

**Marc F. Efron**

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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