

Eric Whytsell

He/Him

PARTNER

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A natural problem solver, Eric enjoys helping clients assess, understand, and develop and implement practical strategies to address complicated issues relating to government contracts, intellectual property, cybersecurity, and export controls.

Eric is a government contracts lawyer who represents clients' interests through counseling, negotiation, and litigation. His clients include multinational corporations as well as small and mid-sized businesses in a variety of sectors, including technology and IT services, R&D, defense, cybersecurity, construction, transportation, manufacturing, financial services, education, health care, and biotech.

Eric advises on federal, state and local procurement issues throughout the life cycle of the contracting process. Clients rely on his counsel from pre-proposal opportunity and risk assessment, through compliance with solicitation requirements, award capture, and contract performance, to termination and close-out. Along the way, he helps clients understand and address a wide variety of complex compliance issues, including: business ethics and conduct; government contractor specific employment laws; privacy and data security; sourcing restrictions; M&A due diligence and contract novation; security clearances; cost and pricing; small business and socio-economic programs; and export controls. Eric also supports client success by negotiating

PRACTICES & INDUSTRIES

- Business Litigation
- Construction
- Cybersecurity & Data Privacy
- Government Contracts & Investigations
- Infrastructure Government Contracts & Investigations
- Infrastructure Task Force
- International
- IP & Technology Transactions
- Real Estate & Construction Infrastructure

ADMISSIONS

- Colorado
- District of Columbia
- West Virginia
- U.S. Court of Federal Claims
- U.S. Court of Appeals for the Tenth Circuit
- U.S. District Court for the Northern District

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contracts, subcontracts, teaming and joint venture agreements, and IP development agreements and licenses with contractors, commercial and non-profit entities, and institutions of higher education. If disputes or potential problems arise, he advocates for his clients in bid and size protests, contractor and government claims, and appeals. In addition, he guides clients through audits and investigations, terminations, and suspension and debarment issues.

Regardless of the problems he is working to help solve, Eric's approach reflects his belief in the importance of cogent analysis, effective communication, and a focus on the client's bottom line.

Eric serves as the Chair of the American Bar Association's Public Contract Law Section. He has written extensively on government contract matters, has co-edited two books on subcontracting and flow downs, and frequently lectures and conducts training on government contracting, cybersecurity, export controls, and intellectual property issues.

EXPERIENCE

Conducted comprehensive government contracts compliance risk assessment for major communications company.

Defended protest of multimillion dollar contract for the operation and maintenance of a federal research facility.

Assisted cybersecurity firm in negotiation of hundreds of service agreements with commercial and government customers.

Represented language services firm in appeal of a claim to the Armed Services Board of Contract Appeals (ASBCA) based on constructive changes in a contract for the creation of maintenance manuals.

Advised enterprise resource planning contractor regarding state RFP procedures, proposal contents, Q&A and other communications, and preparing to file/defend against potential

of West Virginia

U.S. District Court for the Southern District of West Virginia

West Virginia Supreme Court of Appeals

EDUCATION

University of North Carolina School of Law, J.D., 1993

Davidson College, B.A., *cum laude*, 1988

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protest of award of state-wide contract.

Conducted internal investigation into alleged payment of gratuities for mid-size defense contractor and helped revise its ethics and business conduct policies and procedures to address problematic aspects discovered during the investigation.

Revised large IT manufacturer / distributor's policy governing hiring of former government employees to conform to legal requirements.

Negotiated Space Act Agreement for client's use of NASA's image catalog in development of on-line game to promote STEM education.

Developed response to Defense Contracting Audit Agency defending contractor's bonus compensation plan and CAS disclosure statement.

Counseled commercial products company concerning potential mandatory disclosure GSA Inspector General relating to Price Reductions Clause issues.

Negotiated a joint venture teaming agreement to position small business client to compete for a multimillion dollar IT services contract for the Center for Medicare and Medicaid Services.

Represented subcontractor in negotiation of key subcontract and multiple change orders with multinational transportation firm for design and upgrade of public transportation system for a land-grant university.

Designed and provided export controls compliance plans and training for multiple clients.

Developed export controls risk identification and analysis plan for R1 Research University.

Helped multi-national aerospace firm analyze potential export problems arising from supply chain and develop voluntary disclosure under the International Traffic in Arms Regulations (ITAR).

Assisted HVAC manufacturer in educating prime contractors and Department of Defense customers concerning availability of non-availability exception to Buy American Act restrictions.

PROFESSIONAL & CIVIC ACTIVITIES

Chair, American Bar Association Public Contract Law Section:

ABA PCLS Council Member, 2016-2019

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Co-Chair, ABA PCLS State and Local Procurement Law Committee, 2015-2020

Vice-Chair, ABA PCLS Intellectual Property Committee, 2017-2020

Vice-Chair, ABA PCLS Strategic Alliances, Teaming and Subcontracting Committee, 2017-2020

NEWS

Stinson's Eric Whytsell Starts Term as Chair of Public Contract Law Section

08.14.2023

ACC Colorado Publishes "Mitigating False Claims Act Risk in a Harrowing Enforcement Climate"

10.10.2022

Stinson Establishes Infrastructure Task Force to Support Clients

03.08.2022

Habib Ilahi, Eric Whytsell Publish in *Law360* on Contractor Settlements

08.23.2021

Chugach Electric Acquisition Featured in *Global Legal Chronicle*

12.03.2020

Stinson Serves as Legal Counsel on Major Alaskan Energy Acquisition

11.17.2020

Eric Whytsell Discusses Executive Order Affecting Contractors with Foreign Workers on Federal News Network

09.10.2020

Stinson Partner Eric Whytsell Elected Secretary of the ABA Public Contract Law Section

08.18.2020

SPEAKING ENGAGEMENTS

"FAR Policy Network Overview," 2022 FAR Supplements Webinar Series, January 2022

Co-Presenter, "Navigating Government Contracts Issues in the Commercial World," ACC Colorado Webinar, May 2021

Co-Presenter, "Are You Ready for the New Federal Cybersecurity and Supply Chain Requirements?" National Association of Energy Service Companies Webinar, March 2021

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Co-Presenter, “The False Claims Act and Emerging Developments,” Client Webinar, March 2021

Co-Presenter, “The Evolving Requirements of the Section 889
‘Huawei Ban,’” National Contract Management Association, Denver Chapter, November 2020

“FAR Part 48 – Value Engineering,” Get “FAR” Sighted in 2020 Webinar, November 2020

Co-Presenter, “Understanding and Implementing the “Huawei Ban” in Government Contracts and Grants,
Stinson LLP Webinar, October 2020

“FAR Part 41 – Acquisition of Utility Services,” Get “FAR” Sighted in 2020 Webinar, September 2020

Co-Presenter, “What’s Next for Government Contracts IP?” ABA Public Contracts Law Section,
Intellectual Property Committee webinar, July 2020

Co-Presenter, “Small Business Contracting 101,” Federal Bar Association/MyLawCLE Webinar, July 2020

“Challenges and Opportunities in the ‘Next Normal,’” ACC Colorado Webinar, May 5, 2020

Co-Presenter, “The Thoughtful Contractor’s Approach to Subcontract Terms and Conditions,” ABA
Section of Public Contract Law Webinar, April 2020

Co-Presenter, “Cybersecurity Maturity Model Certification (CMMC): Guarding the Keys to the Kingdom,”
National Defense Industry Association, Rocky Mountain Chapter, Colorado Springs, CO, March 2020

Co-Presenter, “Mentor-Protégé Joint Venture Agreement Best Practices,” ABA Public Contracts Law
Section, Joint Meeting of the Small Business Committee and Subcontracting, Teaming & Strategic
Alliances Committee, Washington DC, November 2019

“The Past, Present, and Future of the ABA Model Procurement Code for State and Local Jurisdictions,”
NASPO Law Institute, October 2019

Co-Presenter, “Navigating Master Service Agreements,” Association of Corporate Counsel, Colorado
Chapter, October 2019

Co-Presenter, “Bid-Rigging and Other Threats to Effective Procurement,” Colorado Bar Association
Business Law Summit, September 2019

“The Top 10 (plus!) Pitfalls to Avoid When Responding to Solicitations,” (Co-Presenter) National Contract
Management Association (NCMA) Boston Chapter March Workshop, Boston, Massachusetts, March 2019

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"Don't Be the Slowest Zebra: Understanding and Responding to CyberSecurity Risks" (Co-Presenter), PCI Legislative and Political Conference, Denver, Colorado, November 2018

"Exceptions: Striking the Right Balance in a Jumbled Landscape," ABA Section of Public Contracts Law Fall Meeting, Louisville, Kentucky, November 2017

"Everything You Always Wanted to Know about Contract Claims but Were Afraid to Ask" (Co-Presenter), International Paint Committee, Colorado Springs, Colorado, September 2017

"The Mechanics of Flow Downs – What Are the Best Practices?" ABA Section of Public Contract Law, Subcontracting, Teaming Agreements, and Strategic Alliances Committee Meeting, January 2017

"Understanding and Responding to Cybersecurity Risks" (Co-Presenter), Association of Corporate Counsel (ACC) Colorado Chapter, Spring In-House Forum, Denver, Colorado, April 2016

"Practical Answers to Key Protest Questions," NCMA, Northern West Virginia Chapter Meeting, Morgantown, West Virginia, March 2016

"Gaining Advantage on the High Seas: The Thoughtful Pirate's Approach to Subcontract Terms and Clauses" (Moderator), ABA Section of Public Contract Law, 22nd Annual Federal Procurement Institute, Annapolis, Maryland, March 2016

"Regulations and Their Impact on Your Business" (Co-Presenter), Teaming to Win Conference, Canaan Valley, West Virginia, May 2015

"Everything You Always Wanted to Know about the Model Procurement Code but Were Afraid to Ask" (Moderator), American Bar Association, Section of Public Contract Law, 10th Annual State and Local Procurement Symposium, Philadelphia, Pennsylvania, April 2015

Fall Construction Seminar

1201 Walnut Street, Suite 2900, Kansas City, MO 64106, 11.15.2022

Are you ready for the new federal cybersecurity and supply chain requirements?

04.21.2021

PUBLICATIONS

["Georgia v. Biden Places Nationwide Stay on the Government Contractor Vaccination Mandate,"](#) *Stinson's Government Contracting Blog*, December 7, 2021

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["Biden's Executive Order on Protecting Americans' Sensitive Data from Foreign Adversaries,"](#) *Stinson's Government Contracting Blog*, June 24, 2021

Contributor, *"The Tech Contracts Handbook: Cloud Computing Agreements, Software Licenses, and Other IT Contracts for Lawyers and Businesspeople,"* 3rd Edition, May 2021

["Continuing Developments on the Supply Chain Front,"](#) *Stinson's Government Contracting Blog*, March 19, 2021

["Protests Alleging an Unmitigated OCI Must Present "Hard Facts" Even When the Awardee Is the Incumbent,"](#) *Stinson's Government Contracting Blog*, March 11, 2021

["GSA Removes All But DoD-Approved Drones from MAS Contracts,"](#) *Westlaw Today*, January 29, 2021

["Challenging an Agency's Determination of Urgent and Compelling Need Can be an Uphill Battle,"](#) *Stinson's Government Contracting Blog*, December 3, 2020

["If Your Proposal Makes the Agency Work Too Hard, You Have Only Yourself to Blame If You Don't Win,"](#) *Stinson's Government Contracting Blog*, October 16, 2020

["Two Kinds of False Claims, the Same Bad Outcome,"](#) *Stinson's Government Contracting Blog*, September 24, 2020

["Another \(Minor\) Step in the Evolution of Section 889\(a\)\(1\)\(B\) Obligations,"](#) *Stinson's Government Contracting Blog*, August 27, 2020

["DNI Apparently Has Granted DoD A Limited Temporary Waiver of Section 889 Implementation,"](#) *Stinson's Government Contracting Blog*, August 14, 2020

["You Challenge the Award, You Best Come Ready to Play,"](#) *Stinson's Government Contracting Blog*, August 13, 2020

["Senate and House Make Progress in Passing the National Defense Authorization Act for Fiscal Year 2021,"](#) *Stinson's Government Contracting Blog*, July 31, 2020

["Federal Contractors' Compliance Responsibilities Just Got Easier, or Did They?,"](#) *Stinson's Government Contracting Blog*, July 23, 2020

["Beware Rogue Employees with a Taste for Fraud,"](#) *Westlaw Practitioner Insights Commentaries*, July 7, 2020

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["Flouting Affiliation Rules When Pursuing Small Business Set-Asides Can Lead to FCA Woes,"](#) *Stinson's Government Contracting Blog*, June 5, 2020

["If the Solicitation Doesn't Provide Enough Information for You to Bid Intelligently, Push for More,"](#) *Stinson's Government Contracting Blog*, May 14, 2020

["When Selecting Protest Grounds, Don't Forget the Prejudice,"](#) *Westlaw Journal Government Contracts*, April 20, 2020

["DoD Issues Class Deviation and Guidance to Implement CARES Act Relief for DoD Contractors under Section 3610,"](#) *Stinson's Government Contracting Blog*, April 16, 2020

["In Case You Missed It: New Website Provides Acquisition-Related Coronavirus Information,"](#) *Stinson's Government Contracting Blog*, March 26, 2020

["Everybody's Crying National Security, Just as Long as There's Business First,"](#) *Stinson's Government Contracting Blog*, March 12, 2020

["When Selecting Protest Grounds, Don't Forget the Prejudice,"](#) *Stinson's Government Contracting Blog*, March 5, 2020

["How Soon Is Soon Enough for Corrective Action to Preclude Recovery of Protest Costs?,"](#) *Stinson's Government Contracting Blog*, February 27, 2020

["Hope Is Not a Strategy: Protest Shortcomings of Corrective Action as Soon as You See Them,"](#) *Stinson's Government Contracting Blog*, February 20, 2020

["Don't Rely on a Procuring Agency to Track Down Past Performance Questionnaires,"](#) *Stinson's Government Contracting Blog*, January 27, 2020

["New Year, New Voluntary Self-Disclosure Policy for Export Controls and Sanctions,"](#) *Stinson's Government Contracting Blog*, January 16, 2020

["New Changes to the ITAR Focus on Unclassified Technical Data And the release of 'Access Information',"](#) *Stinson's Government Contracting Blog*, January 10, 2020

["When the Government Asks for Required Information, Answer \(But First Make Sure You Have Prepared for the Question\),"](#) *Stinson's Government Contracting Blog*, January 4, 2019

["Some Tradeoff Is Better than None—and Enough to Avoid the Prohibition against LPTA,"](#) *Stinson's Government Contracting Blog*, November 19, 2019

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["Your Proposal Says What It Says: The GAO Does Not Engage in Revisionist History,"](#) *Stinson's Government Contracting Blog*, November 12, 2019

["Short Take: Proposed Rule Raises Certified Cost or Pricing Threshold to Implement Section 811 of FY18 NDAA,"](#) *Stinson's Government Contracting Blog*, November 12, 2019

["Do Not Be Discouraged: Agency Discretion on Corrective Actions Does Have Limits,"](#) *Stinson's Government Contracting Blog*, November 12, 2019

["Procurement Fraud Is Alive and Well—and Being Punished,"](#) *Stinson's Government Contracting Blog*, August 15, 2019

["If You Want to Win the Contract, You Can't Afford to Rely on Glancing References and Unsupported Assurances to 'Demonstrate' Anything,"](#) *Stinson's Government Contracting Blog*, July 28, 2019

["Digging into the Details of the Latest Buy American Executive Order for Federal Construction Contractors,"](#) *Stinson's Government Contracting Blog*, March 12, 2019

["FAA Announces Audit of Its Award Practices for Major Acquisition Program Contracts,"](#) *Stinson's Government Contracting Blog*, March 2, 2019

["Being 'Highly Desirable' Doesn't Make a Specification Mandatory,"](#) *Stinson's Government Contracting Blog*, January 29, 2019

["Contractors Need to Take OCIs Seriously because the Government Certainly Does,"](#) *Stinson's Government Contracting Blog*, January 15, 2019

Editor, *ABA Guide to Service Subcontract Terms and Conditions*, 2nd Edition, 2019

["Berry Amendment's Non-Availability Exception Trumps Agency Market Research,"](#) *Stinson's Government Contracting Blog*, December 5, 2018

["Friendly Reminder: Protest Grounds Cannot Be Based Solely on Supposition and Speculation,"](#) *Pratt's Government Contracting Law Report*, Vol. 4 No. 12, December 2018

["Sometimes Less Than Complete Information Is Enough, But Don't Count on It,"](#) *Pratt's Government Contracting Law Report*, Vol. 4 No. 11, November 2018

["Overcome by Events: Facts not Directly Related to Protest Grounds Can Prevent an Ultimate Protest Victory,"](#) *Pratt's Government Contracting Law Report*, Vol. 3 No. 11, November 2017

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"Mindful Negotiation and Consistency in Quoting Can Help Fend Off Misguided Evaluators on FSS Procurements," *Pratt's Government Contracting Law Report*, Vol. 3 No. 8, August 2017

"Not for the Faint of Heart' - Startups planning to pursue small business set-aside contracts face unique compliance issues," *Law Week Colorado*, June 2017

Contributor, ABA *Guide to State Procurement: A 50-State Primer on Purchasing Laws, Processes and Procedures*, 2d Ed. 2017

Co-Editor, ABA *Guide to Fixed-Price Subcontract Terms and Conditions*, 5th ed., August 2016

"Department of Veterans Affairs' Rule of Two Applies to IDIQ Contracts," *Pratt's Government Contracting Law Report*, Vol. 2 No. 5, May 2016

"Knowing and Meeting Solicitation Requirements," *Pratt's Government Contracting Law Report*, Vol. 2 No. 3, March 2016

Check Your LED Lighting Supplies and Construction Materials or It Could Cost You
08.23.2022

Georgia District Court Places Nationwide Stay on the Government Contractor Vaccination Mandate
12.07.2021

Judicial Holdings Throw Vaccine Mandate Implementation into Disarray
12.01.2021

White House Fact Sheet Results in Additional Questions for Government Contractors
11.04.2021

Mandatory COVID-19 Vaccination Rule for Government Contractors Continues to Develop
11.02.2021

Update on Vaccine Requirements and Roll Out of the Path out of Pandemic Plan
10.15.2021

Federal Contractors' Compliance Responsibilities Just Got Easier, or Did They?
07.20.2020

DoD Issues Class Deviation and Guidance to Implement CARES Act Relief for DoD Contractors under Section 3610
04.14.2020

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