



# Contractors continue to face myriad challenges in 2023

Contractors throughout the U.S. and abroad have faced a host of challenges over the past three years. A cross-market boom in construction that had fueled the AEC industry and changed skylines worldwide for more than a decade came to an abrupt halt three years ago, as the first wave of COVID-19 swept across the globe, stopping or severely restricting construction. Those early shutdowns soon gave way to unprecedented supply-chain shortages and skyrocketing costs for such construction staples as steel, concrete and lumber. Simultaneously, the construction industry, like other market sectors, began experiencing historic labor shortages that made staffing newly revived projects extremely difficult. Now, inflation and rising interest rates have cooled an already struggling real estate development market, leading owners to rethink, retool or shelve planned projects, and those already underway are experiencing a host of labor, delay and cost-related issues.

Contractors buffeted by these and other challenges are facing strong headwinds as they navigate 2023.

## **Pace of Infrastructure Spending**

According to survey results published by the Associated General Contractors of America (AGC), contractors disappointed by the dearth of private-sector work are turning their attention—and their hopes—to public-sector opportunities in 2023.

“Contractors are less optimistic about many private-sector segments than they were a year ago, while their expectations for the public sector market have remained relatively bullish,” the AGC said in its survey report. “The bottom line is that contractors have high hopes for public funding in 2023 even as they expect to cope with continued supply chain challenges and workforce shortages.”<sup>1</sup>

Much of that public funding is expected to be levied from the Infrastructure Investment and Jobs Act (IIJA), the \$1.2 trillion bipartisan spending plan signed into law in late 2021 that represents the largest investment in U.S. infrastructure in more than six decades. IIJA funding began rolling out via formula grants to states, as well as competitive grants to municipalities, last year. According to the AGC survey, however, respondents felt that little of that funding has yet to translate to new work.

“Only 5 percent of respondents say they have worked on new projects funded by the law, while 6 percent have won bids but have not started work. Five percent say they have bid on projects but have not won any awards yet, whereas 21 percent plan to bid on projects but say nothing suitable has been offered yet,” the report states.

The slow pace of funding may be partly attributable to widespread confusion among states and public agencies about spending regulations, including the IIJA’s Buy America requirements. “As a result, many state and local officials may be waiting for additional clarity before moving forward as they anticipate challenges in receiving Buy America waivers from federal officials,” the AGC report states.

### **Skilled and Unskilled Labor Shortages**

Even those contractors that are optimistically preparing for a windfall of work may not be able to adequately staff upcoming jobs, as a pervasive shortage of both skilled and unskilled workers that has dogged the industry since 2020 shows no signs of abating.

According to a recent model developed by the Associated Builders and Contractors (ABC), the construction industry will need nearly a half-million more workers—on top of its normal pace of hiring—to meet project demand in 2023 and beyond. The ABC based its findings on trends from the U.S. Census Bureau, payroll figures from the U.S. Bureau of Labor Statistics and other sources.<sup>2</sup>

The construction industry had an average of 390,000 job openings per month in 2022, “the highest level on record,” the ABC reports. Simultaneously, the industry’s unemployment rate reached a historic low of 4.6 percent in 2022—the second-lowest on record, after 2019’s 4.5 percent rate of unemployment.

“Despite sharp increases in interest rates over the past year, the shortage of construction workers will not disappear in the near future,” said ABC chief economist Anirban Basu.<sup>3</sup> “First, while single-family home building activity has moderated, many contractors continue to experience substantial demand from a growing number of mega-projects associated with chip manufacturing plants, clean energy

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<sup>1</sup> [https://www.agc.org/sites/default/files/users/user22633/2023\\_Construction\\_Hiring\\_and\\_Business\\_Outlook\\_Report\\_Final.pdf](https://www.agc.org/sites/default/files/users/user22633/2023_Construction_Hiring_and_Business_Outlook_Report_Final.pdf)

<sup>2</sup> <https://www.abc.org/News-Media/News-Releases/entryvid/19777/construction-workforce-shortage-tops-half-a-million-in-2023-says-abc#:~:text=WASHINGTON%2C%20Feb.%209%E2%80%94The.by%20Associated%20Builders%20and%20Contractors>

<sup>3</sup> <https://www.abc.org/News-Media/News-Releases/entryvid/19777/construction-workforce-shortage-tops-half-a-million-in-2023-says-abc>

facilities and infrastructure. Second, too few younger workers are entering the skilled trades, meaning this is not only a construction labor shortage but also a skills shortage.”

### **Cost and Availability of Materials**

While the cost of some construction materials fell in late 2022, overall costs are expected to continue rising, albeit at a slightly slower pace, in 2023. According to the AGC, the cost of materials rose 7.2 percent in 2022, well above the reported 6.5 percent increase in the Consumer Price Index. Nearly 75 percent of contractors surveyed by the AGC said that material costs continue to be a major concern.

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## Nearly three years after the onset of the coronavirus pandemic, supply-chain bottlenecks continue to bedevil contractors.

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“While producer price indexes for construction inputs fell in December, they still outpaced other inflation measures for the year,” said AGC chief economist Ken Simonson. “In addition, some prices have already turned higher in January. Contractors are right to rank materials costs as a major concern for 2023.”<sup>4</sup>

Getting equipment and materials when needed also continues to be a challenge, contractors report.

“Nearly three years after the onset of the coronavirus pandemic, supply-chain bottlenecks continue to bedevil contractors,” the AGC reports. “Complicating things, these supply chain challenges have been erratic and unpredictable. One week one material is in short supply, while the next week it is a different product. This makes it hard for contractors to make reliable cost estimates and anticipate production schedules.”

### **Accelerations versus Postponements and Cancellations**

Some construction owners, intent on completing long-planned projects put on hold during the height of COVID-19, have accelerated construction schedules over the past 12 to 18 months to mitigate their financial risk. Others have put projects on hold, or scrapped them altogether, citing rising inflation and costs as primary reasons.

“Most contractors have experienced project delays or cancellations,” the AGC states. Nearly 40 percent of contractors surveyed reported that their 2022 projects had been postponed, with re-schedules planned. However, more than 35 percent said that postponed 2022 projects had not yet been rescheduled or were cancelled outright. So far, in 2023, 13 percent of firms said projects scheduled to begin in the first half of 2023 already have been postponed.<sup>5</sup>

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<sup>4</sup> <https://www.agc.org/news/2023/01/18/overall-costs-construction-materials-decline-steeply-december-contractors-remain-wary-costs-will-go>

<sup>5</sup> [https://www.agc.org/sites/default/files/users/user22633/2023\\_Construction\\_Hiring\\_and\\_Business\\_Outlook\\_Report\\_Final.pdf](https://www.agc.org/sites/default/files/users/user22633/2023_Construction_Hiring_and_Business_Outlook_Report_Final.pdf)

## **COVID Complications**

Many contractors entering 2023 also still are dealing with the lingering effects of COVID-19, waiting for owners, insurers or the courts to repay them for PPE and other health, safety and security expenditures they made as a result of the pandemic. The question of who pays for worker health screenings, for example, is a question that is still being adjudicated in many courts.

Other contractors, who predicted in the early stages of the pandemic that “force majeure” and related contract provisions would protect them from responsibility for COVID-related delays and associated cost overruns, have been disappointed.

Contractors forced to delay or scrap projects during COVID, or those that incurred delays caused by government shut-downs, mandated health and safety protocols, manufacturing slowdowns or a sharply decreased labor pool have been seeking relief under these contract provisions from courts across the country and overseas, with mixed success.

Also, even if those terms are included in new contracts, they aren’t expected to carry as much weight going forward, as contractors will likely be expected by owners, insurers and the courts to apply the lessons they’ve learned over the past three years to future projects.<sup>6</sup>

## **Meeting the Challenges**

Each of the challenges contractors face can place them in precarious positions—both functionally and financially. Those who actively monitor and make a firm-wide commitment to stay ahead of expected trends in project funding, material and equipment costs, labor availability, regulatory compliance and ever-evolving technology stand the best chance of weathering this seemingly unprecedented and persistent “perfect storm” over the coming months. Some strategies to consider include the following:

### ***Share Risk***

Ideally, all parties to a construction project should equitably shoulder the responsibility for reducing risk, and the contract is the primary tool for allocating and communicating that responsibility at the earliest stages of a project. Indemnity clauses, no damage for delay clauses, liquidated damages clauses, force majeure clauses, material escalation clauses and other provisions can provide some protection, and contractors should fully understand their obligations, rights and remedies before contracts are signed.

Project delivery methods, decided upon at the earliest project stages, also can mitigate—or complicate—contractors’ risk. Most projects are delivered via prescribed Design-Bid-Build, Design-Build, Design-Negotiate-Build, Construction Manager At-Risk, or Construction Manager Agent methodologies. Using one method over another often depends on the type, size, scope and budget of a specific project. Each carries both benefits and drawbacks for contractors and other project stakeholders. Some methods may be riskier for contractors than others, and it is vital to understand these risks up front.

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<sup>6</sup> <https://www.constructiondive.com/news/the-dotted-line-covid-19-force-maieure-clauses-are-losing-their-punch/617479/>

### ***Address Labor Shortfalls***

Contractors are finding new ways to attract and retain workers in a highly competitive job market. Many are offering pay increases and attractive benefits packages. Others are upping their contributions to employee benefits packages to lessen an employee's out-of-pocket costs and adding lucrative incentives or bonus programs.

Contractors also are increasing recruitment and training of younger workers to help fill anticipated gaps in experience as older, seasoned workers leave or retire. Training and monitoring to keep those new, inexperienced workers safe on their new jobsites is also a priority for many contractors.

### ***Manage Materials Cost and Availability Issues***

Contractors have relied on various methods to circumvent supply-chain shortages and rising costs. Many opt to fast-track material purchases, often paying a premium to do so. Others have turned to alternative suppliers, leveraging Buy America requirements to call on local manufacturers to provide materials and equipment that formerly were made overseas.

Considering options for specified materials also can be helpful. Contractors can consult with project designers, value engineers, or others on the owner's team to identify and specify less-costly alternatives that have worked well on other, similar projects.

Contractors with the means to do so also have pre-purchased and stockpiled materials during lag times between bidding and contract award. While the practice can help ensure that hard-to-find or pricey items are on-hand when needed, it does present a fair amount of risk.

Contractors also are creating "supply-chain teams" on each of their projects that focus solely on minimizing the impact of shortage and delay issues, leaving project teams to focus on what they do best.

### ***Maximize New Technologies***

If nothing else, COVID-19 showed the construction industry that technology can be a valuable tool in keeping projects moving forward. An industry reticent to embrace 21st-century innovation three years ago now relies on a host of increasingly user-friendly technologies to document, monitor, manage and communicate about every aspect of a project. Project teams from around the globe meet, communicate and share documents virtually. Mobile phones house tools for tracking, managing, inspecting and documenting work in real time. Workers are screened for illness with the touch of a button, and drones capture views of projects—and their progress—from bird's-eye vantages.

Contractors routinely are updating technology to help manage projects' increasingly voluminous documentation. Others are pivoting to the newest versions of cloud-based software to manage jobsites or entire projects, and developing formal IT plans and budgets to help ensure that they continue capitalizing on technological tools and trends as they emerge.

Conducting ample testing of new software or other technology is essential to ensure its full deployment and successful integration with existing systems. Training is equally important and should be ongoing and conveniently scheduled to maximize both usage and return on investment.

### **Study New Regulations**

Regulations surrounding public infrastructure funding, such as those under the IIJA, are evolving as capital projects intersect such issues as worker safety, prevailing wage, Buy America, equity and inclusion, and environmental and social justice. When coupled with evolving regulations concerning the “nuts and bolts” of construction, the regulatory environment for contractors can be confusing. Although some industry leaders have decried the IIJA’s Buy America regulations, for example, as prohibitively confusing, the federal government and granting agencies such as the U.S. Department of Transportation, the Federal Highway Administration, and the Environmental Protection Agency have stepped up education via web pages dedicated to sifting through the confusion, as have many state agencies. Industry groups such as the AGC, ABC and the American Bar Association, among others, also offer primers in various forms.

### **Communicate Early and Often**

It is vital that contractors communicate in a clear and timely manner when they have questions, or when issues arise that could impede progress or drive up costs. Ideally, this communication begins even before work is awarded, with Requests for Information submitted if contractors need clarification on—or take exception to—information in bidding documents. Contractors’ experience can also be invaluable during the design and pre-construction phases, when asking questions, offering work-arounds or other collaboration can save time or trim costs.

As a project team’s “boots on the ground” during construction, contractors can often identify and communicate potential challenges as soon as they emerge. Consistent, timely and multi-channel communication allows owners and other project stakeholders to take mitigating steps to address challenges, and any changes or remedies authorized should likewise be well documented and communicated.

### **Resolve Disputes**

Contracts set out specific procedures for how disputes among the parties should be handled—before they escalate to contentious litigation. Whether contracts call for binding or non-binding arbitration, mediation or alternative dispute resolution, resolving disputes as amicably as possible should always be the contractors’ first line of defense.

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The use of alternative dispute resolution techniques, embraced to help stem the growing number of construction disputes in courts more than three decades ago, waned somewhat in the fast and furious pace of construction leading up to 2020.

In the wake of a worldwide spike in disputes over the impacts of COVID-19, the Confederation of International Contractors' Associations (CICA) recommended its resurgence.

“Often considered a last resort and as a result not effectively employed, we now see how important it is to address issues and make use of these mechanisms in a timely way. Contractors are therefore strongly encouraged to initiate such mechanisms in their existing contracts in order to overcome deadlocks imposed by those employers which do not offer any true resolution,” CICA’s Construction Contracts Working Group said in a 2021 position paper.<sup>7</sup>

### **The Path Ahead**

Despite the challenges, CICA and other industry leaders remain optimistic about the future of construction. While some market sectors, such as residential and office construction, may continue slowing throughout 2023, others, including power and utilities, infrastructure and public works, are expected to continue growing. The West and South may see more growth than their chillier counterparts, said Zack Fritz, economist for Associated Builders and Contractors (ABC).

“As more people flock to warmer states with friendlier tax environments, construction spending will follow suit,” he added.<sup>8</sup>

Also, while labor shortages will continue to worry contractors, the nation’s historically low unemployment rate is a silver lining.

“Despite rising interest rates and high inflation, the fundamentals of our economy are still strong,” said John Fish, CEO of Suffolk, a Boston-based contractor. “We have seen upward trends in our GDP, consumer confidence is still high, Americans still have money to spend, and we have seen strong jobs reports with low unemployment rates.”<sup>9</sup>

“Firms are raising pay, boosting benefits, and increasing their training budgets to be better able to attract and retain new, and more diverse, talent. They are investing in new technology and new techniques to be more efficient so they can build more with fewer people. And they are finding ways to overcome supply chain challenges by being more conservative in their bidding and scheduling practices and more willing to suggest alternative materials,” the AGC said in its report.

Dodge chief economist Richard Branch said that, despite continued uncertainty as contractors navigate 2023, the picture isn’t a bleak one.

“There are still lots of opportunities to grow and be profitable,”<sup>10</sup> he said.

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<sup>7</sup> <https://www.cica.net/wp-content/uploads/2021/03/CICA-Lessons-Learned-from-COVID-19-11.02.2021.pdf>

<sup>8</sup> <https://www.conexpoconagg.com/news/20232024-construction-economic-forecast>

<sup>9</sup> <https://www.constructiondive.com/news/2023-outlook-economists-expect-recession-contractors-re/640564/>

<sup>10</sup> <https://www.conexpoconagg.com/news/20232024-construction-economic-forecast>

Indeed, change may be the one constant in an industry that has undergone massive foundational shifts over the past 36 months. Firms that that proactively prepare for continued uncertainty may be positioned to better weather those changes.

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