



# PACA Pulse

SUMMER 2015

PROFESSIONAL AEROSPACE CONTRACTORS ASSOCIATION OF NEW MEXICO

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We are pleased to publish this article regarding BFI as it appeared in the August 26, 2015 issue of *Air Force Print News Today*. Special thanks to **Joanne Perkins** and **Kendahl Johnson** of the KAFB Public Affairs Office for their permission.



## Agility, Partnerships Highlighted at Industry Event

*By Kendahl Johnson, KAFB Public Affairs*

Businesses got insight into more than 400 opportunities worth \$12.2 billion at the annual **Briefing for Industry** held Aug. 17-19 at Albuquerque Hotel in Old Town.

BFI provides information to the government contracting community on upcoming and proposed acquisitions from the many and varied federal organizations operating in New Mexico. The event is sponsored by the non-profit Professional Aerospace Contractors Association of New Mexico, led by **Ron Unruh**.

"It was a huge success," Unruh said. "It's a very unique event where networking venues are created and there are opportunities for dialogue between companies and those with contract opportunities."

New Mexico **Gov. Susana Martinez** opened the event, discussing her vision and efforts towards making New Mexico attractive for new businesses. She said there have been reforms to help diversify the state's economy, allowing it to compete with neighboring states and making it more attractive to job creators who hire New Mexicans.

More than 26 federal agencies presented their upcoming opportunities, including small business innovative research projects, broad agency announcements and major acquisitions.

BFI provides a forum for potential bidders to gain knowledge and insights for a successful bid and offers opportunities to speak directly with the presenters about their programs. Air Force Research Laboratory officials called BFI one of the laboratory's key industry outreach events to share a diverse portfolio of opportunities to help address the Air Force's technical challenges.

**Maj. Gen. Thomas Masiello**, commander of AFRL at Wright-Patterson Air Force Base, Ohio, and opening keynote speaker, told guests the theme of AFRL's presentations at



**Maj. Gen. T. Masiello**

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## Agility, Partnerships *continued*

the event were that the Air Force and the Department of Defense needs to do things faster and better than ever before.

"We have to shake things up," the general said. "We can no longer be business as usual. Just because we've had technological superiority for the past 20 years, doesn't mean that we'll continue to have it."

He said the United States is facing competition in research and development from potential adversaries, who have been making progress towards leveling the playing field. Space, cyber and the electromagnetic spectrum are increasingly contested.

"Our enemies have the ability to challenge us in ways that were never possible before," he said. "Our greatest challenge is to be able to respond faster than our adversaries. We have to adapt and be flexible."

The general emphasized partnerships with large and small businesses and universities, and leveraging science and systems engineering as a path to deliver advanced Air Force capabilities while lowering life cycle costs.

There were more than 430 registered attendees at the event, representing 26 different states. Unruh said plans are to continue to grow and expand the annual conference. •

## 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](http://www.pacanm.org).

For more information, contact the Membership Chair **Terel Anyaibe** at [tanyaibe@aerotek.com](mailto:tanyaibe@aerotek.com) or **342-5007**.

\* Dues are subject to change.

## 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](mailto: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](mailto:RCrown@LRLaw.com) or call him at 764-5402.

Contributions are welcome! •

## Legislative Update: Aerospace Tax Incentive Now Law

by *Heather Brewer, PACA Legislative Liaison*

During the Legislature's Special Session in July, House Appropriations Committee Chairman Larry Larranaga was able to successfully include in the proposed tax package—which subsequently passed both houses and was signed into law by Gov. Susana Martinez—a gross receipts tax deduction for aerospace and directed energy businesses contracting with the Department of Defense.



The new aerospace tax incentive allows businesses to deduct from New Mexico Gross Receipts Tax any sales of goods and services by an aerospace or directed energy business as part of a contract with the Department of Defense.

The incentive applies only to contracts entered into after January 1, 2016, and it sunsets in 2021.

This innovative tax incentive allows New Mexico-based aerospace and directed energy businesses to compete for DOD contracts on a level playing field with businesses nationwide, and positions New Mexico businesses as strong contracting partners. It also helps aerospace businesses located outside of the state to affordably set up operations in New Mexico, where they can build lasting and meaningful relationships with our state's high-tech community.

PACA members are encouraged to email Rep. Larranaga at [larry@larranaga.com](mailto:larry@larranaga.com) to thank him for his leadership on this issue.

You can read the full text of the bill at [NMLegisl.gov](http://NMLegisl.gov). (It is HB 2 for the 2015 Special Session.) You can also email PACA Legislative Liaison Heather Brewer at [heather@hbstrategiesnm.com](mailto:heather@hbstrategiesnm.com) with any questions. •

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# Legal Insights: Interpreting Contracts with the Federal Government

By Ross Crown

Many, if not most, contract disputes concern differing interpretations of language in the contract. Contract disputes with the federal government are no different. Recently, the U.S. Court of Federal Claims took the opportunity to review the rules for interpreting a federal contract and discuss how these rules are applied. In *Jacintoport International LLC v. United States*, 121 Fed.Cl. 196 (2015), the contractor brought a claim against the government under the Contract Disputes Act. Jacintoport, a private port facility operator in Houston, performed a contract to provide pre-positioned packaged storage, cargo handling, and custodial and logistics services for food commodities for the United States Agency for International Development (USAID). During the course of the contract, a dispute arose between Jacintoport and the USAID. This dispute concerned two issues. The first issue involved the extent

to which the contract obligated the agency to reimburse Jacintoport for fumigating the warehouse within which the food commodities were stored. The government contended that the contractor was entitled to reimbursement only for the cost of fumigating the commodities, and not the warehouse. The second issue concerned the rate that Jacintoport was entitled to charge the government for fumigation services. Jacintoport sought reimbursement at \$3.00 per metric ton while the USAID argued reimbursement was to be at cost.

Three and a half years after the contract terminated, Jacintoport filed a certified claim seeking an award of \$552,658.35 for expenses the contractor allegedly incurred for fumigation of its warehouse, charged at \$3.00 per ton. The contracting officer denied the claim. Accordingly, Jacintoport brought an action on its claim in the Court of Federal Claims.

## Rules of Contract Interpretation

The court began its analysis of the case by reviewing the rules of contract interpretation. It noted that contract interpretation begins with the language of the contract. When interpreting a contract, the document must be considered as a whole and construed so as to harmonize and give reasonable meaning to all of its parts. Where the contract's provisions are clear and unambiguous, they are to be given their plain and ordinary meaning. In such situations, the court may not consider evidence outside the contract to interpret unambiguous provisions.

The court went on to observe that a contract is deemed ambiguous if the language can reasonably be interpreted in more than one way. If the contract is ambiguous, the court's

approach to interpreting the contract depends upon whether the ambiguity is patent or latent. An ambiguity is patent when it is obvious, gross or glaring, so that the contractor has a duty to inquire about this language at the start of the contract. Where a patent ambiguity is found, the court will construe the contract against the contractor.

On the other hand, where an ambiguity is not sufficiently glaring as to trigger a duty to inquire on the part of the contractor, the ambiguity is deemed to be latent. In the case of a latent ambiguity, the general rule of *contra proferentem* may apply. This doctrine requires the court to construe the contract against the government as the drafter of the instrument. *Contra proferentem* is, however, a rule of last resort. Ascertaining the most reasonable construction of contract language utilizing other tools of contract interpretation must be the

first priority. Thus, before resorting to the doctrine of *contra proferentem*, the court may look to evidence outside the contract, also referred to as "extrinsic evidence", to assist in its interpretation of the document. For example, a court may consider contemporaneous circumstances, evidence of the parties' intent or their course of performance. Only if such outside evidence fails to illuminate the meaning the parties intended may the court then apply *contra proferentem* and decide the dispute against the government.

## Application of Rules of Contract Interpretation

Applying these rules of contract interpretation to the two-pronged dispute in this case, the court first considered whether the language of the contract required Jacintoport to fumigate the warehouse and be reimbursed for doing so. After evaluating the arguments on both sides, the court concluded that neither party's interpretation of the contractual language was outside the "zone of reasonableness." In other words, the contract could reasonably be read to support the opposing interpretations of the contractor and the agency. Because ambiguity exists when contract language can reasonably be interpreted in more than one way, the court ruled the contract was ambiguous as to whether USAID committed to reimburse Jacintoport for fumigating its warehouse. The court further found that this ambiguity was not so obvious, gross or glaring that Jacintoport had a duty to inquire about it at the start of the contract. Rather, the ambiguity was latent. Given this latent ambiguity, the court permitted Jacintoport to pursue discovery of extrinsic evidence needed to respond to the government's arguments



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## Legal Insights *continued*

in support of its interpretation of the contract.

The second aspect of the dispute between the parties involved the rate at which Jacintoport was entitled to charge the government for fumigation services. After reviewing each side's rationale for its interpretation of the contract on this question, the court found that neither party's interpretation squared with the contract language. Instead, the court held the contract provision at issue was internally inconsistent. Under these circumstances, the court ruled that this provision was patently ambiguous. Because of the obvious, gross and glaring nature of the ambiguity, Jacintoport had a duty to confirm that its understanding of the charges authorized for fumigation reimbursement was correct. Since the contractor failed to exercise its duty of inquiry, the provision was construed against Jacintoport.

### Lessons to Learn

At least two lessons can be drawn from the Court of Federal Claims' consideration of contract interpretation in *Jacintoport International*. First, a contractor who discovers an obvious ambiguity in the contract during the solicitation process cannot assume that it can take advantage of such an ambiguity during contract performance. If the ambiguity is apparent, it will be deemed a patent ambiguity and the provision in question construed against the contractor. Second, if a latent ambiguity surfaces during contract performance, the contractor will want to assemble evidence outside the document itself favoring its interpretation of the contract. In addition, or alternatively, the contractor will need to be prepared to argue the extrinsic evidence does not favor the government. If the contractor is successful with either approach to dealing with outside evidence, the contract will be construed against the government. •

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!



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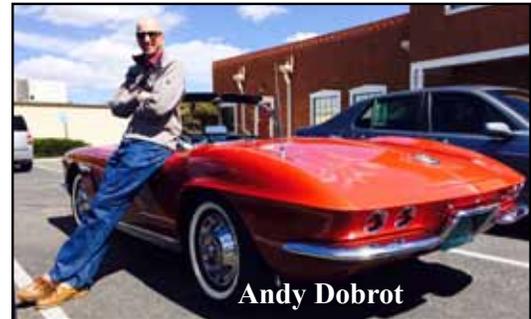
**Charles Zang,**  
American Systems  
Corporation



## President's Corner

by *Judy Ruiz*

Hello PACA Members – The "lazy days of summer" have passed and we're all finishing up business' 2015 goal action plans. It's hard to believe how fast this year has flown by; though not as fast as Andy's 1960s era Corvette!



We were enlightened by our May and June luncheon speakers, Ms. Chris Anderson from Spaceport America and Colonel David Goldstein from AFRL/RV. We also distributed luncheon critiques that included a space to write-in your suggestions for future guest speakers. We've received a few but always welcome more. Please identify suggested guest speakers either by their position or name and Don Nash will make contact.

At our July membership meeting, we accomplished our first networking luncheon and hosted 66 attendees—many of whom were guests. We received rave reviews and plan to conduct two such networking luncheons again in 2016, most likely in April and October.



Judy Ruiz

We also hosted PACA's 29th Annual Briefing for Industry (BFI). **Ron Unruh** and his usual list of BFI team members pulled off an absolutely spectacular event. Ron and Eric Mechenbier were interviewed several times on radio by Pat Allen and Bob Clark, and we ran several radio ads on KKOB. We also ran a banner on the Sunport welcome kiosk. All this great planning resulted in an event that was thoroughly enjoyed by 440 attendees from 26 states, 47 large businesses, and 79 small businesses. The most valued part seemed to be the opportunities to network with government customers and all other business people in attendance. Some attendees said this year's was the best BFI they could remember.

The 2016 BFI will once again be held at the Hotel Albuquerque August 15 – 17, 2016. Recent reports have indicated the AFRL Corporate Board meeting will be scheduled next year to occur the same week as BFI, so even greater attendance (and opportunity) may be expected.

Clearly, PACA is a dynamic and energetic organization that draws its influence from the caliber of members we recruit and retain. Volunteer organizations have their challenges, but through your tireless support, we can host BFI, a successful annual conference; monthly networking luncheons featuring timely topics; scholarship programs; and much more. Please welcome new aerospace and technology businesses to PACA by inviting them to an upcoming PACA luncheon. •

# Thanks PACA Sponsors!



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New Mexico Partnership provides a streamlined approach with in-depth information and coordinated support regarding incentives, workforce, logistics, real estate sites and buildings for companies looking to expand or relocate operations to the state in an effort to improve the business climate in the state. New Mexico has improved its business environment more than any state in the West over the past five years. A study by Ernst & Young and the New Mexico Tax Research Institute determined that we've reduced tax rates for manufacturing by nearly 60%—the greatest drop, by far, in the western states studied. New Mexico's after-credit manufacturing rate is now at 3.3%—the best in the region. [www.nmpartnership.com](http://www.nmpartnership.com)



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## Upcoming Luncheon Speakers

### ■ September 15 – Retired Col. John E. Stocker III, Chief of Staff, Defense Threat Reduction Agency



Col. Stocker was formerly the Inspector General, Headquarters Air Force Space Command at Peterson Air Force Base in Colorado. He was responsible for conducting the Nuclear Surety Inspections, Operational Readiness Inspections, Compliance Inspections, and Weapons Safety Inspections of 189 Air Force Space Command units located

at 50 locations worldwide.

The mission of the Defense Threat Reduction Agency (DTRA) is to keep weapons of mass destruction (WMD) out of the hands of terrorists and other enemies by locking down, monitoring, and destroying weapons and weapons related materials. As a Combat Support Agency, the DTRA supports the Combatant Commanders and Services in responding to any WMD threat. This requires personnel to not only address current needs but also to anticipate future threats to U.S. warfighters.

### ■ October 20 – Commander, Air Force Nuclear Weapons Center, Air Force Materiel Command and Air Force Program Executive Officer for Strategic Systems, Office of the Assistant Secretary of the Air Force for Acquisition, KAFB



Maj. Gen. Jansson was formerly the Air Force Program Executive Officer for Weapons and Director of the Armament Directorate, Air Force Life Cycle Management Center, Air Force Materiel Command at Eglin AFB in Florida.

The mission of the Air Force Nuclear Weapons Center (NWC) is to ensure safe, secure, and reliable nuclear weapon systems to support the National Command Structure and the United States Air Force warfighter. NWC's responsibilities include acquisition, modernization and sustainment of nuclear system programs for both the Departments of Defense and Energy.

Established in March 2006, the NWC is Air Force Materiel Command's (AFMC) center of expertise for nuclear weapon systems. The agency is the single AFMC voice for integrating nuclear weapon systems requirements and nuclear weapon system resource 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](http://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. •

## 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](mailto: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. •