

Section of Public Contract Law
321 North Clark Street
Chicago, Illinois 60610-4714

FIRST CLASS MAIL

First Class Mail
U.S. Postage
PAID
American Bar
Association



DATED MATTER

Register for the program and
make your hotel reservations **today**.
The Hyatt Regency San Antonio
will release our room block
on **Tuesday, October 10!**

***American Bar Association
Section of Public Contract Law***

**Movement
Towards
Commercial
Contracting**

***Boot Scootin' Boogie
(and Other Line Dances)***

November 3, 2006

***Hyatt Regency San Antonio
San Antonio, Texas***

Historically, public entities have danced to their own beat, constrained to **limited patterns** by a frame inapplicable to the private sector. Entranced by the multitude of steps available in the private sector to fit varying needs, public entities recently have **pivoted towards commercial contracting techniques**, affecting contract procurement, performance, claims, and litigation in a variety of ways. Some changes involve a **subtle shift** in the pattern of contracting; others, **exciting leaps**. Some of these moves have attracted much attention but have not covered much ground. Others involve **fundamental changes** in the pattern of public procurements.

The implications of this movement are significant for both commercial and government contracts practitioners. Commercial contractors stepping into government contracting must be cautious about seemingly familiar commercial contracting approaches that take **unexpected turns**, necessitated by **unique public contracting policies**. Both commercial contractors and seasoned government contracting professionals must know in which directions the commercial contracting movement may break, so that they can **remain in step**, or confidently **take the lead** in pursuing lucrative contracting opportunities.

This program will lead you through some of the most **significant similarities and differences** between commercial contracting and government contracting, with dynamic panel presentations on:

- **Finding your partner:** How the **traditional differences** between public and private procurements are **many, but are changing** as public entities adopt new techniques based on sales approaches successfully used in the private sector.
- **Taking the lead:** How the **tensions** between public contracting policies and the need for flexibility to respond to **exigent or unusual procurement needs** may clash.
- **Quick-stepping your way out of disputes:** How the **innovative techniques** used to resolve commercial contract disputes fare when used to **define and negotiate government contract claims**. Customer relationship issues; estimates versus damages “proof;” why “splitting the difference” and “bottom-line” settlements pose problems; and more.

- **Changing the tune:** How allegations of **fraud, unfair trade practices** and the like are added to breach of contract litigation—doing it and dealing with it based on **lessons learned** from government contracts and private party litigation.
- **Sharp moves:** Why **streamlined litigation practices** familiar in the commercial world are novel in government contracts litigation. Knowing when pushing for change is **worth the fight**.

Ensure that you are ready. Whether jumping into the Boot Scootin’ Boogie and other line dances, or into the current flow of government contracting towards commercial practices, collisions may occur if you do not know the steps. Hear from the experts as we discuss the changes you must know to move smartly as the government contracting dance continues towards commercial contracting practices.

This brochure describes other events planned on the days before and after this program. So, schedule your arrival and departure to allow your attendance at one or all of them. **Be sure to indicate in the appropriate boxes on the Registration Application which events you will attend.**

PROGRAM SPONSORS

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

GOLD



SILVER



MOSS ADAMS LLP

OTHER PLANNED EVENTS

Thursday, November 2, 2006

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

Meet and Greet Reception

Arrive early and take advantage of this opportunity to network with speakers and other contracts professionals from government, industry and private practice. You may even learn a few line dances!

Saturday, November 4, 2006

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 to discuss issues of current importance to government contracts practitioners. All members and registrants for the Friday program are welcome.

2:00 p.m. to 5:00 p.m.

A Personal Tour of the Alamo

The personal tour will begin with a lecture at 2:00 p.m. in the Live Oak Room, Level A, at the Hyatt Regency, following the Section leadership luncheon meeting. Our lecturer and tour guide will be Dr. Stephen L. Hardin, generally considered the foremost military historian of the Texas Revolution. He is the author of *Texian Iliad: A Military History of the Texas Revolution* as well as *The Alamo 1836: Santa Anna's Texas Campaign*. Dr. Hardin also was a technical advisor for the most recent *Alamo* movie produced by Ron Howard.

Dr. Hardin's telling of the story of how fewer than 200 men fighting overwhelming odds carries a mountain of emotional weight. After the "story," the group will cross the street to the Alamo for a personal guided tour by Dr. Hardin. He will do the "short" tour inside the Mission, and for those with further interest, will conduct a tour of the existing and former walls to provide a more thorough appreciation of the military defenses and locations of specific events that occurred. The complete tour should end at approximately 5:00 p.m.

PROGRAM

Friday, November 3, 2006

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

Registration

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

Welcome and Introduction

Jennifer L. Dauer, *Program Co-Chair*
Diepenbrock Harrison PC
Sacramento, CA

Linda Maramba, *Program Co-Chair*
Northrop Grumman Corporation
Arlington, VA

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

Securing a Partner: Movement of the Public Sector Towards Private Procurement Practices

- Responding to crises: public versus private procurement practices.
- An engineer's perspective: pros and cons of contracting methodologies.
- Innovative construction methodologies available to California local public entities.
- Allowing innovation while maintaining the principals underlying competitive procurements.

Stephen J. McHale, *Panel Moderator*
Patton Boggs LLP
Washington, DC

Eileen M. Diepenbrock
Diepenbrock Harrison PC
Sacramento, CA

Elaine C. Duke (*Invited*)
Chief Procurement Officer
U.S. Department of Homeland Security
Washington, DC

W. Guy Fincher
Rimkus Consulting Group, Inc.
Houston, TX

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

Networking Break

PROGRAM

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

Fancy Footwork: Performance Requirements of Government Contracts

- Differing performance obligations in public and commercial contracts.
- Intersection of GAAP and CAS: understanding the differences.
- Unique performance risks faced by a government contractor.

Catherine E. Pollack, *Panel Moderator*
Northrop Grumman Corporation
McLean, VA

Mary Beth Bosco
Patton Boggs LLP
Washington, DC

Donald G. Featherstun
Seyfarth Shaw LLP
San Francisco, CA

Phillip M. Kohn
Moss Adams LLP
Los Angeles, CA

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

Luncheon: Who's Leading This Dance Anyway? Sovereign Immunity in Texas

Presiding:

Michael A. Hordell, *Chair*
Section of Public Contract Law
Pepper Hamilton LLP
Washington, DC

Speaker:

Honorable Craig T. Enoch
Retired Justice, Texas Supreme Court
Austin, TX

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

Quick Stepping: Resolving Claims and Disputes

PROGRAM

- Sorting through complexities in finding the right parties, including claim sponsorship issues.
- Working through differences between what may be recovered under government and commercial contracts.
- Ensuring that estimates are not misunderstood; the essentials for proving damages and avoiding allegations of fraud.
- Employing innovative commercial contracting approaches for resolving government contract claims.

Mary Shallman, *Panel Moderator*
Morrison & Foerster LLP
New York, NY

Ross W. Branstetter, III
Missile Defense Agency
Washington, DC

Nancy O. Dix
DLA Piper Rudnick Gray Cary US LLP
San Diego, CA

Stephen J. Kiraly
The Lance Group
Fairfax, VA

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

Networking Break

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

Sharp Moves on the Dance Floor: Government Contracts Litigation

- Overlapping remedies and parallel proceedings—making sense of the cacophony.
- The peculiar investigation/litigation/risks of using commercial methods in a traditional government procurement context.
- Government fraud remedies in the U.S. Court of Federal Claims.
- Recent developments under the Contract Disputes Act—making litigation under government contracts more or less like commercial litigation?

PROGRAM

Paul J. Ehlenbach, *Panel Moderator*
Vice President and Assistant General Counsel
The Boeing Company
Chicago, IL

Scott M. McCaleb
Wiley Rein & Fielding LLP
Washington, DC

Representative (*Approval pending*)
Commercial Litigation Branch
U.S. Department of Justice
Washington, DC

Terrence J. Moran
Chief Counsel – Programs
Lockheed Martin Aeronautics
Fort Worth, TX

Anthony H. Anikeef
Bracewell & Giuliani
Washington, DC

5:15 p.m. to 7:15 p.m.

Section Reception

HOTEL INFORMATION

The Hyatt Regency San Antonio, at 123 Losoya Street, is located in the central business district, on the River Walk, and within one block of the Alamo. Minutes from the hotel are ancient Spanish missions, cathedrals and adobe villas, the world-famous San Antonio Zoo, Japanese Sunken Gardens, Sea World of Texas, Fiesta Texas, and shopping at the River Center Mall.

Among the amenities in the deluxe guest rooms are pillow-top mattresses with down blankets, in-room coffee makers with complimentary coffee, telephones with data-port and voice mail, and full-size ironing boards and irons. The fitness center—open 24 hours—features a weight room, Stairmaster, sauna, and massage. There's also an outdoor, heated swimming pool with Jacuzzi and sundeck.

San Antonio International Airport is 12 miles and 20 minutes from the hotel. SA Trans operates shuttles between the San Antonio Airport and the hotel. The shuttle picks up and drops off at the front entrance of the hotel. The fare is \$24 round trip and \$14 one-way. SA Trans runs from 6:10 a.m. until 10:00 p.m. daily. For more information, please call 210-281-9900. Cab fare between the airport and the hotel averages \$22-\$24 each way.

Room rates at the Hyatt Regency San Antonio are \$175, single or double, plus 16.75% tax per room per night. A limited number of rooms are available to government employees at \$96. Parking for hotel guests is \$25 plus tax for valet and \$21 plus tax for self-parking per day.

You may reserve your accommodations by calling the Hyatt directly at 210-222-1234 or 800-233-1234, identifying the **ABA Public Contract Law 2006 Fall Meeting** room block, and guaranteeing your reservation by credit card or deposit check. Rooms will be available for check-in no later than 3:00 p.m. with a check-out time of 12:00 noon. Early arrivals or late departures will be booked on an availability basis. **Individuals with guaranteed reservations must cancel their reservations 24 hours prior to the scheduled day of arrival to avoid a one-night cancellation charge.**

Make your reservations NOW. The hotel will release the room block on Tuesday, October 10, 2006, at 5:00 p.m. CDT.

SPECIAL AIRFARE DISCOUNTS

Airfare discounts to ABA meetings are available through ABA Online Travel, Travelocity Business, the ABA's travel agency, or directly from the airlines. To access ABA Online Travel, go to www.abanet.org/mtd/onlinetravel.html.

At ABA Online Travel you will have automatic access to meeting airfare discounts, web fares and web book only airlines. Attendees can call Travelocity Business toll-free, at 866-321-8403. If you are calling American Airlines directly at 800-433-1790, please reference Discount Code 18395.

CANCELLATION POLICY

Requests for refund must be made in writing and received in the Section of Public Contract Law's office on or before October 27, 2006. **Refund requests received after October 17 will be reduced by a \$25.00 administrative fee.** Substitutions may be made at any time.

If you complete a registration form and fax it to the Section office, the transaction is considered a firm commitment, and you will be expected to pay the registration fee even if circumstances prevent you from attending the conference.

NO REFUNDS WILL BE MADE AFTER OCTOBER 27, 2006.

CLE CREDIT

Accreditation has been requested for this program from every state (including CA and PA) with mandatory continuing legal education (MCLE) requirements for lawyers. Please be aware that each state has its own rules and regulations, including its own definition of "CLE". Attorneys seeking to obtain credit in Pennsylvania must pay fees directly to the PACLE. Please be prepared to remit payment to the PACLE (\$2 per credit hour or any portion thereof) after the program. Certificates of attendance will be available at the conclusion of the program for both attendees and speakers. If you have questions about the number of CLE credit hours granted by each state, you may call 800-285-2221 starting 2 to 3 weeks before the program.

COMING ATTRACTIONS

MARCH 1-3, 2007

13th Annual Federal Procurement Institute and Open Midyear Council Meeting

LOEWS ANNAPOLIS HOTEL, ANNAPOLIS, MD

MAY 18-19, 2007

2nd Annual State and Local Procurement Symposium and Open Spring Council Meeting

SHERATON DOWNTOWN NASHVILLE, NASHVILLE, TN

AUGUST 10-13, 2007

Annual Educational Programs and Open Council Meeting

WESTIN ST. FRANCIS, SAN FRANCISCO, CA

NOVEMBER 2-3, 2007

Fall Educational Program and Open Council Meeting

BROWN PALACE HOTEL, DENVER, CO

MARCH 6-8, 2008

14th Annual Federal Procurement Institute and Open Midyear Council Meeting

LOEWS ANNAPOLIS HOTEL, ANNAPOLIS, MD

MAY 2-3, 2008

3rd Annual State and Local Procurement Symposium and Open Spring Council Meeting

OMNI AUSTIN HOTEL DOWNTOWN, AUSTIN, TX

REGISTRATION APPLICATION

Send directly to:

Marilyn M. Neforas

American Bar Association

321 North Clark Street, M/S 19.1

Chicago, Illinois 60610

312-988-5596 — Fax: 312-988-6033

Register online at: <http://www.abanet.org/contract/admin/programs/fall2006.html>

Please register the following person for the *Public Contract Law (PCL) Section program, **Movement Towards Commercial Contracting: Boot Scootin' Boogie (and Other Line Dances)***, on Friday, November 3, 2006, at the Hyatt Regency San Antonio, San Antonio, Texas.

1 Registration Fee:

- \$240 PCL Section Member or Associate
- \$195 Government Employee PCL Section Member
- \$215 Other Government Employee
- \$295 ABA Member, PCL Non-Member
- \$350 Non-ABA Member
- \$40 Law Student

2 and/or

- Free Thursday, November 2, Meet and Greet Reception
- Free Friday, November 3, Cocktail Reception
- Free Saturday, November 4, Council Meeting
- Free Saturday, November 4, Personal Tour of the Alamo

For reservations postmarked or faxed after October 27, 2006, and for walk-in registrants, add \$25 to each fee category.

3 Name _____
(please print legibly or type)

ABA Member No. _____

Firm/Agency/Company _____

Address _____

City, State, Zip _____

Telephone Number _____

Fax Number _____

Email _____

4 Enclosed is my check, made payable to the **American Bar Association/PCL**, for \$_____.

Government purchase/training order enclosed.

Charge \$_____ to my Credit Card:

AmEx MasterCard Visa

Card Number: _____

Exp. Date: _____

Signature: _____

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