



## Government Contracting

PRACTICES

### OVERVIEW

When compared with traditional business-to-business agreements, contracts and grants involving federal, state or local governments are more regulated, are subject to considerable compliance requirements and are subject to bid protests and other challenges. In addition, the rules and regulations for government procurement change frequently.

Our North Carolina-based law firm has extensive experience in government contracts formation and administration, compliance requirements, and dispute resolution for a range of government contracts, including federal military and nonmilitary and state, local and public construction. We help resolve the legal needs of long-time federal, state and local government contractors, subcontractors and grantees. Our team of lawyers are engaged by companies that are offering their goods and services to governments and government prime contractors for the first time.

We have been integrally involved with some of the largest government contracts and infrastructure projects in North Carolina. Additionally, we regularly counsel our clients on their teaming agreements, including joint ventures and subcontracts; federal assistance grants; cooperative agreements; and collaborative research and development agreements (CRADAs).

We have similar legal experience with state and local contracts, as well as state, local and federal bid protests, administrative hearings, litigation and dispute resolution before the U.S. Government Accountability Office (GAO), the Court of Federal Claims, the Civilian Board of Contract Appeals and other venues. Our Firm also offers the advantages of a full-service business law firm, with practices in such related areas as Construction, Technology, Intellectual Property, Corporate Relocation and Expansions, Environmental and OSHA, Health Care, Employment, Labor and Human Resources, and Mergers and Acquisitions.

The military's significant growth in North Carolina, including the relocation to Fort Bragg of the U.S. Army's Forces Command (FORSCOM) and Reserve Command (USARC) as a result of the Base Realignment and Closure (BRAC) process, has significantly increased the need for defense contracts legal expertise which we are well-positioned to provide.

### SERVICES

- Pursuing requests for equitable adjustment and disputes before the Armed Services Board of Contract Appeals and the Civilian Board of Contract Appeals
- Dispute resolution via negotiation, mediation, arbitration and litigation in various federal and state forums
- Addressing payment and performance bonding claims
- Pursuing State and Federal Bid Protests and related litigation before the Government Accountability Office, contracting officer and state and federal court levels

- Assistance with bidding issues, including bid preparations, flowdowns of relevant state and federal contract provisions, subcontractor compliance with disadvantaged business enterprises and historically underutilized businesses and related issues
- Drafting Joint Venture and Contractor/Subcontractor Teaming Agreements
- Preparing responses to agency requests for proposals or applications under the Small Business Innovation Research Program (SBIR), the Small Business Technology Transfer Program (STTR) and similar programs
- Developing and conducting ethics, business and Foreign Corrupt Practices Act compliance and training programs
- Drafting Cooperative Research and Development Agreements, grant management contracts and subawards
- Working towards novation of government contracts and government contracting issues in connection with mergers and acquisitions

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## EXPERIENCE

### **Litigation and Dispute Resolution**

- Representing a prime contractor before the Civilian Board of Contract Appeals appealing the agency's denial of a request for equitable adjustment
- Representing an international contractor and its surety in state and federal court litigation and on payment and performance bond claims arising from a \$110 million airport parking garage project
- Representing a Fortune 500 company in litigation involving a design-build contract for a multimillion-dollar ground-coupled heat pump system installed at a United States Marine Corps base
- Representing a national highway construction contractor in court litigation regarding claims for extra work in connection with a \$38 million interstate highway project
- Representing a national pre-cast concrete contractor in federal court litigation involving a \$40 million state prison construction project
- Representing private defense and government contractors facing lawsuits arising out of their activities in the Middle East
- Representing contractors in disputes brought before the American Arbitration Association

### **Bidding Assistance, Teaming Agreements and Contract Compliance**

- Addressing bid, bonding, contract and other issues in connection with construction of North Carolina's first two Turnpike Authority highway projects with a combined cost of \$900 million, and bid and contract issues related to \$480 million public Light Rail Project in Charlotte, North Carolina
- Assisting clients with contract and risk management issues in connection with IDIQ Projects for the Iraq Coalition Provisional Authority, and a satellite communications system project in Afghanistan

- Analyzing compliance with state and federal programs benefiting disadvantaged business enterprises, including the Small Business Administration's 8(a) and HUBZone programs and helping prime contractors comply with set-aside goals and reporting
- Preparing joint venture and contractor/subcontractor "teaming agreements" between businesses agreeing to bid together on government contracts
- Assisting clients in various bidding and compliance issues involving state and local governments relating to public construction and soft drink contracts
- Assisting clients in "flowing down" required provisions into grants, subcontracts and third-party vendor contracts; for example, in university sponsored research agreements
- Assisting clients in reviewing pre-award contract drafts to be issued in response to agency Requests for Proposals or applications under programs such as the Small Business Innovation Research Program (SBIR) and the Small Business Technology Transfer Program (STTR)
- Assisting clients with contract administration matters such as The Bayh-Dole Act and ownership and licensing of inventions, determination of allowable costs, and presenting claims for increased compensation under change and differing site conditions clauses
- Assisting clients in connection with novation of government contracts in connection with mergers and acquisition transactions
- Developed and conducted Ethics, Business Conduct and Foreign Corrupt Practices Act (FCPA) compliance and training programs for companies in accordance with Federal Acquisition Regulations (FAR)
- Drafted Cooperative Research and Development Agreements (CRADA) for a company teaming with the federal government on a research project in support of Special Operations Forces

### **Corporate Transactions/Mergers and Acquisitions**

Lawyers from Smith Anderson's Finance, Securities, Health Care and Complex Contract Dispute groups also are active in public company and private mergers and acquisitions. *Chambers USA: America's Leading Business Lawyers* has recognized Smith Anderson as one of the top corporate practices in the State of North Carolina for multiple consecutive years.

In addition to on-going federal contract support, we assist clients with acquisition transactions to secure the government's consent to the transfer of government contracts in compliance with the federal Anti-Assignment Act. We recently assisted an international client that was acquiring a United States corporation in securing approval from the Committee on Foreign Investment in the United States ("CFIUS") under the Exon-Florio provision under Section 721 of the Defense Production Act.

### **Employment**

Lawyers in Smith Anderson's Employment, Labor and Human Resources group are experienced in wage and hour, affirmative action, environmental, health and safety, as well as traditional labor matters relevant to government contracting. We have assisted clients with developing and implementing plans and programs such as affirmative action plans required of government contractors. We frequently represent clients in investigations and audits conducted by the North Carolina and United States Department of Labor and the United States Department of Justice.

### Corporate Relocations and Expansions

For decades, Smith Anderson lawyers have assisted corporate clients relocating to and expanding within North Carolina. Smith Anderson is a leader in this field, with considerable experience working with state legislators and economic development officials to implement business investment tools and economic development incentives such as the North Carolina Job Development Investment Grant program and the One North Carolina Fund. We maintain close ties to state and local agency officials who are instrumental in the economic development and business recruitment process. Our firm regularly counsels clients in tax and corporate planning to obtain the maximum benefits available for corporate relocation and expansion projects.

### Environmental, Health and Safety

Current lawyers in Smith Anderson's Environmental, Health and Safety group have served in federal and state agencies, including the Army Corps of Engineers and the North Carolina Department of Justice. We have assisted clients with Section 404/401 compliance and permitting matters, lobbied successfully for the passage of major environmental laws, assisted clients with air, solid and hazardous waste permitting matters and represented clients in major toxic tort litigation, including representing companies in Superfund cost recovery actions and lawsuits involving North Carolina wetlands. In addition, firm attorneys regularly advise and defend clients in connection with environmental and OSHA enforcement proceedings.

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## PROFESSIONALS

Jackson W. Moore

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## RELATED AREAS

Administrative Law

Construction & Infrastructure

Corporate Relocation & Incentives

Employment, Labor and Human Resources

Environmental

Government Relations

Health Care

Intellectual Property

Mergers and Acquisitions

Technology Transactions

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