



Statement of James W. Sheaffer, President of CSC's North American Public Sector (NPS):  
Consistency and Recognition of Adequate Mitigation Measures Are Needed

I am Jim Sheaffer, President of CSC's North American Public Sector (NPS). Thank you for sponsoring this meeting on one of the most important issues confronting DoD, its industrial base and all stakeholders in the federal acquisition system. Thanks too for allowing me the opportunity to take part in today's dialog.

This year CSC celebrates its 50<sup>th</sup> anniversary providing both commercial and governmental customers cutting edge Information Technology solutions across the globe. Our specialty is providing IT solutions to complex, mission-critical challenges.

CSC's global revenues exceed \$16 Billion. NPS performs nearly all of CSC's federal contracting with annual revenues of \$6 Billion. Washington Technology's most recent ranking listed CSC as the ninth largest federal contractor.

Over CSC's 50 year history, we have developed expertise by performing a variety of roles serving many industries. Some clients look to CSC to provide solutions. Others look to us to analyze the client's problems and recommend effective solutions based on our intimate knowledge of the IT markets in which CSC participates.

By providing IT, integrated IT technology solutions, and pure IT advisory services, CSC has developed deep IT market knowledge that a pure IT service provider or consulting services company can lack. This knowledge and experience allows us to better serve all our clients. This desirable combination is not unique to CSC. Of course, I do believe CSC is the best at what it does. Many in the IT industry, as well as other industries, similarly serve their clients in multiple roles for any number of valid business reasons. This diversity of experience clearly benefits DoD.

Today we are discussing Organizational Conflicts of Interest (OCIs), the implementation of section 207 of the Weapon Systems Acquisition Reform Act (WSARA)<sup>i</sup> and related congressional mandates. In my prepared remarks I will first show why mitigation should be more widely accepted in accordance with existing regulatory guidance. Then I will review our understanding of the current rules pertaining to OCIs. I will urge that DoD regulations define characteristics of a mitigation approach that should always be acceptable. DoD recognizes that similar techniques can be successfully used to prevent disclosure, misuse, or control of classified aspects of national defense programs by foreign corporate owners. The Senate also recognized the efficacy of limiting control and restricting information flow to mitigate OCIs in the bill it sent to conference<sup>ii</sup> (Senate S. 454) in the process of passing WSARA.

Permit me to note something important for the purposes of this meeting. In all the acquisitions, teaming agreements and business deals I have been involved in or know of, I have yet to hear of one designed to give an unfair advantage to an affiliate in a current or future opportunity. This goes to the essence of the topic of the day, effective mitigation of OCIs.



As our new OFPP Administrator, Daniel Gordon, several years ago noted in his “OCI Paper,” a conflict of interest is “a situation where a person is torn between duties (or loyalty) to two or more different parties.”<sup>iii</sup>

Non-disclosure agreements between businesses that at times compete often cause a conflict of interest. The company receiving the information likely could use it to better position itself or an affiliate in a related future competition if the company or an employee disregarded the non-disclosure obligations. The receiving company and its employees who have the information are both duty bound to strive to best serve the corporate family’s competitive interests and also to honor their nondisclosure obligations to the disclosing company. The duty to protect the information consistently overrides the broader corporate family interests. Without a fundamental belief that non-disclosure obligations will be honored, teaming, joint ventures and traditional prime-subcontractor relationships could not occur.

This normal behavior of industry to honor non-disclosure obligations contradicts any presumption that agreements to mitigate OCIs through information control, such as firewalls, can not be effective.<sup>iv</sup>

As CSC has previously argued to the Senate Armed Services Committee before it amended and then reported out S. 454,<sup>v</sup> GAO’s analyses of “impaired objectivity OCIs” suffers from some flawed premises about corporate conduct. One premise seems to be that an organization acts the same as an individual person, particularly regarding impaired objectivity.<sup>vi</sup> ““Impaired objectivity” is when a company is asked to perform tasks that require objectivity, but another role the company plays casts doubt on the company’s ability to be truly objective (for example, where a company is to give the government an assessment of the performance of firms, where one of those firms is an affiliate of the company giving the assessment).”<sup>vii</sup> CSC believes an analysis of pertinent circumstances in such cases is appropriate to determine if the “doubt” about a company’s objectivity was justified. In making such a determination, important factors that must be considered include:

1. Whether the same individuals are to perform as part of both roles,
2. Whether a single organization is performing both roles,
3. What efforts will be undertaken to keep information about the two roles controlled within the broader organization,
4. Whether managers will have requisite independence, and
5. What other mitigation efforts will help ensure that each organization will perform its different role in accordance with their individual contractual commitments; that is, in the clients’ best interests as defined in the relevant contracts.

One of the principal differences between personal and organizational conflicts of interest is that in addition to relying on the integrity of each individual, an organization can provide processes, management and oversight to ensure the potential conflict does not adversely affect performance. Thus mitigation strategies can be more effective for OCIs than personal conflicts of interests.



Section 205 of S. 454 as passed initially by the Senate required mitigation to *eliminate appearances* of a conflict, which the Conference Committee wisely dropped. Like the Conference Committee, we cannot agree “[T]hat the essence of an OCI is always a matter of appearance.”<sup>viii</sup> As the Conference Committee reported, OCI and mitigation guidance should “ensure that advice provided by contractors is objective and unbiased.”<sup>ix</sup> Thus the essence of a conflict is the inability of the government to be assured contractual obligations will be met. The fact that an individual or an organization might be challenged to achieve objectivity and fairness does raise an OCI issue. Mitigation means the challenges that have given root to an OCI have been made manageable. No mitigation can eliminate an appearance of conflict in all instances.

A final important point: There is a continuing trend toward finding impaired objectivity OCIs. Some view impaired objectivity as extremely difficult or impossible to mitigate. Thus contracting offices have increasingly required companies to divest business units or be deemed ineligible for contract awards. This has already forced several divestitures, including one CSC has agreed to and Northrop-Grumman’s recent divestiture of TASC.<sup>x</sup> Moreover, the wide perception that GAO is second guessing contracting officers and requiring burdensome evaluation and justification of acceptance of mitigation plans, also favors the simple, expedient action (for contracting offices) of simply requiring divestiture. To assure against second guessing and because evaluating OCI mitigation is part of determining a contractor’s ability to perform, approval of mitigation plans should be given the same deference as affirmative responsibility determinations.

Unless we change these circumstances, the defense industry faces wholesale divestiture and restructuring despite the fact that DoD OCI and industrial base policy has *not* changed. If this continues, only two distinct types of firms will remain - those that provide services and those that provide products. Over time, the services only firms will be divided further into those who can provide professional and technical expertise to the government and those that deliver services using their own expertise to produce the deliverables that other service firms will help evaluate. In this future state, much cross fertilization within corporate families will be lost to everyone’s detriment.

Such broad based restructuring of the industrial base, which DoD helped shape, should not be allowed to occur as a second order effect or unintended consequence of contracting office OCI decisions.

We believe DoD should eliminate or severely restrict a contracting officer’s discretion to demand divestiture. When a contractor offers to create legally separate and independently managed organizations with limited flow of information between them, “independent” affiliates, that should suffice to mitigate an OCI because without information and lacking control, undue influence will not occur. An “independent” affiliate is where an affiliated but legally distinct organization, like an LLC, has a majority of board members from outside both businesses who would also would serve as an OCI review committee, no employees are shared, no investment option in parent company stock is provided through any benefits plan or otherwise, information systems are separate, and employees have no automatic right of transfer between the two organizations. Section 205 of Senate passed S. 454 recognizes such OCI mitigation efforts would be adequate.<sup>xi</sup> Moreover, DoD’s Defense Security Service



recognizes that similar controls adequately protect classified information from foreign owners of federal contractors and their governments in the NISPOM,<sup>xii</sup> which applies not only to DoD but 23 other federal agencies.

## **Conclusion**

To address the need for consistency in the treatment of OCIs, recognize adequate mitigation efforts and minimize unintended industrial base restructuring, CSC respectfully urges DoD to use the opportunity presented by section 207 of WSARA to take control by amending the DFARS to:

1. Supplement the definition of organizational conflict of interest in the FAR<sup>xiii</sup> to instruct DoD contracting offices to recognize organizations as distinct from an individual person and to take those inherent differences into consideration in determining whether an OCI exists and the efficacy of proposed remediation plans.
2. State that (a) effective control is required over related organizations before they may be considered affiliates for OCI purposes, and (b) among other factors, contractor agreements to control information sharing, including firewalls, should be presumed effective unless circumstances known to the contracting officer overcome this presumption.
3. State a mere appearance of an OCI is not sufficient to reject an otherwise qualified competitor or contractor, particularly when mitigation efforts make the likelihood of impaired contract performance small.
4. State that if an allegedly conflicted business itself or its affiliate causing the OCI have (a) controls in place to restrict critical information flow between them, and (b) management and oversight mechanisms to police the effectiveness of these controls to ensure both organizations will perform independently and only considering their individual contractual obligations, then such mitigation shall be found adequate for the alleged OCI.
5. Provide for DoD Office of Industrial Policy review before telling an otherwise qualified competitor or contractor that it cannot compete or be awarded a contract unless it creates an "independent" affiliate or it completely cuts its ties with a related organization, that is divests. The affected contractor or competitor must also have an opportunity to comment on the contracting officer's recommendation to the DOD Office of Industrial Policy.
6. Note that a Contracting Officer's evaluation and acceptance of a mitigation plan is part of an affirmative responsibility determination and that forums reviewing such determinations should apply equivalent deference.
7. Provide that one Contracting Officer's determination that an OCI mitigation plan allowing a contractor to compete on a future competition shall be binding upon subsequent contracting officers absent a showing the assumed circumstances considered by the first contracting officer



are materially different than the circumstances actually confronting a subsequent contracting officer.

Again thank you for this opportunity. I hope to explore these issues further through a continuing dialog.

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<sup>i</sup> Pub. Law 111- 23. [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_public\\_laws&docid=f:publ023.111](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ023.111) . Section 207 is also found in 10 U.S.C. §2430 note.

<sup>ii</sup> Weapon Systems Acquisition Reform Act of 2009, S. 454, Sec. 205, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:s454es.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s454es.txt.pdf) , as passed by Senate on May 7, 2009 (“Senate S. 454). Copy of Section 205 attached. The WSARA Conference Report, House Report no. 111–124, pages 37-38, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_reports&docid=f:hr124.111.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:hr124.111.pdf) , emphasizes the need for more consistency through additional guidance to ensure objective and unbiased advice considering the guidance provided in section 205 of the Senate bill by stating:

Existing Department of Defense regulations leave it up to individual elements of the Department to determine on a case-by-case basis whether or not organizational conflicts of interest can be mitigated, and if so, what mitigation measures are required. The conferees agree that additional guidance is required to tighten existing requirements, provide consistency throughout the Department, and ensure that advice provided by contractors is objective and unbiased. In developing the regulations required by this section for cases in which mitigation is determined to be appropriate, the conferees expect the Secretary to give consideration to strengthened measures of organizational separation of the type included in the Senate bill.

<sup>iii</sup> Daniel I. Gordon, *Organizational Conflicts of Interest: A Growing Integrity Challenge*, page 2, download at <http://ssrn.com/abstract=665274> (“OCI Paper”). A slightly different version is available if 35 Pub. Cont. L.J. 25 (2005). All cites here are to the web-version on ssrn.com.

The OCI Paper, while not purporting to be GAO policy, accurately summarized GAO bid protests decision up to that time and proved to be a reasonably accurate prediction of where those decisions have gone thus far. Thus, for convenience, this discussion will use the OCI Paper as organizational, but reasonably accurate device, to represent of a long and continuing series of GAO decisions.

<sup>iv</sup> OCI Paper, *supra* n. 1, page 4, citing ICF, Inc., B-241372, Feb. 6, 1991, 91-1 CPD ¶ 124 at 1, which explicitly notes the decision was based the contracting officers examination of all pertinent facts and should not be cited for “approval of the blanket exclusion of a class of potential contractors on other EPA contracts without a comprehensive consideration of the particular work to be performed.”

<sup>v</sup> CSC White Paper dated March 27, 2009 submitted for consideration during Senate Armed Services Committee deliberations on S. 454, Weapon Systems Acquisition Reform Act of 2009, introduced by Senator Levin and Senator McCain. Attachment A.

<sup>vi</sup> OCI Paper, *supra* n. 1, page 6.

<sup>vii</sup> OCI Paper, *supra* n. 1, page 7.



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<sup>viii</sup> OCI Paper, *supra* n. 1, page 14.

<sup>ix</sup> Conference Report no. 111–124, Pages 37-38 < <http://thomas.loc.gov/cgi-bin/cpquery/T?&report=hr124&dbname=111&>>.

<sup>x</sup> *Nextgov*, Northrop's sale of business unit signals start of a divestiture trend, Nov. 9, 2009 < [http://www.nextgov.com/nextgov/ng\\_20091109\\_8678.php](http://www.nextgov.com/nextgov/ng_20091109_8678.php)>

<sup>xi</sup> This version of the Bill also required these steps to eliminate the appearance of an OCI, which, as discussed before, effectively precludes any mitigation approach.

<sup>xii</sup> Chapter 2, section 3 of the National Industrial Security Program Operating Manual (NISPOM).

<sup>xiii</sup> FAR 2.101



March 27, 2009

**CSC White Paper**

CSC respectfully submits this white paper for consideration during deliberations on S. 454, Weapon Systems Acquisition Reform Act of 2009, introduced by Senator Levin and Senator McCain. The CSC point of contact for this White Paper is Michael K. Love, Assistant General Counsel, 703 641 2232; email [mlove9@csc.com](mailto:mlove9@csc.com)

**THE PROPOSED LEGISLATION PRESENTS ACRITICALLY FLAWED ORGANIZATIONAL CONFLICT OF INTEREST (OCI) POLICY**

***S. 454, Section 205 (b)(1) and (2) provide:***

*(b) ELEMENTS.—The revised regulations required by subsection (a) shall, at a minimum—*

*(1) ensure that the Department of Defense receives advice on systems architecture and systems engineering matters with respect to major weapon systems from federally funded research and development centers or other sources independent of the prime contractor;*

*(2) require that a contract for the performance of systems engineering and technical assistance (SETA) functions with regard to a major weapon system contains a provision prohibiting the contractor or any affiliate of the contractor from having a direct financial interest in the development or construction of the weapon system or any component thereof;*

**DISCUSSION:**

As proposed, these two provisions would substantially change existing law and significantly restrict the access by Department of Defense components to a mature pool of highly skilled analysts. The proposed provisions allow no mitigation of organizational conflicts of interest. If enacted, businesses will be forced to sever financial relations with affiliates and teammates to eliminate even the appearance of a conflict of interest. Some might argue, as discussed below, if an OCI creates “impaired objectivity” existing Government Accountability Office (“GAO”) bid



March 27, 2009

protest decisions hold that such OCIs are not mitigable. However, other forms of OCIs covered by these provisions can be mitigated under existing law; namely, unequal access to information and biased ground rules. The proposed OCI provisions also require no showing that a financial interest in the development or construction of a weapon system does or could impair performance of, or prejudice the systems engineering and technical assistance (“SETA”) contractor’s work. They also fail to consider that the nature of the work performed by a SETA type contractor may present no opportunity for the financial interest to adversely influence the services the government receives. Rather than allow a reasoned judgment to be made after determining the material facts and circumstances, under section 205 as introduced, mere appearances requires a company to dismember its corporate family.

The philosophy underlying section 205 is akin to the flawed OCI policy the GAO, through its bid protest decisions, has developed concerning impaired objectivity OCIs. Practically, GAO’s policy requires restructuring of the industrial base because virtually the only means by which an agency can be assured of satisfactory resolution of impaired objectivity, short of surviving a bid protest, is through requiring divestments of parts of the affected company. GAO’s theory rests on several flawed assumptions including: a) companies, no matter how large, diverse or decentralized act as monoliths, and b) as long as there remains an appearance of impaired objectivity, the OCI has not been adequately mitigated without regard to the reality of the individuals’ conduct and their fairness. See Daniel I. Gordon, *Organizational Conflicts of Interest: A Growing Integrity Challenge*<sup>1</sup> download at <http://ssrn.com/abstract=665274>.

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<sup>1</sup> Mr. Gordon’s discussion, while not purporting to be GAO policy, accurately summarized GAO bid protests decision up to that time and proved to be a reasonably accurate prediction of where it would go. Thus, for convenience, this discussion will use the paper as an easy but reasonably accurate representation of the policy developed by GAO through a long and continuing series of



March 27, 2009

GAO assumes, conclusively, that each affiliate totally controls all other affiliates. Mitigation of impaired objectivity is impracticable, “Where an “impaired objectivity” OCI is at issue, it is difficult to see how a firewall within the conflicted organization would mitigate the OCI, in light of the **assumption** in these OCIs that all employees of the organization will work to further the organization’s interest.” (Emphasis added). Gordon at n. 48. “Impaired objectivity comes into play when a company is asked to perform [advisory type] tasks that require objectivity, but another role the company plays casts doubt on the company’s ability to be truly objective (for example, where a company is to give the government an assessment of the performance of firms, where one of those firms is an affiliate of the company giving the assessment).” Gordon at n. 23. While GAO recognizes that companies have many goals, it nonetheless concludes “all the people and bodies associated with an organization -- whether they are agents, officers, employees, officials, or representatives-- will treat the organization’s interests as, in some sense, their own and want to further them.”<sup>2</sup> Gordon at n. 13. When an organization<sup>3</sup> has many interests, the employee and various affiliates prioritize them in accordance with the affiliate’s interests, which does not support GAO’s conclusion that the interest most detrimental to the government will prevail, that is that the performing affiliate and the employees actually performing the work will bias their work – even though

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decisions. Mr. Gordon also participated in *Aetna Government Health Plans, Inc.; Foundation Health Federal Services, Inc., B-254397 et al.*, July 27, 1995, 95-2 CPD ¶ 129, a seminal GAO decision on organizational conflicts of interest.

<sup>2</sup> The clear assumption is that a company is a monolith, all parts acting jointly in each of its endeavors without regard to the differing missions and business models that may well exist for different affiliates. In fact, the need for different business models and missions may have prompted the creation or maintenance of separate business units.

<sup>3</sup> GAO also erred fundamentally in assuming a corporation composed of many individuals, and often different affiliates, acts like a single person. Because the FAR OCI definition does not distinguish between a living person and a legal entity, GAO *assumes* a corporations act with the same unity of purpose as a single person. Gordon at n. 19 & 20



March 27, 2009

doing so breaches contractual obligations and may subvert the performing affiliate's own interests in serving its immediate clients dutifully. GAO has addressed such arguments and erroneously rejected them in *Aetna Government Health Plans, Inc.; Foundation Health Federal Services, Inc., B-254397 et al.*, July 27, 1995:

*[The awardee]... contends that FAR subpart 9.5 does not apply to "apparent" conflicts of interest, and that a standard based on the appearance of impropriety "has no place in determining whether agencies have met their responsibilities under FAR Subpart 9.5." In our view, the organizational conflict of interest at issue in these protests was not merely an apparent conflict. [The awardee's] dual roles placed it in an actual organizational conflict of interest because of the **prospect** that it would be unable to render impartial advice to OCHAMPUS. FAR § 9.501. Furthermore, we view it as **axiomatic** that a key purpose of FAR subpart 9.5 is to avoid the **appearance** of impropriety in government procurements. [Emphasis added]*

We respectfully submit that GAO erred not only in assuming monolithic organizational action, but in conflating a "prospect" with an "axiomatic" key that used an "appearance" to derive "an actual organizational conflict of interest." Congress should refrain from enshrining GAO's errors in S. 454.

Based on these errors, GAO has rejected traditional mitigation strategies such as individual non-disclosure agreements – which prevent the flow of information often vital to allowing manipulation of work product; and firewalls between corporate business units –which help ensure independence of action. Separate business entities with governing boards comprised of a majority of independent directors and restricted information access would also likely be rejected notwithstanding the U.S. Government's well established policy and practice of permitting analogous



March 27, 2009

independent entities to effectively prevent foreign owners from exercising undue control over their U.S. subsidiaries handling classified information.<sup>4</sup>

Requiring divestiture is an easy “solution.” No judgment, no analysis of the facts and no regard for the consequences make such a rule easy to implement. Government workforce limitations strongly favor simple solutions such as the corporate divestitures that would be required under section 205.

Such a flawed policy will result in the government receiving sub-optimal support from both development and SETA support contractors. As companies are forced to choose between development and SETA contractor roles, the most valuable personnel currently supporting the government in one of those efforts may be moved to other roles within the company rather than becoming part of a divested unit depriving the government of access to their proven competence and experience. The required divestitures will also cause a long period of turmoil in the industry.

Sound industrial base policy, acquisition policy and OCI policy should require evaluation of OCIs based upon a realistic assessment of real, not apparent, conflicts of interest and reasonable mitigation plans rather than a blanket ban on **any** financial connection between a prime product developer and companies looking to provide SETA support to the government on that program.

Nonetheless, we respectfully submit that if Congress concludes that agencies have been and will be unable to spend the time to find the qualified resources to perform and document such assessments, a reasonable compromise is that a SETA

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<sup>4</sup> [National Industrial Security Program Operating Manual](#) (NISPOM) §2-303.



March 27, 2009

contractor should be precluded from having an affiliate that it controls, or that is commonly controlled, which will compete for a material part of the development program on which the SETA contractor is providing the Government with material advice. Thus, if the SETA contractor is providing material advice and its affiliate will be competing for or is performing a material part of the program, the SETA contractor and the affiliate must be independently controlled; in other words, a structural change is required. This means either divestiture or the establishment of a separate business entity with separate employees and officers and a board of directors or its equivalent with a majority of independent members. However, this compromise position should include a provision that permits the head of the procuring activity to waive this requirement if that officer signs a waiver showing it is in the best interests of the government to do so.

**RECOMMENDATION:**

Ideally, Congress should explicitly allow mitigation of impaired objectivity, expressly provide that Contracting Officers will consider the circumstances of an affiliate's independence, access to information and the affiliates' own incentives in judging the adequacy of mitigation efforts, *i.e.*, Contracting Officers will not consider all affiliates as acting as a monolith. In this ideal world, the Government Accountability Office would also defer to Contracting Officer's judgments of adequacy of mitigation plans unless it found the judgment to be arbitrary; much as GAO gives deference to the contracting officer's exercise of discretion in affirmative responsibility determinations.

In the present circumstances, we propose that Subsections 205(b)(1) & (2) of S. 454 should be amended to explicitly allow mitigation through establishment of an



March 27, 2009

independent affiliate. To implement this proposal, these subsections would be amended as follows:

(1) ensure that the Department of Defense receives advice on systems architecture and systems engineering matters with respect to major weapon systems from federally funded research and development centers or other sources that act independently of the prime contractor for the development or construction of the weapon system or any major component;

(2) require that a ~~contract for the performance of~~ systems engineering and technical assistance (SETA) ~~functions~~ contract with regard to provide material judgmental advice on a major weapon system contains a provision prohibiting the contractor or any affiliate of the contractor from having a direct financial interest in an affiliate providing the development or construction of the weapon system or any major component thereof unless that the affiliate who provides the development or construction of the weapon system or any major component is independent provided however, the head of the procuring activity may waive this provision through a written finding that doing so is in the government's best interest.

(3) For these purposes an "independent affiliate" is:

(A) A separate business entity with its own employees and management;

(B) A governing Board that has a majority of members who are not affiliated with the business entity or that entity's affiliates;

(C) Governance procedures that direct the governing board to act solely in the interest of the entity and without regard to the interests of any affiliate except the parent corporation may take and must agree to the following acts:

(i) The sale, lease or other disposition of any of the property, assets or business of the business entity, or the purchase of any property or assets by the business entity that is other than in the ordinary course of business;

(ii) The merger, consolidation, reorganization, dissolution or liquidation of the business entity;



March 27, 2009

- (iii) The filing or making of any petition under the Federal Bankruptcy Code or any applicable bankruptcy law or other acts of similar character; or
- (iv) The initiation of action to terminate the rights of the independent board members.

(D) An affiliate means associated business concerns or individuals if, directly or indirectly,

(i) Either one controls or can control the other; or

(ii) A third party controls or can control both.<sup>5</sup>

(E) A SETA contractor provides system engineering and technical direction for a major weapons system but does not have overall contractual responsibility for its development, its integration, assembly and checkout. *Systems engineering* includes a combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. *Technical direction* includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies.<sup>6</sup>

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<sup>5</sup> Adapted from FAR 2.101.

<sup>6</sup> Adapted from FAR 9.505-1.