

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:

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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