

Government Contracts MVP: Mayer Brown's Marcia Madsen

By **Ben James**

Law360, New York (December 17, 2012, 4:49 PM ET) -- Mayer Brown LLP's Marcia Madsen successfully fended off challenges to government contract awards worth a total of \$2.7 billion for Lockheed Martin Corp. and BAE Systems Ordnance Systems Inc., just two of the wins that landed her a place on Law360's list of 2012 Government Contracts MVPs.

Madsen enjoyed success in both defending protests of government contract awards as well as helping clients pursue challenges of their own, court papers and U.S. Government Accountability Office decisions show.

In addition to her work for Lockheed Martin and BAE, Madsen notched wins in protests brought by VSE Corp. over a support contract for the Army's Rapid Equipping Force and Bechtel Infrastructure Corp. over a contract to design and make pump stations to protect canals in New Orleans.

"Our concern for our clients is that they have a fair and equal opportunity to compete and that's what the protest process is about ensuring," Madsen said. "It allows companies that feel the government hasn't followed its own rules to challenge the government's decision."

BAE winning a 10-year, \$800 million contract to operate the Radford Army Ammunition Plant marked the first time since World War II that there had been a change in management at the Virginia facility.

The selection of BAE brought on a protest from Alliant Techsystems Inc. that took aim at nearly every facet of the Army's award decision, but Madsen and Mayer Brown worked with the Army's counsel and shot down the protest, which the GAO denied in January.

"In any situation where you have a company coming in and challenging a long entrenched incumbent, it's always an uphill fight," Madsen said.

More recently, Madsen secured a major victory for Lockheed Martin when the GAO rejected CH2M Hill Inc.'s protest of a \$1.9 billion National Science Foundation contract award to support research in Antarctica.

CH2M's arguments that the NSF's evaluation of the company's technical proposal was unreasonable, that the agency conducted unequal discussions with Lockheed Martin and that the selection decision was flawed were nixed by the GAO in an April.

Lockheed Martin won the award in December 2011, and CH2M filed its protest in January.

In addition to handing a win to Lockheed Martin, the GAO decision was also a boon to the company because of its timing, which allowed the company to get needed equipment on the ground before the onset of the harsh Antarctic winter.

Madsen's wins in cases brought by clients pursuing challenges to decisions in the government contracts space include convincing the GAO to sustain VSE's protest of a decision to terminate a \$68 million contract, which it did in a November 2011 ruling.

That dispute involved an allegation that VSE got an unfair leg up on other would-be contractors seeking to support the Army's Rapid Equipping Force by hiring a former government employee, the GAO decision said.

Madsen also helped secure a win at the U.S. Court of Federal Claims for Bechtel Infrastructure Corp. in May in another case that involved an alleged conflict of interest and a \$700 million contract awarded to CBY Design Builders by the U.S. Army Corps of Engineers for permanent pump stations in New Orleans.

Bechtel and PCCP Constructors J.V. both filed protests at the GAO after CBY was awarded the contract, arguing that CBY had an unfair competitive advantage because it had hired a former chief of program execution for the Hurricane Protection Office of the Army Corps, the court said in a May opinion.

The GAO sustained the protests and the Court of Federal Claims' May ruling denied a challenge to the GAO decision.

Economic pressure is pushing up the overall number and intensity of legal battles over government contracts and allegations of conflicts of interest — and the question of what former high-level government employees can do after moving on to private contractors — are arising with increasing frequency, Madsen said.

“That is a major issue in this space right now,” she said.

Madsen chaired the Services Acquisition Reform Advisory Panel, which recommended in 2007 that Federal Acquisition Regulatory Council review existing government rules and regulations with an eye toward issuing a new rule on organizational conflicts of interest.

A rule has been proposed, but not finalized, Madsen said.

“The government knows it's got a problem here, and they need to fix their regulations and give their agencies more guidance,” she said.

--Editing by Andrew Park.