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The Government Contracts Reference Book: A Comprehensive Guide to the Language of Procurement

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The Government Contracts Reference Book

A Comprehensive Guide to the
Language of Procurement

FIFTH EDITION

Ralph C. Nash, Jr.
Steven L. Schooner
Karen R. O'Brien-DeBakey
Vernon J. Edwards

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Preface to the Fifth Edition

Since our first publication of *The Government Contracts Reference Book*, the policies and practices of government contracting have continued to change with the result that the terminology of this field has also changed. This fifth edition reflects the new terminology and updated references throughout.

The purpose of the book remains the same: to give concise, comprehensive information to the practitioner of the art of government contracting. Looking up a key term, the reader can find a definition, followed by a summary of where the term is used in the statutes or regulations dealing with the procurement process. We have also included references to those places in the literature where the term is more fully discussed. The book is not designed to stand alone: it is a *first* reference, pointing the user to additional sources as needed. The book makes it clear what we have known for a long time: government contracting is complex, and the rules cannot be gleaned from a single source such as the Federal Acquisition Regulation. They can only be learned from constant reading of reference materials and textbooks—not to mention decisions of the courts, boards of contract appeals, and the Government Accountability Office. Navigating the waters of government procurement is an arduous task, and this book is intended as an aid in that journey.

The one thing that we have learned in updating and revising the book is that it is impossible to make it fully comprehensive. While the book is significantly expanded, we are sure that there are additional terms that could be added. We urge our readers to let us know of terms that we have omitted so that they can be included in the next edition.

How to Use This Reference Book

To Find the Term You're Looking for *Alphabetization*

This book uses the word-by-word (as opposed to letter-by-letter) mode of alphabetizing, with hyphens, commas, and other punctuation treated as word spaces. For example:

PERFORMANCE

PERFORMANCE-BASED ACQUISITION

PERFORMANCE BOND

Numbers within terms are treated as words. 8(a) PROGRAM is alphabetized as EIGHT A PROGRAM, for example, and A-76 POLICY as A SEVENTY-SIX POLICY.

Acronyms and Abbreviations

Because many terms in government contracting have acronyms or abbreviations, and because these shortened forms are often as familiar as the full terms, common-use acronyms and abbreviations have been included in the book's entry titles:

COST-PLUS-FIXED-FEE (CPFF) CONTRACT

QUALIFIED PRODUCTS LIST (QPL)

Virtually all entry titles, however, are terms spelled out in full (REQUEST FOR PROPOSALS) (RFP) as opposed to RFP, for example. If you want to look up an acronym or abbreviation but don't know what it stands for, you can find the full term in *Acronyms and Abbreviations Used in This Reference Book*. You can also refer to this listing if you need to look up one of the handful of acronyms (FAR, DOD, DOE, GSA, NASA, and a few others) that have been used in the text without full-term introduction in order to save space.

To Locate additional Information

Cross-References

In order to gain a better understanding of one term, it will sometimes be helpful to refer to the book's entry on another term. The book's cross-referencing system has therefore been designed to guide you

to entries that provide additional detail, discuss closely related concepts, or define terminology that must be read with a precise meaning. Cross-references are in ALL CAPITALS.

References to Other Sources

All the entries in The Government Contracts Reference book will lead you to pertinent information to be found in various other documents.

Most entries cite other documents (frequently the Federal Acquisition Regulation (FAR)) as the source for the capsule definitions provided or for other statements made.

In addition to the FAR, regulations cited in this book include the Department of Defense FAR Supplement (DFARS), the Department of Energy Acquisition Regulation (DEAR), and the National Aeronautics and Space Administration (NASA) FAR Supplement (NFS). References to these regulations are current as of December 2012; in some cases, proposed changes pending at that time are noted. This reference book is not, however, a substitute for federal procurement statutes or their implementing regulations. The regulations should be consulted directly before making binding decisions about federal contracting matters.

Many of the book's entries treat or cite procurement-related statutes. In most cases, reference is made to the current 2012 version of the U.S. Code. Since title 41 of the Code was codified in 2011, all references to that title are to the current codification. Pertinent court and board of contract appeal decisions are reference as well, following *The Bluebook: A Uniform System of Citation* style.

Also cited in this reference book are some 50 texts, scores of articles from more than 30 different periodicals, and many other types of documents issued by both government and private industry (pamphlets, booklets, study reports, manuals, as so forth). All appear in the entries in italics, often with "see" or "see also" references to signal that they provide useful information beyond that synopsized in this book.

About the Authors

Ralph C. Nash, Jr., is a widely recognized author and lecturer in the government contracts field. A professor emeritus of law at The George Washington University Law School, he founded the University's Government Contracts Program in 1960 and served as its director from 1960 to 1966 and from 1979 to 1984. In addition to teaching, he does consulting work for government agencies, private corporations, and law firms. He is a member of the Procurement Round Table, and is a fellow and serves on the board of advisers of the National Contract Management Association. He served as a member of the Department of Defense Advisory Panel on streamlining and codifying Acquisition laws (Section 800 Panel). Professor Nash is the coauthor of *Government Contract Changes*, *Formation of Government Contracts*, *Administration of Government Contracts*, *Cost-Reimbursement Contracting*, *Competitive Negotiation: The Source Selection Process*, and *Intellectual Property in Government Contracts*. He received an A.B., magna cum laude, from Princeton University and a J.D. from The George Washington University Law School.

Vernon J. Edwards is a former U.S. Air Force and U.S. Department of Energy contracting official. He is a monthly contributor to *The Nash & Cibinic Report* and an occasional contributor to other publications, such as *Contract Management*, *The Government Contractor*, and *Briefing Papers*. He has written more than 200 published articles on various topics in acquisition in addition to books and monographs. He founded The FAR Bootcamp® and The Source Selection Bootcamp® and authored *The Source Selection Answer Book*. He is a 1974 graduate of the University of California at Los Angeles.

Karen R. O'Brien-DeBakey is a Vice-President at Jefferson Consulting Group where she provides expert assistance to government agencies in a wide range of acquisition services. Prior to joining Jefferson, she was Of Counsel to the firm of McCarthy, Sweeney and Harkaway, P.C., where she practiced government contract law. Prior to that, Ms. O'Brien-DeBakey was at ESI International managing the Government Contracts publications program of the George Washington University Law School. She began her career as a procurement law attorney in the Army Judge Advocate General's Corps. She also served as a staff attorney for the DOD Advisory Panel on Streamlining and Codifying the Acquisition Process (Section 800 Panel). She is coauthor of *Competitive Negotiation: The Source Selection Process* with John Cibinic, Jr. and Ralph C. Nash, Jr., and *ILII/JCG Guide to Millennium Challenge Indicators and Source Data* with Allan V. Burman. She received a B.A. in accounting, magna cum laude, from Niagara University and a J.D., cum laude, from Vermont Law School.

Steven L. Schooner is Nash & Cibinic Professor of Government Procurement Law, and Co-Director of the Government Procurement Law Program at the George Washington University Law School. Before joining the faculty, he served as the Associate Administrator for Procurement Law and Legislation at the Office of Federal Procurement Policy. He also served as a trial attorney in the Commercial

Litigation Branch of the Department of Justice, practiced with private law firms and, as an Active Duty Army Judge Advocate, served as a Commissioner at the Armed Services Board of Contract Appeals. As an Army Reserve officer, he taught for more than 20 years as an Adjunct Professor at the Judge Advocate General's School of the Army. His dispute resolution experience includes service as an arbitrator, mediator, neutral, and ombudsman. He serves on the Board of Directors of the Procurement Round Table and is a Fellow of the National Contract Management Association, a Member of the Board of Advisors, and a Certified Professional Contracts Manager. He is the Faculty Advisor to the American Bar Association's Public Contract Law Journal and a member of the Government Contractor Advisory Board. Professor Schooner received his B.A. from Rice University, J.D. from the College of William and Mary, and LL.M. from the George Washington University.

Note on References

DAU GLOSSARY refers to the DEFENSE ACQUISITION UNIVERSITY GLOSSARY OF DEFENSE ACQUISITION ACRONYMS AND TERMS, an online resource: www.dau.edu/tools/t/DAU-Glossary.

DOD 5000 Series refers to the directives (DoDD) and instructions (DoDI) that describe The Defense Acquisition System, beginning with DOD Directive (DoDD) 5000.01, *The Defense Acquisition System*. The current directives and instructions are maintained by the DOD Executive Services Directorate and may be accessed at <https://www.esd.whs.mil/DD/Dod-Inssuances>. Documents referenced in this book as the DOD 5000 Series include the following:

- DOD Directive 5000.01, The Defense Acquisition System, Sept. 9, 2020
- DOD Instruction 5000.02, Operation of the Adaptive Acquisition Framework, Jan. 23, 2020
- DOD Instruction 5000.02T, Operation of the Defense Acquisition System, Jan. 23, 2020
- DOD Instruction 5000.74, Defense Acquisition of Services, Jan. 10, 2020
- DOD Instruction 5000.75, Business Systems Requirements and Acquisition, Jan. 24, 2020
- DOD Instruction 5000.81, Urgent Capability Acquisition, Dec. 31, 2019
- DOD Instruction 5000.80, Operation of the Middle Tier of Acquisition (MTA), Dec. 30, 2019
- DOD Instruction 5000.85, Major Capability Acquisition, Aug. 6, 2020
- DOD Instruction 5000.87, Operation of the Software Acquisition Pathway, Oct. 2, 2020