

# **INTRODUCTION TO GOVERNMENT CONTRACT LAW**

## **I. INTRODUCTION.**

This Desk Book has its origins in the instructional materials for the Contract Law Course offered by the Judge Advocate General's School, U.S. Army, located on the campus of the University of Virginia. For decades, the JAG School has taught thousands of military lawyers the arcane rules and regulations that govern the military procurement process. Originally, the Contract Law Division of the JAG School prepared a Department of Army Pamphlet 27-153, Procurement Law, but the format proved unsuitable for introducing lawyers to a complex area of the law. To help their students, the JAG School instructors prepared teaching outlines, suitable for student note taking, which evolved over time to the detailed outlines that are used today.

As the JAG School's graduates have migrated to other agencies, entered civil life, and the student base expanded to include civilian attorneys, students from other services, and the federal government as a whole, the teaching outlines became an important set of reference materials for federal procurement attorneys, as well as the private sector. There was an unsatisfied demand for the updated outlines from the JAG School, which was difficult to meet in the days preceding the internet. Recognizing the need, the American Bar Association published the first edition of the Government Contract Law Desk Book in the mid-1990s, having modified the original materials to meet the needs of a wider audience. Since then, it has had two subsequent editions, and this 2015 version is the fourth edition.

One of the reasons that this Desk Book has proven so useful is that it focuses on procurement by the Department of Defense. While the numbers change from year to year, the Department of Defense procures approximately 70% of all the goods and services

acquired by the United States. Consequently, most government contract law issues are governed by the laws, regulations, and decisions applicable to the Department of Defense.

## **II. ORGANIZATION.**

The TJAGSA Contract Law Desk Book is organized into two volumes. Volume I is primarily focused on the law and regulations governing the formation of a procurement contract with the United States Government. Volume II is primarily focused on issues that arise during the performance of a U.S. Government procurement contract and on special topics.

This version of the Desk Book is a single volume. Chapters 1 through 15 primarily address public policies and contract formation. Many important public policies are involved in deciding who should receive a procurement contract from the United States Government, and what its terms should be. Most of the rules are oriented at fairly selecting a contractor on the basis of the best offer to the government, assuming the contractor is an ethical person who can compliantly perform the contract as written. Fairness is generally perceived as maximizing competition, following the rules, selecting the offeror offering the best deal, and rejecting offers from unscrupulous businesses.

Major legal topics include:

- Authority of government employees,
- Funding of government procurements,
- Competition,
- Methods of acquisition (e.g., simplified acquisition, sealed bidding, contracting by negotiation),
- Contract types,
- Social and economic policies implemented in contract,
- Protests, and

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- Pricing of contracts.

Chapters 16 through 33 of this Desk Book address contract performance and special topics. Contract performance involves two related legal issues. The first issue is the substantive contract provisions included in the most significant standard terms and conditions incorporated by reference into a typical government procurement contract. These terms and conditions describe many of the obligations of both the government and the contractor. The second issue is allocation of risk: the terms and conditions identify how risks are allocated between the government and the contractor(s). The later chapters also address a number of special topics regarding contract formation as well as contract performance issues, or that are otherwise important in the practice of government contract law.

Major topics include:

- Contract changes,
- Inspection and acceptance,
- Payments to contractors and contract financing terms,
- Terminations for the default of the contractor and for the convenience of the government,
- Litigation of contract claims and disputes,
- Ethics,
- Intellectual property,
- Construction contracting, and
- Contracting in military deployments.

### **III. ADDITIONAL RESOURCES.**

Government contracting, as a separate legal discipline, owes a great deal to Professors Ralph Nash and the late John Cibinic of the National Law Center at the George Washington University. Nash and Cibinic created the Government Contracts Program at GW, introduced many practitioners to government contracting, and authored numerous books on government contracting. They also authored numerous other publications for their CLE courses, which are now available from a commercial publisher at <http://www.wklawbusiness.com/store>.

1. John Cibinic, Jr., and Ralph C. Nash, Formation of Government Contracts, published by Government Contracts Program, George Washington University, 3d edition, 1998.
2. Cibinic and Nash, Administration of Government Contracts, published by The George Washington University, 3d edition, 1995.
3. Related CLE Materials available from <http://www.wklawbusiness.com/store> include:
  - Formation of Government Contracts
  - Administration of Government Contracts
  - The Government Contracts Reference Book
  - Competitive Negotiation: The Source Selection Process
  - Cost-Reimbursement Contracting
  - Intellectual Property in Government Contracts and
  - History of Government Contracting.

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**IV. OVERVIEW OF THE GOVERNMENT CONTRACTING PROCESS.**

Government contracting follows a process in both the selection and award of contracts and in the performance of the contract by the contractor.

