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Carolina Academic Press
Durham, North Carolina
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Government contracting matters more than ever. Government has grown, especially in what it does—and how it uses contracting to get its jobs done. As an example, for the wars in Iraq and Afghanistan, the government used contractors for everything from serving meals and repairing vehicles to providing interpreters and guarding convoys and bases. At times, in the theater of war the government had more contractors than it had military or civilian employees.

Like the business of government contracting, the law of government contracting matters more than ever, too. It provides the legal structure for the government to buy its enormous needs of goods and services. These are transactions with a far larger role for lawyers than contracts between purely private parties, because government contracting is far more regulated. Government contracting carries out the great range of policies by which Congress and Executive authorities seek to make procurement economical, efficient, competitive, practical, fair, and an instrument of diverse substantive national policies like support for small business. As a field of practice, it puts lawyers—both established and starting—to work where they can accomplish much for their clients, their country, the economy, and themselves.

Through this subject, such lawyers take on the challenges of a sophisticated legal specialty. As a subject, it is both intensely practical and intellectually stimulating. There is no point in memorizing or otherwise dully plodding away at government contract law. This body of law is too vast, too complex, and too rapidly evolving to be mastered entirely in a single semester course of study. Those who tackle it learn core concepts and then learn to follow the trail of study to specific advanced areas.


Reviewing its novel approach serves as an introduction to its contents. This book has adopted a new focus, so that instead of being heavily weighted just to traditional core topics, it covers a wide set of interesting emerging topics. The book has nineteen chapters, seven beyond the predecessor book, reflecting this diverse set of fresh topics. The new chapters, plus many new subchapters and current cases and notes even in the core chapters, reflect a whole new set of worlds in government contracting since the 1990s.

It helps to group all the new material into four largely or entirely new lines of practice reflected in this book’s new chapters. One line of practice covers technology and health, which have the necessary new chapters. A few years back, issues of technology, and specifically intellectual property, were relatively simple. The government acquired the intellectual property it needed, on its terms. And, a government contracting book could omit contracting with health providers altogether, because government payment for medical goods and services did not matter so much.

Now the government acquires much of the intellectual property—such as word processing software like that with which this book, and millions of government documents
a week, are written — in a “commercial” way that makes complex compromises with the commercial world about intellectual property. And, the government’s purchases of health care are big business, with rapid evolution in the 2000s of how the government, particularly the Defense Department, buys health care.

Second, government contracting has new and complex litigation aspects. The book has the contemporary chapter on the False Claims Act and defective pricing suits. In the last century, the False Claims Act case law had only begun its development after the 1986 statutory amendments. Now that body of law is full-blown; and there have been a string of important Supreme Court rulings in the 2000s. The book has separate chapters on protests, and on claims, reflecting how each has rapidly evolved. Since 2000, protests no longer come to district courts, while the Court of Federal Claims has become their vital judicial forum. Claims now come through a consolidated Civilian Board of Contract Appeals.

Third, transactional government contracting has evolved, too. Commercial, IDIQ, and MAS contracting have mushroomed, with their unique bodies of law. Not until 2008 could a challenger even protest an IDIQ task order award; now IDIQ case law is a whole subject. Commercial and MAS contracting law have moved rapidly as the era of government-restricted procurement has given way to a commercial market. So these areas have the new chapter they need. And, construction law has its own chapter, reflecting how it increasingly emerges as a separate specialized body of law.

Fourth, government contracting has increasing connections with diverse policy realms. This book has the current chapter on international procurement, including the global wars from 2001 to the present. More than ever before, we live in a global world. We make war with the support of private contractors, and we have new government contracting law to deal with these challenges. This book has the needed chapter on government and contractor workforce, recognizing how developments reflect how much more they matter, with so much more procurement of services, rather than goods, and close oversight by government employees of what contractors provide. The 2000s shook up the government workforce issue, with the struggles over whether the defense and homeland security employees would be organized as in the past. And, the book has the contemporary chapter on government breach and takings, subjects more emphasized these days, in the wake of Winstar, than hitherto.

With these new lines of practice and so many new subjects, the book’s cases have had to catch up to the present. A large majority of the book’s cases come from the last decade or two. Whenever possible, the book has traded in older in favor of more recent cases. Among other benefits, this increases the likelihood that the cases will discuss a context familiar to the students of this generation. For example, almost none of this book’s cases that relate to wartime procurement relate to the experience of past generations with World War II, the Korean War, the Vietnam War, or even the Persian Gulf War. The war-related cases have to do with the Iraq and Afghanistan wars. Very few of the cases in this book that relate to regulations, stop with the versions of the regulations before the Federal Acquisition Regulation (FAR) of 1984. These fresh cases focus on the implementation and evolution of the FAR and successor waves of regulations as the new development.

Does this mean that those who taught the predecessor volume must throw out their whole set of notes for their government contracting course and start all over from scratch when planning how to teach from this book? Of course not. The book has continuity for the core subjects of the government contracting curriculum. Those continuing basics include the limited authority of officials, competition, negotiated procurement, and protests of awards. So too do the basics continue of the core of contract types and administra-
tion, changes, claims, small businesses and subcontracts, and disputes. Termination for convenience and for default are as they were.

As to these subjects, this book uses fresh cases in place of those from decades ago, and delves into new aspects that have replaced old ones. But, those who taught the predecessor volume will have no unnecessary difficulty teaching the core of their course using the new one. Moreover, they will find their load lightened by their not having to supplement the book with explanations of what has changed in the years since the 1980s, the 1990s, or even the early 2000s.

As for the two authors, Charles Tiefer, Professor at University of Baltimore Law School, annually teaches a course in government contract law. He served as General Counsel (Acting), Deputy General Counsel, and Solicitor of the U.S. House of Representatives in 1984–95. In 2008–11, he served as Commissioner on the Commission on Wartime Contracting in Iraq and Afghanistan, a full-time federal commission created by Congress. He participated in its 25 televised hearings and major reports that delved deeply into state-of-the-art procurement issues.

William Shook is senior partner in the government contracting firm of Shook Doran in Washington, D.C. He came to that position after serving from 1979 through 1985 on various congressional investigations committees that focused on government contracting procedures and abuses. Since then, his practice has been at the cutting edge in fast-evolving areas such as commercial contracting and intellectual property. He lectures across the country regarding government contract law. It has been an effective, thought-provoking, and pleasant collaboration, with one party bringing the academic perspective, and the other, successful and extensive experience with a broad range of issues in practice.

Professor Tiefer acknowledges the assistance of his colleagues at the University of Baltimore Law School with whom he has had valuable discussions of the work, including: Dean Phillip J. Closius, who has inspired the school’s intellectual flowering; former deans Gil Holmes and John Sebert; the current Acting Dean, Michael Higginbotham; and associate deans John Lynch, Jane C. Murphy, and Donald Stone, each of whom encouraged scholarship in many ways that made the book possible. A special thanks goes to Dean Closius and Associate Dean Lynch, who willingly supported the years of leave at the Commission and also provided the supportive welcome back.

Also providing valuable help were colleagues: Michael Meyerson, Steve Shapiro, and Fred Brown, who sat in on course sessions and gave important advice on their improvement; and Barbara Babb, Dick Bourne, Steve Davison, Eric Easton, Garrett Epps, Robert Lande, Audrey MacFarlane, Lynn McLain, Arnold Rochvarg, Rob Rubinson, Elizabeth Samuels, Mortimer Sellers, Amy Sloan, Angela Vellario, and Barbara White, all of whom gave advice and support over the years of development. Unique help came from his sister, Dr. Leonore Tiefer, whose own best-selling books, and internationally well-received talks, on sexual psychology, alas, could only have some of their aspects of interest smoothly melded into this book.

Principal credit for the skilled word processing on the book, including the patient massaging of countless very raw sources into polished form, goes to Mary Heywood Peterson. Also helping have been Will Tress, Robin Klein, Harvey Morrell, Robert Pool, and Elizabeth Rhodes, who miraculously retrieved library and computer resources, often from the most unexpected and inaccessible sources. And much help came from the students of government contracting law classes, who cheerfully learned the subject from predecessor materials and whose diplomatic yet urgent requests for improvement in those materials spurred the book’s progress. A series of top-flight, creative, hard-working research assistants did high-quality work on the book, including Myshala Middleton, Melissa Gold-
meier, and Michele Reichlin, and, including Aidan Smith who did deep research and superb work for the health care chapter.

Helping in countless ways were his wife, Hillary Burchuk, who lent tremendous strength of character, and her own insights into the workings of government and business from her years in advanced practice in both public and private sectors. This book could only be done with major support for Commissioner Tiefer on his wartime contracting commission, and the burden of that support fell heavily on Hillary’s ability to juggle her own challenging legal career, the care of our two boys, and all the rest of the household load for three long years, especially during the trips to Iraq and Afghanistan. She also gave wise counsel, both for the Commission and for the book, from her own years as a Justice Department trial lawyer. Also contributing were two promising young authors: Max David Tiefer, twelve, whose skills at creative writing and moviemaking inspired the better passages of this book; and Roy Bernard Tiefer, nine, whose exceptionally high level of reading interests kept the household’s attention on the goal of quality writing.

Keith Sipe and Linda Lacy at Carolina Academic Press provided a high level of enthusiasm and professional counsel in getting the book to completion. They helped to visualize the book when it was only a thought in the minds of the authors, and generously used their own confidence and experience to bring it forth. The book’s editors, especially Tim Colton, took the raw manuscript material and brought it to a high polish.

William Shook acknowledges the significant help, by his forebearance, of Stratton Shook, who somewhat willingly agreed to excuse his father from various duties; whose ability to excel in college and in learning abroad, and in commencing his career have been a source of constant inspiration and pleasure. William Shook also acknowledges the enormous contribution of his wife, Teri, whose boundless energy for adventure, and whose own challenging career as a government contractor, provide a world of inspiration.

And he recognizes the help of his colleague, Kelly Doran, who youthful professionalism helps keep him grounded in frontline happenings.

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