

# VENTURE MANAGEMENT



Volume 6, Issue 3 | September 2008

## Five Ways to Stay Out of Organizational Conflict of Interest Trouble

For the government services industry, conflict of interest is a one-way issue. That is, don't expect to see any reversal in government concern, active scrutiny, and enforcement of conflict-of-interest policies and regulations. And, perceptions of conflicts, whether deserved or not, have a way of amplifying damage to your firm's reputation and freedom to do business.

Here are five things to avoid or do to stay out of trouble. (For legal advice, be sure to talk with your counsel rather than using the business advice in this article.)

### | one |

The boundary of impermissible organizational conflicts is in the eye of the beholder; what is harmless to you may be toxic in a politician's eyes. Last year, Rep. Henry Waxman, chair of the House Oversight and Government Reform Committee, pilloried Booz Allen Hamilton for alleged organizational conflict of interest (OCI) at a hearing on SBInet, a contract performed by Boeing. His investigators had found on Booz Allen's Web site that the firm had done work for Boeing's commercial airplane division.

That fact alone said it all for the congressman, it seems. It didn't matter that Booz Allen's program management support for SBInet did not involve oversight of Boeing, or that the consulting work for the aerospace firm was years earlier and in a distant part of the company.

### | two |

The government is capable of identifying questionable collateral use of domain knowledge gained in contract work and can make an issue of it. Also, beware the perceived entanglements of trade and professional association membership and activity. In July this year a federal jury returned a verdict against defendant SAIC in a government lawsuit, started by a whistleblower, that alleged the company had submitted numerous false claims and made false statements in connection with a Nuclear Regulatory Commission contract. SAIC rejects the verdict and plans to appeal.

The company usually settles out of court, with no admission of wrongdoing. But this case went to trial and surfaced multiple organizational conflict-of-interest violations. For example, the jury found for the government that SAIC had used information obtained at NRC to build business for itself at a Department of Energy facility. The government also proved its point that an SAIC executive with responsibilities on the NRC contract, which supported rule-making activity, had a conflict with his membership in a specialized trade association that focused on nuclear waste disposal, which was the subject of the NRC work.

### | three |

Be careful not to contribute content to the recompetes or follow-on contract file. (Let your good work on the current contract be your edge). It used to be a widely accepted custom that incumbent contractors played a role in drafting or otherwise supporting the statement of work and other parts of RFPs for recompetes or follow-on contracts. The contractor-generated material was often couched as "white papers." Clients often welcomed the help, and many firms eagerly provided it.

But those days are largely over. Whether due to increased training and awareness on either side, this kind of activity is clearly unacceptable and formally frowned upon. That's not to say it doesn't occur in some quarters.

### | four |

Consider getting ahead of the next frontier in conflict avoidance and mitigation. Personal conflicts of interest are of growing concern but not addressed much in the Federal Acquisition Regulation. But regs are coming. Now is a good time to get ahead of the curve-and possibly adding some valuable differentiation-by developing your company's own policies for personal conflicts of interest. But it's difficult, because you have to make judgments about both what looks bad and is bad, without knowing where the government will draw the line.

For example: what if your project manager and the government COTR were grad students together 12 years ago and keep in touch? What if your husband coaches a client's kid on a neighborhood swim team? What if your wife works for an energy company and your consulting work is at DOE? The possibilities are endless. Specialized ethics consultants, experienced attorneys, and a growing literature on business conflict management may be of help.

### | five |

Teaming requires extra care in conflict avoidance. When you lash up with another firm, you pool and multiply your vulnerabilities to conflict issues. There is not only the teaming partner's uncertainty about its own conflicts, but also the possibility of conflicts between your firm and your teaming partner. For example, in the IT arena it would not be unheard of for one team member to support a government client that is served by a supplier supported by a second team member.

That may or may not be a problem, but it requires detection, evaluation, and some degree of disclosure and possibly mitigation. Multiply such situations by the number of firms on a team, factor in the limited view of teammates' past and present book of business, and you have a lot of work to do before even thinking of mitigation measures. The resources mentioned in 4, above, may also help.

*Michael Lent is editor and publisher of Government Services Insider, a subscription-paid information service about the business strategies and methods of contractors. He can be reached at [mlent@gsinsider.com](mailto:mlent@gsinsider.com), or at (202) 237-0765.*