




# PACA Pulse



WINTER 2010

PROFESSIONAL AEROSPACE CONTRACTORS ASSOCIATION OF NEW MEXICO

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## AFRL Small Business Update

*By Bill Miera, PACA Small Business Officer*

For those who were not at the last PACA luncheon there have been several changes in the Small Business Office at AFRL. First, Joan Fulkerson is no longer running the office. Joan has been moved to a different part of AFRL. Francisco (Cisco) Tapia has been temporarily assigned to run the office. This assignment could be until October 2010.

For those who have not met Cisco, he is in charge of the Small Business Innovative Research (SBIR) office and he will continue in

primarily for those companies wanting to meet Cisco and for those new to doing business at Kirtland. There will not be any procurement people present at these meetings.

The next scheduled non-quarterly monthly meeting will be held on February 24 with the general format as described above. The next two quarterly meetings with the procurement folks are planned for March 31 and June 30 at 1:30 p.m. and may include the above mentioned agencies plus others such as Sandia National



those duties. In fact, Cisco has been successful in getting the national SBIR Conference in Albuquerque this May. Arrangements are still being finalized. For right now it will be Government only.

Cisco initially planned to institute a monthly meeting to obtain potential upcoming procurement information from agencies such as the Air Force Research Laboratory, the 377th Air Base Wing, and the Nuclear Weapons Center. Each attendee would have a few minutes to introduce themselves and their companies, with time at the end for general networking. Additionally, you would be allowed to ask the procurement folks directly about potential procurements. The monthly meeting would be limited to approximately 30 companies, although more than one person from each company could attend. Most recently however, the format has changed somewhat in that the procurement folks will now attend only quarterly, with general monthly meetings in between,

Laboratories. The procurement staff will most likely not be there in September due to end of the year activities. Reserve your spot by calling Cisco or anyone in the office at 846-8515. The meetings will be held at the Maxwell Training Center (Building 1900) on the north side of Gibson. The Small Business office will put your name on a list to get through the gate if needed. At last month's meeting Donna Hines from the Nuclear Weapons Center was there and discussed some potential opportunities that may be coming out in the next year from the center. There are no specifics as of yet but if you e-mail her at Donna.Hines@Kirtland.af.mil with the particular area you are interested in, identified in the subject area of your message, she will e-mail you when the information is solidified.

There will be no more of the trade shows that Joan had spearheaded. It is possible that another entity will pick them up with AFRL supporting them. •

## PACA Profile: Workspace Dynamics

Workspace Dynamics is a small, woman-owned office furniture dealership established in 1999 by Mary Escobar. The company provides commercial furnishings for general office, educational, healthcare, hospitality, and laboratory use.

Mary is the principal of Workspace Dynamics and was born and raised in Albuquerque. After attending the University of Arizona and the University of New Mexico on a track scholarship, Mary obtained a degree in Business Management from the University of Phoenix. In addition to Mary, the company has ten employees and two contract employees. For large projects Workspace Dynamics partners with large installation companies and utilizes a project manager.

Mary has been a PACA member for about a year. She values PACA because it gives her an insight into what is happening on base and at the laboratories. As her business is based on relationships and trust, she particularly appreciates the opportunity to network with other PACA members.

Workspace Dynamics provides office furnishings as well as design, space planning, reconfiguration, installation, and service. The company supplies systems furniture, desks, seating, high density filing and storage systems, and furniture for reception areas, conference rooms, and break rooms. It represents over 100 manufacturers, is the exclusive dealership for KNOLL in New Mexico, and has

include the Air Force Research Lab, the Nuclear Weapons Lab, the University of New Mexico, and various state court houses, municipalities, and healthcare providers. Workspace Dynamics is providing the furnishings for the new five story Tri-Lab facility under construction at University and Indian School. The company can provide its customers with GSA pricing through its manufacturers and also qualifies for small-woman owned set-aside business.

# WORKSPACE

DYNAMICS

Workspace Dynamics is presently rolling out an innovative packaged office program. In conjunction with one of its manufacturers, the company is offering a complete design and furniture package for about \$15 per square foot installed. Customers start with a warm shell and Workspace

Dynamics and its partner provide a design and build-out, including walls, furnishings, electrical, and zone cabling.

Workspace Dynamics strives to be a resource for its customers. Before selling any furniture, the company consults with customers about their requirements and formulates a design. If Workspace Dynamics does not carry a product needed by a customer, the company will help their clients locate it from another source.

In response to customer demand, Workspace Dynamics recently introduced a new service, electrostatic painting of metal file cabinets and shelving units. Through this process, cabinets and shelves can be repainted to accommodate new designs and colors. The process is done on site for a fraction of the cost customers would pay for new cabinets and shelving.

Workspace Dynamics is committed to reduced waste policies which are of value not only for their own sake, but are of interest to many of its customers. The company recycles wooden pallets and cardboard containers and minimizes the volume of packaging used in shipping its products.

Additional information about Workspace Dynamics can be found at [www.workspace-dynamics.com](http://www.workspace-dynamics.com).



strategic partnerships with Kimball Office and National. The service department provides delivery, installation, warranty, and repair work.

Workspace Dynamics supplies furniture and services to a wide variety of government and commercial customers. Its customer mix used to be 60% government and 40% commercial. As the economy has weathered its recent storms, this mix has changed to 90% government and 10% commercial. Although the company would like to have more commercial customers, it will always have a strong government focus. Workspace Dynamics' customers in-





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## Upcoming Lunch Speakers



■ **February 16, 2010** Dr. Pete Worden, Director NASA Ames Research Facility

Dr. Simon "Pete" Worden most recently served as a Research Professor of Astronomy, Optical Sciences and Planetary Sciences at the University of Arizona. He is a recognized expert on space issues — both civil and military.

In addition to his former position with the University of Arizona, Dr. Worden served as a consultant to the Defense Advanced Research Projects Agency on space-related issues.

Dr. Worden retired as a Brigadier General in 2004 after 29 years of active service in the United States Air Force. His final position was Director of Development and Transformation, Space and Missile Systems Center, Air Force Space Command, Los Angeles Air Force Base, California.

Dr. Worden has authored or co-authored more than 150 scientific technical papers in astrophysics, space sciences, and strategic studies. Moreover, he served as a scientific co-investigator for two NASA space science missions. He holds a B.S. from the University of Michigan and a Doctorate in Astronomy from the University of Arizona.

■ **March 16, 2010** Tammie Johnson, AFRL Director of Contracts

Tammie Johnson is the Chief of the Contracting Office for Detachment 8, Air Force Research Laboratory Contracting Office at Kirtland Air Force Base. Ms. Johnson leads a 90-person organization which manages research and development contracts for the Space Vehicles and Directed Energy Directorates of the laboratory.

Ms. Johnson has over 20 years experience in the Contracting and Acquisition profession where she has handled contracts in a variety of environments including systems, logistics, operations, and research and development.

Prior to her assignment to Detachment 8 AFRL, Ms. Johnson was employed by the Missile Defense Agency as the Contracts Team Chief for the Airborne Laser Program Office. In that capacity, she led a team of contracting officers and contract specialists in the management of the Airborne Laser development contracts.

Ms. Johnson received her Masters of Business Administration from the University of New Mexico in 1999, and her Bachelor's Degree in Finance from the University of Utah in 1984. She is a Certified Professional Contracts Manager and is Acquisition Professional Development Program Certified Level III in Contracting.



■ **April 20, 2010** Col. Stephen Clark, Commander, 27th Special Operations Wing, Cannon AFB

Colonel Clark is responsible for preparing Air Force Special Operations Forces (SOF) for missions worldwide in support of Army and Navy special operations forces and USAF counterparts. The wing's mission is to plan and execute specialized and contingency operations using advanced aircraft, tactics,

and air refueling techniques to infiltrate, exfiltrate, and resupply SOF and provide intelligence, surveillance and reconnaissance, and close air support in support of SOF operations.

Colonel Clark is a command pilot with more than 3,300 hours in 11 aircraft. He has flown combat missions in Somalia, Bosnia, Haiti, Afghanistan, and Iraq. He was previously assigned as the U.S. Special Operations Command support team chief, National Counter Terrorism Center in Washington, D.C.

He earned a Bachelor of Arts in Political Science from the University of Tennessee and a Masters of Public Administration from Troy State University.

We meet the 3<sup>rd</sup> Tuesday of each month at the Mountainview Club (located on Club Road on the east side of Kirtland Air Force Base). Registration begins at 11:30 am followed by lunch at 12:00 noon. Members are admitted free and our guest fee is \$15.

To RSVP, register online at [www.pacanm.org](http://www.pacanm.org). Include your name, guest's name, and menu selection (typically a meat, fish, or vegetarian dish). Please RSVP by noon on the Friday before the week of the meeting.

If you are not already on base, enter at the Wyoming gate and state your purpose. Assuming you're registered, your name will appear on the PACA list and you will be admitted. •

### PACA Website: Value to Members

Members are encouraged to log onto the "Members" section of the PACA website ([www.pacanm.org](http://www.pacanm.org)) and look at the documents available only for our membership. We add new information periodically.

Also, check the Events and Announcements tabs – we post not only PACA activities but other events that may be of interest to our members.

The PACA website is provided as a service to our membership. If you have comments or suggestions on how we can improve the site for your use, please send your comments to Dar Johnson at [d\\_r\\_johnson@comcast.net](mailto:d_r_johnson@comcast.net). •



# Legal Insights: Payment for Additional Work

By Ross Crown

Payment for work beyond the requirements of the contract is the subject of a recent opinion of the Armed Services Board of Contract Appeals in *Sinil Co., Ltd.*, 09-2 BCA ¶ 34213, ASBCA No. 55819 (August 4, 2009). The Board's opinion relates a cautionary tale to contractors who perform additional work.

## Background

In this case, the U.S. Army entered into two indefinite delivery/indefinite quantity contracts with Sinil. One contract was for repair and replacement of deteriorated security fences. The other contract was for asphalt paving.

Both contracts included the DFARS Contracting Officer's Representative (COR) clause which provides in part that the COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract. Moreover, this instruction was reiterated at a post-award conference between Sinil and the Army where Sinil was also advised that any changes to the contract had to be made in writing by the contracting officer. Finally, Sinil was provided with a standard designation memorandum whenever a new COR was appointed, reminding Sinil that the CORs were not empowered to take any action that may affect the scope or other terms and conditions of the contract.

While performing the two contracts, Sinil performed dozens of delivery orders. As work under each delivery order was completed, Sinil submitted certified payment requests stating that the payment requested was correct and that payment had not been received.

Following an audit by the Army Audit Agency, the contracting officer issued a decision finding that Sinil had been overpaid by more than \$1.4 million in connection with the fence contract. In response, Sinil claimed that it had performed work outside the scope of the delivery orders which if considered, would have resulted in an underpayment by the Army of over \$290,000. The contracting officer issued a separate decision on the paving contract finding that Sinil was overpaid nearly \$100,000. Sinil contended that it performed work outside the scope of the delivery orders under that contract as well which if considered, would have resulted in an underpayment of nearly \$26,000.

Sinil submitted a certified claim under both contracts asserting the underpayments as an offset to the contracting officer's decisions finding that Sinil had been overpaid. The contracting officer denied this claim. All three of the contracting officer's decisions were appealed by Sinil to the ASBCA.

In arguing its appeal, Sinil maintained that Army employees other than the contracting officer requested Sinil to perform additional work. The Army responded that these employees had no such authority. Also, the Army contended that the requests for additional work were not ratified by anyone with authority to do so. Lastly, the Army argued that Sinil executed releases in exchange for payment of each delivery order but did not include any reservations of claims in these releases. Although the ASBCA opinion breaks no new

ground, it provides useful reminders to contractors concerning authorizations for work, ratification of work orders, and payment releases.

## Authority

Addressing the question of authority, the Board noted that the law relating to government officials' authority to enter into binding contracts is straightforward. A contract with the United States requires that the government representative who entered into or ratified the agreement has actual authority to bind the United States. A contractor who executes an agreement with the Government assumes the risk of ascertaining the authority of the agents who purport to act for the Government and this risk remains with the contractor even when the government agents themselves may be unaware of the limitations of their authority. The Board also noted that Sinil was specifically on notice that only the contracting officer could authorize work through the COR clause in the contracts, the instructions given at the post-award conference and the COR designation memoranda.

## Ratification

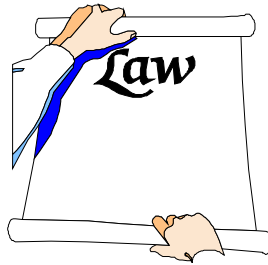
The Board next addressed the issue of ratification. It noted the governing law states that agreements made by government agents without authority may subsequently be ratified by those with authority. However, ratification can occur only if the ratifying officials have actual or constructive knowledge of the unauthorized acts. In this case, the Board found no ratifications. To the contrary, when the Army became aware that Sinil was billing for work not properly requested, the contracting officer terminated the appointment of the COR who ordered the unauthorized work and initiated recoupment actions against Sinil.

## Payment Releases

In seeking dismissal of Sinil's claims that it was underpaid, the Army demonstrated to the Board that Sinil provided a release of any claim for additional payment each time it accepted payment of an invoice for a delivery order. Sinil did not include any exceptions in these releases. Sinil responded to this argument by contending that when it sought payment for delivery orders, it was in no position to make claims for equitable adjustment because doing so would have delayed payment and created a cash flow problem. Sinil further contended that at the time the equitable adjustment issues arose they were not sufficiently large to justify making claims. Sinil submitted its equitable adjustment claims only after the Army sought to recoup a large sum of money from Sinil.

Again, the Board found the law pertaining to this issue is well-established. Under the terms of the contract the Army paid invoices upon execution of a release by Sinil of all claims against the Government, except those specifically excepted. If there are outstanding claims excepted on the release, then payment will not necessarily bar resolution of those claims. However, if there are no claims excepted in the release or if the claims excepted are not legally cognizable as claims, then payment will prohibit their subsequent submittal.

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**Lessons to be Drawn**

Based on the application of above legal principles to the facts at hand, the ASBCA denied Sinil’s claim to recover for unpaid work. The lessons of this case are clear and should be ingrained in every company doing business with the Government. Contractors must ascertain who, if anyone, besides the contracting officer, has authority under their contract to bind the Government. A contractor must not undertake work that is not authorized by a government official with proper authority. A key distinction between government and commercial contracting is that the doctrine of apparent authority, pursuant to which a contractor may rely on the instructions of an agent who appears to be cloaked with the authority to bind his principal, does not apply to the Government. When unauthorized work is performed, the contractor should immediately seek ratification for that work from the contracting officer or other authorized official. If a contractor has reason to believe it has grounds for a claim against the Government, it must reserve this claim in any release provided to the Government once the grounds for that claim have arisen. This reservation has to be made regardless of the financial hardship it may create or the seemingly small size of the claim. •

Ross is a partner in the Albuquerque office of Lewis and Roca LLP. This article is intended for general information only and should not be construed as legal advice or opinion. Any questions concerning your legal rights or obligations in any particular circumstance should be directed to your lawyer.

Ro Saavedra contacted me a couple of weeks ago asking for a farewell “President’s Corner” for this Pulse issue. FAREWELL? “I’m not leaving,” I said to myself. But on reflection I realized that my PACA president’s roller coaster will soon be pulling into the station where I will get off and let the new president ride. Although the position has been a handful, I’ll miss being at the helm. The remainder of this article summarizes my reflections on the organization, what we’ve accomplished on my “watch,” and what I hope for PACA in the future.

My first thought is that the ups and downs of being president have been manageable because a dedicated Board of Directors has been on the ride with me and helped carry the load. Along with a big **thank you** comes the reassurance that they will continue to be there to shoulder the load and support our next president. Special thanks to John Kiegel, Dar Johnson, and Stacy Sacco whose support has been invaluable.

Another reassurance for the future is that Ginny Buckmelter will succeed me as president. Ginny, a successful small business owner, brings a wealth of experience to all areas of PACA operations. I have been impressed by her energy, people skills, and willingness to tackle the hard jobs. Perhaps more importantly, Ginny really cares about PACA and the welfare of our members.



PACA has continued to make progress over the last year as a result of a great deal of effort on the part of many. I am pleased that we have increased our membership over a year ago, giving us a broader base. We partnered with nmOptics to allow wider outreach. We had a hugely successful BFI that generated enough income to enliven our education outreach programs. We have more and better website services and now allow job advertisements. We started a high school scholarship program to help students pursuing engineering and science careers, and we have improved our contact with and endowments to New Mexico’s major universities.

Going hand-in-hand with where we’ve been is where we yet have to go in making a good thing even better. In my view accomplishing several goals will serve us well in the future:

- Get more new people involved with our Board of Directors to generate new ideas and energy
- Build more partnerships with other trade associations to broaden our outreach
- Get more speakers from operational units around the state so our focus will be more rounded as to what our war fighters need
- Continue to pursue new members
- Get closer to our customers by sponsoring/participating in inter-change events
- Encourage more of our members to network and use our services

Recently, after talking with a wing commander’s executive on the phone, my wife (Pat) noted that I will miss being president of PACA; as always, she was right. While I won’t be president soon, I will continue on the Board of Directors as the “Past President.” I look forward to continuing to serve you. •

**Welcome NEW Members**

**Helena Deakin-Smith**  
Atkinson & Co CPA / CFS

**Michael Emerson**  
ABS Consulting

**Eric Mechenbier**  
Sharp Informatics

**Thomas Farrell**  
NG Xinetics

**Kenneth D. Blemel**  
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**Stephen Rose**  
MZA Associates

**Allie Thompson**  
Keres Consulting, Inc.

# Could Your Company Benefit From a Newsletter?

By Ro Saavedra

If your company could benefit from sending customers and potential customers a newsletter, and you aren't already doing so, you might want to consider it.

Disseminating a company newsletter can serve many purposes in developing or enhancing your company's credibility, presence in the market, and overall image with current and prospective customers. However, as a newsletter is not appropriate for every business, first assess whether or not you can provide useful and valuable information to your readership (clients/customers, potential customers, past customers, and referral sources). A newsletter that is solely a marketing/sales piece is recognized



as such and will backfire. Helpful content might include timely industry-specific updates; changes in legislation; changes in procedures or policies that may affect the reader's business or their customer base; new expansion, services, or products and their potential benefit to your customers; or an introduction of new service personnel, to name but a few examples.

Assuming that you have value to give in terms of useful information, the potential benefits may be immediate (such as if your newsletter includes a "discounted services/products announcement" or redeemable coupon), but will most likely be long-term. Client/customer goodwill lives on and positively affects the bottom line. Your company newsletter (either hardcopy or electronic) can be passed on to other readers; posted on your company's website; distributed at trade fairs, conventions, and other industry events; displayed in your lobby; and included in company informational packets. A newsletter is simply an inexpensive way to provide a free service to your readers; remind them of your presence; and inform them of how doing business with your company may meet their needs.

A current, well maintained database is necessary to launch your newsletter. In addition, a company newsletter provides excellent motivation to build your database and keep it current. A newsletter can be published monthly, quarterly, semi-annually, annually, or even just occasionally – when you have something really pithy to communicate. **The only hard rule is that its content be useful and provide a service.**

# PACA Luncheon Sponsorship Opportunities

The Board of Directors has launched a pilot program for the mutual benefit of the organization and the membership. Effective with the February 2010 luncheon, PACA members may sponsor a luncheon and receive the benefits listed below. Sponsorship provides an excellent opportunity to showcase your business.

Many thanks to David Seely for Kirtland Federal Credit Union's sponsorship of the February meeting, and to Don Sullivan for Ktech Corporation's sponsorship of the March meeting.

If you are interested in taking advantage of this new program, contact Maran Vedamanikam at 797-3042 or Ro Saavedra at 830-2345.

## Bronze Sponsors \$100

- Display booth at Luncheon (table stand only)
- President will publicly thank your company at Luncheon
- PACA will host a company representative at Luncheon

## Silver Sponsors \$250

- Display booth at Luncheon (table stand only)
- President will publicly thank your company at Luncheon
- PACA will host a company representative at Luncheon
- Your Company may post banner at Luncheon

## Gold Sponsors \$500

- Display booth at Luncheon (table stand only)
- President will publicly thank your company at Luncheon
- PACA will host a company representative at Luncheon
- Your Company may post banner at Luncheon
- Five minute presentation about your company at Luncheon
- Your company-provided information highlighted on PACA's website
- Advertisement in PACA Pulse
- Sit at head table with guest speaker

**There will be a maximum of two Sponsors per monthly lunch.**

## Membership & Pulse

PACA membership annual dues are \$150\*. The fiscal year runs from April 1, 2010 to March 31, 2011. Mid-year applications will be pro-rated. You may apply on-line at [www.pacanm.org](http://www.pacanm.org).

For more information, contact one Maran Vedamanikam, (Membership Chair), 797-3042 / [maran@euroclydon.com](mailto:maran@euroclydon.com)

\* Dues are subject to change.

If you know a potential member or anyone else who would like to receive our newsletter, please forward their e-mail address to Burke Nelson, 944-2126.

This is your newsletter. If you would like to contribute an article, make announcements (promotion, job change, or a new product or service), please submit your newsletter contribution to the editor, Ross Crown, at [RCrown@LRLaw.com](mailto:RCrown@LRLaw.com) or call him at 764-5402.

Contributions are welcome!