

## Intelligence Brief 1.1

### Contents

- **Welcome from William F. Marshall** - An introductory note from our President
- **Retired Senior Intelligence Official Joins Veritas Board** - Extending greetings to Jim Campbell
- **Competitive Intelligence: Know Thy Adversaries** - A growing necessity for modern business
- **Federal Acquisition Regulations - U.S. Government Contractors Face New Burdens**

### Welcome from William F. Marshall

I am pleased to present to you the inaugural issue of the Intelligence Brief – a newsletter designed to discuss issues in the arena of international information gathering, business intelligence, and security.

In today's globalized economy, with massive foreign direct investment and capital flows between Western industrialized countries and developing markets, and from emerging markets such as China, India, and the Middle East into the West, the need to know with whom one is dealing has become paramount.

This requirement for credible information about people, companies, and events worldwide is magnified by the proliferation of terrorist and criminal organizations around the world, new legislation in the West designed to identify these groups and their financial facilitators, increasing sophistication of criminal enterprises, and technological advancements making fraud easier and its perpetrators more difficult to detect.

As a professional whose company has interests overseas – whether in the form of a potential acquisition or investment in a foreign country, an insured traveler who died while on vacation abroad, or an adverse foreign party in litigation with your client – you understand the importance of high-quality, reliable information obtained quickly and cost-effectively from challenging locations. The retrieval of such information in many parts of the world presents unique hurdles, often far more daunting than those typically faced in the West. The reasons for the difficulties in acquiring good information overseas are numerous, but may include: outdated information archival systems; antiquated or non-existent databases; authoritarian governments' fear of investigators and mistrust of

outsiders; corruption among government officials and commercial interests; and strict privacy laws. Law firms, multinational corporations, insurance companies and others with commercial interests overseas encounter these obstacles every day.

The goal of this quarterly publication is to offer interesting insights on these issues, drawing on the many years of experience among our staff, our advisory board, and our associates in government and business intelligence. We hope you find it informative.

All the best,

William F. Marshall  
*President & CEO – Veritas Intelligence*

---

### Retired Senior Intelligence Official Joins Veritas Board

James E. Campbell, a former senior CIA executive and current international business consultant, joined the Veritas Intelligence Advisory Board on October 10, 2008. Jim retired from the senior ranks of the U.S. Central Intelligence Agency in 1993 following a career which featured a series of overseas assignments focusing on the Near East and Africa. Upon leaving federal service he helped found a company which, for the next 14 years, provided advice and guidance to a number of "Fortune 50" companies engaged in international business.

In 2007, Jim established the Washington Assessment and Analysis Service, which publishes a free weekly multi-lingual foreign policy report on the web which can be found at [www.theswoop.net](http://www.theswoop.net). The Swoop is a source of information about U.S. international policy: political, military, financial, and commercial, designed

for global readers who need an accurate, objective, and independent understanding of American intentions.

Jim joins other former colleagues from the CIA also serving as Veritas Intelligence Advisors: Michael Shanklin and Richard Holm, as well as retired Assistant Director of the National Security Agency, Gerard P. Burke, who serves as chairman of the board. Other board members include Fred Hegner, a retired executive with the insurance company AIG; Lawrence Cosgriff, Senior Vice President, Government Services, of the international maritime firm Inchcape Shipping Services; and Ken Ducey, Senior Partner at corporate advisory firm Stamford Capital, LLC.

Veritas CEO, Bill Marshall, has had a long association with Jim. Bill said of the new addition to the advisory board: “Jim is an intelligence sage, whose expertise, particularly regarding Middle East and North Africa business and security issues, is unparalleled. In his role as an advisory board member, I will be able to call on his wise counsel, as I already have been informally for years, as we take Veritas to the next level in the field of international business intelligence.”

**"Jim is an intelligence sage, whose expertise, regarding business and security issues, is unparalleled"**

### Competitive Intelligence: Know Thy Adversaries

Competitive Intelligence (CI) is a term often conflated with industrial espionage, theft of intellectual property, bribery, and other illegal or unethical practices. In truth, proper CI practitioners adhere to strict legal and ethical standards. The legal parameters are defined by the Economic Espionage Act of 1996 and antitrust legislation relating to the sharing of price and marketing data between rival companies. The ethical standards are by definition determined by the ethics of the person within a corporation assigned to formulate a Competitive Intelligence program and will be, or should be, governed by a corporate CI Code of Conduct. The Code of Conduct should be informed by the best practices in this field as defined by reputable organizations, such as the Society of Competitive Intelligence Professionals (SCIP), and in consultation with corporate counsel.

CI is a fast-growing and increasingly indispensable discipline. Bonnie Hohhof, Director of Competitive Intelligence Information and Research at SCIP – a leading organization in this field – notes that although empirical data is largely lacking, anecdotal information

indicates that the number of specialty firms providing CI services to corporate and legal clients has grown.

Additionally, many larger corporations are creating in-house CI units tasked with keeping their firms apprised of developments in their markets. It is particularly incumbent on companies involved in rapidly advancing industries, such as telecommunications, information technology, and biomedicine, as well as those heavily engaged in research and development (such as the pharmaceutical and defense industries) to stay abreast of the strengths, weaknesses, opportunities, and threats posed by their industry competitors. A well-formulated, rigorously structured CI program is fundamental to achieving that goal. Such a program should be designed around the core principles of the intelligence cycle – intelligence consumer taskings, information collection, analysis, dissemination, and feedback.



A good example of the pitfalls of not watching one's competition closely enough can be found in the coffee chain Starbucks. Howard Schultz, Starbucks' visionary chairman and CEO, grew Starbucks over a 20-year span from a four-store operation to a chain of 16,000 cafés worldwide by introducing chic European-style coffee drinks to American consumers. Mr. Schultz stepped down as the company's CEO in 2000, staying on in the role of Chairman. In 2007, the company's fortunes began to slide as its stock price, propelled in part by a November 2007 report of a year-over-year drop in average U.S. café register sales, fell to just over \$17 a share by May 2008 from its November 2006 peak of just over \$40 per share – a 56 percent decline in 18 months.

Stunningly, in a February 2007 analyst conference call, Starbucks' then-CEO, Jim Donald, when asked about Starbucks' competition (specifically, McDonald's new

premium coffee), reportedly said: “I don’t know the details.” Then four months later, when discussing the company’s financial results, Donald was reported to have said, in response to a question about the company’s competition, “We don’t really consider [the competition].” These statements are breathtaking admissions coming from the CEO of a Fortune 500 company with dozens of competitors trying to capture his company’s market share. One would expect informed decision-making based on the products and market shifts of one’s most dominant rivals in a tremendously competitive market like retail coffee shops to be a principal duty for a company’s CEO. Of course, this ignorance may also have played a part in Donald’s sacking in January 2008 and his replacement by the firm’s former CEO and current Chairman, Howard Schultz.

Critical to Starbucks’ decline were the introduction of better coffee drinks by its principal competitors, McDonalds and Dunkin’ Donuts, as well as design changes to McDonalds stores to emulate the “Starbucks experience”, such as wireless Internet capability, more comfortable seating, and more muted color schemes in McDonalds’ franchises. Of course other factors played a role in Starbucks’ travails, such as a weaker economy resulting in declining disposable income, which favors lower priced franchises like McDonalds, but the failure to closely monitor its competitors was an egregious oversight by its erstwhile CEO. Schultz recently announced the planned closure of 600 Starbucks outlets. A robust CI program for a company operating in such a highly competitive market may have spared Starbucks some of this painful cost-cutting.

The ability to gather information about one’s competitors through lawful and ethical means has never been greater. The sources of information available today through industry trade publications, industry supplier and buyer data, blogs, market surveys, government regulatory bodies, industry analysts, media reports, licensing authorities, and a myriad other open-source repositories are vast.

Senior corporate management has a fiduciary responsibility to scrutinize their competition and know the challenges that confront them. Too often we have seen companies conduct competitive intelligence only after they are so far behind their competition that efforts to recover their edge will be unnecessarily costly

and time-consuming, or sometimes even futile. These clients could often have maintained their competitive advantage merely by paying attention to their rivals and changing market conditions through a robust CI program.

---

## **Federal Acquisition Regulations: U.S. Government Contractors Face New Burdens**

U.S. Government contractors should be aware of new and potentially onerous regulatory burdens they will be forced to confront should federal regulators have their way. Proposed changes to the Federal Acquisition Regulations (FAR) could impose new, far-reaching, and costly compliance and investigatory requirements on government contractors, particularly those who engage foreign subcontractors in the performance of their work for the Federal Government.

The proposed changes are sometimes collectively referred to as the “KBR Rule”, as they arose from the investigation of Halliburton subsidiary KBR over allegedly fraudulent practices in connection with Defense Department contracts in Iraq. The proposed rule changes fall under FAR case 2007-006 under the rubric ‘Contractor Compliance Program and Integrity Reporting.’ The proposed rule changes, one published on November 14, 2007, and a related second proposed change, published May 16, 2008, would impose several new requirements on prime contractors. Among them, contractors would be required to “self report” instances in which the contractor has “reasonable grounds to believe” that a violation of Federal criminal law by a principal, employee, agent, or subcontractor of the contractor has occurred in connection with the award or performance of its contracts or subcontracts. Contractors whose contracts meet certain dollar and duration thresholds would also be required to have in place a business code of ethics and an in-house compliance program to detect and report potential fraud. Additionally, the rule changes add to the grounds for suspension and debarment for a contractor’s “knowing failure to timely disclose” any possible violation of the civil False Claims Act (FCA).<sup>1</sup>

---

<sup>1</sup> The entire text of the first proposed rule change relating to FAR Case 2007-006, dated November 14, 2007, can be found at <http://edocket.access.gpo.gov/2007/pdf/07-5670.pdf>. The text of the second proposed change, dated May 16, 2008, can be found at <http://edocket.access.gpo.gov/2008/pdf/E8-11137.pdf>.

Perhaps the most challenging stipulation of the proposed rule changes, if they are eventually enacted, is that the provision for mandatory self-reporting of potential violations of U.S. criminal law “applies to contracts to be performed outside the United States.” In letters published on January 18, 2008 and July 15, 2008, the Public Contract Law Section of the American Bar Association comments extensively on both the legal and practical problems it sees with various aspects of the proposed rule changes. The ABA notes particularly the importance the government will place on prime contractors’ investigations of potential wrongdoing. They write:

**"The practical considerations of implementing these proposed rule changes have eluded those who formulated them"**

Considering the severe suspension/debarment sanction that a contractor may face under the Proposed Rule, contractors (with some exceptions for small businesses) will be required to establish comprehensive compliance programs and maintain extensive records any time they investigate allegations or suspicions of such violations. Even if a company determines that disclosure is not required, the contractor must still document its investigation to enable it to demonstrate later the *bona fides* of its investigation and explain why it did not believe that there had been a violation of federal criminal law that required disclosure. If the contractor fails to keep adequate records of its decision-making process, and it is later determined that the contractor was in fact required to disclose the purported wrongdoing, the contractor would be hampered in defending itself against a threatened suspension/debarment.<sup>2</sup>

Investigations of subcontractors, employees, agents, and principals suspected of wrongdoing by contractors will be difficult enough in the United States, where widespread access to public records, such as corporate filings and criminal histories, a common language and culture shared by the prime contractors and those suspected of wrongdoing, and relatively easy access to individuals for the purposes of interviews regarding activities in which they have engaged exists. Consider the difficulties facing a contractor who suspects a foreign subcontractor of violating U.S. criminal law or violating the Civil False Claims Act.

Many countries in which contractors engage foreign subcontractors have opaque or outdated recordkeeping systems. Restrictive privacy laws make many records which we in the United States consider public off-limits to third parties. In the United Kingdom, for example, the Data Protection Act only permits criminal records to be accessed by the individual to whom the criminal records pertain. If a person wishes to prove that he does not have a criminal record, he must make an application at the police station nearest to his residence, and even then the police will only provide a "Criminal Conviction Certificate" which indicates if the person has or has not been convicted of a crime. Moreover, under Britain’s Rehabilitation of Offenders Act (ROA), persons convicted of all but the most serious criminal offenses and spend fewer than two and a half years in prison are entitled to have their criminal convictions “purged” from official records if they are not charged with a subsequent crime for a certain period of time (the “rehabilitative period”). The length of this rehabilitative period varies depending on the severity of their crime. Under the ROA, ex-convicts are also not required to divulge their prior convictions (known as “spent convictions”) once purged, even when applying for jobs. There are some exceptions, such as jobs involving contact with children. These laws illustrate the unique challenges contractors are going to face in conducting any meaningful investigations of foreign subcontractors.



Similarly, an American contractor investigating a foreign subcontractor may face a myriad of other difficulties specific to the locale of the subcontractor. An American investigator is very unlikely to have success, for example, in conducting interviews in Japan, China, or other characteristically insular societies,

<sup>2</sup> American Bar Association Section of Public Contract Law, comment letter on FAR Case 2007-006, “Contractor Compliance Program And Integrity Reporting”, 72 Fed. Reg. 64019, dated January 18, 2008.

where local residents are generally highly suspicious and uncooperative toward an American interviewer, or even to someone from outside their own ethnic group or city.

In Middle Eastern cultures, another challenge confronting investigators looking into the questionable activities of a subcontractor is the institutional paranoia of the autocratic regimes which control many of the countries in that region. Authorities in many of these societies tend to see questions posed by inquisitive outside investigators as threatening, even when they are of a purely commercial nature. There is no such thing in most Middle Eastern countries as the profession we call “private investigator.” People making inquiries can often make officials nervous, particularly if the people or companies that they are inquiring about are politically or socially connected. Since many companies operating in Arab countries must be part-owned by local partners that in some cases may be high-profile members of the elite, one runs the risk of antagonizing the very governments whose cooperation and blessing the prime contractor conducting the investigation may need for its operations in those countries.

The practical considerations of implementing these proposed rule changes seem to have eluded those who formulated them, even apart from the subjective nature of many of the legal issues entailed in them, which have been discussed by legal analysts. Investigating the actions of foreign subcontractors on non-U.S. soil poses challenges beyond the imagination of the policymakers by whom these proposed rule changes were created.

---

### **William F. Marshall, President & CEO**

Prior to founding Veritas, Mr. Marshall was Managing Director of global investigations firm GlobalSource LLC. He has also served as the head of the North American Investigations Division of ArmorGroup, Senior Investigator for the Investigative Group International, and as an Intelligence Analyst with the U.S. Drug Enforcement Administration, specializing in money laundering methodologies, trends and detection techniques.



### **About Veritas Intelligence**

Veritas Intelligence enables its clients to succeed in complex or hostile business environments. To this end, Veritas Intelligence provides a broad range of investigative, intelligence, financial and research services to help clients reduce risks, solve problems, and capitalize on opportunities.

Veritas Intelligence is headquartered in the Washington, DC metropolitan area with a branch office in London, United Kingdom. Veritas Intelligence serves a global clientele of law firms, financial institutions, multinational corporations, insurance carriers, investment organizations, non-profit organizations, and high net worth individuals. Our operational hubs in the Washington, DC area and London oversee our global network of investigators who are located across the world.

---