

How do I effectively protect my IP when I'm forced to work with large, prime contractors in a government contract setting?

It is exceptionally rare that companies, of any size, steal IP. What is the norm is that companies often give away their IP. And such gifts are normally done unwittingly.

The government gains the rights to data and inventions laid out in the applicable regulations. Contracting officers for the government are charged with protecting the government's best interest just as would be a contracting officer for any company. It's no surprise to find out then that disagreements on IP between a prime and subcontractor fall on deaf government ears when the government's rights are not implicated.

In the government marketplace, the number of customers is usually one. In a commercial marketplace, the number of potential customers can be measured in the thousands if not more. So, protection and enforcement of IP requires a different strategy.

Commercial and Government Environments

In a commercial marketplace, a competitor infringing an innovative company's IP rights likely will experience increasing scrutiny up to and including litigation. In many instances that competitor's customers are involved in the process in an ancillary way, and while not the target of the assertions, they are, nonetheless, collateral damage. The likelihood of those customers jumping ship to your product is negligible. And the impact on the overall customer field is very low. The real goal in such an endeavor is to secure or protect the other thousands of would-be customers.

In the government marketplace, in which there is but one customer, trying to enforce IP against a competitor may have the less-than-desirable effect of implicating the very customer you want to impress. And in many cases, the government steps into the shoes of the contractor with respect to claims of IP infringement. So, rather than trying to limit a competitor, you may be fighting against the very customer to whom you're trying to sell your product, which is generally not a winning business strategy.

How to Protect Your IP in the Government Marketplace

It can be relatively easy in the government marketplace to have the government fund research and development. With a little foresight and prior planning, the rights to an innovative product can be secured through one or more patents, copyrights or trade secrets. This can be done without providing sweeping rights to the government while, nevertheless, enabling the government to assist in refining and productizing the product to meet its applications.

In this way, the background IP is solely owned and controlled by the company. While providing the government customer with any and all rights it needs, the company now possesses leverage with other competitors including large prime contractors. In doing so, the small, emerging subcontractor secures not only an initial contract but follow-on work as well.