By Sharon L. Larkin

I love spring! The freshness of the outdoors, the promise of summer, the hope that fun and excitement are just around the corner. That is how I choose to think of public contracting this year. After the long harsh winter following sequestration and the government shutdown, spring is now upon us! Throughout our Section, I see a renewed commitment to excellence in government contracting taking hold. I see dedication and resolve from both the private and public sectors to make the acquisition system work better. I see our committees, council, Section members, and Section leadership eagerly engaging in substantive discussions and projects, commenting on proposed regulations, and contributing to the professional development of acquisition officials, attorneys, and others who work in the field of public contracting. I see renewed energy put into all of the Section’s upcoming programs. Here are some of the exciting events happening in our Section.

The 20th Annual Federal Procurement Institute, held in Annapolis, Maryland, on March 20-21, 2014, was a shining example of the high quality of our Section programming. The program chairs (Greg Smith, Tracey Howard, and Patricia Becker) planned and executed an exceptional two-day program that had the highest FPI registration total ever of more than 320. Moderators and presenters from the private bar, government, judiciary, academia, and industry spoke on exciting topics such as international contracting, compliance and debarment, bid protests, cyber security, health-care contracting, construction contracting, ethics and technology, and the ever-popular judges panel. Our keynote speaker was the Honorable Patricia Campbell-Smith, the new Chief Judge at the US Court of Federal Claims. Our receptions were wonderful opportunities for attendees to get acquainted and for members to reach out to younger lawyers and new faces to welcome them into the fold. Thank you to our sponsors and to all of you who participated in or attended this program. Thank you, also, to the Federal Bar Association Government Contracts Section, and its chair, Jerry Miles (who is also a Section member), for partnering with our Section to present this outstanding program.

On April 24-25, 2014, our Section partnered with the State & Local Government Law Section to present the 9th Annual State & Local Procurement Symposium.
8. 78 Fed. Reg. 69,273, 69,282 (Nov. 18, 2013) (to be codified at 48 C.F.R. § 52.204-7012(d)).
9. 78 Fed. Reg. 69,273, 69,280 (Nov. 18, 2013) (to be codified at 48 C.F.R. §§ 204.7303 and 212.301(f)(vi)) and 69,282 (to be codified at 48 C.F.R. § 52.204-7012(g)). See also 78 Fed. Reg. 69,273, 69,274 (applying the UCTI rule to Internet and cloud service providers) and 69,276 (applying the rule to small businesses) (Nov. 18, 2013).
11. Id. at 69,278.
12. 78 Fed. Reg. 69,268 (Nov. 18, 2013). “Supply chain risk” is defined as “the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert . . . a national security system . . . so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of such system.” Id. at 69,273 (to be codified at 48 C.F.R. § 252.239-7018(a)). A covered system includes any information system that is used or operated by an agency, or a contractor on the agency’s behalf, and that is otherwise critical to the fulfillment of military or intelligence missions. 78 Fed. Reg. 69,268, 69,271 (Nov. 18, 2013) (to be codified at 48 C.F.R. § 239.7302).
16. 48 C.F.R. § 52.239-1(b) (applicable to IT contracts that require IT security, or that are for the development or operation of a system of records using commercial IT services); 48 C.F.R. § 552.239-71(k) (applicable to IT contracts where the contractor will have access to government information that directly supports the GSA mission). Additionally, on December 7, 2013, the director of national intelligence issued Intelligence Community Directive 731, which implements threat assessments of proposed contractors and subcontractors. The directive permits the exclusion of contractors and subcontractors from IT procurements based on supply chain risks.
17. 79 Fed. Reg. 1,236, 1,238 (Jan. 7, 2014). Note that many DoD contractors already may be subject to “basic safeguarding requirements” similar to those that may be included in the forthcoming FAR rule. DoD Instruction 8582.01, Security of Unclassified DoD Information on Non-DoD Information Systems, identifies “minimal safeguards” applicable to all unclassified DoD information in the possession of DoD contractors. The instruction is applicable to a contractor to the extent that it has been incorporated into the contractor’s DoD contract.
18. Notably, the DoD-GSA Report, supra note 2, at 13–14, recommends that agencies institute “baseline cybersecurity requirements” in procurements, but goes no further in defining those baseline requirements than providing examples of basic safeguards that are “broadly accepted across government and the private sector,” such as antivirus programs and software security patches. The NIST Cybersecurity Framework likewise does not identify a specific set of security protocols that companies should adopt.
19. In the UCTI rule, DoD noted that “most small businesses have less sophisticated [information assurance] programs and will realize costs meeting . . . additional requirements.” 78 Fed. Reg. 69,273, 69,279 (Nov. 18, 2013).
21. 78 Fed. Reg. 69,273, 69,282 (Nov. 18, 2013) (to be codified at 48 C.F.R. § 52.204-7012(d)(4) and (5)). Note that other FAR provisions similarly may require a contractor to provide access to a subcontractor’s IT systems for purposes of a government investigation, and may require the prime to make available to the government information about an investigation. See, e.g., 48 C.F.R. § 552.239-71(k).

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in Asheville, North Carolina. This is the third year that the two Sections have worked together on this program. Thank you to the symposium’s co-chairs (Scott Livingston and Joe Goldstein) for working tirelessly to provide valuable programming to the state and local procurement community, and to our sponsors for making this program possible. Thank you, also, to W. Andrew Gowder, Jr., the current chair of the State & Local Government Law Section for his leadership in helping to make the partnership between our Sections successful. Finally, I wish to thank the National Association of State Procurement Officials for its unique support of the symposium.

For our final program during my year as chair, the Section is traveling to Boston, Massachusetts, for the ABA Annual Meeting in August 2014. As many of you know, the ABA has altered the traditional Annual Meeting schedule, reserving the weekend for ABA events and restricting the times that the Section may conduct activities on Saturday and Sunday. This has created challenges for the Section, but I am delighted to report that we have worked out a schedule that preserves all of the events that our members value. We kick off the annual meeting with the Ruth Burg luncheon on Thursday, August 7, followed by an afternoon of continuing legal education programming, and the Air Force trial attorneys’ dinner in the evening. On Friday, August 8, the Section offers a full day of CLE. Also on Friday, we hold the Alan E. Peterson lecture and luncheon (with the Honorable Michael Dukakis as our luncheon speaker), and the Section reception in the evening. On Saturday, August 9, the Section holds its Council meeting, business meeting, and brainstorming session with the incoming chair. Our annual program chairs (Dan Chudd, Candida Steel, and Scott Maravilla) are working hard to develop quality, relevant programs for your enjoyment.

In addition to our in-person programs, our Section offers a number of webinars throughout the year. One of our most successful webinars was “The Most Important Government Contract Decisions of 2013,” which was presented at a contract claims and dispute resolution committee meeting in late 2013 and in webinar format in February 2014. If you attend an outstanding committee meeting or Section program that you would like to see converted to a webinar, or if you have other ideas for webinar programming, please contact one of the Section’s teleconference program chairs: David Black or Richard Arn Holt. Both of these gentlemen do a terrific job of managing the programming for our webinars.

I encourage all of you to check the Section’s website for up-to-date announcements of Section programs, webinars, and committee events and meetings. I hope that you all have the opportunity to attend a Section event in the coming year. I look forward to seeing you there.

—Sharon