



The British Constructional Steelwork Association Limited

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12th March 2020

ALL MEMBERS MEMORANDUM No 50-20

COVID-19: CONTRACTUAL ADVICE

AMM 43-20, AMM 37-20 and AMM 49-20 have focused on prevention of spreading illness, health and safety and employment matters, this memo will cover contractual and project issues.

First of all, review your active contracts and any you are about to enter into.

What do your contracts say about:

- use of alternative suppliers or materials
- force majeure (if defined, sometimes epidemics or pandemics are included)
- relevant events/matter enabling claims for extensions of time and additional money
- delay and liquidated damages
- rights to suspend/terminate the contract
- notices – early warnings and notification of relevant events/ compensation events in particular

JCT Relevant Events which may apply

- 2.19.7/.9 – Suspension/impediment by Main Contractor
- 2.19.15 – if emergency legislation affecting the Main Contract Works is enacted
- 2.19.17 – force majeure – N.B. not a Relevant Matter (so extra time may be granted but not additions to the Sub-Contract Sum)

NEC Compensation Events

The main one would be 60.1(19) which is the NEC equivalent of force majeure. An event which:

- Stops the Sub-Contractor completing the whole of the Sub-Contract Works or
- Stops the Sub-Contractor completing the whole of the Sub-Contract Works by the date for planned Completion shown on the Accepted Programme

and which

- Neither Party could prevent
- **An experienced subcontractor would have judged at the Sub-Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for* and**
- Is not one of the other compensation events stated in the Sub-Contract.

***Take care when entering into new (Sub)contracts now with this clause, as you would almost certainly be deemed to be aware of COVID-19 at this time.**

OTHER CONSIDERATIONS:

Site lockdown - what will you do if your employees or workforce do contract coronavirus, and if you do shut down works how do you do so quickly and safely? How quickly and safely can you react on receiving a notice to shut down your works on site from a Main Contractor?

Understanding your supply chains - where are labour and materials coming from (eg are key materials being sourced from a country known to be particularly badly hit by the disease)?

Insurance - whether you have any insurance policies that could help you recoup any losses - and do you need to get in touch with insurers under the terms of your insurance policy?

Please contact me if you have any individual contract queries or need additional assistance.

DEBORAH HARRISON
Legal Manager and Company Secretary