



**AGC**  
THE CONSTRUCTION  
ASSOCIATION

# Soaring Material and Supply-Chain Costs and Delays: What to Expect, How to Cope

Brian Perlberg

ConsensusDocs Executive Director and  
Senior Counsel

AGC Senior Counsel for Construction  
Law

[bperlberg@consensusdocs.org](mailto:bperlberg@consensusdocs.org)



# Pardon My French: Force Majeure



- Means Superior Force
- Performance becomes impossible or impractical
- Unforeseeable
- Neither party controls
- Are your price escalations a force majeure event?

# Are Soaring Prices and Supply Shortage a Force Majeure Event?



- A) I cannot possibly break even on this project because prices have spiked more than a covid-19 spiked protein
  
- B) I cannot locate timber from my normal dealer located in Colorado
  
- C) I cannot get my supply on time from any local dealer

# Price Escalation Clauses ConsensusDocs Can Help



- ConsensusDocs 200.1 Potential Time Price-Impacted Materials Amendment
- [Price Escalation Resource Center](#) has a link to a free sample
- Only industry standard contract document that addresses the issue
- Prices can go UP or Down – so fair to owners
- Based on an objective index agreed to upfront
- Can set limits and floors to adjustment.



# Other Contractual Approaches to Risk Mitigation for Price Escalation



- Shorten time period your bid is valid for explicitly or better yet condition your bid.
- Request a change order, if appropriate.

Free sample <https://www.consensusdocs.org/contract/202-2/>

Change of Law, see ConsensusDocs 200 section 3.21.2

- Cost of the Work Agreement with a GMP(ConsensusDocs 500) or IPD (ConsensusDocs 300)
- Consider breaking projects into phases
- Early procurement of materials and then store them
- Contingency Clauses

Define w/ clarity what contingency can be used for and what it cannot  
Owners may be motivated to sign the agreement now rather than later.

# Contractual Flow Down

- Don't get stuck in the middle: you can't give a subcontractor or supplier contractual terms better than what's in the prime agreement
- Pass along fair terms to Subs/Suppliers, otherwise, why should Owner give GCs a fair contract and not get much of the benefit?
- Limit a Sub/Suppliers' rights to those you have upstream for material price increases
- If your price increases are capped, then you should cap a Sub/Suppliers' increase.

Contract  
**Risk**  
Flowdown

