




MEMORANDUM

TO: Steve Morgan, Executive Director, New York Road and Infrastructure Coalition (NYRIC)
Ross J. Pepe, President, Construction Industry Council of Westchester and Hudson Valley (CIC)
Marc Herbst, Executive Director, Long Island Contractors Association (LICA)
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Michael J. Elmendorf II, President and CEO, Associated General Contractors of NYS (AGC)
Carlo A. Scissura, Esq. President and CEO, The New York Building Congress (NYBC)

FROM: Wahid Albert, Chief Engineer 

SUBJECT: COVID-19 Guidance for NYSDOT Construction Projects

DATE: March 19, 2020

The COVID-19 virus presents unprecedented challenges to our state and local communities, which are served by the dedicated people you represent every day. Just as our employees are the heart and soul of the New York State Department of Transportation, the construction industry is an invaluable partner in our efforts to serve the people of the State New York. To ensure you have the most up-to-date information on how best to protect your workers as we move forward with our critical mission, I am providing the below guidance and list of resources for you and your membership.

Part I, Information, Training & Health & Safety Guidance:

A. Government Agency information & guidance related to COVID-19 and public health:

See the following weblinks for associated information and publications:

Centers for Disease Control and Prevention Webpage:

<https://www.cdc.gov/coronavirus/2019-ncov/>

New York State Department of Health:

<https://health.ny.gov/diseases/communicable/coronavirus/>

New York State Governor's Office:

<https://www.governor.ny.gov/#>

Department of Labor OSHA Guidance on Preparing Workplaces for COVID-19:

<https://www.osha.gov/Publications/OSHA3990.pdf>

OSHA Issues New COVID-19 Preparedness Guidance for Employers:

<https://www.idsupra.com/legalnews/osha-issues-new-covid-19-preparedness-30844/>

OSHA reminds employers COVID-19 is a recordable illness:

<https://www.businessinsurance.com/article/20200311/NEWS06/912333495/OSHA-reminds-employers-COVID-19-is-a-recordable-illness-coronavirus>

OSHA Issues Guidance to Employers on Preventing Worker Exposure to Coronavirus:

<https://www.crowell.com/NewsEvents/AlertsNewsletters/all/OSHA-Issues-Guidance-to-Employers-on-Preventing-Worker-Exposure-to-Coronavirus-COVID-19>

World Health Organization:

<https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>

B. Contractor Health & Safety Program & Project Specific Safety & Health Plans (SHP):

In accordance with NYS Standard Specifications § 107-05B, Project Safety and Health Plan, the Department is reminding all firms of the contract requirements and their relevance to COVID-19.

1. The Contractor shall perform all necessary planning, supervision, and training activities to ensure all requirements of 29 CFR Part 1926 are fully met for all workers employed in the construction of the contract.
2. As a minimum, the Contractor shall provide a written Project Safety & Health Plan (SHP) which documents the Contractor's company policy relative to safety, and which identifies and addresses specific safety and health concerns to be encountered on the project. This shall now include provisions addressing concerns regarding COVID-19.
3. The Contractor shall ensure that each subcontractor employed on the project complies with the requirements of NYS Standard Specification § 107-05B and has either submitted their firm's SHP or the Contractor may provide certification that the subcontractor will be subject to the Contractor's SHP, including, but not limited to the provisions associated with COVID-19.

The Department is hereby directing that each Contractor or Design-Builder submit a supplement to their SHP to include detailed provisions associated with COVID-19. The supplement shall, as a minimum include the following:

- Corporate Safety and Health Officer's Role & Responsibilities;
- Corporate Program;
- Project Site specific protocols;
- Mandatory best practices to prevent spread and transmission as published by the CDC & other recognized expert health agencies, and enforcement of said practices
- Training & education of all staff that may be exposed to COVID-19;
- Reporting procedures to ensure communication to supervision is timely;
- Corporate responsibilities to employees and the project potentially impacted staff;
- Self-quarantine and social isolation practices; and
- When and how to seek medical attention.

The Department will review and shall accept the supplement. It shall be submitted to the Department's Regional Construction Engineer and Engineer in Charge /Project Manager (PM) no later than close of business 72 hours following receipt of this directive.

The Department will also partner with each firm to ensure all project staff attend necessary daily/weekly and event based mandatory safety meetings.

C. Immediate Actions Taken to reduce the potential of transmitting COVID-19

- a. All ongoing DB & DBB Contracts shall immediately implement social isolation practices to extent possible via WebEx / skype meetings and implementation of precautions identified in **Part II, A & B** below.
- b. Travel to projects by Department staff be limited to oversight of essential operations only when determined necessary by DOT's Office Directors.

Part II, Contract Practices to Reduce COVID-19 Transmission:

A. Design-Bid-Build/DB Quality Control (QC) & Administration, Contracts in Construction:

- a. Contractors continue to work on projects based on resource availability:
(materials, subcontractors, fabricators, equipment supply, general labor / craft).

- b. Administration can be done to the greatest extent possible via remote management due the Department's web-based PM software which is currently in place on all projects.
- c. Inspection QC: Can be on site performing field duties but limit social contact, avoid meetings in person, stay in the field to max extent possible and when work in the project field offices is necessary, limit staff numbers to comply with current social distancing recommendations.
- d. Material testing QC: Requires interaction with ongoing operations to ensure specification requirements are being met. Also requires transport of materials to testing facilities. This must be done in compliance with current social distancing recommendations.
 - In the event the QC resources become ill by COVID-19, impacted operations must be suspended until qualified replacements become available. Critical Path work activities should have contingency plans in place to minimize such impacts should they occur. Such events may qualify as compensable delays if it delays the project's completion. Compliance with all contractual provisions should be strictly complied with including but not limited to Notice & Recordkeeping.
- e. Projects impacted by COVID-19: Must be managed on a case by case basis dependent on the exposure and impact of those effected / exposed to the virus.
- f. To the extent possible, keep operations going, adjust schedule to account for delayed operations and / or provide additional resources to supplement operations where effected staff must be replaced.
- g. Contract related issues associated with COVID-19:
 - i. Subcontractor performance may be impacted, which may also affect goal attainment.
 - ii. Potential contract completion date time extensions.
 - iii. Review of Engineering Charges and Liquidated Damages will not be imposed if the delay was caused by COVID 19 related issues.
 - iv. Section 108-04 Non-Compensable Delays may apply whereby a time extension may be granted without charges.
 - v. Failure of the Contractor to adequately progress completion of the work will be considered in determining whether the aforementioned instances are the primary causes of delay.
 - vi. Projects where no extension of time is granted may be eligible for recovery costs to keep the project on schedule.

B. Design Build QA Design / Construction Contracts:

- a. Administration can be done to the greatest extent possible via remote management due to CSMIN for PM software connectivity which is currently in place on all projects.
- b. Design Quality Assurance (QA) can be performed to a great extent via remote meetings, Webex, Bluebeam design sessions as an alternative to in person over-the-shoulder reviews and collaboration.
- c. Construction Inspection QA: Will require on site personnel performing field duties while exercising limited social contact. Staff shall avoid any unnecessary meetings in person, congregating of staff, and preferably, devote most if not all time outside on site rather than in a confined project field office. Additionally, if necessary, limit staff numbers to comply with current social distancing recommendations.

- d. Material testing QA: Requires interaction with ongoing operations to ensure specification/contract requirements are being met. It also requires transport of materials to testing facilities. This must be done with compliance with current social distancing recommendations.
- In the event the QA resources are DOT or Consultant and they become ill from COVID-19, then 2 options are recommended:
 1. Design or construction operations impacted must be suspended until qualified replacements become available. This will be considered as a basis for a time extension if it impacts the final completion date.
 2. Do not stop or delay any impacted construction operations if they are not High-Risk work activities as defined by the Contract. QC staff will be entrusted to perform all Acceptance Testing required for moderate and low risk work until such time as qualified QA staff can be provided. (gain FHWA approval, for this short-term condition).

Please feel free to contact me at Wahid.Albert@dot.ny.gov if you have any additional questions.

cc: Marie Therese Dominguez, Commissioner
Todd Westhuis, Chief of Staff
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