

Some Thoughts on the Effects of the Covid19 Pandemic

A SHORT SUMMARY

Historical Problems of Covid19 in the Delivery of International Construction Projects

Problems have included delayed starts; suspension of work; delays and disruptions to work progress; reduced productivity of labour; unreliability of subcontractor, supplier, and vendor performance; and uncertainty in project outturns.

In addition to these problems further challenges have included:

- *lack of clarity of owner requirements and directions regarding such things as lockdowns and travel restrictions, and different interpretations of those requirements and directions*
- *major reductions and changes to work scope*
- *uncertainty regarding future financial capacity of subcontractors and suppliers/vendors*
- *inadequate clarity of available cash flow for project completions.*

Likely Continuing or Future Impacts of Covid19 in the Delivery of International Construction Projects

The continuing and future impacts of Covid19 on projects are likely to be:

- *historical problems will continue (but their impacts should be better understood, more predictable, and more easily managed)*
- *the future impacts are likely to be:*
 - *greater uncertainty with project scope (as some existing projects are reduced in scale, or adjusted to reflect the changed economic conditions)*
 - *strong resistance from owners to any claims for additional payments but (perhaps) less resistance from owners to claims for extensions of time*
 - *increased pressure from subcontractors and suppliers/vendors for improved payment terms*
 - *increasing cash flow challenges for all project participants.*

MANY ECONOMIES HAVE BEEN DAMAGED AND THE FOREGOING ISSUES ARE LIKELY TO INCREASE WITH THE IMPACT OF THE CONFLICT IN UKRAINE

A View of the International Construction Business

Some two years ago many thought the Covid19 outbreak would be quickly contained, and things would quickly return to normal. ***But the effects of the pandemic have extended beyond the short term and may continue for some time yet.*** The economies of many countries have been damaged and this is likely to be exacerbated with the ongoing conflict in Ukraine.

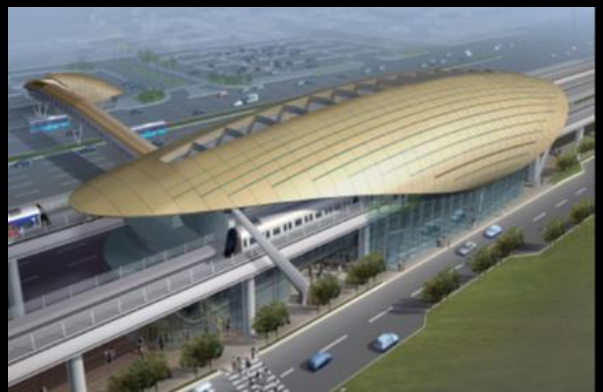
Accordingly:

- many overseas projects have been stalled, or significantly delayed because of the effects of Covid19, and are likely to be so. Significant losses may already have been suffered. ***Completion of those projects will probably cost considerably more, and many governments, private owners, and local subcontractors and suppliers have already been financially weakened***
- procurement of materials and equipment is likely to take longer and cost more ***and payment terms from suppliers will, almost certainly, be more onerous***
- main contractors will have very major decisions to make, and delays in making those decisions is leading to further costs being incurred and further delays. Business and contracting risks will be uncertain, and



these risks will have to be clarified and evaluated quickly. Additional costs and losses already suffered will have to be recovered

- ***the financial effects of those delays and where projects are required to be restarted forward costs and contracting terms will have to be considered in detail, and different completion options may have to be modelled. Clear strategies are having to be developed for such things as completion budgets and schedules, local subcontractor and supplier cash flow requirements, the impact of delays to manufacturing and shipping of equipment, retention of labour, equipment warranties and guarantees, and the potential risks associated with performance bonding***
- companies investing in independent power stations, private highways, railways, and airports, and the like will have to investigate their financial models and the risks now associated with those investigations. ***Finance and concession agreements, and construction and operation/maintenance contracts will have to be restructured, and renegotiated***
- new contracts and agreements both for public and private infrastructure and developments will necessarily include many new terms, and new risks. And these new risks will have to be included in subcontracts and supply agreements.



Some Historical Covid19 Issues on Various International Construction Projects

The following specific issues have arisen (with sometimes several of them on the same project):

- *tender processes are being delayed with contractors being requested to extend the validity of pricing*
- *difficulties in obtaining visas for key personnel*
- *the issue of a notice to proceed or commence is being delayed and often with little certainty when the project will be permitted to start*
- *major changes being made to the project work with reduced specifications and/or reduced scale*
- *work being omitted and being tendered to other cheaper contractors*
- *construction contracts being terminated*
- *subcontractors and suppliers demanding increased payments or 'cost-plus' contracting arrangements*
- *uncertainty with delivery dates for key materials and equipment.*

Each of these issues is causing delays to completion of projects and leading to additional costs. But more importantly in combination they are dramatically increasing the risks associated with construction contracts. These risks are requiring those affected to consider project and business decisions, the most important of which appear to be:

- ***whether to proceed with the project at all***
- ***whether to reduce the scale of the project or the quality of the project***
- ***whether to reduce site and project resources to a reduced or minimum level (including whether to suspend or terminate subcontract and supplier agreements)***
- ***how to report financial revenues (including whether to assume recovery of the additional costs in future claims or to declare those costs as losses).***

Clearly these are major decisions which can have wide ranging project and corporate repercussions.

Covid19 Effects – Some Early and Continuing HPP Findings

There follows some of HPP key findings.

Government Covid19 Measures

Measures taken by some Governments around the world to limit and control Covid19 include 'lock-down' restrictions, closure of non-essential shops, restaurants, community spaces, and schools, social distancing, limitations on non-essential travel, and implementation of a 'stay at home' policy and restrictions.

Impacts on Projects

The pandemic, and the measures implemented to fight it, has had a devastating and unavoidable effect on the global construction industry and its workforce. Serious and unforeseen impacts are occurring to many construction projects worldwide, including significant delay and disruption and additional costs for owners, contractors, subcontractors, and suppliers. These impacts have included:

- imposed restrictions on methods of working on sites and the implementation of restrictive site operating procedures and safe working practices to comply with Government recommendations and public health guidance to avoid the spread of the virus among the workforce
- loss of availability of management, labour and key personnel with increased absenteeism and sick leave
- working practices changed to enable working from home
- contractors required to put in place measures to prevent the spread of Covid19 (including imposing travel restrictions)
- disruption of global supply chains caused by decline in manufacturing volumes of goods, equipment, and plant
- restrictions on exports and logistics
- shortages of materials or finished goods
- inability of contractors to keep the work force fully mobilised
- difficulties in securing capacity from specialist subcontractors or to obtain goods, plant or equipment to progress work on site at the expected rate (resulting in slow-down of work, or in severe cases, suspension of work or closure of project sites)
- implementation of Government policy in some countries has resulted in the closing of construction projects classed as non-essential.



The impact on workforce and the additional costs incurred has been particularly felt in countries where a high proportion of migrant workers are involved in construction.

Some Key Observations on Specific Project Impacts

These have included:

- delays in mobilisation of site teams
- uncertainty with completion of designs being carried out remotely
- changed or uncertain site working methods with reduced productivity of the labour force
- restrictions on the importation of foreign labour and construction plant
- delays in clearance of imported materials and equipment
- uncertain timing of supplier deliveries and additional costs being charged
- uncertainty of owners with potential reductions in project scope and/or quality
- significant uncertainty with financial viability of projects and project sponsors
- serious debates regarding terms of performance bonds, and material and equipment warranties
- uncertainty on insurance policies coverage
- key subcontractors, material suppliers and equipment vendors financially distressed.

Some Key Observations of Approaches to Impacts

There have been some regular findings:

- *the standard terms of most current international construction contracts are inadequate for dealing with the effects of Covid19. [And it is, therefore, vitally important that notifications or requests under these contracts are carefully worded to provide the best basis for pursuit of entitlements]*
- *additionally, many of those contracts include terms which, in any event, oblige contractors to respond to the impacts of the pandemic*
- *the approaches of many contractors relying upon 'force majeure', or a change in law or legislation, or an impossibility of performance are highly unlikely to deliver a satisfactory financial resolution*
- *other contractors have sought to argue that owner's representative properly should issue instructions to enable performance of necessary obligations changed because of Covid19, or that the Covid restrictions required by governments constitute procedures by public bodies, or that the changes caused by Covid19 should properly be instructed as variations*
- *some contractors have taken no action (either waiting for the effects of Covid19 to cease, or because they are uncertain how to proceed) and as a result there is a real risk any entitlement has been, or will be, lost*
- *the most serious issue remains the lack of adequate evidence to fully demonstrate the additional costs incurred, or the delays suffered. **It is becoming increasingly clear that even if any claim is accepted the inability to provide evidence of the actual delays suffered and additional costs incurred will severely restrict financial recovery***
- *some owners are reassessing the viability of projects and work is being either omitted, or overtly or covertly delayed, or major changes to specifications are being instructed*
- **the effects of Covid19 should now be considered as (at least) medium term requiring different thinking. There are now new important business and project risks to consider.**



All of this has led to projects progressing with much greater and quite different risks.

Often the financial viability of projects under construction has been the most common and serious risk. Many projects are undergoing physical and financial reviews and potential restructuring. This is causing further delays and uncertainty ***and leading to major concerns regarding sufficiency of cash to reimburse the additional costs being incurred and to complete the projects.***

Covid19 Financial Viability and Cash Flow Certainty

This increased uncertainty in future project revenues is forcing project and corporate executives to completely rethink their approach to financial risk management. Business survival may be at risk here. Cash receipts will be the true and only measurement of future profits.

The means of delivering projects is already having to change. All project participants are realising these circumstances will prevail for a considerable period. There is a recognition the future will be quite different.

The better companies are responding to the challenges and ***financial management and risk management of projects are being substantially improved.***



Undoubtedly some future projects will contain contract terms adapted to better deal with the likely future impacts of Covid19. However, there will also be projects where terms will be the same or very similar and obtaining relief from these for Covid19 impacts will remain difficult. Historically, collection of detailed evidence of the actual impacts of Covid19 has been a very major challenge. Even where there has been a clear contract entitlement the failure to properly evidence the actual impacts has quite understandably led to denial of any adjustment of payment or time. Of course, the quality of evidence will be even more important if the effects of Covid19 continue into the future and affect new projects.



The High-Point Experience

POWER GENERATION

350+

POWER GENERATION PROJECTS



Combined-Cycle
Hydroelectric
Nuclear
Renewable
Thermal

TRANSPORTATION

250+

TRANSPORTATION PROJECTS



Airports
Bridges
Highways
Maritime Facilities
Rail Systems
Tunnels

OIL, GAS AND INDUSTRIAL

450+

OIL, GAS AND INDUSTRIAL PROJECTS



Manufacturing
Mining
Oil & Gas Processing
Pipelines
Utilities

COMMERCIAL AND PUBLIC BUILDINGS

300+

BUILDING PROJECTS



Hotels & Resorts
Institutional Facilities
Offices & Retail
Sports & Leisure

PROCUREMENT TYPE

PPP, PFI, IPP, IWPP and PROJECT PARTNERING, EPC, EPCM, DESIGN AND BUILD, DESIGN, BUILD and OPERATE, EARLY CONTRACTOR INVOLVEMENT and many HYBRID FORMS

TYPICAL CLIENTS

INSTITUTIONAL and PRIVATE FUNDERS, GOVERNMENT AGENCIES, PRIVATE SPONSORS, INVESTORS and DEVELOPERS, INSURERS, MAJOR INTERNATIONAL CONTRACTORS, EQUIPMENT VENDORS/SUPPLIERS and OPERATORS

If you require any further discussion or explanation of the matters described above, then please let us know.

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