



# TMA Legal Review Policy Briefing

April 2012



# Agenda

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- Purpose of Legal Review
- Legal Review Policy
- Actions Requiring Legal Review equal to or greater than \$6.5 million
- Actions Requiring Legal Review Regardless of Dollar Value
- Actions Not Requiring Legal Review
- Legal Review Procedures
- Summary
- Legal Review References
- Questions

# Purpose of Legal Review

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- A legal review is conducted by legal counsel to advise the contracting office whether the planned action and/or issue is in compliance with general and specific legal requirements prior to reaching an agreement and/or executing a contract action.
- A legal review is intended to be advisory in nature.
- The ultimate goal of legal review is to ensure that TMA contract actions and/or issues associated with contracts meet legally sufficient standards and are legally defensible.

# Legal Review Policy

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- TMA Legal Review policy and related guidance includes:
  - TRICARE Acquisition Directive (TAD) 01-05, Legal Review
  - TMA PGI 201.602 – Legal Review
- The purpose of this policy is to consolidate TMA guidance on when Legal Review of a contract action is required.
- Legal Reviews identify and mitigate legal risks during the acquisition lifecycle. The policy applies to all members of the TMA acquisition workforce that participate in the procurement of supplies/and or services.
- **Director/Chief of the Contracting Office**, with guidance from legal counsel, may establish a legal review threshold less than \$6.5 million (absolute value) for those actions identified in the Directive for their local contracting office.
- **Contracting Officers**, with assistance from the Contract Specialists, initiates the legal review with legal counsel.
- **Legal Counsel** is responsible for conducting the legal review.

## Actions Requiring Legal Review equal to or greater than \$6.5 million

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- Solicitations and amendments to solicitations (except administrative amendments);
  - Contract awards;
  - Contract modifications (except administrative modifications and certain modifications); and
  - Contract actions and/or issues identified in TMA PGI 201.602-2(c).
- The Acquisition Strategy;
  - The Acquisition Plan;
  - J&A for other than full and open competition;
  - The Source Selection Plan;
  - The competitive range determination
  - Requests for final proposal revisions;
  - Evaluation reports; and
  - Any source selection documents, as deemed appropriate by the CO and/or the Source Selection Authority.

Legal review may be obtained, at the discretion of the CO or Director/Chief of the Contracting Office, whenever there is potential for legal issues to arise, regardless of the dollar value of the acquisition.

## **Actions Requiring Legal Review Regardless of Dollar Value**

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- Contracts awarded to other than the low bidder when using sealed bid procedures;
- Mistakes in bid;
- Potential and/or Actual Organizational and Personal
- Conflicts of Interest;
- Protests;
- Claims;
- Disputes and Appeals;
- Terminations;
- Ratifications;
- Contractor bankruptcies;
- Resolutions of tax questions;
- Requests for equitable adjustment;
- Use of liquidated damages provisions; and
- Requests for extraordinary contractual relief under Public Law 85-804

Moreover, COs are responsible for obtaining legal review for all other contract actions and/or issues that require legal review in accordance with the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS).

# Actions Not Requiring Legal Review

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- Incremental funding modifications (increase in available funding without an increase in contract value);
- Modifications adjusting the contract price, in accordance with FAR 52.222-43 Fair Labor Standards Act and Service Contract Act ~ Price Adjustment (Multiyear and Option Contracts);
- Administrative amendments;
- Administrative modifications; and
- Pre-priced options exercised within the terms of the contract.

## Waiver

COs may request a legal review waiver from the Director/Chief of the Contracting Office, or designee, if they determine a legal review for a particular contract action and/or issue will not provide additional risk mitigation.

# Legal Review Procedures

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- Following determination that legal review is required, the CO shall:
  - Ensure that all requirements of law, executive order, regulation, policy and procedure are met;
  - Seek information from other COs or Contract Specialists related to the applicable legal issue;
  - Initiate the review with legal counsel;
  - Obtain a written statement of legal review, including a statement of legal sufficiency or insufficiency;
  - Request adjudication of non-concurrence, if necessary from the Director/Chief of the Contracting Office;
  - Document the decision and rationale, in writing, to concur or non-concur with the legal review;
  - Maintain documentation in the contract file.



# Summary

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- The TAD and PGI establish TMA policy and procedures for legal review of acquisition, contractual, and procurement related documentation.
- Contracting Officers should obtain legal advice from legal counsel during all phases of the acquisition lifecycle.
- The CO shall obtain legal review for all contract actions and/or issues as required by the Directive. The CO shall obtain a second legal review when a substantive change is made to a document after legal counsel has reviewed and determined the document to be legally sufficient.
- The CO shall document the outcome of the legal review in the contract file.
- The Director/Chief of the Contracting Office, or designee, shall have the authority to non-concur with a legal recommendation other than legal sufficiency or waive a legal review.

# Legal Review References

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- TMA Legal Review TAD  
(<http://tricare.mil/tma/ams/acqpolicyproc.aspx>)
- TMA Legal Review PGI  
(<http://tricare.mil/tma/ams/acqpolicyproc.aspx>)
- Public Law 85-804 (Requests for extraordinary contractual relief under Public Law 85-804)  
(<http://www.law.cornell.edu/cfr/text/48/52/250-1>)
- 52.222-43 Fair Labor Standards Act and Service Contract Act—  
Price Adjustment (Multiple Year and Option Contracts)  
([https://www.acquisition.gov/far/html/52\\_222.html#wp1148260](https://www.acquisition.gov/far/html/52_222.html#wp1148260))

# Questions

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- For questions related to Legal Review please contact the TMA AM&S Contract Policy and Pricing Branch:

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By email: [policyweb@tma.osd.mil](mailto:policyweb@tma.osd.mil)

