

Government Contracts Group Of The Year: Arnold & Porter

By **Dietrich Knauth**

Law360, New York (January 16, 2014, 9:23 PM ET) -- From winning a hotly contested protest over the CIA's \$600 million cloud services contract to bolstering its ranks with a former U.S. Air Force general counsel, Arnold & Porter LLP's continuing successes in national security and contracting law have earned it a place among Law360's Government Contracts Practice Groups of the Year.

Most successful work for government contracts attorneys stays under the radar, so it was gratifying for the firm to showcase some high-profile legal wins in 2013, said practice group head Mark Colley, who leads the more than 50 government contracts lawyers at Arnold & Porter.

Defending contractors often means making sure they never find themselves in court in the first place, and the firm prides itself on proactive approaches that keep potential problems from growing, whether the particular issue is suspension and debarment, inquiries in apparent billing discrepancies, or other contractor-specific legal concerns.

"A great deal of the work that we're doing is not within the public eye, and the clients that we work with are very interested in making sure it stays out of the public eye," Colley said.

The firm, with a team led by partner Craig Holman, helped Amazon Web Services LLC defend its award of a \$600 million CIA cloud services contract from a challenge by IBM Corp.

The contract attracted national media attention and led to a no-holds-barred fight between the tech titans, first in the U.S. Government Accountability Office, which sustained IBM's protest, and then in the U.S. Court of Federal Claims, which was sharply critical of the GAO's decision and of IBM. Judge Thomas Wheeler, ruling for Amazon, wrote that Amazon won because its "offer was superior, and the outcome of the competition was not even close."

The Amazon contract was just one of many significant litigation successes in 2013. The firm successfully defended contract awardees in a number of high-stakes bid protests, representing Mission Essential Personnel in a challenge to \$9.7 billion in contracts for linguist support in Afghanistan, and defending L-3 Communications in a protest over a \$362 million U.S. Army information technology order, among other victories.

The firm also won a string of claims dispute cases on behalf of Raytheon Co. in the Armed Services Board of Contract Appeals, further cementing a body of case law that has made it more difficult for the government to toll a six-year statute of limitations when it wants to pursue alleged billing discrepancies.

Paul Pompeo, who represented Raytheon in the ASBCA cases, and also in a related appeal in the Federal Circuit, said that the decisions have helped shield contractors from litigation over older government claims, an area that has taken on growing prominence as the Defense Contract Audit Agency wrestles with a large backlog of unaudited contract invoices.

While the government has tried various arguments to extend its time to pursue claims, such as starting the six-year clock when the DCAA finishes an audit, the ASBCA has found that the government's claims accrue when the contractor first submits its requests for payment or reports an accounting change that could impact the government — not when the government finishes its review.

“It's a nice, clean standard,” Pompeo said. “I think that cases in the future are going to look back at these Raytheon cases as setting the groundwork for a new body of case law on statutes of limitations.”

In addition to its litigation strength, Arnold & Porter also helps clients with a wide range of national security compliance concerns, including export control compliance, leveraging the experience of the many former government officials at the firm.

Charles Blanchard, a former general counsel at the Air Force and the Army, joined the firm, bolstering a practice group that already includes a former CIA general counsel, a former NSA general counsel, a former legal adviser to the U.S. Department of State, another former Air Force general counsel, and a former deputy general counsel for the U.S. Department of Homeland Security.

John Barker, an Arnold & Porter partner who previously worked as deputy assistant secretary of state for export controls and nonproliferation, said that the firm's depth and breadth of experience with government enforcement is invaluable in helping clients navigate the legal risks that government contractors face, especially as the government puts increasing scrutiny on contractors.

Arnold & Porter's deep bench of experts helped the firm represent United Technologies Corp. in an export compliance audit related to UTC's illegal exports of military software used to develop China's first modern military attack helicopter.

After the company pled guilty and paid a \$75 million settlement, Barker spearheaded UTC's effort to revamp its export compliance after the dust settled, leading a team of 18 other attorneys in an investigation that spanned four continents and required scores of employee interviews and thousands of document reviews to assess UTC's compliance practices and recommend compliance practices going forward.

“While it was required by the government, the company used the audit to be able to improve its compliance, and we were happy to be able to help with that,” Barker said. “On average, we represent about 150 companies per year on export controls and trade sanctions matters. We try to leverage that experience working many clients to help each individual client.”

Colley and Pompeo said that clients keep returning to Arnold & Porter for help with their most difficult problems, and its specialized expertise in areas like export control and cost accounting standards help keep the firm ahead of an increasingly competitive market for government contracts legal work.

“Our clients come to us for the really difficult issues,” Pompeo said. “They know that there are a lot of firms that they can go to for the day-to-day problems, and there's a push to do more work in-house.”

They come to us because they know we can handle the brain surgery, and we've shown we can do that year after year."

The firm is also looking to stay on the cutting edge, exploring areas of law that are increasingly important to contractors, like cybersecurity and privacy laws, to maintain its status as an attractive destination for clients and top legal talent, according to Colley.

"We're not sitting on our laurels," Colley said. "We are trying to consistently deliver the quality and caliber of work that will earn us some regard and keep our clients coming back to us."

--Editing by Edrienne Su.

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