

**POLICY REGARDING
LEGAL REVIEW OF PROCUREMENT MATTERS
Effective December 1, 2002**

A. APPLICABILITY: These policies apply to the drafting, negotiation, review and approval of all contracts, Requests for Proposals¹ (RFPs), and other procurement documents by which goods and services are procured by AOC from non-governmental entities. (Agreements with governmental entities will be addressed in a separate policy.)

B. POLICIES

1. Legal Review and Approval²:

Most terms in an agreement combine both legal and commercial considerations. In larger transactions, legal review may address legal and commercial issues because both may present legal considerations and risk. Legal review may also entail advice about business concerns. Legal review and approval are required for certain transactions described in this policy. Legal review is also available upon request. Legal approval applies only to the particular contract, RFP, or other document that is reviewed and approved, which is not to be used for a subsequent transaction without further legal review and approval.

The process for obtaining legal review is as follows: after the initiating Division contacts Business Services concerning the desired procurement, Business Services determines whether legal review is required under AOC policy and, if review is required, Business Services contacts the OGC to arrange for such review. (As previously noted, legal review is also available upon request; a Division or Business Services may contact the OGC at any time concerning a procurement that is not subject to mandatory legal review.)

In cases where the reviewing attorney cannot approve a contract, RFP, or other document (for example, due to concerns about legal exposure or undue risk), the attorney will consult with OGC management. If concerns are not resolved, the matter will be reviewed with the Executive Office for decision.

2. Contract Execution:

¹ For purposes of this policy, the term "RFP" includes Invitations To Bid, Requests For Proposals, and other procurement documents referred to in the AOC's Policy and Procedure for Procurement of Goods and Services.

² "Legal Review and Approval" means review and approval by an authorized OGC attorney or outside legal counsel retained through the OGC.

All contracts for goods or services must be in writing. A contract must be executed (signed) prior to the start of work, except in urgent or emergency situations as approved by the Business Services Manager. In such exceptional circumstances, a contract must be signed within ten (10) business days of the start of work.

3. **Contract Amendments:**

All amendments to contracts must be in writing and signed by all parties.

4. **Timely Submittal for Legal Review:**

To ensure sufficient time for effective legal review, contracts, RFPs, and other documents should be sent to the OGC at the earliest opportunity and before the contract, RFP, or other document is sent to the bidders (or to the vendor in the event of sole sourcing). For RFPs and other complex documents, a minimum of ten (10) business days should be allowed for review. The actual amount of time required for legal review will depend on factors such as the nature and complexity of the transaction, and how soon the work is required. Once bids are received, a bidder's exceptions³ to the AOC contract terms should be sent to the OGC before discussions are held with the bidder regarding its exceptions.

When the contract value is \$1,000,000 or more or the contract involves high risk activities, the initiating Division must contact Business Services early in the planning process so that Business Services can arrange for legal review and so that the attorney, Business Services representative, and the Division's Project Manager may most effectively participate in the contracting process, including the drafting of the statement of work and/or specifications, establishing contract terms, preparation of the RFP, and negotiations.

C. REQUIREMENTS FOR LEGAL REVIEW AND APPROVAL OF PROCUREMENT DOCUMENTS

1. **Regardless of dollar value of the contract, if the transaction involves any of the following, legal review/approval is required to fully protect AOC's interests with regard to legal risk and exposure.**

- **High Risk Activities**

The contract involves high-risk activities.

- **Certain Proposed Terms or Provisions**

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³ "Exceptions" refer to a bidder's response that it will not accept some or all of AOC's proposed contract terms. Often a bidder will propose alternative terms.

(a) Indemnification:

1. Vendor will not agree to AOC's preferred indemnification provision or approved alternative indemnification provisions; or
2. Vendor proposes that AOC indemnify the vendor or any third party.

(b) Limitation/Extension of Liability:

1. Vendor will not agree to AOC's limitation of liability provision (protecting AOC).
2. Vendor proposes limiting its liability in excess of approved limits (which will be established with and implemented by the Business Services Manager).
3. Vendor proposes that AOC assume liabilities beyond AOC's control.
4. Vendor proposes provision that creates a contingent liability for the AOC.

(c) Liquidated damages: Vendor proposes liquidated damages provision applicable to vendor or AOC.

- Events Requiring Legal Review Include:

(a) Cancellation or Termination: Prior to taking action to:

1. Cancel a contract for cause (material failure by vendor to perform its obligations under the contract);
2. Terminate a contract at will if:
 - (i) there are potentially significant termination costs;
 - (ii) there is any question as to AOC's right to terminate;
 - (iii) disputes have arisen with vendor; or
 - (iv) the contract was one that required legal review/approval under this policy.
3. Terminate a contract/RFP for non-appropriation of funds.

(b) Disputes: Disputes arise that involve a significant portion of the value of the contract.

(c) Release of a claim: Vendor proposes AOC release a claim relating to the contract.

- (d) Transfer or Assignment: Vendor requests or notifies AOC of a transfer or assignment of vendor's rights and/or obligations to a third party.
- (e) Contract amendments: Project Manager wants to revise an existing contract in a manner that would result in the contract being subject to legal review/approval under this policy.

2. Legal review required based on contract value: All contracts are subject to legal review when the contract value is at or above the dollar thresholds identified below. "Contract value" refers to the total amount anticipated under the contract, including amendments, not merely the initial award.

Contract Form	Goods and Materials	Consulting	Information Systems, off-the-shelf software, developed software	General Services and Maintenance	Leases/Real Property	Other (including hotel services and legal services)
Approved Form Contract (model contracts pre-approved by OGC for specific types of procurements)	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000
General Form (contracts comprised of terms/conditions pre-approved by OGC)	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000
Vendor/Vendor Contract Terms (contracts proposed by the vendor/vendor and not containing provisions requiring legal review per section C-1)	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000

REMINDER: When the contract value is \$1,000,000 or more or the contract involves high risk activities, the initiating Division must contact Business Services early in the planning process so that legal review can be arranged and so the attorney, Business Services representative, and the Division's Project Manager may most effectively participate in the contracting process, including the drafting of the statement of work and/or specifications, establishing contract terms, preparation of RFP, and negotiations.

NOTE: Procurements from a vendor must not be divided into smaller contracts or orders thereby avoiding legal review.