BakerHostetler

Government Contracts Quarterly Update

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The Government Contracts Quarterly Update *is published by BakerHostetler's Government Contracts Practice team to inform our clients and friends of the latest developments in federal government contracting.*

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Bid Protests

Court of Federal Claims Bid Protest Jurisdiction Limited

History has proven since enactment of the Competition in Contracting Act ("CICA") that bid protests are one of the most powerful legal tools in a contractor's toolbox, allowing aggrieved offerors to police federal agencies to ensure fairness and honest dealing throughout the solicitation and award process. The mere specter of being brought before the Government Accountability Office ("GAO") or the U.S. Court of Federal Claims ("COFC") provides a powerful incentive for agencies to respect the procurement process. Although the COFC and U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") (collectively the "Courts") have expanded the scope of agency actions and decisions that can be subject to protest jurisdiction under the Tucker Act, in select recent decisions, the Courts have taken steps to limit—rather than expand—the Courts' jurisdiction.

On September 15, 2014, in *SRA International, Inc. v. United States*, 766 F.3d 1409 (Fed. Cir. 2014), the Federal Circuit determined that the COFC did not have jurisdiction over a task order protest involving an organizational conflict of interest ("OCI"). The Court vacated the COFC's decision sustaining a bid protest that sought to void a task order award because of an improper OCI waiver by the agency. Relying on the Federal Circuit's decision in *Distributed Solutions* (a decision in which the Federal Circuit held that the COFC had jurisdiction over a protest challenging an agency's decision to procure software through an existing task order rather than conducting a new competition) the protester argued and the COFC agreed that the protest was not subject to the Federal Acquisition Streamlining Act's ("FASA") limits on protest jurisdiction for task order awards. The Federal Circuit, however, rejected that argument in sweeping language, concluding that FASA "effectively eliminates all judicial review for protests made in connection with a procurement designated as a task order—perhaps even in the event of an agency's egregious or even criminal, conduct." At the same time, the court acknowledged that there are protest scenarios involving task orders where jurisdiction may lie. At a minimum, the *SRA* decision has narrowed the scope of task order-related protests over which COFC will accept jurisdiction, but it has not cut off such jurisdiction outright.

One month later, on October 21, 2014, the COFC, in *VFA, Inc. v. United States*, No. 14-173C, 2014 WL 5462563 (Fed. Cir. Oct. 29, 2014), followed the Federal Circuit's lead in further narrowing the jurisdictional reach of *Distributed Solutions*, dismissing a protest of the Department of Defense's ("DOD") decision to standardize the use of DOD-owned facilities assessment software across all military installations. In its protest, the aggrieved offeror, a facilities assessment software provider, argued that the DOD's standardization decision precluded the protester, and others, from competing for contracts to provide facilities assessment software and that the decision to standardize, absent competition, violated CICA. The COFC dismissed the protest, concerned that entertaining such a protest "where no procurement or cost comparison process was mandated or undertaken [such as the required cost comparison process when insourcing services], would so broadly expand this Court's jurisdiction as to eliminate any restrictions of the Tucker Act." The COFC distinguished the *VFA* scenario from other standardization and in-sourcing cases in which the Court exercised jurisdiction, so there is reason to argue in future protests that the jurisdictional implication of the *VFA* ruling is limited to the facts of that case.

At a minimum and going forward, IDIQ contractors will have to examine much more closely the COFC jurisdictional question when considering whether to lodge a protest in that forum in connection with task order awards to its competitors. The *SRA* and *VFA* decisions do not affect the jurisdiction of the GAO to entertain task order protests, which is broader than that of COFC. Would-be protesters should also be vigilant regarding the 10-day filing deadline for task order awards at GAO.

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Cost Allowability

Supreme Court Tacitly Endorses Rejection of Business Judgment Rule When Gauging Cost Reasonableness

On October 6, 2014, the Supreme Court of the United States ("Supreme Court") denied *certiorari* in Kellogg Brown & Root, Inc.'s ("KBR") fight to recover $41 million in disallowed subcontractor costs incurred in performance of dining services in Iraq, bringing an end to KBR's long-running claim litigation. Of significance for other contractors, the Supreme Court's denial leaves intact the decision by the Federal Circuit, *Kellogg Brown & Root Servs., Inc. v. United States*, 728 F.3d 1348, 1359 (Fed. Cir. 2013) *opinion corrected on denial of reh'g*, 563 F. App'x 769 (Fed. Cir. 2014) and *cert. denied*, 13-1558, 2014 WL 2919328 (U.S. Oct. 6, 2014) (*KBR I*), wherein the Federal Circuit discussed at length the significant regulatory discretion invested in the Government when assessing cost reasonableness. *KBR I* has caused a great deal of concern in the contracting community because it undermines contractors' real-time business judgments about cost reasonableness.

The underlying dispute stemmed from a cost-reimbursement contract between KBR and the DOD, under which KBR was required to provide dining services for up to 50,000 troops in support of military operations in Iraq. As the military action escalated, however, the dining service requirements quickly and dramatically expanded to supporting 200,000 soldiers at 56 sites throughout Iraq. After a "disastrous" attempt to self-perform certain portions of the expanded contract, KBR engaged a subcontractor, Tamimi Global Company, ("Tamimi") to provide dining services at one of the Army camps and sought payment for those subcontractor services. The Defense Contract Audit Agency ("DCAA") subsequently audited KBR and determined that KBR incurred $41 million in unreasonable subcontractor costs between July and December 2004. Acting on DCAA's audit report, the contracting officer then withheld $41 million from payment to KBR. KBR filed a claim against the agency, which the Government denied, and then filed its claim appeal with the COFC. The COFC denied KBR's claim, adopting DCAA's position that the costs were unreasonable because KBR did not engage in effective bargaining with Tamimi. The Court noted that although KBR's failed attempt at self-performance undermined its negotiating position, that complication did not mitigate KBR's failure or inability to negotiate better service rates with Tamimi.

Before the Federal Circuit, KBR argued that DCAA, the contracting agency, and the COFC impermissibly second-guessed KBR's business judgment in a wartime environment, contending that contractor's cost of performance should be presumed reasonable unless the result of "gross

Contract Spotlight

Certified Claims

Welcome to BakerHostetler's "Contract Spotlight," a space we use to highlight fundamental but often overlooked aspects of government contracting law that can give contractors a leg up in the fiercely competitive government contracts space. This quarter, we are highlighting the claim submission requirements of the Contract Disputes Act ("CDA").

The CDA requires that a contractor submit a claim against the Government to the contracting officer for a final decision before that claim may be considered by a tribunal, such as the boards of contract appeals or the U.S. Court of Federal Claims. Yet contractors consistently submit incomplete or inadequate materials, jeopardizing untold dollars in the process. By paying attention to the key requirements of the CDA and its implementing regulations, contractors can ensure they are either paid in full and on time, or are ready to litigate their claims.

A recent decision by the Civilian Board of Contract Appeals ("CBCA") demonstrates the importance of rigorously adhering to the CDA's certification requirements. *See McAllen Hospitals LP Dep't of Veterans Affairs*, CBCA 2774 (Oct. 2, 2014). In this matter, the contractor entered into a contract with the Department of Veterans Affairs ("VA") to provide medical and hospital services. Roughly two years into the contract, the contractor determined that the VA was improperly calculating reimbursement rates, resulting in both overpayments and underpayments on various services. The contractor then returned the purported overpayments and submitted a "formal claim" to the contracting officer, claiming over $900,000 in alleged underpayments. After the contracting officer denied the claim on the theory that the contract limited the reimbursement rates, an appeal was taken to the CBCA.

Despite the fact that the Government had fully considered the claim, and despite the fact that the Government did not argue before the CBCA that the claim was not certified, the CBCA nevertheless dismissed the claim sua sponte because it found no evidence in the record that the claim was accompanied by the certification required for all claims above $100,000. Therefore, the contractor's failure to submit a proper certified claim denied it the opportunity to even litigate the claimed amounts.

The fundamental attributes of a claim are simple and straightforward. A claim must be submitted to the contracting officer in writing and must demand precise relief, such as a sum certain. Additionally, for claims for more than $100,000, the contractor must expressly certify that: (1) the claim is made in good faith; (2) the data supporting the claim are accurate and complete; (3) the claimed amount accurately reflects the adjusted amount for which the contractor believes the federal government is liable; and (4) the certifier is authorized to certify the claim on behalf of the contractor. By following these simple requirements, contractors can avoid the pain of foregoing amounts due to the strict requirements of the CDA.

misconduct," "arbitrary action," or "a clear abuse of discretion." In substance, KBR advocated for application of the "business judgment rule" (a fundamental corporate law doctrine) to cost reasonableness determinations. The Federal Circuit rejected KBR's position, noting that earlier precedent deferring to contractor cost judgments does not outweigh the regulatory flexibility embodied in the cost principles contained in Federal Acquisition Regulation Part 31.

Now that the Supreme Court has denied *certiorari* and the Federal Circuit's decision is final, contractors, subcontractors, accountants, auditors, and counsel must adapt to the newly recognized regulatory discretion held by all agency contracting personnel who are called upon to make cost reasonableness determinations. A few important aspects of the KBR decision may prove helpful to that adaptation process:

- Documentation. Well-documented subcontractor price negotiations and flowdown provisions. KBR's exposure resulted from subcontract terms negotiated in and around the exigencies of a war zone at a time when performance was urgently needed. These unique circumstances left KBR without a comparable private marketplace benchmark for establishing cost reasonableness. KBR was forced to rely solely on its record of subcontract negotiations and the subcontract itself to establish reasonableness. Taking KBR's lessons learned to heart, cost-reimbursement contractors that are considering subcontracting should (i) look early (even at the time of proposal preparation) for a commercial market benchmark against which to make outsourcing price comparisons, and where no such counterpart exists, (ii) develop and pursue a robust plan for conducting and documenting subcontract negotiations, to include specially tailored clauses that enable the contractor to claw back costs paid and subsequently disallowed by the agency.
- Burden of Proof. *KBR I* preserves the fundamental tenet that the burden to prove cost reasonableness always falls on the contractor. To meet that burden, contractors performing on large complex cost reimbursement contracts should expect and prepare for cost controversies and claims with the Government by meticulously documenting costs in order to justify their claim.
- No Business Judgment Rule. The *KBR I* court took a dim view of KBR's argument that the costs were not unreasonable and were not the result of gross negligence. In short, there is no safe harbor in the form of a business judgment defense.
- Second-Guessing — the New Standard. Cost-reimbursement contracts are now even more susceptible to agency second-guessing. Contractors should consider stepping up their administrative efforts to justify and document costs to mitigate the risk of material second-guessing during audit and closeout actions.

Offeror Due Diligence

Electronic Proposal Submission Using Agency Mandated Portals—Contractor Diligence

The days of submitting hard copy proposals are going the way of the 8-track tapes, as are faxed or emailed offers and delivery of compact discs or thumb drives or any other physical form of electronic media. More and more agencies are relying on electronic portals for the delivery and receipt of proposals. With a Government-furnished portal, the offeror generally will first browse and select from its server the proposal files that it wants to upload to the portal, and then the offeror transfers those files via an upload command from the offeror's server to the Government's portal/server. Once the offeror's proposal files have been uploaded to the Government portal, the offeror then submits the proposal files with a click or other electronic command. This process should be easy to complete regardless of the portal platform used by the Government; and yet, offerors are finding that there are complications and challenges with which they must contend.

Even though it is a Government-mandated portal, the burden still resides with the offeror to make sure that its entire proposal is timely submitted and received by the agency. And to meet that burden, offerors should document confirmation of receipt or, at the very least, confirmation of submission. More than one offeror has learned the hard way that not all of its proposal files were actually selected for uploading or, if selected, were not actually uploaded or, if uploaded, were not actually delivered (*i.e.*, received by the agency). The result invariably is that the offeror's proposal submission will be deemed incomplete and it will be eliminated from the competition. So what should offerors do when submitting proposals via agency or third-party portals? Several best practices should be considered:

- Read carefully the instructions for proposal submission and make sure to follow those instructions to the letter.
- Conduct a trial run to test the operability of the transfer process to confirm that designated files are successfully selected, uploaded, and ready for submission.
- Plan in advance how to select and upload files (*e.g.*, individual files, file groups or categories, or single integrated file). Weigh the options against the risks that go along with those options and make an informed decision about the approach that best meets your needs, realizing that the overarching need is to make certain the entire proposal is timely submitted to and received by the agency.
- Determine in advance whether there are any file size constraints (too big) associated with the portal, and make sure your files fit within the limiting parameters. Consider proposal formatting (*e.g.*, Excel, Word, PDF, or other native applications) as the file format may materially impact the upload or submittal process.
- Consider file transfer rates (a test run will help you determine whether it is quick and efficient or takes forever). Transfer rates are very important should you wind up submitting your proposal within minutes of the

stated deadline. Select, upload, and submit the proposal files well before the deadline for submission of offers.

- After the proposal has been submitted, print and save any evidence that demonstrates that the proposal, including each file and part thereof, was successfully submitted and/or received. To the extent that the agency later claims that it did not receive the entire proposal, your record of transfer and file delivery can be used to show that you did everything as instructed and that the Government is to blame for any nonreceipt of files.
- Confirm receipt of each file comprising the proposal with the agency.
- To the extent allowed by the solicitation and/or the contracting officer, submit a copy of the proposal through other means, such as through electronic mail or by hand delivery, as a failsafe measure.

By following these best practices, contractors can mitigate the risks associated with proposal submission through electronic portals.

Cybersecurity

Government Releases New Guidelines for Protecting Controlled Unclassified Information on Contractors' Systems

Although the Government has long recognized the need for security measures to protect sensitive government information residing on contractor information systems, it has struggled to adopt a unified approach to contractor data security. In recent years, guidance for securing "sensitive but unclassified" information on non-federal information systems has been inconsistent, with multiple agencies addressing the protection of federal information in materially different and sometimes conflicting ways.

On November 18, 2014, the U.S. Department of Commerce's National Institute of Standards and Technology ("NIST") released a draft version of NIST Special Publication 800-171, Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations ("SP 800-171"). As part of a larger initiative to comply with Executive Order 13556, the new publication aims to provide clear, government-wide security requirements for "controlled unclassified information," primarily by implementing security requirements and controls from prior NIST guidance and tailoring them specifically for nonfederal entities. The Government also anticipates establishing a single FAR clause that will apply the requirements of SP 800-171 to contractors. In exigent circumstances, agencies are permitted to reference SP 800-171 in a contract-specific requirement until promulgation of a final FAR clause. NIST is accepting comments on the draft document through January 16, 2015.

Labor and Employment

New Minimum Wage Rule Set to Increase Labor and Compliance Costs

As we covered in our May 2014 Quarterly, President Obama issued Executive Order 13658 in February 2014, which imposed a minimum wage of $10.10 per hour for workers on certain federal contracts. The U.S. Department of Labor ("DOL") and FAR Council recently issued corresponding rule changes to implement the requirements of Executive Order 13658.

On October 7, 2014, the DOL published the final rule imposing a minimum wage of $10.10 per hour for workers on certain federal contracts formed on or after January 1, 2015, including negotiated renewals and contract modifications (unilateral renewals by the Government will not be subject to the Final Rule). *See* 79 Fed. Reg. 60,634 (the "DOL Final Rule"). This minimum wage will be tied to the Consumer Price Index, increasing on an annual basis to account for inflation.

The DOL Final Rule raises the minimum wage for employees "performing on or in connection with" a covered contract. Covered contracts include service contracts regulated by the Service Contract Act ("SCA"), construction contracts regulated by the Davis-Bacon Act ("DBA"), concession contracts regulated by the Fair Labor Standards Act ("FLSA"), and contracts for services related to federal property that are regulated by FLSA. Consistent with the FLSA, SCA, and DBA, the definition of worker generally excludes coverage of any person employed in a *bona fide* executive, administrative, or professional capacity. Although the DOL Final Rule expressly exempts certain other types of contracts, such as manufacturing contracts regulated by the Walsh-Healey Public Contracts Act, the rule has come under fire for a lack of clear guidance that contractors can use to determine when an employee's work is "in connection with" a covered contract. Ambiguities aside, the "in connection with" benchmark also carries a compliance burden for contractors, particularly as relates to those employees who perform multiple job duties, where their work is allocated between covered and other (*i.e.,* non-covered) contracts. As a means of mitigating this burden, the DOL introduced a *de minimus* exclusion for workers with dual jobs. Under the exclusion, employers are not required to pay the new minimum wage to workers who devote less than 20 percent of their weekly effort in connection with covered contracts.

The Final Rule also creates interpretive difficulty with respect to understanding the term "contract" as defined by the agency. The DOL Final Rule broadly defines the term "contract" to include any mutually enforceable agreement, explicitly including subcontracts. This definition will cover instruments such as blanket purchase agreements, task orders, and delivery orders that are not regarded as "contracts" under the FAR definition. Thus contractors must contend with divergent terminology and definitions on some pretty basic contracting concepts - one set of definitions to satisfy DOL's requirements and a related but different

definition as used by the contracting agencies. Can it get any more complicated? Yes.

The ambiguities of the DOL Final Rule are compounded by the harsh sanctions that can be imposed in connection with rule violations. Upon a finding that a contractor failed to pay the proper wage, the DOL may order contract payments to be withheld or redirected to DOL for disbursement to workers as unpaid wages. Additionally, a finding by DOL that a company failed to comply with the prescribed minimum wage requirements can provide grounds for suspension and debarment.

On December 15, 2014, the FAR Council issued an interim rule to amend the FAR to implement Executive Order 13658. *See* 79 Fed. Reg. 74,544 (the "FAR Interim Rule"). Unlike the DOL Final Rule, which applies to both procurement and non-procurement contracts and agreements, the FAR Interim Rule only applies to FAR-based (*i.e.,* procurement) contracts, clarifying at least one area of ambiguity. Other aspects of the FAR Interim Rule include the definition of worker, exemptions, and sanctions for noncompliance, substantially the same in form and substance as in the DOL Final Rule.

The FAR Interim Rule will apply to any solicitations issued on or after February 13, 2015, as well as bilateral contract modifications of more than six months and existing indefinite-delivery, indefinite-quantity contracts, "if the remaining ordering period extends at least six months and the amount of remaining work or number of orders expected is substantial." The FAR Interim Rule also applies to subcontractors at all levels that fall under DOL's rules, as well as under the mandatory flowdown requirements recited in the FAR (prime contractors are responsible for subcontractor compliance at every tier). Where prime contractors are found to have not complied with the requirements, under the FAR Interim Rule agencies may withhold payment to cover unpaid wages at the new rate.

Although these regulations will have a delayed effect, their complexity demands immediate preparation. The Final Rule imposes several administrative obligations for contractors and subcontractors, including requiring contractors to (i) include a contract clause implementing the executive order requirements in all subcontracts of any tier on a contract with the federal government; (ii) notify all workers who are covered by the FLSA and who perform work on or in connection with covered contracts of the applicable minimum wage rate and their minimum wage rights; and (iii) maintain records reflecting each worker's occupation or classification and total wages paid. These requirements, particularly in light of the above-mentioned ambiguities in the Final Rule and the corresponding enforcement mechanism, require contractors to pay close attention to this developing area of regulation.

Labor and Employment

DOL Final Rule Requires Contractors to Change Policies to Prohibit Discrimination on the Basis of Sexual Orientation or Gender Identity

On December 9, 2014, DOL published a final rule implementing Executive Order 13672—covered briefly in our October 2014 Quarterly—which extends non-discrimination prohibitions enforced by the Office of Federal Contract Compliance ("OFCCP") to prohibit discrimination on the basis of sexual orientation or gender identity. 79 Fed. Reg. 72,985. The final rule, which is effective on April 8, 2015, does not substantially alter the existing equal employment opportunity regulations. Instead, the rule simply adds the categories of sexual orientation and gender identity to the list of prohibited bases for discrimination.

The final rule requires the use of a new equal employment opportunity clause in new or modified contracts, subcontracts, and purchase orders to state that employees and applicants will be treated without regard to their sexual orientation or gender identity. Moreover, contractors will need to update the equal employment opportunity language in job solicitations and posted workplace notices to reflect these prohibitions. However, unlike the equal employment opportunity regulations governing gender, race, and ethnicity, the new rule, as relates solely to sexual orientation and gender identity, does not impose on contractors any data collection and reporting requirements and it does not impose any affirmative action obligation on federal contractors (to take steps to actively recruit candidates that fall within those non-discrimination categories). Moreover, the final rule does not require employers to ask applicants or employees to self-identify their sexual orientation or gender identity.

While the new rule is fairly straightforward, it is nevertheless essential that contractors update their internal policies and operating procedures. In light of the flurry of labor reform issues over the course of the past year, clients are encouraged to take the New Year as an opportunity to initiate a thorough review of current equal opportunity policies to ensure a smooth transition to the new regulatory landscape.

False Claims

DOJ Announces Record–Breaking FCA Recoveries

On November 20, 2014, the U.S. Department of Justice ("DOJ") announced that its False Claims Act recoveries for Fiscal Year ("FY") 2014 reached a record-breaking $5.69 billion. This figure reflects both judgments and settlements in connection with the False Claims Act. The record-breaking recovery reflects an almost 50% increase from last year's $3.8 billion recovery and a 16% increase from the prior record ($4.9 billion in FY 2012).

Of the $5.69 billion in FY 2014 False Claims Act recoveries, the DOJ collected approximately $5.4 billion from the financial and healthcare industries, which paid out $3.1 and $2.3 billion, respectively. The $3.1 billion collected from banks and other financial institutions stems from false claims related to federally insured mortgages and loans, while the $2.3 billion collected from the medical industry largely involved fraudulent Medicare, Medicaid, and TRICARE claims.

Of greater concern for contractors, however, is the large number of whistleblower actions filed by private citizens (or *qui tam* actions). Such actions accounted for $3 billion of the total FY 2014 recovery, and for the second straight year,

whistleblowers filed over 700 *qui tam* actions in federal courts. This is a dramatic increase from prior years. For example, between 2006 and 2009, whistleblowers filed less than 400 *qui tam* actions annually. Although the last two years have seen record numbers, whistleblower suits have been growing steadily since 2007. Even when such suits lack merit, they can materially and adversely disrupt business by diverting personnel and resources from revenue-generating activities. A comprehensive risk management strategy can prepare even the smallest contractors and grant recipients to efficiently handle whistleblower actions.

Practice Updates

- Our Government Contracts team recently scored consecutive wins for a pharmaceutical manufacturer at the GAO in multiple pre-award and post-award protests, in which the U.S. Department of Veterans Affairs took corrective action in each of the protests, allowing the manufacturer to re-enter each of the competitions.
- Another victory was scored for an information technology contractor in a pre-award protest of the U.S. Department of Health and Human Services' rejection of the contractor's proposal, where a U.S. Court of Federal Claims protest-related filing and a series of discussions with agency officials resulted in the agency taking corrective action by reinstating and evaluating the offeror's proposal.
- In separate GAO protests lodged in connection with delivery of medical and dental services at Army National Guard bases, the procuring agency opted to take corrective actions.
- Hilary Cairnie presented at the AID and International Development Forum Disaster Relief Summit 2014 on Wednesday, November 19, 2014. The presentation was titled "Building Successful Public Private Partnerships and Collaborations."

New BakerHostetler Attorneys

BakerHostetler Government Contracts Practice Team Expands in 2014

Complementing its top-tier Government Contracts practice, BakerHostetler welcomes three additional attorneys to its Government Contracts Practice team, with each attorney providing further expertise and depth in support of BakerHostetler's clients. W. Barron A. Avery joins the team as Counsel from another well-regarded Government contracts practice in Washington. Michael P. Giordano and Katherine M. John join the team as Associates, joining from respected Government contracts practices in Norfolk, Virginia and Washington, D.C., respectively. The combined experience these attorneys bring to the team places BakerHostetler in an even better position to represent and counsel its clients in Government contract matters.

W. Barron A. Avery focuses his practice in the area of federal government contracts, representing clients in all aspects of government contract law. He has a particular experience in contract disputes resolution. In addition to Mr. Avery's substantial litigation experience, he also provides counseling to contractors in connection with the day-to-day administration of government contracts, including cost issues, domestic preferences, small-business issues, and ethics.

Michael P. Giordano practices government contract law, with in-depth experience representing government contractors, and a focus on contract advice, bid protests, claims preparation, negotiation, and litigation. He has appeared in federal and state courts and before administrative tribunals, including various boards of contract appeals and the Government Accountability Office.

Katherine M. John represents clients in all aspects of government contracts law. Katherine's experience includes litigating bid protests before the Government Accountability Office and the U.S. Court of Federal Claims, resolving contract disputes, and counseling large and small businesses on contract administration issues.

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About BakerHostetler

BakerHostetler, one of the nation's largest law firms, represents clients around the globe. With offices coast to coast, our more than 900 lawyers litigate cases and resolve disputes that potentially threaten clients' competitiveness, navigate the laws and regulations that shape the global economy, and help clients develop and close deals that fuel their strategic growth. At BakerHostetler we distinguish ourselves through our commitment to the highest standard of client care. By emphasizing an approach to service delivery as exacting as our legal work, we are determined to surpass our clients' expectations.

BakerHostetler's Government Contracts Practice team consists of more than a dozen attorneys with extensive experience in government contracts, including former government attorneys from the U.S. Justice Department, U.S. Securities and Exchange Commission, and the U.S. Patent and Trademark Office. Working closely with the firm's Intellectual Property, Labor and Employment Practice groups, as well as the International Trade, FDA, and White Collar Defense and Corporate Investigations Practice teams, among others, the Government Contracts Practice team represents clients on a wide variety of government contract matters and cases.

Why BakerHostetler's Government Contracts Practice team?

- Seasoned, experienced team with a deep bench
- Several attorneys with technical and engineering backgrounds
- Former government attorneys
- Outstanding client service and responsiveness
- Competitive value-driven rates and fee arrangements

Hilary S. Cairnie
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Hilary S. Cairnie is the leader of the firm's Government Contracts Practice team. He focuses on public contract law, encompassing virtually all aspects including contract formation, performance, administration, and enforcement controversies at the federal and state levels. With two engineering degrees and several years of experience working as an engineer for various companies, Mr. Cairnie uses his unique technical background to represent clients involved in aerospace, automotive, shipbuilding, transportation, construction, software, medical and healthcare, engineering, and research and development endeavors, among others.

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Kelley P. Doran has focused on government contracts counseling, contract negotiation, and litigation for over fifteen years. Mr. Doran's practice includes representing a broad array of commercial item, defense, and homeland security contractors that sell products and services to the federal, state, and local governments. He has worked with product and service companies in numerous industries, including biodefense and life sciences, environmental remediation, homeland security, information technology, and nanotechnology.

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