

Q&A With Sheppard Mullin's Anne Perry

Law360, New York (February 26, 2013, 2:54 PM ET) -- Anne B. Perry is a partner in Sheppard Mullin Richter & Hampton LLP's Washington, D.C., office and co-chairman of the firm's government contracts, investigations and international trade group. Her experience includes bid protests before the U.S. General Accounting Office and the United States Court of Federal Claims, complex litigation in connection with the False Claims Act, litigation in connection with disputes between prime contractors and their subcontractors, claims litigation before the Boards of Contract Appeals, and counseling and litigation in all areas of government contracting including export control. Before entering private practice, Perry worked for the U.S. General Accountability Office handling bid protests.

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

A: I worked on a very large False Claims Act matter that covered five very separate and distinct claims regarding complex cost accounting issues, spanned activities that occurred over 10 years, involved many key witnesses who had retired from the company, and millions of documents. The case was incredibly challenging not only from the management perspective given the breadth of the action, issues and documents, but also because the government cost accounting rules are often difficult to understand even by government contracts lawyers and so it is especially difficult to make them understandable by a district court judge.

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

A: In bid protests filed at the Government Accountability Office, I believe that the regulations should be modified to provide more equality in the process in terms of timeliness. For example, after a protest is filed, the agency whose procurement is being challenged has 30 days to prepare its response to the protest and to provide the relevant documents to the GAO and the protester. The protester, however, has merely 10 days to review the entirety of that response and record and to prepare and submit its comments and any supplemental protest grounds based thereon. This inequality in time to present and argue the case gives the government even more of an advantage than it already enjoys in the protest arena. Moreover, giving protesters additional time to review the record and to prepare comments and supplemental protest grounds would likely result in more efficiently and effectively litigated protests.

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

A: Organizational conflicts of interest are a perennial problem because the issues surrounding the identification and resolution of OCIs are not well understood, either by many government contracting officials or contractors. While there are some issues that clearly constitute OCIs, there are many circumstances in which it is unclear that an OCI exists and yet contractors can be penalized for failing to identify and to disclose such potential conflicts. Without a clear understanding of all of the possible types of OCIs that may exist, it is difficult to establish a compliance procedure to identify OCIs as they arise. Further, many agency contracting officials incorrectly view firewalls as an effective remedy for OCIs when, in fact, such firewalls are only effective for certain types of OCIs. This is an area that is fraught with the potential for mistakes and, unfortunately, the government all too often treats mistakes as fraud.

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

A: Kevin M. McCall is an assistant general counsel for investigations at Northrop Grumman because she both has an incredible grasp on the law and a superb ability to digest even the most complex matters into simple, understandable issues.

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

A: Many years ago, I was successful in obtaining a dismissal without prejudice of an action against my client very early in the discovery process. However, the plaintiff filed an amended complaint many months later, but the court refused to extend the discovery schedule that it had instituted in the initial action. I learned from this experience that you should always seek clarity from the court regarding its pending orders even where the court has dismissed a case.

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