

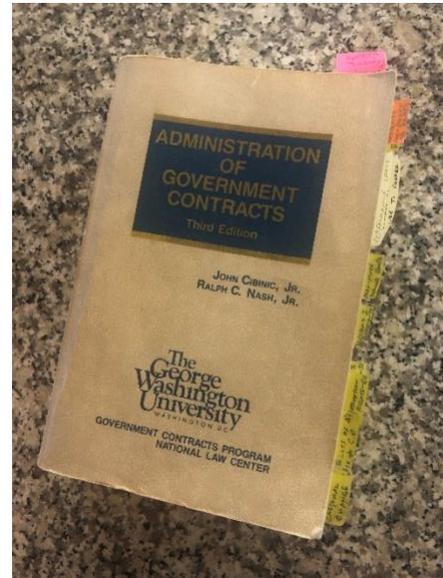
Construction Law Bible

Executive Summary. If you work for a public works construction contractor or you do construction management on public works jobs, *Administration of Government Contracts* by John Cibinic, Jr. and Ralph C. Nash, Jr. is the bible for governmental law. A very brief background from a construction professional, not a lawyer, is provided here on this key publication which should be on your bookshelf.

The bible. *Administration of Government Contracts* by John Cibinic, Jr. and Ralph C. Nash, Jr. is the book to have. Although it makes a great reference for case law for a lawyer's use, it's written in enough plain-speak that construction professionals can understand it too.

What's in this bible? The book is quite voluminous at 1,500 pages, however, I've gleaned a basic understanding and/or learned the origin of several items:

- Category I versus Category II differing site condition – one differs materially from conditions indicated in the contract (Category I) versus conditions differing materially from those ordinarily encountered (Category II).
- Origin of the contracting officer decision – this derives from case law, not the FAR.
- Contra proferentum – this is a risk allocation principle which favors the non-drafting party. In other words, whomever writes the contract takes responsibility for any vagueness.
- Reservation of rights – modification of the terms of a change order is often a sticking point with a contractor. A reservation of rights, even though crossed out by the contracting officer, was enforced in a case.
- Eichlaey formula – a calculation used to reimburse the contractor for additional expense related to home office overhead.
- Cardinal change – those changes beyond the scope of the contract as coined by the Court of Claims.
- Other – other topics for reading include document order of precedence, acceleration, site investigation, mistakes, concurrent delays, failure to investigate, quantum meruit, termination, liquidated damages, and many more.



Why do I care? This book costs \$165. Your lawyer costs twice that an hour. This book provides a good background and explanation on legal matters and at least gets you on the right track to a good offense, or defense, on issues. This can tell you what to do, or not to do, in many scenarios. However, the interpretation of this information and the real legal battling should be left to your lawyer.

My story. Early in my career, I was project manager on a large project that went legal in month two of the job. Several months in to the fighting I asked my lawyer for the bible



publication he recommended for jobs like the one we were. It was this publication by Cibinic and Nash. I've used the book in my career to help draft letters against owners and to better understand the legal concepts involved in technical and contractual job matters. And, I'll be honest, I've read this on a Friday night or two – it's an interesting read if you enjoy construction law.