Welcome to Legal Aspects of Public Procurement

NIGP’s foundation course *The Legal Aspects of Public Procurement* will be of interest to those who are substantially involved in the public procurement contracting process. Individuals who want to increase their understanding of both the capability and limitation of the law on government procedures will be responsive to the course content. In addition, this course will be beneficial to all who work alongside those in the public sector and must operate under the guidelines of procurement law for the successful acquisition of products and services. Please note that this course is intended to address US legal issues and may not meet the needs of those working outside the United States. The UPPCC certification exams do not contain questions about country-specific laws.

Course Objectives:
Upon successful completion of this course, participants will be able to:

- Identify and define public purchasing legal terms, concepts, and principles.
- Apply basic legal concepts and principles to practical public procurement situations.
- Describe how the three categories of law apply to public purchasing.
- Describe how the laws establish the rights and obligations of all parties.
- Describe the basic components of a common law contract.
- Describe the role of the public professional in the application of procurement and contract law.
- Distinguish between professionalism, ethics, and law and determine an approach to applying appropriate actions and conduct.

Textbooks and Materials:

Course Activities
This course will address various aspects of the law and procurement as presented in *The Legal Aspects of Public Procurement*. You will receive the link to the eBook when you register. Case studies and group activities will allow you to apply legal practices to common procurement activities.

Participants must work together in groups on many assignments for this course. You will be assigned to a group and work with your group members on weekly assignments. You will be responsible for contributing fully to your team’s outputs.
The course is organized by week. The due dates for assignments and discussion questions can be found in this syllabus. Each week usually contains:
- an assigned chapter of the textbook
- one or more supplementary articles
- a group activity
- discussion questions
- a self-assessment

The weekly self-assessment, based on terminology and concepts directly from the reading assignments, is a tool for you to gauge how much you have learned and is non-graded. It is highly recommended for those who are preparing for the UPPCC certification exam to pass each self-assessment.

You should complete the reading assignments first each week, and you may read ahead.

You will participate in full class discussions every week. You will respond to the instructor’s questions with a well thought out paragraph at minimum and make a substantial comments on one other response on the discussion board.

You must complete all the weekly assignments before taking the final assessment. It is expected that the final assessment will be completed in the final week of the course. If you require assistance with the timing of your final assessment, contact your instructor and NIGP (distancelearning@nigp.org) to make arrangements.

**Basis for Student Grading**
You will receive a grade of pass or fail. In order to pass, you must:
1. Achieve a score of 80% on threaded discussion participation
2. Work with your small group to complete the assignments
3. Achieve a score of 70% on the final exam
4. Achieve a score of 70% on all weekly self-assessments
5. Submit a course evaluation.

**Attendance Policy**
NIGP requires that all participants attend to all aspects of an eLearning course. This means that attendees collaborate with groups on all group assignments within the time frame of the course. All participants must also answer instructor-posed discussion questions within the time frame of the course. If a participant fails to show participation within the first week and has not responded to inquiries from the instructor and course moderators, it is assumed the participant has dropped the course. If you have any questions about your attendance or require assistance due to extenuating circumstances, please contact the instructor and NIGP (distancelearning@nigp.org) to discuss.

**Course Schedule**
Compare this course schedule to your personal and professional schedules to identify weeks with heavy workloads. While you cannot complete teamwork ahead of time, you
may want to read ahead. This schedule may be changed with prior notice at any time during the course.

**Week 1**
- Print and read this syllabus.
- Review the *Course Rules*.
- Participate in the whole class discussion via the Legal Introduction Week Threaded Discussion by selecting Reply. Introduce yourself with the requested information and share your perspective on how the law affects procurement activities.

**Week 2: The Essential Principles and Structure of the United States Legal System**

**Focus:** The first week’s reading contains the essential principles and structure of the United States legal system—the three types of law, the history of statutory law affecting public procurement, and legal precedents affecting statutory law.

**Objectives:**
1. Examine the basics of the U.S. Legal system.
2. Develop strategies to work together as a small team in a virtual environment.

**Read:**
- Text, Chapter 1: The Essential Principles and Structure of the United States Legal System
- Supplementary readings
  - *U.S. Department of Justice Anti-Trust Primer*—review and retain as a reference
  - *Open Records Supplement* (Richard Pennington)—read this as a supplement to page 9 in the textbook
- Total reading: 33 pages

**Activities:**
- Answer the discussion questions posted by the instructor and provide one substantial comment to another student’s answer.
- Complete the Group Roles Assignment. You have been added to a Legal Group discussion community (Legal Group 1, Legal Group 2, etc.). Work with other group members to establish a project leader for each week and complete the Group Roles Assignment. The Project Leader will Upload the completed assignment for the group to the Week 2 Upload question on myliNk.
- Independently complete the Week 2 self-assessment on terminology.
Week 3: Fundamentals of Procurement Law & Procurement Authority

Focus: This chapter focuses on public contract law.

Objective: The objective this week is to describe how statutory procurement law and other types of laws impact public procurement operations and the decisions of public procurement professionals.

Read:
- Text, Chapter 2: Fundamentals of Procurement Law & Procurement Authority and Chapter 8: Relevant Procurement Case Law, p. 168-170, “Under Law of Agency provisions, when does ‘implied authority’ constitute real authority in a contract for the purchase of goods under the U.C.C.?”
- Supplementary readings
  - Federal Laws and Their Relationship to Federal Funding (Richard Pennington)— read this as a supplement to p. 36 in the textbook.
  - Cooperative Procurement Supplement (Richard Pennington)—read this as a supplement to p. 31, 33, and 36 in the textbook.
  - Dillon Rule
- Total reading: 30 pages.

Activities:
- Answer the discussion questions posted by the instructor and provide one substantial comment to another student’s answer.
- Work with your group to complete The Law of Agency and the Types of Authority, the Case of the Battered Bleachers activity. Project Leader will upload the completed assignment to the Week 3 Upload question on myliNk.
- Independently complete the Week 3 self-assessment on terminology.

Week 4: Basic Components of a Common Law Contract

Focus: The basic components of contracting include the six essential elements needed to form a legal contract, conditions that could lead to a voidable contract, and the conditions for oral and written contracts.

Objective: The objective this week is to explain the basic elements of a contract in order to relate contract formation and performance law to "best practices" in procurement.

Read:
- Text, Chapter 3: Basic Components of a Common Law Contract and Chapter 8: Relevant Procurement Case Law, p. 153-154, “If a public entity’s governing board awards a contract to a bidder, can it subsequently rescind the award if a contract had not yet been executed?”
- Supplementary readings:
• Stevens & Wilkinson v. City of Columbia (Is an MOU a contract?)
• Contract Scope Supplement (Richard Pennington)—read this as a supplement to p. 52 in the textbook.
• Total Reading: 23 pages

Activities:
• Answer the discussion questions posted by the instructor and provide one substantial comment to another student’s answer.
• Work with your group to draft a short training on using Purchase Orders to enter into unilateral and bilateral contracts. Project Leader uploads the completed assignment to the Week 4 Upload question on myliNk.
• Independently complete the Week 4 self-assessment on terminology.

Week 5: The Uniform Commercial Code (Part 1)
NOTE: The Uniform Commercial Code (UCC) will be the topic of week 4 and 5.

Focus: Part 1 of the UCC topic will focus on contract formation: offer and acceptance, battle of the forms, parole evidence rule, statute of obligations, and warranties and obligations.

Objectives:
1. Describe the key contract formation issues.
2. Distinguish between expressed and implied warranties.

Read:
• Text, Chapter 4: The Uniform Commercial Code Part 1, p. 57-62, Chapter 8: Relevant Procurement Case Law, p. 164-165, “When does the ‘indefiniteness’ of a contract still constitute an enforceable contract?” and p.165-167, “When do additional terms on a Purchase Order represent an unenforceable, material change to the contractual relationship between buyer and seller?”
• Supplementary reading
  • Case summary - Aqualon Company v. Mac Equipment, Inc.
• Total Reading: 17 pages

Activities:
• Answer the discussion questions posted by the instructor and provide one substantial comment to another student’s answer.
• Work with your group to complete the activity “What about those on-line orders.” Project Leader uploads the completed assignment to the Week 5 Upload question on myliNk.
• Complete the Week 5 self-assessment on terminology.
Week 6: The Uniform Commercial Code (Part 2)

**Focus:** Part 2 of the UCC topic will focus on contract performance: inspection and acceptance, rejection and perfect tender rule, revocation of acceptance waiver, remedies, unconscionability, and substantial performance.

**Objectives:**
1. Apply the UCC rules about inspection, acceptance, and revocation of acceptance.
2. Describe the legal counsel's perspective of remedies under the UCC.

**Read:**
- Text, Chapter 4: The Uniform Commercial Code Part 2, pp. 63-78, Chapter 8: Relevant Procurement Case Law, p. 143-144, “Where there is an installment contract and one of the delivered installments contains defective goods, what are the Buyer’s rights?”; p. 162-164, “What happens when actual damages exceed the allowances specified for liquidated damages?”; and p. 167-168, “When can a Buyer rely on skill and judgement of the Supplier to invoke a warranty of fitness for a particular purpose under the U.C.C.?”
- Supplementary reading
- Total Reading: 21 pages

**Activities:**
- Answer the discussion questions posted by the instructor and provide one substantial comment to another student’s answer.
- **Work with your group** to complete the activity “Help the Lawyers Assess Legal Risk.” Project Leader uploads the completed assignment to the Week 6 Upload question on myliNk.
- Independently complete the Week 6 self-assessment on terminology.

**Week 7: The Legal Context for Formal Solicitations**

**Focus:** This week focuses on the importance of legal terms and conditions when developing formal bids and solicitations.

**Objective:** This week the objective is to explain how public procurement solicitations relate to the law of contracts. Additionally, we will describe the policies that deal with common issues in bids and proposals.

**Read:**
- Text, Chapter 5: The Legal Context for Formal Solicitations, Chapter 8: Relevant Procurement Case Law, p. 147-149, “Can a public entity award a contract to the apparent low bidder if this bidder fails to acknowledge an addendum as required in the bid specifications?” and p. 157-158, “In those
cases where the bid solicitation requires a bid bond,...different than the form required by the entity?”

Supplementary reading

• “Responsive or Not?” Richard Pennington. *Government Procurement*, Feb/March 2011

• Total Reading: 30 pages

Activities:

• Answer the discussion questions posted by the instructor and provide one substantial comment to another student’s answer.

• **Work with your group** to complete the assignment “Those pesky late and incomplete bids!” Project Leader posts uploads the completed assignment to the Week 7 Upload question on myliNk.

• Independently complete the Week 7 self-assessment on terminology.

**Week 8: Legal Considerations for Software Licensing and other topics**

**Focus:** This week examines the special problems with software licensing.

**Objective:** The objective for Week 8 is to identify special issues in software contracts.

**Read:**

• Text, Chapter 7: Legal Considerations for Software Licensing

• Supplementary work: View two video segments on software contracts and read *Procurement Planning for a Cloud Computing Environment* (Richard Pennington)

• Optional readings


  • *Modular Procurement and Agile Project Delivery* (Richard Pennington)

• Total Reading: 29 pages

Activities:

• Answer the discussion questions posted by the instructor and provide one substantial comment to another student’s answer.

• **Work with your group** to complete the activity “Negotiating Software Agreements.” Listen to the Webinar Segment on negotiating software contracts and then work with your group to select at least 5 clauses of the QuikCall Terms and Conditions that you would negotiate with the supplier. Provide a brief explanation for each. Project Leader uploads the completed assignment to the Week 8 Upload question on myliNk.

• Independently complete the Week 8 self-assessment on terminology.
Week 9: Ethics and Professionalism in Public Procurement

Focus: This final week examines the intersection of the law and ethics and why procurement officials need to maintain the highest level of ethical practice.

Objectives:
1. Distinguish between professionalism, ethics, and law.
2. Determine an approach to applying appropriate actions and conduct.

Read:
- Text, Chapter 6: Ethics and Professionalism in Public Procurement
- View video: Lawyers, Clients, and Opposing Counsel
- Supplementary reading:
  - “Colorado labor chief Ellen Golombek hiring longtime friend as consultant.” Denver Post, 2/04/2012
  - Virginia Conflict of Interest Act
- Total Reading: 39 pages

Activities:
- Answer the discussion questions posted by the instructor and provide one substantial comment to another student’s answer.

Week 10: Course Wrap-up
- Review the entire course and then complete the Final Assessment. One of the requirements for passing the course is a score of at least 70% on the final exam. If you do not receive a passing score on your first attempt, we recommend you review your results before taking the assessment a second time.
- Once you have achieved a passing grade, complete the online course evaluation which will enable you to print your certificate of completion.