



DEPARTMENT OF THE NAVY

CHIEF OF NAVAL AIR TRAINING
CNATRA
250 LEXINGTON BLVD SUITE 102
CORPUS CHRISTI TX 78419-5041

CNATRINST 4200.2
00D

07 SEP 2007

CNATRA INSTRUCTION 4200.2

Subj: LEGAL REVIEW OF COMMERCIAL DOCUMENTS AND PROCESSES

Ref: (a) SECNAVINST 5430.25D
(b) Navy Acquisition Procedures Supplement (NAPS)
5201.602-1
(c) CNATRINST 4335.1

Encl: (1) Contract Documents for Review
(2) Optional Cover Sheet for Legal Review

1. Purpose. To identify commercial documents, business processes, and fiscal issues that require legal review by the Office of Counsel, Chief of Naval Air Training Command.

2. Applicability. This instruction applies to commercial documents, business processes, and fiscal issues at CNATRA, the NATRACOM, and subordinate activities (CNATRA). The Office of Counsel shall be consulted, at the earliest possible stage, concerning any commercial document, business process, or fiscal issue requiring the interpretation or application of statute, regulation, or policy which raises an issue of commercial law, business process, or fiscal issue. Examples include contract documents, loan agreements, "personal services" determinations, the OMB Circular A-76 process, Small Business Administration documents, funding documents, and intellectual property matters such as licensing agreements, "proprietary data", copy write, and trademark. This instruction covers all such commercial documents, business processes, and fiscal issues regardless of the cognizant procuring activity or the administrative contracting activity. Examples include NAVAIR, NAVSUP (e.g., FISC, "ISSOT"), NAVFAC, GSA, other military services, and DoD or its activities. Enclosure (1) lists specific examples of commercial documents requiring Office of Counsel review. This instruction does not apply to micro purchases.

3. Policy. CNATRA cannot effectively perform its mission unless it complies with commercial, business, and fiscal law and policy. The Department of the Navy, through references (a) and legal advice. In accordance with reference (b), commercial

CNATRAINST 4200.2

0 7 SEP 2007

documents, processes, or issues shall be forwarded to the Office of Counsel for review as to form and legality and any additional pertinent comment or advice.

4. Procedures

a. All legal reviews shall be documented and coordinated by Office of Counsel in a manner appropriate to the circumstances.

b. Specifically, with respect to the documents listed in enclosure (1), contracting Officers and acquisition personnel shall provide these contract documents, including all pertinent supporting material, to the Office of Counsel for review and comment. Documentation of legal reviews identified by enclosure (1) shall be retained in the contract file in accordance with FAR 4.803(a)(24). Route sheet chops/comments, e-mail, or memoranda are all acceptable forms of documenting legal review. Electronic messages from Counsel should be printed and included in the contract file as evidence of legal review. In addition, the contract file checklist shall be appropriately annotated to document satisfaction of this requirement or exception thereto.

c. Contracting Officers and other personnel will make efforts to allow Counsel sufficient time for meaningful review. Correspondingly, Counsel will make every effort to complete reviews within program timelines. Turn around times will vary significantly depending upon the scope and complexity of the documents or issues. Attorneys and clients shall seek to agree upon lead and turn around times in advance taking into account all pertinent factors.

d. In the event a client wishes a second legal opinion from an office of counsel at a higher echelon, CNATRA Office of Counsel shall coordinate the second opinion in order promote consistent and efficient delivery of legal advice within CNATRA and the Navy.

0 7 SEP 2007

e. Legal reviews under this instruction shall be coordinated with the procedures under reference (c) when a Contract Review Board is convened.



D. B. GRIMLAND
Chief of Staff

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CNATRAINST 4200.2

0 7 SEP 2007

CONTRACT DOCUMENTS FOR REVIEW

PRE AWARD/PLANNING PHASE

- (1) Performance Work Statements
- (2) Solicitations (NAPS 5201.602-1)
- (3) Amendments to solicitations (other than purely administrative amendments. e.g., change in date and time for receipt of proposals and correction of clerical mistakes) (NAPS 5201.602-1)
- (4) Contract clauses
- (5) Justifications and Approvals (NAPS 5206.303-90)
- (6) Requests for deviations (DFARS 201.402(2) (viii))
- (7) Cases of non-personal services determinations (FAR 37.103)
- (8) Provisions, clauses and other documents involving organizational conflicts of interest (FAR 9.504(b))
- (9) Determinations and Findings (FAR 1.7)
- (10) Consultations with industry with respect to requirements
- (11) Unsolicited proposals
- (12) Loan Agreements

AWARD/POST AWARD PHASE

- (13) Modifications of contracts, including but not limited to, those that obligate or de-obligate funds (exceptions: purely administrative modifications, i.e., change in contract administration designation, addresses, names of

Encl (1)

0 7 SEP 2007

individuals, COR, and accounting data; unilateral option exercises at prices/terms evaluated/contained in contract) (NAPS 5201.602-1).

(14) Delivery Orders/Task Orders (FAR 16.505 and FAR8.4).

(15) Novation and change of name agreements (FAR 42.1203(f)).

(16) Contract claims and Requests for equitable adjustment immediately after submitted to the Contracting Officer; Contracting Officer's proposed settlements and final decisions on claims submitted under the Contract Disputes Act and Requests for Equitable Adjustments (FAR 33.211(a)(2), NAPS 5233.9001(b), and NAVAIRINST 4365.3).

(17) Termination documents (e.g., show cause letters, cure notices, settlement proposals, cancellations) (FAR 49.402-3(a)) and termination of contracts with suspended or debarred contractors (FAR 9.405-1(a)).

(18) Stop Work Orders (FAR 42.1303).

(19) Voluntary refunds (DFARS 242.71).

OTHER CONTRACTING DOCUMENTS/ISSUES

(20) Contracting Officer's determination of breach of implied warranties (FAR 12.404).

(21) Acceptability of individual sureties (FAR 28.203 through 28.203-5).

(22) Indemnification requests (see FAR 50.403-2(a)).

(23) Contracting Officer's reports on proposed suspensions and debarments (see NAPS 5209.406-3(a)(i)).

CNATRAINST 4200.2

0 7 SEP 2007

(24) Proposed decisions, responses, reports and other Contracting Officer generated documents concerning agency level and level above the Contracting Officer bid protests (see reference (a), paragraph 9b). GAO protests shall be referred immediately to the Office of Counsel for appropriate action

(25) Intellectual property documents including Licensing and subscription agreements (e.g. software licensing agreements), copy write and trademark documents

(26) Proofs of claim or other documents relating to Federal bankruptcy or insolvency proceedings under state law (see FAR 42.902)

(27) State and local tax applicability to the Federal Government (see FAR 29.1)

(28) New, modified or other provisions or clauses not previously approved in accordance with NAPS 5201.304

OTHER FISCAL AND COMMERCIAL LAW ISSUES

(29) Fiscal and funding issues including funding of judgments and settlements, fiscal year of obligation, and appropriate funding type, e.g., MILCON, APN, OMN

(30) Documents prepared for the competition and contracting out process under Circular A-76 in accordance with published guidance

(31) Documents prepared for the Small Business Administration including the "Section (8)(a)" set aside program

0 7 SEP 2007

COVER SHEET FOR LEGAL REVIEW

TO: Office of Counsel

FROM: _____

PHONE: _____ BLDG: _____

CONTRACTING OFFICER: _____

CONTRACT/SOL NO.: _____

PURPOSE OF SUBMISSION TO LEGAL & ISSUES:

SPECIAL COMMENTS TO LEGAL ON ABOVE CONTRACT:



LEGAL COMMENTS:

Concur _____

Not Concur _____

Concur with Comments _____

Signed & Dated by Legal Counsel: _____

Enclosure (2)