

“What Can You Do When Prices Change (and not for the better)?”

A mainstay of the construction industry over the past several years has been the rollercoaster ride of material and labor costs. Supply chains have been a mess, the labor market has been tight, and contractors have had to adjust on the fly. Inflation has only made life harder to navigate. So, the question arises: what is a contractor to do when its material and labor costs change drastically from bid submittal to project completion.

To start, if you are bidding a project right now, make sure your contract provides a material escalation provision that will allow you to recoup out-of-pocket expenses in the event your material and/or labor cost at the time of construction drastically outstrip your original bid. Time and again I have seen contractors that bid a project in a given month, but do not actually receive notice to proceed until months (sometimes many) later. At that point, their material and labor costs have eaten a large chunk of their profit margin due to market factors. Bottom line, if you know there will be some lag time between your bid the project coming out of the ground, make sure you have a contract provision that triggers a reset of your bid numbers to align with the market before you begin work. A good construction lawyer can be instrumental in including such a provision in your contract or standard terms and conditions.

In the same vein, if you have already begun a project and find yourself with larger material and labor bills than expected, check the contract. There may be a provision that deals with the issue. At the very least, submit a change order for the amount and make your case to the GC or owner. Of course, it goes without saying: track your costs diligently, as this is crucial to showing your entitlement to additional sums for your work.

At the end of the day, communication is key. If you see an issue on the horizon related to a mismatch in bid costs versus actual costs, talk with the GC or owner and make sure it is all documented in writing. In my experience, I have found that the people controlling the money have a strong awareness of the current economic climate and are generally agreeable to working with good contractors who approach the issue with professionalism and respect.

Of course, if you ever need any legal assistance, please feel free to reach out to me or a competent and trusted construction lawyer.