

HOW ARBITRATION REQUIREMENTS CAN AFFECT BOND CLAIMS

Very often, sub-trades find themselves embroiled in a dispute where the customer refuses to pay for work performed or materials furnished. In most instances, the sub-trade will simply file a claim of lien and proceed to foreclosure and include a breach of contract if it is not paid within a reasonable period of time. However, the situation can be complicated if the contract terms require that disputes be arbitrated rather than litigated in court.

Recently, a Washington state federal court ruled on this issue with respect to Miller Act Claims (Federal Construction Projects). Specifically, in Lee & Rua Co. v. Great American Ins. Co., Slip Copy, 2008 WL 868633 (W.D.Wash.,2008), the court decided that if a subcontract requires disputed claims to be arbitrated, that it will alter the usual format of litigation as follows: The claimant (sub-trade) can still file suit on the Miller Act payment bond, but that suit will be stayed, with no decision made, until the arbitration of the breach of contract claim is completed.

This change in format should impress sub-trades with the importance of being able to fully document their claims. Such documentation includes contract documents, signed change orders, emails, faxed instructions, etc. Sub-trades should also review their contract documents before and during the project so as to not overlook these requirements.

Finally, sub-trades should still give all notices on time, as well as to foreclose by the statutory deadline. Arbitration requirements cannot alter the state or federal guidelines that relate to perfection of lien or bond claims.