

Gov't Contracts Group Of The Year: Pillsbury

By Ryan Harroff

Law360 (February 23, 2023, 2:02 PM EST) -- Pillsbury Winthrop Shaw Pittman LLP scored a rare, precedent-setting debarment victory for a veteran-owned small business and got an \$83 million settlement over spent nuclear fuel storage for Entergy–Indian Point 2 from the U.S. Department of Justice, earning the firm a spot among Law360's 2022 Government Contracts Groups of the Year.

Pillsbury boasts a large government contracts practice filled with attorneys versed in all sorts of industry litigation, from bid protests to debarments to breach-of-contract claims against the government itself. The firm has 19 offices around the world, with government contracts attorneys in the U.S. in multiple offices on both coasts.

Alex Tomaszczuk, the firm's government contracts practice section leader, told Law360 that Pillsbury's nationwide approach to government contracts in America is a point of pride.

"I think one of the things that is unique about our firm's government contracts practice is the fact that it really operates on both coasts, with strengths on both coasts," Tomaszczuk said, adding that many other firms centralize their government contracts practice in Washington.

That range of strengths helped the firm set new precedent in the contract debarment area, Tomaszczuk said, when it saved veteran-owned Precision Metals Corp. from going under by getting a debarment order against it vacated in New York federal court.

Precision Metals was unjustly debarred for late deliveries after the COVID-19 pandemic disrupted supply lines and the U.S. Department of Defense's Defense Logistics Agency failed to share certain details on parts they wanted the company to provide, according to Pillsbury's Todd Canni, who led the company to victory when it challenged its debarment order.

"It's just bringing attention to things that I think very experienced, sophisticated practitioners and debarring officials knew was the law, but showing that the system has teeth and that a contractor who has its rights violated has recourse," Canni said on the court's decision to vacate the debarment after trial.

The government agreed to vacate the company's debarment in late 2022, and the parties filed a joint stipulation of dismissal in February. According to Canni, that resolution is the reason Precision Metals still exists.



Had Precision Metals remained debarred from government contracts, it would have gone under and put around 50 employees out of work, Canni told Law360. He said the system for debarment is generally about protection, not punishment, but that such a system can still go too far and hurt the little guy.

"This small business with, I think, \$7 million in revenue, a tiny business, takes the Department of Defense to court and prevails?" Canni said. "I mean, that shows that the check is there when the executive branch exceeds its powers."

Pillsbury also scored a victory for the U.S. government in March 2022 when it defended the U.S. Army Corps of Engineers against multiple bid protests that said it should not have awarded more than \$250 million in indefinite-delivery, indefinite-quantity, or IDIQ, contracts for disaster debris removal to ECC Constructors LLC.

The protestors objected to the awards on the grounds that the prices to be paid to ECC Constructors for hauling hurricane, earthquake and other disaster debris was unbalanced in the company's favor. The U.S. Government Accountability Office affirmed the contracts after Pillsbury counsel argued in part that the contracts were meant to account for the unpredictable nature of debris removal, such as some debris being hazardous or toxic.

Richard Oliver, lead counsel from Pillsbury for the Army Corps in the ECC Constructors case, told Law360 that the question of pricing balance in IDIQ contracts, particularly for contracts that span multiple years, as in the ECC Constructors case, is an important issue not just for the contractors but for the government.

"The government's concern, of course, is they want to be sure that they're not paying an unreasonably high price for the work they actually get," Oliver said, adding that he and his co-counsel worked closely with the government's counsel to defend the contract awards as fair.

Pillsbury also dealt with the issue of moving and disposing of hazardous materials when it scored an \$83 million payout from the DOJ in January 2022 on behalf of Entergy–Indian Point 2, which practice group head Tomaszczuk said is one of many energy firms that is stuck storing spent nuclear fuel that the U.S. Department of Energy agreed to collect back in 1998 but never actually took away.

Entergy–Indian Point 2 had "no choice" but to bring an action against the DOE, represented by the DOJ, in order to recover the costs of storing the waste it had been contractually assured would not be its problem, Tomaszczuk told Law360. He said the \$83 million settlement, which was about 90% of the company's claimed loss, was so high relative to similar settlements because the government likely feared going to trial.

"I mean, the government fights over much smaller sums. I think part of it is the history of the Indian Point case," Tomaszczuk said, noting that he could only speculate. "I think the Justice Department concluded they were looking at a likely loser if the case had gone to trial. I think rather than get a judgment, which could have been worse, and if appealed could have been precedent setting."

Considering the past year of Pillsbury's government contracts practice, Tomaszczuk told Law360 that its work in the bid protests and claims area was one of the firm's major successes, and he praised his practice group for its hard work throughout 2022 and onward.

--Editing by Andrew Cohen.
