

Government Contracts Compliance Backgrounder



What You Need to Know About Government Contracts Compliance

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Named 2012 Government Contracts Practice Group of the Year by *Law360*

Attorneys named leading lawyers by *Chambers USA* for Government Contracts and by *Legal500* for Supreme Court and Appellate practices

The Government Can Be a Good Customer!

- The Government represents a stable market in uncertain economic times.
- The Government can also be a great source of funding and new business opportunities for companies.

Why is Government Contracts Compliance Important to You?

- **Complex Laws and Regulations:** As a customer, the Government operates under extensive and complex procurement statutes, regulations, and rules that are different from those in the commercial marketplace. Failure to follow the rules can - and usually will - result in civil and criminal penalties.
- **Noncompliance Has Serious Consequences:** Consequences of noncompliance can be severe: termination for default, payment of excess re-procurement costs, adverse past performance ratings, charges of false claims or false statements, and even suspension and debarment from performing future government contracts.
- **Strict Ethics Rules:** The U.S. Government imposes strict contractor business ethics and compliance rules. These impact internal controls and often force mandatory disclosure of violations. Through the suspension and debarment rules, mandatory disclosure obligations apply to all contractors and subcontractors.
- **Intellectual Property Can Be At Risk:** Federal funds always come with strings. Under the Bayh-Doyle Act and other federal regulations, the Government will obtain intellectual property rights to a contractor's software developed or customized for a federal government customer, and to technical data delivered under a government contract.
- **GSA Schedule Enforcement:** There has been phenomenal growth in the quantity and value of GSA Schedule sales. The good news is that terms and conditions do not need to be negotiated every time an order is placed; the bad news is that the contractor is generally stuck with the terms and conditions for the life of the GSA schedule contract, and enforcement actions for noncompliance are at all-time highs.
- **Small Business Risks:** Increased pressure by the Government on all agencies to meet small business contracting and subcontracting goals has resulted in a renewed emphasis on contractors meeting small business contracting goals and on enforcement of liquidated damages provisions if quotas are not met.

- **Contract Administration Is Critical:** Contract administration requirements can be a trap for inadvertent violations, which may result in civil and criminal liability under the False Claims Act, as well as suspension and debarment. Adequate contract administration not only is required to ensure compliance with the many unique government requirements, but also is critical for a contractor to affirmatively demonstrate compliance when challenged by the Government, sometimes years after performance is complete.
- **Cost Accounting Issues:** Cost accounting requirements are complex and burdensome. Government contractors are subject to a number of cost accounting principles and practices that can dramatically affect the way that companies do business. For example, the Cost Accounting Standards ("CAS") dictate the way in which a contractor must maintain its accounting system and how it must account for certain types of costs. Failure to adhere to CAS or other cost principles may lead to false claims liability and/or substantial unilateral reductions to the contract price.
- **International Risks:** Doing business internationally triggers additional requirements under federal laws and regulations, including the Foreign Corrupt Practices Act and export control laws. Enforcement actions can result in steep financial penalties for companies, and even the criminal prosecutions of individuals.
- **Know The Rules:** Sovereign immunity is a powerful shield! Many traditional remedies are not available against the Government. Contractors are presumed to know the law and must be extra careful to protect themselves and mitigate the risks in contracting with the Government.

How Morrison & Foerster Can Help

- We provide advice and counseling to clients through the full range of government business transactions, from the contract formation process through performance and close-out of the contract.
- Our government contracts team has represented clients in the information technology, defense, electronics, aerospace, shipbuilding, health care, national security and intelligence, biotechnology, telecommunications, engineering services, logistics support, transportation, manufacturing, and facility services industries.
- There is no substitute for doing the right thing. We help ensure that you have the right infrastructure in place (operational, accounting, contract administration, and socioeconomic), guide you through the regulatory requirements, and help you manage the risks of working with the Government.
- We have vast experience in scores of government contracts matters for major national and international companies, involving a wide range of government contracts issues.