

Gov't Contracts MVP: Covington & Burling's Jay Carey

By Daniel Wilson

Law360, Nashville (December 12, 2016, 2:10 PM EST) -- Packing a wealth of experience Covington & Burling LLP's Jay Carey has become a go-to lawyer for major bid protests by federal contractors from a variety of industries, including UnitedHealth's challenges to \$58 billion in Tricare contracts, and earned a spot on Law360's list of Government Contracts MVPs.

Carey joined Covington in 2015, and — in addition to his work helping to advise clients on issues related to government contracts, such as intellectual property rights and potential organizational conflicts of interest — has continued to handle a spectrum of bid protest matters for clients in industries that range from aerospace and defense firms, to biotechnology and health care companies, to information technology and telecommunications firms.

Carey had originally started his career as a general litigator, with government contracts matters eventually coming to dominate his docket, and he has embraced that work, he told Law360.

"One of the things I really enjoy about it is that every protest is a challenge in terms of learning the subject matter," he said.

Many of the bid protests he is regularly tapped to handle are high-stakes matters involving lucrative federal contracting opportunities. A prominent example is his lead role in challenges filed by a UnitedHealth Group Inc. unit over the award of a pair of Defense Health Agency Tricare managed care support contracts, collectively worth \$58 billion. The dispute is currently before the U.S. Court of Federal Claims.

Clients' choosing Covington for such high-stakes work is a testament to the size and scale of the firm's government contracts group, which is about 50 lawyers strong and brings a "deep degree" of expertise and specialization, he said. This enables the team to take on effectively any challenge a government contractor may face, including dozens in the last year alone, according to Carey.

One recent victory saw Carey and his team work alongside the U.S. Department of Defense to help successfully defend a nearly \$3 billion Tricare dental program contract awarded to United Concordia

MVP
GOVERNMENT
CONTRACTS



Jay Carey
Covington & Burling

Cos. Inc., after MetLife Inc. filed a bid protest with the U.S. Government Accountability Office.

The GAO ruled in May that the Defense Health Agency had reasonably assessed technical and past performance factors in both bids, and therefore had reasonably picked UCC's lower-priced bid as the best-value offer.

Working on the other side, Carey also recently led a successful bid protest against a U.S. Department of Veterans Affairs contract to provide medical examinations, potentially worth around \$7 billion.

Arguing on behalf of Logistics Health Inc. and Medical Support Los Angeles, Carey convinced the GAO that the VA had failed to properly consider the actual cost to the government of each potential vendor's bid, looking at line item prices but failing to evaluate the quantity of each item the agency would buy, he told Law360. The GAO also chided the VA for engaging in misleading discussions with the companies. The office's decision resulted in competition for the deal being reopened and awards ultimately being made to both LHI and MSLA, Carey said.

Carey noted that he does not limit his practice to the very largest protests, however, pointing to his recent work for Transcor Inc. in challenging a U.S. Department of Labor contract connected to the agency's Jobs Corps program, a case that demonstrates that "sometimes interesting issues come in small packages," he said.

Transcor had been the incumbent on the deal for more than three decades, but — for reasons that remain a mystery to Transcor, and to its counsel — declined to even inform the company it was issuing a new solicitation for the work, ultimately awarding the new contract to another company.

When Transcor eventually did get wind of the new solicitation, the company filed a protest, only to be told a protest should have been filed when the request for proposals was first issued — despite the DOL's having failed to inform Transcor of the RFP at all.

"Transcor had made every effort to find out if a solicitation had been issued — they had repeatedly called the agency, but couldn't get a straight answer," Carey said.

Ultimately, the GAO declined the DOL's request to dismiss the protest, and the agency in turn took corrective action, with Transcor now having another chance to compete for the award, Carey said.

--Editing by Edrienne Su.