

Federal Grants and Cooperative Agreements

The federal government spends billions more dollars on grants than on contracts each year. Grants are one of the primary ways that the government funds projects to provide public services and promote the public good. Grants are also a significant source of funding for many nonprofit organizations, colleges and universities, research institutions, and for-profit companies, including “traditional” government contractors. Like government contracts, grants are subject to a host of regulatory requirements and compliance obligations. Although many of these requirements were consolidated into the Office of Management and Budget “Super Circular” in December 2014, federal grantees are still subject to a patchwork of agency-specific provisions for certain grant awards.

Our Government Contracts attorneys have a wide range of experience advising clients on issues related to federal and state grants. We have counseled prime recipients and subrecipients to aid their understanding of their obligations under grants and to develop policies and procedures to ensure compliance with those requirements. For certain industry-specific grant programs, we have successfully leveraged the expertise of our colleagues in other practice groups, such as the Telecom, Media & Technology Practice, to ensure our clients understand and are protected from all potential risk areas. Our attorneys also have significant experience assisting clients with various other alternative procurement vehicles used by the federal government, such as cooperative agreements, other transaction agreements (OTA), cooperative research and development agreements (CRADA), Space Act Agreements (SAA), Technology Investment Agreements (TIA), and Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) awards.

Collectively, our attorneys have handled matters with virtually every federal government agency, including all of the major grant-awarding agencies—the National Institutes of Health (NIH), U.S. Agency for International Development (USAID), U.S. Department of Defense (DOD), U.S. Department of Homeland Security (DHS), U.S. Department of Transportation (DOT), U.S. Department of Health and Human Services (HHS), U.S. Department of Agriculture (USDA), U.S. Department of State (DOS), U.S. Department of Labor (DOL), the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA), and U.S. Department of Energy (DOE). We have worked with a great number of state agencies as well, including handling several recent high-profile disputes over state grants that have resulted in state and district court litigation.

Like government contractors, grant recipients have increasingly become the targets of government audits, investigations, and enforcement actions. Working closely with our colleagues in the White Collar Defense & Government Investigations Practice, our Government Contracts attorneys have successfully represented clients in connection with agency audits and program reviews, Office of Inspector General (OIG) and U.S.

Department of Justice (DOJ) investigations, congressional inquiries, False Claims Act (FCA) actions, and suspension and debarment matters. We also have extensive experience assisting clients with conducting internal investigations of alleged misconduct and determining whether corrective action is warranted, including a potential disclosure to the government.

Representative experience includes:

- Analyzing Notices of Funding Availability (NOFAs) and the terms and conditions of grant awards;
- Counseling recipients and subrecipients on compliance requirements under grant awards;
- Assisting clients with implementation of grant requirements, including preparing codes of conduct and procurement policies;
- Significant experience advising clients on recent, high-profile grant programs, including the American Recovery and Reinvestment Act (ARRA), the Broadband Technology Opportunities Program (BTOP), and Broadband Initiatives Program (BIP);
- Analyzing compliance with government ethics requirements;
- Representing prospective grant recipient challenging state recipient's use of funds and compliance with grant funding competition requirements;
- Counseling clients on agency decisions to use grants and cooperative agreements instead of procurement contracts, including evaluating potential protest options;
- Responding to and resolving suspensions and proposed debarments under both the procurement and non-procurement regulations;
- Responding to federal and state agency audits of expenditures under grant awards;
- Securing favorable resolution of civil FCA investigation regarding a client's receipt of SBIR and STTR awards;
- Conducting internal investigation for university based on alleged misconduct under program funded by the Defense Advanced Research Projects Agency (DARPA);
- Assisting client with responding to criminal and civil investigations related to NSF grants, with no enforcement action against the company;
- Reviewing incurred cost and financial controls to prevent fraud, waste, and abuse, and to ensure the appropriate allocation of costs across multiple grants;
- Analyzing intellectual property rights under grant awards, cooperative agreements, and other alternative procurement vehicles;
- Assisting clients with the negotiation of cooperative agreements, OTAs, CRADAs, SAAs, and TIAs;
- Appealing agency decisions to disallow costs incurred under federal grants;
- Negotiating and executing settlement agreements to reduce retroactively disallowed grant and cooperative agreement funds; and

- Counseling clients on prime-sub disputes arising under SBIR awards.