Karen L. Manos, Chair

This last quarter has seen some interesting developments in our area of the law. On October 2, 2009, we received the welcome news that the president had nominated long-time Section contributor Daniel I. Gordon to be the administrator of the Office of Federal Procurement Policy. At the time of his nomination, Dan was the acting general counsel of the Government Accountability Office. Among his many contributions to the Section, Dan formerly served on the Section’s governing Council and as co-chair of the Federal Procurement Division, cochair of the Outsourcing and Privatization Committee and vice-chair of the Bid Protest Committee. Dan’s nomination was confirmed by the Senate on November 21, 2009.

In another, more surprising personnel change, the Department of Defense abruptly replaced the director of the Defense Contract Audit Agency. Former Director April G. Stephenson was reassigned to an unspecified “executive” position in the DOD comptroller’s office on October 26, 2009, and was replaced on November 9, 2009 by Patrick J. Fitzgerald, who previously served as the auditor general of the U.S. Army.

The Section continues to contribute to the public debate and help shape acquisition policy. Most recently, the Section’s Suspension & Debarment Committee, working in cooperation with the Administrative Law Section, prepared a comment letter recommending changes to section 602 of H.R. 3221, 111th Cong. (2009), Defunding the Association of Community Organizations for Reform Now (ACORN). The comment letter was prepared at the suggestion of the director of the ABA’s Governmental Affairs Office, Tom Susman, who was concerned that the unintended consequences of the House language could have a potentially disastrous impact on government contractors and grantees. Other recent comment letters prepared by the Section under its technical comment authority addressed Private Security Contractors Operating in Contingency Operations; Prohibition on Contracting with Inverted Domestic Corporations; and the Acquisition of Commercial Items. On the international law front, Council member and George Washington University law professor Christopher R. Yukins briefed a visiting Chinese delegation on the basics of U.S. procurement law.

I am pleased to announce the arrival of two new Section monographs. In December 2009, we published Best Practices in the Acquisition of a Government Contractor.

(continued on page 22)

Agnes and Dan turned to subject matter for future meetings. Noting that economic stimulus funds are trickling in, Agnes suggested Paul Gottlieb (Department of Energy) as a speaker. Paul said that in two months he would have some idea as to the effect of contract awards under the economic stimulus program. By then he also would be in a position to discuss public comments on proposed technology transfer regulations, as well as on CRADAs and open-source software. Agnes said that she would schedule Paul as a speaker for the next meeting.

Dick said that he also would be interested in a speaker on other transactions (OTs). Len then suggested nondisclosure agreements (NDAs), noting that the Treasury Department recently wanted its employees to sign a long NDA.

Len said that frequently he has seen NDAs in service contracts. John said that he believed that the requirement arises principally out of concern for organizational conflicts of interest (OCI). Chris Veith pointed out that such a regulation awaits a DoD definition of “inherently governmental function.” John then suggested administrative patent infringement claims against the government. Chris also suggested industry concern over fixed-price R&D contracting. Other suggestions included authentication and use of CRADAs. Dan concluded that he and Agnes would be glad to consider other topics submitted in advance.

**Meeting information:** The committee generally meets bimonthly (lunch served). Contacts: cochairs Agnes P. Dover, (202) 637-5975, e-mail apdover@hhlaw.com; Herman D. Levy, (703) 698-5246, e-mail hdlleditor@aol.com, and Daniel I. Nylen, (202) 719-7190, e-mail dnylen@wileyrein.com. For more information on this and other committees, visit the Section Web site at www.abanet.org/contract/home/html; click on “Substantive Committees” on the left-hand navigation bar.

---

**NEWS FROM THE CHAIR**

(continued from page 2)

Because the subject matter is of interest to the Sections of Antitrust Law and Business Law, at our request those Sections have agreed to promote it in their publication catalogs and on their links to the ABA store. Also, the long-awaited Guide to the Mandatory Disclosure Rule was published in January 2010, with a special prepublication discount for the Section’s current and new members.

The Section has also been busy with educational programs. The Fall Educational Program in Orlando, “Emerging Issues: A Multifaceted Look at Federal Procurement,” was a huge success, with a record number of registrants. On October 27-28, 2009, the Section held “Veterans Health Care Act Pricing in an Era of Health Care Reform” in Washington, D.C. This biennial federal drug pricing program continues to garner rave reviews from attendees, including comments such as “[it covers] major issues that other conferences don’t”; “excellent content not covered in other pricing programs”; “all experts in one place and accessible”; “excellent speakers . . . nice mix of government folks and very knowledgeable lawyers, consultants”; and “excellent written materials . . . I like being able to take away materials I can share with my company.” Last, but not least, at its September 24 annual conference, the National Association of State Procurement Officials awarded Section member C. Richard Pennington of Denver its highest distinction, the Giulio Mazzone Distinguished Service Award for continuing exemplary service to the public purchasing profession.

I look forward to seeing all of you at the Federal Procurement Institute and open Council meeting next March in Annapolis.