By Sharon L. Larkin

This, my friends, is my last column and I feel bittersweet about writing it because it signifies the end of my year as Section chair. What a year it has been! Despite numerous challenges, it has been an incredibly exhilarating and rewarding time for me.

Thank you for putting your trust and confidence in me to lead the Section this year. It has been an honor and privilege to serve all of you.

I am proud of what the Section has accomplished this year. Our Section’s programming and activities weathered a three-week government shutdown due to the grit, determination, and resilience of so many of our Section members and supporters. We developed and presented five exceptional multiday educational programs, and we reached an all-time record high attendance at our Federal Procurement Institute in the spring. Our committees remained active throughout the year, drafting comments on important procurement issues and providing quality programming at their meetings. Thank you, one and all, for your hard work and support to make all of this happen.

Our Section and its members continue to be the leading authority on procurement-related matters. Section members are currently serving on ABA task forces, impacting ABA policy on such things as cybersecurity and corporate monitors. Our Section will be participating in an ABA roundtable discussion of alternative dispute resolution (ADR) developments, thanks in large measure to the work of Section member Gerry Doyle in spearheading this effort. In addition, the Senate and House Armed Services Committees sought out our Section’s recommendations for improvements to the Department of Defense Acquisition. Vice-Chair Dave Ehnhart, Kara Sacilotto, and Kristen Ittig are doing a remarkable job of leading the Section’s efforts in responding to this request.

When I began this year, I talked about two initiatives: (1) improving the Section’s use of technology, and (2) increasing the participation of government and young lawyers in our Section activities. I am delighted to report that we have made great progress in both areas. With help from many of you, we modernized the delivery of our programming materials through web links, and we made a number of improvements to our website, including the creation of a Section events calendar and leadership portal. We attracted more government members continued on page 31

Sharon L. Larkin is the 2013–14 chair of the Section of Public Contract Law. She is a judge on the GAO Contract Appeals Board and an assistant general counsel in GAO’s Procurement Law Division.
General Services Administration (GSA) was required to conduct discussions even though GSA assessed Trammell as "successful" for the key personnel factor. GSA had given Trammell a lower rating than the awardee because Trammell's proposed personnel did not have the recommended years of experience or experience with facilities of the same size as stated in the solicitation. GAO stated that "while the agency termed the failure of the [Trammell] employees to meet the experience preferences only 'weaknesses,' it is clear that, under the agency's evaluation methodology for this subfactor, the weaknesses in fact were significant." Similarly, in Raytheon Company, GAO found that the Patent and Trademark Office failed to conduct meaningful discussions when it did not discuss 10 "medium risk" weaknesses, which the agency had determined could jeopardize program success, with the offeror. GAO rejected the agency's characterization of the weaknesses as insignificant because of their potential impact on the program's success and the fact that the agency did not characterize any weaknesses as significant.

**Conclusion: What Does This All Mean?**

It is undeniable that meaningful discussions can be critical in a competition. The opportunity to learn of and correct significant weaknesses and deficiencies can turn a flawed proposal into a winning proposal. It is not always easy, however, to determine if an agency was required to engage in discussions and whether the discussions that occurred were sufficient. While contracting officers have discretion, they are required to discuss significant weaknesses and deficiencies and treat offerors equally.

Contractors should be mindful of when discussions are required throughout the procurement process and consider relying on the failure to conduct meaningful discussions as a protest ground when an agency fails to provide sufficient discussions about a material weakness. Because what constitutes sufficient notice and a significant weakness is not always apparent, disappointed offerors should closely examine the facts and circumstances at hand and determine whether they present a viable protest ground.

**Endnotes**

2. JWK Int'l Corp. v. United States, 279 F.3d 985, 988 (Fed. Cir. 2002).
4. § 15.306(b).
6. DMA All-Star, see also TriCenturion, Inc. et al, B-408032; – .2; – .3; – .4, Jan. 25, 2012, 2012 CPD ¶ 52, at 21 (stating discussions must be sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving award).
11. Id. at 40.
13. See DMS All-Star, 90 Fed. Cl. at 669.
18. Id. at 7.
20. Id. at *13.
wise counsel, and for having the courage to speak up when the Section’s interests were at stake. Thank you, also, to the past-chairs of the Section for leading the way and guiding me with your examples of excellent leadership. Thank you to the Section’s Council, the division and committee leaders, and all of the program chairs for making our Section shine through your numerous and significant contributions.

I also wish to thank a number of people who have worked tirelessly behind the scenes. Tina Gillenwater (legal assistant to Stu Nibley)—you are an angel! Thank you for the many hours of administrative support you provided me this year, and for your support for our fall program. Greta Dempsey (former legal assistant to Michael Hordell)—thank you for helping me get the leadership directory in tip-top shape after all of the data was jumbled and lost. Nancy Krieger (paralegal at Wiley Rein LLP)—thank you for making the Regulatory Coordinating Committee run like an efficient and well-oiled machine, and for making it possible for our Section to comment on proposed rules. Jill Pena (ABA director of administration and operations, Professional Services Division) and Maria Enright (ABA associate executive director)—thank you for your extraordinary work and generous support during this difficult year of challenges and transition. I am extremely grateful to each and every one of you for your behind-the-scenes support!

Thank you, also, to Marilyn Neforas, our Section’s director. For more than 35 years, you have provided extraordinary service to our Section and each of its chairs. This year, you have faced challenges that none of us could have foreseen, yet somehow you continued to be the glue that kept our Section together. With your extraordinary work ethic, caring personality, and good humor, you represent the best of what our Section has to offer. It is impossible for me to put into words how much your friendship means to me, and how blessed I am to have you in my life. Thank you my dear, dear friend.

I also wish to thank my organization, GAO, for allowing me to be a government voice in the Section of Public Contract Law, and for supporting me in all of the leadership roles that I have held in the Section. Thank you GAO, also, for supporting government attorney participation in the Section and other professional associations, and for recognizing that the training and exchange of information through these associations adds to the skill sets of our attorneys.

Last but never least, I wish to thank my husband, Jim Larkin, for patiently standing by while I spent countless nights and weekends working on Section business. Thank you for your endless support and encouragement. You are my rock!

To all of the Section’s membership, thank you for a truly remarkable experience! I hope to see you at future Section events.  

—Sharon