

Viewpoint

## Supply Chain Snarls Aren't Going Away. Do Something About Them.

By Thomas C. Schleifer PhD



National dealer inventory supply of PVC pipe has been rebuilding after several years of unusual demand and higher prices.

*Photo by Richard Korman for ENR*

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**C**ontractors across the board have been telling me about their supply chain worries and the related project disruptions or delays. The consensus among those studying the causes suggest this is not a short-term issue. Most project the situation will continue for five or six years and a few suggest much longer. All seem to agree it is going to get worse before it gets better, despite some optimistic recent forecasts.

The exposure for the construction industry is real, is just beginning and can be expensive. The problems have the potential for severe cash flow interruptions. It seems that each time a contractor or the media suggests a product is no longer scarce, two other products turn out to be in short supply. It bears reminding that projects and companies have faltered or failed under similar circumstances involving materials and products.

Of great concern is that every construction professional I talk to about this is convinced that there is nothing we can do about it. But staying passive isn't a good option.

We need to do something because no one else is going to do it for us. When we sign agreements, sometimes with penalties for missing completion dates, we accept on behalf of our company the contractual obligation to perform. Somewhere in the fine print it also says that we understand every detail in the plans and specifications, and that we can accomplish them. This, in effect, means we can gather the parts and pieces and construct them into the finished project on time.

If we can't get all the parts and pieces in time (or at all), we like to say "it's not our fault" which, of course, means not our responsibility. The problem is we accepted the contractual obligation. The question is: If it's not our fault is the other party to our contract at fault? Taken to the extreme, the answer will typically be determined in dispute resolution—perhaps in three years. It goes without saying that if years later this is found in our favor, we still lose.

When I asked a nationally famous construction attorney, off the record, how cases like this "impossibility of performance" usually resolve, the response was: "This circumstance may be excusable but noncompensable." But it seems to me that prudence demands action beyond "nothing we can do about it."

A first step would be for construction professionals to recognize the magnitude of the supply chain exposure to their companies.

Here's one example: a recent project had the facade curtain wall fabricated and delivered on time, but no one had reacted to a memo from the supplier that the fastening clips required for installation were on back order. The lesson here is that our working environment has changed, and we need to recognize that. These exposures are increasing by orders of magnitude, and solving the problems from that exposure, once the problem arrives, is much more difficult than preventing them.

## Start in Selection Stage

As early as the project selection stage, we need to explore with every subcontractor and supplier the availability and lead time of every element that will be required for their portion of the work, no matter how small.

An objection I have heard was “who is going to pay for that pre-bid effort?” My response was: “You are going to pay a lot more for a solution than the prevention costs. This is not the first time we have had to adjust as our industry evolved. We also have plenty of history about what happened to organizations that delayed or refused to accept the changes.”



**Schleifer**

One enlightened contractor I spoke with said that their response includes exploration with subs and suppliers about the possibility of early purchase of long-lead items, in some cases even before a contract award. They determine how long before there would be a cancellation fee, and if so, how much. Another contractor prepaid for product they commonly used that was in short supply, negotiating with their supplier to store it for future deliveries.

The most important step is to fully recognize the supply-chain exposure by project and by contract. The ultimate solution is to include only materials and products that are currently available during project design, which obviously favors the design-build delivery method. For projects in progress, owners, designers and the developer must either agree on necessary material and product substitutions, or accept the resulting delays. And after that all that can be done is to allow the dispute resolution process sort out the time extensions and costs.

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