

Protecting Your Bottom Line: Navigating Tariff-Related Price Escalations in Construction Contracts

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The construction industry in Western New York and beyond is facing a period of increased uncertainty regarding material costs due to the current administration's trade policies. With new tariffs being implemented and additional ones being threatened, contractors are facing significant risk of price escalations that can drastically impact project profitability. Through properly structured price escalation clauses, however, contractors can take steps to protect themselves.

A price escalation clause is a contractual provision that allows adjustment of the contract price when specific materials experience significant cost increases. In order to implement such clauses effectively, the first step is to identify what materials in your projects are most vulnerable to tariff-related price fluctuation. These materials most often are steel and aluminum products, lumber and wood products, electronics and mechanical equipment, and imported finishing materials.

Once you have identified the effected materials, you then should consider the key elements of your price escalation clause. At a minimum, your clause should:

- **Identify specific materials** subject to adjustment rather than using blanket provisions;
- **Establish baseline prices** and the date those prices were established;
- **Define trigger thresholds** (for example, price increases exceeding 5% from baseline);
- **Specify verification methods** (published indices, supplier quotes, etc.);
- **Outline the calculation method** for adjustments; and
- **Set timing parameters** for when claims must be submitted.

Be prepared, however, for resistance to your proposed price escalation clause. You may need to educate those who do not know about the current market volatility and tariff impacts. One way to sell the concept is to present price escalation clauses as risk management rather than a contractor advantage. If that approach does not work, consider proposing a symmetrical provision that allows for price decreases, or a provision that fixes a limited duration as opposed to an open-ended one. In addition, you could propose alternatives like allowances for high-risk materials or caps on total adjustment amounts.

If, however, you are stymied by your request for a price escalation clause, consider the following alternatives:

- **Contingency line items** specifically for tariff-related increases;
- **Time-limited bids** that expire if not accepted within a defined period;

- **Unit pricing** for materials at high risk of escalation;
- **Phased bidding** where volatile materials are priced closer to purchase;
- **Cost-plus contracts** for projects with significant exposure; and
- **Early procurement** of materials locked in at current prices.

In today's uncertain trade environment, contractors need to be proactive in protecting themselves from price volatility. Well-crafted price escalation clauses provide a fair mechanism to share the risk of unpredictable cost increases while maintaining project viability. By incorporating these clauses into your contracts and following best practices for implementation, you can navigate the challenges of tariff-related price escalations while maintaining healthy business relationships and project profitability.

This article is intended for general informational purposes only and does not constitute legal advice. You are advised to consult with qualified legal counsel regarding specific contract language for your projects.