

Legal Research Toolkit

Introduction

Research is a necessary step in generating an informed and professional opinion. [Westlaw](#) and [LexisNexis](#) oftentimes can do most of the heavy lifting, but if you want to be a specialist and become an expert in procurement law it is necessary to understand the theory behind procurement policies and laws. Having a standardized approach for addressing legal procurement questions can help you provide guidance on even the most challenging procurement issues.

This Toolkit will offer a framework for how to tackle a legal procurement question along with several legal research strategies to assist you in arriving at an informed and professional opinion. In addition, it will discuss some key resources for you to use to become more knowledgeable in the area of procurement law.

Steps for Every Legal Procurement Question

While every legal procurement question will present its own unique challenges, there are a few basic steps that you can take to tackle even the most nuanced legal procurement questions. The first step would be to see if your state's procurement code applies to the question at hand. This is a great starting point for locating applicable statutory law. Next, you would want to consider other constraints or rules beyond your state's procurement code. For example, depending on the procurement, there might be relevant federal regulations, or you might need to consider if there are any agencies involved that have delegated procurement authority. Lastly, you may consider looking at how similar legal procurement issues have been decided outside of state procurement examples, such as in the private sector or at the federal level to see if there are any arguments or insights which would be useful to review.

1. Does your state's procurement code apply?

- What is the section that defines the application and relevant definitions?
- Are there any exemptions?

2. Are there other constraints or rules beyond your state's procurement code?

- Agency Authority
- Fiscal Law
- State Ethics Law
- US Constitutional Issues
 - » Due Process (protected property interest)
 - » Equal Protection
- Federal Law Issues
 - » Applicable grant laws that flow down
- Other – security interests, mortgages, sovereign immunity, etc.

3. Find at least one non-state authority on your issue.

Where to Start with Legal Research: 5 Strategies

Once you've completed the opening steps of your legal procurement research, there are five strategies for legal research. These approaches represent a structured methodology for you to employ in order to make sure you've covered all potential relevant considerations regarding your particular legal procurement question.

1. Scorched-Earth Review of Your Procurement Statute & Regulations

- The vast majority of the time there is a statute or regulation that directly addresses the question so you should search both state statutes and regulations for your keywords or phrases. You might also consider looking at prior versions of the relevant statute or regulations and determine if your provision is a model provision based upon the Model Procurement Code for State and Local Governments (hereafter known as the Model Procurement Code).

2. Find the Answer Sans Your Procurement Statute

- What would be the state-law answer to your procurement question if the procurement statute did not apply? Find the applicable case law, attorney general's opinion, etc.

3. Find the Contract Law Answer

- What would be the contract-law answer without the procurement code?
 - » Irrevocable bid v. UCC firm offer rule v. Common law offeror-master-of-the-offer rule
 - » Notice of award v. Officer-acceptance-contract formation
 - » Responsiveness v. Meeting of the minds

4. Find the Federal Procurement Law Answer

- There are plenty of situations where state procurement law is based on federal procurement law so it's useful to compare your state's law on an issue with the applicable provisions in the Model Procurement Code and the Federal Acquisition Regulations. Below is a table of additional topics that illustrates the similarities and differences between the two.

Topic	Model or Model Regs	FAR
Rejection of Bid	R3-301.03	14.404
Multi-Year Contracts	3-503	17.103
Interagency Contracts	Article 10	17.502

5. Find the Policy Behind the Law

- The law is policy so understand the policy behind the law. There are several resources to help with this process:
 - » [Restatement of the Law Second, Contracts](#)
 - » [Desiderata: Objectives for a System of Government Contract Law¹](#)
 - » [Public Contract Law Journal](#)
 - » [ABA Model Code's Model Comments](#)
 - » [Federal Board of Contract Appeals Decisions](#)

4. Resources for Legal Research

It is a blessing and a curse that there are so many resources to utilize in legal procurement research. Starting your research with a few reliable high-quality resources and tools can go a long way in helping you use your time most efficiently. Here are some recommended resources to use when looking for specific kinds of information.

Attorney General Opinions

- Westlaw's Database of all the States' A.G. Opinions

Case Law – Generally

- Westlaw – Practices Areas – Government Contracts – Administrative Decisions & Guidance
 - » Select from District of Columbia Contract Appeals Board Decisions, Pennsylvania Board of Claims Decisions, or South Carolina Procurement Decisions
- Corpus Juris Secundum (C.J.S)
 - » 72 (Supp) C.J.S. Public Contracts
 - » 81A C.J.S. States > generally see only §§ 154 - 193

Case Law – Supplemental

- McQuillin, Law of Municipal Corporations
- American Law Reports (ALR) articles
 - » In the Index to Annotations, look for the entry titled Public Works and Contracts, which lists several pages of excellent articles on public contract issues

¹ Schooner, Steven L., Desiderata: Objectives for a System of Government Contract Law (May 19, 2011). Public Procurement Law Review, Vol. 11, p. 103, 2002, GWU Law School, Public Law Research Paper No. 37, Available at: <https://ssrn.com/abstract=304620> or <http://dx.doi.org/10.2139/ssrn.304620>.

Federal Procurement

- Westlaw
 - » Practice Areas – Government Contracts
- Federal Acquisition Regulations
 - » The Federal Register that promulgated a regulation will explain it
- Treatises
 - » Government Contract Awards: Negotiation & Sealed Bidding, by Steven W. Feldman (Thomson Reuters)[on Westlaw]
 - » Ralph C. Nash, Jr., John Cibinic, Jr., Christopher R. Yukins, Nathaniel E. Castellano, Formation of Government Contracts (5th ed.)
 - » John Cibinic, Jr., James F. Nagle, Ralph C. Nash, Jr., Administration of Government Contracts (5th ed.)
- Supplemental
 - » The Government Contracts Reference Book: A Comprehensive Guide to the Language of Procurement, 4th ed., by Ralph C. Nash, et al., Wolters Kluwer (a dictionary)

Protests, Contract Disputes, & Administrative Law

- Guide to State Procurement: A 50-State Primer on Purchasing Laws, Processes, and Procedures, 3d ed., Melissa Copeland, American Bar Association
- State and Local Government Procurement, by Danielle Conway, American Bar Association
- Administrative Law Treatise – Richard J. Pierce, Jr. – Aspen Publishers
- The Practitioner’s Guide to Suspension and Debarment, 4th ed., Frederic Levy and Michael Wagner, American Bar Association

Information Technology

- A Practical Guide to Software Licensing for Licensees and Licensors: Model Form and Annotations, 7th ed., H. Ward Classen, American Bar Association
- [AI-Powered Procurement: Harnessing AI’s Potential for More Efficient State Procurement Practices \(2024\)](#)
- [Capitals in the Cloud Part II: Changing the Cloud Conversation Volume 2 \(2023\)](#)

Along with the aforementioned sources of information, NASPO offers a number of professional development opportunities and resources to help you grow as an attorney with a particular focus on procurement knowledge.

- **NASPO**

- » Attorney Calls
- » [ProU Fundamentals on Procurement: 101, Ethics, Protests, etc.](#)
- » [Law Institute](#)
- » [Repository of State Practices \(RoSP\) Database](#)
- » [State Preference Database](#)
- » [Practical Guide and Supporting Resources](#)

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