

INTERNATIONAL GOVERNMENT CONTRACT LAW

FIRST EDITION

By
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To Claire

PREFACE

In today's world, in order to thrive, most industries must export. For the United States industry engaged in providing goods and services to governments, the enormous government contract market in particular is now truly global. This book is intended to bring together in one place an in-depth discussion of the major legal disciplines that comprise international government contract law.

There are the rules of the road pertinent to a particular government's procurement process – and, in the case of the European Union, oversight of Member State rules as well. It is necessary to understand the application in the United States of the World Trade Organization's Agreement on Government Procurement, and also certain bilateral agreements, that waive protectionist "buy national" treatment among signatory countries and provide for a transparent process in an international free trade procurement market. This not only affects the United States industry domestically, it also provides a foundation for using these tools to penetrate foreign markets.

Then there are international contracting and financing mechanisms. Defense exporters must navigate the United States Foreign Military Sales Program; the alternative direct commercial sale rights of the contractor and customer; the customer's potential use of FMF credit financing; and the regulatory requirements for both the customer and the seller. The United States Agency for International Development stands ready to support non-military foreign assistance programs. The World Bank provides support for lesser developed countries. These programs provide, among other things, for financing – and without financing, there would be no business. In that regard, a working understanding of the use and ramifications of international letters of credit, both for payment and guarantees, is also essential.

The UNCITRAL model procurement code provides modern best practices for use by states with inadequate or out-of-date procurement laws. For defense contracts, offsets and their negotiation and implementation are always an issue.

INTERNATIONAL GOVERNMENT CONTRACT LAW

One also must pay close attention to statutory and regulatory international trade requirements. Compliance with export control laws and regulations, in particular those of the United States, the European Union, and other major defense and high technology exporting countries, must be ensured when providing controlled data and goods to prospective and existing foreign customers; to foreign national employees; and to vendors. The ethics and business practices of representatives, consultants, and other off-shore business partners must be closely monitored for compliance with the United States Foreign Corrupt Practices Act and the Organization for Economic Cooperation and Development's anti-corruption treaty.

Observance of comparative law and culture best practices in dealing with performance issues, and identifying and negotiating nascent performance disputes at an early stage, are critically important. Successful mediation and arbitration of those disputes that persist, try as one may, are equally critical. One must plan ahead both to avoid disputes if it is possible and to prevail if it is not.

International government contract law integrates all of these subjects, and more. It is a fascinating field, and I hope this book will provide a useful guide.

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Guidelines – Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, January 2011 (the “Red Guidelines”). Available at http://siteresources.worldbank.org/INTPROCUREMENT/Resources/278019-1308067833011/Procurement_GLs_English_Final_Jan2011.pdf

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UNCITRAL Arbitration Rules (as revised in 2010). Available at <http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules-revised/arb-rules-revised-2010-e.pdf>

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