



# PACA Pulse

WINTER 2011

PROFESSIONAL AEROSPACE CONTRACTORS ASSOCIATION OF NEW MEXICO

PO Box 9178  
Albuquerque, NM 87119  
www.pacanm.org

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## PULSE EDITOR

**Ross Crown**  
764.5402  
RCrown@LRLaw.com

## EDITORIAL SUPPORT & DESIGN

**Ro Saavedra**  
830.2345  
RoSaavedra@msn.com

## UNDERWRITER

**LEWIS  
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## President's Corner

*By Ginny Buckmelter*

It is hard to believe that almost a year has passed since I was given the honor of being the first female PACA President! In this, my final President's Corner, I simply wish to convey my sincere gratitude for the support that all of you have given me in my performing this role. It has been a pleasure serving you and I look forward to continuing to be a part of PACA and serving on the program committee for the Briefing for Industry.

Even though PACA is an organization based on the aerospace industry, many members bring an enormous amount of knowledge from other diverse industries. I have learned much from all of you and wish you success in your business roles as well as your personal lives.

Thank you again for the opportunity to serve you! •



## Welcome NEW Members

**Brian Cook**  
Innovation Aero Group, LLC

**Michael Cushman**  
Infoscitex Corporation

**Tracie O'Geary**  
Northrop Grumman

**Mark A. Menicucci**  
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**Erik Thompson**  
Blue Lynx Resources

**Sam Chavez**  
Professional Business Systems, Inc.

## Save the Date for the 2011 Briefing For Industry

You don't want to miss this special 25th Anniversary of the BFI to be held at Hotel Albuquerque at Old Town, August 15-17. All PACA members are invited to attend, not only to learn of new business opportunities for the upcoming year, but also to celebrate this milestone year of the BFI.

Check the website regularly to learn of distinguished keynote speakers and other presenters at <http://bfi.pacanm.org>. •



## Sponsoring BFI Delivers Many Benefits

PACA presents scholarship funds to New Mexico universities every year using excess revenue from the Briefing for Industry. Students majoring in engineering or scientific disciplines are eligible to apply for a scholarship. Sponsorships of the BFI not only provide a means for advertising your company to the right audience, but also enables state universities to train the next generation of valued engineers and scientists.

### **A profile of the 2010 annual BFI participants:**

- 248 Paid Contractors
- Over 90 senior government decision makers and technical leaders from over 25 organizations
- 122 small businesses
- 53 large businesses
- 18 8(a) companies
- 2 Hubzone companies
- 18 Woman-Owned SB companies
- 18 Veteran-Owned SB companies (6 were Disabled Veteran)

The following sponsorships are available on a first requested and paid basis. For details regarding each level's benefits, or to secure a sponsorship, please visit the BFI website at <http://bfi.pacanm.com>. All sponsors will be listed on the PACA BFI website and on conference materials where applicable (subject to print deadlines).

- Diamond (1 Sponsor) \$7,500
- Gold (1 Sponsor) \$5,000
- Silver (Unlimited) \$3,000
- Welcome Reception (1 Sponsor) \$2,000
- Dinner (1 Sponsor) \$5,000
- Lunch (1 per Lunch) \$3,000
- Breakfast (1 per Breakfast) \$2,000
- Break/Refreshment (1 per Break, 4 total) \$1,500
- Binders and CDs (1 Sponsor) \$2,500
- Note pad and pen (1 Sponsor) \$1,000
- Advertise Your Business \$500
- Graduate Student \$2,000
- BFI Out of Town Visitor (2 Sponsors) \$300

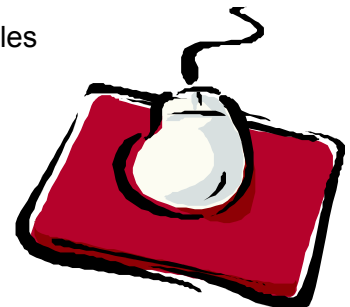
Please contact the following if you have questions about sponsorships:

- **Cinnamon Spain:** 505-998-4910 / [cinnamon@cynncs.com](mailto:cinnamon@cynncs.com)
- **Joan Fulkerson:** 505-554-7200 / [Joan.Fulkerson@gmail.com](mailto:Joan.Fulkerson@gmail.com)
- **Dar Johnson:** 505-400-1639 / [d\\_r\\_johnson@comcast.net](mailto:d_r_johnson@comcast.net) •

## Additions to the Website

The following documents were added to the Member's Section of the PACA website during 2010:

- 2010 Legislative Bills Subject Index
- SBA 2011 Small Business Week Letter
- Ms. Susan Thornton's July 2010 Briefing to PACA
- AFRL SB POCs, page 1
- AFRL SB POCs, page 2
- AFRL Useful Web Links, page 1
- AFRL Useful Web Links, page 2
- AF Procurement Technical Information
- AF SB Solutions Center
- AIAA Newsletter – August 2010
- CAF Strategic Plan 2010
- Brig. Gen. Garrett Harencak Biography
- Brig. Gen. John F. Thompson Biography
- Colonel William T. "Bill" Cooley Biography
- Maj. Gen. Pawlikowski's Nov 24, 2010 Briefing
- NM Federal Procurement & SADBUs Contacts 2011
- DoD Business Operations Briefing, July 2010
- DoD Business Operations Statement, July 2010
- SBA 10 Tips for Writing Winning Nominations
- National SBIR Program Managers' Contact Info.
- Small Business Advocate Newsletter – Dec 2010
- Small Business POCs, page 1
- Small Business POCs, page 2
- SNL Overview for PACA – January 2010
- PACA Standing Rules



## Upcoming Luncheon Speakers

### ■ March 15th – Mr. Mark Neice, Director of the High Energy Laser Joint Technology Office



Mr. Neice supervises the research and development of solid-state, free electron and gas laser devices, beam control technologies, lethality analysis, and the modeling and simulation tools that create military applications of laser energy for combat operations. He retired

as a Colonel in the U.S. Air Force in October 2004, after 25 years of active duty service.

Previously, Col. Neice was the Chief of the Laser Division, Directed Energy Directorate, Air Force Research Laboratory. Past positions include Director of Space Test Operations, Det. 12, AFSPC, and Director of Systems Engineering and Test Operations for the Airborne Laser Program Office.

A command pilot, he has over 6,000 flying hours, mainly in the C-135 and B-707 variants, and is a member of the Acquisition Career Force, certified in program management, test and evaluation, and systems planning, research, development and engineering.

### ■ April 19th - Dr. David A. Hardy, Director, AFRL Directed Energy Directorate, Air Force Material Command



The AFRL's Directed Energy Directorate is the U.S. Air Force's center of expertise in the range of technologies required for high-energy lasers, high-power microwaves, high-power millimeter waves, and advanced optics. Associated technologies include optical imaging and communication technologies and modeling, simulation, and effects studies. As the technical expert, the Directorate

also provides independent assessment and analysis of directed energy concepts for multiple Air Force customers.

Dr. Hardy, a member of the Senior Executive Service, was previously Associate Director for Space Technology, Space Vehicles Directorate, responsible to the AFRL Commander for the oversight of all the organization's space science and technology investments, as well as for the senior civilian management of the Space Vehicles Directorate's science and technology portfolio.

Dr. Hardy also worked as the AFRL's Senior Space Experimentalist responsible for the advancement of all major space flight experiments, and served as Chief, Battlespace Environment Division, within the Space Vehicles Director-

ate. In addition, he has acted as the Chief Technical Adviser, Requirements Directorate at Headquarters Air Force Space Command.

Dr. Hardy holds a B.S. degree in physics, magna cum laude with honors from Duke University; M.S. and Ph.D. degrees in space physics and astronomy from Rice University; and a M.S. in strategic studies from the Air War College at Maxwell AFB.

We meet the 3<sup>rd</sup> Tuesday of each month *generally* at the Mountainview Club (located on Club Road on the east side of Kirtland Air Force Base). Registration begins at 11:30 a.m. followed by lunch at 12:00 noon. Members are admitted free and the guest fee is \$15. (As the board is considering other venues, please pay particular attention to the meeting location when you receive your e-mail reminder to RSVP.)

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

If the meeting is at the Mountainview Club and 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 Luncheon Sponsorship Opportunities

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

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.* •

# Legal Insights: Claim Pitfalls

By Ross Crown

This two-part series of articles discusses how contractors should pursue claims against the federal government. In the last issue of the Pulse, the first part examined the preparation of a successful claim. This second part concerns claim pitfalls.

Contractors planning to pursue a claim under the Contract Disputes Act against the federal government need to be aware of a variety of pitfalls that can render their claim dead on arrival. The government has available to it many defenses that will lead to the denial of a claim before the merits of the claim are even considered. The primary pitfalls include the following.

## Inadvertent Release of Claim

Potential claims can be forfeited by a contractor executing a release in exchange for final payment. Typically contractors are required to sign a release of all claims arising under the contract at the time final payment is tendered. If a claim or potential claim is pending, the contractor must insist on language in the release preserving the right to pursue that claim. Otherwise if a contractor accepts final payment in exchange for a release of further liability on the part of the government, any claim under the contract will likely be released as well.

The inadvertent release of a claim does not happen only in connection with final payment. The same problem can arise when the government offers a bilateral contract modification incorporating a release. If the claim arises from that modification, the modification must include language preserving the contractor's right to pursue its claim.

## Certification

Contract claims above a certain minimum threshold must be certified. The purpose of certification is to provide an accurate appraisal of the contractor's damages and thus encourage settlement. Certification also serves to discourage improper submissions by holding contractors liable for fraudulent claims. An uncertified claim is not valid. The Court of Federal Claims and the Board of Contract Appeals do not have jurisdiction over uncertified claims.

Fortunately, a defective certification is not the same as an uncertified claim. A defective certification can be corrected prior to the entry of final judgment or a decision. In certifying a claim, a contractor must ensure that the appropriate person executes the certification. The certifying individual has to be duly authorized to certify and must have knowledge of the basis of the claim, including knowledge of the accuracy and completeness of the supporting data. A certifier does not, however, need to have first hand involvement in the events giving rise to the claim but may base his or her knowledge on a review of company records.

## Sum Certain

Claims must seek as a matter of right the payment of

money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A sum certain is not stated where the amount of the claim is described as "in excess of," "no less than," "at a minimum," or "approximately." On the other hand, a claim for a sum certain plus an estimated continuing per month cost that is readily calculable is valid. A sum certain does not have to include a detailed breakdown of costs.

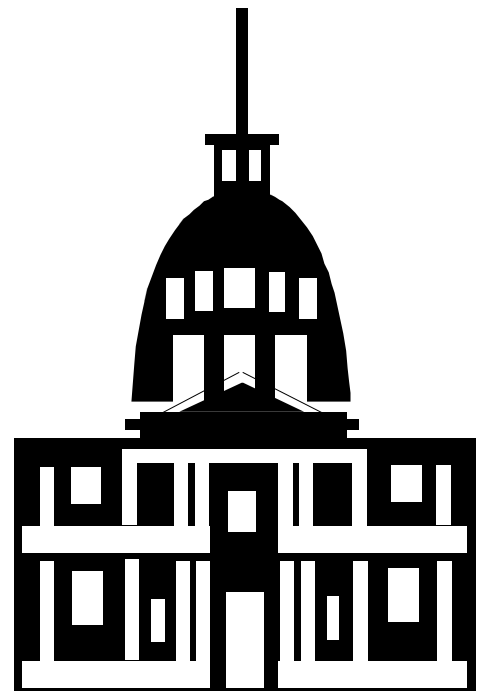
## Contract Changes

A contractor asserting a claim arising from a contract change (which most claims do) must ensure that it has preserved a claim for contract changes. Virtually every contract includes a changes clause. While the form of the clause can vary depending on the nature of the contract, they basically require that a contractor must first give notice of an asserted right to compensation for the change. These clauses typically provide that after a change is ordered by the contracting officer, the contractor has a certain period of time (usually 30 days) within which it must assert its right to an equitable adjustment if the change order causes an increase in the contractor's cost of performance or time required for performance.

Notice provisions in changes clauses generally also apply to constructive changes as well. A contractor should give notice of any increase in cost or time of performance after it receives any written or oral order from the contracting officer that causes such a change.

The required contents of a notice will vary depending on the particular changes clause involved, but notice should generally include the identity of the individual requesting the change, the nature of the change and a description of the additional work required by the change. The notice should also request confirmation of the authority of the government representative directing the change.

Contractors who fail to provide notice of a contract change



*continued on following page*

## Legal Insights: Claim Pitfalls *continued*

are not necessarily out of luck. There are exceptions to the notice requirement. These exceptions include situations where (i) the responsible government officials are aware, or should be aware, of the facts giving rise to the claim, (ii) the government has actual knowledge of the facts underlying the contractor's claim and the government cannot sustain its burden to establish it was prejudiced by the absence of formal notice, or (iii) the contracting officer decides the contracting officer's claim.

### False Claims

What is worse than a denied claim? How about a claim that is not only denied but also leads to civil or criminal liability on the part of the contractor? Recent years have seen a renewed emphasis by the government on oversight of contractors. The False Claims Act is a primary tool for exercising control over perceived contracting excesses. If a contractor is unable to support any part of its claim and it is determined that such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, it shall be liable to the government for an amount equal to such unsupported part of the claim in addition to all costs to the government attributable to the costs of reviewing that part of the claim. The government may assert a false claim up to six years after the misrepresentation.

What is most difficult about false claims is that they often encompass conduct which people ordinarily do not consider fraudulent. For example, false claims can arise from a failure to fully investigate. The contractor may prepare a claim based on interviews with less than all of the key personnel or a review of less than all of the key documents.

A contractor should never submit a claim as a bargaining chip. A contractor might add to a set of claims submitted to a contracting officer a claim the contractor intends to abandon later on as a negotiating tool. If it is determined that the

contractor did not have reason to believe that this added claim was legitimate, a false claim can ensue despite the validity of other claims submitted at the same time by the contractor. In connection with this scenario, contractors should beware of signing settlement agreements reciting that payment by the government reflects the amount to which the contractor is legally entitled. If the contractor originally sought an amount greater than is reflected in the settlement agreement, the settlement agreement should refer to the settlement amount as a compromise figure.

Another false claim scenario is where a claim is based on estimates. When actual account records are not readily acceptable, a contractor may be tempted to estimate cost figures. If a later government audit reveals that these estimates are overstated, however, a false claim may be asserted.

### Avoiding the Pitfalls

Contract claims are difficult enough on the merits. When the procedural defenses available to the government are considered, successfully pursuing a contract claim can look to be a daunting task. Contractors intent on prosecuting a claim must identify the basis of the claim early and then have available to them a checklist of each of the requirements of a valid claim. Only after each item on the checklist is satisfied should the claim proceed. Contractors should never pursue a claim without knowing the legal requirements defining the right to bring that claim. •

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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.

## Membership Renewal is Due

PACA membership annual dues are \$150\* and due now. The fiscal year runs from April 1, 2010 to March 31, 2011. You should have received a "dues due" e-mail reminder from PACA Treasurers John Kiegel. Mid-year applications will be pro-rated. You may pay your dues and apply on-line at [www.pacanm.org](http://www.pacanm.org).

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

\* Dues are subject to change.

### PACA Pulse

If you know a potential member or anyone else who would like to receive the 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! •