NAVIGANT

GLOBAL CONSTRUCTION

MAXIMIZING COLLECTIONS ON FEDERAL CONTRACTS WITHOUT GOING TO JAIL

Adrian L. Bastianelli III, Lori Ann Lange, Michael C. Zisa
Peckar & Abramson

The federal government is not known for the speed that it does anything, including making payment on a construction contract or on claims. So what can the contractor do to expedite its payment? The primary key is for the contractor to understand that it cannot change the system, which is set in regulatory stone. Instead, the contractor needs to learn how to work within the system and make the system work for the contractor. Set out below are some tips on how the contractor can do this, and thereby expedite its payment.

THE CONTRACTOR SHOULD START WORKING ON PAYMENT BEFORE CONSTRUCTION COMMENCES

First and foremost, the contractor needs to read the contract's payment clauses. Generally speaking, a federal construction contract will contain two important clauses: (1) the Payments Under Fixed-Price Construction Contracts clause, Federal Acquisition Regulation ("FAR") 52.232-5, which states that the government will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the contracting officer, on estimates of work accomplished that meets the standards of quality established under the contract, as approved by the contracting officer; and (2) the Prompt Payment for Construction Contracts clause, FAR 52.232-27, which states that the due date for making progress payments is 14 days after the designated billing office receives a proper payment request and the due date for making final payment is 30 days after the designated billing office receives a proper invoice from the contractor or the government accepts the work, whichever is later. The contracting agency may add additional payment provisions, but these generally concern the type of information required to be submitted by the contractor in order to receive payment.

The contractor needs to perform the groundwork to expedite payment even before it receives the Notice to Proceed from the government in order to achieve timely payment once work commences. While regulations govern all federal agencies, each government agency and office within each agency has its own way of doing business. The contractor needs to understand how the particular office with which it has the contract handles payment, which may not be the contracting office. Even before the work starts, it is important for the contractor to discuss the payment process with the government

representatives, understand what is important to that office, and reach agreement on an effective process to expeditiously handle payment applications and payment.

An issue that often plagues the contractor and can slow down reaching agreement on the pricing of changes and claims are equipment and overhead rates. The FAR allows the parties to enter into advance agreements on equipment and overhead rates that will be used throughout the project to price changes and claims: FAR 31.109. The contractor should attempt to reach an agreement on these items as early as possible to avoid disputes on changes and claims later in the project. In the early stages, the contractor and government are working together and agreement on rates generally is not difficult. Once disputes arise, the relationship between the parties may have changed and agreement may be more difficult to reach. In addition, FAR 31.109(b) states that advance agreements may be negotiated either before or during a contract but should be negotiated before incurrence of the costs involved.

In negotiating an advance agreement, the contractor must provide cost and pricing information to the government. In doing so, the contractor must present accurate data to the government representative supporting the equipment and overhead rates and push to reach an agreement.

Federal construction contracts generally require the submission and approval of a preliminary and baseline schedule prior to starting work and the contractor's failure to provide the schedule can be a basis for withholding payment. One of the main reasons for a delay in payment at the beginning of the job is the contractor's failure to submit the baseline schedule in a timely manner. The contractor needs to complete the baseline schedule as quickly as it can without sacrificing accuracy and thoroughness. The effort to expedite the schedule should not result in a bad or incomplete schedule, because a bad baseline schedule will haunt the contractor for the entire job, particularly if there is a delay claim.

UNDERSTAND THE PAYMENT APPLICATION PROCESS

Understanding the payment application process is critical to ensure timely payment, since the government will not pay the contractor without a proper payment application. Progress payments on a fixed-priced federal contract generally are made on a percentage-of-completion basis through monthly progress payment applications. In preparing the payment application, the contractor must timely collect the data, including the data from subcontractors, and arrange for an early meeting with the government each month to reach an agreement on the quantity of work properly performed. The contractor needs to be fully prepared with accurate information for this meeting. It is important for the contractor to push back when the government seeks to cut an application without a good reason. On the other hand, the contractor needs to avoid pushing the envelope too far and seeking payment for more work than the contractor has properly performed, which can result in a false claim allegation by the government.

The payment application must include the following information:

- An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested
- A listing of the amount included for work performed by each subcontractor under the contract
- A listing of the total amount of each subcontract under the contract
- A listing of the amounts previously paid to each such subcontractor under the contract
- Any additional supporting data in a form and detail required by the contracting officer

FAR 52.232-5(b)(1).

For the contractor to receive payment, its representative must certify that to his or her best knowledge:

- The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract.
- All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by the certification, in accordance with subcontract agreements and the requirements of 31 U.S.C. Chapter 39.
- The request for progress payments does not include any amounts that the contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

FAR 52.232-5(c).

If the certification is knowingly inaccurate, the contractor may be liable for a false claim, which can have Draconian results, including the forfeiture of payment, civil penalties, a poor performance rating, and possibly suspension or debarment. The cost of defense of a false claim can be substantial, and the relationship with the government may be permanently injured. It is therefore extremely important that the certification of the payment application be

accurate. At a minimum, whoever is signing the payment application must verify that the percentage of work being billed for is accurate, that subcontractors have been timely paid from previous progress payments, and that the contractor is not billing for money it does not intend to pay a subcontractor or supplier.

The contractor is entitled to interest on the government's failure to pay a proper invoice within the specified time. A proper invoice must contain:

- Name and address of the contractor.
- Invoice date and number.
- Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
- Description of the work or services performed.
- Delivery and payment terms (such as any discount for prompt payment).
- Name and address of contractor official to whom payment is to be sent (this must be the same as that in the contract or in a proper notice of assignment).
- Name (where practicable), title, phone number, and mailing address of the person to be notified in event of a defective invoice.
- Taxpayer Identification Number if required by the contract.
- Electronic funds transfer banking information if required by the contract.
- Any other information or documentation required by the contract.

FAR 52.232-27(a)(2).

If the invoice is not proper or does not contain the required information, the government does not have an obligation to pay the invoice and the interest clock does not begin to run. Thus, the contractor must focus on submitting an accurate payment application complying with the requirements of the contract.

If payment is late, the government should automatically add interest. If it does not, the contractor needs to provide notice of the lack of interest and pursue the issue.

The government typically does not withhold retainage. However, if the contractor is not achieving satisfactory progress, the government may withhold up to 10 percent retainage: FAR 32.103; FAR 52.232-5(e). The government also can withhold retainage for cause, including defective work and the failure to provide sufficient supporting data and schedules.

SUBCONTRACTORS

While the government is not liable if a prime contractor fails to pay a subcontractor, federal statutes and regulations provide subcontractors with many rights relating to payment. The FAR requires that federal subcontracts contain provisions stating that subcontractors shall be paid within seven days from receipt by the prime contractor of payment from the government: FAR 52.232-27(c)(1). If payment is not timely made by the prime contractor, the subcontractor is entitled to interest from the prime contractor. The FAR also requires that first-tier subcontractors flow down these provisions to lower-tier subcontractors: FAR 52.232-27(d)(2). These provisions cannot be enforced against the government, but can be enforced in a private action between the parties.

The FAR allows the subcontract to contain a provision for retainage by the prime contractor from the subcontractor even though the government is not withholding retainage from the prime contractor: FAR 52.232-27(d)(1). In other words, the prime contractor can hold retainage on the subcontractor even though the government is not holding retainage. While the prime contractor can hold retainage from the subcontractor, it cannot bill the government for the retainage it intends to hold. Thus, the government ultimately will hold the retainage.

The FAR also allows the prime contractor to withhold payment from the subcontractor for deficient work. However, the contractor needs to be careful that it does not bill the government for amounts that it withholds unless the deficient work was corrected by the prime contractor or another subcontractor. The contractor must certify that each payment application does not contain amounts that the prime contractor intends to withhold from the subcontractor: FAR 52.232-5(c). If the contractor did bill for deficient work before it realized there was a defect it may be required to return that money to the government. If the contractor violates these requirements, it may be subject to false-claim allegations.

Upon withholding, the prime contractor is required to provide notice to the subcontractor of the reason for the withholding and provide a copy of that notice to the government: FAR 52.232-27(d)(2)-(3). Once the work is corrected, the prime contractor can bill the government. The contractor then must make payment to the subcontractor within seven days of payment by the government: FAR 52.232-27(e)(4).

The most important tool for the subcontractor for obtaining timely payment is the Miller Act, which requires the prime contractor to provide a surety bond on federal government

projects to protect subcontractors since subcontractors cannot lien federal property: 40 U.S.C. §§ 3131, *et seq.* Subcontractors must be aware of the provisions of the statute and the time limits for filing bond claims as these time limits are strictly enforced. The application and time limits of the Miller Act have been widely chronicled and are beyond the scope of this article.

COLLECTING FOR CHANGES, REQUESTS FOR EQUITABLE ADJUSTMENTS, AND CLAIMS

Nowhere is the difference between doing business with the federal government and doing business in the private sector more different than in the preparation, presentation, and resolution of changes, Requests for Equitable Adjustments ("REA"), and claims. Disputes with the federal government are governed by statutes, regulations, contract terms, and extensive case law. In addition, the government decision-makers are typically motivated by factors that are different than their private sector counterparts. Finally, federal contractors are subject to stiff penalties for false statements made during the pursuit of claims. Federal contractors seeking to recover for extras from the government need to understand and take these differences into account when drafting and pursuing their changes, REAs, and claims.

The term "claim" has a special meaning in federal contracting as defined by the Contract Disputes Act ("CDA"): 41 U.S.C. §§ 601, *et. seq.* The fact that a contractor is seeking payment for extra work, delays, differing site conditions, or other events does not necessarily mean that it has a claim. Such events are generally referred to as an REA. Once the parties reach an impasse on the REA, there is a dispute, and the contractor must file a formal claim in accordance with the CDA.

The distinction between an REA and a claim has real financial consequences in the federal sector. The contractor can recover the costs of an outside third party to help prepare and pursue an REA as part of contract administration. However, if the submission is deemed a claim against the government, federal regulations prevent the recovery of the cost to pursue that claim and those costs become unrecoverable. As a result, the contractor wants to spend the money on outside consultants, such as a scheduling expert, cost expert, or lawyer, to draft a thorough and convincing presentation during the REA stage, because those costs are recoverable, if the contractor prevails in the negotiation of the REA or on the subsequently submitted claim. If the contractor waits until the claim phase to retain third-party consultants, the costs are no longer recoverable, because they are costs of pursuing a claim.

A factor that mandates the opposite approach is the fact that interest does not accrue on an REA. However, once a claim is filed in the proper format, interest begins to run under the CDA. The contractor therefore must make a judgment weighing REA preparation costs and interest in deciding when and how to proceed.

THE REA

Expediting the processing and payment of changes, REAs, and claims, while at the same time maximizing the collections on these items, is critical to the contractor's cash flow. Often, the contractor puts the preparation and pursuit of these items off, sometimes until after the work is completed, because it wants to focus on the work, does not want to upset the government, and feels that the total impact cannot be determined until that time. However, this approach results in the contractor incurring costs and being out of pocket for a long period of time.

Even if the contractor elects to postpone the submission of the REA until the end of the job, there are certain actions the contractor needs to take when an event occurs that increases its costs. The first order of business is submission of timely written notice, followed by an REA setting out the estimated cost increase. Each clause in the contract has a separate notice requirement with which the contractor should comply. While the notice requirements generally are not strictly enforced in federal contracts, the contractor should not subject itself to a lack-of-notice argument. The government may deny the claim based on a lack of notice, which can delay the resolution of the matter, cost the contractor time and money making the argument, and possibly result in a reduced recovery or no recovery.

The notice should be short and straightforward. It should not be argumentative or aggressive. There is no reason to start a fight with the government. Give the government the facts and the basis for the contractor's assertion that there has been a change.

The contract clauses have timeliness requirements for submitting the REA defining damages. However, these provisions are even less likely to be enforced than the notice provisions. This does not mean that the REA should be delayed. The matter cannot be settled and payment obtained until the REA is submitted and settled, so the contractor should present the REA to the government as quickly as it can. However, it also is important that the REA contains the necessary facts and supporting documentation to justify the REA. The contractor should not sacrifice a quality REA for speed.

When a change is directed, the contractor needs to segregate and track the costs of the change. This is best done by establishing cost codes to collect the costs of the extra or changed work. The potential for a dispute over quantum is decreased when a cost code is established at the beginning of the change. Further, if the matter goes to litigation, the damages collected in cost codes are more difficult for the government to challenge. In contrast, there is almost always a dispute over quantum if cost codes are not established. Without cost codes, resolution of the amount must be based on estimates of cost, and the contractor inevitably is forced to compromise and take less than the amount claimed.

In addition, if the REA or claim will require an expert, whether it be a geotechnical engineer, a designer, a scheduler, an accountant, or other expert, the expert should be engaged immediately when the construction is visible, the facts are fresh, and before the contractor starts taking positions that may later prove to be in error. Further, as explained above, the experts' costs in preparation of the REA are recoverable.

The change order needs to be priced, submitted, negotiated, and finalized aggressively and timely. Without a change order and a contract modification, there will be no payment. Equally as important, the longer the change order languishes, the more memories fade and the harder it is to settle the change and obtain full compensation.

It normally is good practice to draft a detailed REA that can be converted to a claim with very little effort, if the REA cannot be settled. Thus, the principles discussed herein regarding the drafting of a claim apply to the drafting of an REA as well.

THE CLAIM

If the contractor cannot resolve an REA through negotiation, it must then submit a formal claim. The CDA defines a claim as a written demand seeking payment in a sum certain or the adjustment or interpretation of the contract or other relief arising out of the contract. For claims exceeding $100,000, it must also contain a certification that the claim is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the adjustment for which the contractor believes the government is liable. The certification must be made by a person authorized to do so on behalf of the contractor. The claim must be submitted to the contracting officer for final decision. Once the claim is submitted, interest begins to run on the claim under the CDA. The contracting officer has 60 days after submission of the claim to issue a final decision, unless he or she justifies the need for additional time in writing.

If the contracting officer denies the claim in whole or in part, the contractor has 90 days to appeal the final decision to the appropriate board of contract appeals (typically the Armed Services Board of Contract Appeals or the Civilian Board of Contract Appeals) or one year to appeal to the Court of Federal Claims. Final decisions that are not appealed within these time limits become final and binding. Once before the board or the court, the parties are permitted to conduct discovery in accordance with the respective rules, which includes requests for production of documents, interrogatories, and depositions. The board and the court make available various forms of alternative dispute resolution but typically require the parties' voluntary consent. All hold evidentiary hearings and decide the claims *de novo*, which means the contracting officer's final decision is given no deference. Appeal from a decision of the board or court is taken to the U.S. Court of Appeals for the Federal Circuit.

SUBJECTS OF A CLAIM

In the federal arena, contractors typically pursue claims for costs and/or time resulting from: (1) changes or constructive changes, (2) differing site conditions, (3) suspension of works, and (4) terminations for convenience. Contractors may also pursue a claim for improper termination for default which, if successful, results in conversion to a termination for convenience and entitles the contractor to submit a claim for its costs. The FAR contains provisions and contract clauses that relate to each of these types of claims.

EQUITABLE ADJUSTMENT

The contractor's recovery under the contract is normally limited to an equitable adjustment for the increase or decrease in costs and/or time of performance arising out of the events that give rise to the claim. The recovery is cost-based, not price-driven — the government reviews the claimed costs to determine whether the costs are allowable, allocable, and reasonable. The contractor is also entitled to overhead and profit as a part of the equitable adjustment, except for claims under the Suspension of Work, where no profit is allowed.

The contractor is not entitled to lost profits, except in unique circumstances, where the events constitute a breach of contract that is not recoverable under a clause in the contract. The primary examples of a breach are a cardinal change, a lack of good faith and fair dealing by the government, and the refusal of the government to pay undisputed amounts due. A material breach of contract also provides the contractor the right to stop work.

The contractor cannot recover legal or other costs in pursuing its claim. The one exception is where the contractor is a small entity under the standards established by the Equal Access to Justice Act: 5 U.S.C. § 504; 28 U.S.C. § 2412. If the contractor is a small entity, it can recover legal fees in pursuing a claim under the Equal Access to Justice Act, if the government's position is not substantially justified.

THE GOVERNMENT DECISION-MAKERS

The decision process used by the federal government differs with each agency. However, the process generally includes the following:

- Consideration by the onsite government representative. While the contractor may resolve the claim at the job site level, and that opportunity should not be bypassed, the job site representatives may be the cause of the claim and likely have already made up their minds.
- Review and analysis by procurement professional or a government claims analyst— a person with no involvement in the project. This normally is the most important person in the claims process from the contractor's perspective because the representative typically is not invested in the facts of the claim.
- Assistance from the counsel's office. Counsel normally does not become involved until the claim is headed to litigation or unless the claim involves a legal issue.
- The contracting officer issues the final decision that starts the litigation process. He or she is the last resort and seldom has any firsthand involvement in the facts giving rise to the claim. However, the contracting officer often is simply a rubber stamp for the decision of the others in the process.

Private sector decision-makers largely are driven by the profit motive to minimize payment to the contractor, regardless of the validity of the claim. The decision to settle in the private sector often is less about the merits of the claim, than the cost of litigation and other business considerations. The government decision-maker, in contrast, is seldom motivated by profit and driven to deny or reduce legitimate claims by the contractor. The cost of litigation is not as important because the government has in-house counsel, which the government views as having no cost. The issue for the government generally is whether the contractor is entitled to recover on the claim as a matter of right. If the contractor can convince the government decision-maker of the merits of the claim, the government likely will pay the full amount of the costs caused by the events. If the decision-maker is not convinced of the merits, the claim likely will be denied even if the cost of litigation exceeds the amount of a possible settlement. Thus, the claim to the government needs to focus on the contractor's legal right to recover under the contract and the resulting costs.

DRAFTING THE CLAIM

By the time the contractor reaches the point of drafting a claim, the contractor's representatives are often angry, and they view the claim as an opportunity to vent. The claim often refers to the government representatives as incompetent, ignorant, liars, vindictive, arbitrary, and capricious. Seldom does this approach cause the government representatives to want to pay the claim. To be most effective, the claim should be logical, clear, well-reasoned, well-documented, and an accurate submission that is written in a measured and respectful tone.

The drafter of the claim should put himself or herself in the shoes of the government decision-maker and ask what would convince that person the claim has merit.

When dealing with the government, the contractor must understand that the wheels grind more slowly than in the private sector. As a result, the contractor must exercise patience and persistence.

PARTS OF THE CLAIM

Executive Summary

The claim should contain a short executive summary that covers the key points and establishes a repeatable theme for the claim. This is the contractor's opportunity to set the tone and make its point in a short statement that can be repeated in the future. Often the ultimate decision-maker for the government never reads past the executive summary.

Facts

Construction claims often turn on the facts, and the claim should always contain a fact section. The factual allegations in the claim should spare no detail and should contain documents to support each allegation. It is a mistake to play "hide the ball" in drafting a government contract claim. Remember, the government representative deciding the claim likely will have no firsthand knowledge of the facts. The claim is the contractor's opportunity to establish those facts. Further, the government representative must document the record to justify a settlement. The contractor should do the work for the government representative and provide the documents. The contractor does not want to force the government representative to have to search for justification for the facts or for reasons to deny the allegations, since the representative may find a different answer than the contractor wants.

Basis for Claim

The contractor should set out in detail the arguments justifying its entitlement to recover under the contract for the facts established in the previous section and should cite to the applicable clauses in the contract.

The contractor should not ignore issues it knows are weak or in dispute. This is the contractor's opportunity to make its best argument. If the contractor fails to address an issuewhere it is weak, the government decision-maker will still consider the issue but will be without the benefit of the contractor's best position.

Legal Section

Often the legal issues are so well-established and accepted that citation to cases is unnecessary. For example, there is no question that extra work required by the Contracting Officer constitutes a change to the contract for which the contractor is entitled to an equitable adjustment under the Changes clause. No case citation is required to support such a proposition. In fact, the addition of cases may result in more in-depth participation by counsel's office, which probably is not in the contractor's favor. The contractor does not want to get into a battle of the cases if logic is sufficient to carry the day. However, if the claim involves complex legal issues or there are cases directly on point, a legal section should be included in the claim. Once again, the contractor should do the work for the government.

Pricing

There should be a detailed section identifying the additional costs and time resulting from the claim events. The contractor should endeavor to show cause and effect as best it can. The calculations should be detailed and supporting documents should be attached for each item. The contractor should open its books and records to the government. They will get them in the end and holding back will simply delay the process. In addition, withholding documents likely will cause the government representative to assume the worst, which will not result in the highest recovery.

Certification and False Claims

Another important distinction between public and private contracts is the impact of the federal False Claims Act ("FCA"). In the private sector, contractors may embellish and inflate their claims with the assumption that such action will result in a higher settlement or verdict at trial. While this may be unethical and bad business, there are no penalties for doing so short of fraud, which is hard to prove. That is not the case in federal government contracts because the FCA and other statutes establish severe penalties and sanctions for false statements and false claims. Specifically, the FCA prohibits, among other things, knowingly presenting a false or fraudulent claim for payment or approval and making, using, or causing to be made or used a false record or statement material to a false or fraudulent claim. As explained above, if the claim is in excess of $100,000 it must contain the following certification:

I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor.

FAR 52.233-1(d)(2)(iii).

The certification must be executed by a person authorized to bind the contractor with respect to the claim. This certification implicates the FCA for the contractor submitting the claim, as well as the person signing the certification.

The violating party is liable for civil penalties between $5,500 to $11,000 for each false claim or statement and treble the amount of the government's damages. A single claim can have multiple false statements and claims in it which can result in enormous penalties. However, these dollar penalties are just one of the contractor's concerns. The FCA also allows for contract termination, contractor suspension and debarment, and forfeiture of the entire claim for a single false statement or claim. So if the contractor overstates its claim amount it can lose the entire claim even though the claim is otherwise completely valid. In addition, false claims can result in a lower past performance rating, which will hurt the contractor's ability to obtain future contracts.

In order to crack down on FCA violations, the government created a *qui tam* provision that allows private persons (such as employees or former employees) to file suit for FCA violations on behalf of the government and share in the recovery. This, coupled with the government's focus on weeding out fraud in public procurement, has driven the number of FCA suits and recoveries up dramatically.

As a result, in federal government contract claims, whether you are the contractor submitting your claim or the pass-through claim of your subcontractor submitting a claim, it is extremely important not to embellish or inflate the claim and to vet claims fully before submission. While this is ethical and good business under any circumstances, in the government arena the failure to do so can be devastating.

navigant.com

About Navigant

Navigant Consulting, Inc. (NYSE: NCI) is a specialized, global professional services firm that helps clients take control of their future. Navigant's professionals apply deep industry knowledge, substantive technical expertise, and an enterprising approach to help clients build, manage, and/or protect their business interests. With a focus on markets and clients facing transformational change and significant regulatory or legal pressures, the firm primarily serves clients in the healthcare, energy, and financial services industries. Across a range of advisory, consulting, outsourcing, and technology/analytics services, Navigant's practitioners bring sharp insight that pinpoints opportunities and delivers powerful results. More information about Navigant can be found at navigant.com.

FINAL PAYMENT AND CONTRACT CLOSEOUT

Once the project is completed, the contractor will want to bill for final payment. Final payment is a prerequisite to contract closeout. A contract will not be closed out if there is litigation or an appeal involving the contract: FAR 4.804-1(c).

To receive final payment, the contractor must submit a final payment application: FAR 52.232-5(h). The government will make final payment when:

- All of the work has been completed and accepted by the government.
- The contractor submits a proper payment application.
- The contractor submits a release of all claims against the government.

While the FAR technically permits the contractor to exempt claims from its release, in practice final payment is not made until all claims are settled. More important, the contractor should ensure that all claims are submitted to the government before final payment is made, as final payment will act as a waiver of the right to submit additional claims.

CONCLUSION

In order to expedite payment on a government contract, the contractor must understand how to work within the system and regulations and continually be vigilant about timely performing the obligations necessary to obtain payment, including promptly preparing payment applications, REAs, and claims, and aggressively, but professionally, pursuing them with the government. In doing so, the contractor must not sacrifice accuracy for speed or it may face false claims allegations or recover less than it is entitled to recover.

Note: This article was compiled and adapted from three articles: Adrian L. Bastianelli III and Lori Ann Lange, "How Can Construction Contractors Expedite Payment on Federal Contracts?", 4:3 Surety Bond Quarterly (Fall 2017, p. 10) and 4:2 Surety Bond Quarterly (Summer 2017, p. 28), and Adrian L. Bastianelli III and Michael C. Zisa, "Preparation of a Claim Against the Government — It's Not the Same Claim You Would Submit on a Private Project," 4:1 Surety Bond Quarterly 32 (Spring 2017, p. 32). For a detailed discussion of all issues dealing with federal government construction contracts, *see* Michael A. Branca, William E. Franczek, Paul A. Varela, and Barbara G. Werther, Federal Government Construction Contracts, (ABA Forum on Construction Law, Third Edition, 2017).

Adrian L. Bastianelli III, Lori Ann Lange, and Michael C. Zisa are partners in the Washington, D.C., office of Peckar & Abramson. Their practices focus in part on federal government construction contracts.