

American Bar Association
Section of Public Contract Law
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DATED MATTER

Look inside for program details!

- *Attend any of 9 CLE programs*
- *Network with leading procurement practitioners*
- *Participate in the Section Council Meeting*
- *Register By **FEBRUARY 4** and get a discounted rate*

Don't miss this premier event!

16th Annual Federal Procurement Institute

Shifting the Plates of the Acquisition System:

*Investigations, Oversight
and Transparency —*

*A Seismic Event or
Just Another Tremor?*

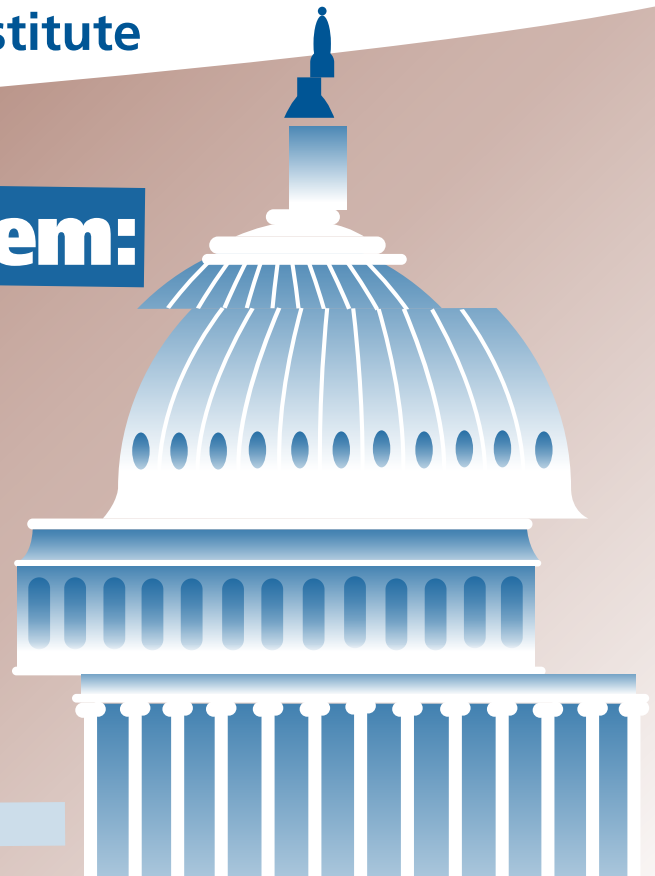
March 4-5, 2010

2 Full days at Loews Annapolis Hotel

Annapolis, MD

Followed by the

Section's Council Meeting on March 6



**Federal Bar Association
Government Contracts Section**

Shifting the Plates of the Acquisition System: Investigations, Oversight and Transparency—A Seismic Event or Just Another Tremor?

March 4-5, 2010 ■ Loews Annapolis Hotel ■ Annapolis, MD

Over the past year, **Congress has continued its relentless push for statutory and regulatory reform** of the acquisition process, and the **enforcement community has stepped up the pressure of its oversight activities** to an unprecedented level. In addition, the Obama Administration's efforts to change the Federal Procurement system have been moving forward for over a year, and this impact is just beginning to be felt. Federal agency procurement officials and industry participants in the Federal marketplace are watching carefully for the signs of **either a fundamental shift in the way the Government does business** (reminiscent of the mid 1990's Acquisition Reform movement) or **perhaps just the routine recycling of procurement laws and regulations** that comes with every new Administration.

The ABA Section of Public Contract Law, National Contract Management Association, and Federal Bar Association Government Contracts Section are jointly sponsoring the 16th Annual Federal Procurement Institute. This year's FPI will **focus on the emerging trends and salient legal issues** in Government contracting that have surfaced in the past year and attempt to **predict the impact of the political and programmatic changes** currently being implemented. Among the topics and questions to be covered are:

- What is the **future role of the contracting officer** in Federal Acquisition? Has the legal authority to make decisions for the Government been eroded?
- What are the **challenges to contracting officer authority and autonomy? Do the roles of DCMA and DCAA encroach on contracting officer discretion?**
- **How are Federal procurement laws, regulations and policies changing** based on current Congressional and Obama Administration acquisition policy initiatives?
- What are the **lessons learned** from our **recent wartime contracting experience** in Iraq and Afghanistan? Do we need new laws and regulations for contingency contracting?
- Will the **False Claims Act Amendments of 2009** create an avalanche of new *qui tam* actions?
- How can the private sector survive **increasingly complex cyber security challenges?**
- What are the **ethical issues facing practitioners** as a result of the new FAR **Mandatory Disclosure Rule and the "interviews" of employees** authorized by the Recovery Act?

On **Saturday, March 6**, from 8:30 a.m. to 12:00 noon, the Council will meet in open session to discuss a number of action and information items involving 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 2010 FPI sponsors.

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Thursday, March 4, 2010

7:00-7:45 **Registration and Continental Breakfast**

7:45-8:00 **Opening Remarks and Introductions**

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

Marcia G. Madsen, *Co-Chair*
Federal Procurement Institute
Mayer Brown LLP
Washington, DC

Gary L. Poleskey, *National President*
National Contract Management
Association
Dayton Aerospace, Inc.
Dayton, OH

Matthew J. McGrath, *Chair*
Government Contracts Section
Federal Bar Association
The McGrath Law Group, LLC
Washington, DC

8:00-9:30 **Contracting Officers: The Journey from
Autonomy to 24/7 Oversight**

- What are the statutory and regulatory sources of traditional CO authority?
- Is CO authority being eroded by Congress, the Courts, Boards, the IGs and protesters?
- If a CO cannot make a decision that binds the government, who can?

Patricia H. Wittie, *Moderator*
Oldaker Belair & Wittie LLP
Washington, DC

Barbara T. Greeley
(Former) Chief
Division of Planning and Procedures
USCG Office of Contract Operations
Washington, DC

Paula J. Haurilesko
Staff Attorney
Government Accountability Office
Washington, DC

John S. Pachter
Smith Pachter McWhorter, PLC
Vienna, VA

9:30-10:00 **The Administration's Acquisition Agenda**

Daniel I. Gordon
Administrator
Office of Federal Procurement Policy
Washington, DC

10:00-10:15 **Networking Break**

10:15-11:45 **The Role of DCMA and DCAA in
Supporting the Contracting Officer**

- How are contract administration responsibilities divided between the PCO and ACO and does this limit the PCO's legal authority and discretion?
- How are audit reports used in contract formation and administration? Can a CO challenge statutory and regulatory interpretations reflected in an audit report?
- How does the contracting officer reconcile adverse audit findings? Who has the authority to decide when DCAA and the contractor disagree?
- In performing their functions, does DCMA or DCAA limit a contracting officer's legally authorized discretion?

James A. "Ty" Hughes, Jr., *Moderator*
Deputy General Counsel (Acquisition)
Department of the Air Force
Washington, DC

Charlie E. Williams, Jr.
Director
Defense Contract Management Agency
Alexandria, VA

Peter A. McDonald
Navigant Consulting, Inc.
Vienna, VA

DCAA Representative (Committed)

12:00-1:30 **Construction Luncheon—Small Business
and Other Set-Asides in Federal
Construction Contracting.**

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

- Socio-economic policies underlying Small Business Set-Asides
- Current trends, including Mentor-Protégé Agreements
- Limitations on subcontracting and joint ventures
- Regulatory changes to 13 C.F.R. Parts 121 through 127
- The small business concern perspective

Reginald M. Jones, *Moderator*
Smith, Currie & Hancock LLP
Washington, DC

Kathleen Olden-Barnes
Watt, Tieder, Hoffar & Fitzgerald, L.L.P.
Washington, DC

Gail Wegner
Acting Director
Office of Small Disadvantaged Business
Utilization (OSDBU)
Department of Veterans Affairs
Washington, DC

Mary Richards
Executive Vice President
Zapata Incorporated
Charlotte, NC

1:45-2:15

**Writing Competition Presentation—
Energy Savings Performance Contracts:
Assessing Whether to “Retrofit” an
Effective Contracting Vehicle for
Improving Energy Efficiency in Federal
Government Facilities**

An analytic discussion of the legal issues
addressed in the Paper awarded First Place in
the 2009 *Public Contract Law Journal* Writing
Competition.

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

David R. Frenkil
Writing Competition Winner
The George Washington University
Law School
Washington, DC

2:15-3:45

**Emerging Legal and Policy Issues:
Acquisition Initiatives from the Hill and
the Obama Administration**

- Which acquisition issues are of greatest concern to Congress and the Administration?
- On which legal and policy issues is there consensus in the government? Where is there disagreement?
- What changes, if any, should be made to the acquisition process for major systems? Commercial items?
- What are the legal and policy implications of the increased emphasis on in-sourcing?

Paul W. “Whit” Cobb, Jr., Moderator
Deputy General Counsel (Corporate)
BAE Systems, Inc.
Rockville, MD

Troy Cribb
Counsel
Senate Committee on Homeland
Security and Governmental Affairs
Washington, DC

Peter Levine
General Counsel
Senate Armed Services Committee
Washington, DC

Steven L. Schooner
Associate Professor of Law and
Co-Director of the Government
Procurement Law Program
The George Washington University
Law School
Washington, DC

William T. Woods
Director
Acquisition and Sourcing Management
Government Accountability Office
Washington, DC

3:45-4:00

Networking Break

4:00-5:30

**The American Recovery and
Reinvestment Act: Reporting
Requirements, the Recovery Board,
“Interviews” of Employees, and the
Role of the Inspector General**

- What are the oversight initiatives in the Act and how have they been implemented?
- How do the Act and its implementation compare with the Inspector General Act of 1978?
- What are the benefits and burdens of oversight?
- What are the oversight models for the future?

David F. Dowd, Moderator
Mayer Brown LLP
Washington, DC

Robert J. Cramer
Managing Associate General Counsel
Government Accountability Office
Washington, DC

Mary Mitchelson
Deputy Inspector General
Department of Education
Washington, DC

Laura Auletta
Procurement Analyst
Office of Federal Procurement Policy
Office of Management and Budget
Washington, DC

Anne B. Perry
Sheppard Mullin Richter & Hampton LLP
Washington, DC

Friday, March 5, 2010

7:30-8:00 **Registration and Continental Breakfast**

8:00-8:15 **Opening Remarks and Introduction**

James J. McCullough, *Co-Chair*
Federal Procurement Institute
Fried, Frank, Harris, Shriver
& Jacobson LLP
Washington, DC

8:15-9:45 **The Commission on Wartime Contracting
and New Legislative and Regulatory
Initiatives—Impact on Contractors in the
Battle Space**

- How will the new OMB guidelines on “inherently governmental functions” impact battle space contracting?
- How should we measure success in battlefield contracting? Is a “lowest price - technically acceptable” standard for warzone security sufficient to achieve battle space contracting objectives or are there other standards that should be used?
- How is contract oversight being implemented during the drawdown of U.S. forces in Iraq and the surge in Afghanistan? What are the lessons learned and recommendations for improvement?

Tara M. Lee, *Moderator*
DLA Piper US LLP
Reston, VA

Rich Beutel
General Counsel
Commission on Wartime Contracting
Washington, DC

Mark DeWitt
Senior Director
Legal & Government Affairs
Triple Canopy, Inc.
Herndon, VA

Chris Taylor
Chief Executive Officer
Mission Essential Personnel
Chantilly, VA/Columbus, OH

Jeff Green
President
J.A. Green & Company, LLC
Washington, DC

9:45-10:00 **Networking Break**

10:00-11:30 **The 2009 False Claims Act Amendments:
Perspectives of Government and
Relators’ Counsel**

- How did the 2009 amendments to the False Claims Act change the statute’s liability provisions?

- Are the amendments “clarifications” to existing law, and should they be applied retroactively?
- What is the significance of the changes to the statute’s Civil Investigative Demand provisions?

Rob Vogel, *Moderator*
Vogel, Slade & Goldstein, LLP
Washington, DC

Brian D. Miller
Inspector General
General Services Administration
Washington, DC

Michael Granston
Deputy Director, Commercial
Litigation Branch, Civil Division
Department of Justice
Washington, DC

Roann Nichols
Deputy Chief, Civil Division
U.S. Attorney’s Office for the
District of Maryland
Baltimore, MD

Colette G. Matzzie
Phillips & Cohen, LLP
Washington, DC

11:45-1:15 **Luncheon**

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

Speaker:
Shay D. Assad
Assistant Secretary of Defense for
Acquisition (designated);
Director of Defense Procurement
and Acquisition Policy
Washington, DC

1:30-3:00 **Cybersecurity Challenges: Mitigating
Risks and Exploring Opportunities**

- What challenges do agencies and contractors face in complying with current requirements?
- How can contractors develop comprehensive cybersecurity strategies? Are SAFETY Act protections available?
- Will new legislation and regulations clarify cybersecurity standards?
- What are the challenges to effective public-private partnership on cybersecurity issues?

Annejanette Heckman Pickens

Moderator
Senior Counsel
HP Enterprise Services, LLC
Herndon, VA

M. Peter Adler

Chief Privacy Officer
UnitedHealth Group
Washington, DC

Christina Ayiotis

Deputy General Counsel for
E-Discovery and Data Privacy
CSC
Falls Church, VA

Ellen Doneski

Chief of Staff
Senate Commerce, Science and
Transportation Committee
Washington, DC

Brian Finch

Dickstein Shapiro LLP
Washington, DC

Hugo Teufel III

Director
PricewaterhouseCoopers LLP
McLean, VA

Paul J. McNulty

Baker & McKenzie LLP
Washington, DC

Department of Justice Office of
Professional Responsibility
speaker not yet confirmed

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:

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3:00-3:15**Networking Break****3:15-5:15****Ethical Issues for Government, Corporate and Outside Counsel Involved in Employee Interviews, Fraud Investigations and Mandatory Disclosures**

- What ethical issues does the new FAR mandatory disclosure rule raise for corporate and outside counsel?
- What has been the impact of the August 2008 DOJ Memorandum on the conduct of Agency and DOJ counsel with respect to waiver and cooperation in corporate investigations?
- Have the ethical ground rules for employee interviews changed for internal investigations and responding to Government demands for access to employees?

Agnes P. Dover, Moderator

Hogan & Hartson LLP
Washington, DC

Wallace E. "Gene" Shipp, Jr.

Bar Counsel
DC Office of Bar Counsel
Washington, DC

Steve A. Linick

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

16th Annual Federal Procurement Institute and Midyear Council Meeting

March 4-5, 2010 ■ Loews Annapolis Hotel ■ Annapolis, MD

Register online at: <http://www.abanet.org/contract/admin/programs/2010fpi.html>

REGISTRATION FORM

(Register by February 4, 2010 to obtain a discount)

1 Basic Registration		2 Events Registration	
Basic Registration (Please circle appropriate amount)	Postmarked On or Before Feb. 4, 2010	or Submitted After Feb. 4, 2010	(Please indicate all events you and your spouse/guest will attend) COST
PCL (Public Contract Law) Section, NCMA or FBA Member	\$425.00	\$485.00	Thursday, March 4 <i>Optional Construction Division Luncheon and CLE Program—Small Business and Other Set-Asides in Federal Construction Contracting</i>
PCL, NCMA or FBA Government Employee or Academic	\$325.00	\$385.00	<input type="checkbox"/> Registrant \$25.00
Non-PCL or Non-NCMA -FBA Government Employee or Academic	\$355.00	\$415.00	Friday, March 5 Luncheon
ABA Member, PCL Non-Member	\$525.00	\$585.00	<input type="checkbox"/> Registrant N/C
Non-ABA or Non-NCMA -FBA Member	\$625.00	\$725.00	Reception
For reservations postmarked, faxed or entered online after February 24, 2010, add \$50 to each fee category.			<input type="checkbox"/> Registrant <input type="checkbox"/> Spouse/Guest N/C
<input type="checkbox"/> Please send me information on how I can become a member or general associate of the: <ul style="list-style-type: none"> <input type="checkbox"/> American Bar Association <input type="checkbox"/> Public Contract Law Section <input type="checkbox"/> I am an attorney <input type="checkbox"/> I am not an attorney 			Saturday, March 6 <input type="checkbox"/> Council Meeting N/C
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.			

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3 Fees Due	4 Method of Payment
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SECTION COUNCIL MEETING

On **Saturday, March 6, 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 2010 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 24, 2010. **Refund requests received after February 12 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, 2010.

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 \$199, 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 \$120 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 16th 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 8, 2010.

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 \$35 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, 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 1-877-222-4185.

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".

COMING ATTRACTIONS

MAY 14 – 15, 2010

5th Annual State and Local Procurement Symposium and Open Spring Council Meeting
RENAISSANCE SEATTLE, SEATTLE, WA

AUGUST 6 – 9, 2010

Annual Educational Programs and Open Council Meeting
WESTIN ST. FRANCIS, SAN FRANCISCO, CA

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