



## **Skin in the Game: Questioning Organizational Conflict of Interest**

### **The Space Communications Network at Goddard<sup>1</sup>**

Goddard has always had a key role in space communications for NASA. That role changed significantly with the introduction of the TDRSS (Tracking and Data Relay Satellite System) launched in April 1983 with TDRS 1—the first of many TDRSS satellites that would reduce the need for many ground stations around the world. TDRSS was also an expensive system and was being developed at the same time as the Shuttle. (TDRS B was destroyed in the Challenger Disaster). While the satellites were being built the ground support system also had to be expanded to support TDRSS.

For three decades under several successive follow-on contracts until 2008, Honeywell, in one form or another, had been the main Contractor supplying both near-Earth Network (NEN) and Space Network (SN) communications services to NASA and Goddard.<sup>2</sup> The latest space communications service contract, the Near-Earth Network Services (NENS) contract, was set to expire in 2008 and the re-compete was to be the Space Communications Network Services (SCNS) contract commonly referred to as the “Skins” contract (no relation to the Washington Football team).

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<sup>1</sup> For a detailed history of space communications see: <http://esc.gsfc.nasa.gov/157.html>

<sup>2</sup> The long-time contractors which provided the space communication services for NASA were Bendix, which was acquired by Allied Signal in 1983, and Allied Signal, which was acquired by Honeywell in 1999. Since 2003, Honeywell has been the prime contractor to NASA for the Near-Earth Network Services (NENS) contract.

The primary purpose of the SCNS contract is to perform telemetry, tracking and command services for near-Earth customer missions that utilize the Space and Near-Earth Networks, as well as operate the Satellite Laser Ranging Network, and the Very Long Baseline Interferometry Network. The NASA Space and Near-Earth Networks provide most of the communications for a wide range of the Agency's Earth-orbiting spacecraft, including the International Space Station, the Space Shuttle, the Hubble Space Telescope, and the Earth Observing System satellites, as well as space communications support for other government agencies. SCNS was expected to be worth over \$1 billion for the potential seven year life of the contract and Honeywell was set to bid again. The RFP was released in January 2008, and three proposals were received including one from Honeywell.

A Source Evaluation Board (SEB) was convened and meticulously went through the three proposals evaluating them according to the criteria and specifications in the RFP. One proposal was found to be outside the competitive range and was not considered for further evaluation. This left two companies bidding for SCNS: Honeywell and ITT. After completing their work, the SEB made their presentation to the Source Selection Authority (SSA). On October 8, 2008 the SSA selected ITT as the successful offeror. Honeywell immediately filed a protest with Government Accountability Office (GAO).

In its protest, Honeywell raised several issues, including alleging that ITT had an Organizational Conflict of Interest (OCI) issue.<sup>3</sup> In this regard, Honeywell claimed that under an ITT contract with GSFC, ITT had access to technical information about NASA's near-Earth communications networks, which Honeywell supplied under the cost-type NENS contract. Honeywell alleged that this information gave ITT an unfair competitive advantage in the SCNS competition, and that NASA should have disqualified ITT from competing against Honeywell. Honeywell also claimed, among other things, that the Agency's technical, cost, and past performance evaluation were flawed.

Honeywell raised complaints with Office of Inspector General (OIG), certain members of Congress, and filed a total of six bid protests (though not all related to the OCI allegations) with the GAO. Each time a bid protest was received, the Government had no choice but to execute a sole-source contract extension on the existing Honeywell NENS contract while the protest was being resolved. While this was frustrating for ITT it was lucrative for Honeywell.<sup>4</sup> Some in procurement saw a pattern developing where unsuccessful incumbents almost always protest:

*"It has become a general practice of unsuccessful incumbents who lose a major follow-on contract to file a protest. They know that regardless of the outcome of the protest, that by simply filing a protest it can potentially result in an extension of the existing contract which can be worth millions of dollars in additional work until the protest is resolved."*

## Happy Days in Procurement

Geoff Sage spent nearly two years living in the SEB room between the original SEB session and the reconsiderations during the protest. The stress and strain were tough to handle (Geoff was also newly

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<sup>3</sup> See the FAR section on OCI (subpart 9.5). URL: [https://www.acquisition.gov/far/current/html/Subpart%209\\_5.html#wp1078823](https://www.acquisition.gov/far/current/html/Subpart%209_5.html#wp1078823)

<sup>4</sup> The total of these contract extensions added up to more than \$269M by the end of 2010.

married during this time.) Nothing prepared him for his appearance ‘on the stand’ at a GAO protest hearing. The Honeywell lawyers, GAO attorney, and NASA lawyers kept Geoff on the witness stand for eight and a half hours exploring every facet of the SCNS procurement process. Geoff’s comment on this experience:

*“I learned from sitting there on the stand that sometimes writing emails isn’t the best way to communicate. It’s easy, it’s fast but there is so much room for possible misunderstanding in the original communication and there is lots of room for intentional misinterpretation or misunderstanding if an independent reader is not a part of the full exchange. At the end of the day, we were good, but we left too many opportunities for suggestions of misbehavior that we had to keep explaining. Next time I would be more careful about how I write emails to ensure that the full story was clear.”*

In a source selection process, the different evaluation factors are given an order of importance with Mission Suitability usually being the most important, followed by cost and past performance third. One thing that became apparent in this procurement was that past performance, even though the least important evaluation factor, was a focus of the protest simply because the Offerors were close in the Mission Suitability and Cost evaluations. Geoff commented on past performance:

*“While all of the factors are important in the SEB process, usually we end up having discriminators in the mission suitability or cost (typically the two most heavily weighted subfactors) that can lead to a clear selection decision. When those factors are perceived to be nearly equal between the Offerors or don’t have significant differences all of a sudden past*



*performance which is typically the least important factor can become a very important factor as it can help to tip the scales in a selection. When that happens much more attention gets focused on past performance than it usually gets. We need to make sure we pay just as much attention to past performance in the process because this could easily happen again.”*

Figure 1. The SCNS SEB room where Geoff ‘lived’ for nearly two years.

As a result of Honeywell's communications with certain members of congress, the Office of Inspector General (OIG) initiated a formal investigation into determine if any criminal or unlawful conduct had occurred in the course of the bid process. After examining nearly 100,000 documents and interviewing 67 people involved with the process the OIG concluded:<sup>5</sup>

*“In sum, after evaluating the information gathered in the course of our investigation and consulting with the Department of Justice and the Office of Government Ethics, we found insufficient evidence to sustain Honeywell’s allegations. Specifically, we found no evidence that [employee name withheld] violated federal laws relating to procurement practices or restrictions on his post- government employment. Nor did we uncover evidence that ITT personnel engaged in any criminal misconduct during the procurement or used Honeywell’s proprietary information preparing ITT’s bid for the SCNS contract.”*

ITT settled into full performance of the contract nearly 3 years after the initial RFP was issued. The extra cost of the contract extensions was estimated by Goddard procurement in excess of \$1M per month for nearly two years or more than an estimated \$15-20M not including legal expenses.

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<sup>5</sup> National Aeronautics and Space Administration Office of Inspector General, “Investigation of Alleged Misconduct During NASA’s Procurement of Space Communications Network Services,” Investigative Summary, December 9, 2010. Available at: [http://oig.nasa.gov/investigations/SCNS\\_final\\_report.pdf](http://oig.nasa.gov/investigations/SCNS_final_report.pdf)