

## Government Contracts Group Of The Year: Crowell & Moring

By Asher Stockler

*Law360 (December 21, 2020, 3:09 PM EST)* -- Crowell & Moring LLP's deft navigation this year of politically complex deals, including contracts related to urgently needed medical supplies amid the COVID-19 pandemic, has earned the firm a place among Law360's 2020 Government Contracts Groups of the Year.

As the country confronted its worst public health crisis in a century, the federal government scrambled to amass medical supplies, which hospitals across the U.S. in turn burned through in record numbers. Among the most essential items were ventilator machines designed to keep coronavirus patients breathing as their lung function declined.

But the Trump administration's uncertain, will-they-or-won't-they approach to invoking the Defense Production Act — a Korean War-era law providing the government limited "takeover" authority in the event of a national emergency — introduced an X-factor for manufacturers called upon to ramp up production.

Throughout the crisis, Crowell & Moring served as General Motors' lead counsel, participating in contract negotiations with the government as the auto giant was tasked with converting its assembly lines to handle ventilator production.

"In the span of a number of weeks, GM went from manufacturing automobiles to manufacturing ventilators," Peter Eyre, co-chair of the firm's government contracts group, told Law360. "There were intense negotiations with the Department of Health and Human Services and the White House."

Eyre said that "everyone was focused on speed and moving fast" in order to move up the date of delivery, calling the monthlong span from negotiation to production in the GM situation "pretty unprecedented."

Crowell & Moring delved into another politically contentious deal when it intervened on behalf of Amazon Web Services in a protest filed by Oracle over the Pentagon's mammoth \$10 billion cloud computing contract.

"This was at the time an existential threat to Amazon's ability to compete for the contract, because part



of the allegation was that the procurement was steered toward Amazon and that there was evidence of wrongdoing," said partner Dan Forman, who represented Amazon at the U.S. Court of Federal Claims and at the Federal Circuit.

Though the conflict of interest allegations were serious, Forman's team was able to steer away Oracle's challenge, a noteworthy success considering this was one of the most high-stakes government contracts in recent memory.

But the firm's highest-profile victory came earlier in the year, when the U.S. Supreme Court in April handed down an 8-1 decision in favor of Affordable Care Act insurers, putting the government on the hook for approximately \$12 billion worth of "risk corridor" payments.

Maine Community Health Options, Crowell & Moring's client and the lead plaintiff in the case, had faced substantial losses in 2015 and 2016, and the ruling allowed the health insurance cooperative to recover meaningful sums from the government.

"It was to us and to the industry a landmark case," said partner Steve McBrady, who worked on the dispute. "The health plans filed suit very reluctantly. They do a lot of business with the federal government, but they filed suit to ensure that the government would live up to its end of the bargain that the government had struck with the health plans. And that is fundamental to everything we do in government contracts."

Government contracts cases rarely wind up before the justices, McBrady added. And given that the case could have been a "political lightning rod," he said that the firm focused on issues of statutory interpretation, "keeping it right down the middle and arguing this as a legal issue."

The approximately 60 members of Crowell & Moring's government contracts team represent a deep bench of talent with "experience handling every aspect of government contracts M&A," according to Addie Cliffe, a partner in the firm's Washington, D.C., office. And diversity is a selling point for their client representation, the attorney noted.

Cliffe, who worked on two complex divestitures on behalf of Raytheon Technologies, emphasized that the legal teams on both those transactions prominently featured women and diverse attorneys. Though Cliffe noted that the teams faced "every single type of M&A complication that you can have in the government contracts space," she said getting to closing on the transactions was "incredibly crucial."

"I just can't imagine any other firm being able to say that they dealt with such a high-profile, complex transaction, threw their very best folks at it," and achieved that level of diversity, Cliffe said.

Mana Lombardo, who helped secure a favorable ruling for one of the largest government contractors in the world after a five-year battle, also highlighted her team as one "that's diverse and mostly made up of women."

"It's a proud moment for us," Lombardo said of the firm's efforts on the case.

--Editing by Daniel King.