

Government Contracts MVP: Mayer Brown's Marcia Madsen

By Kelly Knaub

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For her work successfully defending what is believed to be the largest government contract ever awarded by the U.S. Department of Energy, along with several other high-profile victories, Mayer Brown LLP partner Marcia Madsen has earned a spot on Law360's list of Government Contracts MVPs.



Marcia Madsen

Madsen, who leads Mayer Brown's government contracts practice group, successfully defended Consolidated Nuclear Security LLC against multiple challenges to a \$22.8 billion contract awarded by the Department of Energy and the National Nuclear Security Administration.

The massive contract — a 10-year agreement for the management and operation of highly sensitive nuclear weapons facilities — consolidates the management of the Y-12 nuclear enrichment facility in Oak Ridge, Tennessee, and the Pantex site near Amarillo, Texas, with an option to include the Savannah River Tritium Operations in South Carolina in an attempt to achieve cost savings for the government.

After the contract was won by CNS — which is majority-owned by Bechtel National Corp. and partially owned by Lockheed Martin, ATK Launch Systems and SOC LLC — it faced aggressive protests by Nuclear Production Partners, an affiliate of Babcock & Wilcox Inc., at the U.S. Government Accountability Office.

"You really had to get in and get your hands dirty and understand the work that was being done," Madsen said.

After the first protest was sustained, the government had to go back and reform its procurement plan and eventually reissued its request for proposal, which was again contested by Nuclear Production. The company protested two more times after that.

Madsen said their work was to help the government lawyers defend the protest, to work with their people, make sure that people were prepared to testify, and to ensure that everybody understood all of the details. Finally, after a three-day hearing, the GAO rejected all elements of Nuclear Production's protest and CNS held onto the award.

The government contracts pro said the financial details involved were really important.

"One of the complexities of these DOE sites is that they're heavily unionized, so cost savings at these sites is a challenge," Madsen said. "This RFP had people looking at wages and salaries and pension plans and benefits across these two and a half big facilities that have a pretty entrenched method of operating."

In another significant case this past year, Madsen successfully represented General Motors Corp. in a decade-long dispute with the federal government over pension plan liabilities. After the company sold off its Allison Gas Turbine unit in 1993, the question arose of whether General Motors could recover its share of the pension obligations from the government for employees at that unit at the time of the sale.

Madsen said they had to be very familiar with what the union plan looked like, what the pension plan looked like, what the regulations say, and then had to brief and argue that set of issues to the court. They won summary judgment from the Court of Claims on the issue, which Madsen said is one of the last issues in the case, putting a resolution to the case within arm's reach.

Madsen also successfully represented Lockheed Martin in a protest of a contract awarded to the global aerospace and defense company in 2009 by the Defense Advanced Research Projects Agency to develop a long-range anti-ship missile.

Following two successful tests Lockheed Martin conducted of its weapon by late 2013, DARPA announced its intent to give the company a follow-on contract to perform further work on the program, which included the development of avionics hardware and the fabrication of missile hardware.

The contract, which was to be a "sole-source" contract and therefore not subject to competitive bidding, faced protests filed by Raytheon Co. and Kongsberg Defence & Aerospace AS in March 2014. Madsen successfully countered the protestors' arguments that DARPA had not sufficiently explained the need for the sole-source approach and that the contract was improper under the 2014 National Defense Authorization Act.

"What we had to do to be helpful and useful here was really have a grasp in a very short time period of the various technologies that the parties were proposing so we could explain them clearly and explain why the approach that the DARPA had selected made more sense," Madsen said.

The GAO ultimately issued a decision for Lockheed Martin in June that rejected the protests.

Madsen said that having the ability to work with new systems and technology, understand what's going on, and to understand how things work is essential in what she does.

"We have to have a pretty good ability to grasp technical details quite quickly," Madsen said. "So that's a challenge in our area."

As for what she enjoys most in her work, Madsen said it's the variety.

"Regardless of the agency, they're always doing something really interesting, and we get to see a lot of it," Madsen said.

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