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Q&A With Sheppard Mullin's John Chierichella

Law360, New York (March 05, 2013, 1:30 PM ET) -- John W. Chierichella is a partner in Sheppard Mullin Richter & Hampton LLP's Washington, D.C., office, where he specializes in government contracts law. Admitted in D.C., California and New York, he has more than 30 years of experience in government contract matters, including bid protests, claims and appeals, cost and Cost Accounting Standards counseling and audit response, compliance reviews and internal investigations, False Claims Act litigation, subcontract and teaming disputes, and the General Services Administration's Multiple Award Schedule Program.

Q: What is the most challenging case you have worked on and what made it challenging?

A: The most obvious answer is “the next one.” Leaving that aside, I would say a classified arbitration involving an alleged breach of a teaming agreement to design, develop and produce surveillance satellites. This was a case that was generated as a result of an agency’s direction essentially to dissolve the teaming agreement and the falling out between the partners when they could not reach agreement on a new collaborative approach to downstream requirements.

The logistics were demanding — six months on the road, working in secure facilities, virtually no access to agency records (even when requested of the agency by the cleared arbitrator), no access to agency personnel, and an agreement that had been in place for more than 10 years when the agency decided that the agreement was no longer in its best interests. The issues were multifaceted, grounded in variety of contract and tort theories, and, with the limited discovery available, the hearing was a “live event” in the truest sense of that phrase.

Q: What aspects of your practice area are in need of reform and why?

A: The aspects most in need of reform will never change, i.e., the procedural and substantive “tilt” of the law in favor of the government. There are policy reasons for that, of course, but at times they make the contractor’s ability to get what most folks would regard as a “fair shake” very difficult.

Another pervasive problem has been the incredible influence of auditors and investigators over federal contracting officials and the in terrorem effect of that influence on those officials’ ability and willingness to administer contracts fairly. The plain fact of the matter is that many contracting officers will refrain from making an independent decision because they know that auditors and investigators can — and will — publicly criticize them if their decisions deviate from those espoused (rightly or wrongly) by those auditors and investigators.

Q: What is an important issue or case relevant to your practice area and why?

A: Sequestration and the debt ceiling — what does it mean for government contractors? How do they minimize the impact on existing contracts? On what government representations regarding funding and payment — if any — can they responsible rely? How do they deal with suppliers? What happens if the suppliers fail because of the interrupted cash flow? A fundamental purpose and objective of all contracts is predictability of result. Sequestration and funding embargoes eliminate that predictability.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Neil O’Donnell of Rogers Joseph O'Donnell PC — he is smart, experienced, a great substantive knowledge of government contract law, strategic in his thought process, pragmatic, candid, honest and a gentleman.

Q: What is a mistake you made early in your career and what did you learn from it?

A: I took an opposing counsel’s word at face value. It is too easy for folks to forget, to misremember, to reconstruct their memories, or to lie. We tell our clients this, and we should follow the same rule — “get it in writing.” No reputable lawyer should be offended by a request for confirmation of an oral agreement. “Trust — but verify.”

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