

Section of Public Contract Law
321 North Clark Street
Chicago, Illinois 60654

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DATED MATTER

Make your hotel reservations now. Disney's Contemporary Resort will release our room block on Tuesday, October 13, 2009, at 5:00 p.m. CDT.



Section of
Public Contract Law

The Federal Circuit Bar Association
BENCH & BAR

Emerging Issues

A Multifaceted Look at Federal Procurement



November 13, 2009

Disney's Contemporary Resort
Lake Buena Vista, Florida

PROGRAM OVERVIEW

Government contractors and practitioners in the field face **tough procurement law issues** as they navigate through the **ever-changing legal landscape**. Our distinguished speakers will spend the day addressing a variety of legal issues and problems, with suggestions from the panelists for **how to address some of the daunting challenges** faced by government contractors in today's legal environment, and **predictions for what to expect in the future**.

- Where will the Congress and the Obama Administration set the bar for **accountability, transparency and ethics for 2009 and beyond**? Four key events have already raised the bar and created new legal concerns: the implementation of the **mandatory disclosure** rule and the requirements for contractor codes of business ethics, the activities of the **Recovery Accountability and Transparency Board**, the issuance of new **memorandum and guidance by the DCAA and OMB**, and Congress' attention to the **False Claims Act**. How will these evolving legal requirements impact the future of government contracting?
- The **Federal Circuit** is faced with unique procurement law issues and litigation challenges. Our distinguished panel of Federal Circuit judges and others will explain **how the appellate practice of government contract law has evolved**, and will discuss the **unique legal and practice considerations before the court**.
- The **American Recovery and Reinvestment Act of 2009** and recent **legislative and regulatory procurement reform initiatives** present **unique challenges to federal construction contractors**, including expanded audit rights, organizational conflicts of interest, mandatory disclosure, E-Verify, and Buy-American restrictions. Many of these legal reforms extend beyond federal construction contracts and also **impact state and local contractors on federally-funded projects**. How do these evolving restrictions function in the context of newly-minted legal requirements accompanying stimulus spending?
- In July 2009, the **Office of Federal Procurement Policy (OFPP)** was expected to release guidance regarding **personal conflicts of interest (PCIs)** in response to the 2009 National Defense Authorization Act. What is the impact of these and other ongoing legal trends in the regulation of PCIs and **organizational conflicts of interest (OCIs)**? What processes and procedures will be necessary for contractors to ensure **compliance with PCI rules**? How will the Government **monitor and enforce PCI restrictions** in a manner that does not interpose the Government between a contractor and its employees?

Join your colleagues and **learned experts** from government, industry and private practice for a stimulating analysis of these emerging issues and what they see as changes to them in the years ahead.

PROGRAM SPONSORS

The Section gratefully acknowledges the very generous support from the following Fall Program Sponsors:

GOLD



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OTHER PLANNED EVENTS

Saturday, November 14, 2009

8:30 a.m. to 12:00 noon

Section Council Meeting

The Council of the Section of Public Contract Law will meet in **open** session where a number of action and informational items will open the window on legislation, regulatory and other substantive issues of current interest and importance to government contracts practitioners. All members and registrants for the Friday program are welcome.

PROGRAM

Friday, November 13, 2009

7:30 a.m. to 8:15 a.m.

Registration

8:15 a.m. to 8:30 a.m.

Welcome and Introduction

Sharon L. Larkin, *Program Co-Chair*
Government Accountability Office
Washington, DC

Daniel P. Graham, *Program Co-Chair*
Wiley Rein LLP
Washington, DC

8:30 a.m. to 10:00 a.m.

Hot Topics for 2009 and Beyond

- Where are the Recovery Accountability and Transparency Board and OMB setting the bar for transparency and accountability in federal procurement?
- Do DCAA's recent pronouncements reflect a completed course correction, or an ongoing trend?
- Is more reform coming? Have the False Claims Act, mandatory disclosure rule and the requirements for contractor codes of business ethics brought about the change that was sought?
- Where will all these recent changes in accountability, transparency and ethics leave the procurement community?

J. Scott Hommer III, *Moderator*
Venable LLP
Washington, DC

Robert A. Burton
Venable LLP
Former Deputy Administrator
Office of Federal Procurement Policy
Washington, DC

Steve A. Linick
Director, National Procurement Task Force
Deputy Chief, Criminal Division Fraud Section
U.S. Department of Justice
Washington, DC

Alice M. Eldridge
Vice President for Ethics and Business Conduct
Lockheed Martin Corporation
Bethesda, MD

PROGRAM

10:00 a.m. to 10:15 a.m.

Networking Break

10:15 a.m. to 11:45 a.m.

Government Contracts Law Practice at the Federal Circuit: A Dialogue Between the Bench and Bar

- How has the appellate practice of Government Contract Law evolved?
- Are there unique legal considerations governing appeals from the Court of Federal Claims versus the Boards of Contract Appeals? Are there any considerations unique to Bid Protest cases?
- What is the effect of Federal Circuit Rule 32.1, Unpublished Decisions, on appellate practice?
- What is the impact of new trends, legislation, and regulations in Government Contracting on dispute resolution at the trial and appellate levels?

Hon. Mary Ellen Coster Williams, *Moderator*
U.S. Court of Federal Claims
Washington, DC

Hon. Daniel M. Friedman
U.S. Court of Appeals for the Federal Circuit
Washington, DC

Hon. Kimberly A. Moore
U.S. Court of Appeals for the Federal Circuit
Washington, DC

Marcia G. Madsen
Mayer Brown LLP
Washington, DC

J. Reid Prouty
Senior Trial Attorney, Civil Division
U.S. Department of Justice
Washington, DC

12:00 noon to 1:30 p.m.

Program Luncheon

Presiding:

Karen L. Manos, *Chair*
Section of Public Contract Law
Gibson, Dunn & Crutcher LLP
Washington, DC

Luncheon Speaker:

Frank R. Jimenez
Vice President & General Counsel
ITT Corporation
White Plains, NY

PROGRAM

1:45 p.m. to 3:15 p.m.

New Restrictions on Federal Construction Contractors

- What legal obstacles do evolving legislative and regulatory procurement reform initiatives place on federal construction contractors seeking stimulus funding under the American Recovery and Reinvestment Act of 2009?
- What has been the impact on federal construction contractors of the ASBCA's decisions in *Mortenson* and *Caddell* and those cases' resolution of restrictions on the recovery of project overhead?
- How have federal construction contractors been impacted by ASBCA decisions such as *Hemphill* and *R.J. Lanthier*, which limit the Government's liability for acceleration in the face of concurrent delay?
- How has the judiciary's treatment of fraudulent payment and performance bonds impacted the contracting process, and how will the regulatory solutions impact federal construction contractors?

W. Stephen Dale, *Moderator*
Smith Pachter McWhorter, PLC
Vienna, VA

Eric L. Nelson
Smith, Currie & Hancock LLP
Atlanta, GA

Thomas H. Gourlay, Jr.
Chief Trial Attorney
U.S. Army Corps of Engineers
Washington, DC

Katherine T. Muldoon
Smith Pachter McWhorter, PLC
Vienna, VA

Edward G. Gallagher
General Counsel
Surety & Fidelity Association of America
Washington, DC

3:15 p.m. to 3:30 p.m.

Networking Break

PROGRAM

3:30 p.m. to 5:00 p.m.

Trends in the Regulation of Personal and Organizational Conflicts of Interest

- What standards and definitions should be used to identify PCIs, and to what extent should these standards and definitions mirror conflict of interest and ethics rules that apply to Government employees?
- What processes and procedures will be necessary for contractors to ensure compliance with PCI rules, and how will the government monitor and enforce these PCI restrictions?
- How will the creation of standard OCI and PCI clauses alter the manner in which these conflicts are identified and mitigated?
- What are the unique challenges to identifying and mitigating OCIs that arise out of the (potentially conflicting) activities of sister corporations, different business units of the same corporation, or member of a teaming arrangement?

Rand L. Allen, *Moderator*
Wiley Rein LLP
Washington, DC

Levator Norsworthy, Jr.
Deputy General Counsel for Acquisition
Department of the Army
Washington, DC

Sheila C. Cheston
Senior Vice President, General Counsel & Secretary
BAE Systems
Rockville, MD

Susan P. Raps (Tentative)
Deputy General Counsel/Acquisition and Logistics
Office of the General Counsel
Department of Defense
Washington, DC

5:00 p.m. to 7:00 p.m.

Section Reception

SPECIAL DISNEY MEETING THEME PARK TICKETS

These special tickets and savings are available only to meeting attendees and their guests.

Transform your business meeting into a complete Disney vacation. Share in all the fun with family and friends or make the most of your free time with Disney's "After 2pm" or "After 4pm" Meeting/Convention Ticket. Disney offers attendees and their guests total ticket flexibility, customization and...a little magic.

- Enjoy advance purchase savings on Multi-day Tickets
- One bonus visit to an additional Disney Experience
- Not available at Theme Park ticket windows
- Save time—no waiting in ticket lines

Orders must be placed by November 11, 2009.

For more information and to order advance purchase of specially priced Disney Meeting/Convention Theme Park tickets, go to:

<http://www.disneyconventionear.com/ABASPCL>

COMING ATTRACTIONS

OCTOBER 27–28, 2009

4th Biennial Federal Drug Pricing Program—Veterans Health Care Act Pricing in an Era of Health Care Reform

HYATT REGENCY WASHINGTON ON CAPITOL HILL, WASHINGTON, DC

MARCH 4–6, 2010

16th Annual Federal Procurement Institute and Open Midyear Council Meeting

LOEWS ANNAPOLIS HOTEL, ANNAPOLIS, MD

MAY 14–15, 2010

5th Annual State and Local Procurement Symposium and Open Spring Council Meeting

RENAISSANCE SEATTLE HOTEL, SEATTLE, WA

NOVEMBER 11–13, 2010

Fall Educational Program and Open Council Meeting

SEAPORT HOTEL, BOSTON, MA

MARCH 3–5, 2011

17th Annual Federal Procurement Institute and Open Midyear Council Meeting

LOEWS ANNAPOLIS HOTEL, ANNAPOLIS, MD

MAY 12–14, 2011

6th Annual State and Local Procurement Symposium and Open Spring Council Meeting

SHERATON GRAND SACRAMENTO, SACRAMENTO, CA

CANCELLATION POLICY

Requests for refund must be made in writing and received in the Section of Public Contract Law's office on or before November 6, 2009. **Refund requests received after October 20 will be reduced by a \$25.00 administrative fee.** Substitutions may be made at any time.

A registration submitted online or by mail, fax, or PDF to the Section office is considered a firm commitment. If you do not cancel by the designated deadline date for refund, you will be expected to pay the registration fee even if circumstances prevent you from attending the program.

NO REFUNDS WILL BE MADE AFTER NOVEMBER 6, 2009.

CLE CREDIT

Accreditation has been requested for this program from every state (including CA and PA) with mandatory continuing legal education (MCLE) requirements for lawyers. Please be aware that each state has its own rules and regulations, including its own definition of "CLE". Attorneys seeking to obtain credit in Pennsylvania must pay fees directly to the PACLE. Please be prepared to remit payment to the PACLE (\$2 per credit hour or any portion thereof) after the program. Certificates of attendance will be available at the conclusion of the program for both attendees and speakers. If you have questions about the number of CLE credit hours granted by each state, you may call 800-285-2221 starting 2 to 3 weeks before the program.

SPECIAL AIRLINE DISCOUNTS

Discounted airfares are available from ABA Orbitz for Business including ABA negotiated discounts on American, United and Continental Airlines. To book online, go to www.abanet.org/travel, click under the Orbitz for Business logo at the top of the page, then click on the appropriate link in the Self Paid Travel box. For assistance with online or offline reservations, call toll free 877-222-4185.

Discounts can also be obtained directly from the carrier. American: Call 800-433-1790 code **20348**; United: Call 800-521-4041 code **578IG**; Continental: Call 800-468-7022 Z code **ZFD2** – Agreement code **BWRKNY**. Continental discounts also available at www.continental.com by entering **ZFD2BWRKNY** in the "offer code box".

HOTEL INFORMATION

Disney's Contemporary Resort is an ultra-modern, lakeside Disney Deluxe Resort, conveniently located within walking distance of Magic Kingdom theme park. The sprawling grounds include a marina, pools, restaurants, recreational facilities, a health club, and tennis courts.

Boasting views of nearby Space Mountain attraction and Cinderella Castle, Disney's Contemporary Resort overlooks 4.5 miles of shoreline along Bay Lake and Seven Seas Lagoon and is the closest hotel to Magic Kingdom theme park.

It is the only hotel in Walt Disney World Resort to have the Walt Disney World Monorail System pass through the main lobby. Guests can pick up the monorail on the fourth floor and easily make their way to Magic Kingdom theme park and Epcot theme park.

Transportation at Disney's Contemporary Resort is complimentary for Resort hotel Guests. Destinations throughout Walt Disney World Resort, including Disney Theme Parks and Disney Water Parks, are accessible by bus, boat, monorail and walking path.

Disney's Magical Express (DME) is a complimentary transportation service between Orlando International Airport and Disney's Contemporary Resort for hotel guests. DME will be offered to guests at the time they call in to make their reservations. More complete information about DME is available on the Section's website: <http://www.abanet.org/contract/admin/programs/2009fall.html>

A block of rooms has been reserved on a **priority basis for program speakers and registrants**. Room rates at Disney's Contemporary Resort are \$205, single/double, plus 12.5% tax per night. A limited number of rooms are available to government employees at the rate of \$99, single or double, per night. The Olympiad Fitness Center, complimentary to hotel guests, features steam rooms, saunas and the latest in fitness equipment including free weights, treadmills, ellipticals, bicycles and stair climbers. Two pools are adjacent to the marina with two hot tubs next to the pools, providing a haven for relaxation.

You may reserve your accommodations by calling the hotel directly at 407-824-3869 and referring to the **ABA Section of Public Contract Law 2009 Fall Meeting**, and guaranteeing your reservation by credit card (American Express, the Disney Credit Card, MasterCard and Visa) or deposit check. Rooms will be available for check-in after 3:00 p.m. with a check-out time of 11:00 a.m. Early arrivals or late departures will be booked on an availability basis. **Individuals with guaranteed reservations must cancel their reservations within five (5) days of the scheduled day of arrival to avoid a one-night cancellation charge.**

Make your reservations NOW. The hotel will release the room block on Tuesday, October 13, 2009, at 5:00 p.m. (CDT).

REGISTRATION APPLICATION

Send directly to:

Marilyn M. Neforas, American Bar Association
321 North Clark Street, M/S 19.1,
Chicago, Illinois 60654
312-988-5596 — Fax: 312-988-6033
neforasm@staff.abanet.org

Register online at: <http://www.abanet.org/contract/admin/programs/2009fall.html>

Please register the following person for the *Public Contract Law (PCL) Section* program on **Emerging Issues: A Multifaceted Look at Federal Procurement** on Friday, November 13, 2009, at Disney's Contemporary Resort, Lake Buena Vista, Florida.

1 Registration Fee:

- \$240 PCL Section or FCBA Member or Associate
- \$195 Government Employee PCL Section or FCBA Member
- \$215 Other Government Employee
- \$295 ABA Member, PCL Non-Member
- \$350 Non-ABA Member

2 Other Events:

- Free Friday, November 13, Cocktail Reception
- Free Saturday, November 14, Council Meeting

For reservations postmarked or faxed after November 6, 2009, and for walk-in registrants, add \$25 to each fee category.

- 3 Name _____
(please print legibly or type)
- ABA Member No. _____
- Firm/Agency/Company _____
- Address _____
- City, State, Zip _____
- Telephone Number _____
- Fax Number _____
- Email _____
- Name of guest _____

4 Payment Method:

- Enclosed is my check, made payable to the **American Bar Association/PCL**, for \$_____.
- Government purchase/training order enclosed.
- Charge \$_____ to my Credit Card:
 AmEx MasterCard Visa

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Signature: _____

- 5 Please send me information on becoming a member or associate of the:
- American Bar Association
 - Public Contract Law Section
 - I am an attorney I am not an attorney