



# Overcoming OCONUS Business Risks to be Successful

**Moderator:** Ms. Charysse Knotts, PE, PMP, LEED AP, F.SAME | Director  
Federal Services Europe | Black & Veatch Special Projects Corporation

## Speakers:

- Mr. Daniel J. Alexy | Senior Counsel | Black & Veatch
- Mr. Chris Decker, PE | President | Planate Management Group



Take Note of Emergency Exits



Silence Your Mobile Devices



Earn 1 PDH Credit for Attending this Session.



This Session will be recorded for future viewing in the Virtual Event Platform



Presentations will be posted in the Virtual Event Platform post conference



# SPEAKER

**Dan Alexy | Senior Counsel | Black & Veatch**



- Most interesting flight: hot air balloon in Africa
- Favorite Micro Brewery: Southern Tier
- Hobby: off-roading Jeep in Blue Ridge Mountains



# Black & Veatch OVERVIEW

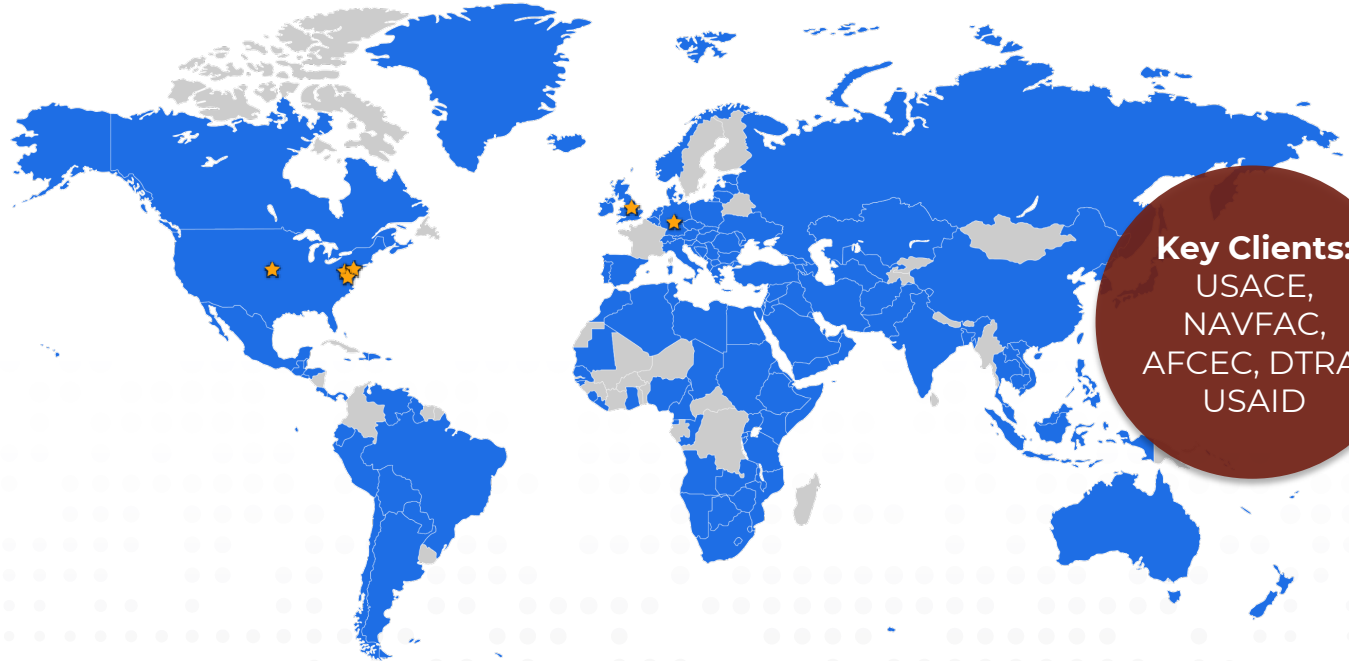
- Providing Critical Facility and Infrastructure Solutions that Strengthen our National Security
- Experts in deconflicting U.S., NATO, and HN requirements and codes



Countries where BV has performed work



BV Federal Centers of Expertise Office Locations



**Key Clients:**  
USACE,  
NAVFAC,  
AFCEC, DTRA,  
USAID



# SPEAKER

**Chris Decker, PE | President | Planate Management Group**



- Sports Teams: Wounded Warrior Games: Disabled Olympics
- Vacation Spots: Philippines and Kenya
- Hobbies: Reading books and Executive education
- Did you know I do Partnering facilitation on large federal service contracts for over 25 years?





# WHEN IN ROME



**Compliance:** Contractors must comply with host country laws and regulations when performing work OCONUS pursuant to a U.S. government contract



**Cost and Schedule Impacts:** It is critical to gain an understanding of the potential impacts of host nation laws early during the pursuits / proposal preparation process



**Solicitation Review:** Determine where the project will be executed; many IDIQ contracts are regional or global, whereby each task order could be performed in a different country (e.g., DOS Overseas Building Operations; USAID; DOD AE & Construction; DTRA)



# CONTRACT CLAUSES

## **FAR 52.236-7**

### **Permits & Responsibilities**

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work.

*(This clause has been applied to OCONUS projects)*

## **DFARS 252.222-7002**

### **Compliance with Local Labor Laws (Overseas)**

- (a) The Contractor shall comply with all;
- (1) Local laws, regulations, and labor union agreements governing work hours; and
  - (2) Labor regulations including collective bargaining agreements, workers' compensation, working conditions, fringe benefits, and labor standards or labor contract matters.

## **DOSAR 652.242-72**

### **Authorization and Performance**

- (a) The contractor warrants the following:
- (1) That it has obtained authorization to operate and do business in the country or countries in which this contract will be performed;
  - (2) That it has obtained all necessary licenses and permits required to perform this contract; and,
  - (3) That it shall comply fully with all laws, decrees, labor standards, and regulations of said country or countries during the performance of this contract.





# GOVERNING AUTHORITY

**What instrument authorizes the United States Government to be present in the host country?**



Obtain and review the instrument that allows the United States government and its contractors to perform a project in the host country, i.e., the “governing authority” instrument



Governing authority could be a Status of Forces Agreement (“SOFA”), treaty, cooperation agreement, diplomatic note, or some other instrument executed by the United States government and the host government



# SOFAs

**Commonly exempt contractors from host nation taxes, fees, customs duties, registrations, and other obligations that would otherwise apply to the company. Confirm that a SOFA exists and whether it applies to your company's project.**



## Romania SOFA (October 30, 2001)

United States citizens, firms, and third country nationals, firms, and corporations exclusively serving the United States forces shall be exempt from the laws and regulations of Romania, or any subdivision thereof, with respect to the terms and conditions of their employment and licensing and registration of businesses and corporations. Such contractors shall also be exempt from all income and corporate profit taxes arising from the delivery to the United States forces of goods or services, or from construction of facilities.



## Poland SOFA (December 11, 2009), Article 33

Contains seven paragraphs which outline visa information, business registration requirements, taxation, the use of facilities and other issues.



**PRACTICE TIP:** Check and assess the solicitation and the United States Department of State *Treaties in Force* publication (*country-by-country index*)



# OCONUS CONSIDERATIONS



**Host Nation  
Legal Presence**



**Authority to  
Enter Country**  
*(Visa & Work Permit Requirements)*



**Host Nation  
Labor & Employment Laws**



**Taxes**



**Anti-Corruption  
Compliance**



**Export Controls  
Compliance**



# LEGAL PRESENCE



Performing the USG project in a host nation commonly requires the contractor to establish a legal presence in the host nation. The host nation may require the U.S. contractor to establish a specific kind of business entity:

## BRANCH OFFICE

Direct extension of the U.S. parent company and can engage in core activities such as sales and contracts. A branch office is not a separate legal entity from the parent company; it cannot independently participate in the general business. It performs support and implementation-related tasks without having independent business discretion and is entirely dependent upon the company headquarters.

## SUBSIDIARY COMPANY

More complex than a branch office; entirely separate legal entity established by the parent company to do business in a country. As a distinct legal entity, the subsidiary provides the parent company with an additional layer of protection from liability. Depending upon the country, the law may require a local “sponsor” to own a percentage of the subsidiary. A U.S. contractor may consider subcontracting the prime contract to its host nation foreign subsidiary if appropriate.



# ENTRY REQUIREMENTS



**You can't perform the contract if you can't get into the country!**

- Immigration compliance: visas and/or work permits may be required by the host nation
- Ability to obtain entry documents commonly depends upon the type of legal presence that the contractor has established in the host nation



**PRACTICE TIP:** get help from experts--larger companies have in-house resources (e.g., international HR, global mobility teams, etc.) and international law firms are set up to assist with country-specific entry requirements



# EMPLOYMENT & LABOR LAWS



**Some things to consider regarding host nation employment and labor laws:**

- No “at will” employment doctrine
- Written employment agreement commonly required
- Employee Handbooks
- Employee probation periods, separation, EOSG
- Privacy



# TAX

## Contract Clauses FAR 52.229-6 Taxes

**Foreign Fixed Price Contracts:** requires a contractor to include taxes and duties in its price, except those that the United States and host nation have agreed shall not be imposed.

## Corporate Income Taxation Permanent Establishment (“PE”)

Performing the contract could result in the contractor having a taxable presence in the host nation. This potentially includes projects that the contractor is executing at a U.S. military base or U.S. embassy in a foreign country. PE triggers foreign corporate income tax return filing requirements and potentially host nation income tax liabilities (project revenue and costs allocated to the foreign legal entity); potentially withholding tax requirements regarding payments made by the PE to local subcontractors; reporting requirements to the IRS.

## Payroll Reporting And Compliance

If the U.S. contractor has a PE in the host country, then host nation payroll reporting and compliance is commonly triggered for U.S. expatriate employees and third country employees. A company may structure a host nation payroll (a “parallel” or “shadow payroll”) in conjunction with the U.S. payroll for its employees working overseas in order to effectuate certain tax exemptions. This commonly occurs when U.S. expatriate employees are subject to foreign income tax withholding in the host nation.



# TAX

## VAT

Host nation value-added tax (“VAT”) exemptions may or may not be addressed in the governing authority or tax treaties. VAT can apply when the U.S. contractor imports or exports equipment or supplies into or from the host nation. Payments to suppliers and subcontractors within the host nation can also be subject to VAT.



## PRACTICE TIPS:

- Plan early in the solicitation phase to mitigate risk of exposure to U.S. and host nation tax liabilities
- Risks: noncompliance with host nation corporate income tax return filing requirements; payroll tax reporting; VAT requirements; U.S. international tax reporting rules
- Check applicable SOFA and tax treaties; agency-specific bilateral agreements (e.g., “umbrella agreements”)
- Seek expert guidance



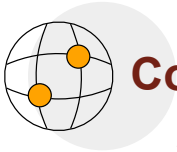


FEDERAL  
SMALL BUSINESS  
CONFERENCE

NOV  
15 - 19



# EXPORT CONTROLS



## Contract Clauses

252.225-7048 Export-Controlled Items

EXPORT CONTROLLED ITEMS (JUNE 2013)

(a) **Definition.** “Export-controlled items,” as used in this clause, means items subject to the Export Administration Regulations (EAR) (15 CFR Parts 730-774) or the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130). The term includes:

(1) **“Defense items,”** defined in the Arms Export Control Act, 22 U.S.C. 2778(j)(4)(A), as defense articles, defense services, and related technical data, and further defined in the ITAR, 22 CFR Part 120.

(2) **“Items,”** defined in the EAR as “commodities”, “software”, and “technology,” terms that are also defined in the EAR, 15 CFR 772.1.

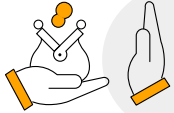
(b) **The Contractor shall comply with all applicable laws and regulations regarding export-controlled items**, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.

(c) **The Contractor's responsibility to comply with all applicable laws and regulations** regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.





# ANTI-CORRUPTION



**Conduct anti-corruption due diligence on each outside resource within the host country, including law firms, tax advisories, sponsors, etc.**

- Host Nation, FCPA, UK Anti-Bribery Act





## Why New Places?

### Contract Opportunity

- Limited competition
- Well suited
- Engaged to the rest of the world
- Reinforced our global workforce
- Outside of comfort zone (new challenges = new opportunities)
- Past performance



Members of



INTERNATIONAL  
STABILITY OPERATIONS  
ASSOCIATION



## Why **New Places?**

### Global Team

- Exercise worldwide support
- Position the firm with support centers
- Opportunities to understand other cultures
- ISO Certification
- IT security (CMMC Compliant)
- Delegate authority
- Virtual set-up before pandemic
- Security partners

### 3 Worldwide support offices

Orlando



Philippines



Kenya





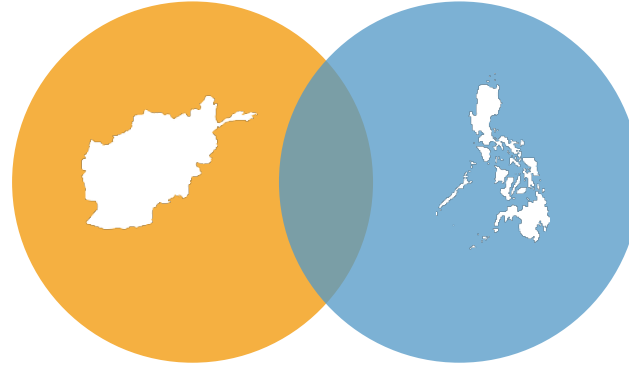


## Why **New Places?**

### Policy Anticipation and Acquisition Strategy

- Patience
- Positioning around the globe
- 1st mover advantage

Afghanistan



Philippines

## Challenges

- High threat environment
- Business uncertainty
- Culturally diverse
- High corruption

## Positive

- ✓ Lots of Money
- ✓ Low threat environment
- ✓ Business is more certain
- ✓ Culturally similar

## Challenges

- Some corruption
- No money
- High taxes



## PLANATE AFGHANISTAN CONTRACT ADMINISTRATION



SHINDAND

ZHARAI

CAMP DWYER

CAMP MYERS

KANDAHAR

PANJWAYE

MAIWAND

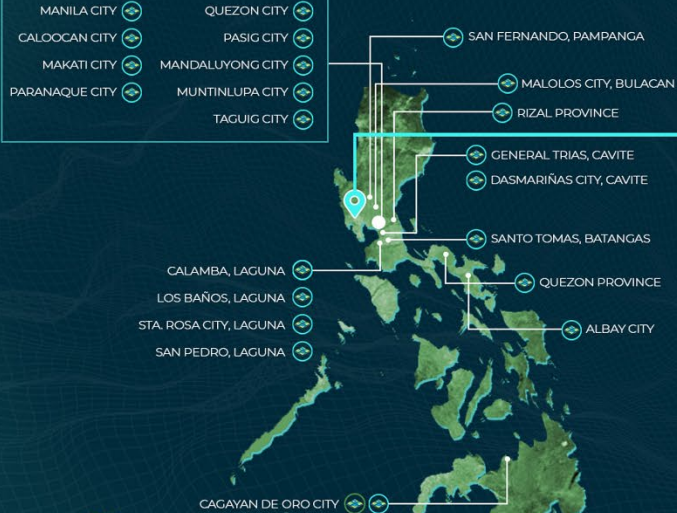
CAMP SHORAB





## OUR GROWTH AND HISTORY IN PH

### NATIONAL CAPITAL REGION



Cornerstone for Service, Integrity, and Innovation



On **September 23, 2013**, Planate became registered in the Philippines under the Securities and Exchange Commission (SEC) as Planate Corporation, and on **January 9, 2014**, we opened our office in **Subic Bay, Philippines**. Planate continued to grow, and in **2019**, we became **Planate Management Group South East Asia Corporation (PMG SEAC)**.

**SUBIC BAY, ZAMBALES**  
OLONGAPO CITY





# Considerations

- **Compliance**

- FCPA compliance is paramount for U.S. companies (and this includes subsidiaries) – but often hard, especially if local staff are not properly instructed.
- Pre-market-entry research of employment and taxation requirements will save you a lot of nerves and funds later.
- Cybersecurity is paramount – don't neglect it. Local non-compliance may cause huge risks for the U.S. parent company.

- **Local business formation**

- Minimize risks by having a separate subsidiary (not a representative office of the parent company).
- Don't register just to be in the country – have a plan developed well before formation.
- Have an exit strategy! "How to we liquidate/exit quickly?"



FEDERAL  
SMALL BUSINESS  
CONFERENCE



NOV  
15 - 19

# OVERCOMING OCONUS BUSINESS RISKS TO BE SUCCESSFUL



**Charysse Knotts**

[knottsc@bv.com](mailto:knottsc@bv.com)

+49 151 1766 3574 | +1 210 241 1221

[www.bv.com](http://www.bv.com)

Booth #815

**Dan Alexy**

[alexydj@bv.com](mailto:alexydj@bv.com)

+1 913-458-9179

[www.bv.com](http://www.bv.com)

Booth #815

**Chris Decker**

[chris.decker@planate.com](mailto:chris.decker@planate.com)

+1 703 232 1492

[www.planate.com](http://www.planate.com)

Booth #913