

A photograph of a person in dark clothing running across a light-colored, textured surface. A faint circular outline is visible on the ground behind the person's feet.

# What Will the New Year Bring for Government Contractors?

Crowell & Moring Webinar

The webinar will begin shortly. The slides will be made available to you shortly after the webinar.

January 12, 2011

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A photograph of a person in dark clothing walking on a light-colored sidewalk. The person is carrying a briefcase and is captured in mid-stride. A circular shadow is cast on the ground in front of them.

# What Will the New Year Bring for Government Contractors?

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# Policy and Procurement Climate

## *Stan Johnson and Richard Arnholt*

- Spending trends and priorities
- Status of administration's acquisition reforms
- Legislative & regulatory focus
- War on contractors
- Impact on contracting industry



Stan Johnson



Richard Arnholt

# Policy and Procurement Climate

## *Stan Johnson and Richard Arnholt*

### **Reduce, Reuse, Recycle**

- Efforts at significant spending reductions
  - Fiscal responsibility/austerity
  - Entitlements harder to cut than discretionary spending
  - DoD - reduced spending, program terminations
- Focus on greening the government?
  - EO 13514 -"Federal Leadership in Environmental, Energy, and Economic Performance"
  - GSA found feasible for suppliers to report greenhouse gas emissions; green building initiatives; forthcoming DoD report

# Policy and Procurement Climate

## *Stan Johnson and Richard Arnholt*

### **The Government's 2011 Shopping List**

- Needs are evolving
  - Move away from the “tip of the spear”
  - Cyber-security
  - Intelligence support
  - Efficiency through IT improvements (consolidation, cloud computing)
- Renewed attention to infrastructure
  - Massive infrastructure investments required
  - Fiscal constraints – PPPs the only option?

# Policy and Procurement Climate

## *Stan Johnson and Richard Arnholt*

### **Administration's Acquisition Reform**

- Limit private sector interaction (lobbyists)
- Increased transparency
  - New reporting requirements – FAPIIS, Recovery Act; greater accessibility to procurement information
- Labor Initiatives
  - Insourcing and High Road slowed
  - Problematic implementation of project labor agreements; GAO protests; GSA's Procurement Instructional Bulletin 09-02

# Policy and Procurement Climate

## *Stan Johnson and Richard Arnholt*

### Legislation & Regulations in 2011

- FY11 DoD Authorization Act
  - Restrictions on use of quotas for insourcing
  - Oversight/accountability of private security contractors
  - Extension of task order protest jurisdiction to 2016
  - DoD must develop and manage a “highly skilled professional acquisition workforce”
  - Recommend how to reduce barriers for non-traditional suppliers
- 2011 regulatory/legislative agenda
  - OCIs, insourcing, labor initiatives, cyber security

# Policy and Procurement Climate

## *Stan Johnson and Richard Arnholt*

### War on Contractors

- Congressional oversight
- DCAA audits of internal controls
- Quick-draw suspension and debarment officials
  - Suspend first, ask questions later
  - Lower standard for S/D:
    - ✓ Failure of internal controls = suspension?
- Expansive Interpretation of False Claims Act



# Bid Protests

## *Dan Forman and Puja Satiani*

- GAO docket and ramifications
- GAO Task Order jurisdiction
- Potential new protest issues



**Dan Forman**



**Puja Satiani**

# Cost and Business Systems Issues

## *Terry Albertson and Linda Bruggeman*

- Dependent health care costs
- Possible applicability of CAS to foreign contractors
- DCMA/DCAA joint effort to “disposition” old issues
- DCAA/DCMA business systems reviews



Terry Albertson



Linda Bruggeman

# Conflicts of Interest

## *Peter Eyre*

- Organizational conflicts of interest
- Personal conflicts of interest



Peter Eyre

# Small Business Issues

## *Amy O'Sullivan and Gunjan Talati*

- Risk for large businesses
- Limitation on subcontracting
- Future of ANCs



**Amy O'Sullivan**



**Gunjan Talati**

# Government IP Issues

## *John McCarthy*

- Bayh-Dole Supreme Court case
- Proposed amendment to DFARS



**John McCarthy**

# Labor and Employment Issues

## *Rebecca Springer*

- New areas of enforcement
- OFCCP push to expand jurisdiction



Rebecca Springer

# GSA Schedule

## *Cathy Kunz*

- Theories of liability: Continued use of popular theories as well as application of novel theories
- Increased oversight by the government . . . and by the public



Cathy Kunz

# International *Adelicia Cliffe*

- BAA/TAA enforcement
- Export control reforms



**Adelicia Cliffe**



# Middle East Contracting

## *Robert Nichols*

- New areas of enforcement
- Contractor-initiated claims
- Local law



**Robert Nichols**

# Procurement Fraud

## *Bob Rhoad, Kelly Currie, and Jon Cone*

- Increased False Claims Act Enforcement
  - FERA & PPACA Amendments
- FCA Enforcement Trend
- FCPA Enforcement Trend
- 2010 UK Bribery Act



Bob Rhoad



Kelly Currie

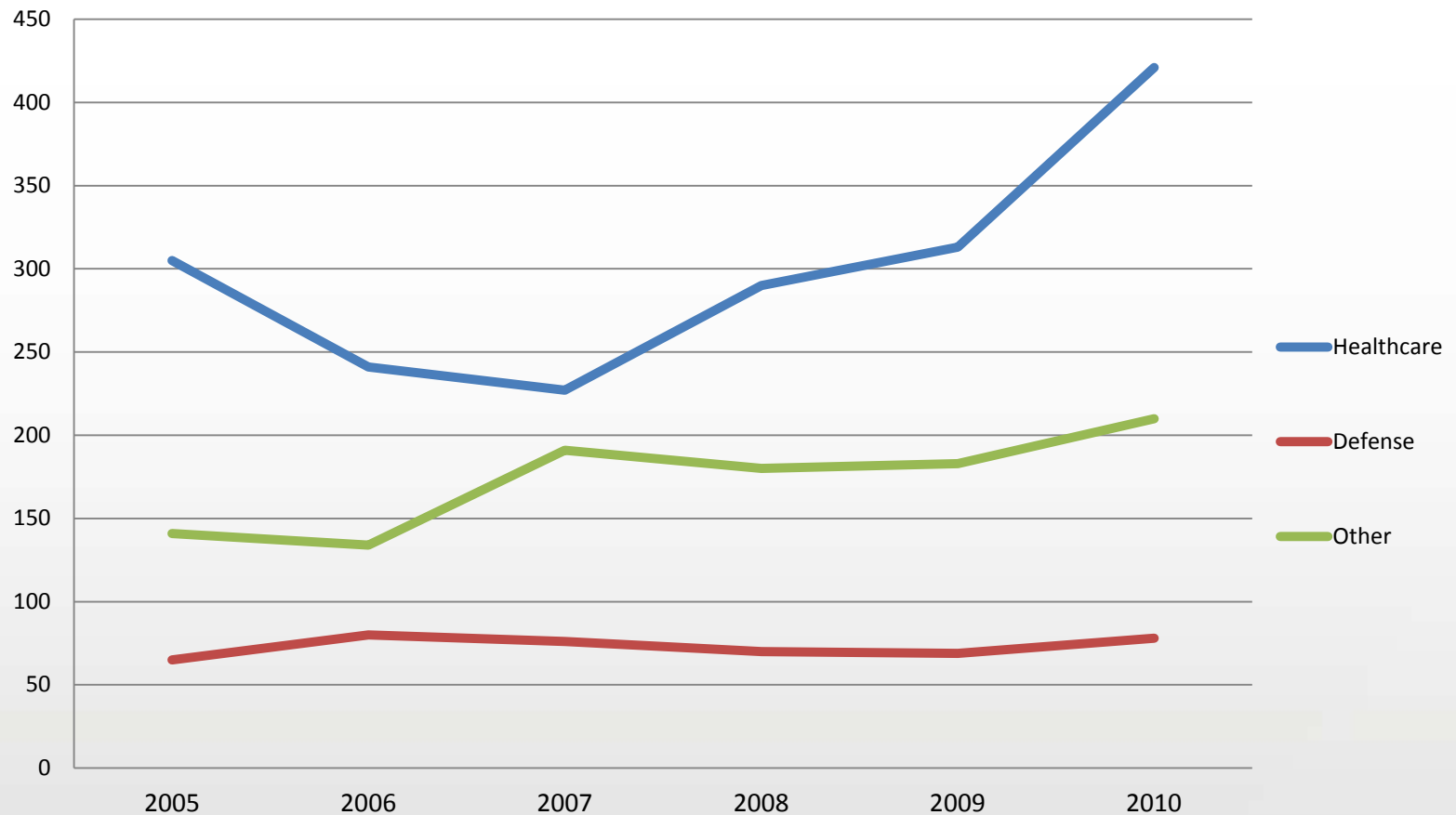


Jon Cone

# Procurement Fraud

## *Bob Rhoad, Kelly Currie, and Jon Cone*

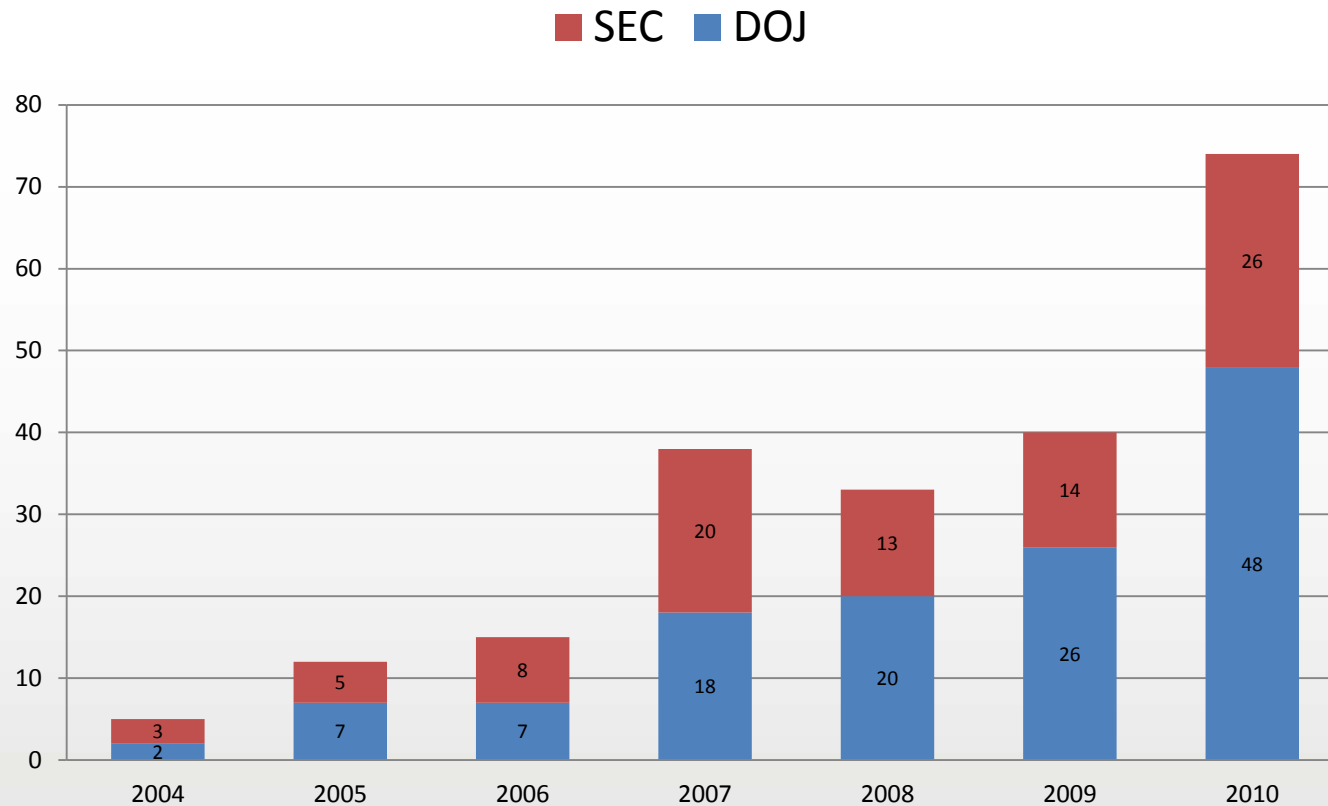
### New FCA Matters 2005-2010



# Procurement Fraud

## *Bob Rhoad, Kelly Currie, and Jon Cone*

### Trend In FCPA Enforcement



# Procurement Fraud

## *Bob Rhoad, Kelly Currie, and Jon Cone*

### UK Bribery Act: FCPA On Steroids

- Effective April 2011
- Covers both Commercial Bribery and Bribery of Foreign Officials
- Crimes:
  - “General” offenses: Giving or Accepting a Bribe
  - Bribe or offer to bribe a Foreign Public Official
  - **Corporate Offense for Failing to Prevent Bribery**
    - ✓ Defense: Adequate Procedures to Prevent Bribery
- Broad Extraterritorial Jurisdiction
- Penalties: Unlimited fines; 10 years in prison
- Possible Debarment/Suspension

# Discussion

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