

D. Joe Smith

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Practice Focus

Government Contracts

Representative Experience

Mr. Smith has 24 years of government contracts experience with various law firms in Washington, D.C. as well as nine years of experience as CEO and General Counsel of two biotechnology firms. Representative current clients include General Dynamics Corporation and Raytheon Company.

Mr. Smith has represented both large and small companies in a wide variety of government contract matters. In the area of contract claims and disputes, he has appeared as lead counsel in both the Armed Services Board of Contract Appeals and the Court of Federal Claims as well as numerous federal district courts. He has conducted oral arguments before the Federal Circuit, the District of Columbia Circuit and the Eleventh Circuit. The subject matter of these claims and disputes has ranged from highway construction to retirement benefit costs to radar jammer technology. Mr. Smith has also conducted mini-trials, arbitrations and alternative dispute resolution proceedings.

In the area of cost principles and Cost Accounting Standards (CAS), Mr. Smith has defended contractors against allegations of CAS noncompliance, including the proper treatment of pension costs as well as continuing costs associated with divested business units. These cost accounting issues were frequently raised in connection with the close out of overhead years, and Mr. Smith prepared position papers used in negotiations between the contractor and the Defense Contract Management Agency (DCMA) and the Defense Contract Audit Agency (DCAA). Mr. Smith has handled many defective pricing claims under the Truth in Negotiations Act (TINA). He briefed and argued one of the early cases interpreting TINA before the United States Court of Claims (now the Federal Circuit): *Singer Co., Librascope Div. v. United States*, 576 F.2d 905 (1978). In a series of cases that Mr. Smith handled for a major defense contractor, defective pricing claims totaling \$24 million and covering 25 contracts were eventually settled for \$3

million after extensive fact finding and legal analysis.

Mr. Smith has performed due diligence and has been active in drafting agreement language with respect to many mergers and acquisitions, including some of the largest transactions in the defense industry. He has represented both divesting companies and acquiring companies. In the area of fraud, waste and abuse, Mr. Smith has represented numerous corporate clients and, on occasion, individuals. His work on these cases has included conducting internal investigations. In some situations, he has recommended that clients initiate refunds and make voluntary disclosures. In other cases, he has presented detailed factual and legal analyses that have resulted in the complete withdrawal of allegations of fraud. Some of these cases involved criminal investigations, and Mr. Smith has prepared responses to subpoenas, prepared clients for grand jury testimony and negotiated plea agreements. In many cases, qui tam fraud actions are initiated by whistle-blowers who have only fragmentary knowledge of a company's activities. In several cases, Mr. Smith has demonstrated that his client's actions were proper and that the matters alleged by the qui tam relator were in fact disclosed to the Government or corrected by the contractor prior to initiation of the qui tam lawsuit.

In addition to government contracts matters, Mr. Smith has obtained injunctive relief for clients in cases involving the wrongful appropriation of intellectual property and confidential company information. In one case, federal marshals seized computers and discs that contained programs and other data that were wrongfully taken from his client.

As an in-house lawyer and CEO for two start-up biotechnology companies, Mr. Smith was involved in negotiating and drafting agreements with investment banks and venture funds. He also drafted and negotiated several research collaboration agreements with major pharmaceutical companies, including Aventis, Merck, Bayer and others. He has prepared private placement memoranda and developed appropriate capitalization structures for start-up companies. As a result, Mr. Smith has a unique understanding of the practical problems that companies face, and his advice and counsel reflect this experience.

Education

Yale Law School (J.D. 1974) S&H Foundation Fellow

Yale University (M.A. Political Science 1974)

Woodrow Wilson Fellow; National Science Foundation Fellow

Anderson College (B.A. Political Science and History 1970) Valedictorian, National Merit Scholar.

Speeches and Publications

Mr. Smith has made numerous presentations and has written extensively on government contracts issues. Representative examples include the following:

Author (with Richard Johnson and Matthew Haws), "Allowability of Legal Costs of Third-Party Lawsuits Following *Tecom, Inc.*," *Government Contract Costs, Pricing and Accounting Report*, March 2008.

Contributing Author, *Qui Tam Litigation Under the False Claims Act*, American Bar Association (1994).

Author, "Regulatory Considerations" chapter in *Exportise*, Small Business Foundation of America (1983); chapter deals with the Arms Export Control Act, the Export Administration Act and the Foreign Corrupt Practices Act.

Speaker, "Thou Shalt Not: The 10 Commandments for Government Contractors," presentation on codes of business ethics and conduct, Washington Metropolitan Area chapter of the Association of Corporate Counsel (2008).

Speaker, "Defective Pricing and the Truth-in-Negotiations Act," in-house training seminar presented to various business units of Raytheon and General Dynamics (2008).

Speaker, "Contract and Procurement Fraud," speech and paper presented at the Illinois CPA Society's Annual Fraud Conference (1993).

Professional Memberships

District of Columbia Bar, American Bar Association Section of Public Contract Law. Admitted to the United States Supreme Court, the U.S. Court of Appeals for the Federal Circuit, the U.S. Court of Appeals for the District of Columbia Circuit, the Court of Federal Claims, the U.S. District Court for the District of Columbia and the Superior Court of the District of Columbia.