

MVP: Crowell & Moring's Daniel Forman

By Alyssa Aquino

Law360 (October 7, 2020, 5:03 PM EDT) -- Crowell & Moring LLP's Daniel Forman helped lead Amazon Web Services' successful defense against high-profile ethics claims concerning the \$10 billion JEDI deal and secure for Perspecta Enterprise Solutions LLC's corrective action in a \$7.6 billion cloud contract, making him one of Law360's 2020 Government Contracts MVPs.

HIS PROUDEST MOMENT THIS YEAR:

Over the past year, Forman defended Amazon Web Services' against Oracle Corp.'s "salacious" ethics claims that government officials — one of whom had worked for Amazon, joined the U.S. Department of Defense and then rejoined Amazon — tailored the \$10 billion Joint Enterprise Defense Infrastructure contract to Amazon. The contract was ultimately awarded to Microsoft Corp.

The Crowell & Moring team steered Amazon to a win in the U.S. Court of Federal Claims, which ruled that the alleged conflicts of interests either didn't exist or hadn't tarnished the deal. In July, the team followed that up with a victory in the Federal Circuit.

The Federal Circuit decision was particularly important, Forman said. The appeals court could have simply ordered the DOD to review the bidding without addressing the conflicts of interests claims, but Forman had staunchly pushed back against that option, saying it amounted to a punishment for Amazon. Moreover, Oracle's allegations were salacious, had attracted media attention and needed to be addressed, he said.

Forman and his team worked hard to show that the DOD employees had duped Amazon as well. A lot of the case hinged on bringing up evidence that Amazon had firewalled new employees coming from the government and kept them out of certain federal contracting efforts. Ultimately, the Federal Circuit vindicated Amazon, ruling that the alleged conflicts of interests hadn't tainted the deal, Forman said.

"The fact that we were able to show both at the Court of Federal Claims and the Federal Circuit that, in fact, our client had done everything right and was proactive and was certainly eligible to compete was a



significant win," Forman said.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

Forman said his biggest accomplishment this year was being able to secure the types of legal wins that actually support his clients.

"Simply winning a protest isn't necessarily delivering victory for your client, you have to achieve a remedy that gives them a chance at winning a contract," he said. "I feel like a lot of the victories in the big cases have been meaningful."

He pointed to his team's ability to secure a corrective action for Perspecta Enterprise Solutions LLC, which had protested the DOD's award of a \$7.6 billion contract to move many of its IT functions to the cloud. According to the firm, Forman was lead counsel in the case.

The Defense Enterprise Office Solution contract went to General Dynamics unit CSRA LLC. But Perspecta challenged the decision in the Government Accountability Office, arguing that the General Services Administration had disclosed its confidential proposed pricing to CSRA. After reviewing the information, the GAO advised the parties it would likely sustain Perspecta's claims, spurring the GSA to order a corrective action and reevaluate the award, according to Forman.

The GAO's outcome prediction "wasn't typical," Forman noted. Under the Procurement Integrity Act, any improper disclosures must be intentional, but the GAO found that the GSA's disclosures were inadvertent.

"Ordinarily, you think at that point, case over, you've lost, but we were still able to prevail, because even though [the disclosures] were inadvertent, we were able to show that the information was potentially competitively useful," he said.

Forman also led ISS Action's defense of a \$249 million contract to provide security and transportation services for U.S. Customs and Border Control. G4S Security Solutions Inc. had previously held the award, but then lobbed allegations of being wrongfully snubbed when CBP went with ISS for the follow-up contract.

In January, a federal judge tossed G4S' protest, ruling that ISS Action had offered a higher-quality technical approach at a cheaper price. The claims are currently on appeal in the Federal Circuit.

WHY HE'S A GOVERNMENT CONTRACTS ATTORNEY:

Forman had never taken a government contracts class before he joined Crowell & Moring's government contracts bench as a first-year associate. But he stuck around when he realized that government contracts work put him in front of interesting clients and cutting-edge issues, he said.

It's like a law school class where you like the subject matter and the professors, Forman explained.

Forman was additionally surprised that government contracting work held social justice components, something he hadn't anticipated when he first dove into the field. Presidents Barack Obama and Bill Clinton issued several executive orders binding government contractors to certain equal employment provisions and child labor rules, he pointed out.

"I never thought of government contracting as a tool for progressive policy, but it really can be, when

properly utilized," Forman said. "If you think about it, many of the largest companies do business with the government and so, you have an ability through EOs and regulations to really influence the behavior of corporations in a positive social lab."

HIS ADVICE TO JUNIOR ATTORNEYS:

Forman couldn't stress enough that attorneys must learn their clients' business: "You really can't represent your clients' interests to the fullest extent unless you understand what it is they're doing."

Within the competitive contracting world, there are several talented lawyers who do high-quality work, but what sets an attorney apart for Forman is their ability to know their clients. When attorneys understand their clients' business, they can grasp what kind of victories will best support them and how the latest legal developments will impact them, Forman said.

The advice goes hand-in-hand with his other entreaty that attorneys understand the value of client service. Proper client service requires a type of responsiveness and dedication that isn't easy to learn, Forman acknowledged, but he said it's been a cornerstone of his team's practice.

"When we think about our clients, we think of them as our partners, not necessarily just as our clients," he said. "I think clients know the difference when you say 'we' when you're talking about the lawyers and their client, it sends an important message that we're in this together with the company."

— *As told to Alyssa Aquino*

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