



## → John W. Chierichella

### Of Counsel

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John Chierichella is of counsel in the Governmental Practice in the firm's Washington, D.C. office.

### Areas of Practice

John's practice focuses on government contract matters, including claims and appeals, cost and CAS issues, compliance reviews and internal investigations, *qui tam* and other False Claims Act litigation, bid protests, teaming disputes and GSA's Multiple Award Schedule (MAS) Program.

John has been nationally recognized by *Chambers & Partners, Legal 500*, and most recently by *Who's Who Legal*, noting that he "is one of the most instantly recognizable names in government contracts law."

John is a prolific author and frequent lecturer, and co-authored the leading book on the MAS Program. He also served as attorney/adviser to the Secretary, Office of the General Counsel, Department of the Air Force, in the area of procurement law from 1973 to 1975.

### Honors

*Chambers & Partners*, Tier 1 National Ranking

Leading Lawyer in Government, *Chambers USA*

The Legal 500 Hall of Fame – Government Contracts, *Legal 500*, 2021-2022

National Recognition as an Elite Leading Lawyer in Government Contracts, *Legal 500*

Best Lawyers in America, *Best Lawyers*, 2022-2023

Washington, D.C. Super Lawyer, *Super Lawyers*

America's Leading Business Lawyers

Best Lawyers in Washington, D.C.

Best Government Contracts Lawyers, *Washington Business Journal*

Best Government Contracts Lawyers, *Washingtonian Magazine*

*SmartCEO Magazine's* SmartLawyers

*Legal Times*, Leading Lawyer

*Who's Who Legal*, Thought Leaders Global Elite, Leading Public Procurement Lawyer and Government Contracts Expert

Martindale-Hubbell Alternative Dispute Resolution Washington, D.C. Top Rated Lawyer

Recommended Lawyer - Government Contracts, *Legal 500*, 2022

Top Lawyers Hall of Fame, *Washingtonian Magazine*

## Experience

### Litigation Experience

- Litigation of contract claims and counterclaims in the Court of Federal Claims against the U.S. Postal Service
- Litigation of claims relating to restructuring costs under CAS 406
- Litigation of claims against HHS on behalf of a service-disabled small business
- Litigation relating to costs arising from storm damage incurred by Hurricane Katrina
- Litigation of alleged false claims brought by former employee/*qui tam* relator relating to accounting for vacation and holiday time
- Litigation of alleged false claims brought by former employee/*qui tam* relator relating to accounting for various indirect costs, including independent research and development (IR&D), manufacturing and production engineering, selling costs and long-range economic planning
- Litigation of alleged false claims relating to design, development and production of classified microelectronic circuits
- Litigation with respect to expressly unallowable costs
- Litigation with respect to the allowability and allocability of IR&D costs relating to aircraft development
- Litigation with respect to the allowability and allocability of IR&D costs relating to naval ship design and development
- Litigation with respect to breach of a teaming agreement for a major U.S. aircraft system
- Litigation of alleged false claims relating to compliance with the Buy American and Trade Agreements Acts
- Litigation of alleged false claims relating to compliance with the General Services Administration's Price Reduction Clause
- Litigation of alleged false claims relating to allowability of proxy contest costs

### Alternate Dispute Resolution Experience

- Classified arbitration relating to alleged breach of teaming agreement for design, development and production of satellites
- Unclassified arbitration of claim against major Israeli contractor
- Mediation relating to alleged breach of teaming agreement for rocket motor technology
- "Baseball"-style arbitration of claims under government prime contract
- Mediation of penalties assessed for expressly unallowable costs

### Investigations

- Investigation of alleged false claims relating to license fees and royalties included in prices billed to U.S. Government customers

- Investigation of alleged cost-plus-percentage-of-cost violations
- Investigation of alleged false claims relating to application of profit to inter-affiliate transfers
- Investigation of possible false claims raised by the U.S. Postal Service Office of Inspector General
- Investigation of alleged false claims relating to contractor claims of commerciality
- Investigation of potential false claims in connection with progress payment invoices
- Investigation of numerous alleged false claims relating to defective cost or pricing data
- Investigations of numerous kickback allegations
- Investigation of numerous potential disclosures under FAR Mandatory Disclosure Rule

## **Claims**

- Representation of major aerospace contractor in connection with claims relating to failed rocket launch and loss of payload
- Preparation of claim against the Department of Interior relating to underpayments on contract for nationwide personal counseling services
- Preparation of claim under contract for overhaul of statewide information technology services contract
- Preparation of claim relating to contract for production of plant machinery and equipment
- Preparation of claims relating to contract for the design, development and production of unmanned aerial vehicles
- Investigation, preparation and prosecution of various contract claims relating to ship design and construction
- Investigation, preparation and prosecution of contract claims relating to extreme weather impacts
- Investigation, preparation and prosecution of contract claims relating to business reorganizations
- Representation of international sales agent in connection with claims for commissions against U.S. aircraft manufacturer
- Response to numerous contractual “show cause” and “cure” letters

## **Bid Protests**

- Numerous offensive and defensive bid protests at the Court of Federal Claims, GAO and agency levels

## **Counseling**

- Audit Response
- Buy American Act, Trade Agreements Act and Appropriations Act Restrictions

## **Costs**

- Allowability
- Allocability
- Reasonableness
- Credits

- Depreciation
- Economic Planning
- Environmental Costs
- Executive Compensation Costs
- Fines, Penalties and Mischarging
- Golden Handcuffs
- Golden Parachutes
- Idle Facilities and Idle Capacity
- IR&D
- Lobbying
- Manufacturing & Production Engineering
- Material Costs
- Organization Costs
- Relocation Costs
- Restructuring Costs
- Royalties
- Selling Costs
- Special Tooling and Special Test Equipment
- Termination Costs
- Legal and Other Proceedings Costs
- Cost Accounting Standards
- Cost or Pricing Data
- Cost Analysis/Price Analysis

## **Contracts**

- Multiple Award Schedule Contracting
- Public Law 85-804/Extraordinary Contract Relief
- Rights in Technical Data and Computer Software
- Subcontracts and Flow Down Requirements
- Teaming Agreements

## **Other**

- Government contracts-related due diligence in support of government contracts-related mergers and acquisitions
- Committee on Foreign Investment in the United States (CFIUS) oversight of M&A involving foreign buyers
- Foreign Ownership, Control or Interest (FOCI) in contractors holding classified contracts

- FOIA
- Service as an ombudsman for a foreign defense contractor under an ITAR-related agreement with DDTC resolving alleged export violations

## Articles

### Selected Recent Articles in Print

- "Contractors Face Tougher Ethical Standards," *National Defense*, December 2020
- "DoD Policy Memorandum Rejects "Sweeps" Data, National Defense Magazine," *National Defense*, September 2018
- "Achieving Cyber-Fitness in 2017: Part 6—Potential Liabilities and Putting It All Together," *The Government Contractor*, December 6, 2017
- "Industry Struggles with Ever Changing Acquisition Rules," *National Defense*, September 26, 2017
- "Achieving Cyber-Fitness in 2017: Part 5—Cyber Incident Reporting and Response," *The Government Contractor*, September 13, 2017
- "Achieving Cyber-Fitness in 2017: Part 4—Subcontracts, Joint Ventures And Teaming Agreements," *The Government Contractor*, June 14, 2017
- "Presidential Executive Order on Cybersecurity: No More Antiquated IT," *Bloomberg Law Privacy and Security Law Report*, May 29, 2017
- "Achieving Cyber-Fitness in 2017: Part 3—Proving Compliance And The Role Of Third-Party Auditors," *The Government Contractor*, April 5, 2017
- "Achieving Cyber-Fitness in 2017: Part 2—Looking Beyond The FAR And DFARS—Other Safeguarding And Reporting Requirements," *The Government Contractor*, February 22, 2017
- "What You Need to Know About Mergers and Acquisitions Involving Government Contractors and Their Suppliers - Volume 10," *Pratt's Government Contracting Law Report*, January 2017
- "Achieving Cyber-Fitness in 2017: Part 1—Planning for Compliance," *The Government Contractor*, February 1, 2017
- "The Enemy Within: The Soft Underbelly of Cybersecurity," *Metropolitan Corporate Counsel*, November 2016
- "The Impact of Foreign Buyers on Mergers and Acquisitions Involving Government Contractors: Preserving the Facility Security Clearance (Part II)," October 12, 2016
- "Identifying and Mitigating Organizational Conflicts of Interest in Government Contracts Mergers and Acquisitions," *Bloomberg BNA*, October 11, 2016
- "The Impact of Foreign Buyers on Mergers and Acquisitions Involving Government Contractors: Preserving the Facility Security Clearance (Part I)," *The Government Contractor*, October 5, 2016
- "Where to Look for Low Hanging Fruit," *Contract Management - Due Diligence in Government Contracts Mergers and Acquisitions*, September 2016
- "Roadmap to Obtaining Government Consent for Corporate Transactions Involving Government Contractors," *Financier Worldwide Magazine*, September 2016
- "Investing in Small Business - Navigating SBA's Affiliation Rules," *The Government Contractor*, August 24, 2016

- "The Impact of Government Contracts on The Structure of Corporate Transactions," *Financier Worldwide Magazine*, August 2016
- "Contractor Mergers and Acquisitions: Issues to Watch," *National Defense*, June 2016
- "Compulsory Confession Without Absolution: Complying With the FAR Mandatory Disclosure Rule," *Thomson Reuters Westlaw Journal*, September 2015
- "10 Ways To Maximize Success Of Gov't Contract Claims," *Law360*, February 19, 2013

## **Selected Government Contracts, Investigations & International Trade Blog Posts**

- "'You Got To Know When To Protest' Part III: The Court Of Federal Claims Declines To Expand Blue & Gold Waiver Rule For Bid Protests 'Any Further Than The Federal Circuit Already Has'"; September 24, 2021
- Blue & Gold Waiver Rule For Bid Protests Inapplicable When Pre-Award Objection Would Have Been "Futile"  
rel="noopener" href="https://www.governmentcontractslawblog.com/2020/08/articles/protest/protest-part-ii-blue-gold-rule/">"You Got To Know When To Protest' Part II: Federal Circuit Holds *Blue & Gold* Waiver Rule For Bid Protests Inapplicable When Pre-Award Objection Would Have Been 'Futile'"; August 18, 2020
- "'You Got To Know When To Protest': Federal Circuit's *Insero* Decision Stretches the Blue & Gold Waiver Rule For Bid Protests To New Lengths," July 29, 2020
- "CBCA Rules Contractor Under GWAC Task Orders Properly Submitted Claims to the Agency Ordering Contracting Officer Instead of the Procuring Contracting Officer," May 29, 2019
- "The Government's Playbook – Your Guide to Uncle Sam's Negotiating Techniques," April 29, 2019
- "Resurrecting the Spare Parts Bogeyman – A Refresher on Why the Government Gets It Wrong," April 29, 2019
- "GAO Annual Report On Bid Protests: 2018 Yields More Protests, More Merit Decisions, But Fewer Sustains and Fewer Hearings," December 3, 2018
- "OSD Issues Policy Guidance Rejecting 'Sweeps' Data," June 27, 2018
- "Clearly Erroneous Audit Assertion – An Expensive Thorn in Contractors' Sides," December 1, 2017
- "Industry Struggles With Ever Changing Acquisition Rules," October 26, 2017
- "Presidential Executive Order on Cybersecurity: No More Antiquated IT," May 30, 2017
- "Defense Contractors to Face New Cost Accounting Oversight with Creation of Defense Cost Accounting Standards Board," April 26, 2017
- "What You Need to Know About Mergers and Acquisitions Involving Government Contractors and Their Suppliers, Volume 10 - Accounting for the Cost of Business Combinations Under Government Contracts Mergers and Acquisitions," October 18, 2016
- "What You Need to Know About Mergers and Acquisitions Involving Government Contractors and Their Suppliers, Volume 9 - Unclassified Contracts? Foreign Buyers Still Make a Difference," September 6, 2016
- "What You Need to Know About Mergers and Acquisitions Involving Government Contractors and Their Suppliers, Volume 8 - Foreign Buyers Do Make a Difference," August 15, 2016
- "What You Need to Know About Mergers and Acquisitions Involving Government Contractors and Their Suppliers, Volume 7 - Investing in Small Businesses," July 27, 2016
- "What You Need to Know About Mergers and Acquisitions Involving Government Contractors and Their Suppliers, Volume 6 - Organizational Conflicts of Interest: When the Whole Is Less Than the Sum of Its Parts," June 23, 2016

- "What You Need to Know About Mergers and Acquisitions Involving Government Contractors and Their Suppliers, Volume 5 - The Land Mines Strewn Throughout the Data Room," May 23, 2016
- "What You Need to Know About Mergers and Acquisitions Involving Government Contractors and Their Suppliers, Volume 4 - Key Issues in Government Contracts Due Diligence," April 21, 2016
- "What You Need to Know About Mergers and Acquisitions Involving Government Contractors and Their Suppliers, Volume 3 - What Happens to Pending Proposals?" March 17, 2016
- "What You Need to Know About Mergers and Acquisitions Involving Government Contractors and Their Suppliers, Volume 2 - Obtaining Consent to Assign a Government Contract," February 12, 2016
- "What You Need to Know About Mergers and Acquisitions Involving Government Contractors and Their Suppliers, Volume 1 - The Structure of the Deal and Government Consent," January 14, 2016
- "Been to Confession Lately?" October 27, 2015
- "Those NDAs May Not Be Worth the Paper They Are Written On," March 24, 2015
- "'How Dare You Charge That for a Spare Part!' – The Untold Story of the X27 Interface Assembly," November 21, 2014
- "Data Rights Redux – 10 Ways to Preserve Your IP," October 29, 2014
- "Creating Intellectual Property is Hard; Losing It to Uncle Sam is Easy," September 24, 2013
- "Teaming Agreements Called Into Question Under Virginia Law," April 29, 2013
- "The ABC's of Government Contract Claims - 10 Ways to Maximize Your Chance of Success," January 28, 2013

## Books

GSA Schedule Handbook  
Co-Authored (2008-2023)

## Media Mentions

ABA Section Flags Problems With DFARS/NIST Cybersecurity Guidance  
*The Government Contractor*, 06.13.2018

Navy Contractor Can't Stay \$43M Submarine Oxygen Contract  
*Law360*, 08.16.2017

Trump 'Freeze' Puts Rules in Limbo, But Contractors May Not Mind  
*Bloomberg BNA Federal Contracts Report*, 06.14.2017

Federal Contractors Brace for Insider Threat Rule  
*Compliance Week*, 09.13.2016

Pentagon Weighs Strategy to Secure 'Trusted' Electronics Suppliers  
*National Defense*, 07.11.2016

## Events

NCMA's 36th Annual Government Contract Management Symposium  
Arlington, VA  
12.04.2017

Where Are We Headed? Trends and Directions in the Aerospace & Defense Market 2018  
Washington, D.C.  
11.01.2017

Lunch With Your Cybersecurity Lawyer  
Sheppard Mullin DC  
09.28.2017

## Memberships

Member, Advisory Board, Government Contractor

Member, Sections of Public Contract Law, Administrative Law and Litigation, American Bar Association

Member, National Contract Management Association

## Practices

Governmental Practice

CFIUS: Foreign Investment in the U.S.

White Collar Defense and Corporate Investigations

Litigation

Alternative Dispute Resolution

Bid Protests

Buy American

Claims

Contract Cost Accounting

Exports and Export-Related Controls

False Claims Act

Government Contracts

GSA Multiple Award Schedule Contracting

Intellectual Property Rights Under Government Contracts

## Industries

Aerospace & Defense



CFIUS: Foreign Investment in the U.S.  
Government Business

## Education

J.D., Columbia Law School, 1972, *Law Review*, James Kent Scholar, Harlan Fiske Stone Scholar  
A.B., Cornell University, 1969

## Admissions

District of Columbia  
California  
New York  
U.S. District Court for the Eastern District of Wisconsin