

NATIONAL FORUM ON

GOVERNMENT CONTRACTING COMPLIANCE FOR COMMERCIAL COMPANIES



Hear from Top Government Officials:

Robert A. Burton
Office of Federal Procurement Policy

Maureen Regan
U.S. Department of Veterans Affairs

Kevin Buford
General Services Administration

Felipe Mendoza
General Services Administration
Office of Small Business Utilization

James A. "Ty" Hughes Jr.
U.S. Air Force

Nicholas P. Retson "Chip"
Defense Contract Management Agency

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Northrop Grumman

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EDS Federal

BearingPoint

Raytheon

GTSI

Learn How To:

- Meet domestic preference and False Claims Act requirements
- Negotiate key provisions in your GSA Schedules contract
- Implement and monitor effective in-house compliance programs
- Avoid subcontracting and teaming agreement pitfalls
- Prepare for increased enforcement activities by the government and survive an audit
- Resolve disputes and protect your rights during contract termination
- Ensure compliance with the government's stringent ethical standards
- Prevent violations when performing commercial services

Plus! An update on Section 1423 Panel guidelines and how they could affect your business

EXCLUSIVE INTERACTIVE WORKSHOPS – MARCH 29, 2007

- A** How to Prepare a Successful GSA Proposal and Market Your Product Within Ethical Boundaries
- B** Performing an Audit of Your Company's Compliance Program: A Complete Guide for a Successful Self-Assessment

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W

ith the US government purchasing \$265 billion dollars worth of commercial goods and services in 2005 alone, government contracting can be extremely rewarding for many commercial companies. Yet, while the financial rewards can be great, many risks are associated with doing business with the federal government as well. For one, businesses must strictly adhere to a myriad of complicated rules and regulations or risk facing severe administrative, civil, and even criminal penalties. And, with audits on the rise, companies large and small are finding themselves the targets of grueling investigations and enforcement actions.

This American Conference Institute National Forum on Government Contracting Compliance for Commercial Companies will provide you with the critical information you need to set up effective internal controls to ensure your company's government contract compliance while competing in the federal marketplace. Benefit from the practical perspective of seasoned in-house executives from Microsoft, Northrop Grumman, Nortel, Teledyne Technologies and many others. Get an update on enforcement priorities from senior government officials from the General Services Administration and the Department of Veterans Affairs. Plus, gain valuable insights on:

- Creating and enforcing an effective compliance program for your company
- Protecting your rights during a government audit
- Adhering to ethical standards while contracting with the federal government
- Ensuring compliance with domestic preference laws and the False Claims Act
- Understanding your options in the event of a dispute or contract termination
- Reducing the risks associated with subcontracting and teaming agreements
- Complying with socio-economic provisions in federal commercial contracting
- Negotiating favorable terms in your GSA Schedules contract

Take advantage of this opportunity to network with top experts and get their practical insights for complying with the complex, ever-evolving rules in this highly rewarding, yet risky, environment. This must-attend event will fill up quickly, so register now by calling 1-888-ACI-2480, by faxing your registration form to 1-877-927-1563, or by registering online at www.AmericanConference.com/GCC.

WHO YOU WILL MEET

- Corporate Counsel
- Chief Compliance Officers
- Compliance Counsel
- CFOs
- Presidents and CEOs
- Vice Presidents and Directors of
 - Contracts
 - Compliance
 - Government Relations
 - Ethics and Business Conduct

TUESDAY, MARCH 27, 2007

8:00 Continental Breakfast and Registration Begins 🍳

9:00 Co-Chairs' Opening Remarks

Robert L. Schaefer

Associate General Counsel and General Counsel of Electronics and Communications
Teledyne Technologies Inc.
(Los Angeles, CA)

Thomas M. Abbott

Partner
National Chair, Government Contracts Practice
McKenna Long & Aldridge LLP
(Los Angeles, CA)

9:15 Preparing for Section 1423 Panel Guidelines: How Reform Will Affect Federal Commercial Contracts

Marcia G. Madsen

Partner, Mayer, Brown, Rowe & Maw
Chairwoman, Section 1423 Panel
(Washington, DC)

Robert A. Burton

Deputy Administrator
Office of Federal Procurement Policy
Office of Management and Budget
(Washington, DC)

James A. "Ty" Hughes Jr.

Deputy General Counsel for Acquisition
U.S. Air Force
(Arlington, VA)

Alan L. Chvotkin

Senior Vice President and Counsel
Professional Services Council
(Arlington, VA)

James J. McCullough – Panel Moderator

Partner, Fried, Frank, Harris, Shriver & Jacobson LLP
Chair, Procurement Planning Committee
National Defense Industrial Association
(Washington, DC)

- How price can affect whether an item is defined as commercial
 - introducing price reasonableness into the equation
 - what does price have to do with anything?
 - what information would be used to decide whether a price is reasonable?
 - what effect will this have on industries?
 - applying non-commercial rules to items where no uniform price has been set by the market
 - applicability of TINA requirements
 - post-award audit rights
 - standard intellectual property rights in government
- Redefining commercial services
 - what services would become ineligible for commercial treatment
 - using competitive practices to procure commercial services: impact of Section 803 requirements
- Creating a separate GSA Schedule for information technology services

- the implications for contractors of not listing set prices on this schedule
- Allowing protests of task and delivery orders over \$5 million on MAS contracts
- Restrictions on use of time and materials contracts with no predetermined contracting scope: is this the optimal way to obtain services on a cost-effective basis?
- Which recommendations are most likely to be accepted and which will fall by the wayside

10:15 Coffee Break ☕

10:30 Meeting Domestic Preference Requirements and Mitigating Foreign Ownership Control and Influence (FOCI)

Sharon Owlett

Vice President and Senior Counsel
Nortel Government Solutions
(Fairfax, VA)

Nicholas P. Retson "Chip"

Acting General Counsel
Defense Contract Management Agency
(Alexandria, VA)

Terry L. Albertson

Partner
Crowell & Moring LLP
(Washington, DC)

- Berry Amendment
 - key provisions and to which agencies does it apply?
 - what are various companies doing to comply with it or to get exceptions?
 - why is the government stepping up enforcement?
 - penalties for non-compliance
- Trade Agreements Act and Buy American Act
 - key provisions and application
 - understanding the substantial transformation test
 - what are the exceptions?
 - industries that are receiving increased focus from the government
 - penalties for non-compliance
- Foreign Ownership Control and Influence (FOCI)
 - the NISPOM's FOCI provisions
 - FOCI alternatives
 - key business considerations
 - complying with the restrictions
- Areas of non-compliance and how to prevent violations

11:30 Complying with the False Claims Act

Stephen D. Altman

Stephen D. Altman PLLC
Former Assistant Director
U.S. Department of Justice – Civil Fraud Section
(Washington, DC)

Laurence J. Freedman

Partner, Patton Boggs LLP
Former Assistant Director
U.S. Department of Justice - Fraud Section
Commercial Litigation Branch, Civil Division
(Washington, DC)

- What key provisions of the FCA mean to commercial companies

- How liability arises under the Act
 - the relationship between FCA liability and violations of other statutes
- Enforcement priorities and what can be learned from recent FCA cases
- Defending against False Claims Act allegations
- Negotiating key settlement provisions with the government
- Penalties associated with FCA violations
- How to mitigate False Claims Act violations

12:30 Networking Lunch for Speakers and Delegates

1:45 Enforcement Update: A View from the Feds on Current Enforcement Priorities

Maureen Regan

Counselor to Inspector General
U.S. Department of Veterans Affairs
(Washington, DC)

Kevin Buford

Counsel to the Inspector General
General Services Administration
(Washington, DC)

- How agencies assess the scope and magnitude of violations: aggravating and mitigating factors
 - knowledge and intent
 - risks and benefits of voluntary disclosures
 - compliance programs
- How violations are revealed and discovered
- Red flags of non-compliance
- Understanding the audit process
- Working with the auditors and investigators
 - what you can do to expedite the process
 - what does the government expect and how to respond
 - communication protocol during an enforcement action

2:45 Refreshment Break

3:00 Schedules Contracts: Negotiation and Compliance Strategies

Carl L. Vacketta

Partner
DLA Piper
(Washington, DC)

Larry Allen

Executive Vice President
The Coalition for Government Procurement
(Washington, DC)

- Negotiating your basis of award
 - how much room is there for negotiation?
 - how do you comply with this?
 - understanding your disclosure obligations
 - making a case for your price
- Standards of performance
 - how will your performance be evaluated?
 - inspection rights
- Payment issues

- invoice submission
- how often will you get paid?
- methods of payment
- Protecting your IP rights
 - negotiating your own IP clauses to protect your proprietary information
 - strategies for dealing with different agencies
- Specific risks associated with GSA Schedules Contracts
 - Price Reduction Clause
 - what is it?
 - risks associated with non-compliance
 - Industrial Funding Fee
 - keeping track of your sales to the government
 - how do you calculate the fee?
 - repercussions of failing to pay

4:00 Complying with Socio-Economic Provisions in Federal Commercial Contracting

Felipe Mendoza

Associate Administrator
General Services Administration
Office of Small Business Utilization
(Springfield, VA)

Ralph C. Thomas III

Special Counsel
Buchanan Ingersoll & Rooney PC
(Washington, DC)

- GSA Small Business Subcontracting Program
 - to what companies does this apply?
 - drawing up your company's small business subcontracting plan
 - how do you comply when there's not enough subcontractors?
- Equal Opportunity requirements
- Affirmative action for workers with disabilities
- Implications of non-compliance with socio-economic provisions
- Steps you can take to be seen as proactive in meeting your goals
 - what your small business liaison should be doing now

4:45 Conference Adjourns for the Day

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This course has been approved in accordance with the requirements of the New York State Continuing Legal Education Board in the amount of 13.5 hours, of which 1.0 apply to ethics. An additional 4.0 credit hours will apply to workshop A or B participation.

ACI certifies that this activity has been approved for CLE credit by the State Bar of California in the amount of 11.5 hours, of which 1.0 apply to ethics. An additional 3.5 credit hours will apply to workshop A or B participation.

WEDNESDAY, MARCH 28, 2007

8:00 Continental Breakfast ☕

9:00 Co-Chairs' Recap and Remarks

Carol R. Marshall

Former Senior Vice President
Ethics & Business Conduct
MCI (Potomac, MD)

Thomas M. Abbott

Partner
National Chair, Government Contracts Practice
McKenna Long & Aldridge LLP
(Los Angeles, CA)

9:05 Developing and Implementing Best-in-Class Internal Compliance Programs

Odell Guyton

Director of Compliance
Anti-Trust Compliance Officer
Senior Corporate Attorney, Legal & Corporate Affairs
Microsoft Corporation
(Redmond, WA)

Doug Perry

Vice President, Global Compliance
Honeywell International
(Washington, DC)

David P. Handler

Senior Counsel
GE – Aviation
Military Systems and Government Business
(Cincinnati, OH)

Gregory A. Garrett

Chief Compliance Officer
U.S. Federal Government Programs
Lucent Technologies
(Fairfax, VA)

Angela B. Styles – Panel Moderator

Member
Miller & Chevalier Chartered
(Washington, DC)

- Performing a risk assessment to determine what policies your company should have in place
 - what are your risk areas?
 - are there any policies that put your company in jeopardy?
 - what is the current level of compliance?
- Creating a tailor-made program to fit your company's needs
- "Success stories" – how companies have averted critical issues through effective compliance programs
- Developing a culture of compliance within your organization
 - employee training
 - the importance of having management support your policies
 - how do you keep such a culture active?

10:20 Coffee Break ☕

10:30 Surviving a Government Audit

Domingo Maradiegue

Associate General Counsel
Group Counsel, Public Services
BearingPoint
(McLean, VA)

Jonathan Aronie

Partner
Sheppard, Mullin, Richter & Hampton LLP
(Washington, DC)

- What to do when you receive the audit notice
- At what point should you bring in outside counsel?
- What you should request from the audit team prior to the commencement of the audit
- Planning for the audit
 - doing your research
 - document preservation
 - written procedures
 - internal audits
- Preparing your employees and management for the interview process
- Effective strategies to use when responding to an audit

11:30 How to Comply with the Government's Ethical Standards

Marynell DeVaughn

Senior Counsel
Raytheon Company
(Washington, DC)

Andrew D. Irwin

Special Counsel
Steptoe & Johnson LLP
(Washington, DC)

- The Procurement Integrity Act
 - understanding the impact of the Boeing/Darleen Druyun case
 - overcoming challenges employers face when vetting candidates who are current or former government employees
- Bribery and Illegal Gratuities Statute
 - who is subject to this statute?
 - distinguishing between acceptable gifts vs. bribes
 - gift disclosure rules
- Anti-Kickback Statute
 - to whom does this apply?
 - safe harbor regulations
- Lobbying restrictions
 - prohibition against direct campaign contributions to members of Congress
- Standards of Ethical Conduct for Employees of the Executive Branch

12:30 Networking Lunch for Speakers and Delegates 🧑🏫🧑🏫

Ethics

1:45 Performing Commercial Services Under the Service Contract Act

Charles DeLeon

General Counsel
GTSI Corp.
(Chantilly, VA)

Stu Nibley

Partner
Thelen Reid & Priest LLP
(Washington, DC)

- Types of service contracts
- The Service Contract Act
 - what does it cover and to whom does it apply?
 - exemptions
 - fringe benefits
 - wage determination
 - health and safety
 - penalties for violations
- Understanding the award process
 - avenues of relief if you are not awarded the job
- Preventing common problems involved in performing service contracts
 - problems related to work performance
 - contractual disputes
 - government furnished property
 - terminations
 - disputes associated with payment
 - cost and pricing issues

2:45 Refreshment Break ☕

3:00 Minimizing Liability Risks of Subcontracting and Teaming Agreements

Eric B. Howell

Vice President, Contracts, Pricing and Procurement
Information Technology Sector
Northrop Grumman Corporation
(McLean, VA)

John W. Chierichella

Partner
Sheppard, Mullin, Richter & Hampton
(Washington, DC)

- Understanding the difference between subcontracting and teaming agreements
- Analyzing the benefits and the risks associated with each
 - preliminary factors to consider before partnering with someone
- Negotiating your agreement
 - key terms and provisions to include for the protection of your business
- Avoiding common pitfalls associated with subcontracting and teaming arrangements

3:45 Terminations and Disputes: How to Confront Adverse Actions and Come Out Ahead

Fred W. Geldon

Counsel, US Government Solutions
Electronic Data Systems Corporation
(Herndon, VA)

Richard D. Lieberman

Principal
McCarthy, Sweeney & Harkaway, P.C.
(Washington, DC)

- Termination for the convenience of the government
 - issuance of written notice of termination
 - what the notice must contain
 - total vs. partial terminations
 - limitation on government's right to terminate for convenience
 - contractor's right to recovery – what costs are you entitled to?
 - limit to recovery if you have a loss contract
 - negotiating the best settlement terms with the government
- Termination based on default of the contractor
 - grounds for termination
 - consequences of default termination
 - contractor's rights if the contract is terminated for default
 - procedural protections – show cause notice and cure notice
 - best defenses to a default allegation
 - limitation on right to default terminate
 - alternatives to default termination
 - conversion to termination for convenience
- Disputes process
 - overview of the disputes clause and the Contracts Disputes Act of 1978
 - required elements of a viable claim
 - certification requirements
 - strategies for negotiating a settlement with the contracting officer
 - analyzing your options if you receive an unfavorable final decision

4:30 Conference Ends

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A

9:00 a.m. to 12:30 p.m.

HOW TO PREPARE A SUCCESSFUL GSA PROPOSAL AND MARKET YOUR PRODUCT WITHIN ETHICAL BOUNDARIES

Carolyn Alston

General Counsel
Washington Management Group
(Washington, DC)

Mark Amtower

President
Amtower & Co.
(Washington, DC)

The General Services Administration (GSA) Schedule is the largest and most widely-used acquisition vehicle in the federal government for the purchase of commercial products and services. With \$40 billion dollars in annual purchases, many contractors are looking to increase their sales by getting on the GSA Schedule. Yet, getting onboard is only the first step in the process. In order to win contracts, you need to master the art of writing a successful GSA proposal and learn how to effectively market your product while adhering to the complex, ethical rules the government has in place.

In this interactive and practical workshop, Carolyn Alston and Mark Amtower will take you through the intricate GSA Schedule and key success factors to prepare a winning proposal, including:

- Determining which opportunities are worth going after and which you should pass over
- Preparing your proposal
 - complying with the requirement to provide “current, complete and accurate data”
 - what does this entail?
 - where do you get this information from?
 - what information the GSA requires
 - setting prices for your products and services
 - how do you select your basis of award?
 - how do you justify your proposed price?
 - responding to requests for additional information
- Marketing your product while staying within ethical boundaries
 - establishing your credibility
 - common pitfalls contractors make that can cost them in the long run
 - maintaining relationships with your existing customers
 - using your customers to help gather marketing information
 - tracking your competition

B

1:30 p.m. to 5:00 p.m.

PERFORMING AN AUDIT OF YOUR COMPANY'S COMPLIANCE PROGRAM: A COMPLETE GUIDE FOR A SUCCESSFUL SELF-ASSESSMENT

Angeline G. Chen

Assistant General Counsel
Lockheed Martin Corporation
(Bethesda, MD)

Brett Ingerman

Partner
DLA Piper
(Baltimore, MD)

The most effective way to ensure that your policies and procedures are being adhered to is by conducting an audit of your company's compliance program. By uncovering noncompliance or even potential wrongdoing early on, you will be able to take the necessary corrective action before a serious problem develops. With government audits on the rise, this type of proactive management is more necessary than ever.

This interactive workshop will provide you with an in-depth look at self-assessment reviews. Workshop leaders will lead you through the internal audit process and supply you with a foundation to conduct a successful self-assessment, including:

- When is a self-assessment appropriate?
- Who should and should not be involved?
- What types of audit should be used?
- How often should an audit occur?
- Steps of an audit
- How to effectively use outside counsel during a compliance audit
- Types of documentation to review
- What personnel should you interview?
- Effective internal audit methodologies
 - targeting high-risk areas
- Wrapping up the audit: when is enough enough?
- End result of an audit – how to memorialize; what to distribute; proper format of findings
- How to use your audit results effectively
- Working with management to implement improvements
- Advantages and disadvantages of disclosing wrongdoing

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Benjamin Greenzweig, Director of Business Development, U.S. (212) 352-3220 ext. 238 or B.Greenzweig@AmericanConference.com

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