



One Firm WorldwideSM



INTERNATIONAL TRADE & NATIONAL SECURITY AND GOVERNMENT CONTRACTS

Jones Day's Government Regulation practice features a roster of lawyers who served as White House, National Security Council, and Treasury, State, Justice, Commerce, and Transportation Department officials, offering clients extensive experience in matters of international trade, national security, and government contracts. We leverage our deep store of talent, our thorough understanding of the federal government, and the Firm's premier international presence to provide U.S. and non-U.S. companies of all sizes assistance in conducting international business transactions efficiently and with minimal regulatory delay. Our International Trade & National Security and Government Contracts lawyers can advise on the full range of issues related to export controls, economic sanctions, defense trade controls, review by the

Committee on Foreign Investment in the United States (CFIUS), and government contracts.

INTERNATIONAL TRADE & NATIONAL SECURITY

Lawyers in Jones Day's International Trade & National Security practice have extensive experience assisting clients with various U.S. trade controls, including economic-sanctions programs administered by the Treasury Department's Office of Foreign Assets Control (OFAC), the Export Administration Regulations (EAR) administered by the Commerce Department's Bureau of Industry and Security (BIS), anti-boycott laws administered by the Commerce and Treasury Departments,

and the International Traffic in Arms Regulations (ITAR) administered by the State Department's Directorate of Defense Trade Controls (DDTC). We also regularly advise clients dealing with CFIUS, an inter-agency committee of the U.S. government chaired by the Treasury Department that reviews, and advises the President on, the potential impact on national security of foreign acquisitions of U.S. companies.

We conduct a wide range of projects for clients in these areas of the law. We carry out internal corporate investigations, advise on responses to civil and criminal enforcement actions, help companies establish compliance programs that meet agency requirements, aid classifications of products under the appropriate Export Control Classification Number (ECCN) on the Commerce Control List (CCL), assist in applying for and obtaining licenses to engage in covered activities, and analyze the applicability of regulations to activities that present complex or novel issues. Given the overlapping jurisdiction of regulating agencies, we also help identify the applicable agencies to be considered and, as appropriate, assist clients in submitting commodity jurisdiction requests.

We regularly help clients navigate the complicated and opaque sanctions regimes administered by OFAC against countries such as Iran, Sudan, Myanmar, and Cuba. With the laws in this area constantly changing, we help clients ensure that their global operations are in compliance with the latest requirements. Increasingly, we advise non-U.S. companies about the potential impact that U.S. regulations may have on their business activities—both legally and for political, reputational, and other nonlegal considerations. We also routinely advise on the application of trade laws in M&A transactions, advising non-U.S. companies seeking to make acquisitions in the United States, as well as U.S. companies that are the potential targets of such acquisitions. When required, we negotiate special security or other mitigation agreements that help alleviate any concerns U.S. government regulators might have.

We also have significant experience specific to the ITAR, which deals with the manufacturing, exporting, and brokering of defense articles and technical data on the United States Munitions List (USML), as well as defense services. We advise companies in connection with the acquisition of U.S. companies registered with the DDTC, we manage the process for transitioning ITAR-controlled agreements such as Technical Assistance Agreements and Manufacturing License Agreements following changes in ownership, and we assist in

investigating potential violations of the ITAR and in preparing voluntary disclosures to the State Department.

We also have extensive experience advising both acquirers and targets on the CFIUS review of foreign acquisitions of U.S. companies. Jones Day's CFIUS team includes experienced merger-review lawyers and former government officials with first-hand knowledge of the way CFIUS conducts reviews, mitigates national security risks, and interprets its legal authorities following the passage of the Foreign Investment and National Security Act of 2007 (FISIA). With particular and current insight into the Executive, congressional, political, and public dynamics that can affect sensitive international transactions, Jones Day attorneys are positioned to help clients successfully navigate the complications and uncertainties that can accompany today's national security review processes.

GOVERNMENT CONTRACTS

Jones Day's Government Contracts practice spans the full range of government contracts-related counseling and litigation. Our clients include U.S. and non-U.S. corporations engaged in a wide spectrum of commercial and defense-related industries, including aerospace, engineering and construction, computer technology, nuclear facilities, environmental remediation, health care, munitions, energy, and telecommunications. We have worked with clients on matters relating to most federal agencies, including the Departments of Defense, Energy, Homeland Security, State, Interior, and Veterans Affairs; the Central Intelligence Agency; the General Services Administration; the Environmental Protection Agency; the U.S. Agency for International Development; the Army Corps of Engineers; and the U.S. Postal Service. We have also assisted clients in disputes arising out of state government procurements in Washington, D.C.; California; New York; Ohio; and Texas.

Pre-Award Counseling. Our experience in the pre-award counseling area includes providing advice on the U.S. Federal Acquisition Regulation, teaming agreements, and joint ventures, as well as conducting contract and specification risk reviews. We also work with clients who are participating in federal grant programs, Stimulus Act programs, FTA-funded procurements, Title III of the Defense Production Act, and R&D programs including Contract Research and Development Agreements (CRADA).

Litigation to Gain or Retain Government Contracts. Jones Day lawyers have considerable experience in litigating contract award disputes before all of the relevant decisional authorities in the U.S., including bid protest cases before the Government Accountability Office and injunction actions before the U.S. Court of Federal Claims.

Post-Award Counseling and Litigation. Careful attention to a contractor's rights under a contract or subcontract can have a substantial impact on profitability. Jones Day lawyers provide valuable counseling during contract performance to avoid problems, resolve disagreements before they become disputes, and help position clients for the best possible resolution of disputes that are unavoidable. Our lawyers are well versed in claims preparation, negotiation, and litigation, and they are experienced in handling cases before the U.S. Civilian Board of Contract Appeals, the U.S. Court of Federal Claims, and other federal and state courts.

Jones Day's lawyers also have been successful in overturning default terminations through litigation as well as through presentations to agency officials that result in negotiated resolutions, thereby avoiding the expense of litigation. Although our lawyers are experienced in traditional litigation, they are familiar with and, in appropriate cases, encourage the use of alternative means of resolving disputes, such as mediation and arbitration.

Cost Issues and Defective Pricing. Government contract cost principles, the Cost Accounting Standards (CAS), and the Truth in Negotiations Act can affect the pricing of, accounting for, and ultimate profitability of contracts and contract modifications. These often impose significant record-keeping, disclosure, and other administrative burdens. Our lawyers assist clients in negotiating with government auditors and contracting officials on questions of the allowability of costs and contractors' compliance with cost principles and the CAS. In a notable example, Jones Day represented a major aerospace contractor in successfully resolving, without litigation, cost disallowances and assertions of defective pricing that, if sustained, would have cost the client tens of millions of dollars.

Intellectual Property. A company's proprietary technical data, computer software, and trade secrets can be its most valuable assets. Jones Day lawyers help companies defend against government efforts to take expansive rights in such information. Our lawyers also have helped forestall disputes

by counseling clients on how such data should be protected both before and after a contract award. Lawyers in our Government Contracts practice, usually in conjunction with lawyers from our Intellectual Property Practice, often assist contractors during the contract negotiation process to maximize protections for valuable intellectual property.

Prime Contractor-Subcontractor Disputes. Government contracts involve not only a maze of statutory and regulatory constraints but also another complex set of private relationships—subcontracts, joint ventures, teaming agreements, etc.—that necessarily support the prime contract effort. Jones Day lawyers are familiar with the formation and implementation of these agreements and have provided counseling and litigation assistance concerning all aspects of these arrangements.

Corporate Organizations. The acquisition, divestiture, or reorganization of a corporate entity performing government contracts requires an appreciation of government restrictions on assignments of contracts, cost-recovery limitations, and industrial security requirements. Our lawyers have represented a number of U.S. and international companies, as well as financial institutions, in connection with these mergers and acquisitions, including the drafting of special terms and conditions, the conduct of due diligence reviews, novation agreements, and interaction with the Defense Security Service (DSS) concerning maintenance of security clearances.

Whistle-Blower Lawsuits and Fraud Investigations. Government contractors frequently face allegations that, in some fashion, they defrauded or submitted false claims to the government. Jones Day lawyers have extensive experience in dealing with internal and government investigations and defending False Claims Act or *qui tam* lawsuits and, in connection with our Corporate Criminal Investigations Practice, related grand jury proceedings.

Compliance and Educational Programs. The best "resolution" of allegations of fraud, waste, abuse, or false claims is, of course, to prevent them from arising in the first place. Jones Day lawyers draw on their substantial experience to counsel contractors on establishing effective compliance and training programs to make it less likely that such allegations will arise. We recently conducted an extensive compliance training program for a major contractor involved in reconstruction projects in the Middle East. The seminars were presented to personnel in the U.S., Europe, Jordan, and Iraq.

THE FIRM'S RESOURCES

Jones Day's capabilities in these areas are supplemented by the resources of the entire Firm, as appropriate, to meet our clients' needs. Our International Trade & National Security and Government Contracts lawyers are members of the Firm's Government Regulation Practice but routinely call upon the significant talents and experience of our complex litigation team in handling major, fast-paced investigations and litigation matters. We also draw support from the Corporate Criminal Investigations Practice in dealing with investigations and enforcement actions. Similarly, our lawyers routinely work with the Firm's corporate and intellectual property lawyers on issues relating to mergers, acquisitions, and new business ventures.

STAFFING AND COSTS

The Firm is sensitive to cost considerations and business objectives. Jones Day's Government Regulation lawyers are committed to working with our clients as a team to provide top-quality representation designed to achieve client business objectives in the most cost-effective manner possible.

ADDITIONAL INFORMATION

For additional information regarding our International Trade & National Security and Government Contracts practices, please contact your principal Firm representative or one of the lawyers listed in this publication. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

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