



LEGAL ALERT

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DELAYS IN CRITICAL MATERIAL FOR BRIDGE CONTRACTORS: MANAGING RISK THROUGH PROACTIVE PLANNING AND STRICT ADHERENCE TO NOTICE REQUIREMENTS

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Supply chain interruptions are reaching critical levels and suspending work on projects. Shortages of bridge coating materials is the most recent area of concern and could be potentially catastrophic to unprepared contractors and owners. The inability to obtain materials may force painting contractors into a position where they cannot advance painting work, cannot retain painting crews, and may be asked to perform work in 2023 they had bid and scheduled for 2022.

WHAT CAN THE INDUSTRY DO TO MANAGE RISKS?

Pre-bid, contractors must evaluate the availability of specified coatings and options for advance purchase and storage, confirm and lock-down material delivery timing, and account for any time and cost impacts associated with securing the materials. Additionally, contractors may condition their performance obligations on the ability to obtain materials. Owners should consider breaking projects into small tranches, cooperating with contractors on advance purchase/storage, and be flexible and reasonable as additional disruptions and delays occur. Owners should also take steps to ensure the bridge contractors are able to continue to operate, including providing change orders for increases in material, labor, and additional mobilization costs for work performed long after the initial schedule date. Ohio needs its skilled painting contractors in place and viable to mobilize and protect our bridge assets once materials are available.

For projects under contract, now more than ever it is imperative that contractors strictly follow the notification provisions in their contracts, including the ODOT C&MS, to preserve their entitlement to an extension of time. Under ODOT C&MS Section 108.06(B) Contractors are entitled to an excusable, non-compensable delay for: “Extraordinary delays in material deliveries the Contractor or its suppliers cannot foresee or avoid resulting from freight embargoes, government acts, or area-wide material shortages.” See [ODOT C&MS 108.06\(B\)\(3\)](#). However, the Contractor must notify the Engineer in compliance with ODOT C&MS Section 108.02(F). That means immediate oral notification and Written Early Notice within two days. Failure to follow these timelines can prejudice the contractor’s rights.

If you have questions or need assistance, our construction team is here to help.

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