

NCMA NEWS

San Diego Chapter



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Upcoming NCMA-SD Events

- November 4 Chapter Board Meeting – All Members Welcome
- November 18 Chapter Seminar: Intellectual Property
- December 2 Chapter Board Meeting – All Members Welcome
- December 15 NCMA Audio Seminar: Best Practices in Incentive & Award Fee Contracting
- December 16 Chapter Holiday Social – SAVE THE DATE!

Gems from an Evening with Professor Ralph Nash

By Julianne Hagan

Professor Ralph Nash (Esq.) graced the NCMA San Diego Chapter with his learned wisdom at the last meeting of our 2008-2009 Program Year in May. Professor Nash spoke about the inside view from D.C., and specifically, we (the government/taxpayer) should not contract out contracting (that's the good news). In his view we should not contract out writing requests for proposal, evaluations, cost analyses, or recommendations. Doing so results in having the lone government employee make all of the procurement decisions, which makes no sense. Also, it's not right for contractors to control the outcome.

The problem is to re-stock the government with contracts expertise. Agencies have intern programs and we're seeing highly qualified interns come through, but it will take three to five years to get there. From the view of the agency, the challenge is to give these interns exciting work and

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President's Message

By Dan Chalfant

Servant Leadership – have you heard of it? My name is Daniel Chalfant, recently elected President of NCMA San Diego. My desire is to be a Servant to NCMA San Diego members in leading the chapter this year. I am honored to have this opportunity to serve a group of professional contract managers. In line with the NCMA Vision that “enterprises will succeed through improved buyer–seller relationships.” I hope we can provide the values, practices, and professional standards to accomplish this.

Last year, we asked our members what they wanted from NCMA San Diego in the form of a survey. We took the results of that survey and planned an exciting program year for our members. In September, we had Alan Dickson present on “The Strange Evolution of Organizational Conflicts of Interest.” Upcoming topics for Seminars include Indirect Rates, Intellectual Property, Negotiations, and Closeouts – all topics that you the members said you wanted in the survey. But if you have thoughts or ideas, please don't wait until next year's survey! I am always interested in hearing feedback from our members as to what topics are the most relevant and useful to you. Please feel free to contact me by email anytime; I am here to serve you.

I hope you can make it to a few of our Workshops and Seminars this year, and please save the date for our Holiday Social on December 16!

Daniel Chalfant, President
NCMA San Diego
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**A big THANK YOU to Erin Armstrong for revamping our chapter website!!!
Come visit us and see our new look!**

Membership Focus – Meet Victoria Marin

Victoria Marin is the new Arrangements Director for the NCMA San Diego chapter. She has been working in Government Contracting for the past four years with Lockheed Martin. Victoria graduated with a BS in Business Administration from the University of California, Riverside in 2004. Victoria hired on with Lockheed Martin in her home town of Santa Maria, CA where she worked for three years in Contract Management, working primarily on Launch Range programs for the US Air Force. In early 2008, Victoria transferred to the San Diego Lockheed Martin office where she currently works as a Contracts Negotiator on various Department of Defense Contracts for the Navy and Air Force.



Victoria actively participates in her community as a member of the Lockheed Martin Network of Volunteers Association (NOVA); she participates in yearly fundraising for non-profit organizations including the LM Relay for Life 2009. Victoria has also been a member and volunteer for the Girl Scouts for over 20 years, and still enjoys outdoor activities like hiking and camping. She avidly explores the local scenes such as hiking up Cowles Mountain, playing soccer, and going to Padres baseball games in her free time. Victoria has been a member of the San Diego NCMA chapter since February 2008.

World Congress 2009 – Surfing the Waves of Change

By Joni Shirley, CPCM

Long Beach, California: What a perfect location for NCMA's World Congress 2009. We renewed our friendships and made new acquaintances in the sunny, warm weather, enjoyed the beautiful beaches, great restaurants, and of course, the Queen Mary.

World Congress 2009 began its festivities featuring a powerful presentation from Carly Fiorina, former chairman and CEO of Hewlett-Packard. In keeping with this year's WC theme, *Surfing the Waves of Change*, she said, "People that succeed in life are the ones that embrace change and see it as an opportunity." The favorite quote from the presentation was "Change is like heaven – everyone wants to go there, but no one wants to die." Following the presentation, Ms. Fiorina joined NCMA President Steve Ayers and World Congress Chair Deidre Lee in cutting the ceremonial ribbon which signaled the official opening of the Exhibit Hall.

Monday morning's keynote speaker was the Honorable Thomas Davis III, former member of the House of Representatives. His energized presentation touched upon the importance of transparency in government spending as well as many of the current administration's initiatives. The picture he painted from what is and will be coming out of Washington DC was not a rainbow with a pot of gold at the end. He emphasized the answers to our current problems will be the investment in the workforce, empowering and training our contracting officers, and allowing them to be innovative.

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World Congress 2009 – Surfing the Waves of Change

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NCMA celebrated its 50th Anniversary at the Aquarium of the Pacific with a Gala Dinner served with a huge blue whale suspended overhead. The event featured Professor Ralph Nash and honored our past presidents. NCMA's Executive Director Neal Couture was presented special recognition with a plaque and brandy decanter for his leadership of NCMA.

Tuesday morning's keynote speaker was General Lester L. Lyles, retired Air Force four-star general and former Vice Chief of Staff for the Pentagon. He is a long-time supporter of NCMA and encouraged us as contract professionals to keep the big picture in mind. We need to visualize what the contract should look like in order to drive toward the final result.

Wednesday's general session presenter was Dr. Kathleen Hall, Stress and Life Balance Expert. She is an internationally recognized lifestyle expert and is the founder and CEO of The Stress Institute, Alter Your Life, and The Mindful Living Network. During times of stress and crisis such as the West Virginia and Utah coal mining tragedies, Hurricane Katrina, the Air France crash in Canada and the London terrorist bombings, she was sought after for her authoritative knowledge, information, and direction. Hall gave the NCMA audience several tips on relieving stress, which begins with the word "SELF," with each of the letters being identified with "serenity, exercise, love, and food."

Over the three days of WC we listened to several panelists speaking on various topics. One panel being moderated by past NCMA President Lenn Vincent featured Charlie Williams, director of DCMA, and Jan Frye, Deputy Assistant Secretary for Acquisition and Logistics for the Department of Veterans Affairs. Other panelists included: Kim Rupert, Senior Vice President for Contracts, Procurement and Pricing at SAIC; Larry Schultz, Vice Present, Corporate Contract Compliance for Parker Hannifin Corporation; Angela Styles, former Administrator for the Office of Federal Procurement Policy; and Elliott Branch, Procurement Contracting Officer of NAVSEA. There were many breakout sessions over the three days which offered a myriad of learning opportunities. The closing general session featured Rob Burton, partner of Venable LLP, who served in the Executive Office of the President as Deputy Administrator of the Office of Federal Procurement Policy (OFPP), making him the nation's top career federal procurement official. His main topic of discussion was the federal procurement policy under the Obama administration and the 111th Congress.

All in all, this year's World Congress was very successful with the largest turnout NCMA has ever had. It was also very encouraging to see so many of the graduating Leadership Development Students (40 total) who were in attendance. It was also a great opportunity to take advantage of the discounts and training offered in taking the CPCM, CFCM and CCCM examinations. Our very own Arrangements Director, Quyen Tran, took and passed both the CFCM and CCCM.

Mark your calendars to be in Fort Lauderdale, Florida on July 18-21, when we convene for World Congress 2010.

November 18th Seminar

The San Diego Chapter of the
National Contract Management Association
Will Present a Seminar

Critical Steps for Protecting Your Intellectual Property under Government Agreements

This seminar will address:

- Federal R&D funding agreements — Obama Administration changes
- Government rights in IP developed with government funds
- Requirements for marking notices, etc.
- Areas that are mandatory versus those that can be negotiated
- Strategies to limit the effects of the mandatory provisions

Guest Speakers:

Richard Vacura, Partner & Chair of Government Contracts Practice Group

Keric Chin, Of Counsel, Government Contracts Practice Group

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Who should attend:

Contract managers & contract administrators
Marketing & proposal managers
Program & project managers
Company counsel

Location: Four Points by Sheraton, 8110 Aero Drive

Time:

Hot Breakfast, Networking and Registration: 8 a.m.
Meeting begins promptly at: 8:30 a.m.

**Please register by November 13, 2009. Use the Registration Form or
register online at ncmasd.org**

September Seminar Debrief

By Julianne Hagan

On September 16, Alan Dickson, Esq., CPCM, NCMA Fellow, and long-time expert on Organizational Conflict of Interest policy and management, presented our San Diego chapter members and guests with his thoughts on “The Strange Evolution of OCI.” (Mr. Dickson is also a member of NCMA’s Executive Advisory Council and a Partner in the L.A. Office of Holland + Knight, LLP.)

Mr. Dickson’s main message is to maintain vigilance over your company’s or organization’s ethics codes (which should address OCI and its compliance), watch DFARS revisions closely, and ensure you stay out of trouble on the OCI front.

OCI is defined very concisely as:

1. Unequal Access to Non-Public Information (such as proprietary or source-selection data) as it may give an unfair competitive advantage to the company with access.
2. Biased Ground Rules (which frequently is seen in the creation of statements of work or specifications) as it could give an unfair competitive advantage or operate to steer contracts).
3. Impaired Objectivity – e.g., you are on a government team evaluating products/services of your own company or those of a competitor, which would give your company an unfair competitive advantage.

OCI has been described by some attorneys recently as “the perfect storm,” and after listening to Mr. Dickson, I have a better insight into why. Recent rules regarding OCI include a DFARS Interim Rule (January 2008), a second DFARS Interim Rule (effective July 2009), and the Weapon Systems Acquisition Reform Act (2009) for major defense programs. All are intended to provide uniform guidance and tighten existing requirements. This, after a long history in the development of OCI rules that began with the ASPRs (remember those?) and as updated in the FAR. Some of this history includes the following timeline:

- 1962, The Bell Commission addressed defense companies’ position that it is wasteful of talent to not utilize industry in the government’s decision whether to obtain independent advisory services
- 1963, Appendix G of the ASPR addressed OCI by requiring the management of conflicts of interest
- Today, the FAR and the Nuclear Regulatory Commission (NRCAR) place OCI under “contractor qualifications” rather than under “improper business practices,” and OCI can be considered a crime (depending on the circumstances). FAR changes to Parts 3, 9 and 52 address the following OCI requirements:
 - Code of Ethics
 - Compliance systems
 - Mandatory disclosures
 - Enhanced debarment risks for failing to disclose crimes
 - False Claims events and overpayments

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September Seminar Debrief

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Mr. Dickson believes the original concepts of effective OCI management have become lost in the evolutionary process in DoD contracting to the point that in today's environment offerors may spend a million dollars on a proposal only to have it rejected after submittal for OCI reasons! This has resulted in some prime contractors considering divesting themselves of advisory services units that had been acquired not long ago. For more detailed information on Mr. Dickson's presentation, please link to both of the resources listed below:

- Mr. Dickson's NCMA 9/16/09 [presentation on OCI](#) (click "Read Only")
- Holland+Knight's *Government Contracts Alert*, June 30, 2009, provides an article on "[Weapons Reform Statute Directs New Defense Regulations on Organizational Conflicts of Interest.](#)"

Dickson's 11 on OCI Mitigation (from *Informatics Corp. v. U.S.*)

1. Who prepares / approves?
2. Organizational / personnel barriers
3. Isolating subcontractors from planning aspects
4. Subcontractor (or prime) task declination
5. Altering corporate structures, sale of units, recent CMS uniform plan for having all offerors establish special subsidiaries
6. Restrictions on future work (original ASPR/FAR scheme)
7. Defining scope of work to minimize OCIs
8. Mitigation plans as source selection factor in addition to, or in lieu of, remediation function
9. Nondisclosure agreements
10. Many other types and functions of OCI mitigation plans
11. PCOs must take contractor mitigation plans seriously and not brush them off!

not treat them as clerks—we must find ways to give them challenging work. From the industry side, companies would like to deal with more competent government counterparts. But, when they do, the companies hire these people away! Professor Nash advised industry to hire their own and train them!

The bad news is there are a lot of politicians in D.C., and it's not whether they're Democrats or Republicans—there are problems across the board. These politicians believe there are two ways to make contracting better and save billions of dollars: have more competition and more fixed price contracts. Professor Nash knows of no data that supports cost-type contracts costing the government more money. It's fixed-price contracts that cost the government more money! Writing a fixed-price contract without requirements is fine with politicians. Competition sometimes helps, but there's a disincentive to understanding what's being bought. It used to be that we justified buying sole source when we thought we had sufficient "program" competition—e.g., there were four different fighters in the Air Force and whichever one was best was the one the Contracting officer was told to go buy—that was the kind of competition we had. If market research was done, you found the best product, but ultimately that is defined as sole source. In today's environment it's considered "good" when the government writes a technical specification that no one understands and then we pick the best liar— that's how we define competition, and that's just wrong. The real solution in terms of selecting the right contract—the key to the problem—is to hire good people and leave them alone. Hopefully people in contracts would then be able to do their jobs, follow the FAR, and just ignore the politicians.

The government needs to find ways to save money. The rational approach is to ask contractors to "tell us ways to save, to make things more affordable," and let them know that we're not going to play the political system. The most courageous decision by industry was when Lockheed Martin said "We will not contest the decision to end the F22 program." This is the right approach—we're in this together (yet at the same time they're lobbying Congress for more money for the C17 and F18 programs). We need to be more unified as an industry.

Take the CPAF type of contract as an example. This is a good contract type; a company could make more money than with CPFF, the government gets good results, and it includes a natural communication system—at least it used to be that way. Today, it's the worst type of contract a company could sign. Why? Because the GAO in 2004 began to attack CPAF and got Congress to adopt legislation. It used to be if a contractor did just what the contract calls for, they got 50%; if they did less, they got less. So, if you got 50% you were a hero, and typically contractors would expect to get 30-40%. Now it looks like there's a base fee of 1%, and an award pool of 10%. With a disallowance rate of 2.5% on a 4% max fee, who would want to take on the contract?

Also, according to the Federal Circuit (*Winter* decision), there is no such thing as implied authority. If industry deals with anyone but the Contracting Officer, they're in jeopardy, and so the Contracting Officer is involved with every decision! This is the dumbest thing anyone could do, but that's what the court has done. If we must inundate the Contracting Officer, then we should put them in the field—the Executive Branch doesn't care. There are significant risks for contractors, and the only way to deal with them is force the Contracting Officer to be involved in day-to-day decisions.

Gems from an Evening with Professor Ralph Nash

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Question and Answer Session

Question: How do we attract new people into the profession?

Answer: The recession is the best thing that's happened to government contracting. The President is saying the government is hiring, and people are looking for work. (At this point, Professor Nash shared with us that he earned his degree in Medieval History—and that it proved to be a wonderful background for government contracting!) Industry can do the same. As a contracting professional, you need to know cost accounting; for IT contracting, Professor Nash would take a software engineer and teach them contracting because the most important thing is to know something about what you're buying. Industry should bring in young people and train them. Contracting is an exciting business. In 1958, Professor Nash explained "I had the money and negotiated with the vice president of a company who made eight times what I made—that was FUN!"

Question: There is nothing in place to train the leaders. We need leaders to motivate.

Answer: There was an article in Contract Management last year—a lot of 1102s are about to retire. Having all those people leave is the best thing as they're stopping things for a lot of minor issues, and they are in the way. Professor Nash's job as a GS13 was to make sure his staff knew their jobs—there is no time now to nurture and mentor. He explained, "If I ran a contracting shop [today], I would meet two hours a week and talk about the contracting field, the business, and problems we're having."

Question: In the DCMA intern program the interns bond, receiving training, and are mentored by seasoned persons. They are not a bump on a log. The result is a 3-year structure, and you do real work after 1 month of initial training.

Answer: I would like to see contracting people trained along with technical and program people where they work in a group. One of the most important things about members of an established profession is you read the literature—on your own time. We don't do that. Assign one intern to track GAO, another court decisions, board decisions, FAR changes, and report back to the group. This should be part of everyone's routine. NCMA has a mentor/protégé program—even seasoned professionals need mentors with a good relationship between the government and industry to bounce things off of.

Question: Competition/price analysis... regulations were shorter, all sole source. Now there are 750-page technical specifications. The system is unwieldy.

Answer: The common denominator is understanding that good procurement requires good people. The role of contracts has diminished—it's more clerical and not as exciting work. Contracts should take over acquisition planning and move out more into contract administration. We all need to understand what all of us do—as a team!

Introducing Your 2009-2010 NCMA-SD Board of Directors

Board of Directors

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President	Dan Chalfant	chalfant_daniel@bah.com	
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