Federal Aviation Administration

Memorandum

Date: August 11, 2005

To: Management Team

From: Marion C. Blakey, Administrator

Subject: Financial oversight of FAA service contracts

Every year the FAA uses outside companies to provide more than $1.3 billion in services -- on top of the monies spent to acquire equipment, off-the-shelf software, hardware and other products that we need to run the National Airspace System. These services contracts range from software development agreements to consulting agreements on areas where the FAA lacks internal expertise to maintenance contracts on non-FAA equipment. Many of the actual procurements for services are done under one of three "umbrella" agreements (administered by the Technical Center, the Aeronautical Center, and headquarters) under which companies are either pre-qualified or have competed to be eligible for selection.

These umbrella agreements, when administered correctly, can be very helpful. They are designed to allow us to get the job done expeditiously for the taxpayers and to cut down on unnecessary bureaucratic review. But it is also important to emphasize that *we must always get the job done right* – which means adhering to the highest possible ethical standards and being responsible stewards of the taxpayers' money. Indeed, Secretary Mineta has made it repeatedly clear that observing these standards of procurement integrity is a cornerstone of DOT's mission, and as recently as June the Secretary issued an order that will help each modal administration to ensure that its contractors strictly comply with their obligations to us.

As you know, the agency faces some very difficult financial choices ahead. I've previously made the point that we now have more work to do – from moving lots of smaller jets through the air traffic system to certifying new air carriers, aircraft and technologies – with fewer resources and a declining Aviation Trust Fund. In this environment, we simply must control our expenses, one of the largest of which is our services contracts, and we must also ensure that every taxpayer dollar is spent wisely, effectively, and properly. That means we have to look on a more fundamental level at the financial and contractual controls we have in place to avoid unnecessary, improper, or avoidable expenditures on outside services.

For the last several months, prompted by some specific examples of potential waste under the umbrella agreements brought to my attention by the Inspector General, a team of individuals

under the direction of Dennis DeGaetano, our Acquisition Executive, has been scrutinizing our approach to support services agreements. They are making substantial progress. And although their work is ongoing, I've made some decisions on initial steps we must take *now* to better control our spending in this arena and to guarantee that safeguards against waste, fraud and abuse are observed:

- First, we will be amending our procurement policies to require competitive bidding on *all* support service contracts with a total value of $1 million or more. Sole source contracts for such requirements will not be permitted -- unless the Deputy Administrator has approved making an award on this basis. I am also asking the Deputy Administrator to review any proposed support services contract award where fewer than three bids were received in the competition. Statements of work in proposed sole source solicitations will also be held to a higher standard, as our policy will require that we be very specific about the kind of work we are looking to buy. These new rules will apply not only to the contracts themselves but also to task, delivery and work orders under any of the umbrella agreements, as well as to modifications expanding the scope of a support services contract.

- Second, the agency's Chief Financial Officer will be exercising greater oversight and fiscal control over all agency procurements, including support services agreements as well as other types of agreements. Before the agency issues any procurement request for products or services costing $10 million or more, we will require written authorization from the CFO. We will also establish within the CFO's newly created Financial Controls division an independent cadre of personnel with significant acquisition and financial controls experience. This team, assisted by procurement attorneys, will advise the CFO in his reviews of proposed acquisitions of goods and services.

- Third, I am directing our Acquisition Executive, in conjunction with the Chief Counsel's office and our Human Resources office, to institute mandatory in-depth training on procurement integrity for all FAA *program officials,* as well as all contracting officers, to be completed within six months. This training will supplement our required ethics courses. We'll also require periodic recurrent training, so that we stay up to speed on this highly important topic.

Finally, I am distributing to the entire agency a memo provided by Dennis earlier this year on support services contracts. I want to emphasize a few points from that memo, highlight some of our existing requirements, and alert you to a few new ones:

- The entire service team (including contracting officers, technical representatives, attorneys, program officials) should ensure that there is a good business case for the services being acquired . . . that they don't overlap or duplicate services being acquired elsewhere in the agency . . . that the FAA has the expertise to monitor the contractor's performance . . . and that we have a solid, well documented rationale for selecting the contractor.

- Statements of Work, Independent Government Cost Estimates, and Market Surveys must always be prepared by the *Government*, not the contractors who will perform the work.

- Except when approved by the head of the line of business and Acquisition Executive, the agency may not enter into personal services contracts. And under no circumstances may contractors be used to perform inherently governmental duties, like budgeting for FAA programs.

- When acquiring services from a multiple award schedule or acquisition program, the procedures for competing task orders, or comparing rates and capabilities from multiple sources must be fairly and strictly followed.

- Contractors must supply detailed invoices that support with specificity and orderliness, the services rendered and amounts billed. Going forward, Contracting Officers must review and approve all invoices submitted to FAA under FAA contracts other than as provided for under the Government purchase card program.

- Labor categories must be accurate and must honestly reflect the work being done. For example, a time and attendance clerk may not be billed to the government as an "information engineer," because doing so inflates the costs to the taxpayers.

- Contract ceilings must be reasonably related to the amount of work anticipated to be ordered and, in no instance, should exceed 10% of funding required to support the work reasonably anticipated.

In the next few weeks, more detailed memoranda outlining the policies will be coming. Some of these will require changes in the way we do business, but I am convinced these moves are necessary. I'll be looking for your support as we work through these important changes.

Marion C. Blakey

SUPPLEMENT TO NOTICE TO CONTRACTING OFFICERS, CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVES, AND LINES OF BUSINESS

Subject: Service Contract Guidelines

The purpose of this supplement to my Notice to Contracting Officers, Contracting Officer's Technical Representatives, and Lines of Business dated May 25, 2005 is to provide clarification and implementation instructions with respect to the use of Washington Headquarters' funds by regional and center activities. On the final page of the document, it is stated that, "...when Washington Headquarters' funds are to be used, the requiring office must use a Washington Headquarters' contract to make an obligation, unless authorization is received from the Office of Acquisition Policy and Contracting's appropriate contracts division manager." Some have interpreted this statement as to require the authorization by the appropriate Headquarters' Contracting Division Manager regardless of purpose or method of obligation.

When taken in the context of the subject of the notice, it should be understood that the Headquarters' funds addressed above are those that are provided by Headquarter requirement offices to regional and center activities, for the purpose of contracting for support services. Funding sent to the field in the form of a Project Authorization (PA) to perform site implementation activities or other construction work should not be considered Headquarters' funding subject to the provisions of this Notice.

For the purposes of this Notice, support service contracts are those that are awarded to vendors for the provision of technical, engineering or professional/administrative support by a vendor to a requirements office in the performance of that office's assigned duties. Support service contracts encompass both personal and non-personal services and for the purposes of this notification; do not include services being provided through an Interagency Agreement with another Federal agency.

Accordingly, the following implementations instructions are provided:

1. Upon the identification by a Headquarters requirements office of a need to contract for support services, that office shall immediately contact their assigned representative of the Office of Acquisition Policy and Contracting for assistance in the development of an acquisition plan covering those services. Addressed in the plan shall be a description as to the type service required, the scope of work, potential source(s) of support and the market availability of the type support needed.
2. As part of that process, a determination will be made as to whether the requirement can be filled by the award of a new contract or the modification of an existing Agency contract.
3. If it is determined that either Headquarters resources are not available to service the requirement or that a contract exists at a Center or Regional Office; the decision may be made by the appropriate manager of the servicing contracting division that it is in the Agency's interest to allow for the

contracting to be performed by Center or Regional activities. In making this determination, the Headquarters Division Manager will assess the nature of the requirement as well as the Statement of Work in the existing field contract to ensure that the new work that is to be performed is in conformance with that existing Statement of Work. If the new work that is to be performed is in keeping with the existing Statement of Work, then the Headquarters' Contracting Division Manager will likely make the determination that the work should be performed at the Center or regional level. If the work is new work and would require a substantial modification to the existing Statement of Work to bring the work into scope, strong consideration should be made to require the acquisition to remain at the Headquarters level and performed by the appropriate Headquarters' contracting division.

4. Documentation providing insight into this deliberative process shall be made a permanent part of the file created in support of the contracting requirement. The determination that it is appropriate to assign the Headquarters' requirement to a field activity for award and administration shall be made in writing, signed by the appropriate Headquarters Contracting Division Manager and forwarded with the associated procurement request to the Center or Regional Contracting office for incorporation into the file.

Vice President, Acquisition Business Services, ATO-A

7/15/05
Date