



Examining New York City's recent contractor reforms

October 21, 2008 - Front Section

The Bloomberg Administration recently unveiled reforms intended to attract increased numbers of bidders for its construction projects, recognizing the need to become more even-handed in its treatment of contractors.

As a contractor, I am pleased to see this acknowledgment that unfair treatment of contractors directly results in higher costs to the city for its capital projects.

The reforms address two significant areas of concern. Firstly, the city establishes a three-year pilot program, covering approximately one quarter of its projects, eliminating the onerous "no damage for delay" provision in the city contract. Secondly, the city will streamline the processing of change orders to reduce the time-frame from the current average of 300 days to an average of 150 days. The recognition, by the Administration, that reform is necessary if the city is to maximize the return on its construction expenditures, is commendable.

Let's compare the city's reforms to the reforms recently implemented by other public entities. In the area of change orders, we have recently seen two public entities announce significant reform. Last year, The Los Angeles Unified School District modified its procedures to permit change orders to be billable in 45 days. The New York city reform-processing a change order in 150 days clearly pales in comparison. New York City might respond that, given its size, it would be unreasonable to expect streamlining to the same extent as is possible elsewhere. I could answer this anticipated "explanation" by pointing out that Los Angeles is not exactly small, but there is actually a much better example of enlightened public sector reform in this area that was very recently undertaken on a large scale, and right here in New York City, by the School Construction Authority (SCA).

SCA president, Sharon Greenberger, recently announced change order reforms that are truly innovative, and will clearly result in increased competition and improved "bottom-line" bid results for the SCA:

- 1) For change orders totaling \$50,000 or more, the "notice of direction" to proceed will be accompanied by a cost estimate prepared by the architect or engineer.
 - 2) Contractors can immediately bill 80% of this estimate, pending final issuance of the change order.
- Turning to the issue of "no damage for delay" reform - prudent contractors facing the uncertainty of possible costly delays caused by the city, coupled with the certainty that the city contract precludes reimbursement of the contractor for its added costs due to the delay, bid accordingly. Thus, the city has been paying a premium on every job covered by this contract language. Since the pilot program will only cover one quarter of projects to be bid over the next three years, the city is subjecting itself to paying a premium on three quarters of its projects over this time frame.

The New York State Office of General Services eliminated "no damage for delay" language from all of its contracts several years ago. From the information I've received, their experience has been

favorable, and they are pleased with their decision.

I encourage mayor Bloomberg and deputy mayor Lieber to reconsider the reform measures they have recently unveiled, and to replace them with initiatives the same as, or in keeping with, the impressive actions taken by the Los Angeles Unified School District, New York State Office of General Services, and the New York School Construction Authority.

These will be worthy of mayor Bloomberg's Administration and his legacy, and all New Yorkers will benefit.

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