

Government Contracts Group Of The Year: Mayer Brown

By **Dietrich Knauth**

Law360, New York (January 30, 2013, 1:36 PM ET) -- Mayer Brown LLP helped BAE Systems PLC win an \$800 million ammunition manufacturing contract from an incumbent with decades of experience, while scoring victories in two high-profile cases involving organizational conflicts of interest, earning it a place among Law360's Government Contracts Practice Groups of the Year.

The firm kept its hands full in 2012, helping Lockheed Martin Corp. secure a \$1.9 billion contract to support research in Antarctica, representing Bechtel Infrastructure Corp. in a successful protest over a U.S. Army Corps of Engineers project to install new floodgates and pumping stations in New Orleans, and winning a string of victories in California state procurements.

In the BAE and Lockheed procurements, Mayer Brown helped its clients unseat incumbent contractors that had more than a decade of experience. Protests over both procurements involved very challenging technical questions. BAE was chosen to take over operation of the unique Radford Army Ammunition Plant, the source of propellant and explosives used in Army weapons, and Lockheed was selected to support National Science Foundation operations in Antarctica, an operation similar to running a small town in a challenging polar environment, according to practice group head Marcia Madsen.

Madsen, who worked on both protests, said she relishes the technical details at the heart of complex acquisitions.

"I find the technical aspects of these cases really fascinating," she said. "If I had been born 20 years later, I probably would have been an engineer."

When BAE was chosen to run Radford in May 2011, incumbent contractor Alliant Technosystems Inc. protested, saying it was best positioned to oversee planned Army upgrades to the facility, based on its long history there. Alliant was the only company to run the factory, which opened in 1941.

"It's the only facility in the United States that produces nitrocellulose, the accelerant that goes into mortars, small-caliber rockets, Howitzers and things like that," Madsen said. "The party that had been running the facility had enormous incumbent knowledge ... there were a lot of arguments about whether anyone but the incumbent could do this."

It was an uphill battle, but BAE convinced the Army that it could do the job better than Alliant, and Mayer Brown helped the contractor and the Army defend that decision in a protest before the U.S. Government Accountability Office.

In addition to overthrowing incumbents, Mayer Brown also made its mark in the organizational conflicts of interest arena, winning two protests involving former federal employees who went to work for contractors.

In November 2011, Mayer Brown convinced the GAO to sustain VSE Corp.'s protest of a decision to terminate a \$68 million contract supporting the Army's Rapid Equipping Force. Losing bidders alleged that VSE got a leg up by hiring a former government employee, the GAO decision said.

In addition to defending VSE, Mayer Brown also used organizational conflicts of interest arguments in a successful protest over a \$700 million contract awarded to CBY Design Builders to install permanent pump stations in New Orleans.

Representing Bechtel in protests in the GAO and the U.S. Court of Federal Claims, Mayer Brown argued 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 GAO sustained the protests and the Court of Federal Claims denied a challenge to the GAO decision in May.

Madsen said the VSE and Bechtel cases were “two sides of the same coin.” Organizational conflicts of interest protests are very fact-intensive, and experienced attorneys can help make the difference in cases that appear superficially similar, according to Madsen.

The two cases could be influential because in the absence of updated organizational conflicts of interest regulations, case law that describes what the government needs to do to mitigate organizational conflicts of interest concerns can be helpful for federal agencies, she said.

“It's an area where guidance is desperately needed, and these two cases flesh out what agencies need to think about when officials leave and what contractors need to think about before hiring a government official,” Madsen said.

Mayer Brown also stood out in 2012 for its expertise in California procurement law, and is involved in several large protests in that state.

It currently represents Motorola Solutions Inc. in a protest of a \$600 million contract to build a regional interoperable communications system in the Los Angeles region. After the Los Angeles procuring authority awarded the contract to Raytheon Co., Motorola successfully protested and won the contract after it was reprocured. That award was later canceled, and the firm represents Motorola in its effort to win the contract after Los Angeles issued a new request for proposals.

In other California work, Mayer Brown represents Titan Outdoor in a hotly-contested fight over a \$110 million transit advertising contract with the Los Angeles County Metropolitan Transportation Authority. It also represents Zetron Inc. in an effort to overturn a \$13 million fire and dispatch console contract with Los Angeles County, obtaining a favorable county review panel decision that allowed the case to proceed in California state court.

--Editing by Andrew Park.