



**LANGLEY
POLICY
DIRECTIVE**

**Directive: LAPD 2030.1 D
Effective Date: 11/08/2019
Expiration Date: 11/08/2024**

Responsible Office: Office of the Chief Counsel

Subject: Requirements for Legal Review of Acquisition Matters

1. POLICY

Acquisition and other contractual matters with legal implications are to be reviewed by the Office of the Chief Counsel (OCC). This policy centralizes requirements for legal reviews and establishes threshold levels for legal review where flexibility to do so is allowed.

2. APPLICABILITY

This policy is applicable to all civil servants at Langley Research Center.

3. AUTHORITY

- a. The National Aeronautics and Space Act, 51 U.S.C. § 20113(a).
- b. Federal Acquisition Regulation (FAR), 48 Code of Federal Regulations (CFR), 1.000-53.303.
- c. NASA FAR Supplement (NFS), 48 CFR 1801.000-1852.301.

4. APPLICABLE DOCUMENTS

- a. NPD 5101.1, "Requirements for Legal Review of Procurement Matters."
- b. NPD 2000.1, "Authority to Take Certain Actions for the General Counsel."

5. RESPONSIBILITIES

a. Office of Procurement (OP). In any case where OP personnel believe legal advice should be sought, regardless of thresholds, they are encouraged to seek legal review and consultation. The following review levels are required.

- (1) The following matters with an estimated value of \$2,000,000 or more:
 - (a) Solicitations (excluding FAR Part 13.5 solicitations).
 - (b) Awards (excluding FAR Part 13.5 awards).

(c) Modifications (excluding modifications dealing solely with incremental funding). The value of a modification is arrived at by adding any deductive value to any additive value, i.e. deleting \$1,500,000 of work and adding \$1,500,000 of work in a modification is a \$3,000,000 modification.

(d) Competitive Range Determinations.

(e) Source Selection Plans and Source Selection Statements.

(2) Justifications for Other than Full and Open Competition with an estimated value of \$700,000 or more.

(3) The following matters shall receive legal review whenever they occur:

(a) Procurement related submissions to Congress, Congressional committees, individual Senators or Representatives, the Comptroller General, The Justice Department, Federal or State Agencies (excepting NASA), Courts, or the Armed Services Board of Contract Appeals.

(b) Any termination of a contract.

(c) Any deviations or special clauses.

(d) Any action where the FAR or NFS requires legal review. For example:

(i) Ratifications of unauthorized commitments.

(ii) Whistleblower complaints filed by contractors.

(iii) Determinations that a contractor has not resolved Personal Conflict of Interest violations satisfactorily and situations where the Contracting Officer suspects violations by a contractor of provisions covering Personal Conflicts of Interest.

(iv) Closeout of contracts requiring receipt of a final patent report when such report is not received.

(v) Asserting any claim for breach of implied warranty.

(vi) Prior to taking contractual actions regarding penalties for defective certified cost or pricing data.

(vii) Any Determination and Findings (D&Fs), to include class D&Fs.

(viii) Personal conflict of interest, organizational conflict of interest, or improper business practice issues, to include any suspensions or debarment actions

- (ix) Situations where a contractor becomes an inverted domestic corporation or a subsidiary of one.
- (x) Proposed rejection or acceptance of a mistake in bid.
- (xi) Determinations regarding taking contractual actions concerning penalties for defectively certified cost or pricing data.
- (xii) Any determination to omit or limit the applicability of FAR 52.227-3, Patent Indemnity.
- (xiii) When notified that a contractor is filing a patent application on a classified matter.
- (xiv) When any question arises over the use of patented technology under the North American Free Trade Agreement.
- (xv) When there is receipt of invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information relating to patent rights clauses.
- (xvi) Optional usage of intellectual property clauses requiring patent counsel consultation or concurrence and Contracting Officer decisions regarding whether certain intellectual property clauses are to be included in particular subcontracts.
- (xvii) Whenever a contractor or subcontractor considers including a particular clause under FAR 27.3 in a subcontract to be inappropriate or a subcontractor refuses to accept inclusion of a clause in their subcontract.
- (xviii) On matters of delivery of limited rights data, restricted computer software, contractor claims of copyright, copyright licenses different in scope from that allowed in FAR 52.227-14, directing contractors to assert claim to copyright, issues of unauthorized marking of data or omitted or incorrect data rights markings.
- (xix) Bid guarantees, payment and performance bonds, acceptability of individual sureties, any bond secured with an interest in real property, or any substitution of assets pledged by an individual surety.
- (xx) Release of liens.
- (xxi) Tax issues.
- (xxii) Any question regarding the possible violation of criminal statutes.
- (xxiii) Issues of unclear title to government property under progress payments or performance-based payments.

- (xxiv) Responses to protests to the Contracting Officer, NASA, or the GAO.
 - (xxv) Prior to paying any recommended award of costs under a protest.
 - (xxvi) A claim to the Contracting Officer that cannot be settled by mutual agreement and a decision on the claim is necessary.
 - (xxvii) Assessing the extent of liability by the architect-engineer contractor for any modification to a construction contract required because of a possible error or deficiency in the services provided by the architect-engineer contractor.
 - (xxviii) When authorizing use of a personal services contract or in cases where the contracting officer is unsure if the action is a personal services contract.
 - (xxix) Determinations regarding severability of work and compliance with the Bona Fide Needs Rule.
 - (xxx) Determinations of non-availability of NASA personnel qualified to evaluate and analyze proposal submissions.
 - (xxxi) Utility services being obtained on a competitive basis.
 - (xxxii) When a contractor's certificate of final indirect costs is thought to be false.
 - (xxxiii) Bankruptcy of a contractor.
 - (xxxiv) Change of name of a contractor or novation of a contract.
 - (xxxv) Asserting a claim for damages under a termination for default.
 - (xxxvi) Any request for Extraordinary Contractual Actions, including any requests for indemnification. To include resolving any question on the applicability of FAR Part 33 as opposed to FAR Part 50.1.
- (4) Issues regarding patents, copyrights, or other intellectual property issues are to be coordinated with the Intellectual Property Law Team of OCC.
- b. OCC. As the contracting function involves the preparation and negotiation of legal instruments, the OCC works closely with the OP, providing legal advice and assistance whenever practicable during every phase of the contracting process. This assistance includes:
- (1) Participation in procurement strategy meetings, solicitation review boards, competitive range meetings, source selection presentations, and pre-negotiation review committees. Participation in solicitation review boards, competitive range meetings, and

source selection presentations are not to be considered a substitute for the reviews noted in 5.a.(1)(a), (d), and (e), above.

(2) Assisting in preparing, negotiating, and interpreting contracts, grants, cooperative agreements, and similar instruments, including statements of work and specifications.

(3) Advising program and procurement officials in the administration of contracts, grants, cooperative agreements, and similar instruments.

(4) Serving in an *ex officio* capacity to all Source Evaluation Boards or Teams.

(5) Providing advice whenever requested by any element of OP. When a written opinion is required or desired, a written request for such opinion should be submitted.

c. Legal review times.

(1) OCC will attempt to accomplish all standard reviews within five (5) business days from the date of receipt (actions received after 2 p.m. are not considered received until the next business day). Actual review time will vary depending on the complexity of the issues presented and workload. OCC will work closely with OP to prioritize the work and process actions in less than five (5) business days. Requests for expedited review [two (2) business days or less] must have a branch head or higher endorsement for the expedited review.

(2) If a legal review cannot be performed in five (5) business days [two (2) business days for expedited actions], the responsible attorney will coordinate with the OP point of contact to set a mutually acceptable due date.

d. Response to Legal Review.

(1) The legal review shall identify with specificity the legal issue(s) that must be resolved. It may also include recommendations based on business judgment.

(2) Contracting Officers shall document their response to each legal review comment provided by the Office of Chief Counsel. These responses will be attached to the legal review or included in that portion of the contract file containing the legal review. If a contracting officer is unable to resolve a specific legal issue identified within the legal review in a manner recommended within the legal review, the contracting officer will coordinate with the attorney who issued the legal review to evaluate alternative satisfactory approaches to resolving the issue.

6. DELEGATION OF AUTHORITY

None

7. MEASUREMENTS/VERIFICATION

None

8. CANCELLATION

LAPD 2030.1 dated February 11, 2014.

Original signed on file

Clayton P. Turner
Center Director

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