

LA wildfire reconstruction: Critical contract strategies to minimize costly delays

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With 29 people killed and 16,000 structures destroyed, the extent of the damage caused by the recent Los Angeles wildfires is still being assessed. Estimates of the damage exceed a quarter trillion dollars. State, federal and local leaders are at the beginning stages of grappling with reconstruction issues unique to the wildfires, such as identifying and removing massive unknown quantities and types of toxic debris.

Plans for repaired and reconstructed homes will be subject to updated building codes, including requirements for enhanced fire protection. Building departments will be overwhelmed with an avalanche of plan submissions for evaluation and approval even with the expedited permitting process contemplated by the state.

Demand for already scarce skilled labor and material is expected to increase exponentially. Large-scale reconstruction projects take years to complete under ordinary circumstances. These are not ordinary circumstances, and policy makers do not have the luxury of unlimited time.

Time means money in construction. The longer the schedule duration, the greater the rebuild costs and the less likely residents and business owners are to return which will destabilize entire communities. Costs incurred by delays will ultimately be passed on to taxpayers,



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utility ratepayers and insurance policyholders by way of increased premiums. Time is truly of the essence and every Californian has an interest in minimizing delays.

Wildfire victims are encouraged to obtain plans and start the process of rebuilding as soon as possible. Development of a realistic critical path schedule for the thousands of activities involving toxic cleanup, debris removal, plan development and approval, material and equipment procurement, and construction will be an essential component of effective project management.

Adhering to the schedule will require cooperation from a multitude of stakeholders and subject matter

experts with relevant experience. Careful drafting of construction contracts between owners and reconstruction contractors is imperative and several key contract provisions may be added or modified to assist with mitigating delays in this unique and challenging environment.

Categories of costs arising from delays

Stakeholders must understand the types of delays commonly affecting construction projects to appreciate the magnitude of the issues presented. Typical categories of time-driven costs include, but are not limited to:

- Project expenses in the form of architectural and engineering con-

struction administration, construction management, construction supervision and coordination, testing and inspection and other costs increase as the project duration is extended.

- Project finance costs, that is, the cost of borrowing, whether by conventional, SBA or other loans.

- Escalation of costs for labor, material, and equipment due to scarcity and inflationary pressures.

- Contractor markups on labor and material escalation costs including taxes, overhead and profit which can easily exceed thirty percent.

- Increased rent and other personal expenses incurred by fire victims on alternative housing and

living arrangements which will be absorbed by insurers and public agencies and passed through to the public at large.

These time-driven costs can become dramatic over time. These costs can be mitigated by effective contract management and delay avoidance.

Important contract provisions that can serve to minimize delays

Certain construction contract provisions can be added or modified to reduce delays. The following is a checklist of provisions which should be considered:

- **Schedule requirements:** Establish a baseline critical path method schedule and require periodic updated schedules. Require narrative reports identifying delays and their causes, recommended strategies for schedule recovery, and near critical items threatening delay.

- **Regular scheduled meetings:** Integrate important stakeholders into periodic scheduled meetings including building department officials, contractors, owners, and designers of record to address logjams and expedite decisions.

- **Liability of contractors for labor and material escalation costs:** Define the conditions in which labor and material price escalation costs may be passed through to the government and owners.

- **Waiver of consequential damages:** It may be appropriate to waive consequential damages and replace

them with a stipulated rate of liquidated damages.

- **Liquidated damages and early completion bonus:** Consider a daily liquidated damage rate to be paid by the contractor for delays and an equal bonus rate to the contractor for every day the project is completed early.

- **Force majeure events, including code enforcement changes and differing site conditions:** Complete rebuilds will likely trigger code upgrades such as the installation of fire sprinkler systems, which is now required in LA County for new construction.

- **Changes clauses:** Consider limiting the parties' ability to make changes to the scope of work and streamline the change order process. Agree in advance on documentation requirements for extended supervision and other costs.

- **Dispute resolution provisions:** Consider a streamlined dispute resolution process which expedites the process for resolving disputes that do not involve litigation or arbitration, including dispute review boards and early project neutrals.

Coming to terms with these key contractual provisions at the outset could greatly reduce delays once the project is underway.

2028 Olympic construction impacts

One additional variable that could increase the stress on rebuilding efforts is the impending 2028 Los Angeles Olympics. The Olympics

will create greater competition for already scarce resources including labor, materials, and equipment. The positive news is that residential home reconstruction draws mostly from different labor pools than for the Olympics construction work. However, if union labor is required for significant portions of fire restoration work, then even higher resource scarcity and costs will result.

The potential for labor and material impacts caused by the Olympics on fire restoration work increases the importance of effective program management and scheduling. The same is true for a myriad of other potential impacts on the local construction industry from trade wars, tariffs and deportations of migrant workers.

Conclusion

To manage costs effectively, it is imperative that resources are promptly allocated, decision makers are granted necessary authority, lines of communication and authority are well-defined, decisions are made quickly, and schedule accountability exists. Stakeholders must be incentivized to minimize delay and disruption.

No matter how well-intentioned leaders may be, the process of rebuilding will be messy and subject to criticism. Not all stakeholders will be fully satisfied no matter what decisions are made. While consensus building and oversight are vital, undue delays will have significant costs. Our advice? Don't let the search for perfection be the enemy of the good.

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