

Notices of Claim on NYCHA Projects, STA Legal Log, by Andrew Richards, Esq., March 2022

In 2014, Section 1744 of the Public Authorities Law was amended to clarify when a claim against the NYC School Construction Authority (SCA) accrues—which would trigger the contractor’s requirement to submit a notice of claim to the SCA concerning the contractor’s intention to bring a claim for disputed extra work. The amendment resulted in a change in the accrual date for a claim from the day the contractor believed there may be an extra work dispute to the day the SCA denied the request for the change order.

Prior to the amendment, the contractor was required to submit notices of claim to the SCA once it recognized that there may be a claim, even before the SCA and the contractor engaged in definitive discussions as to whether the work was extra and the amount to be paid to the contractor. Despite this change with respect to claims against the SCA, the Appellate Division, First Department recently upheld provisions in the NYC Housing Authority Contract that, similar to the old SCA procedures, requires the contractor to submit a notice of claim within 20 days after the occurrence of the event which gives rise to the claim, which is essentially the date that the contractor was directed to perform the disputed work. Under the NYCHA provisions, the Contractor must also provide its costs/damages within the 20-day claim time frame even if the work has not yet been completely performed. While this law is archaic and does not follow business common sense, the moral of the story is that the contractor may not wait for NYCHA’s denial of a change order request to submit a notice of claim, despite the changes in the Public Authorities Law to create equity and clarify procedures for claims against the SCA.

Andrew Richards is the STA General Counsel, co-chair of KD’s Construction Practice Group, and co-managing partner of KD’s Long Island, NY office.