INQUIRY 1

How has the COVID-19 pandemic affected state agencies, interested parties, and the public as it relates to transportation matters?

The construction industry continues to assess the short-term and potential long-term implications due to COVID-19. Many construction projects today rely on a global supply chain and modularized construction which has required Owners, Contractors and the financial community which provides financing to projects to assess changes to the risk regime reflected in construction contracts.

All construction contracts, regardless of the delivery method used, should incorporate a set of "COVID-19 Baseline Assumptions." The Baseline Assumptions should explicitly identify specific protocols required by the Owner and explicitly identify all current orders issued by the State of Texas and local governments. This ensures that the contract price and contract time in all bids include all impacts associated with the Contractor performing the Work in accordance with the COVID-19 Baseline Assumptions through Final Completion.

The Contractor should be entitled to additional relief in limited circumstances, particularly for instances where the critical path is impacted, as follows:

- The contract price and/or contract time be adjusted to compensate the Contractor for the impacts of any of the following:

  1. Material deviations from the COVID-19 Baseline Assumptions that impose greater restrictions on working conditions at the site for any Contractor-Related Party; and
  2. Delays in the delivery of equipment and/or materials to the extent caused by COVID-19.

- Additionally, the Contractor's right to additional relief should not be limited by the 'foreseeability' requirement applied to other change order / claim requests.

As Owners evaluate advancing spending on infrastructure projects to reinvigorate the economy, we recommend that as Owners reassess the overall risk regime reflected in all Contracts, uncertainties due to COVID-19 are also incorporated.