



PACA Pulse

FALL 2018

www.pacanm.org

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President's Corner

by Malini Hoover



Malini Hoover

Autumn is in the air. The cool weather, leaves turning into vibrant fall colors, and the cooler mornings remind us that the holidays are around the corner!

This year flew by very quickly. When you are having fun who is complaining? Vice president David Rosprim will be hosting our annual Christmas Party on Tuesday, December 11 at Albuquerque Country Club. Hope to see you and your guest at this very fun holiday party.

In the last couple of months, we have been busy planning and executing multiple events.

We successfully hosted the NM Congressional Governor's Space and Technology Transfer Forum with Congresswoman Michelle Lujan Grisham and Congressman Steve Pearce on September 18. On October 22, PACA hosted the NM Congressional District 1 Space and Technology Transfer Forum with congressional candidates Janice Arnold-Jones and Debra Haaland. (See additional photos on page 7.) Both events went great!

It is important that the new congressional delegation and governor understand the space and technology industry in New Mexico and support the growth of the state's space companies. These types of events and dialogue with public officials will continue in the future as we cultivate their support and awareness of

our space industry and PACA.

We also had an excellent networking event at Bow & Arrow Brewing Co. on September 25. PACA will be hosting more quarterly networking events in the coming year as it is a great way to mingle and find potential teaming partners for your future contracts as well as build lasting friendships.

PACA is hiring a part-time administrator to support several functions including conferences, legislative issues, membership growth, networking events, marketing, and public relations. This is essential for PACA's future growth and will bring added benefits to the membership.

PACA is looking to host a small satellite conference in Albuquerque in the near future. If you are interested in participating on the planning committee, please reach out to David or me.

Lastly, we are recruiting the next Vice President whose role will include promoting the organization and its membership. The ideal candidate possesses aerospace experience and can help us in fostering its growth. The VP, a 3-year elected position, attends monthly Board of Directors meetings; fills in for the President in his or her absence; functions as a master of ceremonies

for a portion of the BFI; and plans the annual holiday party. The VP automatically advances to the President position after one year. If you have any interest in serving as VP, please talk to David or me. Nominations are also appreciated. •



L to R: Janice Arnold-Jones, Malini Hoover, Debra Haaland

WELCOME New Members!

Tim Brooks,
Sierra Peaks Corporation

Dena Crain,
Menicucci Insurance Agency

Donald Shannon,
The Contract Coach



Join PACA!

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

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

* Dues are subject to change.

Spread the News

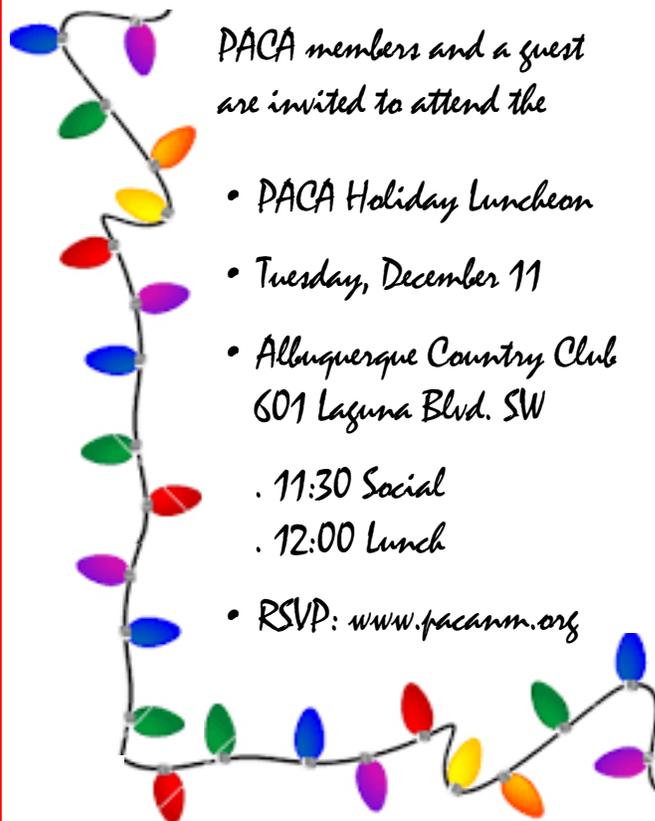
If you know a potential member or anyone else who would like to receive the *PACA Pulse*, please forward their e-mail address to RoSaavedra@msn.com.

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@lrrc.com or call him at 764-5402.

Contributions are welcome! •

Upcoming Luncheons

■ December 11 – Holiday Luncheon!



PACA members and a guest are invited to attend the

- PACA Holiday Luncheon
- Tuesday, December 11
- Albuquerque Country Club
601 Laguna Blvd. SW
- 11:30 Social
- 12:00 Lunch
- RSVP: www.pacanm.org



■ January 15, February 19 and March 19, 2019

Representatives of the following organizations are invited to speak at the January, February, and March 2019 luncheons but will not be confirmed until closer to the luncheon dates so they are *subject to change*.

- Air Force Operational Test and Evaluation Center
Commander Kirtland AFB
- Sandia National Laboratories Deputy Director
- Space Vehicles Directorate Director, Air Force Research Laboratory, Kirtland AFB

We meet the third Tuesday of each month. Until further notice luncheons will be at the Albuquerque Country Club, 601 Laguna Blvd. SW. Registration begins at 11:30 a.m. followed by lunch at noon. Members are admitted free and our guest fee is \$20.

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



Legal Insights: Building Better Mousetraps by Adding Value to Technical Proposals

By Ross L. Crown

“Build a better mousetrap and the world will beat a path to your door” is the old saying, but the federal government seldom beats a path to the door of a contractor. Nevertheless, companies can win contracts by adding value to their proposals with technical discriminators.

Assuming a contractor is responsible, contract awards by federal agencies are generally determined by three sets of factors: price, past performance, and technical approach. Where contracts are awarded based on the government’s assessment of best value, distinctions among technical proposals are critical to determining the contract award. In best value acquisitions, technical discriminators, which serve to differentiate one proposal from another, are often what determine success or failure.

To increase the value of their technical proposals, contractors must make maximum use of technical discriminators. Yet, not all technical discriminators that could lend a competitive advantage to a proposal may be readily apparent. For that reason, it can be useful to look at best value assessments in other procurements. Many such evaluations are reviewed in bid protest decisions. These decisions frequently discuss the technical discriminators that agencies find significant.

A. EVALUATION OF TECHNICAL PROPOSALS IN BEST VALUE ACQUISITIONS

Contracts issued by the federal government are awarded through sealed bidding or negotiated acquisitions. FAR 15.000. Negotiated acquisitions can be conducted on a sole source or competitive basis. FAR 15.002. Technical proposals are of the most significance where a competitive negotiated acquisition is decided by which prospective contractor offers the best value to the agency. Contracts awarded through sealed bidding, sole sourcing, or a lowest price, technically acceptable basis are most likely to be determined on price, price-related, or other factors not involving a particular technical approach. See FAR 6.401(a), 15.002(a) and 15.101-2.

In best value procurements, the agency evaluates proposals by engaging in a tradeoff process. This procedure permits balancing among cost or price and non-cost factors and allows the government to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal have to merit the additional cost. FAR 15.101-1(c). When tradeoffs are performed, the source selection authority must document an assessment of each offeror’s ability to accomplish the technical requirements and prepare a summary, matrix, or quantitative ranking, along with an



appropriate supporting narrative, of each technical proposal using the evaluation factors in the solicitation. FAR 15.305(a) (3).

All factors and significant subfactors that will affect contract award and their relative importance must be stated clearly in the solicitation. FAR 15.304(d). Although agencies are not permitted to use unstated evaluation factors in evaluating proposals, the government may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even if they are not expressly identified as evaluation criteria in the solicitation. *Red River Computer Company, Inc.*¹

B. TECHNICAL DISCRIMINATORS THAT ADD VALUE

Bid protest decisions of the Government Accountability Office and the U.S. Court of Federal Claims offer a window into the process by which federal agencies conduct best value procurements. Disappointed offerors in these acquisitions frequently contend that the agency did not properly engage in the tradeoff process. Such protests are denied where the agency can demonstrate that it reasonably applied the evaluation factors in the solicitation to decide which proposal offered the best value to the government. These best value assessments frequently address technical discriminators. By studying the best value determinations discussed in bid protests, contractors can better understand what types of technical discriminators make a difference to the agencies and why they are valued.

Bid protest decisions show that technical discriminators differentiating one technical proposal from another generally fall into five categories: (1) quality of product, (2) quality of service, (3) management of work, (4) qualifications of personnel, and (5) quality of written proposal. Each of these factors are used by contractors to gain an advantage in competitive procurements.

1. Quality of Product

In a procurement involving the government’s purchase of a tangible product, the quality of that product is clearly the most important discriminator. Among the common differentiators of product quality that procuring agencies have found add value are the following.

(a) Use of Commercially Available Components

• *Continental RPVs*²: Where the Army requested proposals for the acquisition of an aerial remotely-piloted vehicle target system, the contracting officer determined that the winning offeror’s proposed use of off-the-shelf components offered significant benefits to the government by avoiding the need for costly specialized equipment and increasing the reliability of the system. According to the agency, these parts were low technology and thus low risk.

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Legal Insights *continued*

- *Marion Composites*³: The Army issued a request for proposals for a quantity of rigid wall shelters. The contract was awarded to an offeror who proposed critical shelter components that were already tested and proven. As a result, the contractor's technical approach did not pose a risk of production delays and justified paying a price premium.

- *Northrop Grumman Systems Corporation*⁴: Where the Air Force issued a request for proposals for the development and delivery of a multi-intelligence core upgrade for its Distributive Common Ground System, the agency found the winning contractor's software maximized the use of commercial off-the-shelf technology to provide an open standards based architecture and a high level of flexibility. By accommodating modifications, growth, and system upgrades to a greater extent than a competing proposal, the awardee's approach ensured maximum combat capability.

(b) Superior Design

- *Precision Lift, Inc.*⁵: The awardee's design for aircraft maintenance platforms was found superior in featuring an advanced, interlocking alignment pin system that exceeded minimum performance standards and plank decking with 40% more cross sectional material which provided greater strength, support, and safety.

- *Continental RPVs*⁶: The winning design of an air frame for remotely-piloted vehicle targets provided the ability to change air frame components easily in response to any future growth requirements.

- *Chicago Dryer Company*⁷: The winning technical approach for laundry equipment exceeded specifications where the equipment could be linked to the agency's existing laundry software allowing the agency supervisor to closely monitor performance and productivity.

(c) Superior Testing Process

- *Marion Composites*⁸: In a procurement of rigid wall shelters, the winning proposal included a thorough discussion of the validation testing process, including detailed first article testing milestone charts and road testing requirements.

- *Continental RPVs*⁹: In an acquisition of remotely-piloted vehicle targets, the awardee verified the key performance parameters for its air frame design and power plant through test flights and substantiated the performance characteristics of its design with detailed performance data.

(d) Superior Terms

- *Precision Lift, Inc.*¹⁰: The winning technical proposal was deemed to offer an advantage where the product came with a five year warranty compared to a three year warranty offered by the competing proposal.

(e) Reduced Energy Consumption

- *Carothers Construction, Inc.*¹¹: A proposal for the design/build of an elementary school was found to be of greater value where the building design provided for a reduction in energy consumption of 10% more than the competing design and where the winning offeror proposed building canopy-style structures over the parking areas to support additional solar panels.

2. Quality of Services

When the government is purchasing services, the quality of those services is also a most important technical discriminator. Agencies have determined the following differences in the quality of services proposed by offerors to confer a competitive advantage:

(a) Enhanced Efficiency

- *Raytheon Company*¹²: In its proposal to provide engineering support and vulnerability assessments to the Defense Threat Reduction Agency, the awardee identified inefficiencies in the existing characterization process and offered suggested changes to the workflow and team structure to address those inefficiencies.

- *Hagler Bailly Consulting, Inc.*¹³: The winning offeror proposed a more effective and innovative approach than the competing offeror for eliminating duplication of work and for incorporating previously completed assessments.

- *Millennium Corporation, Inc.*¹⁴: In response to a solicitation by the Department of Veterans Affairs seeking support services for the agency's acquisition and contract administration office, the awardee proposed to implement a comprehensive enterprise resource planning system to support acquisition management reporting. The proposed system promised to unify an aggregate of various elements of the agency's existing acquisition management systems.

(b) Offer to Provide Additional Services

- *Hagler Bailly Consulting, Inc.*¹⁵: Where the USAID issued a solicitation for a contract to provide technical assistance on an energy management project to the Government of the Philippines, the contracting officer was impressed by the awardee's plan to establish a fund to finance future energy projects and a public/private sector group to research and track consumer end-use and load issues.

- *American Correctional Healthcare, Inc.*¹⁶: In response to a solicitation from the Federal Bureau of Prisons for comprehensive medical services at a federal penitentiary, the winning offeror's proposal included behavioral health services at all of the hospitals in its proposal and also offered greater administrative support at these facilities compared to the competing proposal.

- *Computer Systems Development Corporation*¹⁷: The Department of Defense issued a solicitation to provide support services for automated information systems. One of the discriminators that favored the winning proposal was offering to provide 24 hour staff coverage in support of the information system facilities which exceeded the agency's requirement for hours of operation.

- *Doss Aviation, Inc.*¹⁸: In response to a solicitation for helicopter flight training services, the awardee's proposal was found to be technically superior because, among other reasons, it provided for two more instructor pilots than considered necessary by the independent government estimate.

(c) Tailoring of Services to Agency Needs

- *Hagler Bailly Consulting, Inc.*¹⁹: In response to a

continued on following page

solicitation to provide technical assistance on an energy management project to the Government of the Philippines, the awardee's proposal was specifically tailored to the Philippines. The competing proposal was generic, utilizing an approach which could be applicable to any developing country.

3. Management of Work

Regardless of whether a contractor offers products, services, or both, how it proposes to manage the work is of critical importance in determining the strength of the offeror's technical approach. Management includes a broad range of strategies that can result in a competitive advantage.

(a) Innovative Use of Staff

• *Raytheon Company*²⁰: The Defense Threat Reduction Agency found the awardee's proposed technical approach exceptional because, among other reasons, it offered a reorganization of the engineering teams to improve both the quality and quantity of production while at the same time allowing new engineers to meaningfully contribute earlier in their certification process than was then possible. The proposed reorganization was expected to lead to significant increases in production without cost increases.

• *A-T Solutions, Inc. v. United States*²¹: A proposal to the Defense Threat Reduction Agency for development and implementation of training programs to counter threats from chemical, biological, or nuclear attacks or accidents was deemed more valuable because the offeror demonstrated it could support the task order with significantly fewer full time employees than anticipated by the government estimate. This proposal also indicated that the offeror would expend fewer hours to perform than its competitor. The awardee further differentiated its technical proposal by showing it would use corporate overhead staff to oversee transition to the new contract while keeping its direct management personnel working on its existing contract with the agency. Incumbent staff engaged on the current contract would not be switched to the new contract until the first day of the new performance period.

(b) Expedited Commencement of Work

• *Hagler Bailly Consulting, Inc.*²²: The agency determined that the awardee's demonstration program was designed for expeditious implementation of an energy management project, including accelerated development of end-use data through a customized model and complete and immediate use of existing models and databases.

• *Marion Composites*²³: In evaluating a proposal to manufacture rigid wall shelters, the agency noted that the offeror already had facilities and equipment in place to begin the manufacturing process. This lowered the risk of production delays.

• *Computer Systems Development Corporation*²⁴: The Ballistic Missile Defense Organization found the winning offeror's proposal of a reduced start-up time of two weeks, which exceeded the solicitation requirement for a transition

period of not more than 90 days, constituted a significant technical discriminator.

(c) Accelerated Schedule

• *Tri-J Contractors*²⁵: In response to a solicitation issued by the U.S. Forest Service for repair of flood damaged hiking trails, the awardee offered to complete the lower half of the trail after the first season of work, one season earlier than competing proposals. Moreover, while the absence of a firm start date in the solicitation prevented other offerors from providing a work schedule, the winning offeror developed an estimated schedule depending on the start date and demonstrated how it would account for uncontrollable conditions expected to impact the schedule.



4. Qualifications of Personnel

Technical proposals can be found to add value by demonstrating that the personnel proposed to work on the contract are more highly qualified than those offered by competing proposals.

(a) Experience Relating to Proposed Work

• *Red River Computer Company, Inc.*²⁶: In awarding a contract to the offeror proposing personnel with experience most applicable to the proposed services, the agency stated it is always reasonable for the government to consider whether a contractor has specific experience directly related to the work to be performed under the solicitation, even if such experience is not explicitly called for in the solicitation.

• *The Scientex Corporation*²⁷: The winning offeror for a contract to study roadside inspection procedures proposed a principal investigator most highly qualified to conduct the subject research, especially in the area of statistical analysis.

• *Halfaker and Associates, LLC*²⁸: In response to a solicitation by the Navy for watchstander support services, the agency determined that the awardee's staffing approach met the intent of the performance work statement and presented a low risk of unacceptable performance. The winning offeror presented a multi-tiered approach that would aim first to retain the incumbent staff, second to utilize the contractor's current employees, and third to fill gaps in service by using current recruiting activities. This proposal was found to ensure that the contractor captures the most qualified personnel as a priority while still allowing flexibility to fill gaps in service with qualified and trained personnel.

(b) Subcontractor Personnel

• *Hagler Bailly Consulting, Inc.*²⁹: The winning offeror proposed a subcontractor possessing strong experience with the subject matter of the contract who would play a significant role in satisfying the project's objectives.

• *Metro Machine Corp.*³⁰: The technical approach found

continued on following page

Legal Insights *continued*

by the Navy to offer the best value in response to a solicitation for maintenance, repair, and modernization of guided missile destroyers, proposed resource sharing agreements with significant subcontractors. These agreements provided the awardee with the ability to share facility and manpower resources to optimize facility utilization and to better level workload across the port.

5. Quality of Written Technical Proposal

No matter how strong the proposed quality of the products or services, the management of the work, or the qualifications of the contract personnel may be, if an offeror cannot adequately explain these strengths to the procuring agency, it will be at a competitive disadvantage. Technical proposals must be well-organized and offer detailed explanations of the contractor's approach.

(a) Organization of Technical Proposal

• *The Scientex Corporation*³¹: The winning offeror submitted a proposal deemed by agency to be well-organized and thought-out with a logical combination of different tasks including brief outlines of methodology.

(b) Detailed Explanation of Technical Approach

• *Doss Aviation, Inc.*³²: The awardee's proposal to provide helicopter flight training services was found to offer the best value where the agency found it included a detailed mobilization plan and detailed management organization charts.

• *Halfaker and Associates, LLC*³³: A proposal to provide watchstander support services to the Navy offered the best value where the awardee provided a detailed plan of action for contract phase-in. This approach included a planning phase, site survey phase, site preparation phase, and site transition phase. Detailed actions were included in each section of the proposal, such as developing plans, proposals, notifications, and surveys, gathering credentials, and conducting of briefs and orientations. These activities, the Navy concluded, would ensure proper identification of site specific requirements and notification to the affected government personnel regarding the contract transition.

C. HOW TO MAXIMIZE VALUE OF CONTRACT PROPOSALS WITH TECHNICAL DISCRIMINATORS

Best value evaluations reported in bid protest decisions show that technical discriminators take many forms. Sometimes these discriminators are as complex as more adaptable software, and other times they are as simple as a longer warranty.

When preparing technical proposals, particularly in best value acquisitions, contractors ought to keep available a checklist of possible technical discriminators. They should consult this checklist to ensure they have thoroughly considered all of the discriminators that could add value, and thus a competitive edge, to their proposals.

Endnotes

1. *Red River Computer Company, Inc.*, B-414183.4 *et al.* (June 2, 2017), 2017 CPD ¶ 157.

2. *Continental RPVs*, B-292768.6 (April 5, 2004), 2014 CPD ¶ 103.
3. *Marion Composites*, B-274621 (December 20, 1996), 96-2 CPD ¶ 236.
4. *Northrop Grumman Systems, Corporation*, B-293036.5 *et al.* (June 4, 2004), 2004 CPD ¶ 124.
5. *Precision Lift, Inc.*, B-310540.4 (June 26, 2008), 2008 CPD ¶ 166.
6. B-292768.6 (see note 2).
7. *Chicago Dryer Company*, B-293940 (June 30, 2004), 2004 CPD ¶ 137.
8. B-274621 (see note 3).
9. B-292768.6 (see note 2).
10. B-310540.4 (see note 5).
11. *Carothers Construction, Inc.*, B-405241.4 (July 26, 2012), 2012 CPD ¶ 225.
12. *Raytheon Company*, B-413981 (January 17, 2017), 2017 CPD ¶ 40.
13. *Hagler Bailly Consulting, Inc.*, B-265708 (December 19, 1995), 95-2 CPD ¶ 276.
14. *Millennium Corporation, Inc.*, B-412866 *et al.* (June 14, 2016), 2016 CPD ¶ 168.
15. B-265708 (see note 13).
16. *American Correctional Healthcare, Inc.*, B-415123.3 *et al.* (January 2, 2018), 2018 CPD ¶ 85.
17. *Computer Systems Developmental Corporation*, B-275356 (February 11, 1997), 97-1 CPD ¶ 91.
18. *Doss Aviation, Inc.*, B-275419 *et al.* (February 20, 1997), 97-1 CPD ¶ 117.
19. B-265708 (see note 13).
20. B-413981 (see note 12).
21. *A-T Solutions, Inc. v. United States*, 122 Fed. Cl. 170 (2015).
22. B-265708 (see note 13).
23. B-274621 (see note 3).
24. B-275356 (see note 17).
25. *Tri-J Contractors*, B-277063 *et al.* (July 6, 1998), 98-2 CPD ¶ 25.
26. B-414183.4 *et al.* (see note 1).
27. *The Scientex Corporation*, B-238689 (June 29, 1990), 90-1 CPD ¶ 597.
28. *Halfaker and Associates, LLC*, B-407919 *et al.* (April 10, 2013), 2013 CPD ¶ 98.
29. B-265708 (see note 13).
30. *Metro Machine Corp.*, B-402567 *et al.* (June 3, 2010), 2010 CPD ¶ 132.
31. B-238689 (see note 27)
32. B-275419 *et al.* (see note 18).
33. B-407919 *et al.* (see note 28).

Ross is a partner in the Albuquerque office of Lewis Roca Rothgerber Christie LLP where his practice emphasizes government contracts. He can be contacted at RCrown@lrc.com. 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.

Space and Technology Transfer Events

PACA Sponsorship Opportunities

Support to PACA in the form of sponsorships helps make the organization a success while promoting your business. The Board 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.

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- Advance electronic list of BFI attendees.
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- Addition of company literature or giveaways in BFI Goody Bag.

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- Corporate logo on PACA signage at luncheons and events.
- Two registrations for the PACA annual Briefing for Industry.
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- 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.

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- Company logo on the PACA website.
- Booth at BFI.
- Two guests for the sponsored lunch.
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- Introduction as the luncheon sponsor and be allowed to present a 5-10 minute overview of company. Corporate brochures may be placed on the luncheon tables. A small business sponsor may not sponsor another luncheon for twelve months. •



Congressman Steve Pearce addresses audience



Janice Arnold-Jones



Congressman Steve Pearce, Malini Hoover, and Congresswoman Michelle Lujan Grisham

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GOLD



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