

American Bar Association
Section of Public Contract Law
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Look inside for program details!

- *Attend any of 9 CLE programs plus two optional CLE programs*
- *Network with leading procurement practitioners*
- *Participate in the Section Council Meeting*
- *Register By **FEBRUARY 5** and get a discounted rate*

Don't miss this premier event!



American Bar Association Section of Public Contract Law
National Contract Management Association



15th Annual Federal Procurement Institute



Procurement Going Forward —

***Today's Questions for
Tomorrow's Challenges***

March 5-6, 2009

2 Full days at Loews Annapolis Hotel, Annapolis, MD
Followed by the Section's Council Meeting on March 7

Procurement Going Forward—Today's Questions for Tomorrow's Challenges

March 5-6, 2009 ■ Loews Annapolis Hotel ■ Annapolis, MD

Today's ubiquitous **promise of change** is surely the harbinger of new and difficult challenges tomorrow. Federal procurement will continue to be at or near the center of the Government's attempts to deal with foreign threats and domestic crises. What **legislative and regulatory initiatives** may be expected with a **new administration** as it attempts to bring change to solving **old problems** and resolving **new concerns**? How will contractors deal with attention to heightened **concern for environmental responsibility** and with **mandatory disclosure requirements**? How will international procurement be affected by the changed **economic environment, both in the U.S. and abroad**? In short, in a changing world, this 15th Annual Federal Procurement Institute asks the question: "**Where is federal procurement "going"?**"

Jointly sponsored by the ABA Section of Public Contract Law and the National Contract Management Association, our "going forward" panels will seek to identify the **trends**, spot the **pitfalls**, and suggest **solutions** for tomorrow based on today's most informed and **experienced thinking**. Among the topics and questions they will cover:

- **Transatlantic culture clashes** amidst rapidly converging procurement markets
- Beyond ESPC, where and what is **green on the procurement horizon**?
- **Task order bid protests** in a changed world at GAO
- The **costs of compliance**: new oversight and accountability legislation
- Whether and when to conduct an **internal investigation**
- Where is **the attorney-client privilege under pressure**?

In addition, a **panel of judges** and distinguished senior practitioners will discuss the current state of procurement law at the courts, and a **two-hour panel on ethical issues** in our changing world will help many practitioners meet their **state bar's mandatory ethics training** requirements.

Optional events include a Wednesday evening Practicum on the **new FAR Mandatory Disclosure Rule and its implementation** and the Thursday Construction Luncheon Program on the **future for U.S.-funded construction**.

On **Saturday, March 7**, from 8:30 a.m. to 12:00 noon, the Council will meet in open session where a number of action and information items will open the window on legislation, regulatory, and other substantive issues of current interest and importance to government contract practitioners.

Put this meeting on your "don't miss" calendar. Register now to take advantage of the discounted rate.

The Section gratefully acknowledges the generous support from the following 2009 FPI sponsors:

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Wednesday, March 4, 2009

5:30–7:30 **Optional Practicum on the New FAR Mandatory Disclosure Rule and Its Implementation**

This *optional* Practicum will focus on the new FAR Mandatory Disclosure Rule, 73 Fed. Reg. 67064, which took effect on December 12, 2008. Government and contractor representatives will discuss the Rule and the Government's and contractors' efforts to implement it. They will explore:

- Procedures established for making and investigating disclosures under the Rule.
- Retroactive “look-back” requirement for violations or overpayments that occurred before the Rule took effect.
- Meaning of “credible evidence” and “significant overpayment” and how those terms relate to other terms in the FAR.

- Requirement of “full cooperation” with any Government investigation of the violation or overpayment, and how that requirement interplays with the attorney-client privilege and the work product doctrine.
- Practical impact of the Rule's enhanced compliance awareness program and internal control system requirements.

Robert K. Huffman, *Moderator*

Akin Gump Strauss Hauer & Feld, LLP
Washington, DC

An agency Inspector General representative

An agency Suspension and
Debarment Official

A contractor in-house counsel

A nominal fee of \$35 will be charged to help defray additional program costs for CLE and written materials.

Thursday, March 5, 2009

7:15–8:15 **Registration and Continental Breakfast**

8:15–8:30 **Opening Remarks and Introductions**

Michael W. Mutek, *Chair*
Section of Public Contract Law
Raytheon Company
Garland, TX

Sharon L. Larkin, *Co-Chair*
Federal Procurement Institute
U.S. Government Accountability Office
Washington, DC

R. Stephen Ayers, *Fellow*
National President
National Contract Management Association
SAIC
San Diego, CA

8:30–10:00 **Going Abroad? An Introduction to European Procurement Practice**

- U.S. bid protest vs. European “challenge” procedures
- European and U.S. practices in representing public and private interests—a comparative analysis of approaches to conflicts
- Rapidly converging transatlantic markets—defense and beyond

- Culture clashes: Common transatlantic pitfalls—and how to avoid

Christopher Yukins, *Moderator*
Associate Professor of Government
Contract Law
George Washington University
Law School
Washington, DC

Berthold Mitrenga
Beiten Burkhardt
Nuremberg, Germany

Michael Bowsher, QC
Monckton Chambers
London, England

Ohad Soudry
Hammonds
Brussels, Belgium

Philippe Oudinot
Arnold & Porter LLP
Washington, DC

Dr. Sabine Pellens
LindenPartners
Berlin, Germany

10:00–10:15 **Networking Break**

10:15–11:45 **Going Green? Current Issues and Initiatives**

- Lessons learned from green initiative attempts
- Are ESPC contracts passé?
- Can acquisition processes and goals achieve operational energy use?
- Are “credits” for green initiatives effective?
- Green initiatives on the procurement horizon

Paul E. Pompeo, *Moderator*
Arnold & Porter LLP
Washington, DC

Eric Cho
Counsel (Minority Staff)
Senate Committee on Homeland Security
and Governmental Affairs
Washington, DC

Eryn Robinson
Professional Staff Member
House Armed Services Committee
Washington, DC

Aaron P. Silberman
Rogers Joseph O’Donnell
San Francisco, CA

Mark Wagner
Vice President, Government Relations
Johnson Controls, Inc.
Washington, DC

12:00–1:30 **Construction Luncheon—Economic Crunch Time: Where Is U.S.-Funded Construction Headed?**

This luncheon is *optional*. No seminar-sponsored luncheon is scheduled.

- Ramifications of major government investment
- Procurement methods for major infrastructure funding
- Running low on funds: contracting and performance issues
- Is public construction an alternative market for commercial contractors?

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

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

Carol S. Clark
HNTB Federal Services Corporation
Kansas City, MO

Bryant Farland
Skanska USA Building
Rockville, MD

1:45–2:15

Going Across Borders? The Offshoring of American Government

An analytic discussion of the legal issues addressed in the Paper awarded First Place in the 2008 *Public Contract Law Journal* Writing Competition.

Christyne K. Brennan
Managing Editor
Public Contract Law Journal
Washington, DC

Michael Zuckerman
Writing Competition Winner
Cornell University Law School
Ithaca, NY

2:15–3:45

Going to Protest? The Evolving Process at GAO

- Procedural and substantive developments in task order protests
- Practical considerations of electronic record development
- Effective use of reverse discovery
- Significant developments in protective orders, timeliness and redactions

Michael R. Golden, *Moderator*
Managing Associate General Counsel
for Procurement Law
U.S. Government Accountability Office
Washington, DC

Glenn G. Wolcott
Deputy Assistant General Counsel
U.S. Government Accountability Office
Washington, DC

Thomas P. Humphrey
Crowell & Moring LLP
Washington, DC

Helaine (Lannie) G. Elderkin
Deputy General Counsel
CSC
Falls Church, VA

Gena E. Cadieux
Assistant General Counsel for
Procurement & Financial Assistance
U.S. Department of Energy
Washington, DC

3:45–4:00

Networking Break

4:00–5:30

Going for Compliance? More Contractor Costs and Risks

- Cost of ethics and compliance programs, including mandatory fraud disclosure
- Limits on “excessive” pass throughs
- Requirements of the FY 2009 National Defense Authorization Act
- Cost challenges surrounding contractor rebates

Robert A. Burton, *Moderator*
Venable LLP
Washington, DC

Greg S. Bingham

Vice President
The Kenrich Group
Washington, DC

John T. Jones, Jr.

Associate General Counsel
General Dynamics C4 Systems, Inc.
Scottsdale, AZ

Rebecca E. Pearson

Venable LLP
Washington, DC

Friday, March 6, 2009

7:15–8:15

Registration and Continental Breakfast

8:15–8:30

Opening Remarks and Introductions

Annejanette Kloeb Heckman, *Co-Chair*
Federal Procurement Institute
EDS
Herndon, VA

Kent R. Morrison, *Co-Chair*
Federal Procurement Institute
Crowell & Moring LLP
Washington, DC

8:30–10:00

Going to the Cloakroom? Issues on the Hill

- Proposals to end cost reimbursement contracting
- The future of commercial item contracting
- Transparency initiatives and the effect on proprietary information
- Oversight and accountability

Angela B. Styles, *Moderator*
Crowell & Moring LLP
Washington, DC

Kristen Ittig
Arnold & Porter LLP
McLean, VA

Cathy Garman
Professional Staff Member
House Armed Services Committee
Washington, DC

Jonathan L. Etherton
President
Etherton and Associates, Inc.
McLean, VA

10:00–10:15 **Networking Break**

10:15–11:45

Going to Confession? Internal Investigations

- Whether and when to conduct
- Determining the scope and who should investigate
- Pros and cons of preparing a report
- Need to cooperate and what it entails
- What is remediation?

Frank Razzano, *Moderator*
Pepper Hamilton, LLP
Washington, DC

Marvin G. Pickholz
Duane Morris, LLP
New York, NY

Jane Wexton
Wexton Advisors, Inc.
New York, NY

L. James D’Agostino
Greenberg Traurig LLP
McLean, VA

12:00–1:30

Luncheon

Speaker not yet confirmed

1:30–3:00

Going to Court? The State of Procurement Law

- When should the Government be treated as would a private party?
- To what extent should APA and common law principles be imported?
- Are standards for recovery of breach damages clear and proper?
- How have the COFC and the Boards fared at the Federal Circuit?
- Are courts engaging in proper fact finding?

Judge Mary Ellen Coster Williams,

Moderator

U.S. Court of Federal Claims

Washington, DC

Judge Thomas C. Wheeler

U.S. Court of Federal Claims

Washington, DC

Judge Candida S. Steel

Civilian Board of Contract Appeals

Washington, DC

Jeanne Davidson

Director, Commercial Litigation Branch,

Civil Division

U.S. Department of Justice

Washington, DC

W. Stanfield Johnson

Crowell & Moring LLP

Washington, DC

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Arent Fox LLP

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Arnold & Porter LLP

Barnes & Thornburg LLP

Beers + Cutler

The Boeing Company

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Thompson Coburn LLP

Venable LLP

Vinson & Elkins LLP

Watt, Tieder, Hoffar & Fitzgerald, L.L.P.

Wiley Rein LLP

Womble Carlyle Sandridge & Rice

3:00-3:15

Networking Break

3:15-5:15

Going Straight? Current Issues in Professional Ethics

- The duty to protect client confidences
- Where is attorney-client privilege under pressure?
- How do you protect client confidences and maintain the privilege?
- Is there a role for Congress in protecting the privilege?

Alison L. Doyle, Moderator

McKenna Long & Aldridge LLP

Washington, DC.

James J. Graham

Trial Attorney, Fraud Section

Criminal Division

U.S. Department of Justice

Washington, DC

Peter B. Hutt II

Akin Gump Strauss Hauer & Feld LLP

Washington, DC

Wallace E. "Gene" Shipp, Jr.

Bar Counsel

District of Columbia Bar

Washington, DC

5:15-7:15

Cocktail Reception

We gratefully acknowledge the contributions from the following sponsors to help defray the costs of all of the Section's quarterly Receptions this year:

ABA Section of Public Contract Law and National Contract Management Association
15th Annual Federal Procurement Institute and Midyear Council Meeting
March 5-6, 2009 ■ Loews Annapolis Hotel ■ Annapolis, MD

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

REGISTRATION FORM

(Register by February 5, 2009 to obtain a discount)

1 Basic Registration	Postmarked or Submitted	On or Before	After	
(Please circle appropriate amount)	Feb. 5, 2009	Feb. 5, 2009	Feb. 5, 2009	COST
PCL (Public Contract Law) Section or NCMA Member	\$425.00		\$485.00	
PCL or NCMA Government Employee or Academic	\$325.00		\$385.00	
Non-PCL or Non-NCMA Government Employee or Academic	\$355.00		\$415.00	
ABA Member, PCL Non-Member	\$525.00		\$585.00	
Non-ABA or Non-NCMA Member	\$625.00		\$725.00	

For reservations postmarked, faxed or entered online after February 25, 2009, add \$50 to each fee category.

Please send me information on how I can become a member or general associate of the:

American Bar Association

Public Contract Law Section

I am an attorney I am not an attorney

Your basic registration fee includes continental breakfast on both days, all scheduled breaks, Friday luncheon, Friday reception, and two days of bound program materials of the speakers' written presentations.

2 Events Registration
 (Please indicate all events you and your spouse/guest will attend)

Wednesday, March 4
Optional CLE Practicum on the New FAR Mandatory Disclosure Rule and Its Implementation

Registrant **\$35.00**

Thursday, March 5
Optional Construction Division Luncheon and CLE Program—Economic Crunch Time: Where Is U.S.-Funded Construction Headed?

Registrant **\$25.00**

Friday, March 6
Luncheon

Registrant **N/C**

Reception

Registrant Spouse/Guest **N/C**

Saturday, March 7

Council Meeting **N/C**

Payment

3 Fees Due

Registration Totals

Registration Fee \$ _____

Other Events \$ _____

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ABA Section of Public Contract Law
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SECTION COUNCIL MEETING

On **Saturday, March 7, from 8:30 a.m. to 12:00 noon**, at Loews Annapolis Hotel, the Council of the Section of Public Contract Law will meet in **open** session to discuss issues of current importance to government contracts practitioners. All members and 2009 FPI registrants are welcome.

CANCELLATION POLICY

Requests for refund must be made in writing and received in the Section of Public Contract Law's office on or before February 25, 2009. **Refund requests received after February 13 will be reduced by a \$50.00 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 FEBRUARY 25, 2009.

HOTEL INFORMATION

Loews Annapolis Hotel, located at 126 West Street in the historic seaport of Annapolis, Maryland, is a 25-minute drive from both Baltimore and Washington, D.C., and only 18 miles from Baltimore-Washington International Airport (BWI). Room rates are \$195, single or double, plus 12% tax per room per night. A very limited number of rooms are also available for government employees at the rate of \$126 single or double. Parking rates range from \$8-\$22 per day.

You may reserve your accommodations at Loews Annapolis Hotel by calling the hotel directly at 410-263-7777 and guaranteeing your reservation by credit card or deposit check.

Please refer to the ABA Public Contract Law 15th Annual Federal Procurement Institute. Rooms will be available for check-in after 3:00 p.m. with a check-out time of 12:00 noon. Early arrivals or late departures will be booked on an availability basis. Individuals with guaranteed reservations must cancel their reservations by 48 hours prior to the scheduled day of arrival to avoid a one night's cancellation charge.

Make your reservations NOW. The hotel will release the room block on February 11, 2009.

GROUND TRANSPORTATION

Super Shuttle operates a van/bus service between BWI and Annapolis. Information about this service can be obtained by calling 800-258-3826. The cost is \$33 per person each way.

Private car transportation from BWI is available for \$68 each way for one or two persons. Arrangements should be made in advance by calling Sundown Enterprises at 443-822-8747.

CLE/CEU CREDIT

Accreditation has been requested for this program from every state (including California and Pennsylvania) with mandatory continuing legal education (MCLE) requirements for lawyers. Please be aware that each state has its own rules and regulations, including its definition of "CLE." Attorneys seeking to obtain MCLE credit in Pennsylvania are required to pay state accreditation fees directly to the PACLE. Please be prepared to remit payment to the PACLE (\$2.00 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. Attendance at this conference also provides points toward CPCM/CACM recertification and CEUs.

SPECIAL AIRLINE DISCOUNTS

Discounted airfares are available from ABA Orbitz For Business including ABA negotiated discounts on American and United 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. If you are calling American Airlines directly at 800-433-1790, please reference Discount Code 19838. The toll-free number for United is 800-521-4041, Discount Code 578IG.

COMING ATTRACTIONS

MAY 15-16, 2009

4th Annual State and Local Procurement Symposium and Open Spring Council Meeting

HOTEL INTERCONTINENTAL, NEW ORLEANS, LA

JULY 31-AUGUST 3, 2009

Annual Educational Programs and Open Council Meeting

INTERCONTINENTAL CHICAGO, CHICAGO, IL

NOVEMBER 12-14, 2009

Fall Educational Program and Open Council Meeting

DISNEY'S CONTEMPORARY RESORT, LAKE BUENA VISTA, FL

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