## BOOK REVIEW

*The Legal Aspects of Public Purchasing*. By Kirk W. Buffington and Michael Flynn, Herndon, VA: National Institute of Governmental Purchasing, Inc, 2004. Price: $80.00.

Legal concepts are embedded in almost every aspect of public purchasing. At its essence, of course, the purchasing field is about contracts, and legal enforceability of public contracts is an important (though not the necessarily the most important) aspect of a successful public purchasing program. Quality, efficiency, integrity, customer service and effectiveness are equally important. Nonetheless, basic legal training in contract and bidding laws is an essential component of professional development for public procurement officials. NIGP is to be commended for including *The Legal Aspects of Public Purchasing* in its "LEAP" (Learning and Education to Advance Procurement) Text Writing Project. The authors' pairing of legal and purchasing expertise makes the work useful and practical. Despite some awkwardness in its organization and approach, this volume offers a good deal of important information and will be a useful reference.

There are several sections of this book that I think practitioners will find particularly useful. The summaries of key provisions of Article 2 of the Uniform Commercial Code (relating to the sale of goods) will be an excellent resource. While there are numerous treatises and legal publications dealing with this material in more detail (citations to some of these resources might have been a useful addition), descriptions in plain English and specific to the public purchasing context are hard to find. The material in this book will be a useful starting point for purchasers sorting through UCC issues and terminology.

Speaking of terminology, another excellent feature of this book is the comprehensive glossary in the back. Yet another helpful feature, is the "Organization of a Basic Contract" contained in Chapter 5 of the book. This clear and easily understandable section takes the reader through the basic elements of a typical contract and could be used to develop templates for commonly used contracts in purchasing. The overview of the ABA's Model Procurement Code is also a valuable and accessible resource for those who use the code as well as for those who may simply be looking for a template in developing their own procurement policies. The chapter on software contracts provides much useful detail on that subject – perhaps more than would be expected in a general law text. However the practical advice will be useful and much of it is applicable to other types of contracts.

The chapter on ethics seemed at first to be somewhat out of place in this text, especially the introductory section, which seemed overly academic in comparison with the rest of the book. Ethics is a topic much broader and in some ways distinct from legal aspects, as the author of this chapter points out. Its inclusion in the legal text, however, provides appropriate emphasis on the need to view legal compliance as a minimum, but not the ultimate standard. As it is sometimes framed the legal requirements are a floor, not a ceiling. The author states, "[T]he professional should not rely solely on whether or not an action is legal, but should determine what is right or wrong behavior." (p.122) In addition, the material setting out the purchaser's ethical obligations respectively to her employer, her supplier/vendor, and her profession is very well done and will provide a good framework for purchasing departments and trainers to use in explaining how to create an ethical environment. In my view, the public purchaser's most important obligation is to the general public. As the author notes, "In the final analysis, the tax paying public is best served when the individuals conducting the procurement process are capable of effectively, efficiently, and ethically executing their duties."

Writing about legal concepts for a lay audience is always challenging. It's often difficult to know how much detail to include and how much basic legal knowledge to assume in the reader. For the

most part, the authors have pitched it just right, though parts of the introductory chapter on the legal system probably provide more detail than most practitioners need, especially with regard to legal research. The book varies a bit in its approach to citation and source reference. Most chapters skip case citations and regulatory or statutory references and this is appropriate for a national, non-lawyer audience. When specific citations are used, it becomes more important to emphasize that case law and statutes vary from state-to-state, so leaving them out makes the book easier to read. The inclusion of citations in Chapter 5 came as a surprise given the approach in the rest of the book, but perhaps this reflects the different approach taken in the Eugent W. Massengale work from which it was drawn. Editorial consistency on this point might have been a better choice.

Finally, the book's organization is a bit confusing at times, as concepts are sometimes mentioned in multiple chapters without cross-reference. This may be a function of having multiple authors, but it can be confusing to the reader who may wonder whether they are indeed the same concepts being repeated, or concepts that are separately discussed because they are different. An index would have been a helpful addition, though the detailed table of contents provides an excellent guide for the reader who is interested in a particular topic.

It is certainly clear that legal issues in the public procurement field are here to stay. At a time when the term "no-bid contract" is regularly used by the media, and gifts and favors are bringing down major political figures, there is no doubt about the value of an accurate and accessible resources on purchasing law. NIGP and the authors of *The Legal Aspects of Public Purchasing* have provided such a resource.

Frayda S. Bluestein
Professor of Public Law and Government
School of Government
The University of North Carolina at Chapel Hill