SEYFARTH SHAW LLP
ATTORNEYS

# Government Contracts

## Practice Overview

# Government Contracts

As the world's largest purchaser of goods and services, the United States Government offers tremendous business opportunities for companies in a variety of industries. Companies doing business with the government find the market to be highly competitive and intensely regulated. Government contractors are subject to the Federal Acquisition Regulation (FAR) and the Supplemental FAR regulations of many federal agencies.

Many of the complicated rules surrounding government business pertain to contract cost allowability, accounting system requirements, government audit rights, and the accuracy and completeness of information provided to the government. Penalties for wrongdoing, particularly under the False Claims Act, or even for negligent non-compliance can be extreme and the consequences, such as debarment from obtaining federal contracts, can be severe. Even the largest companies, with years of experience and infrastructure, can still run afoul of government regulations.

For 25 years, Seyfarth Shaw's Government Contracts Practice Group attorneys have assisted clients in obtaining, retaining and managing government contracts. We regularly help domestic and international clients address major issues involving U.S. federal, state and local government contracts. We understand the complexities of the current business and regulatory environments and advise clients on how to achieve their goals while remaining in compliance with government rules. Our team assists clients on the entire spectrum of U.S. government contracting issues at every stage of the procurement process from the proposal preparation and bid protests through the resolution of contract claims.

We offer comprehensive advice and assistance to businesses in a wide array of industries seeking to compete and operate successfully in the federal marketplace. We have extensive experience assisting defense contractors, office and information technology manufacturers and service providers, construction contractors, engineering service providers, health care providers, resellers, and small business contractors.

## Obtaining and Keeping Government Contracts

Clients seek our counsel in obtaining, retaining and managing their government contracts. Our attorneys represent clients in contract performance disputes in the courts and before the various boards of contract appeal and the Government Accountability Office (GAO). Our work includes:

- Representing disappointed bidders in protests when they believe the government has improperly conducted a procurement and they wish to challenge the award
- Preparing claims or requests for additional payment (equitable adjustments) resulting from a change in the scope of the contract
- Defending against government claims of non-performance

## Litigation

There are times when a contractor cannot avoid litigation in order to vindicate a claim or defend itself. Our attorneys have extensive experience representing companies in contract litigation as well as in attempting to resolve matters using alternative dispute resolution. We have successfully represented clients in virtually all government contract litigation forums, on issues including:

- Bid protests at the GAO, the Court of Federal Claims, and at the agency and state levels
- Performance disputes with the government
- Disputes between prime and subcontractors under government contracts
- Defense of false claims allegations, whether initiated by a whistleblower or by the Department of Justice
- Inspector general and grand jury investigations
- Suspension or debarment proceedings
- Contract terminations
- Small business contracting issues including those related to size protests and appeals, the Mentor/Protégée Program, and Alaskan Native Corporation status

## Transactional Representation

Our government contracts attorneys represent buyers and sellers of government contractor firms and frequently work with the Firm's transactional corporate counsel on matters involving:

- Due diligence reviews
- Merger and acquisition negotiations
- Document drafting and disclosure requirements associated with mergers and acquisitions
- Federal anti-assignment laws
- Contract novations
- Intellectual property rights
- Asset valuation
- Export control compliance

We offer comprehensive advice and assistance to businesses in a wide array of industries seeking to compete and operate successfully in the federal marketplace.

## BID PROTESTS

A disappointed offeror sought counsel in its protest to the GAO of the U.S. Army Corps of Engineers award of a large base operations and security services contract in Qatar. After filing the initial protest, our attorneys:

- Performed a detailed analysis of the other offerors' technical and price proposals and the agency's proposal evaluation. During this process, our team discovered a significant error in the government's evaluation.
- Prepared extensive pleadings in support of the client's initial bid protest and a supplemental protest filed as a result of the information learned through discovery.

**Result:** Our team succeeded in demonstrating that the agency had performed an improper cost analysis, and the GAO sustained our client's protest. We were also able to broker a resolution through which the contract work was shared between the original awardee and our client. The value of the contract to our client increased dramatically during the contract term.

# Government Contract Compliance

Compliance with the special laws, regulations and requirements that apply to government contractors can be extremely difficult to navigate. We ensure that our clients have a thorough understanding of the issues by advising them on specific compliance subject matter requirements. To further assist clients, in 1988 we authored The Government Contract Compliance Handbook, which is published by West, and is now in its fourth edition. The Handbook presents practical information for government contractors on compliance obligations and on how to develop and implement a compliance program. We routinely assist clients in designing and maintaining effective corporate compliance programs and in demonstrating their corporate responsibility to government procurement officials. We counsel clients on:

- Contract pricing
- The Service Contract Act
- Socio-economic programs including small subcontracting plans
- Procurement integrity
- Industrial security requirements
- Import/export regulations, including International Traffic in Arms Regulation (ITAR) and Export Enhancement Act (EEA)
- Intellectual property rights
- Government or internal audits and investigations
- General Services Administration (GSA) and other agency schedule contracts
- U.S. Agency for International Development (USAID) contracts and foreign military sales contracts

## FALSE CLAIMS ACT

Our client received subpoenas indicating that the government had Buy American Act/product substitution concerns with critical products our client had supplied to the government. Government counsel subsequently informed us of a Qui Tam (False Claims Act) action that was still under partial seal, which it was investigating. In this False Claims Act matter, we:

- Conducted an extensive investigation of the factual and legal allegations in the Qui Tam action, as well as in communications with government counsel.
- Analyzed the action and convinced the government that the action did not have merit from either a factual or legal standpoint.
- Worked closely with the government to address any remaining questions that it had.

**Result:** The government determined that the Qui Tam action was without merit and chose not to intervene; it conveyed to relators' counsel its belief that the case was without merit. The relators nonetheless decided to proceed with its action. However, when subsequently faced with our motion to dismiss, relators withdrew their case with prejudice.

## CONTRACT DISPUTES

The State of California sued our client alleging that the contractor had defaulted on a $130 million contract to develop a child support enforcement computer system. Our attorneys:

- Developed a successful trial strategy that allowed for an administrative trial but permitted the parties to preserve their appeal rights in the state court system.
- Prepared and presented our client's affirmative damages at trial.

**Result:** The court found that the State of California had breached the contract. Our client sought and received a multi-million dollar damage award, and the court denied the state's demand for $200 million. After appeal to both the Court of Appeals and the California Supreme Court, the damages awarded to the client were slightly reduced but the court upheld the underlying finding against the state.

# About Our Government Contracts Group

Our Government Contracts Practice Group has substantial experience, with seven of our senior attorneys tallying nearly 180 years of collective experience in government contracts law, with more than 140 years of it at Seyfarth Shaw. Our group has an excellent success rate in bid protests, a history of obtaining favorable outcomes in False Claims Act cases, and in-depth experience in claim preparation and litigation. We have built lasting relationships with many of our clients that have endured for decades.

We understand the government contracting process from all perspectives. Before joining Seyfarth Shaw, many of our Government Contracts Practice Group attorneys were in-house counsel for major defense contractors, government contracts litigators at various departments in the federal government, or prosecutors. Some of our attorneys have worked in finance, program management, and contract administration positions for government contractors. Diverse backgrounds such as these enable us to find creative and practical solutions for clients' government contract problems.

With offices across the country and in London, we offer seamless service on government contract matters. As a national government contracts practice, we have attorneys in such key regions as Washington, D.C. and California. Our group also works in tandem with Seyfarth Shaw attorneys in other practice groups including corporate and finance and labor and employment to address transactional matters and socio-economic program compliance issues. ■

## About Seyfarth Shaw

Seyfarth Shaw was founded in 1945 by three lawyers and has grown to more than 800 lawyers across ten offices. We handle issues for our clients in all key areas including commercial litigation, construction, corporate and finance, employee benefits, environmental, government contracts, intellectual property, labor and employment, litigation, real estate, securities litigation, trade secrets, trusts and estates, and workouts and bankruptcy, among others.

Our success is the result of a constant, unrelenting focus on the needs of our clients. Our commitment to excellence and our belief in the strength of a team-based approach to the delivery of our services offers an atmosphere of creative and innovative thinking.

Our clients are our partners in business and we are committed to listening to their needs and to aligning the skills and abilities of our people to respond to those needs. Our clients range from *Fortune* 100 to midsize companies, and include publicly traded and privately held companies. We represent clients of all sizes across all industries and we are diligent in providing the same level of commitment to each client.

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