

# 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.**

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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?

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**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**

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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