

Government Contracts Group Of The Year: Perkins Coie

By **Megan Stride**

Law360, New York (February 1, 2011) -- Perkins Coie LLP's government contracts group helped mega-contractor Northrop Grumman Corp. sidestep a \$720 million False Claims Act suit last year, one of a number of accomplishments that landed the firm a spot among Law360's Government Contracts Groups of 2010.

The firm also scored big wins bagging a bid protest success for Washington state's Port of Bellingham and representing Fluor Enterprises Inc. in a protest over its win of a Federal Emergency Management Agency contract.

With 13 lawyers in the entire practice group — 11 in the firm's Washington office and two more in its Seattle office — group chair Richard Clifford said that Perkins Coie's government contracts outfit is small in number but large in expertise, enabling the team to give clients maximum value.

"We're very mean and lean, and we're able to attract very high-profile cases from top defense contractors because we're very cost effective and because of the experience we have," Clifford said.

A small group size also means that the Perkins Coie attorneys clients hire are also the lawyers who are going to be intimately involved in the work, Clifford added.

"Our senior partners are more than just a name at the top of the pleading," Clifford said.

The group's lawyers also have the government contracts-specific qualifications that can help cinch big wins, according to Clifford.

Many in the practice have government security clearances, which can make a big difference when working on time-sensitive cases that require quick access to classified information, and most attorneys also boast experience working in government agencies or as clerks in government contracts-focused courts, Clifford said.

Perkins Coie partner Rick Oehler, who spent eight years working as a trial attorney in the U.S. Department of Justice's Civil Division, said that agency experience gives the firm's government contracts practice an edge.

"I was at the DOJ and represented a lot of agencies, so now when I represent companies that are attempting to resolve issues — and companies would generally like to resolve things with the government if they can — I do think I bring an understanding of what the government thinks they need in order to make that happen," Oehler said.

Perkins Coie's government contracts group launched in 2000 with five lawyers, and the practice has held on to several big contractor clients through the years since then, Clifford said.

Part of the reason behind the group's slow but steady growth is that new members must hold a serious understanding of the contracting industry and a certain finesse that makes them a good match for these "institutional clients," Clifford added.

"We want to make sure that not only do we have lawyers that are capable of doing the work, but who are a good fit with our culture and work well with our clients," Clifford said.

Perkins Coie bagged one of its biggest government contracts wins of 2010 while defending industry behemoth Northrop Grumman in a qui tam False Claims Act suit that stemmed from a U.S. Coast Guard contract to retrofit eight patrol boats with updated communication systems.

The suit, which also targeted Lockheed Martin Corp. and Integrated Coast Guard Systems, accused Northrop Grumman of disregarding its own design defects and falsely certifying that its work would meet the specifications of the contract, which was awarded under the Coast Guard's \$24 billion Integrated Deepwater System Program.

The alleged defects eventually caused problems with the boats' hulls and shafts, according to the suit lodged by a former Lockheed Martin employee in the U.S. District Court for the Northern District of Texas in 2006.

The complaint alleged \$240 million in damages to be trebled under the FCA, meaning the defendants were staring down a hefty demand of \$720 million.

Perkins Coie attorneys argued that the court did not have subject-matter jurisdiction to hear the case under the FCA's public disclosure bar, which bans courts from trying suits based on the public disclosure of allegations or transactions.

The relator's claims regarding the design of the patrol boats were all publicly disclosed in an April 2007 congressional hearing on the Deepwater Program, in media reports or by the Coast Guard itself during the lawsuit's discovery period, the Perkins Coie team asserted, meaning that Northrop Grumman should be off the hook.

Judge Reed O'Connor sided with Perkins Coie on Oct. 27, granting Northrop Grumman summary judgment on all claims against it just a day and a half before the four-week trial was slated to begin.

In another impressive victory, Perkins Coie successfully led the state of Washington's Port of Bellingham through the fast-paced bid protest process before the U.S. Government Accountability Office.

The firm helped score a ruling in Bellingham's favor that led to an award of the protest costs and corrective action by the U.S. Department of Commerce's National Oceanic and Atmospheric Administration in 2010.

In the protest, the Port of Bellingham was challenging the award of a 20-year lease by the NOAA to the Port of Newport, Oregon, to provide office, warehouse and related space for the agency's Marine Operations Center-Pacific, according to the GAO decision.

Perkins Coie attorneys argued that the Newport facility was located within a designated flood plain, which made that port's winning proposal noncompliant with the basic requirements of the agency's solicitation for offers, according to Perkins Coie partner Lee Curtis, who led the firm's work on the protest.

The Perkins Coie team argued that the NOAA had failed to consider whether there were any practical alternatives to choosing a facility in a flood plain, and the firm worked to show that the government's own documents established that the agency was not complying with flood plain regulations, an argument that "could be objectively demonstrated," Curtis said.

While the agency asserted that any facility to win the contract would necessarily have to be constructed in a flood plain, the Perkins Coie team argued that the Port of Bellingham was fully compliant and could actually provide a facility with a surface located above the flood plain.

The GAO sided with Perkins Coie in its Dec. 2, 2009, decision, finding that the NOAA had no reasonable basis for the award.

"This is probably the first instance where the GAO has accepted the proposition that the failure to locate the facility above a flood plain necessarily rendered the procurement inconsistent with the rules of the solicitation," Curtis said.

The precedent of the GAO's Bellingham decision has already been applied to at least one subsequent case, according to Curtis.

Perkins Coie also managed to wrangle the costs of the protest for its client, scoring GAO approval for the NOAA's payment — which nearly reached the statutory maximum — on May 17, 2010.

The NOAA took corrective action over several months in mid-2010 by engaging in a review process dictated by flood plain regulations to determine whether the lease could be awarded on an exceptional basis to Newport, given its location on a flood plain, Curtis said.

Upon completing that review, the agency did award the lease to Newport, with the Oregon port proposing a "significant loss" per year in order to secure the award, according to Curtis.

Perkins Coie's client wasn't upset to see the lease go in the end, given the final terms of the contract, Curtis said.

"Our client could not obtain the same type of subsidization, so it was ultimately uninterested in receiving such an award," Curtis said. "They were extremely pleased that they won the protest and extended the discussion."

Perkins Coie banked two more major victories before the GAO in 2010 while representing Fluor Enterprises as an intervenor in bid protests challenging its win of a FEMA architect and engineering support services contract.

Shaw-Parsons Infrastructure Recovery Consultants LLC and Vanguard Recovery Assistance launched a bid protest against FEMA challenging the award of the contract, which went to Fluor and three other offerors.

Fluor had previously been a winning bidder in two related FEMA contracts, and the total value of the three contracts for all awardees was estimated to be about \$2 billion, according to the GAO decision on the matter.

On March 10, the GAO denied Vanguard's protest but sustained Shaw-Parsons', ruling that FEMA needed to reperform its past permanence evaluation of the offerors.

The agency did so, again confirming the selection of the same four bidders and making clear that of the four awardees, Fluor was considered the highest rated overall, according to Curtis.

Shaw-Parsons and Vanguard followed up with a renewed protest, and on Sept. 8, the GAO shut down Shaw-Parsons' protest and sustained Vanguard's.

When the GAO told FEMA to revisit its past performance evaluation once more, the same four winners were confirmed again, according to Curtis.

Defending Fluor was just one of several ways Perkins Coie made a major impression on the government contracts scene in 2010, and given the demand for solid counsel in the arena, Curtis said he doesn't expect the practice group to slow down anytime soon.

"It's a robust practice," Curtis said. "There are a lot of companies that are actively either pursuing protests or defending themselves in the protest process, and we anticipate that there will continue to be a substantial demand for protest representation in the upcoming future."

Methodology: In mid-November, Law360 solicited submissions from more than 300 law firms for its practice group of the year series. The more than 400 submissions received were reviewed by a committee of four editors. Winners were selected based on the number of significant wins the group had in litigation or the size, number and complexity of deals the group worked on in 2010.

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