

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

By Ama Sarfo



Law360, New York (January 09, 2015, 7:20 PM ET) -- Crowell & Moring LLP's government contracts group is widely heralded as an industry go-to, and the firm's recent wins for Lockheed Martin Corp. in a closely watched \$400 million qui tam suit and BAE Systems PLC in a highly technical bid protest further cemented that dominance, landing the practice among Law360's Government Contracts Groups of the Year.

The D.C.-based firm boasts significant manpower in the government contracts space, with a team of 50-plus core government contracts attorneys who handle matters ranging from health care matters to white collar issues. But if you count the additional firm attorneys who help in that space, the number quickly balloons to more than 80 attorneys, group co-chair Daniel Forman told Law360. That deep bench of experience sets Crowell apart from many other firms.

Crowell was built as a government contracts-centric firm when it was founded in 1979, group co-chair Angela Styles told Law360. The firm's relatively recent founding, coupled with its quick ascent, means it holds layers of generational and institutional knowledge, from lawyers who grew with Crowell from the ground up to newly minted associates just cutting their teeth.

"We have partners who you would consider to be deans of the bar, but we also have counsel and senior associates who have more experience than partners in most other government contracts practices," Forman said.

"We're continually able to serve clients with the right lawyer, right experience, right skill set," Styles added.

Crowell's expertise and sophistication were clear this March as it helped Lockheed Martin end a nine-year suit brought by a whistleblowing former engineer who accused the defense giant of fraudulently lowballing its bid for a U.S. Air Force contract by more than \$400 million in the largest False Claims Act litigation in the company's history, Styles said.

Former employee Nyle Hooper had filed an FCA suit claiming Lockheed had intentionally lowballed a bid for a 1995 contract to support space launch operations at Vandenberg Air Force Base in California and Kennedy Space Center in Florida, causing the total project cost to blow out from an estimated \$432 million to more than \$900 million by 2008.

Lockheed had much at stake in the lawsuit, as it faced a potential \$1.2 billion in treble damages, firm partner Mark Troy told Law360. And the entire defense contracting industry had much at stake in the case as well, as contract estimates are a routine part of the bidding process.

"The issue in the case, the notion that a cost estimate could be a false claim, was something that really had not been addressed in an FCA case before," Troy explained. "But a cost estimate is not a statement of fact; it's simply a guess. And in the government contracts world, under the Truth in Negotiations Act, there's a distinction between what you tell the government as fact and what you present as a judgment call."

Ultimately, Crowell prevailed by showing jurors that the government was responsible for the cost increases because it, not Lockheed, kept changing the contract. The firm also brought in witnesses from the Air Force who supported the adequacy of Lockheed's bid, Troy said.

In the bid protest arena, the firm showed off its deep technical knowledge when it helped BAE Systems successfully protest a \$280.4 million contract to develop the U.S. Navy's next-generation electronic jamming system.

The contract aimed to develop a replacement for the Navy's existing tactical jamming system pods, used on the EA-18 Growler aircraft, and the Navy had chosen Raytheon Co. over teams led by BAE and Northrop Grumman Corp.

In sustaining BAE's protest, the U.S. Government Accountability Office found that the Navy had failed to reasonably evaluate technical risk in accordance with the terms of the solicitation, had failed to adequately document its evaluation, and had improperly credited Raytheon with outdated experience, a GAO official told Law360 at the time.

In light of that protest, the GAO recommended that the Navy reconsider its decision to award the contract to Raytheon Co.

Forman attributes this outcome to the firm's comfort with complex technical issues — a comfort so complete the firm sometimes handles its cases without using technical experts, he said.

"We have folks on our legal team who are former military personnel, former engineers and software developers, and in addition to being at the top of their game on the legal side, they can speak multiple languages and talk to both general counsel and engineers, and that's an important facet of our practice," Forman added.

However, the team encompasses more than litigation and bid protests. Crowell is also heavily active in mergers and acquisitions in the government contracts arena, and it recently played a significant role advising private equity fund Madison Dearborn Partners LLC in its \$200 million purchase of Alcatel-Lucent SA's LGS Innovations LLC.

As 2015 progresses, the firm anticipates it will see continued growth in M&A as well as cybersecurity, which Forman and Styles say is a burgeoning area for the firm. And Crowell's work in state and local government contracts matters is also flourishing thanks to local counsel who call on the firm to lend background support to their cases, Forman said.

“There’s a level of service here that I don’t see anywhere else ... our clients need us at all hours, at all times, and I will email partners and associates at 1 a.m., and they will jump and get the job done,” Styles added. “Our clients are under extraordinary pressure, and they want their lawyers to be there for them, and we do an extraordinary job of that.”

--Additional reporting by Kat Greene. Editing by Kat Laskowski.

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