

STATEMENT FROM STUART S. ZISHOLTZ

I discussed in the past the ridiculous clauses that The City of New York and the various surrounding bureaucracies are inserting into their contracts that can create enormous headaches and havoc for the contractor. Unfortunately, the Courts are enforcing those provisions.

In a recent case, the General Contractor was awarded a contract with the New York City Housing Authority totaling \$8,600,000. His usual practice was to submit change orders, perform the work, furnish the materials and straighten the whole thing out later. At the end of the job, the General Contractor submitted extras totaling approximately \$1,100,000 and The Housing Authority disputed the extras.

Under the terms of the contract, if there were disputed extras, the General Contractor had to do the work whether he liked it or not and file a protest within five days and itemize the claim within thirty days. Because the General Contractor failed to abide by the terms of the contract, the Court found that it waived its right to collect the extras and was unable to recover the \$1,100,000.

In a subsequent case, the Appellate Division found that a contractor may recover for extra work if it is orally approved or the parties' conduct establishes a modification of the contract and the approval of the extra work. The Court distinguished its finding from the previous case in that the job was a private job and not a public job.

Therefore, the law is that with respect to public jobs, every "I" must be dotted and every "T" must be crossed in order to collect for extra work. You must abide by the contract terms. If you do not abide by your contract on a public job, you may jeopardize your right to collect.

It is vital that you review and understand each and every term of your contract and provide whatever paperwork is necessary in a timely manner.

Never let your lien time run out!

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