



→ Emily S. Theriault

Special Counsel

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Emily Theriault is special counsel in the Governmental Practice in the firm's Washington, D.C. office.

Areas of Practice:

Emily's practice includes Contract Disputes Act litigation before the Court of Federal Claims; False Claims Act and Administrative Procedure Act litigation before the U.S. District Courts; bid protests before the U.S. Government Accountability Office and the Court of Federal Claims; size and status protests before the Small Business Administration Office of Hearings and Appeals; internal investigations; and government contract counseling.

She counsels clients on compliance with federal procurement regulations, including FAR and DFARS provisions relating to the Contractor Code of Business Ethics and Conduct, the Trade Agreements Act, the Price Reductions Clause, small business requirements, and commercial item contracting.

Honors

"Ones to Watch," *Best Lawyers*, 2024

Top Read Article Award for "Executive Order 14042: Survival Guide for Federal Contractors (An Analysis of What We Know, What We Think, and What We Don't Know About President Biden's COVID-19 Executive Order for Federal Contractor)," 2022

Experience

Representative Government Contracts Investigations

Emily often handles matters involving government contracts investigations, Office of Inspector General subpoena responses and mandatory and voluntary disclosures. Her experience includes investigations on the following topics:

- Price Reductions Clause
- Defective pricing
- False Claims Act
- Procurement Integrity Act
- Organizational Conflicts of Interest

- Small business compliance, including issues relating to service-disabled veteran-owned small businesses, veteran-owned small businesses, woman-owned small businesses, and small disadvantaged businesses
- Foreign Military Financing
- FAR and DFARS provisions

Government Contracts Compliance

Emily counsels clients regarding compliance with federal procurement statutes and regulations. Her experience includes:

- counseling clients on small business government contracts mergers and acquisitions;
- developing and implementing, as well as assessing and updating, government contracts compliance programs;
- drafting Contractor Codes of Business Ethics and Conduct;
- drafting government contracts policies, including policies addressing Organizational Conflicts of Interest; gifts, gratuities, bribes and kickbacks; human trafficking; mandatory disclosure; non-retaliation; labor qualifications; procurement integrity; Foreign Military Financing; and truth in bidding and negotiations;
- counseling clients on commercial item contracting, small business requirements, and FAR and DFARS compliance;
- merger and acquisition due diligence;
- training contractors on federal procurement compliance; and
- researching government contracts questions related to statutes and regulations.

Government Contracts Litigation & Bid Protests

Emily represents contractors before the U.S. District Courts as well as the Court of Federal Claims. She also represents protesters and intervenors in numerous bid protests filed at the Government Accountability Office and Court of Federal Claims.

- Successfully defended a large government contractor from a multi-billion dollar False Claims Act *qui tam*. She assisted with researching case law, interviewing and deposing witnesses and drafting motions. The company obtained a complete victory on summary judgment.
- Successfully challenged the Department of Veterans Affairs application of the Veterans Benefits Act, ensuring that service-disabled veteran-owned small businesses and veteran-owned small businesses are afforded the appropriate priority. The Court of Federal Claims' bid protest decision was affirmed by the Federal Circuit and the Supreme Court denied a writ of certiorari.
- Successfully intervened in and defended an Administrative Procedure Act challenge before the U.S. District Court for the District of Columbia.
- Successfully represented a major government contractor in ongoing litigation before the U.S. Court of Federal Claims involving large, complex claims and government counterclaims related to the performance of an \$874 million contract with the U.S. Postal Service.

Small Business Size and Status Protests

- Emily represents contractors before the Small Business Office of Hearings and Appeals. She has successfully defended numerous size and status protests.

Articles

- The Cost Corner - Government Contracts Cost and Pricing: Compensation for Personal Services, Part I
Pratt's Government Contracting Law Report, 04.2024
- Government Contracts Cost and Pricing: The Truth in Negotiations Act, or Whatever the Kids Are Calling It These Days (Part 3)
Pratt's Government Contracting Law Report, 11.08.2023
- Government Contracts Cost and Pricing: Defense Contract Audit Agency Audits (Part 2)
Pratt's Government Contracting Law Report, 10.10.2023
- The Cost Corner - Government Contracts Cost and Pricing: Defense Contract Audit Agency Audits
Pratt's Government Contracting Law Report, 09.13.2023
- Buying or selling a small business government contractor? Draft the letter of intent carefully to avoid immediate affiliation
Westlaw Today, 03.21.2023
- The Procurement Lawyer Fall 2022
American Bar Association, 12.20.2022
- What We Know And Don't About The Federal Court Order Enjoining EO 14042
December 2021
- Vet-Owned Biz Is Always VA Contract Priority, Fed. Circ. Says
Law360, 10.17.2018
- Cross Your Heart and Hope to Die – New DFARS Clauses Target Counterfeit Electronic Parts
Westlaw Journal, 10.24.2016
- 7th Circ. Rejects FCA Implied False Certification Theory
Law360, 07.01.2015

Government Contracts & Investigations Blog Posts

- "Bid Protest Hub – February 2024," March 28, 2024
- "The Cost Corner: Government Contracts Cost and Pricing – Compensation for Personal Services (Part I)," February 29, 2024
- "Government Contracts Cost and Pricing: The Truth in Negotiations Act, or Whatever the Kids Are Calling It These Days (Part 3)," September 25, 2023
- "Government Contracts Cost and Pricing – DCAA Audits (Part 2)," August 1, 2023
- "Let's Go Swimming: Small Disadvantaged Business Growth Targeted by SBA and GSA 8(a) MAS Pool Initiative," June 28, 2023
- "The Cost Corner: Government Contracts Cost and Pricing – DCAA Audits," June 28, 2023
- "DoD Commercial Item Group Summit: A Recap," April 27, 2023
- "Buying or Selling a Small Business Government Contractor? Draft the Letter of Intent Carefully to Avoid Immediate Affiliation," February 28, 2023

- "To Each Their Own: Agency Must Consider Experience of Each Partner in a Small Business Set-Aside Joint Venture," February 28, 2023
- "News For Veteran-Owned Small Businesses – SDVOSB and VOSB Certification Moves to the SBA in 2023," January 30, 2023
- "Comparing Two Small Business Status Protests: Veteran-Owned Small Business CVE Protests and Women-Owned Small Business Status Protests—Different Processes but Similar Results," November 29, 2022
- "SBA Annual Scorecard Shows Federal Government Continues to Prioritize Small Business Contracting," October 26, 2022
- "SBA OHA Says Small Business on Notice of Email in Junk Folder. Appeal Untimely," March 30, 2022
- "What Are the 2022 Small Business Set-Aside Thresholds?," January 28, 2022
- "Executive Order 14042 – Update 12.0: U.S. District Court Issues Nationwide Injunction," December 8, 2021
- "What We Know And Don't About The Federal Court Order Enjoining EO 14042," December 3, 2021
- "Executive Order 14042 Survival Guide," October 11, 2021
- "Does Your Contract Work Abroad Require A Combatting Trafficking In Persons Compliance Plan? Now Is A Good Time To Check," September 29, 2021
- "Small Business Federal Government Contracting Dollars Continue to Increase," August 30, 2021
- "Women-Owned Small Business Self-Certification Ends October 15, 2020 When SBA Begins Requiring Formal Government-Issued Or Third-Party Certifications for Awards," September 29, 2020
- "Government Small Business Contracting Continues to Increase: Creating Opportunities and Potential Pitfalls," August 18, 2020
- "New Executive Orders Aim to Eliminate Unfair Surprise in Civil Enforcement Actions by Formalizing Guidance Documents," October 30, 2019
- "Federal Circuit Affirms Veteran-Owned Small Businesses Are the VA's First Priority," October 30, 2018
- "While Protests and the Sustain Rate Decrease, the Effectiveness Rate Continues Its Upward Climb – A Brief Review of GAO's FY 2017 Bid Protest Statistics," December 1, 2017
- "Cross Your Heart and Hope to Die – New DFARS Clauses Target Counterfeit Electronic Parts," September 22, 2016
- "DoD Proposes Cost Allowability Rule for Correcting Counterfeit Electronic Parts," April 25, 2016
- "Seventh Circuit Rejects FCA Implied False Certification Theory," June 23, 2015
- "SCOTUS: No Unlimited Suspension of the Statute of Limitations Under the False Claims Act; "First-to-File" Doctrine Does Not Bar Related Suits in Perpetuity," May 27, 2015
- "Suspensions and Debarments on the Rise – A Brief Review of the ISDC's FY 2014 Stats," April 30, 2015
- "What's New Out There? Highlights from the Federal Register," September 29, 2014

Media Mentions

Administration Imposes Sweeping Limits on Federal Actions Against Companies
The New York Times, 02.10.2018

Memberships

Co-Chair, ABA Federal Procurement Institute March 2023

Member, State Bar of Virginia

Member, Bar of the District of Columbia

U.S. Supreme Court

U.S. Court of Federal Claims

U.S. Court of Appeals for the Federal Circuit

U.S. District Court for the District of Columbia

Former Executive Mentee, ABA Section of Public Contract Law

Member, Publications Board, ABA Section of Public Contract Law

Practices

Governmental Practice

Bid Protests

Claims

GSA Multiple Award Schedule Contracting

False Claims Act

Intellectual Property Rights Under Government Contracts

Government Contracts

Industries

Government Business

Education

J.D., George Washington University Law School, 2013, *with high honors*, *The George Washington Law Review*

B.A., Middlebury College, 2007, *magna cum laude*

Clerkships

Intern to the Honorable William K. Sessions, III, of the U.S. District Court for the District of Vermont

Admissions

District of Columbia

Virginia

U.S. Supreme Court

U.S. Court of Federal Claims

U.S. Court of Appeals for the Federal Circuit

U.S. District Court for the District of Columbia