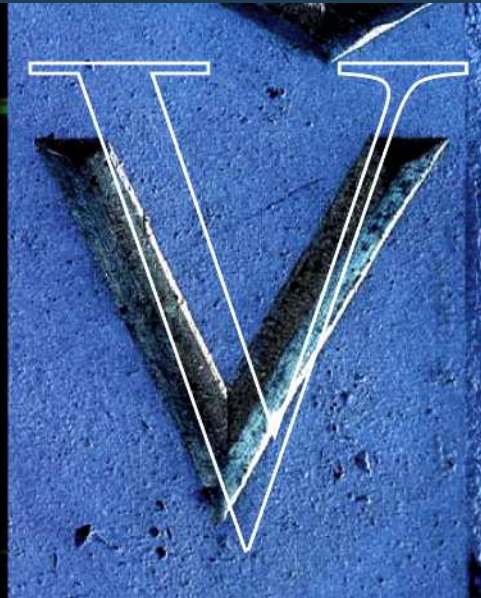
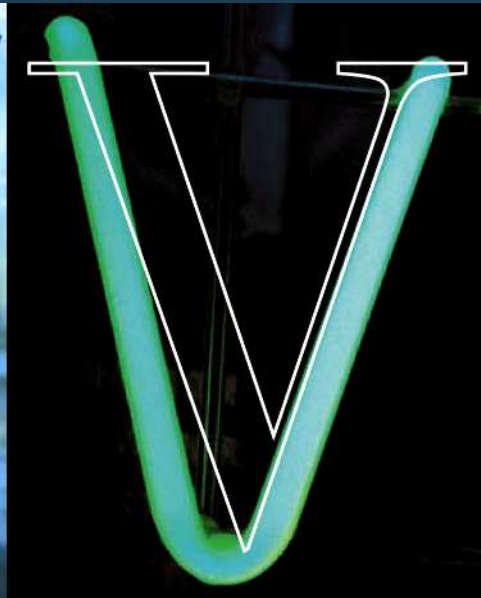
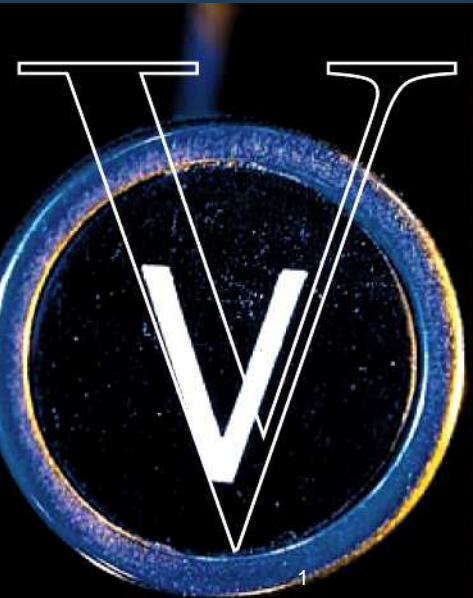


WMACCA Government Contractors Forum

Ready, Fire, Aim: What Should Contractors Do When the Government Doesn't Consistently Hit the OCI Target

October 24, 2013



WMACCA Government Contractors Forum

Ready, Fire, Aim:

What Should Contractors Do When the Government Doesn't Consistently Hit the OCI Target

Moderator:

Scott Hommer

Co-Chair, Government Contracts Practice Group, Venable LLP

Panelists:

James S. Kennell

Senior Vice President & General Counsel, National Security Sector
Leidos

Rebecca Pearson

Government Contracts Practice Group, Venable LLP

James Boland

Government Contracts Practice Group, Venable LLP



Biographies

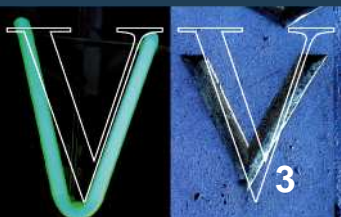
J. Scott Hommer, III, Venable LLP - Moderator



Scott Hommer serves as a partner in the Tysons Corner office of Venable LLP. He concentrates his practice in business counseling and litigation, with an emphasis on technology companies and government contractors. He represents clients locally, nationally, and internationally on issues including negotiating contracts, doing acquisitions, protecting intellectual property rights, and litigating successfully. Mr. Hommer also has significant experience in counseling clients who do business with the federal, state, and local governments and has represented clients on contract administration matters, contract claims and disputes, bid protests,

contract terminations, teaming agreements, conflicts of interest issues, intellectual property rights issues, government socio-economic programs, and small business matters.

Mr. Hommer is committed to developing relationships with his clients that go beyond the usual role of legal advisor. He works closely with his clients on a proactive basis, developing strategic plans and managing legal issues that may arise, and, more importantly, identifying potential problems before they develop. This approach is not only smart; it is efficient and cost-effective and significantly enhances opportunities for success.



Panelist Biographies

James S. Kennell

Senior Vice President & General Counsel, National Security Sector
Leidos

Jim Kennell is Senior Vice President & General Counsel for the National Security Sector of Leidos, Inc. (formerly known as SAIC). His areas of practice include Government and commercial contracts, litigation, internal investigations and compliance-related counseling. He is a member of the American Bar Association Public Contract Law Section, the ABA Section of Litigation, the ABA Standing Committee on Law & National Security and the National Defense Industry Association, and is also a past chair of the NDIA Procurement Division's Legal Committee. Prior to joining SAIC in the Fall of 2000, he practiced with the law firm of Fried, Frank, Harris, Shriver & Jacobson in its Washington, DC office. He is a graduate of the University of Illinois (B.A. 1987), and the University of Michigan Law School (J.D. 1990).



Panelist Biographies

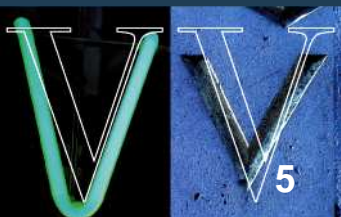
Rebecca E. Pearson, Venable LLP



Rebecca Pearson focuses on government contracts law. She assists clients in government contract litigation; contract award protests before the Government Accountability Office and federal courts; administrative claims before agency boards of contract appeals; representation before the Department of Justice and federal courts on civil matters involving government contractors; and civil litigation in federal courts involving government prime

contractors and subcontractors. Ms. Pearson also counsels clients on matters involving contracts including defective pricing and cost allowance questions, teaming agreements, legal and regulatory compliance and ethics, and small business issues. She has significant experience with due diligence in connection with the merger and acquisition of government contractors, as well as post-transaction matters such as novation.

Ms. Pearson's extensive experience as an Air Force attorney in federal litigation and client counseling, and in interfacing with other federal agencies, provides her with an invaluable "insider's" perspective and proven skills to render timely and effective assistance to clients in a wide variety of government contracts matters.



Panelist Biographies

James Y. Boland, Venable LLP



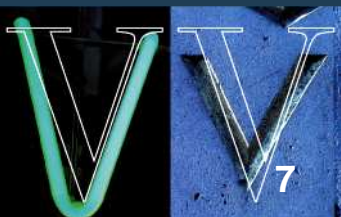
James Boland is a member of the firm's Government Contracts Group. Mr. Boland's practice covers a broad range of federal procurement counseling and litigation, including bid protests; claims and requests for equitable adjustments; Federal Circuit appeals; prime/subcontractor agreements and disputes; small business matters; teaming and joint venture agreements; suspension and debarment; compliance and internal investigations; security clearance appeals; and intellectual property issues.

Mr. Boland also advises clients in the pre- and post-award source selection stages of procurements. He has successfully challenged and defended solicitations, evaluations, contract award decisions, and offeror size/status eligibility before numerous defense and civilian agencies, the Government Accountability Office, the Small Business Administration, the United States Court of Federal Claims, and the FAA's Office of Dispute Resolution for Acquisition. In addition, Mr. Boland prepares, negotiates and litigates a wide variety of claims under the Contract Disputes Act before the Armed Services and Civilian Boards of Contract Appeals and the United States Court of Federal Claims, including claims for: equitable adjustments based on contract changes, breach of contract damages, Prompt Payment Act interest and penalties, misappropriation of trade secrets and intellectual property, and claims arising out of terminations for default and convenience.



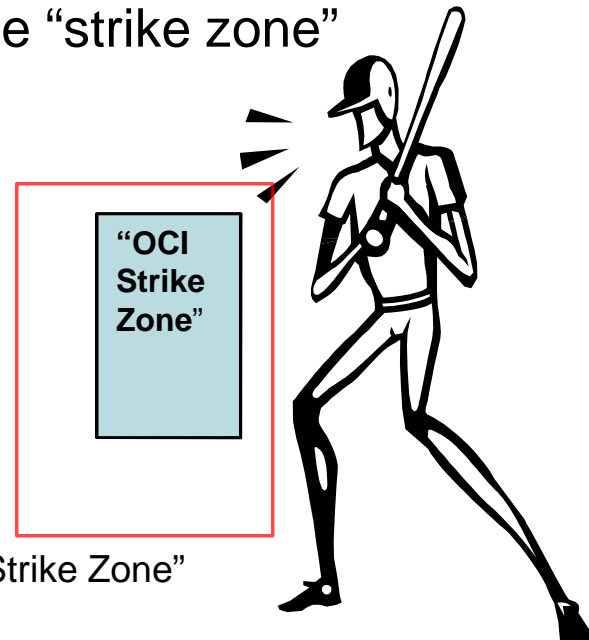
Agenda

- Current Issues
- Types of OCI and Overview of Case Law
 - Biased Ground Rules
 - Unequal Access to Information
 - Impaired Objectivity
- In-House Counsel Perspective
- Practical Considerations, Lessons Learned and Best Practices



Current Issues

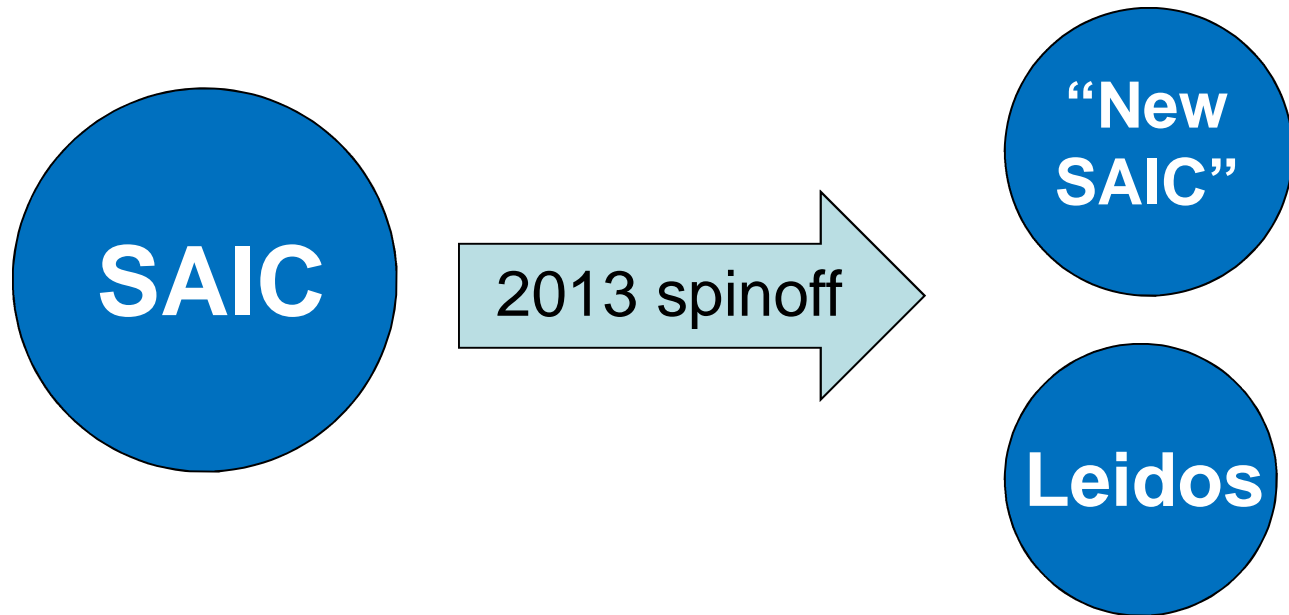
- Companies seeking to remove OCI impediments and expand into new and previously barred market opportunities.
- High-level deference to agencies and their respective OCI investigations.
 - What happens when the “strike zone” becomes larger?
 - Less Competition
 - Higher Prices



“Enlarged OCI Strike Zone”

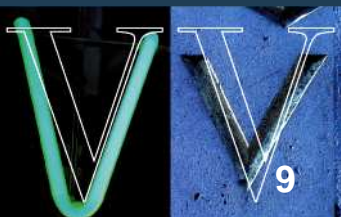


Impact on Company Organization



Other Recent OCI-Related Reorganizations

- **2012:** L-3 Communications split off government services business into new company Engility.
- **2010:** Lockheed Martin sold its Enterprise Integration Group (EIG) business for \$815 million to Veritas Capital.
- **2009:** Northrop Grumman sold TASC government advisory business to private investors for \$1.65 billion.



Types of OCI

1. Biased Ground Rules

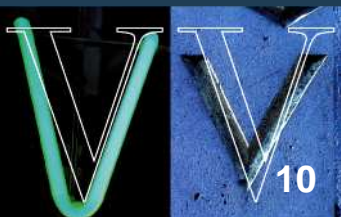
Because of activities or relationships, a contractor is in a position to set the ground rules for another procurement, thereby gaining a competitive advantage.

2. Unequal Access to Information

Because of a contractor's performance pursuant to another procurement, the contractor gained access to non-public information that may provide a competitive advantage.

3. Impaired Objectivity

Because of conflicting obligations or relationships, a contractor's ability to render impartial advice or judgment is impaired.

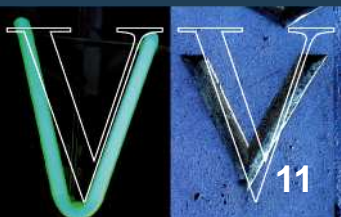


AT&T Government Solutions, Inc.

B-400216 (August 28, 2008)

“Impaired Objectivity OCI” // “False-Positive” OCI

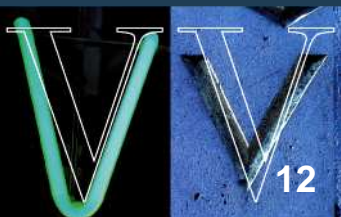
- RFP at issue provided that offerors with even an appearance of an OCI “will be disqualified and eliminated,” yet, it also contemplated the submission of an acceptable mitigation plan pursuant to FAR 9.505.
- Following an OCI assessment of AT&T, the Contracting Officer issued a disqualification notice on the basis of an “impaired objectivity” OCI.
- In response to AT&T’s protest, the Navy argued that intent of the RFP was to require disqualification without consideration of a mitigation plan, and that such “strict avoidance” was proper under FAR 3.101.



AT&T Government Solutions, Inc.

(contd.)

- GAO sustained the protest on 3 grounds:
 - 1) RFP called for an evaluation of a proposed mitigation plan.
 - 2) A reasonable interpretation of the RFP was that firms would not be disqualified until after a determination that the conflict could not be mitigated.
 - 3) The Agency's OCI determination "appear[ed] to be based more on unsupported inference than fact."
- GAO directed the Navy to:
 - 1) Give AT&T an opportunity to respond to the Agency's perceived OCI.
 - 2) Consider AT&T's entire proposal (including mitigation plan).
 - 3) Consider the applicability of "contracting restrictions" provided in the solicitation to resolve any OCI concerns.



Turner Construction Co., Inc. v. United States

94 Fed. Cl. 561 (2010)

“Biased Ground Rules OCI”

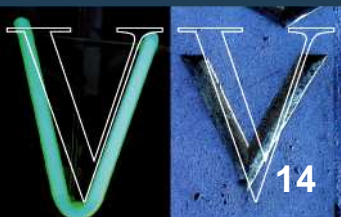
- Turner Construction’s competitors had persuaded the GAO, contrary to the Contracting Officer’s investigation results, that Turner Construction had a biased grounds rules OCI. The Army followed GAO’s recommendations and stripped Turner Construction of a contract it had been awarded to replace an Army hospital.
- The GAO found that Turner Construction had a biased ground rules OCI because one of Turner Construction’s proposed subcontractor consultants had been in acquisition discussions with an entity that had performed design and technical assistance services for the subject Army hospital.
- Turner Construction filed a protest at the Court of Federal Claims, which found that GAO’s decision lacked a rational basis and ordered the Army to restore the hospital contract to Turner Construction.



Turner Construction Co., Inc. v. United States

(contd.)

- In ruling, the Court emphasized GAO's lack of analysis regarding whether the interests of Turner Construction's proposed subcontractor consultant and its potential merger partner were effectively aligned during the relevant time period.
- The Court also noted that the GAO's " cursory " inquiry differed from other GAO cases which " discussed the facts of the case to inquire into the closeness of the connection between firms, the directness of a financial relationship, and the specific facts that could indicate whether a relationship was close enough or too attenuated to support an OCI. "
- Further, the Court stressed that the GAO failed to cite any " hard fact " in support of its findings of biased ground rules and unequal access OCIs.
- The Federal Circuit upheld the Court of Federal Claims decision on July 14, 2011.

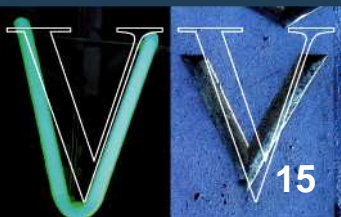


QinetiQ North America, Inc.

B-405008; B-405008.2 (July 27, 2011)

“Biased Ground Rules OCI”

- QinetiQ argued that the awardee, CSC, had a biased ground rules OCI based on work CSC had performed under the predecessor contract.
- The record revealed that CSC’s work under the legacy contract included requirements analysis and definition, and also revealed that the Contracting Officer “did not know, or inquire, whether CSC had participated in the preparation of the SOW for the protested task order, or whether those who prepared the SOW had used materials that CSC created under the predecessor contract.”
- Notwithstanding CSC’s prior work and the Contracting Officer’s failure to make any reasonable inquiry, GAO denied the protest. GAO explained: “To succeed in a protest...a protester must demonstrate not only that an agency failed to follow established procedures, but also that the failure could have materially affected the outcome of the competition.”



Case Law Update

AT&T Government Solutions, Inc.

B-407720; B-407720.2 (January 30, 2013)

OCI Waiver

- In its protest, AT&T argued that the Marine Corps failed to meaningfully consider whether the awardee had “unequal access to information” and “impaired objectivity” OCIs as a result of its work on a related engineering and acquisition support task order.
- Following the agency’s submission of its report responding to the protest allegations, the GAO conducted an outcome prediction alternative dispute resolution conference, during which the GAO attorney indicated that the GAO would likely sustain the protest due to OCI concerns.
- Three days prior to the expiration of GAO’s 100-day statutory deadline, the agency informed the GAO that in lieu of avoiding, neutralizing, or mitigating an OCI, it had waived any OCIs resulting from its award pursuant to its authority under FAR 9.503.
- In support of its waiver, the Marine Corps noted that the risk of any OCI existing was “negligible”; any residual impact was “insignificant in comparison to the estimated annual savings”; and “other performance strategies are not acceptable due to the limited market of qualified sources...”



Case Law Update

Deference to Agency OCI Assessments

- Use of a personnel firewall is “virtually irrelevant” when applied to “impaired objectivity” OCIs, because the concern applies to the organization, rather than a select individual(s). Thus, the agency’s elimination of the protester due to an OCI was reasonable.

Cognosante, LLC, B-405868 (Jan. 5, 2012).

- The agency’s disqualification of an offeror who shared a close alignment of interests with the designer of a construction project that was the subject of the procurement, who possessed competitively useful information, was reasonable. Further, the GAO’s consideration of new (post-disqualification) evidence and information is proper, irrespective of whether the Contracting Officer considered such information during the initial OCI assessment.

McTech Corporation, B-406100; B-406100.2 (Feb. 8, 2012).

- Note that the agency, following the protester’s filing of its subsequent protest complaint at the Court of Federal Claims and the submission of the administrative record and the protester’s motion thereon, took corrective action by rescinding its disqualification and restoring the protester to the competition for award. The protester further challenged the corrective action, objecting to the scope and intended application of the agency’s plan. *McTech Corporation v. United States*, 105 Fed. Cl. 726 (Fed. Cl. 2012).

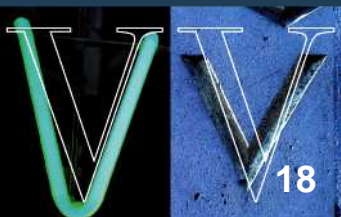


Case Law Update

Deference to Agency OCI Assessments

(contd.)

- Awardee's plan, which included specific details, active divestiture milestones and a contingency plan, effectively mitigated the agency's identified "impaired objectivity" OCI. In addition, "an agency may reasonably find that certain relationships between companies or corporate affiliates are too remote or that the possibility of a conflict is too unlikely or speculative to conclude that there is a disqualifying OCI."
AdvanceMed Corporation; TrustSolutions, LLC, B-404910.4 et al. (Jan. 17, 2012).
- See also *TriCenturion, Inc.; SafeGuard Services, LLC, B-406032 et al.* (Jan. 25, 2012); *SeKON Enterprise, Inc.; Signature Consulting Group, B-405921; B0495921.2* (Jan. 17, 2012).



Case Law Update

Deference to Agency OCI Assessments

(contd.)

- A protest will be denied where an agency's OCI investigation meaningfully considers whether a significant OCI exists. Moreover, a protester must "identify hard facts that indicate the existence, or potential existence, of a conflict and [a protester's] mere inferences and speculation are insufficient to sustain a protest."

Oklahoma State University, B-406865 (Sept. 12, 2012);
see also *Diversified Collection Services, Inc.*, B-406958.3;
B-406958.4 (Jan. 8, 2013).

- "[O]rdinary incumbent advantage does not rise to the level of an OCI[,]" and thus, any such advantage does not require mitigation.

Onsite Health Inc., B-408032; B-408032.2 (May 30, 2013).



Case Law Update

Timeliness Issues

- A contractor is prohibited from protesting an agency's failure to identify and mitigate an "unequal access to information" OCI where the contractor knew about the alleged OCI prior to proposal submission, but failed to assert it, via protest, until after the award was made.

CR Associates v. United States, 102 Fed. Cl. 698 (2012).

- Conversely, a protest that raises an "impaired objectivity" OCI challenges the propriety of an agency's final award decision, and is therefore timely filed after award, irrespective of the fact that the protester knew that the awardee was competing for award and the basis for the claimed conflict prior to award.

Guident Technologies, Inc., B-405112.3 (June 4, 2012).

- Consideration of an alleged OCI based on the awardee's proposed subcontractor's performance of construction services is premature where the agency has not yet procured the construction services, nor did the agency approve the awardee's subcontractor.

Nuclear Production Partners LLC; Integrated Nuclear Production Solutions LLC, B-407948 *et al.* (Apr. 29, 2013).



Case Law Update

- Where an agency has not made a final determination as to an alleged conflict of interest, the GAO will treat any protest based on such allegations as premature.
McKissack-URS Partners, JV, B-406489.2 et al. (May 22, 2012).
- Under the FAR, a Contracting Officer is not required to document in writing or submit for approval a plan to neutralize apparent or potential conflicts, which in his discretion and judgment are deemed not to be significant. Thus, to the extent a Contracting Officer acts within his discretion in determining that no significant conflict of interest exists, no documentation is required.
The McVey Co. v. United States, 111 Fed. Cl. 387 (2013).
- An agency's request for dismissal of a protester on the basis that the protester is not an interested party due to an assessed OCI must be based on hard facts, and an agency cannot rely on mere conclusions without explanations in alleging an OCI.
NikSoft Systems Corp., B-406179 (Feb. 29, 2012).





Ready, Fire, Aim –

**What Should Contractors Do When the Government
Doesn't Consistently Hit the OCI Target**

**James S. Kennell
SVP & Sector General Counsel**

National Security Sector



SAIC History

- ▶ Founded in 1969 in San Diego by Dr. J. Robert Beyster
- ▶ Employee-Ownership as a Foundational Principle
- ▶ Highly-Decentralized Organization
 - ▶ “[A] loose federation of businesses held together by tight financial controls.”
 - ▶ J.R. Beyster, *The SAIC Solution: How We Built an \$8 Billion Employee-Owned Technology Company* (2007)
 - ▶ “A farmer’s market with central heating.”
 - ▶ Harold Agnew, renowned nuclear scientist and former Director, LANL
- ▶ Business Organizations within Company Encouraged – and Even Incentivized – to Compete Against One Another
- ▶ Operation pursuant to the So-Called “1,000 Flowers Blooming” Business Model

SAIC History (cont'd)

- ▶ Feb 1990: Company Reaches \$1 Billion in Annual Revenue
- ▶ Nov 2003: Dr. Beyster retires as CEO
- ▶ Oct 2006: Company IPO (NYSE Listed)
- ▶ Dec 2007: “Project Alignment” Announced
 - Internal Reorganizations, Operational Streamlining, and Move Toward “Shared Services” Business Support Model
- ▶ Sep 2009: Corporate Headquarters Officially Relocates from San Diego to McLean, VA

Fall 2012 Status

- ▶ \$11 Billion in Annual Revenue
- ▶ 41,000 Employees
- ▶ Over 500 Locations throughout U.S. and Overseas
- ▶ Business Organized into Three Groups, with over 20 Different Business Units among these Groups
- ▶ Aug 2012: Company Announces Decision to Separate into Two Independent, Publicly-Traded Companies
 - Effort to Reduce OCI Constraints Identified as One of Several Key Factors Driving the Decision

OCI “Footprint” in Fall 2012

- ▶ **Conflicted Business Lanes Across Many Major Customers**
 - SETA and Other Technical Advisory Work (e.g., T&E Support) vs. Systems Development & Integration, Other Production-Type Work
- ▶ **Internal OCI Governance Process**
 - Enterprise-wide Routing of Every Business Opportunity
 - Level of Review Based on Specified OCI “Triggers” (Type of Work, Customer, RFP OCI Provisions, etc.)
 - Majority of OCI Routings Required Individual Replies on Behalf of Each Business Unit and Other Stakeholders
 - Resulted in Over 10,000+ Annual OCI Routings for Review, Well Over 6,000 of which Required Responses
 - Escalation of Internal OCI Disputes for Resolution
- ▶ **Prevalence of OCI Mitigation Plans (and Accompanying Training, NDAs/Certifications, Audit Activity, etc.)**
- ▶ **Frequent Inability to Achieve Satisfactory Level of Certainty on Potential Future OCIs**

Changes in Gov't Marketplace

- ▶ Industry Consolidation + Growth in Gov't Outsourcing
- ▶ Growth of GWACs and Other Large Multiple-Award IDIQs
- ▶ Increased DoD "Jointness"
- ▶ "Choose Your Major" OCI Policies (NRO, DARPA and Others)
 - Avoidance, Over-Neutralization, or Mitigation
- ▶ Increased Reliance on Contractor OCI Disclosures/Certifications
- ▶ Rise in the Use of FCA as an "Enforcement" Mechanism

Post-Split: Leidos

(effective Sep 27, 2013)

“A solutions company that combines the innovative application of technology, science, and engineering with deep mission and domain understanding of its customers and markets.”

- ▶ 23,000 Employees; \$6 Billion in Annual Revenue
- ▶ Nat'l Security Sector (68% Revenue)
 - IC Mission Support
 - C4ISR R&D
 - Logistics, Readiness & Sustainment
 - Cybersecurity
- ▶ Health & Engineering Sector (32% Revenue, Majority Commercial)
 - Healthcare IT, EHR and Advanced Analytics
 - Health & Life Science / Clinical Research
 - Energy Grid and Critical Infrastructure Design & Integration
- ▶ ***Reduction in OCI Constraints = Dramatic Expansion in Addressable Market (est'd \$37B[↑] for Nat'l Security Sector)***

Post-Split: “New” SAIC

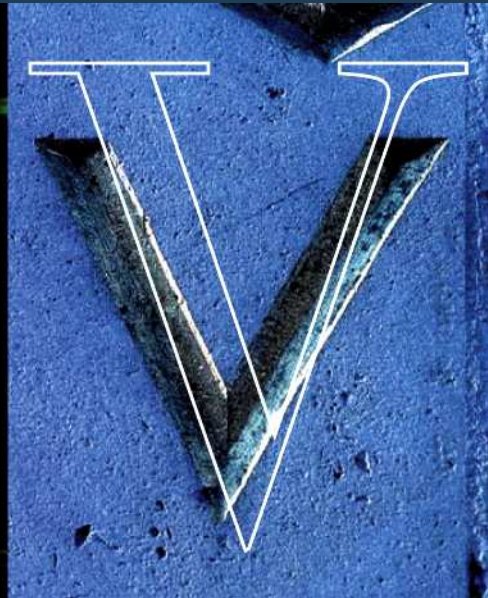
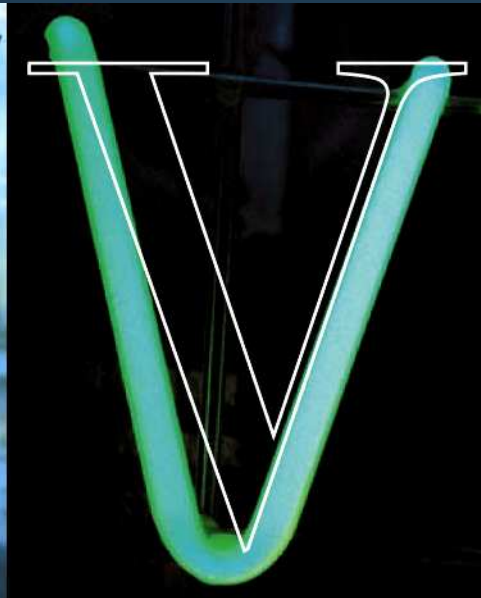
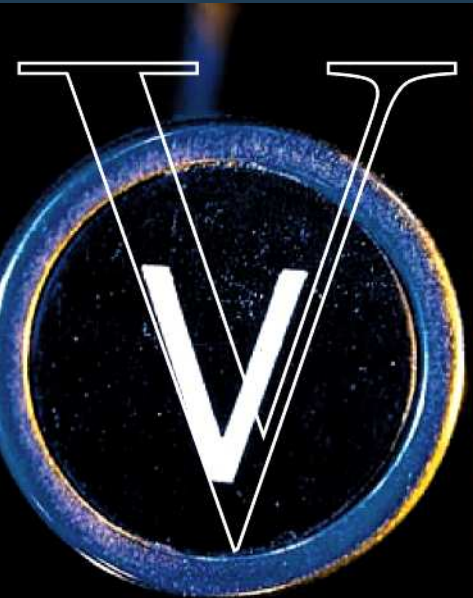
(effective Sep 27, 2013)

“A leading technology integrator providing full lifecycle services and solutions in the technical, engineering and enterprise information technology markets.”

- ▶ 14,000 Employees; \$4 Billion in Annual Revenue
- ▶ Technical & Engineering Services
 - Mission & SETA (21% Employees)
 - Hardware Integration (14% Employees)
 - Training & Simulation (9% Employees)
 - Logistics & Supply Chain (10% Employees)
- ▶ Enterprise IT Services
 - Network Integration (7% Employees)
 - Software Integration (15% Employees)
 - IT Managed Services (19% Employees)
 - Emerging IT Solutions (5% Employees)
- ▶ ***Reduction in OCI Constraints Estimated to Open Up Additional \$25 Billion in Addressable Market***

Practical Considerations, Lessons Learned & Best Practices

Rebecca Pearson
James Boland



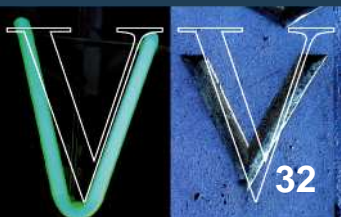
Practical Considerations, Lessons Learned & Best Practices

- CO's are risk adverse, and may see an OCI designation as the path of least resistance.
 - Harmful Impact on Full and Open Competition
- It is important to note that reversing an OCI determination is difficult once a final decision is made.
 - COs receive considerable discretion in making OCI determinations.
 - As a result, it is critical to be proactive in steering the CO in the right direction before a final decision is made.
- Pursuant to FAR 9.505, the exercise of “**common sense, good judgment and sound discretion**” is required when making OCI determinations and resolutions.
- Contractors should avoid taking a “one size fits all” approach.
 - OCIs are fact specific, so adapt your strategy to the facts of the particular situation.



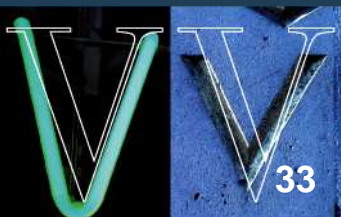
Help CO Build Administrative Record

- Convincing the CO that no OCI is present is not enough.
- The agency decision **must** also be adequately documented and reasoned in order to withstand scrutiny.
- If the agency has given **meaningful consideration** of whether an OCI exists, the agency decision will receive significant deference on appeal.
- Thus, a contractor's job is twofold:
 - (1) demonstrate that there are no "hard facts" showing an OCI and that any potential OCI is not significant; and
 - (2) provide a **complete** factual and legal analysis for the agency.
- A contractor's response is critical and requires full attention and resources.



Focus Attention on Individual Task Orders

- IDIQ SOWs are broad.
- In many cases, COs are inclined to look only at the broad IDIQ SOW, rather than the individual task orders.
- In order to avoid disqualification based on an OCI determination, demonstrate that the task order you performed is isolated from other tasks that may potentially create an OCI on new work.



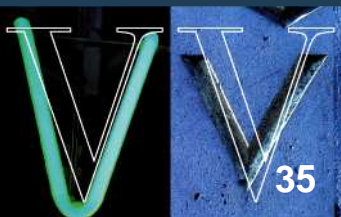
Encourage Use of Multiple Award IDIQ Contracts

- Get involved in the planning stages.
- If prior work will create an OCI, break up the new procurement into smaller pieces to avoid conflicts.
- Encourage multiple awards, thereby allowing for increased competition.



Restraint on Future Work? Postpone Decision.

- Once a clause conditioning eligibility on restraint of future work is included pursuant to FAR 9.507-1 and -2, this clause is a part of the contract.
- If the CO is considering including a clause restraining future work, encourage the CO to postpone the decision.
- Highlight that there is no need for **this CO** to make that decision now; rather, let a downstream CO responsible for the future work make that decision years from now.
- If the CO will not postpone the decision, contractors should seek to dilute the restraint clause.
 - For example, by using “may” rather than “shall.”



Know When to Stay Silent

- If the draft RFP does not have a restraint clause, why ask?
- Contractors may value certainty, but it is better to have greater flexibility for later procurements.



Unfair Competitive Advantage vs. Incumbent Advantage

- COs often fail to see the distinction between these two situations.
- The mere fact that a contractor is the incumbent and has insight into the agency's needs and the ability to tailor its proposal accordingly, does not rise to level of an unequal access OCI. (See *QinetiQ*).



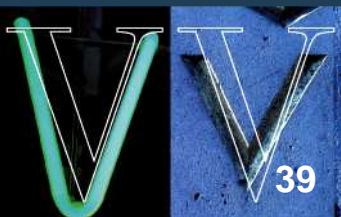
Know When to Compromise

- A contractor's position must be plausible, or you will be discredited.
- If there are truly unfavorable facts, convince the CO it is merely a potential "non-significant OCI."
 - There is no need to mitigate potential, non-significant OCIs. (*See Turner*).
- If the issue is unequal access to information, consider the pros and cons of having the agency disclose allegedly sensitive information to all offerors.

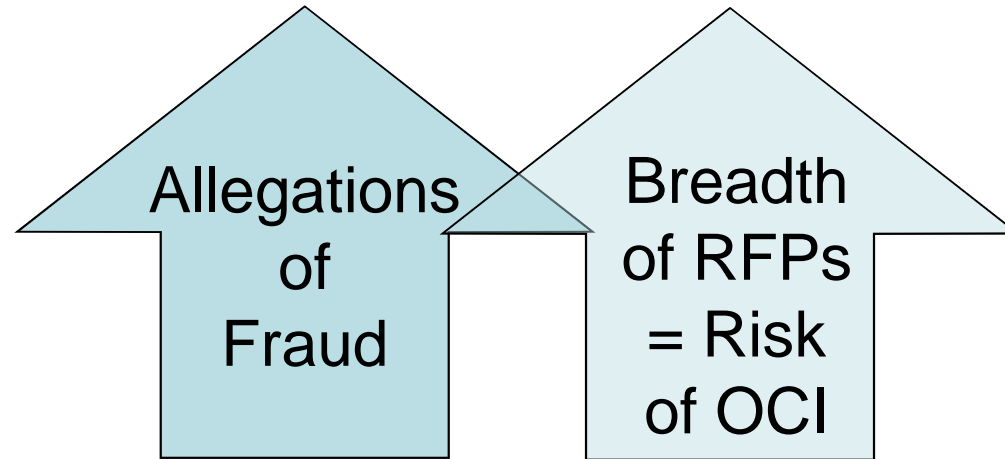


Last Resort – OCI Waiver

- Under FAR 9.503, an agency may waive OCI rules or procedures when strict application “in a particular situation would not be in the Government’s interest.”
- Section 9.503 waivers are highly discretionary and very difficult to challenge.



Failure to Disclose an OCI May Result in False Claims Act Liability



- Increase in Treatment of All Compliance Issues as False Claim Creates Risks for OCIs
- False Claim No Longer Needs an Express Statement
- May be Filed by Whistleblowers (e.g., Competitor, Disgruntled Employee, Other) or Raised by the Government (e.g., CO, DCAA, OIG)



Civil False Claims Act

- The Civil False Claims Act provides penalties for any person who knowingly submits a false claim.
- A claim is submitted “knowingly” when the claimant, with respect to the false information:
 - Has actual knowledge of the information;
 - Acts in deliberate ignorance of the truth or falsity of the information; or
 - Acts in reckless disregard of the truth or falsity of the information.
- Proof of specific intent to defraud **IS NOT** necessary under the FCA.
- An innocent mistake or mere negligence will not result in a violation of the FCA.

Penalties

- Civil penalty of between \$5,500 and \$11,000 per false claim; plus
- Three times the amount of damages sustained by the government; as well as
- The cost of any civil action brought to recover the penalties or damages.



Court Finds that OCI Certification Created False Claim

United States ex. Rel. Harrison v. Westinghouse Savannah River Co.
352 F.3d 908 (4th Cir. 2003)

- Westinghouse held a management and operations contract with DOE, and was required to develop a \$500 million In-Tank Precipitation facility to store radioactive waste.
- When the development was in trouble, Westinghouse worked with an employee of General Physics Corp. (“GPC”) to develop a recovery plan.
- The GPC employee helped prepare papers for Westinghouse to obtain approval from DOE to subcontract the training program.
- Westinghouse obtained approval, completed the training, and awarded to GPC.
- GPC certified that no OCIs existed and Westinghouse, in turn, certified that no OCIs existed.
- Former VP of GPC brought a *qui tam* action.
- Jury found that Westinghouse had impliedly made false certifications by submitting invoices and the Court upheld because at least one person at Westinghouse knew the certification was false.



Questions and Comments

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