

Government Contracts Group Of The Year: Crowell & Moring

By Jennifer Doherty

Law360 (February 1, 2022, 2:04 PM EST) -- Crowell & Moring LLP guided Amazon Web Services Inc. through multiple rounds of litigation over the U.S. Department of Defense's \$10 billion deal to move to cloud-based computing under the Joint Enterprise Defense Infrastructure, earning it a spot among Law360's 2021 Government Contracts Groups of the Year.

The Pentagon ultimately canceled JEDI amid protests brought by Oracle America Inc., which challenged multiple aspects of the DOD's procurement process, including the involvement of former officials with ties to Amazon. But before the contract went kaput, Crowell & Moring's team helped lay to rest Oracle's allegations concerning its client.

The U.S. Court of Federal Claims dismissed Oracle's claims, a decision later upheld by a unanimous appeals court panel, which the U.S. Supreme Court declined to revisit last year.

"The Oracle protests will continue to be a milestone for years to come — one, because of the Federal Circuit decision, and two, because you had the Supreme Court weighing in," group co-chair Daniel R. Forman told Law360.

The sole-source procurement is now slated to be replaced by a multiple-award contract, and Amazon is back in the running. The team at Crowell & Moring sees lessons for other contractors in the factors that drove litigation over the JEDI deal, namely the importance of establishing proper firewalls as former government officials transition into industry following last year's change in administration.

Leveraging its expertise in that area, the government contracts team led Serco Inc. to victory in December in a \$372 million bid protest over a contract the U.S. Navy awarded to Booz Allen Hamilton Inc. Crowell & Moring attorneys convinced the U.S. Government Accountability Office that Booz Allen had obtained an unfair competitive advantage when it hired two recently retired Navy captains who helped prepare its proposal.

Forman and group co-chair Stephen J. McBrady credited the third member of their leadership triad, Peter Eyre, with keeping the group focused on emerging trends in the ever-evolving field of government contracts law to help Crowell & Moring's clients stay out of trouble.

"Our model is to be a modern law firm that partners with our clients," McBrady told Law360. "The old



model was: Client has a problem. They call you. You try to help them solve it. ... The new model, and our model, is to proactively help our clients avoid problems."

McBrady also highlighted the leadership team's relative youth compared to other government contracts practices — all three men are in their 40s — as an asset in the mission to change with the times.

Eyre framed the team's holistic perspective on client needs as a "life-cycle approach" that requires a deep bench to execute effectively.

"We try to take a team of people who see an issue through many different lenses and can apply ... best-in-class thinking to each [aspect]," he said. "We think about who's got the best experience, even if they've never worked for that company before, to have the right people at the table at the right time to give the best possible advice."

Along with having approximately 60 attorneys on their team, the co-leads said their group also benefits from a spirit of collaboration that comes from identifying clients as belonging to the firm, not individual attorneys.

In a case that called on attorneys from across the team's practice areas, Crowell & Moring scored a win for Lockheed Martin Corp. last year on a \$143 million claim before the Armed Services Board of Contract Appeals in a matter of first impression.

The U.S. Air Force tried to dodge Lockheed's claim for added expenses the company incurred working on the C-5 Galaxy transport aircraft, arguing that it had waited too long to seek payment. But under the Contract Disputes Act, Crowell & Moring attorneys argued, the company had six years to file, eroding the government's defense based on laches, an equitable judicial doctrine that blocks claims brought after an unreasonable delay.

"We argued based on Supreme Court precedent in the intellectual property space, which has held that when Congress enacts a statute of limitations, that's what sets the deadline for when you need to file a claim, not an equitable doctrine, because Congress has spoken and said here's what the timeline should be," McBrady said.

McBrady also led Crowell & Moring's team on another groundbreaking case last year, representing the state of Colorado in its bid to recoup \$24 million from the U.S. Department of Health and Human Services after an Affordable Care Act insurer went bust.

After almost three years of litigation, a unanimous Federal Circuit panel affirmed Colorado's position that HHS couldn't erase the insurance co-op's state debt just because it also owed \$42 million to the agency. The panel opinion chastised HHS for attempting to "leapfrog other insolvency creditors."

Coming off of a winning year, Forman said the Crowell & Moring team is exploring opportunities to further develop the educational, client-focused side of its practice in 2022.

"We're thinking about additional ways to provide ancillary services to our clients. It's a little premature to make any announcements, but ... we're trying to think outside the box in terms of consultancies [and] software offerings to help our clients," he said.

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