

## **GOVERNMENT CONTRACTS & PUBLIC PROCUREMENT**

### **OVERVIEW**

BCLP has been involved in Government Contracts practice for decades. We regularly represent many clients in their dealings with governments at all levels, including local, state, federal, and foreign governments. We have experience in handling matters involving DOD, all the military services, and many of the civilian agencies, including NASA, FAA, Interior, DOE, GSA, DOL, Homeland Security, Postal Service, SEC and Transportation.

Members of our Team include experienced trial lawyers (a Fellow of the American College of Trial Lawyers), the former Vice President and Associate General Counsel of McDonnell Douglas/ Boeing, a former general counsel of the National Security Agency, and lawyers with engineering degrees and experience. Our team has had leading roles in some of the most significant disputes and litigation in the government contracting field during the past four decades. Additionally, our lawyers are active in the ABA's Public Contract Law Section and industry associations, including National Contract Management Association and National Defense Industry Association and frequently have lectured and written on Government contract issues.

A staple of our Government contract practice is the prosecution and defense of alleged breaches of contract, both prime contracts and subcontracts, and claims and requests for equitable adjustment. Our trial lawyers have been through every conceivable issue regarding breaches of contract and claims for equitable adjustment. We have also appeared before state and federal courts, the Boards of Contract Appeals, the Federal Court of Claims, and the U.S. Courts of Appeals, including the Federal Circuit.

We routinely review procurement contracts, teaming agreements, non-disclosure agreements, subcontracts, and provide advice and counseling for a wide variety of Government clients with respect to contract terms.

Our group is involved frequently in compliance counseling, compliance program implementation and evaluation, risk assessment, and internal investigations. Nearly daily, we are advising clients on interpretation or compliance with the FAR's, DFAR's, and other regulations and policies and on compliance program best practices.

BCLP attorneys have substantial experience in conducting internal investigations of sensitive government contracts-related matters, including investigations of time and cost charging, quality, product substitution, material requirements planning, improper inspections and sign-offs, and

pricing issues, among other issues raised by alleged whistle-blowers, and Anti-Kickback Act and Foreign Corrupt Practices Act issues. We have defended our clients in private litigation (both qui tam and employment-related) and counseled clients on whether a disclosure of the results of an investigation must or should be made to the government. We also regularly represent clients in responding to government inquiries at both the administrative and prosecutorial level, and in debarment and suspensions proceedings, that might arise out of such investigations.

In addition, we have an extensive practice regarding national security clearances, facility clearances and related issues, particularly advising contractor employees and adjudicating security clearance denials before the Defense Department Office of Hearings and Appeals, as well as issues of foreign ownership, control and influence.

## MEET THE TEAM



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## RELATED PRACTICE AREAS

- White Collar

## EXPERIENCE

- We've handled the leading case considering the effect and enforceability of a teaming agreement between major government contractors. We represented a client in the leading case concerning DoD national security requirements in connection with civil trials, and established the precedent that a government contractor who pledges to honour national security requirements may be deemed to have waived its rights to a jury trial in matters involving classified information.
- We have extensive experience in representing clients both bringing and defending breach of contracts claims and requests for equitable adjustments. In a number of subcontract suits, we have been able to obtain injunctions for specific performance requiring the subcontractor to continue to perform during the pendency of the dispute.
- We have frequently worked with company and expert witnesses and examined opposing experts in technical areas. For example, we became familiar with aerodynamics and engine propulsion issues while working with our client's personnel in the recovery of over \$200 million for constructive changes claims on the T-45A program. We also have worked with company and expert accounting witnesses on the often thorny issues of trying to quantify impacts. We have experience in the issues relating to unabsorbed overhead recovery and in quantifying the impact of government delays and disruption, including working with experts in the field of CPM analysis and in computer simulation modeling of delay and disruption where traditional CPM analysis cannot be used.
- We have handled disputes relating to termination of hundreds of subcontracts under the A-12 and Space Station programs and have obtained numerous court orders requiring specific performance by recalcitrant subcontractors on other programs. We also have experience in representing prime contractors when they have found themselves in the uncomfortable position of simultaneously having to defend against a default termination by the government, while defending themselves against a claim by a subcontractor.
- We have represented a number of clients in both pursuing and defending bid protests including issues related to organizational conflict issues, past performance evaluations, misleading/unfair discussions, technical noncompliance, undisclosed evaluation criteria/improper evaluation, refusal to provide company with an RFQ, unequal treatment of

offerors, propriety of sole source award, and specifications designed to favor a specific contractor.

- We have also advised and represented clients in connection with rights in data, trade secrets, copyright and patent issues, export control regulations and International Traffic in Arms Regulations.
- In addition, we have represented clients in numerous litigation matters involving constructive changes, superior knowledge, terminations for default, terminations for convenience, government caused delays and description, suspension of work, defective specifications, and directed changes.
- We have frequently represented companies in affirmative and reverse FOIA matters at the agency level, federal district court, and U.S. Courts of Appeal. We represented a company in the leading decision by a Circuit Court of appeals in which the court ordered that the company's sensitive option pricing information in a government contract not be disclosed under the Freedom of Information Act to a competitor. We have counseled clients in connection with the Trade Agreements Act, Buy American Act, and the Berry Amendment.
- We have also counseled clients on small and minority-owned business matters, including qualification criteria for small businesses, including disadvantaged, woman-owned or veteran-owned businesses.
- We have assisted a number of clients in the past several years in developing compliance programs and manuals and Code of Ethics specially targeted to proposing for and performing Government contracts.

A list of matters and issues for which our Government Contracts Group has provided advice and representation includes:

- Review of solicitations and contract terms
- Proposal preparation and negotiations
- Small disadvantaged business procurements, set-asides and other preference issues
- Women-owned, minority-owned and veteran-owned enterprises
- Government grants
- Bid protests and mistakes
- Bid rigging allegations
- Internal audits and investigations

- Contract terms and conditions
- GSA Schedule pricing and disclosures
- Adequacy of internal controls
- Cost allowability and allocability
- Accounting and Material Management and Accounting Systems
- Voluntary disclosures
- Contract funding and payments
- Government audits, subpoenas and investigations
- Export control issues
- Foreign military sales
- Licensing, data rights, and patents
- Civil and criminal defective pricing and defective products and false claims allegations
- Preparation and negotiation of construction claims
- Contract changes, directed, implied and cardinal
- Teaming and joint ventures
- Government subcontracts
- Suspension and debarment proceedings
- Congressional investigations and hearings
- Terminations for convenience and default and related wrongful termination actions
- National Security issues
- Arbitration, mediation, and other alternative dispute resolution processes
- Litigation before the Boards of Contract Appeals and federal and state courts
- Qui tam and whistle-blower claims
- Compliance and ethics in Government contracting

- Corporate compliance program risk assessments, implementation and benchmarking
- Acquisition or divestiture of Government contracting businesses
- Truth-In-Negotiations
- False Claims Act
- Foreign Corrupt Practices Act
- Buy American Act
- Berry Amendment
- Defense Base Act
- Services Contract Act
- Walsh-Healy Act
- Davis-Bacon Act
- Organizational Conflicts of Interest
- Freedom of Information Act
- ITAR

## RELATED INSIGHTS

Insights

Jul 05, 2023

### **What's the deadline? Timely guidance for procurement challenges in *Altiotech Ltd v Birmingham City Council* [2023]**

A recent Technology & Construction Court's judgment considers the procedural time limits that apply in procurement litigation. The question of timing in bringing a claim in procurement challenges is not straightforward, requiring close examination of the interplay between the procurement regulations and the Civil Procedure Rules, by reference to the nature of the claims available. Failure to understand and comply with the requisite timelines can often result in claims being limited or excluded altogether. This case is a timely examination of the rules surrounding time limits.

News

Jun 14, 2023

## **Cross-firm BCLP team advises Wireless Telecom Group in merger with Maury Microwave**

Insights

Mar 14, 2023

### **2023 China “Two Sessions”: key takeaways from the Government Work Report**

The National People’s Congress, as an important part of China “Two Sessions”, started its annual meeting on 5 March 2023, in which Premier Li Keqiang delivered the government work report for 2023 (“GWR”) to policymakers, setting the tone for the Chinese economy in the coming year. The GWR touched on important aspects of economy and trade, namely foreign investment, boosts to funding and technological innovation. We have set out below the key takeaways from the policy measures outlined in the GWR, as a brief guide to assist foreign investors with an interest in understanding the direction of the Chinese economy in the post-COVID era.

News

Jan 30, 2023

### **BCLP announces 2023 counsel promotions**

Insights

Oct 21, 2022

### **Key Takeaways from President Xi’s Speech at China’s 20th Communist Party Congress**

On 16 October 2022, China’s President Xi Jinping (“Xi”) gave his opening speech to kick off the 20th National Congress of China’s Communist Party (the “CCP”) (the “Congress”), a political meeting held every five years to set out the CCP’s objectives and to elect the leaders for the next term. Xi outlined in his speech the blueprint on the long-term objectives covering a wide range of matters from economy and Covid policy to national security. We set out the key takeaways in this article which may be relevant for foreign investors.

Insights

Oct 19, 2022

### **Hong Kong SAR policy address 2022 – A quest for talent, public housing and land supply**

Hong Kong SAR Chief Executive John Lee announced his maiden policy address on 19 October 2022. Alongside initiatives to attract foreign talent and safeguard national security, which are the main themes of his speech, he highlighted various key policies which are relevant to the real estate, construction and infrastructure sectors. We set out the key takeaways in this article.

Insights

May 23, 2022

### **Bids, scores, and brand new laws? A review of the Government’s Procurement Bill 2022**

On 11 May 2022, the keenly awaited Procurement Bill (announced in the Queen’s Speech) was formally introduced to the House of Lords and received its first reading. Running to 122 pages (and comprising 116 sections across 13 Parts, and 11 Schedules) in its current form, the Bill is one of the Prime Minister’s so-called “Brexit bonanza” bills focused on further decoupling the UK from the EU. Post-Brexit, the government views this as an opportunity for the UK to develop and implement a procurement regime unburdened by the current complex regime that derives almost entirely from EU law. Indeed, the intention is to repeal the public contracts, defence, utilities and concessions procurement regimes, and replace these with a single piece of procurement legislation that extends to contracting authorities in England, Wales and Northern Ireland (Scotland has opted not to implement the new UK procurement r...

Insights

Mar 24, 2021

**Asset Managers: Managing the Most Significant Emerging Regulatory Risks in 2021 (UK focus)**

Insights

Mar 24, 2021

**Banks/Brokers/Financial Market Infrastructure Providers: Managing the Most Significant Emerging Regulatory Risks in 2021 (UK focus)**