Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

MVP: Covington's Jay Carey

By **Alyssa Aquino**

Law360 (October 10, 2023, 1:08 PM EDT) -- Covington & Burling LLP's Jay Carey helped steer the protest that shook up the U.S. Air Force's $3.3 billion missile support contract and led the successful defense of the U.S. Army's $8 billion award for next-generation attack helicopters, earning him a spot on Law360's 2023 Government Contracts MVPs.

Why he's a government contracts attorney:

Coming out of law school, Carey knew he wanted to be a litigator. He started off with general civil litigation on cases that lasted for years before a bid protest came his way — and the "instant gratification" of the bid protest world, where decisions come back in a 100-day turnaround, really drew Carey in, he said.

"I liked the focus that it gave to everything. Everybody needs to be focused and move quickly, and it doesn't leave people a lot of time for a lot of the shenanigans that you see in other kinds of civil litigation," he said.

Well into his government contracts practice, Carey still loves bid protests, which comprise the majority of what he does.

"I guess I'm a bit of an adrenaline junkie," he said.

His most challenging case of the past year:

In late 2022, Carey led the defense of client Bell Textron's contract to build the Army's next-generation attack helicopter, set to replace the decades-old fleet of UH-60 Black Hawks.

Bell Textron had notched the deal for $8 billion, but the replacement system is expected to be used for decades, giving the award a potential value of tens of billions of dollars.

The deal was extraordinarily intricate, with the Army referring to the procurement as the "largest and most complex" in the history of Army aviation. Spurned bidder Sikorsky Aircraft Corp.'s protest was also complicated — amounting to more than 160 pages of primarily technical engineering arguments.

"I am not an engineer. So … we, as a team here at Covington, really had to learn a lot about that," he said.

"And we had to do all of that in, as we touched on earlier, a very compressed timeline."

In April, the U.S. Government Accountability Office announced the dismissal of Sikorsky's protest. The decision is under a protective order, but the watchdog revealed that Army officials had reasonably found Sikorsky's proposal technically unacceptable.

Despite the case's challenges, Carey noted that Bell Textron had the foresight to lawyer up "a long, long time before the award was made," which helped pave his team's later success.

"The in-house lawyers and the business team spent a lot of time with us educating us about the procurement, their proposal. By the time the protest hit … we had a lot of knowledge and understanding … that we could use to then be much more effective in defending the particular issues that got raised," he said.

Other notable cases he's worked on:

Also this past year, Carey co-led the Covington team that overturned the Air Force's $3.3 billion contract for BAE Systems Technology Solutions & Services Inc. to provide engineering support for the country's intercontinental ballistic missile fleet.

Covington client Guidehouse and Jacobs Technology Inc. had protested the deal, arguing BAE Systems' proposed salaries were too low to recruit and retain personnel. The GAO sided with the protesters, faulting the Air Force for using a flawed evaluation method to analyze BAE Systems' proposed rates.

The Air Force is currently reconsidering the award, according to Covington.

Carey noted that the ICBM deal was "another incredibly complicated procurement," but he declined to provide further comment on the award.

His advice for junior attorneys:

You have to really slow down sometimes, Carey said.

That guidance, Carey said, is somewhat counterintuitive for people enmeshed in bid protests, but he stressed the importance of attorneys taking the time at the front end to do their research before they begin writing a brief.

"Whenever you have a short deadline, your instinct is just to start moving really fast. And my instinct is to start writing as quickly as I can if I have a brief due in five or 10 days," he said. "But I think what's really important is not to do that."

As a younger attorney, Carey admitted he would start writing "way too early" and would have to find his way through the writing process.

"It's just much more efficient to do your homework on the front end, make sure that you've gotten to the ground truth of what the issues are, what the documents say, and then start writing," he said.

--As told to Alyssa Aquino

Law360's MVPs of the Year are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals, and complex global matters. A team of Law360 editors selected the 2023 MVP winners after reviewing more than 900 submissions.

All Content © 2003-2023, Portfolio Media, Inc.