

KD Alert: New Law Signed by Governor Cuomo Benefits Contractors Seeking Payment from New York City School Construction Authority

By Andrew L. Richards, Esq. and Matthew J. Minero, Esq.
(December 19, 2014)

Good news for contractors working on projects owned by the New York City School Construction Authority (the “SCA”). Governor Cuomo has signed into law a bill which makes it significantly easier for contractors to seek payment from the SCA. This law is particularly advantageous to contractors who, during their performance of work at an SCA project, perform additional work which is not within the scope of their contracts with the SCA. In order to be paid for extra work at SCA projects, contractors are required to submit to the SCA for approval change orders which set forth the scope of additional work to be performed and the price of the additional work. If the SCA fails or refuses to pay the monies claimed by the contractor, the contractor is required by Section 1744 of the Public Authorities Law to file a notice of claim with the SCA as a prerequisite to filing a lawsuit against the SCA to recover the funds. The failure by the contractor to timely file a notice of claim precludes it from recovering the monies that are owed.

Until now, Section 1744(2) of the Public Authorities Law required contractors to file a notice of claim within 90 days after the claim had “accrued”. Courts routinely interpreted this vague term to mean some time prior to the SCA’s rejection of the contractor’s change order. In many cases, courts held that contractor’s claim accrued at the time when: (i) the contractor submitted its change order to the SCA; (ii) or when the contractor had completed the work for which additional payment was sought. Thus, since the SCA often takes a long period of time to make a determination on a change order, contractors’ claims for payment were often becoming time-barred before they even knew they had a claim.

Fortunately, the recently enacted law brings clarity to the SCA’s notice of claim requirement by amending Section 1744(2) of the Public Authorities Law to provide that a contractor’s time in which to file a notice of claim with the SCA extends until 90 days after the SCA has denied payment for the amount claimed.