

Gov't Contracts Group Of The Year: Sheppard Mullin

by Nick Brown

Law360, New York (February 3, 2011) -- For the team at Sheppard Mullin Richter & Hampton LLP — the group responsible for arguing both sides of the same issue to first overturn, then sustain defense contracts on behalf of ICx Nomadics Inc. — versatility was key in earning a spot as one of Law360's Government Contracts Groups of 2010.

ICx needed lawyers it could trust in January 2010 when it told Sheppard Mullin government contracts partner John Chierichella it wanted to challenge a sole source U.S. Navy contract for perimeter defense systems awarded to competitor Argon ST Inc.

Chierichella convinced the Navy that ICx not only built the products in question — mobile detection systems for use in Afghanistan — but advertised them on the relevant U.S. Government Services Administration schedule. The Navy agreed, terminated the award and decided to advertise the services without the need for a bid protest.

The tables turned four months later, when Argon protested the U.S. Marine Corps' sole source award to ICx for almost the same technology.

"He is no lawyer who cannot take two sides," Chierichella said Wednesday, a nod to Charles Lamb's oft-quoted axiom.

The Sheppard Mullin team quickly went about building a defense, ultimately arguing that, while Argon may have had the technology for the detection systems, it had yet to build one and had no proof it could do so successfully.

"It devolved into an argument of, 'These are designed to save lives, and we can't sit around to wait to see if yours works while people take bullets,'" Chierichella said. "The [U.S. Government Accountability Office] said that was reasonable. I'm sure Argon was really irritated, but our client was very happy."

In government contracts law, circumstances change overnight, and successful firms must be able to adapt. The team at Sheppard Mullin does just that, by

forgoing specialization in one aspect of the practice area in favor of hiring experts in all of them.

"We're not just a bombs-and-bullets practice," Chierichella said. "We do a lot of defense work — don't get me wrong. I've been in a nuclear submarine for my practice, I've been inside the B2 bomber, flown simulators for military helicopters. But we have a really significant practice for all other areas."

The group has export control specialists, attorneys who focus on the white collar aspects of government contracts, and even some that advise on mergers and acquisitions involving contractors.

"We wanted to make sure we had a cost accounting and cost recovery aspect, because that feeds into the day-to-day bread and butter of our clients," Chierichella said. "We wanted to make sure we had GSA multiple award schedule capability, because those are the folks that sell off-the-shelf products to the government and aren't exclusively government contractors."

One major civilian-side win came in August in *Office Depot Inc. v. U.S.*, when Sheppard Mullin withstood a challenge to a national office supplies contract awarded by the Federal Deposit Insurance Corp. to Staples Inc.

Group Co-Chairwoman Anne Perry helped the defense prevail on all issues in the protest over the roughly \$10 million contract.

"We intervened on behalf of our client, Staples, but part of that also entailed assisting the agency in defending its decision," Perry said.

Overall, the practice boasts 45 attorneys between the firm's Washington, D.C., and Los Angeles offices. That isn't particularly large in proportion to other practice areas, but the group is "pretty damn successful when it comes to generating revenue," Chierichella said.

It is also growing, netting three new attorneys in 2010 and staying "very, very busy," he said.

"We're focused on continuing to grow, and on adding

capability," he said. "We don't have a particular number in mind in terms of growth, but we focus on skill set instead of body count, and we can be kind of picky."

As the principle reason the firm opened its D.C. office in 2003, the government contracts group — deemed a "key destination practice" by firm leaders — succeeds in large part because of the personnel it hires, Chierichella said. —°

Rather than rely on luring rainmakers via lateral hires, the group drafts strong associates and aims to cultivate their expertise.

"They're just kids when they start, relatively speaking," Perry said.

Chierichella said the firm doesn't hire attorneys who simply want a job.

"We hire people with the ambition and desire to excel, so that we can make sure all elements of the practice are adequately and more than adequately well-covered," he said.

The fruits of that effort appeared in the spring, when the group upset five contracts awarded by the U.S. Army to Raytheon Co., Booz Allen Hamilton Inc., Lockheed Martin Corp., General Dynamics Corp. and Computer Sciences Corp. for rapid response logistics services.

The contracts allowed the winners to compete over 10 years for task orders worth a total of \$16 billion. Sheppard Mullin challenged the awards on behalf of Northrop Grumman Corp., arguing the Army had not adequately evaluated the offerors' cost proposals.

The GAO convened an outcome prediction status conference after a five-day evidentiary hearing, and days later the Army canceled the awards. Northrop has since received a contract to compete for the work, as well as reimbursement by the Army for a significant portion of the legal costs.

"This was a great case," Chierichella said. "If they didn't get that contract, they would have been out of the market for about 10 years. What they would have lost was the right to be one of five or six people to have a chance to bid on that \$16 billion worth of work."

Assuming all six companies get an equal share of the work, Northrop will receive \$2.7 billion in task orders over the next decade — nothing to sneeze at, Chierichella said.

Perry, who handled the bulk of the case, said the matter exemplifies the importance of client trust in government contracts law.

"What's interesting about the process is there's very little interaction allowed between lawyers and clients,"

Perry said. "Basically they just have to trust us. That's why it's important to have a good rapport."

Clients have little input and are kept out of the loop save for procedural updates, making a good client relationship a valuable asset, Perry said.

Another key accomplishment for Sheppard Mullin in 2010 was the dismissal of a qui tam False Claims Act suit against GTSI Corp., Unistar-Sparco Computers Inc. and Emtec Federal Inc. in the U.S. District Court for the District of Massachusetts.

The whistleblower action accused the defendants of selling products on the GSA Advantage! website that did not comply with the Buy American and Trade Agreements acts, but defense counsel in April convinced a federal judge to deep-six the complaint on grounds that the relator failed to state a claim with particularity.

"The beauty of that was it was a quick kill," Chierichella said. "We got that case dismissed before the client had to undergo protracted, expensive discovery."

In January 2010, the team won reimbursement on behalf of EWA-JV LLC for about 80 percent of excess costs on a contract with the Army Space and Missile Defense Command, convincing the command that the costs were not voluntary.

Contractors who exceed the limitation of cost ceilings typically face long odds for recovering those costs, the firm said.

The government contracts group also played a key role working in tandem with Sheppard Mullin's aerospace & defense team, assisting in major transactions in the A&D field.

Government contracts lawyers helped oversee Six3 Systems Inc.'s leveraged buyout of BIT Systems Inc. and Chandler/May Inc.'s acquisition of AeroMech Engineering Inc. in 2010.

"The unique ability of our firm is, you typically have deals lawyers to advise on the deal, but you don't have government contracts people to advise on the unique aspects of a transaction in that field," Perry said. "We actually have an internal team here who deals specifically with that."

Just another sign of the firm's versatility, Chierichella said.

"Quite frankly, I think we've succeeded in our goal of implementing a practice with broad expertise," he said. "Our clientele has expanded, and we've handled lots of huge cases, and lots of small ones, too."