

## → Government Business Group

### UP-TO-DATE INFORMATION ON EXECUTIVE ORDER 14042

Spending \$665 billion on contracts per year, the Federal Government is the largest consumer of goods and services in the United States. The impact Federal Government spending has on the domestic supply chain accounts for more than \$1 trillion dollars moving through the U.S. economy every year.

The companies that keep the Federal Government in business – a group we call the government business industry – is made up of countless manufacturers, suppliers, distributors, wholesalers, resellers and service providers of all shapes and sizes, some of which may not even know they are part of this massive industry. Members of the government business industry provide IT services and hardware, cloud computing and other virtual platforms, software products and SaaS, food and beverage, furniture, healthcare, electronics, office products, hardware, automobiles and services of every sort – both directly to the Federal Government and indirectly through a contractor or reseller.

While the members of this non-exclusive industry are extremely diverse, they also have commonalities – most notably, they are all subject to a host of complicated federal statutes, regulations and contract terms. While some members of the government business industry – aerospace & defense contractors, for example – are well versed in the challenges these rules impose, many traditional commercial businesses are not so attuned to dealing with the complex issues flowing from the Federal Government's mammoth supply chain.

Sheppard Mullin's Government Business Group (GBG) provides tailored, thoughtful guidance to members of the government business industry. With decades of experience guiding hundreds of large and small businesses through their interactions with the Federal Government, the Sheppard Mullin GBG can help both commercial businesses and aerospace & defense companies deal with the ever-evolving and complex regulatory scheme imposed by the Federal Government.

### Government Contracts

We have decades of experience representing traditional aerospace & defense as well as commercial companies that do business with the federal government, including DOD and all civilian agencies. Our attorneys are experienced in a wide variety of government contract issues and disputes. We have successfully advocated for our clients on a variety of challenges, including cost and cost accounting challenges and audits; claims development and litigation before boards of contract appeals, the Court of Federal Claims, and the Court of Appeals for the Federal Circuit; rights in technical data and computer software; "buy national" restrictions; cyber security; terminations; bid protests; teaming agreements; other transaction agreements (OTAs), subcontract disputes, litigation, and arbitration; civil and criminal False Claims Act investigations and litigation; and antitrust and intellectual property claims as applied to defense, electronics, aerospace, transportation and other industry enterprises.

Our team has deep and broad capability conducting assessments of corporate compliance programs intended to satisfy required statutory and regulatory mandates. We have an extensive background in performing internal investigations related to possible violations of the maze of federal statutes and regulations that permeate the government business industry.

Our lawyers have published a six part series on Government-wide and DOD-peculiar cyber security compliance, the definitive book on GSA's Multiple Award Schedule Program and a Cloud Computing guidebook.

We also have extensive experience representing entities in the transportation sector and other industries in administrative and judicial challenges to federal and state agency decisions, rulemakings and investigations. And we have, on multiple occasions, successfully challenged user fees that have been unlawfully imposed by the Federal Government.

## Corporate

Our corporate attorneys are deeply experienced in M&A and private equity transactions, early and later stage venture financings, SEC compliance, public offerings, and corporate joint venture and other strategic alliance arrangements. Because of our diverse client base, our experience ranges from structuring and executing complicated domestic and multinational transactions, preparing commercial agreements to address unique business arrangements and advising smaller and emerging clients on the full spectrum of business matters.

Our M&A and private equity practices are among the most active transactional practices in the government business industry throughout the U.S. and overseas and include a savvy and talented group of attorneys with deep sector experience and relationships. We have advised our clients on all forms of M&A transactions, leveraged buyouts, management buyouts, recapitalizations and other corporate restructurings. Our attorneys have been involved in transactions that have been both friendly and hostile, have advised both foreign and domestic participants on cross-border transactions and have utilized a myriad of acquisition structures and forms of consideration to help accomplish our clients' goals. We have also been engaged on numerous occasions to serve as special counsel to boards of directors and to independent director committees.

We have published a 10-part series on M&A issues that are unique to the government contracts market, and a book that explains the reformulated CFIUS process. Our combination of skills in the transactional world allows us to provide broad, in-depth, economical support to assist our clients in achieving their objectives.

## Trade Control Compliance

Firms in the government business industry are typically subject to a range of export control laws that materially affect their business operations and international sales. The movement of goods and information across borders – whether as finished products, parts and components, demonstration models, or selling aids is subject to an intricate web of regulations promulgated by U.S. agencies. We help our clients understand and address their most vexing trade controls issues. We advise clients on complying with U.S. export controls under the ITAR and the EAR, especially complicated issues involving technology transfers. We counsel clients on complying with U.S. sanctions regulations, which evolve frequently in connection with U.S. foreign policy directives. We work with clients to understand their obligations under the byzantine anti-boycott rules, and under the many facets of U.S. import law. And we assist clients with their toughest issues under the FCPA, the U.S. anti-corruption law that is being enforced more aggressively now than ever before.

## Litigation

Our attorneys handle a range of complex litigation and arbitration matters for traditional commercial businesses and aerospace & defense firms in both state and federal court. In this capacity, we have represented clients in matters involving both state and federal agencies. We have also represented clients with respect to complex government and commercial contract disputes, including bid disputes, contingent payment claims, liquidated damages claims, back charge and change order claims, construction defect claims, bond claims, and insurance coverage disputes. Our experience in such matters can often help bring about early and successful settlement of disputes. But if litigation is necessary, you can count on our experienced trial attorneys to vigorously represent your interests.

## Antitrust & Competition

Our global antitrust & competition group includes a deep bench of more than 30 lawyers who do nothing but practice antitrust and competition law. The team is consistently ranked highly by *Chambers* and *Legal 500* and includes former enforcement officials and trial lawyers from the U.S. Department of Justice, U.S. Federal Trade Commission and the European Commission's Directorate General for Competition.

Our global experience includes:

- **Transactions:** Merger review is a core part of our antitrust practice. Working collaboratively with our corporate mergers and acquisitions group, we can quickly assemble multidisciplinary teams including specialized lawyers who can handle the antitrust implications of complicated transactions that require review by the federal government, as well as certain states, particularly in the aerospace, healthcare, energy and telecom industries. We work with our clients to assess the antitrust risks of potential transactions (including joint ventures and teaming arrangements) and devise strategies for achieving clearance from the FTC, DOJ, and States AG, in an increasingly challenging antitrust enforcement environment and make any filings required under the Hart-Scott-Rodino Act.
- **Government Investigations and Prosecutions:** In addition to defending clients in merger investigations, our leading antitrust lawyers defend domestic and multinational clients in connection with antitrust investigations and prosecutions by the FTC and U.S. Department of Justice Antitrust Division, as well as actions the agencies pursue in federal courts.
- **Civil Strategic Litigation Defense and Counseling:** Our antitrust group defends strategic litigation for monopoly violations or joint collaborations, market foreclosures and other competitor and supplier side cases. We also recognize the importance of practical, creative antitrust counseling to minimize risks of litigation and investigations. Accordingly, we regularly provide training and counseling to our government business clients on business practices that may create antitrust issues, such as participation in government procurement programs, pricing and distribution, hiring practices, and others.
- **EU Merger Control:** Our Brussels and London lawyers have extensive experience related to EU merger control and national (Member States) merger control regimes, as well as with other foreign merger regimes, including in the U.S. and Asia. This enables us to offer worldwide merger clearance solutions for our clients' international transactions. They regularly assist clients with the coordination of multi-jurisdictional merger proceedings, including substantive and procedural aspects of European investigations under the EU Merger Regulation; advising interested third parties in merger investigations; negotiating remedies and pushing for adequate remedies on behalf of interested third parties; and representing clients in EU and national court

litigation arising from merger proceedings.

## Finance

Because the infusion of capital is one of the pillars of success for many businesses, all industries are dependent upon the lender/borrower relationship. However, not all industries are the same, and many require very specific knowledge of specialized laws, deal structures and the like. In addition to our broad and deep general financing skill, Sheppard Mullin offers finance and lending attorneys with specific experience in the government business industry. We represent the interests of business borrowers in financial transactions including the following:

- Syndicated bank loans for large public (or private) company clients
- Acquisition financing for strategic acquisitions by corporate clients
- Acquisition financing for financial acquisitions by private equity clients
- Capital loans for corporate borrowers
- Public or private note/bond issues
- Leveraged recap transactions
- Asset based financing for working capital and acquisitions
- Seller financing in M&A transactions
- Bridge loans to major customer/supplier or other business partner
- Letter of credit transactions
- Distressed company sales through Article 9 public and private foreclosure sales or Chapter 11 or assignment for the benefit of creditor proceedings
- Lead or local counsel in multi-jurisdiction transactions including cross-border transactions
- Opinion letter work under California, New York, D.C. and Illinois law

Our knowledge of market customs and practices, together with our experience representing all sides of financing transactions, allows us to effectively assist clients in structuring and negotiating complex debt deals. Our understanding of very specific and specialized needs of the government business industry allows us to provide clients with a resourceful and economical approach to avoiding pitfalls, resolving challenges, capitalizing on opportunities and thus, successfully closing the transaction at hand. We zealously represent our borrower/issuer clients while preserving a solid and productive relationship with the lenders and underwriters on the other side of the transactions.

## Intellectual Property

Our work in the government business industry includes drafting and prosecuting comprehensive patent applications, evaluating and rendering opinions about existing and prospective patent portfolios, and defending and enforcing patents in court. In the age of employee raiding and sophisticated industrial espionage, we also work with clients to safeguard proprietary information and protect trade secrets. We defend clients against overzealous claims alleging such violations. Our attorneys have obtained restraining orders and injunctions protecting our clients' rights and have successfully defended similar actions brought by our clients' adversaries. We also secure and enforce new product names, and negotiate contracts, licenses, export agreements and

technology transfer agreements. We understand the government's desire for its contractors' intellectual property and we know how to maximize protection of that IP from government overreach and misappropriation and infringement by others.

## Labor and Employment

Our team has experience in all matters affecting the workplace, including wage and hour, class and collective actions, discrimination, harassment, retaliation, employment agreements, executive compensation, layoffs and ERISA. Additionally, our immigration and international labor practices provide global organizations with support within the US and abroad. With our knowledge and commitment to service, our clients view us as an extension of their in-house legal departments.

## Employee Benefits and Executive Compensation

Our team works with both public and privately held companies who are faced with creating compensation programs for employees and executives in order to attract and retain crucial talent. Many employers have learned that to effectively grow their companies, they must find ways to compensate employees that contribute to the overall success of the company. We draft stock option and compensation plans, assist employers in establishing procedures for administering stock compensation plans and advise employers regarding stock compensation plan compliance. We also assist employers in developing tailored bonus and commission plans that are based on rewards for contribution and increased revenue of an organization. We advise on all aspects of qualified and nonqualified retirement plan and employee benefits matters including defined contribution and benefit plans, profit sharing and 401(k) plans, Supplemental Executive Retirement Plans ("SERPs"), and Employee Stock Ownership Plans ("ESOPs"). We understand how these benefits are treated by the government, from a cost accounting perspective, under government contracts and we actively work with our clients in contesting audit results that seek to disallow such costs.

## Real Estate

Our team has extensive experience in the representation of clients in real property leasing, and purchase and sale transactions. We negotiate and document real property acquisitions and dispositions, and regularly assist our clients in conducting the "due diligence" investigations required for purchase and sale transactions. This work includes investigations regarding the environmental and physical condition of real property and improvements, lease review, comprehensive review of all related title, land use, zoning issues and contractual obligations.

We also represent both landlords and tenants in commercial leasing transactions. We negotiate and prepare special purpose high rise ground leases for urban high rise buildings, corporate headquarters, campuses and free standing retail facilities. We also negotiate leases with the U.S. General Services Administration as well as with many state and local government agencies.

We counsel clients in connection with site assessments prior to purchasing, selling, leasing or lending secured by real property. We also negotiate and document remediation activities, both with private parties and with governmental authorities. We represent clients in connection with CERCLA enforcement actions, clean-up and abatement orders, underground storage tank regulation, removal and remediation of hazardous substances, hazardous waste storage and transportation, the permitting of facilities which handle or store hazardous waste

and private contamination litigation. We have also represented clients in proceedings before the Air Quality Management District Boards and have counseled clients with respect to asbestos removal procedures and asbestos related injury and abatement cases.

## Tax

We assist clients in structuring transactions and planning business affairs in order to reduce income, sales, transfer, property and other taxes. Our goal is to help our clients achieve their business objectives with practical and effective tax reduction planning. We have also handled tax related matters in state and federal courts and before the U.S. Tax Court.