

Be Careful When You Sign Partial Waivers of Lien, by Andrew Richards, Esq., published by STA, Legal Log, 5-2024

During the project, the subcontractor will most likely be required to sign partial waivers and releases in conjunction with change orders. It is extremely important to read all of the language in the waiver so that the subcontractor does not waive other claims (e.g., time extensions and delay damages), which may not have anything to do with the scope change, which is the subject of the change order.

A typical partial waiver will state in pertinent part that the subcontractor has been paid in full for all work and labor performed, and materials and equipment furnished at the above-described Project as of the signature date on the change order.

The waiver language may also state that the subcontractor has no claims whatsoever against the prime contractor or the owner whether the claims are for extra or additional work, change order work, acceleration costs, delay costs or for an extension of time. Whether or not it is the intent of the subcontractor to waive extra work or delay claims, the plain language of the partial waiver of a lien will preclude the subcontractor's ability to maintain such claims.

If the subcontractor does not request time extensions with each change order (if necessary) and waits until the end of the work to submit a "global" time extension request, the subcontractor may find that certain time extension rights have been waived.

Similarly, claims may be waived if not explicitly reserved in detail in time extension requests, which is particularly an issue in the NYC Standard Construction Contract. Assuming that the document relates simply to one extra work item or time extension may result in a complete waiver of extra work claims, delay damages or time extensions.

If the waiver form does not allow the subcontractor to reserve its rights to other claims, the subcontractor must add a separate page excepting claims that are not being waived and mark up the document referencing those exceptions. Additionally, a cover letter may be sent with the document indicating that certain claims are not being waived.