

2018 Fall Educational Program

NOVEMBER 1–3, 2018

Nashville, Tennessee



Program Overview

The ancient Greek philosopher Heraclitus famously said, “The only thing that is constant is change.” That sentiment certainly describes the current state of flux in government contracts. Conducting business with the Government — whether federal, state or local — remains a complex and challenging undertaking, and the changes are accelerating. As the legal and regulatory landscape continues to shift under our feet, it is more important than ever to understand emerging trends and how recent legal developments are playing out in the procurement arena. Our Fall Program focuses on a number of “hot spots” that require practitioners to understand and consider the implications of recent or impending changes. Join us and hear subject matter experts examine recent and anticipated developments in the law and best practices for procuring or securing contracts and successful contract completion from both the Government and industry perspectives.

- Gain real-world insight into how hackers think and how they choose their targets, and what contractors can do to prepare their defenses and get ready for a cyberattack and its aftermath.
- Learn about best practices for responding to a procurement crisis and potential changes in the law to address such issues.
- Consider how artificial intelligence is changing the legal landscape.
- Explore how changes in FAR and DFARS clauses have expanded the factors that must be considered when deciding what should be flowed down to subcontractors.
- Hear about the lessons learned from the first two years of the SBA’s All Small Mentor-Protégé Program.
- Explore the practical implications of the *Escobar* decision on the nuts and bolts of False Claims Act litigation.
- Delve into issues relating to subawards under federal financial assistance awards (i.e., grants and cooperative agreements).

Register today and enhance your awareness of emerging issues impacting the procurement process and the tools necessary for success at each step, while networking with other Government contract professionals and enjoying the charm and hospitality of Nashville, Tennessee.

Nashville is filled with historic, cultural and musical attractions. Take in a show or tour the historic Ryman Auditorium. Catch a Nashville Predators game or a concert at Bridgestone Arena. Celebrate Country Music’s warm and cherished history at the Country Music Hall of Fame and Museum. Cheer on the Tennessee Titans at Nissan Stadium. Learn about Johnny Cash, Patsy Cline, and George Jones at their respective museums. History buffs will enjoy a visit to the Hermitage, the former plantation home of Andrew Jackson, or the Nashville Parthenon, a full-scale replica of the original Greek Parthenon. (As with the theme of change, Heraclitus would feel right at home.)

We look forward to seeing you in Nashville.

Program Committee

SECTION CHAIR

Kara M. Sacilotto, Partner, Wiley Rein LLP, Washington, DC

PROGRAM CO-CHAIRS

Kaitlin Hazard, Associate, Bass, Berry & Sims PLC, Nashville, TN

Todd R. Overman, Member, Bass, Berry & Sims PLC, Washington, DC

Malaka Watson, Corporate Counsel, HealthTrust, Nashville, TN

Eric Whytsell, Member, Jackson Kelly, PLLC, Denver, CO

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Program Schedule

THURSDAY, NOVEMBER 1, 2018

1:30 pm

Registration

2:00 pm – 4:00 pm

Cybersecurity—Knowing the Enemy and Responding to an Attack

With all of the talk about the impacts of hostile cyber attacks and rules aimed at preventing security incidents, the nuts and bolts of such attacks and their aftermath sometimes get lost. This session will provide participants valuable insight into hackers, their most likely targets, and key data protection expectations. It will also include an interactive real-time “tabletop” demonstration focused on identifying, recovering and responding to a successful cyber attack.

Topics will include:

- Who are these hackers and what do they want?
- What makes a contractor a good target?
- What actually happens when you learn about a successful attack?

MODERATOR:

Charles Barley Jr., Director, Risk Advisory Services (IT), RSM US, LLP, McLean, VA

YOUNG LAWYER CO-MODERATOR:

Sonia Tabriz, Associate, Arnold & Porter, Washington, DC

SPEAKERS:

Sean Renshaw, Director, National Leader, Digital Forensics and Incident Response, RSM US, LLP, Chicago, IL

Andrew Weidenhamer, Security Director, RSM US, LLP, McLean, VA

4:00 pm – 4:15 pm

Networking Break

4:15 pm – 5:45 pm

Politics & Policy of Responding to Procurement Crises

Federal and state governments have seen a number of procurement crises occur over the last several years. From the technical problems in the rollout of Healthcare.gov to Tennessee’s recent nullification of a large number of state education testing results, many of these crises trace back to issues in the procurement of technology. This panel will consider the legal and political aspects of responding to these situations when they arise. Topics will include:

- Recent high profile procurement crises;
- Responding to procurement crises; and
- Potential changes to procurement policy and technical aspects of contracting.

MODERATOR:

Mary Beth Bosco, Partner, Holland & Knight, Washington, DC

Program Schedule

SPEAKERS:

Nathaniel Greeson, Senior Procurement Litigation Attorney, U.S. Department of Homeland Security (FEMA), Washington, DC

Dismas Locaria, Partner, Venable LLP, Washington, DC

Jeffrey P. Yarbro, Tennessee State Senator – District 21 and Counsel, Bass, Berry & Sims, PLC, Nashville, TN

6:15 pm – 7:45 pm

Reception

Sponsored by: Baker Donelson, 211 Commerce Street, Nashville, TN

FRIDAY, NOVEMBER 2, 2018

7:30 am – 8:15 am

Registration and Continental Breakfast

8:30 am – 10:00 am

The Thoughtful Contractor's Approach to Subcontract Terms and Clauses

Given the proliferation of complex contract clauses that impose obligations on not only the prime contractor but also multiple levels of subcontractors, the days of flowing down clauses by simply including them verbatim in subcontracts are long gone, at least for contractors who take contract performance and compliance seriously. This session will explore this new reality of subcontracting through a scenario that highlights some of the challenges facing thoughtful contractors today. Topics will include:

- Sorting out the interests of prime contractors, subcontractors and the government in defining subcontract terms;
- When merely “flowing down” is not enough;
- What subcontract terms are mandatory and why?

MODERATOR:

Howard Wolf-Rodda, Partner, Abrahams Wolf-Rodda, LLC, Potomac, MD

SPEAKERS:

Keir Bancroft, Associate General Counsel (Acquisition), U.S. Air Force, Washington, DC

Christine Couvillon, Office of General Counsel, U.S. Department of Homeland Security, Washington, DC

Karri Palmetier, Partner, Palmetier Law, Denver, CO

10:00 am – 10:15 am

Networking Break

Program Schedule

10:15 am – 11:45 am

Lessons Learned from SBA's All Small Mentor-Protégé Program

This panel will feature a discussion of the lessons learned during the first two years of SBA's All Small Mentor-Protégé Program, which in October 2016 opened up participation, formerly limited to the 8(a) Program, to all socioeconomic designations (small, WOSB, SDVOSB, HUBZone). The panelists will discuss the new Program's popularity, how contractors are using it (e.g., joint venturing), and the challenges and opportunities for SBA to evolve the Program over time.

Topics will include:

- Practical considerations in applying for the Program;
- Opportunities and pitfalls for Joint Ventures and other forms of assistance under the Program;
- SBA's enforcement of Program requirements; and
- Program challenges and plans for future changes.

MODERATOR:

Stephen P. Ramaley, Associate, Miles & Stockbridge P.C., Tysons Corner, VA and Washington, DC

SPEAKERS:

LaTanya Channel, State Director of Tennessee, U.S. Small Business Administration, Nashville, TN

Joshua A. Mullen, Shareholder, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Nashville, TN

12:00 noon – 1:45 pm

Luncheon Program: AI for the Law and Law for AI—The Train Has Left the Station!

PRESENTER: Professor J.B. Ruhl, David Daniels Allen Distinguished Chair of Law; Director, Program on Law & Innovation; Co-Director, Energy, Environment, and Land Use Program Vanderbilt University Law School, Nashville, TN

2:00 pm – 3:30 pm

Nuts & Bolts of False Claims Act Practice

This panel will feature a discussion of the practical implications of the *Escobar* decision in the context of False Claims Act litigation. The panelists will focus on the nuts and bolts of a post-*Escobar* False Claims Act case—from pleading and motions to dismiss through discovery.

Topics will include:

- Practical considerations in alleging and defending implied certification theories;
- How discovery has (and hasn't) changed in a materiality world; and
- What the future may hold for False Claims Act law and litigation.

MODERATOR:

Daniel E. Chudd, Partner, Morrison & Foerster LLP, McLean, VA

Program Schedule

SPEAKERS:

Anna C. Haac, Partner, Tycko & Zavareei LLP, Washington, DC

J.B. Perrine, Senior Counsel, Huntington Ingalls Industries, Inc., Pascagoula, MS

Elizabeth Rinaldo, Senior Trial Counsel, U.S. Department of Justice, Washington, DC

Lisa S. Rivera, Partner, Bass, Berry & Sims, PLC, Nashville, TN

Christopher C. Sabis, Assistant U.S. Attorney, Middle District of Tennessee, Nashville, TN

3:30 pm – 3:45 pm

Networking Break

3:45 pm – 5:15 pm

Federal Grants Subaward Panel—Navigating Common Issues in Disparate Programs

The Section's recently established Grant Law Committee will host a panel of practitioners and industry participants focusing on issues that arise in making and managing subawards under federal financial assistance awards (i.e., grants and cooperative agreements). Challenges ranging from selection of instrument type, to identifying key flow down requirements, to establishing reasonable yet effective oversight mechanisms are inherent in each subrecipient transaction regardless of federal program. Join us to discuss common challenges and strategies for passthrough entities (the "primes") and subrecipients alike.

Topics will include:

- Legal and practical challenges of structuring joint/collaborative project performance;
- Key compliance concerns; and
- State agency challenges in carrying out federal programs through contracts with local government and private contractors and subrecipients.

MODERATOR:

Scott S. Sheffler, Partner, Feldesman Tucker Leifer Fidell LLP

SPEAKERS:

Kourtney Hennard, Contract Officer, Sponsored Programs Administration, Vanderbilt University, Nashville, TN

Kelly Randall, Senior Assistant General Counsel, State of Tennessee Department of Health, Nashville, TN

Abby Regan, Contract Officer, Sponsored Programs Administration, Vanderbilt University, Nashville, TN

Andrea Wilson, Partner, BDO USA, LLP, Washington, DC

5:15 pm

Closing Remarks/Adjourn

Program Schedule

5:15 pm – 6:30 pm

Section Reception

The Section of Public Contract Law gratefully acknowledges the support and contributions from our section reception sponsors.

Join us at the Friday night reception for an opportunity to experience Nashville's legendary music scene first-hand. We have recruited local talent to lead us in a group songwriting session, so bring your ideas for the greatest government contracts country music hit that ever was!



SATURDAY, NOVEMBER 3, 2018

8:00 am – 12:00 noon

Council Meeting

Please join the leaders of the Section in the open session to discuss actions and information on legislation, regulations, and other current issues important to government contract practitioners. All members and meeting registrants are welcome to attend the Council Meeting.

UPCOMING CONFERENCES

25th Annual Federal Procurement Institute

March 13-16, 2019

ABA/PCL Annual Meeting

August 8-10, 2019

Registration Information

Register online at <http://ambar.org/PubConFall18>. Members will need an ABA ID number, located on your ABA membership card or on the mailing label above your name on this brochure. Non-ABA members may register online by creating a new customer account. You may also join the Section to take advantage of the discounted member rates. Please contact 800.285.2221 if you need assistance with the online registration system.

Registration Fee

Register online by **October 12, 2018** to receive the early bird registration rates. The attendee registration fee includes continental breakfast, coffee breaks, the Friday luncheon, the receptions, and program materials available in advance through a web link that will be provided to attendees. The registration fees above provide for reduced registration fees for government employees, academics, public interest lawyers employed with non-profit organizations, lawyers admitted to practice for less than five years and law students.

Group Discount

Organizations registering three or more attendees are eligible for a group discount of 20% off each attendee's registration. Please email patty.brennan@americanbar.org for more information.

Tuition Assistance

A limited number of registration fee reductions are available for this program for government employees, public interest lawyers employed with nonprofit organizations, and academics. The fee-reductions will be determined on a one-time only, case-by-case basis. For programs with tuition costs of \$500 or more, qualifying attorneys will receive at least a 50% reduction in the course fees only. Requests must be received by October 1, 2018. You will be notified prior to the program if your application is approved. To apply, send a letter outlining the basis for your request of a fee reduction to Patty Brennan at patty.brennan@americanbar.org.

In-Person Registration

If you plan to register in person, please call the ABA by October 19, 2018 to confirm space availability. Cash payments will not be accepted.

Program Confirmation

Written confirmation of your registration will be sent to you upon receipt. If you do not receive the confirmation notice prior to the program, please call the ABA at 800.285.2221 at least 24 hours in advance to confirm that your registration was received.

Cancellation Policy

Requests for refund must be made in writing and received in the Section of Public Contract Law's office on or before **October 16, 2018** and will incur a \$50 administrative fee. No refunds will be made after **October 16, 2018**. Registrations fees are not transferable to other Section or ABA programs. Substitutions for the program are acceptable.

Substitutions

Written requests for substitutions will be permitted prior to the conference for requests received by the conference registration cut-off date. After this date, substitutions will need to be made on-site. Substitutions are not permitted once a registrant has registered on-site or after the conference has occurred. Please submit a request on firm/agency letterhead to transfer the registration to another person. Only the substitute will be eligible for CLE credit. The substitute and original registrant must work out the payment between themselves.

Hotel Information

The DoubleTree by Hilton Hotel Nashville, 315 4th Avenue North, Nashville, TN is only 10 miles from Nashville International Airport. ABA guests will receive complimentary internet access in guest rooms. When booking reservations, please refer to the **Group Code: ABA or ABA Section of Public Contract Law—2018 Fall Educational Conference and Council Meeting**. Rooms are available for check-in after 4:00 pm and check-out time is 11:00 am.

Registration Information

Individuals with guaranteed reservations must **cancel their reservations 72 hours prior to the scheduled day of arrival to avoid a one night's cancellation charge.** The rooms are available on a first-come, first-serve basis. The section's room block will be available until **Wednesday, October 10, 2018 at 5:00 pm (CST)** or whenever the block fills, whichever comes first.

Attendees Hotel Rate

The special room rate for meeting attendees is \$209 single/double, plus 15.25% tax per room per night. You may reserve your accommodations at the DoubleTree by Hilton Hotel Nashville by calling the DoubleTree directly at 1-800-222-TREE (8733) or 615.244.8200 and providing the group code ABA to make a reservation. You may also reserve your hotel room online at http://doubletree.hilton.com/en/dt/groups/personalized/B/BNADUDT-ABA-20181031/index.jhtml?WT.mc_id=POG.

Government Hotel Rate

A very limited number of rooms are also available for government employees at the rate of \$124 single/double plus taxes. Please email patty.brennan@americanbar.org regarding availability and booking. Proof of current government employment will be required at check-in to be entitled to the government room rate.

Special Airline Discounts

Reservations with ABA Egencia can be made online or offline. For offline reservations, call 877.833.6285. ABA Egencia is available online via ABA Travel Services. A Travel Profile is required when booking airline reservations with ABA Egencia. Visit www.americanbar.org/travel for more information. ABA airfare discounts on some carriers may also be obtained by purchasing your tickets under the ABA Discount Codes directly from the airline or through your travel agent.

American Airlines ABA Discount only available at ABA Egencia.

United Airlines 800.426.1122. For ABA Meetings Only - Agreement Code: 633818 / Z Code: ZE6X,

Discount available at www.united.com Click All Search Options and enter Online Discount Code: ZE6X633818 in the Promotions and Certificates box. Not for leisure travel.

Delta Airlines 800.328.1111 ABA File Global Meeting Code: NMR3V. Discount available at www.delta.com. Click **Advance Search** and enter Online Meeting Event Code: **NMR3V** in the **Meeting Event Code**

Dietary Restrictions

If you have any dietary restrictions, please indicate so by contacting Patty Brennan at 312.988.5623 or patty.brennan@americanbar.org.

Services For Persons With Disabilities

If any special arrangements are required for a person with a disability to attend this conference, please call Patty Brennan at 312.988.5623 by October 16, 2018.

CLE Program Materials

Prior to the program, all advance registrants will receive an email with a link to the CLE materials. No printed materials will be available on-site. You are encouraged to bring a laptop, notebook, or tablet to view the materials onsite. Complimentary Wi-Fi access will be available.

CLE Credit

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, CT, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, ME, MN, MS, MO, MP, MT, NH, NJ, NM, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, VI, WA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs.

This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, contact Patty Brennan at patty.brennan@americanbar.org or 312.988.5623.

2018 Fall Educational Program

NOVEMBER 1–3, 2018

DoubleTree Nashville Downtown Hotel

REGISTER ONLINE: www.ambar.org/pubconfall18

Register by October 12, 2018 to obtain a discount

The following discounts are available to each attendee. The ABA will automatically adjust registrations submitted at the incorrect rate. Full payment at the correct rate must be received in order to process your registration and CLE credits.

Registration Fees	By 10/12/18	After 10/12/18
General Attendee (Non ABA Member)	\$450	\$500
ABA Member, PCL Section Non-Member	\$425	\$475
PCL Section Member	\$350	\$400
PCL Section Member Government Employee, Academic, or Young Lawyer*	\$300	\$350
Other Government Employee, Academic, or Young Lawyer *	\$325	\$375
ABA Law Student Section Member (limited slots available)	\$50	\$50
Saturday, 11/3		
Section Council Meeting	No Fee	No Fee

* *Qualifying young lawyers are under 36 years old or admitted to practice for five years or less.*

GROUP DISCOUNT

Organizations registering three or more attendees are eligible for a group discount of 20% off each attendee's registration. Please email patty.brennan@americanbar.org for more information.

HOW TO REGISTER

We encourage you to register online at www.ambar.org/pubconfall18. All attendees must be preregistered for this conference to participate.

Please enroll me as a member of the of the ABA Public Contract Law Section to take advantage of the section member rate above. I understand I must be a member of the ABA to join the Section.

- \$45 ABA Lawyer Member/ABA Associate Member
- Free ABA Law Student Member

No written materials will be available on-site. You may wish to bring a laptop, notebook, tablet to view the materials onsite as complimentary. Wi-Fi access will be available.



American Bar Association
Section of Public Contract Law
321 North Clark Street
Chicago, IL 60654

Register ONLINE AT

www.ambar.org/pubconfall18

EARLY BIRD REGISTRATION DEADLINE

October 12, 2018

HOUSING DEADLINE

October 10, 2018

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