



**ARMSTRONG
FLIGHT POLICY
DIRECTIVE (AFPD)**

**Directive:
Effective Date:
Expiration Date:**

**AFPD-5101.1-001B-8
September 2, 2020
September 2, 2025**

Compliance is mandatory.

SUBJECT: Requirements for Legal Review of Acquisition Matters (with Admin Changes dated September 2, 2020)

RESPONSIBLE OFFICE: Office of the Chief Counsel

1. POLICY

a. This directive establishes policy for Armstrong Flight Research Center (AFRC, hereinafter referred to as "Center") for which acquisition and other contractual matters that have legal implications will be reviewed by the Office of the Chief Counsel. The following acquisition actions will 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). Routine incremental funding documents are specifically excluded from this requirement.

(2) All proposed contracts for human research, personal services, or with foreign contractors irrespective of dollar value.

(3) Any procurement action submitted to National Aeronautics and Space Administration (NASA) Headquarters, including the Office of Procurement and Office of the General Counsel.

(4) Justifications for Other than Full and Open Competition with an estimated value above the simplified acquisition threshold.

(5) Procurement related submissions to Congress, Congressional committees, individual Senators or Representatives, the Comptroller General, the Justice Department, Federal or State agencies, courts and other judicial tribunals, and the Armed Services Board of Contract Appeals.

(6) All responses to protests to the Contracting Officer, the agency, or the General Accounting Office (GAO), whether submitted directly to the protester or to NASA Headquarters.

(7) Proposed rejection of bids, rejection or acceptance of mistake in bids, terminations, and other claims or requests for relief.

(8) Proposed actions, findings, or decisions on claims submitted under the Contract Disputes Act. Concurrence of the Office of the Chief Counsel will be made prior to forwarding the proposed action to the Contractor.

(9) Correspondence and other communications that entail the interpretation of contractual provisions or other legal instruments, or otherwise involve matters of law including cure notices, show cause letters, novations, levies, and assignments.

(10) 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.

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Before use, verify that this is the current version.

- (11) Agreements for the acquisition of supplies or services with other Government agencies which commit NASA resources, and any communications with such agencies on acquisition matters that have legal implications.
- (12) Procurement matters involving intellectual property rights.
- b. Items 1. a. (3) and 1. a. (5) will 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 choose to 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 will 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 Office of Strategic Communications Innovative Partnerships Program for processing by the assigned Patent Attorney.
- d. 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.
- e. Contractual documents falling within the purview of this directive 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 is 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.
- f. If a document that has been reviewed by the legal office is to be changed substantively, further coordination between legal and acquisition personnel (either formal or informal) will be required.
- g. Immediately upon receipt of a protest or claim under the Contract Disputes Act, the Acquisition Management Office will provide a copy to the Office of the Chief Counsel.

2. APPLICABILITY

- a. This directive is applicable to all Center employees who are responsible for documenting, reviewing, coordinating, and approving acquisition and other contractual matters that have legal implications, including those of Component Facilities, Technical and Service Support Centers, and Jet Propulsion Laboratory (a federally-Funded Research and Development Center) only to the extent specified or referenced in the applicable contracts, grants, or agreements. It applies to items listed in section 1 of this document. Only the Chief Counsel can waive the review process as described in item 1. b.
- b. In this directive, all mandatory actions (i.e., requirements) are denoted by statements containing the term "shall." The terms "may" denotes a discretionary privilege or permission, "can" denotes statements of possibility or capability, "should" denotes a good practice and is recommended, but not required, "will" denotes expected outcome, and "are/is" denotes descriptive material.
- c. In this directive, all document citations are assumed to be the latest version unless otherwise noted.

3. AUTHORITY

NPD 5101.1 Requirements for Legal Review of Procurement Matters.

4. APPLICABLE DOCUMENTS AND FORMS

None

5. RESPONSIBILITY

a. Legal Counsel shall:

- (1) Participate in acquisition strategy meetings and source selection presentations.
- (2) Assist in preparing, drafting, negotiating, and interpreting contracts, grants, cooperative agreements, and similar instruments, including statements of work and specifications.
- (3) Advise program and procurement officials in the administration of contracts, grants, cooperative agreements, and similar instruments.
- (4) Serve in an ex officio capacity to all Source Evaluation Boards/Teams/Committees.
- (5) Render advice to all elements of the Acquisition Management Office when a written request for an opinion is submitted through the Procurement Officer.

b. Procurement officers and employees handling procurement matters are responsible for:

- (1) Competency in policy, procedures, and practices pertaining to acquisition matters.
- (2) Ensuring Legal Counsel is consulted during all phases of documenting, reviewing, coordinating, and approving acquisition matters in accordance with this Directive and other NASA policies.

6. DELEGATION OF AUTHORITY

None

7. MEASUREMENT/VERIFICATION

None

8. CANCELLATION

None

Original signed by:

/S/ Patrick Stoliker for David McBride Dated 03/10/10

DISTRIBUTION:

Approved for release via the Document Library

Attachment A, Definitions

Agency-level Directive. A NASA directive with Agency-wide applicability; i.e., NASA Policy Directives (NPDs), NASA Procedural Requirements (NPRs), and NASA Interim Directives (NIDs).

Attachment B, Acronyms

AFRC	Armstrong Flight Research Center
GAO	General Accounting Office
NASA	National Aeronautics and Space Administration
NPD	NASA Policy Directive
NPR	NASA Procedural Requirements

Attachment C, Requirement Verification Matrix

PARAGRAPH	REQUIREMENT	COMPLIANT	NON-COMPLIANT
5.a.(1)	Legal Counsel shall: Participate in acquisition strategy meetings and source selection presentations.	<input type="checkbox"/>	<input type="checkbox"/>
5.a.(2)	Legal Counsel shall: Assist in preparing, drafting, negotiating, and interpreting contracts, grants, cooperative agreements, and similar instruments, including statements of work and specifications.	<input type="checkbox"/>	<input type="checkbox"/>
5.a.(3)	Legal Counsel shall: Advise program and procurement officials in the administration of contracts, grants, cooperative agreements, and similar instruments.	<input type="checkbox"/>	<input type="checkbox"/>
5.a.(4)	Legal Counsel shall: Serve in an ex officio capacity to all Source Evaluation Boards/Teams/Committees.		
5.a.(5)	Legal Counsel shall: Render advice to all elements of the Acquisition Management Office when a written request for an opinion is submitted through the Procurement Officer.	<input type="checkbox"/>	<input type="checkbox"/>

Document History Log

This log is for informational purposes and does not have to be retained with the document.

Baseline, 01/20/99**Revision A, 10/05/04**

- Revalidation

Admin Change, 11/18/04

- Added "Compliance is mandatory" to first page.

Admin Change, Revision A-1, 07/23/09

- Added serial number to document name. Name changed from DPD-5101.1 to DPD-5101.1-001. The content did not change

Revision B, 03/10/10

- Specified estimated value in a.4, page 1.
- Changed PAO to Office of Strategic Communications Innovative Partnerships
- Changed 5.a.5 from contract specialist to Procurement Officer

Admin Change, Revision B-1, 07/13/10

- Formatted to comply with Agency standards. The content did not change

Revalidate w/admin change B-2, 02/26/15

- Paragraph 1.a.(4) changed Justifications for Other than Full and Open Competition with an estimated value over \$100,000 to Justifications for Other than Full and Open Competition with an estimated value above the simplified acquisition threshold.

Revision B-3, 08/04/17

- Admin change
- Updated Revision B-2 to Revision B-3
- DPD-5101.1-001 renumbered to AFPD-5101.1-001 in accordance with Center instruction.

Revision B-4, Admin Change, 06/05/18

- Admin change
- Changed measure in Section 7: MEASUREMENTS to "None."

Revision B-5, Admin Change, 02/18/20

- Admin change
- Extended expiration date March 1, 2020 to September 1, 2020

Revision B-6, Admin Change, 08/19/20

- Document extension

Revision B-7, Admin Change, 09/02/20

- Updated section headers to align with NPR 1400.1 revision
- Removed "shall" statements from section 1. POLICY

Revision B-8, Admin Change, 07/07/21

- Added Attachments A, B, and C.