



Ames Policy Directive

APD 5101.1

Effective Date: September 27, 2017

Expiration Date: October 4, 2027

COMPLIANCE IS MANDATORY

Subject: Requirements for Legal Review of Procurement Matters

Responsible Office: Code DL / Office of the General Counsel at ARC

CHANGE LOG

Status [Baseline /Revision /Cancelled]	Document Revision	Date of Change	Description
Baseline	0	6/8/2009	New document
Revision	1	9/25/2017	Update and renewal of policy directive regarding legal review of procurement matters.
Revalidation	2	10/4/2022	Added threshold for review of justifications for other than full or open competition to greater than \$700,000; updated office titles; and formatted to comply with NPR 1400.1.

1. POLICY

- a. This directive summarizes the policy and responsibilities for seeking, and providing, legal advice and review of procurement matters. The Office of the General Counsel at ARC will review procurement matters that have substantive impact or that may expose the Center to substantial liability.
- b. **Waiver.** Submissions described under subparagraph 5d(2)(a) must be reviewed by the Office of the General Counsel at ARC prior to their submission to NASA Headquarters; this legal review may not be waived. For all other matters, the Office of the General Counsel at ARC may waive its review, either because the Acquisition Division so requests, or because the volume of work so induces. Such waivers are wholly within the discretion of the Office of the General Counsel at ARC; the Acquisition Division cannot invoke such a waiver unilaterally. Whenever the Office of the General Counsel at ARC exercises such discretion, the file containing the matter will bear the following notation, or its equivalent: "Not Reviewed by Counsel."
- c. **Timing.** The Office of the General Counsel at ARC will undertake formal review of contractual documents falling within the purview of this instruction only after completion of all work by the Acquisition Division 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) Whenever the final approval or execution lies within the Acquisition Division, review by the Office of the General Counsel at ARC will immediately precede the approving official's review.
 - (2) Whenever the final approval or execution lies outside of the Acquisition Division, review by the Office of the General Counsel at ARC will immediately precede the Procurement Officer's review.
- d. **Intellectual Property, Data Rights, Patents, and Copyright.** Requests for legal advice or review on intellectual property matters (e.g., inventions, copyrights, trade secrets, proprietary data, use restrictions on data, computer software (including software release goals--e.g., open source), and non-disclosure agreements) will be referred to, and processed by, the Ames Patent Counsel, who is also a member of the Office of the General Counsel at ARC (Code DL). The advice of the Ames Patent Counsel on such matters will be made a matter of record and set forth in the acquisition file. (See Matrix of Acquisition Cycle Matters Requiring Legal Review, attached hereto)

2. APPLICABILITY

- a. This APD is applicable to ARC and associated facilities (e.g., contractor's facilities).⁹]
- b. This APD applies to civil servants at ARC and to contractors, grant recipients, and parties to agreements to the extent specified or referenced in the contracts, grants, or agreements.
- c. In this directive, all mandatory actions (i.e., requirements) are denoted by statements containing the term "shall." The terms "may" or "can" denote discretionary privilege or permission, "should" denotes a good practice and is recommended, but not required, "will" denotes an expected outcome, and "are/is" denote descriptive material.
- d. In this directive, all document citations are assumed to be the latest version unless otherwise noted.

3. AUTHORITY

- a. NPD 5101.1, Requirements for Legal Review of Procurement Matters

4. APPLICABLE DOCUMENTS AND FORMS

None.

5. RESPONSIBILITY

- a. The Office of the General Counsel at ARC shall work with, and provide legal advice and assistance to, representatives of the Acquisition Division throughout the procurement cycle, including:
 - (1) Advising on the preparation, negotiation, and interpretation of solicitations (including statements of work and specifications), contracts, grants, cooperative agreements, and similar instruments.
 - (2) Providing advice regarding the administration of contracts, grants, cooperative agreements, and similar instruments.
 - (3) Serving as ex officio members on all Source Evaluation Boards as well as on all Source Evaluation Teams and Committees for procurements that exceed \$2,500,000 in estimated value (including participation in any related Procurement Strategy Meetings and source selection presentations).
 - (4) Rendering informal advice or a formal opinion to the Acquisition Division.
- b. Contract Specialists/Contracting Officers are not required to submit actions that relate to procurements for Commercial Items under FAR Parts 12 or 13; Small Business Innovation Research procurements; NASA Research Announcements; and routine funding modifications -- all of which are hereby made exempt from mandatory legal review by the Office of the General Counsel at ARC. However, such review should always be sought whenever legal issues or other questions arise.
- c. Contract Specialists/Contracting Officers shall submit the following matters to the Office of the General Counsel at ARC for legal review and comment for the record, concurrence, or approval, as appropriate, prior to release or execution via written request submitted through his or her Branch Chief and routed to the Office of the General Counsel at ARC via arc-legal-office@mail.nasa.gov:
 - (1) Requests for a formal legal opinion.
 - (2) All of the following, regardless of the value:
 - (a) Actions described in subparagraphs 5a(1) through (3) and 5c(2) through 5c(6) hereof that are to be submitted to NASA Headquarters for approval, execution, or further action.
 - (b) Proposed contract clauses.
 - (c) Proposed procurement policies, procedures, instructions, regulations, deviations therefrom, delegations of authority, and contract forms -- when the Code JA Policy Officer determines legal review is required on these actions.
 - (d) Submissions to Congress, Congressional Committees, individual Senators and Representatives, the Comptroller General, the Office of Management and Budget, the Department of Justice, Federal or State agencies, courts and other judicial tribunals, and administrative boards, including the Armed Services Board of Contract Appeals and the NASA Contract Adjustment Board.
 - (e) Actions that affect the public, including notices of, and responses to, protests of all types; rejections of bids or offers; mistakes in bid; cure or show cause notices; novation; change-of-name agreements; levies; contract terminations (whether for default or for convenience, or through cancellation or rescission); and other claims or requests for relief, including claims

submitted under the Contract Disputes Act ("CDA"). (The Acquisition Division shall immediately notify the Office of Chief Counsel of any protest or any CDA claim.)

(f) Actions related to litigation under the CDA, including findings, decisions, and appeals, including all pertinent documents and summaries of anticipated testimony of all Government witnesses; and notifications to courts, boards, contractors, and interested parties.

(g) Correspondence and other communications with contractors, their counsel, or other interested parties that interpret contractual provisions, legal instruments, commit the Government, or otherwise involve questions having legal implications.

(h) Requests for indemnification.

(i) Solicitations and contracts for human research, animal research, personal services, or consulting services.

(j) Justifications for other than full and open competition greater than \$700,000.

(k) Procurement matters involving intellectual property rights, questions, and/or issues.

(3) All of the following if the value is greater than \$1,000,000:

(a) Orders placed with other Government agencies for the procurement of supplies or services that commit NASA, and any significant communications with such agencies on procurement matters.

(4) All of the following if the value is greater than \$2,500,000:

(a) Solicitations (including statements of work and specifications), determinations, evaluations, selections, contract awards, modifications, and other substantive procurement and/or contract actions -- excluding, however, routine funding modifications, and those actions listed in subparagraph 5c(5) hereof (i.e., excluding the listed FAR Part 14 "Sealed Bidding" actions valued at \$10,000,000 or less).

(b) Cooperative agreements, grants, and letter contracts.

(5) All of the following if the value is greater than \$10,000,000:

(a) Solicitations, selections, and awards issued under FAR Part 14.

(6) All of the following if the value is greater than \$25,000,000:

(a) Acquisition plans.

(b) Pre-negotiation plans.

Note: The preceding list of matters that require legal review does not suggest that Acquisition personnel should not seek legal review in other instances whenever legal issues or other questions arise. For example, Acquisition personnel should seek legal review whenever legal issues or other questions arise regarding eligibility for "Commercial Item" status under Parts 12 or 13 of the Federal Acquisition Regulation ("FAR"), the applicability of export laws, or the Buy American Act.

6. DELEGATION OF AUTHORITY

None.

7. MEASUREMENT/VERIFICATION

- a. Verification of conformance to requirements in this directive are measured through Center and Responsible Organizational management reviews, self-assessments, and subsequent analysis and reports of conformance to requirements, as well as periodic internal audits.

8. CANCELLATION

- a. APD 5101.1, Requirements for Legal Review of Procurement Matters, dated June 8, 2009.

Eugene Tu
Director

DISTRIBUTION:

Internal and external distribution.

ATTACHMENT A. MATRIX OF ACQUISITION CYCLE MATTERS REQUIRING LEGAL REVIEW

Note: Procurements for Commercial Items under FAR Parts 12 or 13; Small Business Innovation Research procurements; NASA Research Announcements; and routine funding modifications are exempt from mandatory legal review by Office of the General Counsel at ARC.

DOCUMENT	ALL	>\$1M	>\$2.5M	>\$10M	>\$25M	EXEMPT
Actions described in subparagraphs 5a(1) through (3) and subparagraphs 5c(2) through 5c(6) of this APD that are to be submitted to NASA Headquarters for approval, execution, or further action.	X					
Proposed contract clauses.	X					
Proposed procurement policies, procedures, instructions, and regulations, and deviations therefrom, delegations of authority, and contract forms -- when the Code JA Policy Officer determines legal review is required on these actions.	X					
Submissions to Congress, Congressional Committees, individual Senators and Representatives, the Comptroller General, the Office of Management and Budget, the Department of Justice, Federal or State agencies, courts and other judicial tribunals, and administrative boards, including the Armed Services Board of Contract Appeals and the NASA Contract Adjustment Board.	X					
Actions that affect the public, including notices of, and responses to, protests of all types; rejections of bids or offers; mistakes in bid; cure or show cause notices; novation; change-of-name agreements; levies; contract terminations (whether for default or for convenience, or through cancellation or rescission); and other claims or requests for relief, including claims submitted under the CDA. (The Acquisition Division shall immediately notify the Office of Chief Counsel of any protest or any CDA claim.)	X					
Actions related to litigation under the CDA, including findings, decisions, and appeals, including all pertinent documents and summaries of anticipated testimony of all Government witnesses; and notifications to courts, boards, contractors, and interested parties	X					

DOCUMENT	ALL	>\$1M	>\$2.5M	>\$10M	>\$25M	EXEMPT
Correspondence and other communications with contractors, their counsel, or other interested parties that interpret contractual provisions, legal instruments, commit the Government, or otherwise involve questions having legal implications.	X					
Requests for indemnification.	X					
Solicitations and contracts for human research, animal research, personal services, or consulting services.	X					
Justifications for other than full and open competition greater than \$700,000.	X					
Procurement matters involving intellectual property rights, questions, and/or issues.	X					
Orders placed with other Government agencies for the procurement of supplies or services that commit NASA, and any significant communications with such agencies on procurement matters.		X				
Solicitations (including statements of work and specifications), determinations, evaluations, selections, contract awards, modifications, and other substantive procurement and/or contract actions -- excluding, however, routine funding modifications, and those actions listed in subparagraph 5.1 (d) of this APD.			X			
Cooperative agreements, grants, and letter contracts.			X			
Solicitations, selections, and awards issued under FAR Part 14.				X		
Acquisition plans.					X	
Pre-negotiation plans.					X	
Procurements for Commercial Items under FAR Parts 12 or 13, Small Business Innovation Research procurements, NASA Research Announcements, and routine funding modifications.						X