

Who's who in gov't contracting: A cast of characters

John W. Chierichella

Entering the world of government contracts is somewhat like attending the theater. Before the play begins, you want to consult your playbill, review the cast of characters and get a sense of who will do what to whom.

This will serve as a brief playbill for those who are new to the government contracts process. Each of the players has a unique capacity to influence — for better or worse — the success of your efforts.

- **The PCO.** The Procuring Contracting Officer is perhaps the most important character in this play, and for a very pragmatic reason. Only a contracting officer can bind the United States. A host of other government personnel will issue instructions to you to perform extra work, but unless the PCO approves, you are unlikely to be paid. In the world of the theater, this known as a “tragedy.”

- **The ACO.** The Administrative Contracting Officer is the only government official authorized to negotiate and settle your indirect cost rates. Whereas the PCO is the key decision maker with respect to costs that are specific to the contracts he or she signs, the ACO is responsible for cost and accounting issues that affect your contracts generally.

- **The PM and the PMO.** The Program Manager, who is housed in a Program Management Office, is, in many respects, your customer. If you adhere to the adage that the customer is always right, you will want to keep the PM happy. Your urge in this regard will reach new heights when the

PM tells you that the general or the admiral wants something. The problem is that, while the PM and PMO have massive influence over you, they are not PCOs and cannot obligate the United States. So, while you may be disinclined to say “Yes, General So-and-So, but I need to check with the PCO,” you’d be wise to check with the PCO.

- **The COTR or COR.** The Contracting Officer’s Technical Representative (aka the Contracting Officer’s Representative or the Contract Specialist) could be the government representative with whom you interface most frequently. They, too, are prone to issue directives “on behalf of the PCO.” Believe such representations at your peril. When it comes to unauthorized directives to perform extra work for which you may not be paid, think of the PM and the COTR as the bread in a ham sandwich. You are the ham.

- **DCAA.** The Defense Contract Audit Agency is the largest auditing component of the government’s contracting infrastructure. The perception of many auditors is that contractors always overcharge Uncle Sam and an auditor’s job is to get the money back. Because audits can occur years after the “real time” decisions under review were made, the DCAA’s job has been described as that of entering the field after the battle is over and bayoneting the wounded.

- **The IG.** The Inspector General was described by President Reagan as the government’s “junkyard dog,” whose job it is to ferret out “fraud, waste and abuse.” The arrival of the IG on your doorstep, often with a subpoena in hand, is never a harbinger of happy days. Call your lawyer.

- **The SBA.** The SBA ensures that a sizable slice of the acquisition budget is set aside for “small business concerns.” If you are a small business, you should familiarize yourself with Part 19 of the Federal Acquisition Regulation and with the SBA. They can be your best friends.

- **The GAO.** The Government Accountability Office, has, for some 80 years, reviewed the propriety of contract awards through the so-called “bid protest” process.

- **The COFC.** The Court of Federal Claims sits in Washington and has concurrent jurisdiction with the GAO over bid protest cases. The COFC also has jurisdiction over claims that arise during the performance of a contract.

- **The BCA.** Boards of Contract Appeals have concurrent jurisdiction with the COFC over contract claims (but not bid protests).

- **Congress.** Many contractors believe that their congressional representatives have “pull” in the procurement arena. This is largely a myth. Congressional offices most often merely write a polite letter expressing concern and asking to be kept advised. Congress, however, can do great harm to the process. If you look at the congressional micromanagement of the procurement function over the past 30 years, you will conclude, like Will Rogers, that “No man’s life, liberty or property is safe as long as the legislature is in session.”

JOHN W. CHIERICHELLA is a partner in the Washington and Los Angeles offices of Sheppard, Mullin, Richter & Hampton. E-mail: jchierichella@sheppardmullin.com