

# BRICKS IN THE WALL

**Building Toward a More Cost-Effective and Efficient Construction Project**

## Why is it prudent to have a records retention policy?

**W**e began this series of articles by addressing why it can be important to find documents when you need them and defining a records retention policy. Let's look at some very good reasons why you should have a records retention policy.

First, there are some regulatory or administrative reasons. Some governmental agencies require you to maintain documents, or other proof of compliance with applicable statutes, guidelines, and laws. For example, the American Reinvestment and Recovery Act mandates that companies demonstrate where the money comes from and how it is spent. The Fair Labor Standards Act and state wage and hour laws demand that employers prove they have paid their employees the "prevailing wage" for the actual time they work. Various immigration laws require that employers be able to prove their employees are rightfully in the United States.

In addition to regulatory reasons, your contract probably contains a provision that obligates you to provide access for the owner to your books and records. The owner wants this access to make sure you are paying your employees, you have the right insurance coverage, you are installing the materials you are supposed to, and you are progressing on schedule.

Your contract also may include a clause like this: "Subcontractor shall indemnify, defend and hold harmless Contractor for any losses, fines or other penalties, including reasonable attorney fees that may be incurred by or imposed on Contractor due to Subcontractor's failure to comply with the provisions of any applicable law." This clause makes the subcontractor responsible for knowing and understanding what documents and information should be kept according to various laws that apply to the project.

Finally, there are some very practical reasons why you should have a records retention policy. The first and most obvious is... you may need it! What steps do you take when you do not have a written change order? You look to your job logs, daily reports, and meeting minutes for proof that your request was approved. What do you do when a subcontractor shows up 2 years later claiming he was not paid? You look to your pay stubs, withholdings records, and canceled checks. What do you do when there is a dispute about why the pad cracked? You look back at soils testing reports provided by the owner before the project began and emails about when the concrete was poured.

You cannot foresee all of the reasons why you will need to find documents, but you can put in place a systematic way of organizing and preserving the documents you create and collect that will ease your mind.

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*Bricks in the Wall* is a quarterly publication series, each issue on a topic of interest to the construction industry. Listed below are previous issues and their topics.

- Giving Proper Notice
- Get a Change Order
- Don't Just Kick a Contractor Off the Project
- Changes to Tennessee Lien Law Statute
- Your Contractor Delayed Completion of the Project – What Next?
- Is Your Liquidated Damages Clause Valid?
- E-Verify Required for All Federal Contractors – Part of the Plan
- Changes to Tennessee Lien Law Statute Effective July 1, 2008
- It Pays to be Indemnified
- Federal Government Contractors Must Use E-Verify Effective January 15, 2009
- You Need to Understand the Fair Labor Standards Act; Part 1 – The Basics
- You Need to Understand the Fair Labor Standards Act; Part 2 – What is "Work" Under the FLSA?
- You Need to Understand the Fair Labor Standards Act; Part 3 – Are You a Joint Employer?
- You Need to Understand the Fair Labor Standards Act; Part 4 – Enforcing the FLSA
- You Need to Understand the Fair Labor Standards Act; Part 5 – Protect Yourself
- Here Comes OSHA – Protect Yourself
- Stimulus Act Projects Require Strict Adherence to the Rules

### Upcoming Issues:

**September 2012** | What are some practical, real world things to consider about your records retention policy?

**December 2012** | What is a "legal hold," how does it differ from a records retention policy, and why is it important?