

# TECH **BISNOW**

## BUNDLING AND FIXED PRICES

November 21, 2008

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Can't you just tell from the "government contract speak" title that it's time to resume our latest roundtable at **Morton's** in Tysons? Yep, with Federal IT experts:

- **Jodi Johnson**, former CEO of Oberon
- **Long Nguyen**, CEO of Pragmatics
- **Sudhakar Shenoy**, CEO of Information Management Consultants

Special thanks again to our sponsors **KippsDeSanto** managing director **Bob Kipps** and Sheppard Mullin's **Vic Victorino**, who are also renowned experts in this area, as well as fine diners. We wish we could somehow pipe in the great food to you, dear readers, on this page; but, alas, you'll have to settle for the great conversation.



*KippsDeSanto focuses on M&A transactions, mostly middle market defense and technology companies. Meanwhile, Bob's food is getting cold.*

Our **Doug Anderson** led the conversation:

**Doug:**        **What are the big issues in the M&A world right now?**

**Bob:**        There's still an **active market** for the **best positioned** defense and technology firms as the larger players continue to look to M&A to **reposition themselves** for the market's future needs and demand. That being said, buyers today are being **more discriminating**, resulting in many deals not getting completed. The number of buyers willing and able to pay the often eye-popping prices of recent past has narrowed. One thing I've seen is the increasing amount of **winner-take-all**, multiple-award government contracts continue to be a catalyst for consolidation, because bundling generally makes it more difficult for **mid-size firms** to continue to grow on their own.

**Long:**        I see more and more government agencies leaning toward **multiple-award ID/IQ contracts**. During the last few years, many small and mid-tier companies have won these contracts

as **primes**. These companies have seen the value of these types of contracts as a **solid foundation** for their growth.

**Vic:** I think a big reason behind bundling is **to avoid protests**. If a protest to a single award is successful, the agency's plans and schedule are disrupted. The **agency figures** that by doing multiple award contracts, anybody who is competent can submit a bid and get a contract and, as a result, there are no legitimate protests.



*Long's 23-year-old company has **21 prime contracts** for the Army, DISA, DHS, State, OCC, the IRS, and the FDIC. (We've run out of initials.) Revenues for FY09 are expected to be **\$115M**.*

**Doug:** As a government contractor, what issues keep you up at night?

**Sudhakar:** One of the most important issues is the government's fight for **more fixed price contracts**, but so many contracts change over time that it's almost impossible to determine a fixed price. And **Henry Waxman**, of course, is one of the biggest proponents of this.

**Vic:** One of my first projects, way back in the early

'70s, was when **Lockheed** was on the **brink of bankruptcy**. They got into trouble in large measure because they took on about five major fixed-priced development-to-production contracts, called a **total package procurement** back in the days of Defense Secretary McNamara, even before they knew what they were really building. The resulting cost overruns **nearly killed them**. And that's essentially what Waxman is talking about today: Total package fixed price procurements.

**Sudhakar:** It really looks good at the **front end**, but then conflicts arise and there needs to be renegotiation.



*Vic has focused his law practice on government contracts for the past **38 years** and is part of a team of **16 lawyers** at Sheppard Mullin who **concentrate** solely in this area.*

**Jodi:** We've actually done very well on **fixed price projects**, but I'm only comfortable with them as long as we could define what the customer wants. We never want to be in a position where we would have to say we can't do that for you. Therefore, it is especially important in a fixed price job to articulate exactly what it is that is **being contracted**.

**Long:** We don't mind them. Of course when you write the proposal, we put in the assumptions and so on, but the main thing is not building the **proposal in the assumption**. We want to work with the customers as partners. And once they see that we are really serious about it, they are willing to work with us. A few years ago, the emphasis was on cost plus contracts, then **time and materials**. I expect that the pendulum will swing back in the future.

*David Stegon is at the Kidney Ball Saturday night! Say hi there or send story ideas to [David@Bisnow.com](mailto:David@Bisnow.com).*

