

NEW YORK CONSTRUCTION LAW UPDATE

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INCORRECT OR INCOMPLETE PLANS: WHO PAYS FOR THE MISSING INFORMATION?

A typical relationship between a general contractor and an owner begins with the general contractor reviewing a set of plans and specifications that the owner has provided. The general contractor then issues a bid based on those plans and specifications. But on most construction projects the process from that point forward is not always smooth sailing. A common hiccup occurs where the plans and specifications are incomplete or incorrect. In general, a contractor is only required to build what has been drawn but a contractor cannot intentionally build something that he knows, or reasonably should know, is defective or deficient in some way. This issue comes up commonly in implementing the "means and methods" of construction.

For example, structural drawings may show two pieces of steel being connected. They may show the connection method to be used. However, what if the nut and bolt specified in the plans turns out to be incorrect? What if the correct nut and bolt are more expensive? What if it is a thirty (30) story building with hundreds of steel connections and all of the connection details are discovered to be incorrect? Switching to the proper more expensive nut and bolt for each connection could expose the contractor to significant additional charges. The contractor should submit a change order for the more expensive unit and should be paid the higher price. This may seem like the only logical outcome but many owners will try to push the additional charges off on the contractor.

What if the situation is more complex? Take this example: the general conditions of the contract state that the contractor has had a chance to review the plans and specifications and that he agrees to execute the construction in accordance with the applicable building codes, rules and regulations. The plans that the contractor reviewed required the installation of 10,000 linear feet of plastic hand railings in the stairwells. But the building code requires the stairwells to have steel handrails. The steel upgrade could be an extremely expensive upgrade. The owner will argue that the contractor is required to construct according to code and that since code requires steel handrails the bid included steel and there is no upgrade. The contractor will argue that he was entitled to follow the plans and specifications prepared by the architect and the architect's error in specifying the handrails requires a change order for the upgrade. The contractor's argument will be that the building code provision in the general conditions of the contract only

applied to means and methods determinations. Where a specific item is called out in the plans, if it is later changed due to an error, the error must result in a change order.

While most courts in New York would agree that the contractor is correct in the scenario above, and award the costs of the upgrade, there is no definitive binding authority on the issue. For contractors the key is to carefully review the plans and specifications before bid. Make sure you are thoroughly familiar with the required work and if you question any item you may want to request a clarification from the architect before bidding. If the contract has already been entered into and you encounter the problem you should retain competent construction counsel to help guide you through this potential hazard area.