2019 PUBLIC PROCUREMENT SYMPOSIUM

Everything Under the Sun
Federal, State, Local and Commercial Government Contracting

OCTOBER 24–26, 2019
SAN DIEGO, CALIFORNIA

One and a Half Days of CLE Followed by the Section Council Meeting on October 26
Featuring innovative programs and networking opportunities, the Section’s Public Procurement Symposium will cover key developments in federal, state and local public procurement law that are essential to procurement professionals involved with either traditional or non-traditional government contracting. Whether you have years of deep experience or limited exposure to government contracts, the Symposium has you covered with “Everything Under the Sun!”

The Symposium will explore what drives public procurements from the early stages of acquisition planning through to contract performance and protests/dispute resolution, including how best to avoid and remedy challenges unique to government contracts. Expert presenters will share guidance and insights key to navigating the thicket of legal principles that have developed through the years, including identifying the open areas that are emerging with the latest evolutions in legal thinking and practice.

Concurrent program tracks will provide attendees an opportunity to select programs focused on federal or state and local procurement matters—or both. The “Essentials” track covers contracting from beginning to end, highlighting the most critical areas for both novices and experienced practitioners. And concurrent programs cover a broad variety of topics, such as privacy and cybersecurity impacts on government contractors, challenges presented by high profile/high stakes litigation, criminal antitrust risks in government contracting, and understanding the world of government sponsored research and development.

In addition to these program selections with which attendees may hone their skills and/or develop new interests, the Symposium includes networking opportunities, such as a reception at nearby Petco Park with tours of the facility available. And at breaks during the Symposium, attendees are welcome to join in fast-paced, individual exchanges orchestrated by your Symposium Director and Co-Chairs to expand your professional connections. Multiple speed networking “challenges” throughout the day will enliven the exchanges and add an element of lively competition. Bring a large stack of business cards—you’ll be glad that you have them!

Enjoy San Diego, a city known for its rich culture and scenic landmarks, including the Gaslamp Quarter peppered with Victorian-style buildings, the historic Mission Revival architecture in Balboa Park, breathtaking ocean views at Mission Beach, the beautiful sights and sounds of Sunset Cliffs or Torrey Pines State Natural Reserve, the world-famous San Diego Zoo and the USS Midway aircraft carrier and Museum which houses an extensive collection of aircraft, many of which were built in Southern California.

Please visit ambar.org/19pubpro for the most up-to-date information.
SECTION CHAIR
Linda A. Maramba, Senior Litigation Counsel, Northrop Grumman, Falls Church, VA, Chair, ABA Section of Public Contract Law

CONFERENCE DIRECTOR
Honorable Jeri Somers, Chair, United States Civilian Board of Contract Appeals, Washington, DC

PROGRAM CO-CHAIRS
Erin L. Felix, Shareholder, Polsinelli, Washington, DC
Kristin A. Linsley, Partner, Gibson Dunn, San Francisco, CA
Mark A. Rowland, Division Counsel, Northrop Grumman, San Diego, CA

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Thursday, October 24, 2019

12:30 pm – 5:30 pm
Registration

2:00 pm – 4:00 pm
**Ethics in Business Development and Capture: Where are the Lines?**

Coloring outside of the lines has developed a positive connotation, evoking creativity and healthy, innovative growth. In government contracting, however, not so much. Important principles including fair competition and procurement integrity mark boundaries governing how the government and contractors engage in business. And harmful, unexpected consequences can result from uncertainties about where the lines are drawn. This presentation focuses on the particularly fraught, early phases of the business relationship, when the government seeks products and services and contractors seek to capture attention and contracts. Here, we will discuss the lines set by legal and business ethics and by procurement law, such as the Model Rules, the Procurement Integrity Act, and the assortment of laws pertaining to gifts and gratuities.

**PANELISTS:** Townsend Bourne, Partner, Sheppard, Mullin, Richter & Hampton LLP, Washington, DC; Donald Featherstun, Partner, Seyfarth Shaw LLP, San Francisco, CA; Craig A. Schwartz, Legal Counsel, Palantir Technologies, Washington, DC

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4:30 pm – 5:30 pm
**Parallel Paths or Impending Collision? Tracking the Impacts of Concurrent Federal, State, and Local Privacy and Cybersecurity Developments on Government Contractors**

It seems like every day we hear about a new data breach affecting millions of individuals or a major company’s use of customer data comes under scrutiny. It is no wonder, then, that federal, state, and local governments are passing increasingly protective laws and regulations to prevent the misuse of sensitive information by inadvertent and malicious actors. But what does this mean for government contractors performing contracts under conflicting laws of differing jurisdictions? This panel will provide an overview of recent federal, state, and local legislative and regulatory developments, discuss how these are being implemented as requirements in public contracts, and compare how government contractor compliance obligations differ between jurisdictions. The panel will also consider the issue of preemption of federal laws and regulations with respect to state and local contracts.

**PANELISTS:** Cheryl Burtzel, Partner, Duggins Wren Mann & Romero, LLP, Austin, TX; Angela Hinton, Atlanta, GA
4:30 pm – 5:30 pm
Resolving High-Profile or High-Stakes Litigation When Government Entities are a Party
Non-CLE Program – Petco Park

Challenges abound when pursuing or defending high-profile or high-stakes litigation, and even more so when government entities are a party. This presentation will highlight some of the more significant challenges—and how best to surmount them—as seasoned trial lawyers share their perspectives arising from handling a variety of matters for a diverse set of clients. The discussion will include valuable insights, lessons learned and practice tips that are instructive for resolving litigation involving the government via trial or settlement, or perhaps avoiding such litigation entirely.

PANELISTS: Tara Lee, Partner, Quinn Emanuel Urquhart & Sullivan LLP, Washington, DC; David H. Pittinsky, Partner, Ballard Spahr, LLP, Philadelphia, PA

5:45 pm – 7:00 pm
Reception/Tour at Petco Park TICKETED EVENT Attendance limited to 100.
Sponsored by TM Financial Forensics

Friday, October 25, 2019

7:30 am – 8:00 am
Registration and Continental Breakfast

8:30 am – 10:00 am

Whether challenging the terms of a solicitation or the award of a contract, or defending an award, understanding how to navigate and anticipate the realities of the protest process is essential. But how are key legal principles such as ensuring fair competition and the integrity of procurements balanced against the practical need to expeditiously proceed with the procurement of critical products or services treated under different federal, state, and local government agency structures? The variations are myriad. In this session, federal and state/local protest advocates and adjudicators compare significant similarities and differences in bid protest approaches between jurisdictions, as well as the implications of the intersections and divergences. As the discussion will reveal, understanding these nuances may just be your key to success!

PANELISTS: Catherine “McCall” Ginsberg, Deputy General Counsel, Georgia Department of Administrative Services, Atlanta, GA; Gregory Jacobs, Shareholder, Polsinelli PC, Washington, DC; Eric M. Ransom, Senior Counsel, Government Contracts Group, Crowell & Moring, Washington, DC; Kayleigh Scalzo, Associate, Covington & Burling LLP, Washington, DC

10:00 am – 10:15 am
Networking Break
10:15 am – 11:45 am

**Government Contracting Essentials Part 1: From Planning to Award (And Sometimes Back Again)**

The Government acquisition process commences well before the award of a contract and, on occasion, is not completed even when the contract is awarded. This panel will provide an overview of the acquisition planning and source selection process, from the initial market research to deciding the type of contract to be used—that is, if the agency intends to procure using a “contract” or some other contracting vehicle. The panel will also discuss what goes into a typical source selection, highlighting the applicable rules and principles and reviewing the challenges that may form the basis for a bid protest which, if successful, could reset the procurement back to the drawing board.

**PANELISTS:** Douglas Mickle, Assistant Director, National Court Section of the Commercial Litigation Branch, United States Department of Justice, Washington, DC; George Sullivan, Contracts and Compliance Manager, Energy Systems Group, Arlington, VA

10:15 am – 11:45 am

**At the Intersection of Procurement and Collusion: Understanding Criminal Antitrust Risks in Government Contracting**

The U.S. DOJ Antitrust Division made headlines this year announcing criminal penalties and civil settlements in its ongoing investigation into collusion and bid rigging affecting DOD fuel supply contracts for U.S. military bases. There are high stakes for government contractors as they navigate interactions with competitors while wearing multiple hats as customers (or prime contractors), suppliers (or subcontractors), and teaming/joint venture partners. This panel of experienced attorneys will cover the nuts and bolts of criminal antitrust violations in public procurement, and assess the risk environment given the “revitalization” of the Division’s use of Section 4A of the Clayton Act to seek civil damages, in addition to criminal fines, when the government is the victim of criminal antitrust violations like bid rigging, price fixing and market allocation.

**PANELISTS:** William M. Sloan, Counsel to the Assistant Attorney General, Antitrust Division, United States Department of Justice, Washington, DC; Raul M. Alcantara, Resident Agent in Charge, SoCal Fraud Resident Agency, Major Procurement Fraud Unit, U.S. Army CID, San Diego, CA; Lisa Tenorio-Kutzkey, Partner and Co-Chair, U.S. Antitrust and Trade Regulation Group, DLA Piper, San Francisco, CA; John Seward, Associate Director of Antitrust Compliance, Intel Corporation, Hillsboro, OH

12:00 noon – 1:45 pm

**Keynote Luncheon Program**

**TICKETED EVENT $50**

**KEYNOTE SPEAKER:** Richard A. Powers, Deputy Assistant Attorney General for Criminal Enforcement, U.S. Department of Justice, Washington, DC
2:00 pm – 3:30 pm
**Government Contracting Essentials Part 2:
Now That the Contract Has Been Awarded, What’s Next?**

You have successfully issued or been awarded the contract and survived any potential bid protests. That was the difficult part, right? Sometimes, but in other instances, contract performance is where the challenges will begin. This panel will discuss contract changes, both formal changes and constructive changes, and the contractor’s remedies, including to request an equitable adjustment in the contract price and schedule and to file a formal claim under the Contract Disputes Act. The panel will also provide an overview of the Government’s contractual rights, including the ability to inspect the work and to issue a contract termination for default or termination for convenience.

**PANELISTS:** Greg Correnti, Associate General Counsel, General Dynamics NASSCO, San Diego, CA; Mark Meagher, Office Managing Partner, Dentons, Denver, CO

2:00 pm – 3:30 pm
**“Understanding the Mysterious World of FFRDCs”**?

Perhaps one of the least understood mechanisms for government-sponsored research and development is the Federally Funded Research and Development Center (or FFRDC). These centers, operated by a variety of non-profits, universities and other companies and consortiums, operate under long-term contracts directed towards agency missions.

**PANELISTS:** Saurabh Anand, Chief Counsel Stanford Linear Accelerator Center (SLAC) National Accelerator Laboratory, Stanford, CA; Malissia R. Clinton, Senior Vice President and General Counsel, The Aerospace Corporation, El Segundo, CA; Paul Ehlenbach, General Counsel, Lawrence Livermore National Laboratory, Livermore, CA; Jennifer Lum, General Counsel, California Institute of Technology, Pasadena, California.

3:45 pm – 5:15 pm
**Government Contracting Essentials Part 3: Fraud and How to Prevent It**

Entire conferences are devoted to the False Claims Act and allegations of fraud in Government procurement and presents issues that are frequently reviewed by the United States Supreme Court, including in several recent decisions. This panel will provide a short overview of the False Claims Act and reporting fraud, as well as the remedies available to the Government, which range from civil to criminal and contractual to administrative. In addition, the panel will discuss how a contractor can mitigate against the risks of fraud and other misconduct through the implementation of an effective internal compliance program.

**PANELISTS:** Christopher Cook, Vice President, Corporate Compliance, OSI Systems, Los Angeles, CA; Joshua Greenberg, General Counsel, Rapiscan Systems, Fremont, CA; Gail Zirkelbach, Partner, Crowell & Moring LLP, Los Angeles, CA
CONCURRENT BREAKOUT SESSIONS

3:45 pm – 5:15 pm  
**Behind Bars: New Constraints on Contracting with the Government due to Expansions to, or “De Facto or De Jure,” Suspension and Debarment**

The opportunity to participate in full and fair competition for contracts is a hallmark of government contracting. Accordingly, government action barring contractors from competition is regulated, including by formal suspension and debarment procedures. But recent developments making headlines indicate that government actions barring contractors from contract awards is an expanding area. For example, contractors have been barred from contracting with the government based on allegations of cybersecurity risk, or on having supported (or not) a particular policy. This presentation provides an overview of the general suspension and debarment framework applicable to federal, state and local procurements, then discusses some recent expansions and “de facto or de jure suspension and debarments” taken beyond this framework, as well as how contractors may challenge such actions.

**PANELISTS:** Melissa “Missy” Copeland, Partner, Schmidt & Copeland LLC, Columbia, SC; Glen D. Nager, Partner, Jones Day, Washington, DC; Duc H. Nguyen, Suspension and Debarment Official, U.S. Environmental Protection Agency, Washington, DC

5:15 pm – 6:45 pm  
**Section Reception**

Westin San Diego Gaslamp Quarter Hotel

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**Saturday, October 26, 2019**

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.

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**UPCOMING CONFERENCES**

**March 11–14, 2020**  
26th Annual Federal Procurement Symposium (FPI)  
Annapolis, MD

**July 30–August 1, 2020**  
ABA/PCL Section Annual Meeting  
Chicago, IL
Registration Fee
Register online by September 30, 2019 to receive the early bird registration rates. The attendee registration fee includes continental breakfasts, coffee breaks, the receptions and two days of speakers’ written presentations available in advance through a web link that will be provided. The Friday luncheon program is a separate fee. The registration fees provide for reduced registration fees for government employees, academics, public interest lawyers employed with non-profit organizations, lawyers under the age of 36 or 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 may be available for this program upon application. The fee-reductions will be determined on a one-time only, case-by-case, basis. Requests must be received by September 24, 2019. You will be notified prior to the program if your application is approved. For programs with tuition costs over $500, qualifying attorneys will receive at least a 50% reduction in the course fee(s) only. To apply, send a letter outlining the basis for your request of a fee reduction by September 24, 2019 to patty.brennan@americanbar.org.

In-Person Registration
If you plan to register in person, please call the ABA by October 17, 2019 to confirm space availability. Cash payments will not be accepted.

Cancellation Policy
Registrants who are unable to attend the conference will receive a refund less a $50 administrative fee if written notice of cancellation is received by October 7, 2019. No refunds will be granted after this date. Cancellations may be emailed to patty.brennan@americanbar.org. Registration fees are not transferable to other section or ABA programs. Substitute attendees for the program are acceptable. The ABA reserves the right to cancel any program and assumes no responsibility for personal expense.

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. There is no additional cost for substitutions. 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.

Course Materials
Course materials and related background information will be provided to attendees online prior to the symposium. You may wish to bring a device to view the materials on-site. Complimentary Wi-Fi access will be available.
CLE Credit
The ABA will seek 9 hours of CLE credit (including 2 hours of ethics credit) for this program in 60-minute states, and 10.8 hours of CLE credit (including 2 hours of ethics credit) for this program in 50-minute states. Credit hours are estimated and are subject to each state’s approval and credit rounding rules. Please visit the conference website at ambar.org/19pubpro for program CLE details or visit www.americanbar.org/mcle for general information on CLE at the ABA.

Dietary Restrictions
If you have any dietary restrictions, please indicate so during registration or by email to patty.brennan@americanbar.org by October 10, 2019 so that your needs are noted.

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 10, 2019.

Hotel Information
The Westin San Diego Gaslamp Quarter Hotel is located at 910 Broadway Circle in San Diego, California—a 15-minute drive from the San Diego Airport. ABA guests will receive complimentary internet access in guest rooms. When booking reservations, please refer to the ABA Section of Public Contract Law Fall Program/Council Meeting. Rooms are available for check-in after 3 pm and check-out time is 12:00 noon.

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 section’s room block will be available until October 1, 2019 at 5:00 p.m. (CST) or whenever the block fills, whichever comes first.

Attendees Hotel Rate
The group room rate for meeting attendees is $229 single/double, plus 12.77% tax per room per night. You may reserve your accommodations at the Westin San Diego Gaslamp Quarter Hotel online or by calling the Westin San Diego Gaslamp Quarter at 1-888-627-8563 and asking to “stay at the Westin San Diego Gaslamp Quarter with ABA Section of Public Contract Law.”

Government Hotel Rate
A very limited number of rooms are also available at a government rate for government employees. Proof of current government employment will be required at check-in to be entitled to this government room rate. Please contact Patty Brennan at 312.988.5623 or patty.brennan@americanbar.org regarding availability.

Travel
Airfare and car rental discounts for ABA meetings are available through Egencia and Hertz. Go to www.americanbar.org/membership/aba_advantage_discounts.html for more information.
REGISTRATION

2019 PUBLIC PROCUREMENT SYMPOSIUM/
FALL COUNCIL MEETING

OCTOBER 24–26, 2019
WESTIN SAN DIEGO GASLAMP QUARTER HOTEL

REGISTER ONLINE: ambar.org/pubconfall19
Register by September 30, 2019 to obtain a discount

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<th>Registration Fees</th>
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**Networking Events**

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**Saturday, 10/26**

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

**GROUP DISCOUNT**

Firms/agencies 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 ambar.org/pubconfall19. If you want to register by mail visit ambar.org/19pubpro to download a registration form. Please mail the form with your payment to: American Bar Association, Attn: Section of Public Contract Law, 321 N. Clark Street, Fl. 18, Chicago, IL 60654

All attendees must be preregistered for this symposium to participate.

**ATTENTION ABA MEMBERS!**

If you are an ABA member but not a member of the Section of Public Contract Law, your conference registration fee now includes Section membership, a $45 value. You will be automatically enrolled in the Section. ABA membership is a prerequisite of Section membership. If you are not already an ABA member, please call 800.285.2221. Free membership only applies to individuals who have not been a member of the Section during the past two years. To join the Public Contract Law Section for $45 go to ambar.org/learnMORE.
Register Online
ambar.org/19pubpro

EARLY BIRD REGISTRATION DEADLINE
September 30, 2019

HOUSING DEADLINE
October 1, 2019