

Labor Shortages: Contractor Challenges and Industry Response



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A Balanced Approach to Construction Law.

Texas is growing. Urban areas are increasing in density and building high rises and mixed-use communities in response. Rural areas are becoming more connected to urban parts of Texas and are building and upgrading their transportation systems to improve access. This is an exciting time for the construction industry in Texas.

This growth, however, has exacerbated a labor shortage in the construction industry. None feel this strain more than contractors. The ability to attract, hire, and retain quality employees and subcontractors has become increasingly difficult as the available pool of workers is stretched thin by the number of projects across the state. Urban areas are hit particularly hard, as the rising cost of living precludes many workers from living and working in those areas.

In this article, I will list some of the common challenges contractors face, explain how those challenges can lead to contractual risk for the contractor, and provide practical tips to avoid those contractual risks. I will then highlight ways the industry is responding to alleviate this labor shortage in the long term.

Challenge: Decreased Worker Availability

Increased demand for labor requires contractors to compete for a smaller pool of workers, which can limit a contractor's ability to maintain a consistent and adequate number of laborers and subcontractors for each project. Oftentimes, subcontractors who previously staffed four crews on four separate jobs are now using those same four crews on eight jobs due to the increased number of available projects.

While this increase in projects is a boon for the subcontractor, contractors now cannot expect each job to get the attention or staffing it received in the past. Decreased staffing can cause a contractor to unexpectedly have an insufficient number of crews on a project, leading to potential delays to the schedule. Contractors are also less able to accelerate progress by increasing manpower, further compounding a delayed schedule.

Many contracts permit an owner to carry out the work if delays are not resolved within a specified period after the contractor receives notice from the owner, which exposes the con-

tractor to back charges for that portion of work completed by the owner's other forces. The best way to avoid this staffing problem is to be proactive. Ensure you always have a work front available to provide your subcontractors work, so the crews assigned to your job do not go to another project while they wait on a work front to become available.

Challenge: Unqualified Labor

The number of available projects has also impacted a contractor's ability to hire qualified laborers and subcontractors. In an effort to meet increased demand, many subcontractors have to hire persons who may not have the experience or qualifications normally expected of a certain trade. For example, pipelayers may hire persons who have never worked in a horizontal construction setting or utilized surveying equipment to confirm proper slope, or commercial framers may hire employees with only residential framing experience. Virtually all contracts contain a workmanship clause, and contractors will be held responsible for the quality of work performed by its subcontractors. To ensure quality work, contractors should conduct regular, thorough walk throughs to observe the work in place and catch any questionable work before it impacts the entire project. While contractor oversight should always be part of a contractor's project role, the current industry challenges further underscore the importance of staying on top of the work and ensuring all work is performed in a quality and workmanlike manner.

Challenge: Contractor Internal Staffing

Project engineer and project manager candidates are being sought after by multiple contractors, which limits a contractor's ability to maintain a consistent group of office-side personnel to run each project. New hires require time and resources to onboard and get up-to-speed on any specific construction management software. These efforts can monopolize a portion of the contractor's time previously spent on winning and completing projects. However, poorly trained office-side personnel can lead to inadequate project billing, documentation, and supervision, and impact a contractor's overall profitability on any given job.

Many contracts contain provisions that require contractors to closely review project documents and field conditions before commencement of a project and may pin the cost for resolving issues not identified during this review on the contractor. If a contractor's project engineer or project manager is not adequately trained, he or she could miss important details that can impact a contractor's progress and profitability, and reputation with certain ownership groups. Contractors can avoid this problem by creating and maintaining a positive and supportive company culture that develops talent and keeps employees challenged and satisfied so they are not lured away by competing contractors.

Industry Response

Key stakeholders in the construction industry are acting in response to the labor shortage. Many companies run internship programs for high school and college students to experience firsthand the rewarding careers available in the construction industry. Organizations like the ACE Mentor Program, which has programs in Austin, Dallas, Houston, and San Antonio, utilize volunteer industry professionals to educate high school students about the full range of design and construction industry careers through mentorship and scholarships. Many local school districts have created programs that expose students to career paths in construction and allow students to earn a related associate's degree or earn up to 60 hours of credit toward a bachelor's degree while in high school.

Texas recently passed Senate Bill 37, which prohibits Texas agencies from denying, suspending, or revoking an occupational license (such as electrician's license) because the license holder had defaulted on student loan payments. Finally, the federal government has proposed new apprenticeship programs to expand education and access for potential workers in many industries, including the construction industry.

The labor shortage is a struggle faced by all contractors in Texas. Long-term solutions are in the works, but in the short term, I hope these practical tips enable contractors to maintain successful, profitable business during this exciting time of growth in Texas.

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