By Ty Hughes, Chair

It is hard to believe that 2016 is behind us. I expect 2017 will be a busy and interesting year for the Section. With a new administration in the White House, we can expect significant policy changes in federal procurement. We also can expect new government contracts legislation and regulations. The Section of Public Contract Law is prepared to assist wherever it can.

Section 809 Panel. One of the missions of our Section is to advocate for the betterment of the acquisition process at both the federal and the state levels. We have successfully been doing this for more than 50 years. Our members come from the government, industry, the private bar, academia, and the judiciary. A hallmark of our Section is that we provide balanced and thoughtful views when we prepare and submit comments to various agencies on acquisition regulations and policies. Participation in the public comment process, which can be a time-sensitive and labor-intensive activity, demonstrates the Section’s commitment to, and considerable influence in, helping shape and improve the procurement system.

A recent and noteworthy example of this commitment took place last quarter. Congress established a panel under Section 809 of the Fiscal Year 2016 National Defense Authorization Act to review acquisition regulations and make recommendations to streamline and improve the efficiency of the acquisition process. Familiar with the Section’s commitment to providing balanced and thoughtful views, the Section 809 Panel requested Section comments on how to make the process of doing business with Department of Defense (DoD) faster and more efficient, and how DoD should change its business models to include emerging technology and adopt new business approaches. Under a very tight timeline, the Section assembled a task force to draft detailed written comments, which required approval from the Section’s Council, as well as a review by all the entities of the ABA under the Association’s Blanket Authority process. The final comment letter titled, “Section 809 of the 2016 National Defense Authorization Act—Advisory Panel on Streaming and Codifying Acquisition Regulations” is available for review on the Section’s home page.

Following submission of the comment letter, the Section was invited to make a presentation to the Section 809 Panel in the fall. The Section was represented by Susan Ebner, Co-Chair of the Section’s Acquisition Reform & Emerging Issues Committee, and David G. Ehrhart, Immediate Past Section Chair and accompanied by Aloysius Hogan, the Section’s legislative counsel liaison from the

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ABA’s Governmental Affairs Office. The Section’s participation and feedback were well received and the Panel commended our presenters for providing an extremely valuable perspective and recommendations regarding the “big rocks” related to improving the acquisition process and maintaining DoD’s technological advantage.

I thank all the Section leaders who participated in this process—with special recognition to all the members of the working group, led by Susan Ebner, who assisted in the preparation of the Section 809 comment letter and again to Susan Ebner and David Ehrhart for their thoughtful and insightful presentation to the Panel. The hard work and diligence of all those involved allowed the Section to play a meaningful role in this DoD review process.

In Memoriam. We lost one of the stalwarts of the government contracts bar when Jerry Walz passed away at the end of last year. Jerry was a member of our Section for 40 years. He founded PubKLaw in 2002 after a long career in government, which included 26 years as the chief of the Department of Commerce’s Contract Law Division. He also served as an engineer for the National Oceanic and Atmospheric Administration and in the private sector. Most recently, he had been enjoying retirement after stepping down from PubKLaw in 2014. We will miss Jerry’s warm smile and friendship.

Section Committees. Our committees have been doing a great job. Meetings have focused on timely and interesting topics. We have had excellent participation, including government lawyers and judges.

A few notable examples of high-caliber committee meeting content include a joint presentation by the Section’s Young Lawyers Committee and the Accounting, Cost and Pricing Committee on DFARS Business Systems. Other examples include the Small Business Committee judges’ panel presentation and discussion with insights on recent decisions related to small businesses. The Ethics, Compliance, and Professional Responsibility Committee conducted a webinar on the role of external evaluation and monitoring of corporate ethics and compliance programs. A recording of the webinar can be found on the committee web page. The Subcontracting, Teaming, and Strategic Alliances Committee hosted a presentation by Michael Mutek on the recent dispute in TYR Tactical v. Protective Products Enterprises and Point Blank Enterprises, and other situations where there are disagreements among members of prime-subcontractor teams and JVs regarding the pursuit of a protest.

The Section has more than 20 committees, which cover virtually all aspects of government contracts. Participating in committee meetings is a great way to stay informed and to get to better know your colleagues. If you can’t participate in person, most of the committees provide a conference bridge or webinar link for their meetings. You can view the schedule for upcoming committee meetings and sign up for committee mailing lists on the Section website. Also, many of the committees post the materials from their meetings on their committee web pages.

Federal Procurement Institute. Mark your calendars now and plan to attend the 23rd Annual Federal Procurement Institute (FPI), March 15–18, 2017, at the Loews Hotel in Annapolis, Maryland. In addition to two full days of the latest developments in federal procurement law, the FPI will include a special practicum discussion on the various congressional supplemental contracting and acquisition authorities, how agencies are using them, and how the federal government’s interest in innovation could impact the rights and remedies available to your clients. Other sessions include changes in commercial item contracting, navigating federal IP waters, bid protests, issues that keep government and in-house counsel awake at night, corporate monitoring after a procurement fraud or suspension/debarment matter, and ethics, among others.

The Program Co-Chairs, Amy Conant, John McCarthy, Jr., David Robbins, and Bryant Snee, are hard at work and promise that the 23rd Annual FPI will be the best ever.

I look forward to seeing you in Annapolis! PL

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debarment constituted rule making without notice and an opportunity for public comment, in violation of the Administrative Procedure Act.

While not expressly ruling on the motion, the debarring official proceeded only on the grounds specifically listed in the FAR. After the hearing, the debarring official simply dismissed the case, on the general ground that a debarment was not necessary to protect the government’s interest, thus avoiding an express ruling on the motion—or, implicitly granting it.

The FAR debarment catch-all clauses should be removed from the FAR, as they threaten the integrity and constitutionality of the FAR regulatory system (1) by permitting debarring officials to add causes for debarment without notice or public comment, and (2) by delegating authority to debarring officials to expand the scope of causes for debarment without providing adequate standards or guidelines. But until the catch-all clauses are removed, government contractors and their counsel need to be aware of the dangers these clauses pose and be ready to challenge unpublished catch-all causes for debarment. Pl.