at the state level. Local governments may permit a protest to the local agency.

After that, it gets complicated. Contracts for services and consulting services are covered by one protest process and forum, while contracts for the procurement of goods, telecommunications, and IT goods and services are covered... (continued on page 22)
likely required few intellectual property clauses.

... factories did not require significant research and development, and


... get Bulletin No. M-09-15, Updated Implementing Guidance for

... Federal Agencies and States (2010).

... 19. It is instructive as to just how involved reporting becomes when

... the contractor is required to use an online reporting tool available at

... Recovery Act contract and order number; the amount of Recovery

... Act funds invoiced by the contractor for the reporting period; a list

... significant services performed or supplies delivered; the program

... or project title; a description of the overall purpose and expected

... outcomes or results of the contract; an assessment of the contractor's

... progress towards completion; a narrative description of the employ-

... measures) have been made. Thus, as compared to normal reports

... or project provided under a contract, Recovery Act contracts are

... 20. 35 U.S.C. § 201(c) (2002).


... 22. 40 C.F.R. § 30.36(a)(2010).

... 23. 40 C.F.R. § 30.36(c)(2010).


... 25. Committees on Science, Engineering, and Public Policy, Rising Above the Gathering Storm: Energizing and Employing


... 27. Press Release, DOE, Bold, Transformational Energy Research Projects Win $151 Million in Funding (Oct. 26, 2009), available at


... For a more detailed discussion on commercialization reports

... that ARPA-E, and DOE (DOE) and ARPA-E).

... 29. For a more detailed discussion on commercialization reports

... and public ramifications for failure to provide, see David S. Bloch


... 33. DE-AR0000015 to FloDesign Wind Turbine Corp.;

... 34. The text of the TIAs can be found at http://arpa-e.energy.gov/

... 35. Advanced Research Project Agency – Energy (ARPA-E) Program

... 36. Also available from many agencies are CRADAs, Work for


... 38. 35 U.S.C. § 204 (1980). A similar requirement exists in the


... 40. See, e.g., U.S. Gov't Accountability Office, GAO-09-742,

... 41. FAR 52.227-14(a).

... 42. See, e.g., 10 C.F.R. § 600D, App. A, Alt. II, (g)(2).


... 44. See, e.g., 10 C.F.R. § 600D, App. A, (h).

... 45. See, e.g., 10 C.F.R. § 600D, App. A, (g).

... 46. See, e.g., 10 C.F.R. § 600D, App. A, (f)(1).

... 47. See, e.g., DOD FAR Supp. § 252.277-7013(a)(12).


... 51. Michael Grunwald, supra, n.24.


... the Recovery Act: Transforming the American Economy Through Innovation (2010) (discussing the various technologies funded by the Recovery Act, including many from DOE and ARPA-E).


... the solicitation documents. Perhaps the most unusual California bid protest I have been asked to handle was one involving the public defender for Contra
Costa County. That office had lost a contract to provide representation to juveniles in dependency hearings. The contract was awarded by the court system and we were protesting to the chief judge of the county who had also been on the selection panel. Needless to say, it was a very unusual situation of a kind that one is not likely to find at the federal level.

The Claims Process
California has claims processes described in several different areas of the Public Contract Code for state agencies, but none of them is quite as formal as the Contract Disputes Act (CDA) claims process at the federal level. The California processes can differ depending on the size of the claim, the type of contract, and the agency involved. There can be very short periods in which claims need to be filed.

At the local level, it once again becomes less clear. There are California Government Code provisions that appear to require any claim against public agencies to be filed within a very short time after accrual. Similar to the CDA, the claims process can be a prerequisite to filing a suit.

Types of Procurements
Perhaps the most interesting aspect of working on state and local procurements is the variety and types of procurements. There are standard construction projects for buildings. There are computer systems for the California Department of Motor Vehicles, the California Public Employees Retirement System, the state lottery, and the California Health and Human Services Agency.

The contract structures can be very unique. In one case, California was supporting the construction of a commercial building by a developer; upon completion, the building was then to be leased back to the state for 20 years. In another case, the California Department of Corrections and Rehabilitation entered into a services contract to lease prison space from a company. The company built the facility with its own funds and then the state paid the company based on the number of prisoners housed in the facility per day. In another contract, the state only paid a contractor hired to support state procurements a percentage of demonstrable savings. One contract involved providing state agencies with telephone services. Another contract involved providing state agencies with access to the Internet. Most recently, we worked on a contract to provide a DC-10 aircraft for firefighting efforts.

California has its own multiple award schedule contracting program called, appropriately enough, the California Multiple Award Schedule (CMAS). In addition, states in the region have teamed together to increase purchasing power by forming the Western States Contracting Alliance (WSCA).

Fifty Ways (and More) to Run Your Procurement Process/Fifty State Summaries/Electronic Newsletter
The in-house counsel of a contractor that had a division that only performed state and local procurements once told me that the largest part of the company’s outside legal fees came in the areas of state and local procurement. That counsel explained that he needed a law firm in each of the 50 states to support their efforts, because the laws were different in each state.

Recognizing the complexity and variety of the laws at the state and local level, our Section embarked several years ago on a project to prepare summaries of the key portions of each state’s procurement laws. In the near future we will publish those summaries under the title “Guide to State Procurement—A 50-State Primer on Purchasing Laws, Processes and Procedures.” For details about the summaries, go to the Section website at www.americanbar.org/groups/public_contract_law/publications.html.

In addition to publishing the “Guide to State Procurement,” the Section is also starting an electronic newsletter that will focus exclusively on state and local procurement issues. Recently the cochairs of the Section’s State and Local Procurement Division sent out an e-mail asking members if they wanted to receive the newsletter. Unless you respond in the affirmative, you will not receive it. If you are interested in receiving it, send Section Director Marilyn Neforas an e-mail telling her you would like to receive it. Her address is marilyn.neforas@americanbar.org.

The State and Local Procurement Symposium
Recognizing the breadth and complexities of state and local procurements, the Section in 2006 initiated an annual State and Local Procurement Symposium. We have held this symposium in San Diego, Nashville, Austin, New Orleans, and Seattle. This year we are in Sacramento, California, May 12–14. We have tried to focus the symposium solely on legal issues that arise at the state and local level. We have explored the legal relationships between the federal government and the states, we have examined the “best practices” at the state and local level, and we have explored many more topics. This year we will have presentations on such topics as public-private partnerships, cloud computing at the state level, and recent case developments.

The symposium this year has been put together by Pat Meagher, Jennifer Dauer, and Angela Hinton. I would like to thank them for their efforts.

National Association of State Procurement Officials (NASPO)
In an effort to expand the reach of the Section, we began several years ago to improve our relationship with NASPO. This year we have focused on putting in place a memorandum of understanding (MOU) between the Section and NASPO in which we each promise to promote the other’s organization; one aspect of that effort is our joint promotion of the State and Local Procurement Symposium. The MOU also helps to put the symposium on secure financial footing. The Section of Public Contract Law is pleased to be teamed with NASPO for the symposium, and we wish to extend to NASPO our profound thanks for its support.