What Is the Christian Doctrine & Does It Apply to Subcontractors?

A Practical Guidance® Article by Kristi Morgan Aronica, Weitz Morgan PLLC

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This article discusses a principle of government contract law known as the *Christian* Doctrine.

The Christian Doctrine:

A principle of government contract law known as the *Christian* doctrine states that certain clauses are of such importance in public procurements so as to be considered incorporated by operation of law. The government has a responsibility to notice vendors of contract requirements, whether expressly or through incorporation by reference. However, since G. L. Christian & Assocs. v. United States, 160 Ct. Cl. 1, 312 F.2d 418 (1963), a clause that conveys a deeply ingrained strand of public procurement policy is considered to be included even if the government fails to include it in the prime contract.

The *Christian* doctrine's applicability "turns not on whether the clause was intentionally or inadvertently omitted, but on whether procurement policies are being avoided or evaded (deliberately or negligently)." S.J. Amoroso Constr. Co. v. United States, 12 F.3d 1072, 1075 (Fed. Cir. 1993) (quoting G.L. Christian & Assocs., 320 F.2d at 351). Therefore, the principle does not permit the automatic incorporation of clauses; rather, it applies only to provisions that are a significant or deeply ingrained part of public procurement policy. For example, when improper FAR terms are incorporated into a contract, under the *Christian* doctrine, the correct FAR provisions would control if they are considered a deeply ingrained aspect of public procurements. Or, say, when a terminations clause – a provision having been held to be sufficiently significant – is omitted, courts will read it into the contract and enforce it.

While no universal list of clauses covered by the *Christian* doctrine exists, various courts and boards have consistently held that the disputes clause, termination clauses, changes and payment clauses, and clauses implementing provisions of the Buy American Act and Truth in Negotiations Act meet the significant or deeply ingrained strand of public procurement policy standard. The *Christian* doctrine does not require a court to insert a clause into a government contract; however, it has been utilized in numerous instances and as to a variety of provisions. As such, contractors will want to be mindful of arguments based on failure to include a contract clause or including the wrong clause since, per the *Christian* doctrine, doing so is not necessarily a bar to the government's ability to enforce or recover under an aspect of the contract.

The Applicability of the Christian Doctrine to Subcontractors:

Courts will likely not use the *Christian* doctrine to read a fundamental tenet of procurement contracting into a subcontract given the prime/sub relationship is one between private parties. However, a risk does exist, as at least one court has incorporated a government contracts requirement into a subcontract.

The case is UPMC Braddock v. Harris, 934 F. Supp. 2d 238, 241 (D.D.C. 2013) (D.D.C. 2013), *opinion vacated, appeal dismissed sub nom.* Braddock v. Perez, 584 F.

App'x 1 (D.C. Cir. 2014) (unpublished). Three hospitals contracted with a health plan that had a government contract to provide health benefits to federal employees. The Department of Labor (DOL) determined that the equal opportunity requirements imposed on government contractors were applicable whether they appeared in the contract or not and that those obligations should flow-down to subcontractors irrespective of whether the requirement appeared in the subcontract agreement. The hospitals appealed, but the court agreed with the DOL. While acknowledging the private nature of the relationship between primes and subs, it reasoned that the subcontractor should be bound because a subcontractor performs work for the government and the regulation was a mandatory flow-down.

UPMC Braddock can be distinguished in a number of ways and as a result makes its applicability in other cases difficult. Nevertheless, subcontracting parties, particularly subcontractors, should be aware that the possibility exists. Subcontractors should take care to ensure they are conscious of all of the prime contract's mandatory flow-downs, even if the prime has not included them in the subcontract. They should also be mindful – to the extent possible – to have a working knowledge of what courts in the applicable jurisdiction have incorporated into prime contracts by way of the *Christian* doctrine.

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- G. L. Christian & Assocs. v. United States, 160 Ct. Cl. 1, 312 F.2d 418 (1963)
- S.J. Amoroso Constr. Co. v. United States, 12 F.3d 1072 (Fed. Cir. 1993)

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- ARTICLE THE UNPREDICTABLE AND OFTEN MISUNDERSTOOD CHRISTIAN DOCTRINE OF GOVERNMENT CONTRACTS: PROPOSED APPROACHES FOR REMOVING HARMFUL UNCERTAINTY, 49 Pub. Cont. L.J. 617

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An experienced attorney with comprehensive capabilities in commercial litigation and government contracts, Ms. Aronica has an extensive track record of excellence in work product and client satisfaction. A graduate of the University of Miami School of Law, she is licensed to practice in Texas and in various federal jurisdictions.

Ms. Aronica represents government contractors and subcontractors in federal procurements, including advising on applicable laws and solicitation terms, bid protests, contract negotiations, conducting post-award training and compliance, REAs and claims, litigating disputes, drafting/reviewing teaming agreements and subcontracts, and providing counsel or assistance with mergers and acquisitions, organizational conflicts of interests, GSA Schedules, small business programs, suspension and debarment proceedings, grants, and cooperative agreements

Providing reliable legal representation founded on strength of conviction, strategic decision making, and substantive knowledge, Ms. Aronica is driven in her commitment to clients and their matters. As a result, she has also had successful outcomes in both state and federal courts as counsel for prime contractors and subcontractors in commercial disputes arising from federal procurement contracts. Experienced on both sides of the docket, she serves as plaintiff's or defendant's counsel and has a unique skill set of combined proficiency in federal public contract law and the civil procedure and substantive law of state and federal jurisdictions in Texas.

Ms. Aronica represents a diverse set of clients working on government contracts and has particularly strong knowledge in the unique aspects of entities operating in the government marketplace in the industries of construction, parts supply, and tech.

In addition to practicing law, Ms. Aronica has published on subcontract terms and conditions and in the fields of American literature and U.S./Mexican immigration and has been quoted by Bloomberg Law on federal procurement cases. She also spent numerous years in a leadership position on the board of directors of The Arc of the Capital Area, a Texas non-profit focused on enhancing the lives of those with intellectual and developmental disabilities.