

Index

A

- Abandonment of contract, 5-33 to 5-34, 5-38 to 5-39
- Acceleration of work, 5-36 to 5-37
- Acceptance of finished work
 - discovery of defects after, 7-7 to 7-12
 - latent defects, 7-6 to 7-7
 - unauthorized, 7-5 to 7-6
- Active interference, 1-45
- Administrative Procedure Act, 1-13
 - standing rules, 3-11 to 3-12
- Administrative procedures, 6-3, 6-4 to 6-7
 - state preferences, 6-7 to 6-14
- Advertisement for bids, 1-6 to 1-9
 - change of specifications after, 1-8 to 1-9
 - content, 1-6, 1-7 to 1-8
 - duration, 1-6 to 1-7, 2-6, 5-20
 - general contractor/construction manager contracts, 1-30
 - posting, 1-6
- Affirmative action
 - certification of disadvantaged and minority-owned businesses, 4-15 to 4-18
 - challenges to state and local programs, 4-9 to 4-11
 - constitutional challenges to federal regulations, 4-5 to 4-9
 - economically disadvantaged businesses, 4-4 to 4-5, 4-17 to 4-18
 - Equal Employment Opportunity program, 4-3 to 4-4
 - goals, 4-12, 4-13
 - good faith efforts to comply, 4-4 to 4-5, 4-12 to 4-13
 - joint venture compliance, 4-18 to 4-19
 - Minority Business Enterprise program, 4-4
 - narrow-tailoring test, 4-11 to 4-12, 4-20
 - origins and development of federal programs, 4-3
 - race-neutral alternatives, 4-12
 - subcontractor programs, 4-6, 4-8 to 4-9, 4-12
 - See also* Disadvantaged Business Enterprise program; Minority Business Enterprise program
- Alternative bids, 1-27 to 1-28
- Alternative contracting methods, 1-29 to 1-32
- Alternative dispute resolution
 - dispute review boards, 7-24 to 7-26
 - forms of, 7-20
 - hybrid forms, 7-26
 - mediation, 7-20 to 7-23
 - mini-trials, 7-24
 - partnering process, 7-31 to 7-32
 - rationale, 7-20
 - trends, 7-32
 - See also* Arbitration
- Antitrust law, suspension of qualification and, 2-21
- Apprenticeship programs, 4-28 to 4-30
- Arbitration, 6-3
 - advantages, 7-27, 7-29

- characteristics, 7-30
 - consolidation of proceedings, 7-31
 - process, 7-27 to 7-28
 - state administrative procedures, 6-7 to 6-14
 - state transportation agencies and, 7-29 to 7-31
 - trends, 7-26
- Architectural services, 1-22
 - liability, 6-26 to 6-27
 - See also* Design professionals
- Attorney–client privilege, 6-46
- Attorney fees, 6-42
- Audit provisions of claims specification, 6-6
- Audit rights, 1-41
 - in claim resolution, 6-15 to 6-16
- Authority to contract, 1-50
- Awarding of contract, 1-10 to 1-11
 - agency failure to follow procedures, 1-17 to 1-18
 - basis for noncompetitive award, 1-20 to 1-27
 - to disadvantaged or charitable groups, 1-26
 - discovery of bid error after, 3-15
 - equitable relief for bid mistakes, 3-15 to 3-19
 - prequalification of bidder, 2-3
 - request to invalidate, 3-15
 - See also* Protest of contract award
- B**
- Bankruptcy, 5-40
- Bid mistakes
 - absence of affirmative action program description, 4-13 to 4-15
 - in awarded bid, 3-15
 - bond guarantees, 3-9
 - equitable relief for, 3-15 to 3-19
 - failure to acknowledge addenda, 3-9
 - failure to attend pre-bid conference, 3-9 to 3-10
 - forfeiture of bid security deposit, 3-19 to 3-20
 - late submission, 3-6 to 3-7
 - major *vs.* minor irregularities, 3-4 to 3-6
 - nonmaterial deviations, 3-10
 - nonresponsiveness, 3-8 to 3-9
 - by subcontractor, 3-22 to 3-23
 - types of, 3-3 to 3-4
 - unbalanced bids, 3-7 to 3-8
 - unsigned bids, 3-6
 - waiving of, 3-5, 3-10
 - withdrawal of bid, 3-15
- Bid preparation costs, 3-20 to 3-21
- Bid security deposits, 1-9 to 1-10, 1-18
 - forfeiture, 3-19 to 3-20
- Bonds
 - agency obligations, 2-28 to 2-29
 - basic concepts, 2-27
 - bid mistakes, 3-9
 - bid security deposits, 1-9 to 1-10

- conflicts over default payments, 7-15 to 7-16
- contractor claims for recovery of increased costs, 6-42
- discharge of surety obligations, 2-45 to 2-47
- public policy concepts, 2-27 to 2-29
- qualification of contractors, 2-4
- state requirements, 2-27
- statutory requirements, 2-28
- statutory terms and definitions, 2-31 to 2-32
- types of, 2-27
- validity, 2-28
- See also* Payment bonds; Performance bonds
- Breach of contract
 - changes clause exception, 5-3
 - by contractor, 7-3
 - contractual basis, 6-22 to 6-23
 - contractual limitations on damages for, 6-30 to 6-31
 - damage awards, 6-22, 6-30
 - by design consultant, 7-16
 - liquidated damages clauses, 1-40 to 1-41
 - sovereign immunity from claims of, 6-4
 - surety liability, 7-13 to 7-14
 - tort damages and, 6-26
 - violation of contractor licensing laws as, 2-7
 - See also* Claim procedures
- Brooks Architects-Engineers Act, 1-22
- Buy American Act, 1-37, 1-40, 2-21
- C
- Capacity rating of contractors, 2-13 to 2-14, 2-18
- Capital improvements contracts, 1-25
- Cardinal change, 5-8
- Changed character of work, 1-38
- Changed conditions, 1-37 to 1-38, 5-14
 - See also* Differing site conditions
- Change orders
 - acceleration of work related to, 5-36 to 5-37
 - accord and satisfaction, 5-12 to 5-13
 - as admission of differing site conditions, 5-27 to 5-28
 - authority to issue, 5-3, 5-4
 - bond coverage and, 5-11
 - Cardinal Change doctrine, 5-8
 - compensation, 5-4
 - constructive change, 5-6 to 5-7
 - contractor response to perceived breach of contract in, 5-8, 5-9
 - delays related to, 5-30
 - effects on other work, 5-11
 - estoppel, 5-5
 - increased labor costs related to, 6-34 to 6-35
 - induced by duress, 5-13
 - notice of contractor claims against, 5-9 to 5-11
 - preventing, 5-13
 - purpose of changes clause, 5-3, 5-13
 - recovery of profit on cost of extra work, 6-42

- scope of contract considerations, 5-7 to 5-9
- as source of litigation, 5-3
- standard form of changes clause, 5-3 to 5-4
- variation in estimated quantities, 5-11 to 5-12
- waiver of changes clause, 5-4 to 5-5, 5-6
- written change order requirement, 5-4 to 5-7
- Civil Rights Act, 3-21
- Claim notice, 6-43, 6-58
 - agency evaluation of, 6-3, 6-6, 6-43 to 6-44
 - agency response, 6-6 to 6-7, 6-45
 - for change order perceived to be outside of contract, 5-9 to 5-11
 - for defects discovered after final acceptance, 7-7 to 7-12
 - delay-related claims, 5-35 to 5-36
 - differing site conditions claims, 5-20 to 5-21
 - filing periods, 1-47 to 1-48, 6-5, 7-7 to 7-12
 - protest of contract award, 3-13
 - recovery for cost of preparing, 6-42
 - requirements, 6-5
- Claim procedures
 - administrative procedures, 6-3, 6-4 to 6-14
 - amendments to claim, 6-5 to 6-6
 - audit provisions, 6-6, 6-15 to 6-16
 - claims specifications, 6-5 to 6-7
 - critical path analysis, 5-28, 5-31, 6-39 to 6-40
 - damage amounts, 6-5, 6-7
 - establishment of contractual basis, 6-22 to 6-23
 - evaluation of claim, 6-3
 - False Claims Act provisions, 6-7, 6-14 to 6-15
 - final remedy method, 6-3, 6-7 to 6-14
 - interpretation of contracts, 6-16 to 6-22
 - recovery theories, 6-24 to 6-26
 - state immunity from suit, 6-3 to 6-4
 - subcontractor pass-through claims, 6-23 to 6-24
- Claim summary, 6-44 to 6-45
- Classification of contractors, 2-13, 2-18
- Clean Air Act, 1-37
- Clean Water Act, 1-37
- Collective bargaining agreements, 4-31 to 4-35
- Collusion
 - contractual prohibition, 1-38 to 1-39
 - suspension of bidders for, 2-21 to 2-22
- Commercial general liability insurance, 7-18
- Common law
 - arbitration in, 7-27
 - sovereign immunity, 6-3
- Competitive bidding
 - advertisement for. *See* Advertisement for bids
 - affirmative action programs, 4-3 to 4-5
 - agency failure to follow procedures, 1-17 to 1-18
 - alternative bidding in, 1-27 to 1-28
 - alternative contracting methods, 1-29 to 1-32, 1-36
 - apprenticeship programs and, 4-30
 - bidder protests, 3-11 to 3-15

- bid security deposits, 1-9 to 1-10, 1-18
- collusion in, 2-21 to 2-22
- combined bidding, 1-18 to 1-20
- confidentiality requirements, 1-28
- contractor qualification and, 2-4
- design-build-bid method, 1-3
- determination of lowest responsible bidder, 1-11 to 1-17, 2-3
- dividing of contracts and, 1-4
- emergency response and, 1-23 to 1-25
- exceptions to rules, 1-20 to 1-27
- for federally-aided contracts, 1-20
- form of bidding rules, 1-4 to 1-6
- goals, 1-3 to 1-4, 1-27
- lump sum *vs.* unit price bids, 1-5 to 1-6
- minimum amount of contract for, 1-20 to 1-21
- post-bidding negotiations, 1-16 to 1-17
- pre-bid conference, 1-10, 3-9 to 3-10
- preference to disadvantaged or charitable groups, 1-26
- prequalification of bidders in, 2-11 to 2-12
- preservation of bid documents, 6-15 to 6-16
- project labor agreements and, 4-33 to 4-34
- rejection of all bids, 1-13 to 1-14
- rejection of lowest bid, 1-15 to 1-17
- single *vs.* separate contracts, 1-4 to 1-5, 1-21
- special contracts, 1-23 to 1-25
- specialized services, 1-21 to 1-23
- statutory and regulatory environment, 1-3
- submission and opening of bids, 1-10 to 1-11, 3-6 to 3-7
- use of requests for proposals, 1-36
- See also* Bid mistakes; Protest of contract award
- Computer systems and services, 1-23
 - trial information management, 6-48
- Confidentiality
 - attorney–client privilege, 6-46
 - of bidding records, 1-28
 - escrow bid documentation and, 6-16
 - mediation agreement, 7-22
 - prequalification materials, 2-12
 - proprietary information in proposals, 1-31 to 1-32
- Consent decrees, liquidated damages clauses and, 1-40 to 1-41
- Consequential damages, 6-40 to 6-41
- Constructibility, warranty of, 1-34 to 1-35, 1-36
- Constructive acceleration, 5-36 to 5-37
- Constructive change, 5-6 to 5-7
- Constructive suspension, 5-30
- Consultant, claims, 6-45, 6-47
- Consultant fees, 6-42
- Contents of contract. *See* Contract contents
- Contract compliance by contractor
 - strict compliance, 7-3
 - See also* Substantial completion
- Contract contents
 - agency responsibilities, 1-32 to 1-36

- alterations to, without surety consent, 7-15
- ambiguities or defects in, 1-35 to 1-36, 6-17, 6-21 to 6-22
- applicability of statutory requirements, 1-49
- audit rights, 1-41
- Buy American provisions, 1-40
- changed conditions/differing site conditions clause, 1-37 to 1-38, 5-14 to 5-28
- change orders clause. *See* Change orders
- damage limitations, 6-30 to 6-31
- default clause, 5-39 to 5-40
- disincentive clause, 7-4 to 7-5
- dispute resolution provisions, 1-41, 7-20 to 7-21, 7-23, 7-25, 7-29
- escrow bid documentation specification, 6-15 to 6-16
- exculpatory clauses, 1-44 to 1-48
- express warranties, 1-51
- implied terms and warranties, 1-49
- indemnification for loss or liability, 2-47 to 2-48, 7-16 to 7-18
- insurance requirements, 7-17 to 7-18
- liability limitation clause, 7-17
- liquidated damages clauses, 1-40 to 1-41
- mutual mistakes, 6-25
- no-damage-for-delay clauses, 5-32 to 5-35, 6-42
- noncollusion clause, 1-38 to 1-39
- nondiscrimination clause, 1-39
- order of precedence, 1-35 to 1-36, 6-21
- plans and specifications, 1-32 to 1-36, 1-50 to 1-51
- prohibition of constructive acceleration claims, 5-37
- prohibition on consequential damage claims, 6-41
- prompt pay provisions, 1-39
- required federal clauses, 1-36 to 1-40
- required state clauses, 1-40 to 1-42
- required use of exclusive sources, 1-42 to 1-44
- site investigation clause, 5-19 to 5-20
- state bidder preference policies, 4-23
- state products requirements, 1-41 to 1-42
- subcontractor listing, 1-48 to 1-49, 3-5 to 3-6
- suspension of work clause, 5-30
- termination provisions, 1-39 to 1-40
- value engineering clauses, 1-41
- wage and hour requirements, 4-30 to 4-31
- Contract Disputes Act, 6-41, 6-42, 7-27
- Contracting methods, 1-3
 - alternatives to competitive bidding, 1-3, 1-29 to 1-32
 - design-build, 1-3, 1-29
 - general contractor/construction manager, 1-30 to 1-31
 - on-call contracts, 1-51
 - postqualification of bidders, 2-14
 - public-private partnerships, 1-31 to 1-32
 - See also* Competitive bidding; Protest of contract award
- Contract interpretation. *See* Interpretation of contracts
- Contractor, defined, 2-8 to 2-9
- Contract Work Hours and Safety Standards Act, 1-19 to 1-20, 4-30
- Contra proferentem*, 6-22
- Criminal behavior, suspension of qualification based on, 2-18 to 2-19

Critical path analysis, 5-28, 5-31, 6-39 to 6-40, 6-60

D

Damages

- breach of contract awards, 6-22, 6-30
- claim specification, 6-5, 6-7
- consequential, 6-40 to 6-41
- contractual limitations on, 6-30 to 6-31
- cost categories, 6-34
- for defective performance, 7-3, 7-4 to 7-5
- for delayed performance, 7-3
- determination of, 6-31 to 6-34
- discrete cost method of calculating, 6-31 to 6-32
- disruption-related, 6-38 to 6-39
- economic loss limitation on liability, 6-26 to 6-29
- equitable adjustment, 6-22 to 6-23, 6-30
- equitable relief for bid mistakes, 3-15 to 3-19
- for erroneous rejection of bid, 3-20 to 3-23
- force account method of determining, 6-34
- jury verdict method of determining, 6-33 to 6-34
- for late completion or delay, 5-37 to 5-40
- modified total cost method of calculating, 6-33
- rights of unlicensed contractors, 2-7
- total cost method of calculating, 6-32 to 6-33
- trial testimony, 6-62 to 6-63
- types, 6-30

See also Recovery

Davis–Bacon Act, 4-23 to 4-24, 4-25, 4-26 to 4-27, 4-28

Default, 5-39 to 5-40

- conflict between surety and bank over contract payments, 7-15 to 7-16
- conflict between surety and owner over contract payments, 7-16
- surety liability, 7-13

Defective performance

- discovered after final acceptance, 7-7 to 7-12
- disincentive clause provisions, 7-4 to 7-5
- latent defects, 2-44, 7-6 to 7-7
- reduction in functional life due to, 7-4
- remedies for, 7-3, 7-4 to 7-5
- repair or replacement, 7-4
- surety liability, 7-13 to 7-15
- unauthorized acceptance of, 7-5 to 7-6

Delay

- abandonment of contract and, 5-33 to 5-34, 5-38 to 5-39
- acceleration of work to prevent, 5-36 to 5-37
- caused by active interference, 5-33
- caused by bad faith, 5-33
- caused by negligence, 5-33
- causes of, 5-28
- concurrent, 5-31, 6-39
- contract clauses, 5-28
- critical path analysis, 6-40
- differing site conditions and, 5-30
- disruption and, 6-38

- due to change orders, 5-30
 - due to third-party actions, 5-29, 5-30
 - early completion delay claims, 5-32
 - exculpatory clauses, 1-44 to 1-48
 - excusable and compensable, 5-30 to 5-31
 - excusable but noncompensable, 5-29
 - foreseeability, 5-29
 - inexcusable, 5-31
 - liquidated damages clauses, 1-40 to 1-41
 - no-damage-for-delay clauses, 5-32 to 5-35
 - not contemplated by parties, 5-33
 - notice of claims arising from, 5-35 to 5-36
 - owner's remedies, 5-37 to 5-40
 - qualification of bidder to prevent, 2-4
 - subcontractor, 5-35
 - termination for default, 5-39 to 5-40
 - types of, 5-28
 - weather-related, 5-29, 5-31
 - See also* Performance bonds; Suspension of work
- Deposit, bid security, 1-9 to 1-10, 1-18
- Depositions
- defending, 6-55 to 6-56
 - document management for, 6-53, 6-54 to 6-55
 - of expert witnesses, 6-52, 6-53, 6-54, 6-55
 - guidelines, 6-55 to 6-56
 - importance of, 6-52
 - outline preparation, 6-53
 - place for, 6-54
 - potential problems in, 6-56
 - taking, 6-52 to 6-55
 - telephone, 6-53
- Design-bid-build method of contracting
- definition, 1-3
 - See also* Competitive bidding
- Design-build method of contracting, 1-3, 1-29
- Design professionals, 1-22
- liability of, 6-26 to 6-27, 7-16
 - tender of claims to, 7-19
- Design specifications, 1-36
- Differing site conditions, 1-38
- change orders and, 5-27 to 5-28
 - compensation for, 5-4, 5-15, 6-30
 - conceptual basis, 5-14
 - contract clauses, 5-14 to 5-19, 5-21
 - definition, 5-15 to 5-16, 5-17 to 5-18
 - delays related to, 5-30
 - effects on unchanged work, 5-15
 - exculpatory clauses, 5-19 to 5-20, 5-24 to 5-27
 - impossibility of performance claims, 5-27
 - models and charts for describing, 6-60
 - notice of claims arising from, 5-20 to 5-21
 - owner liability, 5-15, 5-21 to 5-27
 - owner misrepresentation of, 5-15, 5-21 to 5-23

- owner nondisclosure, 5-23 to 5-24
- risk assumption, 5-14
- site investigation and, 5-19 to 5-20
- subcontractor claims, 5-27
- type I claims, 5-16 to 5-17
- type II claims, 5-17 to 5-19
- types of, 5-15
- Disadvantaged Business Enterprise program, 1-39, 4-3
 - captive companies, 4-19
 - certification of compliance, 4-15 to 4-18
 - challenges to state and local programs, 4-9 to 4-11
 - compliance monitoring, 4-19 to 4-20
 - compliance with, as evidence of responsibility, 4-13 to 4-15
 - constitutional challenges to, 4-5 to 4-6, 4-8, 4-11
 - flexibility in implementation, 4-12 to 4-13
 - mentor-protege programs, 4-19
 - narrowly-tailored regulations, 4-20
 - race-neutral measures to achieve, 4-12
 - revisions to withstand strict scrutiny, 4-11 to 4-12
 - subcontracting rules, 4-18, 4-19
- Disadvantaged businesses
 - contract preferences, 1-26
 - fraudulent use of, 2-22
 - prompt pay provisions, 1-39
 - See also* Affirmative action; Disadvantaged Business Enterprise program
- Disciplinary actions, 2-14 to 2-16
- Discovery process, 6-43
 - depositions, 6-52 to 6-56
 - interrogatories, 6-50 to 6-51
 - in mediation, 7-22, 7-23
 - potential problems in, 6-56
 - request for production of documents, 6-51 to 6-52
 - requests for admission, 6-52
- Discrimination
 - challenges to state affirmative action programs, 4-9
 - constitutional rulings on affirmative action programs, 4-6 to 4-8
 - federal prohibition, 1-39, 4-3
 - prequalification of bidders and, 2-5 to 2-6
 - state bidder preferences as, 4-21 to 4-22
 - See also* Affirmative action
- Disincentive clause, 7-4 to 7-5
- Dispute resolution
 - contract provisions, 1-41, 7-20 to 7-21, 7-23
 - state administrative procedures, 6-7 to 6-14
 - See also* Alternative dispute resolution; Litigation
- Dispute review boards, 7-24 to 7-26
- Disqualification of bid, 2-16 to 2-18
 - damages for erroneous rejection, 3-20 to 3-23
- Disqualification of contractor, 2-20 to 2-26
- Disruption damages, 6-38 to 6-39, 6-40
- Diversion of funds, 2-16
- Doctrine of Apparent Authority, 5-4
- Document collection and management

- in depositions, 6-53
- summaries, 6-65
- trial preparation, 6-47 to 6-50, 6-56

Due process

- in awarding of contracts, 1-14
- in disqualification or debarment, 2-22 to 2-23, 2-24 to 2-26
- project labor agreements and, 4-35
- in protest of contract award, 3-14
- in suspension of qualification, 2-18 to 2-19

E

Early completion delay claims, 5-32, 5-37

Economic loss limitation on liability, 6-26 to 6-29

Eichleay formula, 6-36 to 6-37

Eleventh Amendment, 6-4

Emergency response, 1-23 to 1-25

- prequalification of bidders and, 2-11, 2-12

Employee Retirement Income Security Act, 4-27

- apprenticeship programs and, 4-29 to 4-30

Employees, 2-8 to 2-9

Enforcement

- arbitration decisions, 7-27
- disincentive clause, 7-5
- of exculpatory provisions, 5-25 to 5-26
- indemnification, 2-48
- indemnity clause, 7-17
- no-damage-for-delay clauses, 5-32
- of payment bonds, 2-36 to 2-43
- of performance bonds, 2-43 to 2-45

Engineering services, 1-22, 1-23

- expert witnesses, 6-56 to 6-57

Environmental regulation, 1-37

- delay for environmental testing, 1-46

Equal employment opportunity, 1-37

Equal Employment Opportunity program, 4-3 to 4-4

Equal Protection Clause, 4-6, 4-10

- project labor agreements and, 4-35

- state bidder preference policies and, 4-21 to 4-22

Equipment costs, 6-35 to 6-36

Equitable adjustment, 6-22 to 6-23, 6-30

Escrow bid documentation specification, 6-15 to 6-16

Estoppel, to avoid written change order requirement, 5-5

Evidence

- document collection and management, 6-47 to 6-50
- excluding, 6-65
- management during trial, 6-65
- pre-marked exhibits, 6-59
- in protest of bid award, 3-13
- proving damages, 6-31
- resolving contractual ambiguity, 6-21
- summaries of records, 6-65
- visual aids, 6-59 to 6-61
- See also* Discovery process

Excavation and grading work, 2-9
 Exculpatory clauses, 1-44 to 1-48
 differing site conditions claims and, 5-19 to 5-20, 5-24 to 5-27
 no-damage-for-delay clauses, 5-32 to 5-35
 Executive Order 11246, 4-3 to 4-4
 Executive Order 13202, 4-32
 Expert witnesses, 6-45
 cross examination, 6-63
 deposing, 6-52, 6-53, 6-54, 6-55
 trial preparation, 6-56 to 6-57
 Express warranties, 1-51
 Extension of contract, 1-26

F

Fair Labor Standards Act, 4-30
 False Claims Act, 6-7, 6-14 to 6-15
 Federal Arbitration Act, 7-26 to 7-27
 Federal False Claims Act, 3-22
 Federal Highway Act, 1-14
 Federally-aided projects
 advertisement of bids, 1-7, 1-8
 bidding requirements, 1-20
 changes clause in contracts for, 5-3 to 5-4, 5-6, 5-7, 5-11
 design-build contracts, 1-29
 minimum wage provisions, 4-23 to 4-30
 qualification of contractors, 2-6
 state bidder preference policies and, 4-23
 suspension and debarment of contractors, 2-23
 suspension of work clause, 5-30
 Federal regulations
 affirmative action programs, 4-3 to 4-5
 differing site conditions clause, 5-14, 5-15, 5-18 to 5-19
 dispute resolution requirements, 7-26 to 7-27
 False Claims Act, 6-14 , 6-15
 labor standards, 4-23
 nondiscrimination, 4-3
 project labor agreement compliance, 4-31 to 4-32
 required contract clauses, 1-36 to 1-40
 state procedures for contractor qualification and, 2-5
 Fees, licensing, 2-7 to 2-8
 Fifth Amendment, 4-3
 Financial evaluation
 in contractor capacity rating, 2-13
 diversion of funds, 2-16
 surety evaluation, 2-29
 Flow-down clause, 5-35
 Force account, 6-34
 Form FHWA-1273, 1-37
 Fourteenth Amendment, 4-3
 Freedom of Information Act, 6-47
 Fringe benefits, 4-24, 4-26 to 4-27

G

General contractor/construction manager contracts, 1-30 to 1-31

H

Heard Act, 2-29, 2-31

I

Immunity

- Eleventh Amendment, 6-4
- sovereign, 6-3 to 6-4, 6-7 to 6-13, 6-16, 7-8 to 7-9, 7-12
- statutes of repose and, 7-8 to 7-9, 7-12
- waivers of, 6-16

Implied terms and warranties, 1-49

- in prequalification of subcontractors, 2-12 to 2-13

Impossibility of performance, 5-27

Indemnification

- anti-indemnification statutes, 7-17
- contract clause, 7-16 to 7-17
- design consultant liability, 7-16
- enforcement, 2-48
- liability limitation clause, 7-17
- in public-private partnership contracts, 1-32
- rationale, 2-27
- statutory requirements, 2-47
- suretyship and, 2-47 to 2-48

Injunctive relief, 3-13 to 3-14

Insurance coverage, 1-21

- builder's risk insurance, 7-12
- contractor liability, 7-17, 7-18
- contractual requirements, 2-47 to 2-48, 7-17 to 7-18
- failure to obtain, 7-18

Interest payments, 6-41

Intermodal Surface Transportation Efficiency Act, 4-5, 4-11

Internet, advertisement of bids via, 1-6

Interpretation of contracts

- context rule, 6-17 to 6-18, 6-19 to 6-20
- doctrine of mutual mistakes, 6-25
- liability of design professionals, 6-26 to 6-27
- plain meaning approach, 6-17, 6-19 to 6-20
- principles of, 6-17 to 6-18, 6-21
- protection of expectations in, 6-16
- public contract considerations, 6-16
- resolving ambiguities, 6-21 to 6-22
- sources of litigation, 6-16 to 6-17
- state preferences, 6-17, 6-18 to 6-20

Interrogatories, 6-50 to 6-51

Interstate commerce laws, 1-42

- qualification of contractors and, 2-5, 2-6
- state bidder preference policies and, 4-21

Invitations to bid

- advertisement for bids, 1-6 to 1-9
- agency failure to follow procedures, 1-17 to 1-18
- alternative bidding, 1-28

- ambiguities in, 1-7
- bidder protest prior to opening, 3-11
- change of specifications after, 1-8 to 1-9
- design-build contracts, 1-29
- disqualification of bid, 2-16 to 2-18, 2-25 to 2-26
- form of bid rules, 1-4 to 1-6
- general contractor/construction manager contracts, 1-30
- pre-bid conference requirements, 1-10, 3-9 to 3-10
- subcontractor listing requirement, 1-48 to 1-49, 3-5 to 3-6
- See also* Bid mistakes; Prequalification of bidders

J

- Job descriptions, 4-27 to 4-28
- Joint ventures, 1-19
 - design-build contracts, 1-29
 - Disadvantaged Business Enterprise program compliance, 4-18 to 4-19
 - prequalification of bidders and, 2-12
- Jury instructions, 6-43, 6-65
- Jury trials, 6-57

L

- Labor costs, recovery of, 6-34 to 6-35
- Laborers, 4-27 to 4-28
- Labor standards, 1-37
 - apprenticeship programs, 4-28 to 4-30
 - classification of workers, 4-27 to 4-28
 - federal authority, 4-23
 - hours and conditions of work, 4-30
 - minimum wage, 4-23 to 4-30
 - project labor agreements, 4-31 to 4-35
- Land purchases, 1-25
- Latent defects, 2-44, 7-6 to 7-7
 - surety liability, 7-13 to 7-14
- Licensing and certification
 - administration of, 2-8
 - of Disadvantaged Business Enterprise program compliance, 4-15 to 4-18
 - due process rights in revocation of, 2-22 to 2-23
 - as evidence of contractor responsibility, 2-4
 - examinations and criteria, 2-9 to 2-10
 - exceptions, 2-8
 - federal contract requirements, 1-37
 - on federally-aided projects, 2-6
 - fees, 2-7 to 2-8
 - legal rights of unlicensed contractors, 2-7
 - penalties for violation, 2-7
 - prequalification and, 2-10
 - rationale, 2-4 to 2-5, 2-6 to 2-7
 - revocation, 2-14 to 2-16
 - scope of state law, 2-8 to 2-9
 - state laws and regulations, 2-6 to 2-7, 2-8
 - substantial compliance, 2-15 to 2-16
 - suspension and debarment, 2-20 to 2-26
- Life cycle costs, 1-41

- Liquidated damages, 1-40 to 1-41
 - actual damages and, 5-38
 - for delayed performance, 7-3
 - disincentive specifications as, 7-4 to 7-5
 - to ensure Disadvantaged Business Enterprise program compliance, 4-19 to 4-20
 - for late completion, 5-37 to 5-39
 - to satisfy wage requirements, 4-30 to 4-31
 - substantial completion and, 7-3
- Litigation, 6-42 to 6-43
 - affirmative defense, 6-57 to 6-58, 6-67
 - answer to complaint, 6-57
 - attorney–client privilege, 6-46
 - bifurcating phases of, 6-43
 - claim summary, 6-44 to 6-45
 - closing arguments, 6-64
 - communication with judge and jury, 6-66
 - complex cases, 6-43
 - contract interpretation as source of, 6-16 to 6-17
 - cross examination of witnesses, 6-63
 - damages testimony, 6-62 to 6-63
 - designer liability, 7-19
 - determinants of success, 6-43
 - direct examination of witnesses, 6-62 to 6-63
 - discovery process, 6-43, 6-50 to 6-56
 - document collection and management, 6-46, 6-47 to 6-50, 6-64
 - excluding evidence, 6-65
 - exhibits, 6-59, 6-65
 - jury instructions, 6-43, 6-65
 - jury trials, 6-57
 - legal team, 6-45
 - multiple claims, 6-63 to 6-64
 - note-taking during trial, 6-64
 - opening statement, 6-61 to 6-62
 - outline plan, 6-46
 - pretrial motions, 6-43, 6-58 to 6-59
 - procedure, 6-43
 - recovery of attorney fees, 6-42
 - review of claim with agency, 6-44
 - state administrative procedures, 6-7 to 6-14
 - summary judgment, 6-58
 - trial briefs, 6-59
 - trial preparation, 6-43 to 6-46
 - visual aids, 6-59 to 6-61
 - witness preparation, 6-56 to 6-57, 6-65 to 6-66
 - witness selection, 6-45
 - work–product privilege, 6-46
- See also* Alternative dispute resolution
- Lost business opportunity, 6-40 to 6-41
- Low bidder, 1-11 to 1-17, 2-3
- Lump sum bidding, 1-5 to 1-6

M

- Management contracts, 1-22 to 1-23, 1-30 to 1-31

Manufacturers, 2-9, 2-37 to 2-38

Materials and methods of construction

- commercial availability, 1-43
- contract elements, 1-33, 1-42 to 1-44
- payment bond coverage, 2-33 to 2-36, 2-37
- recovery of increased cost of materials, 6-35
- state products requirements, 1-41 to 1-42

Mechanics, 4-27 to 4-28

Mediation, 7-20 to 7-23

Miller Act, 2-27, 2-29 to 2-31, 2-32, 2-37 to 2-43, 2-44

Minimum wage standards, 4-23 to 4-30

Mini-trials, 7-24

Minority Business Enterprise program, 4-3, 4-4

- business control rules, 4-16 to 4-17
- business ownership rules, 4-16
- certification of compliance, 4-15 to 4-18
- challenges to state and local programs, 4-9 to 4-10
- compliance with, as evidence of responsibility, 4-13 to 4-15
- constitutional challenges to, 4-5, 4-6 to 4-8

Model Procurement Act, 2-30 to 2-31

Model Procurement Code for State and Local Governments (2000), 1-3, 1-4

Models, of construction site, 6-60

N

National Labor Relations Act, 4-31 to 4-32

National Recovery Act, 2-31

Negotiations

- after bid opening, 1-16 to 1-17
- design-build contracts, 1-29
- mediation, 7-20 to 7-23
- mini-trials, 7-24
- project labor agreements, 4-31 to 4-35
- for specialized services, 1-22

No-damage-for-delay, 1-45 to 1-46, 5-32 to 5-35, 6-42

Nullum tempus, 7-8 to 7-12

O

On-call contracts, 1-51

Optical character recognition, 6-48

Oral contracts, 1-49 to 1-50

- change orders, 5-4 to 5-5, 5-6, 5-10

Order of precedence clause, 1-35 to 1-36, 6-21

Overhead costs, 6-36 to 6-38

Overtime costs, 6-35

P

Painting, 2-9

Parol evidence rule, 6-17, 6-21

Partnering, 7-31 to 7-32

Pass-through claims, 6-23 to 6-24

Patent ambiguity, 1-35 to 1-36, 6-22

Payment bonds

- administrative set-offs and, 7-5

- agency liability to subcontractor, 6-25
- amounts, 2-30
- claimant rights, 2-30, 2-36 to 2-39
- discharge of surety obligations, 2-45 to 2-47
- enforcement, 2-36 to 2-43
- failure to require, 6-25
- limitation on suit, 2-41 to 2-43
- Miller Act coverage, 2-27, 2-29 to 2-31, 2-32
- notification of claim, 2-39 to 2-41
- proof of nonpayment, 2-43
- rationale, 2-27, 7-13
- scope of coverage, 2-31 to 2-36
- statutory requirements, 2-28
- waiver of remedies, 2-43

Performance bonds

- administrative set-offs and, 7-5
- alterations to contract without surety consent, 7-15
- amounts, 2-30
- bid security, 1-9 to 1-10
- change orders and, 5-11
- conflict between surety and owner over default payments, 7-16
- discharge of surety obligations, 2-45 to 2-47
- enforcement, 2-43 to 2-45
- historical development, 2-29
- limitations, 2-4
- Miller Act coverage, 2-29, 2-30 to 2-31
- out-of-state sureties, 2-28
- qualification of surety, 2-28 to 2-29
- rationale, 2-27 to 2-28, 7-13
- statutory requirements, 2-28
- surety liability, 7-13 to 7-15
- trial evidence related to, 6-47

Performance specifications, 1-36

Plans and specifications of construction projects

- change clause provisions, 5-7
- contract terms, 1-32 to 1-36
- failure to follow, 2-16
- liability of design professionals, 6-26 to 6-27
- required use of exclusive sources, 1-42 to 1-44
- status as rules, 1-50 to 1-51

Policies as rules, 1-50 to 1-51

Postqualification of bidders, 2-14

Prefabricated components, 2-9

Prejudgment interest, 6-41

Prequalification of bidders, 1-22

- classification of contractors, 2-13, 2-18
- competition and, 2-11 to 2-12
- conclusiveness, 2-14
- with criminal record, 2-18 to 2-19
- denial of, 2-16 to 2-18, 3-22
- discrimination in, 2-5 to 2-6
- evidence required for, 2-12 to 2-13
- federal regulations, 2-6

- first-time or out-of-state bidders, 2-13 to 2-14
- implied warranties in, 2-12 to 2-13
- for joint ventures, 2-12
- licensing requirements and, 2-10
- protest of disqualification, 3-22
- purpose, 2-4
- rating of contractors, 2-13 to 2-14, 2-18
- regulatory authority, 2-10
- revocation of, 2-20 to 2-26
- right to review, 2-18
- scope of requirements, 2-11 to 2-12
- state practice, 2-10
- statutory authority, 2-10
- subcontractor qualification, 2-11, 2-12 to 2-13
- See also* Qualification of contractors
- Private-public partnerships, 1-31 to 1-32
- Privileges and Immunities Clause, 4-21 to 4-22
- Productivity, damage claims for interference in, 6-34 to 6-35, 6-38
- Product liability law, 6-26
- Profit, 6-42
- Project labor agreements, 4-31 to 4-35
- Prompt pay requirements, 1-39, 4-12, 6-41
- Proprietary information in proposals, 1-31 to 1-32
- Protest of contract award
 - damages for erroneous rejection of bid, 3-20 to 3-23
 - injunctive relief, 3-13 to 3-14
 - mandamus action, 3-14
 - prior to bid opening, 3-11
 - request to invalidate execute award, 3-15
 - rule of evidence, 3-13
 - standard and scope of court review, 3-12 to 3-13
 - standing to challenge, 1-13, 3-11 to 3-12
 - state bidder preference policies, 4-20 to 4-23
 - statutory procedures, 3-13
 - suit against successful bidder, 3-22
 - timeliness requirements, 3-13
- Public-private partnerships, 1-31 to 1-32
- Public safety, contractor qualification to protect, 2-4
- Public works, defined, 2-31
- Public Works Employment Act, 4-6

Q

- Qualification of contractors
 - authority of contracting officer to investigate, 2-3 to 2-4
 - competition and, 2-4
 - definition of "responsibility," 2-3
 - Disadvantaged Business Enterprise program compliance as element of, 4-13 to 4-15
 - disqualification of bid proposals, 2-16 to 2-18
 - on federally-aided projects, 2-6
 - legal basis, 2-5 to 2-6
 - licensing and, 2-4
 - maintenance of status, 2-20
 - methods, 2-3 to 2-4

- rationale, 2-3, 2-4 to 2-5
- responsiveness *vs.* responsibility, 4-13 to 4-15
- suspension and debarment, 2-20 to 2-26
- wage requirements, 2-20 to 2-21
- See also* Licensing and certification; Prequalification of bidders

R

Rating of contractors, 2-13 to 2-14, 2-18

Rescission of bid/contract, 3-16 to 3-19

Recovery

- of attorney fees, 6-42
- based on mutual mistake, 6-25
- based on unjust enrichment, 6-24 to 6-25
- of bond cost increase, 6-42
- of claim preparation costs, 6-42
- for consequential damages, 6-40 to 6-41
- for damage to structures during contract, 7-12 to 7-13, 7-18
- for defects discovered after final acceptance, 7-7 to 7-12
- from design consultant, 7-16
- of equipment cost increase, 6-35
- of financing costs, 6-41
- of idle equipment costs, 6-35 to 6-36
- of increased labor costs, 6-34 to 6-35
- of insurance cost increase, 6-42
- of materials cost increases, 6-35
- of overhead costs, 6-36 to 6-38
- of profit on cost of extra work, 6-42
- through administrative set-offs, 7-5
- See also* Damages

Reformation of bid/contract, 3-15 to 3-16

Rejection of bids

- because of unit price/total price discrepancies, 1-5 to 1-6
- for defective bid security deposit, 1-9 to 1-10
- for defective submission procedure, 1-10, 1-11
- erroneous, damages for, 3-20 to 3-23
- grounds for, 3-3, 3-4 to 3-5
- for lack of affirmative action program, 4-13 to 4-15
- rejection of all bids, 1-13 to 1-14
- rejection of lowest bid, 1-15 to 1-17
- reservation of contracting agency's rights, 1-7
- standing to challenge, 1-13
- See also* Bid mistakes

Renewal of contract, 1-26

Rental equipment, 2-35, 6-35

Repairs to equipment, 2-36

Requests for proposals, 1-36

Revocation of license, 2-14 to 2-16

- due process rights in, 2-22 to 2-23

Rice doctrine, 5-11

Right of way, acquisition of, 1-8

Risk allocation

- adverse site conditions, 5-14, 5-15
- changed conditions clauses, 1-37 to 1-38, 5-24

cost of delay, 5-28
 for damage to structures during contract, 7-12
 exculpatory clauses, 1-44 to 1-48
See also Indemnification

S

Schedule, 5-32
 critical path analysis, 5-28, 5-31, 6-39 to 6-40, 6-60
See also Delay

Sealed bidding, 1-3

Second War Powers Act, 2-21

Security deposits, 1-9 to 1-10, 1-18
 forfeiture of, 3-19 to 3-20

Separation of contract elements, 1-4 to 1-5, 1-21

Set-offs, 7-5

Severin doctrine, 6-23 to 6-24

Site inspections, 1-34
 contract requirements, 5-19
 differing site conditions claims and, 5-19 to 5-20, 5-26

Small Business Act, 4-4

Soil conditions, differing site conditions claims, 5-16 to 5-17, 5-25 to 5-26

Sole source specifications, 1-43 to 1-44

Sovereign immunity, 6-3 to 6-4, 6-7 to 6-13, 6-16, 7-8 to 7-9, 7-12
 limitations, 2-47

Specialized services, 1-21 to 1-23
 qualification, 2-11

Specifications. *See* Plans and specifications of construction projects

Standing
 to challenge contract awards, 1-13, 3-11 to 3-12
 to challenge project labor agreements, 4-35
 False Claims Act provisions, 6-14
 subcontractor, to sue owner, 6-23 to 6-24

Stand-still agreement, 7-19

Statute of limitations, 7-7 to 7-12

Statutes of repose, 7-7 to 7-12

Strikes, delay caused by, 5-29

Subcontracts/subcontractors, 1-19 to 1-20
 affirmative action programs, 4-6, 4-8 to 4-9, 4-12, 4-18, 4-19
 agency liability to, 6-25
 bid errors made by, 3-22 to 3-23
 contractual arrangements, 2-37
 defined, 2-37 to 2-39
 delays related to, 5-35
 differing site conditions claims, 5-27
 failure to perform, 2-45
 federal regulations, 1-37
 licensing laws and, 2-8, 2-9
 listing of subcontractors, 1-48 to 1-49
 pass-through claims, 6-23 to 6-24
 payment bond coverage, 2-29 to 2-30, 2-33 to 2-34, 2-37 to 2-43
 prequalification, 2-11, 2-12 to 2-13
 prompt pay requirements, 1-39
 standing to sue owner, 6-23

- Subpoena duces tecum, 6-51 to 6-52, 6-54
- Substantial completion, 5-40
 - definition, 7-3
- Substantial performance doctrine, 2-15
- Surface Transportation and Uniform Relocation Assistance Act, 4-5
- Surface Transportation Assistance Act, 4-5
- Suspension of qualification, 2-18 to 2-26
- Suspension of work, 1-38, 1-46, 6-30
 - contract clause, 5-30
 - idle equipment costs during, 6-35 to 6-36
 - recovery of contractor expenses caused by, 6-35 to 6-38, 6-42
 - See also* Delay

T

Taxes

- liens against contractors, 2-44
- payment bond provisions, 2-31 to 2-32
- state bidder preference for tax-paying contractors, 4-22 to 4-23

Termination of contract, 1-39 to 1-40

- for convenience, 1-46 to 1-47, 5-40
- for default, 5-39 to 5-40
- surety's response, 2-27
- wrongful, 5-40

Testing, 1-33

Tort liability, 2-47

- in breach of contract, 6-26

Trainees, 4-28 to 4-30

Transportation Equity Act for the 21st Century, 4-5, 4-12

U

Uniform Arbitration Act, 7-26

Uniform Relocation Assistance Act, 1-8

Unions

- project labor agreements, 4-31 to 4-35
- strikes, 5-29

Unit price bidding, 1-5 to 1-6, 1-17

- unbalanced bids, 3-7 to 3-8
- variation in estimated quantities, 5-11 to 5-12

Unjust enrichment, 6-24 to 6-25

Utilities contracts, 1-25

V

Value engineering, 1-41

Variation in estimated quantities, 5-11 to 5-12

W

Wage requirements, 1-33 to 1-34

- apprenticeship programs, 4-28 to 4-30
- classification of workers, 4-27 to 4-28
- compliance monitoring, 4-30
- determinations of prevailing wage rates, 4-24 to 4-26
- Employee Retirement Income Security Act and, 4-27
- failure to meet, 2-20 to 2-21, 4-30 to 4-31

- fringe benefits, 4-24, 4-26 to 4-27
- minimum wage standards, 4-23 to 4-30
- payment bond requirements, 2-31 to 2-32
- Walsh-Healey Act, 1-37
- War Manpower Act, 4-3
- Warranty of specifications, 1-44
- Weather-related delay, 5-29, 5-31
- Withdrawal of bid, 3-15
 - forfeiture of bid deposit, 3-19 to 3-20
- Witnesses, trial
 - cross examination, 6-63
 - depositions, 6-52 to 6-56, 6-54 to 6-55
 - direct examination, 6-62 to 6-63
 - experts, 6-45, 6-52, 6-53, 6-54, 6-55, 6-56 to 6-57
 - preparation, 6-55, 6-56 to 6-57, 6-65 to 6-66
 - selection, 6-45
- Work conditions, 4-30

Index of Cases

A

Ace Flying Service, Inc. v. Colorado Dept. of Agriculture, 6–8
Adams v. Magnolia Construction Co., 2–33
Adarand Constructors, Inc. v. Pena, 1–39, 4–8 to 4–9, 4–11
Aer-Aerotron v. Texas Department of Transportation, 6–4
Aerodex, Inc. v. United States, 1–43
Agricultural Land Services v. State, 4–16
Air Cooling & Energy, Inc. v. Midwestern Construction Company, 5–25
Air Support Services International, Inc. v. Metropolitan Dade County, 1–8
Alabama Department of Transportation v. Blue Ridge Sand & Gravel, 1–50, 3–11
Alaska State Bank v. General Insurance Company, 7–15
Albany Specialties, Inc. v. County of Orange, 4–34
American Combustion, Inc. v. Minority Business Opportunity Commission, 4–16
Arkansas Highway and Transportation Department v. Adams, 1–17
Asphalt Roads and Materials v. Commw. DOT, 5–19 to 5–20
Associated Builders and Contractors v. City of Rochester, 4–30

B

Berley Industries v. City of New York, 6–37
Biolota Construction Corp. v. Village of Mamaroneck, 5–25
Blount Bros. Constr. Co. v. United States, 6–24
Board of Regents of Murray State Normal School v. Cole, 3–19
Bodies by Lembo v. Middlesex County, 3–9
Bolander & Sons Co. v. City of Minneapolis, 3–20
Boston Shipyard Corp., In re, 5–13
Brock v. Roadway Express, 2–25
Building and Construction Trades Council v. Associated Builders and Contractors, 4–31
Building and Construction Trades Department, AFL-CIO v. Allbaugh, 4–32

C

Callanan Industries v. City of Schenectady, 2–25
Callanan Industries v. White, 2–23
Central Alabama Paving v. James, 4–4
Christiansen Bros., Inc. v. State, 5–34
City of Baltimore v. De Luca-Davis Construction Company, 3–16 to 3–17
City of Dayton, ex rel. Scandrick v. McGee, 4–23
City of Dillingham v. CH2M Hill Northwest, Inc., 7–17
City of Houston v. R. W. Ball Const. Co., 5–33
City of Inglewood–Los Angeles Civic Center Authority v. Superior Court, 1–30
Clark Construction Company v. Pena, 1–14, 1–16, 3–14
Clifford E. MacEvoy Co. v. United States for Use and Benefit of Calvin Tompkins Co., 2–37
Codell Construction v. Commonwealth of Kentucky, 5–22 to 5–23
Colonnelli Bros., Inc. v. Village of Ridgefield, 3–10
Commonwealth to the Use of Walters Tire Service v. National Union Fire Ins. Co., 2–36
Complete General Construction v. Ohio Department of Transportation, 7–5
Contractor's Association of Eastern Pennsylvania v. City of Philadelphia, 4–10
Contractors Association of Eastern Pennsylvania v. Secretary of Labor, 4–3
Copper Plumbing & Heating v. Campbell, 2–21
Corcoran v. Philadelphia, 2–5

Corrino Civetta Construction Corp. v. City of New York, 1–45 to 1–46
County of Brevard v. Miorelli Engineering, 5–5
Craftsmen's Builder's Supply v. Butler Mfg., 7–8
Croson v. City of Richmond, 4–6 to 4–8

D

Davis, Murphy, Niemiec and Smith v. McNett, 1–50
DeFoe Corporation v. Larocca, 2–25
Department of Labor and Industries v. Boston Water and Sewer Commission, 3–8
Department of Public Works v. Ecap Const. Co., 7–29
Department of Transportation v. Anjo Construction Co., 5–37
Department of Transportation v. Arapaho Construction, Inc., 1–47
Department of Transportation v. Blackhawk Quarry Co. of Florida, 1–50
Department of Transportation v. Ronlee, Inc., 3–16
Devir v. Hastings, 1–6
Dick Fischer Development No. 2, Inc. v. Department of Administration, 1–11
Dillingham Construction, N.A. v. County of Sonome, 4–29
Domar Electric v. City of Los Angeles, 4–10 to 4–11
Dormitory Authority v. Span Electric Corp., 7–29

E

E. F. Solomon v. Department of State Highway and Transportation, 2–12
E. Smalis Painting Company v. Commonwealth, Department of Transportation, 2–20
Edward M. Crough, Inc. v. Department of General Services of District of Columbia, 1–43
Electrical Contractors v. Tianti, 2–20 to 2–21
Ell-Dorer Contracting Co. v. State, 5–25
Enertech Electrical v. Mahoning County Commissioners, 4–35
Equitable Shipyards v. Washington State Department of Transportation, 4–22

F

Faulk v. Twiggs County, 1–51, 3–12
Foster Construction C.A. and Williams Brothers v. United States, 5–14, 5–16
Foster Wheeler Enviroresponse v. Franklin County Convention Facilities Auth., 5–5, 5–6
Fullilove v. Klutznick, 4–5 to 4–6, 4–7, 4–8

G

Gaines v. Jones, 5–38
General Contracting & Construction Co. v. United States, 5–7
George & Benjamin General Contractors v. Virgin Island Department of Property and Procurement,
 3–9
George Harms Construction Company v. New Jersey Turnpike Authority, 4–33
George & Lynch, Inc. v. State, 6–9
Gerzof v. Sweeney, 4–34
Grant Constr. Co. v. Burns, 6–9
Gulf Bitulithic Co. v. Nueces County, 1–22

H

Hardeman-Monier-Hutcherson v. United States, 5–23
Harris v. Philadelphia, 2–5
Hartford Accident and Indemnity Co. v. Arizona Dept. of Transportation, 7–14
Hersey Gravel Co. v. State Highway Dept., 6–10
Hicklin v. Orbeck, 4–21
Holloway Construction Co. v. Department of Transportation, 1–46

Holly's Inc. v. County of Greenville, 3–6
Holman Erection Co. v. Orville E. Madsen & Sons, Inc., 4–14
Howard Contracting v. G.A. MacDonald Construction Co., 5–27

I

Inglewood Los Angeles County Civic Center Authority v. Superior Court of Los Angeles County, 2–25
International Ass'n of Machinists v. Wisconsin Employment Relations Comm'n, 4–31
Iverson Const. Corp. v. Palmyra-Macedon Central School District, 3–16

J

J. H. Berra Constr. v. Missouri Hwy. & Transportation Comm'n, 6–22
J. Weinstein Building Corp. v. Scoville, 2–10
Jack Wood Constr. Co. v. United States Dept. of Transportation, 4–16 to 4–17
James Luterbach Const. Co. v. Adamkus, 4–14
Janik Paving & Construction v. Brock, 2–21
John E. Gregory & Sons v. A. Guenther & Sons Co., 1–46
Joseph F. Trionfo & Sons, Inc. v. Board of Education, 5–25

K

Kersten Co. v. Dept. of Social Services, 6–9
Kingston Constructors v. Washington Metro Area Transportation Authority, 1–40

L

L. G. DeFelice & Son, Inc. v. Argraves, 1–27
L. P. Cavett Co. v. United States Department of Labor, 4–28
L. P. Stewart & Bro., Inc. v. Bowles, 2–21
L. Pucillo & Sons v. Belleville Township, 3–12
Laborers Local # 942 v. Lampkin, 4–34 to 4–35
Land Const. Co. v. Snohomish County, 4–14
L&B Construction Co. v. Ragan Enterprises, 5–35
Leatherby Insurance Company v. City of Tustin, 2–47
L-J Inc. v. South Carolina State Highway Department, 5–22
Louisiana Associated General Contractors v. State, 4–9

M

M. De Matteo Constr. Co. v. Commonwealth, 6–10
MacPherson v. Buick Motor Co., 6–26
Massachusetts Bonding & Insurance Company v. New York, 2–44
McKnight Const. Co. v. Department of Defense, 3–7 to 3–8
MCM Construction v. City and County of San Francisco, 3–5
Meens v. State Bd. of Educ., 6–11
Metropolitan Paving Co. v. United States, 5–32
Milbrand Co. v. Department of Social Services, 2–31
Miller v. State, 1–26
Minnesota Chapter of Associated Builders and Contractors v. County of St. Louis, 4–32
Mongioli v. Doerner, 1–31
Monterey Mechanical Co. v. Sacramento Regional Sanitary District, 4–13
Monterey Mechanical Co. v. Wilson, 4–10
Motor City Electric Co. v. Ohio Casualty Insurance Co., 2–42

N

Naugatuck Valley Devel. Corp. v. Acmat Corp., 3–18
New England Concrete Pipe Corp. v. D/C Systems of New England, 2–28

New York State Ch., AGC v. Thruway Authority, 4–34
New York State Chapter, Inc., Associated General Contractors v. New York State Thruway Authority,
 4–33
Noel J. Brunell & Sons, Inc. v. Town of Champlain, 4–14

O

O'Hare Truck Service v. Northlake, 3–22

P

P. T. & L Construction v. State, Department of Transportation, 5–17
PacOrd, Inc. v. United States, 1–50
Parker v. Hufty Rock Asphalt Co., 6–9
Peabody Construction Company v. City of Boston, 3–21
People ex rel. Bernardi v. Leary Construction Co., 4–21 to 4–22
Percy J. Matherne Contractor v. Grinnell Fire Protection, 3–23
Perini Corp. v. City of New York, 5–10
Phillips & Jordan, Inc. v. State, Department of Transportation, 1–34 to 1–35, 1–36
Phillips & Jordan, Inc. v. Watts, 4–9
Polyvend, Inc. v. Puckorius, 2–26
Powder Horn Constructors v. City of Florence, 3–17 to 3–18
Powers v. Miller, 5–5
Progressive Transportation Services v. County of Essex, 3–22
Puget Sound Painters v. State, 3–17

R

Regional Scaffolding & Hoisting Co. v. City of Philadelphia, 4–13
Register Div. of Freedom Newspapers, Inc. v. County of Orange, 7–22 to 7–23
Robinson v. United States, 5–38
Ro-Med Construction Company v. Clyde M. Bartly Co., 2–11
Romero Excavation & Trucking, Inc. v. Bradley Construction, 1–48
Rowan Cty. Bd. of Educ. v. U.S. Gypsum Co., 7–12

S

Safeco Credit v. United States, 5–12
San Diego Building Trades Council v. Garmon, 4–31
Savage v. State, 1–26
Scheckel v. Jackson County, Iowa, 1–49
Schiavone Construction v. Larocca, 2–25
School District of Springfield R-12, ex rel. Midland Paving Co., 2–43
Schrey v. Allison Steel Manufacturing Co., 1–42
Sempre Construction Co. v. Township of Mount Laurel, 1–28
Sevell's Auto Body Company, Inc. v. New Jersey Highway Authority, 2–14
Sherbrooke Sodding Company, In re, 4–11
Souza & McCue Constr. v. The Superior Court, 6–8
St. Paul Fire and Marine Insurance Co. v. United States ex rel. Dakota Electric Supply Co., 2–43
State Board of Public Affairs v. Principal Funding Corp., 6–11
State Highway Administration v. Griener Engineering Sciences, Inc., 1–45
State Highway Commission v. Green-Boots Construction Co., 5–5 to 5–6
State Highway Dept. v. Milton Constr. Co., 6–8
State v. Antonich, 4–22
Statewide Roofing v. Eastern Suffolk Board of Cooperative Educational Services, 3–7
Stone v. Arizona Highway Comm'n, 6–8
Stuyvesant Dredging Co. v. United States, 5–17

Suislaw Concrete Construction Company v. State of Washington, Department of Transportation, 4–29
Systems Contractors Corp. v. Orleans Parish School Board, 3–22

T

Texas Department of Transportation v. Jones Bros. Dirt & Paving Contrs., 6–4
Tom Mistick & Sons, Inc. v. Reich, 4–26, 4–27
Trap Rock Industries v. Kohl, 2–18 to 2–19
Triton Corp. v. Hardrives, Inc., 1–50
Turner Construction Company v. New Jersey Transit Corporation, 3–8

U

United Building and Construction Trades Council v. The Mayor and Council of the City of Camden,
 4–21
United States ex rel. Parker-Hannifin Corp. v. Lane Construction Co., 2–37, 2–38
United States Fidelity and Guaranty Co. v. Thompson-Green Machinery Co., 2–35
United States to the Use of Noland Co. v. Irwin, 2–31
United States v. Fidelity Co. and Deposit of Maryland, 2–41
United States v. Munsey Trust Co., 2–44
United States v. Spearin, 1–34, 5–14

V

V. C. Nora, Jr. Building and Remodeling, Inc. v. State Department of Transportation & Development,
 1–17
Valhal Corp. v. Sullivan Associates, 7–17
VanKirk v. Green Construction Co., 5–38
Vermont Agency of Natural Resources v. United States ex rel. Stevens, 6–14 to 6–15
V.S. D'Carlo Constr. Co. v. State, 6–10

W

W. C. English, Inc. v. Commonwealth, Department of Transportation, 1–47
Walker v. Thornsberry, 2–9
Warner Construction Corp. v. City of Los Angeles, 5–23
Washington Contractors v. Department of the Navy, 3–7
Webster v. Belote, 1–4
Wells Bros. Co. v. United States, 5–35
Western Sun Contractors Co. v. Superior Court, 3–15
*White Construction Company, Inc. v. Division of Administration, State Department of
 Transportation*, 2–20
White Oak Corp. v. Department of Transportation, 1–45
White v. Massachusetts Council of Construction Employers, 4–21
Wunderlich v. State, 5–24 to 5–25
Wygant v. Jackson Board of Education, 4–6, 4–7

Y

Youngstown Sheet & Tube Company v. Sawyer, 4–3