

Office of Dispute Resolution for Acquisition

Federal Aviation Administration

Washington, D.C.

Protests of

Camber Corporation and

Information Systems & Networks Corporation

Under Solicitation DTFA01-96-R-11087

ODRA Docket Nos. 98-ODRA-00079 and 98-ODRA-00080 (Consolidated)

DECISION ON APPLICATIONS FOR ACCESS TO MATERIALS UNDER PROTECTIVE ORDER

Applications for access to materials under the Protective Order hereto issued by the Office of Dispute Resolution for Acquisition ("ODRA") in the above-captioned consolidated protests have been submitted by Messrs. Alan M. Grayson and Ira E. Hoffman of Grayson and Associates, P.C., as attorneys for protester Camber Corporation ("Camber"), and by Mr. Norman H. Singer of Rudnick, Wolfe, Epstein & Zeidman and Mr. Robert M. Cozzie, as attorneys for protester Information Systems & Networks Corporation ("ISN"). ISN has filed an objection to the applications of Messrs. Grayson and Hoffman. In turn, Camber has filed objections to the applications of Messrs. Singer and Cozzie. In addition, Advanced Management Technology, Inc. ("AMTI"), the awardee-intervenor, has filed its own objection to Mr. Cozzie's admission under the Protective Order. For the reasons set forth below, the ODRA is approving the applications of Messrs. Grayson and Hoffman, but denying those of both Mr. Singer and Mr. Cozzie.

Factual Background

This procedural issue arises from two protests, which were filed by Camber and ISN on June 18, 1998 and June 22, 1998, respectively. The protests both contest an award of a contract under SIR No. DTFA01-96-R-11087 to AMTI for technical engineering services and program management support for future satellite and satellite augmentation systems in support of the FAA Global Positioning System ("GPS") product team. With the admission of AMTI as an intervenor and with the consolidation of the two protests for purposes of adjudication, Camber requested the issuance of a Protective Order, and it was

clear that a Protective Order was needed for the protection against disclosure of confidential and proprietary bidding and source selection materials. Accordingly, a Protective Order was executed by the parties and issued by the ODRA effective on June 30, 1998.

Thereafter, counsel for the non-Government parties, Camber, ISN and AMTI, each submitted applications for access to protected materials under the Protective Order. No objections were received with respect to the applications of AMTI's counsel, L. James D'Agostino, James P. Hodges, and Leigh T. Hansson, all of Reed Smith Shaw & McClay. Accordingly, all three have been admitted under the Protective Order. As stated above, however, objections have been raised with respect to the applications of Camber's counsel, Alan M. Grayson and Ira E. Hoffman, both of Grayson and Associates, P.C., as well as with respect to ISN's counsel, Norman H. Singer of Rudnick, Wolfe, Epstien & Zeidman, and Robert M. Cozzie, an in-house attorney with ISN. All such objections were timely filed in accordance with the Protective Order, *i.e.*, within twenty-four hours of the application submission to the ODRA.

There do not appear to be any specific objections raised with regard to Mr. Hoffman, other than his association with Mr. Grayson's firm. As to Mr. Grayson, counsel for ISN, Mr. Singer, has alleged that Mr. Grayson "has failed to disclose that he has extensively represented ISN . . . in prior legal matters, to include protests before the General Accounting Office ("GAO") and the U.S. District Court (District of Columbia), which involved participation in competitive decisionmaking activities and disclosure of confidential information." In this regard, Mr. Singer has also stated his intent to file a motion with the ODRA to disqualify Mr. Grayson from representing Camber in this matter. Further, Mr. Singer has expressed his doubts about the credibility of the affidavits filed by Messrs. Grayson and Hoffman regarding their non-participation in competitive decisionmaking on Camber's behalf, arguing that such participation on their part is inevitable, considering the purported longstanding representation which Grayson and Associates, P.C. has provided Camber as well as Camber's limited capacity as a small, disadvantaged business enterprise:

Second, it defies credulity to believe that neither Mr. Grayson or [sic] Mr. Hoffman does not provide competitive decisionmaking advice to Camber Corporation. Upon information and belief, Camber was, and is, a small, disadvantaged minority-owned business, which lacks the resources or financial capacity for in-house counsel. It is ISN's understanding that Grayson & Associates, P.C., has represented Camber as outside counsel in government contracts matters for nearly two years. As such, Grayson & Associates has participated in the decisionmaking process of Camber's business operations, to include providing advice on the competitive structuring and composition of bids, offers and proposals. ISN believes that disclosure of Grayson & Associates' billing records and correspondence with Camber will support the contention. . . . It is even more improbable to suggest that legal advice provided by Grayson & Associates to Camber during this uninterrupted, exclusive, continuing

attorney-client relationship is not inextricably intertwined with the company's business judgment decisions, given Camber's small disadvantaged business status. Accordingly, because both Mr. Grayson and Mr. Hoffman have failed to disclose such relationships with Camber, they should be denied access. Their blanket assertions on the formatted applications do not provide justification for access.

Information Systems & Networks Corporation's Objections to Applications of Alan M. Grayson, Esq. and Ira E. Hoffman, Esq. for Access to Materials Under Protective Order By Outside Counsel, pages 2-3.

In their response, counsel for Camber dispute the allegation that Mr. Grayson had previously represented ISN "extensively," deny any prior representation of ISN before the GAO, and state that the only representation which Mr. Grayson had for ISN in the past had been limited to a single bid protest matter before the U.S. District Court for the District of Columbia (*ISN v. United States*, No. 96-2802 (D.D.C., filed Dec. 18, 1996)). This statement was confirmed by subsequent affidavit. Affidavit of Alan M. Grayson, Esq., ¶1. They also dispute that the District Court case "involved participation in competitive decisionmaking activities." In his supplemental affidavit, Mr. Grayson denies that he had given any advice to ISN in the past which related to competitive decisionmaking, including advice on the preparation of bids and proposals or teaming arrangements. *Id.*, ¶3. When asked by the ODR to describe the nature and extent of confidential and proprietary bidding information which was imparted to him by ISN competitive decisionmakers, Mr. Grayson states as follows:

ISN's competitive decisionmakers did not impart any confidential and proprietary bidding information to me. ISN's proposal [which was provided under the District Court's Protective Order] likely contained confidential and proprietary bidding information. I do not remember any of it.

Id., ¶4. He also specifically denies attending any ISN board meetings. *Id.*, ¶5. Finally, in terms of the allegations concerning Mr. Grayson's prior representation of ISN, Mr. Grayson, under oath, denies that he obtained any confidential or proprietary information regarding ISN that could be materially adverse to the interests of ISN in the context of the pending protests. *Id.*, ¶8.

In terms of the doubts expressed by Mr. Singer regarding Mr. Grayson's lack of participation in Camber competitive decisionmaking, Mr. Grayson, again under oath, specifically denies having ever provided advice to Camber with respect to bidding, teaming arrangements or any other matters relating to competitive decisionmaking. *Id.*, ¶7. ISN has presented nothing further to demonstrate otherwise. The extent of his prior representation of Camber is likewise disputed. In this regard, the response filed by Camber's counsel notes that "Grayson & Associates, P.C., and Mr. Grayson, have represented Camber in only one other matter -- GAO Protest B-278695," a protest which they say was instituted seven months ago (not two years, as alleged by Mr. Singer) and

"finished three months ago." Moreover, Camber's counsel point out, "Mr. Grayson is not 'outside counsel [to Camber] in government contract matters.'" Rather, they state, "the law firm of Fried Frank Harris Shrive & Jacobson ("Fried, Frank") provides that service." The full extent of the Grayson firm's "relationship" with Camber, they say, has been limited to the one GAO protest and the present protest before the ODRA. Camber Corp.'s Response to ISN's Objections to Application of Alan M. Grayson, Esq. and Ira E. Hoffman, Esq. for Access to Materials Under Protective Order By Outside Counsel, page 6.

As stated previously, objections have also been lodged against the applications of both of the attorneys seeking admission to the Protective Order on behalf of ISN. In his application, Mr. Cozzie disclosed that, although he was an in-house counsel to ISN, he and two other in-house attorneys at ISN reported directly to Mr. Singer, who is "retained outside General Counsel" for the company. The Detailed Narrative accompanying Mr. Cozzie's application states that Mr. Cozzie's position and responsibilities "primarily include federal government contracts litigation before the Armed Services board of Contract Appeals and U.S. Court of Federal Claims, claims preparation, protests, and other civil litigation in state and federal courts as assigned." The Detailed Narrative goes on to state:

Over seventy-five percent (75%) of my time involves representation of Information Systems & Networks Corporation ("ISN") in these litigation matters. The remaining twenty-five percent (25%) of my duties involve gathering information to respond to government agency inquiries and/or investigations, provide advice on employment matters, and review and/or prepare proposed subcontractor/vendor/teaming agreements and non-disclosure and licensing agreements. I occasionally provide general legal advice regarding interpretation of warranty clauses, Federal Acquisition Regulation provisions, and remedies available for government acts and/or omissions during contract performance/administration. I do not assist, advise, or otherwise participate in the preparation or competitive structuring and composition of bids, offers and proposals, marketing or advertising strategies, product research and development, or product design.

Cozzie Application, Detailed Narrative, ¶5(a). In terms of the two other ISN in-house counsel, the Detailed Narrative states: "They have no involvement in competitive decisionmaking nor do they provide any advice in procurement-related matters. They are primarily responsible for all other federal and state court litigation taskings, as directed by Mr. Singer." *Id.*, ¶5(b). As to Mr. Cozzie's provision of advice on Government contract matters, the Detailed Narrative says that Mr. Cozzie responds to written requests for "legal review/assistance" from the "Manager of Contracts, Mr. Barry Campbell," and that Mr. Campbell -- described by Mr. Cozzie as "the nearest person to me involved in competitive decisionmaking" -- is the one who provides advice on contract matters to the "competitive decisionmakers" whom the Detailed Narrative identifies as the ISN Advance Program Group ("APG"). In this connection, Mr. Cozzie, in his Detailed

Narrative, states: "No proprietary or business confidential information is provided nor am I ever requested to provide a 'bid-no-bid' assessment." *Id.*, ¶5(d).

In the case of Mr. Cozzie, both Camber and AMTI have raised objections to his admission to the Protective Order. Notwithstanding his denial of involvement in competitive decisionmaking, Camber, among other things, points to the Detailed Narrative statements indicating "undiluted concentration of ISN's government contracts legal issues in Mr. Cozzie's hands," arguing that this "warrants the denial of his application." Camber Corporation's Objections to Application of Robert M. Cozzie, Esq. for Access to Materials Under Protective Order for In-House Counsel, page 4. Both Camber and AMTI refer to Mr. Cozzie's involvement in preparing "subcontractor/vendor/teaming agreements" as an indication of involvement in matters important to competitive decisionmakers and as posing "a clear and significant risk of disclosure of protected information," should Mr. Cozzie be granted access to confidential information under the Protective Order. *Id.*; Reed Smith Shaw & McClay L.L.P. letter to the ODRA dated July 1, 1998.

Based on Mr. Cozzie's Detailed Narrative, Camber also seeks to bar Mr. Singer from admission under the Protective Order. In this regard, Camber states:

In his application, Mr. Singer claims that his "professional relationship with the party that [he] represent[s] in this protest and its personnel is strictly one of legal counsel." Singer Appl. ¶4. Mr. Robert M. Cozzie's application for access for in-house counsel contradicts this, however. Specifically, in his application, Mr. Cozzie states that he "report[s] directly to Mr. Norman H. Singer, Esq." Cozzie Appl. 25(b). Mr. Cozzie further states that there are only two other ISN in-house counsel, and both of them are "directed by Mr. Singer." *Id.* ¶5(c). With Mr. Singer supervising all three ISN in-house counsel, his "professional relationship" with ISN personnel obviously is not "strictly one of legal counsel." Indeed . . . , Mr. Cozzie expressly identifies Mr. Singer not as outside legal counsel, but as "retained outside General Counsel."

Camber Corporation's Objections to Application of Norman H. Singer, Esq. for Access to Materials Under Protective Order by Outside Counsel, pages 1-2.

Subsequent to the receipt of these various objections, the ODRA Dispute Resolution Officer ("DRO"), by facsimile letter to the parties dated July 2, 1998, requested responses in the form of affidavits from Messrs. Singer, Cozzie and Grayson to a series of specific questions, in order to aid in the ODRA's ruling on such objections. Camber's objection to Mr. Singer's admission had included a copy of a letter from Mr. Grayson to Mr. Singer dated July 1, 1998, in which Mr. Grayson alluded to a prior GAO refusal to allow a admission under a protective order for an ISN in-house counsel. Among the questions posed to Mr. Grayson by the DRO therefore was the following:

1. In your facsimile letter to Mr. Singer dated July 1, 1998 (Exhibit A to Camber's Objections to Mr. Singer's admission), you allude to "ISN in-house counsel's previous unsuccessful request for admission to the GAO protective order." Please provide details.

The following was Mr. Grayson's response to that question:

In Modern Tech. Corp., B-278695, 1998 U.S. Comp. Gen. LEXIS 69, this office represented Camber, a protester. ISN was another protester against the same award. ISN's in-house counsel Bobby D. Melvin applied for admission to the GAO protective order (Ex. A) He was not admitted.

Affidavit of Alan M. Grayson, Esq., ¶9 (emphasis in original). Also included with the Grayson affidavit (as Exhibit A) was a copy of the application to the GAO by ISN's former in-house General Counsel, Mr. Bobbie D. Melvin. That application contained certain information that gave rise to further questions in the mind of the DRO. Accordingly, by letter dated July 6, 1998 to Mr. Singer, the DRO asked that Mr. Cozzie, as part of the response to the DRO's July 2, 1998 questions, provide answers to the following additional questions:

1. How long have you been employed by ISN?
2. Please state whether you were the individual whom Mr. Bobby D. Melvin referred to in the Narrative In Support of Bobby D. Melvin's Application for Access to Material Under A Protective Order in the GAO protest under B-278695.3 (Exhibit A to Camber Corp.'s Response to ODRA's Questions, etc.) when Mr. Melvin stated:

Of the three other attorneys in my office, one acts as primary legal advisor to the contract administrators. As such, he is sometimes involved in reviewing certain portions of proposals for compliance with the RFP. In addition, he is primarily responsible for preparing the formal agreements for teaming partners, subcontractors and consultants who work with the marketing and operations personnel of the company during the preparation of bids and performance of contract work. This individual, with my occasional review, responds to contract administration questions that arise from the daily management of existing contracts.

3. If you are not the individual being described by Mr. Melvin in the above-quoted paragraph, please identify the person being referred to and state whether that individual is still with ISN. If not, please identify who has assumed the duties of "primary legal advisor to the contract administrators" and state whether that is among your duties.

In response to the DRO's July 2, 1998 letter, Mr. Cozzie, on July 6, 1998, provided an affidavit which states: (1) that his review of "subcontractor/vendor/teaming agreements"

is "to determine jurisdictional issues and appropriate remedies for post-award claims (e.g., non-performance and litigation actions)"; (2) that he reports requests for review of such documents to Mr. Singer "during our weekly attorney meetings"; (3) that he does not "report" "to anyone inside ISN at the present time"; (4) that he had "previously reported to the in-house General Counsel, who departed ISN in April 1998 [purportedly Mr. Melvin]"; (5) that, in terms of verbal communications with Mr. Campbell or his staff, he "on occasion" "will make a verbal request to Mr. Campbell for documents to assist in litigation or for production/disclosure in response to discovery requests"; (6) that "the primary interface [with Mr. Campbell] is by written memoranda; (7) that he has no other discussions with Mr. Campbell or his subordinates relating to subcontractor/vendor/teaming agreements or bids or proposal; (8) that, other than "bid-no-bid" assessments, which he previously stated he had never been asked to provide, he is not asked to provide and has not provided comments with regard to bidding on contracts of any nature; and (9) that, other than what is described in the application and July 6, 1998 affidavit, the only interactions he has with ISN competitive decisionmakers is "an occasional personal greeting." Affidavit of Robert M. Cozzie. As to the three additional questions quoted above, Mr. Cozzie, by supplemental affidavit, states that he has been with ISN since March 1997, that he is not the individual being referred to by Mr. Melvin as the one who "acts as primary legal advisor to the contract administrators," that he believes a "Mr. Carlos Cancel" was that individual, that Mr. Cancel was "terminated in February 1998," that he (Cozzie) has not "been assigned the duties of primary legal advisor [to the contract administrators]," and that, to his knowledge, no one has "assumed these duties in the Legal Department." Supplemental Affidavit of Robert M. Cozzie.

In his affidavit in response to the questions posed to him by the DRO, Mr. Singer reveals, for the first time, that, as of June 1, 1998, he had been elected Secretary of ISN. Affidavit of Norman H. Singer, ¶1. He also states that he has represented ISN "in various corporate and litigation matters since May 15, 1997," that he is also, in fact, "retained outside General Counsel for ISN" through his law firm, that his duties are "to supervise the in-house Legal Department and responsibility for the overall legal affairs of the company," and that he reports to the President/CEO of ISN. *Id.*, ¶¶7, 10 and 12.

By letter dated July 7, 1998, counsel for Camber, in light of the disclosure by Mr. Singer regarding his position as ISN Corporate Secretary, sought to bring to the ODRA's attention a Comptroller General decision dealing with the denial of admission under a GAO protective order of outside counsel who served as an officer of affiliated companies to the party he was representing in the protest. The ODRA was already aware of the decision in that case, *Allied Signal Aerospace Corp.*, B-250822, 93-1 CPD ¶201. Indeed, that case, among others, was the reason Mr. Singer had Mr. Grayson had both been asked about whether they were officers or directors of their respective clients, affiliates or of any potential competitors of Camber, ISN, or AMTI.

Legal Analysis

Access to protected material is not dependent on whether a particular counsel is in-house or is retained as outside counsel. Rather, access is granted or denied on the basis of each

individual counsel's actual activity and relationship with the party represented. *U.S. Steel Corp. v. United States*, 730 F.2d 1465, 1468 (Fed. Cir. 1984). In determining whether counsel may be permitted access to information covered by a protective order, the GAO looks to whether the attorney is "involved in competitive decision making for the client – i.e., whether the attorney's activities, associations, and relationship with the client involve advice and participation in any of the client's decisions (such as pricing, product design, etc.) made in light of similar or corresponding information about a competitor." *Colonial Storage Company; Paxton Van Lines, Inc.*, B-253501.5 *et seq.*, 1993 U.S. Comp. Gen. LEXIS 955; 93-2 CPD ¶234, October 19, 1993, citing *Allied-Signal Aerospace Co.*, B-250822, Feb. 19, 1993, 93-1 CPD ¶201; *U.S. Steel Corp. v. United States*, *supra*.

Where an attorney is involved in competitive decisionmaking, there is an unacceptable risk of inadvertent disclosure of the protected material, if he or she is given access to confidential materials under a protective order. *Id.* Significantly, an attorney can be said to be involved in competitive decisionmaking by working with marketing, technical or contracting personnel on procurements, even if the attorney himself/herself is not a competitive decisionmaker. *Colonial Storage Company*, *supra*.

Although it is often easier for outside counsel to establish that they are not involved in competitive decisionmaking, the admission of counsel is decided on a case-by-case basis, and one should not assume that any attorney's status as outside counsel will automatically be viewed as proof that the attorney is not involved in competitive decision making. *Mine Safety Appliances Company*, B-241279.2; B-242379.3, 1991 U.S. Comp. Gen. LEXIS 1366, 91-2 CPD ¶506, November 27, 1991, citing *U.S. Steel Corp.*, *supra*.

For example, in *Allied-Signal Aerospace Company*, B-250822; B-250822.2, 1993 U.S. Comp. Gen. LEXIS 268; 93-1 CPD ¶201, February 19, 1993, the GAO denied the admission of one of two outside counsel for the intervenor-awardee, where the attorney's role as a competitive decisionmaker presented too great a risk of inadvertent disclosure of protected information. The attorney there, although not an officer of the intervenor-awardee, served as a corporate officer (Assistant Secretary) for two other subsidiaries of a common parent and had represented at least nine subsidiaries of that parent company within the prior 3 years. These facts suggested to the GAO that the attorney had a management relationship with the companies that "cut across corporate boundaries." Given the apparent broad nature of the attorney's relationship with these corporations, the GAO could not confidently conclude that information learned during the representation of one corporate entity could be isolated and protected from inadvertent disclosure, when the attorney also functioned as a competitive decisionmaker for other affiliated corporate entities.

In contrast, in *Mine Safety Appliances Company*, B-241279.2; B-242379.3, 1991 U.S. Comp. Gen. LEXIS 1366, 91-2 CPD ¶506, November 27, 1991, the GAO held that protester's attorneys were properly admitted to a protective order, even though they were associated with a law firm, Reed, Smith, Shaw & McClay, in which the managing partner of the firm's home office served on the protester's board of directors. The attorneys, who had their own offices in Washington, D.C., submitted affidavits which (1) indicated that

the managing partner of their firm (the individual who served on protester's Board of Directors) was located in the firm's Pittsburgh headquarters office, and (2) proposed additional special precautions to isolate information received pursuant to the protective order from other individuals in the firm, and from the managing partner. The GAO determined that under the circumstances and based on the precautions proposed, the risk of disclosure was sufficiently small to warrant granting access to the protected material.

Although it is normally more difficult for in-house counsel to gain admission under a protective order, admission is possible where the record shows that the in-house counsel does not participate in competitive decisionmaking and that there is no otherwise unacceptable risk of inadvertent disclosure of protected information. *Robbins-Gioia, Inc.*, B-274318 et seq., 1996 U.S. Comp. Gen. LEXIS 611; 96-2 CPD ¶222, December 4, 1996. The mere fact that an in-house counsel reports to corporate officials who advise and participate in competitive decisionmaking does not itself establish that the in-house counsel advises or participates in competitive decisionmaking. *Id.*

In determining whether to grant access to documents under a protective order, the GAO considers whether an applicant primarily advises on litigation matters or whether he or she also advises on pricing and production decisions, including the review of proposals, as well as the degree of physical and organizational separation from employees of the firm who participate in competitive decision making and the degree and level of supervision to which the applicant is subject. *U.S. Sprint Communications Company Limited Partnership*, B-243767, 1991 U.S. Comp. Gen. LEXIS 991; 91-2 CPD ¶201, August 27, 1991. Where the facts show there is an unacceptable risk of inadvertent disclosure because the in-house counsel advises his or her company's competitive strategists, admission of an in-house counsel to a protective order will be denied. *McDonnell Douglas Corporation*, B-259694.2; B-259694.3, 1995 U.S. Comp. Gen. LEXIS 523; 95-2 CPD ¶51, June 16, 1995.

Based upon the foregoing case law, there is no question that Mr. Singer ought be excluded from the ODRA Protective Order in this case. Mr. Singer's affidavit clearly evidences his close link to ISN's competitive decisionmakers. He not only confirms that he is the "retained outside General Counsel" for ISN, but that he visits ISN 4 days per week, reports directly to the President and CEO of the firm, and is involved not merely in supervising all litigation for ISN, but has responsibility for the "overall legal affairs of the company." Moreover, he was recently elected Secretary of the company. This situation poses an even greater risk for inadvertent disclosure of confidential information than had been the case in *Allied Signal, supra*, where the outside attorney held corporate offices not in a party to the protest, but in various affiliates. In this case, there is no real distinction between Mr. Singer's role at ISN and that of its former in-house General Counsel, who had been excluded from a GAO protective order.

As to Mr. Cozzie, although the ODRA has no doubts concerning the integrity and veracity of Mr. Cozzie's application for admission to the protective order and in the statements offered in his two subsequent affidavits, the record shows that he reports directly and solely to Mr. Singer, an attorney who is a corporate officer and who reports

directly to its chief competitive decisionmaker, the President and CEO. Moreover, even though Mr. Cozzie has yet to be involved in providing competitive decisionmaking advice, there is no reasonable assurance that he will not be used in that manner in the future. With his background in Government contracts and with no other ISN attorney handling Government contracts issues, the likelihood would appear high that he will be called upon to provide advice in connection with bidding and proposals for future Government contract work. Certainly, considering the fluid nature of the ISN Legal Department over the past year alone (with both the in-house General Counsel (Mr. Melvin) and the "primary legal advisor to the contracts administrators" (Mr. Cancel) leaving and/or being "terminated"), it is hard to conceive that Mr. Cozzie will never participate in advising competitive strategists for his company. Assuming that Mr. Cozzie would be so used in the future, he would be faced with carrying the untenable burden of having to "mentally compartmentalize" the potentially relevant information that would be nondisclosable to his colleagues under the ODRA Protective Order, whenever they seek competition-related advice from him. The plan to have him access protected materials at Mr. Singer's office would also be untenable. Accordingly, the ODRA finds there to be an unacceptable risk of inadvertent disclosure with Mr. Cozzie as well. *See McDonnell Douglas Corporation, supra.*

In terms of Messrs. Grayson and Hoffman, the facts would not justify excluding either of them from admission under the Protective Order. Even though Mr. Grayson had been excluded once by the GAO for having made an unauthorized disclosure of protected information to officials of a Government agency, the Small Business Administration, that violation occurred some six years ago, a point in time which the ODRA considers too remote to pose a significant risk here. In that regard, whereas Mr. Grayson was completely forthcoming in making the ODRA aware of this prior difficulty, current GAO applications do not even require such disclosure, where the infraction occurred more than five years before the date of the application. Moreover, Mr. Grayson has been admitted to numerous GAO protective orders during the intervening years, notwithstanding such infraction. Notably, this included the GAO protective order in B-278695, the one bid protest case in which Mr. Grayson previously represented Camber and in which ISN had failed to raise an objection to his admission based on his prior representation of ISN.

With regard to the allegations concerning prior representation of ISN, those clearly have been rebutted by the facts as stated in Mr. Grayson's affidavit. Initially, it should be noted that, for purposes of the instant proceeding, ISN and Camber are not necessarily adverse parties. Thus, an ethical violation is not readily apparent, merely by reason of the prior representation. Furthermore, in the present instance, where both counts of the initial Camber protest and the sole count of its recent supplemental protest focus solely on issues wholly unrelated to ISN, *i.e.*, issues related to the alleged ineligibility of the Overlook/AMTI team to participate further in this procurement, there is no apparent possibility for Mr. Grayson to make use of ISN proprietary information gleaned from the one prior case he tried for that firm, even if he were to remember such information -- which he swears under oath that he does not. Mr. Grayson has sworn that he has not "obtained confidential or proprietary information regarding ISN that could be materially adverse to the interests of ISN in the context of the pending protests." Affidavit of Alan

M. Grayson, Esq., ¶8. ISN has furnished no evidence that would indicate otherwise, nor has it demonstrated that Mr. Grayson and Mr. Hoffman are anything other than outside counsel to Camber for purposes of this protest. There is no credible evidence that they participate in competitive decisionmaking. Accordingly, the ODRA is satisfied that they should be permitted access to protected materials under the terms of the Protective Order.

Conclusion

For all the foregoing reasons, the applications of Alan M. Grayson and Ira E. Hoffman for admission under the ODRA Protective Order in these consolidated protests are hereby approved and those of Norman H. Singer and Robert M. Cozzie are hereby denied. Protester ISN is advised to secure the services of alternative outside counsel immediately, if it wishes to obtain admission under the Protective Order and access to protected materials for purposes of the pending protests.

_____/s/_____
Richard C. Walters, Dispute Resolution Officer
For the FAA Office of Dispute Resolution for Acquisition

Date: July 7, 1998