
Government R&D and Technology Transactions

Government Contracts

Our team assists commercial entities, universities and other institutions in establishing collaborative projects with federal agencies and leveraging government resources. As the largest source of funding for commercial and institutional research and development, US federal government laboratories and technology program offices provide crucial support for innovation in the defense, aerospace, health and life sciences, information technology, transportation security, and energy industries, among others. WilmerHale helps clients establish projects with federal agencies and defense research sponsors such as the Defense Advanced Research Projects Agency, the Missile Defense Agency, and the US Army, Navy and Air Force research laboratories. Among non-defense agencies, we advise on R&D collaborations with leading federal research institutions, including the National Institutes of Health, the Homeland Security Advanced Research Projects Agency and the Advanced Research Projects Agency-Energy, the Energy Department's national laboratories, and the intelligence community. The structure of these arrangements is critical for maximizing the value of government contributions while protecting the participants' intellectual property and commercialization rights.

We help clients leverage a broad range of government R&D resources, including:

- R&D procurement contracts to provide research and development services intended to advance the work of the sponsoring agency.
- Grants of financial assistance to promote innovation in targeted priority fields of science or technology.
- Cooperative agreements, in which government and non-government collaborators work together toward an R&D objective.
- Cooperative research and development agreements that align non-government funding with in-kind federal agency support not readily replicated in the private sector, including facilities, equipment, technologies and expertise.
- "Other Transaction Agreements" with flexible terms to encourage advanced, high-risk prototype, demonstration and other projects involving entities not traditionally engaged in federal contracting.
- Loans and loan guarantees to encourage or supplement private financing for high-stakes projects in high-priority fields of science and technology.

IP Implications

WilmerHale is experienced in the unique intellectual property implications of government contracts, financial assistance and in-kind R&D support. We advise clients on the government reporting and licensing requirements of the Bayh-Dole Act to maximize clients' ownership of federally supported inventions and technical data, while developing long-term relationships with federal agencies that may be the primary consumers of the resulting commercial products and technologies. In collaboration with our intellectual property and technology transactions and licensing colleagues, we craft agreements that not only reflect the unique requirements affecting federally sponsored research, but also fit seamlessly into our clients' broader intellectual property strategies.

For example, we have:

- Negotiated IP licensing arrangements between a provider of advanced sensor equipment and the US Department of Defense.
- Secured an investment and technology development agreement between a telecommunications equipment provider and In-Q-Tel, the nonprofit strategic investment affiliate of the Central Intelligence Agency.
- Advised a major international pharmaceutical company on the implications of federal financial support for technologies developed by and subsequently licensed from a US university.
- Negotiated Space Act Agreements to facilitate advanced research collaborations between emerging technology companies and NASA space flight centers.
- Counseled clients on strategies to protect pre-existing, privately developed technologies in federal grant applications and in resulting federally funded research programs.

Reflecting the government's leadership as a source of technological innovation, clients turn to WilmerHale for advice on government-to-industry and government-to-university technology transfer transactions, including identifying and licensing technologies that are owned by government agencies and available for commercial use.

Research and Technology Transactions

Federal research and technology transactions provide opportunities for companies and institutions of all sizes. With a long history of advising early-stage and venture-backed companies, WilmerHale enables clients to leverage government programs to accelerate R&D and commercialization, without impeding private-sector funding plans. For companies eligible for Small Business Innovation Research grants and contracts or Small Business Technology Transfer collaborations with universities and government laboratories, we assist in negotiating technology licensing terms and setting up required reporting and compliance procedures. We advise companies on eligibility standards for technology innovation programs and appeal

unfavorable size status determinations rendered by the Small Business Administration.

Federal research and technology transactions also present a wide range of compliance considerations. WilmerHale advises both seasoned contractors and new recipients of government funding and can help to reduce the costs of managing federal financial assistance.

For example, we:

- Counsel clients on the application of socioeconomic requirements, including equal employment opportunity, affirmative action, and Section 508 information technology accessibility standards.
- Advise pharmaceutical and life sciences companies on the requirements of the Common Rule for protection of human research subjects in federally funded clinical research, and prepare informed consent documentation for research subjects.
- Represent clients seeking waivers of the “preference for US industry” domestic manufacturing requirements.
- Facilitate participation by non-US entities in federally funded research programs.
- Secure security clearances and export licenses to facilitate the performance of government-supported research programs.