
Supply Chains, Subcontracts and Teaming Arrangements

Government Contracts

With a substantial portion of federal acquisition funding channeled through increasingly large, multiyear contract vehicles, much of the activity in the government contracting sector occurs in the thousands of companies that provide supplies and services to the government's prime contractors. WilmerHale represents both prime contractors and subcontractors on the full range of issues arising in the relationships among contractors.

When prospective prime contractors and subcontractors collaborate to pursue government business opportunities, market planning, proposal preparation and contract negotiations, it may require significant time and resources. We negotiate contractor team arrangements that define the roles and responsibilities of the collaborating contractors, so that the parties can present comprehensive proposals to government customers, while providing confidence that prospective subcontractors will realize a return on their investment if the collaboration results in a success contract award. Teaming agreements present a range of important considerations, including the allocation of responsibility during the proposal and negotiation period, the distribution of work in the event of a successful award, and the core terms and conditions that will guide the collaboration during the period of contract performance. We help clients to anticipate likely points of prime-sub tension to build confidence between the parties, minimize the likelihood of disputes, and build mechanisms for resolving disagreements without impairing the underlying relationship with the government customer.

Experience

Our team of government contract lawyers advises companies and institutions on supply chain management issues, including:

- Oversight of subcontractor compliance systems
- Implementation of programs to detect and prevent counterfeit or substandard electronic items
- Application of cybersecurity safeguards and cyber incident reporting
- Advice on domestic sourcing preferences, such as the Buy American Act, Trade Agreements Act, Berry Amendment and specialty metals sourcing regulations

Subcontracts are not government contracts as such, but are significantly impacted by federal acquisition policies and regulations. We advise government contractors and subcontractors on the application of mandatory and permissive flowdown clauses to subcontracts, not by merely incorporating lists of clauses, but rather, by applying our knowledge and experience to ensure that flowdown clauses are sensibly applied.

Subcontracting issues that we routinely address include:

- Application of mandatory and permissive flowdown of government contract clauses to subcontractors and vendors
- Advice on subcontractors' compliance controls and business systems
- Implementation of required subcontracting plans
- Managing the submission of subcontractor cost and pricing data
- Securing consent to subcontracts
- Compliance with contractual limitations on subcontracting
- Submission of subcontract award and executive compensation reporting