

TMA Procedures, Guidance, and Information (PGI)

TMA PGI 201 – FEDERAL ACQUISITION REGULATIONS SYSTEM

(March 5, 2012)

PGI 201.6 – Career Development, Contracting Authority and Responsibilities

PGI 201.602 Contracting Officers

PGI 201.602-2(c) Legal Review

- (1) TRICARE Acquisition Directive ([TAD](#)) 01-05 establishes TRICARE Management Activity (TMA) policy for requiring legal review.
- (2) Overview - The purpose of this policy is to 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.

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. A legal review is intended to be advisory in nature.

- (3) TMA requiring activities and program offices are responsible for requesting and obtaining legal review of any proposed changes to TRICARE Manuals (e.g., TRICARE Operations Manual, TRICARE Policy Manual, TRICARE Reimbursement Manual, and TRICARE Systems Manual) prior to submission to the contracting office.
- (4) Contracting Officers (COs) should obtain legal advice from legal counsel during all phases of the acquisition lifecycle.
- (5) The following actions also require legal review at the dollar threshold identified in Section 4.1 TAD 01-05:
 - a. The Acquisition Strategy;
 - b. The Acquisition Plan;
 - c. The Justification and Approval for other than full and open competition;
 - d. The Source Selection Plan, and associated attachments;
 - e. The competitive range determination, approach to discussions, and questions and topic areas to be discussed;
 - f. Requests for final proposal revisions;
 - g. Evaluation reports; and

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- h. Any source selection documents, as deemed appropriate by the CO and/or the Source Selection Authority.
- (6) Regardless of dollar amount, 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, including, but not limited to those identified below:
- a. Contracts awarded to other than the low bidder when using sealed bid procedures;
 - b. Mistakes in bid;
 - c. All issues associated with potential and/or actual organizational and personal conflicts of interest;
 - d. Protests;
 - e. Claims;
 - f. Disputes and Appeals;
 - g. Terminations;
 - h. Ratifications;
 - i. Contractor bankruptcies;
 - j. Resolutions of tax questions;
 - k. Requests for equitable adjustment;
 - l. Use of liquidated damages provisions (except that liquidated damages for subcontracting plans do not require a legal review); and
 - m. Requests for extraordinary contractual relief under Public Law 85-804.
- (7) The CO shall obtain legal review for legal matters that may affect uniformity across a product line including, but not limited to the Managed Care Support contracts, Designated Provider contracts, and Dental Contracts.
- (8) A legal review is not required for:

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- a. Incremental funding modifications (increase in available funding without an increase in contract value);
- b. 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);
- c. Administrative amendments;
- d. Administrative modifications; and
- e. Pre-priced options exercised within the terms of the contract.

(9) COs may request a legal review waiver from the Director/Chief of the Contracting Office, or designee. COs may request a waiver if they determine a legal review for a particular contract action and/or issue will not provide additional risk mitigation. In order to waive legal review, the Director/Chief of the Contracting Office or designee must approve the request to forego legal review. The CO shall place the memorandum of record in the contract file.

(10) The package forwarded to legal should include, as appropriate, all necessary documents to support the contract action(s) and/or issue(s). For example, the actions and issues identified in paragraph 5 of this PGI may also be supporting documents for a solicitation or award.

(11) Following determination that legal review is required, the CO shall:

- a. Ensure that all requirements of law, executive order, regulation, policy and procedure are met;
- b. Seek information from other COs or Contract Specialists related to the applicable legal issue;
- c. Initiate the review with legal counsel;
- d. Obtain a written statement of legal review, including a statement of legal sufficiency or insufficiency;
- e. Request adjudication of non-concurrence, if necessary, from the Director/Chief of the Contracting Office.
 - i. If the CO requests adjudication of a non-concurrence, the Director/Chief of the Contracting Office, or his designee, shall:

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- (A) Review the documentation, including comments from the CO;
 - (B) Adjudicate the comments from the CO, with supporting rationale;
 - (C) Return adjudication to the CO for inclusion in the contract file; and
- f. Document the decision and rationale, in writing, to concur or non-concur with the legal review prior to:
- i. A Board of Review, in accordance with [TAD 01-02](#); and/or
 - ii. Reaching an agreement and/or executing the contract action or issue that prompted the legal review.
- g. Maintain documentation in the contract file, which may include:
- i. The original procurement package submitted to legal counsel;
 - ii. All legal recommendations, including requested changes;
 - iii. A statement of legal or non-legal sufficiency, if applicable;
 - iv. A written statement of non-concurrence, if applicable;
 - v. A written statement waiving legal review, if applicable;
 - vi. Any resubmissions to legal counsel;
 - vii. Final decisions or actions taken;
 - viii. Any waiver or non-concurrence requests, with written adjudications; and
 - ix. All supporting documentation, including attachments.