

Government Contracts MVP: Jenner & Block's Mark Nackman

By **Natalie Olivo**

Law360, New York (December 13, 2016, 1:26 PM EST) -- Jenner & Block LLP's Mark J. Nackman landed major victories for contractors involved in high stakes bid protests, including successfully fighting back against Lockheed Martin's challenge to a \$500 million U.S. Army Corps of Engineers computer contract decision, landing him a spot among Law360's 2016 Government Contracts MVPs.

Nackman, a partner at Jenner & Block's Washington, D.C., office, recently secured a win for Science Applications International Corp. after Lockheed Martin Integrated Systems Inc. protested the Corps' decision to award the \$568 million task order to SAIC. In a decision released in October, the U.S. Government Accountability Office said the Corps could make reasonable decisions about the uncertainty caused by Lockheed's \$5 billion Leidos deal based on the deal announcement in January.

The deal at issue, which combined Leidos and Lockheed's IT systems unit, included a \$1.8 billion payment to Lockheed and stock exchanges as part of the transaction that combined Leidos and Lockheed. When evaluating the proposals, the Corps assumed that Leidos would in fact control the ultimate entity responsible for the work, partially based on the press release announcing the deal, and said that could cost the agency more than \$7 million more than intended each year.

Nackman told Law360 that the type of issues that a mergers and acquisitions deal raises "just kind of automatically drive you to do an interdisciplinary approach, because you have sophisticated M&A corporate transition type issues going on in the background of a government procurement."

In representing SAIC, Nackman said he pulled together a team of colleagues who could address all of the issues involved in the dispute. Although the GAO issues protective orders that limit available information, the Jenner & Block team looked at thousands of pages of documents publicly available through U.S. Securities and Exchange Commission filings.



“We have a fantastic team here, both on the corporate and government contracts side, so we were able to address pretty sophisticated issues that arose in the context of that protest,” Nackman said. In another GAO victory, Nackman represented ASRC Communications Ltd. in its successful bid protest over a U.S. Air Force contract to provide operations, support and maintenance work at its Cape Canaveral station.

In a GAO decision released in February, the government watchdog found that the Air Force had “no reasonable basis” to re-evaluate a \$285 million bid proposal, originally deemed unacceptable, as adequate and in fact the best value.

The GAO sided with ASRC in finding that awardee Aleut O&M Services LLC only adequately addressed one out of four fatal failings identified in its initial proposal, yet the Air Force nevertheless improperly deemed all four fixed and thus Aleut eligible for the project. After the Air Force again awarded the contract to Aleut, Nackman said ASRC protested again, “and we were right again.”

Nackman started his career with the Air Force's judge advocate general and eventually went on to work as general counsel for General Dynamics Inc.'s business unit. He noted that his background in the private and government sectors has been the key to his success.

Regarding his time with the Air Force, Nackman said that “not only are you getting insight into the government's decision process and how things work, it's the amount of responsibility you get very early in your career.”

Nackman came to Jenner & Block in May 2015, after four years at General Dynamics, most recently as vice president and general counsel for its advanced information systems unit, which works on government intelligence and cybersecurity. He also served as vice president and associate general counsel for aerospace and defense company Alliant Techsystems, or ATK.

“My time in the industry, both at General Dynamics and ATK has been particularly useful in a lot of the counseling work I've done,” Nackman said. “In the [Lockeed Martin] protest, it allowed me to have perspective on a transaction, having worked on M&A deals from inside the company, both at General Dynamics and ATK, from the acquiring side and the divesting side.”

When it comes to current policies, Nackman said that the U.S. Department of Defense's crackdown on independent research-and-development funding has been “a war against the contractors for the past several years.”

One aspect of the DOD's floated rules included “technical interchanges” between contractors and the Pentagon, which Nackman said was a controversial change that was initially going to involve approval for a project. He was involved in drafting a white paper for clients to use as advocacy, “to make sure the government understood that requiring approval for a project before you begin it would completely take out that independence.”

The DOD's eventual proposed technical interchanges rule did not require approval, but instead that a contractor has notified the government that it's going to proceed with a project, a subtlety that Nackman said “makes a huge difference.”

“I felt happy and fortunate to be one of the voices in that process,” he said.

--Additional reporting by Michael Macagnone and Bryan Koenig. Editing by Emily Kokoll.

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