

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

By Alyssa Aquino

Law360 (February 16, 2023, 2:02 PM EST) -- Crowell & Moring LLP's government contracts practice showed a federal watchdog that the U.S. Navy fumbled a \$372 million award investigation, and convinced a contracting appeals board that Lockheed Martin's \$143 million U.S. Air Force dispute was timely filed, landing the firm a spot as one of Law360's 2022 Government Contract Groups of the Year.

The firm has 65 lawyers who work predominantly or exclusively with government contracting orders, and Dan Forman, co-chair of the government contracts group, said the practice is expanding.

"We have quite aggressive aspirations for the group as well in the future in terms of continued growth," he said.

Steve McBrady, another co-chair of the government contracts group, touted the scope of matters covered by the team, as well as its commitment to fostering a diverse and inclusive workplace.

"A lot of our young superstars are individuals with diverse backgrounds. We think that's really value added to our clients," he said.

Over the past six years, the firm has invested heavily in its claims litigation practice, and McBrady credited that for the team's major litigation win in 2022 for Lockheed Martin Corp. in its bid for a \$143 million reimbursement from the U.S. Air Force.

Lockheed Martin had asked the Air Force to cover extra costs incurred while upgrading the C-5 Galaxy — the largest military aircraft in the Air Force. The service branch refused, saying the claims were barred by a six-year statute of limitations. But McBrady and his team were able to show the Armed Services Board of Contract Appeals that their client's claim began accruing each time the government approved a repair and was consequently timely filed.

To secure that win, Crowell & Moring relied in part on a U.S. Supreme Court ruling barring defendants from asserting a "laches defense" against certain patent infringement claims. There hadn't been an ASBCA case that applied that holding in a government contracting case before, McBrady said.

"The [board] ... held that because the Contract Disputes Act has a six-year statute of limitations, the equitable doctrine of laches was not applicable in ASBCA litigation going forward because the CDA



statute of limitations ... would dictate the time frame for filing a claim," he said.

The group prides itself not just on winning bid protests but in ensuring their clients reach their ultimate goal — winning the contract itself, an outcome that isn't guaranteed for successful protesters, Forman said.

The firm's awareness of these dynamics were on display in its work for Serco Inc., which successfully reclaimed a \$372 million naval support deal initially awarded to Booz Allen Hamilton.

Serco, the incumbent on the deal, had argued that Booz Allen Hamilton had an unfair competitive advantage by using two former U.S. Navy captains on its proposal team. The Navy agreed to take corrective action, including conducting a six-month investigation, but reaffirmed Booz Allen Hamilton's award. That second look, however, was panned by the U.S. Government Accountability Office in December 2021.

"Typically, at that point, GAO will be quite deferential, and they'll say, 'OK, well, you looked at the issue, and so long as you're comfortable, everything's fine. We're not going to sort of second-guess.' ... Notwithstanding the substantial investigation, GAO still found that the government's conclusion that there was no impact from Booz Allen hiring these people was incorrect," Forman said.

The firm also helped a client secure a lost contract for Accenture Federal Services. The company operated the Centers for Medicare & Medicaid Services' Federally Facilitated Exchange but came close to losing the work when CMS awarded the recompetes to Deloitte.

The litigation, according to Peter Eyre, the group's third co-chair, unfurled over three years, encompassing several rounds of protests. Throughout the ordeal, Accenture was the protester, an intervenor and an adviser on ongoing performance with the incumbent contract before it finally nabbed the deal — with no further protest — in March.

"We're securing really important business wins. Going from the loss of a contract to getting that contract back. That's really key," Eyre said.

--Editing by Gemma Horowitz.