

Gov't Contracts Group Of The Year: Crowell & Moring

By **Daniel Wilson**

Law360 (February 19, 2020, 3:10 PM EST) -- Crowell & Moring LLP's broad scope of work, including representing Amazon in a prominent dispute over a Pentagon cloud contract and helping United Airlines secure a precedential False Claims Act victory, have earned the firm a place among Law360's 2019 Government Contracts Groups of the Year.

With 100 attorneys who contribute to government contracts matters, more than 60 of whom work exclusively within the practice and most of whom are located in Washington, D.C., Crowell & Moring's government contracts practice is "really at the center of the firm," group co-Chair Dan Forman said. The group is also "diverse at all levels" and is strongly driven by the strength of its younger attorneys, according to Forman.

"We feel really good about where we are today and where we're heading," Forman, who is based in D.C., said.

Crowell & Moring is particularly well-known for working with aerospace and defense clients, representing some of the biggest defense contractors in the world, like BAE Systems Inc., Lockheed Martin Corp., Northrop Grumman Corp. and United Technologies Corp.

But its client list includes companies of all sizes across a wide variety of industries, with the firm representing companies such as AT&T Inc., Amazon Web Services Inc. and United Airlines Inc. in their government contract and False Claims Act matters, recently aiding the latter two companies in securing major court victories.

When Oracle Corp. protested the terms of the U.S. Department of Defense's high-profile \$10 billion JEDI cloud contract, one of its allegations was that the deal had been tainted by alleged conflicts of interest involving DOD employees with links to Amazon, seeking to cancel the deal or at least to exclude Amazon from consideration.



Working with the U.S. Department of Justice, Crowell & Moring attorneys helped to show Amazon had acted appropriately and had not benefited from any alleged conflict of interest, putting context to documents in the case record showing government employees saying “silly things,” Forman said. The Court of Federal Claims dismissed Oracle’s protest in July 2019.

Oracle had cited U.S. Supreme Court precedent backing the proposition that certain facts creating a bad appearance could taint a procurement process, without needing to show actual harm, but Crowell & Moring attorneys were able to convince the claims court “that there had been subsequent developmental law in the Federal Circuit that made clear it’s not simply enough to show that there were facts that don’t look good, but that ... there actually was some unfair competitive advantage,” Forman said.

The firm also recently helped United Airlines defeat whistleblower FCA claims in a case accusing the company of misleading the government about the calibration of tools used to maintain engines on C-17 aircraft under a billion-dollar Air Force sustainment contract, with the Fourth Circuit issuing a precedential decision in December 2018 addressing required pleading standards in FCA cases.

“We decided to focus on the fact that United, in performing this work, was acting as a second-tier subcontractor and made the argument that this might appear to be a detailed complaint ... but there’s really no detail about how this led to the submission of a claim for payment to the government,” D.C.-based counsel Jason Crawford said.

“The opposing counsel were talented lawyers, knew the aviation industry really well and had really focused their energies on building up that part of the case, so it was by pivoting and focusing on the structure of the contract that we were able to find an opening at the pleading stage,” he added.

The firm is also growing its practice in a number of industries less commonly associated with government contracting, such as the automotive industry, practice group co-Chair Peter Eyre said. The federal government is taking a leading role in emerging automotive technologies like new types of fuel, and there are also opportunities for automakers to compete for contracts like military vehicle production deals, according to Eyre, who is also located in D.C.

Another area of growth for the firm is private equity transactions that involve government contracting issues, which require consideration of not only regulatory requirements but also how to value assets, according to Eyre. That process that can be quite different from valuing a commercial firm, given the government can cancel contracts at any time and may have funded, or have rights to use, a company's intellectual property, he said.

“It’s a very attractive value proposition, but a few private equity firms really have gotten themselves into difficulty because they didn’t understand that at the outset,” Eyre said. “All the core business assumptions that private equity firms make in the commercial space have to be translated a little differently. So we try to help be that translator for them.”

A recent example is Crowell & Moring attorneys' work on government contracts issues related to Madison Dearborn Partners and CoVant Management's \$750 million sale of portfolio company LGS Innovations LLC, which develops secure networking, cybersecurity and related technologies, to CACI International, a deal that closed in March 2019.

"It was one of the top [government contracts acquisition] deals of the year, not only by valuation but because it also was pretty transformative for CACI — it allows them to really start to offer some additional solutions and services," Eyre said. "That was a pretty significant undertaking for the firm and for the group, and we are certainly pleased to be part of that."

--Editing by Jack Karp.