

Section of Public Contract Law  
321 North Clark Street  
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**DATED MATTER**

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InterContinental Miami Hotel will  
release our room block on Wednesday,  
October 23, 2013 at 5:00 p.m. CST.**



***Feeling  
the Heat***

# **Burning Issues in Government Contracts**

- Foreign Military Sales
- Counterfeit Parts Update
- Cybersecurity Challenges
- Bid Protests
- Infrastructure Contracting

***November 14-15, 2013***

**InterContinental Miami  
Miami, Florida**

## PROGRAM OVERVIEW

**Feeling the heat of a changing government procurement world?** Join us as we examine critical hot spots in government contracting and identify things you need to know to avoid getting burned. **One year later, the heat is on for all sides as they seek to combat counterfeits in the supply chain.** This panel will address what's being done, and discuss the safe harbor and allowable cost issues brewing. **Cybersecurity challenges have ignited Presidential initiatives.** Representatives from government and industry will **discuss steps being taken to warm-up companies to adopting sound cyber security practices to enhance the security of the nation's critical infrastructure.** **Bid Protests remain a hot topic** in the procurement community. This panel will discuss **sizzling trends in protests, including information on the flashpoints for procurements and protests.** The nation's **infrastructure needs are reaching the boiling point**, while government funding and resources are cooling off. A panel will cover **procurement strategies to meet these infrastructure challenges.**

In panel presentations devoted to each of these hot topics, you will hear Government and Industry representatives describe the latest initiatives, their impact on business and future business opportunities, as well as hot legal risks associated with these emerging areas.

- **Counterfeit Parts One Year Later: Updates and Burning Issues.** The heat is on at all levels to protect the Government supply chain from the risk of counterfeit parts. This panel will address the instructions and guidance on detection and avoidance of counterfeit parts, the risk of suspension and debarment proceedings, potential safe harbors, draft amendments to the DFARS and pending FAR amendments that are expected to expand reporting and revise quality requirements.
- **Cybersecurity Hot Spots: The Evolving Role of Cybersecurity in Federal Acquisitions.** In 2013, the President issued an Executive Order to protect critical infrastructure and facilitate information sharing to guard against cybersecurity threats. This panel will discuss next steps and review some of the hot terms and requirements you must know to advise clients, possible incentives to prompt adoption of sound cyber security practices, and the role of commercial IT in federal procurements in light of cybersecurity concerns.
- **Luncheon Speaker:** NASA's Associate General Counsel will discuss current efforts to support the commercial use of space and innovative transaction structures to achieve its objectives.
- **Firing Up a Bid Protest in the Federal Procurement System: What Practitioners Need to Know.** Bid Protests remain a hot topic. This panel will discuss signifi-

## PROGRAM OVERVIEW

cant protest decisions, case trends and lessons that affect how the Government conducts acquisitions, and proposed legislation that could affect the bid protest system.

- **Infrastructure Contracting: Lighting a Fire Under Government and Industry.** The nation's infrastructure needs are growing increasingly desperate, while government funding and resources are being curtailed. This panel will examine hot new procurement strategies to help government meet these challenges, whether current provisions provide the means to accomplish this vital mission, the role of inter-governmental cooperation, optimal project delivery methods, legal fixes, and funding issues.

## OTHER PLANNED EVENTS

**Thursday, November 14, 2013**

4:00 p.m. to 6:00 p.m.

**Practicum: How Not To Get Burned In A Foreign Military Sale**

With drastic cuts in U.S. defense spending, contracting abroad has become vitally important for U.S. contractors. Learn how to address the unique issues, such as export control, foreign military sales, and anti-corruption, presented by the foreign market. This session will include practical, hands-on training with program participants to review some of the key issues facing industry and government in this new international landscape.

- How are FMS procurements structured and where are the hot issues in potential corruption?
- How should contractors prepare to address possible export control issues?
- Where are Foreign Corrupt Practices Act (FCPA) issues likely to arise?
- How may corruption abroad impact contractors at home?
- How can contractors structure effective compliance systems to protect themselves?

**Andrew D. Irwin**, *Moderator*  
Steptoe & Johnson, LLP  
Washington, DC and Century City, CA

**Maria Swaby**  
Washington, DC

**Ricardo P. Levy**  
Pinheiro Neto Advogados  
Sao Paulo, Brazil

**Marques O. Peterson**  
McKenna Long & Aldridge  
Washington, DC

**Associate Dean Jessica Tillipman**  
George Washington University Law School  
Washington, DC

## OTHER PLANNED EVENTS

6:00 p.m. to 7:30 p.m.

### Section Reception

7:30 p.m. – 9:00 p.m.

### Women's Networking/Mentoring Dinner "No Host" Dinners

**Saturday, November 16, 2013**

8:30 a.m. to 12:00 noon

### Section Council Meeting

The Council of the Section of Public Contract Law will meet in open session where a number of action and informational items will open the window on legislation, regulatory and other substantive issues of current importance to government contracts practitioners. All members and registrants for the Friday program are welcome.

**Sharon L. Larkin, Chair**

Section of Public Contract Law

*Fall Meeting Program Co-Chairs:*

**Susan Warshaw Ebner**

**Robert T. Wu**

*Annual and Quarterly Programs Co-Chairs:*

**Linda Maramba**

**James McCullough**

**Gerard Wimberly, Jr.**

## PROGRAM

**Friday, November 15, 2013**

7:30 a.m. to 8:15 a.m.

### Registration

8:15 a.m. to 8:30 a.m.

### Welcome and Introduction

8:30 a.m. to 10:00 a.m.

### Counterfeit Parts One Year Later, Updates and Burning Issues

Government agencies and contractors world-wide continue to feel the heat associated with requirements to protect the Government supply chain from the risk of counterfeit parts. Companies may face suspension and debarment proceedings, as well as criminal, civil, and/or contractual actions, following the introduction of counterfeit parts into government programs. The May 2013 draft amendments to the DFARS generated numerous and lengthy comments. Pending FAR amendments are expected to expand reporting requirements for non-conforming items and revise quality requirements. This panel will address:

- New legislation, regulations and guidance issued since last year, as well as the current status of safe harbor provisions.
- Government and contractor actions to prevent and address the risk of counterfeit parts in the supply chain.

## PROGRAM SPONSORS

The Section gratefully acknowledges the very generous support from the following Fall Program Sponsors:

### GOLD



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## PROGRAM

- Implications of legislation and pending regulations on contractor business system compliance processes
- Accounting and cost allowability issues presented by the new rules

**Ita Snyder, Moderator**

Senior Counsel, GE Aviation  
Washington, DC

**Monica Aquino-Thieman**

Director, Acquisition Integrity Program (Fraud Remedies)  
Office of the General Counsel  
National Aeronautics and Space Administration  
Washington, DC

**John Farenish**

Government Contracts Group  
Venable LLC  
Washington, DC

**David E. Fletcher**

Cooley LLP  
Washington, DC

**Bradley A. Rush**

Managing Counsel, Government Communication Systems  
Harris Corporation  
Melbourne, FL

10:00 a.m. to 10:15 a.m.

### Networking Break

10:15 a.m. to 11:45 a.m.

### Cybersecurity Hot Spots: The Evolving Role of Cybersecurity in Federal Acquisitions

Cybersecurity is a topic of increasing concern and focus, as evidenced by the number of regulatory and legislative proposals over the past several years. In February 2013, President Obama took on this thorny issue by issuing an Executive Order intended to enhance the security of the nation's critical infrastructure. In response to the Order, the Departments of Homeland Security, Defense, and Commerce, the General Services Administration, and other federal agencies are pursuing a number of initiatives, including developing a framework to reduce cyber risks to critical infrastructure, analyzing incentives to encourage the private sector to adopt cybersecurity best practices, and considering how to harmonize existing procurement requirements related to cybersecurity. This panel will address:

- The status of agency initiatives pursuant to the Executive Order
- How the federal acquisition system can use incentives and a risk-based methodology to promote the adoption of cybersecurity measures by federal contractors, subcontractors, and suppliers
- The role of commercial IT products and services in federal procurements
- How legislative and acquisition policy changes may impact cybersecurity requirements in federal acquisitions

## PROGRAM

**Annejanette Heckman Pickens, Moderator**

Assistant General Counsel  
General Dynamics Advanced Information Systems  
Fairfax, Virginia

**Jon W. Burd**

Wiley Rein LLP  
Washington, DC

**Maureen T. Kelly**

Enterprise Shared Services Counsel  
Northrop Grumman Corporation  
Falls Church, Virginia

**Emile Monette**

Washington, DC

**Pamela Walker**

Senior Director, Homeland Security  
Global Public Sector  
TechAmerica  
Washington, DC

12:00 noon to 1:30 p.m.

### Program Luncheon

**Sharon L. Larkin, Chair**

Section of Public Contract Law  
US Government Accountability Office  
Annapolis, MD

### New Frontiers in Space, Commercialization and Beyond

NASA has several initiatives underway to encourage the fullest commercial use of space. The speaker will discuss these unique initiatives and the interplay between use of different legal authorities and innovative transaction structures to meet NASA's goals.

**Courtney B. Graham**

Associate General Counsel for Commercial and Intellectual Property Law  
National Aeronautics and Space Administration  
Washington, DC

1:45 p.m. to 3:15 p.m.

### Firing Up a Bid Protest in the Federal Procurement System—What Practitioners Need to Know

Bid Protests remain a hot topic in the procurement community, on the Hill and in the media. This panel will discuss significant procedural and substantive protest decisions, case trends and lessons from the decisions that affect how the Government conducts acquisitions. The panel also will discuss proposed legislation that could affect the bid protest system. Specific topics for discussion will be:

- Hot protest issues to watch out for
- The more important lessons you can learn from protest decisions
- Where are the potential procedural traps and how you can avoid them
- Recent legislative proposals that would impact the bid protest system

## PROGRAM

**Michael R. Golden**, Moderator  
Partner, Pepper Hamilton LLP  
Washington, DC

**Ralph O. White**  
Managing Associate General Counsel  
Procurement Law  
U.S. Government Accountability Office  
Washington, DC

**William J. Colwell**  
Corporate Director & Assistant General Counsel, Litigation  
Northrop Grumman  
Falls Church, VA

**Scott N. Flesch**  
Chief, Bid Protests  
Contract & Fiscal Law Division  
U.S. Army Legal Services Agency  
Arlington, VA

3:15 p.m. to 3:30 p.m.

### Networking Break

3:30 p.m. to 5:00 p.m.

### Infrastructure Contracting: Lighting a Fire Under Government and Industry

The nation's infrastructure needs are dramatic and are growing increasingly desperate. Meanwhile, government funding and resources are being curtailed at every turn. What procurement strategies can help all levels of government meet these challenges? Does current law and regulation provide the means to accomplish this vital mission and, if not, what changes are needed? The panel will address:

- The nation's infrastructure needs now and for the foreseeable future
- Whether current law sufficiently allows and encourages cooperation among federal and state/local governments to procure what we need
- Procurement and project delivery methods that are best suited to meet our infrastructure needs, and whether law and regulation authorize and provide the flexibility to use them
- How government and industry can lawfully finance the work we need

**Aaron P. Silberman**, Moderator  
Rogers Joseph O'Donnell  
San Francisco, CA

**Nathan Tash**  
Assistant Chief Counsel, Acquisition and Fiscal Law Division  
Federal Aviation Administration  
Washington, DC

**Deborah B. Mastin**  
Former Assistant County Attorney  
Broward and Dade Counties (FL)  
Miami, FL

## PROGRAM

**John T. Carpenter**  
Kiewit Infrastructure  
Assistant General Counsel  
Fairfield, CA

5:30 p.m. to 7:30 p.m.

### Section Reception

## CANCELLATION POLICY

Requests for refund must be made in writing and received in the Section of Public Contract's office on or before October 26, 2013. **Refund requests received after October 9 will be reduced by a \$25.00 administrative fee.** Substitutions may be made at any time.

***A registration submitted online or by mail, fax, or PDF to the Section office is considered a firm commitment. If you do not cancel by the designated deadline date for refund, you will be expected to pay the registration fee even if circumstances prevent you from attending the program.***

**NO REFUNDS WILL BE MADE AFTER OCTOBER 26, 2013.**

## CLE CREDIT

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, MN, MS, MO, MT, NM, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, VI, WA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs. Limited scholarships are available for this program. For more information, please contact Jill Peña at 312-988-5867 or [jill.pena@americanbar.org](mailto:jill.pena@americanbar.org). This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, visit [http://www.americanbar.org/cle/mandatory\\_cle.html](http://www.americanbar.org/cle/mandatory_cle.html).

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Discounted airfares are available from ABA Orbitz for Business including ABA negotiated meeting discounts on American, United, Delta and Virgin America Airlines. To book online, go to [www.americanbar.org/travel](http://www.americanbar.org/travel) > click on the Orbitz for Business logo at the top of the page > read the instructions under the Travel Paid by Self box. For assistance with online or offline reservations using the ABA Orbitz for Business website, call toll free 877-222-4185.

Discounts can also be obtained directly from the airlines. American: Call 800-433-1790 code **A8913TT**; United: Call



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## HOTEL INFORMATION

The InterContinental Miami, at 100 Chopin Plaza, Miami, Florida, rises 34 stories above shimmering Biscayne Bay and brings a new level of elegance to Miami's downtown hotel accommodations. Amenities include spectacular views of downtown and Biscayne Bay; High-speed Internet access; European marble bathrooms; flat panel TVs in all guestrooms; and coffeemakers.

Miami International Airport is approximately 7 miles from the hotel, and driving time between the airport and hotel is approximately 15 minutes, depending on the time of day. Super Shuttle provides scheduled runs from the airport every 15 minutes, beginning at 5:30 a.m. and ending at midnight for \$18 per person one way. To make arrangements with Super Shuttle, call 800-BLUE-VAN (800-258-3826) or go to [www.supershuttle.com](http://www.supershuttle.com). A one-way taxi ride between the airport and hotel will run between \$28 without tip.

Room rates at the InterContinental Miami are \$199, single or double, plus 13.0% tax per room per night. Overnight guest valet parking is \$36 per day.

A limited number of rooms are available to government employees for \$105 plus 13.0% tax per room per night. Proof of current employment by a government agency will be required at check-in to be entitled to this \$105 room rate.

You may reserve your accommodations by calling the InterContinental Miami directly at 305.577.1000 or 800.327.3005 and referring to the **ABA Public Contract Law 2013 Fall Meeting room block**, and guaranteeing your reservation by credit card or deposit check. Rooms will be available for check-in no later than 4:00 p.m. with a check-out time of 11:00 a.m. Early arrivals or late departures will be booked on an availability basis. **Individuals with guaranteed reservations must cancel their reservations 48 hours prior to their scheduled day of arrival to avoid a one-night cancellation charge.**

**Make your reservations NOW. The hotel will release the room block on Wednesday, October 23, 2013 at 5:00 p.m. CST.**

## COMING ATTRACTIONS

**Oct. 22-23, 2013**

**6th Biennial Federal Drug Pricing Program**  
Sheraton Pentagon City, Arlington, VA

**Mar. 20-21, 2014**

**20th Annual Federal Procurement Institute**  
Loews Annapolis Hotel, Annapolis, MD

**Apr. 24-25, 2014**

**9th Annual State & Local Symposium**  
Grove Park Inn & Spa, Asheville, NC

## REGISTRATION APPLICATION

Send directly to:

**Marilyn M. Neforas, American Bar Association**  
**321 North Clark Street, M/S 19.1, Chicago, Illinois 60654**  
**312-988-5596 — Fax: 312-988-6033**  
**[marilyn.neforas@americanbar.org](mailto:marilyn.neforas@americanbar.org)**  
**Register online at: <http://ambar.org/PubCon2013FallIMtg>**

Please register the following person for the *Public Contract Law (PCL) Section* program, **Burning Issues in Government Contracts**, on Friday, November 15, 2013, at the InterContinental Miami, Miami, Florida.

### 1 Registration Fee:

- ☐ \$260 PCL Section Member or Associate
- ☐ \$215 Government Employee: PCL Section
- ☐ \$235 Other Government Employee
- ☐ \$315 ABA Member, PCL Non-Member
- ☐ \$370 Non-ABA Member

### 2 Other Events:

- ☐ Free Friday, November 15, Cocktail Reception
- ☐ Free Saturday, November 16, Council Meeting

**For reservations postmarked or faxed after October 26, 2013, and for walk-in registrants, add \$25 to each fee category.**

### 3 Name

(please print legibly or type)

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Firm/Agency/Company \_\_\_\_\_

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Telephone Number \_\_\_\_\_

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### 4 Payment Method:

- ☐ Enclosed is my check, made payable to the **American Bar Association/PCL**, for \$ \_\_\_\_\_.
- ☐ Government purchase/training order enclosed.
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### 5

- ☐ Please send me information on becoming a member or associate of the:
  - ☐ American Bar Association
  - ☐ Public Contract Law Section
    - ☐ I am an attorney ☐ I am not an attorney