

Government Contracts MVP: Sheppard Mullin's Anne Perry

By Bryan Koenig

Law360, Washington (November 13, 2015, 8:56 PM ET) -- A year spent successfully fighting before the Government Accountability Office for hundreds of millions of dollars worth of work for agencies such as the U.S. Department of Defense has earned Sheppard Mullin partner Anne Perry a spot on Law360's list of Government Contracts MVPs.

Perry, a former co-chair of Sheppard Mullin Richter & Hampton LLP's Government Contracts, Investigations & International Trade practice group in Washington, D.C., played offense and defense with GAO bid protests by her clients and against her clients' already won contracts, and she scored on both sides.

Bid protest fights must incorporate a client's interests and their confidence, Perry said in an interview, pointing to the protective orders that keep a tight lid on what the contractor is allowed to know about the GAO proceedings.

"You have to know a lot about the client and the client has to trust you because you can't share information with the client about the protest until you get the decision or you have redacted versions," Perry said.

Perry has spent 20 years developing that balance, including time before entering private practice spent handling bid protests from the opposite side with the GAO's predecessor, the General Accounting Office. Perry started with the GAO as an intern in her second year at law school at George Washington University.

"I kind of learned from the ground up what a protest is, who the players are, what the key issues typically are," Perry said of her time at the GAO. Bid protests have become Perry's comfort zone, where she spends up to half her time along with work in various courts and on internal investigations.

In the past year, that knowledge helped her pivot through several successful defenses of an office supply program with the General Services Administration worth up to \$1.8 billion under which Perry's client, hardware superstore W.W. Grainger Inc., was a contractor.



Anne Perry
Sheppard Mullin

In one protest, Kipper Tool Co. had alleged that five of the successful vendors — including Grainger — offered items from Turkey despite a requirement for goods to come from the designated country list under the Trade Agreements Act, but Perry led Sheppard Mullin in a successful intervention, helping convince the GAO that the goods were properly attributed to Canada and that the protester merely disagreed with the technical judgments of the agency.

“The Grainger protest was interesting because there were actually a series of protests which challenged so many different things with so many different moving parts that it was really challenging,” Perry said.

Of course, a protest being challenging isn't necessarily a bad thing. “They were pretty complicated to litigate, which probably makes them the most fun,” Perry said.

Successful bid protests fights, Perry said, are largely about speed — the ability to prioritize a challenge in an extremely tight time frame and review often voluminous records quickly and efficiently, reducing 100,000 pages into a 50-page brief.

Perry has learned what to look for and what to skirt over, she said, how to focus a search based on the law and a knowledge of the most successful arguments and how to avoid muddying the water with the weak ones. On defense, it means finding the arguments the agency itself didn't have time to make and using them to back up the government's own contentions, according to Perry. That knowledge, Perry said, has been employed on protests over contracts ranging from \$100 million to in excess of \$6 billion.

One of those recent contracts was a \$150 million award Perry successfully defended for the Wexford Group, a CACI International Inc. subsidiary. BAE Systems Technology & Services Inc. had alleged that one of the GSA evaluators was biased against it over the work supporting the Department of Defense's Counter-Improvised Explosive Device Operations/Intelligence Integration Center, but Perry and Sheppard Mullin stepped in. The GAO ultimately sided with the Pentagon, finding reasonable the agency's conclusion that BAE failed to comply with requirements for key personnel and determining there was no convincing proof of bias.

“[BAE] challenged absolutely everything about their own evaluation and then correspondingly against the Wexford Group evaluation,” Perry said. “That was a very hands-on, detailed protest.”

When playing offense, Perry and Sheppard Mullin managed to change the tide, at least in the moment, against GAO views of late submissions. Perry's client, USIS PSD, which is now PAE PSI, had been rejected because while it submitted all the necessary documents on time for a Department of Homeland Security contract to support United States Citizenship and Immigration Services field offices, some documents weren't sent to the email address designated under the solicitation.

The GAO has been very strict on timeliness requirements, Perry said, but this time, an outcome prediction conference with the agency indicated it agreed that the bid came in under the deadline and there was no risk of competitive harm, prompting Homeland Security to accept the company's proposal, which was ultimately awarded the work.

Success “is obviously different in each instance,” Perry said. “But in truth it's critical in all of these cases is understanding the procurement, understanding the agency's perspective, what the solicitation required, what the proposals say, and then in the background having the knowledge as to what the law requires.”

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