

**American Bar Association
Section of Public Contract Law
2010 Annual Meeting Program
August 6 through August 9
San Francisco, California**

Unless otherwise noted, all sessions will be held at

**Westin St. Francis
Union Square, 335 Powell Street
San Francisco, CA 94102
415-397-7000**

You must register for the Annual Meeting to attend any of the ticketed events or CLE programs.

Purchasing CLE at the 2010 Annual Meeting is easy. **ABA members can purchase an All-Access CLE Badge for \$470* that covers registration and admittance to governance meetings, non-CLE programs and all CLE programs at the Annual Meeting, including those in the CLE Centre and at the satellite hotels** (registration for non-ABA members is \$875.).

For those wishing to attend only a few CLE programs, the basic ABA member registration fee is \$195*, and individual CLE program tickets are \$75 each (\$35 each for government employees and judges).

Please note that ALL of the Section's CLE programs, including the Monday morning Construction program, will require either a CLE program ticket or the ABA All-Access CLE Badge.

If you register for the All-Access CLE Badge, do not purchase individual CLE program tickets, too.

Registration, housing, event and CLE program ticket information are detailed at the end of this brochure.

All requests for tickets to Section functions will be processed through CDS/TP and must be received by them by Friday, July 16, 2010.

Karen L. Manos, Chair
Section of Public Contract Law

Annual Meeting Program Co-Chairs:
Robert L. Schaefer
Gail D. Zirkelbach

Annual and Quarterly Programs Co-Chairs:
Patricia A. Meagher
Holly Emrick Svetz

* **Increases by \$100 after May 28, 2010.**

* **Increases by \$125 for August 5-10 on-site registration.**

Thursday, August 5

Please refer to the following link for the complete listing of available CLE offerings that begin on Thursday, August 5: <http://new.abanet.org/annual/pdfs/ABA-Annual-2010-SF-CLE-Programs.pdf>

Saturday, August 7

7:00 a.m. to 8:15 a.m.

Council Breakfast

California East, 2nd Floor

For 2009-2010 and nominees for 2010-2011 Section Officers and Council Members only

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

Council Meeting

California West, 2nd Floor

Open to all Section members

12:00 noon to 2:00 p.m.

Section Luncheon and

Annual Alan E. Peterson Lecture

California East, 2nd Floor

Luncheon Speaker:

Daniel I. Gordon

Administrator

Office of Federal Procurement Policy

Washington, DC

This year's Luncheon is made possible by the following Sponsors who have contributed to help defray its expenses:

Section Luncheon Sponsors

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2:00 p.m. to 2:15 p.m.

Annual Section Business Meeting

California East, 2nd Floor

Includes election of Officers and Council Members for 2010-2011 and other Section business

Presiding:

Karen L. Manos

2009-2010 Section Chair

Gibson, Dunn & Crutcher LLP

Washington, DC

2:15 p.m. to 3:45 p.m.

2010-2011 Section Leadership Brainstorming Session

California East, 2nd Floor

4:00 p.m. to 5:30 p.m.

Battle Space and Contingency Procurements Committee Meeting

Olympic Room, 2nd Floor

4:00 p.m. to 5:30 p.m.

Cybersecurity, Privacy and Data Protection Committee Meeting

Victorian Room, 2nd Floor

4:00 p.m. to 5:30 p.m.

International Procurement Committee Meeting

Kent Room, 2nd Floor

4:00 p.m. to 5:30 p.m.

State and Local Procurement Division Meeting

Yorkshire Room, 2nd Floor

6:30 p.m. to 8:30 p.m.

Section Reception

The City Club of San Francisco

155 Sansome Street



Advance reservations and payment of guest tickets must have been received by CDS/TP by July 16.

This gracious social gathering, for Section members and their guests, and honoring the incoming Section Chair, is made possible through the generosity of the following Sponsors who have contributed to defray its expenses.

Reception Sponsors

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

Wiley Rein LLP

Womble Carlyle Sandridge & Rice

Sunday, August 8

7:00 a.m. to 9:00 a.m.

Long Range Planning Committee Breakfast Meeting
Elizabethan Room A, 2nd Floor

9:00 a.m. to 12:00 noon

**CLE Program: Inside the Due Diligence Process—
Applying Best Practices in the Acquisition of a
Government Contractor**

California West, 2nd Floor

Co-sponsored by the Section of Antitrust Law

Whether you are representing the acquiring company, the company being acquired, or representing the government, this program will demystify the acquisition process and help you understand the reasonableness of each party's practical expectations.

In December 2009, the Section of Public Contract Law published *Best Practices in the Acquisition of a Government Contractor*. The lawyers—from the Government, companies and the private bar—who wrote this best-selling book brought their many years of experience in the intricate areas of law that must be addressed in the process of acquiring a government contractor. The book contains over 90 "Best Practice Tips" not found anywhere else.

Now, the authors of this book will take you inside the process to discuss how these best practices are applied, by dealing with a true-to-life hypothetical. The Worldwide MEGA Corporation is evaluating the acquisition of the ACME Widget Company, a company that does much of its business as a government contractor. The lawyers for MEGA and ACME are given a few weeks to address an ever-increasing list of issues, each of which might take months to consider under more leisurely circumstances. But, there is no time to writing hands over how hard these issues are—they must be solved quickly.

The session will begin with jump starting the **due diligence process**. The parties and their lawyers have to:

- ◆ negotiate a non-disclosure agreement, establish the due diligence team and organize the data room;
- ◆ decide what documents MEGA as the buyer should request and what ACME as the seller should provide; and
- ◆ prepare for and participate in briefings.

Given the volume of ACME's government business, the initial focus will be on the **government contract issues** raised by this potential transaction. These bread and butter issues for government contracts lawyers (but perhaps not as well known to the transactional lawyers) include:

- ◆ the type of contracts that ACME performs;
- ◆ the cost issues that are unique to government contracts;
- ◆ ACME's claims, disputes and bid protests;

- ◆ ACME's compliance program, and how it will mesh with MEGA's ethics program;
- ◆ possible conflicts of interest that will be created by the proposed combined company; and
- ◆ intercompany transfers following the transaction.

But wait, there's more. New issues arise that require very specialized knowledge:

- ◆ MEGA already owns other widget companies, raising possible **antitrust** concerns. How and when should those issues be decided and who decides them?
- ◆ much of ACME's work is **classified**, and MEGA has **foreign ownership**. How does that get resolved and by whom?

While the diligence progresses, there are **transactional issues** to address, including:

- ◆ deciding on the scope of the representations about government contracts that go into the acquisition documents;
- ◆ dealing with the fact that MEGA's tax and corporate lawyers want to restructure ACME into a different form of entity;
- ◆ discussing with the Government the requirement for, and scope of, novation and guarantee agreements;
- ◆ determining the impact of the restructuring on cost allowability.

It's a lot to cover in one session. But, it is emblematic of the intensity in a real acquisition. The speakers on this panel have been through it all before and know where the traps are. Combined with the book, this session will give both government contracts and transactional lawyers a realistic idea of what to expect.

Allan Joseph, Moderator
Rogers Joseph O'Donnell
San Francisco, CA

◆ **Antitrust**

Raymond Jacobsen
McDermott, Will & Emery
Washington, DC

◆ **Classified Contracts/CFIUS/Exon-Florio**

Chris Griner
Kaye Scholer LLP
Washington, DC

Jay Fraude
Defense Security Service
Alexandria, VA

◆ **Corporate Structure and Practice**

Marian Block
Lockheed Martin Corporation
Bethesda, MD

Paul T. Porrini

Paul Shinn

Hewlett-Packard Company
Palo Alto, CA

Kathryn G. Simpson

Raytheon Company
Waltham, MA

◆ **Government Contracts**

Joseph Barsalona

PricewaterhouseCoopers LLP
New York, NY

Steven S. Diamond

Arnold & Porter LLP
Washington, DC

Brian Kingston

Defense Contract Management Agency
Boston, MA

12:00 noon to 2:00 p.m.

20th Annual Margaret Brent

Women Lawyers of Achievement Awards Luncheon

Moscone Center West



2:00 p.m. to 5:00 p.m.

CLE Program: The Emerging Procurement Fraud Landscape—Effect of Developments in Law and Enforcement Policy on Investigations and Prosecutions
California West, 2nd Floor

Government, in-house counsel, and private practice experts will discuss the evolving fraud enforcement environment faced by government contractors. There have been significant changes to the procurement fraud landscape, through revisions to the False Claims Act made by FERA and the Patient Protection and Affordable Care Act, the Mandatory Disclosure Rule, and recent federal case law. This panel will discuss these changes, evaluate how they affect compliance and enforcement issues, and consider the differing perspectives of the Government and defense contractors on best practices, risk areas and enforcement trends.

Among the subjects the three-hour panel will address are the following:

- ◆ Effects of the 2009 and 2010 amendments to the False Claims Act on potential liability;
- ◆ Practical issues in Mandatory Disclosure Rule compliance: Identifying “significant” overpayments, finding the threshold for “credible evidence” and other common issues in interpreting the rules;
- ◆ How the Government is managing the flow of mandatory disclosures from contractors;

- ◆ *United States v. Rhule*: Lessons learned from the Broadcom investigation and prosecution; how to avoid problems with attorney-client communications, representation issues and prosecutorial misconduct issues;
- ◆ The “zero tolerance” prosecution perspective on alleged fraud under Stimulus Package Programs;
- ◆ In resolving criminal and civil fraud matters, DoJ has long maintained a “hands-off” policy concerning related suspension and debarment actions; is a different approach in the works?

E. L. “Pete” Hoffman, Co-Moderator

Jackson Kelly PLLC
Martinsburg, WV

Susan A. Mitchell, Co-Moderator

McKenna Long & Aldridge LLP
Los Angeles, CA

Bryan D. Daly

Sheppard Mullin Richter & Hampton LLP
Los Angeles, CA

Eric R. Feldman

Senior Advisor to the Director for Procurement Integrity
National Reconnaissance Office

James J. Graham

Trial Attorney, Fraud Section
Department of Justice
Washington, DC

James S. Kennell

Vice President and Assistant General Counsel
SAIC
McLean, VA

Kevin McCall

Assistant General Counsel
Northrop Grumman Corporation
Los Angeles, CA

Frances Lynn McCormick, Special Agent

Program Manager
Contractor Disclosure Program
Department of Defense Inspector General
Washington, DC

Michael G. Scheininger

McKenna Long & Aldridge LLP
Washington, DC

Monday, August 9

7:00 a.m. to 7:30 a.m.

Construction Program Continental Breakfast

California East, 2nd Floor

This continental breakfast is included in the ABA All-Access CLE Badge or CLE Program Ticket used for the program that follows.

7:30 a.m. to 9:00 a.m.

CLE Program: Recent Developments—Proving Acceleration and Inefficiency Claims in Construction Contracts

California East, 2nd Floor

This 90-minute CLE program and 7:00–7:30 a.m. continental breakfast are made possible by our Gold Sponsors—The Kenrich Group LLC and Smith Pachter McWhorter PLC—and our Silver Sponsor—Smith, Currie & Hancock LLP—whose contributions have helped to defray its expenses.

Loss of productivity claims are among the most challenging disputes for construction professionals to litigate. While the parties can often identify discrete project events that resulted in changes, delays, or disruptions, they usually disagree as to both liability for and quantification of lost productivity damages.

The contentious nature of these disputes is also reflected in the body of case law. Courts and boards have utilized several different methodologies to justify large damages awards for lost productivity. Many of these same methodologies, however, have also been subject to criticism and questioned in both their theory and practical application. The panel will consider several questions pertaining to the proving and pricing of loss of productivity claims, including the following:

- ◆ The phenomenon that symptoms of lost productivity are typically identifiable, although the resulting damages are often difficult to quantify;
- ◆ Potential impact of common contract clauses on the recovery of lost productivity claims;
- ◆ Methods often utilized to quantify lost productivity damages and their acceptance and criticism by courts and boards;
- ◆ Impact of recent judicial decisions on parties that are litigating lost productivity claims.

Mark A. Sgarlata, Moderator

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

Ken Smith

Group Counsel
Granite Construction, Inc.
Watsonville, CA

Blake V. Peck, PE, CCM

President
McDonough Bolyard Peck
Fairfax, VA

Mairav R. Mintz, PE

Branch Manager
McDonough Bolyard Peck
Columbia, MD

Christopher M. Anzidei

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

9:00 a.m. to 12:00 noon

CLE Program: Different Perspectives on Interacting With a More Active DCAA

California West, 2nd Floor

As the roles and responsibilities of the Defense Contract Audit Agency (“DCAA”) continue to evolve, the manner in which federal contractors and their legal counsel interact with the DCAA similarly needs to evolve. Recent trends include the increase in the federal government’s reliance on the DCAA to decrease potential instances of “fraud, waste, and abuse” in the federal contracting arena and a shift in the division of legal and regulatory responsibilities between Contracting Officers and the DCAA. The panels will consider the impact of these changes on federal contractors and their legal counsel from a variety of perspectives.

This CLE program features two 90-minute panels.

Success in an Evolutionary Audit Environment

This panel of government, in-house and private practice experts will discuss what can and should be done, given the events of the past two years, from the 2008 GAO report, to the proposed DFARS Business System Rule, to the DPAP Memorandum—Resolving Contract Audit Recommendations, to ensure that contractors, their legal counsel and auditors achieve productive and efficient audits and audit resolutions. Amidst all the hype, business must go on, and practical audit solutions must be developed and adopted.

Among the questions they will address are:

- ◆ How can contractors and their legal counsel most efficiently support DCAA Audits?
- ◆ How will audit recommendations be resolved in the future?
- ◆ What is the proper role of the new, more active DCAA and the IG?
- ◆ How will the DCAA, DCMA, contractors and their legal counsel implement the “Business Systems Rule”?
- ◆ How will the government contract community deal with “Payment Recapture Audits”?

Thomas M. Abbott, Moderator

McKenna Long & Aldridge LLP
Los Angeles, CA

Patricia A. Meagher

Rogers Joseph O’Donnell
San Francisco, CA

Glenn Sweatt

General Counsel
ECC
Burlingame, CA

Mark E. Langevin

Northrop Grumman Corporation
Los Angeles, CA

Practical Advice for Those Who Deal With the More Active DCAA

This panel of accounting experts who regularly advise clients on thorny accounting issues will explain the events of the last two years in a historical context—from the DIVAD litigation to the more recent GAO and IG Reports. They will explain in practical terms how shifting audit and oversight roles, and changes in audit guidance and regulations, are affecting contractors, government agencies and shareholders.

Among the questions they will address are:

- ◆ What can the contracting officer do when they disagree with the DCAA's audit findings?
- ◆ After the GAO and IG criticisms, will contractors more often object to DCAA audit findings?
- ◆ Will the DoD have to rely less on the DCAA and more on outside audit firms when litigating cost issues?
- ◆ Will DCAA's audit requirements be increased with fewer, but more rigorous, audits completed?

Andrea B. Tecce, Moderator

Navigant Consulting
Washington, DC

Cheryl A. LeeVan

TM Financial Forensics LLC
Chicago, IL

David A. Hall

Alvarez & Marsal Dispute Analysis
& Forensic Services, LLC
Denver, CO

Greg S. Bingham

The Kenrich Group LLC
Washington, DC

12:00 noon to 2:00 p.m.

**8th Annual Ruth C. Burg Luncheon
for Women in Public Contract Law**
Empress of China, 838 Grant Avenue



This year's Luncheon is made possible through the generosity of the following Sponsors who have contributed to defray its expenses:

Ruth C. Burg Luncheon Sponsors

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Coming Attractions

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

AUGUST 5–8, 2011

Annual Educational Programs and Open Council Meeting

Sheraton Centre, Toronto, Ontario, Canada