

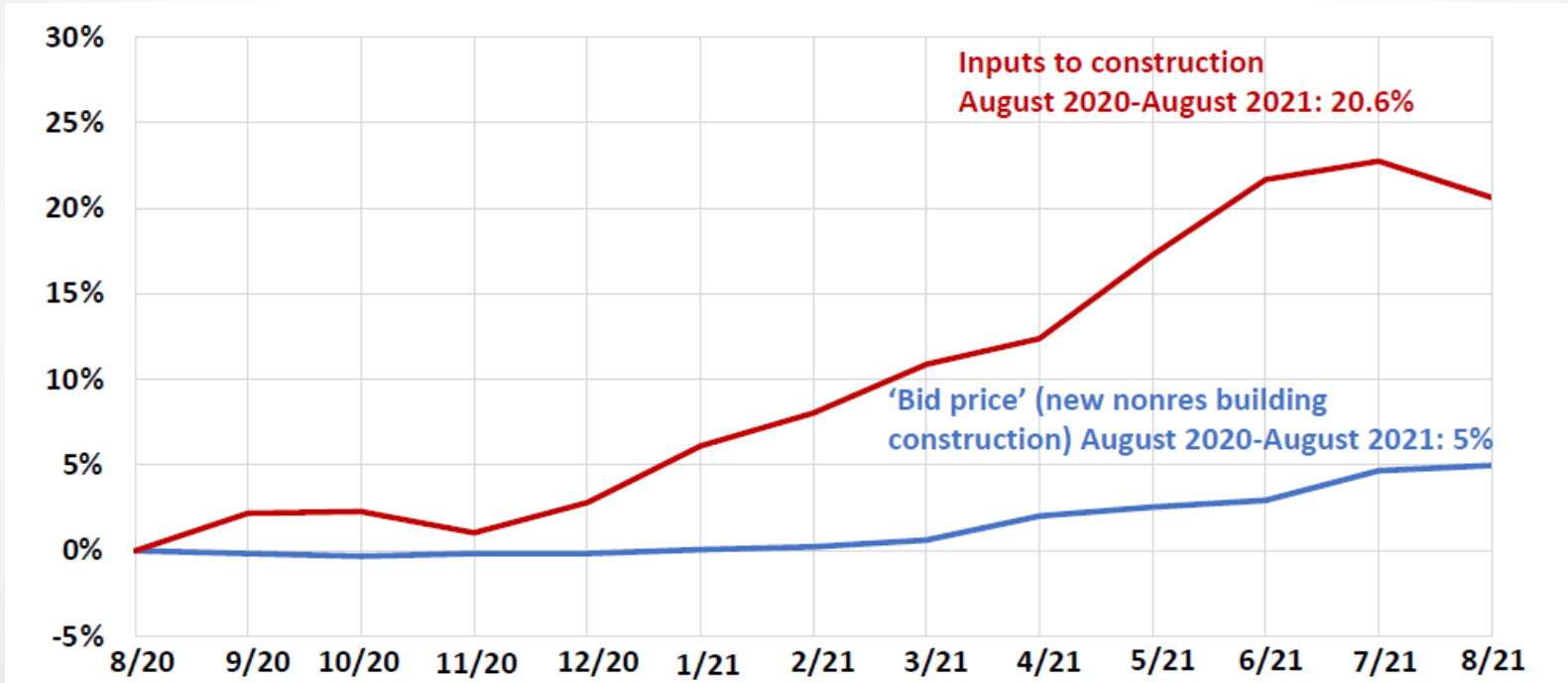
**MATERIAL SHORTAGES AND COST
ESCALATION IN THE BUILT ENVIRONMENT
AND WHAT IT MEANS TO YOU**

white + burke
**VERMONT
DEVELOPMENT
CONFERENCE**

What we'll cover...

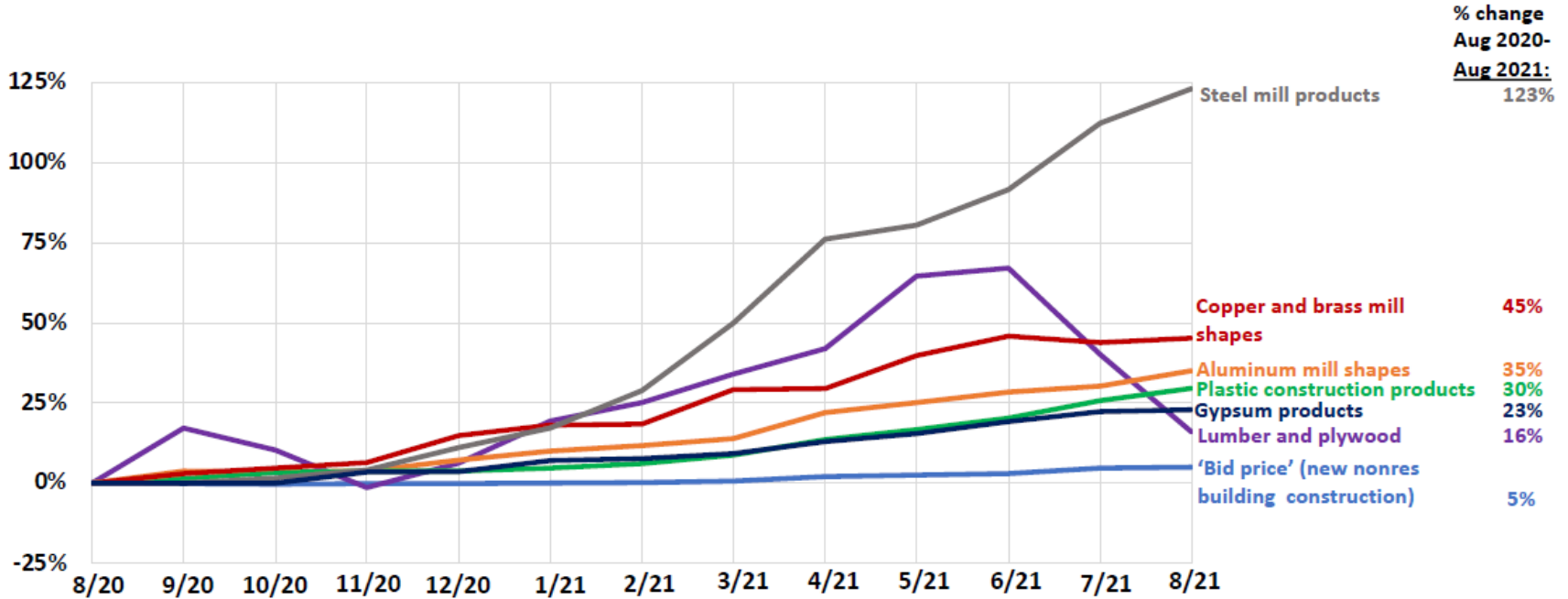
- I. DEFINING THE PROBLEM
- II. HOW THE PROJECT'S DELIVERY METHOD/COST MODEL DICTATES THIS RISK
- III. HOW CONTRACT LANGUAGE CAN BE USED TO ALLOCATE THIS RISK
- IV. HOW THE PROJECT TEAM CAN MANAGE THIS RISK

Construction Input vs 'Bid Price' PPI



Source: Bureau of Labor Statistics, producer price indexes, www.bls.gov/ppi

PPIs and Selected Inputs



Source: Bureau of Labor Statistics, producer price indexes, www.bls.gov/ppi

Recent Headlines

“Construction Costs Now Projected To Keep Rising Through Next Year, Worsen For Nonresidential Projects” Bisnow October 8, 2021

“Despite the monthly decline in construction input prices, contractors should expect elevated and likely rising prices for months to come,” said ABC Chief Economist Anirban Basu. He further predicts material costs will continue to soar well into next year

“Pricing insanity: Material costs escalate, driving contractor desperation”
Construction Dive October 18, 2021

“Prices For Construction Materials Continue to Outstrip Bid Prices over 12 Months, Despite Dip in September , Amid Increasing Supply-Chain Problems” AGC/VT October 15, 2021

DEFINING THE PROBLEM

A. Reasons for market volatility

- Raw material shortages
 - Lack of supply to the U.S. market
 - Protectionist legislation
- Mill shutdowns
- Factory manpower shortages
- Distribution choke points/Container availability/Truck Driver shortages
- Unanticipated spike in demand
- Increased production costs (fuel, electricity, etc.)
- Material Rationing
- Hoarding

DEFINING THE PROBLEM

B. Impacts

- Sub/Contractor's razor thin profit margins are jeopardizing their ongoing viability
- Developer's price uncertainty is impacting cost to end user
- Project Delays
- Cost Spikes

HOW THE PROJECT'S DELIVERY METHOD/COST MODEL DICTATES THIS RISK

- A. Design-Bid-Build (Stipulated Sum)
- B. CM at Risk (with or w/o GMP)
 - Use of contingency
- C. Design Build (Stipulated Sum/Cost Plus)
- D. EPC (Target Price)

HOW CONTRACT LANGUAGE CAN BE USED TO ALLOCATE THIS RISK

A. Manuscript Material Escalation Clauses

- Threshold Escalation clause (Cost-Based)
 - Purchaser absorbs risk until a certain tipping point
 - Cost-based trigger
 - Over/Under (i.e.: price is fixed unless it exceeds/is less than 5% of bid price)
 - Index-based trigger
 - Price floats based upon indexed value
 - Producer Price Index (U.S. Bureau of Labor Statistics)

HOW CONTRACT LANGUAGE CAN BE USED TO ALLOCATE THIS RISK

- Delay Escalation clause (Time-Based)
 - Prices are held for a defined period of time
 - Clause expressly acknowledges uncertainty
 - Attempts to achieve equity
 - Adjustments apply reciprocally if price decreases

HOW CONTRACT LANGUAGE CAN BE USED TO ALLOCATE THIS RISK

B. Standard Form Escalation Clauses

- FAR § 16.203: Fixed Price Contracts with Economic Price Adjustment
- ConsensusDocs 200.1 Amendment
 - ID key materials likely to be impacted
 - Establishes a *baseline* price (market, catalog, index, actual cost, etc.)
 - Equitable adjustments from baseline

HOW CONTRACT LANGUAGE CAN BE USED TO ALLOCATE THIS RISK

C. Force Majeure Clause

- Contract based
- Beyond the control of the party seeking to enforce the clause
- Requires a nexus between the unforeseen event and the cost impact
- Usually limited to *time extensions* not *cost increases*
- COVID impacts are now less unforeseen

HOW CONTRACT LANGUAGE CAN BE USED TO ALLOCATE THIS RISK

D. Change in Law Clause

- Tariffs, Taxes, etc.
- Protectionist Legislation (Buy American, Buy America)

E. No Damage for Delay Clause

- Needs to be coordinated with other contract remedies
- Timing of NTP and project access take on increased significance

HOW CONTRACT LANGUAGE CAN BE USED TO ALLOCATE THIS RISK

F. Suspension

- Give parties the right to suspend should costs spike

G. Termination for Convenience Clauses

- Give parties the right to terminate w/o cause (but specifically for reasons related to spike in material costs/shortages)

HOW THE PROJECT TEAM CAN MANAGE THIS RISK

- A. Early Communication, Coordination & Open-mindedness
- B. Stored Materials
 - Early Buy-Out
 - Additional handling/storage/insurance costs
- C. Use of contingencies/allowances/alternates
- D. Risk Management Plan

HOW THE PROJECT TEAM CAN MANAGE THIS RISK

E. Detailed Project Schedule

F. Proper Backup

G. Use of substitutions

H. Owner's direct purchase

I. Benchmarking

- Identify price assumptions for steel, lumber, gypsum, copper, pvc, stainless, insulation, etc.

HOW THE PROJECT TEAM CAN MANAGE THIS RISK

J. Pricing Windows

- Negotiate price expiration dates from suppliers
- Qualified bids could be a problem on public procurements

J. Purchase in bulk

K. Invoice transparency

L. Manage Deposits

- Early funding

M. Alternative/supplemental suppliers

- Ensure Contractors & Subcontractors have multiple suppliers

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QUESTIONS?

