

Epidemic Rider For Negotiated Subcontracts and Response to Proposals



*Language prepared and provided by Lindabury, McCormick, Estabrook & Cooper, P.C.



Below is a Rider that can be included in a response to a proposal or an actual subcontracting agreement to take into account the risk to the parties of COVID-19. This has been prepared by Lindabury, McCormick, Estabrook & Cooper, P.C. attorney, Greg Vitali, Esq. Please note the Coronavirus and related diseases associated with it, such as COVID-19, are now well known so reliance on a Force Majeure clause to relieve a contractor from contractual obligations will have less weight, the issue should now be directly addressed in the response to proposal and subcontract. As with all contracts, this is an exercise in negotiation as to where the risk falls for a foreseeable event, and this is drafted to move it upstream. The upstream contractual parties have the right to request verification and documentation to substantiate the increase included in paragraph two.

Add the following:

Epidemic Rider

Notwithstanding any provision(s) of this Subcontract, if as a direct or indirect result of any virus, disease, contagion, or any other widespread communicable disease that causes disruption, including but not limited to COVID-19 or any other Epidemic or Pandemic (hereinafter collectively referred to as "Epidemic"), Subcontractor's work is delayed, disrupted, suspended or otherwise impacted by, among other things, (i) disruptions to material and/or equipment supply; (ii) illness of Subcontractor's workforce and/or unavailability of labor; (iii) government quarantines, shelter-in-place orders, closures, or other mandates, restrictions and/or directives; (iv) Owner or Contractor restrictions and/or directives; (v) fulfillment of Subcontractor's contractual or legal health and safety obligations associated with an Epidemic; then Subcontractor shall be entitled to an equitable adjustment to the Subcontract Schedule and duration to account for such disruptions, suspensions, and impacts. Under such circumstances, Subcontractor shall not be liable for any liquidated, compensatory, consequential, special and/or indirect damages incurred by the Owner or Contractor resulting from such delays.

To the extent any of the causes identified above result in an increase in the price of labor, material, or equipment used in the performance of this Subcontract, the Subcontractor shall be entitled to an equitable adjustment to the Subcontract price for such increases. Any such equitable price increases to labor, material or equipment shall be provided by way of a Change Order to the Subcontract.

This language shall take precedence over any conflicting language in the Contract Documents.