

**David Z. Bodenheimer**

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**Practice Areas**

- Government Contracts
- False Claims/Qui Tam
- Homeland Security
- Privacy & Data Protection
- False Claims
- Trade Secrets

**David Z. Bodenheimer** is a partner in the law firm of Crowell & Moring LLP in the DC office where he heads the Homeland Security Practice and specializes in Government Contracts, False Claims Act, Privacy, and Cybersecurity. For more than 25 years, he has found solutions for clients whenever and wherever problems arise in doing business with the Government.

**Government Contracts.** Mr. Bodenheimer represents all sizes of technology clients (computer hardware and software, major weapon systems, biodefense, satellite and space services, and military avionics and equipment). He litigates, counsels and resolves the full range of issues that clients confront in selling to the Government. Highlights include the following:

- **Defective Pricing.** Counseling on TINA cost and pricing matters, teaching the Defective Pricing course, and litigating major cases define the core of his defective pricing practice. *See, e.g., Wynne v. United Technologies Corp.*, 463 F.3d 1261 (Fed. Cir. 2006), *affirming* 05-1 BCA ¶ 32,860 and 04-1 BCA ¶ 32,556 (defeated \$299 million defective pricing claim after 33-day trial and Federal Circuit appeal). He also authored the *Defective Pricing Handbook* published by Thomson Reuters.
- **Protests.** His 25-year protest experience spans all forums (court, GAO, and agency), with the best ones being successfully resolved through agency corrective action without a decision, while others have established precedents in key areas. *See, e.g., Health Net Federal Services, LLC*, 2009 CPD ¶ 220 (winning protest against \$16 billion award after 5-day hearing, establishing key precedents on unfair competitive advantage, price realism, past performance, and staffing); *AT&T Government Solutions, Inc.*, 2008 CPD ¶ 170 (establishing contractor's due process rights of notice, opportunity to respond, and

right to mitigate organizational conflicts of interest (OCIs)); *DRS C3 Systems, LLC*, 2008 CPD ¶ 103 (winning protest on past performance evaluation of \$65 million shipboard display award); *IBM Corp.*, 2008 CPD ¶ 64 (prevailing on protest against cost and price evaluation of \$125 million financial management system); *Gentex Corp. v. United States*, 58 Fed. Cl. 634 (2003) (sustaining protest against misleading and unequal discussions on \$400 million award for aircrew helmets for nuclear, biological, and chemical protection).

- **False Claims Act (FCA) & Investigations.** He defends fraud investigations and subpoenas (DCIS, AFOSI, Army CID, DOD IG, NSF IG, and Postal IG) relating to battlefield contracting, ethics rules, defective pricing, labor charging, progress payments, cost claims, government property, and postal equipment. His FCA litigation includes continuing litigation on a \$600 million FCA claim after a 2-month trial and appeal, as well as public decisions. *See, e.g., United States ex rel. Ackley v. International Business Machines*, 76 F. Supp. 2d 654 (D. Md. 1999) (briefed and argued jurisdictional dismissal of *qui tam* relator's fraud claims); *Peoples v. Eagle-Picher Indus., Inc.*, No. 96-5009-CV-SW-GAF (W.D. Mo., Jan. 31, 2003) (briefed and obtained disqualification of *qui tam* relator's counsel, ultimately leading to dismissal of FCA case).
- **Prime/Sub Disputes and Issues.** He advises both prime and subcontractors on software and data rights, trade secret and procurement integrity breaches, teaming agreements, specialty metals requirements, and flowdown terms. He litigates prime/sub disputes in both federal court and arbitrations. *See, e.g., O'Gara Satellite Systems, Inc., vs. Telenor Satellite Services, Inc.*, No. AW 04 CV 3841 (S.D. Md. 2005) (achieved no-cost resolution of lost-profits claim for satellite services after judicial mediation); *McDonnell Douglas Corp. vs. SCI Corp.*, No. 91CV2077 (E.D. Mo. 1996-97) (conducted 2 weeks of courtroom cross-examination relating to A-12 prime/sub contract, leading to successful resolution and withdrawal of default termination).
- **Counseling & Compliance.** Mr. Bodenheimer supports clients in a broad spectrum of areas, developing strategies for resolving organizational conflicts of interests (from protests to mitigation plans), conducting compliance reviews (defense, healthcare, and postal industries), defending against default terminations and cure notices, supporting convenience termination settlements, protecting software and technical data rights, preparing claims and requests for equitable adjustment (REAs), and addressing a host of cost, pricing, and profit issues.

**Homeland Security.** Mr. Bodenheimer serves as the head of the firm's Homeland Security practice, where he focuses upon the intersection of this practice with other Crowell & Moring groups such as Government Contracts, Transportation, Privacy, and International.

- **SAFETY Act.** He has developed SAFETY Act due diligence procedures, untangled complex insurance issues, advised on applications, prepared regulatory comments, testified before Congress, and supported legislative and regulatory enhancements to the SAFETY Act.
- **International Sales.** When contractors seek to sell anti-terrorism technology abroad, he has developed strategies for limiting liability exposure, advised on privacy and security implications, and analyzed other international risks.
- **Acquisition Challenges.** For the unique challenges of Department of Homeland Security (DHS) contracting, he has addressed issues relating to inverted corporations and organizational conflicts of interest, commented on special acquisition risks relating to requirements definition, and testified before Congress on TSA regulatory exemptions that have since been legislatively revoked.
- **Homeland Security Privacy.** For privacy issues arising out of Homeland Security technology (including passenger screening, identity authentication, and data mining), Mr. Bodenheimer has prepared extensive analyses of privacy requirements, advised on risk mitigation strategies, and assisted with preparation of policies, procedures, and Privacy Impact Assessments (PIA).
- **ABA Committee.** As Co-Chair of the ABA Science and Technology Section's Homeland Security Committee, he supports ABA activities, publications, and panels on the latest developments, risks, and opportunities in the homeland security arena.

**Privacy & Information Security.** In the privacy and information security arena, Mr. Bodenheimer handles emerging dilemmas arising out of data sharing, information technology (IT) interoperability, cybersecurity, and privacy concerns in the homeland security, defense, and intelligence industries. His privacy and cybersecurity counseling spans the Privacy Act, Federal Information Security Management Act (FISMA), DIACAP, NIST, USA PATRIOT Act, cyber warfare, electronic workplace monitoring, security breach notification laws, HSPD authentication and biometrics, and federal electronic surveillance. He has testified before Congress regarding cybersecurity threats, public-private partnerships, and contractor liability issues for military contractors. He currently serves as Co-Chair of the ABA Public Contract Law Section's Cybersecurity Committee.

Prior to joining Crowell & Moring LLP, Mr. Bodenheimer worked for the Department of the Navy from 1982 to 1988 in various positions, including Assistant to the General Counsel, where he handled default termination

litigation, suspension and debarment, foreign military sales, major claims and disputes, NATO negotiations, and bid protests (GAO, agency, and district court actions).

### Education

- University of North Carolina, B.A. (1978)
- University of North Carolina, M.B.A. (1982)
- University of North Carolina Law School, J.D. (1982)

### Affiliations

- **Admissions to practice.** Bar of District of Columbia; Bar of North Carolina (inactive); United States Court of Appeals for Federal Circuit; United States Court of Federal Claims; United States Court of Appeals for Sixth Circuit; United States District Courts (DC and MD); United States Court of Appeals for Veterans Claims.
- **American Bar Association (ABA).** Co-Chair, Committee on Homeland Security, Science and Technology Section; Co-Chair, Committee on Cybersecurity, Privacy, and Data Protection, Public Contracts Law Section.
- **International Association of Privacy Professionals (IAPP).** Member and previously qualified as Certified Information Privacy Professional.