



To: NUCA Membership
From: NUCA Legal Committee
Re: Material Shortages/Escalation Clause

NUCA Members: We have all been faced with the reality that the material shortages/challenges and high costs are likely here to stay for the near foreseeable future. NUCA has been your resource for a number of webinars and white papers on this topic and those can be found here:

[NUCA Webinar: Material Shortages](#)

[NUCA Webinar: Market Volatility](#)

[NUCA White Paper: Material Shortages](#)

We are hosting another [Webinar this Wednesday, May 11th](#) with a little twist. [Click Here to Register](#). As an industry, we must band together for our industry. We have some new insights into some possible escalation clauses that are succeeding in the market and some questions we are encouraging the membership to ask in pre-bids.

Pre-Bid Questions:

1. For lump sum contracts, or the portions of a quantities contract that include lump sum amounts based on current obtainable market prices, will the owner allow for labor, equipment and material price adjustments, for events that are not the fault of the contractor?
2. For unit prices, will the owner allow for price adjustments when the material price increases significantly during the performance of the contract, through no fault of the contractor?
 - a. If so, what does the owner consider as “significant”; a price increase or decrease by 20%?
3. Will the owner allow for price adjustments when acts of god or “force majeure” events cause material prices to increase?
4. If global supply chain events cause increases to material prices, what type of notice and documentation is necessary to demonstrate that a change order should be granted for labor, equipment or material price adjustments?

Escalation Clause:

“In the event of significant delay or price increase of material, equipment, or energy occurring during the performance of the contract through no fault of the Construction Manager, the Contract Sum, time of completion or contract requirements shall be equitably adjusted by Change Order in accordance with the procedures of the Contract Documents. A change in price of an item of material, equipment, or energy will be considered significant when the price of an item increases ____% percent between the date of this Contract and the date of installation.”

***‘LEADERSHIP IS THE AUTHENTIC EXPRESSION OF WHO YOU ARE IN SUCH A WAY THAT
CREATES THE CONDITIONS FOR OTHERS TO ACHIEVE’***