protocol for the architect or engineer of record to perform the actual inspection and submit the results to the building inspector electronically for review. A similar approach may be possible elsewhere. Alternative strategies may be considered, such as engaging independent engineers to conduct the inspections and using photo or video evidence of work before it is covered.

## 3) Project Team members may be affected by COVID-19

Although there is much work that can be performed by Project Team members working from home, there are some Project Team members, such as contractors, sub-contractors, consultants, and project managers, who must carry out their work on construction sites, client offices, and other locations away from their home. In these circumstances, there is risk that Project Team members may be infected with COVID-19, which could leave the Project Team short of resources and lead to reduced productivity. To minimize labour disruption and the spread of disease, Owners should ensure that all firms participating in their projects (architects, sub-consultants, general contractors and trades) have internal protocols in place to address the following:

- a. **Containment** – Ensure staff who are exposed to the virus, or have a higher risk of being exposed, go into self-isolation to avoid spreading the virus within each firm. This includes people returning from business and personal travel to other countries.
- b. **Prevention** – International travel is now restricted. Firms should consider restricting non-essential business travel within Canada. Provide measures to facilitate cleaning and require staff to stay home if they are exhibiting symptoms or feeling unwell. The United States Center for Disease Control now [recommends](#) the use of simple cloth masks to reduce the spread of the disease.
- c. **Education** – Promote practices that are proven to reduce viral transmission and refer staff to reliable sources such as the Government of Canada webpage [Coronavirus disease \(COVID-19\): Outbreak update](#).
- d. **Continuous Improvement** – Regularly monitor recommendations from health authorities and adjust protocols accordingly.
- e. **Communication** – Request that all firms participating in the project share relevant corporate and site specific COVID-19 mitigation policies. This is essential to enable all parties involved in the project to make informed decisions regarding the possible risk of transmission to their own staff.

- f. **Cleaning** – A protocol should be in place for deep cleaning of the job site if a presumptive case of COVID-19 is identified. For renovation projects, this should include integration with the Owner's deep cleaning of the balance of the building. Owners should avoid cost penalties that might incent the contractor to under-report cases to the owner.

The [Canadian Construction Association](#) published *Standardized Protocols for All Canadian Construction Sites* on March 30, 2020. This guideline covers most of the aspects listed above and over the next weeks will become increasingly familiar to contractors. Implementation of these protocols may reduce productivity on job sites to some degree.

#### 4) Availability and price of materials may change

During the past few weeks that we have been addressing the COVID-19 pandemic, we have seen projects that have been disrupted by changes in the supply chain for materials. Initially this applied to some products supplied by China, and later products supplied by Italy. With the recent, tragic and rapid spread of COVID-19 in the United States, we expect materials produced there to be delayed. As material delivery delays occur, we also expect price increases for many materials. Owners should assess their current state of procurement:

**Projects where material supply contracts have been executed** will be governed by the contracts and any supplementary conditions.

For projects using CCDC contracts, if contractors are delayed by a cause beyond their control, then Owners must allow a reasonable extension of time recommended by the Consultant. In the most common contract (CCDC2 – stipulated price), the Owner would not bear any cost increase for this time extension. Under construction management contracts, the Owner may bear all costs in addition to the Construction Manager's administrative costs. Owners should consult with their legal advisors to confirm the application of these contract terms and any supplementary conditions.

- a. **Projects where material supply contracts have not been tendered** should expect to receive pricing that reflects the perceived risk of price increases. Owners should be aware that in times of uncertainty, the expected value of risk is often exaggerated, and prices may be far higher than warranted. Options should be considered, such as deploying appropriate supplementary conditions, delaying award, allowing alternative suppliers, or Owners taking on the risk of future material cost changes (increases and decreases). Owners should consult with their Project Managers to develop their best strategy.
- b. **Projects where tendering is in process** are more complicated. If bids have not been received, Owners should consider issuing an addendum to clarify which party will bear the risk. Owners cannot afford to have some bidders assume one direction and others assume something else. Here the options described in the paragraph above also apply.

If bids have been received but have not been awarded, Owners need to achieve certainty of costs included in the bid. However, post-bid negotiations are fraught with risk. Owners should consult with our Project Managers and their legal advisors to determine a fair, honourable and transparent process that allows for assessment of the bids.

#### 5) Shortages of Personal Protective Equipment may affect work schedules

There are shortages of N95 respirator masks, which Canadian medical teams use to protect medical professionals. These respirator masks are also used as personal protective equipment for many construction workers. A shortage of N95 masks could stall some types of work. In some cases, other

higher grades of respirators (N99 and N100, and P95, P99 or P100) could be used. Limited availability of N95 respirators may lead to delayed work even if contractors seek to use higher-grade respirators to replace unavailable N95 respirators. Owners should generally not have to pay incremental costs for use of these personal protective equipment. However, consideration could be given to negotiating an additional cost to use higher-grade respirators or other personal protective equipment to allow construction to continue.

## SUMMARY – Plan Ahead

1. Contractors are responsible for all health and safety on construction sites. However, Owners must ensure integration of the Contractor's policies with their own operational health and safety practices. Therefore, Owners should request copies of corporate and site-specific policies from all consultants and trades, confirming that they have appropriate internal protocols to contain and prevent their staff from spreading the COVID-19 virus. These policies should also promote the continuity of office work and site work.
2. Confirm any material delivery delay and cost escalation impacts for materials supplied by the contractor, and for any materials the Owner provides. Further steps may be determined based on the degree of impact on the business case. Be prepared to accept alternative products if there are shortages of specified products.
3. Monitor changes in the PHAC assessment of public health risk and, if the risk has increased, establish any additional risk management tasks.
4. Allow contractors to determine whether it is no longer possible to work. If Owners make that determination, Owners could incur greater cost liability.

In addition, Owners should consider if, or when, the following steps may add value to the project:

5. Conduct risk workshops to assess and quantify changes in project risks given the PHAC assessment of public health risk and provincial government orders in place at that time.
6. Develop a response protocol to facilitate rapid response to changes in public health risk or government restrictions with appropriate involvement from the project team.
7. Conduct a sensitivity analysis to assess how impacts caused by COVID-19 infection would affect the project justification and the success of the business case.