

CC-2025-001

October 01, 2024

Subject: Expert Procurement and Funding
Procedures

Cancel Date: Until Further Notice

Purpose

This Notice provides guidance to the Operating Divisions relating to procurement and funding procedures to retain an expert in cases in the Office of Chief Counsel's ("Chief Counsel") jurisdiction. Specifically, this Notice:

- 1) announces and requires the use of a standardized initial expert procurement package ("procurement package");
- 2) introduces the Expert Witness Dashboard ("Dashboard") to prepare and process procurement packages;
- 3) identifies procedures for monitoring and modifying the terms of existing expert contracts;
- 4) summarizes expert approval requirements and procedures;
- 5) describes procedures for deobligating expert funding and the disposition of materials in the expert's custody and control; and
- 6) provides guidance on the processing of invoices.

Effective immediately, the procedures outlined in this Notice will apply to all Operating Divisions.¹

Background

Chief Counsel attorneys may need to hire a witness to offer opinion or other testimony that is supported by specialized knowledge, skill, experience, training, or education.² Fed. R. Evid. 702 requires that for an expert's testimony to be admitted, the proponent must demonstrate that it is more likely than not (i.e., by a preponderance of the

¹ IRS LB&I Exam hires experts to assist with examinations through its own Outside Expert Program. See IRM 4.46.10. This Notice is not intended to alter any procedures, practices, or policies of the IRS's Outside Expert Program.

² On rare occasions, an expert may serve as a consultant. The procedures set forth in this Notice also apply in those instances.

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evidence) that: (a) the expert's specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

Chief Counsel is firmly committed to the fair treatment and full participation of all people. Recommendations to procure experts shall be made free of discrimination based on an individual's identity (e.g., race, ethnicity, religion, abilities, gender, sexual orientation, neurodiversity, age, or prior participation in the EEO process).

Overview of Expert Procurement

If an expert is necessary for the preparation or presentation of a case for trial, the procedures to properly procure funding to engage the expert, as set forth in this Notice, must be followed. Depending on the complexity and amount of funding requested, a paralegal certified as a Contracting Officer's Representative ("COR") may be assigned to assist in the preparation of the procurement package. The assigned attorney ("Attorney"), with the possible assistance of a COR, interviews, vets, and selects the potential expert. The COR and/or Attorney prepare the procurement package. The procurement package is then forwarded to the first-line supervisor reviewing the work on the case ("Case Manager"). The Case Manager will ensure that the expert was properly vetted, the request is necessary and reasonable, and the procurement package is accurate and complete. Depending on the amount of funding requested, Division-level approval may be required.

Once the procurement package has been approved at all required levels within the Operating Division, the procurement package is routed to Finance & Management ("FM") Field Program Specialists ("FPS"). FPS confirms that the procurement package is complete and ready to be submitted to IRS Procurement ("Procurement"). A procurement package for expert witness services requires review and approval of FM's Planning and Finance Division. Once all necessary approvals are received from FM, the procurement package is forwarded to Procurement by FPS. Procurement reviews and processes the procurement package, and ultimately prepares and awards the expert purchase orders and contracts (hereinafter referred to collectively as "contract").³ The

³ Purchase orders for expert witness services are only awarded for acquisitions below the simplified acquisition threshold, which as of the date of this Notice is below \$250,000. Purchase orders allow for the use of simplified acquisition procedures. For expert witness services in excess of \$250,000, contracts are awarded. The two terms, purchase orders and contracts, are often used interchangeably. The procedures within Counsel for expert witness services for purchase orders and contracts are similar, with the primary differences being that a contract requires two additional attachments to the procurement package and the estimated lead times required for Procurement to award a contract are longer.

amount of funding requested impacts the length of time needed by Procurement to award a contract. Chief Counsel employees are not authorized to negotiate with experts and only Procurement, once a contract is executed, can authorize the expert to start working.

After an initial award is granted by Procurement, a modification is required to request any changes to the contract (referred to throughout as a “modification”). Common reasons for submitting a modification include activating funding for phases of the contract that Procurement has not yet funded, requesting an increase in the amount awarded in a given phase, changing or adding a COR, or adding a material change in the expert’s assignment. Modifications must be prepared expeditiously and submitted with sufficient time for FM and Procurement to process the modification request. Modifications are generally prepared by the COR or Attorney and then reviewed by the Case Manager and all required levels of management within the Operating Division. Similar to procurement packages, modifications are routed to Procurement through FPS. Chief Counsel employees cannot authorize an expert to begin work on any phase until Procurement has awarded the contract and funded the phase in which the expert is working. An expert must not be permitted to incur expenses in excess of the amount Procurement has awarded and funded. If additional funding is required, Procurement must award increased funding (where necessary) and activate awarded funding prior to the expert resuming work.

Hiring and Working with Experts

Below is an overview of the milestones involved in procuring experts and monitoring expert funding. Refer to the Resources section at the end of this Notice for further guidance.

Pre-Hiring Stage

1. Determine need: Once assigned to the case, the Attorney, in consultation with the Case Manager, must analyze the issues and facts as soon as possible in order to determine whether expert consultation or testimony is needed. If needed, the Attorney should evaluate whether the need can be satisfied by an internal IRS specialist, and if not, begin searching for an outside expert.
2. Timing: Begin the expert search and procurement process as soon as the need for an expert is determined.
3. Project Funding: Once it is determined that an expert should be hired, the Attorney and Case Manager must estimate the amount of expert funding required during the fiscal year. The Case Manager, after coordinating with Field

Executive(s)⁴ if applicable, will enter expert funding projections on the Expert Witness Projections Site.

4. Research and Market Survey: Search for potential experts from various sources, and interview, compare, and evaluate qualifications. A contemporaneous informal market survey is required as part of the procurement package to support the proposed selection. A non-disclosure agreement must be obtained prior to disclosing return or return information as defined in I.R.C. § 6103.
5. Vetting: Once you have selected the potential expert, it is vitally important that you thoroughly vet the expert in order to evaluate the expert's credibility and suitability in light of the needs of the case. Refer to the available [resources](#), including the [Vetting Guide](#).⁵

Procurement Stage

6. Assignment of a COR: CORs provide technical direction and assist in monitoring the performance of the expert. They work with the Attorney and Case Manager to prepare the procurement package.
7. SAM: Ensure that the proposed expert is registered in the relevant systems, including the System for Award Management ("SAM").
8. Tax Compliance Check: A tax compliance check must be completed, which involves a questionnaire and IDRS verification. If tax compliance issues are identified, promptly discuss the issues with the Case Manager.
9. Procurement package preparation: Use the Dashboard for efficient procurement package generation.
10. eApproval 2.0: Use eApproval 2.0 for routing and approval of the procurement package. Once approved by the Operating Division, the procurement package will be routed to FPS via eApproval 2.0, and FPS will secure approval for the funding request. FPS will then send the procurement package to Procurement for processing.

Contract Administration Stage

11. Monitoring: Be aware of significant case developments that may impact the need for and timing of the expert's services. The Attorney and Case Manager must timely review and certify invoices for payment. Complete any interim performance

⁴ The Field Executive is typically a Senior Executive Service ("SES") official assigned to a geographic area within an Operating Division.

⁵ The hyperlinks throughout this Notice are internal to the IRS network and access is limited to certain IRS and IRS Chief Counsel employees.

assessments as required.

12. Modifications: The contract may require modifying as the case progresses, necessitating a request for an increased award or the funding of previously awarded amounts. Prepare and recommend modifications as needed. If a COR is assigned to the case, then the COR will prepare the necessary modifications in coordination with the Attorney, Case Manager, and the applicable executives (where required).
13. Closure: Once the final phase of work is complete, verify that the final invoice has been paid. Complete all performance assessments and submit the deobligation and closing memoranda. If a COR is assigned, then the COR is generally responsible for the preparation of the deobligation and closing memoranda.

The Procurement Package

Hiring an expert requires substantial lead time and coordination with FM, Procurement, and within the Operating Divisions. Before an expert may begin working, Procurement must award the contract. This process is initiated by preparing a procurement package, which has been standardized for all Operating Divisions to use.

The [Procurement Guide](#) contains up-to-date procedures for preparing and processing a procurement package, including instructions for completing all required attachments. The forms required for the procurement package are located here: [Forms: Initial Package and Hiring](#). A list and short description of the forms and documents comprising the standardized procurement package are included in Appendix 1.

The procurement package and forms are subject to modification at the direction of IRS Procurement. When modifications are made, the current procurement package, forms, and procedures will be updated on the [Expert Witness Procurement and Procedures](#) SharePoint.

Preparing the Procurement Package

The [Dashboard](#) should be used to generate all procurement packages.

Once generated, the user must review the procurement package and complete any narrative portions of the procurement package and any additional information that was not included. Use of the Dashboard ensures uniformity and standardization of the procurement package used by the Operating Divisions.

Review and Approval of the Procurement Package and Modifications

Requesting Executive Approval. Before submitting a procurement package to FM and Procurement, the Attorney must obtain executive approval by preparing an Executive Summary Memorandum ("Memorandum"). This [Memorandum](#) is required for all expert

procurements, as it summarizes the key aspects of the case and issues requiring expert testimony, and provides basic information on the expert.

In preparing the Memorandum, particular care must be exercised to identify and address any potential litigation hazards with the expert and explain why we should nonetheless hire the expert. The Attorney, with assistance from the COR (if assigned), will draft the Memorandum and forward it to the Case Manager. The Case Manager will review the draft for substance, form, and conformity with the current requirements of Chief Counsel, after which the Memorandum will be uploaded as a separate document (i.e., not included in the zip file) to eApproval 2.0 for an executive, or their delegate, ("Approver") to review and approve. If the Approver has questions or otherwise does not approve the request, the Approver will follow-up as necessary. If the Approver agrees with the request, the Approver will communicate concurrence to the Case Manager, Attorney, and COR by signing the Memorandum and uploading it to eApproval 2.0. A copy of the signed Memorandum will also be retained in the case's electronic legal file.

Determining the Approver. A flowchart identifying the approvals necessary for procurement packages and modifications is included in Appendix 2. The below guidelines must be followed when seeking approval to hire an expert.

- Procurement Packages
 - The Case Manager is responsible for reviewing and approving the contents of the procurement package.
 - \$250,000 or more: For procurement packages that are \$250,000 or more,
 - the Operating Division's Field Executive, if applicable, and Deputy Division Counsel (or delegated executive), must give approval to submit a procurement package to FM by reviewing and signing the Memorandum; or,
 - if the Operating Division does not have a Field Executive, the Deputy Division Counsel for the Case Manager's Division must give approval to submit a procurement package to FM by reviewing and signing the Memorandum.
 - Less than \$250,000: For procurement packages that are less than \$250,000, the Field Executive or a delegated Case Manager must give approval to submit a procurement package to FM by signing the Memorandum. The Memorandum is to be submitted for post review to the appropriate Operating Division executive (i.e., Deputy Division Counsel or delegated executive).
- Modifications
 - The Case Manager is responsible for reviewing and approving any modification to request an increase in the awarded funding. The Case Manager may approve modifications that do not request increased funding.
 - \$250,000 or more: For modifications to a contract to request an increase in

the awarded funding resulting in a revised total contract amount of \$250,000 or more, the Operating Division's Field Executive, if applicable, and Deputy Division Counsel (or delegated executive) for the Case Manager's Division must give approval to submit the modification to FM by reviewing and signing the Memorandum.

- Less than \$250,000: For modifications to a contract to request an increase in the awarded funding resulting in a revised total contract amount of less than \$250,000, the Field Executive or delegated Case Manager must give approval to submit the modification to FM by signing the Memorandum. The Memorandum is to be submitted for post review to the appropriate Operating Division executive (i.e., Deputy Division Counsel or delegated executive).

If a procurement package or modification does not meet the \$250,000 threshold amount requiring Deputy Division Counsel (or delegated executive) pre-approval, the Attorney and Case Manager should use their discretion to obtain Deputy Division Counsel (or delegated executive) pre-review and approval where circumstances might warrant such need for pre-review.

[eApproval 2.0](#). The eApproval 2.0 platform tracks necessary approvals of all procurement packages and transmits these items to FM. The completed and signed procurement package should be sent through the appropriate approval levels using the [eApproval 2.0](#) platform. The procurement package (transmittal memorandum and Attachments A through P, as applicable) should be uploaded into eApproval 2.0 as a single zip file that is not password protected. The approvals from the COR, Attorney, Case Manager, and applicable Executives are recorded in eApproval 2.0. Follow these [instructions](#) for using eApproval.

Modifications and Closings

Modifications. [Modifications](#) are used to request changes to the contract after the initial award has been granted. Common examples include activating funding for subsequent phases, requesting an increase in the amount awarded, changing the primary COR, and materially changing the expert's assignment by amending the Performance Work Statement. More than one modification action can be initiated in a single request. However, a separate modification memorandum must be prepared for every contract that you are modifying.

A [template](#) to create the modification memorandum is available for use. Additional documents may need to be attached to the modification memorandum, including a revised cost estimate on the expert's letterhead and verification of active SAM registration, if you are requesting an increase in the amount awarded for any phase. Confirmation of tax compliance is required when requesting a modification to increase the amount awarded for any phase. Refer to the [Procurement Guide](#) and the [Modifications](#) section of the [Expert Witness Procurement and Procedures](#) SharePoint for complete and current information.

The assigned Attorney and the Case Manager must review, approve, and sign all modifications. Modifications requesting an increased award may also require executive approval. Like procurement packages, the approvals for modifications are tracked in [eApproval 2.0](#). Modification packages are to be uploaded into eApproval 2.0, as per the instructions above.

Closings. Determining when to close a contract must be made on a case-by-case basis, in consultation with the Case Manager. In order to close a contract, first verify that the expert has completed all work and that all invoices have been submitted and paid. A [final deobligation memorandum](#) is prepared in order to deobligate any unused funds. This memorandum is reviewed and approved by the assigned Attorney and the Case Manager. Like procurement packages and modifications, the approvals for the deobligation memorandum are recorded in eApproval 2.0 and then transmitted to FM via eApproval 2.0.

After the unused funds are deobligated, a [contract closing memorandum](#) must be prepared. This memorandum contains: (a) an Evaluation of Contractor⁶ Performance; and (b) a Procurement Customer Service Survey. The Evaluation of Contractor Performance is signed by the COR and/or Attorney, the Case Manager, and Procurement. The Procurement Customer Service Survey is signed by the COR or Attorney. Like procurement packages, modifications, and deobligation memoranda, approvals for closings are tracked in and then transmitted to FM via [eApproval 2.0](#).

Disposition of Documents. When the contract is ready to be closed, the COR and Attorney must confer with the Case Manager about the procedures for the disposition of documents the expert received from Counsel and documents created or obtained by the expert and/or the firm for which the expert works, if applicable, e.g., workpapers, as part of the engagement. See [Procurement Guide](#). The expert may be permitted to retain some information while returning or destroying certain sensitive information, and in some cases, there may be an obligation to continue to preserve information related to open litigation. A [template](#) letter can be used and modified as needed depending on the circumstances in any case(s). If you need assistance in determining whether the expert is required to destroy, return, or provide copies of documents created or obtained and electronically stored information prior to closing the contract, please contact Procedure and Administration Branches 6 and 7.

Payment of Invoices

Invoice Processing. Experts must generally submit an invoice to the IRS as promptly as possible but not less than once per month during periods when the expert is actively performing work on the IRS's behalf. See CCDM 35.4.4.8.2.3(6). Contracts require the Contractor to submit their invoice through the Invoice Processing Platform ("IPP"). Once

⁶ "Contractor" generally includes the individual expert and the firm for which the expert works.

submitted to IPP, the invoice must be approved within seven calendar days. To ensure the invoice will be timely approved, the expert shall provide a copy of the invoice to the COR and/or Attorney for pre-review prior to submitting the invoice to IPP.

Pre-review of Invoice. Once the expert provides their invoice, the COR and/or Attorney will review the invoice to ensure accuracy, i.e., that the expert is billing to the correct phases, travel was authorized and accurately billed, the Contractor has submitted all required receipts, all billing is authorized under the contract, the hourly rates charged are accurate, and there are sufficient funds to pay the invoice. If the COR or Attorney identifies inaccuracies in the invoice, they will work with the expert to correct the invoice that will be submitted to IPP for processing and payment. Once the COR and/or Attorney agree with the invoice, the COR (if assigned) and Attorney shall digitally sign the invoice and forward it to the Case Manager for review. The Case Manager will then review the invoice and address any concerns with the invoice. Once the Case Manager agrees with the invoice, they will digitally sign it indicating they have reviewed it and concur.

Approving the Invoice through IPP. Once the invoice has been reviewed by the COR, Attorney, and Case Manager, the expert shall submit the invoice to IPP. The invoice submitted in IPP by the expert must mirror the invoice that was digitally signed. Once confirmed, an email shall be sent to cc.fps-invoice_team@irscounsel.treas.gov indicating that the invoice is ready for review and approval and attaching: 1) the digitally signed invoice; 2) the invoice submitted through IPP; and, 3) any necessary receipts or other substantiation for travel and miscellaneous expenses.

Rejection of Invoice in IPP. If the invoice is rejected by the COR or Attorney, the COR or Attorney will send an email to cc.fps-invoice_team@irscounsel.treas.gov. If the COR sends the email, the COR will copy the Attorney with primary responsibility for working with the expert. This email will contain the Counsel-signed/initialed finalized invoice and the invoice submitted by the Contractor to IPP. The email shall state why the invoice was rejected. The COR or Attorney will notify the expert of the rejection and will work with the expert to correct the issue.

Resources

[Expert Witness Procurement and Procedures](#) SharePoint. This is a comprehensive collection of current information, training, and templates relating to experts.

[Procurement Guide.](#) This guide provides step-by-step information relating to all aspects of expert procurement. It contains links to templates, outside sites, and numerous other resources.

[CCDM 35.4.4.8.](#) CCDM provisions relating to experts are set forth here.

[Expert Witness Background Research Guide.](#) This guide is maintained by the Chief Counsel's Library and includes links to additional resources.

Questions

Questions about this Notice should be directed to the [Expert Witness Procurement and Procedures Mailbox](#).

/s/

Paul Butler
Associate Chief Counsel
(Procedure & Administration)

Appendix 1 – Contents of the Procurement Package

Transmittal Memorandum – This memorandum transmits the procurement package through the Operating Division and FM to Procurement. This memorandum identifies basic case information and the attachments included in the procurement package.

Attachment A, Curriculum Vitae and Cost Estimate – Attachment A includes the expert's *curriculum vitae* and the expert's cost estimate for the contract (on the expert's letterhead), including a phase-by-phase breakdown of fees, travel, and miscellaneous expenses.

Attachment B, Performance Work Statement ("PWS") – Attachment B is the PWS. The PWS describes the work that the expert will complete under the contract, including a phase-by-phase description of the specific tasks required and estimated completion dates.

Attachment C, Non-Disclosure Agreement ("NDA") – Attachment C is the NDA that the expert will not disclose any tax return or return information, or any other information provided by Counsel. An NDA is also required from any subcontractors that the Contractor may use.

Attachment D, Identification of Proposed Contractor/ Expert – Attachment D is a form that provides the contact information for the Contractor (where applicable).

Attachment E, SF 1010 Market Research Summary Report and Informal Market Survey ("IMS") – Attachment E consists of two parts, a) the SF 1010 Market Research Summary Report, and b) the IMS. The SF 1010 Market Research Summary Report is a Treasury Standard form required by Procurement. The IMS is a memorandum addressed to FM and Procurement and explains Counsel's reason for selecting the expert from the pool of candidates considered.

Attachment F, COR Nomination Memorandum – Attachment F is the COR Nomination Memorandum. If a COR is assigned to the expert procurement, this form is required to be completed by the COR and signed by the COR's manager.

Attachment G, SF 1009 Sole Source Justification for Simplified Acquisition or Justification for Other Than Full and Open Competition – Attachment G will contain either: a) SF 1009 Sole Source Justification for Acquisitions at or Below the Simplified Acquisition Threshold; or b) Justification for other than Full and Open Competition ("JOFOC"). These documents justify a sole source procurement.⁷ The JOFOC is required for procurement of \$250,000 or more. The SF 1009 is required for procurements over \$25,000 up to \$250,000.

⁷ Sole source procurement is a contract entered into based on a justification that the service is available from only one source.

Attachment H, Coding of Service Contract Requirement Worksheet – Attachment H is a worksheet designed to ensure that the agency does not award a personal-services contract unless specifically authorized by statute. This worksheet is required for all new procurements of \$25,000 or more.

Attachment I, Certification of Fees – Attachment I is the Certification of Fees, which certifies that the fees, costs, and process quoted to the government are the same as those charged to a commercial user. This document must be signed by the expert and/or an authorized signatory for the Contractor (i.e., expert firm (if applicable)).

Attachment J, Tax Compliance Questionnaire – Attachment J is the Tax Compliance Questionnaire. This form must be completed and signed by the individual expert. A separate form must be completed by the Contractor (if different from the individual expert) and must be signed by someone with the authority to bind the Contractor. Once secured, the COR or Attorney must confirm the expert and/or Contractor are in compliance with their tax obligations. IDRS transcripts are not included as part of the procurement package.

Attachment K, Government Cost Estimate – Attachment K is the Government Cost Estimate. This is the expert's estimate of the costs associated with each phase of the contract, including all costs for fees, travel, and miscellaneous expenses.

Attachment L, SF 1011 Acquisition Plan – Attachment L is the SF 1011 Acquisition Plan. If the total amount of the requested expert procurement is over the simplified acquisition threshold of \$250,000, then SF 1011 Acquisition Plan must be submitted with the procurement package.

Attachment M, Quality Assurance Surveillance Plan – Attachment M is the Quality Assurance Surveillance Plan ("QASP"). The QASP addresses the roles and responsibilities of government officials and the method to be employed by Counsel to monitor the performance of the expert. This form is required for all procurements over \$250,000.

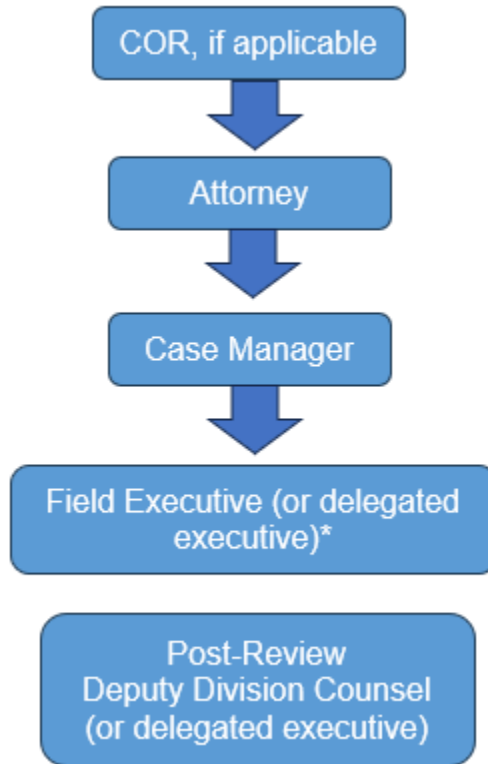
Attachment N, Proof of SAM Registration – Attachment N is the Proof of SAM Registration. In order to be awarded a contract with the Federal government, every Contractor must have an active account in SAM. Proof of an active SAM account must be submitted with the procurement package.

Attachment O, Form 15598 Statement of Federal Financial Accounting Standards 54 ("SFFAS 54") Lease Verification – Attachment O is the SFFAS 54. This form is required to be submitted with every procurement package.

Attachment P, Table of Deliverables – Attachment P is the Table of Deliverables, which should identify due dates of deliverables from experts.

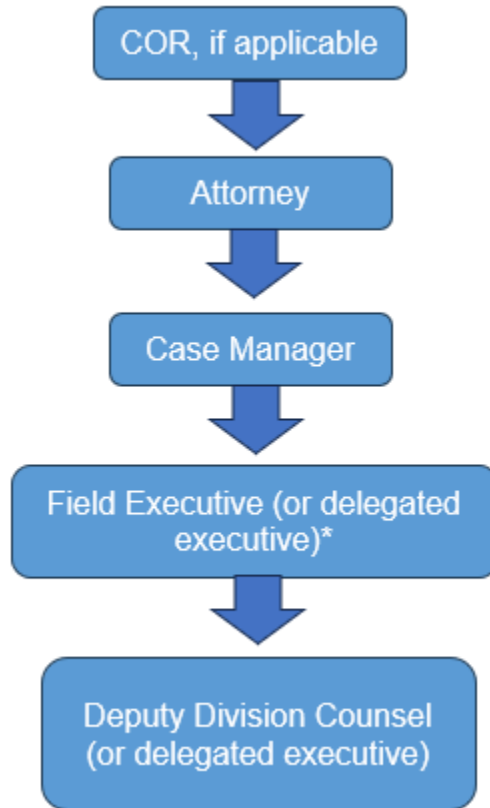
Appendix 2 – Flowchart of Executive Approval Required to Submit Procurement Packages and Modifications

Approval of procurement packages totaling less than \$250,000:



* If the Operating Division does not have a Field Executive (or delegated executive), then the Case Manager has the authority to approve procurement packages totaling less than \$250,000.

Approval of procurement packages totaling \$250,000 or more:



* If the Operating Division does not have a Field Executive (or delegated executive), then the Case Manager will route the final approval for procurement packages of \$250,000 or more to the applicable Deputy Division Counsel (or delegated executive).