

# Price Escalation Impacts

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## CONTACTS

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This bulletin provides guidance to contractors, subcontractors, suppliers, and others to ensure compliance with contractual change order requirements in the event work on a construction project is impacted by price escalation.

### **Bid Protection Tips:**

- **Keep bids open for less than 30 days with a designated sunset date.**
  - Keeping your bids open for less than 30 days can help protect you from sudden changes in pricing and help maintain your bids' competitive status.
  - If asked to extend the time a bid is open, reconfirm prices before agreeing.
- **Lock in material prices and confirm an agreement.**
  - Getting a signed, written agreement with your supplier – that notes the specific price agreed to – will be extremely valuable.
- **Consider specific proposal terms.**
  - Make sure to include in your bids/proposals language such as:  
“Upon release by the customer to proceed to purchase raw materials, this proposal becomes a binding agreement.”
  - If you include this language in a proposal, make sure that the proposal is specifically incorporated by reference into the contract.

### **Contract Protection Tips:**

We also recommend that you add an Escalation Clause, which will compensate you in the event there are increases in raw material or equipment costs. **Look for a clause like this:**

Material prices, including construction materials, are based on current prices at the time of the Proposal. Any significant price increases (meaning a price increase exceeding 10%) in materials necessary to perform the work that occurs during the period of time between the date of this Proposal and Substantial Completion of the Project shall cause the contract price to be equitably adjusted by an amount reasonably necessary to cover any increase. Further, if material or equipment required by the contract is not available due to shortage or unavailability or if the price to procure such material or equipment increases as set forth in this provision, then an acceptable substitute shall be found and an adjustment in the contract price shall be made accordingly. The contractor shall be entitled to an extension of time for any delay in obtaining delivery of the item necessary for completion of the Work.

Additionally, define unavailability to obtain materials as an excusable delay or force majeure event in the contract.

If the contract does not include an escalation provision, you should revise it to include a provision. Check the prime contract to see if escalation has been addressed. If so, the owner and the contractor should not object to including an escalation provision in downstream contracts.

**Supply Protection Tips:**

- **Negotiate for the release of funds to make early purchases when needed.**
  - Negotiate contracts that allow you to purchase materials in advance to avoid a price increase or product unavailability.
- **Confirm product lead times in advance of project needs.**
  - Put a hold on material verified to be in stock.
  - Make purchases early when feasible.
  - Obtain guarantees from your suppliers.

**Price Escalation Action Items:**

If you experience a price escalation impact, it is imperative that you comply with the notice provisions of your contract and track your actual time and damages.

1. Keep meticulous records of all increased expenses and provide supporting documentation as required to obtain payment.
2. Track your material costs to establish the increased cost versus the amount at bid.
3. Follow the recommendations set forth in "Protect Your Right to Payment."



Contact Partner [Denise M. Motta](#) with any questions.