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THE CONSTRUCTION AND SURETY LAW UPDATE

CONSTRUCTION • GOVERNMENT CONTRACT CLAIMS • SURETY • LABOR • LITIGATION

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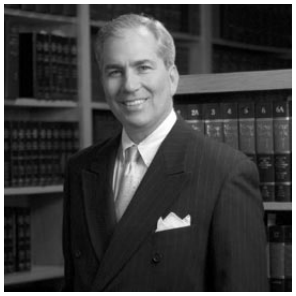

Henry L. Goldberg
Managing Partner

GENCY ABUSE OF NYC VENDEX

• Is There a Constitutional Right of Protection

There can be no doubt that we live in an age of "hyper-sensitivity" with regard to contractor responsibility issues. What once took a prolonged, formal default hearing (with all of the appropriate due process protections), now can be virtually accomplished on a de facto basis. A unilaterally-issued "unsatisfactory" evaluation of a contractor on a particular project by a single government agency can swiftly reverberate (regardless of validity) around New York City's VENDEX system, effectively precluding a contractor from bidding on new contracts. New York State courts have so sharply swung the "discretion pendulum" in favor of public owners, that they have almost completely abdicated their judicial duty to review the legality of such actions by public agencies.

Some cases have reached such ridiculous outcomes, and agency powers have come to be perceived as so nearly absolute, that the opportunity for abuse by individual public owner representatives is almost irresistible, particularly when personal animosity on a project is allowed to poison the well.

In one of the more interesting construction law cases to be decided in some time, AFC Enterprises'

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Agency Abuse of NYC Vendex (*Continued from page 1)*

long battle with prior administrations of the New York City School Construction Authority took on the mantle of an epic constitutional struggle between a private company and a governmental agency. A federal court ruling in the now-settled case gave AFC the green light to take its case to trial. The ruling was in large part based on constitutional legal arguments, certainly a rarity in construction litigation. The day-to-day significance of this important decision to the contracting community, however, may be quite fundamental.

The decision in AFC Enterprises v. NYC-SCA turned on, among other issues, whether the SCA submitted false information to the New York City VENDEX system, with the intent to cause findings by NYC agencies of AFC's "nonresponsibility" and whether that "retaliatory" act represented the official policy of the SCA. The court held that sufficient evidence had been submitted by AFC to permit these issues to be heard by a jury, and that AFC could belatedly amend its complaint in the lawsuit so that a jury could also consider a First Amendment (constitutional "Freedom of Speech") argument that SCA officials had retaliated against AFC for its public criticism of their performance and financial practices. The court noted that the SCA had awarded a contract to another contractor to complete the project (after terminating AFC) for $1,835,000.00, when the actual cost to complete, per the SCA's own records, was no more than $150,000!

Based on sound legal principles and the facts presented to it, the federal district court found that the statements of the SCA officials had stigmatized AFC, and that a jury could reasonably infer that the SCA supplied information to NYC officials with the knowledge that doing so would produce (and with the intent, according to the court, to so produce) findings of non-responsibility and resulting negative VENDEX entries. The SCA, therefore, may have intentionally damaged AFC's employment prospects. Moreover, because the defamatory statements were made by senior SCA officials (who either delegated final decision making authority, or were vested with such authority by law), a jury could also easily find that the retaliatory defamation represented official policy of the SCA.

G&C Commentary: The danger of unreliable information being negligently, recklessly or even intentionally dumped into the NYC VENDEX system is very real today. In this age of warp-speed communications, the leveraged effect of this danger can be catastrophic to a contractor. No true standards are in place. Any public agency can use negative information in its almost unrestricted discretion, regardless of the self-serving nature of such information.

This case establishes the urgent need for safeguards to be developed. The City of New York should itself step into the breach and reform the VENDEX reporting procedures, so that only fair and accurate information can be placed in the systems. Such reforms must include a prompt and efficient administrative procedure that could be efficiently and economically implemented by a contractor when the system is abused. Previously, it was simply the right thing to do. Now -- given this federal court decision -- public owners may risk significant financial exposure for the irresponsible and/or malicious acts of their employees.

DAMAGE FOR DELAY

• Two Recent Appellate Decisions Favor Contractors

As every contractor should know, "no damage for delay" clauses are generally valid and enforceable. While there are certain "exceptions" to the enforcement of these clauses, these exceptions have been narrowly interpreted by the courts. Damages for delay may still be recovered, however for: (1) delays caused by the owner's bad faith or its willful, malicious, or grossly negligent conduct; (2) uncontemplated delays; (3) delays so unreasonable that they constitute an intentional abandonment of the contract by the contractee; and (4) delays resulting from the contractee's breach of a fundamental obligation of the contract.

A contractor seeking delay damages in the face of a "no damages for delay" clause has an uphill battle, to say the least. However, in two recent appellate cases in New York, the delay damage claimant was able to successfully meet this challenge.

In the first case, involving a school district project, the appellate court affirmed the trial court's judgment awarding the contractor damages for extended site overhead, labor rate increases, loss of labor productivity, expenses for small tools and consumables, and for lost profit.

This was despite the fact that the defendant school district's contract contained a standard "no damage for delay" clause.

Among the various causes of the delays identified

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Damage for Delay (*Continued from page 2)*

by the trial court were defendant's failure to timely obtain easements for electrical and drain sewer installations, the failure of the school district's construction manager to adequately supervise and coordinate the work of the various contractors, including the failure to prepare the coordinated construction schedules and drawings, the termination of both the construction manager in December 1994 and the general contractor in June 1995 [the plaintiff was the "Wicks" electrical prime] and defendant's decision to hire thirty separate subcontractors in lieu of replacing the general contractor.

In holding that the "no damage for delay clause" did not bar this claim, the appellate court explained that under the totality of the circumstances, it found ample basis in the record for the factual conclusion that the project delays were uncontemplated and that the defendant was responsible for a breach of fundamental contractual obligations.

In the second New York appellate case, the general contractor was granted leave to amend its complaint to assert claims for delay damages, despite the inclusion of an exculpatory "no damage for delay" clause in the contract. The appellate court permitted this amendment, and modified the lower court's decision which had denied the claim, because:

"Here, the evidence presented by plaintiff in opposing defendant Lehrer McGovern Bovis's motion, demonstrating over 600 days in delays, including a substantial period during which Lehrer McGovern Bovis, as Contract Manager, suspended work, is sufficiently indicative of delays beyond the contemplation of the contracting parties or of an abandonment by the contractee, and thus a meritorious cause of action for delay damages not withstanding the cited exculpatory contract provision, as to warrant... claims for delay damages predicated upon uncontemplated delays and abandonment." (Emphasis added.)

G&C Commentary: Clearly, these cases did not involve "ordinary, garden-variety" construction delays contemplated by the parties when they entered into their agreement and, therefore, were beyond the scope of the "no damage for delay" clause. The owner's termination of both the construction manager and the general contractor within a six-month period and the hiring of thirty subcontractors in lieu of replacing the general contractor in the first case, and 600 days of delay, including a construction manager imposed suspension of work, in the second case, were justifiably viewed by the courts as extraordinary circumstances. However, delay in public construction is epidemic and contractors are seriously hurt on a daily basis due to the actions or inactions of public owners or their representatives. Only legislative reform of public

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Spotlight On . . .

NORMAN A. STEIGER
Director of Federal Contracts Group

Norman A. Steiger has been deeply involved in federal contract law and management for over thirty years. In addition to his private practice, he has been general counsel for major defense contractors, is widely published, and has received numerous awards for his contributions to the field. Fortunately, in 1998 Norman brought his government contracting practice to Goldberg & Connolly. The demand for his expertise, has propelled the growth of his and Goldberg & Connolly's Federal Contractor client base. He is now Director of Goldberg & Connolly's Federal Contracts Group, and is Of Counsel to the firm.

An aggressive litigator and advocate for his clients, Norman is also viewed as a legal innovator and noted authority. He is active in several industry associations, such as the National Defense Industry Association (NDIA) of which he is a lifetime member and the former chairman of its Legal Committee. He is a frequent lecturer on the topic for groups such as Federal Publications, Inc., the Bureau of National Affairs, Inc., and the Federal Bar. Currently, he is conducting a Homeland Security Series for the National Management Contractor's Association (NCMA).

He is the noted author of the three-volume treatise on government contracts, Federal Contract Management, published by MatthewBender/Lexis Nexis. He remains its Editor-in-Chief and principal contributor. Today, almost twenty years after its introduction, it is regarded as the "industry standard," and is an important and respected resource for law schools and government contract lawyers nationwide.

Mr. Steiger regularly counsels the firm's clients on all government contracting matters, ranging from contract formation and risk assessment to bid protests, contract claims and termination disputes.

Damage for Delay (*Continued from page 3)*

contracting laws to prevent public owners from hiding behind unqualified no damage for delay clauses will equitably resolve this issue. Meanwhile, skillful use of existing exceptions to such clauses can provide some necessary relief to seriously impacted contractors or subcontractors.

PRIVATE SECTOR CONSTRUCTION
• Now Also Subject to "Prompt Payment" Law

Governor Pataki has signed into law a modified version of the "Prompt Payment of Construction Contracts Act" that he vetoed in December 2001. The statute establishes time frame requirements for payment from owners to contractors, and from contractors to subcontractors. It also fixes penalties for the failure to pay within those periods. The 2002 bill, known as the "Construction Contract Act ("Act") applies to private construction contracts entered into on or after January 14, 2003.

The new law establishes the calendar month during which any work is performed as the billing cycle for the project. It also requires the Owner, within twelve business days to approve or disapprove a payment requisition in writing. The law does allow parties to contract for payment schedules which override the "defaults" set in the statue.

Another noteworthy provision provides that "where a contractor enters into a construction contract with a subcontractor as agent for a disclosed Owner, the payment obligation shall flow directly from the disclosed owner, as principal, to the subcontractor through the agent." This is intended to foreclose any attempt by an Owner to avoid contractual privity with the subcontractors (and, therefore, direct liability) by interposing an affiliated "shell" corporation as a construction manager between itself and the subs.

The new statute also limits the age old ploy of pretextual "backcharges" to only amounts sufficient to pay the costs and expenses that the withholding owner (or contractor) reasonably expects to incur in curing or correcting items listed in its written notice of payment disapproval.

Perhaps most significant, however, is the provision which gives a contractor or subcontractor not paid within the specified period the right to actually suspend performance, without being held to be in breach of its contract. The Act also gives the owner or contractor the right to notification in writing before performance is suspended, and an opportunity to cure. When performance is resumed, the suspending party is entitled to an extension of time corresponding to the entire period that performance was suspended. In addition, payment of "documented actual costs incurred for re-mobilization shall be negotiated between the parties."

New features in the law are a prohibition against a contractor requiring retainage in excess of the actual percentage retained by the owner and a requirement that the owner release retainage to the contractor within thirty days after final contract approval with a 1% monthly interest penalty on retention not timely released either by an owner or contractor.

The Act, as passed into law, however, is weaker than 2001's vetoed bill. It extends the approval-and-payment cycle from three weeks to roughly six; interest on past-due payments is reduced from 1 1/2 percent per month to one percent; an approved remedy for nonpayment is "suspension of performance" (not termination of the Construction Contract); and the mandatory arbitration provisions allowing for the availability of costs, the winner's attorneys' fees, and any incidental and consequential damages against the losing party was dropped entirely.

G&C Commentary: The political clout of the Act's opponents resulted in a significantly weaker statute than its vetoed predecessor. The opponents did make a valid point, however in arguing that ascertaining the financial condition of an owner, developer or general contractor before entering into a large construction contract or subcontract on a private job, provides better assurance of payment than any statute could provide. As the old adage goes, "no contract is better than the parties to it." This is all the more so in private sector construction.

Even in its diluted form, however, the Act does require interim payments within a reasonable time frame. Its requirement of written disapprovals of invoices should make it more difficult to later defend the arbitrary withholding of progress payments. Also, the 12% interest rate on late payments imposed by the Act is a helpful incentive, particularly considering current market rates.

However, the most fundamental and far reaching change in the law is the new statutory right enabling unpaid contractors or subcontractors, after giving notice and the opportunity to cure, to walk off a job without fear of being held in default for breach of contract. For a contractor or subcontractor to be able to walk off a

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project with impunity - particularly at the first sign of trouble - is a new weapon of extraordinary caliber.

LEGISLATIVE UPDATE

• New Procedures for "Bonding Off" Mechanics' Leins

Effective January 1, 2003, the New York Lien Law was amended to eliminate the cumbersome two-step procedure previously required for "bonding off" a mechanics' lien. The amendments are applicable to both private and public improvement liens. The new law provides that a bond in the amount of 110% of the face amount of the lien will be sufficient, as a matter of law, to discharge any mechanics' lien.

Previously, the New York Lien Law required a two-step process in court. First, a court order had to be issued to set the amount of the undertaking and then, once the undertaking in the directed amount was obtained, a second appearance in court was required to obtain an order actually discharging the lien of record. Incidental to this second court proceeding, the moving papers had to be served upon the original mechanic's lienor, who then had an opportunity to object before the judge. Under the new law, judicial intervention can be completely avoided. This will greatly reduce the expense and time involved in bonding off mechanic's liens in New York State.

While, as stated, the need for judicial intervention has been generally eliminated, there are two minor exceptions:

The first exception gives the lienor the opportunity to object to the bond. A copy of the bond must be served upon the lienor in the specific manner prescribed by the statute. The lienor has ten days from receipt of the bond to take exception to it in court. The law cautions, however, that "exceptions deemed by the court to have been taken unnecessarily, or for vexation or delay, may, upon notice, be set aside with costs."

The second exception applies to sureties that are not authorized to transact business within New York State, and/or where a certificate of qualification of the surety by the Superintendent of Insurance has not been attached to the undertaking. In either case, a court order is required to permit the lien to be discharged by the filing of the nonconforming surety's undertaking.

G&C Commentary: It is now quite simple. Upon filing a bond from an approved surety for 110% of the amount of the mechanics' lien (for a public improvement, filing is made with the appropriate state agency; for a private improvement filing is made with the appropriate county clerk's office), and serving a copy of the lien upon the original lienor in the manner prescribed by the statute, the lien is "deemed" discharged as a matter of law. Thus, the burden of seeking court relief is shifted to the lienor and will only apply in those rare instances where an objection to the bond (which must be filed in 10 days) is made. The new law will significantly speed up the time required for the discharge of a lien. Under the previous procedure, several weeks, indeed often months, could elapse between the time of the filing of a lien, and completion of the procedure for its discharge through the court system. Since public owners are permitted to withhold 150% of the amount of a

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OSHA ENFORCEMENT
• The "Loose Cannon" Defense

The "unpreventable employee misconduct" defense, sometimes called the "isolated incident" defense, is a valuable employer affirmative defense to liability for an employee's unsafe practices.

In order to effectively raise the "unpreventable employee misconduct" (a/k/a "Loose Cannon") defense, an employer must demonstrate that an employee's conduct was a departure from an effectively communicated and enforced safety program. To that end, an employer must show that (1) it maintains a written safety program related to OSHA standards; (2) it provided adequate training for its employees, and effectively communicated to the employees the company's standards for safety and the possibility of disciplinary action for violations; and (3) it did enforce the safety program by disciplining violating employees.

How can an employer demonstrate that it took its safety program seriously? First, it should document each time an employee is reprimanded, suspended, or discharged for violating the safety program. Also, an employer should always specify the particular unsafe action(s) in which an employee engages. For example, instead of citing an employee for "unsafe practices," it should cite the employee for "violation of OSHA rules requiring a minimum clearance of 10 feet from transmission lines when operating cranes." The "repeat-offender" employee should bear his share of the responsibility. However, only by preparing in advance will an employer be able to avail itself of this important legal defense in an OSHA investigation.

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mechanics' lien from payment until the lien is discharged this is a significant change. Because judicial intervention is no longer required, the speed of the discharge will be dependent only upon the speed in which the party affected by the lien obtains the necessary bond from its surety.

The new law will also significantly alter the cost/benefit analysis frequently engaged in by those considering whether to "bond off" a mechanics' lien. Because the involvement of an attorney may be limited to assuring that proposed lien complies with the statute, and that copies of the discharge bond are properly served upon the lienor, legal fees will be reduced, thus providing further incentive to quickly and efficiently discharge a lien.

STATUTE OF LIMITATIONS ON PAYMENT BOND CLAIMS

• New York's Highest Court Speaks Twice

In two cases before New York's highest court concerning the payment bond suit limitation period under New York State Finance Law 137, the Court of Appeals decided in favor of the surety industry. One case involves determining when the one-year period for bringing suit ends, the other when it starts.

When the Time Period for Suit Starts: In the first case, the Court of Appeals addressed when the time period for bringing suit against a State Finance Law 137 payment bond begins to run. In that case, the subcontractor had successfully arbitrated a dispute with the general contractor, but upon learning that the general contractor was insolvent, sought to recover under the general contractor's payment bond. The subcontractor argued that final payment did not become due until the arbitration had been concluded and the right to payment determined. This position was upheld by the intermediate appellate court.

New York's highest court, the Court of Appeals, reversed. It held that the language of State Finance Law §137(4) (no action allowed after the expiration of "one year from the date on which final payment under the claimant's subcontract became due") has to be read in conjunction with §137(3) which states that any subcontractor has the right to sue on a payment bond if it has not been paid within ninety (90) days "after the day on which the last of the labor was performed or material was furnished." The Court stated that, together, subsections (3) and (4) set the beginning and end-point measurements for payment bond lawsuits.

According to the Court of Appeals, the one-year statute of limitations starts "at a point when a subcontractor who has directly contracted with the general contractor has submitted an invoice for final payment (or the functional equivalent thereof, such as a demand for final payment) and ninety days have passed since the subcontractor has ceased to work on the project."

Significantly, the Court of Appeals stated that the parties may not by their subcontract modify the starting point date, the date when "final payment" became due. Significantly, the court clearly held that the terms of the invoice or demand for final payment, not the actual terms of the subcontract, shall govern.

When the Time Period for Suit Ends: The second case involved a combination performance and payment bond on a school district project. The bond was silent as to the suit limitation period. A subcontractor filed an action against the bond approximately twenty months after the date it had claimed final payment was due. The surety defended, relying upon the language in State Finance Law 137(4)(b), which states:

> [N]o action on a payment bond furnished pursuant to this section shall be commenced after the expiration of one year from the date on which final payment under the claimant's subcontract became due.

The subcontractor argued that its suit was governed by the general six-year limitations period for contract actions, rather than the one-year limitations period in the State Finance Law, because the bond was a "common law bond" rather than a statutory bond. The court disagreed. It held that whether a public works bond was a common law bond or a statutory bond was no longer an issue in New York. In 1985, an amendment to the State Finance Law changed payment bonds on public work from permissive to mandatory. As a result, all such bonds became subject to the provisions of State Finance Law 137. Since the bond in this case was a public works bond, it was held subject to the one-year limitations period under the statute. Because the contractor clearly failed to comply with the Section 137 statue of limitations, its case was dismissed.

G&C Commentary: The Court of Appeals took pains to explain that it cannot "countenance a sympathetic escape hatch for a particular subcontractor's claim," but must instead establish a bright line for the beginning

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Statute of Limitations On ... *(Continued from page 6)*

and end dates for all lawsuits on payment bonds. This is both good (i.e., creating certainty) and bad (i.e., possibly causing harsh results in particular cases).

The following should be noted:

1. The end date for the commencement of a lawsuit may be modified by the parties' bond. A bond may grant broader rights to payment bond claimants than the one-year statute of limitations provided for in 137, but it cannot be more restrictive than the statute.

2. Notwithstanding the Court's view in the first case that the time to sue begins when final payment is demanded and ninety days have passed since this subcontractor has ceased to work on the project, situations may arise when a subcontractor leaves work without having demanded final payment or the subcontractor has made demand for final payment but continues working for more than ninety days thereafter. The clear implication is that the first of these events to occur will become the starting point from which the statute of limitations will run.

This interpretation is potentially prejudicial to early-finishing subcontractors, and, if applied as indicated, might actually undermine the intent of the statute. As the court acknowledged:

"We observe that this case yields the ironic result of a subcontractor being shut out from a timely lawsuit by the very statute meant generally to protect the rights of subcontractors."

Thus, early-finishing subcontractors concerned about the financial health of their general contractor should be careful not to submit their final invoices "too early" if they want their retainage payments to have payment bond coverage. They also must be vigilant to determine when the general contractor receives its final payment from the owner so that they know when they can safely invoice for the retainage on their subcontracts.

IMPORTANT CHANGES AFFECTING NYS PREVAILING WAGE LAW

There have been a number of significant changes in the prevailing wage law, all of which reflect the trend towards an increased level of investigation and more severe sanctions. On these pages, we have often referred to violation of the Prevailing Wage Law as a "fool's paradise," with short term "gains" followed by the potential for catastrophe. This is all the more so today in view of these recent changes.

Personal Liability of Individual Shareholders Expanded: Effective November 1, 2002, a shareholder for a corporation who owns 10% or more of the corporation's issued and outstanding shares shall be personally liable for any prevailing wage obligation of the corporation if the corporation fails to meet that obligation. Under the prior provision, only the five largest shareholders were held liable. Now, any shareholder with 10% or more in ownership would be fully exposed to personal liability.

Loophole Allowing Avoidance of Automatic Debarment Closed: The new statute implements additional grounds for the automatic debarment of contractors from the public works contracts throughout the state. Labor Law 220 had for many years provided that two instances of willful non-compliance of the Prevailing Wage Law within a six-year period would result in automatic debarment for a five-year period. In addition, §220-b had recently been amended to provide that a contractor would be automatically debarred for five years for one instance of submission of false payroll records, or for one instance of demanding kickbacks. Now, under this newest statutory amendment, contractors will be debarred for any conviction of a felony offense "for conduct directly relating to obtaining or attempting to obtain, or performing or attempting to perform a public work contract", if the facts underlying such felony offense would constitute a violation of Section 220 of the Labor Law.

This amendment reflects the increased level of prevailing wage-related prosecutions by the offices of the various District Attorneys in the region. It closes a loophole that existed in prevailing wage criminal enforcement. While automatic debarment has been required for the above mentioned violations of Labor Law Section 220, a contractor criminally prosecuted by a District Attorney for prevailing wage-type violations under the auspices of a "related" statute, such as the New York Penal Law (i.e., not Labor Law 220 specifically, which is exclusively the province of the Department of Labor to enforce), could still "plea bargain" to avoid debarment. Local prosecutors frequently indicted contractors for prevailing wage-type violations under the New York Penal Law, alleging crimes such as "offering a false instrument for filing," "falsifying business records," "perjury" (prevailing wage submittals are certified) and "grand larceny." All of these crimes, in their more serious forms, are felonies. Prior to this amendment, when confronted with a criminal prosecution by a local District Attorney,

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Important Changes Affecting ... *(Continued from page 7)*

contractors could still offer to make restitution by paying the prevailing wage assessment with interest and penalties in an attempt to escape automatic debarment under the Prevailing Wage Law. Now, contractors prosecuted by a local District Attorney's Office will be subject to automatic debarment in the same manner as contractors who are civilly investigated by the Department of Labor, or the New York City Comptroller's Office, under Labor Law 220 itself.

THE "BUY AMERICAN ACT"
• It Can Bury Your Project!

The "Buy American Act" requires construction contractors on federal projects to use "only such unmanufactured articles, material, and supplies that have been mined or produced in the United States and only manufactured articles, materials and supplies that have been manufactured in the United States substantially from articles, materials or supplies produced domestically. The Act also allows the head of a federal procuring agency to authorize exceptions based on a determination that adherence to the Act would be "inconsistent with the public interest" or that compliance would require the contractor to absorb "unreasonable costs."

There have been several significant cases litigated both in the federal courts and the Boards of Contract Appeals in the last few years in which the provisions of the "Buy American Act" have been strictly enforced. In these cases, construction contractors have been subjected to the loss of substantial equitable adjustment claims, termination for default, debarment, and even the assessment of civil monetary penalties under the False Claims Act.

One of the most draconian sanctions invoked by the government to remedy "Buy American Act" violations is default termination. The federal construction contract default clause does not explicitly state that a federal construction contractor's failure to comply with the Buy American Act is grounds for default. However, Boards of Contract Appeals have found that a violation of the Act is a material breach and that it may serve as the basis for terminating a contractor for default.

Furthermore, The "Buy American Act" does expressly authorize debarment as a sanction for a failure to comply with its requirements. The contractor may be precluded from participating in future federal government contracts for three years. However, the Controller General has held that debarment is appropriate only in cases of wilful violation of the terms of the Act. Nonetheless, the Department of Defense continues to enforce the provisions of the Act by threatening debarment, even in situations where the violation is unintentional. As a result, even the threat of debarment for failure to comply with the Act now requires a construction contractor to utilize substantial time and resources to show cause why it should not debarred. Furthermore, in the enforcement of the Act, contractors are often required to withstand substantial contract price reductions in order to "compensate" the federal government for the lesser cost of cheaper, foreign materials used in a federal project.

G&C Commentary: One recent case, Rule Industries, established a dangerous precedent for construction contractors who are, in fact, uncertain about whether they are utilizing foreign or domestic construction materials. Construction contractors should avoid False Claims Act challenges by exercising due diligence in investigating the source of their construction materials, or by applying for relief in advance with the head of the federal procuring agency. Because the consequences can be so severe, contractors need to pay close attention to their "Buy American Act" obligations. Avoid making uninformed decisions in areas where doubt exists as to the proper method for satisfying their contractual obligations. The combined sanctions of the "Buy American Act" and the "False Claims Act" are far too serious to be taken lightly by any federal construction contractor. Know your rights, and your responsibilities.

Your suggestions and comments are welcome.

Either e-mail us at
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or simply
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We would love to hear from you.

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