

presented by

WELBY, BRADY & GREENBLATT, LLP

CONSTRUCTION, REAL ESTATE & DEVELOPMENT AND LABOR LAW

11 MARTINE AVENUE, WHITE PLAINS, NEW YORK 10606
TEL. (914) 428-2100 FAX (914) 428-2172

WWW.WBGLLP.COM

Welby, Brady & Greenblatt, LLP periodically publishes its Legal Alert Bulletin to notify its clients and others in the construction industry about court decisions and changes in the law in the Tri-State area that may affect their businesses or the way they do business. We urge you to regularly visit our website, www.wbglp.com, to keep abreast of what is happening in the courts and law that may affect your business.

Allowance Change Orders Will Be Issued By The NYC School Construction Authority

Contractors who perform (or intend to perform) public contracting work for the NYC School Construction Authority, may have reason to rejoice (a little). As of March 19, 2008, a new provision has been added to the SCA's Construction General Conditions. New Section 7.04, "Allowance Change Orders" should alleviate some of the economic pressure faced by Contractors and Subcontractors when they are directed to perform changed work, but are unable to agree with the SCA as to the value and credits for that work.

Under new Section 7.04, when the SCA issues a Notice of Direction ("NOD") to a Contractor that increases the cost of the work by \$50,000 or more, an Allowance Change Order will be issued. The SCA will estimate the value of the Allowance Change Order - reasonably we hope. The SCA also has an option, as a guideline for the Contractor's payments to its Subcontractors, to allocate a percentage of the estimated cost to one or more Subcontractors whose work is affected by the NOD.

Here is the good part. The SCA will make progress payments to the Contractor, as part of the normal monthly requisitioning process, for up to 80% of the estimated Allowance Change Order amount.

The Contractor has up to 90 days from the date of issuance of the NOD to submit a detailed cost proposal for the NOD work. The Contractor's proposal is subject to the requirements in the contract for computing the value of changed work. If the Contractor does not submit its cost proposal within the 90 day period, no further progress payments will be made by the SCA on the Allowance Change Order. However, once the Contractor's cost proposal is submitted, progress payments for the Allowance Change Order will resume.

After the Contractor's submits its cost proposal, the SCA will complete a "fair and reasonable" evaluation. The parties are then supposed to negotiate a final value for the NOD work. If the negotiation is successful and the parties reach an agreement, the SCA will issue a Change Order to resolve any difference between the Allowance Change Order amount and the final agreed value of the NOD work. The final agreed value will constitute the total settled amount to be paid to the Contractor for the costs and/or credits resulting from the NOD.

Curiously, the new Allowance Change Order provision is silent about the issuance of extensions of time relating to the NOD work. Contractors should therefore remember to comply with the contract notice provisions for requesting extensions of time when an NOD is issued by the SCA. It should not be assumed that an extension of time is part of an Allowance Change Order – unless the Allowance Change Order specifically and expressly states that it includes an extension of time. Even then, prudent Contractors should still timely submit documentation to support their request for an extension of time and be ready to negotiate a time extension when the parties meet to negotiate the value of the NOD.

If you have any questions about the information set forth in this Legal Alert, call us at 914-428-2100. Please understand that this alert provides general information only. It is not intended to provide legal advice. We encourage you to contact an attorney should you desire to discuss specific situations for which you may need legal advice. Under the ethical rules that govern the practice of law, this communication may be considered as attorney advertising.