

National Forum on

Government Contracting Ethics & OCIs

KEYNOTE SPEAKER

The Honorable Brian D. Miller
Inspector General
U.S. General Services Administration

Get Updates and Best Practices from:

Government Officials

U.S. Government Accountability Office
U.S. Office of Government Ethics
Standards of Conduct Office,
Department of Defense
Department of Defense Inspector General
Department of the Navy
U.S. Air Force
Senate Committee on Homeland Security
and Governmental Affairs
House Armed Services Committee

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GE Aviation
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Lockheed Martin Corporation
Oracle USA, Inc.
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Division, Aerospace Group
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SAIC

Legal and Practical Guidance for Avoiding Enforcement, Litigation and Lost Business

Hear crucial insights that you can apply to your daily work:

- Overcoming revolving door challenges: Hiring and managing former government personnel
- Preventing and mitigating organizational conflicts of interests (OCIs)
- Bid protests on ethical grounds and OCIs: When have they succeeded? What are the trends?
- Complying with new mandatory reporting requirements
- Updating your ethics compliance program in light of new enforcement risks
- Reconciling domestic and foreign ethical standards: Maintaining your competitive edge without running afoul of U.S. laws
- Updates on the enforcement backlash: Suspension, debarment and other risks
- Leveraging recent congressional, regulatory and policy developments: Task and delivery order contracting and more

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Pre-Conference Workshop:

Government Contracts Clause-by-Clause: Drafting and Interpreting Key Terms and Conditions

September 23, 2008

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Minimize the Threat of Litigation, Enforcement and Lost Business!

Federal lawmakers and regulators have pushed for stricter ethics and OCI rules for government contractors – and have largely succeeded. With new and pending FAR mandatory reporting and contracting requirements, **the chances of losing U.S. government contracts for ethics and OCI reasons have never been higher.** Your organization could be facing a heightened risk of **unfavorable bid protest outcomes and harsh enforcement measures.**

Moreover, in order to capitalize on the **government employee turnover** in this election year and beyond, you cannot afford to violate applicable post-employment ethics rules. **Your government contracts could be at stake.**

Whether you are a seasoned U.S. government contractor or a relative newcomer, you cannot afford to miss the **American Conference Institute's National Forum on "Government Contracting Ethics & OCIs."** Top government, industry and legal professionals will help you to overcome your most pressing challenges:

- Tackling **revolving door** issues in this election year: **Hiring and managing former government personnel**
- Preventing and mitigating **organizational conflicts of interests:** Best practices
- Winning/losing bid protests on ethics and OCI grounds
- Preparing for possible new **mandatory reporting** requirements
- Repositioning your **ethics compliance** program in light of **new enforcement initiatives**
- Reconciling domestic ethics with **foreign ethical standards:** Staying competitive and compliant
- The latest on the **enforcement backlash:** Suspension, debarment and other measures
- Recent congressional, regulatory and policy developments: **Task and delivery order contracting** and more
- Avoiding criminal prosecution and fines under **strict new lobbying requirements**

Take advantage of this opportunity to **learn from and network with top experts.** Get updates and analysis that cannot be found in books or on the web. Spaces will fill up quickly, so register now by calling **1-888-224-2480**, faxing your registration to **1-877-927-1563** or online at **AmericanConference.com/govtoci.**

We look forward to seeing you at the conference!

WHO SHOULD ATTEND

- Vice Presidents, Managers and Directors of:
 - Government Contracts
 - Contract Compliance
 - Ethics/Ethics Compliance
 - Business Conduct
 - Government Relations
 - Federal Government Procurement
 - Government Contract Administration
- Corporate & Compliance Counsel
- Compliance Officers
- Private Practice Attorneys specializing in:
 - government contracts
 - bid protests

AGENDA-AT-A-GLANCE

Day 1

- Capitalizing on the Revolving Door: Hiring and Managing Former Government Employees
- Mandatory Reporting of Suspected Criminal Activity: Where are We Now? Where are We Heading?
- Preventing and Managing Organizational Conflicts of Interest (OCIs): Legal and Practical Guidance for Effective Mitigation
- Bid Protests on Ethical and OCI Grounds: Lessons Learned
- Suspension and Debarment: Updates on the Enforcement Backlash for Ethics Violations and OCIs

Day 2

- Keynote Address: The Honorable Brian D. Miller, Inspector General, U.S. General Services Administration
- Government Contracting in an Election Year: The Impact of Recent Congressional, Regulatory and Policy Developments
- Updating Ethics Compliance Plans to Manage New and Pending Requirements: Best Practices
- Reconciling Domestic and Foreign Ethical Standards: Staying Competitive while Minimizing Legal Risks
- Managing Government and Internal Audits: Do's and Don'ts
- *Honest Leadership and Open Government Act of 2007:* Application and Enforcement

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9:00 **Opening Remarks from the Co-Chairs**



James C. Fontana
Senior Vice President, General Counsel & Secretary
Alion Science and Technology Corp.



John A. Howell
Partner, McKenna Long & Aldridge LLP

9:15 **Capitalizing on the Revolving Door: Hiring and Managing Former Government Employees**



Eric Risbel
Senior Attorney, Standards of Conduct Office
Department of Defense, Office of General Counsel

Speaker to be announced
U.S. Office of Government Ethics



Marynell DeVaughn
Senior Counsel, Raytheon Company

Marcia G. Madsen – Lead Panelist and Moderator
Partner, Mayer Brown LLP

During and after this election year, there will be enormous turnover of government employee personnel. With the benefits of hiring former government employees, comes significant risk, particularly with regard to protecting proprietary information, avoiding conflicts of interest and abiding by post-Government employment restrictions. This session will provide you with legal and practical guidance for leveraging the skills and add-value of former government personnel, without risking litigation, adverse publicity and penalties. Ample time will be left for Q & A, so come prepared!

Mitigating Risk at the Recruitment Stage

- Evaluating the risks and rewards of hiring former government personnel
- Holding employment discussions with former government personnel: Best practices
- Mitigating the risks of ethics violations
 - what questions to ask at the recruitment stage
 - describing proposed job functions in ethics letters to affected government agencies
 - requiring the candidate to get an ethics opinion from their former government employer
- Extent to which government contractors can rely on ethics opinions issued by government agencies
- Application and enforcement of criminal and civil revolving door restrictions
 - enforcement trends and priorities
 - what employees can/cannot do after leaving government
 - restrictions on government contractors
- Practical impact of recent case law, including: *Karrar Systems Corporation*
- Training other employees: Creating awareness of revolving door challenges and Procurement Integrity

Protecting Proprietary Information

- What a former government employee can disclose as an advisor to a government contractor
- *Procurement Integrity Act*: What is “improper” access to “off-limits”, competitive, sensitive and government source selection information
- When improper access to information can lead to successful bid protests
- Best practices for records and storage management
 - how and what to store
 - locking down unclassified data

Obligations of Current Government Personnel vs. Contract Workers

- What post-employment ethics rules apply to government vs. contract employees
- Imposing government employee restrictions on contractors: Status of Congressman Waxman’s initiatives

Recent GAO Developments

- Update on GAO report on contract workers in government
 - are we headed toward strengthened revolving door restrictions?
 - stricter ethical standards for government contract workers

10:30 **Networking Refreshment Break**

10:45 **Mandatory Reporting of Suspected Criminal Activity: Where are We Now? Where are We Heading?**

Frank G. Albright
Special Agent, CFE
Director, Policy and Programs
Investigative Policy and Oversight
Department of Defense Inspector General



Curtis Schehr
Senior Vice President
General Counsel and Secretary, DynCorp International



James J. McCullough – Lead Panelist & Moderator
Partner, Fried, Frank, Harris, Shriver & Jacobson LLP
Past Chair, Procurement Planning Committee,
National Defense Industrial Association

- Status of 72 Fed. Reg. 64019 (FAR Case No. 2007-006)
 - updates on public comments and their impact on the latest draft
 - analyzing the latest version of the rule
 - rationale for this proposed rule
- What triggers the mandatory reporting of actual/suspected criminal activity
 - what and when to report
 - when a matter can be reported as a possible overpayment instead of suspected criminal activity
- Scope of regulation
 - who is required to report
 - who is exempt
 - loopholes
- Assessing whether there are “reasonable grounds” for suspecting criminal conduct
 - what constitutes “reasonable grounds”
 - when employee knowledge of suspected criminal conduct can be imputed to the employer
- Who needs to be notified
 - when to notify the Inspector General of each affected agency and all contracting officers
 - protecting the identity of possibly innocent personnel in the disclosure
- Managing employees under the mandatory reporting framework: Key challenges
- Miranda Warnings
 - when a Miranda Warning is necessary for a government or internal investigation
 - when collected evidence can be inadmissible in the absence of a Miranda warning
- When training on mandatory reporting should be provided to subcontractors
 - interpreting “when appropriate”
- Determining if agents or subcontractors may have engaged in misconduct
- Continued contract performance after a report of suspected criminal conduct: Extent of potential liability

- Securities law implications for public companies following the disclosure of possible criminal activity

12:00 Networking Luncheon

1:15 Preventing and Managing Organizational Conflicts of Interest (OCIs): Legal and Practical Guidance for Effective Mitigation



Alice Eldridge
Vice President, Ethics & Business Conduct
Lockheed Martin Corporation



Johana Reed
Senior Counsel, BAE Systems, Land & Armaments

Kimberly S. Rupert
Senior Vice President of Contracts,
Procurement and Pricing, SAIC



John A. Howell – Lead Panelist & Moderator
Partner, McKenna Long & Aldridge LLP

- Pending FAR rule (FAR Cases 2007-017 and 2007-018): Rigorous OCI clauses in government contracts
- Types of business integrity and OCI clauses included by government agencies
- Defining OCIs: Beyond typical examples
 - biased ground rules
 - impaired objectivity
 - unequal access to information
 - case studies of complex scenarios
- Managing conflicts arising from financial interests in contract bidders
- Obligations upon discovering an OCI: Do's and don'ts
- Assessing potential liabilities upon discovering an OCI
- What can happen to your business if you do not disclose an OCI
- TRICARE Management Activity procurement and Coast Guard Deepwater Program: Lessons learned
- Interplay between the mitigation plan and your overall corporate compliance program
- Setting up internal controls for identifying actual and potential OCIs
 - how to gather data for prevention
 - implementing a central database
 - what kind of data to collect
 - strategic use of firewalls
 - logging in all contract work and OCIs in all parts of business
 - implementing internal reporting mechanisms
 - addressing personal conflicts of interest
 - mitigating financial conflicts of interest
 - database challenges
 - divesting part of the business when necessary
 - using subcontractors
- Who is responsible for mitigation plan administration: Roles of program manager, legal counsel and others
- Managing potential OCIs associated with:
 - teaming agreements
 - subcontracting
 - different divisions/departments within an organization
- When an OCI cannot be remedied: What to do
- Assessing OCI risks associated with ongoing procurements: When and how to upgrade your mitigation plan
- Analyzing different scenarios, such as:
 - contracting with different parts of a government agency
 - bidding on different parts of the same project
 - organizations with many prime and subcontracting relationships: extent of participation in later competitions without being disqualified
 - managing different lines of business by subsidiaries: managing risks in ongoing procurement

2:45 Networking Refreshment Break

3:00 Bid Protests on Ethical and OCI Grounds: Lessons Learned

Michael R. Golden
Managing Associate General Counsel for Procurement Law
U.S. Government Accountability Office



Michael W. Clancy
Vice President & Associate General Counsel, Oracle USA, Inc.



Rand L. Allen – Lead Panelist & Moderator
Partner & Chair, Government Contracts Practice Group
Wiley Rein LLP

- When ethics issues have been successful grounds for bid protests
- When, why and how OCI has been a successful ground
- How GAO and courts analyze ethics-related and OCI bid protest cases
 - assessing the logic and reasoning of the contracting officer
 - evaluating “common sense”, “good judgment” and “sound discretion”
 - impact of previous government contracts on the analysis
 - whether a potential OCI can impair judgment
 - how an OCI was addressed in the mitigation plan
- Government and courts’ approaches to addressing and remedying OCIs
 - latest trends
 - how far can adjudicators go to remedy OCIs
- How the OCI rule has been expanded by the courts
- Analyzing recent applications of:
 - *Alion* case
 - *Axiom* bid protests
 - *ITT* Case
 - *U.S. v. SAIC*
- Impact of an ongoing government investigation on bid protests cases: When GAO will get involved before the conclusion of an investigation
- Filing bid protests
 - which forum is appropriate
 - burden of proof
 - standards for analyzing OCIs in your submissions

4:15 Suspension and Debarment: Updates on the Enforcement Backlash for Ethics Violations and OCIs



Laura Fernandez
Associate General Counsel, U.S. Air Force



Dorn C. McGrath, III
Shareholder, Greenberg Traurig, LLP

- Latest developments: Possible debarment for ethics/OCI issues under FAR
- The inside scoop on suspension and debarment processes
 - application of FAR, Subpart 9.4
 - what tests and requirements are applied and how
 - how decisions are made: what decision-makers look for
- Impact of contractors’ behavior outside the scope of a government contract: Real-life examples
- How other investigations affect the risk of suspension and debarment

5:00 Co-Chairs’ Closing Remarks and Conference Adjourns

9:00 Opening Remarks from the Co-Chairs



James C. Fontana
Senior Vice President, General Counsel & Secretary
Alion Science and Technology Corp.



John A. Howell
Partner, McKenna Long & Aldridge LLP

9:15 Government Contracting in an Election Year:
The Impact of Recent Congressional, Regulatory
and Policy Developments

Troy Cribb
Counsel
Senate Committee on Homeland Security
and Governmental Affairs

Cathy Garman
Professional Staff Member, House Armed Services Committee



Carl L. Vacketta – Lead Panelist & Moderator
Partner, DLA Piper

- New GAO jurisdiction over Task Order (TO)/Delivery Order (DO) awards over \$10 million
- Overseeing private security contractors
- Implementing SARA panel recommendations: The latest developments
- Defining “inherently governmental”
- Analyzing the latest proposals related to conflicts of interest
- Requirements for TO or DO icontracting (section 843)

2008 Defense Authorization Act: Revisions to Task
and Delivery Order Contracting

- New GAO Jurisdiction Over TO/DO Awards over \$10 million
 - scope of jurisdiction
 - what is required for a party to have standing before the GAO
 - timelines for filing protests
 - when does the automatic stay requirement apply
 - how this new process will be applied in practice
- Procurement of commercial services (Section 805): How DoD’s authority has been narrowed in acquiring:
 - services “of a type”
 - services under Time and Material (T&M) or Labor Hour contracts
- Treating subsystems, components, and spare parts of major weapon systems as “commercial items” (Section 815)
- Enhanced competition
- Requirements for TO/DO iContracting (Section 843)
 - new rule on sole source TO or DO awards over \$100 million
 - expanded competition requirements for TO/DO awards over \$5 million

Wartime Contracting Commission Activities

- Getting up to speed on wartime contracting initiatives and their potential impact

10:15 Networking Refreshment Break

10:30 Keynote Address:
Current Issues Involving Federal
Investigations and Audits

The Honorable Brian D. Miller
Inspector General
U.S. General Services Administration

11:00 Updating Ethics Compliance Plans to Manage
New and Pending Requirements: Best Practices



Mark O. Wilkoff
Assistant General Counsel (Acquisition Integrity)
Department of the Navy



James C. Fontana
Senior Vice President, General Counsel & Secretary
Alion Science and Technology Corp.

Mary Ita Snyder
Counsel, GE Aviation



J. Scott Hommer, III – Lead Panelist & Moderator
Partner, Venable LLP

- Practical impact of new/pending FAR ethics rules
- How changes to the political landscape have/will affect the implementation and enforcement of FAR ethics rules
- When small and other exempt businesses should implement stricter internal controls than required
- A summary of the new FAR ethics requirements:
 - the new mandatory rules
 - the proposed rules
 - effect of impending changes to the political landscape on implementation and enforcement
- Updating ethics policies and procedures: Assessing existing company policies and procedures
 - composing an ethics committee responsible for the project
 - compiling existing written materials, best practices, and comments on the current system
 - creating a schedule for updating existing policies and procedures
 - valuating the comprehensiveness and effectiveness of company written materials:
 - employee handbook
 - compilations of relevant laws and regulations
 - descriptions of reporting and discipline systems
 - assessing the effectiveness of internal controls and administration:
 - designating and educating the ethics compliance officer
 - implementing a clear ethics violation reporting and review chain of command
 - facilitating timely discovery and disclosure of unreported improper conduct
 - collecting and retaining the appropriate records
 - minimizing human resource and financial costs
 - optimizing communications with government supervisors
 - customizing internal controls to special requirements of certain government contracts
 - tailoring changes to company size and extent of government contracting
- Training employees
 - the type of training and re-training required/recommended
 - the frequency of training
 - maintaining a log of who has/hasn’t received training and when training takes place
 - subjects to cover in training
 - encouraging employees to utilize internal reporting mechanisms when necessary
 - explaining the potential consequences of non-compliance
- Disciplinary action
 - how and when to take disciplinary action against employees for improper conduct
- Potential government enforcement actions for non-compliance:
 - withholding of contract payments
 - loss of contract award fees

- suspension and debarment
- civil and criminal penalties
- Responding to a government enforcement action
- Impact of non-compliance on subcontracts

12:30 Networking Luncheon

1:45 Reconciling Domestic and Foreign Ethical Standards: Staying Competitive while Minimizing Legal Risks



Greg Bierlein

General Manager, Parker Hannifin Hydraulics Systems Division, Aerospace Group

Douglas E. Perry

Vice President, Global Compliance
Honeywell International Inc.



Andrew D. Irwin – Lead Panelist & Moderator

Of Counsel, Steptoe & Johnson LLP

When government contractors operate outside the U.S., they face special risks and challenges. Many important U.S. laws may apply extra-territorially, as well as FAR provisions not necessarily easily suited to work outside the U.S. or involving foreign partners, subcontractors or suppliers. At the same time, government contractors face a wide range of potentially applicable foreign laws and, in many cases, different cultural or ethical norms and expectations. In the current enforcement and oversight environment, it is essential that contractors navigate this regulatory and ethical maze deftly.

This practical session will focus on the challenges that contractors face when conducting business abroad. It will provide you with practical insights related to ethical norms, corruption laws, as well as export control and security considerations. Topics to be discussed will include:

- Working with foreign subcontractors in a FAR-based environment
- Conducting diligence on foreign teaming partners and third party agents/representatives
- Local anti-corruption considerations
- Common export control challenges in international government contracting programs
- Compliance considerations for contractors on the battlefield or supporting the force

3:00 Networking Refreshment Break

3:15 Managing Government and Internal Audits: Do's and Don'ts



Maryanne Lavan

Vice President, Internal Audit
Lockheed Martin Corporation



Angela Styles

Partner, Crowell & Moring LLP

External Executive Branch Audits/Investigations

- Distinguishing a standard audit from an investigation
- What triggers an audit/investigation
- What government looks for: Contract audit/investigation objectives
- The appropriate audit/investigation response
 - preparing and conducting yourself
 - balancing the need to cooperate and your defense
 - when you face heightened risk of suspension or debarment
 - when a waiver of attorney-client privilege is necessary
 - role of inside and outside counsel
- Responding to the results of the audit
- Recovering costs under government contracts

- in-house costs that may be recovered vs. unallowable costs
- corrective measures
- Managing and resolving audit conflicts without litigation: Best practices
- Responding to:
 - a grand jury or an agency Inspector General subpoena
 - a Department of Justice Civil Investigative Demand
- Negotiating a civil or criminal settlement agreement with the government

Internal Audits

- Who should conduct compliance audits
- Role of the internal audit department
- Conducting the audit: Best practices
- Assess auditing results
- Reporting and follow-up: To whom and how
- Preserving privilege

4:15 Honest Leadership and Open Government Act of 2007: Updates on Application and Enforcement



Duncan C. Smith

Partner, Blank Rome LLP

- Enforcement trends and priorities
- Application of restrictions on gift-giving to members of Congress
 - prohibition against giving any gifts to members and staff
 - exceptions and loopholes
- Criminal prosecution and penalties for violating congressional gift rules
 - how criminal prosecution and enforcement differ from the old regime
 - criminal prosecution for false certifications
 - prison sentences and fines
- Complying with other key requirements: Best practices
 - reporting requirements
 - certifying gift rule compliance
 - revolving door restrictions on former members of Congress and staff
 - what triggers disclosure obligations
 - travel reimbursement rules
 - FECA reporting requirements for contributions bundled by lobbyists
- Violating the "toothpick rule": Assessing potential criminal liability
- Public disclosure of lobbying activities and earmarks in appropriations bill
- When the cost of lobbying can be built into government contracts

5:00 Conference Concludes



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Government Contracts Clause-by-Clause:
Drafting and Interpreting Key Terms and Conditions



Kevin J. Maynard
Partner, Wiley Rein LLP

This workshop will provide you with a practical, "clause-by-clause" analysis of key terms and conditions, their legal and commercial implications, and how they have been interpreted by courts and government decision-makers. Don't miss this opportunity to get practical tools for staying out of trouble and protecting your interests.

- Negotiating with the U.S. government: Tips and traps
 - competition/negotiated procurement processes
 - special rules on negotiating commercial item contracts
 - negotiating contract changes and claims
 - sole source negotiations
- Key non-standard clauses: In-depth analysis of concrete examples
 - cost and pricing issues
 - intellectual property/data rights
 - quality assurance/special inspection/testing requirements
 - terms of delivery
 - warranties
- Identifying and mitigating risks in teaming and subcontracting agreements: Clause-by-clause analysis, including:
 - termination
 - flow-down clauses
 - customizing terms and conditions: recent examples
 - indemnification clauses
 - dispute resolution
 - identifying other risks
- Interpreting non-standard clauses: Applying key case law and government decisions
 - potential liabilities
 - key and recent cases
 - lessons learned
- Mitigating the risks of non-standard contract clauses: Practical strategies
- Implementing non-standard clauses: Overcoming practical challenges
 - resolving disputes
 - reconciling conflicting interpretations
 - assessing your legal and financial exposure

KEYNOTE SPEAKER

The Honorable Brian D. Miller
Inspector General
U.S. General Services Administration

CO-CHAIRS

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Senior Vice President
General Counsel & Secretary
Alion Science and Technology Corp.

John A. Howell
Partner
McKenna Long & Aldridge LLP

SPEAKERS

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Investigative Policy and Oversight
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Honeywell International Inc.

Johana Reed
Senior Counsel, BAE Systems
Land & Armaments

Eric Rishel
Senior Attorney
Standards of Conduct Office
Department of Defense
Office of General Counsel

Kimberly S. Rupert
Senior Vice President of Contracts,
Procurement and Pricing, SAIC

Curtis Schehr
Senior Vice President, General Counsel
and Secretary DynCorp International

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Mary Ita Snyder
Counsel, GE Aviation

Angela Styles
Partner, Crowell & Moring LLP

Carl L. Vacketta
Partner, DLA Piper

Mark O. Wilkoff
Assistant General Counsel
(Acquisition Integrity)
Department of the Navy

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National Forum on

Government Contracting Ethics & OCIs

Legal and Practical Guidance for Avoiding Enforcement, Litigation and Lost Business

Top Reasons to Attend

- Minimize the risks of hiring and managing former government personnel
- Prevent and mitigate organizational conflicts of interests
- Learn lessons from recent bid protests and enforcement priorities
- Adjust your ethics compliance program to account for new enforcement risks
- Reconcile conflicting domestic and foreign ethical requirements to stay competitive

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The fee includes the conference, all program materials, continental breakfasts, lunches, refreshments and complimentary membership of the ACI Alumni program

Payment Policy

Payment must be received in full by the conference date. All discounts will be applied to the Conference Only fee (excluding add-ons), cannot be combined with any other offer, and must be paid in full at time of order. Group discounts available to individuals employed by the same organization.

Cancellation and Refund Policy

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