



PACA Pulse

SUMMER 2014

PROFESSIONAL AEROSPACE CONTRACTORS ASSOCIATION OF NEW MEXICO

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

BOARD OF DIRECTORS

Laurence "Andy" Dobrot
President
858.0254

Judy Ruiz
Vice President
254.4329

Burke Nelson
Secretary
269.3416

Michelle Franks
Treasurer
843.9639

Eric Mechenbier
Immediate Past President
228.0221

Don Nash
Program Officer
250.6574

Lenny Bean
Small Business Officer
553.0825

Ron Unruh
BFI Officer
206.1033

PULSE EDITOR

Ross Crown
764.5402
RCrown@LRRLaw.com

EDITORIAL SUPPORT & DESIGN

Ro Saavedra
830.2345
RoSaavedra@msn.com

UNDERWRITER

**LEWIS ROCA
ROTHGERBER**

2014 BFI: Well Received and Attended

By Ron Unruh, BFI Officer

PACA hosted the 28th consecutive Annual Briefing for Industry (BFI), a renowned national conference, on August 18-20 at the Hotel Albuquerque of Old Town. The BFI was well received and attended, and from all the positive comments received from both government and contractor attendees, a solid success for PACA and the BFI Committee. Attendance was significantly up from 2013 and back in line with previous years' attendance numbers. For those who could not attend, you missed a great event. This year's BFI was once again chaired by yours truly **Ron Unruh** with **David J. Eichhorn** serving as session chair for the first day. Mr. Eichhorn presided over opening ceremonies, Posting of the Colors, and led the Pledge of Allegiance.

The BFI Committee procured a number of notable dignitaries to kick off and set the stage for the event as well as provided several keynote addresses throughout the two-day conference.



Maj. Gen. Thomas Maseillo

Major General Thomas J. Maseillo, Commander, Air Force Research Laboratory (AFRL), Wright-Patterson Air Force Base, provided the opening address concerning AFRL's mission, technology focus areas, and priorities. He is responsible for a \$4 billion science and technology program that encompasses both Air Force and customer funded research and development as well as approximately 10,000 personnel.

Jay M. Garner, U.S. Army Lieutenant General (retired), delivered the first keynote luncheon address. General Garner was appointed as the Director of the Office of Reconstruction and Humanitarian Assistance for Iraq in January 2003. He remains active in U.S. national security and Department of

Defense interest areas. His frequent travels to the Middle East (most recently to Iraq within days of the BFI) and its numerous hot spots, ensured that his message was not only current, but relevant to the audience. As one naval officer was overheard commenting, "Garner's message was spot on."

Day two saw the PACA Vice President, **Judy Ruiz**, assuming the role and duties as the session chair. **John Hale III**, Director of the Office of Small and Disadvantaged Business Utilization of the U.S. Department of Energy, provided the highly anticipated luncheon keynote speech. Mr. Hale advocates for small businesses including small disadvantaged, 8(a), women-owned, service-disabled veteran-owned, and historically under utilized business zone businesses for the Department of Energy.

I offer my appreciation to all keynote speakers, briefers/presenters, display personnel, PACA sponsors, and attendees. In addition, my sincere thanks to each BFI Committee member for putting on an outstanding and informative conference. As with every conference, we had our fair share of challenges to overcome – and we did! A snapshot of the 2014 BFI:

- Over 400 attendees from both industry and government
- 26 presentations from various agencies that included all AFRL Directorates, SMC, WSMR, LANL, and NNSA
- Over 75 contract opportunities with an estimated value of over \$6.5 billion for bidding in the next few years
- 20 exhibitors
- Outstanding keynote and luncheon speakers
- Excellent networking opportunities and settings

Event attendees may access the BFI Briefings for contract opportunities until approximately October 5 at <http://bfi.pacanm.org>.

Mark your calendars for the 2015 BFI – **August 17-19, 2015.** •

President's Corner

by Andy Dobrot

It is hard to believe that we are already at the end of summer and by the time you read this our 28th Annual Briefing for Industry should be complete. I want to call out **Ron Unruh** and his team for their hard work in putting the BFI together. I have received phone calls from people all across the country asking if the BFI is really as good as it sounds. Being the very biased PACA President that I am, I usually tell them "no, it is better, especially the networking opportunities with the Government customers and the other business people who attend."

You, the PACA members, are what make this organization stand out, from your volunteering to support activities like the BFI, to your hospitality with folks who are new to the New Mexico business environment. In fact, PACA Board members have been contacted by organizations from Colorado Springs and Los Angeles on how they can do the things that PACA is doing. We are working with them to help us all succeed.

The Board is actively working to ensure that PACA has a clear vision and mission. To that end, we have been conducting strategic planning sessions to articulate what we think the vision and mission should be. We are not done yet but I would like to share the draft:

VISION

Be the premier professional aerospace organization in New Mexico.

MISSION

Provide an environment for members to grow their aerospace and technology companies through networking and access to opportunities and information.



STRATEGIC GOALS

- Grow and expand our membership.
- Provide information and tools to members that allow them to thrive within changing industry environment.
- Design and plan speakers around achieving our mission.
- Improve interactions with other NM and regional technology, entrepreneurial, and economic development organizations.
- Improve marketing and brand recognition of PACA.
- Promote and create a public policy environment that supports the aerospace industry given the current changing environment.
- Create an environment that promotes better professional relationships and interaction between members.

So that is what we have been working on. If you have any comments or questions, please send them in and remember, your President and Board of Directors work for you. Contact us at board@pacanm.org.

Upcoming Luncheon Speaker

■ **October 21 - Bill Miera, CEO, Fiore Industries, Inc.**



A PACA member and former Board President, Bill Miera founded Fiore Industries in 1989 after nine years with the Albuquerque office of Rockwell International.

Fiore is a certified minority-owned small business providing high-technology services and products to federal and state agencies as well as public sector industry businesses. The company's core competencies are focused on the design, prototyping, and operations of high technology state-of-the-art systems, including: directed energy systems, controls systems, test systems, data acquisition systems, and fuselage simulators for research and commercial applications. The company's Information Technology Division also provides high-level Oracle consulting services and IT support services that include applications software development, and help desk services to government IT users.

A representative listing of Fiore's clientele includes New Mexico Spaceport Authority, Los Alamos National Security, AFRL, Sandia National Laboratories, Northrop Grumman, Bombardier Aerospace, Mitsubishi Aircraft Corporation, Honda Aircraft, Sikorski Aircraft, and White Sands Missile Range.

Bill, an Albuquerque native, has been exceedingly active in the community throughout his career. He helped found and is a Past President of the New Mexico Chapter of the Society of Hispanic Professional Engineers, a scholarship raising organization. He has also worked with MESA (Mathematics, Engineering, Science, Achievement); is a board member of the New Mexico 8(a) Association; and contributes to and works with several local charities. Under Bill's leadership, Fiore Industries Inc. established a formal community action committee that oversees activities and contributions to organizations including the New Mexico Special Olympics, the Make-A-Wish Foundation, UNICEF, United Way, Science Fair judging, and helping at UNM's Engineering Day.

He holds a Bachelor's in Mechanical Engineering and a Master's in Robotics from UNM as well as a Certificate in Management from the University's Robert O. Anderson School of Management.



We meet the third Tuesday of each month at **Tanoan Country Club** (Rolling Hills entrance east of Eubank off Academy). Registration begins at 11:30 a.m. followed by lunch at noon. Members are admitted free and our guest fee is \$15.

To RSVP, register online at www.pacanm.org. Include your name, guest's name, and menu selection. Please RSVP by noon on the Thursday before the week of the meeting.

Legal Insights: The Federal Government's Implied Duty of Good Faith and Fair Dealing to Contractors

By Ross Crown

Earlier this year, U.S. Court of Appeals for the Federal Circuit clarified previously misinterpreted case authority and reaffirmed that the federal government owes the same implied duty of good faith and fair dealing to its contractors as do private parties. In *Metcalfe Construction Company, Inc. v. United States*, 742 F.3d 984 (Fed. Cir. 2014), a construction contractor brought a lawsuit against the federal government alleging that the Navy breached its duty of good faith and fair dealing under a contract to design and build military housing. In 2002, the Navy awarded Metcalfe a contract to design and build housing units at Marine Corps Base Hawaii. Due to undisclosed site conditions, Metcalfe had to deal with unusual expansive properties and chemical contamination in the soil. These conditions required Metcalfe to excavate the unsuitable soil and replace it with fill dirt.

Other disruptions and interruptions also occurred during the course of the project. For example, the Navy imposed requirements not found in the written contract and an uncooperative inspector hindered construction. Following completion of the project, Metcalfe submitted a claim for damages to the contracting officer seeking compensation for a cost overrun in excess of \$26 million. Metcalfe argued that the Navy had materially breached the contract, including the implied duty of good faith and fair dealing. The contracting officer denied the claim.

Metcalfe appealed its claim by bringing suit in the Court of Federal Claims pursuant to the Contract Disputes Act. The government counterclaimed under a liquidated damages provision of the contract seeking delay damages. The Court of Federal Claims entered final judgment in favor of the government, awarding liquidated damages less offsets of relatively small sums owed to Metcalfe.

Metcalfe appealed again, this time to the Court of Appeals for the Federal Circuit. One of the issues on appeal was whether the government breached the implied duty of good faith and fair dealing. In analyzing this question, the Federal Circuit began by noting that every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement. Failure to fulfill that duty constitutes a breach of contract the same as failure to fulfill a duty imposed by the written terms of the contract. The Federal Circuit further noted that these principles have long been applied to the federal government.

In granting relief to the government, the Court of Federal Claims found that the implied duty was not breached in this case. According to the lower court, incompetence and/or the failure to cooperate or accommodate a contractor's request do not trigger the duty of good faith and fair dealing unless the government "specifically targeted" action to obtain the benefit of the contract or where the government's actions were undertaken for the purpose of delaying or hampering performance of the contract.

The Federal Circuit found the lower court's view of the implied duty was too narrow. The covenant of good faith and fair dealing, said the Federal Circuit, imposes obligations on both contracting parties that include the duty not to interfere with the other party's performance and not to act so as to destroy the reasonable expectations of the other party regarding the fruits of the contract. In sum, the implied duty exists because it is rarely possible to anticipate in contract language every possible act or omission by a party that undermines the bargain. Thus, the implied duty is focused on honoring the reasonable expectations created by the contract.

The government argued to the Federal Circuit that there was no breach of the implied duty because Metcalfe could not identify a contract provision that the Navy's inspection process violated.

The Federal Circuit also rejected this view of the implied duty as too narrow, finding a breach of the implied duty of good faith and fair dealing does not require a violation of a written provision in the contract.

In concluding its analysis, the Federal Circuit cautioned that the implied duty of good faith and fair dealing is not a broad instrument for remedying injustice wherever it occurs. This implied duty is limited by the original bargain. That is, the duty of good faith and fair dealing cannot expand a party's contractual obligations

beyond those provided for in the written contract. Nevertheless, the implied duty prevents a party's acts or omissions that, although not prohibited by the written provisions of the contract, are inconsistent with the contract's purpose and deprive the other party of the contemplated value of the contract.

The Federal Circuit's reaffirmation of the implied duty of good faith and fair dealing on the part of the federal government is good news for contractors. Contracting officials of the federal government cannot frustrate the reasonable expectations of a contractor even if the contractor cannot point to breach of a specific written provision of the contract. Going forward, the Federal Circuit expects the Court of Federal Claims and the Boards of Contract Appeals to be receptive to contractors damaged by government incompetence or hostility regardless of whether they can prove the government intended to undermine the contract. When it comes to contracting, the federal government owes the same obligation as private parties to treat the other side equitably. •



Ross is a partner in the Albuquerque office of Lewis Roca Rothgerber LLP where his practice emphasizes government contracts. 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.

Welcome NEW MEMBERS!

Lawrence Balash,
NOVA Corporation
Chambersburg, Pennsylvania

Carla Bean,
Araiza Company LLC

Daniel Belden,
MCR Federal LLC

Steven Bower,
Wolverine Services LLC

Alex Bynum,
Saft America Inc.
North Carolina and Maryland

Marc Hallada,
Booz Allen Hamilton



Phil Macklin,
MZA Associates

John Martinez

Samantha Updegraff,
Lewis Roca Rothgerber LLP

Steve Wade,
The Kemtah Group

Join PACA!

PACA membership annual dues are \$150*. The current fiscal year runs from April 1, 2013 to March 31, 2014. Mid-year applications will be pro-rated. You may pay your dues and apply on-line at www.pacanm.org.

For more information, contact **Terel Anyaibe** at tanyaibe@aerotek.com or **342-5007**.

* Dues are subject to change.

August 2014 Legislative Update

by *Heather Brewer, PACA Legislative Liaison*

Among the topics discussed at the New Mexico Legislature's Interim Science, Technology and Telecommunications Committee meeting in Santa Fe in early August was the possibility of establishing a state Center of Excellence for Space Commercialization, Astronomy, and Astrophysics. According to the information presented to the Committee, such a center would work to coordinate existing military assets and academic programs to increase and promote aerospace work in the state.



The Committee gathered in Las Cruces September 4-5. Visit the legislative website at http://www.nmlegis.gov/lcs/committee_detail.aspx?CommitteeCode=STTC for an overview of topics presented and discussions. •



Ken Martinez, Speaker of the New Mexico House, spoke at our September luncheon meeting. Here he is with PACA President Andy Dobrot.

Spread the News

If you know a potential member or anyone else who would like to receive the newsletter, please forward their e-mail address to RoSaavedra@msn.com.

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 or call him at 764-5402.

Contributions are welcome! •

PACA History, Part I

A Past President and long-time active member of PACA, **Dar Johnson**, has an ardent interest in how PACA came to be and its early history, and has taken the helm in collecting this information. Shrouded in mystery, Dar and his investigative staff have uncovered PACA histories written by active members that will be presented in a PACA History series beginning with this issue.

The Founding of PACA and Early History

By Dar Johnson

Unfortunately, early PACA data was not well-archived, so we scoured the collective memories of many “old timers” as best we could. While the “facts” may seem a little blurred from one account to another, it still comes through that PACA owes its start to **Bill Faulds, Roger Hoppe, Bill Bakel, and Ken Johnson**, as well as early members who served on various committees including **Russ Parsons, Lou Bernasconi, Tom Eden, Chuck Vesely, and Dick Trask**.

PACA was formed in 1984 in New Mexico as a non-profit association to promote a healthy and vigorous relationship between the aerospace industry and federal and state agencies in New Mexico. The organization was later, in 1992, incorporated as a 501(c)(6). It began as a non-partisan membership organization with an all-volunteer staff and remains so today. PACA is led by the Board of Directors in accordance with written by-laws and policy.

PACA evolved to include more commercial interests but has maintained its emphasis on information exchange and communication with mainly industry government customers. Today, it is the preeminent contractor organization in the southwest represented by 104 individual members and nearly as many companies, most from the Albuquerque area. Widely recognized and respected by virtually all New Mexico government agencies, PACA receives national exposure through the annual BFI which attracts approximately 400 people to Albuquerque for several days every August.

The following are recollections and notes written by four longtime PACA members about the early days.

During the summer of 1982, Roger K. Hoppe, then Vice President of BDM Corporation, began to develop the concept of an organization that would provide an environment wherein state and U.S. government organizations could speak openly to the employees of professional services/aerospace companies about their future business directions and policies. The concept involved holding monthly meetings where all members and “speaker organizations” could interact with

one another and hear briefings from New Mexico government organizations. The focus of the organization would be to serve the New Mexico community of technical companies as well as state and U.S. government organizations.

An important requirement was that government speakers at the monthly meetings would be assured that their briefings and comments would not be released to the press. The last requirement that Roger felt was important was to build an organization that was open to all professional services as well as large hardware aerospace companies, regardless of company size.

In August 1982, Roger invited three members of the Albuquerque technical community to his BDM office for lunch and to present his ideas about this new organization. **Bill Faulds** of TRW, **Bill Bakel** with Boeing, and **Ken Johnson** of Hughes attended. Roger’s ideas for the new organization were favorably received and discussions were held about selecting a name. The four also discussed the necessary actions to transition PACA from a good idea to a reality, and many additional meetings were held to organize and prepare for building the organization. Two issues that received more attention were the name of the organization, and whether to affiliate with a national organization or have it be a “stand-alone” organization focused on New Mexico. The name issue related to whether or not the organization should represent a wide variety of companies (professional service, aerospace, hardware, software, large, mid-size, small) or just aerospace companies.

The name **Professional Aerospace Contractor’s Association (PACA)** was selected as it encompassed a broad range of companies, and the word “Professional” in the title was believed to broaden the scope of membership. The second issue to be resolved involved strong feelings that the focus of the organization should be on New Mexico companies and organizations. The decision was made and agreed upon that PACA should spend its resources helping to build the technical community of New Mexico.

In September 1982, the first official meeting of PACA was held at the Royal Fork Restaurant on Central Avenue, near the intersection of Washington and Central NE. Eleven people were in attendance. Information about PACA was publicized and initial members subsequently invited new people to join and the newly created PACA began to grow.

Many people have contributed to and helped PACA expand and build the New Mexico technical community throughout the past 30 years. Certainly PACA’s accomplishments and achievements have far exceeded the ideas and dreams of the founders in that fateful summer of 1982. •



Dar Johnson

*Stay tuned for Part II
of the
PACA History Series
to be published in the
Fall 2014 issue.*

PACA Sponsorship Opportunities

Support to PACA in the form of sponsorships helps make the organization a success while promoting your business. The Board has recently added another sponsorship choice, the Premier Small Business sponsorship for \$1,000.

Please contact **Dar Johnson** if you have questions about sponsorships at **505-400-1639** or **d_r_johnson@comcast.net**.

ANNUAL SPONSORSHIPS of \$1,000 - \$7,500: *One time each year* space is provided for a tabletop display at a membership luncheon and the opportunity for a five minute corporate overview presentation. The table will be either in the lobby or in the banquet room, depending on the size of the room. Also, depending on room arrangement and speaker presentation, special rules may apply per event.

DIAMOND \$7,500

- Sponsor level (Diamond) recognition on PACA website.
- Corporate logo on PACA signage at luncheons and events.
- Three registrations for the PACA annual Briefing for Industry.
- Recognition included in the quarterly newsletter, PACA Pulse.
- Advance electronic list of BFI attendees.
- Special reserved seating at BFI.
- Addition of company literature or giveaways in BFI Goody Bag.

GOLD \$5,000

- Sponsor level (Gold) recognition on PACA website.
- Corporate logo on PACA signage at luncheons and events.
- Two registrations for the PACA annual Briefing for Industry.
- Recognition included in the quarterly newsletter, PACA Pulse.
- Advance electronic list of conference attendees for the BFI.
- Addition of company literature or giveaways in BFI Goody Bag.

SILVER \$3,000

- Sponsor level (Silver) recognition on PACA website.
- Corporate logo on PACA signage at luncheons and events.
- Recognition included in the quarterly newsletter, PACA Pulse.
- One registration for the PACA annual Briefing for Industry.
- Special reserved seating at BFI.
- Advance electronic list of BFI attendees.
- Addition of company literature or giveaways in BFI Goody Bag.

PREMIER SMALL BUSINESS \$1,000

The requesting sponsor must demonstrate the company is classified as a small business.

- Sponsor level (Premier Small Bus) recognition on PACA website.
- Corporate logo on PACA signage at luncheons and events.
- Recognition included in the quarterly newsletter, PACA Pulse.
- One registration for the PACA annual Briefing for Industry.
- Special reserved seating at BFI.
- Addition of company literature or giveaways in BFI Goody Bag.

SMALL BUSINESS SPONSORSHIP \$400: Quarterly Luncheon (One sponsor per quarter for January, April, July, and October meetings and one for the December holiday party).

- Company logo on the PACA website.
- Booth at BFI.
- Two guests for the sponsored lunch.
- Corporate logo displayed on signage for the sponsored luncheon.
- Introduction as the luncheon sponsor and be allowed to present a five minute overview of company. Corporate brochures/tri-folds may be placed on the luncheon tables. A luncheon sponsor may not sponsor another luncheon for twelve months. •

Thank You Annual PACA Sponsors!

GOLD SPONSOR



is an aerospace, defense, and commercial products company with operations in 21 states, Puerto Rico, and internationally. **www.atk.com**

SILVER SPONSORS



is a Fortune 500® scientific, engineering, and technology applications company that uses its deep domain knowledge to solve problems of vital importance to the nation and the world, in national security, energy and the environment, critical infrastructure, and health. **www.saic.com**



is an American defense company headquartered in Reston, Virginia, that provides scientific, engineering, systems integration, and technical services. **www.leidos.com**



is one of the world's largest suppliers of technologically advanced aerospace and defense products. **www.utcaerospacesystems.com**



is a modeling, simulation, and microsystems technologies service provider. **www.aegistg.com**



is 100% tribally-owned by the Navajo Nation. Services include data center optimization, cyber security, network and enterprise services, and managed services. **www.nova-dine.com**

PREMIER SMALL BUSINESS SPONSORS



Drylac manufactures and supplies powder coatings used in many industries including specifically designed for the military and defense sectors. **www.tigerdrylac.com**



is a precision measurement, sensing and controls company providing services and products to government and commercial customers. **www.aptec.com**