

**Marc F. Efron**

Senior Counsel
mefron@crowell.com

Washington

1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
Phone: 202.624.2640
Fax: 202.628.5116

Practice Areas

- Government Contracts
- False Claims/Qui Tam
- White Collar & Regulatory Enforcement
- False Claims
- Life Sciences

Marc F. Efron is a senior counsel in the Washington, DC office of the law firm of Crowell & Moring LLP. He practices in the areas of government contracts litigation and counseling and defense of alleged procurement fraud. Mr. Efron represents clients ranging from Fortune 500 companies with years of government contract experience to companies in emerging industries, which for the first time experience the challenges associated with doing business with the government.

Mr. Efron's practice spans a wide range of government contract matters, including bid protests, contract claims and disputes, federal supply schedule contracting, and small and small disadvantaged business contracting. He has handled a number of significant reported cases in these areas, including: *Protest of Liebert Corp.*, B-232234.5, 91-1 CPD 413 (April 20, 1991), and GSBCA No. 11300-P, 91-3 BCA 24,330 (1991) (permitting the use of the Economy Act for inter-agency purchases); *Harris Corp.*, ASBCA No. 26548, 85-3 BCA 18,167 (1985) (sustaining a claim based upon the government's pre-award representation that a part was completely specified and commercially available); *Heritage Reporting Corp. v. GSA*, e.g., 90-3 BCA 22,977 (1990), 90-3 BCA 23,164 (1990), 91-1 BCA 23,379, 94-2 BCA 26,686 (1994), and 95-1 BCA 27,555 (obtaining multimillion dollar settlement for government's breach of a federal supply schedule contract); and *P&B Services, Inc. v. Cardenas*, 525 F. Supp. 1289 (D.D.C. 1981) (overturning SBA determination of small business size status).

Recent noteworthy cases in which Mr. Efron was lead counsel or played a significant role include:

- *Appeal of McDonnell Douglas Services, Inc.*, ASBCA No. 56568, 10-1 BCA ¶ 34,325, Dec. 2, 2009. For the first time, the Contract Dispute Act's six-year statute of limitations was enforced to defeat a government claim. The ASBCA ruled that the Air Force's claim against

C&M's client was time-barred because DCAA and the Air Force, through a series of audit reports, "had established the basis for" the defective pricing claim "well before and definitely not later than" six years before the contracting officer's 2008 final decision.

- *Health Net Fed'l Svcs., LLC*, B-401652.2, B-401652.5, 2009 CPD ¶ 220, Nov. 4, 2009, GAO sustained the protest of Health Net (C&M client) against the award of a \$16 billion TRICARE contract because the agency (1) performed an inadequate past performance evaluation of the awardee, (2) failed to perform a proper cost realism analysis of the awardee, by not considering whether the awardee's staffing reflected a lack of understanding of the technical requirements, (3) overlooked the risk associated with the awardee's proposed plan to hire a large percentage of the incumbent workforce, and (4) failed to consider cost savings associated with the protestor's proposed approach. GAO also found that the awardee's use of a former high-level government employee in preparing its proposal created an appearance of impropriety based on the unfair competitive advantage stemming from the individual's earlier access to non-public, proprietary, and source-selection information.
- *ASRC Research & Technology Solutions, LLC*, B-400217, Aug. 21, 2008, 2008 CPD ¶ 202. GAO sustained the protest by ARTS (C&M client) challenging NASA's evaluation and award to a competitor of a \$200 million contract, recommending a defined course of corrective action that led to ARTS being awarded the contract. The offeror that originally had been awarded the contract then challenged the award to ARTS in the Court of Federal Claims, where ARTS again prevailed. *SP Systems, Inc. v. U.S.*, WL 484590 (Fed. Cl. Feb. 11, 2009).
- *Viacom, Inc. , Successor in Interest to Westinghouse Furniture Sys. v. General Services Administration*, GSBCA No. 15871, 05-2 BCA ¶ 33,080, Sept. 21, 2005. In a dispute that lasted 15 years and after a contentious trial, the GSBCA denied the government's claim of more than \$3.8 million against C&M's client based on discounts that allegedly were undisclosed in negotiating a Federal Supply Schedule contract, finding that the undisclosed discounts were irrelevant to the pricing of the contract and the damages sought were based on an unreasonable premise.

Mr. Efron often represents government contractors sued under the False Claims Act, and he has successfully resolved the following False Claims Act cases during the past several years: an action by the Department of Justice in the Eastern District of New York against a major contractor for alleged defective pricing of a contract for test systems; a suit in the District of Columbia by a *qui tam* relator alleging falsification of indoor air quality test results; and a suit in the Eastern District of Virginia by a *qui tam* relator against a large contractor alleging failure to perform required tests on newly installed telephones. He also was a counsel of record in *U.S. ex rel. Werner v. Fuentes Systems Concepts, Inc.*, 319 F. Supp. 2d 682 (N.D. W. Va.), *aff'd*,

115 Fed. Appx. 127 (4th Cir. 2004), in which summary judgment was obtained on behalf of a contractor based on government knowledge and direction.

Mr. Efron is a member of the District of Columbia Bar and the American Bar Association, where he is a member of the Public Contract Law Section. He often lectures on government procurement issues, and he is the author/co-author of "The GSA Multiple Award Schedule Program," *Briefing Papers*, Federal Publications (No. 94-11, Oct. 1994), "Government Indemnification for Environmental Liability," *Briefing Papers*, Federal Publications (No. 92-11, Oct. 1992), "Certificates of Competency," *Briefing Papers*, Federal Publications (No. 87-11, Oct. 1987) and "Recovery of Environmental Costs," *Costs, Pricing and Accounting Report* Federal Publications (March 1991).

Mr. Efron graduated from Dartmouth College (AB, 1965) and Harvard Law School (JD, 1970). He is married to Barbara Bares and has twin sons, Charles and Nicholas.

Education

- Dartmouth College, A.B. (1965)
- Harvard Law School, J.D. (1970)

Affiliations

Admitted to practice: District of Columbia, U.S. District Court for the District of Columbia

Publications

- "Disaster Relief Contracting: Tools to Respond do Exist," *BNA's Federal Contracts Report*, Vol. 85, No. 5 (February 7, 2006). Author: Marc F. Efron.
- "Defense Priorities & Allocations System," 01-12 *Briefing Papers* (November 2001). Co-Authors: Marc F. Efron and Robert T. Ebert.
- "The GSA Multiple Award Schedule Program," *Briefing Papers* 94-11 (October 1994). Co-Authors: Terry L. Albertson and Marc F. Efron.
- "Government Indemnification for Environmental Liability," *Briefing Papers* 92-11 (October 1992). Author: Marc F. Efron
- "Recovery of Environmental Costs," *Costs, Pricing & Acct. Rep.* (Fed. Pubs. Inc.) 92-3 (March 1992). Co-Authors: Marc F. Efron and Devon Engel.

- "Certificates of Competency: Basic Principles and Guidelines," *Briefing Papers* 87-11 (October 1987). Co-Authors: Marc F. Efron and Susan M. Muchmore.

Alerts & Newsletters

- "Inconsistent Statute of Limitations Decisions -- Or Not?," *Government Contracts Bullet Points* (February 2, 2012). Contacts: Terry L. Albertson, David Z. Bodenheimer, Marc F. Efron, Kent R. Morrison.
- "DOD to Pay All Small Businesses Faster," *Government Contracts Bullet Points* (May 2, 2011). Contacts: J. Catherine Kunz, Amy Laderberg O'Sullivan, Marc F. Efron.
- "Small Business Set-Aside Rules Inapplicable to FSS Purchases," *GSA Schedule Bullet Points* (April 6, 2011). Contacts: J. Catherine Kunz, Marc F. Efron.
- "SBA Shakes Up 8(a) Program Regulations," *Government Contracts Bullet Points* (March 2, 2011). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan.
- "OHA Authority and Impact Expanded," *Government Contracts Bullet Points* (February 11, 2011). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan.
- "Contractor Team Arrangement Member Has Privity to Pursue Claims Against the Government," *Government Contracts Bullet Points* (January 3, 2011). Contacts: J. Catherine Kunz, Marc F. Efron.
- "Carrots, Sticks, and Fixes in the New Small Business Jobs and Credit Act," *Government Contracts Bullet Points* (October 1, 2010). Contact: Marc F. Efron.
- "Court Reviews Decision to Stop Using SBA 8(a) Contract," *Government Contracts Bullet Points* (September 2, 2010). Contacts: Amy Laderberg O'Sullivan, Marc F. Efron.
- "CDA's Statute of Limitation Not Jurisdictional," *Government Contracts Bullet Points* (August 12, 2010). Contacts: Kent R. Morrison, Marc F. Efron, Adelia R. Cliffe.
- "Commerce Proposes Updates To Reauthorized Defense Production Act," *Government Contracts Bullet Points* (June 14, 2010). Contacts: Marc F. Efron, Peter Eyre.
- "Another GSA Schedule Antikickback/FCA Settlement," *Government Contracts Bullet Points* (June 10, 2010). Contacts: J. Catherine Kunz, Marc F. Efron.
- "Another Attempt To Catch GSA Schedule Vendors In Violation of TAA Requirements," *Government Contracts Bullet Points* (June 8, 2010). Contacts: J. Catherine Kunz, Marc F. Efron.
- "GAO Sides With COFC In Continued Battle Over Hubzone Set-Aside Priority," *Government Contracts Bullet Points* (May 21, 2010). Contacts: Amy Laderberg O'Sullivan, Marc F. Efron.

- "When Size Matters, SBA Has Final Say," *Government Contracts Bullet Points* (May 18, 2010). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan.
- "Resellers Policing Each Other On TAA Compliance," *Government Contracts Bullet Points* (May 17, 2010). Contacts: J. Catherine Kunz, Marc F. Efron.
- "Court Gives Teeth To Service Disabled Veteran Status," *Government Contracts Bullet Points* (April 27, 2010). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan.
- "Remember To Quote Approved Rates," *Government Contracts Bullet Points* (March 26, 2010). Contacts: J. Catherine Kunz, Marc F. Efron.
- "MAS Advisory Panel Urges Increased Competition And Transparency," *Government Contracts Bullet Points* (March 24, 2010). Contacts: J. Catherine Kunz, Marc F. Efron.
- "Beware of Out-Of-Scope Offers," *GSA Schedule Bullet Points* (February 1, 2010). Contacts: J. Catherine Kunz, Marc F. Efron.
- "Statute Of Limitations Invalidates Government Claim For The First Time," *Government Contracts Bullet Points* (December 18, 2009). Contacts: Marc F. Efron, Kent R. Morrison, Adelia R. Cliffe.
- "SBA Proposes Important New Section 8(A) Regulations," *Government Contracts Bullet Points* (November 5, 2009). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan, John E. McCarthy Jr..
- "Equality For All - OMB Instructs Agencies To Ignore GAO And Give Equal Consideration To Three SBA Programs ," *Government Contracts Bullet Points* (July 23, 2009). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan.
- "Elimination of Price Reduction Clause and Other Recommendations by MAS Panel," *Government Contracts Bullet Points* (July 6, 2009). Contacts: Marc F. Efron, J. Catherine Kunz.
- "No Small Business Set-Asides For FSS Purchases," *Government Contracts Bullet Points* (May 4, 2009). Contacts: J. Catherine Kunz, Marc F. Efron.
- "Beware of Noncompliance With Price Reduction Clause Requirements," *Government Contracts Bullet Points* (April 16, 2009). Contacts: J. Catherine Kunz, Marc F. Efron.
- "House Hammers Hubzone Program," *Government Contracts Bullet Points* (March 31, 2009). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan.
- "Agency's Corrective Action Based Upon GAO Recommendation Reasonable," *Government Contracts Bullet Points* (March 6, 2009). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan, John E. McCarthy Jr..
- "Successful Protest Leads To Award," *Government Contracts Bullet Points* (November 24, 2008). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan.

- "DOD's Affirmative Action Program Unconstitutional," *Government Contracts Bullet Points* (November 6, 2008). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan.
- "New Energy Management Schedule Contract," *GSA Schedule Bullet Points* (November 4, 2008). Contacts: J. Catherine Kunz, Marc F. Efron.
- ""Rule of Two" For Small Business Set-Asides Extended to Award of Task and Delivery Orders," *Government Contracts Bullet Points* (October 21, 2008). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan.
- "SBA Issues Final Rule On WOSB Contracting Program But Has Yet To Identify Eligible Industries," *Government Contracts Bullet Points* (October 7, 2008). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan.
- "Stay Tuned For Likely Changes In False Claims Law," *Government Contracts Bullet Points* (February 28, 2008). Contacts: Brian C. Elmer, Andy Liu, Marc F. Efron.
- "SBA Proposes Set-Aside Rules For Women-Owned Small Businesses ," *Government Contracts Bullet Points* (January 2, 2008). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan.
- "False Claims Act - Supreme Court Will Review Allison," *Government Contracts Bullet Points* (October 30, 2007). Contacts: Brian C. Elmer, Marc F. Efron, Andy Liu.
- "SBA Proposes To Relax Employee-Based Size Standard," *Government Contracts Bullet Points* (August 3, 2007). Contacts: Amy Laderberg O'Sullivan, Marc F. Efron.
- "Decision Signals Increased SBA Scrutiny of Size Status," *Government Contracts Bullet Points* (April 16, 2007). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan.
- "GAO And SBA Disagree on Effect of Noncompliance With Subcontracting Limitation," *Government Contracts Bullet Points* (April 10, 2007). Contacts: Amy Laderberg O'Sullivan, Marc F. Efron.
- "Federal Supply Schedules Opened To State And Local Governments For Recovery Purchasing," *Government Contracts Bullet Points* (February 2, 2007). Contact: Marc F. Efron.
- "During Bid Protest Stay Agency Should Have Terminated Award To Large Business Following SBA Size Decision," *Government Contracts Bullet Points* (December 29, 2006). Contacts: Marc F. Efron, Amy Laderberg O'Sullivan.
- "SBA Modifies Time At Which Size Status Is Determined," *Government Contracts Bullet Points* (December 12, 2006). Contacts: Amy Laderberg O'Sullivan, Marc F. Efron.
- "Services In Contract Don't Trump "Non-Manufacturer Rule"," *Government Contracts Bullet Points* (September 13, 2006). Contacts: Marc F. Efron, J. Chris Haile.
- "GAO Faults Army For Failure To Pursue Certificate Of Competency ," *Government Contracts Bullet Points* (August 8, 2006). Contact: Marc F. Efron.

- "Restricted Recompensation Given Close Scrutiny," *Government Contracts Bullet Points* (June 13, 2006). Contacts: Frederick (Rick) W. Claybrook Jr., Marc F. Efron.
- "Report Highlights Problematic Katrina Contracting Practices," *Government Contracts Bullet Points* (March 1, 2006). Contact: Marc F. Efron.
- "Report Highlights Problematic Katrina Contracting Practices," *Government Contracts Bullet Points* (February 28, 2006). Contacts: Raymond F. Monroe, Marc F. Efron, Peter Eyre.
- "GSA "Invites" Schedule Contractors To Examine Origin Of Offered Products," *Government Contracts Bullet Points* (February 15, 2006). Contacts: Alan W. H. Gourley, Marc F. Efron, J. Chris Haile.
- "Court Enforces 50% Labor Value Rule," *Government Contracts Bullet Points* (October 27, 2005). Contact: Marc F. Efron.
- "GSBCA Rejects GSA's Defective Pricing Allegations," *Government Contracts Bullet Points* (September 27, 2005). Contacts: Marc F. Efron, J. Catherine Kunz.
- "Emergency Procurements In Support Of Hurricane Katrina Relief," *Government Contracts Bullet Points* (September 6, 2005). Contacts: Marc F. Efron, Terry L. Albertson, David C. Hammond.
- "Veterans' Preference Comes Of Age," *Government Contracts Bullet Points* (April 1, 2005). Contact: Marc F. Efron.
- "Commercial Items Rulemaking Tackles Hot Issues," *Government Contracts Bullet Points* (March 17, 2005). Contacts: James J. Regan, Marc F. Efron.
- "GAO Finds Druyun Contracts Flawed," *Government Contracts Bullet Points* (March 1, 2005). Contact: Marc F. Efron.
- "GAO Sustains For Failure To Set Aside For Small Business," *Government Contracts Bullet Points* (October 20, 2004). Contacts: Marc F. Efron, Daniel R. Forman.
- "SBA Size Standards Revised To Cap Number Of Employees," *Government Contracts Bullet Points* (April 18, 2004). Contacts: Marc F. Efron, John E. McCarthy Jr..

Speaking Engagements

- "Key M&A Considerations for Government Contractors Overcoming Hurdles to a Successful Closing," Ounce OF Prevention Seminar (OOPS) XXVII (May 25-26, 2011). Moderator: Marc F. Efron. Speakers: Bryan Brewer and Karen Hermann.
- "Mentor/Protégé Programs: Selling Healthcare Staffing to the Government," 2010 Healthcare Staffing Summit, Chicago, IL (Sept. 20-22, 2010). Presenters: Marc F. Efron and Alexina G. Jackson.
- "Contracting with Small Businesses in the Wake of Expanding SBA Programs and Scrutiny," Caught in the Federal Procurement Fish Bowl,

26th Annual Ounce of Prevention Seminar (OOPS), Crowell & Moring, Washington, D.C. (May 26-27, 2010). Presenters: Marc F. Efron, Amy L. O'Sullivan and Alexina G. Jackson.

- "Overview of Key Compliance Issues and Types of GSA Audits" and "Audit Results and Mitigation," Crowell & Moring and PWC's Surviving a GSA Audit, McLean, VA (October 30, 2008). Co-Speakers: Marc Efron and J. Catherine Kunz.
- "Contracting with Small Businesses," Ounce of Prevention Seminar (April 2008). Co-Speakers: Richard Arnholt, Amy O'Sullivan, and Marc Efron.
- "Teaming Agreements: What to Expect and What to Avoid," INPUT Teaming Event (March 2008). Co-Speakers: Amy O'Sullivan and Marc Efron.