

RESPONSIBLE OFFICE: L/Office of the Chief Counsel

SUBJECT: Requirements for Legal Review of Acquisition Matters

1. POLICY

Acquisition and other contractual matters that have legal implications should be reviewed by the Office of the Chief Counsel.

2. AUTHORITY

NPD 5101.1 Requirements for Legal Review of Procurement Matters

3. RESPONSIBILITIES

Since the acquisition function involves the preparation and negotiation of legal instruments, the Office of the Chief Counsel works closely with the Acquisition Management Office, and provides legal advice and assistance, whenever practicable, during every phase of the acquisition cycle. This assistance includes:

- A. Participation in acquisition strategy meetings and source selection presentations.
- B. Assisting in preparing, drafting, negotiating, and interpreting contracts, grants, cooperative agreements, and similar instruments, including statements of work and specifications.
- C. Advising program and procurement officials in the administration of contracts, grants, cooperative agreements, and similar instruments.
- D. Serving in an *ex officio* capacity to all Source Evaluation Boards/Teams/Committees.
- E. Rendering advice to all elements of the Acquisition Management Office. When a contract specialist desires a written opinion, a written request shall be submitted.

4. ACQUISITION MATTERS REQUIRING LEGAL REVIEW

- A. The following acquisition matters shall be submitted to the Office of the Chief Counsel for legal review prior to release or execution:
1. All solicitations, contracts, and amendments/modifications with an estimated value over \$500,000 (including the value of all options). Incremental funding documents are specifically excluded from this requirement. Irrespective of dollar value all proposed contracts for human research, personal services, or with foreign contractors shall be reviewed by the Office of the Chief Counsel; however, small purchases with foreign contractors need not be reviewed.
 2. Any action to be submitted to NASA Headquarters including the Office of Procurement and Office of the General Counsel.
 3. Justifications for Other than Full and Open Competition.
 4. Procurement related submissions to Congress, Congressional committees, individual Senators and Representatives, the Comptroller General, the Justice Department, Federal or State agencies, courts and other judicial tribunals, the Armed Services Board of Contract Appeals, or the NASA Contracts Adjustments Board.
 5. All responses to protests to the Contracting Officer, the agency, or the GAO, whether submitted directly to the protester or to NASA Headquarters, shall be reviewed and have concurrence of the Office of the Chief Counsel. All responses to GAO protests will be coordinated through the Office of the Chief Counsel to the Office of the General Counsel for response.
 6. Proposed rejection of bids; rejection or acceptance of mistake in bids; terminations; and other claims or requests for relief.
 7. Proposed actions, findings, or decisions on all claims submitted under the Contract Disputes Act shall be reviewed and have concurrence of the Office of the Chief Counsel. If the Acquisition Management Office does not agree with the Office of the Chief Counsel's suggested changes, attempts to obtain concurrence of

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the Office of the Chief Counsel shall be made prior to forwarding the proposed action to the Contractor. Whether or not agreement proves possible, the findings and decision are the ultimate responsibility of the Acquisition Management Office.

8. Correspondence and other communications that entail the interpretation of contractual provisions or other legal instruments, or otherwise involve matters of law. This includes cure notices, show cause letters, novitions, levies, and assignments.
 9. Proposed local procurement contract clauses, policies, procedures, instructions, and regulations; non-routine delegations of authority; contract forms and clauses; and proposed deviations from established acquisition policies, instructions, regulations, prescribed contract forms and clauses.
 10. Orders placed with other Government agencies for the acquisition of supplies or services which commit NASA resources, and any communications with such agencies on acquisition matters which have legal implications.
 11. Procurement matters involving intellectual property rights.
- B. Items A(2) and A(4) must be reviewed by the Office of the Chief Counsel prior to submission to NASA Headquarters and legal review may not be waived. For all other items the Office of the Chief Counsel may waive its review. Such waivers are within the discretion of the Office of the Chief Counsel; the Acquisition Management Office cannot exercise a waiver on its own. Where such discretion is exercised by the Office of the Chief Counsel, the item or file containing the item shall bear the notation "Not Reviewed by Legal Counsel".
- C. Requests for legal advice or review on intellectual property matters [inventions, reporting, ownership, etc., copyrights, trade secrets, proprietary data, use restrictions on data, computer licenses, non-disclosure agreements, etc.] involving acquisitions are to be referred to the Public Affairs, Commercialization, and Education Office for processing by the assigned Patent Attorney.

6. TIME OF LEGAL REVIEW

- A. The Office of the Chief Counsel will work closely with the Acquisition Management Office during the acquisition cycle. Except for emergencies, contractual documents requiring legal review will be submitted far enough in advance of the required action to accommodate an orderly and meaningful review. Contractual documents falling within the purview of this DPD will be formally reviewed after completion of all work by the Acquisition Management Office and immediately before submission to either the contractor or the Contracting Officer for execution. For internal documents other than contractual documents, the sequence of formal review will be as follows:
 - 1. For documents whose final approval lies within the Acquisition Management Office, the legal review will immediately precede the approving official.
 - 2. For documents whose final approval lies outside the Acquisition Management office, the legal review will immediately follow the review of the Procurement Officer.
- B. If the document is thereafter changed substantively, further review (either formal or informal) will be required. During the processing of any document, acquisition personnel are encouraged to involve legal personnel on an informal basis as problems/questions arise.
- C. Immediately upon receipt of a protest, or claim under the Contract Disputes Act, a copy will be provided to the Office of the Chief Counsel.

Electronically Approved by:
Center Director