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## T1.13 - Metrics and Performance Management Revised 2/2006

### A Metrics and Performance Management

### 1 General Revised 7/2014

a. *Performance Measurement*. Metrics and performance management tools provide systems that organize, integrate, and report program performance information. Program metrics and performance measurements should provide objective information that program and executive management need to make informed decisions that positively impact their business and engineering performance. Program performance measurement works best when it is considered to be a significant, integral part of project management. Like any management or technical tool, performance measurement cannot guarantee that a project will be successful. However, it does help the decision maker take a proactive approach in dealing with the critical issues inherent in project management.

b. *Standards and Guidance.* In addition to tracking program-specific technical performance measures, key performance parameters, and a network schedule, the use of an earned value management system (EVMS) for cost, schedule, and technical performance measurement and integration provides insight into overall project performance. The specifics of an EVMS performance based acquisition management system, as required by the Office of Management and Budget, are contained in American National Standard ANSI/EIA-748. FAA's earned value management guidance is in the *FAA Earned Value Management Guide* in FAST.

c. *Use.* The EVMS-generated performance measurement information is useful to both FAA and the contractor because it provides visibility into program and contract performance that would otherwise be unavailable in this form. Appropriate selection and use of these tools enable program managers and contractor personnel to examine key contract indicators, assess contract performance and make critical decisions in managing contracts.

d. *EVM Focal Point*. The EVM Focal Point must be involved before issuing a screening information request (SIR). The EVM Focal Point reviews and assesses the contracting strategy and plan for EVM implementation to ensure consistency with the JRC-approved Implementation Strategy and Planning Document (Section 3. Program Management and Control).

### 2 Earned Value Management System Revised 7/2014

a. *Earned Value Management System (EVMS).* EVMS applications consistent with the American National Standard EIA-748, Industry Standard Guidelines, provide detailed contract information appropriate for major contracts or contracts considered high value, critical, or high risk to FAA. These projects should include full EVMS compliance in the contract to provide the project team and Contracting Officer sufficient level of insight into the contractor's performance and progress; a tailored application of the Industry Standard Guidelines is appropriate for projects that are not in the above categories.

b. *Integrated Program Management Report (IPMR).* Projects should specify reporting requirements in the contract, and use Data Item Description (DID) DI-MGT-81861 (Formats 1-5), tailored as appropriate, as a format for information generated under requirements of AMS clause 1.13-2, Earned Value Management System. The program official should tailor the specific Contract Performance Report (CPR) reporting requirements to obtain:

(1) Information necessary to manage the contract;

(2) Reporting formats to provide performance data consistent with the program metrics and performance measurement plan; and

(3) Reporting frequency to provide timely performance reporting.

c. *CLIN Structure*. SIRs should be structured to include separately priced contract line item(s) for EVM reporting requirements.

**B Clauses**

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**C Forms**

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**T1.15 - Legal Coordination Guidance**

**A Legal Coordination Guidance**

**1 Introduction**

a. FAA acquisition actions can raise significant legal issues. For example, although pursuant to 49 U.S.C. §40110, FAA is exempt from federal acquisition statutes and regulations, other statutes and court decisions require FAA to demonstrate a rational basis, supported by substantial evidence, for acquisition actions. In addition, many laws and regulations enacted for purposes other than procurement apply to FAA acquisitions.

b. Therefore, the service organization will coordinate acquisition actions with FAA counsel on an ongoing basis throughout the acquisition lifecycle, as specified in Section 4. It is the responsibility of agency counsel to represent FAA's legal interests within the service organization and, exercising independent professional judgment, advise the service organization concerning legal issues, including, the legality and integrity of acquisition actions, and represent the service organization in litigation and other legal matters.

c. This guidance establishes legal coordination as the agency practice for acquisition matters.

## 2 Applicability

This Guidance applies to all FAA acquisition matters, at all stages of the acquisition lifecycle.

## 3 Definitions

a. As used in this Guidance, the term "agency counsel" means:

(1) for acquisition matters arising at, or referred to, Headquarters, the Assistant Chief Counsel, Procurement Law Division, AGC-500; and

(2) for acquisition matters arising at, or referred to, a Region or Center, the responsible Regional or Center Counsel.

b. As used in this Guidance, the term "coordinate" means: soliciting the opinion and recommendations of agency legal counsel reasonably prior to taking acquisition actions, e.g., after providing agency counsel accurate and complete information in sufficient time for review and counsel.

c. As used in this Guidance, the term "service organization" means: any organization that delivers a service, whether a business unit, project office, program directorate, or integrated product team, or whether engaged in air traffic services, security, regulation, certification, operations, commercial space transportation or airport development.

d. As used in this Guidance, the term "represent" means: recommending an appropriate legal position for the service organization regarding an acquisition matter, and, as appropriate, presenting this position to other parties, such as in administrative or judicial proceedings, or in communications, discussions, or negotiations with another party during a protest, dispute, or claim.

## 4 Coordination Guidance **Revised 10/2005**

a. *Coordination between the Service Organization and Agency Counsel*

(1) The service organization will coordinate acquisition actions with FAA counsel on an ongoing basis throughout the acquisition lifecycle. Agency counsel will timely respond to the service organization with accurate and effective legal advice that is consistent with legal mandates and relevant to the agency's business discretion. Agency counsel may, at his or her discretion, establish general time frames for such responses, which counsel will make every effort to meet, taking into account the agency counsel's workload and competing priorities. Counsel will describe and interpret legal issues involved in the matter; identify and assess the legal risk of a particular proposed decision; evaluate alternative courses of action; and identify potential illegal or improper actions.

(2) In case of a conflict between FAA's legal interests and those of a service organization, agency counsel's client is the FAA, and not the service organization. In addition, each agency counsel is bound by independent professional ethical obligations and responsibilities as a licensed attorney.

(3) The contracting officer will document the acquisition file with agency counsel's opinion and recommendations. The contracting officer will document the reasoning/decision process when choosing not to follow the agency counsel's recommendations.

b. *General Coordination Guidance for Acquisition Actions*

The service organization will coordinate with agency counsel on acquisition actions (including supporting documents) with an estimated total value greater than $100,000. This coordination guidance applies to acquisition actions including, as examples, but not limited to:

(1) Required planning documents (e.g., acquisition strategy paper);

(2) Solicitations, including Screening Information Requests, amendments, and other public announcements, such as market surveys;

(3) Responses to market surveys, including capability statements;

(4) Market analyses;

(5) Evaluation of offers or proposals (including preparation and review of technical, cost, past performance, management and other evaluation plans and reports);

(6) Communications with offerors on acquisition matters having legal implications;

(7) Contract awards, regardless of contract type, over the dollar value threshold specified above;

(8) Debriefings, including responses to inquiries regarding awards from parties other than the awardee;

(9) Task and delivery orders issued under contracts over the dollar value threshold specified above;

(10) Modifications under contracts that affect rights and obligations of either the Government or the contractor;

(11) Option exercises;

(12) Award fee determinations;

(13) Determinations as to contract adjustments;

(14) Contract terminations;

(15) Settlement of contract claims;

(16) Liquidated damages;

(17) Interpretation and determination of legal rights under contracts, orders or agreements;

(18) Communications with contractors, offerors, and other parties on acquisition matters having legal implications, including correspondence that might impact the rights and obligations of any party;

(19) Solicitation and contract matters involving rights in technical data, computer software, patents, copyrights, trade secrets and other forms of intellectual property, real estate, fiscal law, labor, environmental law, bankruptcy, anti-trust law, mergers and other non-procurement areas of law, affecting acquisitions;

(20) Debarments and suspensions, nondisclosure agreements, centers of excellence and individuals hired by contractors who received a "buy-out."

(21) Solicitation and contract matters involving state and local laws; (22) Software license agreements;

(23) Purchases from government-wide schedules or vehicles; (24) Interagency agreements;

(24) Grants (except Airport Improvement Grants; policy concerning legal review of AIP grants is or will be covered elsewhere);

(25) Cooperative agreements;

(26) Memoranda of agreement and memoranda of understanding;

(27) Franchises;

(28) Agreements made under "other transaction authority;"

(29) Unsolicited proposals;

(30) Determinations, findings, and justifications issued pursuant to the Acquisition Management System, or as required by statue or regulation;

(31) Proposed waivers and waivers of any portion of the Acquisition Management System;

(32) Any other matters that in the opinion of agency counsel has an impact on the legality of an acquisition or legal consequences.

c. *Coordination Guidance for Noncompetitive Procurements*

The service organization will coordinate with agency counsel on non-competitive procurements with an estimated total value greater than $10,000, and on procurements with an estimated total value greater than $10,000 under which a waiver is sought from the Acquisition Management System's competition policy.

d. *Coordination Guidance for Unauthorized Commitments, Personal Services, and Other Matters*

The service organization will coordinate with agency counsel on the following matters, without dollar limitation:

(1) Freedom of Information Act, Trade Secrets Acts, and Privacy Act concerns relating to proposed release(s) of acquisition information;

(2) Matters involving the FAIR Act/A-76;

(3) Unauthorized agency commitments;

(4) Proposals for innovative financing, such as advance payments, shared costs, or user fees;

(5) Personal services contracts;

(6) Consulting and advisory services

(7) Matters relating to export controls or non-U.S. citizens;

(8) Matters involving information, personnel or physical security;

(9) Condemnations;

(10) Sufficiency of title in real estate acquisitions;

(11) Matters raising ethical or Procurement Integrity Act issues, or concerning conflicts of interest (personal and organizational), federal and state fraud statutes, or other federal and state criminal statutes.

(12) Policy memoranda, procedures, regulations, orders, and guidance concerning acquisition matters;

(13) Proposed legislation and testimony for legislative hearings on acquisition matters;

(14) Correspondence about acquisition matters with parties outside the agency,

including Congress, the General Accounting Office, and other federal agencies, or correspondence under the signature of the Secretary, Deputy Secretary, Administrator, Deputy Administrator or Regional and Center Directors.

**5 Representation**

a. Agency counsel will represent the service organization in any protest of an award or other procurement action, and in contract claims, disputes, or controversies by and against the FAA, including all meetings, negotiations, discussions, or communications on the matter after an action has been filed in an administrative, judicial, or FAA forum.

b. Agency counsel will represent the service organization on behalf of the FAA in communications, negotiations, and meetings with other parties touching upon the legal rights and obligations of the parties, or where another party, including a government party, is expected to be represented by legal counsel.

**6 Exceptions and Waivers**

At Headquarters, the Assistant Chief Counsel for Procurement, and at Regions and Centers, the Region or Center Counsel, may make written exceptions to the Coordination Policy described in Section 1.15, adjust dollar minimums, or in appropriate cases, waive the Coordination Policy.

**B Clauses**

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**C Forms**

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**T3.1.3 Fundamental Principles**

**A Fundamental Principles**

**1 Standards of Conduct for FAA Employees** **Revised 10/2005**

a. Transactions relating to the expenditure of funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to strictly avoid any conflict of interest or even the appearance of a conflict of interest in FAA-contractor relationships.

b. The CO, other integrated product team members, or anyone directly involved in conducting

a procurement are to comply with 5 CFR 2635, Standards of Ethical Conduct for Employees of the Executive Branch, and 18 U.S.C. 201-209, 216.

c. Letters of commendation to contractors or their employees must be reviewed by the Office of the Chief Counsel.

d. FAA personnel should consult their cognizant legal counsel about any questions or issues pertaining to standards of conduct.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

## T3.1.4 Delegations Revised 7/2009

### A Contracting Authority, Delegation, and Unauthorized Commitments Revised 10/2008

### 1 Delegated Authority for Contracting and Other Procurement Activities Revised 1/2012

a. *Delegation.* The Administrator has authority to enter into contracts, leases, grants, cooperative agreements, and other transactions, and to delegate authority for managing FAA's contracting function to the FAA Acquisition Executive (FAE). Based on the Administrator's delegation, the FAE has authority to appoint, and redelegate contracting authority to, the Chief(s) of the Contracting Office (COCO), Contracting Officers (CO) and qualified non-contracting personnel.

b. *Specific Authority Granted*. Any delegation of authority to perform contracting and other procurement activities must be in writing and explicitly state the authority and limitations it conveys. If specific authority is not included in the delegation, then that authority does not exist.

c. *Basis for Delegation*. Except for the purchase card program, all delegations of authority to perform procurement or other related activities are made by the FAE. Before delegating contracting authority, the FAE considers the following:

(1) There must be a demonstrated need for the authority requested;

(2) The delegation level must be commensurate with the need in terms of cost, complexity and mission criticality;

(3) The individual selected must meet the qualifications for the authority

requested. However, an individual's qualifications, without a demonstrated need for the authority, are not sufficient reason to grant contracting authority; and

(4) Other factors, such as organizational structure, total volume of the contractual actions, complexity and dollar value of the work involved, and aggregate value of the anticipated actions that the individual will be processing.

d. *Purchase Card Delegation*. The FAE's approval is not required for individual Delegations of Procurement Authority (DPA) for the purchase card program.

e. *Delegation Records.* The FAE will provide a copy of all delegations of contracting authority and any modifications, terminations, or waivers to delegations to the COCO and the Acquisition Career Manager (ACM). Copies of all delegations are maintained by the COCO and the Acquisition Career Manager. The ACM will be the official record keeper for all delegations.

f. *Terminating Delegation*. Except for the purchase card program, only the FAE may terminate a CO warrant or other procurement authority. Unless the delegation provided for automatic termination, the termination is to be by letter and state the general reason for termination and the effective date. When a delegated contracting authority is terminated before its automatic termination date or when there is no automatic termination date, the written notice to the individual should provide enough time to ensure the individual does not make any unauthorized commitments.

Upon notification of the termination, the original warrant or certificate of appointment is annotated as "terminated" and includes the reasons for the termination. Reasons for termination may include:

(1) The need for the delegated authority no longer exists, for example, lack of a demonstrated need, retirement, resignation, termination of employment, or an assignment to another position.

(2) Failure to comply with applicable requirements, limitations, policies, regulations, statutes, or delegated responsibilities;

(3) Maintenance training/certification requirements have not been met, or failure to maintain all standards after appointment; or

(4) Violation of a material portion of the ethics guidance for Federal employees and/or standards of conduct for Department of Transportation employees.

g. *Changes in Authority*. When the FAE modifies delegated authority, it must be in writing and delivered to the individual with sufficient advance notice and instructions to ensure that the individual does not make unauthorized commitments. Any increase or decrease in the dollar value or scope of an individual's contracting authority requires issuing a new certificate of appointment or warrant and termination of the previous delegated authority.

h. *Waivers.* The FAE may waive qualification standards if circumstances clearly dictate need for delegation of authority, but the employee does not fully meet required standards. Such a

waiver is conditional, identifies duration, and must state the requirements that the individual must satisfy to become fully qualified.

## 2 COCO Responsibilities Revised 1/2012

a. The COCO is a position designated by the FAE that is delegated unlimited authority for procurement contract award and administration, leases, real estate transactions, cooperative agreements, non-Airport Improvement (AIP) grants, agreements, and other transactions. The COCO, acting within the scope of the FAE's delegation, manages day-to-day contracting functions for FAA.

b. As part of the purchase card program, the COCO may redelegate contracting authority to qualified individuals as provided in Procurement Guidance T3.2.6. The COCO may terminate or modify such delegation in accordance with the procedures specified above in T3.1.4. A.1 (f) and (g). The individuals receiving delegation must have the required training to perform as purchase card program managers. Before delegating such purchase card program authority, the COCO considers the following criteria:

(1) There must be a demonstrated need for the authority requested;

(2) The delegation level must be commensurate with the need in terms of cost, complexity and mission criticality;

(3) The individual selected must meet the qualifications for the authority requested. However, an individual's qualifications, without a demonstrated need for the authority, are not sufficient reason to grant contracting authority; and

(4) Other factors, such as organizational structure, total volume of the contractual actions, complexity and dollar value of the work involved, and aggregate value of the anticipated actions that the individual will be processing.

c. Specific responsibilities of the COCO include:

(1) *Review/Approve Qualifications*. The COCO reviews and approves qualifications, such as education, training, knowledge, and experience, of personnel being considered for appointment as a CO or for other types of procurement authority.

(2) *Delegate Authority*. Except for delegations made pursuant to the purchase card program, the COCO formally requests delegation of contracting and other procurement authority in writing to the FAE and maintains appropriate records of all delegations.

(3) *Periodic Review*. The COCO periodically reviews contracting and other procurement delegations to validate that the delegations remain appropriate and needed, reviews individual's continuous learning to ensure requirements are being met, and periodically examines procurement actions to ensure authorized individuals do not exceed their delegated authority. The COCO also reviews all Level I and II warrants at least annually to determine whether each CO maintained professional proficiency and

otherwise remains qualified. Level III warrants are reviewed at least every two years.

(4) *Terminate Delegations*. The COCO may terminate a delegation of authority made as part of the purchase card program at any time. The termination is by letter, and states the general reason for termination and effective date, unless the original delegation provided for automatic termination. If the COCO terminates such delegated authority before an automatic termination date, or when there is no automatic termination date, the written notice to the individual should provide enough time and sufficient instructions to ensure the individual does not make any unauthorized commitments. Upon notification of the termination, the original warrant or certificate of appointment is annotated as "terminated" and includes the reasons for the termination. Reasons for termination may include:

(a) The need for the delegated authority no longer exists, for example, retirement, resignation, termination of employment, or an assignment to another position.

(b) Failure to comply with applicable requirements, limitations, policies, regulations, statutes, or delegated responsibilities;

(c) Maintenance training/certification requirements have not been met, or failure to maintain all standards after appointment; or

(d) Violation of a material portion of the ethics guidance for Federal employees and/or standards of conduct for Department of Transportation employees.

(5) *Changes in Authority*. The COCO modifies delegated authority by written notice in enough time and with sufficient instructions to ensure that the individual does not make unauthorized commitments. The COCO must document any changes in an individual's authority, such as an increase in the number of procurement actions, number or complexity of requisitions, or other operational necessity. Any increase or decrease in the dollar value or scope of an individual's procurement authority requires issuing a new certificate of appointment or warrant and termination of the previous delegated authority.

(6) *Waivers.* The COCO may waive qualification standards if circumstances clearly dictate need for delegation of authority, but an employee does not fully meet required standards. Such a waiver is conditional, identifies a duration, and states requirements that the individual must satisfy to be fully qualified.

## 3 1102 Series Certification Revised 1/2012

Individuals must meet training, education, and experience requirements to qualify for an 1102 job series position, unless otherwise prohibited by an existing collective bargaining agreement. AMS Policy Section 5, Acquisition Career Program, outlines certification requirements for personnel once in the 1102 series.

## 4 Contracting Officer Warrants (1102 Series) Revised 1/2012

a. *Limitations.* Warrants define the dollar and scope limitations of the authority. Warrants may be limited or unlimited. A limited warrant states a total dollar limitation for each transaction. The dollar value of a transaction includes the base year and all options and ceiling amounts, as defined by "total estimated potential value" in Appendix C of AMS policy. An unlimited warrant allows transactions at any dollar value. In addition to the dollar value, limited and unlimited warrants must expressly state any limitations of authority (other than limitations in applicable laws or regulations) and the specific types of transactions the CO is authorized to make. Grants, cooperative agreements and other transactions are excluded from delegated contracting authority for procurement and real property COs *unless* expressly stated in the warrant.

b. *Warrant Levels.* There are three CO warrant levels that apply to contracting authority. The warrant levels align with the 1102 series certification levels. These warrant levels do not apply to purchase card delegations. Unless otherwise prohibited by an existing collective bargaining agreement, individuals must meet the training, education, and experience requirements as outlined in AMS Policy Section 5, Acquisition Career Program, to qualify for warrant.

c. *Procedures for Obtaining Certificate of Appointment (Warrant).*

(1) The request for a certificate of appointment/warrant is prepared on an "Contracting Officer Warrant Request" (see AMS Procurement Forms) by the individual and submitted to his or her immediate manager.

(2) The individual's manager reviews the package to ensure that the individual meets the training, education, and experience requirements commensurate with the proposed delegated threshold. If the manager concurs, he or she forwards the nominee's package to the COCO.

(3) The COCO reviews the request and supporting documentation for completeness and evaluates the applicant's acquisition experience, training, and evidence of certification. If the COCO concurs, he or she signs the request and forwards it to the Acquisition Career Manager (ACM).

(4) The ACM reviews and forwards the request with a recommendation to the FAE. The certificate of appointment must include a warrant number, dollar limit of warrant authority, and any other applicable limitations, such as restrictions to certain types of transactions. If approved, the FAE signs the delegation and returns it to the ACM for distribution.

d. *Administrator's Review.* Individuals delegated authority to award and administer grants, cooperative agreements or other transactions must ensure that prior to award, the Administrator is notified and allowed to review any non-Airport Improvement Program (AIP) grant, cooperative agreement, or other transactions with a cumulative value of $10 million or more, or with significant Congressional interest. (See AMS Procurement Guidance T3.8.1

Agreements, Cooperative Agreements, Gifts & Bequests, for additional information).

e. *Displaying Warrant and Other Certificate of Appointment.* COs must prominently display the warrant or other certificate of appointment so that information about their authority and any limitations is readily available to the public and FAA personnel.

f. *Skills Currency/Continuous Learning*. To maintain the delegated contracting authority, individuals must maintain appropriate 1102 series certification level. Acquisition professionals must earn 80 continuous learning points (CLP) of skills currency training every two years. COCOs monitor continuous learning requirements for individuals delegated contracting authority. If an individual does not earn 80 CLPs every two years, the FAE may terminate or modify the warrant or certificate of appointment to decrease the dollar and/or specific type of transaction authority.

## 5 Procurement Authority Delegated to Other Qualified Individuals Revised 1/2012

a. *General*. The FAE may delegate a limited form of procurement authority to qualified individuals who are not warranted COs. This limited authority may be granted to individuals within or outside of the contracting office when supported by a demonstrated need. The FAE evaluates the request and delegates authority to the individual needing the authority. The delegation must be in writing and state specific limitations governing the limited authority, such as dollar thresholds or types of procurement (i.e. supplies, services, construction, etc.). Guidance in this section does not apply to delegations under the purchase card program, which is addressed in AMS Procurement Guidance T3.2.6, Purchase Card Program.

b. *Redelegation.* Individuals delegated limited procurement authority from the FAE under this subsection cannot redelegate that authority.

c. *Delegation of Procurement Authority (DPA).* A DPA may be granted to non-1102s (such as Logistics Management Specialists (LMS) by the FAE through a written request. This delegation requires individual certification at either Level I (up to $25,000) or Level II (up to $50,000). This form of delegation authorizes the individual to legally bind FAA and delegates specific authority related to the dollar threshold and types of procurements (not related to the purchase card program). This procurement authority cannot be further delegated, and personnel cannot “sign for” or over someone else holding procurement authority.

d. *Delegation of Reimbursable Agreement Authority (DRAA).* For Small Scale Reimbursable Agreements (SSRAs) with a value of less than $30,000, a DRAA may be granted to qualified non-1102s by the FAE through a written request. This delegation does not allow the individual to obligate funds nor is certification required. This authority cannot be further delegated, and personnel cannot “sign for” or “sign over” another's authority.

e. *Limitations.* All DPAs define the dollar and scope limitations of the authority granted by the FAE. All limitations based on dollar thresholds must ensure the dollar value of a transaction includes the base year and all options, as defined by "total estimated potential value" in Appendix C of AMS policy. In addition to the dollar value, a DPA must expressly

state any limitations of authority (other than limitations in applicable laws or regulations) and state the specific types of transactions the non-1102 is authorized to make (e.g. other transaction agreements, reimbursable agreements, construction, services and/or supplies, etc.).

f. *Displaying the DPA and DRAA.* Personnel must prominently display any delegation to make information on the authority and any limitations readily available to the public and FAA personnel.

g. A sample of a delegation request and instructions is at the Acquisition Career Manager website.

## 6 Ratification of Unauthorized Commitments Revised 1/2012

a. G*eneral*.

(1) *Contracting Authority*. Only a CO and other qualified individual delegated procurement authority, acting within the scope of his or her delegated authority, may enter into contracts, leases, or other agreements and may obligate funds on behalf of the Government.

(2) *Unauthorized Commitments*. A contract, lease, order, or agreement made by an FAA employee, other than a CO and other authorized person, is not binding because the person who made the agreement lacked the authority to commit the Government. An employee without proper authority who commits the Government is acting improperly. The employee will be held accountable and may be disciplined according to Federal Aviation Personnel Manual (FAPM) Letter 2635 and Human Resources Policy Manual (HRPM) ER-4.1, as applicable.

(3) *Organizational Responsibility*. FAA organizations must make every effort to prevent unauthorized commitments. Unauthorized commitments are serious acts of misconduct. Supervisors and managers must ensure each employee is aware of policy and procedures related to unauthorized commitments and conduct and discipline rules for unauthorized commitments in FAPM Letter 2635 and ER-4.1.

(4) *Ratification.* Although FAA's policy is to avoid unauthorized commitments, under certain approved circumstances such commitments may be ratified using the procedures in this section and converted into a legal contract.

(5) *Ratifying Official*. The Director of Acquisition and Contracting at Washington Headquarters has authority to ratify unauthorized commitments. This authority is also delegated to the Director of the Mike Monroney Aeronautical Center for unauthorized commitments at the Aeronautical Center. This ratifying authority cannot be delegated below these positions or to other positions.

(6) *Local Implementation*. All FAA organizations must follow the procedures in this section. Contracting offices and other organizations may issue additional implementing procedures if they do not contradict the procedures in this section.

b. *Procedures for Ratification*. When an organization discovers an unauthorized commitment, the organization must take immediate action to ratify the commitment and have the cognizant procurement office convert it to a legal transaction. Procedures for ratification are:

(1) The supervisor/manager, assisted by the person who committed the unauthorized act, prepares a memorandum of facts containing the following information:

(a) A detailed description of the circumstances that caused the unauthorized commitment;

(b) Reasons why normal procurement procedures were not followed;

(c) A description of the bona fide Government need that required the commitment;

(d) A statement about the benefit to FAA from acquiring the unauthorized supplies or services received;

(e) The dollar value of the commitment;

(f) Rationale for the contractor selected and identification of other sources considered;

(g) The name of the individual who made the unauthorized act;

(h) A statement about the disciplinary action taken to preclude the situation from recurring;

(i) A specific recommendation that the transaction be approved and ratified;

(j) A determination that funds are now available and were available at the time the unauthorized commitment was made; and

(k) Any other pertinent facts including invoices, receiving reports, or other evidence concerning the transaction.

(2) Evidence of available funding should be attached to the memorandum.

(3) The memorandum of facts is signed by the employee who made the unauthorized commitment, and endorsed by the supervisor/manager. By signing the memorandum, the employee attests that the information is accurate and complete. If the employee has separated from FAA, then the organization having access to information about the unauthorized commitment prepares the memorandum and the former employee's supervisor/manager signs it.

(4) Legal review and concurrence is obtained before submitting the memorandum to the ratifying official.

(5) After legal concurrence, the memorandum along with the applicable procurement request (PR) is transmitted to the cognizant procurement office for ratification action.

(6) When the procurement office receives a PR and a properly documented supporting memorandum, the CO makes a written determination, as described below, and forwards the ratification action to the ratifying official.

(a) *CO Determination*. Before recommending approval of a ratification and as a part of the CO's review and determination, the CO:

(i) Determines the price to be fair and reasonable;

(ii) Recommends that payment be made;

(iii) Determines that the settlement of the unauthorized commitment would not involve a contract dispute subject to AMS Policy 3.9;

(iv) Determines that the purchase would have been authorized had the purchaser followed established procedures.

(b) If an affirmative determination can be made in all areas of subparagraph (a) above, the CO prepares a memorandum to the ratifying official with the following information:

(i) A brief description of the unauthorized commitment;

(ii) A statement that prices are fair and reasonable;

(iii) A statement recommending approval of the unauthorized commitment;

and

(iv) A copy of all supporting documentation.

(c) If the CO, after legal concurrence, is unable to make an affirmative determination in all areas of subparagraph (a) above, the memorandum to the ratifying official states the CO's reasons that an affirmative determination cannot be made, recommends that the action not be ratified, and offers an alternative solution to resolving the unauthorized commitment.

c. *Notice of Infractions*.

(1) An unauthorized commitment made by an individual is considered a first infraction.

(2) Upon receipt of a request for ratification from an organization, the cognizant division manager of the contracting office forwards a notice of infraction to the next level manager/supervisor above the supervisor/manager who signed the memorandum of facts. The notice advises the second level manager/supervisor that the action violates Federal law and FAA policy and guidance; reminds him or her of the proper procurement process;

offers to provide written material or mini-training sessions (when possible) to orient the organization to the procurement process; requests every effort be made to avoid future violations; and, when appropriate, requests the widest possible distribution of the notice within the organization.

d. *Disciplinary Actions for Making Unauthorized Commitments*.

(1) Individuals who make unauthorized commitments, and their immediate supervisor are subject to possible disciplinary actions. The recommended levels of disciplinary penalties for staff, managers, and supervisors are contained FAPM Letter 2635 and ER-4.1.

(2) Any unauthorized commitment made by a non-manager/supervisor with the approval of his or her manager/supervisor is an infraction against the manager/supervisor and not the non-manager/supervisor.

(3) The period of accumulation for the above-mentioned infractions by staff, managers, and/or supervisors is five years.

e. *Avoiding Ratification*.

(1) When individuals who have not been delegated procurement authority need products or services, or when individuals with delegated procurement authority need products or services estimated to exceed their delegated authority, they must consult with the procurement office for support and guidance to avoid unauthorized commitments.

(2) An unauthorized commitment occurs when someone, other than a CO or other authorized individual, enters into an agreement on behalf of the Government but does not have authority to do so or to obligate the Government.

(3) To avoid a ratification action, an office requiring products or services must ensure that its employees are familiar with the procurement process and are aware of the consequences of unauthorized commitments.

(4) Individuals who have not been delegated procurement authority and who need supplies or services must contact either the person within their organization who has delegated procurement authority or the cognizant procurement office for assistance. The following are examples of types of procurement and areas of the procurement process that may involve individuals outside of the procurement offices, and circumstances in which procurement authority may be delegated to individuals other than a CO. (For more information about procurement methods generally used by individuals outside of the procurement office, see AMS Procurement Guidance T3.2.2.5, Commercial and Simplified Purchase Method.)

(a) *Government Purchase Card.* FAA employees may be delegated authority to procure supplies and services using the Government purchase card.

(b) *Blanket Purchase Agreement (BPA).* A procurement vehicle, awarded by a CO,

for ordering supplies or services that may authorize other specific individuals to order supplies or services from the vendor.

(c) *Purchase Card Check.* FAA employees delegated purchase authority may use purchase card checks when a vendor does not accept the Government purchase card for on-the-spot, over-the-counter purchases of supplies and services.

(5) *Existing Contracts*. Contracting Officer Representatives, resident engineers, etc., must be careful not to direct a contractor to perform any task that would result in a change to the cost, schedule, or scope of the contract, unless such action is authorized by the CO. It is easy through conversation and during the normal daily interaction with the contractor to inadvertently direct the contractor to perform tasks that result in cost or schedule impact. If such direction is given without the delegated authority, or the express authorization of the CO, the result is an unauthorized commitment.

(6) *Contract Renewals*. Contracts awarded for a base period of performance plus options means that the Government is only committed for the base period. Each option period requires a contract modification before the beginning of the option period to authorize continued performance. Performance following the initial contract period must not begin until the contract has been properly modified to authorize continued performance. The requiring office is responsible for requesting a contract modification to exercise options and for providing the funds to continue performance. Individuals who serve as the Government's point of contact on a contract with option provisions should be familiar with the contract terms. Placing an order or directing tasks against an expired contract results in an unauthorized commitment. Before the beginning of the option year, if a modification has not been received to extend the contract period, the CO should be contacted for guidance before placing any orders or directing any tasks for that option period.

(7) *Examples*. The following are examples of areas where unauthorized commitments are commonly made:

(a) *Acquiring Conference Space.* After the request for conference space has been coordinated through the local real property office, the requiring office may discuss the requirement with the vendor/hotel to ensure the appropriate accommodations are available. However, the space should not be utilized until the transaction has been approved and an agreement signed by a person with the appropriate procurement authority.

(b) *Training.* Request for training should be submitted to the procurement office in time to enable the requirement to be processed sufficiently in advance of the beginning of the course.

(c) *Professional Speakers or Arbitration Services.* The requiring organization may identify the appropriate speakers or arbitrators and have discussions to ensure the Government's needs will be met. However, the requiring office should not enter into any oral or written agreements on behalf of the Government unless the person making the agreement has the delegated authority to do so. If the requiring office

does not have an individual with the delegated authority to enter into an agreement, the request should be submitted to the contracting office for processing. f. *Exceptions to Infractions*.

(1) In cases of extreme emergencies, such as floods, fires, tornadoes, earthquakes and hurricanes, or emergencies that may have an immediate impact on the safety of the flying public, an individual may need to obligate the Government's funds to preserve life and property. In these instances, if possible, the individual should contact the cognizant procurement office and request that a CO verbally authorize the contractor to proceed according to emergency procedures outlined in AMS policy 3.2.2.4.1.1.

(2) When the conditions outlined above occur, and the CO was not contacted to give a verbal authorization, the memorandum of fact documents the circumstances. The memorandum includes a statement that the person who made the unauthorized commitment is exempt from the requirement for disciplinary action.

g. *Waiving Disciplinary Action*. The ratifying official may waive disciplinary action. The ratifying official must justify in writing why the unauthorized act does not warrant discipline.

h. *Definitions.*

(1) "Ratification" is an act of approving an unauthorized commitment by an official who has the authority to do so.

(2) "Unauthorized commitment" is an agreement entered into by a representative of the Government who does not have the authority to enter into agreements on behalf of the Government.

## B Clauses Revised 7/2010

view contract clauses

## C Forms Revised 7/2010

view procurement forms

## D Appendix Added 1/2011

### 1 1102 Series Warrant Standards Revised 1/2012

| FAA Certification Level | Threshold Authority | Corresponding FAC - C Certification |
|---|---|---|
| Level I is fixed price | Up to $500,000 | Level I |
| Level II | Up to $10,000,000 | Level II |

| | | |
|---|---|---|
| Level III | Greater than $10,000,000 | Level III |

### 2 Non-1102 Delegation of Procurement Authority Revised 7/2015

**Non-1102 Delegation of Procurement Authority Level I (up to $25,000) - Requirements**

One year of Simplified Acquisition experience or Acquisition-related experience
Formal education is not required

**Required Training Classes**

CON-100 – Shaping Smart Business Arrangements
CON-121 – Contract Planning
CON-124 – Contract Execution
CON-127 – Contract Management
CON-237 – Simplified Acquisition Procedures
FAA-30010027 – Introduction to AMS Procurement
FAA-30010032 – LMS – On-the-Job Training

**Non-1102 Delegation of Procurement Authority – Level II (up to $50,000) – Requirements**

One year of successful Acquisition experience at the DPA Level I
Formal education is not required

**Required Training Classes**

CON-170 – Fundamentals of Cost and Price Analysis
CON-200 – Business Decisions for Contracting
CON-216 – Legal Considerations in Contracting
FAA-30010002 – AMS Lifecycle

## T3.1.5 Conflict of Interest Revised 8/2009

### A Conflict of Interest

### 1 Requirement for an Agreement Regarding Conflict-of-Interest Revised 7/2014

a. Persons who have a real or apparent conflict of interest may be unable to render impartial, technically sound, and objective assistance, advice, or decisions. A procurement team member (program officials, contracting personnel, legal counsel, and others supporting a program), Office of Dispute Resolution for Acquisition (ODRA) member, or other Federal member who has a real or apparent conflict of interest, and who is a Federal employee, must withdraw from participation in the source selection process if law (18 U.S.C. 208) or

regulation (5 CFR Part 2635) requires it. Considerations of equity and integrity of the procurement process require that non-Government members of a procurement team be held to the same standards.

b. Unless a procurement team member receives prior authorization, a procurement team member who is a Government employee should not participate if the result is likely to affect the financial interests of the procurement team member's household, or the procurement team member knows a person with whom the procurement team member has a covered relationship as defined in 5 CFR 2635.502, or the procurement team member represents a party, if a reasonable person with knowledge of the relevant facts would question the procurement team member's impartiality in the matter. The law does not require non-Government procurement team members be removed when they have an apparent conflict, but the FAA's public image, workforce morale, and considerations of equity dictate that they be treated exactly as our own employees are treated.

c. Each person involved in the source selection process, including the source selection official (SSO), contracting officer, and legal counsel, who might have access to confidential or proprietary procurement information such as procurement strategy, offerors' proposals, results of evaluations, and the final selection actions, must sign and submit an Agreement Regarding Conflict-of-Interest (see AMS Procurement Forms) to the SSO or designee before any participation in the source selection process process for all procurements with an estimated value of $150,000 or greater. This is to ensure that no conflict of interest exists. An Agreement Regarding Conflict-of-Interest should be completed before distribution of offerors' submissions for evaluation and at any time afterwards, if an individual's financial, business, or employment situation changes to create the potential for a conflict of interest. The Agreement Regarding Conflict-of-Interest must be completed by individual procurement team members for each procurement and retained in the pre-award file.

## 2 Processing a Conflict of Interest Revised 1/2007

If the SSO or designee becomes aware of a conflict of interest, the SSO should notify the procurement legal counsel immediately. Action should be taken to remove the party from further participation in the source selection activities until the conflict of interest is reviewed and legal advice obtained. A procurement team member must be excused or removed from participation in the source selection process should a conflict of interest exist, unless a waiver is granted. All conflict of interest cases must be clearly documented. The procurement team members must update and resubmit any and all conflict of interest statements if an individual's financial, business, or employment relationship changes to the extent that a conflict of interest could exist.

## 3 Single-Source/Non-Competitive Acquisitions Added 7/2012

The requirements of this Section are also applicable to single-source and non-competitive acquisitions. For such acquisitions, the Contracting Officer will take all appropriate actions in coordination with the Program Office. The Contracting Officer may tailor the Agreement Regarding Conflict of Interest Form as appropriate.

### B Clauses

view contract clauses

### C Forms Revised 1/2011

view procurement forms

## T3.1.6 Non-Disclosure of Information Revised 8/2009

### A Disclosure of Information

### 1 General Revised 1/2007

The Source Selection Official (SSO), each procurement team member (program officials, contracting personnel, legal counsel, and other support staff), including advisors, and any other individuals exposed to commercially sensitive and source selection sensitive information must maintain confidentiality of that information.

### 2 Requirement for an Agreement Regarding Non-Disclosure of Information Revised 7/2014

Maintaining the security of sensitive procurement information and source selection proceedings is of paramount importance to the integrity of the evaluation process. To assure that sensitive data acquired in the course of the procurement are handled properly, the individuals (including the Source Selection Official (SSO), Contracting Officer, and Legal Counsel), involved in these proceedings are required to sign an Agreement Regarding Non-Disclosure of Information before the Screening Information Request (SIR) is issued for all procurements with an estimated value of $150,000 or greater. This agreement provides notice of the type of information that requires protection and the penalties for improperly disclosing such information.

### 3 Processing a Violation of the Agreement Regarding Non-Disclosure of Information Revised 1/2011

Any suspected or actual improper disclosure of procurement sensitive information must be reported to the Contracting Officer. The Contracting Officer will consult with the Procurement Legal Division for guidance in this matter. The suspected violator should not be permitted to continue in the procurement process until the suspected violation has been reviewed and legal advice obtained.

### 4 Processing a Freedom of Information (FOIA) Request Revised 7/2012

a. The CO processes requests for procurement information under FOIA. Unless the request for information is exempt from disclosure under the Act (such as trade secrets and commercial or financial information that is priviledged or confidential), the information must be released. The CO coordinates responses to FOIA requests with the local FOIA Control Officer and the Office of Chief Counsel.

b. The CO must coordinate a request for procurement information with the vendor (submitter) whose contract, or information provided under a contract, is requested. The CO must request that the vendor describe the specific information exempt from disclosure and provide the specific exemption(s) which apply to the information. The vendor's response must be placed in the contract file. The CO determination whether the information is exempt from disclosure and rationale for the determination must also be placed in the contract file.

### 5 Single-Source/Non-Competitive Acquisitions Added 7/2012

The requirements of this Section are also applicable to single-source and non-competitive acquisitions. For such acquisitions, the Contracting Officer will take all appropriate actions in coordination with the Program Office. The Contracting Officer may tailor the Agreement Regarding Non-Disclosure of Information Form as appropriate.

### B Clauses

view contract clauses

### C Forms

view procurement forms

## T3.1.7 Organizational Conflict of Interest Revised 4/2006

### A Organizational Conflict of Interest

### 1 Responsibilities Related to Organizational Conflict of Interest

a. The policy of the FAA is to avoid contracting with contractors who have unacceptable organizational conflicts of interest. An organizational conflict of interest means that because of existing or planned activities, an offeror or contractor is unable or potentially unable to render impartial assistance to the agency, or has an unfair competitive advantage, or the offeror or contractor's objectivity is or might be impaired. It is not the intention of the FAA to foreclose a vendor from a competitive acquisition due to a perceived OCI. FAA Contracting Officers are fully empowered to evaluate each potential OCI scenario based upon the applicable facts and circumstances. The final determination of such action may be negotiated between the impaired vendor and the Contracting Officer. The Contracting Officer's business judgment and sound discretion in identifying, negotiating, and eliminating OCI scenarios should not adversely affect the FAA' s policy for competition. The FAA is committed to

working with potential vendors to eliminate or mitigate actual and perceived OCI situations, without detriment to the integrity of the competitive process, the mission of the FAA, or the legitimate business interests of the vendor community. Contractors should be instructed to contact the FAA at the earliest possible time after an investment decision has been made for a particular acquisition to evaluate whether any identified actual or potential conflicts of interest may be avoided or mitigated. As used herein, the term "person" includes any legal entity including a partnership, corporation, or association.

b. Mitigation Plans. The FAA reserves the right to audit any or all proposed mitigation plans, and to reject a plan, if in the opinion of the Contracting Officer such a plan is not in the best interests of the FAA.

## 2 Potential OCI Situations Revised 4/2006

a. Contracting Officers should analyze planned acquisitions to:

(1) Identify and evaluate potential OCI's early in the acquisition process (prior to issuance of an initial screening information request (SIR), if possible); and

(2) Avoid, neutralize, or mitigate potential conflicts before contract award.

b. *Examples of Conflict Situations.* The following examples illustrate situations in which questions concerning organizational conflicts of interest may arise. They are not all inclusive, but are intended to help the Contracting Officer apply general guidance to individual contract situations:

(1) *Unequal Access to Information.* Access to "nonpublic information" as part of the performance of an FAA contract could provide the contractor a competitive advantage in a later competition for another FAA contract. Such an advantage could easily be perceived as unfair by a competing vendor who is not given similar access to the relevant information. If the requirements of the FAA procurement anticipate the successful vendor may have access to nonpublic information, all vendors should be required to submit and negotiate an acceptable mitigation plan.

(2) *Biased Ground Rules.* A contractor in the course of performance of an FAA contract, has in some fashion established important "ground rules" for another FAA contract, where the same contractor may be a competitor. For example, a contractor may have drafted the statement of work, specifications, or evaluation criteria of a future FAA procurement. The primary concern of the FAA in this case is that a contractor so situated could slant key aspects of a procurement in its own favor, to the unfair disadvantage of competing vendors. If the requirements of the FAA procurement anticipate that a contractor may have been in a position to establish important ground rules, including but not limited to those described herein, the contractor should be required to submit and negotiate an acceptable mitigation plan.

(3) *Impaired Objectivity.* A contractor in the course of performance of an FAA contract, is placed in a situation of providing assessment and evaluation findings

over itself, or another business division or a subsidiary of the same corporation, or another entity with which it has a significant financial relationship. The concern in this case is that the contractor's ability to render impartial advice to the FAA could appear to be undermined by the contractor's financial or other business relationship to the entity whose work product is being assessed or evaluated. In these situations, where a "walling off" of lines of communication may well be insufficient to remove the perception that the objectivity of the contractor has been tainted. If the requirements of the FAA procurement indicate that the successful vendor may be in a position to provide evaluations and assessments of itself or corporate siblings, or other entity with which it has a significant financial relationship, the affected contractor should provide a mitigation plan that includes recusal by the vendor from the affected contract work. Such recusal might include divestiture of the work to a third party vendor.

c. Contracting Officers should obtain the advice of legal counsel and appropriate technical specialists in evaluating potential conflicts and in developing any necessary SIR provisions and contract clauses. Before issuing a SIR for a contract that may involve a potential conflict, the Contracting Officer should formulate, in conjunction with legal counsel and team members, a course of action for resolving the conflict. The rational basis supporting the Contracting Officer's decision on an OCI issue should be documented in the contract file.

**3 Disclosure by Offerors or Contractors Participating in FAA Acquisitions**

a. Offerors or contractors should provide information which concisely describes all relevant facts concerning any past, present or currently planned interest, (financial, contractual, organizational, or otherwise) relating to the work to be performed and bearing on whether the offeror or contractor has a possible OCI.

b. If the offeror or contractor does not disclose any relevant facts concerning an OCI, the offeror or contractor, by submitting an offer or signing the contract, warrants that to its best knowledge and belief no such facts exist relevant to a possible OCI.

**4 Remedies for Nondisclosure**

The following are possible remedies should an offeror or contractor refuse to disclose, or misrepresent, any information regarding a potential OCI:

a. Refusal to provide adequate information may result in disqualification for award.

b. Nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award.

c. Termination of the contract, if the nondisclosure or misrepresentation is discovered after award.

d. Disqualification from subsequent FAA contracts.

e. Other remedial action as may be permitted or provided by law or in the resulting contract.

**5 Contractor Participation in Preparing Specifications or Statements of Work**

The Contracting Officer should consider the following when contractor support is used to prepare specifications or statements of work:

a. If a contractor prepares and furnishes complete specifications covering nondevelopmental items, to be used in a competitive acquisition, that contractor may have a conflict in furnishing these items, either as a prime contractor or as a subcontractor, for a reasonable period of time including, at least, the duration of the initial production contract. Therefore, a contractor who has prepared and furnished completed specifications for such items should be excluded from competition for that acquisition. However, an OCI may not exist in the following circumstances:

(1) Contractors furnish, at Government request, specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product; or

(2) Situations in which contractors, acting as industry representatives, help Government agencies prepare, refine, or coordinate specifications, regardless of source, provided this assistance is supervised and controlled by Government representatives.

b. If a single contractor drafts complete specifications for nondevelopmental equipment, it should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation in which the contractor could draft specifications favoring its own products or capabilities. In this way the FAA may be assured of getting unbiased advice as to the content of the specifications and may avoid allegations of favoritism in the award of production contracts.

c. There may be instances when contractor assistance is necessary in preparing statements of work. When contractor support is used, the contractor might be in a position to favor its own products or capabilities. If a contractor prepares, or assists in preparing, a statement of work to be used in competitively acquiring a system or services, or provides material leading directly and without delay to such a statement of work, that contractor may not supply the system, major components of the system, or the services unless:

(1) It is the single source; or

(2) It has participated in the development and design work; or

(3) More than one contractor has been involved in preparing the work statement.

d. In development work, it is normal to select firms that have done the most advanced work in the field. These firms can be expected to design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more

knowledgeably than firms that did not participate in the development, and this can affect the time and quality of production, both of which are important to the Government. In many instances the Government may have financed the development. Thus, while the development contractor has a competitive advantage, it is an unavoidable one that is not considered unfair, therefore no OCI mitigation would be necessary.

## 6 Procedures

a. The Contracting Officer should award the contract to the apparent successful offeror unless a conflict of interest is determined to exist which cannot be neutralized, avoided, or mitigated. Before determining to withhold award based on conflict of interest considerations, the Contracting Officer should notify the contractor, provide the applicable reasons, and allow the contractor a reasonable opportunity to respond. If after consultation with legal counsel and team members, the Contracting Officer determines that it is in the best interest of the FAA to award the contract notwithstanding a conflict of interest, the Contracting Officer should document that determination.

b. When investigating a suspected OCI concerning a prospective contractor (in instances when a contractor has not independently submitted any information), the Contracting Officers should first seek the information from within the Government or from other readily available sources. Government sources include the files and the knowledge of personnel within the contracting office, other contracting offices, the cognizant contract administration and audit activities and offices concerned with contract financing. Non-Government sources include publications and commercial services, such as credit rating services, trade and financial journals, and business directories and registers.

c. If the Contracting Officer decides that a particular acquisition involves a potential OCI, the Contracting Officer should, before issuing the SIR:

(1) Prepare a written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict; and

(2) If appropriate, a draft SIR provision and/or contract clause.

d. The Contracting Officer should also consider additional information provided by prospective contractors in response to the SIR or during negotiations and attempt to avoid, neutralize, or mitigate the OCI before contract award.

e. The Contracting Officer should retain all organizational conflict of interest information in the contract file.

f. If, during the effective period of any restriction, a contracting office transfers acquisition responsibility for the item or system involved, it shall notify the successor contracting office of the restriction, and send a copy of the contract under which the restriction was imposed.

### 7 SIR Provisions

The following should be considered in developing SIRs where potential conflicts of interest may be evident. As a general rule, potential organizational conflicts of interest may be resolved by imposing some restraint, appropriate to the nature of the conflict, upon the contractor's eligibility for future contracts or subcontracts. Therefore, affected SIRs should contain a provision that:

a. Invites offerors' attention to this concern;

b. States the name of the potential conflict as seen by the Contracting Officer;

c. States the nature of the proposed restraint upon future contractor activities; and

d. Depending on the nature of the acquisition, states whether or not the terms of any proposed clause and the application of this information to the contract are subject to negotiation.

### B Clauses

view contract clauses

### C Forms

view procurement forms

## T3.1.8 Procurement Integrity Act Revised 7/2006

### A Procurement Integrity Act

### 1 Applicability Revised 10/2014

As provided by 49 U.S.C. § 40110(d)(3), FAA is subject to the Procurement Integrity Act (the Act), 41 U.S.C. §§ 2101-2107. Sections 2101, "Definitions," and 2106, "Reporting information believed to constitute evidence of offense," however, do not apply to FAA. Congress directed the FAA to adopt its own definitions in lieu of the definitions in § 2101 of the Act, consistent with the intent of AMS and the Act. By memorandum dated July 14, 2000, the Administrator approved FAAs definitions. The FAA-specific definitions in this Procurement Guidance are to be substituted for §§ 2101 and 2106.

### 2 FAA-Specific Definitions Revised 10/2014

*Under AMS, FAA-specific definitions are to be substituted for Procurement Integrity Act §§2101, "Definitions," and 2106, "Reporting information believed to constitute evidence of offense."*

**FAA Definitions as Used in 41 U.S.C. §§ 2101-2107**

(1) The term "contractor bid or proposal information" means any of the following information submitted to FAA as part of or in connection with a Screening Information Request (SIR) or an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Cost or pricing data (as defined in Appendix C of the AMS).

(B) Indirect costs and direct labor rates.

(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(D) Information marked by the contractor in accordance with (1) AMS Clause 3.2.2.3-16, "Restricting, Disclosing and Using Data," or (2) other applicable law and regulation.

(2) The term "source selection information" means any of the following information prepared for use by the FAA for the purpose of evaluating documentation, information, presentations, proposals, or binding offers which an offeror submits in response to a Screening Information Request (SIR), or in an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Proposed costs or prices submitted in response to a FAA SIR, or lists of those proposed costs or prices.

(B) Source selection plans.

(C) Technical evaluation plans.

(D) Technical evaluations of responses to SIRs or unsolicited proposals.

(E) Cost or price evaluation plans.

(F) Cost or price evaluations of responses to SIRs or unsolicited proposals.

(G) Down select determinations identifying SIR responses that are most likely to receive contract award.

(H) Any ranking of offerors developed by the FAA during the source selection process.

(I) The reports, evaluations and recommendations of source selection panels, boards, or advisory councils.

(J) Other information based on a case- by-case determination made by the FAA

Acquisition Executive*, his or her designee, or the Product or Service Team**, that its disclosure would jeopardize the integrity or successful completion of the FAA procurement to which the information relates.

In addition, all source selection information should be clearly marked as such on the cover and throughout each individual document.

(3) The term "Federal agency" means the FAA.

(4) The term "Federal agency procurement" means the acquisition (by using competitive or non- competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by the FAA using appropriated funds.

(5) The term "contracting officer" means a person who, by appointment in accordance with FAA policy, has the authority to enter into a FAA contract on behalf of the Government and to make determinations and findings with respect to such contract.

(6) The term "protest" means a written objection by an interested party to the award or proposed award of a FAA procurement contract.

(7) The term "official" means the following:

(A) An employee of the FAA, as defined in the FAA's Personnel Management System.

(B) An officer (as defined in 5 U.S.C. § 2104) of any non-FAA Federal agency (as Federal agency is defined in 40 U.S.C. § 102(5)).

(C) An employee (as defined in 5 U.S.C. § 2105) of any non-FAA Federal agency (as Federal agency is defined in 40 U.S.C. §102(5)).

(D) A member of the uniformed services (as defined in 5 U.S.C. § 2101(3)).

(8) The term "other applicable law or regulation" as used at 41 U.S.C. § 2105(c)(1)(D), includes the FAA Personnel Management System.

(9) The term "Comptroller General of the United States," as used at 41 U.S.C. §§ 2106 and 2107(5) and (6), means the FAA Office of Dispute Resolution for Acquisition.

(10) The term "program manager" as used at 41 U.S.C. § 2104(a)(2), includes a FAA Product or Service Team** Lead or Acting Lead.

(11) The term "deputy program manager" as used at 41 U.S.C. § 2104(a)(2) includes a Deputy or Acting Deputy to an FAA Product or Service Team** Lead.

(12) The term "Federal Acquisition Regulation" as used at 41 U.S.C. § 2105(c)(1)(C) means the FAA AMS.

*The July 14, 2000, memo approving FAA definitions used "Associate Administrator for Research and Acquisitions." Due to organizational changes in 2006, this position was abolished. The FAA Acquisition Executive is an equivalent position.

**The July 14, 2000, memo approving FAA definitions used the term "Integrated Product Team." Due to organizational changes, this term was not used after 2006. Product or Service Team is an equivalent structure.

## 3 Full Text of Procurement Integrity Act, 41 U.S.C §§ 2101-2107 Revised 10/2014

*Below is the full text of the Procurement Integrity Act, 41 U.S.C. §§ 2101-2107 (omitting only its §§ 2101 and 2106, which are not applicable to FAA). This Act, as it applies to the FAA, is to be read in conjunction with the FAA Procurement Integrity Act definitions (which are also shown in this Procurement Guidance Section). Please take special notice of 41 U.S.C. § 2107 below, which contains "savings provisions," or situations where the Procurement Integrity Act does **not** apply.*

**Procurement Integrity Act, 41 U.S.C. §§ 2101-2107**

**§ 2101. Definitions**

[Omitted]

**§ 2102. Prohibitions on disclosing and obtaining procurement information**

(a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—

(1) IN GENERAL.—Except as provided by law, a person described in paragraph (3) shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(2) EMPLOYEE OF PRIVATE SECTOR ORGANIZATION.—In addition to the restriction in paragraph (1), an employee of a private sector organization assigned to an agency under chapter 37 of title 5 shall not knowingly disclose contractor bid or proposal information or source selection information during the 3-year period after the employee's assignment ends, except as provided by law.

(3) APPLICATION.—Paragraph (1) applies to a person that—

(A) (i) is a present or former official of the Federal Government; or

(ii) is acting or has acted for or on behalf of, or who is advising or has

advised the Federal Government with respect to, a Federal agency procurement; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) PROHIBITION ON OBTAINING PROCUREMENT INFORMATION.—Except as provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

**§ 2103. Actions required of procurement officers when contacted regarding non-Federal employment**

(a) ACTIONS REQUIRED.—An agency official participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold who contacts or is contacted by a person that is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official shall—

(1) promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(2) (A) reject the possibility of non-Federal employment; or

(B) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until the agency authorizes the official to resume participation in the procurement, in accordance with the requirements of section 208 of title 18 and applicable agency regulations on the grounds that—

(i) the person is no longer a bidder or offeror in that Federal agency procurement; or

(ii) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement

for employment.

(b) RETENTION OF REPORTS.—The agency shall retain each report required by this section for not less than 2 years following the submission of the report. The reports shall be made available to the public on request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5 under subsection (b)(1) of that section may be withheld from disclosure to the public.

(c) PERSONS SUBJECT TO PENALTIES.—The following are subject to the penalties and administrative actions set forth in section 2105 of this title:

(1) An official who knowingly fails to comply with the requirements of this section.

(2) A bidder or offeror that engages in employment discussions with an official who is subject to the restrictions of this section, knowing that the official has not complied with paragraph (1) or (2) of subsection (a).

**§ 2104. Prohibition on former official's acceptance of compensation from contractor**

(a) PROHIBITION.—A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within one year after the official—

(1) served, when the contractor was selected or awarded a contract, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of $10,000,000;

(2) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of $10,000,000 awarded to that contractor; or

(3) personally made for the Federal agency a decision to—

(A) award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of $10,000,000 to that contractor;

(B) establish overhead or other rates applicable to one or more contracts for that contractor that are valued in excess of $10,000,000;

(C) approve issuance of one or more contract payments in excess of $10,000,000 to that contractor; or

(D) pay or settle a claim in excess of $10,000,000 with that contractor.

(b) WHEN COMPENSATION MAY BE ACCEPTED.—Subsection (a) does not prohibit a former official of a Federal agency from accepting compensation from a division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (1), (2), or (3) of subsection (a).

(c) IMPLEMENTING REGULATIONS.—Regulations implementing this section shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this section from accepting compensation from a particular contractor.

(d) PERSONS SUBJECT TO PENALTIES.—The following are subject to the penalties and administrative actions set forth in section 2105 of this title:

(1) A former official who knowingly accepts compensation in violation of this section.

(2) A contractor that provides compensation to a former official knowing that the official accepts the compensation in violation of this section.

**§ 2105. Penalties and administrative actions**

(a) CRIMINAL PENALTIES.—A person that violates section 2102 of this title to exchange information covered by section 2102 of this title for anything of value or to obtain or give a person a competitive advantage in the award of a Federal agency procurement contract shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) CIVIL PENALTIES.—The Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of this title. On proof of that conduct by a preponderance of the evidence—

(1) an individual is liable to the Federal Government for a civil penalty of not more than $50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct; and

(2) an organization is liable to the Federal Government for a civil penalty of not more than $500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct.

(c) ADMINISTRATIVE ACTIONS.—

(1) TYPES OF ACTION THAT FEDERAL AGENCY MAY TAKE.—A Federal agency that receives information that a contractor or a person has violated section 2102, 2103, or 2104 of this title shall consider taking one or more of the following actions, as appropriate:

(A) Canceling the Federal agency procurement, if a contract has not yet been awarded.

(B) Rescinding a contract with respect to which—

(i) the contractor or someone acting for the contractor has been convicted for an offense punishable under subsection (a); or

(ii) the head of the agency that awarded the contract has determined, based on a preponderance of the evidence, that the contractor or a person acting for the contractor has engaged in conduct constituting the offense.

(C) Initiating a suspension or debarment proceeding for the protection of the Federal Government in accordance with procedures in the Federal Acquisition Regulation.

(D) Initiating an adverse personnel action, pursuant to the procedures in chapter 75 of title 5 or other applicable law or regulation.

(2) AMOUNT GOVERNMENT ENTITLED TO RECOVER.—When a Federal agency rescinds a contract pursuant to paragraph (1)(B), the Federal Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(3) PRESENT RESPONSIBILITY AFFECTED BY CONDUCT.—For purposes of a suspension or debarment proceeding initiated pursuant to paragraph (1)(C), engaging in conduct constituting an offense under section 2102, 2103, or 2104 of this title affects the present responsibility of a Federal Government contractor or subcontractor.

**§ 2106. Reporting information believed to constitute evidence of offense**

[Omitted]

**§ 2107. Savings provisions**

This chapter does not—

(1) restrict the disclosure of information to, or its receipt by, a person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;

(4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

(6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

(7) limit the applicability of a requirement, sanction, contract penalty, or remedy established under another law or regulation.

**B Clauses**

view contract clauses

**C Forms** **Revised 10/2010**

view procurement forms

## D Appendix Added 10/2010

### 1 Administrator's Approval of FAA Procurement Integrity Act Definitions Added 10/2010

U.S. Department of Transportation
Federal Aviation Administration

# Memorandum

Subject: **ACTION**: Procurement Integrity Act Definitions

Date: JUL 12 2000

From: Associate Administrator for Research and Acquisitions

Reply to Attn. of:

To: The Administrator

Attached for your approval are definitions applicable to the Procurement Integrity Act (the Act). These definitions are to be read in conjunction with the Act at 41 U.S.C. § 423. These definitions have been tailored to FAA's Acquisition Management System (AMS).

The formulation of AMS specific definitions fulfills a requirement placed upon the Administrator by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106-181, approved April 5, 2000.

These definitions shall be effective upon your approval, and shall be incorporated into FAA's AMS.

Steven Zaidman

Attachment

APPROVED: Jane F. Garvey
Jane F. Garvey
Administrator

JUL 14 2000
Date

DISAPPROVED: _____

LET's DISCUSS: _____

**1. Background**.

As provided by 49 United States Code (U.S.C.) Section 40122(g)(3), effective October 1, 1999, the Federal Aviation Administration (FAA) is subject to the Procurement Integrity Act (the Act) (41 U.S.C. Section 423). However, Subsections (f), Definitions, and (g), Limitations on Protests, both in Section 423, do not apply to the FAA. In lieu of the definitions contained in the Subsection (f) of the Act, the FAA Administrator was directed by Congress to adopt its

own definitions, consistent with the intent of the FAA's Acquisition Management System (AMS) and the Act. These definitions are provided below. (The full text of the Procurement Integrity Act is shown in the following pages.)

**2. <u>Definitions.</u>**

**As used in 41 U.S.C. Section 423:**

(1) The term "contractor bid or proposal information" means any of the following information submitted to FAA as part of or in connection with a Screening Information Request (SIR) or an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Cost or pricing data (as defined in Appendix C of the AMS).

(B) Indirect costs and direct labor rates.

(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(D) Information marked by the contractor in accordance with (1) AMS Clause 3.2.2.3-16, "Restriction on Disclosure and Use of Data," or (2) other applicable law and regulation.

(2) The term "source selection information" means any of the following information prepared for use by the FAA for the purpose of evaluating documentation, information, presentations, proposals, or binding offers which an offeror submits in response to a Screening Information Request (SIR), or in an unsolicited proposal, to enter into an FAA procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Proposed costs or prices submitted in response to a FAA SIR, or lists of those proposed costs or prices.

(B) Source selection plans.

(C) Technical evaluation plans.

(D) Technical evaluations of responses to SIRs or unsolicited proposals.

(E) Cost or price evaluation plans.

(F) Cost or price evaluations of responses to SIRs or unsolicited proposals.

(G) Down select determinations identifying SIR responses that are most likely to receive contract award.

(H) Any ranking of offerors developed by the FAA during the source selection process.

(I) The reports, evaluations and recommendations of source selection panels, boards, or advisory councils.

(J) Other information based on a case- by-case determination made by the FAA Associate Administrator for Research and Acquisition, his or her designee, or the Integrated Product Team, that its disclosure would jeopardize the integrity or successful completion of the FAA procurement to which the information relates.

In addition, all source selection information should be clearly marked as such on the cover and throughout each individual document.

(3) The term "Federal agency" means the FAA.

(4) The term "Federal agency procurement" means the acquisition (by using competitive or non- competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by the FAA using appropriated funds.

(5) The term "contracting officer" means a person who, by appointment in accordance with FAA policy, has the authority to enter into a FAA contract on behalf of the Government and to make determinations and findings with respect to such contract.

(6) The term "protest" means a written objection by an interested party to the award or proposed award of a FAA procurement contract.

(7) The term "official" means the following:

(A) An employee of the FAA, as defined in the FAA's Personnel Management System.

(B) An officer (as defined in 5 U.S.C. Section 2104) of any non-FAA federal agency (as federal agency is defined in 40 U.S.C. Section 472).

(C) An employee (as defined in 5 U.S.C. Section 2105) of any non-FAA federal agency (as federal agency is defined in 40 U.S.C. Section 472).

(D) A member of the uniformed services, as defined in 5 U.S.C. Section 2101(3).

(8) The term "other applicable law or regulation" as used at 41 U.S.C. Section 423(e)(3)(A)(iv), includes the FAA Personnel Management System.

(9) The term "Comptroller General of the United States", as used at 41 U.S.C. Section 423(h)(6), means the FAA Office of Dispute Resolution for Acquisition.

(10) The term "program manager" as used at 41 U.S.C. Section 423(d)(1)(B), includes a FAA Integrated Product Team (IPT) Lead or Acting Lead, or a Product Team (PT) Lead or Acting Lead.

(11) The term "deputy program manager" as used at 41 U.S.C. Section 423(d)(1)(B), includes a Deputy or Acting Deputy to an FAA IPT Lead, or a Deputy or Acting Deputy to a PT Lead.

(12) The term "Federal Acquisition Regulation" as used at 41 U.S.C. Section 423(e)(3)(A)(iii), means the FAA AMS.

**3. <u>Full Text of the Procurement Integrity Act, 49 U.S.C. Section 423</u>.**

*Below is the full text of the Procurement Integrity Act, 49 U.S.C. Section 423 (omitting only its Subsections (f) and (g), which are not applicable to FAA). This Act, as it applies to the FAA, is to be read in conjunction with the FAA Procurement Integrity Act definitions.*

**§ 423**. **Restrictions on disclosing and obtaining contractor bid or proposal information or source selection information**

(a) Prohibition on disclosing procurement information.

(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(2) Paragraph (1) applies to any person who -

(A) is a present or former official of the United States, or a person who is acting or has acted for or on behalf of , or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) Prohibition on obtaining procurement information. A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) Actions required of procurement officers when contacted by offerors regarding non-Federal employment.

(1) If an agency official who is participating personally and substantially in a Federal agency in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contracts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall -

(A) promptly report the contract in writing to the official’s supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employee; and

(B) (i) reject the possibility of non-Federal employment; or

(ii) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of section 208 of title 18, United States Code, and applicable agency regulations on the grounds that --

(I) the person is no longer a bidder or offeror in that Federal agency procurement; or

(II) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) Each report required by this subsection shall be retained by the agency for not less that two years following the submission of the report. All such §reports shall be made available to the public upon request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public.

(3) An official who knowingly fails to comply with the requirements of this subsection shall be subject to the penalties and administrative actions set forth in subsection (e).

(4) A bidder or offeror who engages in employment discussions with an official who is subject to the restrictions of this subsection, knowing that the official has not complied with subparagraph (A) or (B) of paragraph (1), shall be subject to the penalties and administrative actions set forth in subsection (e).

d) Prohibition on former official's acceptance of compensation from contractor.

(1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

(A) served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of $10,000,000;

(B) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of $10,000,000 awarded to that contractor; or

(C) personally made for the Federal agency—

(i) a decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of $10,000,000 to that contractor;

(ii) a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of $10,000,000;

(iii) a decision to approve issuance of a contract payment or payments in excess of $10,000,000 to that contractor; or

(iv) a decision to pay or settle a claim in excess of $10,000,000 with that contractor.

(2) Nothing in paragraph (1) may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph.

(3) A former official who knowingly accepts compensation in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

(4) A contractor who provides compensation to a former official knowing that such compensation is accepted by the former official in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

(5) Regulations implementing this subsection shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this subsection from accepting compensation from a particular contractor.

(e) Penalties and administrative actions.

(1) Criminal penalties. Whoever engages in conduct constituting a violation of subsection (a) or (b) for the purpose of either—

(A) exchanging the information covered by such subsection for anything of value, or

(B) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract, shall be imprisoned for not more than 5 years or fined as provided under title 18, United States Code, or both.

(2) Civil penalties. The Attorney General may bring a civil action in an appropriate United States district court against any person who engages in conduct constituting a violation of subsection
(a), (b), (c), or (d). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty of not more that $50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more that $500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

(3) Administrative actions.

(A) If a Federal agency receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d), the Federal agency shall

consider taking one or more of the following actions, as appropriate:

(i) Cancellation of the Federal agency procurement, if a contract has not yet been awarded.

(ii) Rescission of a contract with respect to which -

(I) the contractor or someone acting for the contractor has been convicted for an offense punishable under paragraph (1), or

(II) the head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

(iii) Initiation of suspension or debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation.

(iv) Initiation of adverse personnel action, pursuant to the procedures in chapter 75 of title 5, United States Code [5 USCS §§ 7501 et seq.], or other applicable law or regulation.

(B) If a Federal agency rescinds a contract pursuant to subparagraph (A) (ii), the United States is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(C) For purposes of any suspension or debarment proceedings initiated pursuant to subparagraph (A) (iii), engaging in conduct constituting an offense under subsection (a), (b), (c), or (d) affects the present responsibility of a Government contractor or subcontractor.

(h) Savings provisions. This section does not -

(1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;

(4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

(6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

(7) limit the applicability of any requirements, sanctions, contract; or penalties, and remedies established under any other law or regulation.

## T3.1.9 Electronic Commerce Added 7/2007

### A Electronic Commerce and Signature in Contracting Added 7/2007

#### 1 Authority for Electronic Commerce Revised 7/2013

a. The FAA may use electronic commerce and signature. The Electronic Signatures in Global and National Commerce Act (E-SIGN) provides authority for electronic contract formation, signature, and recordkeeping. It also establishes legal equivalence between:

(1) Contracts written on paper and contracts in electronic form;

(2) Pen-and-ink signatures and electronic signatures; and

(3) Other legally-required written records and the same information in electronic form.

b. Definitions.

(1) *Electronic Commerce*: Electronic techniques for accomplishing business transactions, including, but not limited to, electronic mail or messaging, World Wide Web technology, electronic bulletin boards, and electronic data interchange.

(2) *Electronic Signature*: A method of electronically signing an electronic message that identifies and authenticates a particular person as the source of the electronic message, and indicates such person's approval of the information contained in the electronic message.

#### 2 Considerations for Technology and Systems Revised 7/2013

a. Before implementing electronic commerce hardware and software, the Contracting Officer (CO) must consult with legal counsel, information security, and information technology specialists to ensure proposed technology is legally supportable, does not weaken security of current systems, is consistent with enterprise-level standards, and does not use unsupported or outdated technology.

b. The procurement team (CO, program official, legal counsel, and other supporting staff) must ensure proposed hardware and software:

(1) Represents the best value to the FAA;

(2) Considers the full or partial use of current systems;

(3) Does not weaken the security of current systems or support outdated technology;

(4) Provides a means of access by all concerns, to the extent practicable;

(5) Properly identifies users and protects sensitive data from unauthorized access; and

(6) Does not violate any law, regulation, Executive Order, or FAA policy.

c. The procurement team must ensure electronic commerce and signature system is capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm of loss, misuse, or unauthorized access to or modification of the information. The technology must ensure records have:

(1) *Authenticity:* Ensures that the record is what it purports to be and to have been created by the person who claims to have created and sent it;

(2) *Integrity*: The records are complete and unaltered;

(3) *Reliability*: Contents can be trusted to be a full and accurate representation of the transaction(s) to provide for a valid audit trail; and

(4) *Usability*: Records can be located, retrieved, presented, and interpreted.

d. All parties (FAA and offeror/contractor) who will use the electronic commerce technology must agree in advance to the particular methodologies and format to be used, and to what extent the contractual action will use electronic commerce. This CO must document this agreement.

e. The CO may authorize using alternative forms of media, such as hardcopy drawings and schematic models, to supplement electronic commerce in a procurement action.

f. Records management and retention policies in FAA Order 1350.15C apply to electronic commerce, and disposal guidelines must be strictly followed.

### 3 Electronic Signature Revised 7/2013

a. Electronic signatures may be accomplished by different technologies, including: (1) Personal Identification Number (PIN) or passwords; (2) Digital signatures; (3) Smart cards; and (4)

Biometrics.

b. The CO must ensure that the name of the electronic signer and the date when the signature was executed are included as part of any electronic record.

## 4 Electronic Contract Files Added 1/2014

a. *eDocS*. The official contract file contains the complete record of activities, rationale for decisions and related documentation from planning through close-out of a procurement action. Beginning with new contract actions in FY14, except for documents which are otherwise required to be created or maintained in paper format such as documents associated with real estate transactions and documents requiring a raised seal signifying authenticity, FAA's official contract file must be created, stored and maintained in Electronic Document Storage (eDocS). The Chief of the Contracting Office (COCO) may waive this requirement on an individual or class basis.

(1) eDocS contains a standard folder structure based on mandatory AMS contract file checklists used to label and organize documents into official files. The CO must use eDocs to establish and maintain an official file for all procurement actions occurring in FY14 and later, excluding purchase card transactions and certain real estate transactions involving sales or conveyances.

(2) The CO must ensure documents stored in eDocS are complete, legible, accurately labeled, and filed promptly under the appropriate contract folder. Signed documents especially must be accurate, complete, legible, and not altered in any way.

(3) The CO must indicate the location of all contract file documents not stored within eDocS in the Annotations field of the eDocS properties page. The annotation must address any and all documents associated with the official contract file whether stored in electronic form or in paper form, including but not limited to paper files that may be maintained in original form, such as large scale drawings impractical to convert to electronic format or a document with a raised seal signifying authenticity.

(4) Documents containing personally identifiable information (PII) are subject to Privacy Act restrictions. A Tax Identification Number (TIN) may be an individual's Social Security Number, and as such would be PII that must be protected. As a general rule, the following documents containing a TIN must be encrypted before storing in eDocS (other documents may also include PII and must be encrypted):

(a) Business declaration
(b) Electronic funds transfer waiver
(c) Intra-Agency Agreements (DOT 2300.1a)

(5) Classified and sensitive unclassified documents must be marked and stored according to FAA orders 1600.72 and 1600.75.

(6) Documents stored in eDocS should not be password protected or encrypted,

unless otherwise required by regulation, policy, or order.

(7) All users must complete training before using eDocS.

(8) By no later than April 1, 2014, the contract reporting metadata for all active contracts must be entered into eDocS. It is the responsibility of the CO to ensure that the data is maintained and updated. eDocS will identify the metadata that must be entered and maintained.

(9) After operating procedures are established and training is provided, the requirement to use eDocS will apply to procurement actions by individuals with a Delegation of Procurement Authority who are outside of Acquisition and Contracting (AAQ) and the Office of Acquisition Services at the Aeronautical Center (AMQ).

b. *Electronic Records*. Federal law, regulations, and policy allow and encourage electronic contract files and using electronic signatures. The Comptroller General as far back as 1991 has affirmed electronic contracts meet the requirement that contracts be in writing. The Electronic Signatures in Global and National Commerce Act (E-SIGN) gives legal equivalence between electronic contract records, including contracts digitally signed, and paper-based, manually signed documents. E-SIGN also provides legal equivalence for retaining electronic versus paper records. Electronic records satisfy any other policy, regulation, or law that requires "written" contract documents and related information to be created, maintained, and stored. The National Archives and Records Administration regulations and policy allow agencies to transmit files for storage entirely in electronic format.

### B Clauses Added 7/2007

view contract clauses

### C Forms Added 7/2007

view procurement forms

## T3.2.1 - Procurement Planning Revised 4/2009

### A Procurement Request (PR) Revised 7/2007

#### 1 Purpose of a Procurement Request Package Revised 7/2007

A procurement request (PR) package initiates acquisition of supplies, equipment, real property, utilities, material, systems, services, or construction. It is the basis for a Contracting Officer (CO) to plan, solicit, and award a contract, purchase order, delivery/task order, agreement, lease, modification, or other procurement action. The PR package is used to define the requestor's requirements so the CO can acquire supplies, real property, utilities, and services from or through other Government agencies, private and public organizations and

institutions, and commercial vendors.

## 2 Content of PR Package Revised 4/2013

a. The program official with the requirement to be satisfied through a procurement action prepares the PR package. The nature, value, and complexity of the requirement determine the exact content of the package. For example, information needed for a single source contract modification differs from that required for a systems development requirement to be competitively procured.

b. As soon as a requirement becomes known, the program official should consult with the cognizant contracting organization, or CO if known, to determine the specific types of information needed for an acceptable PR package, and when the information must be provided. Much of the information in a PR package is the foundation for a contractual instrument, so it should be complete in all essential aspects. The Estimated Acquisition Lead-Time chart (see AMS Procurement Forms) may serve as a planning tool for both the contracting organization and program official to estimate lead-times for the various milestones applicable to a procurement.

c. The following list represents information and documentation that may be required for a PR package. This list is not all-inclusive nor will each item below apply to every procurement action:

(1) Requisition committing funds

(2) Statement of work, specification, purchase description, drawings, or other appropriate technical description of the requirement

(3) Technical data items (such software design documents or test plans) to be delivered, Data Item Descriptions (defining data content, format, preparation instructions, and intended use), and Contract Data Requirements List

(4) Independent Government Cost Estimate

(5) List of potential vendors and addresses (including incumbent contractor, if applicable)

(6) Delivery destination or place of performance and delivery date or period of performance (and optional quantities or periods)

(7) Method and place of inspection and acceptance

(8) List of Government furnished property or information

(9) First article testing requirements

(10) Federal standards that must be met, e.g., energy, environment, health, and safety

(11) Physical, personnel, and information system security requirements

(12) Contractor Personnel Position Risk and Sensitivity Level Determination - FAA Form 1600.77 or OPM Position Designation Automated Tool (PDT)

(13) Classified information or sensitive unclassified information handling requirements

(14) Requirement for vendor's descriptive literature or product samples

(15) Brand name or equal or brand name mandatory justification

(16) Warranty requirements which are over and above generally accepted warranty included with the purchase of an item/service

(17) Liquidated damages justification

(18) Requirement for value engineering provisions

(19) Privacy Act compliance determination

(20) Section 508 Rehabilitation Act determination of non-availability or undue burden

(21) Reprocurement data requirements, spare/repair parts lists, or other special rights

(22) Information about use of existing patents or copyrights

(23) Performance or payment bond requirements

(24) Requirement for insurance coverage or special indemnification

(25) Support services labor categories and description of minimum qualifications

(26) Requirement for key personnel clause

(27) Requirement for Government consent to subcontracting clause

(28) Personal services justification

(29) Single source justification

(30) (CFO) approval- Over $10 million (Note: The contracting office may accept a PR that lacks the CFO approval for applicable procurements over $10 million; however, the CFO approval must be received by the CO prior to the issuance of the Request for Offer (RFO))

(31) Chief Information Officer's approval for information technology over $250,000

(32) Draft technical evaluation factors

(33) Draft technical proposal instructions

(34) Requirements for earned value management system, reports, and integrated baseline reviews

d. The program official submits the PR package to the appropriate contracting office, or assigned CO if known. Unless otherwise required by local procedures implemented by mutual agreement between the PR-initiating organization and contracting office, documents in the PR package are in electronic format and annotated with a PR number and project title. Materials accompanying a PR package that cannot be provided in electronic format, such as drawings, are delivered to the appropriate contracting office or assigned CO, and labeled with PR number, project title, and location.

## 3 Review by Chief Information Officer Revised 10/2013

a. The Chief Information Officer (CIO) must review and approve proposed procurement actions for information technology and service resources that are estimated to exceed $250,000 and would result in a new or modified:

(1) Contract;

(2) Order, such as those issued through a Federal Supply Schedule (FSS); or

(3) Agreement, to include interagency and intra-agency agreements.

b. *Information Resources*.

(1) Equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the FAA.

(2) Information resources include:

(a) Services (including support services):

(b) Computers;

(c) Ancillary equipment;

(d) Software; and

(e) Firmware and similar procedures.

(3) Information resources do not include any equipment that is acquired by a

Federal contractor incidental to a Federal contract.

c. *Review Process.*

(1) For those proposed procurement actions for information technology and service resources that are estimated to exceed $250,000, the program official must submit the following information to the Office of Information and Technology (AIT-3) for review:

(a) Statement of Work (SOW) or requirements documentation;

(b) Cost or price information, to include an independent Government cost estimate (IGCE) when required; and

(c) Documentation of market research conducted.

(2) The CIO review package may be sent to AIT-3 electronically through e-mail or in hardcopy form.

(3) Once approved by the CIO, the program official may then prepare the requisition.

(4) Prior to submission of the requisition to the contracting office, the program office must note the date of the CIO's approval in the body of the requisition.

d. *Goals of CIO Review.*

(1) Ensure that goals of the FAA Flight Plan are addressed in procurements involving information resources.

(2) Prevent redundant procurements.

(3) Ensure that the resource is compatible with the FAA's current or planned Enterprise Architecture.

(4) Ensure that information technology resources support FAA Business Processes.

(5) Promote and ensure information systems security.

(6) Identify potential savings or efficiencies.

**4 Acquisition Review by Aeronautical Center Acquisition Services** Revised 10/2015

a. All procurements expected to have a total estimated value greater than $5 million to be awarded by Aeronautical Center Acquisition Services, AAQ-700 must use the review process specified in AAQ-700 Acquisition Review Standard Operating Procedures (SOP). The SOP is

located at the Acquisition & Contracting (AAQ) KSN site (*FAA only*). The review process should start at the beginning of the procurement planning process.

b. The Acquisition Review process does not replace any other approvals set forth in AMS.

c. The Acquisition Review process only applies to procurements conducted by AAQ-700 and is not applicable to other FAA divisions. All other FAA divisions must follow the applicable acquisition review processes specified elsewhere in AMS.

d. The Acquisition Review is required on all original actions of $5 million or more that would result in one of the following:

(1) New contract, including definitization of letter contracts;

(2) New agreement (interagency, intra-agency, other transaction, or cooperative agreement);

(3) Basic ordering agreement (BOA)/blanket purchase agreement (BPA) where the potential value equals or exceeds $5 million as well as any individual orders on a BOA that equal or exceed $5 million; and

e. Other procurement actions or any other binding commitment, such as a lease. The following contract actions are excluded from the acquisition review process established herein:

(1) Actions that create an undefinitzed contract action, including undefinitized change orders and undefinitized long lead contract;

(2) Orders issued against existing contracts in accordance with the terms and conditions of the basic contract; except task orders for services issued against multiple award indefinite delivery/indefinite quantity contracts to include General Services Administration (GSA) schedules;

(3) Modifications increasing fund obligations under incrementally funded contracts when modifications do not exceed dollar amounts stated in the original acquisition approval and/or other approval (i.e., CFO); and

(4) Modifications solely for changes as a result of the Service Contract Act wage rates/fringe benefits or Fair Labor Standard Acts minimum wages.

f. Review Process - The Acquisition Review Authority (ARA) is responsible for reviewing the Acquisition Strategy, Business Case, and Contract Award on acquisitions conducted by AAQ-700 valued at $5 million and greater, any project identified in a Business Plan, FAA Flight Plan, or any other project identified by the Director, Acquisition and Contracting (AAQ-1) and/or a requirements Program Director.

(1) Acquisition Strategy Planning/Meeting and Review (ASR) is initiated at the

identification of a validated need (program initiation) prior to commencing the business case for Joint Resource Council/Chief Financial Officer approval, if required, and should be conducted no later than 14 months prior to program need date.

(2) Business Case Review (BCR) is required prior to submission to the CFO for requirements requiring a CFO package ($10,000,000 or more) or issuance of the Screening Information Request (SIR) for requirements estimated between $5,000,000 and $10,000,000 and should be conducted within 60 days of completion of the ASR but no later than 12 months prior to program need date

(3) Contract Award Review (CAR) is required after completion of source selection on competitive acquisitions and after negotiations in noncompetitive acquisitions, just prior to award.

**5 PRISM-Generated Requisition** **Revised 7/2007**

a. A requisition provides basic information, such as appropriation data, item description, place of performance, and quantity/dollars needed to begin a procurement action. It is also the means of reserving funds for the procurement. Program officials must prepare requisitions in PRISM, the FAA's automated requisitioning and purchasing system. Contracting offices cannot accept manually prepared Form DOT F-4200.1, "Procurement Request," equivalent hard copy PR forms, or manually signed PRISM-generated forms.

b. *Electronic Routing*. Requisition review, funds certification, and approval are through electronic routing in PRISM and have the same force and effect as manual signatures.

c. *Requisition Control and Numbering.* The functionality of PRISM governs requisition numbering in accordance with AMS Procurement Guidance T3.13.1. Refer to PRISM business process solution "Award Types and PRISM Document Numbering Masks" for further information.

d. *Requisition Amendment/Modification*. If additional funds are needed, the program official should either issue an amendment to the requisition prior to an award being released or should create a requisition for modification after the award is released. Fund certification, review and approval are required for both an amendment or requisition for modification. When the amount obligated for the contractual action is less than the amount funded on the requisition, the program official must decommit excess funds. Because the original purpose of the requisition is considered complete, the requisition cannot later be amended to use the remaining funds either for the original purpose or for another purpose.

e. *Canceling a Requisition.* Program officials may cancel a requisition prior to award by creating an amendment to decommit funding.

f. *Funds Estimate*. The requisition must indicate the total estimated cost of the requirement.

For basic requisitions for new contracts, this includes the estimated amount of the basic contract and all planned options and any other requirements that would not be included in or funded as part of the basic contract. For contract modifications, this amount will be the total estimated cost of the action involved. For requisition amendments and requisition for modifications, whether for new contracts or modifications, the estimated amount will be the net amount of any change to the estimate stated in the basic requisition, and in addition to the net amount, identify in the body of the requisition the cumulative total estimated cost.

g. *Required Quantity*. This is the FAA's need, present and projected, for which funding is or will be available. Quantity discounts and transportation costs must be considered when determining required quantity of supplies. Quantities should not include those for which there are no funded requirements, or for options for which FAA has little expectation of exercising. For indefinite delivery/indefinite quantity (ID/IQ) contracts, identify realistic minimum and maximum quantities. For indefinite delivery/requirements contracts, the total estimated dollar amount for the requisition should be based on the total estimated quantity. The dollar amount on the requisition should cover the minimum quantity.

h. For detailed instructions on preparing a requisition, program officials should refer to the PRISM Requisitioner Guide and Business Processes and Policy, available on the PRISM website (FAA Only).

## 6 Funds Certification Revised 10/2012

a. The requisition must include funds certification if it commits funds to be obligated later on a contractual instrument. Funds certification verifies funds are reserved and certified as available, or funds are to be deobligated on an award or decommitted on a requisition. Funds need not be certified on individual requisitions when "bulk funding" is used for Blanket Purchase Agreements (BPA).

b. The person certifying funds must be designated in writing in accordance with written procedures of the organization issuing the requisition, and must be instructed by that organization on his or her responsibilities, duties and authority limits.

c. An authorized requisitioner may also certify funds when local conditions, such as remoteness or a small facility, make it necessary, *provided*: written local procedures authorize this practice and establish reasonable maximum dollar levels for combined funds certification and approval or requisitioning authority, and include monitoring and oversight procedures to ensure propriety of all such actions.

d. Additional guidance and related business processes for funds certification can be found at the PRISM website (FAA only).

## 7 Requisition Approval Levels Revised 10/2014

a. Only designated FAA employees can approve a requisition. Approval levels are tied to the total estimated amount of the requisition to be approved, as follows:

(1)*Washington Headquarters*

(a) Over $500,000--Office Head, Director, Product or Service Team Lead, or equivalent or higher position.

(b) Over $250,000 to $500,000--Division Manager or equivalent

position. (c) Up to $250,000--Branch Manager or equivalent position.

For Washington Headquarters, an Office Head, Director, Product or Service Team Lead, or equivalent position, as applicable, may delegate via memorandum approval levels differing from the above.

(2) *Service Areas, Regions, and Centers.* Organizations approving requisitions within service areas, regions, and centers may establish written local requisition approval levels. Program officials should contact their local finance office for information about approval levels.

b. Key duties and responsibilities for requisitioners, fund certifiers, approving officials, and those obligating funds (i.e. COs or others with delegated procurement authority) must be separated among individuals. Due to local conditions, some duties may need to be provided by the same individual; however the following conditions will always apply in the processing of a requisition:

(1) An individual must never perform all duties;

(2) A requisitioner may be the fund certifier for the same requisition;

(3) The approving official and the fund certifier for any requisition must be separate individuals;

(4) A requisitioner must not be the approving official and/or CO for the same requisition; and

(5) A CO must never be the approving official or requisitioner for the same requisition. c. Requisition approvers should refer to PRISM guidance and business processes found at the PRISM website (FAA only).

## 8 Describing Requirements Revised 7/2007

a. *Technical Description*. An accurate technical description of the requirement is a critical element of a PR package and key to ensuring FAA's needs are satisfied. The program official prepares, to the extent possible, a comprehensive statement of work, specification, drawings or other description of the product or service to avoid any misinterpretation by prospective vendors about FAA's requirements. The technical description defines valid and minimum needs of the FAA, and is not written in a way that unduly restricts competition. See AMS Procurement Guidance T3.2.2.8, "Describing Needs" for additional information.

(1) *Supplies or Equipment*. For supplies or equipment, the description should cover as wide a range of commercially available and proven products as possible. It should avoid requirements for special manufacture, or requirements that may unnecessarily restrict competition. In this way, a broad competitive base will be possible, prices will be held to a minimum, and good relations with offerors will be promoted.

(2) *Services*. For services to be performed in accordance with a statement of work (SOW), the SOW addresses:

(a) What is the contractor to do?

(b) When is the contractor to perform the tasks?

(c) Who (qualifications and experience) should perform the tasks?

(d) Where are the tasks to be performed?

## 9 Independent Government Cost Estimate Revised 1/2010

a. An independent Government cost estimate (IGCE) describes how much FAA could reasonably expect to pay for needed supplies or services. The IGCE is an internal Government estimate, supported by factual or reasoned data and documentation, and serves as: (1) the basis for reserving funds for the procurement action; (2) a method for comparing cost or price proposed by offerors; and (3) an objective basis for determining price reasonableness when only one offer is received in response to a solicitation. The program official prepares the IGCE.

b. An IGCE includes a breakdown of major elements of cost, by category such as labor, material, equipment, subcontracts, travel, overhead, and profit.

c. An IGCE is required for any anticipated procurement action (to include modifications) whose total estimated value is $100,000 or more, except for:

(1) Modifications exercising priced options or providing incremental funding;

(2) Delivery orders for priced services or supplies under an indefinite-delivery contract; or

(3) Acquisition of real property (i.e., land or space).

d. The CO may require an IGCE for those procurement actions (to include modifications) anticipated to be less than $100,000.

e. The estimate and supporting documentation is for internal use only. It should be made available only on a need to know basis and must not be provided to any potential offeror. An IGCE must not be based on information furnished by any potential vendor that may be competing for the requirement or considered for award. See AMS Procurement Guidance

T.3.2.3 "Cost and Price Methodology" and "FAA Pricing Handbook" for detailed information about preparing an IGCE.

## 10 PR Package Clearances, Justifications and Other Documentation Revised 10/2014

The program official furnishes evidence of certain required clearances, approvals, and justifications with the PR package. This information varies, depending on the nature of requirement, procurement strategy, and dollar value. The program official should consult with the CO to determine applicability of each of the below clearances, documentation, and approvals to the particular requirement. Documentation or other evidence for the below forms part of the PR package (the below is not all inclusive nor will it apply to each procurement action):

a. *Chief Financial Officer Approval*. For a single or cumulative expenditure over $10M, the CO must receive evidence of the Chief Financial Officer's (CFO) approval of the procurement prior to issuing a Request for Offer (RFO). (See AMS Procurement Guidance T3.2.4 "Chief Financial Officer Requirements" for additional information.)

b. *Accountable Personal Property*. FAA's financial standards and annual audit require accurate recording of personal property acquisitions. Before creating a requisition in PRISM, the program official must establish appropriate projects and tasks in the DELPHI Project Accounting (PA) module. Each line item on a requisition must have at least one (but can have more than one) project and task associated with it. The CO will use the line item structure contained in the requisition when setting up the Contract Line Item Number (CLIN) structure.

c. *Government Furnished Property, Information, or Material*. The PR package identifies Government property, information, or material. FAA property is managed, transferred, and added to FAA records through the Automated Inventory Tracking System (AITS). Any special restrictions or conditions, such as property provided "as is" security issues, or special handling should also be specified in the PR package.

d. *Personal Property from Commercial Sources*. Before initiating a requisition to obtain personal property, program officials must determine if the property is available for reuse from an FAA or other Government source, as required by FAA Order 4800.2C (May 31, 1996) and "FAA Reutilization and Disposition Process & Procedure Guide" (FAA only), dated October 2006.

e. *Project Materiel*. Materiel for projects is requisitioned through the Logistics and Inventory System (LIS) Project Materiel Management System (PMMS). For further information on acquiring materiel, refer to the "Project/Materiel Management Desk Guide" (FAA only).

f. *Section 508 of the Rehabilitation Act*. Acquisition of electronic and information technology (EIT) must comply with Section 508 requirements for accessibility. The program official must document EIT non-availability, including market research performed and standards that cannot be met. For further information, see AMS Procurement Guidance T3.2.2 "Source Selection," or the FAA Section 508 website (FAA only).

g. *Personnel Security*. For individuals that may need access to FAA facilities, sensitive unclassified information, or resources, the contract security clause contains sufficient language to meet that objective. For specific guidance and regulations, see the applicable personnel security orders (FAA Order 1600.1E Personnel Security Program and FAA Order 1600.72A Contractor and Industrial Security Program). FAA Form 1600-77, "Contractor Position Risk/Sensitivity Level Designation Record" is used by the Operating Office to make initial position risk/sensitivity level designations based on the initial list of positions and the statement of work.

h. *Sensitive Unclassified Information*. The program official must coordinate with the local FAA Servicing Security Element (SSE) for the minimum standards to mark, store, control, transmit, and destroy Sensitive Unclassified Information, For Official Use Only, Sensitive Security Information, or unclassified information that may be withheld from public release. (See FAA Order 1600.75 or AMS Procurement Guidance T3.14.1 "Security" for additional information.)

i. *Classified Information*. The PR package should identify any requirements for handling of classified materials or for access of contractor personnel to classified information. (See FAA Order 1600.2E Safeguarding Classified National Security Information for additional information).

j. *Information Systems Security*. The FAA must ensure that all information systems are protected from threats to integrity, availability, and confidentiality. (See FAA Order 1370.82A for additional information.)

k. *Paperwork Reduction Act*. The FAA must obtain approval to collect information through questionnaires, focus groups, telephone surveys, applications, performance reports, customer satisfaction surveys, studies and evaluations, interviews, forms, and other means of requesting information from 10 or more respondents. The program official must first coordinate requirements through the FAA Information Clearance Officer (AIT-20), and then obtain clearance from Office of Management and Budget (OMB).

l. *Privacy Act*. When a requirement involves the design, development, or operation of a system of records on individuals for an FAA function, the statement of work must identify FAA rules and regulations implementing the Privacy Act. (See FAA Order 1280.1A ;Protecting Privacy of Information About Individuals.)

m. *Printing or Duplicating or Purchase or Lease of Copying Equipment*. For printing or duplicating services to be performed either by Government Printing Office (GPO) or outside printing businesses, program officials must coordinate with the cognizant FAA printing management office. Purchase or lease of duplicators or electronic copiers over $100,000 must be approved: for Headquarters acquisitions, coordinate with the Corporate Information Division (ABA-10); Region, Center and Service Area acquisitions, coordinate with the servicing printing management organization.

n. *NAS Specifications*. Specifications for acquisitions under the Capital Improvement Program (CIP) are baselined and under configuration control. A requisition for NAS program specification change must include evidence of approval by the NAS Configuration Control Board.

o. *Options*. If optional quantities or services are to be included, the PR package should state the basis for evaluating offeror proposals. The PR package should indicate whether it is expected that offers will be evaluated for award purposes only on the basis of the price for the basic requirement exclusive of options, or price inclusive of options.

p. *Warranty*. Warranties should be cost beneficial. For other than standard commercial warranty generally accepted as included with basic purchase price, the PR package should include an analysis of the costs of a warranty and its administration, versus the benefits of liability deferral.

q. *Liquidated Damages*. Before liquidated damages provisions may be included in a contract, the program official must adequately justify and document the basis for amounts to be assessed.

r. *Brand Name Products*. When a brand name or equal description is used, the PR package must state the brand name product and salient physical, functional, performance, and interoperability or interface characteristics of the brand name product so that vendors may offer alternative but equal products. Brand name-mandatory descriptions identify a specific make, model, or catalog number, and manufacturer of a product. This type of description differs from brand name or equal because vendors may not provide an equal item. For brand name-mandatory, a single source justification is required with the PR package. (See AMS Procurement Guidance T3.2.2.8 "Describing Needs" for more information.)

s. *Recovered Materials*. Program officials are responsible for defining product specifications, utilizing FAA's minimum content standards or preference standards, when procuring EPA-designated items. The program official should provide a written determination certifying that the statement of work/specifications for materials/services specified complies with the FAA's preference standards for recovered materials. (See AMS Procurement Guidance T3.6.3 "Environment, Conservation and Energy" for additional information.)

t. *Recycled Content*. Purchases of EPA-designated recycled content products must meet or exceed EPA guideline standards, unless price, performance, or availability justifies not doing so. The program official should document this determination. (See AMS Procurement Guidance T3.6.3 "Environment, Conservation and Energy" for additional information.)

u. *Capital Versus Non-Capital Lease Determination*. The FAA is required to capitalize certain improvements in both owned and leased space. In addition, the FAA (to include the Operating Office, RECO, and accounting) is required to make a determination as to whether leases (including real property leases) are capital or operating leases and insure they are recorded and filed accordingly. (See AMS Real Estate Guidance 3.1.5 "Capitalization" for additional information and applicable forms.)

v. *Personal Services*. Personal services contracts are permissible if appropriately justified and approved by senior management. The PR package must include evidence of this approval. (See AMS Procurement Guidance T3.8.2 "Service Contracting" for more information.)

w. *Single Source Justification*. When in FAA's best interests, a single source procurement may

be appropriate. The program official should prepare a justification documenting the rational basis for using a single vendor. (See AMS Procurement Guidance T3.2.2.4 "Single Source" for additional information.)

x. *Technical Evaluation Factors/Plan*. Technical evaluation factors must be approved before issuing a solicitation. The program official must provide the factors and plan for evaluating technical proposals.

y. *Earned Value Management System (EVMS).* An earned value management system (EVMS) is required for projects involving development, modernization, or enhancement estimated at $10M or more. Program officials should consult with the FAA's EVM Focal Point (AAP-200) to determine appropriate EVMS certification, review, and reporting requirements. (See AMS "Earned Value Management Guide" for additional information.)

## 11 Simplified Purchases Revised 7/2007

*a. Purchase Cards*. When a requisition is used as the funding document for purchase card purchases, it must contain certification of availability of funds. (See AMS Procurement Guidance T3.2.2.5 "Commercial and Simplified Purchase Method" for additional information.)

*b. Blanket Purchase Agreement (BPA).* A requisition may be issued for a basic BPA, but is not necessary for individual orders (termed "calls") against the BPA. One or more BPAs may be established in response to a requisition. The requisition identifies types of supplies or services to be purchased under the BPA, suggested sources of supply, estimated grand total and individual call dollar limitations, and person(s) to be authorized by the CO to make purchases. BPA calls serve as the obligating documents and a requisition will be required to issue the first call. If the BPA call is funded for a period of less than one year, a requisition for modification will be required to increase the funding.

## 12 Lease or Rental Space Revised 7/2007

a. *Headquarters*. Requirements for short-term lease, or rental, of conference space, or the long- term lease of other space (e.g., office, storage or special purpose), in commercial establishments in the Washington, D. C. metropolitan area, and requests for any GSA acquired space must be coordinated through the Headquarters Facilities Management Staff (ALO-100). The results of this coordination must be indicated on the requisition or an attachment.

b. *Regions and Centers*. Requirements for short-term lease of conference space not acquired through a purchase card should be coordinated with the real property organization of the applicable Region or Center office. The results of that coordination must be indicated in the requisition or an attachment.

## 13 Logistics Center Supply Support Revised 7/2007

Supply Support Program requirements are processed using the Logistics Inventory System (LIS) at the FAA Logistics Center. Requisitioning through LIS, coordination, review, certification, and approval signature are completed electronically.

## 14 Real Property Revised 4/2009

a. *Real Property Responsibilities*. For the regions and centers, the Real Estate and Utilities Branch, or for Washington Headquarters, the Facilities Management Staff (ALO-100), are the primary contracting offices for the acquisition, management, and disposal of real estate, including utilities. In requests for acquisition (i.e. lease land or space), management, or disposal of real estate, or for acquisition of utilities services, the requiring office should initially contact and provide the requirements to the Real Estate Branch. For further information on submitting program office requirements to Real Estate, see AMS Policy 4.2. The requesting office will complete the requisition itself later, after cost information becomes available for its completion. Initially, cost information would not be available, and remain to be developed in consultation with the Real Estate Branch. A representative of the Real Estate Branch should be included at every stage in the real property acquisition, management, and disposal process, whether this is to make initial inquiry, to make contact with the property owner or his/her representative, to approve required audit reports, or for other steps in the process.

b. *General*. The requisition should include the name, address and telephone number of the property owner (or his/her representative), if known, and a record of any and all contacts with the owner/representative. Remember however, that contacts with owner/representative should be made only by the Real Estate Branch. As a minimum, requisitions for real property should contain the information described below, by type of requirement.

c. *Land Acquisition (Purchase or Lease)*. For such acquisitions, the PR package should include information for the RECO to begin the acquisition process. Items for any new or renewal lease action include:

(1) The projected life of facility (total term requirement for real property).

(2) Intended use of property (e.g., VASI, REIL, VORTAC, ARSR, ASR), and amount and type of all required restrictive easements (e.g., 750, 1000, 1200 or 1500 foot radius; trees removed to XX feet).

(3) The legal description of the site and easements, expressed either in metes and bounds or as required by local land registries. If a legal description is not available, a legal description can be requested by a separate requisition transmitted to the Real Estate Branch.

(4) Drawings, to scale, of the property(ies) to be acquired, if available.

(5) *Clearances*. Environmental clearances, as follows:

(a) A statement that due diligence has been applied according to the requirements of the Comprehensive Environmental Response Compensation

and Liability Act (CERCLA) and FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions. Paragraph 1-10 of FAA Order 1050.19B describes the EDDA report review and approval process. The Real Estate Contracting Officer (RECO) receives the final, signed EDDA and places a copy of the report in the real property transaction file. A copy of the EDDA report should be included in the PR package, as well as a letter of acceptance of the report signed by the requiring office Program Manager/Division Manager. When an EDDA is not required, a memorandum must be included explaining the rationale for not conducting an EDDA. If the EDDA was not conducted as a result of an EDDA waiver request, also include a copy of the EDDA waiver request form.

(b) If it has been decided to acquire a site determined to have hazardous material contamination, the PR package should include a statement of justification signed by the requiring office Program Manager/Division Manager, together with a cost/benefit analysis.

(c) A statement certifying that an analysis of environmental impacts has been accomplished according to FAA Order 1050.1E and the National Environmental Policy Act. Environmental analysis may include a Categorical Exclusion (CATEX) or Environmental Assessment (EA) - which would culminate in a Finding of No Significant Impact (FONSI) or Environmental Impact Statement (EIS). These statements must clearly identify any environmental impact mitigation required, and the need for additional lease clauses to cover such mitigation. The environmental analysis must also identify all environmental compliance permits for the project. Examples of permit activities are: wetlands permits from the Army Corps of Engineers, land use permits, special area, water use, and other local, federal and state permits as necessary.

d. *Space Acquisition*. For space acquisitions, the PR package should include the following information for the RECO to begin the space acquisition process:

(1) The intended use of the space (e.g., AFS, FSDO).

(2) A five-year projected staffing chart including the number of authorized positions, by job title, which will use the space. Any projected staffing increases must be validated.

(3) Special Requirements. These include, but are not limited to:

(a) Authorized private offices;

(b) Wiring for data lines;

(c) 24-hour access/HVAC requirements;

(d) Temperature and humidity level limits;

(e) Local Area Network (LAN) rooms;

(f) Computer Based Instruction (CBI) rooms;

(g) Written examination room;

(h) Floor loads and types;

(i) Antennas attached to roof; and

(j) Special finishes.

(4) Number of parking spaces required.

(5) Recommended total lease term (base lease term plus renewal option(s)).

(6) Delineated area and map depicting the area.

e. *Space Alterations/Improvements/Repairs (AIR)*. For this, the PR package should include:

(1) A full narrative description of work to be accomplished, supported by a clear sketch or drawing of proposed AIR; and

(2) Other related items, as stated in the paragraph just preceding.

f. *Construction*. For construction, the PR package should include:

(1) *For Real Property Interests - Land*. When the lease or purchase of land is involved, include a statement that such lease or purchase has been consummated. In rare circumstances, if there is written assurance the property owner will give that real property rights, and a written right of entry to begin construction has been provided, the PR may be processed if approved by the servicing Real Estate Branch.

(2) *For Real Property Interests - Space*. When a servicing contracting activity, that is, the contracting office, is requested to obtain construction, modification, alteration, and/or repair to leased space or buildings, care should be taken to ensure that the Real Estate Branch is involved in such leased space actions. The PR package must:

(a) Contain a statement from the servicing real estate organization that approval from the property owner has been secured and the lease amended to cover FAA's requirements; and

(b) Comply with all applicable requirements set forth in c.(2) and (3) above.

(3) *Environmental Considerations*. These include a statement certifying that all current requirements for Environmental Assessment and Due Diligence Audits have been met. (See the above paragraph c.(5) on environmental clearances.)

(4) *Utility Requirements*. When new or changed utilities, location or service is

involved, state the status of obtaining utility service and the estimated date of its availability to the project.

(5) *Vehicle or Pedestrian Safety*. When the contract work will or may affect the traffic or safety of vehicles or pedestrians on the right-of-way of a public highway, road, or street owned by a governmental body other than the Federal Government, a statement that this is the case, and an identification of the governmental body which owns the highway, road, or street. For further information, see AMS Real Estate Guidance.

## 15 Public Utilities Revised 7/2007

a. *Minimum Content*. The PR package should contain information sufficient to enable the CO to determine the required type(s) of service, quantity, delivery point(s), time of initial service, service duration, and the principal characteristics of services. As a minimum, the PR package should contain the following:

(1) Technical description or specification of the type, quantity, and quality of service required;

(2) Date by which the service is required;

(3) Estimated maximum demand, monthly consumption, and annual cost for the first full 12 months of service;

(4) Schematic diagram or line drawing showing meter locations and Government connection point to utility supplier's system;

(5) Estimated cost, including: required utility services, any connection charges; and contractor installed facilities for replacement utility services; and

(6) Principal characteristics of service specifications. As a minimum, descriptions of the premises, or location to be served, in sufficient detail to clearly establish its identity by agency, function and address, as well as the service delivery point, and an attached map or drawing showing its exact location.

b. Electrical Service Specifications. The PR package should contain:

(1) Monthly kilowatt hour (kWh) demand for a typical year;

(2) Monthly kilowatt-hour (kWh) consumption for a typical year;

(3) Type of current (AC or DC);

(4) Number of phases;

(5) Anticipated load factor;

(6) Substation primary and secondary voltages, and allowable variations or tolerances; and

(7) Type of metering: (1) demand and/or watt hours, (2) kilovolt-amperes (kva) or kilowatts (kW).

c. *Water Service Specifications*. The PR package should contain:

(1) The required pressure and type(s) of water required (e.g., potable water, industrial water, classified as to extent of required filtration or chemical treatment; or raw water [river, lake, well, etc.]); and

(2) Exact location of connection with utility firm's distribution system.

d. *Gas Service Specifications*. These specifications should state the supplier's tariff. They should describe the desired British Thermal Unit (BTU) content, the purity, and the initial and terminal pressure limitations. They should also include:

(1) The estimated maximum demand per hour or per day;

(2) The estimated monthly usage of gas, by months, for a typical year; and

(3) The exact location of connection with utility firm's distribution system.

e. *Sewer Service Specifications*. These should specify the types of service required (e.g. sanitary with primary or secondary treatment, or raw waste disposal; industrial waste disposal; or storm water drainage). They should also include:

(1) The size(s) and location(s) of connections between Government and contractor systems; and

(2) The exact location of connection with the utility firm's distribution system.

## 16 Liquidated Damages **Added 10/2014**

a. Liquidated damages clauses should be used only when (1) the time of completion, performance, or delivery is such an important factor in the award of the contract that the FAA may reasonably expect to suffer damage if the completion, performance, or delivery is delinquent; and (2) the extent or amount of actual damage sustained by the FAA would be difficult or impossible to calculate or prove. In deciding whether to include a liquidated damages clause in the SIR/contract, the procurement team should consider the probable effect of that clause on other issues such as contract price, competition, and the cost or difficulties of contract administration. The rates of liquidated damages must be reasonable and based on probable actual damages to the FAA. Liquidated damages assessed without consideration of actual costs are penalties, and are thus unenforceable.

b. When administering contracts that include a liquidated damages clause, the CO must take all reasonable steps to notify contractors of the pending assessment when the concern about late

completion, performance, or delivery first develops. If a basis for termination for default exists, the CO must advise the contractor that it may be liable for liquidated damages assessed until the date of termination, in addition to reprocurement costs. If completion, performance, or delivery is desired after termination for default, efforts must be made to obtain completion, performance, or delivery elsewhere within a reasonable time.

c. *Construction*. Liquidated damages for construction contracts are assessed on a per project basis. The liquidated damages rate must be determined by the procurement team and documented by the program official, and must, at a minimum, cover the estimated cost of contract administration, including inspection, for each day of delay in completion. In addition, other specific losses anticipated to be incurred as a direct result of the failure of the contractor to complete the work on time must be included. Examples of specific losses are:

(1) Additional inspection costs;

(2) The costs of substitute facilities;

(3) The rental of buildings; and

(4) The costs of FAA crews, or hourly paid contract employees, forced on standby.

When different completion dates are specified in the contract for separate parts or stages of the work (i.e., milestones), the CO may revise the liquidated damages clause to state the amount of liquidated damages for the late completion of each milestone. Separate calculation and documentation of the estimated damages must be developed for each amount specified with a differing basis.

d. The program official must document the basis for the assessment rate for liquidated damages. This documentation must describe the assumptions, data, and formula used to derive the rate of assessment.

## 17 Returning a Deficient PR Package Revised 10/2014

a. The CO may return a deficient PR package without action, or stop work on a pending PR package until the program official submits any needed supplemental information. Examples of reasons for returning or stopping work on a deficient PR package include:

(1) Incomplete or conflicting information between the requisition, specifications, drawings, or other solicitation data;

(2) Unstable requirements due to repeated technical changes to functional capability, reliability, maintainability, quality control, or testing requirements;

(3) Failure to include the appropriate stock number or item code, facility type code, and other required data applicable to each accountable item listed; or

(4) Missing or improper funding citation.

b. In Washington Headquarters, the CO should return a deficient PR package by memorandum, signed by a Contracts Division branch manager, to the approver of the requisition. The memorandum should include a brief explanation of deficiencies.

c. In Service Areas, Regions and Centers, COs should return PR packages in accordance with local procedures.

**B Clauses**

view contract clauses

**C Forms** **Revised 7/2007**

view procurement forms

**T3.2.1.2 - Market Analysis** **Added 10/2006**

**A Market Research and Analysis** **Added 10/2006**

**1 Market Research and Analysis** **Revised 4/2013**

(a) Market research consists of collecting and analyzing information about vendor capabilities to satisfy FAA's requirements. This research can help discover novel or innovative solutions, eliminate excessively complex or unnecessary requirements, identify non-value added costs, and improve vendor's responsiveness to subsequent solicitations. Market research is performed in the early stage of procurement planning and helps shape an appropriate procurement strategy.

(b) A "market survey" is used in two different contexts in AMS. In the procurement process, it refers to any method used to survey industry to obtain information and comments, and to determine competition, capabilities, and estimate costs. In the context of the lifecycle management process, market surveys are part of Concept and Requirements Definition, and Investment Analysis. During these lifecycle phases, market surveys provide information about the range of alternatives and market capabilities, risk, and cost of potential solutions to mission needs.

(c) For procurements not under a program with an approved Implementation Strategy and Planning Document, market analysis initiates industry involvement, develops and refines the procurement strategy, obtains pricing information, determines whether commercial items exist, determines the level of competition, identifies market practices, or obtains comments on requirements.

(d) Market research is a shared responsibility between the program official and Contracting Officer (CO). It may be conducted internally to the FAA or externally. Market research may be for a one-time requirement, or as on-going surveillance to understand the marketplace for

products or services acquired repetitively. Examples of information gathered and analyzed include:

(1) Potential vendors and their capability to satisfy FAA's requirements;

(2) Number of vendors, business size status, and extent and nature of competition;

(3) Cost information and trends;

(4) Expertise, experience, and depth of vendor personnel;

(5) Maturity, adaptability, and complexity of current technology;

(6) Product or service acceptability;

(7) Availability and delivery times of products or services;

(8) Production processes, quality assurance practices, facilities, maintenance and logistics support capabilities;

(9) Information about product design stability, planned design enhancements, and impact on fielded products;

(10) Vendor capability to offer beneficial functional or performance trade-offs in their products or services;

(11) Customer references and procurement histories of other organizations for same or similar products and services, including pricing and contract performance data;

(12) Customary contract or license agreement terms and conditions;

(13) Practices of vendors engaged in producing, distributing, and supporting items, such as terms for warranties, buyer financing, maintenance and packaging, and marking; and

(14) Availability of suitable commercial or non-developmental items, or feasibility and cost of modifying commercial or non-developmental items to meet requirements.

(e) The extent and depth of market research and analysis is tailored to the individual requirement, estimated dollar value, complexity, urgency, and past experience. Market research may range from a telephone call or review of purchase histories to formal market surveys or solicitations requesting information. Techniques for market research include:

(1) Contacting knowledgeable individuals in Government and industry about market capabilities;

(2) Reviewing the results of recent market research into similar or identical requirements;

(3) Publishing formal requests for information in technical, scientific, business, or

Government publications;

(4) Querying on-line Government-wide databases of contracts and other procurement instruments intended for use by multiple agencies

(5) Reviewing Government and commercial databases that provide relevant information;

(6) Participating in interactive, on-line communication among industry, acquisition personnel, and customers to exchange information about current or planned vendor capabilities as it relates to FAA needs;

(7) Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources;

(8) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or other related information available on-line;

(9) Reviewing trade journals, directories, newspapers, and other professional publications; (10) Pre-solicitation conferences;

(10) One-on-one meetings with vendors; and

(11) Formal market surveys.

(f) Supporting data and results and conclusions derived from market research and analysis must be documented and placed in the contract file. This documentation must be included within or referenced as an attachment to the written procurement plan. The analysis and supporting data should be commensurate with the value, complexity, and urgency of the acquisition. In addition, a rational basis and description must be included for the market analysis methodology or technique used to obtain the data.

**B Clauses** **Added 10/2006**

view contract clauses

**C Forms** **Added 10/2006**

view procurement forms

**T3.2.1.3 - Implementing OMB Circular No. A-76** **Revised 1/2009**

**A Guidance for Implementing for OMB Circular No. A-76**

**1 OMB Circular A-76, Performance of Commercial Activities**

OMB Circular No. A-76, "Performance of Commercial Activities," states the policy of the Government to: (a) rely generally on private commercial sources for supplies and services, if certain criteria are met, while recognizing that some functions are inherently Governmental and must be performed by Government personnel; and (b) consider relative cost in deciding between Government and contractor performance. In comparing the costs of Government and contractor performance, the Government bases contractor's cost of performance on firm offers.

## 2 Applicability of AMS

a. The FAA follows A-76 policy and procedures, except when the Circular is inconsistent with AMS or other FAA statutory authority. The Circular requires compliance with the Federal Acquisition Regulation (FAR), such as when conducting standard and streamlined competitions, publicizing competitions, when establishing certain roles or responsibilities, and some decision- making. References to FAR, FAR-based processes or terminology, or other Government procurement requirements in the Circular are not applicable to FAA.

b. Procurement procedures, except as noted in this guidance, are based on AMS procurement policy (section 3.0) and guidance (Procurement Toolbox). AMS is used to plan procurements; solicit, evaluate and select sources; resolve protests and disputes; and manage contracts.

c. Except as described in this guidance, AMS-required decisions, mandatory planning documents, and lifecycle phase-related activities described in AMS policy (sections 1.0 and 2.0) are not applied to Circular A-76 competitions. AMS documentation, when applicable, is appropriately tailored. Joint Resources Council decisions follow A-76 milestones rather than AMS phases.

## 3 Responsibilities **Revised 1/2009**

a. *Service Director of the organization responsible for conducting A-76 competitions*:

Appoints an acquisition team to lead the competition. An acquisition team is a cross-functional, empowered team given an operating budget and resources necessary to acquire specific services identified as commercial in nature by a Federal Activities Inventory Reform (FAIR) Act inventory.

b. *Acquisition Team*

(1) Develops an Implementation Strategy and Planning (ISP) document, tailored as necessary.

(2) Develops public announcements, evaluation criteria and plans, screening information requests, evaluation reports, and debriefs potential service providers.

c. *Joint Resources Council (JRC):*

(1) Prior to issuance of the official start date (public announcement):

(a) Baselines the cost of as-is performance;

(b) Approves the acquisition strategy;

(c) Revalidates the need for the function identified in the functional scoping study.

(2) Prior to issuance of the final screening information request (SIR):

(a) Establishes an activity cost baseline (independent government cost estimate);

(b) Approves the ISP and Risk Management Plan;

(c) Approves the Performance Work Statement (PWS) and Quality Assurance Surveillance Plan (QASP).

(3) Prior to Source Selection decision:

(a) Approves the final cost baseline;

(b) Approves the recommended source selection decision.

## 4 Primary Phases for A-76 Competitions

The general process for the public-private competition within a competitive sourcing study falls into four distinct phases: Preliminary Planning, Public Announcements, Competition Procedures, and Post Competition Accountability.

## 5 Preliminary Planning

The general process for the public-private competition within a competitive sourcing study falls into four distinct phases: Preliminary Planning, Public Announcements, Competition Procedures, and Post Competition Accountability.

a. *Functions*. Before initiation of a competition, a FAIR Act inventory will have already identified the function or activity as a commercial activity suitable for competition; the existing service is deemed to satisfy needed capabilities.

(1) A functional scoping study conducted during the preliminary planning phase of a public-private competition inventories functions that deliver "as is" services/capabilities. It also determines whether users have continued need for all, some, or none of those services. The functional scoping study incorporates mission need related activities and is used to document mission requirements. Therefore, a Mission Need Statement is not prepared.

(2) From the functional scoping study, an initial set of technical and performance requirements is derived and documented in a functional scoping summary document (FSSD). The FSSD refines functions and subfunctions to describe minimum, required levels of technical performance. Functions are described in such a way as they can be measured and evaluated. The FSSD is developed before the public announcement and approved by the JRC.

b. *Market Survey*. A market survey is conducted to determine if sufficient interest and capability exists in the marketplace to perform the service being competed. This market survey is in lieu of AMS-prescribed investment analysis activities. A Requirements Document, Investment Analysis Report, and Acquisition Program Baseline are not required.

c. *Initial Acquisition Strategy*. A high-level acquisition strategy is developed and approved by the JRC.

d. *As-is Cost Baseline*.

(1) A cost baseline is developed for the service as it is currently provided. This cost baseline is presented to the JRC for information before the public announcement.

(2) Baseline costs for the competition are calculated in accordance with the guidance provided in Attachment C of OMB Circular A-76 (Revised).

**6 Public Announcement (Official Start Date)**

The public announcement starts the competition process. The announcement indicates that the FAA will conduct the source selection in accordance with AMS. The FAA uses Contract Opportunities (www.faaco.faa.gov) to make public announcements. Information posted on Contract Opportunities is automatically copied to FedBizOps.

**7 Competition Procedures** **Revised 1/2009**

a. *Stakeholder Involvement*. A overarching goal is user and/or customer satisfaction along with achievement of planned value and performance levels. This requires the acquisition team to work with key stakeholders, including affected employees and associated collective bargaining units, to ensure that all issues necessary for success are identified and resolved.

b. *Notice of OMB Waivers*. Any specific deviations from the Circular that require a waiver from the OMB will be described in the SIR and public announcement.

c. *AMS Planning Documents*. The detailed strategy for the overall program is defined in an Implementation Strategy and Planning (ISP) document. An ISP is:

(1) Prepared to describe program actions and activities;

(2) Developed prior to release of the final SIR; and

(3) Approved by the JRC.

d. *Availability of Data*. Historical data and other information available to the ATO or the MEO Team are made available by the Contracting Officer (CO) to all prospective providers. However, information related to the performance or productivity of an incumbent MEO is not released.

e. *Source Selection.*

(1) An ISP, appropriately tailored, describes the specific procurement approach to be used.

(2) The Source Selection Authority (SSA) in the Circular is synonymous with the FAA's Source Selection Official (SSO).

(3) Use of AMS clauses "Notice of Cost Comparison" and "Right of First Refusal of Employment" is mandatory. The public announcement also states that award to a private potential service provider is contingent on results of the cost comparison.

(4) Cost and pricing data is required from all potential service providers in accordance with the Circular. Common costs will be identified in the SIR.

(5) The SIR includes a requirement for potential service providers to submit a quality control plan.

(6) *Special Considerations*

(a) Private sector offers and agency tenders are not evaluated separately. The CO, SSO, and evaluation team ensure that all potential service providers are treated fairly.

(b) Deficiencies in an offer or tender are handled by the CO in accordance with the provisions of Attachment B of the Circular.

(c) To the maximum extent possible, Government property is made available for use by service providers. The acceptance and use of such property, however, is not mandatory.

(7) Within three days after contract award, the CO provides written notice to each potential service provider remaining in the competition, but not selected for award. This notice includes:

(a) The number of potential service providers solicited;

(b) The number of proposal received;

(c) The name and address of each potential service provider receiving an award;

(d) The items, quantities, and any stated unit prices of each award (The total contract price may be furnished if it is impractical at this time to provide unit prices but the unit prices must be made available upon request.);

(e) In general terms, the reasons the potential service provider's proposal was not accepted, unless the price information reveals the reason. In no event shall a potential service provider's cost breakdown, profit, overhead rates, trade secrets, manufacturing process or techniques, or other confidential business information be disclosed to any other potential service provider.

f. *Period of Performance.*

(1) Contracts awarded under the Circular are for a minimum of three years, excluding the phase-in period. OMB approval is required for performance periods exceeding five years, excluding the phase-in period. Performance periods for the agency tender and for private sector potential service providers will be identical.

(2) Potential service providers, including the MEO, propose a phase-in plan to replace the incumbent service provider. The plan, intended to minimize disruption and start-up requirements, considers recruiting, hiring, training, security limitations, and other special considerations. The phase-in period is considered the first performance period of a new contract.

g. *Contests.* The FAA will follow the FAA Dispute Resolution process in total, which supercedes the provisions of Section B, Part F, of the Circular. The Office of Dispute Resolution for Acquisition (ODRA) is available to assist all parties of an A-76 acquisition, including the MEO, when objections arise concerning the competition or source selection decision.

h. *No Satisfactory Response.* If no satisfactory offer or tender is received in response to an A-76 solicitation, the CO determines the reasons for non-responsiveness and proposes a course of action to the Competitive Sourcing Official (CSO). The CSO then takes action in accordance with the provisions of Attachment B to the Circular.

i. *New Technology and Operational Processes.* There is no required testing of existing services when they become the responsibility of a new service provider unless new services or technologies are introduced. The purpose of test and evaluation remains the mitigation of potential operational risks and the verification of operational readiness for the In-Service Decision. The Acquisition Team determines the type of testing, if required, prior to transition to a new service provider. An In-Service Decision is not required to deliver a set of services

using existing technology or processes. The In-Service Decision is a key program milestone if new technology or service concepts are introduced as a result of the competition or during the service delivery timeframe.

j. *Lessons Learned.* The office responsible for conducting the acquisition maintains a data base of lessons learned from each competition to ensure a consistent competition process and development of best practices.

k. *Competitive Sourcing Official (CSO).* The CSO is responsible for the implementation of the Circular within the FAA. Specific duties of the CSO are spelled out in the Circular.

**8 Post Competition Accountability**

a. In-Service Management begins when the new service provider initiates phase-in. At this point an organization known as the Continuing Government Activity (CGA) assumes responsibility for monitoring and assessing performance of the service provider. Members of the CGA are appointed by the responsible service director. The manager of the acquisition team coordinates closely with the manager of the CGA to assure a smooth transition of responsibilities.

b. For a performance decision favoring the agency, the CO establishes an MEO letter of obligation with the official responsible for performance of the MEO. Appropriate portions of the solicitation and the agency tender are incorporated into the letter of obligation which is then distributed to appropriate individuals, including the ATO.

c. The CGA will accomplish the post competition accountability procedures required by the Circular and will institute the appropriate monitoring mechanisms.

**9 Adversely Affected Employees**

a. In accordance with the FAA Performance Management System (PMS) Chapter 1, paragraph 14, Federal civilian employees serving competitive or excepted service appointments in Tenure Groups I, II, or III, who are identified for release from their competitive level by the FAA as a direct result of a performance decision resulting from a Circular competition are considered adversely affected employees.

b. The new service provider must give such employees the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

c. Within 10 days after contract award, the CO provides the new service provider a list of all Government employees who have been or will be adversely affected or separated as a result of the award. The new service provider then reports, within 120 days after contract performance begins, the names of individuals identified on the list who were hired within 90 days after contract performance began.

**10 The Agency Tender**

a. The Agency Tender is the FAA management plan submitted in response to a Circular competition. It includes the MEO, a cost estimate, an MEO quality control plan, an MEO phase- in plan and other elements required by the Circular and the SIR. It is not required to include a labor strike plan, a small business strategy, a subcontracting plan goal, participation of small disadvantaged businesses, licensing or other certifications, nor past performance information (except in unique circumstances identified in the Circular). The date for delivery of offers and tenders is the same.

b. When preparing the Agency Tender the MEO Team may consider the use of commercial contractors or teammates to help achieve performance requirements. In such cases the MEO is required to comply with the AMS.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

**T3.2.1.4 - Chief Financial Officer Requirements Revised 1/2008**

**A Chief Financial Officer Approvals and Other Requirements Revised 1/2006**

**1 Authorization for Procurement Request Revised 4/2016**

a. The Administrator, in a memorandum dated August 11, 2005, directed the Chief Financial Officer (CFO) to exercise greater control and fiscal oversight over FAA contracting by specifically giving the CFO approval authority over all proposed procurement actions of $10 million or more. This control and fiscal oversight were further clarified when the CFO, in the Administrator-delegated role as FAA's liaison to the DOT Office of Inspector General (OIG), provided the official FAA response in a memorandum dated September 15, 2006 to OIG Report Number Fl-2006-072, "Audit of Federal Aviation Administration's RESULTS National Contracting Service." To accomplish the greater control and fiscal oversight, FAA program offices must submit these proposed procurement actions for CFO review to the Office of Financial Analysis early enough in the acquisition process so that CFO participation can be effective. Review of potential commitments that have already been negotiated or otherwise finalized to the extent that there is little left to do but execute the document does not provide the CFO opportunity for effective contributions.

The CFO has approval authority over all proposed procurement actions of $10 million or more per AMS 3.2.1.4.2.

b. The CFO approval requirement applies to procurement actions for supplies, equipment, materials, systems, services, construction, real property (e.g. utilities), or other items where

the total potential contract value or contract ceilings including options would be $10 million or more.

c. CFO approval is required on all original actions of $10 million or more that would result in one of the following:

(1) New contract, including letter contract;

(2) New agreement (interagency, intra-agency, not-to-exceed orders, other transaction, or cooperative agreement);

(3) Basic ordering agreement (BOA)/blanket purchase agreement (BPA) where the potential value equals or exceeds $10 million as well as any individual orders on a BOA or BPA that equals or exceeds $10 million; and

(4) Other procurement actions or any other binding commitment, such as a lease.

d. CFO approval is required on all modification actions (except as noted in paragraph e., below) to existing contracts, orders, or agreements where the following applies:

(1) Any individual modification or combination of modifications, to an existing contract of less than $10 million, which increases the total value or ceiling to $10 million or more;

(2) Any individual modification or combination of modifications previously not approved by the CFO to a contract with a ceiling or value of $10 million or more, that increases the base value (the total ceiling or value previously approved by the CFO) by the lesser of either 15 percent or $10 million.

**Note:** The 15 percent is to be applied to a "base value" which is the value for the contract or other type of agreement that has been approved by the CFO. This value is set at two distinct events:

(a) at the time of initial approval of the planned contract or other agreement; and

(b) when CFO approval of modifications is received, the base value is reset to include the value of the modifications, and for contracts awarded before October 1, 2005, the base value is the contract ceiling or value that includes modifications accrued through September 30, 2005.

(3) Any modification to an existing contract of $10 million or more that results in a significant change to the statement of work. (The specific conditions involved with this approval will vary according to several factors, including the magnitude of the change to contract scope of work/requirements. The Office of Financial Analysis is available for consultation with any program office to discuss questions concerning these conditions).

e. The CFO review and approval is not required for incremental funding actions under contracts, orders, or agreements; or exercising of priced options which were included in the total estimated contract value as part of a procurement action previously reviewed and approved by the CFO. Also, modifications for incremental funding or exercise of priced options under contracts awarded before October 1, 2005, do not need CFO approval as long as there is no change in scope, contract ceiling, or contract value.

f. Procurement actions must not be split to avoid CFO approval of actions of $10 million or more.

g. For procurements that meet the threshold for CFO review, market research and analysis is required. It needs to be conducted in time to be documented in the package submitted the Office of Financial Analysis for CFO approval. The level of market analysis should be commensurate with the size and complexity of the acquisition (see AMS Procurement Guidance T3.2.1.2)

h. The Contracting Officer (CO) must not release a request for offer (RFO) prior to receiving CFO approval. This requirement applies to both competitive and non-competitive procurements. (This paragraph relates to the timing of the CFO approval and does not override the descriptions in paragraphs b. through g. of what requires CFO approval.)

i. CFO review and approval process for non-support and support service procurements is as follows:

(1) The evaluation process for non-support service packages is as follows:

a) The program office may contact the staff of the Office of Financial Analysis to schedule an appointment to discuss the CFO evaluation process and ask questions specific to the particular contract package to be evaluated prior to preparing the package. This meeting is at the option of the program office, but recommended.

b) The process officially begins with the submission to the Office of Financial Analysis (AFA-100) of a complete package which contains the following:

i. The approval of the requester (usually the program or project manager);

ii. The approval of the head of the line of business or staff office;

iii. The approval of the Chief Information Officer (CIO);

iv. The approval of a procurement attorney;

v. A completed acquisition checklist (template can be found at FAST.FAA.GOV in “Procurement Forms” section under “CFO Approval Requirements – Non-support Service Procurements”);

vi. A completed business case;

vii. A copy of the statement of work; and

viii. A supported independent government cost estimate (IGCE) with a narrative identifying sources of information and explaining methods and assumptions. The IGCE must be crossed-referenced to the planned Section B CLIN structure of the solicitation and to the statement of work.

c) The Office of Financial Analysis coordinates with the AFI-1 Investment Planning and Analysis Office on all packages with emphasis on packages associated with the Joint Resources Council (JRC). The coordination is designed to ensure no duplication between the two offices.

d) Once the Office of Financial Analysis receives the complete package, within 15 calendar days, the program office receives an initial assessment. The initial assessment is usually to identify the package acceptability for submission, provided questions to clarify items in the submission, and request a sample of IGCE items selected to be substantiated with sources/supporting documentation.

e) If the package is found to have minor deficiencies, the staff of the Office of Financial Analysis would recommend actions for the program office to correct the deficiencies or recommend conditions on the approval to address inadequacies. If the package is determined to be significantly inadequate, the program office would be notified of the intention to cancel the evaluation and describe the deficiencies that need to be remedied. The program office would be instructed of what steps were needed to resubmit the package.

f) After the response to the questions and cost estimate sample are determined to be adequate, a recommendation memorandum is sent to the Chief Financial Officer recommending approval or disapproval of the submitted package.

g) Once the CFO has approved the package, the program office is notified and a copy of the approval is provided for the program office's record. A copy of the CFO approval must be provided to the contracting officer for the official eDocs contract file.

(2) The evaluation process for support service procurements (also referred to as "support contracts") is as follows:

a) Support services procurements requiring CFO approval must be reviewed by the Support Contract Review Board (SCRB) which makes a recommendation of approval or disapproval to the CFO. The purpose of the SCRB is to simplify and expedite CFO approval of support services acquisitions by adhering to a set processing timetable, while simultaneously obtaining approval from Contracting and Acquisition, Legal Counsel and the Office of Financial Analysis.

b) Support services contracts and acquisitions are those that augment the resources currently provided by the government (FAA) such as technical assistance contracts, systems engineering support and implementation services. The following items are not considered support services contracts and acquisitions for the purposes of the SCRB: air traffic control services,

telecommunication services, flight services, contract tower, maintenance and contract weather.

c) The SCRB process has two phases. Phase I is a high level examination of the funding, acquisition strategy and schedule (approval of the Acquisition Strategy Review Board is required prior to the SCRB Phase I approval). Phase II is a detailed examination of the planned procurement.

d) Prior to the SCRB Phase I meeting the following must be completed:

i. Obtain the approval of the Acquisition Strategy Review Board (ASRB) and submit a complete approved form;

ii. Submit a completed SCRB Phase I form (The Phase I form is at FAST.FAA.GOV under "Procurement Forms" under "CFO Approval Requirements – SCRB Phase I") approved by the requester and the head of the line of business;

iii. Submit a complete set of briefing slides (SCRB briefing slides template is at FAST.FAA.GOV under "Procurement Templates & Samples" under "CFO SCRB Phase I Presentation Template").

e) The SCRB meeting is conducted every Wednesday morning (except federal holidays) and the above items must be received by the Office of Financial Analysis by noon the Friday prior to the Wednesday of the meeting.

f) Prior to preparing the SCRB Phase II package, the program office may contact the staff of the Office of Financial Analysis to schedule an appointment to discuss the CFO evaluation process and ask questions specific to the particular package to be evaluated. This meeting is at the option of the program office, but recommended.

g) The SCRB Phase II process officially begins with the submission to the Office of Financial Analysis (OFA) of a complete package which contains the following:

i. The approval of the requester (usually the program or project manager);

ii. The approval of the head of the line of business or staff office;

iii. The approval of a procurement attorney;

iv. The approval of the contracting officer;

v. The approval of the Chief Information Officer (CIO);

vi. A completed acquisition checklist (The Phase II form is at FAST.FAA.GOV under "Procurement Forms" under "CFO Approval Requirements – SCRB Phase II");

vii. A completed business case;

viii. A copy of the statement of work; and

ix. A supported independent government cost estimate (IGCE) with a narrative identifying sources of information and explaining methods and assumptions. The IGCE must be cross-referenced to the planned Section B CLIN structure of the solicitation and to the statement of work.

h) The Office of Financial Analysis coordinates with the AFI-1 Investment Planning and Analysis Office on all packages with emphasis on packages associated with the Joint Resources Council (JRC). The coordination is designed to ensure no duplication between the two offices.

i) Once the Office of Financial Analysis receives the complete package, within 15 calendar days, the program office receives an initial assessment. The initial assessment is usually to identify the package acceptability for submission, provided questions to clarify items in the submission, and request a sample of IGCE items selected to be substantiated with sources/supporting documentation.

j) If the package is found to have minor deficiencies, the staff of the Office of Financial Analysis would recommend actions for the program office to correct the deficiencies or recommend conditions on the approval to address inadequacies. If the package is determined to be significantly inadequate, the program office would be notified of the intention to cancel the evaluation and describe the deficiencies that need to be remedied. The program office would be instructed of what steps were needed to resubmit the package.

k) After the response to the questions and cost estimate sample are determined to be adequate, a recommendation memorandum is sent to the Chief Financial Officer recommending approval or disapproval of the submitted package.

l) Once the CFO has approved the package, the program office is notified and a copy of the approval is provided for the program office's record. A copy of the CFO approval must be provided to the contracting officer for the official eDocs contract file.

j. The program official must provide a copy of the Office of Financial Analysis' CFO approval note, including all imposed conditions, and the CFO signature page to the contracting officer.

k. CFO approval is specific to the checklist, business case, statement of work and/or independent government cost estimate (IGCE) provided prior to approval. The criteria below provide guidance on procedures to follow if there are significant changes to the checklist, business case, statement of work and/or IGCE subsequent to CFO approval:

(1) If, after CFO approval, the requirements do not change, but the revised cost estimate, negotiated amount, or selected offer is 15 percent or more greater than the IGCE evaluated by the Office of Financial Analysis, the program office must submit a revised estimate and an explanation and reconciliation to the Office of Financial

Analysis for an updated CFO approval prior to contract award;

(2) If, after CFO approval, the requirements do not change, but the revised cost estimate, negotiated amount, or selected offer is 15 percent or more less than the IGCE evaluated by the Office of Financial Analysis, the program office must submit a revised estimate and an explanation and reconciliation to the Office of Financial Analysis before contract award;

(3) If, after the CFO approval, there are significant changes to the business case and/or statement of work, the program office must submit to the Office of Financial Analysis a revised checklist, business case and/or statement of work for an updated CFO approval. (The specific conditions involved with this approval will vary based upon several factors, including the magnitude of the change to contract scope of work/requirements. The Office of Financial Analysis is available for consultation with any program office to discuss questions concerning these conditions.)

(4) The program office must provide to the Office of Financial Analysis the contract award amount and contract number within 30 days of contract award.

l. The Office of Financial Analysis conducts post CFO approval evaluations and will request information regarding the contract amount, compliance with any conditions/requirements in the CFO's approval, and other information which must be provided to the CFO for follow-up action.

**2 Capitalization of Assets Revised 7/2010**

Capitalization allows FAA to accurately record the value of its assets and to generate reliable information for financial statements required by the Chief Financial Officers Act. The CO and requisitioning/program office personnel are to comply with capitalization requirements and processes outlined in the Financial Manual, Volume 5 Capitalization, available online (FAA only).

**B Clauses Revised 10/2007**

view contract clauses

**C Forms Revised 1/2006**

view procurement forms

**T3.2.1.5 - Disaster or Emergency Preparedness and Response Revised 1/2009**

**A Disaster or Emergency Contracting Added 10/2006**

**1 Local Area Set-Asides for Disaster or Emergency Added 10/2006**

(a) The Contracting Officer (CO) may set-aside procurements for competition among only offerors residing or doing business primarily in an area where the President has declared a major disaster or emergency. A major disaster may result in numerous Presidential declarations spanning counties in several contiguous States. The CO, in consultation with the program official, defines the specific geographic area for the local area set-aside. This set-aside area need not include all the counties in the President-declared disaster or emergency area, but cannot go outside it.

(b) The CO may use other methods to give preference to offerors residing or doing business primarily in the area affected by a disaster or emergency to the extent practicable. For example, the CO may use the local area preference as an evaluation factor for award.

(c) The CO may also combine a local area set-aside with a small business set-aside.

(d) A local area set-aside does not eliminate other AMS requirements for procurement, such as competition considerations.

## 2 Continuity of Mission Critical Contracts Revised 4/2012

a. *General.*

(1) Continuity of mission critical contracts during times of National Emergency or Incidents of National Significance, such as pandemic influenza, is required to ensure the integrity of the FAA and the National Airspace System (NAS). The program office must identify to the contracting office those contracts that are required to ensure continuity of critical supplies and services and at what level these supplies and services must be delivered. Critical contracts may include:

(a) Support for communication infrastructure;

(b) Supplies and services for crucial transportation support;

(c) Supplies and services for facility security; and

(d) Support for emergency response activities.

(2) The Contracting Officer (CO) must include clauses ensuring that the tasks and deliverables from mission critical contracts are continued during times of National Emergency or Incidents of National Significance. This is to include a requirement for the submission of a Continuity of Contract Performance Plan to the CO by the contractor that addresses how the contractor will continue to provide supplies and services at the contracted level if a National Emergency or Incident of National Significance should occur.

(3) The Continuity of Contract Performance Plan must be reviewed and accepted by the FAA Emergency Planning Staff.

(4) If a contract is deemed non-critical by the program office, the CO must suspend or

stop the contract during an emergency until it is determined conditions are favorable for non-critical contracts.

(5) Management must identify COs and Contracting Officer's Representatives (CORs) on mission critical contracts that can assume the roles of CO and COR, if the primary personnel are unavailable, in times of National Emergency or Incidents of National Significance.

b. National Emergencies or Incidents of National Significance include, but are not limited to:

(1) Outbreak of pandemic influenza or infectious disease;

(2) Terrorist attack;

(3) Natural disaster.

c. The Continuity of Contract Performance Plan must address:

(1) Plans and procedures;

(2) Identification of essential functions;

(3) Delegations of authority, planned order of succession, and cross-training to ensure personnel are available to provide services and make key decisions;

(4) Proposed alternate operating facilities;

(5) Interoperable and Effective Communications;

(6) Critical records or data;

(7) Protection of human capital;

(8) Testing and training of the plan;

(9) Devolution of control and direction; and

(10) Reconstitution and resuming normal operations.

d. Further information regarding the FAA's reaction to a National Emergency or Incident of National Significance and content of the Continuity of Contract Performance Plan can be found in the National Response Plan and the National Strategy for Pandemic Influenza Implementation Plan.

**B Clauses** **Added 10/2006**

view contract clauses

## C Forms Added 10/2006

view procurement forms

## D Appendix Added 7/2007

### 1 Appendix - Emergency Procurement Guide Revised 7/2012

**FAA Emergency Procurement Guide**

This guide is for the use of FAA personnel when responding to a bona fide emergency, incident of national significance, or aiding in disaster relief efforts. This guide supplements and summarizes FAA Acquisition Management System (AMS); specific policy and guidance for FAA procurement is available on the FAST website.

**Emergency:** A sudden, unforeseen event that requires action to correct or to protect lives or property.

The flexibilities in this guide may be used:

1. In support of FAA contingency operations or restoration of the NAS;

2. To facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States; or

3. When the President declares an incident of national significance, emergency declaration, or a major disaster declaration.

**Unauthorized Commitments: DO NOT** make commitments or promises of any kind to bind the Government if you are not a properly warranted Contracting Officer (CO) or an authorized holder of a purchase card and the requirement is within your warrant or delegation.

When purchasing goods or services in an emergency, COs and cardholders **must** ensure that applicable FAA security standards are properly addressed and adhered to.

***Purchase Cards***

The purchase card is a valuable tool that can be utilized to procure requirements in times of emergency. Despite the presence of an emergency situation:

Single and monthly limits established for the card account by the Chief of the Contracting Office (COCO) in the cardholder's Delegation of Purchasing Authority (DPA) must still be strictly adhered to; and

The person making the purchase must be the cardholder on the card account and have a valid DPA issued by the COCO.

**Emergency Spending Limits**

The maximum single purchase limit that can be assigned to purchase card is $100,000, while the maximum billing cycle or monthly limit is $999,900. The COCO establishes both limitations based on justification and recommendations of a cardholder's approving official. If a cardholder is designated or tasked to respond to emergencies or participate in relief efforts, that individual's single and monthly limit can be raised to a level that allows for an efficient and effective emergency response.

A warranted CO can make purchases up to $100,000 using a purchase card (if within their warrant limits); however the maximum Single Purchase Limit that may be issued to an un-warranted cardholder is $10,000. If a non-warranted cardholder wishes to have a single purchase limit above $10,000 (up to the $100,000 maximum) for emergency operations, the individual must receive written approval from the COCO.

**Prohibited Purchases**

The following items cannot be purchased using a government purchase card:

- Long-term rental or lease of land or buildings
- Cash advances, including money orders
- Telephone services controlled by the GSA or the local Office of Information Services or Regional Communications Office
- Cellular or communication devices and services covered by the National Wireless Program Office (NWPO)
- Gifts
- Personal purchases or services
- Travel-related expenses
- Obtain Government owned or leased vehicles

**Restricted Purchases**

- Drinking water, except when:
  - A duly constituted health authority pronounces the drinking water to be unsafe for human consumption at the site;
  - A viable and safe water source for FAA personnel is not available on or within a reasonable distance of the worksite;
  - FAA personnel reasonably foresee a disaster or emergency, such as the imminent landfall of a hurricane (See AMS Procurement Guidance 3.2.2.5 for additional restrictions); or
  - The drinking water is provided in a controlled environment to enable collections for drug use analysis for safety sensitive positions.
  - Food items for meetings and conventions, except as detailed in AMS Procurement Guidance 3.2.2.5.
- Membership fees for individual employees (the agency may purchase membership in a society or association in its own name)
- Subscriptions to publications or magazines not relating to official duties
- Clothing (or personal apparel of any description); requirements for special type

clothing necessitated by agency requires written justification from the requestor's supervisor and should be coordinated with legal counsel

- Rental of aircraft by persons not in aircraft related positions
- Fans, air conditioning and cooling equipment, space heaters and heating equipment, except as properly installed for general use in connection with the maintenance and operations requirements for the site.
- Water coolers, or vacuum cleaners and other household appliances (i.e. refrigerators, microwaves, etc), except as requisitioned for general use by the authorities charged with building maintenance and equipment, plaques, trophies, etc. given to employees for high quality work or special projects (See AMS Procurement Guidance 3.2.2.5 for additional information) Services over $2,500
- Construction over $2,000
- Store gift cards or gift certificates (see AMS Guidance T3.2.2.5.A.4.d.(3)).

**Purchase Card Flexibilities**

See the *Emergency Procurement Flexibilities* section below in this guide.

**Purchase Card Do's and Don'ts**

- Be sure not to charge travel related expenses on the purchase card.
- Ensure that funding is available and approvals are received. Despite the presence of an emergency, funding must be available prior to purchase.
- Never allow anyone else to use your purchase card.
- Secure the card at all times and immediately report lost or stolen cards to the Agency Program Coordinator (APC) and bank.
- Ensure that vendors understand that FAA is exempt from sales tax.
- Never exceed assigned single or monthly purchase limits.
- Never split a purchase to avoid single or monthly purchase limits.

**Credit Card Checks**

- For those vendors that don't accept a purchase card, credit card checks have a single purchase limit of $2,500.

***Procurement Resources and Tools for Emergencies***

**Mailing Lists:** Keeping a mailing list of vendors for a given locale for various supplies or services may prove useful when emergency response limits time for market research. Some if not all regional procurement offices have lists available, and can be easily formed.

**Qualified Vendors List (QVL)**: A QVL is a mailing list where vendors submit their background (to include experience, certifications, etc) to the FAA to qualify to be on the QVL. As requirements become known, QVL vendors compete for award. A QVL can be useful where lists are needed in specialized areas such as NAVAIDS, electrical, EPDM roofing, or EFIS siding.

**Blanket Purchase Agreement (BPA)**

- If an area finds a recurring need for a supply or service during an emergency response, the procurement office can establish BPAs locally.
- Individuals can be identified by the CO as authorized users of the BPA and can place purchases or "calls" against it.
- A BPA can be established with zero funding, and when needs arise it can be funded per action or in "bulk."
- BPAs can be established with either local or national vendors depending on the need.
- BPAs can be established with multiple vendors for the same need.

**Indefinite Delivery/ Indefinite Quantity Contract (ID/IQ)**

- If a need is known but the schedule and quantity are unknown, an ID/IQ contract can be a valuable tool.
- An ID/IQ contract can be established with a single or multiple vendors.
- An ID/IQ does have a guaranteed minimum quantity in the contract.
- Funds are obligated by each task or delivery order, not by the contract itself.

**County, City, or Local Trade Organization**

- As a response to an emergency can involve varying levels of government, many state, county, and city governments have already established listings of vendors in varying trades that can be utilized.
- In several areas, vendors have committed personnel and equipment to mobilize for emergency response when required.
- Several trade organizations have also formulated listings of their members that have committed their resources to emergency responses. These include heavy construction contractors (earth moving, etc), electricians, and landscape contractors (tree removal, etc.).
- Many government offices or trade organizations list these vendors in annual publications for reference when needed.

***Other Federal Resources***

**GSA**

- GSA *Advantage* Disaster Relief: GSA has established a website to identify those products and services that are traditionally utilized in relief efforts. As the products are available through GSA *Advantage* and GSA Federal Supply Schedule (FSS) contracts, products and pricing are easily obtained.
- GSA *Advantage*: While using the purchase card, required supplies can be purchased and received in a short period of time. A cardholder can locate required items using the search feature on the site, or utilize tailored sections of the site that categorize the products into areas such as Homeland Security Products or Wild Fire and Equipment.
- GSA e-Buy: If a requirement is needed quickly, yet time limitations allow for some market research, e-Buy allows for the distribution of an opportunity to FSS vendors and submission of the resulting vendor quote for the need electronically.
- GSA FSS or GSA BPA: There are several FSS contracts and Blanket Purchase Agreements (BPA) established by GSA or other agencies for various goods or services. GSA has the goods and services organized by type, and provides them in the GSA Schedule e-Library.

**Department of Homeland Security (DHS) or Federal Emergency Management Agency (FEMA)**: DHS has established several contracts and agreements for supplies and services to be utilized during an emergency response. Information regarding the ability to utilize these tools or to learn of avenues available can be obtained by calling DHS at (202) 205-5045.

**FEMA Source Lists**: FEMA has formulated several lists of vendors of varying trades that may be utilized in relief efforts. The lists and contact information can be obtained by calling (202) 646-4686.

**Defense Logistics Agency (DLA)**: DLA contracts for various supplies and services that can be utilized by the FAA. These include contracts for heavy equipment and buildings.

**Air Force Contract Augmentation Program (AFCAP)**: This program provides various civil engineer and service capabilities to include structural fire protection, environmental management, and lodging.

**Navy's Construction Capability (CONCAP) contract**: Provides rapid response capability in emergency operations and is focused on construction and construction-related activities. Tasks include airfield construction, pier construction, and petroleum storage.

**Army's Logistics Civil Augmentation Program (LOGCAP)**: Provides rapid response in areas to include construction support, general logistics services, and facility engineer support.

***Emergency Procurement Flexibilities***

- Mandatory Sources: An emergency may exempt procurements from complying with the Javits-Wagner-O'Day (JWOD) Act, Randolph Sheppard Act, and the Federal Prison Industries requirements. (AMS Procurement Guidance T3.8.4)
- Single Source Procurement: In an emergency, procurements can be awarded to a single source if in the best interest of the FAA. (AMS Procurement Guidance T3.2.2.4)
- Public Announcement: The requirement to synopsize or publicly announce procurements over $100,000 is waived for emergency actions. (AMS Procurement Guidance T3.2.2)
- Walsh-Healey Public Contracts Act: Contracts for supplies under emergency conditions are waived from this act. (AMS Procurement Guidance T3.6.2)
- Purchase Card: See section *Purchase Cards*.
- Credit Card Checks: See section *Purchase Cards*.
- Letter contracts: If the situation demands immediate response, a CO may issue a letter contract to a vendor. A letter contract includes identification of the requirement and a brief description of the work, a total amount for which the contractor shall be limited to expend and the FAA shall be required to pay; and the period of performance by the contractor. (AMS Procurement Guidance T3.2.4)
- Verbal Authorization: A CO may give a vendor a verbal authorization to begin work once funds are committed and complete the remaining contract phases after the fact. (AMS Policy 3.2.2.4.1.1)
- Oral Solicitations and Quotations: Oral solicitations may be used when processing a written solicitation would delay the acquisition of supplies or services in an emergency to the detriment of the FAA. Oral quotations may be authorized to allow for quicker

receipt of pricing for goods and services. Documentation for each oral Request for Quote (RFQ) should include:

- Description of requirement and RFQ number;
- Rationale for use of oral quotations;
- Sources solicited: Include date, time, and name of individuals contacted, and prices offered; and
- Best value determination.

- System for Award Management (SAM): Contractors do not have to be registered in SAM before award of a contract, agreement, or lease in response to an emergency or disaster. (AMS Procurement Guidance T3.3.1)
- Electronic Fund Transfer (EFT): Payment by EFT is not required during emergencies or contingency operations. (AMS Procurement Guidance T3.3.1)
- Local Area Set-Asides for Disaster or Emergency: The CO may set-aside procurements for competition among only offerors residing or doing business primarily in an area where the President has declared a major disaster or emergency. (AMS Procurement Guidance T3.2.1.5)
- Bonds: For emergency acquisitions, the CO may waive the requirement to obtain a guarantee when performance bond and/or payment bonds are usually required. (AMS Procurement Guidance T3.4.1)
- Legal Coordination: At Headquarters, the Assistant Chief Counsel for Procurement, and at Regions and Centers, the Region or Center Counsel, may make written exceptions to the Coordination Policy described in T1.15, adjust dollar minimums, or in appropriate cases, waive the Coordination Policy. (AMS Procurement Guidance T1.15)
- Overtime: Approval of contractor overtime should be prospective, but if justified by emergency circumstances, approval may be retroactive. (AMS Procurement Guidance T3.6.2)

## T3.2.2 - Source Selection Revised 7/2009

### A Source Selection

### 1 Source Selection Guide Revised 7/2010

A guide to source selection is in Appendix 1 to this section T3.2.2.

### 2 Public Announcement and Announcement of Competing Offerors Revised 1/2016

All procurements over $150,000 must be publicly announced on the Internet or through other means. If the Internet is used, as a minimum the announcement should be placed on the Contracting Opportunities page contained in the FAA Acquisition System Toolset (FAST). This requirement does not apply to emergency actions, purchases from an established Qualified Vendors List (QVL) or Federal Supply Schedule (FSS), exercise of options, modifications, or changes. For actions under $150,000, a public announcement is optional.

Publicizing the names of offerors competing for FAA contracts can be a method of encouraging small businesses to seek subcontracting opportunities with potential FAA

contractors. The Contracting Officer (CO) may publicly announce names and addresses of offerors responding to a screening information request (SIR), provided the SIR includes a notice to the offerors and no offeror objects to the release of this information. The CO may make the public announcement after initial offers are received and/or *after* making a down select decision.

**3 Past Performance Revised 1/2016**

a. General. Past performance can be one indicator of a prospective contractor's future performance. To help ensure that the best performing contractors are providing products and services to the FAA, past performance should be evaluated during source selection. If past performance is not evaluated, reasoning must be documented.

b. Recommendations for Using Past Performance in a Screening Information Request (SIR).

(1) General Considerations. Factors chosen for evaluation should be reasonable, logical, coherent, and directly related to requirements in the statement of work (SOW). The key to successful use of past performance in the screening process is a clear relationship between the SOW, instructions to offerors, and evaluation criteria. Past performance information that is not important to the current acquisition should not be included.

(2) Responsibility Determination. When the CO or product team considers it appropriate, the SIR states past performance will be used to evaluate the responsibility of the contractor. A contractor with a record of unsatisfactory past performance should be screened out of the selection process.

(3) Past Performance as a Separate Non-Cost/Price Factor. Including past performance as a stand-alone evaluation factor is better than integrating it with other non-cost/price evaluation factors. The source and type of past performance information to be included in the evaluation and the relative importance of past performance compared to price or cost and any other evaluation factors is at the broad discretion of the procurement team (CO, legal counsel, program official and other supporting staff).

(4) Non-Relevant Contract Experience/New Contractors. The SIR must state whether new contractors or contractors with non-relevant contract experience will be considered, or rated negatively.

(5) Size, Scope, Complexity, and Time-frame. The SIR requests the offerors for references for ongoing projects and/or contracts completed within a specified period of time (three to five years is reasonable but can be for a shorter period if appropriate) for contracts that are similar in size, scope, and complexity to the SOW. Each of these terms (size, scope, and complexity) should be SOW specific and defined in the SIR. Gather past performance history from sources other than those provided by the offeror. Such sources include the Past Performance Information Retrieval System (PPIRS) database, PRISM database along with other agency contracting personnel, and listings of contract awards posted on FAA Contract Opportunities.

(6) Sub-factors. The procurement team must pay attention to what differentiates a "good" performer from a "poor" performer. Past performance sub-factors are shaped by those differentiators, be limited in number, and are tailored to the key performance criteria in the SOW.

(7) Relative Importance. The SIR may state whether all sub-factors are relatively equal, or whether certain sub-factors are more important than others.

(8) Major Subcontractors. If major subcontractors are likely to perform critical aspects of the contract, the procurement team evaluates past performance of these subcontractors to determine the overall likelihood of success of the prime contractor. The SIR states how such information will be evaluated.

(9) Affiliates, Divisions, etc. The past performance of the affiliates, divisions, etc. that are actually performing the work is considered. The procurement team must consider the degree of control that a parent organization will exert over the affiliate, division, etc. in determining whether both the parent organization and affiliate, division, etc. past performance is evaluated.

(10) Number of References. Ask for at least two points of contact (program/technical and contracts) for each past performance reference to assure that all aspects of the offeror's performance can be evaluated.

(11) Use of Other Sources. The instruction to offerors includes a statement that the Government may use past performance information obtained from sources other than those identified by the offeror, and that the information obtained may be used for both the responsibility determination and the best value decision. For each non-Federal reference, the SIR includes an authorization to release information.

(12) Inclusion of Past Performance Questionnaire (PPQ). The PPQ does not need to be included as an attachment in the SIR. If the PPQ is included in the SIR, note the past performance questions are not limited to those on the questionnaire.

(13) Sample SIR Provisions. Appendix 2 to this Guidance contains examples of SIR provisions and an example client authorization letter. The example is not the only way to include past performance in the SIR. Each SIR must contain instructions and evaluation information that best reflects the individual acquisition.

c. Evaluating Past Performance.

(1) Relation to SIR. Instances of performance, both good and poor, are noted and related to SIR requirements. If problems were identified on a prior contract, the role the sponsor may have played in that result is taken into account. Evaluations consider the number and severity of problems, the demonstrated effectiveness of corrective actions taken (not just planned or promised), and the overall work record.

(2) Current Versus Older Performance. The age of the performance being evaluated may be weighted so that performance on older contracts receives less weight than performance on more recent contracts.

(3) Method of Scoring. The final past performance rating may be reflected by a color, a number, adjectival, or a combination of these methods, depending upon what system is being used overall to indicate the relative ranking of the offerors. A past performance rating is not a precise mechanical or scientific process and must include sound business judgment. Therefore, the documentation of the final rating includes a logical description of the underlying reasons for the conclusions reached.

(4) Disclosure of Negative Information. If the procurement team receives negative information that would have a significant effect on the likelihood of award to an offeror, then the procurement team discloses the information and provides the offeror an opportunity to respond. This is true even if the SIR states that award may be made on initial offers. The SIR includes the appropriate provisions notifying the offerors that FAA retains this option.

(5) Evaluating Disputed/Negative Information. When the procurement team receives negative information, or information that is disputed, they should carefully consider the offeror's response and determine what weight to apply, based on the facts obtained from the questionnaire, interview, or other sources. The file must be documented to explain why the procurement team assigned a particular rating. This is especially important in situations involving unresolved disputes.

d. Obtaining Information on an Offeror's Past Performance.

(1) Reference Checks. The most commonly used method of obtaining past performance is to conduct reference checks from a variety of sources, including previous FAA program and contracting personnel, other Federal agencies, state and local governments, and commercial contractors.

(2) Other Sources. Dun & Bradstreet can obtain information on past performance on specific contractors for the FAA ( Dun & Bradstreet charges for this information). In lieu of FAA paying for the report, the SIR may require offerors to provide a copy of a recent past performance report prepared by Dun & Bradstreet. Quality certifications and awards can also serve as a useful source of past performance information.

(3) Timetable. The process of collecting past performance information begins as soon as the proposal evaluation begins. It may be best to establish a team devoted entirely to this task during the screening, especially if FAA anticipates receiving a large number of proposals. Researchers must locate and question sources of information, either in person, by telephone or in writing. If the information shows a history of poor performance, the procurement team can eliminate the proposal from the competition as non-responsible.

(4) Questionnaire or Survey Form. The first step in obtaining information from sources is to develop a questionnaire, or survey form, that reflects the evaluation rating system that will be used to assess the offerors strengths and weaknesses for the contract being considered. Questions are worded so that interviewees understand precisely what they are being asked to describe. To maintain accurate records and facilitate verification, the questionnaire (survey) record form include: Interviewer's name,

agency/company name, reference's name (to be held in confidence), full mailing address and telephone number, date the questionnaire is completed, and description of the contract effort discussed. An example of a questionnaire is found in Appendix 2.4 Sample 3B.

(5) Information Collection. Once the questionnaire is prepared, the procurement team should contact references. There are various ways to collect the information: Face-to-face interviews, mailing the questionnaires, telephone interviews, electronic mail (ensuring security measures are taken), or some combination of these.

(6) Number of References. The SIR requires the offeror provide at least two references (one from the program office/one from contracts) for each of its proposed past performance examples. Additional references could be identified during interviews in order to survey a large enough sample to identify patterns in performance.

(7) Setting Up Interviews. Being well organized and efficient is important when conducting the interview so as not to waste the interviewee's time. It is helpful to call the reference to make an appointment to conduct an interview, rather than telephoning the references unannounced, thereby catching them unprepared or with little time to respond. If possible, the questionnaire is mailed or faxed to the reference in advance of the appointment. Interviewers take copious notes on the questionnaire to ensure that all information is captured. Tape recording is a good means for capturing all of the conversation; however, tape recording the conversation may cause the interviewee discomfort and reduce the amount of information provided. If tape recording is used during the interview, ensure the interviewee is aware of and agrees to the use of recording devices.

(8) Conducting Interviews. Evaluators look for patterns of either favorable or unfavorable overall performance, rather than focusing on individual successes or failures. It is important to look for actions that demonstrate high performance and not just unfavorable performance. This will help to get away from the old responsibility determination mode of just looking at performance problems. There appears to be a tendency for references to give an upward bias to ratings. The interviewer should ask enough questions to discriminate between "good" and "excellent." Evaluators request copies of any existing documentation in support of excellent or negative findings (i.e., correspondence, modifications, determinations, etc.). Investigating negative findings in- depth prior to presenting them to offerors, in discussions if held, will alleviate unnecessary delays. Prior to concluding the interview, the evaluator asks the reference for a summary opinion, e.g., how would the interviewee rate the contractor's overall performance and would the interviewee like to do business with the contractor again?

(9) Concluding Telephone and Face-to-Face Interviews. Immediately following a telephone or face-to-face interview, the interviewer prepares a narrative summary of the conversation (this can be the questionnaire as filled in by the interviewer) and send it to the reference for verification, preferably by certified mail return-receipt requested, fax, or electronic mail. The narrative states explicitly that if the reference does not object to its content within the time specified, it would be accepted as correct. If the reference indicates that the narrative is incorrect, then a corrected narrative is sent for

verification. If a reference will not agree to the record and satisfactory corrections cannot be agreed upon, the record cannot be relied upon and must not be included in the offeror's rating. Another source may provide the same information, however.

(10) Mailing Questionnaires. If mailing questionnaires is the chosen method for collecting past performance information, mail the questionnaires to the references, provide a time-frame for return of responses, and wait for the responses. If mailed questionnaires are not received in a timely manner, follow-up telephone interviews are suggested (following guidance above if telephone interview occurs).

## 4 Cancelling a Screening Information Request Revised 10/2010

The CO, with the concurrence of the procurement team, may cancel a SIR at any time during the solicitation process. The notification of cancellation may be made through the same mechanism as the initial or subsequent SIRs. The CO must document cancellation for the contract file.

## 5 Section 508 of Rehabilitation Act Revised 1/2016

a. *Requirements for Accessibility.*

Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) requires that persons with disabilities that are either Federal employees or members of the public seeking information or services from a Federal department are to have access to and use of information and data comparable to the access and use of information and data by Federal employees or members of the public who do not have disabilities. Section 508 applies to contract awards, task orders, delivery orders, orders under Government-wide Schedules and Interagency Agreements for electronic and information technology (EIT), as defined below. The procurement team (CO, program official, legal counsel, and other supporting staff) will insert Section 508 requirements into SIRs that include development, procurement, maintenance, or use of electronic and information technology unless an exception applies (see Exceptions to Section 508 below).

b. *Definition.*

Electronic and information technology (EIT) means any equipment or interconnected system or subsystem of equipment used in automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For purposes of the preceding sentence, equipment is used by the FAA:

(1) If the equipment is used directly by FAA; or

(2) Is used by a contractor under a contract with FAA that:

(a) Requires use of such equipment; or

(b) Requires use, to a significant extent, of such

equipment in performance of a service or furnishing of a product.

c. *EIT Products.* EIT includes, but is not limited to the following:

(1) Computers and other office equipment;

(2) Software and firmware;

(3) Services (including support Services);

(4) Telecommunication products;

(5) Information kiosks;

(6) Office equipment such as copiers and fax machines; and

(7) Websites.

d. *Exceptions to Section 508.*

(1) Section 508 does not apply to EIT if the following applies:

(a) Acquired by a contractor incidental to a FAA contract;

(b) For a national security system;

(c) Located in space frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment;

(d) That would impose an undue burden on FAA (see paragraph f. below); or

(e) That would impose a fundamental alteration in the nature of an EIT product or its components.

(2) EIT is not available

(a) When procuring commercial items, FAA must comply with those EIT standards that can met with supplies or services that are available in the commercial marketplace in time to meet FAA's delivery requirements.

(b) When EIT is not available, the contract file must be documented as outlined below.

(3) Documentation supporting a Section 508 exception must be maintained in

the contract file. The FAA Section 508 Procurement Checklist found below in Section C. "Forms" can aid in regulatory compliance. Required documentation includes the following if applicable:

(a) Applicable technical provisions of the Access Board's standards;

(b) Market research performed to locate items that meet the applicable technical provisions;

(c) The specific provisions that cannot be met;

(d) Undue burden documentation (see paragraph f. below); and

(e) Other applicable documentation.

(4) If an exception applies preventing FAA from meeting all of the applicable technical provisions, FAA may acquire EIT that meets some of those provisions.

e. *Applicability.*

(1) All EIT procured on or after June 21, 2001 must comply with Section 508 standards.

(2) The FAA does not have to retrofit EIT procured before June 21, 2001.

f. *Approval of Undue Burden.*

When applying the requirements of Section 508 (see paragraph a. "Requirements for Accessibility" above) would impose an undue burden, FAA must provide individuals with disabilities covered by Section 508 the information and data by an alternative means of access that allows the individual to use the information and data. Undue burden is defined as a significant difficulty or expense to the FAA.

(1) Documentation of an undue burden must include the following:

(a) A thorough and fully supported explanation as to why and to what extent compliance with each provision of “36 CFR Part 1194 – Electronic and Information Technology Accessibility Standards” would create an undue burden for the EIT being procured; and

(b) Dollar value, market research performed, and alternative means of access that will be provided for individuals with disabilities to use the information or data. Alternative means of access include (but are not limited to):

(i) Voice, fax, or relay service;

(ii) Qualified sign language interpreters;

(iii) Teletypewriters (TTY);

(iv) Internet posting;

(v) Captioning;

(vi) Text-to-speech synthesis;

(vii) Readers;

(viii) Personal Assistants; or

(ix) Audio description.

(2) Final approval authority of an undue burden determination resides with the FAA Administrator. The Secretary of the Department of Transportation (DOT) formed the Undue Burden Advisory Board (UBAB), which will advise FAA on undue burden matters. The process for undue burden determinations is:

(a) Review by DOT Chief Information Officer;

(b) Review by DOT General Counsel;

(c) Review by UBAB and their submission of a recommendation to the FAA Administrator in the form of an "Undue Burden Report"; and

(d) Consideration of the report by the FAA Administrator or delegate. The resulting decision is final.

g. *Sources of Further Information.*

(1) U.S. Architectural and Transportation Barriers Compliance Board (U.S. Access Board

(2) Government-wide Section 508 website

(3) FAA Section 508 website (FAA only)

**6 Spare Parts Revised 1/2016**

a. *Shipping Spare Parts.* For all shipments of spare parts, the contractor must include a packing list that includes at least the name, part number, Commercial and Government Entity (CAGE) Code, quantity, unit price, and national stock number (if available). Contracts that require

shipment of spare parts include Clause 3.2.2.3-73 to establish this contractual requirement.

b. *Spare Parts for Nationally Furnished Project Materiel.*

(1) *Requirements.* The contracting officer includes coverage for spare parts in the screening information request and subsequent contract that facilitates availability, accessibility and tracking of spare parts.

(2) *SIR Provision.* For contracts that will require the purchase and delivery of spare parts, the contracting officer establishes a discrete contract line item number for initial site and depot-level spare parts list contract line item number (CLIN) and corresponding delivery date. The CO also includes the SIR provision 3.2.2.3-74, "Submission of Initial Site and Depot-level Spare Parts List" as part of the instruction to vendors on the preparation of their SIR submissions to assure that the parts list will be furnished as part of the SIR submission.

(3) *Contract Requirements.* The contracting officer includes a separately priced CLIN for the site and depot-level spare parts list and corresponding delivery due date of this contract deliverable. The list contains each item's name, part number, Commercial and Government Entity (CAGE) Code, unit price, national stock number (if available) and the quantity.

## 7 Source Selection Team Responsibilities Revised 1/2016

The responsibilities described below are guidelines to help ensure successful source evaluation and selection. The source selection team managing the procurement must apportion these responsibilities to fit the specific procurement.

a. *Source Selection Official.* The service or product team lead or Director (or equivalent position) of the requiring organization is the source selection official (SSO) for a procurement under an investment program subject to the Joint Resources Council (JRC) process (unless the JRC otherwise designates an SSO). For procurements not subject to the JRC investment-decision process, the CO is the SSO. The SSO's responsibilities include the following:

(1) Assure team competence, cohesiveness, and effectiveness;

(2) Approve evaluation plans and assure the evaluation conforms to the stated evaluation criteria; and

(3) Make down-select decisions and assume full authority to select the source for award.

b. *Source Evaluation Team.* The source evaluation team properly and efficiently performs source evaluation, and supports the source selection decision and related activities. Their responsibilities include the following:

(1) Draft all SIRs;

(2) Formulate the source evaluation plan;

(3) Review existing lessons learned reports that provide meaningful insight into the procurement;

(4) Ensure an in-depth review and evaluation of each submitted screening document against FAA requirements and stated evaluation criteria;

(5) Prepare the evaluation report (including recommendations, if applicable), using sound business judgment, to assist the SSO make down selection and/or award decisions;

(6) Oversee all procedural and administrative aspects of the procurement;

(7) Select advisors to assist the team in its evaluation, if required;

(8) Prepare documentation for the SSO's decision rationale, if requested by the SSO; and

(9) Participate in all debriefings;

c. *Contracting Officer*. The CO's responsibilities include the following:

(1) Serve as the SSO for procurements not subject to the JRC investment-decision process;

(2) Ensure, when applicable, conflict of interest documentation is obtained from all source selection team members; with legal counsel, determine if any conflicts or apparent conflicts of interests exist; and if so, resolve them;

(3) Ensure source selection team members are briefed on sensitivities of the source selection process, prohibition against unauthorized disclosure of information (including their responsibility to safeguard proposals and any documentation related to the source selection team proceedings), and requirements concerning conflicts of interest; ensure source selection team members provide nondisclosure of information statements;

(4) Coordinate communications with industry and conducts all debriefings;

(5) Control all written documentation issued to industry;

(6) Lead screening, selection, and debriefing phases of source selection;

(7) Issue letters, public announcements, SIRs, SIR amendments, and other procurement documents; and

(8) Ensure the contract is signed by a contractor's representative with the authority to bind the contractor; with legal counsel, ensure all contractual documents comply

with applicable laws, regulations, and policies.

d. *Product or Service Team Lead or Director of the Requiring Organization.* The product or service team lead or Director's (or equivalent position) responsibilities include the following:

(1) Serve as SSO if the procurement is subject to the JRC investment-decision process (unless otherwise designated by the JRC);

(2) Assure FAA's program needs are acquired through the appropriate source selection process;

(3) Assure SIRs include adequate definition of requirements; and

(4) Assure qualified technical evaluators, if required, assist the source evaluation team in the evaluation.

e. *Advisors.* The source evaluation team may appoint advisors to provide specialized expertise and guidance not otherwise available on the team.

f. *Nongovernmental Evaluators and Advisors.* The source evaluation team may use nongovernmental personnel as evaluators or advisors. Nongovernment personnel must comply with FAA's conflict of interest and nondisclosure of information policies. The SIR must include notice of any nongovernmental participation.

## 8 Supplier Process Capability Evaluation and Appraisal Revised 1/2016

a. *General.* This guidance is designed to assist the Source Selection Official (SSO) in considering process capability of potential suppliers during proposal evaluations, mitigating process-related risk of the supplier during contract/agreement performance, and for fostering process improvement of the supplier throughout the lifecycle.

b. *Scope/Applicability.* Supplier Process Capability Evaluation and Appraisal are intended for use in new acquisitions and agreements, but may also be incorporated into existing contracts or agreements.

c. *Expected Benefits.*

(1) *Acquirer.* The FAA can expect reduced risk in supplier selection and in meeting program objectives by motivating suppliers to improve their processes without forcing compliance to specific practices. Other benefits would include enhanced quality, predictability, performance and cost effectiveness of products and services acquired.

(2) *Supplier.* Suppliers can expect reduced risk in meeting contract requirements by identifying and addressing process deficiencies that might negatively impact project success. Other benefits would include improved performance by identifying and addressing process deficiencies in critical process areas and

potential for earning additional award fee where such incentives are part of the contract.

d. *Pre-award.* In the early phase of planning a source selection, the SSO determines whether process capability will be considered as a risk factor for source selection. The following criteria are considered when making this decision:

(1) The performance of specific processes is considered critical to accomplishment of the mission;

(2) The product or service being acquired is considered crucial to the FAA;

(3) A major component of the product or service to be provided is considered to be unprecedented;

(4) The total estimated value of a contract for research, engineering, and development (R,E&D) is equal to or greater than $70 million, or a contract for acquisition is equal to or greater than $300 million;

(5) There is lack of information on offeror's past performance or process capability data, or the past performance or process capability of the offeror is weak; and

(6) The product or service is especially complex.

If process capability will be used as an evaluation factor, or as an adjustment to risk at either the area or factor level, the SIR must include request for information on current status and commitment to process improvement, including evidence indicating process capability. The SIR must also identify particular aspects of the suppliers' performance capabilities that are considered critical to success of the contract, such as architecture and design, safety, security, human factors, integration, risk management, or quality assurance.

Process capability appraisals can be used after award to validate and confirm the successful offeror's proposal and/or to identify risks associated with process deficiencies to be addressed during contract performance. In order for a post-award appraisal to occur, the SIR must indicate that a post-award appraisal will be performed on the successful offeror's processes that are identified as critical or potentially risky.

e. *Post-award.* Post-award appraisals may be conducted on existing contracts with well-established project(s), or on new contracts using target projects selected from the supplier's sponsoring organization.

f. *Contract/Agreement Requirements.* Considerations in developing contract/agreement requirements include use of trade-off analysis to establish the level of surveillance of strong or weak areas. For example, if a supplier is strong in an area, it is inefficient to check on that area in the same way that would be applied in an area found to be weak. Additional Award fees may also be used as an incentive. Contract/Agreement performance requirements include completion of initiatives to remove critical deficiencies identified. Completion may be a factor in award fees. Depending on the decision of the SSO, contract requirements may include the following:

(1) Risk mitigation plans to remove deficiencies noted during pre-award;

(2) Performing scoped post-award and follow-up appraisal(s);

(3) Risk mitigation plans to remove deficiencies noted in post-award appraisal;

(4) Government "surveillance" for specific areas (weaknesses) to be addressed;

(5) An adequate reporting or insight mechanism to facilitate monitoring the risk mitigation plan;

(6) Consideration for creating additional process strengths; and

(7) Improvement in performing process improvement activities.

Risk mitigation planning describes in detail the schedule and actions that will be taken to remove deficiencies noted during the evaluation and selection process and those uncovered in the appraisal process, if a post award appraisal is performed.

**9 Tiered Evaluation Added 1/2016**

a. *General.*

(1) Tiered evaluation of offers is a process by which FAA promotes small business participation while providing FAA a means to continue the procurement if small business participation is insufficient.

(2) The Contracting Officer (CO) may use tiered evaluation of offers to promote competition in each tier of small business concerns while still allowing other than small business to participate without issuing another SIR.

(3) The CO must consider the tiers of small business concerns prior to evaluating offers from other than small business concerns.

b. *Utilizing Tiered Evaluations.*

(1) The CO must specify in the SIR that a tiered evaluation of offers will be used in source selection, and offers from other than small business concerns will only be considered after the determination that an insufficient number of offers from responsible small business concerns were received.

(2) The CO will specify the tiered order of precedence for evaluating offers in the SIR, and determine the applicable tiers based upon market research of the availability of small business concerns. An example of a tiered order of precedence is (descending in order) as follows:

(a) Socially and economically disadvantaged business (SEDB) expressly

certified by the Small Business Administration (SBA) for participation in SBA's 8(a) program;

(b) Service-disabled veteran owned small business (SDVOSB);

(c) Small business (SB); and

(d) Other than small business.

(3) Once offers are received, the CO will evaluate a single tier of offers according to the order of precedence specified in the SIR. If no award can be made at the first tier, the evaluation will proceed to the next lower tier until award can be made. If no award can be made at the first tier, offerors from the first tier continue on in the evaluation and are evaluated against offerors from each subsequent tier.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

**1 Section 508 Checklist Added 7/2007**

| **Standards** | |
|---|---|
| Check the Access Board's standards that apply to the EIT purchase: | |
| | 1194.21 Software Applications and Operating Systems |
| | 1194.22 Web-based Information or applications |
| | 1194.23 Telecommunication Products |
| | 1194.24 Video and Multimedia Products |
| | 1194.25 Self-Contained Products |
| | 1194.26 Desktop and Portable Computers |
| | 1194.31 Functional Performance Criteria |
| | 1194.41 Information, Documentation and Support |
| | Request vendor Section 508 compliance template (e.g. vendor's website or other website location) |
| **Exceptions** | |

| | |
|---|---|
| | EIT acquired by a contractor incidental to a FAA contract |
| | EIT for a national security system |
| | EIT located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment |
| | EIT that would impose an undue burden on the agency |
| | EIT that would impose a fundamental alteration in the nature of an EIT product or its components |
| **Research** | |
| After market research, the product is considered: | |
| | Compliant |
| | Partially compliant |
| | Noncompliant |
| | EIT is not available |

## D Appendix

### 1 Source Selection Guide Revised 1/2016

### 1.1 Introduction

a. *Purpose.* AMS Policy Section 3.2.2 outlines requirements for source selection. This guide contains additional information about processes and techniques for conducting a competitive source selection. The Contracting Officer (CO) uses business judgment to tailor source selection based on factors such as complexity, dollar value, urgency, and resources available.

b. *Procurement Integrity*. The Procurement Integrity Act applies to personnel involved in source selection. This Act and other similar statutes and regulations impose stringent requirements for safeguarding source selection and contractor proposal information, and other integrity issues. There are civil and criminal penalties for violating these requirements. All personnel involved in the source selection process must maintain the integrity of the procurement, and must understand the prohibitions and certification requirements of the Act and similar statutes and regulations. Any questions or other issues regarding procurement integrity are directed to legal counsel assigned to the source selection.

c. *Bias or Conflict of Interest.* Personnel involved in the source selection must not have any bias or conflict of interest that would affect the source selection. Financial interests in offerors or employment discussions with offerors are examples of conflicts of interests that would preclude an employee from participating in a source selection.

### 1.2 Getting Started

a. *Procurement Planning.* Procurement planning starts when FAA identifies a need for supplies or services. Early and effective planning helps ensure needs are satisfied with the right product or service and at the right time.

b. *Market Research.* Market research is the first step in procurement planning. It is the process of collecting and analyzing information about capabilities, products, services, or practices within the marketplace. Information from market research shapes a procurement strategy and other aspects of a procurement, such as the statement of work, evaluation factors, contract type, and the amount and type of information to be requested in a screening information request (SIR). The extent and degree to which a source selection official documents the results of market research varies, based on factors such as urgency, estimated dollar value, complexity, and past experience. In some cases, one person can conduct market research but for more complex requirements, a team effort may be appropriate. (See AMS Procurement Guidance T3.2.1.2, Market Research and Analysis, for more information)

c. *Source Evaluation Team (SET).* Source evaluation is a multi-disciplined, team effort. As appropriate, the team includes representatives from functional areas such as contracting, program/technical, legal, logistics, and user organizations. The size and composition of the SET varies, depending on the nature of requirement. Whether the team is large or small, it is structured to ensure teamwork, unity of purpose, and appropriate communication among the team members throughout the process. A key to selecting personnel is identifying experience, education, and business and technical skills required for the evaluation. Required skills and experience are defined with enough flexibility to allow substitution of training for experience.

d. *Support Personnel*. Once the primary evaluation team is identified, additional support personnel may be desired or required. Examples of such personnel include administrative support, librarian/document-control personnel, and information technology support.

e. *Key Members and Responsibilities*.

(1) *Source Selection Official*. The SSO does the following:

- Ensures the selection process is conducted properly and according to applicable policies and laws;
- Establishes the SET and ensures the team has the skills, expertise, and experience to perform the evaluation;
- Ensures actual or apparent conflicts of interest are avoided;
- Ensures premature or unauthorized disclosure of source selection information is avoided;
- Approves the evaluation criteria and plan, and ensures the SIR is consistent with both;
- Concurs with the CO's decision to release the SIR (if the SSO is other than the CO);
- Makes down-select decisions; and
- Makes the final source selection decision for an award, and ensures the rationale is documented before contract award

(2) *Source Evaluation Team*. The team does the following:

- Drafts evaluation criteria and plan;
- Drafts SIRs and ensures an in-depth review of each SIR section;
- Selects advisors to the team, as necessary;
- Conducts a comprehensive review and evaluation of proposals against SIR requirements and the approved evaluation criteria;
- Prepares the necessary items for discussions with offerors, if applicable;
- Prepares and submits the evaluation reports to the SSO;
- Briefs the SSO, as requested;
- Responds to special instructions from the SSO; and
- Provides information for debriefings of unsuccessful offerors

(3) *Contracting Officer*. The CO does the following:

- Serves as the SSO (unless otherwise designated);
- Acts as the business advisor to the SSO and is a member of the SET (if not the SSO);
- Coordinates and controls communications with vendors and issues written communication to vendors;
- Leads during screening, selection, and debriefing phases of source selection;
- Issues letters, public announcements, SIRs, SIR amendments and other procurement documents; and
- Chairs all required debriefings

f. *Advisors*. The CO serves as a business advisor to the SSO (if the CO is not the SSO). Additionally, legal counsel, technical experts, or small business specialists may advise the SSO. If non-Governmental advisors are part of the SET, the SIR must include notice about their participation in the evaluation. Non-Government advisors must not have any organizational conflict of interest.

g. *Required Certificates.* The SSO and each SET member (including support personnel and advisors) must sign nondisclosure of information and conflict of interest certificates.

h. *Administrative Considerations.* Each procurement varies, but administrative needs may include facilities for evaluators and discussions with offerors, securable storage space for source selection materials, and other items such as computers, special software, phones, copiers, etc.

i. *Handling Source Selection Information.*

(1) SET members must handle proposal and evaluation material in a manner consistent with “For Official Use Only” or, as appropriate, a higher security classification. The SET establishes sufficient safeguards to protect the material whether it is in their possession or it is being disseminated, reproduced, transmitted, or stored. Additionally, procedures are established for proper disposal of the material when it is no longer required. (See AMS Procurement Guidance T3.13.1.A.7, Records Retention, and FAA

Order 1350.15C Records Organization, Transfer and Destruction Standards).

(2) The Procurement Integrity Act precludes individuals from knowingly disclosing source selection information and contractor bid or proposal information before award of a contract to which the information relates. The SSO may, however, authorize release of source selection information to other authorized Government personnel who have signed a non-disclosure statement, provided the release would not jeopardize the integrity or successful completion of the procurement (when the release is after the SIR is issued, but before contract award).

j. *Security Responsibilities.* All SET members are responsible for the security of source selection information. In complex source selections, it may be beneficial to designate members of the SET to oversee and perform security control functions. Security procedures may also be needed for the source selection physical facilities, such as a sign in and out log, identification to access the area, visitor (e.g. maintenance/service personnel) control, or key or card control access. A security briefing for the SET may be used to emphasize that each member understands the following:

- Each member is responsible for security of the evaluation and proposal materials and other source selection and proprietary information related to the procurement;
- Each member is knowledgeable of, and will adhere to, governing security procedures and regulations;
- Each member does not discuss, communicate, or otherwise deal on matters related to the source selection with any individual not assigned by the SSO, and then only within appropriately secure areas; and
- Each member challenges any apparent unauthorized person within the physical location of the evaluation.

## 1.3 Evaluation Plan and Selection Methodology

a. *Evaluation Plan.* The evaluation plan outlines the people, schedule, process, criteria and other information relevant to evaluating offeror responses to a SIR, and the basis for selecting an offeror for award. It is approved before receiving responses to a SIR requesting screening or qualification information. The evaluation plan is source selection sensitive information, so it must not be disclosed to anyone not authorized by the SSO to receive the information. The size and detail of the evaluation plan is based on the complexity of the procurement, but at a minimum it includes the following:

- Name of the SSO and SET members;
- Evaluation factors, relative importance of factors, and standards for rating offerors against the factors (SIR section M); and
- Basis for selection and award

b. *Selection Methodology*. Designing a procurement strategy includes an effective evaluation methodology. Depending on the circumstances, it may be in FAA's best interest to either do the following:

(1) *Award to best value offeror*. Under this method, both cost/price and non-cost/price factors are assessed based on the evaluation criteria, and the SSO selects the offeror

proposing a combination of these factors representing the best value to FAA. The SSO considers non-cost strengths and weaknesses, risks, and cost/price for each offeror and applies business judgment to select the offeror representing the best value.

(2) *Award to the lowest-priced, technically acceptable offeror*. This method may be the best value when FAA would not realize any value from a proposal exceeding minimum technical requirements. The SIR establishes certain standards that an offeror must meet to be considered technically acceptable. An offeror does not receive any additional credit for exceeding the established standards. The award is then made to the lowest-priced, technically acceptable offeror.

**1.4 Screening Information Request (SIR)**

a. *Purpose.* The FAA obtains information and offers from vendors through a SIR. The SIR includes information necessary for offerors to understand what FAA is buying, what information to provide, and how responses will be evaluated. The success of a procurement is directly linked to the quality of the SIR. A well-written SIR includes the following:

- Facilitates a fair competition;
- Limits criteria to differentiators that add value;
- Clearly details information required from vendors;
- Clearly identifies evaluation and award criteria; and
- Conveys a clear understanding of FAA's requirements.

b. *The SIR Process.* For a given procurement, FAA may make a selection decision after one SIR, or may have a series of SIRs (with a screening decision after each one) to arrive at the selection decision. This process depends on the types of products or services to be acquired and the specific source selection approach. Generally, when multiple SIRs are contemplated, the initial SIR requests general information, and subsequent SIRs requests successively more specific information. Initial SIRs need not state firm requirements, thus allowing FAA to convey its needs to offerors in the form of desired features, or other appropriate means. Firm requirements ultimately are established in all contracts.

c. *SIR Contents.* Each SIR contains the following information:

- Paper Reduction Act number on the cover page;
- A statement identifying the purpose of the SIR (request for information, request for offer, establishment of a QVL or screening);
- A definition of need;
- A request for specific information (with specific page and time limitations, if applicable);
- A closing date stating when submittals must be received in order to be considered or evaluated;
- Evaluation criteria (and relative importance, if applicable);
- A statement informing offerors how communications with them will be conducted during the screening; and
- An evaluation/procurement schedule (including revisions, as required).

d. *Categories of SIRs.*

*(1) Qualification Information.* Qualification information, used to qualify vendors and establish qualified vendor lists (QVLs), are requested when a resultant QVL will be used for multiple FAA procurements. Qualification information screens those vendors meeting FAA's stated minimum capabilities / requirements to provide a particular product or service. Once qualification information is requested, received, and evaluated according to the evaluation plan, a QVL is established for the given product/service and vendors meeting FAA's qualification requirements are listed on the QVL. (See AMS Procurement Guidance T3.2.2.3. for more information on QVLs.)

*(2) Screening Information.* Screening information allows FAA to determine which offeror(s) are most likely to receive the award, and ultimately which offeror(s) will provide FAA with the best value. The screening information requested in the SIR should focus on information that directly relates to the key differentiators for the procurement.

*(3) Request for Offer.* A request for offer is a request for an offeror to formally commit to provide the products or services required by FAA under stated terms and conditions. The response to the request for offer is a binding offer, which is intended to become a binding contract if signed by the CO. The request for offer may take the form of a SIR, a proposed contract, or a purchase order.

e. *Changes in SIR Requirements.* If FAA's requirements change after release of a SIR, then all offerors competing at that stage are advised of the change(s) and allowed to update their submittals accordingly. The SSO may waive a requirement at any time after release of a SIR, without notifying other offerors, if the SIR states offeror specific waiver requests will be considered, and the waiver does not affect a significant requirement that changes the essential character or conditions of the procurement.

f. *Common Problems.*

*(1) Inconsistency among the SIR and related documents.* Having the SIR and related documents to be aligned is critical. This is particularly important for the evaluation plan and the SIR to be consistent.

*(2) Inconsistency Within the SIR.* Avoiding inconsistencies between the description of FAA's requirements, instructions on how to prepare a proposal, and information related to the evaluation factors is important. These inconsistencies may be caused by different groups of people developing the different SIR sections without proper coordination. Such inconsistencies can result in less advantageous offers, necessitate changes to the SIR, cause delays, lead to offerors losing confidence in the process, or result in litigation.

(3) *Requesting Too Much Information from Vendors.* The instructions for preparing and submitting proposals focus on requesting only information necessary for the evaluation. The SIR requirements, each evaluation factor and subfactor, and the SIR preparation instructions are linked. Request only the essential information needed to evaluate SIRs against the evaluation factors and subfactors and do not ask for information that will not be evaluated. Instructions that require voluminous information can cause potential offerors to forego responding in favor of a less costly

business opportunity. Excessively large proposals may increase the time and costs associated with the evaluation. Proposal page limitations are encouraged, but they need to be clearly defined and tailored to the needs of the acquisition. Focus exclusively on differentiators; failure to do so compromises the ability to identify the best offeror.

(4) *Unnecessary Use of Design Requirements.* The description of FAA's requirements in the SIR can have a significant effect on a source selection using a tradeoff process. Use of detailed design requirements or overly prescriptive statements of work severely limits the offerors' flexibility to propose their best solutions. Functional or performance-based requirements provide flexibility and are used to the extent practicable. While it may be more difficult to develop evaluation criteria and conduct the evaluation process using this approach, the benefits warrant it. These benefits include increased competition, access to the best commercial technology, better technical solutions, and fewer situations for protests.

g. *Ways to Improve the SIR.* A multi-disciplined team develops the SIR. The members are stakeholders in the procurement and continuously coordinate with each other to ensure consistency of the SIR with other documents such as the evaluation plan. Open communications with vendors is used to improve the SIR and to also promote understanding of FAA's requirements. This can be accomplished through various forms of communication, such as releasing draft statements of work or SIRs, advance procurement planning briefings for vendors, one-on-one meetings, or conferences with potential offerors.

**1.5 Communications with Offerors**

a. Communications with potential offerors takes place throughout the source selection process. During the screening, selection, and debriefing phases of source selection, communications are coordinated through the CO. All SIRs clearly inform offerors of how communications will be handled during the initial screening phase. The purpose of communications is to ensure mutual understanding between FAA and offerors about all aspects of the procurement, including the offerors' submittals/ proposals. Information disclosed as a result of oral or written communication with an offeror may be considered in the evaluation of an offeror's submittal(s). To ensure that offerors fully understand the intent of the SIR and FAA's needs, FAA may hold a pre-submittal conference and/or one-on-one meetings with individual offerors. One-on-one communications may continue throughout the process, as required, at the discretion of the SET.

b. Communications with one offeror do not necessitate communications with other offerors, because communications will be offeror-specific. Regardless of the varying level of communications with individual offerors, the CO ensures such communications do not give any offeror an unfair competitive advantage. During these and future communications, as applicable, FAA encourages offerors to provide suggestions about all aspects of the procurement. Communications may necessitate changes in FAA's requirements or SIR. Where communications do not result in any changes in FAA's requirements, FAA is not required to request or accept offeror revisions. The use of technical transfusion is always prohibited. Auctioning techniques are prohibited, except in the use of "commercial competition techniques."

**1.6 Evaluation Factors**

a. *Evaluation Factors and Subfactors.*

(1) Selecting the appropriate evaluation factors and subfactors is key to the source selection process. The factors and subfactors give offerors an insight into significant considerations FAA will use to select the best value offer. Structure the evaluation factors and subfactors and their relative importance to clearly reflect the needs of the acquisition. Evaluation factors and subfactors from the evaluation plan must be in Section M (or equivalent) of the SIR.

(2) Factors and subfactors are definable and measurable in readily understood terms. They also represent the key areas of importance and emphasis to be considered in the source selection decision. Factors and subfactors should be limited to the essential elements to distinguish among the information/offers; i.e., will be true differentiators.

(3) Common evaluation factors are technical, cost/price, past performance, and small business participation. Other evaluation factors may be appropriate, and one or more levels of subfactors may be needed.

(4) Steps involved in formulating evaluation factors and subfactors include the following:

- Conduct market research as a starting point for developing criteria;
- Brainstorm critical factors and subfactors;
- Identify key differentiators;
- Define the differentiators as evaluation factors and subfactors;
- Determine and define the evaluation factors and subfactors;
- Relative order of importance; and
- Assess feedback during SIR(s)

(5) *Evaluation Weights.* Assign relative importance to each evaluation factor and subfactor. Tailor the relative importance to specific requirements. Use priority statements to express the relative importance of the evaluation factors and subfactors. Priority statements relate one evaluation factor (or subfactor) to each of the other evaluation factors (or subfactors). For example:

“Technical is the most important factor and is more important than all of the remaining factors combined. Technical is significantly more important than past Performance. The past performance factor is more important than the cost factor and small business participation factor combined. The cost factor is more important than the small business participation factor."

b. *Numerical and Adjectival Ratings.* When using the tradeoff process, the evaluators assess the non-cost portion(s) of the offer and associated performance and proposal risks using numerical or adjectival ratings. The success of an evaluation is not so much dependent upon the type(s) of ratings used, but rather on the consistency with which the evaluators use them. For this reason, adjectival ratings must include definitions for each rating so that the evaluators have a common understanding of how to apply them.

c. *Result of Proposal Evaluation.* At the end of an evaluation, the result is each factor and sub-factor are evaluated, the merits and risks of a proposal are documented and adjectival ratings are assigned.

**1.7 Evaluation**

a. *Conduct Training.* Before receipt of proposals, each evaluator becomes familiar with all pertinent documents, e.g., SIR, evaluation plan, and rating scales, etc.. The SET conducts training that includes an overview of these documents and the source selection process, with instructions on properly documenting each offeror's strengths, weaknesses, and risks. Training also includes ethics information and the protection of source selection information. This training is especially crucial when evaluators have little or no source selection experience.

b. *Documenting the Evaluation.* The SET performs an in-depth, systematic evaluation of offerors' proposals against evaluation factors and subfactors in the SIR(s). All evaluations must be documented. While the specific evaluation processes and tasks vary, the basic objective is to provide information about each offeror's strengths and weaknesses so the SSO can make an informed and reasoned decision. An orderly method for identifying, recording, and tracking strengths and weaknesses is imperative. Evaluation findings being supported with narrative statements is critical. Ratings alone are not conclusive information on which to make a source selection decision. All determinations relating to changes in requirements after release of the SIR must be documented in the evaluation report.

c. *Assignment and Use of Offeror Code Names.* Once proposals are received, the SET considers establishing a code name for each of the offerors. This helps protect the identities of offerors submitting proposals, the proprietary information in their proposals, and the contents of the evaluation reports and source selection documentation. The code names are assigned by the SET and then communicated to all evaluation personnel prior to the start of proposal evaluation. All SET members, evaluation team members, and support personnel involved in the evaluation and source selection must then use any assigned code names rather than the actual offeror names in all discussions and in all written documentation and communication (including the SSO Briefing). The SSO would not know the actual offeror names until after contract award. Additional guidance related to the assignment of code names is as follows:

(1) Code names are based on a series of like items (e.g., states such as Missouri, Arkansas, and Nebraska for an acquisition with three offerors);

(2) Care is taken to avoid choosing a series of names where one may be perceived as more valuable than another (e.g., if using precious metals, gold may be perceived as more valuable than bronze, or if using colors, red may be perceived more negatively than green);

(3) If there are more than three or four offerors, alphabetic characters are used for ease of reference (e.g., Offeror A, Offeror B etc.); and

(4) Code names would not be assigned in the following situations:

- Only one proposal received; or
- Where the names of all offerors competing are publicly known in accordance with AMS clause 3.2.2.3-72 "Announcing Competing Offerors" (July, 2004).

*Note:* Regardless of whether code names are used, SET members, evaluation team members, and support personnel are responsible at all times for the proper treatment of source selection sensitive information from the evaluations and/or proposals.

d. *Past Performance Evaluations.* The past performance evaluators assess the performance risk associated with each proposal. The final assessment describes the degree of confidence in the offeror's likelihood of successful contract performance based on that offeror's demonstrated record of performance under similar contracts. (See AMS Procurement Guidance T3.2.2.A.3.c. for guidance on evaluating past performance.)

e. *Cost/Price Evaluations.* For fixed priced contracts, the evaluation could be as simple as assessing adequate price competition and determining prices are fair and reasonable. Fixed priced contracts are evaluated for appropriateness (i.e., consider market prices, appropriate risk and the possibility of a "buy-in") for what is being offered. For cost- reimbursement and/or time-and-material contracts, the offerors' estimated costs are analyzed for both realism and reasonableness. The cost realism analysis enables evaluators to determine each offeror's most probable cost of performance. This precludes an award decision based on an overly optimistic cost estimate. Additionally, whenever cost analysis is performed, profit or fee analysis is conducted. (See AMS Procurement Guidance T3.2.3 for guidance on cost and price methods.)

**1.8 Selection and Award**

a. *Decisions.* After the evaluators complete their evaluation, the results of the evaluation are presented to the SSO. The SSO may do the following:

- Make a selection decision (see below);
- Make a screening decision by screening those offerors determined to be most likely to receive award, thus continuing the screening phase;
- Amend and re-open to initial offerors; or
- Cancel the procurement.

b. *Presenting the Evaluation to the SSO.* The SET prepares documentation of the evaluation to present to the SSO. The SSO uses this documentation as an aid when making a decision based on business judgment about which proposal represents the best value. At the request of the SSO, the SET may present the evaluation results through one or more briefings.

c. *Source Selection Decision.* The SSO must document his/her rationale for selecting the successful offeror. The source selection decision document explains how the successful

proposal compared to other offeror's proposals based on the evaluation factors and subfactors in the SIR, and discusses the judgment used in making any tradeoffs. If the SSO disagrees with a finding of the SET, the SSO's rationale is part of the decision document. When the SSO determines the best value proposal is other than the lowest-priced proposal, the decision document justifies paying a price premium regardless of the superiority of the successful proposal's non- cost rating. The justification clearly states the benefits or advantages FAA receives for the added price and why it is in FAA's best interest. This justification is required even when the SIR indicates non-cost factors are more important than cost/price. The SSO should consult with legal counsel to review the source selection decision document to assure that the decision clearly articulates the business judgment of the SSO.

d. *Awarding the Contract.* After the SSO signs the source selection decision document, the CO executes and distributes the contract, subject to completing other requirements before award such as Congressional notification.

**1.9 Debriefing of Offerors**

a. *Overview.* The CO notifies all offerors who participated in the competitive process that they may request a single debriefing within three working days from receipt of award notification. Because each offeror puts considerable resources into preparing and submitting a proposal, fairness dictates a prompt debriefing and an explanation of why a proposal was unsuccessful.

b. *Purposes of a Debriefing.* A debriefing accomplishes the following:

- Explains the rationale for the offeror's exclusion from the competition or non-selection for award;
- Instills confidence in the offeror that it was treated fairly;
- Assures the offeror that appropriately qualified personnel evaluated the proposal according to the SIR and applicable policies and laws;
- Identifies strengths and weaknesses in the offeror's proposal so the offeror can prepare better proposals in future FAA procurements;
- Gives the offeror an opportunity to provide feedback about the SIR process, communications, and the source selection; and
- Reduces misunderstandings and reduces the risk of protests.

A debriefing is not any of the following:

- Page-by-page analysis of the offeror's proposal;
- Point-by-point comparison of the proposals of the debriefed offeror and other offerors; and
- Debate or defense of FAA's award decision or evaluation results.

The debriefing must not reveal any information prohibited from disclosure or exempt from release under the Freedom of Information Act.

c. *Notification of Debriefing.* The CO informs the offeror of the scheduled debriefing date by electronic means with return receipt to acknowledge receipt. If the offeror requests a later debriefing date, the CO requires the offeror to acknowledge in writing that it was offered an earlier date, but requested a later date instead. This procedure protects FAA's interests if the

offeror subsequently files a protest.

d. *Debriefing Methods and Location*. The CO debriefs one unsuccessful offeror at a time. The CO selects the method and location of the debriefing. Although face-to-face debriefings are frequently used, a debriefing may be by telephone or other electronic means acceptable to the offeror and FAA. It may be burdensome for an offeror to attend in person and the needs of the offeror are given due consideration. The CO may provide an advance copy of the debriefing to the offeror and allow the offeror to provide written questions for FAA to review before the debriefing.

e. *Attendees.* The CO selects FAA attendees, and chairs and controls the debriefing. The CO asks an offeror to identify all individuals by name and position who will attend the debriefing. Normally, the CO does not restrict the number of personnel the debriefed offeror may bring unless there are space limitations. Ensuring appropriate FAA personnel attend the debriefing to be meaningful is important. The CO may rely on SET members to address specialized areas of the offerors' proposals. Legal counsel participates in preparation and review of the debriefing materials. If the offeror's legal counsel will attend the debriefing, FAA legal also attends. If there are indicators a protest is likely, inform FAA's legal counsel. The CO must not deny a debriefing because a protest is threatened or has already been filed.

f. *Preparing for a Debriefing.* The extent of preparation varies with the complexity of the source selection. Sometimes, preparing debriefing charts is sufficient. Other times, a written script and dry run rehearsals may be beneficial. Because debriefings are time sensitive, preparation may begin before proposal evaluation is complete. SET members may assist in preparing debriefing materials. The CO briefs all FAA personnel who will attend the debriefing on their roles during the debriefing.

*g. Information Provided.* In a post-award debriefing, the CO discloses the following:

- The evaluation rating; significant strengths and weaknesses; strengths and weaknesses; and deficiencies of the debriefed offeror's proposal;
- The debriefed offeror's total evaluated price/cost and the awardee's total evaluated price/cost; and
- A general summary of the rationale for the award decision.

h. *Handling Questions.* Ideally, the CO gets all questions in writing. As a general rule, FAA personnel do not answer questions "on the fly." The CO and other FAA personnel caucus to formulate a response before providing an answer. At the end of the debriefing, the CO advises the offeror that the debriefing is officially concluded. At the discretion of the CO, questions submitted by the offeror after the date on which the debriefing was conducted may be answered. In such cases, the CO must advise the offeror that the information is not considered part of the official debriefing (thereby not affecting the protest time period).

### 1.10 Oral Presentations

a. *Introduction.* Oral presentations (sometimes referred to as oral proposals) provide offerors an opportunity to orally present information they would normally provide in writing. Oral presentations may be beneficial in a variety of procurements, and they are most useful when requirements are clear, complete, and stated in performance or functional terms. Oral

presentations are ideal for gathering information about how qualified the offeror is to perform the work, how well the offeror understands the work, and how the offeror will approach the work. Oral presentations may be conducted in person or via video teleconference. A videotaped presentation does not constitute an oral presentation because it is not a real-time exchange of information.

b. *Scope of the Oral Presentation*. Before deciding if oral presentations are appropriate, the SET must select the evaluation factors. Then the SET decides whether the information needed to evaluate these factors can be better presented orally, in writing, or through a combination of both. Oral presentations can convey information in diverse areas such as responses to sample tasks, understanding the requirements, experience, and relevancy of past performance. Offerors should be required to submit briefing materials in advance of the presentations. This allows FAA attendees to review the materials and prepare any questions. Oral statements cannot be incorporated into the contract by reference, so any information to be made part of the contract needs to be submitted in writing. At a minimum, the offeror must submit certifications, representations, and a signed offer (including any exceptions to SIR terms and conditions) in writing. The offeror must submit any other factual data, such as cost or pricing data or subcontract commitments, as part of a written proposal, too.

c. *SIR Information.* If oral presentations are appropriate, the SIR must notify offerors that FAA will use oral presentations to evaluate and select an offeror for award. The proposal preparation instructions must contain explicit instructions and guidance regarding the extent and nature of the process to be used. The instructions discourage elaborate presentations because they may detract from the information being presented. At a minimum, include the following information in the SIR:

- The type of information the offeror must address during the oral presentations and how it relates to the evaluation criteria;
- The required format and content of the presentation charts and any supporting documentation;
- Any restrictions on the number of charts and/or the number of bullets per chart and how FAA will handle material that does not comply with these restrictions;
- The required submission date for the presentation charts and/or materials;
- The approximate timeframe when the oral presentations will be conducted and how FAA will determine the order of the offerors' presentations;
- Whether any rescheduling will be permitted if an offeror requests a change after the schedule has been established;
- The total amount of time each offeror will have to conduct their oral presentation;
- Who must make the presentation and a requirement that the offeror provide a list of names and position titles of the presenters;
- Whether the presentation will be video or audio taped;
- The location of the presentation site and a description of the site and resources available to the offeror;
- Any rules and/or prohibitions regarding equipment and media;
- How FAA will treat documents or information referenced in the presentation material but never presented orally;
- Any limitations on FAA-offeror interactions during and after the presentation
- Whether the presentation will constitute discussions;
- Whether FAA will use the information in the oral presentation solely for source

selection purposes or whether such information will become part of the contract (which will require a subsequent written submission of that information); and

- Whether or not the offeror includes any cost (or price) data in the presentation.

d. *Timing and Sequencing.* Because preparing and presenting an oral presentation involves time and expense, offerors not likely to be candidates for award do not have to conduct oral presentations. This can be an important consideration with small businesses. When this is a concern, consider down selections to establish the likely candidates for award before oral presentations. The SIR clearly articulates the methods for down selection. The CO may draw lots to determine the sequence of the offerors' presentations. The time between the first and the last presentation is as short as possible to minimize any advantage to the offerors that present later.

e. *Time Limits.* Establish a total time limit for each offeror's presentation. It is not advisable to limit the time for individual topics or sections within the presentation; this detail is the presenter's responsibility. If planning a question and answer (Q&A) session, it is excluded from the allotted time and there is a separate time limit for Q&A. The amount of time allotted is determined using business judgment based upon the complexity of the procurement, experience, and lessons learned.

f. *Facility.* The presentations are conducted at a Government-controlled facility. This helps guard against surprises and ensures a more level playing field. Nothing precludes conducting an oral presentation at an offeror's facility. This may be more efficient if site visits or other demonstrations are part of the source selection. If using a Government-controlled facility, it may be made available for inspection and, if warranted, a practice session. Allowing offerors to get acquainted with the facility will help ensure that it does not detract from the presentation content.

g. *Recording the Presentations.* Having an exact record of the presentation could prove useful both during the evaluation process and in the event of a protest or litigation. The oral presentations can be recorded using a variety of media, e.g., videotapes, audio tapes, written transcripts, and/or a copy of the offeror's briefing slides or presentation notes. The SET is responsible for determining the method and level of detail of the record. If using videotaping, allow for the natural behavior of the presenters. If slides or view graphs are used, the camera views both the lectern and screen at the same time. Place the microphones so that all communications can be recorded clearly and at adequate volume. Every effort is made to avoid letting the recording become the focus of the presentation. The recording, which is considered source selection information, will become part of the official record. Provide a copy to the offeror and seal and securely store the master copy of the recording to ensure there are no allegations of tampering in the event of a protest or court action.

h. *FAA Attendance.* The CO chairs every presentation. All FAA personnel involved in evaluating the presentations attend every presentation.

i. *Presenters.* The offeror's key personnel who will perform or personally direct the work being described conduct their relevant portions of the presentations. Key personnel include project managers, task leaders, and other in-house staff of the offeror's and/or their prospective key subcontractor organizations. This will avoid the oral presentation becoming the domain of a professional presenter, which would increase costs, detract from the

advantages of oral presentations, and adversely affect small businesses.

j. *Reviewing the Ground Rules.* Prior to each presentation, the CO reviews the ground rules with the attendees. This includes discussing any restrictions on FAA-offeror information exchanges, information disclosure rules, documentation requirements, and housekeeping items. These ground rules are included in the SIR. If the evaluation includes a quiz, the CO discusses the related ground rules. For example, whether the offeror may caucus or contact outside sources by phone before answering. The ground rules must avoid too much control because it could inhibit the presentation. The CO controls all exchanges during the presentation if discussions will not be conducted.

k. *Evaluation of Presentations.* Evaluations should be performed immediately after each presentation. Using evaluation forms will help the evaluators collect their thoughts and impressions. Evaluators must document the rationale for their evaluation conclusions.

## 2 Past Performance Samples Revised 1/2016

### 2.1 Sample 1 - Past Performance Instructions

Instructions for Providing Past Performance Information

Offerors must submit the following information as part of their proposal for both the offeror and proposed major subcontractors: (The information may be submitted prior to the other parts of the proposal, to assist the government in reducing the evaluation period).

A. A list of the last "##" contracts and subcontracts completed during the past three years and all contracts and subcontracts currently in process. Contracts listed may include those entered into by the federal government, agencies of state and local governments, and commercial customers. Offerors that are newly formed entities without prior contracts list contracts and subcontracts as required above for all key personnel. Include the following information for each contract and subcontract:

1. Name of contracting activity;
2. Contract number;
3. Contract type;
4. Total contract value;
5. Contract work;
6. Contracting Officer and telephone;
7. Program manager and telephone;
8. Administrative Contracting Officer, if different from # 6, and telephone; and
9. List of major subcontractors.

B. The offeror may provide information on problems encountered on the contracts and subcontracts identified in A above and corrective actions taken to resolve those problems. Offerors provide general information on their performance on the identified contracts. General performance information will be obtained from the references. *(Use this paragraph if written input from the offeror is desired in addition to the information obtained from the*

*references.)*

C. The offeror may describe any quality awards or certifications that indicate the offeror possesses a high-quality process for developing and producing the product or service required. Such awards or certifications include, the Malcolm Baldridge Quality Award, other government quality awards, and private sector awards or certifications (e.g., the automobile industry's QS 9000, Sematech's SSQA, or ANSI/EIA-599). Identify what segment of the company (one division or the entire company) that received the award or certification. Describe when the award or certification was bestowed. If the award or certification is over three years old, present evidence that the qualifications still apply.

D. Each offeror will be evaluated on its performance under existing and prior contracts for similar products or services. Performance information may be used for both responsibility determinations and as an evaluation factor against which offerors' relative rankings will be compared to assure best value to the government. The government will focus on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration. The Performance Information Form identified in the List of Attachments section will be used to collect this information. References other than those identified by the offeror may be contacted by the FAA with the information received used in the evaluation of the offeror's past performance.

E. Offerors should send their listed private sector references a letter to the following effect authorizing the reference to provide past performance information to the Government.

**Sample Client Authorization Letter (Optional)**

Dear "Client":

We are currently responding to the Federal Aviation Administration's SIR No._____ for the procurement of _____.

The FAA is placing increased emphasis in its procurements on past performance as an evaluation factor. The FAA is requiring that clients of entities responding to its SIRs
be identified and their participation in the evaluation process be requested. In the event you are contacted for information on work we have performed, you are hereby authorized to respond to those inquiries.

We have identified Mr./Ms._____ of your organization as the point of contact based on his/her knowledge concerning our work. Your cooperation is appreciated.
Any questions may be directed to:____.

Sincerely,

**2.2 Sample 2 - Past Performance Evaluation Factors Revised 1/2016**

Past performance will be evaluated as follows:

1. Past performance will receive 35 percent of the non-cost/price factors ratings. Sub-factors A, B, C, D and E are of equal importance and will receive up to 25 percent of the non-cost/price ratings with the other 10 percent allocated to sub-factor G, quality awards. The criteria for a rating of excellent are described with each sub-factor.

A. Quality of Product or Service - compliance with contract requirements - accuracy of reports - technical excellence. Excellent = There were no quality problems.

B. Timeliness of Performance - met interim milestones - reliable - responsive to technical direction - completed on time, including wrap-up and contract administration - no liquidated damages assessed. Excellent = There were no unexcused delays.

C. Cost Control - within budget - current accurate and complete billings - relationship of negotiated costs to actuals - cost efficiencies. Excellent = There were no cost issues.

D. Business Practices - effective management - effective small/small disadvantaged business subcontracting program - reasonable/cooperative behavior - flexible - effective contractor recommended solutions - business-like concern for government's interests. Excellent = Response to inquiries, technical/service/administrative issues was effective and responsive.

E. Customer Satisfaction - satisfaction of end users with the contractors service. Excellent = 90 percent or more of end users surveyed rated the service as excellent or better.

F. Where the offeror has demonstrated an exceptional performance level in any of the above five sub-factors additional consideration can be given by the procurement team for that factor. It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceed the performance levels described as "excellent."

G. Receipt of widely recognized quality awards or certifications. Excellent = Malcolm Baldridge Quality award, or equivalent award, covering the entity submitting the offer.

2. Assessment of the offeror's past performance will be one means of evaluating the credibility of the offeror's proposal, and relative capability to meet performance requirements.

3. Information utilized will be obtained from the references listed in the proposal, other sources known to the FAA, consumer protection organizations, and others who may have useful and relevant information. Information will also be considered regarding any significant major subcontractors, and key personnel.

4. Award may be made from the initial offers without discussions. If discussions are held offerors are given an opportunity to address negative reports of past performance, if the offeror has not had a previous opportunity to review the rating. Recent contracts will be examined to ensure that corrective measures have been implemented. Prompt corrective

action in isolated instances may not outweigh overall negative trends.

5. Lack of past performance history relating to this SIR (state how lack of past performance history will affect the evaluation, e.g. neutral rating).

## 2.3 Sample 3B - Past Performance Questionnaire Revised 1/2016

| SAMPLE 3B - PAST PERFORMANCE QUESTIONNAIRE | | |
|---|---|---|
| **I. CONTRACT IDENTIFICATION** | | |
| i. | Name: | |
| ii. | Description | |
| iii. | Geographic distribution of services under this contract, i.e., local, nationwide, worldwide: | |
| iv. | Number of locations serviced by this contract: | |
| **II. EVALUATION** | | |
| **A.** | **PERFORMANCE HISTORY:** | |
| 1. | To what extend did the contractor adhere to contract delivery schedules. | Considerably surpassed minimum requirements 4<br><br>Exceeded minimum requirements 3<br><br>Met minimum requirements 2<br><br>Less than minimum requirements 1 |
| | ***Comment***: | |
| 2. | To what extent did the contractor submit required reports and documentation in a timely manner? | Considerably surpassed minimum requirements 4<br><br>Exceeded minimum requirements 3<br><br>Met minimum requirements 2<br><br>Less than minimum requirements 1 |
| | ***Comment***: | |
| 3. | To what extent were the contractor's reports and documentation accurate and complete? | Considerably surpassed minimum requirements 4<br><br>Exceeded minimum contractual requirements 3<br><br>Met minimum requirements 2<br><br>Less than minimum requirements 1 |
| | ***Comment***: | |
| 4. | To what extent was the contractor able to solve contract performance problems without extensive guidance from | Considerably successful 4<br><br>Generally successful 3 |

| | | |
|---|---|---|
| | government counterparts? | Little success 2<br><br>No success 1 |
| | ***Comment***: | |
| 5. | To what extent did the contractor display initiative in meeting requirements? | Displayed considerable initiative 4<br><br>Displayed some initiative 3<br><br>Displayed little initiative 2<br><br>Displayed no initiative 1 |
| | ***Comment***: | |
| 6. | Did the contractor commit adequate resources in timely fashion to the contract to meet the requirement and to successfully solve problems? | Provided abundant resources 4<br><br>Provided sufficient resources 3<br><br>Provided minimal resources 2<br><br>Provided insufficient resources 1 |
| | ***Comment***: | |
| 7. | To what extent did the contractor submit change orders and other required proposals in a timely manner? | Considerably surpassed minimum requirements 4<br><br>Exceeded minimum requirements 3<br><br>Met minimum requirements 2<br><br>Less than minimum 1 |
| | ***Comment***: | |
| 8. | To what extent did the contractor respond positively and promptly to technical directions, contract change orders, etc.? | Considerably surpassed minimum requirements 4<br><br>Exceeded minimum requirements 3<br><br>Met minimum requirements 2<br><br>Less than minimum requirements 1 |
| | ***Comment***: | |
| 9. | To what extent was the contractor's maintenance and problem tracking/reporting documentation timely, accurate, and have appropriate content? | Considerably surpassed minimum requirements 4<br><br>Exceeded minimum requirements 3<br><br>Met minimum requirements 2<br><br>Less than minimum requirements 1 |

| | | |
|---|---|---|
| | ***Comment***: | |
| 10. | To what extent was the contractor effective in interfacing with the Government's staff? | Extremely effective 4<br><br>Generally effective 3<br><br>Generally ineffective 2<br><br>Extremely ineffective 1 |
| | ***Comment***: | |
| **B.** | **TERMINATION HISTORY** | |
| 11. | Has this contract been partially or completely terminated for default or convenience? | Yes [ Default Convenience ] No<br><br>If yes, explain (e.g., inability to meet cost, performance, or delivery schedules). |
| | ***Comment***: | |
| 12. | Are there any pending terminations? | Yes No<br><br>If yes, explain and indicate the status. |
| | ***Comment***: | |
| **C.** | **EXPERIENCE HISTORY** | |
| 13. | How effective has the contractor been in identifying user requirements? | Extremely effective 4<br><br>Generally effective 3<br><br>Generally ineffective 2<br><br>Extremely ineffective 1 |
| | ***Comment***: | |
| 14. | What level of integration experience has the contractor demonstrated in the reconfiguration of government owned software, commercial software, and government furnished hardware? | Considerable surpass minimum experience 4<br><br>Exceeded minimum requirements 3<br><br>Met minimum contractual requirements 2<br><br>Less than minimum requirements 1 |
| | ***Comment***: | |
| 15. | To what extent was the maintenance and problem reporting/ tracking documentation produced by the contractor's efforts satisfactory to the users? | Considerably surpassed minimum requirements 4<br><br>Exceeded minimum requirements 3<br><br>Met minimum contractual requirements 2<br><br>Less than minimum requirements 1 |

| | | |
|---|---|---|
| | ***Comment***: | |
| 16. | To what extent did the contractor coordinate, integrate, and provide for effective subcontractor management? | Considerably surpassed minimum requirements 4<br><br>Exceeded minimum requirements 3<br><br>Met minimum requirements 2<br><br>Less than minimum requirements 1 |
| | ***Comment***: | |
| 17. | To what extent did the contractor provide timely technical assistance, both on-site and off-site, when responding to problems encountered in the field? | Considerably surpassed minimum requirements 4<br><br>Exceeded minimum requirements 3<br><br>Met minimum requirements 2<br><br>Less than minimum requirements 1 |
| | ***Comment***: | |
| 18. | To what extent did the contractor achieve effective logistics support, i.e., replacement parts, personnel, etc.? | Considerably surpassed minimum requirements 4<br><br>Exceeded minimum requirements 3<br><br>Met minimum requirements 2<br><br>Less than minimum requirements 1 |
| | ***Comment***: | |
| 19. | To what extent did the contractor provide quality replacement parts? | Considerably surpassed minimum requirements 4<br><br>Exceeded minimum requirements 3<br><br>Met minimum requirements 2<br><br>Less than minimum requirements 1 |
| | ***Comment***: | |
| 20. | To what extent did the contractor meet the repair/response times in the contract? | Considerably surpassed minimum requirements 4<br><br>Exceeded minimum requirements 3<br><br>Met minimum requirements 2<br><br>Less than minimum requirements 1 |
| | ***Comment***: | |
| 21. | Did this contract include a Help Desk? | Yes No |

| | | |
|---|---|---|
| | If yes, to what extent was the contractor responsive to users contacting the Help Desk for assistance? | Considerably surpassed minimum requirements 4<br><br>Exceeded minimum requirements 3<br><br>Met minimum requirements 2<br><br>Less than minimum requirements 1 |
| | ***Comment***: | |
| 22. | If there was a Help Desk, were users able to make contact with the Help Desk personnel on their first attempt? | Always able on the first attempt 4<br><br>More often than not on the first attempt 3<br><br>Rarely able on the first attempt 2<br><br>Never on the first attempt 1 |
| | ***Comment***: | |
| 23. | Were the Help Desk personnel courteous and responsive? | Always courteous and responsive 4<br><br>Usually courteous and responsive 3<br><br>Rarely courteous and responsive 2<br><br>Never courteous and responsive 1 |
| | ***Comment***: | |
| 24. | Were user questions resolved in a timely manner? | Always resolved in a timely manner 4<br><br>Usually resolved in a timely manner 3<br><br>Rarely resolved in a timely manner 2<br><br>Never resolved in a timely manner 1 |
| | ***Comment***: | |
| 25. | How technically qualified were the Help Desk personnel? | Extremely qualified 4<br><br>Satisfactorily qualified 3<br><br>Minimally qualified 2<br><br>Technically deficient 1 |
| | ***Comment***: | |
| 26. | How satisfied are you with the contractor's Help Desk problem escalation procedures? | Extremely satisfied 4<br><br>Satisfactorily satisfied 3 |

| | | |
|---|---|---|
| | | Minimally satisfied 2<br><br>Unsatisfied 1 |
| | ***Comment***: | |
| 27. | How technically qualified were the maintenance personnel? | Extremely qualified 4<br><br>Satisfactorily qualified 3<br><br>Minimally qualified 2<br><br>Technically deficient 1 |
| | ***Comment***: | |
| **D.** | **COST MANAGEMENT** | |
| 28. | To what extent did the contractor meet the proposed cost estimates? | Less than estimated cost 4<br><br>Comparatively equal to estimate 3<br><br>Exceeded the costs 2<br><br>Considerably surpassed estimate 1 |
| | ***Comment***: | |
| **E.** | **NARRATIVE SUMMARY** | Use this section to explain additional information not included above. |
| | ***Comment***: | |

### 2.4 Sample 3C - Business Management Past Performance Summary Revised 1/2016

| **Part A. Contract Summary** | | | | | | |
|---|---|---|---|---|---|---|
| 1. Contractor Name: | | | | 2. Contract Number: | | |
| Street: | | | | 3. Contract Type: | | |
| City: | | | | 4. Competitive: | yes | no |
| State: | | Zip Code: | | 5. Follow-on: | yes | no |
| Telephone: | | | | 6. Period of Performance: | | |
| 7. Contract Cost Data | | | Estimated Cost | | Fee | Total Value |

| | | | |
|---|---|---|---|
| Firm Fixed Price | | | |
| Initial Contract Cost | $ | $ | $ |
| Current Contract Cost | $ | $ | $ |

8. Product Description and/or Services Provided.

**Part B. Performance Evaluation of Contract (Summary)**

| Performance Elements | Excellent | Good | Fair | Poor | Unsatisfactory |
|---|---|---|---|---|---|
| 9. Quality of Work | | | | | |
| 10. Timely Performance | | | | | |
| 11. Effectiveness of Management | | | | | |
| 12. Compliance with Labor Standards | | | | | |
| 13. Compliance with Safety Standards | | | | | |
| 14. Handling Staff Integrity Issues | | | | | |
| 15. Facility Maintenance & Repair | | | | | |
| 16. Personnel Management Practices | | | | | |
| 17. Overall Evaluation | | | | | |

18. Remarks on excellent performance. Provide data supporting this observation. *[Continue on separate sheet(s) if needed.]*

19. Remarks on unsatisfactory performance. Provide data supporting the observation. *[Continue on separate sheet(s) if needed.]*

**Part C. Identification of Evaluator**

| | | | |
|---|---|---|---|
| 20. Name: | | 21. Organization: | |
| 22. Title: | | 23. Date: | |

| | | |
|---|---|---|
| **NOTE**: If verbal telephonic response received, complete the following: | 24. Information obtained by: | 25. Signature |
| | | |

**2.5 Sample 4 Survey Form Revised 1/2016**

| | | | | | |
|---|---|---|---|---|---|
| Please provide concise comments regarding your overall assessment of the contractor's performance on the contract identified. Because of the nature of the contract to be awarded, please focus on system integration and installation aspects, when possible, rather than development or production. Please respond to each question in a narrative format. Please telefax your response to the attention of the following point of contact. Please call the individual cited before faxing your response. | | | | | |
| Responses are needed by | | | | | |
| **Section 1. Identification of Point of Contact** | | | | | |
| Program Name | | | | | |
| Name | | | | | |
| Address | | | | | |
| Telephone Number | | Voice | | FAX | |
| **Section 2. Performance Verification** | | | | | |
| Fact Finding Questionnaire for | | | | | |
| NOTE: We have reviewed the latest Contractor's Performance Annual Review (CPAR) on file | *(dated)* | | | | |
| If you can provide any further information, please respond to the questionnaire. If there are no further updates, no further information will be required. *(Use this paragraph when looking for additional information on CPARs.)* | | | | | |
| **Contract Information** | | | | | |
| Contractor/Division: | | | | | |
| Program Name: | | | | | |
| Contract Type | | Contract Number: | | | |
| Period of Contract | | to: | | | |
| **Respondent Identification** | | | | | |
| Name | | Position | | | |
| Telephone No. (Voice) | | Telephone No. (FAX) | | | |
| Business Address | | | | | |
| City, ST | | Zip Code | | | |
| Relation to Program: | | | | | |
| Give a brief, general description of what the contractor was required to deliver. (If the work included installation/integration of (WIDGET) systems, please identify locations and types of systems.) Please note that if a negative reply is supplied, a clarification request is submitted to | | | | | |

| |
|---|
| the contractor, and they in turn have the right to be made aware of the comment. |
| **Evaluation Criteria** |
| **1. Contractor Management** |
| 1.a. Discuss responsiveness of the contractor's upper level management to your organization's concerns and needs. |
| |
| 1.b. Describe how well the contractor's management interfaced with your staff and organization. |
| |
| 1.c. Discuss how well the contractor's management system provided visibility into progress/problems/risks in the technical, cost, and schedule areas, and how well the risks were minimized. |
| |
| 1.d. Discuss how well the contractor managed its subcontractors. (If there was a subcontractor, please include how the contractor maintained oversight of the sub.) |
| |
| 1.e. If your contract involved the issuing of delivery orders, please discuss any problems the contractor had in responding to them (e.g., excessive workload due to conflicts with other contracts). |
| |
| **2. Technical** |
| 2.a. Did the contractor exhibit and exercise a sound engineering approach to the contract? |
| |
| 2.b. Did the contractor personnel have adequate experience to perform the tasks required? (Please include specifics as to personnel to perform design, system integration, test, and equipment installations.) |
| |
| 2.c. Discuss how well the contractor met the specification requirements for the system, hardware, and software. |
| |
| 2.d. Discuss the contractor's ability to achieve the required reliability and maintainability without undue schedule delay or cost overrun. |
| |
| 2.e. How well was the contractor able to achieve a final design which was producible and supportable? |
| |
| 2.f. How well did the contractor respond when any technical problems were encountered (e.g., in areas of timelines and technical adequacy? |
| |

| |
|---|
| 2.g. If the contractor was required to perform work outside the Continental United States (CONUS), please indicate locations and types of work done; also please discuss how familiar the contractor was with CONUS work (e.g., work permits, local taxes, host nation agreements, etc.). |
| |
| 2.h. When encountering problems in the field, was the contractor able to provide timely technical assistance both on-site and off? |
| |
| **3. Logistics and Supportability** |
| 3.a. Discuss any major problems incurred by the contractor in achieving effective logistics support. |
| |
| 3.b. Was Contractor Logistics Support (CLS) part of the contract? If so, was CLS timely and effective? |
| |
| 3.c. Discuss whether the support equipment and manuals were adequate. |
| |
| 3.d. Did any product failures occur while under warranty? If so, please indicate how responsive the contractor was to correct the deficiency. |
| |
| **4. Quality Assurance** |
| 4.a. Discuss the contractor's quality assurance plan and its effectiveness. |
| |
| 4.b. Discuss the contractor's quality control during system design, integration, test, and installation. (Please include discussion on amount of scrap, repair, and rework activities.) |
| |
| **5. Schedule** |
| 5.a. Did the contractor deliver on time? Discuss any schedule overruns and how the contractor minimized them. |
| |
| 5.b. If there were schedule changes, please explain what percentage was attributed to government changes (or your organization's changes) or other factors. |
| |
| **6. Cost** |

| | |
|---|---|
| 6.a. Contract Dollar Amounts | |
| Original | |
| Current | |
| Estimate of Final | |

| | |
|---|---|
| For Award Fee Contracts | |
| Percentage of Award Fee Paid | |

| |
|---|
| 6.b. Were there cost overruns? If yes, how much was attributable to the contractor? |
| |
| 6.c. Reasons for cost variances. |
| |
| **7. Overall** |
| 7.a. Based upon your answers to 1-6, how well did the contractor perform? (Mark with an "X".) |

| | **Exceptional** | **Satisfactory** | **Marginal** | **Unsatisfactory** |
|---|---|---|---|---|
| Management | | | | |
| Technical | | | | |
| Log & Support | | | | |
| Quality Assurance | | | | |
| Schedule | | | | |
| Cost | | | | |

| |
|---|
| 7.b. Please provide any additional comments which you believe are important in the evaluation of the contractor's performance. |
| |
| 7.c. If you had the change to do this again, would you use this contractor again? |
| |
| Thank you for your efforts and timely response. |

| | | |
|---|---|---|
| *(Your Name)* | Chairperson | |
| *(Program Name)* | | |

**T3.2.2.3 - Complex and Noncommercial Source Selection**

**A Establishment of a Qualified Vendors List (QVL)**

**1 General** **Revised 1/2016**

a. A Qualified Vendors List (QVL) is a list of service or product providers who have had their products or services examined, tested or evaluated and who have satisfied all applicable qualification requirements. QVLs are intended as a mechanism to establish a pool of qualified vendors, any of which FAA would be satisfied with the products delivered or services performed. Pre-screening vendors allows only those most qualified contractors to perform a particular service or provide a particular product during a specific period.

b. QVLs are most appropriate when the contracting office can reasonably anticipate recurring or repetitive requirements for the same or similar supplies or services.

c. When planning a QVL, consider the scope of work to be performed, e.g., would it apply to only one region or center, or would requirements from several technical offices be combined.

d. The procurement team should determine the extent of any testing, capability demonstrations, samples, etc. that may involve an expense. If testing, demonstrations, etc. are necessary, the SIR should be explicit as to whom would bear the cost. The procurement team must secure the necessary funds to accomplish these activities if FAA is to bear the costs.

## 2 Public Announcement Revised 1/2016

If the total amount of potential procurements under the QVL are anticipated to exceed $150,000, the CO must make a public announcement. In addition, all potential procurements of products available from Federal Prison Industries that are anticipated to exceed $10,000 must follow the public announcement provisions in AMS 3.2.1.3.12. If it is anticipated that a planned QVL will not exceed $150,000 over its anticipated life and public announcement is not otherwise required, wide dissemination of the intention to establish the QVL would improve the chances of obtaining additional quality vendors.

## 3 Screening and Evaluation Revised 1/2016

a. Prepare screening and evaluation procedures according to AMS Policy Section 3.

b. The CO, in conjunction with the procurement team, should formulate appropriate evaluation criteria for screening and qualifying vendors. The procurement team should carefully craft evaluation criteria to focus on key discriminators. Evaluation criteria should be tailored to the particular requirement. The procurement team should develop an evaluation plan describing how vendors will be evaluated and against what criteria.

c. The screening information request (SIR) indicates the following:

(1) A QVL is being established;

(2) Types of products or services anticipated to be solicited and awarded;

(3) Criteria vendors must meet to qualify for the QVL;

(4) Information prospective vendors must submit (including the submission due

date);

(5) Duration of the QVL;

(6) A brief explanation of the award process for procurements once the QVL has been established, including any method for eliminating firms from the QVL for repeatedly failing to respond to SIRs;

(7) Method for selecting vendors to compete for a specific requirement once the QVL is established;

(8) Method for updating the QVL, including any method for requiring vendors to re- qualify for the QVL;

(9) Method for canceling the QVL; and

(10) Geographical area limitations, if appropriate.

### 4 Evaluating Prospective Vendors Revised 1/2016

a. The CO should prepare an evaluation plan. Evaluators must follow the plan and criteria, and provide a thorough evaluation of the qualified vendors expressing an interest.

b. The number of vendors on a QVL should be appropriate for the types of requirements being purchased.

### 5 Notifying Vendors Excluded from a QVL Revised 1/2016

a. Notify vendors who were unsuccessful in qualifying for a QVL as soon as the decision is made on their individual submission, but no later than the issuance of the QVL. A debriefing should be provided, if requested, in accordance with AMS Policy Section 3.

b. A public announcement is recommended upon establishing a QVL.

### 6 Competing Requirements Among Vendors on QVL Revised 1/2016

a. Vendors are to be informed in the initial SIR establishing the QVL of the method of selection for competing for planned procurements under the QVL. The CO has discretion to tailor the method of QVL vendor competition to the planned requirements or to the size and nature of the QVL. Once the CO establishes a method of competing requirements, it must be used for all procurements under that particular QVL.

b. There must be adequate competition for procurements under a QVL. The incumbent contractor should always be permitted to compete for any follow-on requirement solicited under the QVL, unless otherwise precluded from competing under follow-on competition by a specific Organizational Conflict of Interest provision or documented poor past performance.

## 7 Updating a QVL Revised 1/2016

a. The CO should update QVLs on a periodic basis to allow new vendors an opportunity to qualify. There is no prescribed time when a QVL should be updated because every QVL will be different. Factors such as volume of procurements, size of the industry for the products or services, time and effort involved in establishing a new QVL will influence how often a QVL is updated.

b. At the stated time for updating a QVL, request a written confirmation of each vendor's desire to remain on the QVL. Any vendor not responding to the request for confirmation may be deleted as an indication of lack of interest. Vendors may request to withdraw at any time by submitting a written request to the CO.

c. If at any time, a vendor on an established QVL has performance difficulties, changes ownership, or otherwise becomes less than highly qualified, the CO may request that vendor re- qualify by submitting qualification information again. Notify the vendor of the reasons it is being required to re-qualify.

## 8 Cancelling a QVL Revised 1/2016

There may be situations when a QVL becomes underutilized. In these cases, the CO should consider canceling the QVL, when it is in the best interest of the Government. When canceling a QVL, the CO should notify all vendors in writing and provide a brief explanation of the reasons and whether there are any plans to replace or combine the QVL requirements with other requirements.

## 9 Availability of Information

Names of firms on an established QVL should be provided to the public upon request. Potential subcontractors may wish to pursue opportunities which may exist for future projects. Also, the CO should consider sharing the information with other FAA offices. General information such as the nature of the QVL, vendor names, duration of the QVL, and a point of contact for further information could be distributed or posted on the Internet.

## 10 QVL for Products Revised 1/2016

Products must meet specification requirements. Simply because a product or service appears on a QVL does not constitute endorsement of the product, manufacturer, or other source by FAA. The listing of a product or source does not release the supplier from compliance with the specification. However, it must not be stated or implied that a particular product or source is the only product or source of that type qualified, or that FAA in any way recommends or endorses the products or the sources listed. Reexamining a qualified product or manufacturer is necessary when: the manufacturer has modified its product, or changed the material or the processing sufficiently so that the validity of a previous qualification is questionable; the

requirements in the specification have been amended or revised sufficiently to affect the character of the product; or it is otherwise necessary to determine that the quality of the product is maintained in conformance with the specification. Vendors who furnish evidence that their products have successfully passed qualification are eligible for award even though not yet included on the QVL.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

### T3.2.2.4 - Single Source Added 10/2006

### A Single Source Contracting Added 10/2006

#### 1 Basis for Single Source Revised 7/2011

(a) Single source procurement may be used when in the FAA's best interest. A factual, reasoned, and well-documented rationale must support the decision to use a single source. Excluding emergencies, there are no predetermined or prescribed conditions for using a single source. Each single source decision stands alone and is based on the circumstances.

(b) The rational basis for a single source decision must be documented by the program official, reviewed by legal counsel, and approved by the Contracting Officer (CO). This rationale is documented in a:

(1) Stand-alone, single source justification using the template in Appendix 1;

(2) Procurement Plan, if a formal plan is established; or

(3) Implementation Strategy and Planning Document, if applicable.

(c) Approval of Implementation Strategy and Planning Document or approval of a Procurement Plan constitutes approval of a single-source procurement; no further approval or documentation is necessary.

(d) For single source procurements with a total value $10,000 or less, a justification is not required.

(e) Single source justification is not required for noncompetitive set-asides to 8(a)-certified Socially and Economically Disadvantaged Business (SEDB) or Service Disabled Veteran Owned Small Business. (See AMS Procurement Guidance T3.6.1 "Small Business Development Program").

### 2 Market Analysis Supporting Single Source Revised 1/2016

(a) Market analysis provides factual data to form conclusions and verify assumptions that FAA's technical and business interests are best served through a single source. For single source procurements (excluding emergencies or set-asides to 8(a) SEDB or SDV owned small businesses) over $10,000, market analysis is required. The method and extent of the analysis depends on the requirement, complexity, and estimated dollar value. (See AMS Procurement Guidance T3.2.1.2 "Market Analysis" for further information.)

(b) A formal market survey is one method to gather current data to support a single source decision. When used, a formal market survey should include a sufficiently detailed description of key technical performance requirements or essential knowledge, expertise, or experience so that potential vendors can determine whether they have the capability to satisfy FAA's requirements. FAA also uses these key performance requirements to evaluate capabilities of any vendors responding to the market survey. The market survey may include explicit instructions to potential vendors about the acceptable format, form, and level of detail for vendor capability statements or other vendor information that FAA will use to decide whether other capable vendors exist and whether a competitive procurement is appropriate.

### 3 Award of Single Source Revised 1/2016

(a) After approval of the single source justification, the CO may negotiate final contract terms and price or cost with the single source vendor and award the procurement action.

(b) When the total estimated value is over $150,000, the CO must issue a preaward public announcement (excluding emergencies and other acquisitions that otherwise would not require announcement, e.g. Delivery Orders, Single Source SEDB, and SDVOSB awards) summarizing the basis for the single source decision. The CO may make a post award announcement to promote potential subcontracting opportunities. (Also see AMS Procurement Guidance T3.13.1 "Other Administrative Procedures" for information about notifications to FAA management and Congress).

## B Clauses Added 10/2006

view contract clauses

## C Forms Added 10/2006

view procurement forms

## D Appendix Revised 1/2016

# APPENDIX
# 1

# TEMPLATE FOR SINGLE SOURCE JUSTIFICATION

## 1. Title of Procurement

Insert a brief title describing the requirement. Include the procurement request number, solicitation or contract number, if applicable.

## 2. Program Office and Point of Contact

State the title of the requiring organization, and name, email, and phone number of the responsible program official.

## 3. Nature of Procurement Action

State the nature of the procurement action, such as new contract award, follow-on contract to an existing contract, or modification expanding scope of an existing task order. Identify the proposed type(s) of contract. If an urgent requirement, state the date by which the procurement action must be awarded.

## 4. Total Estimated Value

State the total estimated value, including any options, ceiling amounts, and maximum order amounts. If optional quantities or performance periods are included, separately show the value of each (and include the amounts in the total estimated value).

## 5. Description of Supplies/Services

Describe the requirement for supplies or services to be acquired, deliverables and outcomes of the work, the intended use, and any unique requirements. Include total quantities and performance periods (the description of requirements may be broad enough to allow for quantity increases should the contract unit prices be lower than originally estimated or additional requirements become known). Detailed specifications or equipment lists should not be included. When possible, explain the requirement in non-technical terms.

If the requirement will result in a modification to an existing contract, distinguish clearly between work covered by the basic contract and the additional work to be obtained by the proposed modification.

Discuss any relevant background, history, events, or other special circumstances related to the requirement.

## 6. Authority

Authority for single source procurement is provided by AMS policy section 3.2.2.4. Cite any other authority if applicable, such as an international agreement.

**7. Rationale Supporting Use of a Single Source**

Discuss why it is in the FAA's best interest to use a single source. Provide a well-reasoned, detailed, and factual explanation. Conclusions about a single source, such as the vendor is the only known source, or no other vendor can satisfy the requirement within needed timeframe, or savings from competition will not recover sunk costs, must be supported by objective, factual information collected through market analysis or other means.

Identify the proposed single source contractor. Include a detailed discussion of the contractor's unique qualifications, experience, past performance, expertise, specialized products or services, proprietary data, or other capabilities. Link the contractor's capabilities to FAA's requirements.

Describe technical benefits and potential cost savings that would result from using a single source versus benefits of conducting a competitive procurement that might result in another vendor performing the work.

Address other factors as applicable, such as the following:

*Impact.* Fully describe any impact to the mission of the requiring organization if the single source product or service could not be provided. Explain why the impact cannot be tolerated. Give factual examples about the nature, likelihood, and severity of impact. Include cost estimates and other factual data about the impact, as appropriate.

*Specialized Expertise.* Explain why a particular expertise, experience, or skill is critical. Discuss why the single source vendor is the only source that has the specialized expertise. Explain why other FAA contractors providing or supporting NAS products and services do not have the required expertise. Describe the impact of not using the single source in terms of feasibility, time, and cost of another vendor obtaining sufficient expertise.

*Follow-on Contracts.* If a follow-on procurement for development, production, or sustainment, discuss any duplication of cost not expected to be recovered through competition or unacceptable delays in fulfilling requirements. Include data to support conclusions such as an estimates of costs that would be duplicated or length of delays for transition to another contractor, and basis for the estimates.

*Standardization.* If a follow-on contract is to standardize on one vendor's product or service, discuss duplication of costs not expected to be recovered through competition or unacceptable delays in terms of the overall lifecycle of a product or service. Discuss duplicated costs and learning curves in areas such as testing, familiarization, and certification; physical integration and interoperability; configuration management; security certifications; controller and other workforce training; integrated logistics support; maintenance, repair, and other depot or operational engineering support; maintenance infrastructure; airspace design and procedural changes; and *flight inspections*. Include factual examples and data to support conclusions.

*Interim Contracts*. If the requirement is for an interim contract or contract extension because of urgent or unusual circumstances, include a complete explanation for extended period of performance. Discuss why it would be neither cost effective nor realistic for another contractor to perform during the interim period. Explain issues such as transition plans, start up costs, staffing and recruitment, transfer of property and equipment, retooling, and learning curves for the complexity and variety of requirements. Provide factual examples of transition issues, estimated times, and estimated duplication of costs if a different vendor were awarded an interim contract.

*External Mandate*. If the requirement was mandated externally, discuss who imposed the requirement, how it was communicated, authority to direct the procurement action, and why single source is the best means of satisfying the mandated requirement. Attach a copy of any relevant documentation describing the external mandate.

*Time Constraints*. If time is a key factor, identify when the requirement first became known, explain the significance of meeting the time constraint, and criticality of time to the organization's mission. Define quantitatively the impact of not meeting the time constraint, and why there is insufficient time to conduct a competitive procurement. Discuss cost and time to conduct a competitive procurement, transition time from one contractor to another, and whether it could be done within the time limitations.

*Patents, Proprietary Data, and Unique Items.* Discuss any constraints such as patents, proprietary data, copyrights or other such limitations. Explain whether the vendor will provide any data, specifications, drawings, or source code to the FAA. Discuss whether individual components of a proprietary item can be competitively acquired from other vendors. Discuss whether the item could be reverse engineered. Describe estimated cost and time to obtain rights to data or for FAA to separately develop the proprietary item.

*Unsolicited Proposal*. If the single source is based on an unsolicited proposal, show that it meets the criteria for a legitimate unsolicited proposal (independently originated, innovative, and unique) and discuss benefits of adopting the proposal.

**8. Market Analysis**

Describe in detail the market analysis conducted to identify other qualified sources. If market analysis was not conducted, explain the circumstances.

Discuss sources of market data, level of analysis, and conclusions drawn about any other vendor’s capabilities, products or services.

State whether a formal market survey was issued, when, and for how long the announcement was open. Include a listing of vendors that expressed written interest in the public announcement. Describe criteria used to evaluate vendors responding to the market survey, reasons for rejecting each vendor, person evaluating the responses and when. If no vendors responded to the market survey, include a statement to that effect.

If a prior market survey is used, discuss when the prior survey was conducted, the results, and why the information is still current and relevant.

Discuss evaluation of data from any internal market survey conducted.

**9. Other Facts Supporting Use of Single Source**

Discuss any other factors supporting use of a single source.

Include a statement about future actions to be taken, or not to be taken (e.g., no future similar requirements are anticipated), to identify alternate or additional vendors for the same or similar requirements. Discuss any actions to ensure that the prime contractor obtains competition in subcontracting.

**10. Determination of Fair and Reasonable Price/Cost**

Describe the methods to be used to determine reasonableness of proposed price or cost, such as analysis of the contractor's detailed cost data, DCAA audits, and comparison to the independent Government cost estimate. If applicable, briefly describe any analyses of the vendor's proposed cost, and comparison to cost history for the same or similar requirements.

**ENDORSEMENT**

I certify that the supporting data under my cognizance that are included in this justification are accurate and complete to the best of my knowledge and belief.

| | |
|---|---|
| Name: | _____ |
| Signature: | _____ |
| Organization: | _____ |
| Date: | _____ |

**CONCURRENCE AND APPROVAL**

Legal Concurrence

| | |
|---|---|
| Name: | _____ |
| Signature: | _____ |
| Organization: | _____ |
| Date: | _____ |

Contracting Officer Approval

| | |
|---|---|
| Name: | _____ |
| Signature: | _____ |
| Organization: | _____ |
| Date: | _____ |

**T3.2.2.5 – Commercial and/or Simplified Purchase Method Revised 1/2016**

**A Simplified Purchasing**

**1 Simplified Purchasing Revised 7/2016**

a. *Scope of Simplified Purchasing*. Simplified purchasing covers methods used to obtain noncomplex products, services, or construction through a contract, purchase order, blanket purchase agreement, and Federal Supply Schedule order. Simplified purchase methods apply to noncomplex products, services, or construction that have been sold at established catalog or market prices or where prices can be determined fair and reasonable (see AMS Policy 3.2.2.5).

b. *Simplified Purchasing vs. Complex Source Selection*. The complexity of FAA's requirement shapes the complexity of the process to solicit, evaluate, and select a vendor. Contracting methods described in AMS Policy 3.2.2.3, Complex Source Selection, are generally not a time and cost efficient means for acquiring noncomplex products, services, or construction. There are exceptions to this consideration, such as when the procurement involves cost-reimbursement pricing or indefinite-delivery arrangements, both noncomplex and complex work is required, in- depth evaluation is needed to select the best qualified vendor, or extensive contract terms and conditions are necessary.

c. Authorized users of the FAA purchase card must use methods described in T3.2.6 when procuring items; however, Contracting Officers (CO) or others delegated procurement authority outside of the purchase card program may determine which purchasing method is appropriate, either Simplified Purchase Method or Complex Source Selection, based on the factors surrounding each procurement.

d. *Micro-Purchase Threshold.*

(1) Simplified purchases with a total estimated potential value (TEPV) under the applicable micro-purchase threshold must be performed using the purchase card.

(2) The micro-purchase threshold is:

(a) $10,000 for commercial supplies;

(b) $2,000 for construction; and

(c) $2,500 for services.

(3) Procurement requests under the micro-purchase threshold must not be submitted for award under a contract unless approved by the cognizant procurement office.

e. *Funding*. All applicable funding requirements detailed in AMS Procurement Guidance T3.3.1 apply to procurement conducted using simplified methods. This includes:

(1) Compliance with the Anti-Deficiency Act;

(2) Ensuring sufficient funds are available;

(3) Ensuring awards made subject to the availability of funds include the appropriate AMS Clauses (i.e., AMS Clause 3.3.1-10, Availability of Funds, or AMS Clause 3.3.1-11, Availability of Funds for the Next Fiscal Year); and

(4) Ensuring that severable services crossing fiscal years are awarded using appropriate funds, and that the contract period does not exceed one year.

f. *Mandatory Sources and Other Requirements*. When using simplified purchase methods, COs or others with procurement authority (to include purchase card holders) must consider the following requirements:

(1) *Strategic Sourcing Initiatives*. This includes the following:

(a) Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES). The SAVES program is a mandatory source for some equipment and office supplies (see AMS Procurement Guidance T3.8.6).

(b) Enterprise software licensing agreements such as Oracle.

(2) *Federal Prison Industries, Inc. (FPI) (also known as UNICOR).* For those products available through FPI, the procedures detailed in AMS Procurement Guidance T3.8.4, Government Sources of Products/Services, must be strictly followed.

(3) *Randolph-Sheppard Act.* FAA must first consider the blind in the operation of vending facilities. (See AMS Procurement Guidance T3.8.4)

(4) *Javits-Wagner-O'Day Act (JWOD).* FAA must first consider items and services available through the AbilityOne Program (formerly JWOD) before going to other sources. (See AMS Procurement Guidance T3.8.4)

(5) *General Services Administration (GSA) Federal Supply Schedules (FSS).* When

procuring items through a GSA FSS, FAA must follow the procedures detailed under AMS Procurement Guidance T3.8.3, Federal Supply Schedules. Note that GSA is not a mandatory source for FAA.

(6) *Section 508 Requirements.* FAA must procure products and services that comply with federal requirements for Section 508 of the Rehabilitation Act. (See AMS Procurement Guidance T3.2.2)

(7) *Environmental Requirements.* FAA should acquire environmentally preferable, energy and water efficient, and recycled content products and services when possible. (See AMS Procurement Guidance T3.6.3 for additional information)

(8) *Labor Laws*. Depending on the nature of the requirement, FAA must comply with applicable labor laws when conducting procurements (i.e. the Davis Bacon Act for construction of over $2,000, the Service Contract for applicable services over $2,500, and the Walsh-Healey Public Contracts Act for materials, supplies, articles, or equipment exceeding $15,000). (See AMS Procurement Guidance T3.6.2 for additional information)

g. *Set-asides*. Purchases with an anticipated value between $10,000 and $150,000, except those conducted using a purchase card, are automatically reserved for competition among SEDB (8(a)) vendors, unless the purchaser, with review of the cognizant Small and Small Disadvantaged Utilization Specialist, determines there is not a reasonable expectation of obtaining quotes or offers from responsible SEDB 8(a) concerns that are competitive in terms of market prices, quality, and delivery. More information on set-asides, to include SEDB 8(a) and others, is available in AMS Procurement Guidance T3.6.1.

h. *Competition.*

(1) *Over $10,000*. Purchases over $10,000 must be competed among two or more qualified vendors, unless the proposed action is supported by a single source justification or is set-aside under a small business preference program authorizing noncompetitive awards.

(2) *Under $10,000*. Competition is encouraged, but not mandatory for purchases under $10,000. Purchasers should consider the administrative cost of the purchase versus potential savings that could result from competition. Purchases under $10,000 on a single source basis do not require file documentation justifying the single source decision. However, purchasers should use sound business judgment and have a documented reasonable basis for any decisions involving purchases.

(3) Purchasers may obtain competition by reviewing commercial catalog/price lists, or by soliciting quotes informally by telephone, email, or fax, or formally through written or electronic methods of request for quotation or offer.

i. *Solicitation.*

(1) *Request for Quotation*. A request for quotations (RFQ) may be used to obtain information on prices and availability of products and services. An RFQ is generally

used when the purchaser expects to place an order, but does not wish to bind the vendor at the time the quotation is received. All of the terms and conditions to be included in any purchase that may result from the RFQ are to be included in the RFQ. An RFQ may be either written or oral.

(2) *Request for Offer*. A request for offer (RFO) is appropriate when the purchaser needs some amount of discussion to clearly communicate needs and to understand products and services being offered. The purchaser should discuss all aspects of the RFO, including quality, warranty, payment and other significant aspects included in a written RFO. An RFO may be used when non-price-related information and evaluation is necessary.

j. *Discounts*. Quantity discounts are usually offered for purchasing a specific quantity or dollar value of items at one time, or a specified dollar total over an agreed-upon time period. A trade discount from the catalog/commercial list price is one that is offered to all customers by a vendor. This may include promotion of seasonal, new or slow-selling items or special discounts offered by a manufacturer or dealer. A prompt payment discount is one that is offered by a vendor for payment by the Government before the date payment is due. Such discounts are not considered in the evaluation of quotes or offers, but any discount offered is included in the award. The purchaser should seek discounts when appropriate.

k. *Competition- Evaluation and Basis for Award.*

(1) Purchasers must consider all timely and responsive quotations or offers received.

(2) Requirements solicited on an all-or-none basis specify that prospective vendors must furnish all of the requested items to be considered for award. If vendors are informed in the request for quotation or offer, the purchaser may consider the lowest cost alternative between a single award and multiple awards based on the prices for each item and the administrative costs of making multiple awards.

(3) An award is made to the responsive and responsible vendor offering the best value to FAA. Purchasers may evaluate vendors on the basis of lowest priced, technically acceptable offer or quote, which will result in the best value to FAA.

(4) Non-price related evaluation factors, such as past performance, quality, qualifications, delivery terms or warranties, may also be evaluated but must be communicated to vendors.

l. *Price Reasonableness.*

(1) *Purchases of $10,000 or less*. Purchasers do not need to document price analysis for purchases when they find no justifiable reason to question that the price is fair and reasonable. The administrative cost of verifying price reasonableness of purchases may more than offset potential savings from detecting instances of overpricing. When there are doubts about the reasonableness of the price, the purchaser should obtain additional quotes or take other action to verify price reasonableness, such as reviewing current published price lists, reviewing historical prices for purchases of the same or similar item or service, or requesting data from the vendor on sales prices to other

customers.

(2) *Purchases Over $10,000*. Procurements over $10,000 must be supported by a written determination by the purchaser that the price is fair and reasonable. When possible, this determination is based on competition. When awards are made without competition or when only a single responsive quote or offer is received, the purchaser must use other price analysis techniques to determine if the price is reasonable. Price analysis techniques that the purchaser may consider, along with the independent Government cost estimate, include:

(a) Comparison of prior pricing for the same or similar items or services in comparable quantities;

(b) Application of rough yardsticks (e.g. dollars per pound or horsepower) to highlight significant inconsistencies that warrant additional pricing inquiry;

(c) Comparison with current published catalog or market prices, similar indexes, or discount or rebate arrangements;

(d) Ascertaining that law or regulation establishes pricing; and

(e) Other information gained through a market survey.

m. *Documenting the Award Decision.* Purchasers should have a rational basis for purchasing decisions. The extent of documentation substantiating purchase decisions depends on the value and circumstances of the purchase. If the purchase involves an item that is a viable exemption to an applicable prohibition or restriction (See AMS Procurement Guidance T3.2.2.5.A.4, Prohibited and Restricted Purchases), then the award decision must, despite the dollar value of the purchase, document the basis and background for the purchase.

(1) *Purchases of $10,000 or less*. Documentation is not required except for awards that, without documentation, would appear questionable to a “reasonable person” with market knowledge of the products or services being purchased.

(2) *Purchases over $10,000*. The purchaser must record prices received, names of vendors contacted, and discounts, and other terms quoted by each vendor. If competitive quotes or offers were solicited and award was made to other than the lowest priced, technically acceptable vendor, the purchaser must document evaluation criteria and results, and basis for the award decision.

n. *Rotating Awards for Requirements of $10,000 or less*. When possible and economically feasible, purchasers should distribute simplified purchase awards of widely available products and services among vendors.

o. *Requisitioner Role*.

(1) The requisitioner defines the requirement by supplying applicable information or documentation to the purchaser that includes, but is not limited to, the

following:

(a) Part numbers;

(b) Item descriptions;

(c) Statements of work and specifications;

(d) Packaging and shipment requirements;

(e) Inspection and acceptance requirements;

(f) Funding and any required approvals; and

(g) Suggested vendors.

(2) As necessary, the requisitioner may assist the purchaser with evaluation of offered products and services.

(3) As part of market research, requisitioners may contact potential vendors about product or services offered, pricing, quality, warranty, delivery terms, and other information. Requisitioners should clearly communicate to prospective vendors that the contact is for market research purposes only and is not a commitment to purchase.

p. *Inspection and Acceptance.*

(1) Acceptance by a FAA representative constitutes acknowledgement that the supplies or services received conform to applicable contract or purchase requirements. Acceptance is documented using an inspection and acceptance form such as FAA Form 256, by a commercial shipping document or packing list, or through other means to include annotation on the purchase order form.

(2) Acceptance of the supplies or services is the responsibility of the CO or cardholder. This responsibility may be assigned to a program office or center representative.

(3) Each award must specify the place of acceptance as well as other necessary acceptance provisions.

## 2 Purchase Orders Revised 7/2012

a. *Purchase order*. A purchase order is a simplified form for ordering supplies or services, generally issued on a fixed-price basis, at stated prices based upon specified terms and conditions. Purchase orders must specify the quantity of supplies or scope of services being ordered and contain a date by which the goods or services must be delivered to FAA.

b. *Unpriced purchase orders*. An unpriced purchase order is an order for supplies or services that does not have a price established at the time of its issuance.

(1) An unpriced purchase order may be appropriate when:

(a) It is impractical to obtain pricing in advance of issuance of the purchase order;

or

(b) The purchase is for repairs to equipment requiring disassembly to determine the nature and extent of repairs; the material is available from only one source and for which cost cannot be readily established; or the order is for supplies or services for which prices are known to be competitive but exact prices are not known (e.g. miscellaneous repair parts, maintenance agreements).

(2) Unpriced purchase orders may be issued by using written purchase orders or through various electronic means. A realistic monetary limitation, either for each line item or for the total order, should be placed on each unpriced purchase order. The monetary limitation becomes an obligation subject to adjustment when the firm price is established. The contracting office should follow-up each order to ensure timely pricing. The Contracting Officer (CO) or designated representative should review the invoice price and, if reasonable, process the invoice for payment.

c. *Content*. Purchase orders should contain the following information:

(1) Trade and prompt payment discounts that are offered;

(2) The quantity of supplies or services ordered;

(3) Inspection provisions; origin or destination;

(4) A determinable date by which delivery of supplies or performance of services is required; and

(5) Information should be requested by the preparer of the purchase order as follows:

(a) Vendor's SSN or taxpayer identification number (TIN);

(b) Vendor's business status as one of the following classifications:

(i) Individual/sole proprietorship;

(ii) Corporation;

(iii) Partnership; or

(iv) Other (specify);

(6) The CO's signature. Electronic signatures may be used in the production of purchase orders by automated methods (see AMS Policy 3.1.9).

d. *Clauses*. The CO may print on the purchase order form, or include as an attachment, the clauses they consider to be generally suitable for their purchases. The following forms may be used for purchase orders:

(1) Optional form 347, Order for Supplies or Services;

(2) Optional form 348, Order for Supplies or Services Schedule-Continuation; or

(3) Other agency generated or contractor provided forms.

e. *Procedure*. Procurement under a purchase order valued over $10,000 must be competed among 2 or more qualified vendors, unless the action is supported by a single source justification (AMS Procurement Guidance T3.2.2.4) or conducted under a small business preference program authorizing noncompetitive awards (AMS Procurement Guidance T3.6.1).

(1) *Competitive Awards*.

(a) Before issuing a request for quotations (RFQ), the CO should develop a listing of potential sources based on the requirement. This list can be derived from sources to include, but not limited to:

(i) Previous vendors utilized in FAA or source lists kept in the contracting offices;

(ii) Qualified vendor lists;

(iii) The requiring or program office;

(iii) System for Award Management (SAM); and

(iv) The Office of Small Business Development.

(b) All procurements over $100,000 must be publicly announced on the FAA Contract Opportunities website or through other means. This requirement does not apply to emergency actions, purchases from an established QVL, exercise of options, or modifications within the scope of a purchase order.

(c) Once a list of potential sources is available, the CO should solicit as many sources as practicable, but must solicit quotations from at least two or more sources. A listing of the vendors to whom the RFQ was distributed, as well as any responses or quotes, must be included in the official file.

(d) Prior to award of the purchase order, the CO must confirm that the vendor is not listed in the "Exclusions" portion of the "Performance Information" capability of SAM and has successfully registered in SAM. The CO should

document this process in the file, which may include simply printing the results from each search or including a statement of the checks being completed in a memo to file.

(e) *Vendor Selection*. Once a qualified and responsible vendor is selected, the CO must support the decision with a written determination that the price is fair and reasonable and that the award is in the best interest of FAA. This determination must be included in the official file.

(f) *Price Analysis/Reasonableness.* See AMS Procurement Guidance

T3.2.2.5:1. (2) *Single source awards*.

(a) The rational basis for a single source decision must be documented by the program official, reviewed by legal counsel, and approved by the CO and included in the official file.

(b) There are no predetermined or prescribed conditions for using a single source, and each single source decision stands alone and must be based on the circumstances surrounding each specific need.

(c) Single source procurements over $10,000 (excluding emergencies) require market analysis to verify that FAA's technical and business interests are best met through a single source.

(d) A single source justification is not required for noncompetitive set-asides to 8(a)-certified Socially and Economically Disadvantaged Business (SEDB) or Service Disabled Veteran Owned Small Business. (See AMS Procurement Guidance T3.6.1).

(e) When the total estimated value is over $100,000, the CO must issue a pre-award public announcement (excluding emergencies) summarizing the basis for the single source decision.

(f) Additional information regarding single source awards can be found in AMS Procurement Guidance T3.2.2.4.

f. *Acceptance*.

(1) A quotation resulting from a RFQ is not an offer, and cannot be accepted by FAA to form a binding contract. A contract is formed when the supplier accepts the offer, which can be done by:

(a) The supplier accepting the purchase order in writing to FAA. The Contracting Officer should require written acceptance of a purchase order when it is desired to consummate a binding contract before the contractor undertakes performance; or

(b) The supplier furnishing the supplies or services ordered or by proceeding

with the work to the point where substantial performance has occurred.

g. *Modification*. Each purchase order modification should identify the order it modifies, contain an appropriate modification number, and identify what authority is being used to modify the order. The Contracting Officer determines when it is necessary to obtain a contractor's written acceptance of a purchase order modification. Purchase orders may be modified by using:

(1) Standard Form 30, Amendment of Solicitation/Modification of Contract;

(2) An agency-designed form or an automated format; or

(3) A purchase order form.

h. *Termination*. A purchase order may be terminated, and the process to terminate an order depends on whether the order has been accepted.

(1) If the purchase order has been accepted in writing by the contractor, the termination should be processed in accordance with AMS termination clauses.

(2) If the purchase order has not been accepted in writing by the contractor, the CO should notify the contractor in writing that the purchase order has been canceled and request the contractor's acceptance of the cancellation. If the contractor:

(i) Accepts the cancellation and does not claim that costs were incurred, no further action is required.

(ii) Does not accept the cancellation or claims that costs were incurred, the CO should process the termination in accordance with the termination clauses. i. *Purchase order checklist and Simplified Purchase Summary*.

(1) Any purchase order with an anticipated value of $10,000 or more must include a Purchase Order/GSA/FSS Order File Checklist (see Procurement Forms) in the official file.

(2) The CO may choose to use the Simplified Purchase Summary (see Procurement Forms) to document actions associated with the award of a purchase order.

**3 Blanket Purchase Agreement (BPA) Revised 10/2010**

a. A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for products or services by establishing "charge accounts" with qualified vendors. BPAs may be appropriate when other procurement vehicles such as using a purchase card, purchase order, or contract are not appropriate or available, and:

(1) A wide variety of items in a class of supplies or services are required, but the exact items, quantity, and delivery requirements are not known in advance and vary;

(2) FAA offices in given areas do not have or need purchasing authority, but need a commercial source for supplies or services;

(3) Establishing a BPA would avoid writing numerous purchase orders;

(4) There is no existing source for the same supply or service that FAA must use; these sources include:

(a) Federal Prison Industries, Inc. (UNICOR);

(b) Randolph-Sheppard Act or Javits-Wagner-O'Day Act (JWOD) programs;

(c) Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES) program;

(d) National Wireless program; and

(e) Active contracts containing the "Requirements" clause.

b. A BPA is not a contract. Instead, it is an understanding between FAA and a vendor that allows FAA to place future orders more quickly by identifying terms and conditions applying to those orders, a description of the supplies or services to be provided, and methods for issuing and pricing each order. The FAA is not obligated to place, nor must a vendor accept, any orders. Either party may cancel a BPA at any time. An enforceable contract exists only when FAA places an order against the BPA and it is accepted by the vendor. c. *Establishing a BPA*.

(1) After determining a BPA would be advantageous, the Contracting Officer (CO) may concurrently establish BPAs for the same type of items or services with more than one vendor to provide maximum competition for orders.

(2) There is no maximum dollar limitation for a BPA; however, each BPA must have a total ceiling amount. If the anticipated total value of all orders against a BPA will exceed $100,000, then it is subject to public announcement and applicable review requirements, including review by legal counsel (as well as review by the Chief Financial Officer (CFO) (see AMS Procurement Guidance T3.2.1.4 for applicable standards) and Chief Information Officer (CIO) (if information technology resources over $250,000 are involved)).

(3) Only a CO can place an individual order exceeding $100,000.

(4) Using a BPA does not relieve the CO or authorized users from keeping obligations and expenditures within available funds.

(5) Price reasonableness and competition requirements apply to obtaining needs through BPAs. A BPA with one vendor does not justify purchasing from only one source; the initial BPA and future orders awarded under the BPA are subject to competition requirements. (Refer to AMS Procurement Guidance T3.2.2.4, Single Source).

(6) BPAs may include Federal Supply Schedule (FSS) contractors utilizing the BPA provision in their FSS contract.

(7) BPAs can be prepared without a Procurement Request (PR), but only after contacting vendors to arrange for maximum discounts, documentation requirements for individual purchases, periodic billings, and other necessary details.

(8) Open market purchases are not affected by an existing BPA. The same class of supplies or services offered through a BPA may be purchased on the open market, and both BPA and non-BPA vendors may be solicited.

d. *Mandatory Terms and Conditions*. A BPA must include:

(1) *Description of Agreement*. A statement that the vendor must furnish products or services, described in general terms, if and when requested by the CO, or the authorized representative, during a specified period and within a stipulated aggregate amount.

(2) *Extent of Obligation*. A statement that the FAA is obligated only to the extent of authorized orders actually placed under the BPA.

(3) *Purchase Limitation*. A statement specifying the dollar limitation for individual orders under the BPA.

(4) *Notice of Individuals Authorized to Purchase under the BPA*. The CO will furnish to the vendor a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual.

(5) *Clauses*. The BPA must include any prescribed clauses applicable to the dollar thresholds of particular orders against the BPA, e.g., Service Contract Act for orders for services over $2,500.

(6) *Delivery Tickets*. A requirement that all shipments under the BPA, except subscriptions and other charges for newspapers, magazines, or other periodicals, will be accompanied by delivery tickets or sales slips with the following information as a minimum: name of individual who placed the order, name of contractor, BPA number, date of purchase, purchase number, itemized list of products or services furnished, quantity, unit price and extension of each item, and date of delivery or shipment.

(7) *Invoices*. Invoices are to be submitted at least monthly or upon expiration of the BPA for all deliveries made during the billing period. Each invoice must:

(a) Identify the delivery tickets covered in the invoice;

(b) State the total dollar value of each delivery ticket; and

(c) Be supported by receipt copies of each delivery ticket.

e. *Procurement Request (PR).* A PR is not required for each order. Instead, the BPA can be bulk funded to the ceiling on the first order, and then each subsequent order applied to the BPA until funds are no longer available. Rather than obtaining a PR for each order, bulk funding is a process where the CO receives authorization through a PR to obligate funds against a specified lump sum of funds reserved for a specific purpose for a specified period of time. The amount of bulk funding should represent the anticipated need through the BPA, and not serve as means to avoid fiscal restrictions or appropriation law. The CO, or authorized BPA user, may make purchases based on an oral request or a memorandum from an authorized requisitioner in the program/requisitioning office. The program/requisitioning office should confirm oral requests in writing as a matter of record.

f. *Authorized Users.* Each person authorized to place orders against a BPA should receive written guidance from the CO on the limitations of authority and responsibilities associated with using the BPA. Authorized users must follow ordering procedures to ensure proper delivery, billing, and payment. Purchases that would normally be made as single order should not be split to avoid any user ordering limitations. Program/requisitioning offices should notify the CO whenever an authorized user changes or the need for purchasing against the BPA no longer exists; the CO should modify the BPA to reflect any changes in authorized users.

g. *Placing an Order*.

(1) When placing an order, the authorized user contacts the vendor and provides:

(a) Authorized user's name, phone number, and office.

(b) BPA number and order number assigned by the authorized user.

(c) Description of required supply or service (part number, description, quantity, etc.).

(d) Delivery address and telephone number.

(e) Delivery date.

(f) Reminder that the order is tax exempt.

(2) The authorized user should request any offered discounts, and inform the vendor that the BPA number and order number is to appear on the packing slip and invoice/billing statement.

(3) The authorized user should document the order in a log or by other means to record details of the transaction (item description, price, quantity, date, etc.).

h. *Segregation of Duties*. In accordance with Office of Management and Budget (OMB) Circular A-123, the same person may not make the purchase, receive supplies or services, and authorize payment. The same person may perform two of the functions, but not all three.

i. *Review*. The CO should review a sufficient random sample of BPA files at least annually to ensure that authorized users are following procedures.

j. *Unauthorized Commitments*. Only COs or people authorized by the CO may place orders against a BPA. Any purchase made by an unauthorized person, or any purchase placed against a BPA which exceeds the authorized limitation is an unauthorized commitment.

k. *Market Analysis*. The CO must maintain awareness in market conditions, sources of supply, and other factors that may warrant making new arrangements with different vendors or modifying existing arrangements.

l. *Expiration*. A BPA is considered complete when purchases under it equal its total dollar limitation or when the stated time period expires.

**4 Prohibited and Restricted Purchases Revised 1/2016**

a. This guidance is intended to assist FAA personnel in determining whether a particular item or service would be a permissible purchase using appropriated funds. There is no ironclad rule or readily available list that describes in every case whether a particular purchase using appropriated funding is permissible. FAA personnel should use common sense and sound judgment, based on appropriations law and related decisions of the Comptroller General.

b. The Government Accountability Office (GAO) established a "necessary expense" doctrine. This doctrine is described fully in Volume I, Third Edition, of "Principles of Federal Appropriations Law," (GAO Red Book) issued by GAO, Office of the General Counsel. This publication states, in part, that for an expenditure to be justified under the necessary expense theory, it must meet certain tests, including: "The expenditure must bear a logical relationship to the appropriation sought to be charged. In other words, it must make a direct contribution to carrying out either a specific appropriation or an authorized agency function for which more general appropriations are available" (GAO Red Book, Volume I, Chapter 4, Section B.1.). By projection, the necessary expense doctrine does not allow use of appropriated funds to purchase items or services that can be reasonably interpreted to meet personal convenience and are not for a necessary Governmental function." The CO or purchase cardholder, consulting with budget officials and legal counsel, should make determinations in this area about questioned or questionable items or services. Almost any listing of prohibited items of purchase is subject to exceptions. To quote the GAO Red Book "The Comptroller General has never established a precise formula for determining the application of the necessary expense rule. In view of the vast differences among agencies, any formula would almost certainly be unworkable. Rather, the determination must be made essentially on a case-by-case basis."

c. *Prohibited and Restricted Items*. For FAA, the following are prohibited or restricted items of purchase (this is not a complete list):

(1) **Drinking water**, except when:

(a) A duly constituted public health authority pronounces ordinary drinking

water to be unsafe for human consumption at the site;

(b) A viable and safe water source for FAA personnel is not available on or within a reasonable distance of the worksite;

(c) FAA personnel reasonably foresee a disaster or emergency, such as imminent landfall of a hurricane, and all of the following conditions are present:

(i) FAA personnel reasonably anticipate that drinking water at the site will be unsafe for human consumption;

(ii) The drinking water is for FAA personnel responding to or at the emergency or disaster site;

(iii) The amount of drinking water is commensurate with the anticipated response time at the site or the estimated time for the local drinking water to be considered safe for human consumption, whichever is shorter; and

(iv) The drinking water is purchased in a reasonable time-frame in advance of an imminent emergency or disaster, and the time-frame does not exceed the time required to purchase, stage, and properly distribute the drinking water; or

(d) The drinking water is provided in a controlled environment as may be necessary to enable collections for drug use analysis for safety sensitive positions.

(2) **Food or beverage**, except as described in AMS Procurement Guidance T3.2.2.5A.5, FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops.

(3) **Gifts, gift certificates, and prepaid gift cards**.

(4) **Membership fees** for individual employees**.** The FAA may purchase membership in a society or association in its own name.

(5) **Subscriptions** to print or online publications or magazines not related to official duties.

(5) **Clothing** or personal apparel of any description, except:

(a) Special type clothing required by FAA. The requestor's supervisor must prepare a written justification for special type clothing and coordinate the justification with legal counsel.

(i) Clothing (such as a shirt with FAA logo) for recruitment activities such as job fairs and professional liaison activities with recruitment

sources (e.g., schools, colleges and universities, professional associations/organizations, or intergovernmental agency sources) may be authorized if it supports FAA business objectives and there is a bona fide need.

(ii) Clothing for air shows may be authorized if there is a bona fide need for FAA employees to be clearly identifiable.

(b) Clothing and equipment classified as personal protective equipment (PPE). The requestor's supervisor must prepare a written justification for PPE, but does not need coordination with legal counsel when the value of the procurement is below $100,000. All PPE must:

(i) Have proper controls established to ensure that PPE is appropriate and accounted for; and

(ii) Be maintained and used according to standards established by the Occupational Safety and Health Administration (OSHA). See the OSHA website for more information.

(c) All clothing or PPE purchased by FAA remains the property of the Government and not the employee.

(7) **Rental of aircraft** by anyone not in an aircraft-related position.

(8) **Fans, air conditioning and cooling equipment, space heaters and heating equipment**, except as properly installed for general use in connection with the maintenance and operations requirements for the site.

(9) **Water coolers, vacuum cleaners, and other household appliances** (i.e. refrigerators, microwaves, etc.), except as requisitioned for general use by the authorities responsible for building maintenance and equipment.

(10) **Cellular or communication devices and services** covered by the National Wireless Program Office (NWPO). Devices provided through the NWPO include cellular phones, one and two-way pager devices, multi-functional server-based devices (e.g. Blackberries), and satellite phones.

(11) **Personalized stationery**, including paper pads, with the name, position, title, logo, or office of FAA personnel, except when:

(a) There is a clear business need approved by the head of the line of business or staff office; and

(b) The requestor notifies Office of Financial Analysis (AFA-1) of the planned purchase in advance.

(12) **Tote bags**.

(13) **Coffee mugs**.

(14) **Water bottles**.

(15) **Leather and other natural hide portfolios, binders, or planners**.

(16) **Give-away items**, including portfolio covers, flash drives, pens, and pencils, for internal or external marketing of products, services, or programs by FAA, with the following exception and conditions:

(a) Purchase of promotional items for recruitment activities, such as for job fairs and professional liaison activities with recruitment sources (e.g., schools, colleges and universities, professional associations/organizations, or intergovernmental agency sources), may be authorized when these items support FAA business objectives and there is a bona fide need. Where there is a bona fide need, the selection of items must meet all of the following criteria:

(1) Has a practical use appropriate for the audience, and are business related items, such as pens, rulers, calculators, post-it notes, business card holders, lanyards or note pads;

(2) The items cannot be a personal use item, such as coffee cups, water bottles, umbrellas, candy or food items, or fans;

(3) Is economically priced and reasonably portable;

And

(4) Avoids the perception that taxpayer dollars have been frivolously spent.

(b) Recruitment items must comply with FAA branding order 1700.6C and display the FAA jobs website (http://www.faa.gov/jobs).

(17) **iPAD** and similar equipment and related services, with the following exceptions and conditions:

(a) All purchases of iPAD or similar equipment and related services must be coordinated with the Chief Information Officer's (CIO) Enterprise Program Management Service (EPMS).

(b) iPAD and similar equipment and related services for approved purchases may be procured using the FAA purchase card if the costs do not exceed established single and monthly purchase limits.

(c) LOB/SO CIOs are responsible for determining the level of acceptable security risk. As such, each LOB/SO must review the default device settings and modify accordingly to ensure the appropriate level of information

assurance.

(d) Each LOB/SO must maintain an inventory of all iPAD or similar equipment.

(18) **Purchases for Non-Monetary Awards**, except:

(a) The FAA may purchase plaques, trophies, pins, retirement plaques and certificates, or similar *symbolic* items for non-monetary awards to officially recognize employees. Items purchased for non-monetary awards must not exceed $120 per item; purchases for the FAA Corporate Awards and Recognition program are not subject to this dollar limit, but should be reasonably priced and symbolic items. All official awards must comply with HRPM, Performance Management PM-9.2, Recognizing Employees. Requisitioning offices must maintain appropriate documentation for purchases related to non-monetary awards.

(b) To enhance an official awards ceremony, reasonable and nominally priced purchases, such as for decorations and related supplies, are permissible.

(19) **Business Cards**, except:

(a) The FAA may use appropriated funds to purchase business cards for employees if necessary to conduct business and approved in advance. Associate/Assistant Administrators, ATO Vice Presidents, and Regional Administrators/Center Directors determine who in their organization are authorized business cards paid for with appropriated funds to conduct FAA business. Authority for this determination may be delegated to a lower level.

(b) Business cards purchased with appropriated funds are Government property. Employees should exercise good judgment and caution when using their cards in situations not directly related to conducting FAA business.

(c) All FAA business cards must comply with branding logo and template requirements in FAA Order 1700.6C. See the FAA website for more information (FAA only)

(d) Purchasers must use one of two printing sources when using appropriated funds to purchase business cards:

(1) FAA Aeronautical Center's Media Solutions Group; or

(2) Lighthouse for the Blind, Inc., Seattle, WA (pursuant to the mandatory source requirements of the Javits-Wagner-O'Day Act). See the Lighthouse for the Blind's website for ordering information.

(20) **Purchasing or Renting Portable Storage Units or Procuring Short-term Storage Services**, with the following exceptions and conditions:

(a) Before purchasing or renting storage units or procuring storage services, a

determination must be made that existing storage space is not available from other sources within FAA or elsewhere in Government. COs or purchase cardholders must coordinate storage requirements with a Real Estate Contracting Officer (RECO). This coordination is intended to ensure that no in-house storage capabilities are available, and no real estate or facility factors exist that may affect the procurement, such as applicable real estate regulations or unique site requirements.

(b) Storage units or services for purposes of this guidance are limited to portable storage units or containers designed for temporary (less than six months) on-site use or temporary storage in a secured centralized storage center owned by the vendor. The storage units or containers must be classified as personal property and not affixed or attached in a permanent means to the land (real property) upon which they may be situated for temporary use. If the portable storage unit or container is to be placed on land owned or leased by FAA, the CO or cardholder must ensure FAA has legally established rights to use the land before staging or storing a third party item of property (storage unit or container) procured under a service agreement.

(c) When possible, storage requirements for a construction project should be incorporated into the statement of work or specification under the associated construction contract.

(d) Purchase cards cannot be used:

(1) For purchase, rental, or lease of land or buildings;

(2) To purchase real property, which is defined as land, buildings, structures or rights over or under the land, or things that are permanently affixed or attached to the land such as improvements to make it more productive or to make it serve a more beneficial end than the land itself; and

(3) For long-term storage unit rental or services (long-term is defined as six months or more), unless the purchase card is being used as a payment vehicle against a contract or lease signed by a CO/RECO and:

(i) The total cost of rental or purchase of storage services does not exceed the cardholder's delegated authority;

(ii) The portable units are not classified as real property (as defined above); and

(iii) The terms and conditions of the rental or storage services (i.e. termination authority) are set forth in writing and signed by both parties.

**5 FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops Revised 7/2016**

a. FAA-sponsored conferences, seminars, ceremonies, and workshops are a routine element of FAA operations. FAA personnel must consider certain special requirements when planning and conducting such events. All such conferences must comply with the standard operating procedures (SOPs) specified by the Office of Financial Analysis. For current forms and guidance, please see the Financial Standard Operating Procedure "Planning Meetings, Conferences, Workshops, Training Events and Award Ceremonies in the FAA" at the Financial Services website https://my.faa.gov/org/staffoffices/afn/finance/sop/planning_meetings_conferences_workshops_and_misc_events.html in the FAA.

b. *Securing Conference Space.* See AMS Real Property Guidance 2.4.6, Appendix F, for real property considerations regarding short-term conference and meeting space. Warranted Contracting Officers under the acquisition organization and the real property organization have the authority to secure conference space. Generally, such space can be contracted for utilizing a standard purchase order or on a purchase card. If the conference space provider produces their own conference form, it must be reviewed for unacceptable terms/language and when acceptable, signed by a warranted Contracting Officer.

c. *Legal Review*. Legal counsel must first review any agreement in excess of $100,000 (total Government expenditures including room charges for the attendees) between FAA and a hotel. Except as provided below, agreements below $100,000 do not require review, but review may be sought at the discretion of the CO or the CO's delegate.

(1) Changes to the following AMS clauses require legal review regardless of the dollar value:

(a) 3.9.1-1 Contract Disputes; and

(b) 3.10.6-1 Termination for Convenience of the Government (Fixed Price).

(2) Incorporation of the following clauses requires legal review regardless of the dollar value:

(a) Clauses making any law (including state law) other than Federal law controlling;

(b) Clauses that establish liability beyond what is funded or contingent liability beyond the limits imposed allowed the Federal Tort Claims Act; and

(c) Clauses requiring binding arbitration.

d. *Travel-related Costs*. Employee's travel, hotel, local transportation, and per diem must be paid with the FAA travel card. An employee's travel-related costs cannot be paid for under a contract, purchase order, or FAA purchase card.

e. *Items for Distribution to Conference Attendees*. Generally, personal use items, such as mugs, clothing, or bags, cannot be purchased and given to conference attendees. Conference planners must consult with legal counsel before purchasing any items to be distributed to conference or event attendees.

f. *Food and Beverage*.

(1) The FAA may purchase food and beverage for conference participants under the following narrowly defined circumstances:

(a) *Formal Conferences*.

(i) The term "formal conference" usually denotes topical matters of interest to and participation of multiple agencies and/or non-Governmental participants. Other indicators are registration, published substantive agenda, scheduled speakers and discussion panels.

(ii) The meals, beverages, and refreshments must be incidental to the conference.

(iii) The employees are not free to take meals elsewhere without being absent from the essential business of the meeting.

(iv) The meals, beverages, and refreshments must be part of a formal conference that includes both substantial functions at the time the meals, beverages and refreshments are served and substantial functions separate from when food, beverages, or refreshments are served.

(v) At formal conferences where the above criteria are met, FAA may also pay for the food, beverages, and refreshments of private citizens or Federal employees from other agencies when an administrative determination is made that their attendance is necessary to achieve the program or conference objectives.

(b) *Internal FAA Training Conferences*. The meals, beverages, and refreshments must be:

(i) Incidental to the conference;

(ii) Attendance at the meals must be necessary for full participation in the conference; and

(iii) The employees are not free to take meals elsewhere without being absent from the essential business of the meeting.

(c) *Award Ceremonies*. The FAA may purchase light refreshments for award ceremonies. If not awarded through a contract or purchase order, the FAA purchase card must be used to purchase light refreshments.

(d) *Cultural Awareness Ceremonies*. The FAA may purchase food or beverage if part of a formal program intended to both advance Equal Employment Opportunity objectives and provide cultural or ethnic awareness. Food and beverage must be part of a culture's food and beverage and offered as part of a

larger program that serves an educational function.

(e) *Official Receptions*. For official receptions hosted by the Administrator (or designated senior executive) for foreign or non- Federal dignitaries, FAA may purchase light refreshments, meals, snacks, and beverage. The Administrator's official reception and representation funds must be used for these events (see FAA Order 1200.3). The FAA purchase card may be used to purchase food or beverage for these events.

(2) Except for FAA award ceremonies and the Administrator's official receptions, FAA purchase card cannot be used as a procurement vehicle for food and beverage; a purchase order or contract must be used instead. However, the purchase card may be used to make payment against a duly executed contract signed by a warranted CO.

(3) Food and beverage costs must be reasonable, must not include alcoholic drinks, and cannot be purchased for amusement or social events, such as networking sessions, team-building exercises, or hospitality suites (except hospitality functions at the Administrator's official receptions).

(4) The FAA cannot purchase food and beverage for routine meetings to discuss day-to-day issues. Examples of routine meetings include those to discuss day-to- day operations, to develop business plans to accompany FAA goals, or to develop performance targets.

(5) The FAA may pay a facility rental fee that includes the cost of food or beverages provided to FAA employees where the fee is all-inclusive, not negotiable and competitively priced to those that do not include food.

(6) Foods that constitute "light refreshments" are snacks, such as cookies, and beverages. Light refreshments for morning, afternoon or evening breaks are defined to include: coffee, tea, milk, juice, soft drinks, water, donuts, bagels, fruit, pretzels, cookies, chips, or muffins or related items of similar value. This is distinguished from a meal such as breakfast, lunch or dinner, or multiple heavy hors d'oeuvres. Meals are not "light refreshments."

g. *Justification for Food and Beverage.* The FAA's policy is to not use, nor create the appearance of use of, Government funds to entertain Federal employees. Before contracting for a conference or event with food and beverage, the Director (or equivalent management level) of the organization sponsoring the event and legal counsel must approve a written justification explaining why food and beverage is necessary. The justification must describe:

(1) Nature and purpose of the event;

(2) Applicability of the event to FAA's programs or activities;

(3) Any statutory, regulatory, or other authority for the event;

(4) Participants;

(5) Dates;

(6) Facility and location;

(7) Estimated cost; and

(8) Reason why food and beverage is necessary.

(9) Meal(s) that will need to be offset in attendees' travel vouchers; and

(10) Keynote functions which include meals. The description of the function is to include any keynote speakers, the type of presentation(s) being given and how they are integral to the conference.

h. *Travel Vouchers and Per Diem*. Conference attendees must offset in their travel vouchers the cost of meals paid for and provided by the Government. Light refreshments do not need to be offset in travel vouchers. See FAA Travel Policy for rules when meals are furnished by the Government.

i. *Registration Fees.* Registration fees are payments collected by FAA, or a support contractor on behalf of FAA, from private and other public participants attending an FAA-sponsored conference. If FAA wishes to charge a registration fee, it must have statutory authority to do so. Under 31 U.S.C. 3302(b), FAA must deposit registration fees in the U.S. Treasury, unless there is specific statutory authority for FAA to keep and use fees collected. The FAA currently has statutory authority to credit back to its operations account authorized collections; therefore conference planners should check with legal counsel before depositing authorized registration fees into the general treasury. FAA may not authorize a conference support contractor to charge a fee to offset costs. However, in cases when FAA co-sponsors a conference and the co-sponsor incurs the cost of the conference without FAA reimbursement, the co-sponsor is permitted to collect registration fees to cover its costs.

**B Clauses**

view contract clauses

**C Forms**

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## T3.2.2.6 - Unsolicited Proposals Revised 10/2008

### A Unsolicited Proposals

#### 1 Responsibilities Revised 10/2012

a. *Central Point of Contact*. The Acquisition Policy Division (AAP-100) is the central point of contact for unsolicited proposals(UPs), and has overall responsibility for control and tracking of all UPs in FAA.

b. *Designated UP Coordinator*. Each office head or service director in Washington headquarters, Regional Administrators, and Center Directors should designate a person as a contact and coordinator for UPs. The UP coordinator will receive, track, and forward UPs to the appropriate office for evaluation and appropriate correspondence.

(1) For Washington headquarters, AAP-100 is the UP coordinator.

(2) For Regions and Centers, acquisition offices should designate a UP coordinator (the UP coordinator need not be in the acquisition office). Acquisition offices should forward to AAP-100 the name, routing symbol, and phone number of the UP coordinator(s) for their region or center. The information should be updated whenever a UP coordinator changes.

c. *UP Evaluator*. UP evaluators are individuals who conduct a comprehensive review of UPs to determine if the ideas offered are innovative and unique, are independently originated, prepared without FAA supervision, could benefit FAA's mission, and are not an advance proposal for a known FAA requirement.

**2 Content of UP**

A UP should contain:

a. Offeror's name and address;
b. Names and phone numbers of personnel to be contacted for evaluation and negotiation purposes;
c. Type of organization, e.g., small business, non-profit, etc.;
d. Concise title and abstract of the proposed effort;
e. An outline and discussion of the purpose of the proposal and how it relates to the work of the FAA, the approach to the problem, and the nature and extent of the anticipated results;
f. Names of key personnel, with brief biographical descriptions, and relevant experience;
g. Length of time required to perform the work;
h. Proposed cost, including separate cost estimates for salaries, equipment, and other direct or indirect costs;
i. Name and addresses of any other Government agencies to whom the same or similar proposal has been submitted;
j. Brief description of facilities, particularly those to be used in the proposed effort;
k. Brief outline of previous work and experiences in the field;
l. The period of time which the proposal is valid;
m. Identification of any proprietary data;
n. Required statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts; and
o. Signature of a person authorized to represent and contractually obligate the offeror.

## 3 Receipt of UP Revised 10/2012

a. *Receipt Outside of AAP-100*. Often UPs are submitted directly to technical organizations, rather than to AAP-100. If an unsolicited proposal is received outside of AAP-100, the recipient should record the date of receipt and immediately send all copies to AAP-100. *The recipient must not read the UP upon receipt*, except to read any transmittal document to ascertain that a UP is being submitted. This safeguard is necessary to prevent any premature disclosure of any information which may be considered confidential or proprietary by the offeror.

b. *UPs Received by Regions and Centers*. UPs are sometimes submitted directly to regions and centers because the nature of the UP pertains only to region or center activities. Region and center UP coordinators may process these UPs if the subject matter indicates the region or center should evaluate the UP. The UP recipient should deliver all copies of the UP to the UP coordinator for the region or center. The UP coordinator will notify AAP-100 by e-mail of receipt of the UP and the subject matter; AAP-100 will assign a UP number for identification purposes and inform the region/center of that number. The UP coordinator will promptly send AAP-100 one copy of the UP and copies of all correspondence to the offeror and evaluating office.

c. UP coordinators for regions and centers will follow the same procedures as AAP-100 for processing UPs.

## 4 Procedures Revised 10/2012

a. AAP-100 will process UPs as follows:

(1) Review each submission received and determine whether it constitutes a valid UP;

(2) Maintain an appropriate UP record;

(3) If a valid UP, send the UP to a UP evaluator for review;

(4) If it is not accepted, return the UP to the offeror advising of FAA policy and procedures regarding the treatment of UPs. A UP may be returned if:

(a) It is not related to the FAA mission (when returning the UP, if possible identify any other DOT operating administration whose mission may be related to the subject matter);

(b) The offeror requests withdrawal of the UP without an evaluation;

(c) The UP is not accepted for evaluation for any appropriate reason; or

(d) It does not contain a restrictive legend.

(5) Coordinate with the Procurement Legal Division (AGC-500) if any questions arise regarding proprietary data

(6) AAP-100 will retain one copy of the UP and return all remaining copies to the offeror if the UP will not be supported.

b. *Proprietary Data*. UPs may contain unique ideas which involve proprietary data. To safeguard this data and ensure restricted data is not disclosed, AAP-100 will place a cover sheet on the UP stating the following: "UNSOLICITED PROPOSAL - USE OF DATA LIMITED. All Government personnel must exercise extreme care to ensure that information in this proposal is not disclosed outside the Government and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the proposal without the written permission of the offeror. If a contract is awarded on the basis of this proposal, the terms of the contract must control disclosure and use. The notice does not limit the Government's right to use information contained in the proposal if it is obtainable from another source without restriction. This is a Government notice and will not by itself be construed to impose any liability upon the Government or Government personnel for disclosure or use of data contained in this proposal."

## 5 Evaluation Revised 10/2012

a. *UP Evaluator Responsibilities*.

(1) After receiving a UP from AAP-100, the UP evaluator should promptly perform an initial review of the UP to determine whether it has been submitted to the appropriate office. If the UP evaluator determines another office should perform the review, then the UP evaluator must immediately return the UP to AAP-100 with advice about which office should perform the review. The UP evaluator should also identify and coordinate with any other organizations that should assist in the evaluation of the UP, and advise AAP-100 accordingly.

(2) The UP evaluator should ensure a comprehensive evaluation of the UP is completed within 30 days after receipt from AAP-100. Coordinating with other offices, if necessary, should be factored into the 30 day time period. If the review cannot be completed within 30 days, the UP evaluator should advise AAP-100 of the reasons for the delay and when the evaluation is expected to be completed.

(3) UP evaluators may consider the following when reviewing and deciding whether to support a UP:

(a) Unique and innovative methods, approaches or concepts are demonstrated;

(b) Overall scientific, technical, or socio-economic merits of the proposal;

(c) Potential contribution of the effort to the FAA's mission;

(d) The offeror's capabilities, related experience, facilities, techniques or unique combinations of these which are integral factors for achieving the proposal objectives; and

(e) The qualifications, capabilities and experience of the proposed principal investigator, team leader, or key personnel who are critical to achieving the proposal objectives.

b. Once the evaluation is completed, the UP evaluator should advise AAP-100 by memorandum of the results of the evaluation.

(1) If the proposal will not be supported, that is, the FAA does not intend to award a contract based on acceptance of the proposal, the UP evaluator should include with the memorandum a draft reply to the offeror, with appropriate comments concerning the proposal and the specific reasons why the proposal will not be pursued. The UP evaluator should also return all copies of the UP to AAP-100.

(2) If the proposal will be supported, the UP evaluator should submit with the memorandum:

(a) A procurement request for the requirement; and

(b) Written justification to support a recommendation for a single source contract.

(c) If the UP will be supported, it will be the basis for negotiating a contract.

## 6 Notifying the Offeror Revised 10/2012

a. AAP-100 will provide the following written notifications to offerors:

(1) Acknowledge receipt of the UP from the offeror, and include a UP identification number for tracking purposes in the acknowledgment.

(2) Advise the offeror of the status of the proposal if the evaluation is not completed within 30 days, or is delayed, and the date the evaluation is expected to be completed;

(3) Advise the offeror of the results of the evaluation, using the UP evaluator's draft letter and any other data to explain why the proposal will or will not be supported by the FAA.

## 7 Prohibitions

a. Government personnel must not use any data, concept, idea, or other part of a UP as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea available to the Government from other sources without restriction.

b. Government personnel must not disclose restrictively marked information included in a UP. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under
18 U.S.C. 1905.

**B Clauses**

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**C Forms**

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### T3.2.2.7 - Contractor Qualifications Revised 1/2009

**A Contractor Qualifications**

**1 Responsibility Determination of Prospective Contractors** Revised 7/2012

a. *General Standards.* A responsible contractor:

(1) Has or can obtain adequate financial resources to perform a contract;

(2) Has the ability to meet any required or proposed delivery schedules;

(3) Has a satisfactory performance history;

(4) Has a record of integrity and proper business ethics;

(5) Has appropriate accounting and operational controls that may include, but are not limited to:

(a) Production control;

(b) Property control systems;

(c) Quality assurance programs; and

(d) Appropriate safety programs; and

(6) Is qualified and eligible to receive an award under applicable laws or regulations.

b. *Determination*.

(1) The Contracting Officer's (CO) signature on a contract constitutes a determination that a prospective contractor is responsible with respect to that contract.

(2) The burden of proof is on the prospective contractor to demonstrate its responsibility to perform under the terms of the contract.

c. *Obtaining Information*. When making a determination of responsibility, the CO should have, or obtain, information sufficient to be satisfied that a prospective contractor currently meets applicable standards. The CO should apply the following guidelines in collecting data/information:

(1) Generally, the CO should obtain information on prospective contractors promptly after receipt of offers. Requests for information should ordinarily be limited to information from those offerors most likely to be considered for award, and may include requesting preaward surveys. Depending on the circumstances, the CO may obtain this information before issuing the screening information request (SIR).

(a) A preaward survey may be useful when the information on hand or readily available to the CO is not sufficient to make a determination regarding responsibility. When the requirement is for smaller dollar amounts or commercial items, the CO should consider the cost of the preaward survey in relationship to the requirement.

(b) Preaward surveys should be managed and conducted by the surveying activity. Whether the surveying activity is within or outside of the contract administration office, the CO should obtain from the office or auditor:

(i) Any information required concerning the prospective contractor's financial competence and credit needs; and

(ii) The adequacy of the prospective contractor’s accounting systems and the suitability of their use in administering the proposed type of contract.

(c) When a preaward survey discloses previous unsatisfactory performance, the surveying activity should specify the extent to which the prospective contractor has taken or plans corrective action. Lack of evidence that past failure to meet contractual requirements was the prospective contractor’s fault does not necessarily indicate satisfactory performance.

(d) The surveying activity may provide an abbreviated survey report when it possesses information that supports a recommendation of complete award without an on-site survey and no special area for investigation has been requested.

(e) Information on financial resources and performance capability should be current as of the date of award.

(f) The CO's request to the surveying activity should include:

(i) Additional factors about which information is needed;

(ii) The complete SIR package (unless it was previously been furnished), and any information indicating prior unsatisfactory performance by the prospective contractor;

(iii) A statement whether the contracting office will participate in the survey;

(iv) The date by which the report is required. This date should be consistent with the scope of the survey requested and normally should allow at least 7 working days to conduct the survey; and

(v) When appropriate, limitations on the scope of the survey.

(2) In addition to the preaward survey, the CO may use the following sources of information to support responsibility determinations:

(a) Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices.

(b) The prospective contractor, including proposal information, questionnaire replies, financial data, information on production equipment, and personnel information.

(c) Other sources such as publications, suppliers, subcontractors, customers of the prospective contractor, and financial institutions; or

(d) If the contract is for construction, the CO may consider performance evaluation reports.

(3) The CO must review the "Exclusions" portion of the "Performance Information" capability in the System for Award Management (SAM) to ensure prospective contractors are not listed. (See Notices to SAM below).

(4) Contracting offices and cognizant contract administration offices that become

aware of circumstances casting doubt on a contractor's ability to perform contracts successfully should promptly exchange relevant information.

d. *Documentation.* The CO should consider the following guidelines for documenting contractor responsibility determinations:

(1) A determination of responsibility requires no additional documentation beyond the CO's signature on the contract. Supporting documents such as the preaward survey reports, performance records, and related data/information should be included with other contract file documentation.

(2) If a prospective offeror who is otherwise eligible to receive an award is determined to be nonresponsible, the CO should insert signed documentation in the contract file supporting the nonresponsibility determination. Supporting documentation such as preaward survey reports, performance records, and related data/information should also be included in the file with the nonresponsibility determination.

(3) A nonresponsibility determination for a small business is processed in the same manner as for large businesses. There is no requirement to coordinate with the Small Business Administration (SBA); however the CO may choose to consult with FAA's Office of Small Business Development (OSBD) or local Small Business Development staff.

## 2 Team Arrangements Revised 1/2009

a. *General.*

(1) Team arrangements are cooperative arrangements where:

(a) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or

(b) A potential prime contractor enters into an agreement with one or more other companies to have them act as subcontractors under a specific contract.

(2) Benefits of team arrangements to both FAA and an offeror or contractor include, but are not limited to:

(a) Increases competitive edge and presents a stronger position to FAA;

(b) Provides companies access to new markets and opportunities;

(c) Allows companies to collaborate and focus on their core capabilities;

(d) Brings differing skills and experience together into one solution for FAA;

(e) More opportunities for small and small disadvantaged businesses; and

(f) Decreased costs.

(3) Team arrangements may prove particularly appropriate for research and development (R&D) requirements; however they may be used in other types of acquisitions as well.

(4) FAA will not normally require the dissolution of team arrangements.

(5) Guidance on determining small business size standards for team arrangements can be found in AMS Procurement Guidance T3.6.1.

b. *Joint Venture.*

(1) A joint venture is a separate legal entity, such as a partnership or corporation, formed by two or more parties to conduct business.

(2) In a joint venture, each party contributes equity and shares:

(a) In any revenues;

(b) Expenses incurred; and

(c) In the management or control of the venture.

(3) Joint ventures may be a continuing business relationship or for just one or more projects.

c. *Disclosure of Team Arrangements.* In order for FAA to recognize the validity of a team arrangement, the arrangement and company relationships must be fully disclosed:

(1) In the offer; or

(2) Before the arrangement becomes effective when formed after the submission of an offer or contract award.

d. *Antitrust Law and FAA Rights.*

(1) All team arrangements must comply with all applicable antitrust statutes.

(2) Despite any team arrangement, FAA retains the right to:

(a) Require consent to subcontracts;

(b) Determine the responsibility of the prime contractor;

(c) Provide to the prime contractor data rights owned or controlled by the Government;

(d) Hold the prime contractor responsible for contract performance; and

(e) Apply other AMS requirements such as those for competition or subcontracting.

## 3 Debarment and Suspension Revised 4/2013

a. *General*.

(1) Debarment and suspension are discretionary actions that are appropriate means to implement FAA policy and should be undertaken only to protect the interest of FAA. Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts. FAA will not solicit offers from, award contracts to, consent to subcontracts, or conduct business with contractors that are debarred, suspended, or proposed for debarment:

(a) In their individual capacities;

(b) As agents or representatives of other contractors; or

(c) As sureties on FAA contracts.

(2) *Compelling Exception.* The FAA will not conduct business with contractors that are debarred, suspended, or proposed for debarment, unless the Administrator, or designee, determines that there is a compelling reason for such action.

(3) *Debarring/Suspending Official.* The Administrator is both the debarring official and the suspending official. However, the Administrator may authorize individuals to act as the debarring or suspending official. The debarring or suspending official is the only individual with the authority to make debarment or suspension decisions.

(4) *Effect on Divisions/Affiliates.* Suspension or debarment applies to all divisions or other organizational elements of the contractor, unless the suspension or debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring and suspending official(s) may also extend the debarment decision to include any affiliates of the contractor if they are:

(a) Specifically named;

(b) Given written notice of the proposed debarment; and

(c) Given written notice of an opportunity to respond.

(5) *Continuation of Current Contracts.* Contractors debarred, suspended or proposed for debarment may continue to perform current contracts or subcontracts, unless the

Administrator or designee determines otherwise. However, FAA should not renew or extend the current contract period, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment unless the Administrator, or designee, determines that there are compelling reasons for renewal or extension.

(6) *Ineligible Based on Statute or Regulation*. Contractors declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts under the conditions and for the periods set forth in the statute or regulation.

(7) *Initiating the Debarment/Suspension Action.* When the CO, or requisitioner/program official, determines that cause for debarment or suspension may exist, the information together with any supporting documentation should be provided to the Assistant Chief Counsel for the Procurement Legal Division (AGC-500). AGC-500 will appoint a debarment/suspension officer to investigate whether cause for debarment or suspension exists. The FAA Acquisition Executive will have oversight responsibility and will monitor implementation of the debarment and suspension program.

(8) *The Administrative Record*. The debarment officer will assemble the Administrative Record, which is a consolidated set of records, information, and documentation that clearly demonstrates the basis for the debarment or suspension and the events and actions taken throughout the entire process such as:

(a) Cause for debarment or suspension;

(b) Notice of proposal to debar/suspend;

(c) Contractor’s responses, arguments, disputes;

(d) Consideration given to contractor’s responses;

(e) Resolution of contractor’s comments or disputes, etc.;

(f) Findings of fact;

(g) Other communications with the contractor;

(h) Final report and recommendation to the Debarring Official/Suspending Official;

(i) Debarring/Suspension Official determinations;

(j) Final notice to the contractor/affiliate; and

(k) Notice to the General Services Administration (GSA) regarding the debarment/suspension (see Notices to GSA and System for Award Management (SAM) below). The notice should include the FAA-accepted acronym "DOT- FAA."

(l) Within 45 days of proper notification ("proper notification" is defined as: a referral from the Office of Inspector General that includes either a copy of the Federal, State, or local indictment or civil complaint or other official correspondence or documentation evidencing the indictment or civil complaint from the Department of Justice/United States Attorney. (Internet sources and local newspaper articles as well as unverified news sources are unacceptable for documentation)), FAA will either initiate a debarment or suspension proceeding, or make a decision that a debarment or suspension is not appropriate. If a decision is made not to initiate a debarment or suspension proceeding after proper notice is received, then a justification will be made part of the written record within 45 days after proper notice.

(9) *Scope of Debarment/Suspension.*

(a) Fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct should be considered as evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent criminal, or other seriously improper, conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct must be evidence of such knowledge, approval, or acquiescence.

(10) *Failure to Disclose Violation of Federal Criminal Law.* Whether or not AMS clause 3.2.5-13 is applicable, a contractor may be suspended and/or debarred for knowing failure by a principal to timely disclose to the Government, in connection with award, performance, or closeout of a Government contract performed by the contractor or a subcontract awarded thereunder, credible evidence of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act. Knowing failure to timely disclose credible evidence of any of the above violations remains a cause for suspension and/or debarment until three (3) years after final payment on a contract.

b. *Debarment.*

(1) *Causes for Debarment.* The debarring official should debar a contractor based upon the following:

(a) Conviction of or civil judgment for:

(i) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;

(ii) Violation of Federal or State antitrust statutes relating to the submission of offers;

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(iv) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see Section 202 of the Defense Production Act (Pub. L. 102-558); or

(v) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) A preponderance of the evidence for the following:

(i) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as:

(A) Willful failure to perform in accordance with the terms of one or more contracts; or

(B) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(ii) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by:

(A) Failure to comply with the requirements of AMS Clause 3.6.3-16, Drug Free Workplace; or

(B) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace.

(iii) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see Section 202 of the Defense Production Act (Pub. L. 102-558)).

(iv) Commission of an unfair trade practice as defined herein (see also Section 201 of the Defense Production Act (Pub. L. 102-558)).

(v) Delinquent Federal taxes in an amount that exceeds $3,000

(A) Federal taxes are considered delinquent for purposes of this provision if both of the following criteria apply:

(1) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(2) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(B) Examples.

(1) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(2) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal

rights.

(3) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(4) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(vi) Knowing failure by the principal, until three (3) years after the final payment on any FAA contract awarded to the contractor, to timely disclose to FAA, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of:

(A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;

(B) Violation of the civil False Claims Act (31 U.S.C. 3729-3733);
or

(C) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments.

(c) A determination by the Attorney General of the United States, or designee, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989). The Attorney General's determination is not reviewable in the debarment proceedings.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

(2) *Debarment Procedure*

(a) *Notice Of Proposed Debarment.* If after review of the record and any additional investigation, the debarring official determines that there is sufficient cause for debarment, the debarring official must issue a Notice of Proposed Debarment to the contractor and any specifically named affiliates. The notice should be mailed by certified mail, return receipt requested, stating that debarment is being considered. The notice should also state:

(i) The specific name the firm and any affiliate being considered for debarment;

(ii) That debarment is being considered;

(iii) The reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(iv) The cause(s) relied upon under Section 3.b, Debarment;

(v) That within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;

(vi) The FAA's process for completing the debarment proceeding;

(vii) The effect of the issuance of the notice of proposed debarment on the contractor; and

(viii) The effect of debarment on the contractor and any affiliates.

(b) *Contractor's Response to the Notice of Proposed Debarment.* The contractor's response will be reviewed to identify issues that could affect the outcome and merit further exploration.

(c) *Mitigating Factors.* The existence of a cause for debarment does not require that the contractor be debarred. The debarring official may consider the following mitigating factors, none of which is by itself dispositive, in determining whether or not to debar a contractor:

(i) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment, or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.

(ii) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

(iii) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(iv) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.

(v) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(vi) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

(vii) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

(viii) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

(ix) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

(x) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

(d) *Debarring Official's Decision.*

(i) *Actions Based Upon a Conviction or Civil Judgment or Without Genuine Dispute Over Material Facts.* In this type of action, the debarring official will consider the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the debarring official should make the decision within 30 working days after receipt of any information and argument submitted by the contractor, or within a reasonable time thereafter.

(ii) *Actions Not Based Upon a Conviction or Civil Judgment.* Where the proposed debarment is ***not*** based upon a conviction, civil judgment, or indictment, or the contractor's response to the Notice of Proposed Debarment raises a genuine dispute over facts material to the proposed debarment, the debarring official may, upon the request of a contractor:

(A) Provide the contractor an opportunity to appear informally with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(B) Make a transcribed record of the proceedings and make it available at cost to the contractor.

(iii) *Evidentiary Standard for Debarments not Based Upon Conviction or Civil Judgment.* In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(iv) *Demonstrating Responsibility.* If a cause for debarment exists, the contractor has the burden of demonstrating that, notwithstanding the existence of a cause or causes for debarment, the contractor is presently responsible to perform Government contracts.

(v) *Period of Debarment*.

(A) The debarring official should consider the facts and determine a debarment period commensurate with the seriousness of the cause(s) and sufficient to protect the Government's interest. Generally, debarment should not exceed three (3) years, except that debarment for violation of the provisions of the Drug- Free Workplace Act of 1988 may be for a period not to exceed five (5) years. Debarments subject to the Immigration and Nationality Act should not exceed one (1) year and may be extended for additional periods of one (1) year if the Attorney General or designee determines that the contractor continues to be in violation of the employment provisions of the Immigration and Nationality Act. If suspension precedes a debarment, the suspension period should be considered in determining the debarment period.

(B) The debarring official should extend the period of debarment if that official determines that extension is necessary to protect the Government. However, a debarment may not be extended solely on the basis on the facts and circumstances upon which the initial debarment action was based.

(e) *Notice of Debarment to Contractor/Affiliates.*

(i) The debarring official will provide the contractor and each affiliate identified for debarment/suspension with a Notice of Debarment/Suspension by mailing the notice by certified mail, return receipt requested. The notice will:

(A) Refer to the Notice of Proposed Debarment;

(B) Specify the reasons for debarment;

(C) State the period of suspension/debarment, including effective dates; and

(D) Advise that the debarment is effective throughout the executive branch of the Government unless the debarring

official determines that there are compelling reasons for FAA to continue to do business with the contractor.

(ii) *Debarment Not Imposed.* If debarment is not imposed, the debarring official will promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

c. *Suspension.*

(1) *Applicability.* Suspension is appropriate when the suspending official determines that immediate action is necessary to protect the government's interest pending the completion of legal proceedings, or the agency investigation of the improper conduct.

(2) *Causes for Suspension*.

(a) The suspending official should suspend a contractor as defined herein, upon **adequate evidence**, of:

(i) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, performing a public contract or subcontract;

(ii) Violation of Federal or State antitrust statutes relating to the submission of offers;

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(iv) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by:

(A) Failure to comply with the requirements of the AMS Clause 3.6.3-16, "Drug Free Workplace;" or

(B) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace;

(v) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558));

(vi) Commission of an unfair trade practice as defined herein (see section 201 of the Defense Production Act (Pub. L. 102-558));

(vii) Delinquent Federal taxes in an amount that exceeds $3,000. See

the criteria at T3.2.2.7.A.3.b.(1)(b)(i)(B)(v) for when taxes are considered delinquent;

(viii) Knowing failure by the principal, until three (3) years after the final payment on any FAA contract awarded to the contractor, to timely disclose to FAA, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of -

(A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;

(B) Violation of the civil False Claims Act (31 U.S.C. 3729-3733);

(C) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments; or

(ix) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Indictment for any of the causes in paragraph (a) above constitutes adequate evidence for suspension.

(c) The suspending official should upon **adequate evidence** also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

(3) *Suspension Procedure.*

(a) *Notice of Suspension*. If cause for suspension exists, the suspending official will issue a notice of suspension to the contractor and any specifically named affiliates, if applicable. No hearing is required prior to the imposition of suspension. The notice must be sent by certified mail, return receipt requested, and must state:

(i) That the contractor has been suspended and that the suspension is based upon an indictment or other adequate evidence that the contractor has committed irregularities of a serious nature in business dealings with the Government or seriously reflecting on the propriety of further Government dealings with the contractor. The irregularities must be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(ii) That the suspension is for a temporary period pending the completion of the investigation and such legal proceedings that may ensue;

(iii) The cause relied on for suspension (see Causes for Suspension);

(iv) The effect of the suspension on the contractor and affiliates;

(v) That within thirty (30) days after receipt of the notice, the contractor may submit in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional information that raises a genuine dispute over material facts; and

(vi) That additional proceedings may be conducted to determine disputed material facts unless:

(A) The action is based upon an indictment; or

(B) A determination is made, on the basis of Justice Department advice, that the substantial interests in the Government in a pending or contemplated legal proceeding based on the same facts as the suspension would be prejudiced.

(b) *Suspending Official's Decision.*

(i) In actions that are based on an indictment, in which the contractor's submission does not raise a genuine dispute over material facts, or in which the Department of Justice has denied additional proceedings to determine disputed facts, the suspending officials decision must be based on the administrative record, including any submission made by the contractor.

(ii) In actions not based upon an indictment or actions in which the Department of Justice has not denied additional proceedings, the suspending official may, upon the contractor's request, provide the contractor an opportunity to appear informally with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents. At the discretion of the suspending official, a transcribed record of the proceedings may be made and made available at cost to the contractor upon request.

(4) *Other Actions by the Suspending Official.*

(a) *Written Findings.* The suspending official must make written findings of fact and base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(b) *Suspending Official's.* The suspending official may modify or terminate the suspension or leave it in force. However, a decision to modify or

terminate a suspension does not prevent any other agency from suspending or debarring the contractor under the same facts or circumstances.

(5) *Period of Suspension.*

(a) Suspensions must be for a temporary period as stated in 3.a. (ii) above unless otherwise terminated sooner by the CO. The CO must notify the Department of Justice (DOJ) of the proposed termination of the suspension at least 30 days prior to the expiration of the initial 12-month period to give DOJ an opportunity to request an extension.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension must be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for another 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(6) *Notices to Contractor/Affiliates.* The suspending official must provide prompt written notice of the decision to the contractor and any affiliates involved.

## 4 Notices to GSA and SAM Revised 7/2012

a. *Notice to GSA.* The appropriate CO, at the direction of the debarring/suspending official, will provide GSA the information specified below within 5 working days after a debarment/suspension is effective:

(1) The names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The name and official acronym ("DOT-FAA") of the agency or other authority taking the action;

(3) The cause for the action other statutory or regulatory authority;

(4) The effect of the action;

(5) The termination date for each listing;

(6) The DUNS No; and

(7) The name and telephone number of the point of contract for the action.

b. *System for Award Management (SAM).*

(1) GSA operates the web-based SAM. The "Exclusions" portion of the "Performance Information" capability includes the:

(a) Names and addresses of all contractors debarred, suspended, proposed for debarment, declared ineligible, or excluded or disqualified under the nonprocurement common rule, with cross-references when more than one name is involved in a single action;

(b) Name of the agency or other authority taking the action;

(c) Cause for the action or other statutory or regulatory authority;

(d) Effect of the action;

(e) Termination date for each listing;

(f) DUNS No.;

(g) Social Security Number (SSN), Employer Identification Number (EIN), or other Taxpayer Identification Number (TIN), if available; and

(h) Name and telephone number of the agency point of contact for the action.

(2) For information about adding a contractor to SAM, the CO should contact the DOT representative listed under the agency contacts on the SAM website.

**5 Prohibition Against Contracting with Inverted Domestic Corporations** **Revised 10/2015**

(a) To be eligible for a contract award, an offeror must represent it is not an inverted domestic corporation or subsidiary as defined under the "Definitions" section below. Any offeror that cannot so represent is ineligible for contract award.

(b) Contracting Officers must rigorously examine known circumstances that would lead a reasonable business person to question an offeror's self-certification and, after consultation with legal counsel, take appropriate action when that questionable self-certification cannot be verified.

(c) *Waiver*. The FAA Administrator may waive the requirements of this Section if the FAA Administrator determines in writing that a waiver is required in the interest of national security, documents the determination, and reports it to Congress.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

## D Appendix 1 - Definitions Revised 10/2015

"Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.

"Affiliates." Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly:

(a) Either one controls or has the power to control the other, or

(b) A third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

"Agency," as used in this subpart, means any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

"Civil judgment" means a judgment or finding of a civil offense by any court of competent jurisdiction.

"Contractor," as used in this subpart, means any individual or other legal entity that:

(a) Directly or indirectly (*e.g.*, through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or

(b) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

"Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

"Debarment," as used in this subpart, means action taken by a debarring official to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor so excluded is "debarred."

"Debarring official" means:

(a) An agency head; or

(b) A designee authorized by the agency head to impose debarment.

"Excluded Parties List" means a list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about parties debarred, suspended, or voluntarily excluded under the Nonprocurement Common Rule or the Federal Acquisition Regulation, parties who have been proposed for debarment under the Federal Acquisition Regulation, and parties determined to be ineligible.

"Indictment" means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense must be given the same effect as an indictment.

"Ineligible," as used in this subpart, means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh- Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts and Executive orders.

“Inverted Domestic Corporation” means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b) applied in accordance with the definitions of 6 U.S.C. 395(c).

"Legal proceedings" means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

"Nonprocurement Common Rule" means the procedures used by Federal Executive Agencies to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions under Executive Order 12549. Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements.

"Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

"Suspending official" means:

(a) An agency head; or

(b) A designee authorized by the agency head to impose suspension.

"Suspension," as used in this subpart, means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor so disqualified is "suspended."

"Unfair trade practices," as used in this subpart, means the commission of any or the following acts by a contractor:

(a) A violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as determined by the International Trade Commission.

(b) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq*.) or any similar bilateral or multilateral export control agreement.

(c) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished.

## T3.2.2.8 - Describing FAA Needs Revised 10/2006

### A Describing Needs

### 1 Product Description Revised 10/2006

a. Product description is a generic term for documents, such as specifications, standards, voluntary standards, commercial item descriptions, or statements of work, that describe FAA's needs and are used for procurement purposes. The program official prepares the appropriate type(s) of product description based on the specific need to be obtained.

b. A product description should:

(1) Be accurate, clear, and concise;

(2) Reflect minimum needs;

(3) Not include overly restrictive requirements that would inhibit competition;

(3) Have measurable delivery, performance, objectives, or outputs;

(4) Encourage use of commercially-available items, when appropriate;

(5) Specify environmentally sound, and energy and water efficient products and services, and reduce or eliminate hazardous materials and wastes;

(6) Use metric measurements or a dual (metric/inch-pound) system of dimensions, when practical; and

(7) Use voluntary standards when possible.

### 2 Types of Specification Revised 10/2006

a. A specification describes physical, functional, or performance requirements of a material, product, system, data, or service, and includes criteria for determining whether or not the requirements are met. Types of specifications include:

(1) *Performance specification* that describes a product in terms of form, fit and function, and interface or interoperability requirements. "Form" describes the general constraints placed on the product; “fit" describes how the product must be compatible with related or existing products; and "function" describes what the product must do.

(2) *Design specification* that describes a product in terms of its detailed form or composition, such as specific materials, dimensions, design concepts, drawings, and manufacturing processes. This type of specification requires a product to meet all aspects of the design requirements and vendors cannot substitute their own design preference.

(3) *Hybrid specification* that combines design and performance specifications.

b. Performance specifications are generally preferred. Specifications may be coupled with a statement of work (SOW) to fully define all work requirements. (See AMS Procurement Toolbox Procurement Specification for a template and guidelines for preparing a specification.)

## 3 Standards Revised 10/2006

a. Standards establish uniform engineering and technical limitations and applications of items, materials, processes, methods, designs, and engineering practices. It includes any related criteria deemed essential to achieve the highest degree of uniformity in materials or products, or interchangeability of parts used in those products.

b. A voluntary standard (non-Government standard) is established by a private sector association, organization, or technical society, and available for public use; the term does not include private standards of individual firms.

c. Product descriptions citing standards and specifications should identify each documents by number, title, approval date and revision number. When appropriate, the program official should tailor Government standards and specifications to eliminate unnecessary or non-value added portions of the standard or specification.

d. ATO System Engineering organization maintains FAA standards and system specifications applicable to National Airspace System equipment. Also, information about Federal standards, specifications, and commercial item descriptions is available on the General Services Administration website, the Department of Defense Single Stock Point website, and the National Institute of Technology and Standards website.

## 4 Commercial Descriptions Revised 10/2006

a. Commercial item descriptions describe functional or performance characteristics of an

item and include industry standards, manufacturer's standards, and standard grades.

b. The FAA should use commercial products and services when possible. Consistent with this emphasis, product descriptions that describe voluntary commercial standards or use commercial item descriptions are preferred and will generally result in shorter delivery lead times than will use of detailed design or performance specifications.

c. The use of additional FAA specifications or testing requirements is generally not appropriate with commercial descriptions.

## 5 Brand Name Added 10/2006

a. Brand name or equal, and brand-name mandatory, product descriptions may be used when in the FAA's best interest.

b. *Brand name or equal* descriptions identify products by brand name, make, model, or catalog number and name of the manufacturer. Brand name or equal product descriptions must include both the brand name and a description of most important physical, functional, or performance characteristics that an equal product must meet to be acceptable for award. Other products (an equal product) must have the same salient characteristics as a brand name product.

(1) The rational basis for using brand name or equal description must be documented by the program official and address:

(a) FAA's requirement in terms of specific physical, functional, or performance characteristics, and interfaces or interoperability;

(b) Unique features, functions, or characteristics of the brand name product that satisfies FAA's requirement; and

(c) Market analysis of other manufacturer's products, and a description of why other product's functions, features, performance, interfaces, or interoperability do not meet FAA's requirements.

(2) When a brand name or equal description is used, the solicitation must state the brand name product and salient physical, functional, performance, and interoperability or interface characteristics of the brand name product so that vendors may offer alternative but equal products.

c. *Brand name-mandatory* descriptions identify a specific make, model, or catalog number, and manufacturer of a product. This type of description differs from brand name or equal because vendors may not provide an equal item. For brand name-mandatory, a single source justification is required (see AMS Procurement Guidance T3.2.2.4 "Single Source").

## 6 Statement of Work Revised 10/2006

a. A properly written statement of work (SOW) is critical for the FAA to communicate and

acquire what it needs. An SOW describes objectives, purpose, and requirements for the work to be accomplished. When possible, an SOW avoids defining the approach ("how to") to performing the work and should rely on the marketplace to define its own solution. The degree of specificity in an SOW depends on the type and size of the project. When possible, service contracts incorporate performance-based methods to encourage contractor innovation and efficiency, and to help ensure contractors provide timely, cost effective, and quality contract performance. Also, to the extent possible, an SOW complies with plain language requirements described in Order 1000.36, FAA Writing Standards.

b. *The 4 "W"s*. An SOW addresses who, what, when, and where of the required work, as applicable. It clearly defines expected outputs, deliverables, or objectives that can be measured. All 4 "W"s below are likely to be necessary in a service-type contract and should be included when appropriate in other types of work:

(1) What work will the contractor do?

(2) When is the work to be performed?

(3) Who should perform the work (what minimum qualifications, skills, education, and experience are needed)?

(4) Where must the work be performed?

c. *Redundancy*. The SOW should not repeat material included in other parts of the contract; e.g., general provisions, special provisions, payment, etc.. This makes a contract difficult to modify and can create ambiguity when even slightly different words are used to express the same thing in different places in the contract.

d. *Writing Style*. The SOW is written in a clear and direct style, using simplest words, phrases, and sentences, and without ambiguity so that the document will be readily understood. Indefinite or ambiguous terms, words or sentences are difficult to enforce and administer, and may be construed against the FAA.

e. *Active vs. Passive Voice*. Use direct, active sentence structure that clearly states the subject that will perform the requirement, as in the following example: "The Contractor must maintain all government property related to the contract." This sentence uses the active voice that clearly states the subject ("contractor") must perform the action ("maintain property"). The drafter should not use passive voice sentences. Passive voice implies who performs the action, as in the following example: "The government property related to the contract must be maintained." In this sentence, the subject who must maintain the property is not clearly stated, and could be interpreted as the FAA or contractor. Statements that do not directly assign an action to a subject are ambiguous, may be interpreted incorrectly, and may prevent the FAA from enforcing the rights intended in the statement.

f. *Terms/Abbreviations*. The first occurrence of new or complex terms should always be in full text. If an abbreviation will be used in further occurrences of the word, show the abbreviation in parenthesis following the first occurrence of the word.

g. *Word Selection.*

(1) Must/Will. The term “must” is used to specify a mandatory action from which the contractor cannot deviate. Any expression of a required action by the contractor should be stated as "the contractor must....". The word "will" is used to express declaration of future action on the part of the FAA. (As required by FAA’s plain language order 1000.36, “must” replaces the traditionally used “shall” when specifying mandatory action).

(2) Any/Either/Or. These words imply a choice that either party may make, and should be avoided.

(3) Use of Pronouns. To avoid misinterpretation, use or repeat the noun rather than substitute it with a pronoun. Pronouns can create uncertainty as to what or whom the pronoun refers to which again promotes ambiguity.

h. *Other Elements.* The SOW should be tailored to the specific need. The following sections may be included when appropriate, provided they are not addressed elsewhere:

(1) General. This section should provide a broad overview of the SOW. It could include a general description of the scope of work;

(2) If there are personnel restrictions or requirements, they should be included;

(3) Quality control requirements;

(4) Definitions. A definition section includes all special terms and phrases used in the SOW. The definitions must clearly establish what is meant so that all parties will fully understand them. Also, SOW writers should carefully review trade terms or terms considered common to the industry, and provide definitions when those terms represent "slang" or are terms used only in specific geographical or industrial areas;

(5) Government-furnished property and services. If the Government will provide any property or services for the contractor's use during performance of the contract, this section should describe what will be given. If the list is fairly extensive, make it into an exhibit referenced in this section and attached elsewhere;

(6) Contractor-furnished items. In this section, describe material and equipment that the contractor must provide. As with government furnished property, if the list is lengthy, reference it in this section and make it an exhibit attached elsewhere;

(7) Specific Work/Tasks. Work/tasks to be performed by the contractor should be included in this section;

(8) Applicable Technical Orders, Specifications, Regulations, and Manuals. This section should contain a list of applicable directives. Tell what happens when a directive changes during the life of the contract and state whether each directive is mandatory or advisory on the contractor;

(9) Delivery requirements;

(10) Packaging, packing or marking; and

(11) Technical Exhibits. Some items are too bulky to include in the main body of the SOW. These items should be included as technical exhibits.

(i) Further information about preparing an SOW is described in MIL-HDBK-245D "Preparation of Statement of Work," available on the Department of Defense's ASSIST website.

### 7 Statement of Objective Added 10/2006

a. A statement of objective (SOO) describes basic, top level results to be achieved. An SOO provides potential vendors flexibility to develop cost effective solutions and innovative alternatives meeting the stated objectives. The SOO includes at least:

(1) Purpose;

(2) Scope or mission;

(3) Period and place of performance;

(4) Background;

(5) Performance objectives, *i.e.*, required results; and

(6) Any operating constraints.

b. Vendors use an SOO to propose a detailed statement of work that the FAA evaluates as part of contractor source selection. The SOO does not become part of a resulting contract. Additional information on developing an SOO is in MIL-HDBK-245D "Preparation of Statement of Work;" and in the Air Force's "Statement of Objectives (SOO) Preparation Guide," available on their website.

## B Clauses

view contract clauses

## C Forms

view procurement forms

## T3.2.3 - Cost and Price Methodology Revised 10/2007

## A Cost and Price Methodology

### 1 Proposal Analysis Revised 3/2016

a. *Certified Cost or Pricing Data and Information Other Than Certified Cost or Pricing Data.*

(1) Definitions.

(a) *Certified Cost or Pricing Data.* This is cost or pricing data where the offeror certifies as to the accuracy, completeness and currency of the data as of a specific date before execution of the contract action. This includes all facts that prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental; and are verifiable. Certified cost or pricing data found to be inaccurate, incomplete, or noncurrent as of the date of the action allow the Contracting Officer (CO) to adjust the contract price related to the defective data.

(b) *Information other than certified cost or pricing data.* This is pricing data, cost data, and judgmental information necessary for the CO to determine a fair and reasonable price and/or to determine realism. Such data may include the identical types of data as certified cost or pricing data, but without the certification. The data may also include any information reasonably required to explain the offeror's estimating process, including, but not limited to-

i. The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

ii. The nature and amount of contingencies included in the proposed price.

(2) *Types of Information and Evaluation Method.* The CO may require information to support proposal analysis in any of the following degrees of detail:

(a) No cost data, in which case a price analysis is conducted;

(b) Information other than certified cost or pricing data, in which a price analysis and cost analysis appropriate to the data and information submitted are conducted; or

(c) Certified cost or pricing data, where the offeror certifies to the accuracy, completeness and currency of the data and both price and cost analyses are conducted.

(3) *Decision to Require Data*. A Contracting Officer (CO) has the discretion to determine the level of cost or pricing data required to ensure prices are fair and reasonable. Cost and pricing data should be requested *only* when the CO does not have reasonable assurance that costs or prices are fair and reasonable based on price analysis. When deciding the extent to which cost and pricing data may be required,

the CO should consider the cost and schedule burden on the contractor to provide the information.

(a) When the CO determines adequate price competition exists, certified cost or pricing data must not be requested in accordance with Policy 3.2.3.2.

(b) Adequate price competition may exist when:

(i) Two or more responsible offerors competing independently submit priced offers responsive to FAA's expressed requirement;

(ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors competing independently would submit priced offers responsive to the screening information request's expressed requirement, although only one offer is received from a responsible responsive offeror; or

(iii) Price analysis clearly demonstrates that the proposed price is reasonable compared to current or recent prices for the same or similar items purchased in comparable quantities, and under comparable terms and conditions under contracts that resulted from adequate price competition.

(c) If the CO determines that the level of competition does not support the determination of price reasonableness, or the offeror's price cannot be determined to be reasonable from price analysis according to T3.2.3.A.1.c. below, then the CO must require certified cost or pricing data or information other than certified cost or pricing data to the extent necessary to support a determination of a fair and reasonable price (Policy 3.2.3.2). The CO within his or her discretion may, based on price analysis alone, determine that an offeror’s price is not fair and reasonable without requesting additional cost data.

(d) In situations where adequate price competition does not exist, the decision to require certified or information other than certified cost or pricing data and the level of data required should be based on the specific circumstances of the procurement taking into account the factors described in subparagraph (4) "Factors to Consider" below.

(4) *Factors To Consider*.

(a) The CO has the flexibility to determine:

(i) Whether or not to require cost or pricing data;

(ii) To what degree or level of detail data should be requested; and

(iii) Whether or not the data should be certified, except for situations where adequate price competition exists (and the CO must not require certified cost or pricing data).

(b) The CO may consider the following factors to determine the appropriate data requirement:

(i) *Recent Pricing Data.* Availability of information on prices for the same or similar goods or services procured on a competitive basis.

(ii) *Degree of Competition Attained*. Level to which competitive market forces can be expected to influence submission of reasonable prices.

(iii) *Uncertainty of the Market Place*. How volatile market prices or technological changes may impact vendor prices or costs.

(iv) *Availability of Independent Cost Estimate/Data.* The degree of confidence the CO has in the internal estimate or other data which would provide an effective means to objectively evaluate proposed costs or prices.

(v) *Technical Complexity of Procurement.* The degree to which developmental effort or technical complexity is inherent in the requirement.

(vi) *Contract Type*. The degree to which the decision of contract type mitigates the risk to the agency.

(5) *Requirement for Certified Cost or Pricing Data*. When certified cost or pricing data are necessary, AMS Clauses 3.2.2.3-38, Requirements for Certified Cost or Pricing Data or Other Information, and 3.2.2.3-39, Requirements for Certified Cost or Pricing Data or Other Information – Modifications, must be inserted in the SIR. The clauses require the contractor to submit the information contained in the Appendix "Instructions for Submitting Cost/Price Proposals When Certified Cost or Pricing Data are Required."

(6) *Requesting Information*. When requesting information other than certified cost or pricing data, the information should be limited to the extent necessary to determine price reasonableness and/or cost realism. The level of detail and format of the data requested will be determined by the CO. Generally this will be a modified version of information requested in subparagraph (5), "Requirement for Certified Cost or Pricing Data" above.

(7) *Subcontracts.* Contractors are required to submit certified or information other than cost or pricing data for proposed subcontracts or subcontract modifications only when necessary to determine the reasonableness of the proposed contract or subcontract price, including negotiated final pricing actions. The contractor is responsible for performing cost or price analysis when determining price reasonableness on subcontract proposals and for submitting the subcontract cost or pricing data if requested by the CO.

b. *Proposal Analysis*. The procurement team is responsible for evaluating proposals using the methods of price and cost analysis appropriate to the procurement. Price and cost analysis are

used to determine if prices or costs are allowable, reasonable and realistic. The CO is responsible for determining whether contract prices are fair and reasonable. The data used to perform cost or price analysis should be the most current available. Use of non-current data should be (i) documented as to why more current data was not used or available, and (ii) adjusted if applicable to reflect the purchasing power of the dollar over time. At a minimum, if the data is two or more years old, explain why the older data (escalated to the current year) is adequate for use in determining fair and reasonable pricing.

c. *Price Analysis.* Price analysis is a process of examining and analyzing a proposed price without evaluating separate cost elements and proposed profit/fee. Price analysis is the most commonly used method of proposal analysis and must be performed on all contractor proposals (Policy 3.2.3.2). Even when cost analysis is performed to evaluate individual cost elements of a contractor's proposal, some form of price analysis is needed to ensure that the proposed price is fair and reasonable. There are several techniques that may be used in performing price analysis:

(1) Comparison of proposed prices received in response to the screening information request;

(2) Comparison of prior proposed prices and contract prices with current proposed prices for the same or similar end items and services in comparable quantities;

(3) Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry;

(4) Comparison with competitive published catalogs or lists, published market prices or commodities, similar indexes, and discount or rebate arrangements;

(5) Comparison of proposed prices with independent cost estimates; and

(6) Ascertaining that the price is set by law or regulation.

d. *Cost Analysis.*

(1) Cost analysis is the review and evaluation of the separate cost elements and proposed profit/fee of an offeror's proposal. The CO will determine whether cost analysis is appropriate. Cost analysis is not required to evaluate established catalog or market prices, prices set by law or regulation, and commercial items. If there are significant disparities in proposed prices, a limited form of cost analysis may be used to investigate the cause of the disparities. Cost analysis involves examining data submitted by the contractor and the judgmental factors applied in projecting estimated costs. Cost analysis also includes:

(a) Verification that the contractor's cost submissions are according to disclosed cost accounting procedures;

(b) Comparisons with previous costs; and

(c) Forecasts of future costs based on historical cost experience.

(2) Cost analysis is used to determine cost reasonableness when a fair and reasonable price cannot be determined through price analysis alone, and/or the agency needs an understanding of the cost buildup of the proposal to verify cost realism. The data required to perform the cost analysis should be limited to those cost elements that are necessary to ensure a fair and reasonable, and if necessary, a realistic price determination.

(3) Cost analysis involves the following techniques and procedures:

(a) Verification of cost or pricing data and evaluation of cost elements;

(b) Evaluating the effect of the offeror's current practices on future costs;

(c) Comparison of the costs proposed by the offeror with historical and actual costs, and previous cost estimates for the same or similar items;

(d) Analysis of the contractor's evaluation in determining the reasonableness of the subcontract costs;

(e) Verification of the offeror's proposed cost to ensure that it reflects cost realism and reasonableness; and

(f) Review to determine whether any cost or pricing data that is necessary to make the contractor's proposal accurate, complete, and current has been submitted or identified in writing.

e. *Field Pricing Support.*

Field pricing support is independent support intended to give the CO a detailed analysis and report of the contractor's cost proposal or other areas related to contract pricing. Field pricing support personnel include, but are not limited to, COs, auditors, price analysts, quality assurance personnel, and engineers. The CO may request field pricing support when necessary.

f. *Pre- and Post-Award Audits.*

(1) The CO must request pre-award and post-award audits on all cost reimbursement contracts estimated to exceed $100 million (including all options or ceiling amounts). In addition, FAA must request audits on at least 15% of all cost reimbursement contracts under $100 million (Policy 3.2.3.3). Headquarters Cost/Price Analysis Services (AAP-500) determines which contracts under $100 million require an audit. At the discretion of the CO, audits may also be requested on other types of contracts.

(2) Program offices fund required pre- and post-award audits. Headquarters Cost/Price Analysis Services (AAP-500) tracks and manages requested and completed audits. Although Defense Contract Audit Agency (DCAA) provides audit support for civilian agencies, FAA may also obtain support from other public or private

audit organizations as necessary.

(3) The CO should appropriately scope audit requests considering the nature of the procurement, data to be reviewed, recent audits, and the contractor to be audited. Cost/Price Analysis Services (AAP-500) can advise the CO about scoping the request. Audits may cover one or more of the following:

*Pre-award*

- Pre-award survey (new contract)
- Proposal audit (full or selected portions)
- Forward pricing rates or billing rates
- Rate verification (direct and indirect)
- Cost Accounting Standards compliance review
- Cost accounting system adequacy (labor, indirect and other direct cost systems)
- Earned value management system audit
- Contractor purchasing system review
- Billing system review
- Estimating system review
- Information technology system review
- Material management and accounting system review
- Basis of estimate
- Bill of material and long lead items

*Post-award*

- Proposal for contact modification
- Defective pricing
- Incurred cost
- Invoice reviews for allowability or improper payment
- Claims and request for equitable adjustment
- Final price submission
- Termination
- Closeout

(4) The CO should use good business judgment consistent with applicable AMS guidance when deciding whether to obtain audits. If a CO decides not to obtain an audit, the file should be documented with a rational basis as to why the audit was not obtained. The cost of the audit compared to the expected payback should also be considered.

g. *Defective Pricing.*

(1) Defective certified cost or pricing data is data which was provided to FAA in support of a proposal and which was not current, accurate, or complete. It may only occur when certified cost or pricing data is provided. If, before agreement in price, the CO learns that any certified cost or pricing data the contractor provided are inaccurate, incomplete, or not current, the contractor is notified immediately to determine if the defective data increase or decrease the contract price. The CO then

negotiates using any new data submitted or making allowance for the incorrect data.

(2) If, after award, certified cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of agreement, the CO should give the contractor an opportunity to support the accuracy, completeness, and currency of the questioned data. In addition, the CO may obtain an audit to evaluate the accuracy, completeness, and currency of the data. The contractor should reimburse FAA for any payments issued based on defective cost or pricing data during the contract period. The reimbursement should include the amount identified by the CO including profit or fee and interest accrued from the date of the payment. If defective pricing is determined to exist, this fact should be noted in future past performance evaluations.

(3) If a contractor and subcontractor submitted certified cost or pricing data, the CO has the right, under the clause prescribed in the contract to reduce the contract price if it significantly increased due to contractor submitted defective data. This right applies whether the data supported subcontractor cost estimates or firm agreements between subcontractors and contractors. In order to afford an opportunity for corrective action, the CO should give the contractor reasonable advanced notice before determining to reduce the contract price when:

(a) A contractor includes defective subcontract data in arriving at the price but later awards the subcontract to a lower priced subcontractor (or does not subcontract for work). Any adjustment in the contract price due to defective subcontract data is limited to the difference, plus applicable indirect cost and profit/fee, between the subcontract price used for pricing the contract and either the actual subcontract or the actual cost to the contractor.

(b) Under cost-reimbursement contracts and fixed price incentive contracts, payments to subcontracts that are higher than they would be had there been no defective subcontractor cost or pricing data will be the basis for disallowance or non-recognition of costs.

h. *Profit/Fee Analysis.*

(1) When price analysis techniques are sufficient to ensure a fair and reasonable price, analysis of profit/fee is not appropriate.

(2) When cost analysis is required for price negotiation, profit/fee is analyzed.

(a) Profit/fee should be analyzed with the objective of rewarding contractors for:

(i) Financial and other risks they assume;

(ii) Resources they use; and

(iii) Organization, performance, and management capabilities they employ.

(b) Consideration should be given to the:

(i) Ratio of indirect costs to direct costs;

(ii) Extent of subcontracting;

(iii) Complexity of materials requirements; and

(iv) Commitment of capital investments to contract performance.

(3) For the purposes of establishing a negotiation position the CO may use some structured method (e.g. agency-mandated weighted guidelines) for determining the profit/fee appropriate for the work to be performed. The CO is encouraged to establish a structured mechanism under cost reimbursable contracts which relates performance to fee amounts earned.

i. *Cost and Price Realism.*

(1) The purpose of realism analysis is to ensure that proposed prices are not so low such that contract performance is put at risk from either a technical and/or cost perspective. It is separate from analyses performed to determine cost or price reasonableness. Realism analysis determines whether an offeror's proposed costs and/or prices:

(a) Are realistic for the work to be performed;

(b) Reflect a clear understanding of the requirements; and

(c) Are consistent with the various elements of the offeror's technical proposal.

(2) Cost Realism.

(a) Cost realism analysis is an objective process of identifying the specific elements of a cost estimate or a proposed price and comparing those elements against reliable and independent means of cost measurement. This analysis judges whether or not the estimates under analysis are verifiable, complete, and accurate, and whether or not the offeror's estimating methodology is logical, appropriate, and adequately explained. This verifies that the cost or prices proposed fairly represent the costs likely to be incurred for the proposed services under the offeror's technical and management approach.

(b) Cost realism analysis is used for analysis of proposed costs on cost reimbursement contracts, competitive fixed-price incentive contracts, and may also be used on time and material contracts, and, if necessary, on competitive fixed price contracts.

(c) Cost realism analysis determines whether proposed costs may be overstated or understated with respect to performing SIR requirements using the contractor's unique and described methods in the cost and technical proposals. The offeror's Most Probable Cost (MPC) is determined by adjusting each offeror's proposed cost, and fee when appropriate, to reflect any additions or

reductions in cost elements to realistic levels based on the results of the cost realism analysis.

(d) The MPC may differ from the proposed cost and should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal. The MPC, not the proposed cost, is used for purposes of evaluation to determine the best value.

(e) Cost Realism Evaluation Steps:

(i) Obtain other than certified cost or pricing information from the offeror, including detailed proposal breakdown by cost element and the associated basis of estimates (BOEs) for work to be performed.

(ii) Obtain cost realism analysis support from designated member(s) of the acquisition team. The technical cost realism acquisition team member(s) review the SIR requirements, and each offeror's technical and cost proposal, to ensure the cost proposal reflects the costs required to accomplish the work through the unique methods and approaches identified in the offeror's technical proposal. The technical cost realism reviewer determines which direct labor hours and other direct costs should be adjusted up or down and by what amount. The reviewer provides a cost realism analysis to the cost evaluation team. NOTE: The technical cost realism reviewer must not be a member of the technical evaluation team unless the technical evaluation has been completed, reviewed, and signed. This is necessary to avoid any potential bias in the technical evaluation related to information in the cost proposal.

(iii) Obtain information from Government sources related to contractor direct and indirect rates, i.e. Forward Pricing Rate Agreements or Recommendations (FPRA/FPRRs). Revise the offeror's proposed rates to reflect the Government's expectation of final rates, as appropriate.

(iv) Determine each offeror's Most Probable Cost using the cost realism analysis and any indirect rate revisions to adjust the proposed costs. Include fee adjustments as appropriate for changes in estimated costs. The MPC represents the costs most likely to be incurred by the offeror in performance of the effort. Use the offeror's MPC for best value analysis.

(3) Price Realism.

(a) Price Realism analysis is an objective process that focuses on the proposed price and performance risks. Price realism is used when requirements may not be fully understood by the offeror, there are quality concerns, or past experience indicates that contractors' proposed prices have resulted in quality or service shortfalls.

(b) Price realism may be used for price proposal analysis on competitive fixed-price contracts.

(c) Unlike in cost realism analysis, the offeror's proposed price is not adjusted for the Most Probable Cost. The focus is on the price and the ability of the offeror to perform the contract requirements for the proposed price, not the individual cost elements.

(d) Results of the analysis may be used in performance risk assessments and responsibility determinations.

(e) Price Realism Evaluation Steps:

(i) Obtain price information from the offeror, but no cost data is provided.

(ii) Obtain information from Government or industry sources that can be used for price realism determination such as:

- Comparison to the IGCE;
- Published catalog prices;
- Previous contract prices for similar items in similar quantities procured on a competitive basis;
- Published fully burdened labor rates appropriate to proposed labor categories and geographic location;
- Published price indices such as Global Insight for escalation factors; and
- Other methods of price analysis as described in T.3.2.3.A.1.c.

(iii) Obtain analysis support from the acquisition team related to the offeror's understanding of technical requirements, past performance, and financial capability.

(iv) Document the price realism analysis and its conclusion. If the analysis indicates proposed prices may be unrealistic, the CO may determine that additional analysis, including cost realism, is required. Information other than certified cost and pricing data would be requested to support additional analysis. For either price realism or cost realism analyses for fixed-price contracts, do not adjust the offeror's proposed price.

(4) Realism Analysis and Risk. A practical example of the need for realism analysis is the tendency of some contractors to "buy-in" to a contract award. "Buying-in" refers to an offeror submitting an offer below anticipated contract costs. Contractors may "buy-in" for purely business reasons or may expect to recover losses through an increase of the contract price after award or through receiving follow-on contracts at artificially high prices. Buying-in may decrease competition or result in poor contract performance. The CO should minimize the opportunity for buying-in through the following appropriate actions:

(a) Use cost analysis in evaluating proposals for follow-on contracts and change orders;

(b) Price contract options for additional quantities together with the firm contract quantity, that equal program requirements;

(c) Develop an estimate of the proper price level or value of the supplies or services to be purchased; and

(d) Verify that contract type and price are consistent with the uncertainty and risk to FAA and contractor while at the same time providing the contractor with the greatest incentive for efficient and economical performance.

The foregoing does not mean that the CO should refuse to award a contract when a buy-in is apparent. The CO should evaluate the attendant risks of costs escalating out of control or the contractor not being able to successfully complete performance. For cost-reimbursable contracts, an award based on an unreasonably low cost would represent a significant risk to the agency because the final price paid by the Government is based on incurred costs. For fixed-price contracts, the cost risk is on the contractor, but an unrealistically low price could create performance risks resulting in poor performance or default. FAA reserves the right to make an informed judgment and decide whether to award or not based on downstream consequences emanating from potential change orders, etc.

(5) Evaluation Criteria and Realism Analysis. When using realism analysis in evaluating offers for contract award, the SIR should state that cost realism or price realism may be used as part of the evaluation process and define how the analysis will be considered. Fixed-price contracts may reserve the right to perform realism analysis only if the CO determines it is necessary based on proposed prices.

j. *Unbalanced Offer*. Offeror proposals should be analyzed to determine whether they are unbalanced with respect to prices or separately priced line items. This is particularly important when evaluating the prices for options in relationship to the prices for the basic requirements. An offer is mathematically unbalanced if it is based on prices which are significantly less than the cost of some contract line items and significantly overstated in relation to cost for others. An offer is materially unbalanced if it is mathematically unbalanced and if there is reasonable doubt that the offer would result in the lowest overall cost to FAA (even though it is the lowest evaluated offer); or the offer is so grossly unbalanced that its acceptance would be tantamount to allowing an advance payment. Offers that are materially unbalanced may be rejected. Depending on the nature of the procurement, price analysis or

cost analysis should be used in determining whether offers are materially unbalanced.

## 2 Independent Government Cost Estimate Revised 4/2016

a. *Purpose of an IGCE*

(1) An independent Government cost estimate (IGCE) is an internal Government estimate, supported by factual or reasoned data and documentation, describing how much FAA could reasonably expect to pay for needed supplies or services. It serves as:

(a) The basis for reserving funds for the procurement action;

(b) A method for comparing cost or price proposed by offerors;

(c) An objective basis for determining price reasonableness when only one offer is received in response to a solicitation; and

(d) A means of detecting offeror buy-ins and identifying unbalanced prices.

(2) The CO must ensure, through cost and/or price analysis, that the final price is fair and reasonable for all acquisitions (Policy 3.2.3). One of several techniques in performing price analysis is comparison of the proposed prices with an IGCE. Its primary objective is to provide the CO with an unbiased, realistic cost estimate for proposed supplies, services, and construction.

(3) A well supported IGCE is a valuable tool for price negotiations, especially in the case of a single source acquisition. Clearly defined and supported cost elements such as labor, overhead, and travel enable FAA to make informed negotiation decisions. A well-reasoned IGCE helps FAA to verify completeness of offeror or contractor's cost proposals.

b. *Applicability.* An IGCE is required for procurement actions over $150,000 (or for any lower dollar value procurement action when the CO determines it necessary) (Policy 3.2.1.2.4), except for:

(1) Modifications to exercise priced options;

(2) Incremental funding modifications;

(3) Delivery orders for priced supplies or services under indefinite delivery contracts;

(4) Acquisition of real property (i.e., land, space, or interest therein); or

(5) Supplies or services with prices set by law or regulation.

c. *Responsibility for Preparation.*

(1) The program office is responsible for the IGCE. Non-Government personnel (excluding any personnel of potential offerors) may support a program official in preparing the IGCE. Because the IGCE is procurement sensitive, access to it must be on a need to know basis. The IGCE must be signed and dated by the Government preparer.

(2) The IGCE must not be based on information furnished solely by a potential offer that may be considered for award, or based on an offeror's cost/price proposal after receipt of offers.

*d. When to Submit.* An IGCE should accompany the procurement request package. The IGCE becomes part of the official contract file documentation.

e. *Proper Marking.* Each IGCE must be designated and marked, "FOR OFFICIAL USE ONLY."

*f. Commercial and Noncomplex Procurement Actions.* Published price lists, catalog prices, historical prices, General Services Administration (GSA) schedule prices, or market survey prices may suffice for an IGCE involving standard commercial materials, supplies, equipment and noncomplex services readily available in the commercial market. Lump sum estimates for commercial and noncomplex supplies and services do not break down the estimate into various cost elements. An IGCE for commercial and noncomplex products and services may entail determining the market value of an item or service and using that as the basis for the IGCE, documenting the research, and then furnishing this information to the CO.

g. *Differences Between Proposal Price and IGCE.* When there are differences greater than 15% between the price of the offer proposed for award and the IGCE, the CO should notify the program official for appropriate remedial actions.

h. *Detailed and Lump Sum Estimates and IGCE Structure*. The complexity of an IGCE depends on the nature and dollar value of the requirement, and an IGCE could be a detailed cost estimate or a lump sum estimate. Detailed estimates encompass an analysis and estimation for individual cost elements (i.e., direct labor, material, overhead, other direct costs, general and administrative expense, and profit). In contrast, the lump sum estimate projects cost on a "bottom line" basis. Lump sum estimates may be useful when the price of an item or service can be determined without examining individual cost elements, such as when acquiring commercial items. The program official determines whether the IGCE should be developed as a lump sum estimate, detailed cost estimate, by contract line item number (CLIN), or by work breakdown structure (WBS). The structure used for the IGCE should track directly to the proposed CLIN structure used in the SIR to allow for valid comparisons in proposal cost and price analyses.

i. *Cost Estimates by Work Breakdown Structure (WBS).* Cost estimates by WBS provide detailed cost estimates for each activity in the WBS and may include vendor quotes or catalog prices for materials and engineering labor estimates.

j. *Market Research and Analysis*. Market research and analyses may be used to collect current cost information.

*k. Cost Estimation.*

(i) Cost estimation is a field of practice that can be simple to complex, depending on the requirement. Cost estimation methods for major system, facilities, and equipment acquisitions are complex and require defined requirements, extensive market research and expert assistance.

(ii) Different approaches are used to make cost estimates. The cost estimator decides the appropriate approach and it will vary depending on the requirement, amount of data that the estimator has about the item or service to be estimated and the time frame for completion of the estimate. There are five terms used within the cost analysis community to describe the usual methods of developing estimates: analogy, parametric, expert opinion, engineering and actual cost (extrapolation). There are many Government and private sector publications, models, and tools available on cost estimation. Listed below are several resources available for estimating costs:

DoD Contract Pricing Reference Guide Volume I: Chapter 6.1 and Chapter 1.1

NASA Parametric Cost Estimating Handbook

U.S. Army Cost Analysis Manual

NASA Cost Estimating Handbook

(iii) Detailed information on elements included in a Cost Estimate and a template for preparing an IGCE are available in the Appendix, Appendices 2 and 3.

**3 Cost Accounting Standards Revised 3/2016**

a. *Applicability.* Full or modified cost accounting standards (CAS) coverage, as appropriate, applies to all cost-type contracts and subcontracts. Categories of contracts and subcontracts exempt from all CAS requirements include:

(1) Negotiated contracts and subcontracts not in excess of $700,000. For purposes of this arrangement, an order issued by one segment to another must be treated as a subcontract (Policy 3.2.3.5);

(2) Contracts and subcontracts with small businesses;

(3) Contracts and subcontracts with foreign governments or their agents or instrumentalities or (insofar as the requirements of CAS other than 9904.401 and 9904.402 are concerned) any contract or subcontract awarded to a foreign concern;

(4) Contracts and subcontracts in which the price is set by law or regulation;

(5) Firm fixed price and fixed-price with economic price adjustment (provided

that the price adjustment is not based on actual costs incurred), time-and-materials, and labor-hour contracts and subcontracts for acquisition of commercial items;

(6) Contracts or subcontracts of less the $7.5 million, provided that at the time of award the business unit of the contractor or subcontractor is not currently performing any CAS-covered contracts or subcontracts at $7.5 million or greater;

(7) Contracts and subcontracts to be executed and performed outside the United States, its territories, and possessions; and

(8) Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data.

b. *Contract Requirements*. A CAS-covered contract may be subject to either full or modified CAS coverage.

(i) Modified CAS coverage applies to contractor business units that received less than $50 million in net CAS-covered awards in the immediately preceding cost accounting period. Modified CAS coverage only requires that the business unit comply with the following standards:

a. 401, Consistency in Estimating, Accumulating and Reporting Costs
b. 402, Consistency in Allocating Costs Incurred for the Same Purpose
c. 405, Accounting for Unallowable Costs
d. 406, Cost Accounting Period

(ii) Full CAS coverage requires the business unit (as defined in CAS 410-30(a)(2)) comply with all of the CAS in effect on the contract award date, or if required to submit certified cost or pricing data, on the date of the certification, as well as any CAS (or modifications) which become applicable in the future. Full CAS coverage applies to contractor business units that:

a. Received a single CAS-covered contract award, including option amounts, or $50 million or more; or
b. Received $50 million or more in CAS-covered contract awards during the immediately preceding cost accounting period.

c. *CAS Administration.* The cognizant CO will perform CAS administration for all contracts in a business unit notwithstanding retention of other administration functions by another CO. Within 30 days after the award of any new contract or subcontract subject to CAS, the CO, contractor, or subcontractor making the award should request the cognizant CO to perform administration for CAS matters. This is one of the duties of the Financial Administrative Contracting Officers (FACO) for those contractors who are under the cognizance of the FAA.

d. *Waiver*. In some instances, contractors or subcontractors may refuse to accept all or part of the requirements of AMS Clauses 3.2.3-2, Cost Accounting Standards, and 3.2.3-3, Disclosure and Consistency of Cost Accounting Practices. If the CO determines that it is impractical to

obtain the materials, supplies, or services from any other source, the CO should prepare a request for waiver.

e. *Responsibilities*.

(1) The CO is responsible for determining when a proposed contract may require CAS coverage and for including the appropriate notice in the screening information request. The CO ensures that the offeror has made the required certifications and that required Disclosure Statements are submitted.

(2) The CO should not award a CAS-covered contract until the FACO has made a written determination that a required Disclosure Statement is adequate unless, in order to protect FAA interest, the CO waives the requirement for an adequacy determination before award. In this event, a determination of adequacy should be required as soon as possible after the award.

(3) The cognizant auditor is responsible for conducting reviews of Disclosure Statements for adequacy and compliance.

(4) The cognizant FACO is responsible for determinations of adequacy and compliance of the Disclosure Statement.

f. *Determinations*.

(1) *Adequacy Determination.* The contract auditor will conduct an initial adequacy review of a Disclosure Statement to ascertain whether it is current, accurate, and complete and will report the results to the cognizant FACO. The FACO will determine whether or not it adequately describes the offeror's cost accounting practices, based on the recommendation of the auditor. If the FACO identifies any areas of inadequacy, the FACO should request a revised Disclosure Statement. If the Disclosure Statement is adequate, the FACO should notify the offeror in writing, with copies to the auditor and FACO. The notice of adequacy should state that a disclosed practice will not, by virtue of such disclosure, be considered an approved practice for pricing proposals or accumulating and reporting contract performance cost data. Generally, the FACO should furnish the contractor notification of adequacy within 30 days after the Disclosure Statement has been received by the FACO.

(2) *Compliance Determination.* After the notification of adequacy, the auditor must conduct a detailed compliance review to determine whether or not the disclosed practices comply with cost principles and the CAS and will advise the CO of the results. The CO should take action regarding noncompliance with CAS. The CO may require a revised Disclosure Statement and adjustment of the prime contract price or cost allowance. Noncompliance with cost principles should be processed separately, in accordance with normal administrative practices.

g. *Subcontractor Disclosure Statements.*

(1) When FAA requires determinations of adequacy, the FACO cognizant of the subcontractor will provide such determination to the FACO cognizant of the prime

contractor or next higher tier subcontractor. FACO's cognizant of higher tier subcontractors or prime contractors should not reverse the determination of the FACO cognizant of the subcontractor.

(2) The agency head may determine that it is not practical to secure the Disclosure Statement, although submission is required, and authorize contract award without obtaining the Statement. The agency head must, within 30 days of having done so, submit a report to the Cost Accounting Standards Board setting forth all material facts. This authority may not be delegated.

h. *Changes to Disclosed or Established Cost Accounting Practices.* Adjustments to contracts and withholding amounts payable for CAS noncompliance, new standards, or voluntary changes are required only if the amounts involved are material. In determining whether amounts of cost are material, the following criteria will be considered by the CO where appropriate; no one criterion is necessarily determinative:

(1) *The absolute dollar amount involved*. The larger the dollar amount, the more likely that it will be material.

(2) *The amount of contract cost compared with the amount under consideration*. The larger the proportion of the amount under consideration to contract cost, the more likely it is to be material.

(3) *The relationship between a cost item and a cost objective*. Direct cost items, since the amounts are themselves part of a base for allocation of indirect costs, will normally have more impact than the same amount of indirect costs.

(4) *The impact of Government participation*. Changes in accounting treatment will have more impact if they influence the distribution of costs between Government and non-Government cost objectives than if all cost objectives are with the Government.

(5) *The cumulative impact of individually immaterial items*. It is appropriate to consider whether such impacts:

(a) Tend to offset one another; or

(b) Tend to be in the same direction and hence to accumulate into a material amount.

(6) The cost of administrative processing of the price adjustment modification should be considered. If the cost to process exceeds the amount to be recovered, it is less likely the amount will be material.

The FACO may forego action to require that a cost impact proposal be submitted or to adjust contracts, if the FACO determines the amount involved is immaterial. However, in the case of noncompliance issues, the FACO should inform the contractor that:

(1) FAA reserves the right to make appropriate contract adjustments if, in the future, the FACO determines that the cost impact has become material; and

(2) The contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved.

i. *Equitable Adjustments for New or Modified Standards.*

(1) *New or Modified Standards*.

(a) AMS clause 3.2.3-1, Cost Accounting Standards Notices and Certification, requires offerors to state whether or not the award of the contemplated contract would require a change to established cost accounting practices affecting existing contracts and subcontracts. The FACO ensures that the contractor's response to the notice is made known to the CO.

(b) Contracts and subcontracts containing AMS clause 3.2.3-2, Cost Accounting Standards, may require equitable adjustments to comply with new or modified CAS. Such adjustments are limited to contracts and subcontracts awarded subject to full CAS coverage before the effective date of each new or modified standard. A new or modified standard becomes applicable prospectively to these contracts and subcontracts when a new contract or subcontract containing AMS clause 3.2.3-2, Cost Accounting Standards. is awarded on or after the effective date of the new or modified standard.

(c) COs should encourage contractors to submit any change in accounting practice in anticipation of complying with a new or modified standard as soon as practical after the new or modified Standard has been promulgated by the Cost Accounting Standards Board. Any changes should be provided to the FACO for adequacy and compliance determinations.

(2) *Accounting Changes*.

(a) AMS clause 3.2.3-5, Administration of Cost Accounting Standards. requires the contractor to submit a description of any change in cost accounting practices required to comply with a new or modified CAS within 60 days (or other mutually agreed to date) after award of a contract requiring the change.

(b) The FACO will request the cognizant auditor to review the proposed change concurrently for adequacy and compliance. If the change meets both tests, the FACO will notify the contractor and may request submission of a cost impact proposal or a report of general dollar magnitude. However, if the practice is not yet being performed, it may not be able to be tested for compliance.

(3) *Contract Price Adjustments.*

(a) The FACO should promptly analyze the cost impact proposal with the assistance of the auditor, determine the impact, and negotiate the contract price adjustment on behalf of all Government agencies. The FACO should invite COs from other agencies to participate in negotiations of adjustments when the price of any of their contracts may be increased or decreased by $10,000 or

more. At the conclusion of negotiations, the FACO will:

(i) Inform the COs of affected contracts so the COs may execute supplemental agreements to the contracts;

(ii) Prepare a negotiation memorandum and send copies to cognizant auditors and COs of other agencies having prime contracts affected by the negotiation (those agencies execute supplemental agreements in the amounts negotiated); and

(iii) Furnish copies of the memorandum indicating the effect on costs to the CO of the next higher tier subcontractor or prime contractor, as appropriate, if a subcontract is to be adjusted. This memorandum will serve as the basis for negotiation between the subcontractor and the next higher tier subcontractor or prime contractor and for execution of a supplemental agreement to the subcontract.

(b) If the parties fail to agree on the cost or price adjustment, the FACO may make a unilateral adjustment, subject to contractor appeal.

(4) *Remedies for Contractor Failure to Make Required Submissions.*

(a) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the FACO, with the assistance of the auditor, estimates the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The FACO then informs the COs who may withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS- covered prime contracts, up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(b) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the FACO determines that an adjustment is required, the FACO, with assistance from the CO, should request the contractor to agree to the cost or price adjustment. The contractor should also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the FACO may have the COs make a unilateral adjustment, subject to contractor appeal.

j. *Noncompliance with CAS Requirements.*

(1) *Determination of Noncompliance.*

(a) Within 15 days of the receipt of a report of alleged noncompliance from the auditor, the FACO makes an initial finding of compliance or noncompliance and advise the auditor.

(b) If an initial finding of noncompliance is made, the FACO immediately

notifies the contractor in writing of the exact nature of the noncompliance and allow the contractor 60 days within which to agree or to submit reasons why the existing practices are considered to be in compliance.

(c) If the contractor agrees with the initial finding of noncompliance, the FACO reviews the contractor submissions required by paragraph (a) of AMS clause 3.2.3-5, Administration of Cost Accounting Standards.

(d) If the contractor disagrees with the initial noncompliance finding, the FACO reviews the reasons why the contractor considers the existing practices to be in compliance and make a determination of compliance or noncompliance. If the FACO determines that the contractor's practices are in noncompliance, a written explanation is provided as to why the FACO disagrees with the contractor's rationale. The FACO notifies the contractor and the auditor in writing of the determination. If the FACO makes a determination of noncompliance, the procedures in (b) through (d), as appropriate, are followed.

(2) *Accounting Changes.*

(a) AMS Clause 3.2.3-5, Administration of Cost Accounting Standards, requires the contractor to submit a description of any cost accounting practice change needed to correct a noncompliance.

(b) The FACO reviews the proposed change concurrently for adequacy and compliance. If the description of the change meets both tests, the FACO notifies the contractor and request submission of a cost impact proposal.

(3) *Contract Price Adjustments.*

(a) The FACO requests that the contractor submit a cost impact proposal within the time specified in AMS Clause 3.2.3-5, Administration of Cost Accounting Standards.

(b) Upon receipt of the cost impact proposal, the FACO follows the procedures in subparagraph (3) (a) under above paragraph j. "Equitable Adjustments for New or Modified Standards". In accordance with the AMS Clause 3.2.3-2, Cost Accounting Standards, the FACO must include and separately identify, as part of the computation of the contract price adjustment(s), applicable interest on any increased costs paid to the contractor as a result of the noncompliance. Interest must be computed from the date of overpayment to the time the adjustment is affected. If the costs were incurred and paid evenly over the fiscal years during which the noncompliance occurred, then the midpoint of the period in which the noncompliance began may be considered the baseline for the computation of interest. An alternate equitable method should be used if the costs were not incurred and paid evenly over the fiscal years during which the noncompliance occurred. Interest should be computed pursuant to AMS Clause 3.3.1-9, Interest.

(4) *Remedies for Contractor Failure to Make Required Submissions.*

(a) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the FACO, with the assistance of the auditor, should estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The FACO should inform the COs who may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS- covered prime contracts, up to the estimated general dollar magnitude of the cost impact until the required submission is furnished by the contractor.

(b) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the FACO determines that an adjustment is required, the FACO, with assistance from the CO, should request the contractor to agree to the cost or price adjustment. The contractor should also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the FACO may have the COs make a unilateral adjustment, subject to contractor appeal.

(c) If the FACO determines that there is no material increase in costs as a result of the noncompliance, the FACO notifies the contractor in writing that the contractor is in noncompliance, that corrective action should be taken, and that if such noncompliance subsequently results in materially increased costs to the FAA, the provisions of AMS Clause 3.2.3-2, Cost Accounting Standards and/or AMS Clause 3.2.3-3, Disclosure and Consistency of Cost Accounting Practices, will be enforced.

k. *Voluntary Changes.*

(1) *General.*

(a) The contractor may voluntarily change its disclosed or established cost accounting practices.

(b) The contract price may be adjusted for voluntary changes. However, increased costs resulting from a voluntary change may be allowed only if the CO determines that the change is desirable and not detrimental to the interest of FAA.

(2) *Accounting Changes.*

(a) AMS Clause 3.2.3-5, Administration of Cost Accounting Standards, requires the contractor to notify the FACO and submit a description of any voluntary cost accounting practice change not less than 60 days (or such other date as may be mutually agreed to) before implementation of the voluntary change.

(b) The FACO reviews the proposed change concurrently for adequacy and

compliance. If the description of the change meets both tests, the FACO notifies the contractor and requests submission of a cost impact proposal.

(3) *Contract Price Adjustments.*

(a) With the assistance of the auditor, the FACO promptly analyzes the cost impact proposal to determine whether or not the proposed change will result in increased costs being paid by FAA. The FACO considers all of the contractor's affected CAS-covered contracts and subcontracts, but any cost changes to higher- tier subcontracts or contracts of other contractors over and above the cost of the subcontract adjustment are not considered.

(b) The FACO then follows the procedures in above subparagraph j, "Equitable Adjustments for New or Modified Standards."

(4) *Remedies for Contractor Failure to Make Required Submissions.*

(a) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the FACO, with the assistance of the auditor, estimates the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The FACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS- covered prime contracts up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(b) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the FACO determines that an adjustment is appropriate, the FACO, with assistance from the CO, should request the contractor to agree to the cost or price adjustment. The contractor should also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the FACO may have the COs make a unilateral adjustment, subject to contractor appeal.

l. *Subcontract Administration.* When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the FACO cognizant of the subcontractor should make the determination and advise the FACO cognizant of the prime contractor or next higher tier subcontractor of his decision. FACOs cognizant of higher tier subcontractors or prime contractors should not reverse the determination of the FACO cognizant of the subcontractor.

**4 Financial Administrative Contracting Officer** (FACO) Added 4/2014

a. *Definition*. Financial Administrative Contracting Officers (FACO) are FAA employees who perform financial administration, including at a minimum system adequacy determination, forward pricing and year-end actual rate administration and negotiation, and cost allowability determination to companies whenever the FAA is the cognizant agency.

b. *Roles and Responsibilities*.

(1) Establish billing rates, make forward pricing rate recommendations, negotiate forward pricing rate agreements, and negotiate final indirect rates for cost-reimbursement contracts with companies over whom FAA has cognizance;

(2) Make final determinations on adequacy of contractor accounting systems;

(3) Determine the contractor's compliance with Cost Accounting Standards (CAS) as applicable;

(4) Determine the allowability of cost suspended or disapproved, direct suspension or disapproval of costs when there is reason to believe they should be suspended or disapproved;

(5) Issue Notices of Intent to disallow or not recognize costs;

(6) Negotiate advance agreements applicable to treatment of certain costs;

(7) Send letter(s) to contractor, contracting officers and affected external agencies notifying them of FACO actions, recommendations, negotiations as appropriate.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

**D Appendix Revised 10/2007**

**1 Appendix - Instructions for Submitting Certified Cost/Price Proposals Revised 3/2016**

**INSTRUCTION FOR SUBMITTING COST/PRICE PROPOSALS WHEN**

**CERTIFIED COST OR PRICING DATA ARE REQUIRED**

Note 1. There is a clear distinction between submitting certified cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of certified cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer (CO) or an authorized representative. As later information comes into the offeror's possession, it should be submitted promptly to the CO in a manner that clearly shows how the information relates to the offeror's price proposal. The requirement for submission of certified cost or pricing data continues up to the time of

agreement on price, or an earlier date agreed upon between the parties if applicable.

Note 2. By submitting the offeror's proposal, the offeror grants the CO or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual information (regardless of form or whether the information is specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

**I. GENERAL INSTRUCTIONS**

A. The offeror must provide the following information on the first page of the offeror's pricing proposal:

(1) Solicitation, contract, and/or modification number;

(2) Name and address of offeror;

(3) Name and telephone number of point of contact;

(4) Name of contract administration office (if available);

(5) Type of contract action (that is, new contract, change order, price revision/redetermination, letter contract, unpriced order, or other);

(6) Proposed cost; profit or fee; and total;

(7) Whether the offeror will require the use of Government property in the performance of the contract, and, if so, what property;

(8) Whether the offeror's organization is subject to cost accounting standards; whether the offeror's organization has submitted a CASB Disclosure Statement, and if it has been determined adequate; whether the offeror have been notified that the offeror are or may be in noncompliance with the offeror's Disclosure Statement or CAS, and, if yes, an explanation; whether any aspect of this proposal is inconsistent with the offeror's disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with the offeror's established estimating and accounting principles and procedures and FAA Cost Principles, and, if not, an explanation;

(9) The following statement:

"This proposal reflects our estimates and/or actual costs as of this date and conforms to the instructions contained in the Appendix to Toolbox Section 3.2.3, 'Cost and Price Methodology." By submitting this proposal, we grant the CO and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price."

(10) Date of submission; and

(11) Name, title and signature of authorized representative.

B. In submitting the offeror's proposal, the offeror must include an index, appropriately referenced, of all the cost or pricing data and information accompanying or identified in the proposal. In addition, the offeror must annotate any future additions and/or revisions, up to the date of agreement on price, or an earlier date agreed upon by the parties, on a supplemental index.

C. As part of the specific information required, the offeror must submit, with the offeror's proposal, certified cost or pricing data (that is, data that are verifiable and factual and otherwise as defined in FAA AMS Appendix C. The offeror must clearly identify on the offeror's cover sheet that certified cost or pricing data are included as part of the proposal. In addition, the offeror must submit with the offeror's proposal any information reasonably required to explain the offeror's estimating process, including

(1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

(2) The nature and amount of any contingencies included in the proposed price.

D. The offeror must show the relationship between contract line item prices and the total contract price. The offeror must attach cost-element breakdowns for each proposed line item, using the appropriate format prescribed in the "Formats for Submission of Line Item Summaries" section of this table. The offeror must furnish supporting breakdowns for each cost element, consistent with the offeror's cost accounting system.

E. When more than one contract line item is proposed, the offeror must also provide summary total amounts covering all line items for each element of cost.

F. Whenever the offeror have incurred costs for work performed before submission of a proposal, the offeror must identify those costs in the offeror's cost/price proposal.

G. If the offeror has reached an agreement with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature.

H. As soon as practicable after final agreement on price or an earlier date agreed to by the parties, but before the award resulting from the proposal the offeror must submit a Certificate of Current Cost or Pricing Data as follows:

(1) Certificate

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to the CO or to the CO's representative in support of [*] are accurate, complete, and current as of [**]. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

[*Offeror insert the following information.*]

Firm _____

Signature _____

Name _____

Title _____

Date of execution [***_____]

**Offeror identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., SIR No.)*

*** Offeror insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.*

**** Offeror insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.*

(End of certificate)

(2) The certificate does not constitute a representation as to the accuracy of the offeror's judgment on the estimate of future costs or projections. It applies to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the offeror had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the offeror's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(3) The CO and offeror are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. Closing or cutoff dates should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the offeror to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs). Data within the offeror's or a subcontractor's organization on matters significant to offeror management and to FAA

will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(4) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the offeror's proposal.

(5) If certified cost or pricing data are requested by FAA and submitted by an offeror, but an exception is later found to apply, the data must not be considered certified cost or pricing data and must not be certified in accordance with this subsection.

## II. COST ELEMENTS

Depending on the offeror's system, the offeror must provide breakdowns for the following basic cost elements, as applicable:

A. Materials and services. Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals. Conduct cost analyses for all subcontracts when certified cost or pricing data are submitted by the subcontractor. Include these analyses as part of the offeror's own certified cost or pricing data submissions. Submit the subcontractor certified cost or pricing data as part of the offeror's own certified cost or pricing data as required in subparagraph IIA (2) below. These requirements also apply to all subcontractors if required to submit certified cost or pricing data.

> (1) Adequate Price Competition. Provide data showing the degree of competition and the basis for establishing the source and reasonableness of price. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the offeror, explain the pricing method.
>
> (2) All Other. Obtain certified cost or pricing data from prospective sources (i.e., adequate price competition, commercial items, prices set by law or regulation or waiver). Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of the offeror's cost analysis and a copy of certified cost or pricing data submitted by the prospective source in support of each subcontract or purchase order that is the lower of either $10,000,000 or more, or both more than the pertinent certified cost or pricing data threshold and more than 10 percent of the prime offeror's proposed price. The CO may require the offeror to submit certified cost or pricing data in support of proposals in lower amounts. Subcontractor certified cost or pricing data must be accurate, complete and current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime offeror's Certificate of Current Cost or Pricing Data. The prime offeror is responsible for updating a prospective subcontractor's data. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the cost or

pricing data and submit the results of the offeror's analysis of the prospective source's proposal. When submission of a prospective source's certified cost or pricing data is required as described in this paragraph, it must be included along with the offeror's own certified cost or pricing data submission, as part of the offeror's own certified cost or pricing data. The offeror must also submit any other certified cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.

B. Direct Labor. Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.

C. Indirect Costs. Indicate how the offeror have computed and applied the offeror's indirect costs, including cost breakdowns. Show trends and budgetary data to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.

D. Other Costs. List all other costs not otherwise included in the categories described above (e.g., special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and Federal excise tax on finished articles) and provide bases for pricing.

E. Royalties. If royalties exceed $1,500, the offeror must provide the following information on a separate page for each separate royalty or license fee:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers.

(4) Patent application serial numbers, or other basis on which the royalty is payable.

(5) Brief description (including any part or model numbers of each contract item or component on which the royalty is payable).

(6) Percentage or dollar rate of royalty per unit.

(7) Unit price of contract item.

(8) Number of units.

(9) Total dollar amount of royalties.

(10) If specifically requested by the CO, a copy of the current license agreement and identification of applicable claims of specific patents.

F. Facilities Capital Cost of Money. When the offeror elects to claim facilities capital cost of money as an allowable cost, the offeror must submit form "Contract Facilities Capital Cost of

Money." (see Template 32 in the FAA Procurement Forms section of the Procurement Toolbox). The offeror must show the calculation of the proposed amount.

## III. FORMATS FOR SUBMISSION OF LINE ITEM SUMMARIES

A. New Contracts (including letter contracts)

| (1)<br>COST ELEMENTS | (2)<br>PROPOSED CONTRACT ESTIMATE-TOTAL COST | (3)<br>PROPOSED CONTRACT ESTIMATE-UNIT COST | (4)<br>REFERENCE |
|---|---|---|---|
| | | | |

Column Instruction

(1) Enter appropriate cost elements.

(2) Enter those necessary and reasonable costs that, in the offeror's judgment, will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (e.g., under a letter contract), describe them on an attached supporting page. When preproduction or startup costs are significant, or when specifically requested to do so by the CO, provide a full identification and explanation of them.

(3) Optional, unless required by the CO.

(4) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

B. Change Orders, Modifications, and Claims.

| (1)<br>COST ELEMENTS | (2)<br>ESTIMATED COST OF ALL WORK COMPLETED | (3)<br>COST OF DELETED WORK ALREADY PERFORMED | (4)<br>NET COST TO BE DELETED | (5)<br>COST OF WORK ADDED | (6)<br>NET COST OF CHANGE | (7)<br>REFERENCE |
|---|---|---|---|---|---|---|
| | | | | | | |

Column Instructions

(1) Enter appropriate cost elements.

(2) Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.

(3) Include the incurred cost of deleted work already performed, using actuals incurred if possible, or, if actuals are not available, estimates from the contractor's accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if the contractor desires to retain these items or any portion of them, indicate the amount offered for them.

(4) Enter the net cost to be deleted, which is the estimated cost of all deleted work less the cost of deleted work already performed. Column (2) minus Column (3) equals Column (4).

(5) Enter the contractor's estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the CO, provide a full identification and explanation of them. When any of the costs in this column have already been incurred, describe them on an attached a supporting schedule.

(6) Enter the net cost of change, which is the cost of work added, less the net cost to be deleted. Column (5) minus Column (4) equals Column (6). When this result is negative, place the amount in parentheses.

(7) Identify the attachment in which the information supporting the specific cost element may be found. (A*ttach separate pages as necessary*.)

## 2 Appendix – Developing A Detailed Independent Government Cost Estimate Added 3/2016

(1) *Developing a Detailed Cost Estimate.* An IGCE should be independently prepared by a subject matter expert(s). To begin, the estimator should perform a detailed analysis of the requirement. The estimator should be familiar with the market for the item, including prior prices, inflation, market conditions, quantity, existing and emerging technologies, and substitutions. The estimator should be able to explain clearly the rationale used to develop the estimate and document the results. The estimator should list any assumptions, methodology used, and reference material used in developing the estimate.

*Detailed Cost Estimate – Standard Elements.* The following description of standard cost elements used in a detailed estimate is intended to assist in the preparation of a detailed IGCE. A sample format for a detailed cost estimate is in Appendix 3.

*a. Estimating Labor Hours*

(i) Labor costs are usually the most significant part of the cost estimate for a contract. Direct labor is the labor directly applied to the task or

project performed under a contract. Estimating hours for individual labor categories may be achieved using one or a combination of several techniques.

(ii) Evaluating historical actual cost data gathered from FAA contracts for similar goods or services to estimate future requirements. The comparison between past and future items or services can be accomplished at a summary or task level. Many companies keep detailed cost records at the task level, which may be utilized if FAA has access to these records. When using this method consider aberrations that could skew the estimate. Consider also possible reductions in labor hours resulting from improvement from experience. This reduction can be estimated using learning curve theories.

(iii) Labor standards may be used to estimate labor hours for manufacturing or repetitive functions. Labor standards are developed from data within the company, data published by trade associations, and data gathered from various other reference sources. For example, a company may determine that to produce a widget requires a standard of 12 hours of an engineer's time. This means that on average 12 engineer hours are needed to produce one widget; the actual time may vary from widget to widget.

(iv) Estimates based on the professional experience and judgment of engineers and managers may be used to estimate labor hours, but it is the least accurate approach to estimating. Determining the proper mix of labor categories is important to make sure that the type of labor as well as the skill level of workers is appropriate for the work to be performed.

(v) Labor hours may vary from year to year depending on the goods or services acquired. Estimated hours should be adjusted when more or less work is anticipated in different years.

(vi) The productive hours for full-time contractor personnel should account for the anticipated vacations, holidays, sick days, and other administrative days. The number of potential work hours in a year is 2,080 (40 hours per week X 52 weeks per year); from the 2,080 hours estimated hours for vacation time (e.g. 120 hours), holidays (e.g. 80 hours), and sick leave (e.g. 40 hours) should be deducted (2,080 hours – 120 vacation hours – 80 holiday hours – 40 sick leave hours = 1,840 productive or direct hours).

Documenting the methods used to estimate labor hours is essential to support the independent government cost estimate. This information must be included in the IGCE narrative. Maintain copies of all source information.

b. *Estimating Labor Rates.* Estimates for labor rates may be derived from many sources including the following:

(i) Historical trends on FAA contracts for similar goods or services (be sure to determine if the labor rates are for direct labor or fully-loaded rates that include overhead, general and administrative, and profit) such as MASS, BITS II, and NISC.

(ii) Labor rates for similar services from General Services Administration (GSA) Federal Supply Schedules (FSS), Bureau of Labor Statistics (BLS), Office of Personnel Management (OPM) for comparison to federal employee salaries, and private surveys of labor rates may be used. Be sure to determine if the labor rates are for direct labor or fully-loaded rates that include overhead, general and administrative, and profit.

(iii) Geography may influence labor rates. Work locations should be considered because labor rates vary significantly by location for the same labor skills.

(iv) When the potential contractor is known (such as in a single source or contract modification situation) forward pricing rate agreements (FPRA) with the federal government (often through FAA or Defense Contract Management Agency (DCMA)) may be available and should be used to support estimated labor rates.

(v) In the situation of a known contractor, a comparison of labor rates among FAA contracts should be performed; that is checking the labor rates with the labor rates on other FAA contracts (such as MASS, BITS II, and NISC) for the same labor categories by the same contractor. This comparison avoids paying higher rates for the same labor categories by the same contractor for similar work.

(vi) Labor rates for future periods may be estimated by performing a trend analysis of past labor rates on similar projects, or by escalating labor rates. Escalation must be substantiated by a recognized source such as IHS Global Insight (available on the FAA website) or Bureau of Labor Statistics indices (Consumer Price Index or Producer Price Index).

(vii) Estimates for exempt employees may be estimated for positions performing similar duties covered in Office of Personnel Management (OPM) position descriptions (PD) for general schedule (GS) or wage grade (WG) employees. For example, if an information technology management analyst was required, using OPM's "position classification" worksheet for a series GS-2210 for an information technology management analyst, following the worksheet instructions, the required analyst may be rated as a GS-14 employee equivalent. The

salary tables published by OPM states that a GS-14, at a step 5 earns $106,000 per year or $50.95 per hour. This figure could be used as the basis for estimate.

(viii) Estimates for non-exempt labor for services and construction are available from the Department of Labor wage determinations provided under the provisions of the Service Contract Act and the Davis Bacon Act. A non-exempt employee covered by one of these acts must be paid no less than the rate of pay listed in the wage determination. Examining the list may help in determining the appropriate labor categories.

Documenting the methods used to estimate labor rates is essential to support the independent government cost estimate. This information must be included in the IGCE narrative. Maintain copies of all source information.

c. *Estimating Indirect Costs.*

(i) The following definitions are provided for indirect costs:

| **Terms** | **Definitions** |
|---|---|
| Indirect Cost | Any cost that cannot be *directly* identified with a single final cost objective (i.e. one contract) but can be identified with multiple final cost objectives (i.e. multiple contracts or the overall business). |
| Fringe Benefit Expenses | Costs of employee benefits – health insurance, vacation, as well as payroll taxes. These costs may be included in Overhead, rather than being a separate rate |
| Overhead Expenses | Costs benefiting more than one contract, such as supervision, training, and professional membership fees |
| General and Administrative (G&A) Expenses | Expenses that benefit the business as a whole, such as executives, accounting, and legal. |
| Material Handling Rate | Costs associated with ordering, receiving, inspecting, and shipping materials even when purchased for FAA at cost. Costs associated with subcontracts, including subcontract management |
| Facilities Capital Cost of Money (FCCM) | FCCM is an imputed cost that represents the cost to the contractor employing capital when investing in facilities or assets under construction that benefit FAA. |
| Indirect Cost Pool | An indirect cost pool is a logical grouping of incurred costs identified with multiple final cost objectives. |
| Allocation Base | The costs over which the indirect rates are spread (the denominator in the indirect rate calculation). The allocation base and the indirect costs in the associated |

| | |
|---|---|
| | pool must have a causal/beneficial relationship. |

(ii) When the potential contractor is known (such as in a single source or contract modification situation) forward pricing rate agreements (FPRA) with the federal government (often through FAA or Defense Contract Management Agency (DCMA)) may be available and must be used to support estimated indirect rates.

a. There may also be a forward pricing rate recommendation (FPRR) available, if no FPRA. This may come from FAA, DCMA, or the Defense Contract Audit Agency (DCAA).

(iii) Understanding the composition of each indirect cost or overhead pool is important to ensure proper treatment of costs and to avoid duplication. If a cost estimate contains fully loaded rates, fringe benefits, overhead, G&A, and fee should already be included. Additional overhead should not be applied to avoid over estimating the cost.

d. *Material Overhead*. Material overhead or material handling includes the expenses associated with acquiring, transporting, receiving, inspecting, handling, and storing materials. Different options exist for collecting and allocating indirect material-related costs. Because material costs can vary significantly from contract to contract, a separate pool ensures that overhead costs are charged commensurately with the material cost in the contract. This pool often contains subcontract expenses, as well.

*e. Labor Overhead.*

(i) Labor overhead includes:

a. Indirect labor consisting of supervision, inspection, maintenance, custodial, and other personnel whose labor is not charged directly to a production or operation;
b. Costs associated with labor such as Social Security, unemployment taxes, and fringe benefits, if not in a separate indirect cost pool;
c. Indirect supplies such as small tools and janitorial supplies; and
d. Fixed charges such as depreciation, insurance, rent, and property taxes.

(ii) Overhead may vary significantly if the work is being performed on-site (contractor's location) or off-site (government's location). Off-site work normally is lower because the contractor does not need to maintain a building and avoid costs such as utilities.

(iii) Labor overhead is often separated by labor function such as engineering and manufacturing overhead.

f. *Fringe Benefits Overhead.* Contractors often have a separate pool for fringe benefits. Fringe benefits may include:

(i) Vacation leave;

(ii) Sick pay;

(iii) Holidays;

(iv) Health Insurance;

(v) Payroll taxes; and

(vi) Supplemental unemployment benefits.

*g. General and Administrative (G&A) Expense.*

(i) General and administrative costs typically include labor for corporate officers, clerical personnel, accountants, human resources personnel, purchasing agents, and attorneys. It also includes the cost of corporate level equipment, office supplies, utilities, interest expense, and legal costs.

(ii) The G&A allocation base one of three groups of costs:

a. Total cost input (TCI) is the preferred base to apply the G&A rate. The total cost input base includes all costs, both direct and indirect (excludes profit). This approach must be used unless there is a reasonable basis to use one of the other approaches

b. Value-added cost input is total cost minus material and subcontract costs. Value-added is appropriate when the inclusion of material and subcontract costs would distort the G&A allocation. When material and subcontract costs are significant, the use of value-added G&A allocation may be a better measure of G&A expense than total cost input.

c. Single element cost input would use one cost element to allocate G&A expense. For example, the G&A rate would be multiplied by only the direct labor cost. This approach may be used when there are no other significant cost elements, or when other significant elements vary in the same proportion to total costs. This is the least preferred method.

h. *Material Costs.* The following approaches could support the estimated cost for materials:

(i) If the contract is a follow-on or is similar to another FAA contract, the purchase history of the costs of materials could be a basis for estimate. The IGCE narrative should explain the similarities between the needed material and the historical basis. The estimate must be supported with accounting records, vendor invoices, bills of material, or other documentation that can support a per unit cost of the items being acquired. Any modification required for the new item being acquired should be estimated and supported.

(ii) Commercial items and catalog prices could be used to estimate material costs. Examples would include things like security cameras and doors. Copies of the catalogs used to estimate the material cost should be retained.

(iii) Vendor quotes can be used to estimate material costs. Vendor quotes from similar FAA contracts may be used to estimate material costs for the new acquisition.

(iv) Prices of some commodities may be regulated by law; in this case a copy of the law listing the particular commodity's price would support the cost estimate.

(v) The Producer Price Index (PPI) is an example of a widely used published index for escalation of material cost. The Bureau of Labor Statistics' PPI lists products by commodity groups and individual items. Trade and industry publications are other possible sources for obtaining appropriate data for material cost escalation.

i. *Escalation.* Future periods may be estimated by performing a trend analysis of past projects that are similar to the proposed work, or by using escalation factors. Escalation must be substantiated by a recognized source such as IHS Global Insight or the Bureau of Labor Statistics indices (Consumer Price Index or Producer Price Index).

j. *Other Direct Costs (ODC).* Other direct costs (ODC) are costs charged directly to the contract that have not been included in proposed material, direct labor, indirect costs, or any other category of costs. Examples of ODC include special tooling, shipping expenses, reproduction costs, royalties, and federal excise taxes. All ODC should be listed in the IGCE, and supporting documentation retained and available for inspection by interested third parties.

k. *Travel Costs.* The program office must estimate the number of trips, the origin and destination for each trip, the length of stay, and the number of persons per trip before estimating the cost of travel. The purpose for the trips should be included in the IGCE narrative. Travel costs usually include cost of

transportation, lodging, and meals and incidental expenses. The Federal Travel Regulation prescribed by the General Services Administration should be used to estimate lodging, meal and incidental expense, mileage for privately owned vehicles used for official travel, and so forth. Estimates for airfare and car rentals can be obtained using several travel web sites. (Note: make and retain copies of all source information used for travel estimates.)

l. *Profit or Fee.* Profit is the revenue in excess of the costs to perform a firm fixed price contract, and a fee is a flat charge paid in addition to costs on cost reimbursable contracts. The use of several forms may develop an estimated profit by using weighted-averages for different functions. These forms include DOT Form 4220 and DD Form 1547. A simpler approach is to apply a percentage to the total cost, excluding any directly reimbursable items. The percentage will vary according to risk factors, market factors, and location.

## 3 Appendix - Template for Detailed Independent Government Cost Estimate

**Revised 3/2016**

**Detailed Independent Government Cost Estimate**

Independent Government Cost Estimate for _____

Prepared by: _____

Office title and phone: _____

Date: _____

| Direct Labor by Category | Hours | | Hourly Rate | | Total |
|---|---|---|---|---|---|
| | | X | | = | |
| | | X | | = | |
| | | X | | = | |
| | | X | | = | |
| | | | **Subtotal** | | |
| Labor Overhead ( ___%) of labor | | | | | |
| **Total Labor (Direct Labor + Labor Overhead)** | | | | | |
| Direct Material | | | | | |
| Purchased Parts and Supplies | | | | | |
| Subcontracts | | | | | |

| | |
|---|---|
| Other Material | |
| **Total Material** | |
| Other Direct Costs | |
| Travel | |
| Consultants | |
| Special Equipment | |
| Other | |
| **Total Other Direct Cost** | |
| **TOTAL DIRECT COST** = (Labor + Material + Other Direct Cost) | |
| GENERAL AND ADMINISTRATIVE EXPENSE = ( %) X Total Direct Cost | |
| **Subtotal** | |
| FEE/PROFIT = ( %) X (Direct Cost + General and Administrative) ___ | |
| **TOTAL ESTIMATED COST** | |

**Narrative for basis of estimate attached**

## T3.2.4 - Types of Contracts Revised 7/2009

### A Types of Contracts Revised 7/2007

#### 1 General Considerations Added 7/2007

a. The Contracting Officer (CO) determines the type of contract. A variety of factors influence the CO's decision, such as nature and complexity of the requirement, degree to which requirements can be described, performance period, need for incentives, urgency, market conditions, industry practices, or procurement history.

b. Circumstances may change during implementation of a large program, a series of contracts, or a single long-term contract, and a different contract type may be appropriate in later periods than that used at the outset. Also, a combination of contract types may be appropriate for different aspects of a requirement under one contract award.

c. The CO uses sound judgment when selecting a contract type. Depending on the circumstances, it may be a matter for communication with vendors because contract price is

closely related to contract type. The CO's objective should be to choose a contract type and price that will result in reasonable contractor risk and ensure efficient and economical contractor performance.

d. Performance requirements must be realistic, manageable, and within the control of the parties to the contract. The procurement team (CO, program official, legal counsel, and other staff) should, to the extent possible, assess and discuss contract performance risks and ensure contract requirements and terms are clear. Contract terms must be reasonable to both FAA and the contractor.

## 2 Fixed-Price Revised 7/2007

a. *General*. Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

b. *Firm Fixed-Price*.

(1) Description:

(a) Provides for a price that is not subject to change regardless of the actual costs incurred by the contractor after award.

(b) Places maximum risk upon the contractor and full responsibility for all costs and resulting profit or loss with maximum incentive to control costs and perform effectively.

(c) Imposes minimum administrative burden upon the contracting parties.

(2) Use When:

(a) Performance risk can be reasonably predicted or where risk is minimal.

(b) For commercial items or commercial-type products or other supplies or services on the basis of reasonably definite functional or detailed specifications.

(c) Available cost or pricing information permits realistic evaluation of probable costs of performance or the CO can establish fair and reasonable prices at the outset.

(d) The contractor is willing to accept a firm fixed price representing assumption of the risks involved.

(3) Considerations:

(a) Contractor is responsible for cost control and associated risks.

(b) Careful evaluation of project requirements and the Offeror's price proposal shall be made to ensure a meeting of the minds and ensure price does not include excessive allowance for risk.

c. *Fixed-Price with Economic Price Adjustment.*

(1) Description:

Same as fixed price, except provides for an upward or downward revision of the stated contract price based on the occurrence of specific conditions specified in the contract. Adjustments are of three general types:

(a) Established prices. Increases or decreases from an agreed upon level in published or otherwise established prices of specific items or the contract end items. Normally restricted to industry-wide contingencies.

(b) Actual costs of labor or material. Increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance. Should be limited to contingencies beyond the contractor's control.

(c) Cost indexes of labor or material. Increases or decreases in specified costs of labor or material cost standards or indexes that are specifically identified in the contract.

(2) Use When:

There is considerable doubt concerning the stability of the market or labor conditions that will exist during an extended contract period (i.e., during periods of high or significant fluctuations in inflation), and where the performance period is greater than one year.

(3) Considerations:

(a) Risk for contractor reduced.

(b) Important to ensure that the contingency (typically an index published by the Bureau of Labor Statistics) is a reliable indicator of the contractor's probable changes in cost. For example, the Employment Cost Index (ECI) is generally preferable to the Consumer Price Index (CPI-U) if labor costs are the primary component of the contractor's price.

(c) Should not be used unless it is necessary either to protect the contractor and the FAA against significant fluctuations in labor or material costs.

(d) In contracts that do not require submission of cost or pricing data, the

CO should obtain adequate information to establish the base level from which an adjustment may be made and may require verification of data submitted.

d. *Firm Fixed-Price, Level-of-Effort.*

(1) Description:

(a) Requires a contractor to provide a specified level of effort, over a stated period of time, for work that can be stated only in general terms, and the FAA pays the contractor a fixed dollar amount.

(b) Suitable for investigation or study in a specific research and development area. The output of the contract is usually a report showing the results achieved through application of the required level of effort.

(2) Use When:

(a) The work required cannot otherwise be clearly defined.

(b) The required level of effort is identified and agreed upon in advance.

(3) Considerations:

(a) There is reasonable assurance that the intended result cannot be achieved by expending less than the stipulated effort.

(b) Payment is based on the effort expended rather than the results achieved. e.

*Fixed-Price Incentive.*

(1) Description:

(a) Provides for adjusting profit and establishing the final contract price by application of a formula based on the relationship of total final negotiated cost to total target cost.

(b) The final price is subject to a price ceiling, negotiated at the outset. The two forms of fixed-price incentive contracts are firm target and successive targets.

(2) Use When:

(a) A firm-fixed price is not suitable.

(b) The nature of the supplies or services being acquired and other circumstances of the acquisition are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective

cost control and performance.

(c) The performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work, if the contract also includes incentives on technical performance and/or delivery.

(d) Billing prices are established as an interim basis for payment. These billing prices may be adjusted, within the ceiling limits, upon request of either party to the contract, when it becomes apparent that the final negotiated cost will be substantially different from the target cost.

(3) Considerations:

(a) Places maximum risk upon the contractor and full responsibility for all costs and resulting profit or loss with maximum incentive to control costs and perform effectively.

(b) The final price is subject to a price ceiling, negotiated at the outset. See guidance on Firm Target and Successive Target contracts for additional considerations.

f. *Fixed-Price Incentive (Firm Target).*

(1) Description:

(a) Specifies a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula. These elements are negotiated at the outset.

(b) Price ceiling is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses.

(c) When performance is completed, the parties negotiate the final cost, and the final price is established by applying the formula.

(2) Use When:

(a) The contractor's accounting system is adequate for providing data to support negotiation of final cost and incentive price revision.

(b) Adequate cost or pricing information for establishing reasonable firm targets is available at the time of initial contract negotiation.

(3) Considerations:

(a) Profit varies inversely with the cost; therefore this contract type provides a positive, calculable profit incentive for the contractor to control costs.

(b) If the final negotiated cost exceeds the price ceiling, the contractor absorbs the difference as a loss.

(c) The CO should specify in the contract schedule the target cost, target profit, and target price for each item subject to incentive price revision.

g. *Fixed-Price Incentive (Successive Targets).*

(1) Description:

(a) Specifies the following elements, all of which are negotiated at the outset:

(i) Initial target cost;

(ii) Initial target profit;

(iii) Initial profit adjustment formula;

(iv) The production point; and

(v) A ceiling price.

(b) The profit adjustment formula to be used for establishing the firm target profit includes a ceiling and floor for the firm target profit.

(2) Use When:

(a) Available cost or pricing information is not sufficient to permit the negotiation of a realistic firm target cost and profit before award.

(b) Sufficient information is available to permit negotiation of initial targets.

(c) There is reasonable assurance that additional reliable information will be available at an early point in the contract performance so as to permit negotiation of either a firm-fixed price or firm targets and a formula for establishing final profit and price that will provide a fair and reasonable incentive.

(d) The contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, and negotiation of final costs.

(e) Cost or pricing information adequate for establishing a reasonable firm target cost is reasonably expected to be available at an early point in contract performance.

(3) Considerations:

(a) Initial profit adjustment formula normally provides for a lesser degree of contractor cost responsibility than would a formula for establishing final profit and price.

(b) A ceiling price is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses.

(c) When the specified production point is reached, the parties negotiate the firm target cost giving consideration to cost experience under the contract and other pertinent factors. The firm target profit is established by the stated formula. The parties may then negotiate a firm-fixed price, using the firm target cost plus the firm target profit as a guide; **OR** negotiate a formula for establishing the final price using the firm target cost and firm target profit. The final cost is then negotiated at completion, and the final profit is established by the formula, as under the fixed-price (firm target) contract.

h. *Fixed-Price Award Fee.*

(1) Description:

(a) Provides for a price not subject to any adjustment on the basis of the contractor's actual costs in performing the contract and for a fee consisting of an award amount that the contractor may earn in whole, in part, or not at all during performance.

(b) Award fee is sufficient to provide motivation for excellence in such areas as quality, timeliness, etc.

(c) The amount of the award fee to be paid is determined by the FAA's judgmental evaluation of the contractor's performance in terms of the discriminators stated in the contract. This determination is made unilaterally by the FAA and is not subject to the "Disputes" clause.

(2) Use When:

(a) The work can be sufficiently defined to permit the use of a fixed-price contract and the CO believes the FAA can benefit by providing added incentives to encourage the contractor to perform beyond the minimum contract requirements.

(b) The additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits.

(c) Multiple offices or functions may be support by the contract.

(3) Considerations

(a) Probable profit included in the fixed price when establishing the award fee.

(b) Contract contains an award fee determination plan which discusses the method the FAA will use to determine how much of the award fee may be paid to the contractor. The following topics are recommended:

(i) Performance discriminators (describes the specific areas of performance to be evaluated, and the weighting given to each area).

(ii) Frequency of evaluations, total award fee, and amount of fee allocated per performance evaluation period.

(iii) Process for making changes to the plan.

(iv) Termination (describes how the final period of evaluation will be treated should the contract be terminated).

### 3 Cost-Reimbursement Revised 1/2010

a. *General.* Cost-reimbursement type contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the required work and establish a ceiling that the contractor may not exceed (except at its own risk) without the CO's approval. Cost-reimbursement contracts are appropriate when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

b. *Cost.*

(1) Description:

A cost-reimbursement contract in which the contractor receives no fee.

(2) Use When:

(a) Research and development work, particularly with nonprofit educational institutions or other nonprofit organizations, and for facilities contracts.

(b) The contractor's accounting system is adequate for determining costs applicable to the contract.

(c) The uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use a fixed price contract.

(d) The total value of the contract is high enough to justify the higher administrative costs when compared to other contract types.

(3) Considerations:

(a) Appropriate FAA surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

(b) Verifiable cost information is available.

(c) A ceiling price which the contractor may not exceed without the CO's approval.

(d) Costs are determined according to FAA Cost

Principles. c. *Cost-Sharing.*

(1) Description:
A cost-reimbursement contract in which the contractor receives no fee and is reimbursed only for an agreed-upon share of its allowable costs.

(2) Use When:

(a) The contractor agrees to absorb a portion of the costs with the expectation of compensating benefits.

(b) The contractor's accounting system is adequate for determining costs applicable to the contract.

(c) The uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use a fixed price contract.

(d) The total value of the contract is high enough to justify the higher administrative costs when compared to other contract types.

(3) Considerations:

(a) Appropriate FAA surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

(b) Verifiable cost information is available.

(c) A ceiling price which the contractor may not exceed without the CO's approval.

(d) Costs are determined according to FAA Cost

Principles. d. *Cost-Plus-Fixed Fee.*

(1) Description:

(a) Provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract.

(b) The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the scope of work to be performed under the contract.

(c) Typically written in either completion form or term form.

(d) Permits contracting for efforts that might otherwise present too great a risk to contractors, but it provides the contractor only a minimum incentive to control costs.

(2) Use When:

(a) The uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use a fixed-price contract.

(b) The total value of the contract is high enough to justify the higher administrative costs when compared to another contract type.

(c) The contractor's accounting system is adequate for determining costs applicable to the contract.

(d) The level of effort required is unknown such as for the performance of research or preliminary exploration or study.

(e) The extra incentive of a cost plus award fee is not necessary, but payment of profit is still appropriate.

(3) Considerations:

(a) A ceiling price which the contractor may not exceed without the CO's approval is included.

(b) Costs are determined according to FAA Cost Principles.

(c) Contractor's accounting system is adequate for determining costs applicable to the contract.

(d) Cost plus fixed fee does not provide fee incentives for superior performance.

(e) Generally less costly to administer from an administrative standpoint than cost plus award fee.

(f) May be completion or term. Completion form is preferred because of the

differences in obligation assumed by the contractor. This forms states a definite goal or target and specifies an end product. If the work cannot be completed within the estimated cost, FAA may require more effort and increase the estimated cost but without an increase in fee.

(g) If term is used the contract should provide a specific level of effort within a definite time period. If FAA considers performance satisfactory, the fixed fee is payable at the expiration of the agreed upon period.

e. *Cost-Plus-Incentive Fee.*

(1) Description:

(a) Provides for the initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs.

(b) Specifies a target cost, target fee, minimum and maximum fees, and a fee adjustment formula.

(c) After contract performance, the fee payable to the contractor is determined in accordance with the formula.

(2) Use When:

(a) A cost-reimbursement contract is necessary and a target cost and fee adjustment formula can be negotiated that are likely to motivate the contractor to manage effectively.

(b) Development and test programs are required.

(c) Technical performance incentives may be included and it is highly probable that the required development of a major system is feasible and FAA has established its performance objectives, at least in general terms.

(3) Considerations:

(a) The fee adjustment formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs and decreases in fee below target fee when total allowable costs exceed target costs.

(b) The increase or decrease is intended to provide an incentive for the contractor to manage the contract effectively.

(c) When total allowable cost is greater than or less than the range of costs within which the fee-adjustment formula operates, the contractor is paid total allowable costs, plus the minimum or maximum fee.

(d) The fee adjustment formula should provide an incentive that will be effective over the full range of reasonably foreseeable variations from target

cost.

(e) If a high maximum fee is negotiated, the contract must also provide for a low minimum fee that may be a zero fee or, in rare cases, a negative fee.

(f) Costs are determined according to FAA Cost Principles.

(g) Contractor's accounting system is adequate for determining costs applicable to the contract.

f. *Cost-Plus-Award Fee.*

(1) Description:

(a) Provides for a fee consisting of:

(i) a base amount fixed at inception of the contract;

(ii) an award amount that the contractor may earn in whole or in part during performance and that is sufficient to motivate excellent performance; and

(iii) a performance evaluation plan that specifies the criteria for determining the award fee to be paid. Additional detailed guidance on developing a performance evaluation plan, measurable award fee criteria, calculating award fee, and other basic guidelines about administering cost-plus-award-fee contracts are in Appendices D-2 and D-3 of this Section.

(b) The amount of the award fee to be paid is based on FAA's judgmental evaluation of the contractor's performance. This determination is made unilaterally by FAA and is not subject to the "Disputes" clause.

(2) Use When:

(a) The uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use a fixed-price contract.

(b) The total value of the contract is high enough to justify the higher administrative costs when compared to another contract type.

(c) The contractor's accounting system is adequate for determining costs.

(d) The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance, or schedule.

(e) The likelihood of meeting acquisition objectives will be enhanced by using a

contract that effectively motivates the contractor toward exceptional performance and provides FAA with the flexibility to evaluate both actual performance and the condition under which it was achieved.

(3) Considerations:

(a) The CO should weigh the cost of higher contract administration costs against the expected benefit of selecting a cost-plus-award-fee contract.

(b) A ceiling price which the contractor may not exceed without the CO's approval is included.

(c) Costs are determined according to FAA Cost Principles.

(d) The CO must develop measurable award fee criteria to evaluate contractor performance. The CO evaluation must contain narrative comments as the bases for judging contractor performance, identifying specific contractor strengths, weaknesses and deficiencies.

(e) Contract contains an award fee determination plan which discusses the method FAA will use to determine how much the award fee will be paid.

(f) General topics of an award fee plan:

(i) Performance discriminators must be clearly described as these are the bases for grading and scoring methods used to translate evaluation findings into recommended award fee amounts or ranges.

(ii) Frequency of evaluations, total award fee, and amount of fee allocated per performance evaluation period.

(iii) Process for making changes to the plan.

(iv) Termination (describes how the final period of evaluation will be treated should the contract be terminated).

(f) Number of evaluation criteria and the requirements they represent may differ widely among contracts. The criteria and rating plan should motivate the contractor to improve performance in the areas rated, but not at the expense of a least minimum acceptable performance in all other areas.

(g) Provide for evaluation at stated intervals during performance, so that the contractor is periodically informed of the quality of its performance.

(h) Partial payment of fee should generally correspond to the evaluation periods.

g. *Cost-Plus-Percentage of Cost.*

Description: Provides for reimbursement of cost plus an agreed upon percentage of incurred cost as fee. The amount of fee increases as cost increases. This type of contract rewards inefficient and ineffective performance, or failure to control cost, with higher amounts of fee. **THIS CONTRACT TYPE IS PROHIBITED.**

**4 Incentive Contracts** **Revised 7/2009**

a. *General.*

(1) Incentive contracts are designed to obtain specific program objectives by establishing reasonable and attainable targets clearly communicated to the contractor, and by establishing incentives to motivate contractor performance and discourage inefficiency. The basic categories of incentive contracts are fixed-price incentive and cost-reimbursement incentive. Award-fee contracts are also a type of incentive contract.

(2) When predetermined, formula-type incentives on technical performance or delivery are included in a contract, increases in profit or fee are provided only for contractor achievement surpassing the targets, and decreases are provided for to the extent that such targets are not met. The incentive increases or decreases are applied to performance targets rather than minimum performance requirements.

b. *Cost Incentives.*

(1) Most incentive contracts include only cost incentives, which take the form of a profit or fee adjustment formula and are intended to motivate the contractor to effectively manage costs. No incentive contract should provide for other incentives without also providing a cost incentive (or constraint).

(2) Excluding cost-plus-award-fee contracts, incentive contracts include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides:

(a) Actual cost that meets the target will result in the target profit or fee;

(b) Actual cost that exceeds the target will result in downward adjustment of target profit or fee; and

(c) Actual cost that is below the target will result in upward adjustment of target profit or fee.

c. *Performance Incentives.*

(1) Performance incentives may be considered for specific product characteristics (*e.g.*, range, speed, maneuverability) or other specific elements of the contractor's performance. These incentives should relate profit or fee to results achieved by the contractor, compared with specified targets.

(2) To the extent practicable, positive and negative performance incentives should be considered for service contracts involving objectively measurable tasks when quality of performance is critical and incentives are likely to motivate the contractor.

(3) Technical performance incentives may involve a variety of specific characteristics that contribute to the overall performance of the end item. The incentives on individual technical characteristics should be balanced so that no one of them is exaggerated to the detriment of the overall performance of the end item.

(4) Performance tests and/or assessments of work performance are generally essential in order to determine the degree of attainment of performance targets. The contract should be as specific as possible in establishing test criteria (such as testing conditions, instrumentation precision, and data interpretation) and performance standards (such as the quality levels of services to be provided).

(5) Because performance incentives present complex problems in contract administration, the CO should negotiate incentives in full coordination with Government engineering and pricing specialists.

(6) It is essential that the Government and contractor agree explicitly on the effect that contract changes (e.g., pursuant to the Changes clause) will have on performance incentives.

(7) The CO must exercise care, in establishing performance criteria, to recognize that the contractor should not be rewarded or penalized for attainments of Government-furnished components.

d. *Delivery Incentives*.

(1) Delivery incentives should be considered when improvement from a required delivery schedule is a significant Government objective. It is important to determine the Government's primary objectives in a given contract (*e.g.*, earliest possible delivery or earliest quantity production).

(2) Incentive arrangements on delivery should specify the application of the reward-penalty structure in the event of Government-caused delays or other delays beyond the control, and without the fault or negligence, of the contractor or subcontractor.

e. *Structuring Multiple-Incentive Contracts*. A multiple-incentive arrangement should:

(1) Motivate the contractor to strive for outstanding results in all incentive areas; and

(2) Compel trade-off decisions among the incentive areas, consistent with the Government's overall objectives for the acquisition. Because of the interdependency of the Government's cost, the technical performance, and the delivery goals, a contract that emphasizes only one of the goals may jeopardize control over the others. Because outstanding results may not be attainable for each of the incentive areas, all multiple-incentive contracts must include a cost incentive (or constraint) that operates to preclude rewarding a contractor for superior technical performance or delivery results

when the cost of those results outweighs their value to the Government.

f. *Checklist for Incentive Contracts.*

*Pre-award:*

- Was a review of incentive fee contracting at AMS Procurement Guidance T3.2.4.A.4 a.- e. completed?
- Is it likely the incentive affects cost, schedules or quality in a positive way?
- Are there potential unintended negative consequences in the incentive on costs, schedules or quality?
- Is the incentive challenging and attainable?
- Is the incentive affordable for FAA?
- Are resources available to properly formulate and monitor the contract?
- Can risks and cost benefits be assessed?
- Can incentives be objectively measurable?
- Do incentives correlate to the desired results?
- What form should the incentive take?
- Was there market research and open communications with vendors in developing the incentive?
- Are there evaluation factors related to the incentive?
- Are multiple incentives (i.e., combination of cost, performance/delivery, or quality incentives) appropriate?
- Does the incentive fee plan provide clear direction on how the incentive fee will be applied and monitored?
- What is appropriate contract type - CPIF or FPI?
- Are there any goals where multiple incentives conflict?
- Does the incentive have the requisite limits?

*Post-award:*

- Is the incentive effective?

- Do incentive assumptions need to be reassessed?
- Are contractors being rewarded for simply meeting contract requirements?
- Is the incentive focused on the objective?
- How effective are the tools and processes being used to monitor the incentive?
- Is there a need to revise the incentive due to changes in requirements or contract developments?

## 5 Indefinite Delivery Revised 1/2012

a. *General.* There are three types of indefinite delivery contracts: definite quantity; requirements; and indefinite-quantity. An indefinite delivery contract permits flexibility in both quantity and delivery time, and in ordering products or services after requirements materialize. These contract types are appropriate when the exact times or exact quantities of future deliveries are not known at the time of contract award, and FAA wants a firm commitment from the contractor to accept all orders placed in accordance with the contract terms. Other considerations for indefinite delivery contracts include:

(1) Contracts may provide for any appropriate cost or pricing arrangement.

(2) Cost or pricing arrangements that provide for an estimated quantity of supplies or services (e.g., estimated number of labor hours) must comply with the appropriate cost and pricing procedures.

(3) Prices remain fixed for the duration of the contract unless specific provisions are included for price adjustments.

(4) A separate public announcement is not required for orders placed under a requirements or indefinite quantity contract.

(5) Contract schedule should include the names of organizations authorized to issue orders.

(6) The contract may include provisions for placing oral, electronic, or facsimile orders. Funds should be properly obligated and oral orders confirmed in writing.

(7) When determining which contract, cost and pricing arrangements to include, all justifications and approvals for such arrangements must be made and obtained prior to entering into the indefinite delivery contract.

b. *Definite Quantity.*

(1) Description:

Provides for delivery of a definite quantity of specific supplies or services for a fixed

period, with deliveries or performance to be scheduled at designated locations upon order.

(2) Use When:

(a) FAA can determine in advance that a definite quantity of supplies or services will be required during the contract period and the supplies or services are regularly available or will be available after a short lead-time.

(b) The FAA's total requirements are known but the delivery schedule or locations are not known in advance.

(3) Considerations:

(a) Limits FAA's and the contractor's obligation to the quantity specified in the contract.

(b) May also contain provisions to order option quantities.

c. *Indefinite Quantity.*

(1) Description:

(a) Limits FAA's obligation to the minimum quantity specified in the contract.

(b) Provides for delivery of an indefinite quantity within stated limits, of specific products or services during a fixed period; with deliveries to be scheduled by placing orders with the contractor.

(c) Also known as a delivery order contract.

(2) Use When

(a) The FAA cannot predetermine, above a specified minimum, the precise quantities of supplies or services that will be required during the contract period.

(b) The FAA does not wish to commit itself for more than a minimum quantity.

(c) A recurring need is anticipated.

(d) Funds for other than the stated minimum quantity are obligated by each delivery order, and not by the contract itself.

(3) Considerations:

(a) The schedule of items should include a realistic estimate of total orders to be placed during the contract term.

(b) Contract may include a maximum or minimum quantity that FAA may order under delivery order and the maximum that it may order during a specific period

of time.

(c) The contract should contain a minimum quantity of supplies or services that the contractor may be required to deliver, if ordered. The minimum quantity should be more than nominal but should not exceed the amount that FAA is fairly certain to order.

(d) Making multiple awards may be beneficial. In making this determination, the CO should exercise sound business judgment as part of acquisition planning. The administrative cost of multiple contracts may outweigh any potential benefits.

(e) If multiple awards are anticipated, include a notice to offerors.

d. *Requirements Contract.*

(1) Description:

(a) Provides for filling all actual product or service requirements of designated government activities during a specified period with delivery or performance scheduled by placing orders with the contractor.

(b) Funds are obligated by each delivery order, not by the contract itself.

(c) Also known as a delivery order contract.

(2) Use When

(a) The FAA anticipates recurring requirements but cannot predetermine the precise quantities of products or services that designated FAA activities will need during a definite period.

(b) The contract states a realistic estimated total quantity.

(c) The estimate is based on the most current information available, such as previous requirements or consumption.

(3) Considerations:

(a) Estimated requirements are not a representation to an offeror or contractor that the estimated quantity will be ordered, or that conditions affecting requirements will be stable or normal.

(b) Contract may include a maximum limit of the contractor's obligation to deliver and the FAA's obligation to order.

(c) Contract may specify minimum/maximum quantities that the FAA may order under each individual order and the maximum it may order during a specified

period of time.

(d) If contract is to acquire work on exiting FAA property (e.g., repair, modification or overhaul), the schedule should specify that failure of FAA to furnish such items in the amounts or quantities described in the schedule as 'estimated' or 'maximum' will not entitle the contractor to any equitable adjustment in price under the FAA property clause of the contract.

## 6 Time-and-Materials / Labor-Hour Revised 1/2015

a. Description:

A time-and-materials (T&M) or labor-hour (LH) contract provides for acquiring supplies or services on the basis of direct labor hours at specified fixed hourly rates. Fixed hourly labor rates include wages, overhead, general and administrative expenses, and profit. A T&M contract also includes provisions for acquiring materials at actual cost (and may include a handling fee).

b. Use When:

A T&M or LH contract may be used when no other contract type is suitable, and it is not possible at the time of award to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

c. Considerations:

(1) *Justification*. The CO must document the basis for selecting a T&M or LH contract, including task orders placed against an ordering vehicle. This justification must explain:

(a) Why no other contract type is suitable;

(b) Why it is not possible to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence;

(c) The market research conducted; and

(d) How the requirement has been structured to best allow for another contract type with less risk (such as fixed-price) to FAA in future procurements. This may include transitioning individual line items to fixed-price (for example, materials), while keeping other line items as T&M (for example, installation services).

(2) *Approval of Long Term Contracts*. The Chief of the Contracting Office must approve any T&M or LH contract with a total performance period of more than five years (base period plus options, or contracts extended by modification). The CO documents the basis for the performance period, includes this information in the T&M or LH justification required by paragraph c. (1) above, and sends to the justification to the

COCO for approval.

(3) *Ceiling*. T&M or LH contracts must include a ceiling price established at the time of contract award. There must be a documented relationship between the ceiling price established at the time of award and the amount of work expected to be performed. The CO must justify and document consistent with AMS Single-Source Selection Policy any ceiling price increase. As part of this justification and documentation, the CO must conduct an analysis of pricing and other relevant factors to determine if the ceiling increase is in the FAA's best interests. The CO also should consider if effort in excess of the ceiling price, where appropriate, should be completed using a fixed-price contract modification.

(4) *Labor Categories*. T&M or LH contracts should establish only those labor categories necessary for the required work. The program official and CO must jointly document the basis for selecting labor categories to be used. The contract should specify any minimum education, experience, and other qualifications required for each labor category.

(5) *Hourly Rates*. T&M or LH contracts must specify for each labor category, separate fixed hourly rates that include wages, overhead, general and administrative expense, and profit. For noncompetitive awards, the contract must specify fixed hourly rates for each labor category, whether performed by contractor personnel, subcontractor personnel, or employees of a division, subsidiary, or affiliate of the contractor under a common control.

(6) *Material Costs*.

(a) Materials are:

(1) Direct materials: Those materials that enter directly into the end product or are consumed in connection with the furnishing of the end product or service;

(2) Subcontracts: For supplies or incidental services for which there is not a labor category in the contract;

(3) Other direct costs: Includes incidental services for which there is not a labor category in the contract, travel, and computer usage charges; and

(4) Applicable indirect costs.

(b) Material costs are compensable only if the contract provides for such costs.

(c) When included as part of material costs, material handling costs (or fees) must include only costs excluded from the labor-hour rate. These costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures.

(7) *Monitoring*. T&M or LH contracts provide limited incentive for a contractor to

control costs or efficiently use labor. FAA personnel must closely monitor a contractor's performance to ensure efficient work methods and adequate cost controls are in place. Methods of monitoring generally relate to the dollar value and risk associated with the contract, and may include:

(a) *Random Sampling*. Random sampling is a statistically based method that assumes receipt of acceptable performance if a given percentage or number of scheduled assessments is found to be acceptable;

(b) *100% Inspection*. This surveillance/assessment type is preferred for those tasks that occur infrequently; including tasks that cannot be random sampled because the sample size for a small lot may exceed the lot size;

(c) *Periodic Surveillance*. Periodic sampling is similar to random sampling, but it is planned at specific intervals or dates; or

(d) *Customer Feedback*. Customer feedback is first hand information from the actual users of the service.

## 7 Letter and Ceiling Priced Contracts Revised 7/2007

a. *General.* A letter contract is a preliminary contractual instrument that authorizes a contractor to immediately begin work, subject to negotiating a definitive contract. A letter contract should not be used for contract modifications. A ceiling priced contract authorizes a contractor to start performance before final agreement on contract price.

b. *Letter Contract.*

(1) Description:

(a) Provides a preliminary authorization for the contractor to immediately begin work.

(b) Includes a brief description of the work, performance period, and a limitation on the total funding amount that a contractor may expend and FAA will pay.

(c) Contractor agrees to be bound by the AMS termination, changes and disputes provisions.

(2) Use When:

(a) The FAA's interests demand that the contractor be given a binding commitment so that work can start immediately and negotiating a definitive contract is not possible in sufficient time to meet the requirement.

(b) Emergency or other special situations for limited amounts.

(3) Considerations:

(a) Should not be used to commit the FAA to a definitive contract in excess of the funds available at the time the letter contract is executed.

(b) Should not be amended to satisfy a new requirement unless that requirement is inseparable from the existing letter contract. Any such amendment is subject to the same requirements and limitations as a new letter contract.

c. *Ceiling Priced.*

(1) Description:

(a) A written contractual instrument that contains all required AMS provisions, except for final agreement on contract price or cost.

(b) Contains all requirements for performance or delivery.

(2) Use When:

(a) The FAA's interests demand that the contractor be given a binding commitment so that work can start immediately and negotiating a definitive contract price or cost is not possible in sufficient time to meet the requirement.

(b) The ceiling priced contract contains the maximum price or cost to be negotiated; the contract type for the definitized contract; FAA's maximum liability pending definitization; a definitization schedule; and a provision which permits the CO to determine a reasonable price or cost (subject to the disputes provisions).

(3) Considerations:

(a) Use of a ceiling-priced contract for a cost-reimbursement contract should not be construed to alter the obligation of the parties to complete performance of the cost type contract.

(b) The definitization schedule should include dates for submission of the contractor's price proposal, required cost or pricing data and, if required, make-or-buy and subcontracting plans; a date for the start of negotiations; and a target date for definitization.

(c) The definitization should be completed within 180 days after the date of the ceiling-priced contract or before completion of 40% of the work to be performed, whichever occurs first.

## 8 Multi-year Contracting Revised 7/2007

a. *Description.* Multi-year contracting is a special method of acquiring known requirements for supplies or services for up to five program years, without total program funding at the time of basic contract award. Funds are obligated only for the first program year's requirements. Contract performance after the first year is contingent on appropriations for each subsequent program year. If appropriations are not made, then FAA must cancel the contract and the contract may provide for a cancellation payment to the contractor. Multi-year contracts differ from multiple year contracts in that multi-year contracts obtain more than one year's requirement without establishing and having to exercise an option for each program year after the first.

b. *Multi-year Authority*. Specific legal authority authorizes or restricts FAA's use of multi-year contracts. Before planning a multi-year contract, the CO must obtain legal counsel's concurrence.

c. *Benefits*. Advantages of using multi-year provisions include

to:

(1) Lower costs;

(2) Enhance standardization;

(3) Reduce administrative burden associated with contract award and administration;

(4) Ensure substantial continuity of production or performance, to avoid annual startup costs, pre-production testing costs, make-ready expenses, and phase-out costs;

(5) Stabilize contractor workforces;

(6) Avoid establishing quality control techniques and procedures for a new contractor each year;

(7) Broaden the competitive base, with opportunity for participation by contractors not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs; and

(8) Provide incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

d. *Considerations.* When deciding whether to use multi-year provisions, the CO should consider:

(1) There will be a continuing requirement consistent with current plans for the proposed contract period. The minimum need for the item to be purchased is expected to remain substantially unchanged during the proposed contract period in terms of production rate, acquisition rate, and total quantities;

(2) The contract will require a substantial initial investment in plant or equipment, or there will be a substantial contingent liability for assembling, training, or transporting a specialized workforce;

(3) The contract will encourage competition and promote economies in operation;

(4) The contract will promote safety or efficiency of the National Airspace System and will result in reduced total costs;

(5) There is reasonable expectation that throughout the contemplated contract period FAA will request funding for the contract at the level required to avoid contract cancellation;

(6) There is a stable design for the item to be acquired and the technical risks associated with such item are not excessive; and

(7) There are realistic estimates of both cost of the contract and anticipated cost avoidance through the use of multi-year provisions.

e. *Services*. Fixed-price and fixed-price incentive contracts for the following services, and supplies related to those services, may be acquired using multi-year provisions:

(1) Operation, maintenance, and support of facilities and installations;

(2) Operation, maintenance, and modification of aircraft, vehicles, and other highly complex equipment;

(3) Specialized training requiring high quality instructor skills, including training of pilots and aircrew members and foreign language training; and

(4) Base services, including ground maintenance, aircraft refueling, bus transportation, and refuse collection and disposal.

f. Multi-year provisions should not be used to acquire construction or real property.

g. *Soliciting Offers and Pricing*

(1) The CO may solicit separate offers for the current one-year program requirements alone and for the total multi-year program requirements. Separate offers allow the CO to determine which alternative provides the lowest unit price and whether there are potential savings from using multi-year provisions. When in FAA's best interest, the CO may solicit offers for the total multi-year requirements only.

(2) Multi-year contracts allow certain costs to be amortized over the entire contract quantity, resulting in identical (level) unit prices for all items or services. When level unit pricing is not in FAA's best interest, the CO may use variable unit pricing, provided that for competitive proposals there is a valid method of evaluation.

(3) Given the longer period of performance for a multi-year contract, the CO should consider risk when negotiating a profit or fee objectives and should consider financing arrangements that reflect contractor's cash flow needs.

h. *Cancellation.* If a multi-year contract is canceled, FAA should fairly compensate a contractor for the work done and for preparations made for the canceled portion of the contract. The specific dollar amount of "fair compensation" is only determined if the contract is actually canceled. The contractor submits a cancellation claim, the CO evaluates it, and the parties negotiate the "fair compensation," called the cancellation charge, which FAA will pay to the contractor. A cancellation charge is the amount of unrecovered costs that would have been recouped through amortization over the full term of the contract, including the term canceled. The cancellation ceiling is the maximum cancellation charge that the contractor can receive in the event of cancellation. For each point in time when the FAA could cancel the contract, there is a unique cancellation ceiling.

(1) Whether, or to what extent, cancellation provisions are included in multi-year contract depends on the circumstances. The CO may use modified cancellation provisions or exclude cancellation provisions when appropriate.

(2) If cancellation occurs, the contractor is entitled to payment in accordance with contract terms and conditions. The terms of cancellation should outline cancellation procedures, cancellation points in time, the way in which cancellation will be funded, types of costs to be included in the cancellation charge, and cancellation ceiling.

(3) Cancellation charges need not be funded before cancellation. The CO should determine whether to fund the cancellation ceiling or treat it as a contingent (unfunded) liability.

(4) All program years except the first are subject to cancellation. Each subsequent program year has a cancellation ceiling. Cancellation ceilings should exclude amounts for items included in prior program years. The cancellation ceiling for each program year is reduced in direct proportion to the remaining requirements subject to cancellation.

(5) Multi-year contracts may allow reimbursement of unrecovered non-recurring costs included in the price of canceled items to protect the contractor against loss resulting from cancellation.

(6) In determining cancellation ceilings, the CO should estimate reasonable pre-production or startup, labor learning, and other non-recurring costs to be incurred by an 'average' prime contractor or subcontractor, which would be applicable to, and which normally would be amortized over, the items or services to be furnished under the multi- year requirements. Non-recurring costs include such costs, where applicable, as plant or equipment relocation or rearrangement, special tooling and special test equipment, pre- production engineering, initial rework, initial spoilage, pilot runs, allocable portions of the costs of facilities to be acquired or established for the conduct of the work, costs incurred for the assembly training and transportation of a specialized workforce to and from the job site, and unrealized labor learning.

Costs should not include any costs of labor or materials, or other expenses (except as indicated above), which might be incurred for performance of subsequent program year requirements. The total estimate of the above costs must then be compared with the best estimate of the contract cost to arrive at a reasonable percentage or dollar figure. To perform this calculation, the CO should obtain in-house engineering cost estimates identifying the detailed recurring and non-recurring costs, and indicating labor learning implications.

(7) The CO should establish cancellation dates for each program year's requirements regarding production lead time and the date by which funding for these requirements can reasonably be established. The CO should include these dates in the schedule, as appropriate.

l. The CO should limit the FAA's payment obligation to an amount available for contract performance. The CO must insert the amount for the first program year in the contract upon award and modify it for successive program years upon availability of funds. If the contract is terminated for convenience of the FAA in whole, including items subject to cancellation, the FAA's obligation must not exceed the amount specified in the schedule as available for contract performance, plus the cancellation ceiling.

## 9 Options Added 7/2007

a. An option is a unilateral contractual right through which FAA may, within a specified time, chose to purchase additional quantities of supplies or services or extend the term of a contract. Options can be an effective method of managing risk, reducing administrative costs of resoliciting for recurring requirements, and motivating contractor's performance. Options do not guarantee contractors that FAA will acquire more than the basic contract quantity or extend the period of performance.

b. Options may be stated as increased quantities of supplies or services, or may be expressed in terms of:

(1) Percentage of specific contract line items.

(2) Increase in specific contract line items.

(3) Additional numbered line items.

(4) Extensions to the term of the contract.

c. *Services.* Generally, contracts with options for recurring services should be limited to five years. Contracts subject to the Service Contract Act cannot exceed five years, including options.

d. *Evaluation of Option/Exercise at Award*. The solicitation must state whether the CO will evaluate offers inclusive or exclusive of options and, if applicable, state whether options will be exercised at the time of award. If the CO may exercise an option at award, the solicitation must specify the price at which FAA will evaluate the option (highest option price offered or

option price for specified requirements).

e. *Price Limitation*. A solicitation may allow options to be offered without or with price limitation. Solicitations may require options to be offered at prices no higher than those for the initial requirement. Solicitations that limit option prices should specify that FAA will accept an offer containing an option price higher than the basic price only if the acceptance does not prejudice any other offeror.

f. *Priced Options*. Priced options contain specific option pricing and, if applicable, an appropriate economic price adjustment index. Priced options give FAA a unilateral right to purchase additional quantities or extend a contract period at pre-agreed prices and terms. Priced options are appropriate when the market is relatively stable, price inflation is fairly predictable, the nature of the requirement is not likely to change significantly between award and the time the option is exercised, or when it may be difficult to test the market at a future date.

g. *Unpriced Options*. For unpriced options, the terms and conditions are agreed to at the time of basic contract award but option prices are not agreed to until exercise. Unpriced options may include a not-to-exceed amount established at the time of basic contract award (otherwise exercise of the option requires single source justification). Unpriced options may be bilaterally exercised after agreement on prices.

h. *Public Announcement.* A public announcement is not required for option exercise.

i. *Option Exercise*. The CO makes a prudent business decision whether to exercise an option. The CO, consulting with the program official, should consider funding availability, option prices, and contractor performance (timeliness and quality) when arriving at this decision. The CO may also consider:

(1) A new solicitation, an informal analysis of prices, or examination of the market would not produce better prices or a more advantageous offer than that offered by the option.

(2) The time between award of the basic contract and option exercise is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer.

j. *Economic Price Adjustment*. For options that include an economic price adjustment, the CO should determine the effect of that adjustment on option prices before exercise.

k. *Notification*. The CO must notify the contractor that FAA is exercising an option; options are not self-exercising. When exercising an option, the CO provides written notice to the contractor within the time period specified in the contract. The contract terms may also require the CO to give preliminary notice of intent to exercise an option.

## 10 Basic Agreement Revised 7/2007

A basic agreement is a written instrument of understanding, negotiated between FAA and a contractor, which contains contract clauses applying to possible future contracts between the

parties. During the basic agreement's term, separate future contracts will incorporate by reference or attachment the required and applicable clauses agreed upon in the basic agreement. A basic agreement is not a contract.

a. *Application.* A basic agreement should be used when a substantial number of separate contracts may be awarded to a contractor during a particular period and significant recurring negotiating problems have been experienced with the contractor. Basic agreements may be used with negotiated fixed-price or cost-reimbursement contracts.

b. *Contents.* Basic agreements should contain the clauses required by AMS and other appropriate clauses that the parties agree to include in each contract.

c. *Termination.* Each basic agreement will provide for discontinuing its future applicability upon 30 days written notice by either party. The CO should annually review each basic agreement before the anniversary of its effective date and revised as necessary. Basic agreements may need to be revised before the annual review due to mandatory statutory requirements. A basic agreement may be changed only by modifying the agreement itself and not by a contract incorporating the agreement. Discontinuing or modifying a basic agreement must not affect any prior contract incorporating the basic agreement. COs may obtain and use existing basic agreements of another agency when practical.

d. *Exclusions.* A basic agreement does not cite appropriations or obligate funds, or state or imply any agreement by FAA to place future contracts or orders with the contractor.

e. *Incorporating contract.* Each contract incorporating a basic agreement includes a scope of work and price, delivery, and other appropriate terms applicable to the particular contract. The basic agreement should be incorporated into the contract by specific reference (including reference to each amendment) or by attachment. Clauses pertaining to subjects not covered by the basic agreement, but applicable to the contract being negotiated, should be included in the same manner as if there were no basic agreement.

## 11 Basic Ordering Agreement Revised 7/2007

A basic ordering agreement is a written instrument of understanding, negotiated between the FAA and a contractor. A basic ordering agreement contains terms and conditions applying to future contracts (orders) between the parties during its term, a description, as specific as practicable, of supplies or services to be provided, and methods for pricing, issuing and delivering future orders under the basic ordering agreement. A basic ordering agreement is not a contract.

a. *Application.* A basic ordering agreement may be used to expedite contracting for uncertain requirements for supplies or services when a substantial number of requirements for the type of supplies or services covered by the agreement are anticipated to be purchased from the contractor but specific items, quantities, and prices are not known at the time the agreement is executed. Under proper circumstances, the use of these procedures can result in economies in ordering parts for equipment support by reducing administrative lead-time, inventory investment and inventory obsolescence due to design changes.

b. *Contents.* Each basic ordering agreement describes the method for determining prices to be paid to the contractor for the supplies or services. It also includes delivery terms and conditions or specifies how they will be determined, dispute provisions, and any special payment provisions. The agreement contains a list of FAA activities authorized to issue orders under the agreement. Each basic ordering agreement specifies the point at which the order becomes a binding contract (e.g., issuance of the order, acceptance of the order in a specified manner, or failure to reject the order within a specified number of days). The agreement also contains a statement that failure to reach agreement on price for any order issued before its price is established will be processed as a dispute under the dispute provisions included in the basic ordering agreement.

c. *Administration.* The CO should annually review each basic ordering agreement before the anniversary of its effective date and revised as necessary. Basic ordering agreements may need to be revised before the annual review due to mandatory statutory requirements. A basic ordering agreement should be changed only by modifying the agreement itself and not by individual orders issued under it. Modifying a basic ordering agreement does not retroactively affect orders previously issued under it.

d. *Issuing Orders.* A CO representing any Government activity listed in a basic ordering agreement may issue orders for supplies or services covered by that agreement. A CO may issue orders under basic ordering agreements on any appropriate contractual instrument that incorporates by reference the provisions of the basic ordering agreement. The CO should neither make any final commitment nor authorize the contractor to begin work on an order under a basic ordering agreement until prices have been established, unless the order establishes a ceiling price limiting FAA's obligation and either:

(1) The basic ordering agreement provides adequate procedures for timely pricing of the order early in its performance period; or

(2) The need for the supplies or services is compelling and unusually urgent. For example, FAA would be seriously injured, financially or otherwise, if the requirement were not met sooner than would be possible if prices were established before the work began. The CO should proceed with pricing as soon as practical. In no event should an entire order be priced retroactively.

## B Clauses

view contract clauses

## C Forms

view procurement forms

## D Appendices Revised 7/2008

### 1 Appendix - Sample Letter Contract Revised 4/2012

**SAMPLE LETTER CONTRACT**

Mr. John Smith

Smith Services Company

1234 Easy Street

Oklahoma City, Oklahoma 73123

Dear Mr. Smith:

This letter constitutes an authorization for you to commence work on proposed contract _____ (*insert contract number and brief description of work*), subject to the following:

(a) A maximum of $_____ (*insert amount equal to 50% of contractor proposal or a not-to-exceed amount*) of costs may be incurred.

(b) Expenditures above that amount are not authorized, and are at your own risk.

(c) Work is authorized to begin _____ (*insert date not earlier than date of letter*).

(d) This authorization is subject to FAA cost principles described in FAA Acquisition Management System Policy section 3.3.2.

(e) When the contract for this project is definitized, it will be a _____ (*insert appropriate type of contract*).

(f) In the event of contract termination, calculation of payments due under this authorization will be accomplished under the provisions of clause(s) _____ (*enter appropriate termination clauses*).

(g) The work authorized by this letter is described in your proposal of _____ (*date or other appropriate reference to the SOW*). (*COs should ensure a copy of the SOW is attached to the COR copy of the letter contract.*)

(h) The Contracting Officer's Representative is _____(*insert appropriate information*).; telephone number is _____(*insert appropriate information*).

(i) You must furnish cost or pricing information if such information is requested by the Contracting Officer.

(j) (*The CO should add any other terms and conditions deemed necessary for the proper execution of the project*)

(k) A definitized contract is expected to be completed no later than _____ (*insert number of workdays from date of letter*)

(l) Accounting data: _____ (*insert appropriate information*).

Sincerely,

Contracting Officer

## 2 Appendix - Award Fee Revised 7/2012

### 1. Introduction (*insert number of*

This appendix includes additional explanation of award fee. It focuses on award fee under cost- reimbursement contracts, but the general concepts apply to award fee on other types of contracts.

An award fee contract provides a separate amount that a contractor may earn, in whole or in part, based on FAA's periodic evaluations of its performance. Award fee is intended to reward contractor performance, considering both the levels of performance and conditions under which the contractor achieved those levels. Award fee gives FAA flexibility to judgmentally evaluate contractor performance, and to quickly change evaluation plans to reflect changes in FAA management emphasis or concern.

### 2. Award Fee Provisions

A cost-plus-award fee contract includes an estimated cost, a base fee, an award fee, and an evaluation and fee payment plan. The contract also includes a clause specifying that award fee determinations are made unilaterally by the designated Fee Determination Official (FDO), according to the approved evaluation plan, and determinations are not subject to appeal under the Disputes clause.

### 3. Administrative Cost Versus Benefit

Award fee requires added administrative activities. Tailoring an award fee approach avoids an administrative burden disproportionate to any expected improvements in a contractor's performance and overall project management. When deciding whether to use award fee, the Contracting Officer (CO) should consider administrative cost versus expected benefit. Administrative cost includes staff time to monitor, evaluate, document, brief and otherwise implement award fee. Cost drivers include frequency of evaluation periods, and number of people involved in administering award fee. Benefits, which may be intangible and difficult to estimate, could include dollars saved by enhanced technical capability.

### 4. Fees

The total amount of base fee (if any) and award fee is established at contract award. The sum of base fee and award fee should reflect the overall character, difficulty, and uncertainty of the effort.

Base fee is a fixed amount, similar to fixed fee, that a contractor earns for basic risk of contract performance. Base fee is optional; FAA may decide instead to reward contractor performance solely through award fee. When base fee is used, the amount should be limited so that it does not undermine the effectiveness of award fee. Base fee payments are generally made as part of the regular cost voucher process.

Award fee is a separate amount sufficient enough to reward the contractor for all levels *above* minimally acceptable performance. Actual award fee earned by the contractor is determined by FAA's assessment of performance against criteria included in an evaluation plan. The contractor can earn any amount of available award fee, from none to all. The contractor does not earn any award fee for less than satisfactory performance. Award fee available, but not earned, for an evaluation period is forfeited by the contractor and cannot carry forward to subsequent evaluation periods.

When establishing award fee, the CO may consider weighted guidelines profit/fee analysis factors, such as contractor effort, complexity of the effort, labor and indirect costs, cost risk, and other factors as applicable. Award fee should not be excessive, but should be large enough to adequately motivate contractor performance.

One of the most difficult situations is a hybrid contract, where there might be multiple performance incentives in addition to an award fee. The amounts allocated to each fee area must be sufficient to adequately motivate and reward a contractor to excel in each. There should be a balance in which no fee area is either so insignificant that it offers little reward or so large that it overshadows all other areas. The number of factors being incentivized also plays a part. When too many factors are incentivized, the prospect increases of any one item being too small (and thus overlooked), or the incentives being (or perceived as being) inconsistent and working at cross purposes. Using too many factors can also be confusing and increase the administrative burden.

**5. Combination with Other Contract Types**

A hybrid contract may be appropriate when certain aspects of a contract performance are best suited to objective measurement and other portions are suited to subjective measurement. For example, an incentive fee might be used for cost control and award fee to reward technical performance. Given the interrelationship between contract costs and the other critical performance elements, the CO should ensure that combinations of objective cost control incentives and subjective/objective award fee determinations do not result in a contractor making trade-off decisions inconsistent with FAA objectives and performance priorities. Poorly structured incentives can result in increased costs with little or no improvement in performance or cost savings with a corresponding loss in performance. No performance element should be incentivized more than once. If a separate incentive is used for cost, then cost control cannot also be rewarded in the award fee. Similarly, performance elements should be carefully structured and defined to avoid overlap, and to preclude downgrading in multiple elements for a single type of poor performance. When using hybrid contracts, financial data must be segregated to allow different cost and fee payments based on each type of contract and to provide specific management information and accountability for the work under the different types of contract. Because of the complexity in structuring and administering a hybrid contract, the CO should be reasonably sure that increased administrative costs will be offset by

potential benefit.

**6. Organization and Administration**

The most effective organizational and administrative approach differs with each situation. The overall objective is to not impose an unreasonable administrative burden, considering the value and complexity of the contract. The following are basic guidelines:

a. Avoid creating too many organizational layers. Excessive layers contribute to unnecessary paperwork, delays in turnaround time, and inordinate staffing demands.

b. At the same time, the CO and project manager's assessments should be reviewed by higher level management officials who have a broader perspective and are not involved in the daily interaction with the contractor. Evaluations must be based on contractually required performance.

c. Tailor performance evaluation plans to the specific situation, but do not reinvent the wheel. The tailored, case-by-case application of successfully used procedures and practices generally works best.

d. The objective is to evaluate performance and not micromanage it. The Government tells the contractor what results are expected and important. It then evaluates and rewards the contractor as appropriate for achieving or exceeding the desired results. Communication with contractor personnel about performance should not lead to Government direction in a manner that compromises the contractor's responsibility or ability to manage under the contract.

**7. Organizational Levels and Functions**

The following basic organizational structure is appropriate for most situations. This structure and responsibilities may be modified to fit the circumstance:

Fee Determination Official

Performance Evaluation Board (with

chairperson) Performance Evaluation

Coordinators *(optional)* Performance Monitors

**Fee Determination Official (FDO)** -The FDO is organizationally senior to the Performance Evaluation Board (PEB) members. The FDO is identified by position title, and not name, in the award fee evaluation plan. This establishes the level of the award fee determinations, while eliminating the need to modify the contract if the incumbent FDO changes. The FDO's responsibilities include:

a. Establishing the PEB

b. Approving the award fee evaluation plan and any changes required during

performance, unless the FDO delegates responsibility for changes to the plan to the PEB.

c. Considering the PEB report for each evaluation period and discussing it with the PEB Chair and, if appropriate, with others such as the contractor.

d. Determining the amount of award fee earned and payable for each evaluation period. In the cases where all evaluation ratings are interim except the last one, determining the amount of interim award fee to be paid for each evaluation period. The FDO ensures the amount and percentage of award fee earned accurately reflects the contractor's performance.

e. Justifying and documenting for the contract file any variances between the PEB recommendation and FDO determination.

f. Signing the award fee determination letter specifying the amount of award fee earned and the basis for that determination for the evaluation period.

**Performance Evaluation Board (PEB)** - The PEB is established by the FDO. The PEB brings a broader management perspective to the evaluation process than at the monitor level (and PEB members should be at a higher management level than performance monitors). The qualifications of PEB members will vary depending on the nature, dollar value and complexity of the contract. The PEB should include at least members with overall responsibility for the technical and contracting aspects of contractor performance. Board members should be familiar with the type of work to be evaluated and be able to devote enough time to their assignment to perform thorough and prompt reviews. The PEB should be established in sufficient time so it can develop (or oversee development) and distribute an approved evaluation plan *before* the start of the first evaluation period. PEB responsibilities include:

a. Conducting ongoing evaluations of contractor performance based on Performance Monitor reports and additional performance information as may be obtained from the contractor and other sources. The PEB evaluates contractor's performance according to the standards and criteria stated in the performance evaluation plan.

b. Submitting a PEB report to the FDO covering the Board's findings and recommendations for an award fee amount for each evaluation period.

c. Recommending appropriate changes in the performance evaluation plan for approval by the FDO (if plan changes are not delegated to the PEB), if any.

**Performance Evaluation Board (PEB) Chair** - The FDO designates one PEB member as the Chair. The functions of a PEB Chair include:

a. Scheduling PEB meetings, controlling attendance and chairing the meetings.

b. Recommending appointment of nonvoting members to assist the PEB perform its functions, e.g., a recording secretary.

c. Appointing monitors for the contract effort and assuring they are provided appropriate instructions and guidance.

d. Requesting and obtaining performance information from other personnel involved in observing contractor performance, as appropriate.

e. Obtaining help from other personnel to consult with the PEB, as needed.

f. Preparing and obtaining approval of the PEB report and other documentation such as PEB minutes.

g. Ensuring the timeliness of award fee evaluations.

**Performance Monitors -** Monitors provide continuous evaluation of the contractor's performance in specific assigned areas of responsibility. This often daily oversight is the foundation of the award fee evaluation process. Performance monitors are specialists familiar with their assigned areas of cognizance; their monitor duties generally are in addition to, or an extension of, their regular responsibilities. In performing their duties, monitors should maintain ongoing communication with their contractor counterparts, conduct assessments in an open, objective and cooperative spirit, and emphasize applicable negative and positive performance elements. Monitors are designated by the PEB Chair. Responsibilities of Performance Monitors include:

a. Monitoring (not directing), evaluating and assessing contractor performance in their assigned areas. This activity is conducted according to contract requirements and the award fee plan so that evaluations are fair and accurate.

b. Periodically preparing a Performance Monitor report for the PEB and, if necessary, providing verbal presentations as well.

c. Recommending any needed changes in the performance evaluation plan for consideration by the PEB and the FDO.

**Performance Evaluation Coordinator (PEC) –** In certain high dollar value, complex efforts, the following organizational level also might be used. Performance Evaluation Coordinators provide centralized direction to the various performance monitors and consolidate the findings of the performance monitors for review at the next highest evaluation level. The PEC level should be used only when a very large number of performance monitors are involved in the evaluation process. Each PEC (appointed by the PEB Chair, with appropriate notification to the contractor) is responsible for one of the broad functional areas to be evaluated, such as technical or project management. PEC duties include:

a. Furnishing instructions to performance monitors in their assigned areas.

b. Ensuring that the contractor is promptly notified whenever a problem is identified requiring immediate contractor attention However, PECs should not give technical direction unless they are designated contracting officer's representatives (CORs) and their contracts contain a technical direction clause.).

c. Coordinating, consolidating and analyzing data submitted by their performance monitors and preparing a concisely written PEC report for presentation to the next highest evaluation level for each evaluation period.

**8. Training**

All personnel involved in award fee administration should be trained on the process. Training should begin before or immediately after contract award so that personnel understand the award fee process before beginning their duties. Training should cover the performance evaluation plan, roles and responsibilities, documentation requirements, evaluation techniques, and other areas such as:

- What is an award fee contract
- What is being evaluated
- How will information be gathered; what techniques will be used (e.g., inspection, sampling of work, observation, review of reports or correspondence, or customer surveys);
- When or how often will information be obtained (e.g., daily, weekly or monthly);
- How will performance monitors secure information from functional specialists to cover areas in which the monitors may not be personally involved; and
- Evaluation scoring processes and the need for consistency between scoring and evaluation summaries.

**9. Steps in the Evaluation Process**

Assuming the basic three-level organizational structure, the sequence of events leading to an award fee determination is:

a. A certain number of days before the period starts (specified in the performance evaluation plan), the contractor is provided with any changes to the performance evaluation plan. In addition, the PEB may determine that it wants to highlight a performance area that the contractor should pay particular emphasis to during the period. For instance, an area of performance during the period may be of particular risk to the program. The PEB may want to focus the contractor’s attention on this area of risk by highlighting it. This may be done by issuing a "letter of emphasis" to the contractor a certain number of days prior to the start of the evaluation period, if specified in the performance evaluation plan.

b. During the course of the evaluation period, performance monitors track contractor performance. Interim (mid-term) evaluations may be used to identify strengths and weaknesses in the contractor’s performance during the period being evaluated. Interim evaluations are documented and should involve the FDO.

c. At the end of the period, the performance monitors assess and document the contractor's performance, and report to the PEB.

d. The PEB considers the performance monitors' reports and any other pertinent information, including information provided by the contractor during the evaluation period, and prepares a report for the FDO with findings and recommendations.

e. The contractor may be allowed to comment on its performance during the evaluation period, using one or more of the following methods:

- The contractor may provide a written or oral self-assessment of its performance for consideration by the PEB.
- The contractor may be provided a copy of the PEB's draft findings and recommendations and may be allowed to identify factual errors. Any errors identified by the contractor would be addressed by the PEB in its

  final report. The contractor's draft recommendation is not a subject for negotiation; the PEB should not engage in discussions with the contractor.
- The contractor may be provided a copy of the final PEB report at the same time as the PEB submits it to the FDO. Contractor may submit comments directly to the FDO for consideration.

f. The FDO meets with the PEB to discuss the PEB's report. The FDO then makes a final determination in writing for the amount of award fee earned and to be paid. The FDO provides the determination to the CO, who sends it to the contractor. The FDO's rating is provided to the contractor as quickly as possible after the end of the period being evaluated. The FDO and PEB should provide a debriefing to the contractor after the rating has been issued.

g. Payment to the contractor should be made as soon as possible after the end of the period. The contractor submits a separate voucher for award fee to be paid.

**10. Performance Evaluation Plan (PEP)**

The performance evaluation plan (PEP) includes:

- Organizational structure for award fee administration
- Method for determining award fee, including evaluation criteria and periods
- Method for implementing any changes in plan coverage

The plan should be tailored to the particular situation and should:

- Focus the contractor on performance areas of greatest importance to motivate it to make the best possible use of company resources to improve performance;
- Provide for evaluations of contractor performance levels, taking into consideration contributing circumstances and contractor resourcefulness;
- Clearly communicate evaluation procedures and provide for effective, two-way communication between the contractor and the Government personnel responsible for evaluating performance and making award fee determinations;
- Provide for an equitable and timely evaluation process;

- Establish an effective organizational structure, commensurate with the complexity and dollar value of the particular procurement, to administer the award fee provisions; and
- Be kept as simple as feasible; the simpler the plan, the more effective it is likely to be.

**11. Changing the Performance Evaluation Plan**

The performance evaluation plan is usually not included in the contract. This gives FAA the right to unilaterally alter the plan to reflect any changes in management emphasis. If the plan is made a part of the contract, then FAA's ability to unilaterally change the plan must be specifically stated in the contract. Unilateral changes may be made to the plan if the contractor is provided written notification by the CO before the start of the upcoming evaluation period. Changes affecting the current evaluation period must be by mutual agreement of both parties. All significant changes to the award fee plan should be coordinated with the PEB and approved by the FDO. Examples of significant changes include revising evaluation criteria, adjusting weights to redirect contractor's emphasis to areas needing improvement, changing PEB membership, and revising the distribution of the award fee dollars. It is important that the provision for unilateral changes be clearly described in the contract. The fact that the plan can be unilaterally changed does not give the FAA the right to unilaterally change other award fee provisions or other terms of the contract, absent contract language allowing it to do so.

The Appendix to this guidance includes a sample PEP.

**12. Performance Evaluation Factors**

It is neither necessary nor desirable to include all functions required by the statement of work as part of the performance evaluation plan. However, those functions selected should be balanced so that a contractor, when making trade-offs between evaluation factors, assigns the proper importance to all of the critical functions identified. For example, the plan should emphasize a combination of technical performance and cost considerations, because an evaluation plan limited to technical performance (alone) might result in increased costs out of proportion to any benefits gained.

Spreading the potential award fee over a large number of performance evaluation factors dilutes emphasis. Instead, broad performance factors should be selected, such as technical, project management and cost control, supplemented by a limited number of subfactors describing significant evaluation elements over which the contractor has effective management control. Prior experience can be helpful in identifying those key problem or improvement areas that should be subject to award fee evaluations.

Some basic areas of performance need to be evaluated and rewarded on every contract. Other areas are critical only in some instances. Cost control will always be included as an evaluation factor for cost-plus-award fee contracts, if there isn't a separate cost incentive in the contract. In general, controlling the cost of the system/equipment or service being provided, its quality (technical merit, design innovation, reliability, etc.), and its timely delivery will always be important-- although their relative importance and the measure of what constitutes good performance may vary. The relative importance of the factors and the method of evaluating a contractor should be tailored to fit the needs of individual procurement. For example, providing an item on time is generally critical to the contract. However, earlier delivery might

also be of benefit to the Government and worth incentivizing. On the other hand, early deliveries might be of no benefit, or even cost the Government money if companion technologies are not yet available resulting in increased costs to the Government for storage.

The evaluation factors used in award fee should not be standardized. Rigid standardization tends to generate evaluation plans that are either too broad or include factors inapplicable to a given function. In either case, evaluators are likely to experience difficulties in providing meaningful comments and ratings. It is preferable to tailor performance evaluation plans and factors to fit the circumstances. As contract work progresses from one evaluation period into the next, the relative importance of specific performance factors may change.

Depending on the situation, performance evaluation factors may include outcomes, outputs, inputs or a combination of the three. An outcome factor is an assessment of the results of an activity compared to its intended purpose. Outcome-based factors are the least administratively burdensome type of performance evaluation factor, and should provide the best indicator of overall success. Outcome-based factors should be the first type of evaluation factor considered, and are often ideal for non-routine efforts.

An output factor is the tabulation, calculation, or recording of activity or effort and can be expressed in a quantitative or qualitative manner. Output factors may be more desirable for routine efforts. When output factors are used, care should be taken to ensure that there is a logical connection between the reported measures and the program's mission, goals, and objectives. Examples of outcome and output factors:

**Outcome:** Safely install and ensure the lighting systems are certified and operational to satisfy needs.

**Output(s):**

- Deliver lighting systems to airports no later than July 15, 2008.
- Assemble and certify lights at each airport not later than December 15, 2008.
- Install and ensure lighting compatibility at each airport by January 5, 2009.

**Outcome:** Ensure program spare parts are maintained at a level sufficient to provide a 6-month supply at normal monthly draw down.

**Output:** Store a minimum of 1,000 program spare parts.

Input factors refer to intermediate processes, procedures, actions or techniques that are key elements influencing successful contract performance. These may include testing and other engineering processes and techniques, quality assurance and maintenance procedures, subcontracting plans, purchasing department management, and inventory, work assignment and budgetary controls.

While it is sometimes valuable to consider input and output factors when evaluating contractor performance, it is preferred to use outcome factors when feasible since they are better indicators of success relative to the desired result. For example, in the case of service contracts where performance is demonstrated and measurable in each evaluation period, input factors may be of value in building a historical database, but may be of little or no value in the

evaluation process. Accomplishments, such as achieving small and small disadvantaged subcontracting goals, are what are important, as opposed to efforts expended. In other contracts, however, where the quality of performance cannot be determined with certainty until the end of the contract, input factors can be useful indicators of how well the contractor is achieving its ultimate performance objective. However, a heavy emphasis on input factors, while meant to provide positive motivation to the contractor in certain areas of performance, may in some cases because the contractor to divert its attention and focus from the overall output or outcome desired. Input factors are not always true indicators of the contractor's ultimate performance and so should be relied on with caution.

Some examples of performance evaluation factors, subfactors and criteria are shown below. They do not cover all possibilities, but illustrate some of the key performance areas that can be selected as evaluation factors.

**Technical Performance** - Accomplishment achieved in the areas of:

- Design: Approach in design concepts, analysis, detailed execution and low cost design and manufacturing. Design of test specimens, models and prototypes.
- Development: Conception/execution of manufacturing processes, test plans and techniques. Effectiveness of proposed hardware changes.
- Quality: Quality assurance, e.g., appearance, thoroughness and accuracy, inspections, customer surveys.
- Technical: Meeting technical requirements for design, performance and processing, e.g., weight control, maintainability, reliability, design reviews, test procedures, equipment, and performance.
- Processing Documentation: Timely and efficient preparation, implementation and closeout.
- Facilities/GFE: Operation and maintenance of assigned facilities and Government Furnished Equipment.
- Schedule: Meeting key program milestones and contractual delivery dates; anticipating and resolving problems; recovery from delays; reaction time and appropriateness of response to changes.
- Safety: Providing a safe work environment; conducting annual inspections of all facilities; maintaining accident/incident files; timely reporting of mishaps; providing safety training for all personnel.
- Information Management: Ability of computer system to provide adequate, timely and cost effective support; meets security requirements; management information systems ensures accurate, relevant and timely information.
- Material Management: Efficient and effective processing of requisitions, with emphasis on priority requisitions; responsiveness to changes in usage rates.

**Project Management** - Accomplishment achieved in the areas of:

- Program Planning/Organization/Management: Assignment and utilization of personnel; recognition of critical problem areas; cooperation and effective working relationships with other contractors and Government personnel to ensure integrated operation efficiency; support to interface activities; technology utilization; effective use of resources; labor relations; planning, organizing and managing all program elements; management actions to achieve and sustain a high level of productivity;

response to emergencies and other unexpected situations.

- Compliance with contract provisions: Effectiveness of property and material control, Equal Employment Opportunity Program, Minority Business Enterprise Program, system and occupational safety and security.
- Effectiveness in meeting or exceeding small business and small disadvantaged business subcontracting goals.
- Subcontracting: Subcontract direction and coordination. Purchase order and subcontractor administration.
- Timely and accurate financial management reporting.

**Cost Control** – The procurement team may consider the contractor's ability to control, adjust and accurately project contract costs (estimated contract costs, not budget or operating plan costs) through:

- Control of indirect and overtime costs. o Control of direct labor costs.
- Economies in use of personnel, energy, materials, computer resources, facilities, etc.
- Cost reductions through use of cost savings programs, cost avoidance programs, alternate designs and process methods, etc.
- "Make versus buy" program decisions.
- Reduced purchasing costs through increased use of competition, material inspection, etc.

The predominant consideration when evaluating cost control should be an objective measurement of the contractor's performance against the estimated cost of the contract, including the cost of undefinitized contract actions when appropriate. The estimated cost baseline should be adjusted to reflect cost increases or decreases associated with changes in Government requirements or funding schedules which are outside the contractor's control. In rare circumstances, contract costs might increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment, such as weather-related. Such situations should be taken into consideration when evaluating contractor cost control. In the case of contracts for services where contractor performance is consistent and complete within each evaluation period and does not carry over into succeeding periods, negotiated estimated cost can generally be apportioned among the evaluation periods. Cost control for each evaluation period can then be measured against that period's share of the estimated costs. However, where contractor performance cannot be ascertained until the end of the contract (such as contracts for R&D) and cost expenditures can vary significantly from one evaluation period to the next, it makes more sense to evaluate interim contractor cost control against a cumulative expenditure profile that reflects the estimated cost.

### 13. Quantitative and Qualitative Standards

Once evaluation factors are selected, standards or criteria are developed for measuring contractor performance and assessing the amount of award fee earned.

Quantitative or objective performance measurement standards are based on well-defined parameters for measuring performance. They include customer surveys, inspection reports and test results. Quantitative measures should be used whenever the given performance can be precisely or finitely measured. Sufficient information or experience must be available to permit the identification of realistic standards against which quantitative measurements may be compared.

Unlike the predetermined targets and fee adjustment formulas used in incentive fee type contracts, any comparison of contractor performance against quantitative standards in the award fee environment will need to be tempered by a qualitative evaluation of existing circumstances. Quantitative measurements are not a substitute for judgment. Keep in mind that any reasonable assessment of effectiveness requires an evaluation process encompassing both performance levels and the conditions under which those levels were achieved. To be realistic, any standard (or range of acceptable performance levels) should reflect the nature and difficulty of the work involved.

Qualitative or subjective performance standards rely on evaluator's opinions and impressions of performance quality. Qualitative assessments must be as informed as possible and not rely on personal bias or a purely intuitive feeling. Some examples are:

- **Staffing:** Optimal allocation of resources; adequacy of staffing; qualified and trained personnel; identification and effective handling of employee morale problems; etc.
- **Planning:** Adequate, quality, innovative, self-initiated and timely planning of activities; effective utilization of personnel; quality of responses; etc.

Another example of a qualitative standard is a "quality review" such as a questionnaire requiring "yes" or "no" answers, with a high proportion of "yes" answers indicative of high quality performance. Note that narrative support for questionnaire answers is required.

Where feasible, the quantitative or objective measures are preferred over qualitative or subjective ones. The greater the ability to identify and quantify the facts considered in arriving at a judgmental assessment, the more credible that assessment is likely to be (and the easier it will be to prepare the supporting documentation required).

## 14. Weighting Evaluation Factors

In addition to identifying how performance will be evaluated and measured, the detailed performance evaluation plan should indicate the relative priorities assigned to the various performance areas and evaluation factors and subfactors. This may be accomplished through the use of narrative phrases such as "more important," "important," and "less important" or through percentage weights. When percentages are used, the plan should state that they are for the sole purpose of communicating relative priorities, and do not imply an arithmetical precision to the judgmental determinations of overall performance quality and the amount of award fee earned.

When percentage weights are used, cost control could be at least 25 percent of the total award fee. When adjectives or narratives are used in lieu of explicit weights, cost control should be a substantial factor. No other factor should be less than 10 percent. This ensures that the factors are balanced and, when making trade-offs, the contractor assigns the proper importance to all factors.

The methodology used to establish percentage weights is illustrated in the following example:

**Example:**

First, list the primary evaluation factors in descending order of importance and assign a percentage weight to each factor starting with the most important. Assign the least important factor no less than 10 percent (unless the least important factor is cost control, which would be assigned a minimum of 25 percent). All assigned weightings for primary evaluation factors must total 100 percent. Round all numbers off to the nearest whole number to avoid giving the impression that the procedure is a precise one.

Next, assign percentage weights to the subfactors supporting each of the primary evaluation factors such that the total of the subfactor weights for each performance factor totals the assigned weight for that factor as shown in the example below. The actual factors and subfactors used as well as the weights assigned in any given contract may be different from those shown in the example. For instance, indirect cost control, subcontract costs, other direct costs, etc. should be evaluated when they are significant elements of cost.

| **Factors/Subfactors** | **Assigned Weight** | |
|---|---|---|
| **Technical** | 42% | |
| Design | | 24% |
| Quality | | 12% |
| Schedule | | 6% |
| **Project Mgmt.** | 32% | |
| Planning | | 26% |
| Subcontracts | | 6% |
| **Cost Control** | 26% | |
| Labor Cost Control | | 15% |
| Overhead Cost Control | | 11% |
| Total | 100% | |

**15. Length of Evaluation Periods**

Award fee evaluation periods should generally be between three to six months. Too short of an evaluation period can be administratively burdensome and lead to hasty or late evaluations which result in late fee determinations. Alternatively, evaluation periods may be tied to completing milestones. When linking evaluation periods to milestones, ensure evaluations do not occur at infrequent intervals or become subject to lengthy slippage.

**16. Allocation of Award Fee**

After the total award fee amount is established, the total pool is allocated over the award fee evaluation periods. For contracts where each evaluation is final, the allocation of award fee determines its distribution for final payment purposes. For other contracts, where all evaluations (and payments) are interim, except the final evaluation, award fee is allocated among the evaluation periods solely for the purpose of making interim payments against the final evaluation. That final evaluation will determine the amount of total award fee actually earned by the contractor and will supersede any interim evaluations and payments made.

The distribution of the award fee pool depends on the circumstances. Contractor expenditure profiles may be considered. The total may be allocated equally among the evaluation periods if the risks and type of work are similar throughout the various evaluation periods. Otherwise, if there is a greater risk or critical milestones occur during specific evaluation periods, a larger portion of the pool may be distributed to those periods. This permits the Government to place greater emphasis on those evaluation periods. For example, if a contract has a short initial evaluation period for the contractor to become familiar with the work, the initial period of performance may have a smaller allocation while the remaining pool is divided equally among the remaining evaluation periods. If the schedule for a significant event changes, any potential award fee amount associated with that event must be reallocated accordingly for interim payment purposes.

The following example illustrates an unequal allocation of award fee among the four performance periods, reflecting different degrees of emphasis.

| | |
|---|---|
| Estimated Cost | $5,000,000 |
| Base Fee (0%) | 0 |
| Total Award Fee (10%) | $ 500,000 |
| Total | $5,500,000 |

Evaluation Periods

| | 1 | 2 | 3 | 4 | Total |
|---|---|---|---|---|---|
| Allocation (%) | 10% | 26% | 40% | 24% | 100% |
| Allocation ($) | $50,000 | $130,000 | $200,000 | $120,000 | $500,000 |

**17. Evaluation of Delivery or Task Order Contracts**

A delivery or task order contract may provide for orders with specific requirements that are independent of any other orders' requirements and that have separate, distinct sources of funding. For such orders, an award fee amount could be allocated to each individual order along with the estimated cost. Contractor performance on each order would be evaluated against the award fee criteria on a task-by-task basis. There are instances where the Government wants to motivate the contractor's performance at the contract level versus each individual order. This condition may exist when the overriding objective is not how each individual order is executed, but how the contractor's performance of multiple orders contributes to meeting the overall contract objectives. For example, it may not be cost effective to evaluate contractor performance on a task order basis, or when unknown/undefined requirements may materialize during the contract. An unknown requirement may arise that has a higher priority than an

existing order. The primary objective is for the Government/contractor team to make trade-offs between the orders in a constrained environment (funding, staffing, etc.) to ensure the optimal capability is achieved at the system performance level. Therefore, the ultimate measure of success is judged as meeting the overall contract objectives and not necessarily on the performance of a single order. In this case it is in the Government's best interest to incentivize the contractor to focus its efforts and perspective on overall contract performance versus the individual orders. This does not preclude management of individual orders. To ensure that there is no confusion about how the contractor's performance will be evaluated, the award fee plan must clearly state whether the evaluation criteria are applicable at the contract or individual order level.

**18. Interim and Final Evaluations**

The decision about whether to conduct interim or final evaluations depends on the circumstance. In service contracts, the contract deliverable is a service and contractor performance is measurable at each evaluation period. Performance is usually not cumulative and its quality cannot be improved or reduced by future performance. For that reason, in service contracts, evaluations should be final and unearned award fee cannot be "rolled over" into subsequent evaluation periods or ever retroactively "taken back." On other contracts such as study, design or hardware, where the true quality of contractor performance cannot be measured until the end of the contract, the contract deliverable is an end item. Contractor performance leading up to delivery of the end item is an indication of whether and how well it will produce the end item, but it is not the end item itself. Since the actual quality of the end item cannot be determined until the end of the contract when it is delivered, the last evaluation should be final. All other evaluations and ratings would be interim.

At the end of the contract, the contractor's total performance is evaluated against the performance evaluation plan to determine total earned award fee. That final rating supersedes all interim ratings. It is not the average of the interim ratings. Instead, it reflects the contractor's position at the end of the contract rather than its interim progress toward that position. For example, how well a contractor has controlled costs can only be determined at the end of the contract when the contractor is evaluated against its final cost position. Whether the contractor was overrunning or underrunning the contract estimated cost at various points in time is irrelevant. The contractor's success is measured against the end result. Likewise, the contractor's ability to meet the contract schedule is determined when the hardware is delivered and accepted by the Government. Whether the contractor was behind or ahead of schedule during the course of the contract is not relevant in the final evaluation. The same thing is true of the other evaluation factors and subfactors.

Any significant events that contributed over the course of the contract to the contractor's position (such as delays in receipt of Government furnished equipment), should be considered in the final award fee determination. Those events should be examined as they relate to the final contract outcome and not to the individual evaluation periods in which they occurred.

**19. Grading and Scoring Contractor Performance**

Grading and scoring methods are used to translate evaluation findings into recommended award fee amounts or ranges. The purpose is to help the FDO decide the amount of award fee earned. These methods are evaluation tools and are not a substitute for judgment in the award

fee determination process. The decision process cannot be reduced to a mathematical formula or methodology. Either a weighted or nonweighted process can be used to evaluate performance.

One method is for evaluators to start from the satisfactory performance level and adjust the scores upwards or downwards, depending on the contractor's performance for the period. A rating table may be used as a guide. Another method is for evaluators to use "blind" evaluation sheets where they are asked to rate different criteria using numbers based on the adjectival ratings. The weights that will eventually be applied to their ratings do not appear on the sheets. This approach relieves to some extent the pressure placed on the evaluators by contractor employees.

As a general guideline, a contractor which satisfactorily meets its contractual commitment will fall into the "good" (71-80) range. To earn an "excellent" score (91-100), a contractor must provide exceptional performance--a combination of excellent cost, schedule and technical management. Some general considerations in the development of a grading and scoring methodology are as follows:

- When Government actions impact contractor performance either positively or negatively, e.g., changes in funding allocation or increased emphasis on certain technical requirements which require the contractor to make unexpected and extensive tradeoffs with other technical requirements, those actions should be considered in the scoring and grading process.
- The methodology should be kept as clear and simple as possible. In particular, the situation where specially tailored evaluation factors are force-fit to a "standard" grading table or scoring formula should be avoided.
- The maximum fee should be attainable by the contractor. To be a credible and effective motivator, an award fee contract should provide the contractor with a reasonable opportunity to earn the maximum award fee available. Although a reasonable opportunity generally does not mean absolute perfection in all possible performance areas, the contractor's performance should be outstanding in virtually all areas. On the other hand, providing a contractor the maximum fee on every contract, does not adequately address the issues of risk and effort.
- Documentation of assigned performance values is required in support of award fee recommendations and computations.

**20. Award Fee Conversion Table**

An award fee conversion table may be used to translates overall evaluation scores (i.e., numerical performance points) into the earned award fee amount. This conversion may be linear (e.g., direct conversion of evaluation points to percentage of award fee earned) or non-linear (e.g., a formula to translate performance points to award fee earned). Use of a conversion table does not remove the element of judgment from the award fee process. Regardless of the method used, zero award fee will be earned for an overall unsatisfactory performance.

The following rating table may be used as a guide for award fee. Earned award fee (or interim award fee amounts in the case of interim evaluations) is calculated by applying the total numerical score to the award fee pool. For example, a numerical score of 85 yields an award fee of 85 percent of the award fee pool available for that evaluation period. The table

below lists the award fee evaluation adjectival ratings with their corresponding score ranges. In addition, a narrative description is also provided to assist the PEB in applying the ratings. Criteria for evaluation factors and subfactors should reflect the table.

| **Adjective Rating** | **Range of Performance Points** | **Description** |
|---|---|---|
| Excellent | (100-91) | Of exceptional merit; exemplary performance in a timely, efficient and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance. |
| Very Good | (90-81) | Very effective performance, fully responsive to contract requirements ; contract requirements accomplished in a timely, efficient and economical manner for the most part; only minor deficiencies. |
| Good | (80-71) | Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance. |
| Satisfactory | (70-61) | Meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not substantial, effects on overall performance. |
| Poor/ Unsatisfactory | (less than 61) | Does not meet minimum acceptable standards than in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance. |

No fee will be paid when the total evaluation score is less than 61. In addition, any factor that receives a score of less than 61 for "poor/unsatisfactory" performance will not be rewarded and converted to a factor score of zero. Such zeroing-out should not be done at the subfactor level.

**21. Scoring of Cost Control**

Cost control should be a substantial factor in any performance evaluation plan, except when a fixed-price award fee, fixed-price incentive or cost-plus-incentive fee contract is used. The contractor's success in controlling costs must be measured against contract estimated costs, and not against budgetary or operating plan costs. The following scoring guidelines will help ensure that cost control receives the proper emphasis:

a. Whenever there is a significant cost overrun that was within its control, a contractor should be given a score of zero. If the overrun is insignificant, a higher score may be given. The reasons for the overrun and the contractor's efforts to control or mitigate the overrun should be considered in the evaluation.

b. Cost underruns within the contractor's control should normally be rewarded. However, the extent to which an underrun is rewarded will depend on the size of the underrun and the contractor's level of performance in the other award fee evaluation factors. Contractors should not be rewarded for excelling in cost control to the detriment of other important performance factors. For that reason, whether a cost underrun is rewarded in the evaluation process and, if so, the degree to which it is rewarded depends, not only on the size of the underrun, but also on how well the contractor is performing overall in the other evaluation areas.

c. When the contractor achieves the negotiated estimated cost of the contract, it should not receive the maximum score for cost control. The maximum score for cost control should only be awarded for achieving an underrun. Some lesser score will be assigned, reflecting the degree to which the contractor has prudently managed costs while meeting contract requirements.

## 22. Example - Calculating Earned Fee

The following example illustrates how evaluation scores for weighted factors and subfactors are calculated to arrive at a total award fee recommendation. Again, keep in mind that the use of weighted factors to calculate an award fee amount is an evaluation aid; the result does not represent a required award fee amount.

a. Background: This CPAF contract covers design and verification testing of hardware. The contractor is also required to deliver eight production items. The total estimated cost and award fee is $300,000,000. The available award fee for the current interim evaluation period (#7) is $2,600,000. Evaluation factors and assigned weights are:

| **Evaluation Factor/ Subfactor** | | **Assigned Weight** | |
|---|---|---|---|
| **Technical** | | 42% | |
| | Design | | 24% |
| | Quality | | 12% |
| | Schedule | | 6% |
| **Project Management** | | 32% | |
| | Planning | | 26% |
| | Subcontracts | | 6% |

| | | | |
|---|---|---|---|
| **Cost Control** | | 26% | |
| | Labor Cost Control | | 15% |
| | Overhead Cost Control | | 11% |

b. PEB Findings: The findings of the PEB for the most recent evaluation period are summarized below:
Contractor performance was rated very strong overall in the technical area. Accomplishments included successful design and installation of in-flight wear monitors, and successful test of a redesigned turbo pump. Some weaknesses were identified, the most serious of which was an incompatibility between two components which was not resolved during the period, resulting in a slight schedule slip. In the area of project management, strengths were identified, including communication of program activities to the proper management levels, on- schedule delivery of critical subcontracted hardware, and exceeding subcontracting goals. Weaknesses included ineffective checks and balances for processing hardware and insufficient management involvement at vendor sites which has jeopardized hardware integrity. In the cost control area, the cost overrun increased by 14% in this period due in large part to labor costs. Projected overhead increases were also reported; however, the contractor has identified and will implement cost reduction measures which are expected to ameliorate the problem. (Note - promises of future actions are not normally considered in the current period evaluation, but in this case the overhead increase is also only a projection.)

c. Calculating Weighted Performance Points**:** As a result of the evaluation, the following performance points were assigned and weighted for the subfactors:

| **Subfactor** | **Performance Points** | **Assigned Weights** | **Weighted Performance Points*** |
|---|---|---|---|
| Design | 95 (Excellent) | .24 | 54 |
| Quality | 90 (Very Good) | .12 | 26 |
| Schedule | 80 (Good) | .06 | 11 |
| | | Total for Technical | **91** |
| Planning | 70 (Satisfactory) | .26 | 57 |
| Subcontracts | 86 (Very Good) | .06 | 16 |
| | | Total for Project Mgmt | **73** |
| Labor Cost | 50 (Poor/Unsat.) | .15 | 29 |
| Control | | | |
| OH Cost Control | 70 (Satisfactory) | .11 | 30 |
| | | Total for Cost Control | **59 = 0*** ** |

*Weighted Performance Points are calculated as follows: (Performance Points x Assigned Subfactor Weight)/Assigned Factor Weight = Weighted Performance Points. For example, for Design: (95 x .24)/.42 = 54

** Note that an unsatisfactory rating for a factor results in a *zero* score for that factor. The Cost Control factor received a zero score for receiving a rating of less than 61 percent. Significant cost overrun within the contractor's control should result in a score of zero for cost control.

Next, total weighted performance points were calculated for the primary evaluation factors as follows:

| **Weighted Factor** | **Performance Points** | x | **Assigned Weight** | **=** | **Total Weighted Performance Points** |
|---|---|---|---|---|---|
| Technical | 91 | x | .42 | = | 38 |
| Project Mgmt. | 73 | x | .32 | = | 23 |
| Cost Control | 0 | x | .26 | = | 0 |
| | | | Total for All Factors | | 61 (Sat.) |

d. Converting Performance Points to Award Fee Score: The award fee percentage is the same number as the total weighted performance points. In this example, 61 weighted performance points equals 61% of available award fee. Award fee recommendation: $1,586,000 (61% of $2,600,000).

**23. Example - Changes in Emphasis**

If the Government's relative priorities change as work progresses from one phase into the next, or as unexpected problems or developments occur, such as schedule slippages, the evaluation plan may be revised on a unilateral basis, to communicate such changes to all parties. The following example illustrates how the Government can adjust evaluation weights to redirect contractor emphasis to areas needing improvement and the effect of that readjustment on earned award fee.

| | |
|---|---|
| Estimated Cost | $5,000,000 |
| Base Fee (0%) | 0 |
| Total Award Fee (10%) | $ 500,000 |
| Total | $5,500,000 |

Evaluation Periods

| | **1** | **2** | **3** | **4** | **Total** |
|---|---|---|---|---|---|
| Allocation (%) | 24% | 18% | 18% | 40% | 100% |
| Allocation ($) | $120K | $90K | $90K | $200K | $500K |

Evaluation Period 1:

| **Factor** | **Weight** | **x** | **Performance Points** | **=** | **Weighted Performance Points** |
|---|---|---|---|---|---|
| Technical | .42 | x | 91 (Excellent) | = | 38 |
| Project Mgmt | .32 | x | 73 (Good) | = | 23 |
| Cost Control | .26 | x | 0 (Poor/Unsat.) | = | 0 |
| | | | Total | | 61 |

The contractor earns $73,200, 61% of $120,000.

Evaluation Period 2**:**

If factor weights were adjusted to increase the emphasis on cost control and its performance, and thus its performance points, remained basically the same, this would be the result:

| **Factor** | **Weight** | **x** | **Performance Points** | **=** | **Weighted Performance Points** |
|---|---|---|---|---|---|
| Technical | .40 | x | 91 | = | 36 |
| Project Mgmt | .32 | x | 73 | = | 23 |
| Cost Control | .28 | x | 0 | = | 0 |
| | | | 59 | = | 0 |

The contractor would receive an award fee score of 2 percentage points less in the second period than it would have if the factor weights had not changed. As a result, the contractor would receive an overall score of Poor/Unsatisfactory and no award fee for the second period.

Now, assume that the contractor responds to the shift in emphasis by improving its performance in cost control from Poor/ Unsatisfact*ory to minimally satisfactory, without reducing its score in any other area*, as follows:

| **Factor** | **Weight** | **x** | **Performance Points** | **=** | **Weighted Performance Points** |
|---|---|---|---|---|---|
| Technical | .40 | x | 91 | = | 36 |
| Project Mgmt | .32 | x | 73 | = | 23 |
| Cost Control | .28 | x | 61 | = | 17 |
| | | | | | 76 (Good) |

By increasing its performance in cost control by 31 points (from 30 to 61) - and as a result, it's total score by 17 percent to Good--the contractor is now entitled to receive an award fee payment.

If the cost control weight had not been increased in the second period, the contractor would have continued to be paid fee (61 percent of $90,000 or $54,900) for unsatisfactory cost control performance. By changing the factor weights to put more emphasis on cost control, the contractor is either rewarded for improved cost control with more fee than it would have received had the weights had not been changed (76% of $90,000 or $68,400) or penalized for not showing improvement in that area (59 percent = no award fee payment for the period).

**24. Communication**

A properly structured and administered award fee contract provides effective communication among Government and contractor personnel at management levels, where decisions can be made and results achieved. A post-award conference is one way to establish communication channels early and to ensure key Government and contractor personnel understand their responsibilities. Attendees should review and discuss the performance evaluation plan and contract requirements. Frequent and honest communication is essential, both between the Government and contractor and within their respective organizational frameworks. Both Government and contractor personnel should be encouraged through the award fee process to identify potential problems as promptly as possible (as opposed to withholding such "bad news" for fear it might result in unfavorable criticism).

**25. Contractor Input**

The contractor may be allowed to furnish a self-assessment of its performance. Once the PEB report is prepared, the PEB may also allow the contractor to comment on the draft report. Contractor participation at this point ensures all pertinent data has been considered and no factual errors were used as a basis for decisions. Such communications, however, must not result in negotiation of award fee ratings. The ratings should be fair and reasonable, but are ultimately a unilateral Government determination. Throughout the period of performance, the contractor may be permitted to submit suggestions for improving or changing the evaluation process. In addition to the various formal communications channels, both parties should recognize that frequent, less formal discussions are valuable in ensuring ultimate program success. Both the Government and the contractor should work to eliminate any unnecessary contractual, organizational or conceptual barriers that constrain information sharing and other communications needed for successful joint problem solving.

**26. Timeliness**

The timeliness of award fee evaluations is critical. Long delays minimize any benefits from periodic evaluations and reports. Unless evaluation results are transmitted timely and award fee payments made promptly, the results and payments may not have the desired influence on the contractor's performance during subsequent evaluation periods. The timeliness of changes in the evaluation plan is also important. Proposed changes should be processed expeditiously and the contractor notified in advance of the evaluation period to which they apply.

## 27. Documentation

Performance monitors should consider the following when preparing their reports. These questions can help assure evaluation data are complete and accurately assess how well the contractor performed in the monitors' assigned areas during the period.

- What (in the monitor's area) was the contractor supposed to do during the period? What was actually accomplished?
- How critical are the efforts accomplished, or not accomplished, by the contractor?
- What was the impact of any efforts completed early or late? How critical was the time frame involved?
- How well did the contractor perform the tasks that were accomplished?
- What are the major strengths and weaknesses (in sufficient detail to discuss with the contractor)?
- Were any Government-directed changes made or did any obstacles arise which impacted performance? What corrective actions were implemented? How effective were they?
- Has the contractor efficiently and effectively used available resources (e.g., personnel and facilities) to improve its performance?
- Has the contractor's performance been clearly assessed in regard to all tasks and specific objectives?
- On level-of-effort contracts, what has the contractor accomplished for the dollars spent (The emphasis here is to reward the contractor for accomplishments, not to reward the spending of dollars.)

The reporting formats used by monitors should be structured to ensure accuracy and clarity. Where possible, several evaluation parameters may be consolidated in a single format. Consistency can be achieved by using the same general format for all closely related work at a given activity. However, caution is required here. Carefully tailored evaluation plans can be compromised by inflexible and ill-conceived rating formats. Any format adopted should provide a place for the monitors to make narrative comments. These narrative comments provide detailed, pertinent information not addressed in the completed format. For example, they cover the circumstances under which reported performance levels were achieved, especially if these circumstances were abnormal in any way. These comments also discuss the contractor's efficiency in managing assigned personnel and other resources. Enough detail should be included in reports to the PEB to ensure that their findings and recommendations are accurate and fair and can be supported to the FDO.

Appropriate documentation is vital to support the PEB’s recommendations, particularly when these recommendations differ from the conclusions reported by cognizant monitors. Minutes of meetings or other documentation should summarize the information reviewed, including any additional or explanatory information provided by the contractor and the consideration given to all such information. Since the evaluation is a judgment based upon all pertinent information, that information needs to be identified, discussed and substantiated in the documentation. The FDO will want to review the documentation to satisfy any concerns regarding contractor performance before deciding whether to accept the recommended award fee or some higher or lower amount. Examples of what the FDO might look for include:

- The facts that led to the assignment of a poor/unsatisfactory rating in any subfactor;

- The rationale for a poor/unsatisfactory rating as opposed to a satisfactory rating; and
- The circumstances under which a poor/unsatisfactory level was achieved and the relationships, if any, between it and any excellent performance levels reported for other subfactors.

Sufficient documentation should be provided to the FDO on which to base a decision and to explain that decision to the contractor. Similarly, the FDO must document the basis for the determination, especially in situations involving a contractor rebuttal of PEB findings and conclusions or an award fee determination different from that recommended by the PEB. Documentation of interim ratings may be less detailed since they will be superseded by the final rating at the end of the contract.

**28. Payment**

Final award fee payments and interim payments against interim evaluations should be made generally within 60 days after the end of the evaluation period for which payment is being made.

When the total rating for an evaluation period is "poor/unsatisfactory," no award fee is paid for that period. For example, a total award fee rating of 57 (“poor/unsatisfactory”) would yield an award fee of zero, not 57 percent. For certain contracts involving delivery of a final product, such as hardware, design or study, no award fee will be paid for a final evaluation rating of "poor/unsatisfactory." In these cases, any provisional award fee payments made as a result of "satisfactory" or better ratings (61 and above) on interim evaluations are to be repaid by the contractor.

The amount of interim award fee paid each period will not exceed the interim evaluation score (applied as a percentage) or 80 percent of the award fee allocated to the period, whichever is less. No further award fee payments will be made when the CO determines that the total amount of interim payments made to date will substantially exceed the amount which would be paid based upon the anticipated final evaluation score. The PEB should be notified of such a determination. The CO's determination should be based on a comparison of award fee amounts paid to actual evaluation scores to date, projected future scores based on a combination of past performance trends and any known data which might have an influence on future performance, and any other pertinent data. Stopping award fee payment serves two purposes: it ensures that contractors will not receive award fee which they have not earned and to which they will ultimately not be entitled, and it minimizes the award fee that will be owed the Government by the contractor at the end of the contract.

**29. Provisional Payments**

Long evaluation periods may require FAA to make award fee payments more frequently than at the end of each evaluation period. These provisional payments, representing a percentage of the award fee amount allocated to each evaluation period, are made at regular intervals during each period. They are superseded at the end of each period by the interim or final award fee determination amount. The percentage of allocated award fee to be paid provisionally will be stipulated in the contract and may not exceed 80 percent of available award fee in any period.

Provisional payments are discontinued during any period in which the Government determines that the total provisional payments made during that period will substantially exceed the amount which would be paid based upon the anticipated evaluation score for the period. In the event the amount of provisional payments made exceeds the amount of the award fee determination for that period, the contractor will either credit the next payment voucher for the amount of the overpayment or refund the difference.

**30. Contract Termination**

If a contract with award fee is terminated for convenience after the start of an award fee evaluation period, the earned award fee amount should be determined by the FDO using the normal award fee evaluation process. The remaining available award fee dollars for all subsequent evaluation periods should not be considered available or earned and, therefore, should not be paid.

**END**

## 3 Appendix - Sample Award Fee Performance Evaluation Plan Revised 7/2012

**SAMPLE PERFORMANCE EVALUATION PLAN**

Contract No. _____ with _____

I. Introduction

II. Organizational Structure for Award Fee Administration

III. Evaluation Requirements

IV. Method for Determining Award

Fee V. Changes in Plan Coverage

Attachments

III-A Evaluation Periods and Maximum Available Award Fee for Each Period

III-B Performance Areas and Evaluation Criteria

III-B.1 Evaluation Criteria for Performance Area

No. III-C Grading Table

IV-A Actions and Schedules for Award Fee Determinations

IV-B General Instructions for Performance Monitors

APPROVED BY:

_____ _____

(Signature) (Date)

Fee Determination Official

_____

(Typed Name and Title)

**I. Introduction**

1. This plan covers administration of award fee provisions of Contract No._____ , dated _____ , with_____ _____

The contract was awarded in accordance with the provisions of SIR No. .

2. The following matters, among others, are covered in the contract:

a. The contractor is required to (brief statement describing the scope of contract).

b. The contract term is from _____through _____ .

c. The estimated cost of the contract is $ _____ .

d. The base fee is $ _____ .

e. The award fee, excluding base fee, is $ _____ .

f. The estimated cost, base fee (if any), and award fee are subject to equitable adjustments arising from changes or other contract modifications.

g. The award fee payable will be determined periodically by the Fee Determination Official (FDO) in accordance with this plan.

h. Award fee determinations are not subject to the Disputes clause of the contract.

i. Unearned award fee for each evaluation period is forfeited and cannot roll-over to subsequent periods.

j. The FDO may unilaterally change this plan, as covered in Part V and not otherwise requiring mutual agreement under the contract, provided the contractor receives notice of the changes at least (*insert number of days*) work days prior to the beginning of the evaluation period to which the changes apply

k. The award fee will be provided to the contractor through contract modifications and

is in addition to the (*type of contract*) provisions of the contract.

(**Note**: *The statements at 2.a through 2.f. can be revised as necessary to address any option(s))*

## II. Organizational Structure for Award Fee Administration

The following organizational structure is established for administering the award fee provisions of the contract.

1. Fee Determination Official (FDO)

a. The FDO is _____ (*insert title, not name*).

b. Primary FDO responsibilities are: (1) Determining the award fee earned and payable for each evaluation perio; and (2) Changing the matters covered in this plan, as appropriate.

2. Performance Evaluation Board (PEB)

a. The Chair of the PEB is_____ (*insert title*). The following are voting members:_____ (*insert titles*).

b. The Chair may recommend appointment of non-voting Members to assist the Board perform its functions.

c. Primary responsibilities of the Board are:

(1) Conducting periodic evaluations of contractor performance and submitting a Performance Evaluation Report to the FDO covering the Board's findings and recommendations for each evaluation period; and

(2) Considering changes to this plan and recommending those it determines appropriate for adoption by the FDO.

3. Performance Monitors

a. One or more monitors will be assigned to each performance area to be evaluated. The assignment will be made by the PEB Chair.

b. Each monitor will comply with the General Instructions for Performance Monitors, Attachment IV-B, and any specific instructions of the PEB Chair. Primary responsibilities of Monitors are:

(1) Monitoring, evaluating and assessing contractor performance in assigned areas;

(2) Periodically preparing a Performance Monitor Report for the PEB, or others as

appropriate; and

(3) Recommending appropriate changes in this plan for consideration.

## III. Evaluation Requirements

The applicable evaluation requirements are attached as indicated below.

| Requirement | Attachment |
|---|---|
| Evaluation Periods and Maximum Available Award Fee for Each Period | III-A |
| Performance Evaluation Factors and Evaluation Criteria | III-B |
| Evaluation Criteria for Performance Evaluation Factor No. | III-B.1 |
| Grading Table | III-C |

The percentage weights indicated in Attachment III-B and the Attachment III-C grading table are quantifying devices. Their sole purpose is to provide guidance in arriving at a general assessment of the amount of interim or final award fee earned. In no way do they imply an arithmetical precision to any judgmental determination of the contractor's overall performance and amount of interim or final award fee earned.

## IV. Method For Determining Award Fee

A determination of the award fee earned for each evaluation period will be made by the FDO Within_____ (*insert days*) after the end of the period. The method to be followed in monitoring, evaluating and assessing contractor performance during the period, as well as for determining the award fee earned or paid, is described below. Attachment IV-A summarizes the principal activities and schedules involved.

1. The PEB Chair should ensure a monitor is assigned for each performance evaluation factor or subfactor to be evaluated under the contract. Monitors will be selected on the basis of their expertise relative to prescribed performance area emphasis. Normally, monitor duties will be in addition to, or an extension of, regular responsibilities. The PEB Chair may change monitor assignments at any time without advance notice to the contractor. The PEB Chair will notify the contractor promptly of all monitor assignments and changes.

2. The PEB Chair will ensure that each monitor receives the following:

a. A copy of this plan along with any changes made.

b. Appropriate orientation and guidance.

c. Specific instructions applicable to the monitors' assigned performance areas.

3. Monitors will evaluate and assess contractor performance and discuss the results with contractor personnel as appropriate, in accordance with the General Instructions for Performance Monitors, Attachment IV-B, and the specific instructions and guidance furnished by the PEB Chair.

4. Monitors will submit (*insert monthly, quarterly, etc.)* Performance Monitor Reports and, if required, make verbal presentations to the PEB.

5. The PEB Chair may request and obtain performance information from other units or personnel normally involved in observing contractor performance, as appropriate.

6._____ (*Insert monthly, quarterly, etc*.) the PEB will consider Performance Monitor Reports and other performance information it obtains and discuss the reports and information with monitors or other personnel, as appropriate.

7. The PEB will meet (*insert monthly, quarterly, etc.)* with the contractor and discuss overall performance during the period. As requested by the PEB Chair, monitors and other personnel involved in performance evaluations will attend the meeting and participate in discussions.

8. Promptly after the end of each evaluation period, the PEB will meet to consider all the performance information it has obtained. At the meeting, the PEB will summarize its preliminary findings and recommendations for coverage in the Performance Evaluation Board Report (PEBR).

9. Then the PEB may meet with the contractor to discuss the board's preliminary findings and recommendations. As requested by the PEB Chair, monitors and other personnel involved in performance evaluation will attend the meeting and participate in discussions. At this meeting, the contractor is given an opportunity to submit information on its behalf, including an assessment of its performance during the evaluation period. After meeting with the contractor, the PEB will consider matters presented by the contractor and finalize its findings and recommendations for the PEBR.

10. The PEB Chair will prepare the PEBR for the period and submit it to the FDO for use in determining the award fee earned. The report will include an adjectival rating and a recommended performance score with supporting documentation. The contractor may be notified of the PEB evaluation and recommended rating and score. The contractor may provide additional information for consideration by the FDO. When submitting the report, the Chair will inform the FDO whether the contractor desires to present any matters to the FDO before the award fee determination is made.

11. The FDO will consider the PEBR and discuss it with the PEB Chair and other personnel, as appropriate.

12. The FDO will consider the recommendations of the PEB, information provided by the contractor, if any, and any other pertinent information in determining the amount of award fee (*insert "earned", or "to be paid" if interim evaluations apply*) for the period. The FDO's determination of the amount of award fee __*(insert "earned" or "to be paid"*) and the basis for this determination will be stated in the Award Fee Determination Report (AFDR).

13. The contractor will be notified of the FDO's determination by the Contracting Officer.

The contractor may be provided with a debriefing by the FDO and PEB.

14. Contract Termination. If the contract is terminated for the convenience of the Government after the start of an award-fee evaluation period, the award fee deemed earned for that period shall be determined by the FDO using the normal award-fee evaluation process. After termination for convenience, the remaining award-fee amounts allocated to all subsequent award-fee evaluation periods cannot be earned by the contractor and, therefore, must not be paid.

15. Performance Incentives.(*Omit if no performance incentives are included*) After delivery of the hardware unit(s), hardware performance will be measured and its success, or failure, determined by the Contracting Officer based on the units of measurement and associated dollar amounts which appear in contract clause H-___ (*insert appropriate clause reference*). Either positive or negative performance incentives will apply depending on whether the hardware unit's performance exceeds or falls short of the standard performance level.

**V. Changes in Plan Coverage**

1. Right to Make Unilateral Changes

Any matters covered in this plan not otherwise requiring mutual agreement under the contract, may be changed unilaterally by the FDO prior to the beginning of an evaluation period by timely notice to the contractor in writing. The changes will be made without formal modification of the contract if the plan is not incorporated into the contract.

2. Steps to Change Plan Coverage

The following is a summary of the principal actions involved in changing plan coverage (actions may be modified to reflect different approval/notification levels). The PEB will establish lists of subsidiary actions and schedules as necessary to meet the below schedules.

| **Action** | **Schedule (Workdays)** | |
|---|---|---|
| PEB drafts proposed changes | Ongoing | |
| PEB submits recommended changes to FDO for approval | | days prior to end of each period |
| Through CO, FDO notifies contractor about whether or not there are changes | | days before start of the applicable iod |
| | per | |

3. Method for Changing Plan Coverage

The method to be followed for changing the plan coverage is described below:

a. Personnel involved in the administration of the award fee provisions of the contract are encouraged to recommend plan changes with a view toward changing management emphasis, motivating higher performance levels or improving the award fee determination process. Recommended changes should be sent to the PEB

for consideration and drafting

b. Prior to the end of each evaluation period, the PEB will submit its recommended changes, if any, applicable to the next evaluation period for approval by the FDO with appropriate comments and justification.

c._____ (*insert number of days*) work days before the beginning of each evaluation period, the contracting officer will notify the contractor in writing of any changes to be applied during the next period. If the contractor is not provided with this notification, or if the notification is not provided within the agreed-to number of work days before the beginning of the next period, then the existing plan will continue in effect for the next evaluation period.

**ATTACHMENT III-A** to PEP for Contract No. _____ with _____

**Evalution Periods and Maximum Available Award Fee for Each Period**

| **Period Number** | | **Start Date** | | **End Date** | | **Max. Available Award Fee** |
|---|---|---|---|---|---|---|
| 1 | | | | | | $ |
| 2 | | | | | | $ |
| 3 | | | | | | $ |

**ATTACHMENT III-B** to PEP for Contract No. _____ with _____

**Performance Evaluation Factors and Evaluation Criteria**

The performance factors to be evaluated are identified below. The evaluation criteria for each factor are attached, as indicated.

| **Area No** | **Brief Factor Identification** | **Factor Weight** | **See Attachment** |
|---|---|---|---|
| 1 | | | III-B.1* |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |

* A separate attachment should be prepared for each factor.

**ATTACHMENT III-B.1** to PEP for Contract No. _____ with _____

**Evaluation Criteria for Performance Evaluation Factor No. ____**

(Factor Identification Per Attachment III-B)

Factor Weight _____

Description of

Factor: Subfactors to

Consider: Evaluation

Criteria: Criteria

Weights:

Basis or Standard for Measuring Performance:

**ATTACHMENT III-C to** PEP for Contract No. _____ with _____

**Grading Table**

| | | |
|---|---|---|
| **Adjectival Rating** | | |

**Range of Performance**

| **Description** | **Points** | |
|---|---|---|
| Excellent | (100-91) | Of exceptional merit; exemplary performance in a timely, efficient and economical manner; very minor (if any) deficiencies with no adverse effect on overall performance. |
| Very Good | (90-81) | Very effective performance, fully responsive to contract requirements; contract requirements accomplished in a timely, efficient and economical manner for the most part; only minor deficiencies. |
| Good | (80-71) | Effective performance; fully responsive to contract requirements; reportable deficiencies, but with little identifiable effect on overall performance. |
| Satisfactory | (70-61) | Meets or slightly exceeds minimum acceptable standards; adequate results; reportable deficiencies with identifiable, but not substantial, effects on overall performance. |
| Poor/ Unsatisfactory | (less than 61) | Does not meet minimum acceptable standards in one or more areas; remedial action required in one or more areas; deficiencies in one or more areas which adversely affect overall performance. |

Any factor receiving a grade of “poor/unsatisfactory” (less than 61) may be assigned zero performance points for purposes of calculating the award fee amount. The contractor will not be paid any award fee when the total award fee score is "Poor/Unsatisfactory" (less than 61).

**ATTACHMENT IV-A** to PEP for Contract No. _____ with _____

**Actions and Schedules for Award Fee Determinations**

The following is a summary of the principal actions involved in determining the award fee for the evaluation periods.

| **Action** | **(Workdays)** |
|---|---|
| 1. PEB Chair and members appointed. | days prior to first period |
| 2. PEB Chair appoints performance monitors and informs contractor. | days prior to first period |
| 3. Monitors receive orientation and guidance. | days prior to first period |
| 4. Monitors assess performance and discuss results with contractor. | Ongoing after start of period |
| 5. Monitors submit Performance Monitor reports to PEB. | Last day of each ___ (insert month, quarter, etc.) |
| 6. PEB considers Performance Monitor reports and other | Ongoing |

| | | |
|---|---|---|
| requested performance information. | | |
| 7. PEB discusses overall performance with contractor during period. | ____ | days after end of period of each _____(insert month, quarter, etc.) |
| 8. PEB meets and summarizes preliminary findings and position of PEBR. | ____ | days after end of period |
| 9. PEB may meet with contractor to discuss preliminary findings and position. | ____ | days after end of period |
| 10. PEB establishes findings and recommendations for PEB report. | ____ | days after end of period |
| 11. PEB Chair submits PEB report to FDO. | | days after end of period |
| 12. FDO considers PEB report and discusses with PEB, as appropriate. | ____ | days after end of period |
| 13. FDO sends PEB report to contractor. | | days after end of period |
| 14. Payment made to contractor based on contract modification. | | days after end of period |

The PEB may establish lists of subsidiary actions and schedules as necessary to meet the above schedules.

**ATTACHMENT IV-B** to PEP for Contract No. _____ with _____

**General Instructions for Performance Monitors**

1. Monitoring and Assessing Performance

a. Monitors may prepare outlines of their assessment plans, discuss them with appropriate contractor personnel to assure complete understanding of the evaluation and assessment process.

b. Monitors may plan and carry out on-site assessment visits, as necessary.

c. Monitors may conduct all assessments in an open, objective and cooperative spirit so that a fair and accurate evaluation is obtained. This will ensure that the contractor receives accurate and complete information from which to plan improvements in performance. Positive performance accomplishments should be emphasized just as readily as negative ones.

d. The monitor may discuss the assessment with contractor personnel as appropriate, noting any observed accomplishments and/or deficiencies. This affords the contractor an opportunity to clarify possible misunderstandings regarding areas of poor performance and to correct or resolve deficiencies.

e. Monitors must remember that contacts and visits with contractor personnel are to be accomplished within the context of official contractual relationships. Monitors may avoid any activity or association which might cause, or give the appearance of, a conflict of interest.

f. Monitor discussions with contractor personnel are not to be used as an attempt to instruct, to direct, to supervise or to control these personnel in the performance of the contract. The role of the monitor is to monitor, assess and evaluate not to manage the contractor's effort.

2. Documenting Evaluation/Assessment

Evaluations and assessments conducted and discussions with contractor personnel may be documented as follows:

3. Evaluation/Assessment Reports

Monitors may prepare a formal Performance Monitor Report in accordance with the following instructions and submit it to the PEB. (*Specify format, frequency of submission and minimum information requirements*)

4. Verbal Reports

Monitors need to be prepared to make verbal reports of their evaluations and assessments as required by the PEB Chair.

**END**

## 4 Appendix - Incentive Contracts Guide Added 4/2010

### 1. Introduction

The purpose of this guide is to further explain incentive contracts, provide examples, and other considerations for using incentive contracts. This guide:

- Provides general guidance on when an incentive contract may be appropriate;
- Describes elements of the required cost incentive and how the elements influence profit/fee earned by a contractor, depending on the cost incurred;
- Describes the general characteristics of a performance incentive and delivery incentive;
- Provides general guidance for structuring multiple (i.e., having a cost incentive and performance and/or delivery incentives) incentive contracts;
- Provides general guidance on Fixed-Price Incentive (FPI) contracts including the importance of the Point of Total Assumption (PTA);
- Provides general guidance on FPI contracts with a firm target, and FPI with successive targets;

- Provides general guidance on Cost-Plus-Incentive-Fee (CPIF) contracts including impact of minimum and maximum fee established;
- Provides general guidance on negotiating changes to incentive contracts including possible negotiation methods and circumstances in which they would be appropriate.

**2. General**

(a) Incentive contracts are appropriate when supplies or services can be acquired at lower costs, and in certain instances with improved delivery or technical performance, by relating the amount of profit/fee payable under the contract to the contractor's performance**.** Incentive contracts are designed to obtain specific program objectives by:

(1) Establishing reasonable and attainable targets that are clearly communicated to the contractor; and

(2) Including appropriate incentive arrangements designed to motivate contractor efforts that might not otherwise be emphasized, and to discourage contractor inefficiency.

(b) When predetermined, formula-type incentives on technical performance or delivery are included, profit/fee:

(1) Increases only for achievement that surpasses the targets, and

(2) Decreases to the extent that such targets are not met.

The incentive increases or decreases are applied to performance targets rather than minimum performance requirements.

(c) The two basic categories of incentive contracts are fixed-price incentive and cost-plus- incentive-fee.

(d) Fixed-price incentive contracts are preferred when contract costs and performance requirements are reasonably certain. It is usually in the Government's interest for a contractor to assume substantial cost responsibility and an appropriate share of the cost risk, thus the preference for fixed price incentive contracts.

(e) Award-fee contracts are a separate type of incentive contract and are discussed separately under Appendices 2 and 3 of this Section T3.2.4.

**3. Cost Incentives**

(a) Most incentive contracts include only cost incentives, which take the form of a profit or fee adjustment formula. Cost incentives are intended to motivate the contractor to effectively manage costs. An incentive contract cannot provide for other incentives without also providing a cost incentive (or constraint).

(b) Incentive contracts include a target cost, a target profit or fee, and a profit or fee

adjustment formula that provides (within the constraints of a price ceiling or minimum and maximum fee):

(1) Actual cost that meets the target will result in the target profit or fee;

(2) Actual cost that exceeds the target will result in downward adjustment of target profit or fee; and

(3) Actual cost that is below the target will result in upward adjustment of target profit or fee.

(c) *An example of a cost incentive (in a fixed-price incentive contract) based on the above is as follows*:

Target Cost $10,000,000
Target Profit $1,000,000
Target Price $11,000,000
Share Ratio 70/30 (Government/contractor)
Ceiling Price 115% of Target Cost
($11,500,000)

Actual cost of $10,000,000 would meet target cost. This results in the contractor earning the target profit of $1,000,000 because the contractor met the target cost. $11,000,00 would be paid to the contractor in total ($10,000,000 target cost + $1,000,000 target profit).

Actual cost of $11,000,000 would exceed target cost. This results in the contractor being responsible for its share of 30% of the amount over the target cost ($1,000,000 X 30% = $300,000). This amount of $300,000 is deducted from the target profit of $1,000,000 for a total of $700,000 profit. Instead of being paid a total of $11,700,000, the contractor would be paid $200,000 less because of the ceiling price ($11,500,000) – reducing the profit from $700,000 to $500,000.

-Actual cost of $9,000,000 would be under target cost. This results in the contractor earning an additional 30% of the amount below the target cost ($1,000,000 X 30% = $300,000) in addition to the target cost for a total of $1,300,000 profit. $10,300,000 would be paid to the contractor in total.

**4. Performance Incentives**

(a) Performance incentives may be considered with specific product characteristics (*e.g.*, a missile range, an aircraft speed, an engine thrust, or a vehicle maneuverability) or other specific elements of the contractor's performance. These incentives should be designed to relate profit/fee to a contractor’s achievement, compared with specified targets.

(b) When practicable, positive and negative performance incentives should be considered with service contracts for performance of objectively measurable tasks when quality of performance is critical and incentives are likely to motivate the contractor.

(c) Technical performance incentives may be particularly appropriate in major or complex systems, both in development (when performance objectives are known and the fabrication of prototypes for test and evaluation is required) and in production (if improved performance is attainable and highly desirable to the Government).

(d) Technical performance incentives may involve a variety of specific characteristics that contribute to the overall performance of the end item. Accordingly, the incentives on individual technical characteristics must be balanced so that no one of them is exaggerated to the detriment of the overall performance of the end item.

(e) Performance tests and/or assessments of work performance are generally essential in order to determine the degree of attainment of performance targets. Therefore, the contract must be as specific as possible in establishing test criteria (such as testing conditions, instrumentation precision, and data interpretation) and performance standards (such as the quality levels of services to be provided).

(f) Because performance incentives present complex problems in contract administration, the Contracting Officer (CO) should negotiate them in full coordination with Government technical and pricing specialists.

(g) It is essential that the Government and contractor agree explicitly on the effect that contract changes (*e.g.*, pursuant to the applicable Changes clause) will have on performance incentives.

This will be dealt with in more detail in Section 11 below.

(h) The CO must exercise care, in establishing performance criteria, to recognize that the contractor should not be rewarded or penalized for attainments of Government-furnished components.

(i) *A basic example of a performance incentive is as follows:*

> Maintenance Hours per Operational Hour – Total Possible Incentive $120,000
> Minimum Value – 10 hours – 0% of incentive earned
> Average Value – 5 hours – 50% of incentive earned ($60,000)
> Maximum Value – 2 hours – 100% of incentive earned
> ($120,000) Penalty if > 10 hours -$10,000
>
> In the example above, if the contractor failed to meet the minimum value of 10 hours per operational hour, they would not receive any of the possible $120,000 in incentives. Additionally, a negative incentive of $10,000 would be deducted from the negotiated value of the contract.

**5. Delivery Incentives**

(a) Delivery incentives should be considered when improvement from a required delivery schedule is a significant Government objective. It is important to determine the Government's primary objectives in a given contract (*e.g.*, earliest possible delivery or earliest quantity production).

(b) Incentive arrangements on delivery should specify the application of the reward-penalty structure in the event of Government-caused delays or other delays beyond the control, and without the fault or negligence, of the contractor or subcontractor.

(c) *A basic example of a delivery incentive is as follows:*

The total schedule incentive available must be defined in the contract with specifics as to Contract Line Item, Period of Performance etc. as needed. For this example, the total incentive amount available is $100,000.

Delivery Incentive Milestones:

*Positive Incentives*

20% of available incentive for completion of Critical Design Review (CDR) at least two (2) weeks ahead of schedule ($20,000)
20% of available incentive for passing Design Qualification Test (DQT) at least two (2) weeks ahead of schedule ($20,000)
15% of available incentive for passing site acceptance test at least two (2) weeks ahead of schedule ($15,000)
45% of available incentive for achieving Initial Operational Capability (IOC) at least two (2) weeks ahead of schedule ($45,000)

*Negative Incentives*

20% of available incentive for not achieving completion of Critical Design Review (CDR) on schedule (-$20,000) 45% for not achieving IOC on schedule (-$45,000)

The schedule for the milestones as well as what the achievement of each milestone involves must be clearly defined in the contract. For example, if the contractor fails to meet the first milestone, they lose $20,000 due to the negative incentive. If they do not meet the second, there would be no impact as there is no negative incentive. If they meet the third at least two weeks ahead of schedule, there would be a positive incentive of $15,000 earned. Meeting the last and most important milestone at least two weeks ahead of schedule would earn $45,000 for total schedule incentive earnings of $40,000.

## 6. Structuring Multiple-Incentive Contracts

A properly structured multiple-incentive arrangement should-

(a) Motivate the contractor to strive for outstanding results in all incentive areas; and

(b) Compel trade-off decisions among the incentive areas, consistent with the Government's overall objectives for the acquisition. Because of the interdependency of the Government's cost, the technical performance, and the delivery goals, a contract that emphasizes only one of the goals may jeopardize control over the others. Because outstanding results may not be attainable for each of the incentive areas, all multiple-incentive contracts must include a cost

incentive (or constraint) that operates to preclude rewarding a contractor for superior technical performance or delivery results when the cost of those results outweighs their value to the Government.

(c ) While not requiring as much administrative effort as an award fee contract, an incentive contract with multiple incentives requires some administrative effort to track how the contractor is performing in relation to the cost incentive and to the performance and/or delivery incentive. Before entering into a multiple incentive contract, Agencies must determine whether the amount of additional administrative effort is offset by potentially improved performance by the Contractor.

(d) *A basic example of a multiple incentive contract is as follows (applicable to either Fixed- Price Incentive or Cost-Plus-Incentive-Fee):*

Target Cost $100
Target Profit (Fee) $7
Target Price $107
Share Ratio 75/25
Performance Incentive Reward +$3
Performance Incentive Penalty -$1
Schedule Incentive Penalty -$1

Cost of $84 and maximum performance on schedule – profit is $14 ($16 under Target cost X 25% share = $4 + $7 Target Profit +$3 Performance Incentive Reward).

Cost of $116 and acceptable performance with late delivery – profit is $2 ($16 over Target Cost X 25% share = $4 subtracted from $7 =$3 less $1 Schedule Incentive Penalty)

Cost of $116 and maximum performance with late delivery – profit is $5 ($16 over Target Cost X 25% share = $4 subtracted from $7= $3 less $1 Schedule Incentive Penalty plus $3 Performance Incentive Reward)

**7. Fixed-Price Incentive (FPI) Contracts**

(a) *Description.* A FPI contract is a fixed-price contract that provides for adjusting profit and establishing the final contract price by application of a formula based on the relationship of total final negotiated cost to total target cost. The final price is subject to a price ceiling, negotiated at the outset.

(b) *Application.* A FPI contract is appropriate when-

(1) A FFP contract is not suitable;

(2) The nature of the supplies or services being acquired and other circumstances of the acquisition are such that the contractor's assumption of a degree of cost responsibility

will provide a positive profit incentive for effective cost control and performance; and

(3) If the contract also includes incentives on technical performance and/or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work.

(c) *Billing prices*. In FPI contracts, billing prices are established as an interim basis for payment. These billing prices may be adjusted, within the ceiling limits, upon request of either party to the contract, when it becomes apparent that final negotiated cost will be substantially different from the target cost.

(d) *Point of Total Assumption.* The Point of Total Assumption (PTA ) in FPI contracts is the point where cost increases that exceed the target cost are no longer shared by the Government according to the share ratio. At the PTA, the contractor's profit is reduced one dollar for every additional dollar of cost. The PTA is calculated as follows:

PTA = (Ceiling Price –Target Price)/Government Share + Target Cost

*An example of a PTA calculation is as follows:*

Target Cost $50,000,000
Target Profit $4,500,000
(9%) Target Price
$54,500,000
Ceiling Price 125% of Target Cost = $62,500,000
Share Ratio 70/30

PTA = ($62,500,000-54,500,000)/70% + $50,000,000
PTA = $8,000,000/70% + $50,000,000
PTA = $11,428,571 + $50,000,000 = $61,428,571

Thus, cost increases beyond the PTA of $61,428,571 are no longer shared by the Government in accordance with the share ratio – the contractor's profit will be reduced one dollar for every additional dollar of cost beyond the PTA.

(e) *General Considerations:*

(1) The higher the Government share and the higher the ceiling price, the lower the overall incentive for the contractor to control costs since they have more ability to recover such costs; and

(2) Conversely, the lower the Government share and the lower the ceiling price, the higher the overall incentive for the contractor to control costs since they have less ability to recover such costs

**8. Fixed-Price Incentive (Firm Target)**

(a) *Description*. A fixed-price incentive (firm target) contract specifies a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula. These elements are all negotiated at the outset. The price ceiling is the maximum that may be paid to

the contractor, except for any adjustment under other contract clauses. When the contractor completes performance, the parties negotiate the final cost, and the final price is established by applying the formula. When the final cost is less than the target cost, application of the formula results in a final profit greater than the target profit; conversely, when final cost is more than target cost, application of the formula results in a final profit less than the target profit, or even a net loss. If the final negotiated cost exceeds the price ceiling, the contractor absorbs the difference as a loss. Because the profit varies inversely with the cost, this contract type provides a positive, calculable profit incentive for the contractor to control costs.

(b*) Applicability:* A fixed-price incentive (firm target) contract is appropriate when the parties can negotiate at the outset a firm target cost, target profit, and profit adjustment formula that will provide a fair and reasonable incentive and a ceiling that provides for the contractor to assume an appropriate share of the risk. When the contractor assumes a considerable or major share of the cost responsibility under the adjustment formula, the target profit should reflect this responsibility.

(c) *Limitations*. This contract type may be used only when-

(1) The contractor's accounting system is adequate for providing data to support negotiation of final cost and incentive price revision; and

(2) Adequate cost or pricing information for establishing reasonable firm targets is available at the time of initial contract negotiation.

(d) *Contract schedule*. The CO should specify in the contract schedule the target cost, target profit, and target price for each item subject to incentive price revision. Following the completion of performance, the parties negotiate the final cost, and the final price is established by applying the formula.

*(e) An example of a Fixed-Price Incentive (Firm Target) contract is under Section 7 above.*

**9. Fixed-Price Incentive (Successive Targets) Contracts**

(a) *Description*.

(1) A fixed-price incentive (successive targets) contract specifies the following elements, all of which are negotiated at the outset:

(i) An initial target cost.

(ii) An initial target profit.

(iii) An initial profit adjustment formula to be used for establishing the firm target profit, including a ceiling and floor for the firm target profit. (This formula normally provides for a lesser degree of contractor cost responsibility than would a formula for establishing final profit and price.)

(iv) The production point at which the firm target cost and firm target profit will be negotiated (usually before delivery or shop completion of the first item).

(v) A ceiling price that is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

(2) When the production point specified in the contract is reached, the parties negotiate the firm target cost, giving consideration to cost experience under the contract and other pertinent factors. The firm target profit is established by the formula. At this point, the parties have two alternatives, as follows:

(i) They may negotiate a firm fixed price, using the firm target cost plus the firm target profit as a guide.

(ii) If negotiation of a firm fixed price is inappropriate, they may negotiate a formula for establishing the final price using the firm target cost and firm target profit. The final cost is then negotiated at completion, and the final profit is established by formula, as under the fixed-price incentive (firm target) contract.

(b) *Application*. A fixed-price incentive (successive targets) contract is appropriate when-

(1) Available cost or pricing information is not sufficient to permit the negotiation of a realistic firm target cost and profit before award;

(2) Sufficient information is available to permit negotiation of initial targets; and

(3) There is reasonable assurance that additional reliable information will be available at an early point in the contract performance so as to permit negotiation of either (i) a firm fixed price or (ii) firm targets and a formula for establishing final profit and price that will provide a fair and reasonable incentive. This additional information is not limited to experience under the contract, itself, but may be drawn from other contracts for the same or similar items.

An example of a situation where this contract type may be appropriate is where long lead time requirements may make it necessary in the acquisition of a new system to contract for a follow-on quantity before design or production stability has been achieved.

(c) *Limitations*. This contract type may be used only when-

(1) The contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, as well as later negotiation of final costs; and

(2) Cost or pricing information adequate for establishing a reasonable firm target cost is reasonably expected to be available at an early point in contract performance.

(d) *Contract schedule*. The CO should specify in the contract schedule the initial target cost, initial target profit, and initial target price for each item subject to incentive price revision.

(e) Overall considerations for the use of fixed-price incentive (successive targets) are as follows:

(1) Successive targets are used when uncertainties do not permit the negotiation of a firm arrangement;

(2) The ability to establish a firm pricing arrangement is not limited by the availability of cost or pricing data from the contract itself.

(3) Data may be drawn on as it becomes available from other contracts for the same or similar equipment/services; and

Because this type of contract is negotiated when cost and pricing information is not sufficient to allow negotiation of a firm arrangement, contract performance uncertainties are greater than they would otherwise be the case in a fixed-price type of contract. A realistic pricing arrangement would thus not provide as great a degree of contractor cost responsibility as under a FPI contract.

*A basic example of a Fixed-Price Incentive (Successive Targets) contract is as follows:*

| | |
|---|---|
| Initial Target Cost | $15,000,000 |
| Initial Target Profit | $1,200,000 |
| Initial Target Price | $16,200,000 |
| Initial Share Ratio | 95/5 |

Ceiling on Firm Target Profit $1,350,000
Floor on Firm Target Profit $1,050,000
Price Ceiling $19,500,000

At the production point in the contract, if the cost is $14,500,000, the firm target profit would be determined as follows:
Initial Target Cost $15,000,000
Negotiated Cost $14,500,000
Difference $500,000 (decrease)
Contractor's Share $25,000 (increase)
Initial Target Profit $1,200,000
Firm Target Profit $1,225,000

At this point, there are two alternatives: Using the negotiated cost of $1,450,000 and the firm target profit as guides, a firm-fixed-price may be negotiated. If this is not possible, or if the parties agree that uncertainties under the remaining part of the contract make this unfeasible, a fixed-price incentive with firm targets may be negotiated. The ceiling price cannot be *increased* at this point but it may be *decreased* where firm target costs are lower than initial target costs. With a revised ceiling price of $16,700,000 and a new share ratio of 60/40 negotiated, the following is established:

| | |
|---|---|
| Target Cost | $14,500,000 |
| Target Profit | $1,225,000 |
| Target Price | $15,725,000 |

Ceiling Price $16,700,000
Share Ratio 60/40

The final settlement at contract completion would be done as for the firm target contract described in Section 8.

If the parties negotiated an estimated cost of $17,000,000 at the production point, firm target profit would be determined as follows:

Initial Target Cost $15,000,000
Negotiated Cost $17,000,000
Difference $2,000,000 (increase)
Contractor's Share $100,000 (decrease)
Initial Target Profit $1,200,000
Firm Target Profit $1,100,000

If a FFP contract was not appropriate, and a sharing formula of 75/25 were negotiated, a firm incentive agreement could be set up as follows:

| | |
|---|---|
| Target Cost | $17,000,000 |
| Target Profit | $1,100,000 |
| Target Price | $18,100,000 |
| Ceiling Price | $19,500,000 |
| Share Ratio | 75/25 |

**10. Cost-Plus-Incentive-Fee (CPIF) Contracts**

(a) *Description*. The CPIF contract is a cost-reimbursement contract that provides for the initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. This contract type specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula. Unlike FPI contracts, there is no ceiling price under this contract type.

After contract performance, the fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. This increase or decrease is intended to provide an incentive for the contractor to manage the contract effectively. When total allowable cost is greater than or less than the range of costs within which the fee-adjustment formula operates, the contractor is paid total allowable costs, plus the minimum or maximum fee.

(b) *Application*.

(1) A CPIF contract is appropriate for services or development and test programs when:

(i) A cost-reimbursement contract is necessary where uncertainties in the work

under contract make a FPI contract impracticable; and

(ii) A target cost and a fee adjustment formula can be negotiated that are likely to motivate the contractor to manage effectively.

(2) The contract may include technical performance incentives when it is highly probable that the required development of a major system is feasible and the Government has established its performance objectives, at least in general terms. This approach also may apply to other acquisitions, if the use of both cost and technical performance incentives is desirable and administratively practical.

(3) The fee adjustment formula should provide an incentive that will be effective over the full range of reasonably foreseeable variations from target cost. If a high maximum fee is negotiated, the contract must also provide for a low minimum fee that may be a zero fee or, in rare cases, a negative fee.

(c) *Limitations*. No CPIF contract shall be awarded unless the contractor has an adequate accounting system for that type of contract.

(d) Additional considerations for use of this contract type are as follows: Because of the interrelationship between negotiated fee levels and the sharing arrangement, the wider the range between minimum and maximum fees, the greater the contractor's share percentage under the formula without limiting the range of cost variation over which the incentive is effective.

*Examples of a CPIF contract are as follows:*

Target Cost $10,000,000
Target Fee $750,000
Maximum Fee $1,350,000
Minimum Fee $300,000
Share Ratio 85/15

(1) Actual cost of $10,000,000 results in the contractor earning the target fee of $750,000 since the contractor has met the target cost. $10,750,000 would be paid to the contractor in total.

(2) Actual cost of $11,000,000 above the target cost results in the contractor being responsible for 15% of the amount over cost ($150,000) which is deducted from the target fee for a total of $600,000 fee. This is within the minimum and maximum fee limits specified above.

(3) Actual cost of $9,000,000 below the target cost results in the contractor earning an additional $150,000 in fee above the target fee ($900,000). This is within the minimum and maximum fee limits specified above.

**11. Impact of Contract Changes**

When work required under a contract is changed under the "Changes" clause or other appropriate clause of an incentive contract – either increased or decreased – adjustments may be

negotiated to the target cost, target fee, share ratio, etc. as appropriate. Performance and/or schedule incentives may also be similarly renegotiated. Since late definitizations of contract changes can adversely affect the integrity of the incentive contract structure, agreements on the pricing and incentive aspects of contract changes should be negotiated as soon as possible. Four possible methods of making equitable adjustments to incentive contracts are as follows: (a) Constant dollar – where the same dollar adjustment is applied to target, maximum and minimum fee or profit and ceiling price;

(b) Constant percentage – where the percentage of minimum and maximum fee or the percentage of ceiling price over target cost is held constant. The constant dollar and constant percentage methods are similar except for differences in fee/profit earned at the extremes of ranges above or below the target cost;

(c) Individual element – determining the effect of the change on each element such as target cost, target fee, and ceiling price individually. This is appropriate where the degree of uncertainty varies significantly between the original contract and the changed portion. There is a flexibility to tailor the specifics of the incentive to the change; however, the disadvantage is that more administrative effort is often needed to evaluate and negotiate each individual element; and

(d) Severable change – where the change is isolated form the incentive provisions with a separate agreement reached on the change portion. This method is most appropriate where the changed portion is completely different in terms of technical and cost risk than the original contract. For instance, the contract may be CPIF while the new work may be FPI.

Overall, the method chosen depends on the extent and nature of the change as well as its impact upon the individual incentive contract elements.

## T3.2.5 - Contractor Ethical Guidelines Revised 10/2008

### A Contractor Ethical Guidelines

### 1 Officials Not to Benefit

FAA contracts are to state that no member of or delegate to Congress, or resident commissioner, will be admitted to any share or part of the contract or any benefit arising from it. If a contract is made between the FAA and any member of or delegate to Congress, or resident commissioner, it may constitute a violation of 18 U.S.C. 431 and 432, resulting in:

a. Both the employee of the FAA who awarded the contract and the member, delegate, or resident commissioner being subject to criminal penalties;

b. The contract being void; and

c. The contractor having to return any consideration paid by the FAA under the contract.

## 2 Contractor's Gratuities to FAA Personnel Revised 4/2008

a. With certain limited exceptions, employees are prohibited from accepting gratuities or gifts from contractors or persons seeking FAA contracts or other business under rules prescribed in 5 CFR 2635.201-2635.205. This applies to all contracts except those for personal services.

b. Information or allegations concerning unlawful gratuities or gifts should be promptly referred to the Inspector General. If the Inspector General finds evidence that an offeror or contractor offered or gave an unlawful gratuity or gift, the Contracting Officer (CO) must determine whether debarment proceedings are appropriate in addition to actions taken under a specific contract

c. Before taking any action against a contractor, the CO should determine, after notice and hearing by the FAA Office of Dispute Resolution for Acquisition, whether the contractor, its agent, or another representative, under a contract containing the "Gratuities or Gifts" clause:

> (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the FAA; and intended by the gratuity to obtain a contract or favorable treatment under a contract (intent generally must be inferred).
>
> (2) The contractor will have an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents.
>
> (3) When the CO determines that a violation has occurred, FAA may terminate the contractor's right to proceed and initiate debarment or suspension measures.

## 3 Contingent Fees Revised 4/2008

a. A contractor may not pay a fee to an agent contingent upon the agent's soliciting or obtaining award of a contract. Such a fee arrangement is improper because it may lead to attempted or actual exercise of improper influence. The prohibition does not apply to contingent fee arrangements between contractors and bona fide employees or bona fide agencies employed by contractors to secure business. Contractors should warrant that they have not engaged in contingent fee arrangements, other than those with full-time bona fide employees working solely for the prospective contractor, when they sign the contract.

b. For breach or violation of the warranty by the contractor, FAA may annul the contract without liability or deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

> (1) FAA employees who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the contingent fee clause should report the matter promptly to the Contracting Officer (CO) or the Inspector General.
>
> (2) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (1) above, the CO should review the facts and, if

appropriate, take or direct one or more of the following, or other, actions:

(a) If before award, reject the offer;

(b) If after award, enforce FAA's right to annul the contract or to recover the fee;

(c) Initiate suspension or debarment action;

(d) Refer suspected fraudulent or criminal matters to the Department of Justice.

### 4 Limitation on the Payment of Funds to Influence Federal Transactions Revised 4/2008

a. A recipient of a Federal contract, grant, loan, or cooperative agreement is prohibited by 31 U.S.C. 1351 from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, member of Congress, officer or employee of Congress, or employee of a member of Congress in connection with award of any Federal contract, grant, loan, cooperating agreement, or modification to any of the aforementioned.

b. By signing its offer, an offeror certifies that no appropriated funds have been paid or will be paid in violation of 31 U.S.C. 1352.

c. Suspected violations of will be referred to the Contracting Officer. The FAA may impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804-3408, and 3812.

### 5 Subcontractor Kickbacks Revised 10/2014

As prescribed by the Anti-Kickback Act (41 U.S.C. §§ 8701-8707), subcontractors are prohibited from making payments (or anything of value) and contractors from accepting payments (or anything of value) for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract.

### 6 Unreasonable Restrictions on Subcontractor Sales Revised 4/2008

Subcontractors are not to be unreasonably precluded from making direct sales to FAA of any supplies or services made or furnished under a contract. However, this does not preclude contractors from asserting rights that are otherwise authorized by law or regulation.

### 7 Contracts with Federal Employees/Business Owned by Federal Employees

a. *Contracts with Current Federal Employees.* The FAA will not knowingly award a contract

to a Federal employee or to a business concern or other organization owned or substantially owned or controlled by one or more Federal employees.

b. *Contracts with Former Federal Employees.* The FAA may enter into contracts with a former Federal employee, or business concern or other organization owned or substantially owned or controlled by one or more former Federal employees.

c. *Contracts with Former Federal Employees Taking the Retirement Buy-out. T*he FAA may enter into contracts with former Federal employees who have taken the buy-out retirement option only if those individuals have complied with federal, agency, and local laws or policies concerning reemployment as a contractor. The Contracting Officer should consult with the cognizant legal counsel about retirement buy-out restrictions and potential contracts with former Federal employees.

## 8 Voiding and Rescinding Contracts Revised 4/2008

a. The FAA has discretionary authority to void and rescind contracts, in addition to any other rights available under law or regulation, when a contractor has a final conviction for bribery, conflict of interest, misconduct, or any other violation of 18 U.S.C. 201-224 involving or relating to FAA contracts. The FAA may also recover the amounts expended and property transferred under the contracts.

b. Because a final conviction under 18 U.S.C. 201-224 relating to a contract also may justify the conclusion that the party involved is not presently responsible, the Contracting Officer (CO) should consider initiating debarment proceedings, if debarment has not been initiated, or is not in effect at the time the final conviction is entered.

c. The facts concerning any final conviction for any violation of 18 U.S.C. 201-224 involving or relating to FAA contracts should be reported promptly to the CO. The CO should also promptly notify the Civil Division, Department of Justice, that action is being considered.

d. When proposing to declare void and to rescind a contract, the CO will provide to the contractor, as a minimum, the following:

(1) A written notice of proposed action to declare void and rescind the contract sent by certified mail, return receipt requested. The notice should:

(a) Advise that consideration is being given to declaring void and rescinding contracts awarded by FAA, and recovering the amounts expended and property transferred, under the provisions of 18 U.S.C 218;

(b) Specifically identify the contracts affected by the action;

(c) Specifically identify the final conviction on which the action is based;

(d) State the amounts expended and property transferred under each of the contracts involved, and the money and the property demanded to be

returned;

(e) Identify any tangible benefits received and retained by the FAA under the contract, and the value of those benefits, as calculated by the FAA;

(f) Advise that pertinent information may be submitted within 30 calendar days after receipt of the notice, and that, if requested within that time, a hearing will be held at which witnesses may be presented and any witness the FAA presents may be confronted. Also, advise that no inquiry will be made regarding the validity of the conviction.

(g) Advise that action will be taken only after the CO issues a final written decision on the proposed action.

(2) The final decision to void and rescind a contract will be based on the information available to the Contracting Officer, including any pertinent information submitted or, if a hearing was held, presented at the hearing. If the Contracting Officer declares void and rescinds the contract, the final decision will:

(a) State that determination;

(b) Reflect consideration of the fair value of any tangible benefits received and retained by the FAA;

(c) State the amount due and the property to be returned to the FAA; and

(d) Be sent promptly by certified mail, return receipt requested.

**9 Whistleblower Protection for Contractor Employees** **Revised 10/2010**

a. FAA contractors should not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

b. Any employee of a contractor who believes that he or she has been discharged, demoted, or otherwise discriminated against may file a complaint with the Inspector General. Upon completion of the investigation, the Contracting Officer (CO) will ensure that the Inspector General's report of findings is provided to:

(1) The complainant and any person acting on the complainant's behalf;

(2) The contractor alleged to have committed the violation; and

(3) The Director of Acquisition and Contracting.

c. The complainant and the contractor will be afforded the opportunity to submit a written response to the report of findings within 30 days to the contracting officer. Extensions of time

to file a written response may be granted by the contracting officer. At any time, the CO may request additional investigative work be done on the complaint.

d. If the CO determines that a contractor has subjected one of its employees to a reprisal for providing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, the CO may take one or more of the following actions:

(1) Order the contractor to take affirmative action to abate the reprisal;

(2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken; or

(3) Order the contractor to pay the complainant an amount equal to he aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

e. Whenever a contractor fails to comply with an order, the CO should request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

f. Any person adversely affected or aggrieved by an order issued under this section may obtain review of the order's conformance with the law in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the CO. Review is to conform to 5 U.S.C. 7.

## 10 Contractor Code of Business Ethics and Conduct Added 4/2008

FAA contractors must conduct themselves with the highest degree of integrity and honesty. Contractors should have a written code of business ethics and conduct. To promote compliance with such code of business ethics and conduct, contractors should have an employee business ethics and compliance training program and an internal control system that:

a. Are suitable to the size of the company and to the extent of its involvement in Government contracting;

b. Facilitate timely discovery and disclosure of improper conduct in connection with FAA contracts; and

c. Ensure corrective measures are promptly instituted and carried out.

**11 Definitions** Revised 4/2008

a. *"Bona fide agency*," means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain FAA contracts nor holds itself out as being able to obtain any FAA contract or contracts through improper influence.

b. *"Bona fide employee*," means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain FAA contracts nor holds out as being able to obtain any FAA contract or contracts through improper influence.

c. *"Contingent fee*," means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a FAA contract.

d. *"Improper influence*," means any influence that induces or tends to induce an employee to give consideration or to act regarding an FAA contract on any basis other than the merits of the matter.

e. "*Authorized official of the agency*" means an employee responsible for contracting, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to FAA procurement or the subject matter of the contract.

f. "*Authorized official of the Department of Justice*" means any person responsible for the investigation, enforcement, or prosecution of any law or regulation.

g. *"Final conviction*" means a conviction, whether entered on a verdict or plea, including a plea of nolo contendere, for which a sentence has been imposed.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

## T3.2.6 - Purchase Card Program Revised 4/2016

### A Purchase Card Program Added 1/2009

**1 Purchase Card** Revised 4/2016

a. *Overview*. The FAA purchase card (i.e. SmartPay Card) is an internationally accepted credit card issued through a General Services Administration (GSA) contract. The purchase card is

designed to streamline purchases and reduce procurement time and processing costs. The guidance is in compliance with OMB Circular A-123-Appendix B, GSA SmartPay Program for Purchase Card Use and Management.

(1) FAA employees who receive training and delegated authority are authorized to use the card, within the specified dollar limits, to acquire products and services.

(2) Simplified purchases with a total estimated potential value (TEPV) under the applicable micro-purchase threshold must be performed using the purchase card. The micro-purchase threshold is:

(a) $10,000 for commercial supplies;

(b) $2,000 for construction; and

(c) $2,500 for services.

b. *Duties.*

(1) An Approving Official (AO) must be a Government manager and in the same chain of command as his or her cardholders, unless waived by the National Purchase Card Program Manager. The AO is responsible for the following activities:

(a) Approve new purchase cardholder application and spending limits and submit a justification of the need for a new purchase card account to the Agency Program Coordinator (APC).

(b) Review all purchase card transactions prior to the purchase (and after the purchase in US Bank see j below) and ensure accuracy of information and that all required documentation is included for each transaction.

(c) Notify the Agency Program Coordinator (APC) when a cardholder retires, leaves FAA, transfers to another office, or no longer requires a purchase card.

(d) Establish procedures to ensure that cardholder purchase card files are retained when a cardholder retires, transfers to another office, or leaves FAA.

(e) Submit written requests to the APC to change the cardholder's single and/or monthly purchase limit.

(f) Review all purchase card transactions and ensure accuracy of information

(g) Ensure that all transactions are for a bona fide need of the Government.

(h) Report fraudulent or improper use of the purchase card to the National Purchase Card Program Manager and APC.

(i) Review and final approve cardholder's transactions in US Bank Access Online within 45 days of the close of the billing cycle. All transactions must

be final approved (including fraud and disputed transactions) to ensure funds are expended from the correct appropriation code.

(j) Safeguard the bank's user IDs and passwords. The AO must not share user IDs and passwords.

(k) Ensure that items purchased through the purchase card are the same as those approved. The cardholder is to provide to the AO a justification for any differences.

(l) Verify cardholder has submitted property information to the Property Custodian for input in the AITS system before final approving a transaction in US Bank Access

(m) Establish and continually monitor internal controls to ensure that the prior approval of purchases and funds certification are obtained by cardholders and key duties of the program are properly segregated

(2) *Cardholder*: A Government employee who uses the purchase card to make purchases and is responsible for the following activities:

(a) Safeguard the purchase card and account number. Only the individual whose name appears on the card is authorized to make purchases on that purchase card. Allowing someone other than the cardholder to use the card, or sharing passwords to obtain products and services, is considered an unauthorized purchase that is subject to disciplinary action as outlined in the Human Resources Operating Instructions (HROI) Table of Penalties, ER-4.1, Section 27a .

(b) Obtain prior approval from the approving official and funds certifier before making a purchase.

(c) Ensure the accounting classification code (correct object class codes) for each item to be procured has been certified by a funds certifier before the purchase is made. Each cardholder has a primary use or "default" accounting classification code based on organization and the primary use of the card.

(d) Include a justification and description for each purchase so that it can be easily understood by someone that is reviewing the purchase.

(e) Provide copies of source documents (i.e., invoice, purchase order, etc.) relating to purchases of accountable personal property to appropriate personnel.

(f) Abide by, and never exceed their single and monthly purchase limits. Purchases must not be “split” to circumvent single purchase limits.

(g) Review and validate all charges against their sales slips, review any credits on the statement, and dispute charges for purchases not received.

(h) Review and approve transactions in US Bank Access Online within 45 days of the close of the billing cycle. All transactions must be final approved (including fraud and disputed transactions) to ensure funds are expended from the correct appropriation code.

(i) Notify the APC as part of the exit clearance process when retiring or leaving FAA, and properly destroy issued cards and convenience checks.

(j) Maintain documentation for each purchase card transaction for 6 years, 3 months.

(k) Provide justification to the AO for any discrepancies with the transaction to include amount charged, product defects, shipping issues, return issues, credits, etc. Maintain a copy of the justification with the transaction documentation.

(l) Review and validate charges against sales receipts and invoices; review credits online and dispute transactions as applicable (e.g. amount charged, incomplete orders, etc.).

(m) Splitting transactions/orders to stay within single or monthly limits or other applicable thresholds (including competition, services, construction or check writing limits) is prohibited.

(n) Upon separating from the agency or the purchase card program, cardholders must:

(i) Ensure clearance forms are signed by APC;

(ii) Review purchase card files for accuracy;

(iii) Ensure all transactions posted to US Bank have the designation "Final Approved;"

(iv) Forward all purchase card files to the AO; and

(v) Destroy the purchase card and checks.

(o) Review and reconcile transactions in US Bank.

(p) Immediately report lost and/or stolen purchase card or checks to US Bank and the APC.

(q) Verify items have been received by documenting the transaction file with receipt date and recipient.

(r) Adhere to Accountable Property policy in section 3 below.

(3) Agency Program Coordinator APC's are responsible for implementing the day to day bank activities of the card program. APC's are responsible for the following:

(a) Establishing and terminating accounts

(b) Issuing cards and/or convenience checks

(c) Liaison between the National Purchase Card Manager, the Bank and the Cardholder for account activities

(d) Monitoring and control of lost/stolen accounts

(e) Process changes to accounts

(f) Closeout out accounts due to inactivity, retirement, transfer and resignation from FAA

c. *Single and Monthly Purchase Limit*. Single Purchase Limits are delegated based on the operational need of FAA, the training completed by the cardholder and the experience of the cardholder purchasing items for the Federal Government. The completion of training does not automatically secure an increased authority to use the purchase card.

(1) Cardholders will receive an initial delegation detailing general authority and responsibilities, but applicable single and monthly purchase limits will be identified and available in US Bank Access.

(2) The Purchase Card Office may grant higher limits, either permanently or temporarily, if presented with a written justification establishing an unusual or compelling need.

(3) Prior to being delegated permanent single purchase limits exceeding $10,000, cardholders must complete additional training requirements (detailed below) commensurate with the additional authority.

d. *Initial Training and Experience*.

(1) *Cardholder and Approving Officials*

(a) Must complete the following and provide copies of training certificates to the APC before a purchase card will be issued:

(i) Maintain It: Your FAA Purchase Card (FAA30060016 eLms course);

(ii) GSA SmartPay 2 Purchase Card Training- online;

and

(iii) US Bank Access Online Web-Based Training online.

(b) In addition to the training requirements above, cardholders must complete the following before a purchase card will be issued with a permanent single purchase limit over $10,000: Approving Officials that approve cardholders delegated a single purchase limit over $10,000 will also have to take the additional training below.

(i) The FAA Purchase Card: Get It, Use It, Keep It (FAA30060015)

(ii) CON 100- Shaping Smart Business Arrangements;

(iii) CON 237- Simplified Acquisition Procedures or AQN SPB Simplified Acquisition Procedures Basic; and

(iv) CLC 004- Market Research.

(c) *Experience*. To be considered for a single purchase limit over $10,000, the cardholder must submit evidence of at least 1 year purchasing experience (using a purchase card, contract or other procurement tool) in the Federal Government.

e. *Refresher Training.*

(1) Purchase Card Refresher training will be completed by each AO and cardholder using the eLMS course Maintain It: Your FAA Purchase Card (FAA30060016).

(2) The National Purchase Card Program Manager is responsible for monitoring the proper completion of required refresher training.

(3) AOs and cardholders failing to meet refresher training requirements will have their authority suspended until required training is completed.

f. *Separation of Duties*. Key duties and responsibilities in purchasing, certifying availability of funds, and approving transactions should be separated among individuals. The following conditions apply in the processing of a purchase card transaction:

(1) The AO is the last person to approve the individual purchase after the cardholder obtains certification of funds;

(2) The AO must approve the justification of each individual transaction for need and accuracy;

(3) An individual must never perform all duties;

(4) An AO and fund certifier must not perform both approval and fund certification for the same purchase; and

(5) The cardholder must never be the AO and/or fund certifier.

g. *Mandatory Sources and Other Requirements*

(1) When using the purchase card, cardholders must consider the following requirements:

(a) *Strategic Sourcing Initiatives*. (See AMS Procurement Guidance T3.8.6).

(b) *Federal Prison Industries, Inc. (FPI) (also known as UNICOR).* (See AMS T3.8.4)

(c) *Randolph-Sheppard Act.*. (See AMS Procurement Guidance T3.8.4)

(d) *Javits-Wagner-O'Day Act (JWOD).* (See AMS Procurement Guidance T3.8.4)

(e) *Section 508 Requirements.* (See AMS Procurement Guidance T3.2.2)

(f) *Environmental Requirements.* (See AMS Procurement Guidance T3.6.3 for additional information)

(2) If mandatory sources are applicable and not used, the transaction file must document how mandatory sources were sought and the reasons why a non-mandatory source was chosen.

h. *Split Purchase*. A split purchase is a procurement made to avoid established purchase limits, to include single purchase limits and competition thresholds.

(1) Split purchases may also include procurement intended to avoid limits governing the use of the purchase card for construction ($2,000) or services ($2,500). It is not necessary for the purchase to be in the same day or made by the same cardholder to qualify as a split purchase. One-time increases can be authorized by the Purchase Card Office.

i. *Use of the Purchase Card as a Payment Vehicle*.

(1) The purchase card may be used as a payment tool against an existing signed contract, lease, or order. This allows users to utilize the purchase card's streamlined payment characteristics when its use alone may be otherwise restricted.

(2) When the purchase card is being used as a payment vehicle against a contract, lease or order, all terms and conditions must be established in writing and be signed by both a Contracting Officer (CO) and the vendor. The contract, lease or order must specifically authorize the use of the purchase card as a payment tool. If the contract, lease or order does not authorize in writing the purchase card as a payment tool, the purchase card cannot be used.

(3) Payments must not exceed the cardholder's Single Purchase Limit.

(4) Each payment made using the purchase card against an existing signed contract,

lease, or order must include:

(a) Information regarding the source contract, lease, or order, to include the contract/lease/order number, CO, award date, period of performance or delivery date, and proof of funds availability;

(b) A copy of the terms and conditions in the contract, lease, or order authorizing the use of the card;

(c) A copy of the invoice or request for payment;

(d) Proof of delivery;

(e) Evidence that the CO authorizes payment; and

(f) Prior approval by the Approving Official (AO) authorizing the use of the card.

j. *Services Procured Using a Purchase Card*.

(1) The purchase card may be used to procure services under the following guidelines:

(a) The services are exempted from the Service Contract Act (SCA), as detailed under AMS Procurement Guidance T3.6.2, and do not exceed the cardholder's Single Purchase Limit. Services exceeding $2,500 in which SCA is applicable must not be purchased using the purchase card.

(b) The services are incidental to a supply purchase and the total purchase price is below the micro-purchase threshold for supplies. Supply purchases with incidental services above the micro-purchase threshold must be approved by the Purchase Card Office.

(c) *Recurring Services*.

(i) The service requirement does not exceed one (1) year, and the total value for the year does not exceed the cardholder's Single Purchase Limit.

(ii) For any recurring service, the total dollar value of the service must be established at the time of the initial order, despite payment being made monthly

(iii) If the SCA applies to the service requirement, the total value of the service must not exceed $2,500 for the year.

(iv) The certification of funds availability must be sufficient to cover the entire term of the service, but cannot exceed one year.

(2) Purchase cards must not be used to enter into agreements containing terms and conditions that include termination costs or option periods, or which may incur any contingent liabilities (liabilities that are based on whether or not a future event occurs).

(3) Purchase cards must not be used to procure personal services. Personal service procurements create an employer-employee relationship between FAA and the contractor's personnel (see AMS Procurement Guidance T3.8.2).

(4) The purchase card must not be used to enter into equipment or other types of leases, unless the procurement is through a FAA contract and/or strategic sourcing initiative (e.g. SAVES).

(5) Maintenance agreements are not considered leases, and may be procured using the purchase card.

(6) The purchase card may be used as a payment vehicle against existing service contracts or agreements signed by a CO.

k. *Construction Procured Using a Purchase Card.*

(1) "Construction" means construction, alteration, or repair of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include but are not limited to improvements of all types, such as maintenance facilities, duct banks, air traffic control facilities, communication towers, radar facilities, office facilities, airport facilities, and navigational aids.

(2) The purchase card may be used to procure construction totaling $2,000 or less, as long as it does not exceed the cardholder's Single Purchase Limit.

(3) The value of a construction project includes all related work, and may involve multiple purchases (i.e. multiple purchases towards the completion of a single construction project are included in the total value of the work).

(4) Any construction project procured using the purchase card must have simple terms and not require modifications and specifications that could result in the requirement exceeding $2,000.

(5) The purchase card may be used as a payment vehicle against an existing construction contract signed by a CO.

l. *Competition.*

(1) *$10,000 or less*. Competition is not required for purchases of $10,000 or less.

(2) *In excess of $10,000*. For approved actions that value in excess of $10,000, applicable AMS requirements for competition or single source procurement apply. See AMS Procurement Guidance T3.2.2.4.

m. *Rational Basis.* Purchasers should have a rational basis for purchasing decisions. As the value of a purchase increases, the documentation supporting the purchase should increase as well. If the purchase involves an item that is a viable exemption to an applicable prohibition or restriction (See AMS Procurement Guidance T3.2.2.5.A:4, Considerations for Restricted Purchases), then the purchaser must, despite the dollar value of the purchase, document the basis and background for the purchase. The cardholder should also document the background for actions that would appear questionable to a reasonable and prudent person with market knowledge of the products or services being purchased.

n. *US Bank Access Comments Fields*. Cardholders must enter required data into US Bank Access comments fields.

(1) *Comments Field 1:* PCPS Number, Financial Tracking/Cuff Record System Number (e.g. REGIS Number), Accountable property information (e.g. AITS Number), other explanatory information (e.g. fraudulent transaction, emergency purchase, disputed item information, etc.).

(2) *Comments Field 2:* Description of the item or service.

(3) *Comments Field 3 (Recovery Act):* Description of purchases made using funds received from the American Recovery and Reinvestment Act.

(4) *Comments Fields 4 (Identifier for Item Below) and 5 (Item of National Interest):* Description of purchases made during declared emergencies (e.g. supplies purchased during hurricanes or other disasters).

o. *Documentation*.

(1) Documentation supporting purchase card transactions must be retained for 6 years, 3 months from the transaction date.

(2) All cardholder transaction files should include but not limited to:

(a) Certification of prior approval. The cardholder will obtain confirmation of any verbal approval within 10 days of receiving the verbal approval.

(b) Certification of funds availability. Funds certification officers must provide a documented certification of funds availability prior to any purchase. This can be done on a quarterly, semi-annual or annual basis.

(c) A sales slip, invoice, or order confirmation.

(d) Rational basis.

(e) Receipt of goods or services, signed and dated by recipient.

(f) Dispute Notes

(g) Any special approvals on restricted transactions i.e. water, SAVES waivers,

etc.

(h) Documentation to the purchase that explains more details if needed to include notes, emails, tax information, or backup notes to the purchase card file for problematic or cumbersome transactions that may have additional questions

(i) *Independent Receipt of Goods.*

(i) Where the cardholder is also the receiver, another FAA employee (except for the AO) must confirm receipt of the goods or services by signing and dating the sales slip or invoice.

(ii) Except for items considered sensitive or pilferable, confirmation of receipt of goods or services is not required where the unit price is less than $5,000 or the item is being incorporated into a project for a fixed asset (e.g., buildings and other structures).

(iii) Items that are considered sensitive or pilferable include, but are not limited to:

| | |
|---|---|
| Weapons | Computer hard drives |
| Firearm periphery equipment such as scopes | External disc drives |
| Ammunition | Personal Data Assistants (PDA) |
| Cell phones | Secure fax machines |
| Pagers | Recording equipment |
| Encrypted phones | Cameras, non-disposable |
| Two-way radios. | Test equipment |
| Laptop computers | Laboratory and medical Equipment |

(j) Check for exceptions to prohibited purchases (see AMS Procurement Guidance T3.2.2.5.A.2 and this section).

(k) Additional supporting documentation needed for special transactions such as training, convenience checks, etc.

(3) *Accountable Property*.

(a) *Process.* Cardholder purchase card transaction source documentation must be routed as follows:

(i) Cardholder must provide a suspense copy of the purchase card order (documented proof of prior approval) for accountable personal property to the Property Delegate (Property Custodian) in the gaining organization after placing the order.

(ii) After receiving the property, the cardholder should obtain from the

person receiving the items documentation (invoices, sales slips, packing slips and/or receiving reports) for the purchase and forward property information to the Property Delegate for entry into official agency inventory system and to clear the suspense copy of the purchase card order.

(iii) Cardholders should document their file with property information supporting the purchase (e.g. Invoice number, model or serial number of property, dates information was given to property delegate/custodian and any other property identifying information for recording into AITS).

(iv) More information relating to Property Custodian/Delegates roles are located on the FAA Intranet (FAA only) under the title FAA Personal Property Process and Procedure Guide, V2, June 1, 2009.

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p. *Prohibited Purchases.*

(1) Long-term rental or lease of land or buildings. Exception: The purchase card may be used to purchase short-term commercial conference and meeting-room space. (See AMS Procurement Guidance 3.2.2.5A:3 for additional information)

(2) Cash advances, including money orders;

(3) Telephone services provided through GSA or the local Office of Information Services or Service Center Communications Office. However, telephone equipment may be purchased using the card;

(4) Real property, which is defined as land, buildings, structures or rights over or under the land such as improvements to make it more productive or to make it serve a more beneficial end than the land itself;

(5) Long term storage unit rental or services (long term is defined as 6 months or more), unless the purchase card is being used solely as a payment vehicle against a contract or lease signed by the CO/RECO and;

(a) The total cost of the rental or purchase of the storage services does not exceed the cardholder's delegated authority;

(b) The portable units are not classified as real property (defined above); and;

(c) The terms and conditions of the rental or storage services (e.g., termination authority) are in writing and signed by both parties.

(6) Use of the purchase card for personal purchases or as identification when writing personal checks is prohibited.

(7) Use of the purchase card for travel charge card or travel-related expenses is

prohibited. Exception: Metro fare cards and toll passes (e.g. EZ Pass) may be purchased for local travel supporting official FAA business. Proper controls must be established to ensure that fare cards or passes are not lost or stolen, and use is recorded and monitored to prevent the cards from being used for commuting to and from work. For other services related to local travel, each must be approved by the Purchase Card Office.

(8) Use of the purchase card to obtain commercial, Government owned or leased vehicles is prohibited.

(9) Fuel and maintenance of government owned or leased vehicles is prohibited.

(10) Store gift cards or gift certificates must not be purchased with the Government Purchase card.

q. *Restricted Purchases*. Restrictions for all simplified purchases can be found in AMS Procurement Guidance T3.2.2.5A:4.

r. *Purchase Card Use for Non-Monetary Awards*. Refer to AMS Procurement Guidance T3.2.2.5A:2 for additional information.

s. *Third Party On-line Payments*. Cardholders are required to immediately provide the Approving Official written notification (i.e. e-mail or memorandum) when they become aware that a purchase card purchase will be processed by a third party on-line payment company. Also cardholders must provide the approving official a copy of all documentation that supports the on- line payment transaction within five days of item receipt.

t. *Acquisition of Training Services.* The FAA purchase card is encouraged for use to the maximum extent possible to acquire training. If not designated a training coordinator, it is important for the cardholder to ensure that proper coordination of training requirements has taken place prior to training being purchased, e.g. completed training checklist, needs assessment, etc.

u. *Tax Exemption.* At the time of the purchase, cardholders should advise the merchant that the purchase is for official U.S. Government purposes and therefore is not subject to state or local tax. If the vendor wants to clarify this, the back of the card includes an 888 number that may be called for verification. Exceptions do exist for certain state taxes in certain states (i.e., New Mexico or Arizona). For this reason, cardholders should contact legal counsel regarding applicability of any exemptions or other issues related to state or local taxes.

(1) A review should be made of the bank statement for inclusion of sales tax. If sales tax was included, first check for the state exception. If sales tax is charged in error, request a credit from the vendor.

(2) All newly issued purchase cards should be checked to ensure that the Operating Administration's name and the tax ID are embossed on the card.

(3) The government is tax exempt, but there are instances where the vendor may charge tax. Tax cannot be disputed in US Bank. If improper tax is charged to a transaction the

cardholder must:

(a) Immediately contact vendor and inform the vendor that the government is tax exempt and request a credit;

(b) Document files with the proposed agreement to credit the tax, or if vendor states he or she will not credit tax document the file with a memo to file (for phone conversations) or any e-mail/correspondence received; and

(c) If a credit is forthcoming, watch for the credit during the reconciliation process and contact the vendor if you don't see the credit within 15 days.

v. *Deficiencies/Disputes/Damaged Equipment*

(1) If the cardholder finds a discrepancy that is the result of item shortage, receipt of a defective or damaged item, or receipt of the wrong item, the first step is to contact the vendor to seek resolution. The cardholder should request a replacement item or a credit from the vendor. If the vendor agrees to credit a cardholder's account, the credit will appear on the cardholder's electronic account statement the following month. On the statement, the cardholder will need to final approve both actions, also. If the item is rejected by the Government, the cardholder should return the defective, damaged or erroneous item to the vendor within 60 days of receipt.

(a) If a refund is issued in the form of store credit, it must be made out to the Federal Aviation Administration and used for a future valid purchase.

(b) In the event a refund check is received, it must be forwarded to the servicing accounting office for deposit within one business day. The original accounting classification code should be provided to credit the funds accurately.

(2) A dispute occurs when a cardholder formally challenges the validity of a transaction with the bank. If the cardholder and vendor cannot reach an agreement on resolution of the discrepancy, then the cardholder must formally dispute the purchase on line with the bank. The bank will credit the purchase cardholder's account until the dispute is resolved.

(a) Reasons for Disputing a Purchase:

(i) Inadequate description or unrecognized charge

(ii) Duplicate charge

(iii) Account charged for merchandise returned

(iv) Account charged for an order that was cancelled (unless cancellations charges were agreed to up-front)

(v) Account charged for merchandise or service that was not received

(vi) Account charged for merchandise that does not reflect that ordered

(vii) Account charged for merchandise that is damaged

(viii) Account charged erroneously

(ix) Incorrect amount charged

(x) Did not authorize the charge posted

(b) The bank will not process disputes for:

(i) Foreign exchange rates for international purchases

(ii) Shipping and handling charges

(iii) Taxes

(iv) Convenience checks and associated fees

w. *Lost or Stolen Purchase Cards and Convenience Checks, and/or Compromised Accounts.*

(1) *Reporting Lost or Stolen Purchase Cards and convenience checks, and/or Compromised Accounts*. The cardholder must report immediately the loss or theft of their purchase card and/or convenience checks to the APC, the approving official and the card- issuing bank in order to avoid liability for unauthorized purchases on the card. The cardholder must also report immediately to those indicated above a compromised account (i.e. identity theft) or suspicion of a compromised account. The necessary information to report to the card-issuing bank includes the cardholder's complete name, card number, check numbers, and purchases made on the date of loss or theft. In the event of theft, the cardholder should also provide the bank the date that the theft was reported to the police.

(2) *Card Re-issuance*. The card-issuing bank will issue a new card to the cardholder within two working days from the time that the loss or theft is reported. A cardholder who reports more than one incident of loss or theft within a 12-month period will require authorization from the National Purchase Card Manager in order to have another card re- issued.

x. *Accounting Classification Code Adjustments.* Each cardholder has a primary use or "default" accounting classification code based on the primary use of the card, i.e., whatever the office is primarily purchasing. For example, Flight Standards offices may have a primary use of the card for aircraft rental. The card may be used for purchases other than the "primary use" purpose; however, the action will require a different accounting classification code assignment. The cardholder is required to assign the correct object class code for each item purchased. The approving official is required to review the statement for accuracy, for potential for split purchases, and to approve each individual transaction.

y. *Destroying Purchase Cards and Convenience Checks*.

(1) When an account has been closed, all related purchase cards and unused checks should be recorded and properly destroyed.

(2) Once the financial institution has been notified to cancel an account, checks attempting to post after the closure date will be declined. The financial institution security associates and bank representatives will investigate each check to determine if floating checks were written by the account holder and valid for payment. If the check is valid, the checks will post to the new account number, if not, the checks will be returned for non-payment and further investigated by the financial institution.

z. *Non-Compliance*. The purchase card is considered Government property. The FAA will comply with the FAPM Letter 2635 Code of Conduct & Discipline Order, HRPM 4.1 on Standards of Conduct, and HROI Table of Penalties for any purchase cardholder, approving official, supervisor, and manager misuse and/or fraud of Government property.

aa. *Suspension*. The purchase card privileges of any cardholder found to be non-compliant with purchase card guidance twice in a six-month period will be suspended for six months. The cardholder's privileges may be restored upon completion of remedial training or permanently revoked. Notifications regarding non-compliance will be sent to the manager one level above the AO.

bb. *Organizational Standard Operating Procedures*. Organizations may establish internal standard operating procedures (SOP) for their cardholders addressing the processing of purchase card transactions (e.g. the ATO Purchasing SOP). However, SOPs must not diminish or change the intent of AMS Policy or Guidance.

**2 Convenience Checks Revised 4/2016**

a. Convenience checks are carbon checks pre-printed with the cardholder's name, work address and a notation that the check is not valid for more than $2500. As convenience checks are an extension of the applicable purchase card account, all purchase card policy and guidance applies to check usage.

b. *Convenience Check Usage*. A convenience check may be issued only when the service or goods for which payment is being made is operationally critical, cost effective and consistent with FAA procurement policies. In addition, convenience checks are to be issued only in "exceptional situations" when the use of payment mechanisms such as an automated clearinghouse, or a Government purchase card are not accepted.

(1) Convenience checks may only be used:

(a) Where the political, financial, or communications infrastructure does not support payment by Electronic Funds Transfer (EFT) in a foreign country;

(b) Where the payment is to a recipient within an area designated by the President or an authorized agency administrator as a disaster area;

(c) Where paying by EFT would jeopardize military or law enforcement operations or national security interests;

(d) Where a cost-benefit analysis shows that making non-recurring payments by EFT are not justified;

(e) Where an agency's need for goods and services is of such unusual and compelling urgency that the Government would be seriously injured unless payment is made by a method other than EFT; or

(f) When there is only one source for goods or services and the Government would be seriously injured unless payment is made by a method other than EFT.

(2) Convenience checks may not be used for:

(a) The issuance of travel advances when the Government-issued travel charge card is revoked or cancelled due to delinquent payment or for personal reasons;

(b) Cash; or

(c) Travel or travel-related expenses.

c. *Authorization Level*

(1) Purchases using convenience checks must be approved in advance by the second-level manager. The convenience check-approving official must initial the check register to verify that the payee does not accept the purchase card.

(2) If the approving official is not located at the same site as the person authorized to issue the check (check writer), verbal approval, followed by written documentation, is satisfactory. A copy of the written documentation authorizing the purchase must be provided to the check writer. If the second-level manager is not readily available, another individual at that level or higher may approve the use of the check, provided that he/she can attest that the need clearly follows the guidelines stated above.

(3) If the check writer is providing the check to another employee who will actually be submitting the check to the vendor/merchant/individual for payment, and the latter employee is in a different line of business than the check writer, then the approving official will be the second-level supervisor of the employee paying the vendor/merchant/individual rather than the second level supervisor of the check writer.

d. *Issuing a Convenience Check.*

(1) The following information must be entered in the appropriate space on the check and must be written, printed in ink or typed:

(a) *Date*: Enter the date on which the convenience check was issued to vendor for purchase. The date can be spelled out (e.g., August 27, 2008) or written (8/27/08). Do not predate or postdate a convenience check.

(b) *Pay to the Order of*: Enter the name of the payee. (Individuals may not issue convenience checks payable to themselves.)

(c) *Amount.* The dollar amount of the convenience check must be written and spelled out in the space provided, (e.g., "$126.39" and spelled out as "one hundred and twenty-six and 39/100," followed by a horizontal line out to the end of the space provided).

(d) *Memo*. (Additional Information). Enter information pertinent to the purchase, e.g., radar parts, pavement repair, emergency plumbing.

(e) *Authorized Signature*. Sign in the space provided. Your signature should be in the same format as the name printed on the convenience check, (e.g., if first, middle, and last names are spelled out in full rather than initials being used, your signed name must also be spelled out in full).

(2) Except as otherwise authorized, checks must **only** be used for officially approved purchases and issued **only** by the individual whose name appears on the check. Documentation of the "exceptional situation" required to issue a check must be maintained with the purchase card check file.

e. *Spending Limitation*.

(1) Convenience checks access the same single purchase and monthly purchase limits established for the purchase card account. The established monthly limit will cover purchases made by both the purchase card and the convenience checks. Approving officials will determine the appropriate dollar amount of single purchases limits to be established for each cardholder; however, each convenience check issued cannot exceed $2,500.

(2) Under no circumstances must a check be written over $2,500.

f. *Knowing Your Balance*. Cleared convenience checks are deducted from the monthly purchase limit when they actually clear the bank, not when they are written. Monthly purchase limits are renewed on the 20th of each month. You are responsible for tracking your individual available balance and reconciling cleared convenience checks. Remember any transactions made with your purchase card will also be counted toward your monthly balance. The following is important.

(1) Allow time for each convenience check to clear, which may overlap billing cycles;

(2) Ensure the monthly purchase limit is sufficient to cover written checks; and

(3) At the beginning of each billing cycle, convenience checks that appear on the statement as cleared should be deducted from your balance.

*IMPORTANT NOTE*: This account is different from your personal checking account because unused balances do not accumulate. Exceeding your purchase limit will result in

convenience checks being returned for insufficient funds.

g. *Safeguarding and Accountability of Blank Convenience Checks*. Convenience checks must be safeguarded. When not in use, checks are to be kept in a secured area, i.e., locked safe or cabinet or another secured environment approved by the servicing security element to protect them from being stolen or misused.

h. *Insufficient Check Fees*. The financial institution does not charge a fee for insufficient checks; however, the vendor may charge a fee. This fee may vary depending upon the vendor and/or amount of the check.

i. *Maintaining Your Convenience Check Register*. A convenience check register should be maintained to record each convenience check transaction. The convenience check number, date issued, the payee, a description of the purchase, the emergency convenience check amount, and the account fee can be entered.

j. *Maintaining Receipts and Record Retention*. The carbon copy of the check, the merchandise receipt and invoice must be maintained for each purchase and matched against the convenience check register. Records should be retained in the office and then archived according to the agency's Vital Record and Retention Manual. Records include the monthly statement of account, convenience check register, receipts, and all other supporting documentation.

k. *Account Fees*. The fees associated with writing a convenience check will be charged back to the individual check writer's LOB and will appear on the monthly statement.

l. *Billing Statement*. The monthly purchase card and convenience check statement will show the merchant/vendor name, the amount of the check, and the check number of all cleared checks.

m. *Reconciling Your Account*. The monthly statement must be cross-checked with the convenience check register, carbon copy of the check, receipt, invoice, and internal log to ensure that the register and statement amounts are the same. Any discrepancies must be resolved immediately with the financial institution. Keep in mind that cleared checks that may appear on the statement may be checks written the prior month.

**B Clauses Added 1/2009**

view contract clauses

**C Forms Added 1/2009**

view procurement forms

**T3.2.7 - Anti-Counterfeit Management Added 4/2012**

## A Anti-Counterfeit Management Added 4/2012

### 1 Objective Added 4/2012

This guidance recommends procedures and methods for securing the FAA supply chain from counterfeit parts. This guidance section applies solely to the following acquisitions:

a. Over $50M;

b. Construction contracts for NAS applications over $2M; and

c. Office equipment and/or supplies for NAS applications over $1M

### 2 Statement of Issue Added 4/2012

Counterfeit parts in the FAA supply chain could cause an increased risk in the integrity and reliability of NextGen and legacy National Airspace System (NAS) equipment. A Congressional investigative committee found over 1800 instances of counterfeit electronic parts in the Department of Defense (DOD) supply chain. FAA uses the DOD supply chain for selective parts.

### 3 Requirement Revised 10/2015

a. The Intellectual Property Act of 2008 provides a framework to develop anti-counterfeit policy, guidance, and implementation procedures. One of the intents of the law is for the public and private sectors to take actions to secure the Government supply chain.

b. The Office of Management and Budget (OMB) Policy Letter 91-3, Reporting Non-confirming Products established the Government Industry Data Exchange Program (GIDEP), operated by the Department of Defense as the central data base for receiving information about non-conforming products.

c. FAA is a participating member of GIDEP.

d. FAA Anti-Counterfeiting measures require collaboration and cooperation among the Acquisition Policy, Contracting, Quality Assurance, Logistics Support, and Program Management Organizations to achieve an effective and efficient implementation program to secure the FAA parts supply chain and ensure the FAA is not purchasing counterfeit products.

### 4 Program Description Added 4/2012

The guidance contained in this section is related to the detection and reporting of suspected counterfeit parts.

## 5 Applicability Added 4/2012

a. Acquisition Policy Group, AAP-100 - processes AMS Policy and Guidance for Anti- Counterfeit Management

b. Contracting Officers - include any applicable AMS clauses/provisions in Screening Information Requests (SIRs) and contracts.

c. Logistics Center - AML1/200

(1) Analyze logistics support life cycle requirements

(2) Provide supply support to keep older and often obsolete systems and equipment in continual operating condition until decommissioning

d. NAS Quality Assurance, Acquisition Quality Group, AAQ-100 - conduct in-plant oversight and monitoring requirements and accepts real products.

e. NAS Program Managers -determine the applicability of anti-counterfeit measures for their programs and conduct risk management assessments as needed.

## 6 Definition - Suspected Counterfeit Part Revised 10/2015

An unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

## 7 Counterfeit Parts Control Revised 10/2015

a. Procurement Process

(1) To minimize the risk of receiving counterfeit parts, purchasing parts from the Original Equipment Manufacturer (OEM) or the Original Component Manufacturer (OCM) is encouraged if parts are available. OCM-authorized suppliers (e.g., franchised distributors), and authorized aftermarket manufacturers have a low risk of supplying non- authentic parts.

(2) In order to minimize the risk of receiving counterfeit parts when purchasing from brokers, distributors and aftermarket manufacturers, procurement teams may consider requiring the contractor to provide traceability to the origin of the parts

(3) Diminishing Manufacturing Sources and Material Shortages (DMSMS) and parts obsolescence can be contributing factors to the reason why counterfeit parts are made and placed on the market for sale. DMSMS is the loss or pending loss of manufacturers

or suppliers of critical items and new materials due to discontinuance of production.

(4) When procuring maintenance parts for legacy ground equipment, avoid purchases from unknown and frequently suspect counterfeit parts suppliers. Obsolete military parts could be a source for suspected counterfeit parts to enter the FAA supply chain.

(5) Guidance on detecting suspected counterfeit parts is in section b below.

b. Parts Detection

(1) Prior to the acceptance of the parts and/or equipment by the FAA, parts detection is in accordance with applicable contract quality assurance requirements. After acceptance, parts detection is the FAA's responsibility.

(2) Detecting counterfeit electronic parts is an ongoing process. Counterfeit parts can impact the safety of a user's application of parts and product reliability. Common and basic aspects leading to the suspicion of counterfeit, defective, and nonconforming parts are:

- A pattern of parts rejected by Quality Assurance;
- Devices that will not program correctly;
- Components that have been reworked by an unknown third party;
- The trademark part sold by an unauthorized distributor;
- Original certification of traceability that are unavailable;
- Parts that are obsolete and no longer manufactured;
- Outside package indicates onset of corrosion;
- Failed performance testing data;
- Parts with failed solderability;
- Independent laboratories rejection of parts after reviewing failed vendor analysis;
- Markings indicate parts:
    - Resurfaced and/or sanded
    - Remarked
    - Inconsistencies in physical external figures or markings
    - Discrepancies in lot and/or date codes
- Leads on components show evidence of:
    - Previous use
    - Previous refurbishment
    - Moisture damage and/or oxidation

c. Parts Reporting

(1) Prior to acceptance of the parts and/or equipment by the FAA, suspected counterfeit parts reporting is in accordance with the higher level contract quality requirements identified in section 10.

(2) After acceptance of the parts and/or equipment by the FAA, suspected counterfeit parts are reported to the FAA's Government Industry Data Exchange Program (GIDEP) Coordinator (AAP-120) for the purpose of contacting the proper Agency organization that is responsible for cases related to suspected fraud.

(3) The GIDEP Coordinator may prepare a GIDEP Agency Action Notice and a GIDEP Alert for suspected counterfeit parts information that can be shared with GIDEP members.

(4) Suspected Unapproved Parts (SUPs) and suspected counterfeit parts may be reported via the toll-free FAA hotline at 1-800-255-1111.

## 8 Suspected Counterfeit Parts Database Revised 10/2015

a. The Procurement Information and Services Team's (AAP-120) database is an information sharing tool that is available for use as part of an action plan to mitigate the impact of suspected counterfeit parts on critical electronic parts that could enter the FAA parts supply chain.

b. The database contains information that can be used as a risk management analysis tool to determine the impact of suspected counterfeit parts on critical electronic parts that could impact the proper reliability operation of the system.

c. Searches in the database for suspected counterfeit electronic parts may be made by contacting the FAA GIDEP Coordinator, AAP-120.

## 9 Documentation Added 4/2012

AMS Clause 3.10.4-19 "Government Industry Data Exchange Program (GIDEP)" must be used for contracts and SIRs above the prescribed thresholds. Other applicable quality assurance clauses may be used in SIRs and contracts as appropriate.

## 10 Higher-Level Contract Quality Requirements Added 10/2015

a. The higher-level contract quality requirements are specified in the AMS/FAST, Section T3.10.4 – 13.

b. The higher-level contract quality requirements apply to critical and complex items where there is a need to access the risk of the entry of suspected counterfeit parts in the supply chain.

c. The prime contractor is responsible for flowing down the applicable requirements of the higher-level quality standard in subcontracts for critical and complex items at any tier.

## 11 Suspected Counterfeit Parts Training Revised 10/2015

Initial and refresher training are offered on a quarterly basis at the GIDEP Operations Center, Corona, CA. Refresher training is recommended every two years.

### 12 Aviation Community Guidance Revised 10/2015

For aviation equipment that is not in the NAS, reference is made to FAA Advisory Circular Number 29-21C, Detecting and Reporting Suspected Unapproved Parts, for guidance. The point of contact for Non-NAS Programs is the Flight Standards service, AFS-350.

### B Clauses Added 4/2012

view contract clauses

### C Forms Added 4/2012

view procurement forms

## T3.3.1 - Contract Funding, Financing & Payment Revised 8/2009

### A Contract Funding, Financing & Payment

### 1 Contract Funding Revised 7/2013

a. *Anti-Deficiency Act.* The FAA must comply with the Anti-Deficiency Act (31 U.S.C. 1341) and all other fiscal laws. The Anti-Deficiency Act prohibits FAA from creating or authorizing an obligation in excess of the funds available, or in advance of appropriations, unless otherwise authorized by law. The Act applies to all forms of procurement, including contracts and purchase card transactions.

b. *Funds Availability.* Before executing a contractual instrument that obligates funds, the Contracting Officer (CO) must ensure sufficient funds are available. The CO must obtain written assurance from the program/requisitioning office that funds are available.

c. *Awards Subject to Availability of Funds.* There may be times when a contract will be awarded before funds become available, such as an award for services to begin at the beginning of the next fiscal year. When this occurs, the contractor must be put on notice that the award is subject to the availability of funds; the CO must incorporate AMS Clause 3.3.1-10, Availability of Funds, or AMS Clause 3.3.1-11, Availability of Funds for the Next Fiscal Year, into the SIR or contract.

d. *Services Crossing Fiscal Years*. The FAA may enter into contracts for severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

e. *Distribution to Accounting Office.* The CO should provide copies of all contract awards and modifications to the accounting office to ensure that it can properly document and track payments and available funding.

f. *Timely Deobligation of Unused Funds*. The CO and program office are encouraged to periodically review the funding allocated to each contract or order upon the completion of each contract period, option period or upon completion of a contract line item. The review is intended to determine whether contract line items contain unused funds that can be deobligated. Determining whether funds can be deobligated as soon as possible after each contract period or completion of contract line items helps minimize costs associated with contract administration and the contract closeout processes. Timely deobligation of unused funds also allows for the possible use of those funds elsewhere.

## 2 Continuing Resolution Revised 10/2007

a. *Description*. A continuing resolution (CR) is a type of appropriations legislation to temporarily fund Government operations and programs when a formal appropriation bill(s) has not been signed into law before the start of a new fiscal year. A CR funds existing operations and programs at current or reduced levels for a stated period of time. The stated period time could range from several weeks to many months. Generally, a CR funds only on-going operations, and does not fund new initiatives or expanded scope for existing programs.

b. *Subject to the Availability of Funds and CR*. To allow for the solicitation of requirements before funds becoming available, the CO may issue a SIR with clauses that expressly condition FAA's obligation under the contract upon the availability of funds. (See Contract Funding above for more information).

c. *Coordination.* To ensure available funding is not exceeded and to comply with conditions under a CR, the CO should consult with:

(1) Legal Counsel. Legal counsel's review a proposed procurement action will ensure that award complies with CR conditions;

(2) Budget and Finance. To ensure that procurement activity complies with FAA's overall budget allowance during a CR, the CO should consult with the budget or finance office or review any fiscal or CR guidance before award; and

(3) Program Office. Because a CR affects the overall operations and planning of FAA programs, the CO should coordinate with the program office to ensure that an award is within their available budget.

## 3 Electronic Funds Transfer Revised 1/2012

a. Electronic Funds Transfer (EFT) applies to all new contract awards and contract modifications executed, unless extenuating circumstances exist as described below. Additional EFT guidance and clauses pertaining to real property and utilities are in AMS Real Estate Guidance 3.1.4.

b. The FAA will protect against improper disclosure of a contractor's EFT information.

c. 31 U.S.C. 3332 requires all payments to be made through EFT. The Manager, Accounting Operations Division, AMZ-100, may determine that submission of EFT information is not required and grant an EFT waiver if a vendor meets one of the exceptions listed below:

(1) Contracts awarded by COs outside the United States and Puerto Rico may provide for payment by other than EFT when EFT payments are not supported by the foreign country. EFT payment may still be used, if the political, financial and communications infrastructure in the foreign country supports payment by EFT or payments in other than U.S. currency may be made safely;

(2) Contracts paid in other than U.S. currency may provide for payment by other than EFT. EFT payment may still be used, if the political, financial and communications infrastructure in the foreign country supports payment by EFT or payments in other than U.S. currency may be made safely;

(3) Classified contracts when EFT payments could compromise the safeguarding of classified information or national security, or where arrangements for appropriate EFT payments would be impractical due to security considerations;

(4) Contracts executed by deployed COs in the course of military operations, including but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) where:

(a) EFT payment is not known to be possible; or (b) EFT payment would not support the objectives of the operation.

(5) Contracts executed by any CO conducting emergency operations, such as responses to natural disasters or national or civil emergencies, may provide for payments by other than EFT where: (a) EFT payment is not known to be possible; or (b) EFT payment would not support the objectives of the operation.

(6) When FAA does not expect to make more than one payment to the same recipient within a one-year period and the payment is non-recurring;

(7) When FAA's need for goods or services is of such unusual and compelling urgency that FAA would be seriously injured unless payment is made by a method other than EFT;

(8) Contracts where the contractor claims that payment by EFT would impose a hardship due to a mental disability or a geographic barrier.

d. *Waiver requests.* The Accounting Operations Division will review and approve or disapprove all vendor requests for exceptions to the EFT payment requirement. The waiver process for EFT payments is:

(1) The CO provides the applicable EFT clauses as part of the solicitation package.

(2) If the otherwise successful offeror claims an inability to comply with the EFT requirement, the CO requests that vendor complete an Electronic Funds Transfer (EFT) Waiver Request Form (see AMS Procurement Forms). The waiver request includes the contractor's justification for not receiving payment by EFT. The CO forwards the waiver request, together with a recommendation and the completed DELPHI Vendor Entry Worksheet (see the PRISM website (FAA only) to the Accounting Operations Division, AMZ-100.

(3) The Accounting Operations Division approves or disapproves the waiver in writing and returns the signed determination to the CO. The waiver determination includes recommendations to assist the vendor become capable of receiving EFT payments. The CO retains a copy of the waiver request disposition in the contract file.

(4) If the waiver is disapproved, the CO may consult with the Accounts Payable manager for further guidance.

## 4 System for Award Management (SAM) Revised 7/2012

a. System for Award Management (SAM) applies to all new contract awards, contract modifications, agreements, orders, or leases executed. Applicable SAM clauses for real property or utility contracts or agreements are specified in Real Estate Guidance. SAM is the primary Government repository for contractor information required for doing business with the Government. SAM requires a Data Universal Numbering System (DUNS) number for registration. The DUNS is the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities. Data Universal Numbering System +4 (DUNS +4) number means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts for the same parent concern. Registered in the SAM database means that the contractor has entered all mandatory information, including the DUNS number or the DUNS +4 number, into the SAM database.

b. Prospective contractors must be registered in the SAM database before award of a contract or agreement, except for:

(1) Purchases made by using a Government purchase card;

(2) Classified contracts when registration in the SAM database, or use of SAM data, could compromise the safeguarding of classified information or national security;

(3) Contracts awarded by:

(a) Deployed COs in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7); or

(b) COs conducting emergency operations, such as responses to natural or environmental disasters or national or civil emergencies, e.g., Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121);

(4) Contracts to support unusual or compelling needs. A compelling need is where FAA would be seriously injured if the contract is not awarded;

(5) Awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain SAM registration;

(6) One time/single payment contracts or agreements, such as Real Property purchase and sales agreements, where the seller of the property is not in the practice of offering real property to FAA as a commercial practice and does not anticipate acting as a vendor to FAA in the foreseeable future; or

(7) Long term leases and utility contracts where a SAM clause is not currently in effect and it is determined by the CO that forcing compliance is impractical.

c. In contracts or agreements awarded under paragraph (b) (3) or (4) of this section, the CO should modify the contract or agreement to require SAM registration as soon as practical after award is made.

d. *Change of Name in SAM.*

(1) The contractor must provide the responsible CO a minimum of one business day's written notification of its intention to change its business name in the SAM database, comply with the requirements of a novation or change of name agreement in AMS Procurement Guidance, and agree in writing to the timeline and procedures specified by the responsible CO for the change. The contractor must provide the CO documentation to support the legally changed name. This notification is required when the contractor has:

(a) Legally changed its business name;

(b) Changed its "doing business as" name;

(c) Changed its division name; or

(d) Transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in AMS Procurement Guidance.

(2) If the contractor fails to comply with the requirements AMS Clause 3.3.1-33, System for Award Management, and has not provided a properly executed novation or change- of-name agreement, the SAM information that shows the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of AMS

Clause 3.3.1-34, Payment by Electronic Funds Transfer/System for Award Management. If the contractor's EFT information in SAM is considered to be incorrect:

(a) FAA need not make payment to the contractor until correct EFT information is entered into the SAM database; and

(b) Any invoice or contract financing request must be deemed not to be a proper invoice for the purpose of prompt payment under the contract.

(3) The contractor may not change the name or address for electronic funds transfer payments (EFT) or manual payments, as appropriate, in the SAM record unless an assignment of claims has been properly executed. (See AMS Procurement Guidance T3.3.1, Assignment of Claims)

(4) Assignees must be separately registered in the SAM database. Information provided to the contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of AMS Clause 3.3.1-34, Payment by Electronic Funds Transfer/System for Award Management.

e. Unless the acquisition is exempt, the CO:

(1) Must verify that the prospective contractor is registered in the SAM database before awarding a contract or agreement;

(2) Should use the DUNS number or, if applicable, the DUNS+4 number, to verify registration:

(a) On the SAM website; or

(b) By calling toll-free: 1-888-227-2423, commercial: (269) 961-5757.

(3) When a CO modifies an existing contract or agreement that does not already include the requirement to be registered in SAM, the CO must then incorporate, as appropriate, AMS Clause 3.3.1-33, System for Award Management.

(4) Need not verify registration before placing an order or call if the contract or agreement includes the clause at AMS Clause 3.3.1-33.

f. If the CO, when awarding a contract or agreement, determines that a prospective contractor is not registered in SAM and an exception to the registration requirements for the award does not apply, the CO:

(1) Determines if the needs of the requiring activity allow for a delay. If a delay is allowable, the CO advises the apparently successful offeror of the required date to become registered. If the offeror does not become registered by the required date, the

CO, after consultation with the program office, proceeds to award to the next otherwise successful registered offeror following the same procedures (i.e., if the next apparently successful offeror is not registered, the CO must advise the offeror of the required date to become registered, etc.); or

(2) Determines if the needs of the requiring activity do not allow for a delay. If the needs do not reasonably allow for a delay, the CO will proceed to award to the next otherwise successful registered offeror. Written approval is required at one level above the CO.

g. The FAA must protect against improper disclosure of contractor SAM information.

h. In accordance with FAA procedures, the CO provides the DUNS number or, if applicable, the DUNS +4 on contractual documents transmitted to the payment office.

## 5 Types of Payment Revised 10/2007

a. Payment provisions should balance protection of FAA's interests against adequately compensating the contractor for products delivered or services performed, including construction.

b. COs should maintain a payment log for each contact detailing funding and payment information, i.e., a log showing available funding, date and amount of invoices, balance of funding after payments, etc). This log should be filed in the official contract file.

c. COs should consider the following alternatives when establishing a basis for payment in award documents:

| Type of Payment | Description |
|---|---|
| Single Payment (Lump Sum) | Where one payment is made to a contractor after completion and acceptance of all work. (Preferred method) |
| Partial Payment | Payments authorized to be made upon acceptance of one or more complete units (or one or more distinct items of service) called for under a contract. |
| Progress Payment | Multiple payments made prior to delivery during performance based on a percentage or stage of completion. |
| Recurring Payment | Payments made on a fixed, periodic basis for the delivery or performance of recurring firm fixed-price products or services. |
| Provisional Payment | Payments made for the delivery or performance of products or services recurring under a contract. |
| Advance Payment | Payment made before any performance of work under the contract. Payment should be secured by bond or collateral with expenditures made from a joint |

| | |
|---|---|
| | account requiring FAA approval. Considered to be contract financing, advance payments are the least preferred and must be authorized sparingly. |
| Performance-Based Payment | Contract financing payments that are not payments for accepted items. |

## 6 Single and Partial Payments Revised 10/2007

a. *Single Payments (Lump Sum).*

(1) Where one payment is made to a contractor after completion and acceptance of all work.

(2) The preferred method as FAA only makes payment after acceptance of all contract work (minimal risk).

b. *Partial Payments.*

(1) Payments authorized to be made upon acceptance of one or more complete units (or one or more distinct items of service) called for under a contract.

(2) Despite partial payments being generally treated as a method of payment rather than a method of contract financing, the use of partial payments can provide the assistance necessary for some contractors to participate in FAA contracts.

(3) Circumstances where partial payments should be prohibited include:

(a) When the additional administrative time required to issue 2 or more payments may not be cost effective.

(b) When partial delivery of individual components does not constitute a usable item on its own.

## 7 Progress Payments Revised 10/2007

a. *Definition.* Progress payments consist of multiple payments made during performance and prior to delivery based on a percentage or stage of completion. Payments must be secured against materials/equipment purchased until liquidated by deliveries under the contract.

b. *Basis.* FAA will make progress payments on the basis of percentage or stage of completion. Typical progress payment provisions call for payment of part of the contract price only when a completed stage of work (milestone) or a completed component can be said to be of value to FAA in the event the contract were to be terminated at that point; however, progress payment schedules can be established that will allow payment based on an estimated percentage of completion. Generally, the progress payment rate to the prime contractor is

80% of the total costs of performing the contract and 85% for small businesses. The CO should provide for progress payments if the contractor:

(1) Will not be able to bill for the first delivery of products, or other performance milestones, for a substantial time after work is scheduled to begin; and

(2) Will make expenditures for contract performance during the pre-delivery period that have a significant impact on the contractor's working capital.

c. *Withholding payment.* When there is reason to doubt the amount of a progress payment request, only the doubtful amount should be withheld, subject to later adjustment after review or audit. Any clearly proper and due amounts should be paid without awaiting resolution of the differences. Post payment reviews may be made when considered desirable by the CO to determine the validity of progress payments already made and those expected to be made in the future. The post payment review should include a review of whether or not the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion.

d. *Subcontracts.* The CO should encourage contractors to provide progress payments to subcontractors subject to the bases described in subparagraph (b), "Basis." The CO should consider the following when contractors submit payment requests that include progress payments for subcontractors:

(1) The contractor's request for payment may include the full amount paid to subcontractors as progress payments;

(2) The contractor's inclusion of the substance of clause "Progress Payments" in the prime contract, modified to indicate that:

(a) The contractor, not FAA, awards the subcontract and administers the progress payments;

(b) Title will vest in FAA, not the contractor;

(c) The subcontractor will install the necessary management control systems, including internal audit procedures; and

(d) The subcontractor will allow the CO/FAA access to reports and records.

The CO should, to the extent appropriate, review the subcontract as part of the overall administration of progress payments in the prime contract.

(3) If the contractor makes progress payments to a subcontractor under a cost-reimbursement prime contract, the CO may accept the progress payments as reimbursable costs of the prime contract only under the following conditions:

(a) The payments are made in accordance with this subparagraph (d), "Subcontracts;"

(b) The subcontractor complies with relevant liquidation principles;

(c) The subcontract contains progress payments terms as defined in this section; and

(d) The subcontractor has established a FAA-approved job cost accounting system that is satisfactory for cost reimbursement contracts.

(4) If there is adequate protection to FAA through inclusion of appropriate clauses in subcontracts involving foreign subcontractor.

## 8 Recurring, Provisional, and Advance Payments Revised 10/2007

a. *Recurring Payments (Automatic Payments).* Payments made on a fixed, periodic basis for the delivery or performance of recurring firm fixed-price products or services.

(1) COs must annotate on the award that payments are to be setup on the Recurring Invoice Template (auto pay).

(2) The CO must request an annual invoice from the contractor detailing the recurring fixed amount and the total amount. This annual invoice must be certified by the CO and submitted to accounting.

(3) If deductions are required, the CO must notify the accounting office in writing of the deduction to be made the following month, and the contract will be modified to reflect the change in value.

b. *Provisional Payments.* Payments made for the delivery or performance of products or services recurring under a contract. Invoices are necessary, receiving reports are not.

c. *Advance Payments.* Payment made before any performance of work under the contract. Payments should be secured by bond or collateral with expenditures made from a joint account requiring FAA approval. (See Finance under this section for more information)

## 9 Performance-based Payments Added 10/2007

a. *General.*

(1) Performance-based payments (PBP) are contract financing payments that are not payments for accepted items. The CO may use PBP in contracts, subject to the guidelines below, when the CO finds them practical and the contractor agrees to their use. (2) PBP do not apply to the following:

(a) Payments under cost-reimbursement contracts;

(b) Contracts for architect-engineer services or construction, when the contracts provide for progress payments based upon a percentage or stage of completion;

(c) Contracts for research or development; or

(d) Contracts awarded through sealed bid or competitive negotiation procedures.

(3) PBP are fully recoverable, in the same manner as progress payments, in the event of default. PBP should not be used when other forms of contract financing are provided.

(4) For accounting purposes, PBP should be treated like progress payments based on costs.

(5) Because PBP are contract financing payments they are not subject to the interest- penalty provisions of prompt payment clauses; however, PBP should be made in accordance with FAA's policy for prompt payment of contract financing payments.

b. *Criteria for use.*

(1) PBP should be used only if the following conditions are met:

(a) The CO and offeror are able to agree on the performance-based payment terms;

(b) The contract is a definitized fixed-price type contract; and

(c) The contract does not provide for other methods of contract financing.

c. *Application.* The CO should determine if PBP will be made either on a whole contract or deliverable item basis. Financing payments to be made on a whole contract basis are applicable to the entire contract, and not to specific deliverable items. Financing payments to be made on a deliverable item basis are applicable to a specific individual deliverable item.

A deliverable item for these purposes is a separate item with a distinct unit price. Thus, a contract line item for 10 airplanes, with a unit price of $1,000,000 each, has ten deliverable items (the separate planes). A contract line item for 1 lot of 10 airplanes, with a lot price of $10,000,000, has only one deliverable item (the lot).

d. *Establishing Performance Bases.* PBP may be made on any of the following bases:

(1) Specifically described events (e.g., milestones) or some measurable criterion of performance. Each event or performance criterion that will trigger a finance payment will be an integral and necessary part of contract performance and will be identified in the contract, along with a description of what constitutes successful performance of

the event or attainment of the performance criterion. The signing of contracts or modifications, the exercise of options, or other such actions will not be events or criteria for performance-based payments. An event need not be a critical event in order to trigger a payment, but successful performance of each such event or performance criterion will
be readily verifiable.

(2) Events or criteria may be either severable or cumulative. The successful completion of a severable event or criterion is independent of the accomplishment of any other event or criterion. In contrast, the successful accomplishment of a cumulative event or criterion is dependent upon the previous accomplishment of another event or criterion. A contract may provide for more than one series of severable and/or cumulative performance events or criteria performed in parallel. The following will be included in the contract:

(a) The contract will not permit payment for a cumulative event or criterion until the dependent event or criterion has been successfully completed.

(b) Severable events or criteria will be specifically identified in the contract.

(c) The contract will identify which events or criteria are preconditions for the successful achievement of each cumulative event or criterion.

(d) If payment of performance-based finance amounts is on a deliverable item basis, each event or performance criterion will be part of the performance necessary for that deliverable item and will be identified to a specific contract line item or subline item.

e. *Establishing Performance-based Finance Payment Amounts.*

(1) The CO will establish a complete, fully-defined schedule of events or performance criteria and payment amounts when negotiating contract terms. If a contract action significantly affects the price, or event or performance criterion, the CO responsible for pricing the contract modification will adjust the performance-based payment schedule appropriately.

(2) Total performance-based payments will not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis. The amount of each performance-based payment will be specifically stated either as a dollar amount or as a percentage of a specifically identified price (e.g., contract price, or unit price of the deliverable item). The payment of contract financing has a cost to the Government in terms of interest paid by the Treasury to borrow funds to make the payment. Because the CO has wide discretion as to the timing and amount of the performance-based payments, the CO must ensure that the total contract price is fair and reasonable. This fair and reasonable determination must consider all pertinent factors, including the financing costs to the Treasury of the performance-based payments. Performance-based payment amounts may be established on any rational basis determined by the CO or agency procedures, which may include (but are not limited to):

(a) Engineering estimates of stages of completion;

(b) Engineering estimates of hours or other measures of effort to be expended in performance of an event or achievement of a performance criterion; or

(c) The estimated projected cost of performance of particular events.

(3) When subsequent contract modifications are issued, the performance-based payment schedule will be adjusted as necessary to reflect the actions required by those contract modifications.

f. *Instructions for Multiple Appropriations.* If there is more than one appropriation account (or subaccount) funding payments on the contract, the CO will provide instructions to the payment office for distribution of financing payments to the respective funds accounts. Distribution instructions must be consistent with the contract's liquidation provisions.

g. *Liquidating Performance-based Finance Payments.* Performance-based amounts will be liquidated by deducting a percentage or a designated dollar amount from the delivery payments. The CO will specify the liquidation rate or designated dollar amount in the contract. The method of liquidation will ensure complete liquidation no later than final payment.

(1) If the performance-based payments are established on a delivery item basis, the liquidation amount for each line item will be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount.

(2) If the performance-based finance payments are on a whole contract basis, liquidation will be by predesignated liquidation amounts or liquidation percentages.

h. *Reviews.* The CO is responsible for determining what reviews are required for protection of FAA interests. The CO should consider the contractor's experience, performance record, reliability, financial strength, and the adequacy of controls established by the contractor for the administration of performance-based payments. Based upon the risk to FAA, post-payment reviews and verifications should normally be arranged as considered appropriate by the CO. If considered necessary by the CO, pre-payment reviews may be required.

i. *Incomplete Performance.* The CO will not approve a performance-based payment until the specified event or performance criterion has been successfully accomplished in accordance with the contract. If an event is cumulative, the CO will not approve the performance-based payment unless all identified preceding events or criteria are accomplished.

j. *Government-caused Delay.* Entitlement to a performance-based payment is solely on the basis of successful performance of the specified events or performance criteria. However, if there is a Government-caused delay, the CO may renegotiate the performance-based payment schedule to facilitate contractor billings for any successfully accomplished portions of the delayed event or criterion.

k. *Suspension or Reduction of Performance-based Payments.*

(1) *Enforcing the Clause.*

(a) The Progress Payments clause provides the CO the right to reduce or suspend progress payments, or to increase the liquidation rate under certain conditions; however, the CO should take these actions only in accordance with the contract terms and never precipitately or arbitrarily. These actions should be taken only after:

(i) Notifying the contractor of the intended action and providing an opportunity for discussion;

(ii) Evaluating the effect of the action on the contractor's operations, based on the contractor's financial condition, projected cash requirements, and the existing or available credit arrangements; and

(iii) Considering the general equities of the particular situation.

(b) The CO should take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance.

(c) In all cases, the CO should:

(i) Act fairly and reasonably;

(ii) Base decisions on substantial evidence; and

(iii) Document the contract file. Findings made under the Progress Payments clause should be in writing.

(2) *Contractor Noncompliance.*

(a) The contractor must comply with all material requirements of the contract. This includes the requirement to maintain an efficient and reliable accounting system and controls, adequate for the proper administration of progress payments. If the system or controls are deemed inadequate, progress payments should be suspended (or the portion of progress payments associated with the unacceptable portion of the contractor's accounting system should be suspended) until the necessary changes have been made.

(b) If the contractor fails to comply with the contract without fault or negligence, the CO will not take action permitted by Progress Payments clause, other than to correct overpayments and collect amounts due from the contractor.

(3) *Unsatisfactory financial condition.*

(a) If the CO finds that contract performance (including full liquidation of progress payments) is endangered by the contractor's financial condition, or by a failure to make progress, the CO should require the contractor to make additional operating or financial arrangements adequate for completing the contract without loss to FAA.

(b) If the CO concludes that further progress payments would increase the probable loss to FAA, the CO should suspend progress payments and all other payments until the unliquidated balance of progress payments is eliminated.

(4) *Delinquency in payment of costs of performance.*

(a) If the contractor is delinquent in paying the costs of contract performance in the ordinary course of business, the CO should evaluate whether the delinquency is caused by an unsatisfactory financial condition and, if so, should apply the guidance in paragraph (c) of this section. If the contractor's financial condition is satisfactory, the CO should not deny progress payments if the contractor agrees to:

(i) Cure the payment delinquencies;

(ii) Avoid further delinquencies; and

(iii) Make additional arrangements adequate for completing the contract without loss to FAA.

(b) If the contractor has, in good faith, disputed amounts claimed by subcontractors, suppliers, or others, the CO should not consider the payments delinquent until the amounts due are established by the parties through litigation or arbitration; however, the amounts should be excluded from costs eligible for progress payments so long as they are disputed.

(c) Determinations of delinquency in making contributions under employee pension, profit sharing, or stock ownership plans, and exclusion of costs for such contributions from progress payment requests should be in accordance with the procedures for progress payments.

l. *Title.*

(1) The CO must ensure that FAA title under the provisions of the Performance-Based Payments clause is not compromised by other encumbrances. Ordinarily, the CO, in the absence of reason to believe otherwise, may rely upon the contractor's certification contained in the payment request.

(2) If the CO becomes aware of any arrangement or condition that would impair FAA's title to the property affected by the Performance-Based Payments clause, the

CO should require additional protective provisions.

(3) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the CO may, if necessary, suspend or reduce payments under the terms of the Performance-Based Payments clause covering failure to comply with a material requirement of the contract. In addition, if the contractor fails to disclose an existing encumbrance in the certification, the CO should consult with legal counsel concerning possible violation of 31 U.S.C. 3729, False Claims Act.

m. *Risk of Loss.*

(1) Under the Performance-Based Payments clause, the contractor bears the risk for loss, theft, destruction, or damage to property, except for normal spoilage, affected by the clause even though title is vested in FAA. The clauses related to performance-based payments, default, and terminations do not constitute an assumption of risk by FAA, unless FAA has expressly assumed this risk.

(2) If a loss occurs in connection with property for which the contractor bears the risk, and the property is needed for performance, the contractor is obligated to repay FAA the performance-based payments related to the property.

(3) The contractor is not obligated to pay for the loss of property for which FAA has assumed the risk of loss; however, a serious loss may impede the satisfactory progress of contract performance, so that the CO may need to act under the Performance-Based Payments clause. In addition, while the contractor is not required to repay previous performance-based payments in the event of a loss for which FAA has assumed the risk, such a loss may prevent the contractor from making the certification required by the Performance-Based Payments clause.

## 10 Financing Payment Revised 10/2010

a. Prudent contract financing can be a useful working tool in FAA acquisitions. FAA financing may be provided only to the extent actually needed for prompt and efficient performance, considering the availability of private financing. Any undue risk of monetary loss to FAA through the financing must be avoided.

b. "Contract financing" is a contractual authorization for payments to a contractor prior to acceptance of products or services by FAA. Contract financing includes advance payments.

c. Contract financing methods are intended to be self-liquidating through contract performance. FAA may only use the methods for financing of contractor working capital, not for the expansion of contractor-owned facilities or the acquisition of fixed assets.

d. Advance payments are the least preferred method of contract financing and must be authorized sparingly. They should be authorized only if partial payments or progress payments are not feasible and private financing is not reasonably available.

(1) Payments under time-and-material or cost-reimbursement contracts made to small businesses in advance of payment to their vendors or subcontractors are not considered advance payments under this subpart. The items authorized for advance payment below do not require additional review and approval, while all others not identified below require submittal to the Chief of the Contracting Office (COCO) for approval:

(a) Rent (leases, and rental agreements, including meeting and lodging room rentals);

(b) Tuition and conference registration fees;

(c) Insurance premiums;

(d) Extension or connection of public utilities for FAA buildings or installations;

(e) Subscriptions to publications - interpreted to include electronic methods of data recording. Software subscription services are therefore authorized;

(f) Purchases of products or services in foreign countries and the advance payment is required by the laws or regulations of the foreign country concerned;

(g) Advance payments to Federal agencies;

(h) Advance payments that do not exceed $15,000 or an equivalent amount in foreign currency;

(i) Expense of investigations in foreign countries;

(j) Enforcement of the customs or narcotics laws; or

(k) Other types of transactions excluded by agency procedures under statutory authority.

(2) The CO should transmit the following together with a recommendation of approval of a contractor's request for advance payment to the COCO:

(a) A summary of the solicitation or contract requirements;

(b) Comments on the contractor's need for advance payments and potential benefits to FAA from providing advance payments;

(c) CO's proposed actions to minimize FAA's risk of loss including proposed advance payment contract terms; and

(d) Justification of any proposal for waiver of interest charges.

(3) FAA should charge interest on advance payments received in excess of the

Contractor's current needs, except for awards made to state governments, or instrumentalities thereof. The interest will be charged at the Department of Treasury current value of funds rate. The COCO may authorize advance payments without interest if in FAA's interest.

(4) Letters of Credit are not authorized at FAA.

(5) Payments will be made by electronic funds transfer whenever possible. The advance financing arrangement may be terminated if the contractor is unwilling or unable to minimize the elapsed time between receipt of the advance and disbursement of the funds. In lieu of termination, the CO will require the contractor to not request FAA funds until the contractor's checks are ready to be forwarded to the payees. Advance payments may be processed as follows:

(a) 30-Day Advance: The contractor is authorized to request, in writing, FAA funds in amounts needed to cover its own disbursements of cash in the next 30 calendar days for contract performance. The contractor's request typically requires 30 calendar days for processing. The 30-day advance is the preferred method of providing advance funds to a contractor.

(b) 3-Day Advance: The contractor is authorized to request FAA funds in amounts needed to cover its own disbursements of cash in the next 3 working days for contract performance. When this payment method is selected, FAA will deposit funds in the contractor's designated account within 3 working days after receipt of the request by the FAA accounting office. This method of providing advance funds to a contractor is the least preferred method and will be used sparingly.

## 11 Withholding Payment Added 10/2007

a. The CO should not routinely withhold funds from contractor payments. A withholding should be considered only when:

(1) Satisfactory progress has not been achieved by a contractor during any period for which a payment is to be made; or

(2) The CO expects difficulty in the timely and complete receipt of information required by the contract.

b. Withholding should not be used as a substitute for good contract management, and COs should not withhold funds without cause.

c. Decisions to withhold and the specific amount to be withheld must be made by the CO on a case-by-case basis. Such decisions must be based on the CO's assessment of past performance and the likelihood that such unsatisfactory performance will continue.

d. The CO should notify the contractor in writing when withholding funds. The notice should include:

(1) The amount to be withheld;

(2) The specific cause for the withholding; and

(3) Any remedial actions that can be taken by the contractor in order to receive payment of the funds withheld.

e. Generally, the CO should not withhold an amount greater than 10% of the contract value and may withhold only in those specific instances where the CO has determined, in writing, that it is necessary to protect the interests of FAA.

f. Upon completion of all contract requirements, withheld amounts should be promptly released for payment.

## 12 Prompt Payment Revised 7/2013

a. *Discount for Prompt Payment*. The CO is encouraged to include meaningful discounts for prompt payment in contracts whenever possible. Decisions to accept or not accept a prompt payment discount are made by the cognizant accounting office based on the value of the discount offered. There is no minimum time period for which discounts will be taken. Any discount will be taken if determined cost effective by the accounting office.

b. *Due Date for Payment*. For the sole purpose of computing an interest penalty that might be due the contractor, the CO may establish a period for constructive acceptance of products and services that reflects the minimum necessary for inspection or testing. The period should be within seven (7) days after the contractor has delivered products or performed services in accordance with the terms and conditions of the contract. The CO may negotiate a longer period of acceptance, which must be stated in the contract.

(1) The due date for most invoice payments, (e.g. single [lump sum] payments, partial payments, etc.) will be not later than the 30th day after FAA receives a proper invoice as designated in the contract, or not later than the 30th day after products are delivered or services rendered to FAA acceptance point, whichever is later. Longer due dates may be specified for inspection, demonstrations or timed events.

(a) To the extent practicable, all invoices for contracts with small businesses will be paid not later than the 15th day after receipt of a proper invoice, rather than the 30th day as specified above. This accelerated payment to small businesses does not in any way modify the payment due date (30th day) for applying the Prompt Payment late payment interest penalty provisions as specified in paragraph c. "Interest" below.

(b) For all new awards, the CO must indicate in PRISM whether the contractor is a small business by checking “Y” or “N” in the respective box. If a contractor is a small business, the accelerated payment terms must also be indicated. For existing awards, Accounting and Contracts will be provided a listing of

all existing small business awards converted to accelerated payment.

(c) On a temporary basis, invoice payments for all contracts are being accelerated to the extent practicable using the same methodology as described under b.(1)(a) above to facilitate the payment of small business subcontractors. AMS Clause 3.3.1-20 "Providing Accelerated Payment to Small Business Subcontractors" is required for all SIRs and contracts. The clause may also be added to existing contracts.

(2) For all progress payments except construction, the due date will be not later than the 30th day after FAA approval of contractor estimates of work or of services accomplished. For the sole purpose of computing interest penalties due the contractor, FAA approval may be deemed to have occurred constructively on the 7th day after the contractor estimates are received with all necessary supporting documentation by FAA.

(3) Progress payments under construction contracts will be due not later than the 14th day after receipt of a proper invoice (including required supporting documentation as designated in the contract). The CO has the discretion to specify a longer period (a period longer than 30 days may not be prescribed) if more time is required to afford FAA a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract.

(4) For payment of any amounts retained by the CO, the due date will be not later than the 30th day after approval by the CO for release to the contractor. There is no provision for constructive acceptance.

(5) Final invoice payments will be due not later than the 30th day after FAA receives a proper invoice in the designated billing office, or not later than the 30th day after FAA acceptance of the work or services, whichever is later. For the contractor’s final invoice where the payment amount is subject to contract settlement actions, acceptance should be deemed to have occurred on the effective date of the contract settlement.

c. *Interest.*

(1) The contractor is entitled to interest penalties if payments are made after the payment due date. The FAA may automatically pay interest without request from the contractor, when all of the following conditions, if applicable, have been met:

(a) A proper invoice as specified in the contract has been received;

(b) There is no disagreement over quantity, quality, or contractor compliance with any contract requirement;

(c) In the case of a final invoice, the payment amount is not subject to further contract settlement actions between FAA and the contractor;

(d) FAA paid the contractor after the due date;

(e) Interest owed is over $1.00 in value; an

(f) No off-set action has been filed by an appropriate Federal jurisdiction (such as IRS or DOL).

(2) Interest is not required on payment delays due to:

(a) Defective invoices

(b) Disagreement between FAA and contractor over payment amount;

(c) Issues involving contract compliance; or

(d) Amounts temporarily withheld or retained in accordance with the terms of the contract.

(3) No interest will be paid to the contractor as a result of delayed contract financing payments.

(4) The interest paid will be at the rate established by the Secretary of the Treasury referred to as the "Renegotiation Board Interest Rate."

(5) Interest will not accrue for more than one year.

d. *Interim Voucher for Time-and-Material, Labor-Hour, and Cost Reimbursement Services.*

(1) Contractors awarded time-and-material (T&M), labor-hour (LH), or cost reimbursement contracts are generally authorized to seek payment during the course of the contract.

(2) An interim voucher is a contractor's request for payment during the course of performance under a T&M, LH, or cost reimbursement contract, but excluding the final payment. Interim vouchers are considered a form of contract financing; however, interest penalties must be paid on late payments for interim vouchers under T&M, LH, or cost reimbursement service contracts.

(3) For purposes of computing late payment interest penalties for interim vouchers, the due date for payment is the 30th day after FAA receives a proper invoice.

(4) If the invoice is found to be improper, it must be returned within 7 days after the date FAA receives the invoice.

e. *Acceptance.* For payment purposes, FAA acceptance should be documented on either a receiving report or by a certified invoice. The receiving report or certified invoice should be forwarded immediately to the accounting office with a copy to the CO, and each should receive it no later than the 5th working day after FAA acceptance or approval, unless other arrangements have been made. This period of time does not extend the payment due dates prescribed in the contract. The receiving report or certified invoice should, as a minimum, include the following:

(1) Contract number or other authorization for products delivered or services

performed;

(2) Description of products delivered or services performed;

(3) Quantities of products received and accepted, if applicable;

(4) Date products delivered or services performed;

(5) Date products or services were accepted by the designated FAA official (or progress payment request was approved); and

(6) Signature and printed name of the designated FAA official responsible for acceptance or approval.

## 13 Fast Payment Added 10/2007

a. Fast payment procedures may be included SIRs and contracts when it may not be possible for the receiving location to make timely notice to the payment office that supplies are accepted. In order for fast payment procedures to be authorized by the CO:

(1) The SIR or contract must be firm fixed-price;

(2) Title must vest in the FAA upon shipment or receipt;

(3) The supplier must agree to replace or repair supplies damaged in transit or not conforming to contract requirements; and

(4) Safeguards must be in place to ensure supplies are shipped, received, and acceptable.

b. Invoices will be paid on the basis of the contractor's delivery of supplies to a post office or common carrier for shipment to the specific destination.

c. For supplies delivered by means other than the Postal Service or common carrier, invoices will be paid on the basis of first receipt of the supplies by FAA.

d. The CO has 180 days from the date title to the supplies vests in FAA to instruct the contractor to replace, repair, or correct nonconforming supplies at the contractor's expense.

e. All invoices and shipping containers must be marked "FAST PAY."

## 14 Invoices Revised 4/2012

a. *Proper Invoice*.

(1) For FAA to make payment under a contract, a proper invoice must be submitted to FAA by the contractor. If the invoice does not meet the definition of a proper invoice

per section (2) below, it must be rejected within seven (7) days of receipt.

(2) A proper invoice contains the following:

(a) Name and address of contractor;

(b) Invoice date;

(c) Contract number (to include applicable order numbers and Contract Line Item Numbers (CLINs);

(d) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed;

(e) Shipping and payment terms, to include, when applicable:

(i) Shipment number and date of shipment,

(ii) Bill of lading number and weight (for government bills of lading), and

(iii) Prompt payment discount terms.

(f) Contractor or bank address where electronic payment is to be sent;

(g) Name, title, phone number, and mailing address of person to be notified of a defective invoice;

(h) Other information required by the contract (i.e. certified payrolls, evidence of shipment, etc); and

(i) Invoice number, account number, and/or any other identifying umber agreed under the contract.

b. *Invoice Routing and Acceptance*.

(1) All contracts must specify the FAA employees (or offices) to whom invoices are to be sent.

(2) Invoices must be date stamped when received by FAA Accounting as specified under (b)(4) below, and this date will serve as the reference point for Prompt Payment standards (see Prompt Payment in this Section).

(3) When COs create awards in PRISM, they will be required to select whether the invoice matching for payment in Delphi will be Two (2) or Three (3) Way match. Detailed information on invoice matching and acceptance requirements can be found on the PRISM website.

(a) Three (3) Way match: 3-Way match requires the presence of an award, an invoice, and the acceptance of the good(s) and/or services, by line, in PRISM. The acceptance of the good(s) and/or services in PRISM must annotate the date(s) good(s) were delivered or the services were provided as well as the date(s) of acceptance, where applicable. Most awards will be on a 3-Way match basis
except those authorized for a 2-Way match as specified under (b)

(b) Two (2) Way match: 2-Way match requires the presence of an award and invoice without the need for manual acceptance in PRISM, and is authorized for the following types of procurements:

(i) Awards that include Fast Payment procedures;

(ii) Awards for services placed on Recurring Payment; and

(iii) Leases and utilities.

(4) Varying locations in FAA may have specialized routing of invoices for supplies, services, or construction; however, in all cases, one original of the invoice must be delivered to accounting (AMZ-110). The routing and acceptance of a proper invoice should generally follow these steps:

(a) One original of the invoice will be delivered to accounting (AMZ-110), while one original will be sent to both the CO and Contracting Officer's Representative (COR). Electronic submission of invoices will be allowed per Agency finance guidelines and prior agreement with the finance office;

(b) Once received by accounting, the invoice will be date stamped unless received electronically and assigned to an Accounts Payable (A/P) technician;

(c) The A/P technician will send an e-mail notification to the CO and COR requesting acceptance of the invoice and completion of the an invoice certification sheet or other payment documentation;

(d) Based on documentation or a receiving report from the COR and the presence of a proper invoice, the COR or CO will perform acceptance in PRISM if necessary for a 3-Way match. If a 2-Way match, the COR or CO will ensure that the supplies and/or services on the invoice have been received. When a COR has not been designated, the CO may designate in writing a FAA Program Office employee to perform acceptance in PRISM. After invoice review and any acceptance, the CO will complete an invoice certification sheet or other payment documentation for the contract file and advise the A/P technician that the invoice is ready for payment. This CO approval of invoices may be delegated in writing to the receiver where firm-fixed-price commercial supplies or services are being purchased.

(e) The A/P technician will then verify that all invoice requirements have

been met and process the invoice for payment; and

(f) Copies of all payment documentation will be retained in the contract file.

(5) Additional guidance regarding various special types of payment (such as Fast Payment and Recurring Payment) may be found elsewhere in this Section.

## 15 Debt Collection Added 10/2007

a. Contract debts arise in various ways. The following are some examples:

(1) Damages or excess costs related to defaults in performance.

(2) Breach of contract obligations concerning progress payments, advance payments, or Government-furnished property or material.

(3) FAA expense of correcting defects.

(4) Overpayments related to errors in quantity or billing or deficiencies in quality.

b. Once an indication of a contract debt surfaces, it should promptly be determined if a debt is due to FAA and in what amount. A demand for payment should be made as soon as the amount of the refund has been calculated. In general, interest will be due on any contract debt that is unpaid after 30 days. For debts under $100,000, excluding interest, if further collection is not practicable, or would cost more than the amount of recovery, FAA may compromise the debt or terminate or suspend further collection action.

c. Local legal counsel must review and approve any debt collection activity.

## 16 Assignment of Claims Added 10/2007

a. Assignment of contract payments is the transfer by a contractor of its right to be paid by FAA for contract performance to a bank, trust company, or other financing institution. This assignment of contract payments serves as security for a loan to the contractor. An assignment of contract payments extinguishes the right of the transferor (assignor, contractor) to all future payments due under the contract, and establishes that right in the transferee (assignee, financial institution).

b. FAA may permit assignment of contract payments to help contractors obtain independent financing. When the contract provides for advance payments, assignments are not permitted.

c. No payments made by FAA to the assignee under any contract assigned may be recovered because of any liability of the contractor to FAA. This immunity of the assignee is effective whether the contractor's liability arises from, or independently of, the assigned contract.

d. A contractor may assign payments due or to become due under a contract if all the following conditions are met:

(1) The assignment is made to a bank, trust company, or other financing institution, including any Federal lending agency;

(2) The assignment covers all unpaid amounts payable under the contract; and

(3) The contract terms do not expressly prohibit the assignment.

e. The CO processes requests for assignments from the contractor or financial institution. The contractor notifies the CO that an assignment is contemplated, and the assignment becomes effective upon written acknowledgment by the CO. An assignment should adhere to the following:

(1) Assignments for corporations must be:

(a) Executed by an authorized representative, validated by the secretary or the assistant secretary of the corporation, and impressed with the corporate seal; or

(b) Accompanied by a true copy of the authorization from the corporation's board of directors for the signing representative to execute the assignment.

(2) Assignments for partnerships may be signed by one partner, if accompanied by adequate evidence that the signer is a general partner of the partnership and is authorized to execute the assignment on behalf of the partnership.

(3) Assignments by an individual must be signed by that individual in the presence of and acknowledged before a notary public or other person authorized to administer oaths.

(4) The assignee must forward an original and three copies of the notice of assignment, together with one true copy of the instrument of assignment, to each of the following:

(a) CO;

(b) Surety on any bond applicable to the contract; and

(c) FAA accounting office designated to make payments.

(5) Before acknowledging the assignment, the CO should ensure that the contract permits assignment, the assignment covers only money due or to become due, and, unless
waived, the assignee is registered separately in the Central Contractor

Registration. f. Upon notification of a desire for an assignment, the CO will:

(1) Notify the accounting office designated to make payments of the pending assignment; and

(2) Immediately notify the disbursing officer when assignment is accepted and ensure delivery of the instrument to the disbursing officer.

g. A release of assignment is required whenever the contractor wishes to reestablish its right to receive further payments and a balance remains due under the contract. If the assignee releases the contractor from an assignment of claims under the contract, the contractor must provide the CO, any Surety on any bond, and the FAA accounting office with the following:

(1) Written Notice of Release; and

(2) A true copy of the release instrument.

Each FAA addressee of a Notice of Release of Assignment should acknowledge receipt of the notice.

h. Assignments may be made to banks, trust company or financing institutions only.

## 17 Automatic Deobligation Revised 4/2012

After 365 days of inactivity and a total line item obligation balance with an absolute value of $100 or less, a system-generated modification to deobligate this line item balance will be created and approved in PRISM. This deobligation modification will be created and approved through an automated process that will be run no less than once a year. The FAA payment office will adjust all financial records to reflect the fact that no undisbursed obligation balance remains on the line item. Any valid invoices received by FAA after this deobligation will be paid out of appropriate available funding after CO approval.

## 18 Incremental Funding for Fixed-Price Contracts Added 10/2011

a. A fixed-price contract may be incrementally funded only if—

(1) The contract (excluding any options) or any exercised option—

(a) Is for severable services;

(b) Does not exceed one year in length; and

(c) Is incrementally funded using funds available as of the date the funds are obligated; or

(2) The contract uses funds available from two or more fiscal years and—

(a) Is a major systems acquisition; or

(b) Congress has otherwise authorized incremental funding

b. An incrementally funded fixed-price contract will be fully funded as soon as funds are available.

**B Clauses**

view contract clauses

**C Forms** **Revised 4/2006**

view procurement forms

Electronic Funds Transfer (EFT) Waiver Request

**D Appendix** **Added 10/2007**

**1 Appendix - Sample Notice of Assignment** **Added 10/2007**

**NOTICE OF ASSIGNMENT**

To: _____ (Address to one of the parties listed in subparagraph A.16.e.4 above)

This is a Notice of Assignment for Contract No. _____ dated _____, entered into between _____ (Contractor's name and address) and the FAA for _____ (Describe the nature of the contract).

Moneys due or to become due under this contract have been assigned. A true copy of the instrument of assignment executed by the Contractor on _____ (Date) is attached to the original notice. Payments due or to become due under this contract should be made to the undersigned assignee.

Please return, to the undersigned, the three enclosed copies of this notice with appropriate notations showing the date and hour of receipt, and signed by an FAA employee acknowledging receipt on behalf of the addressee.

Very truly yours,

_____ (Name of Assignee)

By_____ (Signature of Signing Officer)

_____ (Title of Signing Officer)

_____ (Address of Assignee)

**ACKNOWLEDGEMENT**

The FAA acknowledges receipt of the above notice and a copy of the instrument of assignment. These documents were received at _____ (a.m./p.m.) on _____ (Date).

_____ (FAA Signature)

_____ (FAA Title)

On Behalf of _____ (Name of the FAA Addressee of this Notice)

## T3.3.2 - Contract Cost Principles Revised 10/2007

### A Contract Cost Principles

### 1 Applicability Revised 7/2007

a. *General*. To recognize different organizational characteristics, FAA cost principles and procedures are classified by organizational type, e.g., commercial concerns and educational institutions. The objective of this classification is to ensure, to the extent practicable, all similar types of organizations doing similar work follow the same cost principles and guidance. In general, FAA cost principles apply when the Contracting Officer (CO) performs cost analysis to price contracts, subcontracts, and modifications to contracts and subcontracts; and when a contract clause requires determination, negotiation, or allowance of costs.

b. *Fixed-price Contracts.*

(1) The applicable parts of AMS Procurement Guidance T3.3.2 must be used to price fixed-price contracts, subcontracts, and modifications to contracts and subcontracts whenever:

(a) Cost analysis is performed; or

(b) A fixed-price contract clause requires the determination or negotiation of costs.

(2) Applying cost principles to fixed-price contracts and subcontracts must not be construed as a requirement to negotiate agreements on individual elements of cost in arriving at agreement on the total price. The final price accepted by the parties reflects

agreement only on the total price. Notwithstanding mandatory use of cost principles, the objective will continue to be to negotiate prices that are fair and reasonable, cost and other factors considered.

c. *Contracts with Commercial Organizations.*

This category includes all contracts and contract modifications for supplies, services, or experimental, developmental, or research work negotiated with organizations (other than educational institutions, construction and architect-engineer contracts, State and local governments, and nonprofit organizations) on the basis of cost.

(1) The cost principles and procedures in the below Section 2. “Contracts with Commercial Organizations” must be used to price negotiated supply, service, experimental, developmental, and research contracts and contract modifications with commercial organizations whenever cost analysis is performed.

(2) The CO must incorporate the cost principles and procedures in this Procurement Guidance T3.3.2 by reference in contracts with commercial organizations as the basis for:

(a) Determining reimbursable costs under cost-reimbursement contracts and cost- reimbursement subcontracts under these contracts performed by commercial organizations; and the cost-reimbursement portion of time-and-materials contracts except when material is priced on a basis other than at cost;

(b) Negotiating indirect cost rates;

(c) Proposing, negotiating, or determining costs under terminated contracts;

(d) Price revision of fixed-price incentive contracts;

(e) Price redetermination of price redetermination contracts; and

(f) Pricing changes and other contract modifications.

d. *Contracts with Educational Institutions.*

This category includes all contracts and contract modifications for research and development, training, and other work performed by educational institutions.

(1) The CO must incorporate the cost principles and procedures of the below Section 3. "Contracts with Educational Institutions," by reference in cost-reimbursement contracts with educational institutions as the basis for:

(a) Determining reimbursable costs under the contracts and cost-reimbursement subcontracts under these contracts performed by educational institutions;

(b) Negotiating indirect cost rates; and

(c) Settling costs of cost-reimbursement terminated contracts.

(2) The cost principles in this Procurement Guidance T3.3.2 are to be used as a guide in evaluating costs in connection with negotiating fixed-price contracts and termination settlements.

e. *Construction and Architect-engineer Contracts.*

This category includes all contracts and contract modifications negotiated on the basis of cost with organizations (other than educational institutions, State and local governments, and nonprofit organizations except those exempted under OMB Circular A-122 for construction management or construction, alteration or repair of buildings, bridges, roads, or other kinds of real property). It also includes architect-engineer contracts related to construction projects. It does not include contracts for vessels, aircraft, or other kinds of personal property.

(1) Except as otherwise provided in subparagraph e.(3) below, the cost principles and procedures in the below Section 2. "Contracts with Commercial Organizations" must be used to price contracts and contract modifications in this category if cost analysis is performed.

(2) The CO must incorporate the cost principles and procedures in the below Section 2. "Contracts with Commercial Organizations (as modified by subparagraph e.(3) below) by reference in contracts in this category as the basis for:

(a) Determining reimbursable costs under cost-reimbursement contracts, including cost-reimbursement subcontracts under these contracts;

(b) Negotiating indirect cost rates;

(c) Proposing, negotiating, or determining costs under terminated contracts;

(d) Price revision of fixed-price incentive contracts; and

(e) Pricing changes and other contract modifications.

(3) Except as otherwise provided in this subparagraph e.(3), the allowability of costs for construction and architect-engineer contracts must be determined in accordance with the below Section 2. "Contracts with Commercial Organizations."

(a) Advance agreements, as set forth in the below paragraph i. "Advance Agreements," for such items as home office overhead, partners' compensation, employment of consultants, and equipment usage costs, are particularly important in construction and architect-engineer contracts because of widely varying factors such as the nature, size, duration, and location of the

construction project. When appropriate, they serve to express the parties' understanding and avoid possible subsequent disputes or disallowances.

(b) "Construction equipment," as used in this subparagraph e.(3), means equipment (including marine equipment) in sound workable condition, either owned or controlled by the contractor or the subcontractor at any tier, or obtained from a commercial rental source, and furnished for use under Government contracts.

(i) Allowable ownership and operating costs must be determined as follows:

(AA) Actual cost data must be used when such data can be determined for both ownership and operations costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the FAA may specify the use of a particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of construction equipment (see subparagraphs e.(3)(b)(i)(BB) and (CC) below). However, costs otherwise unallowable under this Procurement Guidance T3.3.2 must not become allowable through the use of any schedule (see below subparagraph i(3) “Advance Agreements”). For example, schedules need to be adjusted for Government contract costing purposes if they are based on replacement cost, include unallowable interest costs, or use improper cost of money rates or computations. COs should review the computations and factors included within the specified schedule and ensure that unallowable or unacceptably computed factors are not allowed in cost submissions.

(BB) Predetermined schedules of construction equipment use rates (e.g., the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, industry sponsored construction equipment cost guides, or commercially published schedules of construction equipment use cost) provide average ownership and operating rates for construction equipment. The allowance for operating costs may include costs for such items as fuel, filters, oil, and grease; servicing, repairs, and maintenance; and tire wear and repair. Costs of labor, mobilization, demobilization, overhead, and profit are generally not reflected in schedules, and separate consideration may be necessary.

(CC) When a schedule of predetermined use rates for construction equipment is used to determine direct costs, all costs of equipment that are included in the cost allowances provided by the schedule must be identified and eliminated from the contractor's other direct and indirect costs charged to the

contract. If the contractor's accounting system provides for site or home office overhead allocations, all costs which are included in the equipment allowances may need to be included in any cost input base before computing the contractor's overhead rate. In periods of suspension of work pursuant to a contract clause, the allowance for equipment ownership must not exceed an amount for standby cost as determined by the schedule or contract provision.

(ii) Reasonable costs of renting construction equipment are allowable (but see preceding subparagraph e.(3)(b)(i)CC)).

(AA) Costs, such as maintenance and minor or running repairs incident to operating such rented equipment, that are not included in the rental rate are allowable.

(BB) Costs incident to major repair and overhaul of rental equipment are unallowable.

(CC) The allowability of charges for construction equipment rented from any division, subsidiary, or organization under common control, will be determined in accordance with Attachment 2, Cost (33)(b)(3) "Rental Costs."

(c) Costs incurred at the job site incident to performing the work, such as the cost of superintendence, timekeeping and clerical work, engineering, utility costs, supplies, material handling, restoration and cleanup, etc., are allowable as direct or indirect costs, provided the accounting practice used is in accordance with the contractor's established and consistently followed cost accounting practices for all work.

(d) Rental and any other costs, less any applicable credits incurred in acquiring the temporary use of land, structures, and facilities are allowable. Costs, less any applicable credits, incurred in constructing or fabricating structures and facilities of a temporary nature are allowable.

f. *Facilities Contracts*.

(1) *Applicable Cost Principles.* The cost principles and procedures applicable to the evaluation and determination of costs under facilities contracts, and subcontracts under these contracts, will be governed by the type of entity to which a facilities contract is awarded. Except as otherwise provided in this paragraph f. "Facilities Contracts": Section 2. "Contracts with Commercial Organizations," applies to facilities contracts awarded to commercial organizations; Section 3. "Contracts with Educational Institutions," applies to facilities contracts awarded to educational institutions; and paragraph 1.e., “Construction and Architect-engineer Contracts,” applies to facilities contracts awarded to construction contractors.

Whichever cost principles are appropriate will be used in the pricing of facilities contracts and contract modifications if cost analysis is performed. In addition, the CO must incorporate the cost principles and procedures appropriate in the circumstances by reference in facilities contracts as the basis for:

(a) Determining reimbursable costs under facilities contracts, including cost- reimbursement subcontracts under these contracts;

(b) Negotiating indirect cost rates; and

(c) Determining costs of terminated contracts when the contractor elects to "voucher out" costs.

(2) *Exceptions to General Rules on Allowability and Allocability.*

(a) A contractor's established accounting system and procedures are normally directed to the equitable allocation of costs to the types of products which the contractor produces or services rendered in the course of normal operating activities. The acquisition of, or work on, facilities for the Government normally does not involve the manufacturing processes, plant departmental operations, cost patterns of work, administrative and managerial control, or clerical effort usual to production of the contractor's normal products or services.

(b) Advance agreements (see below paragraph i. "Advance Agreements") should be made between the contractor and CO as to indirect cost items to be applied to the facilities acquisition. A contractor's normal accounting practice for allocating indirect costs to the acquisition of contractor facilities may range from charging all these costs to this acquisition to not charging any. When necessary to produce an equitable result, the contractor's usual method of allocating indirect cost shall be varied, and appropriate adjustment must be made to the pools of indirect cost and the bases of their distribution.

(c) The purchase of completed facilities (or services in connection with the facilities) from outside sources does not involve the contractor's direct labor or indirect plant maintenance personnel. Accordingly, indirect manufacturing and plant overhead costs, which are primarily incurred or generated by reason of direct labor or maintenance labor operations, are not allocable to the acquisition of such facilities.

(d) Contracts providing for installation of new facilities or rehabilitation of existing facilities may involve the use of the contractor's plant maintenance labor, as distinguished from direct labor engaged in the production of the company's normal products. In such instances, only those types of indirect manufacturing and plant operating costs that are related to or incurred by reason of the expenditures of the classes of labor used for the performance of the facilities work may be allocated to the facilities contract. A facilities contract which involves the use of plant maintenance labor only would not be subject to an allocation of such cost items as direct productive labor supervision, depreciation, and maintenance expense applicable to productive

machinery and equipment, or raw material and finished goods storage costs.

(e) Where a facilities contract calls for the construction, production, or rehabilitation of equipment or other items that are involved in the regular course of the contractor's business by the use of the contractor's direct labor and manufacturing processes, the indirect costs normally allocated to all that work may be allocated to the facilities contract.

(3) *Contractor's Commercial Items.* If facilities constituting the contractor's usual commercial items (or only minor modifications thereof) are acquired by the Government under the contract, the Government must not pay any amount in excess of the contractor's most favored customer price or the price of other suppliers for like quantities of the same or substantially the same items, whichever is lower.

g. *Contracts with State, Local, and Federally Recognized Indian Tribal Governments.*

(1) *Applicable Cost Principles.* The below Section 4. "Contracts with State, Local, and Federally Recognized Indian Tribal Governments" provides principles and standards for determining costs applicable to contracts with State, local, and Federally recognized Indian tribal governments. They provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between State, local, and Federally recognized Indian tribal governments, and Federal Government entities. They apply to all programs that involve contracts with State, local, and Federally recognized Indian tribal governments, except contracts with:

(a) Publicly financed educational institutions; or

(b) Publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Government agencies.

(2) The Office of Management and Budget will approve any other exceptions in particular cases when adequate justification is presented.

h. *Contracts with Nonprofit Organizations.*

The below Section 5. "Contract with Nonprofit Organizations" provides principles and standards for determining costs applicable to contracts with nonprofit organizations other than educational institutions, State and local governments, and those nonprofit organizations exempted under OMB Circular No. A-122.

i. *Advance Agreements*.

(1) The extent of allowability of the costs covered in this Procurement Guidance T.3.3.2 applies broadly to many accounting systems in varying contract situations. The reasonableness, allocability and allowability under specific cost principles of certain costs may be difficult to determine. To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability or unallowability under the specific cost principles, COs and contractors should seek advance agreement on the treatment of special or unusual costs and on statistical sampling methodologies. However, an

advance agreement is not an absolute requirement and the absence of an advance agreement on any cost will not, in itself, affect the reasonableness, allocability or the allowability under the specific cost principles.

(2) Advance agreements may be negotiated either before or during a contract but should be negotiated before incurrence of the costs involved. The agreements must be in writing, executed by both contracting parties, and incorporated into applicable current and future contracts. An advance agreement must contain a statement of its applicability and duration.

(3) The CO is not authorized by this paragraph i. to agree to a treatment of costs inconsistent with this Procurement Guidance T3.3.2. For example, an advance agreement may not provide that, notwithstanding Attachment 2, Cost (17) "Interest and Other Financial Costs," interest is allowable.

(4) Advance agreements may be negotiated with a particular contractor for a single contract, a group of contracts, or all the contracts of a contracting office, an agency, or several agencies.

(5) The cognizant CO, or other designated administrative CO, negotiates advance agreements. When the negotiation authority is delegated, the administrative CO coordinates the proposed agreement with the cognizant CO before executing the advance agreement.

(6) Before negotiating an advance agreement, the Government negotiator must:

(a) Determine if other contracting offices inside FAA or in other agencies have a significant unliquidated dollar balance in contracts with the same contractor;

(b) Inform any such office or agency of the matters under consideration for negotiation; and

(c) As appropriate, invite the office or agency and the responsible audit agency to participate in prenegotiation discussions and in subsequent negotiations.

(7) Upon completion of the negotiation, the sponsor shall prepare and distribute to other interested agencies and offices, including the audit agency, copies of the executed agreement and negotiation memorandum.

(8) Examples of costs for which advance agreements may be particularly important are:

(a) Compensation for personal services, including but not limited to allowances for off-site pay, incentive pay, location allowances, hardship pay, cost of living differential, and termination of defined benefit pension plans;

(b) Use charges for fully depreciated assets;

(c) Deferred maintenance costs;

(d) Precontract costs;

(e) Independent research and development and bid and proposal costs;

(f) Royalties and other costs for use of patents;

(g) Selling and distribution costs;

(h) Travel and relocation costs, as related to special or mass personnel movements, as related to travel via contractor-owned, -leased, or -chartered aircraft; or as related to maximum per diem rates;

(i) Costs of idle facilities and idle capacity;

(j) Severance pay to employees on support service contracts;

(k) Plant reconversion;

(l) Professional services (e.g., legal, accounting, and engineering);

(m) General and administrative costs (e.g., corporate, division, or branch allocations) attributable to the general management, supervision, and conduct of the contractor's business as a whole. These costs are particularly significant in construction, job-site, architect-engineer, facilities, and Government-owned contractor operated (GOCO) plant contracts;

(n) Costs of construction plant and equipment;

(o) Costs of public relations and advertising;

and

(p) Training and education costs.

j. *Indirect Cost Rate Certification and Penalties on Unallowable Costs.*

Certain contracts require certification of the indirect cost rates proposed for final payment purposes. If unallowable costs are included in final indirect cost settlement proposals, penalties may be assessed.

## 2 Contracts with Commercial Organizations Revised 10/2014

a. *Composition of Total Cost*.

(1) The total cost of a contract is the sum of the direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits, plus any allocable cost of money pursuant to Attachment 2. Cost (7). In ascertaining what constitutes a

cost, any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used, including standard costs properly adjusted for applicable variances.

(2) Although the total cost of a contract includes all costs properly allocable to the contract, allowable costs to the Government are limited to those allocable costs that are allowable pursuant to this Procurement Guidance Section T3.3.2.

b. *Determining Allowability.*

(1) The factors to be considered in determining whether a cost is allowable include:

(a) Reasonableness.

(b) Allocability.

(c) Standards promulgated by the Cost Accounting Standards (CAS) Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances.

(d) Terms of the contract.

(e) Any limitations set forth in this Section 2. "Contracts with Commercial Organizations."

(2) Certain cost principles in this Section 2. "Contracts with Commercial Organizations" incorporate the measurement, assignment, and allocability rules of selected CAS and limit the allowability of costs to the amounts determined using the criteria in those selected CAS. Only those CAS or portions of standards specifically made applicable by the cost principles in this Procurement Guidance Section T3.3.2 are mandatory, unless the contract is CAS-covered. Business units that are not otherwise subject to these standards under a CAS clause are subject to the selected standards only for the purpose of determining allowability of costs on Government contracts. Including the selected standards in the cost principles does not subject the business unit to any other CAS rules and regulations. The applicability of the CAS rules and regulations is determined by the CAS clause, if any, in the contract and the requirements of the standards themselves.

(3) When contractor accounting practices are inconsistent with the cost principles in this Section 2. "Contracts with Commercial Organizations," costs resulting from such inconsistent practices must not be allowed in excess of the amount that would have resulted from using practices consistent with this section.

(4) A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in this subpart and agency supplements. The CO may disallow all or part of a claimed cost which is inadequately supported.

c. *Determining Reasonableness*.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person conducting competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness must be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the CO or the CO's representative, the burden of proof must be upon the contractor to establish that such cost is reasonable. What is reasonable depends upon a variety of considerations and circumstances, including:

(1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;

(2) Generally accepted sound business practices, arm's-length bargaining, and Federal and State laws and regulations;

(3) The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and

(4) Any significant deviations from the contractor's established practices.

d. *Determining Allocability*.

A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to allowability and reasonableness, a cost is allocable to a Government contract if it:

(1) Is incurred specifically for the contract;

(2) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or

(3) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

e. *Credits.*

The applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor must be credited to the Government either as a cost reduction or by cash refund. See Attachment 2, Cost (4) for rules governing refund or credit to the Government associated with pension adjustments and asset reversions.

f. *Accounting for Unallowable Costs***.**

(1) Costs that are expressly unallowable or mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, must be

identified and excluded from any billing, claim, or proposal applicable to a Government contract. A directly associated cost is any cost which is generated solely as a result of incurring another cost, and which would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable.

(2) Costs which specifically become designated as unallowable or as unallowable directly associated costs of unallowable costs as a result of a written decision furnished by a CO must be identified if included in or used in computing any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this subparagraph f.(2) or subparagraph f.(1) above.

(3) The practices for accounting for and presentation of unallowable costs will be those as described in 48 CFR 9904.405, Accounting for Unallowable Costs.

(4) Statistical sampling is an acceptable practice for contractors to follow in accounting for and presenting unallowable costs provided all of the following criteria are met:

(a) The statistical sampling results in an unbiased sample that is a reasonable representation of the sampling universe.

(b) Any large dollar value or high risk transaction is separately reviewed for unallowable costs and excluded from the sampling process.

(c) The statistical sampling permits audit verification.

(5) Use of statistical sampling methods for identifying and segregating unallowable costs should be the subject of an advance agreement under paragraph i. “Advance Agreements” between the contractor and CO. The advance agreement should specify the basic characteristics of the sampling process. The CO must request input from the cognizant auditor before entering into any such agreements.

(6) In the absence of an advance agreement, if an initial review of the facts results in a challenge of the statistical sampling methods by the CO or CO’s representative, the burden of proof must be on the contractor to establish that such a method meets the criteria in subparagraph f.(4) above.

(7) If a directly associated cost is included in a cost pool which is allocated over a base that includes the unallowable cost with which it is associated, the directly associated cost must remain in the cost pool. Since the unallowable costs will attract their allocable share of costs from the cost pool, no further action is required to assure disallowance of the directly associated costs. In all other cases, the directly associated costs, if material in amount, must be purged from the cost pool as unallowable costs.

(8) In determining the materiality of a directly associated cost, consideration should be given to the significance of:

(a) The actual dollar amount;

(b) The cumulative effect of all directly associated costs in a cost pool; or

(c) The ultimate effect on the cost of Government contracts.

(9) Salary expenses of employees who participate in activities that generate unallowable costs shall be treated as directly associated costs to the extent of the time spent on the proscribed activity, provided the costs are material in accordance with subparagraph f.(8) above (except when such salary expenses are, themselves, unallowable). The time spent in proscribed activities should be compared to total time spent on company activities to determine if the costs are material. Time spent by employees outside the normal working hours should not be considered except when it is evident that an employee engages so frequently in company activities during periods outside normal working hours as to indicate that such activities are a part of the employee's regular duties.

(10) When a selected item of cost under Attachment 2, ”Selected Costs" provides that directly associated costs be unallowable, it is intended that such directly associated costs be unallowable only if determined to be material in amount in accordance with the criteria provided in above subparagraphs f.(8) and 2.f.(9), except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

g. *Construction and Architect-engineer Contracts.*

Specific principles and procedures for evaluating and determining costs in connection with contracts and subcontracts for construction, and architect-engineer contracts related to construction projects, are in paragraph 1.e. "Construction and Architect-Engineer Contracts."

h. *Direct Costs*

(1) A direct cost is any cost that can be identified specifically with a particular final cost objective. No final cost objective must have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.

(2) For reasons of practicality, any direct cost of minor dollar amount may be treated as an indirect cost if the accounting treatment is consistently applied to all final cost objectives and produces substantially the same results as treating the cost as a direct cost.

i. *Indirect Costs*

(1) An indirect cost is any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. It is not subject to treatment as a direct cost. After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated to the several cost objectives. An indirect cost must not be allocated to a final cost objective if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that or any other final cost objective.

(2) Indirect costs must be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Commonly, manufacturing overhead, selling expenses, and general and administrative (G&A) expenses are separately grouped. Similarly, the particular case may require subdivision of these groupings, e.g., building occupancy costs might be separable from those of personnel administration within the manufacturing overhead group. This necessitates selecting a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the several cost objectives. When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(3) Once an appropriate base for distributing indirect costs has been accepted, it must not be fragmented by removing individual elements. All items properly includable in an indirect cost base should bear a pro rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, when a cost input base is used for the distribution of G&A costs, all items that would properly be part of the cost input base, whether allowable or unallowable, shall be included in the base and bear their pro rata share of G&A costs.

(4) The contractor's method of allocating indirect costs must be in accordance with standards promulgated by the CAS Board, if applicable to the contract; otherwise, the method must be in accordance with generally accepted accounting principles which are consistently applied. The method may require examination when:

(a) Substantial differences occur between the cost patterns of work under the contract and the contractor's other work;

(b) Significant changes occur in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(c) Indirect cost groupings developed for a contractor's primary location are applied to offsite locations. Separate cost groupings for costs allocable to offsite locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives.

(d) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period. The criteria and guidance in Section 2. "Contracts with Commercial Organizations" for selecting the cost accounting periods to be used in allocating indirect costs are incorporated herein for application to contracts subject to full CAS coverage. For contracts subject to modified CAS coverage and for non-CAS-covered contracts, the base period for allocating indirect costs will normally be the contractor's fiscal year. But a shorter period may be appropriate in the following instances:

(i) For contracts in which performance involves only a minor portion of the fiscal year; or

(ii) When it is general practice in the industry to use a shorter period. When a contract is performed over an extended period, as many base periods shall be used as are required to represent the period of contract performance.

(5) Special care should be exercised in applying the principles of above subparagraphs i.(2), i.(3), and i.(4) (b), (c), and (d) when Government-owned contractor-operated (GOCO) plants are involved. The distribution of corporate, division, or branch office G&A expenses to such plants operating with little or no dependence on corporate administrative activities may require more precise cost groupings, detailed accounts screening, and carefully developed distribution bases.

j. *Application of Principles and Procedures*

(1) Costs must be allowed to the extent they are reasonable, allocable, and determined to be allowable under this Procurement Guidance Section T3.3.2. These criteria apply to all of the selected items that follow in Attachment 2 “Selected Costs,” even if particular guidance is provided for certain items for emphasis or clarity.

(2) For the following subcontract types, costs incurred as reimbursements or payments to a subcontractor are allowable to the extent the reimbursements or payments are for costs incurred by the subcontractor that are consistent with this Procurement Guidance Section T3.3.2:

(a) Cost-reimbursement.

(b) Fixed-price incentive.

(c) Price redeterminable (*i.e.,* fixed-price contracts with prospective price redetermination and fixed-ceiling-price contracts with retroactive price redetermination).

(3) The requirements of above subparagraph j.(2)(a) apply to any tier above the first firm- fixed-price subcontract or fixed-price subcontract with economic price adjustment provisions.

(4) Costs incurred as payments under firm-fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, when cost analysis was performed, must be allowable only to the extent that the price was negotiated in accordance with the above paragraph 1.b. "Fixed-price Contracts."

(5) The above paragraph 1.e "Construction and Architect-engineer Contracts" does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability must be based on the principles and standards in this subpart and the treatment of similar or related selected items. When more than one subparagraph in 1.e "Construction and Architect-Engineer Contracts" is relevant to a contractor cost, the cost must be apportioned among the applicable subparagraphs, and the determination of allowability of each portion must be based on the guidance contained in the applicable subparagraph. When a cost, to which more than one subparagraph in 1. e "Construction and Architect-Engineer Contracts" is relevant, cannot be apportioned, the determination of allowability must be based on the guidance contained in the topics that most specifically deals with, or best captures the essential nature of, the cost at issue.

## 3 Contracts with Educational Institutions Revised 7/2007

a. *Purpose.* This Subsection provides the principles for determining cost of research and development, training, and other work performed by educational institutions under contracts with the Government.

b. *General.* Office of Management and Budget (OMB) Circular No. A-21, "Cost Principles for Educational Institutions, Revised," provides principles for determining the costs applicable to research and development, training, and other work performed by educational institutions under contracts with the Government.

c. *Requirements*.

(1) Contracts that refer to this Section 3. "Contracts with Educational Institutions" for determining allowable costs under contracts with educational institutions must be deemed to refer to, and must have the allowability of costs determined by the CO in accordance with, the revision of OMB Circular A-21 in effect on the date of the contract.

(2) FAA should not place additional restrictions on individual items of cost.

## 4 Contracts with State, Local, and Federally Recognized Indian Tribal Governments

Revised 7/2007

a. *Purpose*. This Subsection provides the principles for determining allowable cost of contracts and subcontracts with State, local, and federally recognized Indian tribal governments.

b. General. Office of Management and Budget (OMB) Circular No. A-87, “Cost Principles for State and Local Governments, Revised,” sets forth the principles for determining the allowable costs of contracts and subcontracts with State, local, and federally recognized Indian tribal governments. These principles are for cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in financing a particular contract.

c. *Requirements*.

(1) Contracts that refer to this Section 4. "Contracts with State, Local, and Federally Recognized Indian Tribal Governments" for determining allowable costs under contracts with State, local and Indian tribal governments must be deemed to refer to, and must have the allowability of costs determined by the CO in accordance with, the revision of OMB Circular A-87 which is in effect on the date of the contract.

(2) FAA should not place additional restrictions on individual items of cost. However, the following costs are unallowable:

(a) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(b) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(c) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(d) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, state, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments.

(e) Costs of any membership in any social, dining, or country club or organization.

(f) Costs of alcoholic beverages.

(g) Contributions or donations, regardless of the recipient.

(h) Costs of advertising designed to promote the contractor or its products.

(i) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(j) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(k) Costs incurred in making any payment (commonly known as a "golden parachute payment") which is in an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(l) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(m) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States.

(n) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at, a United States facility in that country at the request of the government of that country.

(o) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State.

## 5 Contracts with Nonprofit Organizations Revised 7/2007

a. *Purpose*. This Subsection provides the principles for determining cost applicable to work performed by nonprofit organizations under contracts with the Government. A nonprofit organization, for purpose of identification, is defined as a business entity organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

b. *General.* Office of Management and Budget (OMB) Circular No. A-122, “Cost Principles for Nonprofit Organizations,” sets forth principles for determining the costs applicable to work performed by nonprofit organizations under contracts (also applies to grants and other

agreements) with the Government.

c. *Requirements.*

(1) Contracts which determine allowable costs pursuant to this Section 5. "Contracts With Nonprofit Organizations" must be deemed to refer to, and must have the allowability of costs determined by the CO in accordance with, the revision of OMB Circular A-122 in effect on the date of the contract.

(2) FAA should not place additional restrictions on individual items of cost. However, the costs cited in subparagraph c.(2) "Requirements" of the above Section 4. “Contracts with State, Local, and Federally Recognized Indian Tribal Governments” are unallowable.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

**D Appendix** **Added 7/2007**

**1 Appendix - Summary of Selected Costs** **Revised 1/2012**

| Selected Cost Title | Selected Cost Number | Allowable | Unallowable | Exception / Restriction Applies |
|---|---|---|---|---|
| Alcoholic Beverages | Cost 47 | | X | |
| Asset Valuations Resulting from Business Combinations | Cost 48 | X | | X |
| Bad Debts | Cost 2 | | X | |
| Bonding Costs | Cost 3 | X | | X |
| Compensation for Personal Services | Cost 4 | X | | X |
| Contingencies | Cost 5 | | X | X |
| Contributions or Donations | Cost 6 | | X | |

| | | | | |
|---|---|---|---|---|
| Cost of Money | Cost 7 | X | | X |
| Depreciation | Cost 8 | X | | X |
| Economic Planning Costs | Cost 9 | X | | |
| Employee Morale, Health, Welfare, Food Service, and Dormitory Costs and Credits | Cost 10 | X | | X |
| Entertainment Costs | Cost 11 | | X | |
| Fines, Penalties, and Mischarging Costs | Cost 12 | | X | X |
| Gains and Losses on Disposition or Impairment of Depreciable Property or Other Capital Assets | Cost 13 | X | | X |
| Goodwill | Cost 46 | | X | |
| Idle Facilities and Idle Capacity Costs | Cost 14 | | X | X |
| Independent Research and Development and Bid and Proposal Costs | Cost 15 | X | | X |
| Insurance and Indemnification | Cost 16 | X | | X |
| Interest and Other Financial Costs | Cost 17 | | X | X |
| Labor Relations Costs | Cost 18 | X | | X |
| Legal and Other Proceedings | Cost 44 | | X | X |
| Lobbying and Political Activity Costs | Cost 19 | | X | X |
| Losses on Other Contracts | Cost 20 | | X | |
| Manufacturing and Production Engineering Costs | Cost 22 | X | | |
| Material Costs | Cost 23 | X | | |
| Organization Costs | Cost 24 | | X | |

| | | | | |
|---|---|---|---|---|
| Other Business Expenses | Cost 25 | X | | |
| Patent Costs | Cost 27 | X | | X |
| Plant Protection Costs | Cost 26 | X | | |
| Plant Reconversion Costs | Cost 28 | | X | X |
| Precontract Costs | Cost 29 | X | | |
| Professional and Consultant Service Costs | Cost 30 | X | | X |
| Public Relations and Advertising Costs | Cost 1 | | X | X |
| Recruitment Costs | Cost 31 | X | | X |
| Relocation Costs | Cost 32 | X | | X |
| Rental Costs | Cost 33 | X | | |
| Research and Development Costs | Cost 45 | X | X | |
| Royalties and Other Costs for Use of Patents | Cost 34 | X | | X |
| Selling Costs | Cost 35 | | X | X |
| Service and Warranty Costs | Cost 36 | X | | |
| Special Tooling and Special Test Equipment Costs | Cost 37 | X | | |
| Taxes | Cost 38 | X | | X |
| Termination Costs | Cost 39 | X | | X |
| Trade, Business, Technical and Professional Activity Costs | Cost 40 | X | | |
| Training and Education Costs | Cost 41 | X | | X |
| Travel Costs | Cost 43 | X | | X |

## 2 Appendix - Selected Costs Revised 10/2014

This Appendix 2 does not cover every element of cost. Failure to include any item of cost

does not imply that it is either allowable or unallowable. The determination of allowability must be based on the principles and standards in AMS Procurement Guidance T3.2.2 and the treatment of similar or related selected items.

**(1) *Public Relations and Advertising Costs.***

(a) "Public relations" means all functions and activities dedicated to:

(1) Maintaining, protecting, and enhancing the image of a concern or its products; or

(2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term public relations includes activities associated with areas such as advertising, customer relations, etc.

(b) "Advertising" means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) of this subsection, regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.

(c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in subparagraphs (e)(1) through (6).

(d) The only allowable advertising costs are those that are

(1) Specifically required by contract, or that arise from requirements of Government contracts, and that are exclusively for

(i) Acquiring scarce items for contract performance; or

(ii) Disposing of scrap or surplus materials acquired for contract performance;

(2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding subparagraphs (d)(1), (d)(3), (d)(4)(ii) and (d)(5) ( of this subsection). However, such costs do not include the costs of memorabilia (*e.g.*, models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities that are used primarily for entertainment rather than product promotion; or

(3) Allowable in accordance with Cost (31) Recruitment Costs.

(e) Allowable public relations costs include the following:

(1) Costs specifically required by contract.

(2) Costs of

(i) Responding to inquiries on company policies and activities;

(ii) Communicating with the public, press, stockholders, creditors, and customers; and

(iii) Conducting general liaison with news media and Government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notice of contract awards, plant closings or openings, employee layoffs or rehires, financial information, etc.

(3) Costs of participation in community service activities (*e.g.*, blood bank drives, charity drives, savings bond drives, disaster assistance, etc.).

(4) Costs of plant tours and open houses (but see subparagraph (d)(5) of this subsection).

(5) Costs of keel laying, ship launching, commissioning, and roll-out ceremonies, to the extent specifically provided for by contract.

(f) Unallowable public relations and advertising costs include the following:

(1) All public relations and advertising costs, other than those specified in subparagraphs (d) and (e) of this subsection, whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under Cost (35), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services.

(2) All costs of trade shows and other special events which do not contain a significant effort to promote the export sales of products normally sold to the U.S. Government.

(3) Costs of sponsoring meetings, conventions, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.

(4) Costs of ceremonies such as

(i) Corporate celebrations and

(ii) New product announcements.

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities.

(6) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.

(7) Costs of memberships in civic and community organizations.

***(2) Bad Debts***.

Bad debts, including actual or estimated losses arising from uncollectible accounts receivable due from customers and other claims, and any directly associated costs such as collection costs, and legal costs are unallowable.

**(3) *Bonding Costs*.**

(a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the contractor. They arise also in instances where the contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the contract are allowable.

(c) Costs of bonding required by the contractor in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

**(4) *Compensation for Personal Services.***

(a) *General.* Compensation for personal services is allowable subject to the following general criteria and additional requirements contained in other parts of this cost principle:

(1) Compensation for personal services must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages (but see paragraphs (g), (h), (j), (k), (m), and (o) of this subsection).

(2) The total compensation for individual employees or job classes of employees must be reasonable for the work performed; however, specific restrictions on individual compensation elements apply when prescribed.

(3) The compensation must be based upon and conform to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment.

(4) No presumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor has not provided the cognizant CO, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.

(5) Costs that are unallowable under other paragraphs of this Procurement Guidance Section T3.3.2 are not allowable under this subsection solely on the basis that they constitute compensation for personal services.

(6)

(i) Compensation costs for certain individuals give rise to the need for special consideration. Such individuals include:

(A) Owners of closely held corporations, members of limited liability companies, partners, sole proprietors, or members of their immediate families; and

(B) Persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise.

(ii) For these individuals, compensation must-

(A) Be reasonable for the personal

services rendered; and

(B) Not be a distribution of profits (which is not an allowable contract cost).

(iii) For owners of closely held companies, compensation in excess of the costs that are deductible as compensation under the Internal Revenue Code (26 U.S.C.) and regulations under it is unallowable.

(b) *Reasonableness*

(1) *Compensation pursuant to labor-management agreements*. If costs of compensation established under "arm's length" labor-management agreements negotiated under the terms of the Federal Labor Relations Act or similar state statutes are otherwise allowable, the costs are reasonable unless, as applied to work in performing Government contracts, the costs are unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (*e.g.*, work involving extremely hazardous activities or work not

requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (*e.g.*, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances.

(2) *Compensation not covered by labor-management agreements*. Compensation for each employee or job class of employees must be reasonable for the work performed. Compensation is reasonable if the aggregate of each measurable and allowable element sums to a reasonable total. In determining the reasonableness of total compensation, consider only allowable individual elements of compensation. In testing the reasonableness of compensation for particular employees or job classes of employees, consider factors determined to be relevant by the contracting officer. Factors that may be relevant include, but are not limited to, conformity with compensation practices of other firms

(i) Of the same size;

(ii) In the same industry;

(iii) In the same geographic area; and

(iv) Engaged in similar non-Government work under comparable circumstances.

(c) [Reserved]

(d) *Form of payment.*

(1) Compensation for personal services includes compensation paid or to be paid in the future to employees in the form of

(i) Cash;

(ii) Corporate securities, such as stocks, bonds, and other financial instruments (see paragraph (d)(2) of this subsection regarding valuation); or

(iii) Other assets, products, or services.

(2) When compensation is paid with securities of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the securities is the fair market value on the first date the number of shares awarded is known, determined upon the most objective basis

available.

(ii) Accruals for the cost of securities before issuing the securities to the employees are subject to adjustment according to the possibilities that the employees will not receive the securities and that their interest in the accruals will be forfeited.

(e) *Income tax differential pay*.

(1) Differential allowances for additional income taxes resulting from foreign assignments are allowable.

(2) Differential allowances for additional income taxes resulting from domestic assignments are unallowable. (However, payments for increased employee income or Federal Insurance Contributions Act taxes incident to allowable reimbursed relocation costs are allowable under Cost (32).

(f) *Bonuses and incentive compensation*.

(1) Bonuses and incentive compensation are allowable provided the-

(i) Awards are paid or accrued under an agreement entered into in good faith between the contractor and the employees before the services are rendered or pursuant to an established plan or policy followed by the contractor so consistently as to imply, in effect, an agreement to make such payment; and

(iii) Basis for the award is supported.

(2) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of paragraphs (f)(1) and (k) of this subsection.

(g) *Severance pay*.

(1) Severance pay is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in paragraph (j)(6) of this subsection.

(2) Severance pay is allowable only to the extent that, in each case, it is required by

(i) Law;

(ii) Employer-employee agreement;

(iv) Established policy that constitutes, in effect, an implied agreement on the contractor's part; or

(iv) Circumstances of the particular employment.

(3) Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.

(4) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant. However, if the contractor uses the accrual method to account for normal turnover severance payments, that method will be acceptable if the amount of the accrual is-

(i) Reasonable in light of payments actually made for normal severances over a representative past period; and

(ii) Allocated to all work performed in the contractor's plant.

(5) Abnormal or mass severance pay is of such a conjectural nature that accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, the Government will consider allowability on a case-by-case basis.

(6) The costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, all such costs of severance payments that are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. The head of the agency is permitted to waive these cost allowability limitations under certain circumstances.

(h) *Back pay*. Back pay is a retroactive adjustment of prior years' salaries or wages. Back pay is unallowable except as follows:

(1) Payments to employees resulting from underpaid work actually performed are allowable, if required by a negotiated settlement, order, or court decree.

(2) Payments to union employees for the difference in their past and current wage rates for working without a contract or labor agreement during labor

management negotiation are allowable.

(3) Payments to nonunion employees based upon results of union agreement negotiation are allowable only if-

(i) A formal agreement or understanding exists between management and the employees concerning these payments; or

(ii) An established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payments.

(i) *Compensation and Price of Corporate Securities*. Compensation based on changes in the prices of corporate securities or corporate security ownership, such as stock options, stock appreciation rights, phantom stock plans, and junior stock conversions.

(1) Any compensation which is calculated, or valued, based on changes in the price of corporate securities is unallowable.

(2) Any compensation represented by dividend payments or which is calculated based on dividend payments is unallowable.

(3) If a contractor pays an employee in lieu of the employee receiving or exercising a right, option, or benefit which would have been unallowable under Cost (4)(d) "Compensation and Price of Corporate Securities," such payments are also unallowable.

(j) *Pension costs.*

(1) A pension plan is a deferred compensation plan. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees may be treated as pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs.

(2) Pension plans are normally segregated into two types of plans: defined-benefit or defined-contribution pension plans. The cost of all defined-benefit pension plans shall be measured, allocated, and accounted for in compliance with the provisions of 48 CFR 9904.412, Cost Accounting Standard for composition and measurement of pension cost, and 48 CFR 9904.413, Adjustment and allocation of pension cost. The costs of all defined-contribution pension plans shall be measured, allocated, and accounted for in accordance with the provisions of 48 CFR 9904.412 and 48 CFR 9904.413. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in subparagraph (j)(2)(i) and in subparagraphs (j)(3) through (7) of this subsection.

(i) Except for nonqualified pension plans using the pay-as- you-go cost method, to be allowable in the current year, pension costs must be funded

by the time set for filing of the Federal income tax return or any extension thereof. Pension costs assigned to the current year, but not funded by the tax return time, shall not be allowable in any subsequent year. For nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, pension costs must be allocated in the cost accounting period that the pension costs are assigned.

(ii) Pension payments must be reasonable in amount and must be paid pursuant to an agreement entered into in good faith between the contractor and employees before the work or services are performed; and the terms and conditions of the established plan. The cost of changes in pension plans that are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future are not allowable.

(iii) Except as provided for early retirement benefits in subparagraph (j)( 7) of this subsection, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of living adjustments are allowable if paid in accordance with a policy or practice consistently followed.

(3) *Defined-benefit Pension Plans.* This paragraph covers pension plans in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits. The cost limitations and exclusions pertaining to defined-benefit plans are as follows:

(i)

(A) Except for nonqualified pension plans, pension costs (see 48 CFR 9904.412-40(a)(1)) assigned to the current accounting period, but not funded during it, shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any portion of pension cost computed for a cost accounting period, that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of the Employee's Retirement Income Security Act of 1974 (ERISA), will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412-50(c)(5)).

(B) For nonqualified pension plans, except those using the pay-as-you-go cost method, allowable costs are limited to the amount allocable in accordance with 48 CFR 9904.412-50(d)(2).

(C) For nonqualified pension plans using the pay- as-you-go cost method,

allowable costs are limited to the amounts allocable in accordance with 48 CFR 9904.412-50(d)(3).

(ii) Any amount funded in excess of the pension cost assigned to a cost accounting period is not allowable and shall be accounted for as set forth at 48 CFR 9904.412-50(a)(4), and shall be allowable in the future period to which it is assigned, to the extent it is allocable, reasonable, and not otherwise unallowable.

(iii) Increased pension costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in 48 CFR 9904.413-50(c). Determinations of unallowable costs shall be made in accordance with the actuarial cost method used in calculating pension costs.

(iv) Allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA Section 4062 or 4064 arising from terminating an employee deferred compensation plan will be considered on a case-by-case basis, provided that if insurance was required by the PBGC under ERISA Section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate in the indemnification payment to the extent of its fair share.

(iv) Increased pension costs resulting from the withdrawal of assets from a pension fund and transfer to another employee benefit plan fund, or transfer of assets to another account within the same fund, are unallowable except to the extent authorized by an advance agreement. If the withdrawal of assets from a pension fund is a plan termination under ERISA, the provisions of subparagraph (j)(6) of this subsection apply. The advance agreement shall

(A) State the amount of the Government's equitable share in the gross amount withdrawn or transferred; and

(B) Provide that the Government receive a credit equal to the amount of the Government's equitable share of the gross withdrawal or transfer.

(4) *Pension Adjustments and Asset Reversions.*

(i) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts

and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to subparagraph A.2 of Procurement Guidance Section T3.3.2 or for which cost or pricing data were submitted.

(ii) For all other situations where assets revert to the contractor, or such assets are constructively received by it for any reason, the contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to this Procurement Guidance section 3.3.2. Excise taxes on pension plan asset reversions or withdrawals under this subparagraph (j)(4)(ii) are unallowable in accordance with Cost (38)(b)(6).

(5) *Defined-contribution Pension Plans*. This paragraph covers those pension plans in which the contributions are established in advance and the level of benefits is determined by the contributions made. It also covers profit sharing, savings plans, and other such plans, provided the plans fall within the definition of a pension plan in subparagraph (j)(1) of this subsection.

(i) Allowable pension cost is limited to the net contribution required to be made for a cost accounting period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412-50(c)(5)).

(ii) The provisions of subparagraphs (j)(3)(ii) and (iv) of this subsection apply to defined-contribution plans.

(6) *Pension Plans Using the Pay-as-you-go Cost method*. The cost of pension plans using the pay-as-you-go cost method shall be measured, allocated, and accounted for in accordance with 48 CFR 9904.412 and 9904.413. Pension costs for a pension plan using the pay-as-you-go cost method shall be allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

(7) *Early retirement incentive plans.* An early retirement incentive plan is a plan under which employees receive a bonus or incentive, over and above the requirement of the basic pension plan, to retire early. These plans normally are not applicable to all participants of the basic plan and do not represent life income settlements, and as such would not qualify as pension costs. However,

for contract costing purposes, early retirement incentive payments are allowable subject to the pension cost criteria contained in subparagraphs (j)(3)(ii) through (iv) provided

(i) The costs are accounted for and allocated in accordance with the contractor's system of accounting for pension costs;

(ii) The payments are made in accordance with the terms and conditions of the contractor's plan;

(iii) The plan is applied only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and

(iv) The total of the incentive payments to any employee may not exceed the amount of the employee's annual salary for the previous fiscal year before the employee's retirement.

(8) *Employee Stock Ownership Plans (ESOP).*

(i) An ESOP is an individual stock bonus plan designed specifically to invest in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property. Costs of ESOP's are allowable subject to the following conditions:

(A) Contributions by the contractor in any one year may not exceed 15 percent (25 percent when a money purchase plan is included) of salaries and wages of employees participating in the plan in any particular year.

(B) The contribution rate (ratio of contribution to salaries and wages of participating employees) may not exceed the last approved contribution rate except when approved by the contracting officer based upon justification provided by the contractor. When no contribution was made in the previous year for an existing ESOP, or when a new ESOP is first established, and the contractor proposes to make a contribution in the current year, the contribution rate shall be subject to the contracting officer's approval.

(C) When a plan or agreement exists wherein the

liability for the contribution can be compelled for a specific year, the expense associated with that liability is assignable only to that period. Any portion of the contribution not funded by the time set for filing of the Federal income tax return for that year or any extension thereof shall not be allowable in subsequent years.

(D) When a plan or agreement exists wherein the liability for the contribution cannot be compelled, the amount contributed for any year is assignable to that year provided the amount is funded by the time set for filing of the Federal income tax return for that year.

(E) When the contribution is in the form of stock, the value of the stock contribution shall be limited to the fair market value of the stock on the date that title is effectively transferred to the trust. Cash contributions shall be allowable only when the contractor furnishes evidence satisfactory to the contracting officer demonstrating that stock purchases by the ESOP are or will be at a fair market price; *e.g.*, makes arrangements with the trust permitting the contracting officer to examine purchases of stock by the trust to determine that prices paid are at fair market value. When excessive prices are paid, the amount of the excess will be credited to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the excess price over fair market value shall be credited to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan. When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

(ii) Amounts contributed to an ESOP arising from either

(A) An additional investment tax credit (see 1975 Tax Reduction Act TRASOP's); or

(B) A payroll-based tax credit (see Economic Recovery Tax Act of 1981) are unallowable.

(iii) The requirements of subparagraph (j)(3)(ii) of this subsection are applicable to Employee Stock Ownership Plans.

(k) *Deferred Compensation Other Than Pensions.*

(1) Deferred compensation is an award given by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of receipt of compensation by the employee. Deferred compensation does not include the amount of year-end accruals for salaries, wages, or bonuses that are paid within a reasonable period of time after the end of a cost accounting period. Deferred awards are allowable when they are based on current or future services. Awards made in periods subsequent to the period when the work being remunerated was performed are not allowable.

(2) The costs of deferred awards shall be measured, allocated, and accounted for in compliance with the provisions of 48 CFR 9904.415, Accounting for the Cost of Deferred Compensation.

(3) Deferred compensation payments to employees under awards made before the effective date of 48 CFR 9904.415 are allowable to the extent they would have been allowable under prior acquisition regulations.

(l) *Compensation Incidental to Business Acquisitions.* The following costs are unallowable:

(1) Payments to employees under agreements in which they receive special compensation, in excess of the contractor's normal severance pay practice, if their employment terminates following a change in the management control over, or ownership of, the contractor or a substantial portion of its assets.

(2) Payments to employees under plans introduced in connection with a change (whether actual or prospective) in the management control over, or ownership of, the contractor or a substantial portion of its assets in which those employees receive special compensation, which is contingent upon the employee remaining with the contractor for a specified period of time.

(m) *Fringe Benefits.*

(1) Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. Fringe benefits include, but are not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans. Except as provided otherwise in subparagraph A.2 of Procurement Guidance T3.3.2. “Contracts with Commercial Organizations,” the costs of fringe benefits are allowable to the extent that they are reasonable

and are required by law, employer-employee agreement, or an established policy of the contractor.

(2) That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see Cost (43)(f).

(n) *Employee Rebate and Purchase Discount Plans.* Rebates and purchase discounts, in whatever form, granted to employees on products or services produced by the contractor or affiliates are unallowable.

(o) *Postretirement Benefits Other Than Pensions (PRB).*

(1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, postretirement health care; life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement.

(2) To be allowable, PRB costs must be reasonable and incurred pursuant to law, employer-employee agreement, or an established policy of the contractor. In addition, to be allowable, PRB costs must also be calculated in accordance with subparagraphs (o)(2)(i) or (iii) of this section.

(i) *Cash Basis.* Cost recognized as benefits when they are actually provided, must be paid to an insurer, provider, or other recipient for current year benefits or premiums.

(ii) *Terminal Funding.* If a contractor elects a terminal-funded plan, it does not accrue PRB costs during the working lives of employees. Instead, it accrues and pays the entire PRB liability to an insurer or trustee in a lump sum upon the termination of employees (or upon conversion to such a terminal-funded plan) to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The lump sum is allowable if amortized over a period of 15 years.

(iii) *Accrual Basis.* Accrual costing other than terminal funding must be measured and assigned according to Generally Accepted Accounting Principles and be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The accrual must also be calculated in accordance with generally accepted actuarial principles and practices as promulgated

by the Actuarial Standards Board.

(3) To be allowable, costs must be funded by the time set for filing the Federal income tax return or any extension thereof. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, shall not be allowable in any subsequent year.

(4) Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.

(5) Costs of postretirement benefits in subdivision (o)(2)(iii) of this subsection attributable to past service ("transition obligation") as defined in Financial Accounting Standards Board Statement 106, paragraph 110, are allowable subject to the following limitation: The allowable amount of such costs assignable to a contractor fiscal year cannot exceed the amount of such costs which would be assigned to that contractor fiscal year under the delayed recognition methodology described in paragraphs 112 and 113 of Statement 106.

(6) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data were required or which were subject to subparagraph A.2. “Contracts with Commercial Organization” of Procurement Guidance T3.3.2.

(p) *Limitation on Allowability of Compensation for Certain Contractor Personnel*.

(1) Costs incurred after January 1, 1998, for compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year are unallowable . This limitation is the sole statutory limitation on allowable senior executive compensation costs incurred after January 1, 1998, under new or previously existing contracts. This limitation applies whether or not the affected contracts were previously subject to a statutory limitation on such costs. (Note that pursuant to Section 804 of Pub. L. 105-261, the definition of "senior executive" in (p)(2)(ii) has been changed for compensation costs incurred after January 1, 1999.

(2) As used in this paragraph:

(i) "Compensation" means the total amount of wages, salary, bonuses, deferred compensation (see subparagraph (k) of this subsection), and employer contributions to defined contribution pension plans (see subparagraphs (j)(5) and (j)(7) of this subsection), for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the fiscal year.

(ii) "Senior executive" means

(A) Prior to January 2, 1999;

(*aa)* The Chief Executive Officer (CEO) or any individual acting in a similar capacity at the contractor's headquarters;

(*bb*) The four most highly compensated employees in management positions at the contractor's headquarters, other than the CEO; and

(*cc*) If the contractor has intermediate home offices or segments that report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.

(B) Effective January 2, 1999, the five most highly compensated employees in management positions at each home office and each segment of the contractor, whether or not the home office or segment reports directly to the contractor's headquarters.

(iii) "Fiscal year" means the fiscal year established by the contractor for accounting purposes.

(iv) "Contractor's headquarters" means the highest organizational level from which executive compensation costs are allocated to Government contracts.

(q) *Employee Stock Ownership Plans (ESOP)*

(1) An ESOP is a stock bonus plan designed to invest primarily in the stock of the employer corporation. The contractor’s contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property.
(2) Costs of ESOPs are allowable subject to the following conditions:

(i) For ESOPs that meet the definition of a pension plan at, the contractor:

(A) Measures, assigns, and allocates the costs; and

(B) Funds the pension costs by the time set for filing of the Federal income tax return or any extension. Pension costs assigned to the current year, but not funded by the tax return time, are not allowable in any subsequent year.

(ii) For ESOPs that do not meet the definition of a pension plan, the contractor measures, assigns, and allocates costs in accordance with 48 CFR 9904.415.

(iii) Contributions by the contractor in any one year that exceed the deductibility limits of the Internal Revenue Code for that year are unallowable.

(iv) When the contribution is in the form of stock, the value f the stock contribution is limited to the fair market value of the stock on the date that title is effectively transferred to the trust.

(v) When the contribution is in the form of cash:

(A) Stock purchases by the ESOP in excess of fair market value are unallowable; and

(B) When stock purchases are in excess of fair market value, the contractor must credit the amount of the excess to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the contractor shall credit the excess price over fair market value to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan.

(v) When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

***(5) Contingencies.***

(a) "Contingency," as used in this subpart, means a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.

(b) Costs for contingencies are generally unallowable for historical costing purposes because such costing deals with costs incurred and recorded on the contractor's books. However, in some cases, as for example, terminations, a contingency factor may be recognized when it is applicable to a past period to give recognition to minor unsettled factors in the interest of expediting settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those that may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; *e.g.*, anticipated costs of rejects and defective work. Contingencies of this category are to be included in the estimates of future costs so as to provide the best estimate of performance cost.

(2) Those that may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Government; *e.g.*, results of pending litigation. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately (including the basis upon which the contingency is computed) to facilitate the negotiation of appropriate contractual coverage.

**(6)** ***Contributions or Donations***.

Contributions or donations, including cash, property and services, regardless of recipient, are unallowable, except as provided in Cost (1)(c)(3).

**(7)** ***Cost of Money***

(a) *General*. Cost of money:

(1) Is an imputed cost that is not a form of interest on borrowings [see Cost (17)];

(2) Is an "incurred cost" for cost-reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts; and

(3) Refers to

(i) Facilities capital cost of money (48 CFR 9904.414); and

(ii) Cost of money as an element of the cost of capital assets under construction (48 CFR 9904.417).

(b) Cost of money is allowable, provided-

(1) It is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable;

(2) The requirements of Cost (48), which limit the allowability of cost of money, are followed; and

(3) The estimated facilities capital cost of money is specifically identified and proposed in cost proposals relating to the contract under which the cost is to be claimed.

(c) Actual interest cost in lieu of the calculated imputed cost of money is unallowable.

**(8) *Depreciation*.**

(a) Depreciation on a contractor's plant, equipment, and other capital facilities is an allowable contract cost, subject to the limitations contained in this cost principle. For tangible personal property, only estimated residual values that exceed 10 percent of the capitalized cost of the asset need be used in establishing depreciable costs. Where either the declining balance method of depreciation or the class life asset depreciation range system is used, the residual value need not be deducted from capitalized cost to determine depreciable costs. Depreciation cost that would significantly reduce the book value of a tangible capital asset below its residual value is unallowable.

(b) Contractors having contracts subject to 48 CFR 9904.409, Depreciation of Tangible Capital Assets, shall adhere to the requirement of that standard for all fully CAS-covered contracts and may elect to adopt the standard for all other contracts. All requirements of 48 CFR 9904.409 are applicable if the election is made, and contractors must continue to follow it until notification of final acceptance of all deliverable items on all open negotiated Government contracts.

(c) For contracts to which 48 CFR 9904.409 is not applied, except as indicated in paragraphs (g) and (h) of this subsection, allowable depreciation shall not exceed the amount used for financial accounting purposes, and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same segment on non-Government business.

(d) Depreciation, rental, or use charges are unallowable on property acquired from the Government at no cost by the contractor or by any division, subsidiary, or affiliate of the contractor under common control.

(e) The depreciation on any item which meets the criteria for allowance at price under Cost (23)(e) may be based on that price, provided the same policies and procedures are used for costing all business of the using division, subsidiary, or organization under common control.

(f) No depreciation or rental is allowed on property fully depreciated by the contractor or by

any division, subsidiary, or affiliate of the contractor under common control. However, a reasonable charge for using fully depreciated property may be agreed upon and allowed . In determining the charge, consideration shall be given to cost, total estimated useful life at the time of negotiations, effect of any increased maintenance charges or decreased efficiency due to age, and the amount of depreciation previously charged to Government contracts or subcontracts.

(g) Whether or not the contract is otherwise subject to CAS, the requirements of Cost (48) shall be observed.

(h) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets is limited to the amounts that would have been allowed had the assets not been written down [see Cost (13(h)]. However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

(i) In the event the contractor reacquires property involved in a sale and leaseback arrangement, allowable depreciation of reacquired property shall be based on the net book value of the asset as of the date the contractor originally became a lessee of the property in the sale and leaseback arrangement:

(1) Adjusted for any allowable gain or loss; and

(2) Less any amount of depreciation expense included in the calculation of the amount that would have been allowed had the contractor retained title.

j. A "capital lease," as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, is subject to the requirements of this cost principle. FAS-13 requires that capital leases be treated as purchased assets, *i.e.*, be capitalized, and the capitalized value of such assets be distributed over their useful lives as depreciation charges or over the leased life as amortization charges, as appropriate, except that:

(1) Lease costs under a sale and leaseback arrangement are allowable up to the amount that would have been allowed had the contractor retained title to the asset; and

(2) If it is determined that the terms of the capital lease have been significantly affected by the fact that the lessee and lessor are related, depreciation charges are not allowable in excess of those that would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

**(9) *Economic Planning Costs.***

Economic planning costs are the costs of general long-range management planning that is concerned with the future overall development of the contractor's business and that may take into account the eventual possibility of economic dislocations or fundamental alterations in

those markets in which the contractor currently does business. Economic planning costs are allowable. Economic planning costs do not include organization or reorganization costs covered by Cost.(24). See Cost (35) for market planning costs other than economic planning costs.

**(10)** ***Employee Morale, Health, Welfare, Food Service, and Dormitory Costs and Credits*****.**

(a) Aggregate costs incurred on activities designed to improve working conditions, employer- employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, subject to the limitations contained in this subsection. Some examples of allowable activities are-

(1) House publications;

(2) Health clinics;

(3) Wellness/fitness centers;

(4) Employee counseling services; and

(5) Food and dormitory services for the contractor's employees at or near the contractor's facilities. These services include-

(i) Operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations; and

(ii) Similar types of services.

(b) *Costs of Gifts Are Unallowable.* (Gifts do not include awards for performance or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.)

(c) Costs of recreation are unallowable, except for the costs of employees' participation in company sponsored sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

(d)

(1) The allowability of food and dormitory losses are determined by the following factors:

(i) Losses from operating food and dormitory services are allowable only if the contractor's objective is to operate such services on a break-even basis.

(ii) Losses sustained because food services or lodging accommodations are furnished without charge or at prices

or rates which obviously would not be conducive to the accomplishment of the objective in paragraph (d)(1)(i) of this subsection are not allowable, except as described in paragraph (d)(1)(iii) of this subsection.

(iii) A loss may be allowed to the extent that the contractor can demonstrate that unusual circumstances exist such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. The following are examples of unusual circumstances:

(A) The contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available.

(B) The contractor's charged (but unproductive) labor costs would be excessive if the services were not available.

(C) If cessation or reduction of food or dormitory operations will not otherwise yield net cost savings.

(2) Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(e) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant, and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see subparagraph (f) of this subsection).

(f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, are allowable only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

**(11)** ***Entertainment Costs*****.** Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

**(12)** ***Fines, Penalties, and Mischarging Costs.***

(a) Costs of fines and penalties resulting from violations of, or failure of the contractor to

comply with, Federal, State, local, or foreign laws and regulations, are unallowable except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(b) Costs incurred in connection with, or related to, the mischarging of costs on Government contracts are unallowable when the costs are caused by, or result from, alteration or destruction of records, or other false or improper charging or recording of costs. Such costs include those incurred to measure or otherwise determine the magnitude of the improper charging, and costs incurred to remedy or correct the mischarging, such as costs to rescreen and reconstruct records.

**(13)** ***Gains and Losses on Disposition or Impairment of Depreciable Property or Other Capital Assets.***

(a) Gains and losses from the sale, retirement, or other disposition [but see Cost (16)] of depreciable property shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to those assets was included [but see subparagraph (d) of this subsection]. However, no gain or loss shall be recognized as a result of the transfer of assets in a business combination . See subparagraph Cost (48), "Asset Valuations Resulting from Business Combinations."

(b) Notwithstanding the provisions in paragraph (c) of this subsection, when costs of depreciable property are subject to the sale and leaseback limitations:

(1) The gain or loss is the difference between the net amount realized and the undepreciated balance of the asset on the date the contractor becomes a lessee; and

(2) When the application of (b)(1) of this subsection results in a loss:

(i) The allowable portion of the loss is zero if the fair market value exceeds the undepreciated balance of the asset on the date the contractor becomes a lessee; and

(ii) The allowable portion of the loss is limited to the difference between the fair market value and the undepreciated balance of the asset on the date the contractor becomes a lessee if the fair market value is less than the undepreciated balance of the asset on the date the contractor becomes a lessee.

(c) Gains and losses on disposition of tangible capital assets, including those acquired under capital leases, shall be considered as adjustments of depreciation costs previously recognized. The gain or loss for each asset disposed of is the difference between the net amount realized, including insurance proceeds from involuntary conversions, and its undepreciated balance. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost (or for assets acquired under a capital lease, the value at which the leased asset is capitalized) of the asset and its undepreciated balance

(except see subdivisions (c)(2)(i) or (ii) of this section).

(d) Special considerations apply to an involuntary con-version which occurs when a contractor's property is destroyed by events over which the owner has no control, such as fire, windstorm, flood, accident, theft, etc., and an insurance award is recovered. The following govern involuntary conversions:

(1) When there is a cash award and the converted asset is not replaced, gain or loss shall be recognized in the period of disposition. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost of the asset and its undepreciated balance.

(2) When the converted asset is replaced, the contractor shall either

(i) Adjust the depreciable basis of the new asset by the amount of the total realized gain or loss; or

(ii) Recognize the gain or loss in the period of disposition, in which case the Government shall participate to the same extent as outlined in subparagraph (d)(1) of this subsection.

(e) Gains and losses on the disposition of depreciable property shall not be recognized as a separate charge or credit when

(1) Gains and losses are processed through the depreciation reserve account and reflected in the depreciation allowable under Cost.(8); or

(2) The property is exchanged as part of the purchase price of a similar item, and the gain or loss is taken into consideration in the depreciation cost basis of the new item.

(f) Gains and losses arising from mass or extraordinary sales, retirements, or other disposition other than through business combinations shall be considered on a case-by-case basis.

(g) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property shall be excluded in computing contract costs.

(h) With respect to long-lived tangible and identifiable intangible assets held for use, no loss shall be allowed for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (*e.g.*, environmental damage, idle facilities arising from a declining business base, etc.). If depreciable property or other capital assets have been written down from carrying value to fair value due to impairments, gains or losses upon disposition shall be the amounts that would have been allowed had the assets not been written down.

**(14)** ***Idle Facilities and Idle Capacity Costs.***

(a) "Costs of idle facilities or idle capacity," as used in this subsection, means costs such as maintenance, repair, housing, rent, and other related costs; *e.g.*, property taxes, insurance, and depreciation.

(1) "Facilities," as used in this subsection, means plant or any portion thereof (including land integral to the operation), equipment, individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the contractor.

(2) "Idle capacity," as used in this subsection, means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one-shift basis, less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multiple-shift basis may be used in the calculation instead of a one-shift basis if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(3) "Idle facilities," as used in this subsection, means completely unused facilities that are excess to the contractor's current needs.

(b) The costs of idle facilities are unallowable unless the facilities

(1) Are necessary to meet fluctuations in workload; or

(2) Were necessary when acquired and are now idle because of changes in requirements, production economies, reorganization, termination, or other causes which could not have been reasonably foreseen. (Costs of idle facilities are allowable for a reasonable period, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of the idle facilities (but see Cost (39)).

(c) Costs of idle capacity are costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable provided the capacity is necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

(d) Any costs to be paid directly by the Government for idle facilities or idle capacity reserved for defense mobilization production shall be the subject of a separate agreement.

**(15) *Independent Research and Development and Bid and Proposal Costs*.**

(a) *Definitions.*

(1) "Applied research," as used in this subsection, means that effort which (1) normally follows basic research, but may not be severable from the related

basic research, (2) attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques, and (3) attempts to advance the state of the art. Applied research does not include efforts whose principal aim is design, development, or test of specific items or services to be considered for sale; these efforts are within the definition of the term "development," defined in this subsection.

(2) "Basic research," as used in this subsection, means that research which is directed toward increase of knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof.

(3) "Bid and proposal (B&P) costs," as used in this subsection, means the costs incurred in preparing, submitting, and supporting bids and proposals (whether or not solicited) on potential Government or non-Government contracts. The term does not include the costs of effort sponsored by a grant or cooperative agreement, or required in the performance of a contract.

(4) "Company," as used in this subsection, means all divisions, subsidiaries, and affiliates of the contractor under common control.

(5) "Development," as used in this subsection, means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of a potential new product or service (or of an improvement in an existing product or service) for the purpose of meeting specific performance requirements or objectives. Development includes the functions of design engineering, prototyping, and engineering testing. Development excludes

(i) Subcontracted technical effort which is for the sole purpose of developing an additional source for an existing product, or

(ii) Development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques not intended for sale.

(iii) "Independent research and development (IR&D)," as used in this subsection, means a contractor's IR&D cost that consists of projects falling within the four following areas: (1) basic research, (2) applied research, (3) development, and (4) systems and other concept formulation studies. The term does not include the costs of effort sponsored by a grant or required in the performance of a contract. IR&D effort shall not include technical effort expended in developing and preparing technical data specifically to support submitting a bid or proposal.

(iv) "Systems and other concept formulation studies," as

used in this subsection, means analyses and study efforts either related to specific IR&D efforts or directed toward identifying desirable new systems, equipment or components, or modifications and improvements to existing systems, equipment, or components.

(b) *Composition and Allocation of Costs.* The requirements of 48 CFR 9904.420, Accounting for independent research and development costs and bid and proposal costs, are incorporated in their entirety and shall apply as follows

(1) *Fully-CAS-covered contracts.* Contracts that are fully-CAS-covered shall be subject to all requirements of 48 CFR 9904.420.

(2) *Modified CAS-covered and Non-CAS-covered Contracts.* Contracts that are not CAS-covered or that contain terms or conditions requiring modified CAS coverage shall be subject to all requirements of 48 CFR 9904.420 except 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2), which are not then applicable. However, non-CAS-covered or modified CAS-covered contracts awarded at a time the contractor has CAS-covered contracts requiring compliance with 48 CFR 9904.420, shall be subject to all the requirements of 48 CFR 9904.420. When the requirements of 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2) are not applicable, the following apply:

(i) IR&D and B&P costs shall be allocated to final cost objectives on the same basis of allocation used for the G&A expense grouping of the profit center in which the costs are incurred. However, when IR&D and B&P costs clearly benefit other profit centers or benefit the entire company, those costs shall be allocated through the G&A of the other profit centers or through the corporate G&A, as appropriate.

(ii) If allocations of IR&D or B&P through the G&A base do not provide equitable cost allocation, the contracting officer may approve use of a different base.

(c) *Allowability.* Except as provided in subparagraphs (d) and (e) of this subsection, or as provided in agency regulations, costs for IR&D and B&P are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable.

(d) *Deferred IR&D costs.*

(1) IR&D costs that were incurred in previous accounting periods are unallowable, except when a contractor has developed a specific product at its own risk in anticipation of recovering the development costs in the sale price of the product provided that

(i) The total amount of IR&D costs applicable to the product can be identified;

(ii) The proration of such costs to sales of the product is reasonable;

(iii) The contractor had no Government business during the time that the costs were incurred or did not allocate IR&D costs to Government contracts except to prorate the cost of developing a specific product to the sales of that product; and

(iv) No costs of current IR&D programs are allocated to Government work except to prorate the costs of developing a specific product to the sales of that product.

(2) When deferred costs are recognized, the contract (except firm-fixed-price and fixed-price with economic price adjustment) will include a specific provision setting forth the amount of deferred IR&D costs that are allocable to the contract. The negotiation memorandum will state the circumstances pertaining to the case and the reason for accepting the deferred costs.

(e) *Cooperative Arrangements.*

(1) IR&D costs may be incurred by contractors working jointly with one or more non-Federal entities pursuant to a cooperative arrangement (for example, joint ventures, limited partnerships, teaming arrangements, and collaboration and consortium arrangements). IR&D costs also may include costs contributed by contractors in performing cooperative research and development agreements, or similar arrangements, entered into under

(i) Section 12 of the Stevenson-Wydler Technology Transfer Act of 1980 (15 U.S.C. 3710(a));

(ii) Sections 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)(5) and (6));

(iii) 10 U.S.C. 2371 for the Defense Advanced Research Projects Agency; or

(iv) Other equivalent authority.

(2) IR&D costs incurred by a contractor pursuant to these types of cooperative arrangements should be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

(3) Costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

**(16)** ***Insurance and Indemnification.***

(a) Insurance by purchase or by self-insuring includes

(1) Coverage the contractor is required to carry or to have approved, under the terms of the contract; and

(2) Any other coverage the contractor maintains in connection with the general conduct of its business.

(b) For purposes of applying the provisions of this subsection, the Government considers insurance provided by captive insurers (insurers owned by or under control of the contractor) as self-insurance, and charges for it shall comply with the provisions applicable to self-insurance costs in this subsection. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the Government will consider the insurance as purchased insurance.

(c) Whether or not the contract is subject to CAS, self-insurance charges are allowable subject to paragraph (e) of this subsection and the following limitations:

(1) The contractor shall measure, assign, and allocate costs in accordance with 48 CFR 9904.416, Accounting for Insurance Costs.

(2) The contractor shall comply with Procurement Guidance T3.4.1. However, approval of a contractor's insurance program does not constitute a determination as to the allowability of the program's cost.

(3) If purchased insurance is available, any self-insurance charge plus insurance administration expenses in excess of the cost of comparable purchased insurance plus associated insurance administration expenses is unallowable.

(4) Self-insurance charges for risks of catastrophic losses are unallowable.

(d) Purchased insurance costs are allowable, subject to paragraph (e) of this subsection and the following limitations:

(1) For contracts subject to full CAS coverage, the contractor shall measure, assign, and allocate costs in accordance with 48 CFR 9904.416.

(2) For all contracts, premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor but who reinsure with a captive insurer of the contractor) are unallowable to the extent they exceed the sum of

(i) The amount that would have been allowed had the contractor insured directly with the captive

insurer; and

(ii) Reasonable fronting company charges for services rendered.

(3) Actual losses are unallowable unless expressly provided for in the contract, except-

(i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable; and

(ii) Minor losses, such as spoilage, breakage, and disappearance of small hand tools that occur in the ordinary course of business and that are not covered by insurance, are allowable.

(e) Self-insurance and purchased insurance costs are subject to the cost limitations in the following paragraphs:

(1) Costs of insurance required or approved pursuant to the contract are allowable.

(2) Costs of insurance maintained by the contractor in connection with the general conduct of its business are allowable subject to the following limitations:

(i) Types and extent of coverage shall follow sound business practice, and the rates and premiums shall be reasonable.

(iii) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit.

(iv) The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is allowable only when the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

(iv) Costs of insurance for the risk of loss of, or damage to, Government property are allowable only to the

extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or other equivalent representatives.

(v) Costs of insurance on the lives of officers, partners, proprietors, or employees are allowable only to the extent that the insurance represents additional compensation [see Procurement Guidance T3.3.2].

(3) The cost of insurance to protect the contractor against the costs of correcting its own defects in materials and workmanship is unallowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship are allowable as a normal business expense.

(4) Premiums for retroactive or backdated insurance written to cover losses that have occurred and are known are unallowable.

(5) The Government is obligated to indemnify the contractor only to the extent authorized by law, as expressly provided for in the contract, except as provided in paragraph (d)(3) of this subsection.

(6) Late premium payment charges related to employee deferred compensation plan insurance incurred pursuant to Section 4007 (29 U.S.C. 1307) or Section 4023 (29 U.S.C. 1323) of the Employee Retirement Income Security Act of 1974 are unallowable.

**(17)** ***Interest and Other Financial Costs.*** Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with preparing prospectuses, costs of preparing and issuing stock rights, and directly associated costs are unallowable except for interest assessed by State or local taxing authorities under the conditions specified in Cost (38) [but see Cost (25)].

**(18)** ***Labor Relations Costs*****.** (a) Costs incurred in maintaining satisfactory relations between the contractor and its employees, (other than those made unallowable in paragraph (b) of this section), including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

(b) As required by Executive Order 13494, Economy in Government Contracting, costs of any activities undertaken to persuade employees, of any entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing are unallowable. Examples of unallowable costs in paragraph (b) of this section include, but are not limited to, the costs of—

(1) Preparing and distributing materials;

(2) Hiring or consulting legal counsel or consultants;

(3) Meetings (including paying the salaries of the attendees at meetings held for this purpose); and

(4) Planning or conducting activities by managers, supervisors, or union representatives during work hours.

**(19)** ***Lobbying and Political Activity Costs.***

(a) Costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activities;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence

(i) The introduction of Federal, state, or local legislation, or

(ii) The enactment or modification of any pending Federal, state, or local legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence

(i) The introduction of Federal, state, or local legislation, or

(ii) The enactment or modification of any pending Federal, state, or local legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign;

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities; or

(6) Costs incurred in attempting to improperly influence, either directly or indirectly, an employee or officer of the Executive branch of the Federal Government to give consideration to or act regarding a regulatory or contract matter.

(b) The following activities are excepted from the coverage of (a) of this section:

(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing testimony, statements or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for transportation, lodging or meals are unallowable unless incurred for the purpose of offering testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

(2) Any lobbying made unallowable by subparagraph (a)(3) of this subsection to influence state or local legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract.

(3) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) When a contractor seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs.

(d) Contractors shall maintain adequate records to demonstrate that the certification of costs as being allowable or unallowable.

(e) Existing procedures should be utilized to resolve in advance any significant questions or disagreements concerning the interpretation or application of this subsection.

**(20)** ***Losses on Other Contracts***. An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts) is unallowable.

**(21)** ***RESERVED***

**(22)** ***Manufacturing and Production Engineering Costs.***

(a) The costs of manufacturing and production engineering effort as described in (1) through (4) of this subparagraph are all allowable:

(1) Developing and deploying new or improved materials, systems, processes, methods, equipment, tools and techniques that are or are expected to be used in producing products or services;

(2) Developing and deploying pilot production lines;

(3) Improving current production functions, such as plant layout, production scheduling and control, methods and job analysis, equipment capabilities and capacities, inspection techniques, and tooling analysis (including tooling design and application improvements); and

(4) Material and manufacturing producibility analysis for production suitability and to optimize manufacturing processes, methods, and techniques.

(b) This cost principle does not cover

(1) Basic and applied research effort (as defined in Cost (15)(1)) related to new technology, materials, systems, processes, methods, equipment, tools and techniques. Such technical effort is governed by Cost (15), Independent Research and Development and Bid and Proposal Costs; and

(2) Development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques that are intended for sale is also governed by Cost (15).

(c) Where manufacturing or production development costs are capitalized or required to be capitalized under the contractor's capitalization policies, allowable cost will be determined in accordance with the requirements of Cost (8), “Depreciation”.

**(23)** ***Material Costs.***

(a) Material costs include the costs of such items as raw materials, parts, subassemblies, components, and manufacturing supplies, whether purchased or manufactured by the contractor, and may include such collateral items as inbound transportation and in-transit insurance. In computing material costs, the contractor shall consider reasonable overruns, spoilage, or defective work (unless otherwise provided in any contract provision relating to inspecting and correcting defective work).

(b) The contractor shall-

(1) Adjust the costs of material for income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap, salvage, and material returned to vendors; and

(2) Credit such income and other credits either directly to the cost of the material or allocate such income and other credits as a credit to indirect costs. When the contractor can demonstrate that failure to take cash discounts was reasonable, the contractor does not need to credit lost discounts.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs; provided such adjustments relate to the period of contract performance.

(d) When materials are purchased specifically for and are identifiable solely with performance under a contract, the actual purchase cost of those materials should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable.

(e) Allowance for all materials, supplies and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at price when

(1) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary or affiliate of the contractor under a common control; and

(2) The item being transferred qualifies for an exception and the contracting officer has not determined the price to be unreasonable.

(f) When a commercial item under paragraph (e) of this subsection is transferred at a price based on a catalog or market price, the contractor-

(1) Should adjust the price to reflect the quantities being acquired; and

(2) May adjust the price to reflect the actual cost of any modifications necessary because of contract requirements.

**(24)** ***Organization Costs.***

(a) Except as provided in subparagraph (b) of this subsection, expenditures in connection with (1) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, (2) resisting or planning to resist the reorganization of the corporate structure of a business or a change in the controlling interest in the ownership of a business, and (3) raising capital (net worth plus long-term liabilities), are unallowable. Such expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counselors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders, whether or not additional capital is raised.

(b) The cost of activities primarily intended to provide compensation will not be considered organizational costs subject to this subsection, but will be governed by Cost (4). These activities include acquiring stock for

(1) Executive bonuses,

(2) Employee savings plans, and

(3) Employee stock ownership plans.

**(25)** ***Other Business Expenses***. The following types of recurring costs are allowable:

(a) Registry and transfer charges resulting from changes in ownership of securities issued by the contractor.

(b) Cost of shareholders' meetings.

(c) Normal proxy solicitations.

(d) Preparing and publishing reports to shareholders.

(e) Preparing and submitting required reports and forms to taxing and other regulatory bodies.

(f) Incidental costs of directors' and committee meetings.

(g) Other similar costs.

**(26)** ***Plant Protection Costs***. Costs of items such as

(a) Wages, uniforms, and equipment of personnel engaged in plant protection,

(b) Depreciation on plant protection capital assets, and

(c) Necessary expenses to comply with military requirements, are allowable.

**(27)** ***Patent Costs*****.**

(a) The following patent costs are allowable to the extent that they are incurred as requirements of a Government contract [but see Cost (30)]:

(1) Costs of preparing invention disclosures, reports, and other documents.

(2) Costs for searching the art to the extent necessary to make the invention disclosures.

(3) Other costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is to be conveyed to the Government.

(b) General counseling services relating to patent matters, such as advice on patent laws, regulations, clauses, and employee agreements, are allowable [but see Cost (30)].

(c) Other than those for general counseling services, patent costs not required by the contract are unallowable. [See also Cost (34)].

**(28)*Plant Reconversion Costs.*** Plant reconversion costs are those incurred in restoring or rehabilitating the contractor's facilities to approximately the same condition existing immediately before the start of the Government contract, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before costs are incurred.

Care should be exercised to avoid duplication through allowance as contingencies, additional profit or fee, or in other contracts.

**(29) *Precontract Costs.*** Precontract costs are those incurred before the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract.

**(30) *Professional and Consultant Service Costs.***

(a) *Definition.* "Professional and consultant services", as used in this subpart, are those services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor. Examples include those services acquired by contractors or subcontractors in order to enhance their legal, economic, financial, or technical positions. Professional and consultant services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance, such as studies, analyses, evaluations, liaison with Government officials, or other forms of representation.

(b) Costs of professional and consultant services are allowable subject to this subparagraph and subparagraphs (c) through (f) of this subsection when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government [but see Costs (27) and (44)].

(c) Costs of professional and consultant services performed under any of the following circumstances are unallowable:

(1) Services to improperly obtain, distribute, or use information or data

protected by law or regulation .

(2) Services that are intended to improperly influence the contents of solicitations, the evaluation of proposals or quotations, or the selection of sources for contract award, whether award is by the Government, or by a prime contractor or subcontractor.

(3) Any other services obtained, performed, or otherwise resulting in violation of any statute or regulation prohibiting improper business practices or conflicts of interest.

(4) Services performed which are not consistent with the purpose and scope of the services contracted for or otherwise agreed to.

(d) In determining the allowability of costs (including retainer fees) in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the contracting officer shall consider the following factors, among others:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the contractor's capability in the particular area.

(3) The past pattern of acquiring such services and their costs, particularly in the years prior to the award of Government contracts.

(4) The impact of Government contracts on the contractor's business.

(5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

(6) Whether the service can be performed more economically by employment rather than by contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fee charged, especially on non-Government contracts.

(8) Adequacy of the contractual agreement for the service (*e.g.*, description of the service, estimate of time required, rate of compensation, termination provisions).

(e) Retainer fees, to be allowable, must be supported by evidence that

(1) The services covered by the retainer agreement are necessary and customary;

(2) The level of past services justifies the amount of the retainer fees (if no services were rendered, fees are not automatically unallowable);

(3) The retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, when factors such as cost and level of expertise are considered; and

(4) The actual services performed are documented in accordance with subparagraph (f) of this subsection.

(f) Fees for services rendered shall be allowable only when supported by evidence of the nature and scope of the service furnished. [See also Cost (35)]. However, retainer agreements generally are not based on specific statements of work. Evidence necessary to determine that work performed is proper and does not violate law or regulation shall include

(1) Details of all agreements (*e.g.*, work requirements, rate of compensation, and nature and amount of other expenses, if any) with the individuals or organizations providing the services and details of actual services performed;

(2) Invoices or billings submitted by consultants, including sufficient detail as to the time expended and nature of the actual services provided; and

(3) Consultants' work products and related documents, such as trip reports indicating persons visited and subjects discussed, minutes of meetings, and collateral memoranda and reports.

**(31)** ***Recruitment Costs.***

(a) Subject to subparagraph (b) of this subsection, the following costs are allowable:

(1) Costs of help-wanted advertising.

(2) Costs of operating an employment office needed to secure and maintain an adequate labor force.

(3) Costs of operating an aptitude and educational testing program.

(4) Travel costs of employees engaged in recruiting personnel.

(5) Travel costs of applicants for interviews.

(6) Costs for employment agencies, not in excess of standard commercial rates.

(b) Help-wanted advertising costs are unallowable if the advertising

(1) Does not describe specific positions or classes of positions; or

(2) Includes material that is not relevant for recruitment purposes, such as

extensive illustrations or descriptions of the company's products or capabilities.

***(32) Relocation Costs.***

(a) Relocation costs are costs incident to the permanent change of assigned work location (for a period of 12 months or more) of an existing employee or upon recruitment of a new employee. The following types of relocation costs are allowable as noted, subject to the limitations in paragraphs (b) and (f) of this subsection:

(1) Costs of travel of the employee and members of the employee's immediate family [see Cost (43)] and transportation of the household and personal effects to the new location.

(2) Costs of finding a new home, such as advance trips by the employee or the spouse, or both, to locate living quarters, and temporary lodging during the transition period for the employee and members of the employee's immediate family.

(3) Closing costs incident to the disposition of the actual residence owned by the employee when notified of the transfer (*e.g.*, brokerage fees, legal fees, appraisal fees, points, and finance charges), except that these costs, when added to the costs described in paragraph (a)(4) of this subsection, shall not exceed 14 percent of the sales price of the property sold.

(4) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, and mortgage interest, after the settlement date or lease date of a new permanent residence, except that these costs, when added to the costs described in paragraph (a)(3) of this subsection, shall not exceed 14 percent of the sales price of the property sold.

(5) Other necessary and reasonable expenses normally incident to relocation, such as disconnecting and connecting household appliances; automobile registration; driver's license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(6) Costs incident to acquiring a home in the new work location, except that-

(i) These costs are not allowable for existing employees or newly recruited employees who were not homeowners before the relocation; and

(ii) The total costs shall not exceed 5 percent of the purchase price of the new home.

(7) Mortgage interest differential payments, except that these costs are not

allowable for existing or newly recruited employees who, before the relocation, were not homeowners and the total payments are limited to an amount determined as follows:

(i) The difference between the mortgage interest rates of the old and new residences times the current balance of the old mortgage times 3 years.

(ii) When mortgage differential payments are made on a lump- sum basis and the employee leaves or is transferred again in less than 3 years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual time of the relocation.

(8) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payments may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times 3 years.

(9) Costs of canceling an unexpired lease.

(10) Payments for increased employee income or Federal Insurance Contributions Act (26 U.S.C. chapter 21) taxes incident to allowable reimbursed relocation costs.

(11) Payments for spouse employment assistance.

(b) The costs described in paragraph (a) of this subsection must also meet the following criteria to be considered allowable:

(1) The move must be for the benefit of the employer.

(2) Reimbursement must be in accordance with an established policy or practice that is consistently followed by the employer and is designed to motivate employees to relocate promptly and economically.

(3) The costs must not be otherwise unallowable under Procurement Guidance Section T3.3.2.

(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in paragraph (a)(5) of this subsection, a flat amount, not to exceed $5,000, may be allowed in lieu of actual costs.

(5) Reimbursement on a lump-sum basis may be allowed for any of the following relocation costs when adequately supported by data on the individual elements (*e.g.*, transportation, lodging, and meals) comprising the build-up of

the lump-sum amount to be paid based on the circumstances of the particular employee's relocation:

(i) Costs of finding a new home.

(ii) Costs of travel to the new location (but not costs for the transportation of household goods).

(iii) Costs of temporary lodging.

(iv) When reimbursement on a lump-sum basis is used, any adjustments to reflect actual costs are unallowable.

(c) The following types of costs are unallowable:

(1) Loss on the sale of a home.

(2) Costs incident to acquiring a home in the new location as follows:

(i) Real estate brokers' fees and commissions.

(ii) Costs of litigation.

(iii) Real and personal property insurance against damage or loss of property.

(iv) Mortgage life insurance.

(v) Owner's title policy insurance when such insurance was not previously carried by the employee on the old residence. (However, the cost of a mortgage title policy is allowable.)

(vi) Property taxes and operating or maintenance costs.

(3) Continuing mortgage principal payments on a residence being sold.

(4) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

(d) If relocation costs for an employee have been allowed either as an allocable indirect or direct cost, and the employee resigns within 12 months for reasons within the employee's control, the contractor shall refund or credit the relocation costs to the Government.

(e) Subject to the requirements of subparagraphs (a) through (d) of this section, the costs of family movements and of personnel movements of a special or mass nature are allowable.

The cost, however, should be assigned on the basis of work (contracts) or time period benefited.

(f) Relocation costs (both outgoing and return) of employees who are hired for performance on specific contracts or long-term field projects are allowable if

(1) The term of employment is 12 months or more;

(2) The employment agreement specifically limits the duration of employment to the time spent on the contract or field project for which the employee is hired;

(3) The employment agreement provides for return relocation to the employee's permanent and principal home immediately prior to the outgoing relocation, or other location of equal or lesser cost; and

(4) The relocation costs are determined under the rules of subparagraphs (a) through (d) of this section. However, the costs to return employees, who are released from employment upon completion of field assignments pursuant to their employment agreements, are not subject to the refund or credit requirement of subparagraph (d).

**(33) *Rental Costs.***

(a) This subsection is applicable to the cost of renting or leasing real or personal property acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS-13), Accounting for Leases. Compliance with A.2.e.(8)(m) requires that assets acquired by means of capital leases, as defined in FAS-13, shall be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, or over the lease term as amortization charges, as appropriate (but see subparagraph (b)(4) of this section).

(b) The following costs are allowable:

(1) Rental costs under operating leases, to the extent that the rates are reasonable at the time of the lease decision, after consideration of

(i) Rental costs of comparable property, if any;

(ii) Market conditions in the area;

(iii) The type, life expectancy, condition, and value of the property leased;

(iv) Alternatives available; and

(v) Other provisions of the agreement.

(2) Rental costs under a sale and leaseback arrangement only up to the amount the contractor would be allowed if the contractor retained title.

(3) Charges in the nature of rent for property between any divisions, subsidiaries, or organizations under common control, to the extent that they do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to this Procurement Guidance Section T3.3.2), provided that no part of such costs shall duplicate any other allowed cost. Rental cost of personal property leased from any division, subsidiary, or affiliate of the contractor under common control, that has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed in accordance with subparagraph (b)(1) of this subsection.

(4) Rental costs under leases entered into before March 1, 1970 for the remaining term of the lease (excluding options not exercised before March 1, 1970) to the extent they would have been allowable under Defense Acquisition Regulation (formerly ASPR) 15-205.34 or Federal Procurement Regulations section 1-15.205-34 in effect January 1, 1969.

(c) The allowability of rental costs under unexpired leases in connection with terminations is treated in (39) of this subsection.

**(34) *Royalties and Other Costs for Use of Patents.***

(a) Royalties on a patent or amortization of the cost of purchasing a patent or patent rights necessary for the proper performance of the contract and applicable to contract products or processes are allowable unless

(1) The Government has a license or the right to a free use of the patent;

(2) The patent has been adjudicated to be invalid, or has been administratively determined to be invalid;

(3) The patent is considered to be unenforceable; or

(4) The patent is expired.

(b) Care should be exercised in determining reasonableness when the royalties may have been arrived at as a result of less-than-arm's-length bargaining; *e.g.*, royalties

(1) Paid to persons, including corporations, affiliated with the contractor;

(2) Paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government contract would be awarded; or

(3) Paid under an agreement entered into after the contract award.

(c) In any case involving a patent formerly owned by the contractor, the royalty amount allowed should not exceed the cost which would have been allowed had the contractor retained title.

(d) See A.1.(i) regarding advance agreements.

**(35) *Selling Costs.***

(a) "Selling" is a generic term encompassing all efforts to market the contractor's products or services, some of which are covered specifically in other subsections of A.2.e. The costs of any selling efforts other than those addressed in this cost principle are unallowable.

(b) Selling activity includes the following broad categories:

(1) *Advertising*. Advertising is defined at Cost (1), and advertising costs are subject to the allowability provisions of Cost (1)(b).

(2) *Corporate image enhancement*. Corporate image enhancement activities, including broadly targeted sales efforts, other than advertising, are included
within the definition of public relations at Cost (1)(a), and the costs of such efforts are subject to the allowability provisions at Cost (1)(a)

(3) *Bid and proposal costs*. Bid and proposal costs are defined at Cost (15) and are subject to the allowability provisions of that subsection.

(4) *Market planning*. Market planning involves market research and analysis and general management planning concerned with development of the contractor's business. Long-range market planning costs are subject to the allowability provisions of Cost (9). Other market planning costs are allowable.

(5) *Direct selling*. Direct selling efforts are those acts or actions to induce particular customers to purchase particular products or services of the contractor. Direct selling is characterized by person-to-person contact and includes such efforts as familiarizing a potential customer with the contractor's products or services, conditions of sale, service capabilities, etc. It also includes negotiation, liaison between customer and contractor personnel, technical and consulting efforts, individual demonstrations, and any other efforts having as their purpose the application or adaptation of the contractor's products or services for a particular customer's use. The cost of direct selling efforts is allowable.

(c) Notwithstanding any other provision of this subsection, sellers' or agents' compensation, fees, commissions, percentages, retainer or brokerage fees, whether or not contingent upon the award of contracts, are allowable only when paid to bona fide employees or established commercial or selling agencies maintained by the contractor for the purpose of securing business.

**(36)** ***Service and Warranty Costs.*** Service and warranty costs include those arising from fulfillment of any contractual obligation of a contractor to provide services such as installation, training, correcting defects in the products, replacing defective parts, and making refunds in the case of inadequate performance. When not inconsistent with the terms of the contract, such service and warranty costs are allowable. However, care should be exercised to avoid duplication of the allowance as an element of both estimated product cost and risk.

**(37)** ***Special Tooling and Special Test Equipment Costs***.

(a) The terms "special tooling" and "special test equipment" are defined in AMS Procurement Guidance T3.10.3.

(b) The cost of special tooling and special test equipment used in performing one or more Government contracts is allowable and shall be allocated to the specific Government contract or contracts for which acquired, except that the cost of

(1) Items acquired by the contractor before the effective date of the contract (or replacement of such items), whether or not altered or adapted for use in performing the contract, and

(2) Items which the contract schedule specifically excludes, shall be allowable only as depreciation or amortization.

(c) When items are disqualified as special tooling or special test equipment because with relatively minor expense they can be made suitable for general purpose use and have a value as such commensurate with their value as special tooling or special test equipment, the cost of adapting the items for use under the contract and the cost of returning them to their prior configuration are allowable.

***(38) Taxes.***

(a) The following types of costs are allowable:

(1) Federal, State, and local taxes, except as otherwise provided in subparagraph (b) of this section that are required to be and are paid or accrued in accordance with generally accepted accounting principles. Fines and penalties are not considered taxes.

(2) Taxes otherwise allowable under subparagraph (a)(1) of this section, but upon which a claim of illegality or erroneous assessment exists; provided the contractor, before paying such taxes

(i) Promptly requests instructions from the contracting officer concerning such taxes; and

(ii) Takes all action directed by the contracting officer arising out of subparagraph (2)(1) of this section or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment,

to

(A) Determine the legality of the assessment or

(B) Secure a refund of such taxes.

(3) Pursuant to subparagraph (a)(2) of this section, the reasonable costs of any action taken by the contractor at the direction or with the concurrence of the contracting officer. Interest or penalties incurred by the contractor for non-payment of any tax at the direction of the contracting officer or by reason of the failure of the contracting officer to ensure timely direction after a prompt request.

(4) The Environmental Tax found at section 59A of the Internal Revenue Code, also called the "Superfund Tax."

(b) The following types of costs are not allowable:

(1) Federal income and excess profits taxes.

(2) Taxes in connection with financing, refinancing, refunding operations, or reorganizations [see Costs (17) and (24)].

(3) Taxes from which exemptions are available to the contractor directly, or available to the contractor based on an exemption afforded the Government, except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government. When partial exemption from a tax is attributable to Government contract activity, taxes charged to such work in excess of that amount resulting from application of the preferential treatment are unallowable. These provisions intend that tax preference attributable to Government contract activity be realized by the Government. The term "exemption" means freedom from taxation in whole or in part and includes a tax abatement or reduction resulting from mode of assessment, method of calculation, or otherwise.

(4) Special assessments on land that represent capital improvements.

(5) Taxes (including excises) on real or personal property, or on the value, use, possession or sale thereof, which is used solely in connection with work other than on Government contracts (see subparagraph (c) of this section).

(6) Any excise tax in subtitle D, chapter 43 of the Internal Revenue Code of 1986, as amended. That chapter includes excise taxes imposed in connection with qualified pension plans, welfare plans, deferred compensation plans, or other similar types of plans.

(7) Income tax accruals designed to account for the tax effects of differences

between taxable income and pretax income as reflected by the books of account and financial statements.

(8) Any tax imposed under 26 U.S.C. 5000C (Imposition of Tax on Certain Foreign Procurements)

(c) Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; *e.g.*, taxes on contractor-owned work-in-process which is used solely in connection with non-Government work should be allocated to such work; taxes on contractor-owned work-in-process inventory (and Government-owned work-in-process inventory when taxed) used solely in connection with Government work should be charged to such work. The cost of taxes incurred on property used in both Government and non-Government work shall be apportioned to all such work based upon the use of such property on the respective final cost objectives.

(d) Any taxes, interest, or penalties that were allowed as contract costs and are refunded to the contractor shall be credited or paid to the Government in the manner it directs. If a contractor or subcontractor obtains a foreign tax credit that reduces its U.S. Federal income tax because of the payment of any tax or duty allowed as contract costs, and if those costs were reimbursed by a foreign government, the amount of the reduction shall be paid to the Treasurer of the United States at the time the Federal income tax return is filed. However, any interest actually paid or credited to a contractor incident to a refund of tax, interest, or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest, or penalties.

**(39)** ***Termination Costs.*** Contract terminations generally give rise to the incurrence of costs or the need for special treatment of costs that would not have arisen had the contract not been terminated. The following cost principles peculiar to termination situations are to be used in conjunction with the other cost principles in this Procurement Guidance Section T3.3.2:

(a) *Common items.* The costs of items reasonably usable on the contractor's other work shall not be allowable unless the contractor submits evidence that the items could not be retained at cost without sustaining a loss. The contracting officer should consider the contractor's plans and orders for current and planned production when determining if items can reasonably be used on other work of the contractor. Contemporaneous purchases of common items by the contractor shall be regarded as evidence that such items are reasonably usable on the contractor's other work. Any acceptance of common items as allocable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs Continuing After Termination.* Despite all reasonable efforts by the contractor, costs which cannot be discontinued immediately after the effective date of termination are generally allowable. However, any costs continuing after the effective date of the termination due to the negligent or willful failure of the contractor to discontinue the costs

shall be unallowable.

(c) *Initial Costs.* Initial costs, including starting load and preparatory costs, are allowable as follows:

(1) Starting load costs not fully absorbed because of termination are nonrecurring labor, material, and related overhead costs incurred in the early part of production and result from factors such as

(i) Excessive spoilage due to inexperienced labor;

(ii) Idle time and subnormal production due to testing and changing production methods;

(iii) Training; and

(iv) Lack of familiarity or experience with the product, materials, or manufacturing processes.

(2) Preparatory costs incurred in preparing to perform the terminated contract include such costs as those incurred for initial plant rearrangement and alterations, management and personnel organization, and production planning. They do not include special machinery and equipment and starting load costs.

(3) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead. Initial costs attributable to only one contract shall not be allocated to other contracts.

(4) If initial costs are claimed and have not been segregated on the contractor's books, they shall be segregated for settlement purposes from cost reports and schedules reflecting that high unit cost incurred during the early stages of the contract.

(5) If the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately before termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(d) *Loss of Useful Value.* Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided

(1) The special tooling, or special machinery and equipment is not reasonably capable of use in the other work of the contractor;

(2) The Government's interest is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(3) The loss of useful value for any one terminated contract is limited to that

portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, or special machinery and equipment was acquired.

(e) *Rental Under Unexpired Leases.* Rental costs under unexpired leases, less the residual value of such leases, are generally allowable when shown to have been reasonably necessary for the performance of the terminated contract, if

(1) The amount of rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(2) The contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

(f) *Alterations of Leased Property.* The cost of alterations and reasonable restorations required by the lease may be allowed when the alterations were necessary for performing the contract.

(g) *Settlement Expenses.*

(1) Settlement expenses, including the following, are generally allowable:

(i) Accounting, legal, clerical, and similar costs reasonably necessary for

(A) The preparation and presentation, including supporting data, of settlement claims to the contracting officer; and

(B) The termination and settlement of subcontracts.

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(iii) Indirect costs related to salary and wages incurred as settlement expenses in (i) and (ii); normally, such indirect costs shall be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs.

(2) If settlement expenses are significant, a cost account or work order shall be established to separately identify and accumulate them.

(h) *Subcontractor Claims.* Subcontractor claims, including the allocable portion of the claims common to the contract and to other work of the contractor, are generally allowable. An appropriate share of the contractor's indirect expense may be allocated to the amount of settlements with subcontractors; provided, that the amount allocated is reasonably

proportionate to the relative benefits received and is otherwise consistent with Procurement Guidance T3.3.2. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

**(40)** ***Trade, Business, Technical and Professional Activity Costs***. The following types of costs are allowable:

(a) Memberships in trade, business, technical, and professional organizations.

(b) Subscriptions to trade, business, professional, or other technical periodicals.

(c) When the principal purpose of a meeting, convention, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity

(1) Costs of organizing, setting up, and sponsoring the meetings, conventions, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs;

(2) Costs of attendance by contractor employees, including travel costs [see Cost (43)]; and

(3) Costs of attendance by individuals who are not employees of the contractor, provided

(i) Such costs are not also reimbursed to the individual by the employing company or organization, and

(ii) The individuals attendance is essential to achieve the purpose of the conference, meeting, convention, symposium, etc.

**(41)*Training and Education Costs.***

(a) *Allowable Costs.* Training and education costs are allowable to the extent indicated

below.

(b) *Vocational Training.* Costs of preparing and maintaining a noncollege level program of instruction, including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, are allowable. These costs include

(1) Salaries or wages of trainees (excluding overtime compensation),

(2) Salaries of the director of training and staff when the training program is conducted by the contractor,

(3) Tuition and fees when the training is in an institution not operated by the contractor, and/or

(4) Training materials and textbooks.

(c) *Part-time College Level Education.* Allowable costs of part-time college education at an undergraduate or postgraduate level, including that provided at the contractor's own facilities, are limited to

(1) Fees and tuition charged by the educational institution, or, instead of tuition, instructors' salaries and the related share of indirect cost of the educational institution, to the extent that the sum thereof is not in excess of the tuition that would have been paid to the participating educational institution;

(2) Salaries and related costs of instructors who are employees of the contractor;

(3) Training materials and textbooks; and

(4) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours. In unusual cases, the period may be extended (see subparagraph (h) of this subsection).

(d) *Full-time Education.* Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the contractor's own facilities, at a postgraduate but not undergraduate college level, are allowable only when the course or degree pursued is related to the field in which the employee is working or may reasonably be expected to work and are limited to a total period not to exceed 2 school years or the length of the degree program, whichever is less, for each employee so trained.

(e) *Specialized Programs*. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of managers or to prepare employees for such positions are allowable. Such costs include enrollment fees and related charges and employees' salaries, subsistence, training materials, textbooks, and travel. Costs allowable under this paragraph do not include costs for courses that are part of a degree- oriented curriculum, which are only allowable pursuant to subparagraphs (c) and (d) of this subsection.

(f) *Other Expenses.* Maintenance expense and normal depreciation or fair rental on facilities owned or leased by the contractor for training purposes are allowable in accordance with Costs (8), (14), (21) and (33).

(g) *Grants.* Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.

(h) *Advance Agreements.*

(1) Training and education costs in excess of those otherwise allowable under subparagraphs (c) and (d) of this subsection, including subsistence, salaries or any other emoluments, may be allowed to the extent set forth in an advance agreement. To be considered for an advance agreement, the contractor must demonstrate that the costs are consistently incurred under an established managerial, engineering, or scientific training and education program, and that the course or degree pursued is related to the field in which the employees are now working or may reasonably be expected to work. Before entering into the advance agreement, the contracting officer shall give consideration to such factors as

(i) The length of employees' service with the contractor;

(ii) Employees' past performance and potential;

(iii) Whether employees are in formal development programs; and

(iv) The total number of participating employees.

(2) Any advance agreement must include a provision requiring the contractor to refund to the Government training and education costs for employees who resign within 12 months of completion of such training or education for reasons within an employee's control.

(i) *Training or Education Costs for Other Than Bona Fide Employees.* Costs of tuition, fees, textbooks, and similar or related benefits provided for other than bona fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where public education is not available and where suitable private education is inordinately expensive may be included in overseas differential.

(j) *Employee Dependent Education Plans.* Costs of college plans for employee dependents are unallowable.

***(42) RESERVED***

**(43) *Travel Costs.***

(a) *Costs for Transportation, Lodging, Meals, and Incidental Expenses.*

(1) Costs incurred by contractor personnel on official company business are allowable, subject to the limitations contained in this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(2) Except as provided in subparagraph (a)(3) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the

(i) Federal Travel Regulations, (Stock No. 922-002-00000-2) prescribed by the General Services Administration, for travel in the conterminous 48 United States, available on a subscription basis from the: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402;

(ii) Department of Defense Per Diem, Travel and Transportation Allowance Committee (PDTATAC) bulletins, for travel in Alaska, Hawaii, The Commonwealth of Puerto Rico, and territories and possessions of the United States, available in the Federal Register (or in the Section 925 Supplement to the guidance cited under (a)(2)(iii) below); or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances for Foreign Areas," (Stock No. 744-008-00000-0) prescribed by the Department of State, for travel in areas not covered in (a)(2)(i) and (ii) of this subparagraph, available on a subscription basis from the: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(3) In special or unusual situations, actual costs in excess of the above-referenced maximum per diem rates are allowable provided that such amounts do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in (a)(2)(i), (ii), or (iii) of this subsection. For such higher amounts to be allowable, all of the following conditions must be met:

(i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in subparagraphs (a)(2)(i), (ii), or (iii) of this subsection, must exist.

(ii) A written justification for use of the higher amounts must be approved by an officer of the contractor's organization or designee to ensure that the authority is properly administered and controlled to prevent abuse.

(iii) If it becomes necessary to exercise the authority to use the

higher actual expense method repetitively or on a continuing basis in a particular area, the contractor must obtain advance approval from the contracting officer.

(iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices, subject to subparagraph (a)(7) of this subsection, and provided that a receipt is required for each expenditure of $75.00 or more. The approved justification required by subparagraph (a)(3)(ii) and, if applicable, subparagraph (a)(3)(iii) of this subsection must be retained.

(4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in subdivisions (a)(2)(i), (ii), and (iii) of this subsection in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.

(5) An advance agreement with respect to compliance with subparagraphs (a)(2) and (a)(3) of this subsection may be useful and desirable.

(6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge

(i) When no lodging costs are incurred; and/or

(ii) On partial travel days (*e.g.*, day of departure and return). Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the applicable Federal Travel Regulations, they must result in a reasonable charge.

(7) Costs shall be allowable only if the following information is documented

(i) Date and place (city, town, or other similar designation) of the expenses;

(ii) Purpose of the trip; and

(iii) Name of person on trip and that person's title or relationship to the contractor.

(b) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(c) Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract.

(d) Airfare costs in excess of the lowest-priced airfare available to the contractor during

normal business hours are unallowable except when the lowest priced airfare require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

(e)

(1) "Cost of travel by contractor-owned, -leased, or -chartered aircraft," as used in this paragraph, includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs.

(2) The costs of travel by contractor-owned, -leased, or -chartered aircraft are limited to the standard airfare described in subparagraph (d) of this subsection for the flight destination unless travel by such aircraft is specifically required by contract specification, term, or condition, or a higher amount is approved by the contracting officer. A higher amount may be agreed to when one or more of the circumstances for justifying higher than standard airfare listed in subparagraph (d) of this subsection are applicable, or when an advance agreement under subparagraph (e)(3) of this subsection has been executed. In all cases, travel by contractor-owned, -leased, or -chartered aircraft must be fully documented and justified. For each contractor-owned, -leased, or -chartered aircraft used for any business purpose which is charged or allocated, directly or indirectly, to a Government contract, the contractor must maintain and make available manifest/logs for all flights on such company aircraft. As a minimum, the manifest/log shall indicate

(i) Date, time, and points of departure;

(ii) Destination, date, and time of arrival;

(iii) Name of each passenger and relationship to the contractor;

(iv) Authorization for trip; and

(v) Purpose of trip.

(3) Where an advance agreement is proposed, consideration may be given to the following:

(i) Whether scheduled commercial airlines or other suitable, less costly, travel facilities are available at reasonable times, with reasonable frequency, and serve the required destinations conveniently.

(ii) Whether increased flexibility in scheduling results in time savings and more effective use of personnel that would outweigh additional travel costs.

(f) Costs of contractor-owned or -leased automobiles, as used in this subparagraph, include the costs of lease, operation (including personnel), maintenance, depreciation, insurance, etc. These costs are allowable, if reasonable, to the extent that the automobiles are used for company business. That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in Cost (4)(m)(2).

**(44)** ***Costs Related to Legal and Other Proceedings.***

(a) *Definitions*

(1) "Conviction," as used in this subsection, is defined in T3.2.2.7, A.2.e.

(2) "Costs" include, but are not limited to, administrative and clerical expenses; the costs of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; costs of employees, officers, and directors; and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding which bears a direct relationship to the proceeding.

(3) "Fraud," as used in this subsection, means

(i) Acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents,

(ii) Acts which constitute a cause for debarment or suspension under Procurement Guidance Section T3.2.2.7 and

(iii) Acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or the Anti-Kickback Act, 41 U.S.C. § 8702.

(4) "Penalty," does not include restitution, reimbursement, or compensatory damages.

(5) "Proceeding," includes an investigation.

(b) Costs incurred in connection with any proceeding brought by a Federal, State, local, or foreign government for violation of, or a failure to comply with, law or regulation by the contractor (including its agents or employees), or costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, are unallowable if the result is

(1) In a criminal proceeding, a conviction;

(2) In a civil or administrative proceeding, either a finding of contractor liability where the proceeding involves an allegation of fraud or similar

misconduct or imposition of a monetary penalty where the proceeding does not involve an allegation of fraud or similar misconduct;

(3) A final decision by an appropriate official of an executive agency to

(i) Debar or suspend the contractor;

(ii) Rescind or void a contract; or

(iii) Terminate a contract for default by reason of a violation or failure to comply with a law or regulation.

(4) Disposition of the matter by consent or compromise if the proceeding could have led to any of the outcomes listed in subparagraphs (b)(1) through (3) of this subsection (but see subparagraphs (c) and (d) of this subsection); or

(5) Not covered by subparagraphs (b)(1) through (4) of this subsection, but where the underlying alleged contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of subparagraphs (b)(1) through (4) of this subsection.

(c)

(1) To the extent they are not otherwise unallowable, costs incurred in connection with any proceeding under subparagraph (b) of this subsection commenced by the United States that is resolved by consent or compromise pursuant to an agreement entered into between the contractor and the United States, and which are unallowable solely because of subparagraph (b) of this subsection, may be allowed to the extent specifically provided in such agreement

(2) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the contractor in connection with such a proceeding, that are not otherwise unallowable by regulation or by separate agreement with the United States, may be allowed if the contracting officer, in consultation with his or her legal advisor, determines that there was very little likelihood that the third party would have been successful on the merits.

(d) To the extent that they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by a State, local, or foreign government may be allowable when the contracting officer (or other official specified in agency procedures) determines, that the costs were incurred either:

(1) As a direct result of a specific term or condition of a Federal contract; or

(2) As a result of compliance with specific written direction of the cognizant contracting officer.

(e) Costs incurred in connection with proceedings described in subparagraph (b) of this subsection, but which are not made unallowable by that subparagraph, may be allowable to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and

(3) The percentage of costs allowed does not exceed the percentage determined to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. Agreements reached under subparagraph (c) of this subsection shall be subject to this limitation. If, however, an agreement described in subparagraph (c)(1) of this subsection explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or less of the stated legal fees, no additional limitation need be applied. The amount of reimbursement allowed for legal costs in connection with any proceeding described in subparagraph (c)(2) of this subsection shall be determined by the cognizant contracting officer, but shall not exceed 80 percent of otherwise allowable legal costs incurred.

(f) Costs not covered elsewhere in this subsection are unallowable if incurred in connection with:

(1) Defense against Federal Government claims or appeals or the prosecution of claims or appeals against the Federal Government.

(2) Organization, reorganization, (including mergers and acquisitions) or resisting mergers and acquisitions [see also Cost (24)].

(3) Defense of antitrust suits.

(4) Defense of suits brought by employees or ex-employees of the contractor under section 2 of the Major Fraud Act of 1988 where the contractor was found liable or settled.

(5) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors arising from either

(i) An agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest; or

(ii) Dual sourcing, coproduction, or similar programs,

are unallowable, except when

(A) Incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer, or

(B) When agreed to in writing by the contracting officer.

(6) Patent infringement litigation, unless otherwise provided for in the contract.

(7) Representation of, or assistance to, individuals, groups, or legal entities which the contractor is not legally bound to provide, arising from an action where the participant was convicted of violation of a law or regulation or was found liable in a civil or administrative proceeding.

(8) Protests of Federal Government solicitations or contract awards, or the defense against protests of such solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the cognizant contracting officer.

(g) Costs which may be unallowable under Cost (44), including directly associated costs, shall be segregated and accounted for by the contractor separately. During the pendency of any proceeding covered by subparagraph (b) and subparagraphs (f)(4) and (f)(7) of this subsection, the contracting officer shall generally withhold payment of such costs. However, if in the best interests of the Government, the contracting officer may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

**(45)** ***Research and Development Costs.***

"Research and development," as used in this subsection, means the type of technical effort which is described in Cost (15) but sponsored by a grant or required in performance of a contract . When costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, the excess is unallowable under any other Government contract.

**(46)** ***Goodwill.***

Goodwill, an unidentifiable intangible asset, originates under the purchase method of accounting for a business combination when the price paid by the acquiring company exceeds the sum of the identifiable individual assets acquired less liabilities assumed, based upon their fair values. The excess is commonly referred to as goodwill. Goodwill may arise from the acquisition of a company as a whole or a portion thereof. Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) are unallowable.

**(47)** ***Costs of Alcoholic Beverages***.

Costs of alcoholic beverages are unallowable.

**(48)** ***Asset Valuations Resulting from Business Combinations***.

(a) For tangible capital assets, when the purchase method of accounting for a business combination is used, whether or not the contract or subcontract is subject to CAS, the allowable depreciation and cost of money shall be based on the capitalized asset values measured and assigned in accordance with 48 CFR 9904.404-50(d), if allocable, reasonable, and not otherwise unallowable.

(b) For intangible capital assets, when the purchase method of accounting for a business combination is used, allowable amortization and cost of money shall be limited to the total of the amounts that would have been allowed had the combination not taken place.

## 3 Appendix - Definitions Added 7/2007

Applicable definitions for FAA cost principles and guidance are as follows:

"Accrued benefit cost method" means an actuarial cost method under which units of benefits are assigned to each cost accounting period and are valued as they accrue; *i.e.,* based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan's inception date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the unit credit cost method without salary projection.).

"Accumulating costs" means collecting cost data in an organized manner, such as through a system of accounts.

"Actual cash value" means the cost of replacing damaged property with other property of like kind and quality in the physical condition of the property immediately before the damage.

"Actual costs" means (except for contracts with State, Local, and Federally-recognized Indian Tribal Governments) amounts determined on the basis of costs incurred, as distinguished from forecasted costs. Actual costs include standard costs properly adjusted for applicable variances.

"Actuarial accrued liability" means pension cost attributable, under the actuarial cost method in use, to years prior to the current period considered by a particular actuarial valuation. As of such date, the actuarial accrued liability represents the excess of the present value of future benefits and administrative expenses over the present value of future normal costs for all plan participants and beneficiaries. The excess of the actuarial accrued liability over the actuarial value of the assets of a pension plan is the unfunded actuarial liability. The excess of the actuarial value of the assets of a pension plan over the actuarial accrued liability is an actuarial

surplus and is treated as a negative unfunded actuarial liability.

"Actuarial assumption" means an estimate of future conditions affecting pension cost; *e.g.*, mortality rate, employee turnover, compensation levels, earnings on pension plan assets, and changes in values of pension plan assets.

"Actuarial cost method" means a technique which uses actuarial assumptions to measure the present value of future pension benefits and pension plan administrative expenses, and that assigns the cost of such benefits and expenses to cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the actuarial value of the assets of a pension plan.

"Actuarial gain and loss" means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

"Actuarial valuation" means the determination, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets of a pension plan, and other relevant values for the pension plan.

"Allocate" means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

"Compensated personal absence" means any absence from work for reasons such as illness, vacation, holidays, jury duty, military training, or personal activities for which an employer pays compensation directly to an employee in accordance with a plan or custom of the employer.

"Compensation for personal services" means all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor.

"Cost input" means the cost, except general and administrative (G&A) expenses, which for contract costing purposes is allocable to the production of goods and services during a cost accounting period.

"Cost objective" means (except for contracts with State, Local, and Federally-recognized Indian Tribal Governments) a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

"Deferred compensation" means an award made by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of the receipt of compensation by the employee. This definition shall not include the amount of year end accruals for salaries, wages, or bonuses that are to be paid within a reasonable period of time after the end of a cost accounting period.

"Defined-benefit pension plan" means a pension plan in which the benefits to be paid, or the basis for determining such benefits, are established in advance and the contributions are

intended to provide the stated benefits.

“Defined-contribution pension plan” means a pension plan in which the contributions to be made are established in advance and the benefits are determined thereby.

“Directly associated cost” means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

“Estimating costs” means the process of forecasting a future result in terms of cost, based upon information available at the time.

“Expressly unallowable cost” means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

“Final cost objective” means (except for contracts with Educational Institutions, and contracts with State, Local, and Federally-recognized Indian Tribal Governments) a cost objective that has allocated to it both direct and indirect costs and, in the contractor’s accumulation system, is one of the final accumulation points.

“Fiscal year” means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

“Funded pension cost” means the portion of pension cost for a current or prior cost accounting period that has been paid to a funding agency.

“Home office” means an office responsible for directing or managing two or more, but not necessarily all, segments of an organization. It typically establishes policy for, and provides guidance to, the segments in their operations. It usually performs management, supervisory, or administrative functions, and may also perform service functions in support of the operations of the various segments. An organization which has intermediate levels, such as groups, may have several home offices which report to a common home office. An intermediate organization may be both a segment and a home office.

“Immediate-gain actuarial cost method” means any of the several actuarial cost methods under which actuarial gains and losses are included as part of the unfunded actuarial liability of the pension plan, rather than as part of the normal cost of the plan.

“Independent research and development (IR&D) cost” means the cost of effort which is neither sponsored by a grant, nor required in performing a contract, and which falls within any of the following four areas

(a) Basic research,

(b) Applied research,

(c) Development, and

(d) Systems and other concept formulation studies.

“Indirect cost pools” means (except for contracts with Educational Institutions, and contracts with State, Local, and Federally-recognized Indian Tribal Governments) groupings of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

“Insurance administration expenses” means the contractor’s costs of administering an insurance program; *e.g.,* the costs of operating an insurance or risk-management department, processing claims, actuarial fees, and service fees paid to insurance companies, trustees, or technical consultants.

“Intangible capital asset” means an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefits it yields.

“Job” means a homogeneous cluster of work tasks, the completion of which serves an enduring purpose for the organization. Taken as a whole, the collection of tasks, duties, and responsibilities constitutes the assignment for one or more individuals whose work is of the same nature and is performed at the same skill/responsibility level—as opposed to a position, which is a collection of tasks assigned to a specific individual. Within a job, there may be pay categories which are dependent on the degree of supervision required by the employee while performing assigned tasks which are performed by all persons with the same job.

“Job class of employees” means employees performing in positions within the same job.

“Labor cost at standard” means a pre-established measure of the labor element of cost, computed by multiplying labor-rate standard by labor-time standard.

“Labor market” means a place where individuals exchange their labor for compensation. Labor markets are identified and defined by a combination of the following factors—

(1) Geography,

(2) Education and/or technical background required,

(3) Experience required by the job,

(4) Licensing or certification requirements,

(5) Occupational membership, and

(6) Industry.

“Labor-rate standard” means a pre-established measure, expressed in monetary terms, of the price of labor.

“Labor-time standard” means a pre-established measure, expressed in temporal terms, of the quantity of labor.

“Material cost at standard” means a pre-established measure of the material elements of cost, computed by multiplying material-price standard by material-quantity standard.

“Material-price standard” means a pre-established measure, expressed in monetary terms, of the price of material.

“Material-quantity standard” means a pre-established measure, expressed in physical terms, of the quantity of material.

“Moving average cost” means an inventory costing method under which an average unit cost is computed after each acquisition by adding the cost of the newly acquired units to the cost of the units of inventory on hand and dividing this figure by the new total number of units.

“Nonqualified pension plan” means any pension plan other than a qualified pension plan as defined in this part.

“Normal cost” means the annual cost attributable, under the actuarial cost method in use, to current and future years as of a particular valuation date excluding any payment in respect of an unfunded actuarial liability.

“Original complement of low cost equipment” means a group of items acquired for the initial outfitting of a tangible capital asset or an operational unit, or a new addition to either. The items in the group individually cost less than the minimum amount established by the contractor for capitalization for the classes of assets acquired but in the aggregate they represent a material investment. The group, as a complement, is expected to be held for continued service beyond the current period. Initial outfitting of the unit is completed when the unit is ready and available for normal operations.

“Pay-as-you-go cost method” means a method of recognizing pension cost only when benefits are paid to retired employees or their beneficiaries.

“Pension plan” means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirements, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees, may be an integral part of a pension plan.

“Pension plan participant” means any employee or former employee of an employer or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a pension plan which covers employees of such employer or members of such organization who have satisfied the plan’s participation requirements, or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active participant of the employer’s pension plan.

“Profit center” means (except for contracts with Educational Institutions, and contracts with State, Local, and Federally-recognized Indian Tribal Governments) the smallest

organizationally independent segment of a company charged by management with profit and loss responsibilities.

“Projected benefit cost method” means either—

(1) Any of the several actuarial cost methods that distribute the estimated total cost of all of the employees’ prospective benefits over a period of years, usually their working careers; or

(2) A modification of the accrued benefit cost method that considers projected compensation levels.

“Proposal” means any offer or other submission used as a basis for pricing a contract, contract modification, or termination settlement or for securing payments thereunder.

“Qualified pension plan” means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees that meets the criteria deemed essential by the Internal Revenue Service as set forth in the Internal Revenue Code for preferential tax treatment regarding contributions, investments, and distributions. Any other plan is a nonqualified pension plan.

“Self-insurance charge” means a cost which represents the projected average loss under a self- insurance plan.

“Service life” means the period of usefulness of a tangible capital asset (or group of assets) to its current owner. The period may be expressed in units of time or output. The estimated service life of a tangible capital asset (or group of assets) is a current forecast of its service life and is the period over which depreciation cost is to be assigned.

“Spread-gain actuarial cost method” means any of the several projected benefit actuarial cost methods under which actuarial gains and losses are included as part of the current and future normal costs of the pension plan.

“Standard cost” means any cost computed with the use of pre-established measures.

“Tangible capital asset” means an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the services it yields.

“Termination of employment gain or loss” means an actuarial gain or loss resulting from the difference between the assumed and actual rates at which pension plan participants separate from employment for reasons other than retirement, disability, or death.

“Variance” means the difference between a pre-established measure and an actual measure.

“Weighted average cost” means an inventory costing method under which an average unit cost is computed periodically by dividing the sum of the cost of beginning inventory plus the cost of acquisitions by the total number of units included in these two categories.

## T3.4.1 - Bonds and Insurance Revised 7/2008

### A Bonds and Insurance

### 1 General Requirements

Bonds, guarantees and insurance requirements will:

a. Comply with requirements of law found in the Miller Act;

b. Provide methods to obtain financial protection against damages to the FAA in all forms of contracts including bid/proposal guarantees, bonds, sureties and insurance which are not covered by the Miller Act;

c. Allow the contracting officer discretion to set appropriate bond levels to protect the FAA's interest;

d. Establish contracts that allow the contracting officer flexibility to increase bond amounts based upon contract changes;

e. Encourage the use of corporate, rather than individual, sureties;

f. Allow flexibility in the types of security for bonds; encourage avoidance of termination for default through consideration of surety takeover when contractors are not performing;

g. provide the CO flexibility to tailor clauses to the specific situation provided that they remain in compliance with the Miller Act.

### 2 Proposal Guarantees Revised 7/2008

a. Proposal guarantees (referred to as guarantee(s)) are relevant to performance bonds only. The Contracting Officer (CO) determines the applicability of a proposal guarantee based on the best interests of FAA.

b. *Amount*. The CO should determine a guarantee amount that is adequate to protect the Government from loss should the successful offeror fail to sign the contract or obtain required bonds. The guarantee amount should be at least 20 percent of the proposal price and should not exceed $3 million. When the penal sum is expressed as a percentage, a maximum dollar limitation may be stated. For indefinite delivery contracts, the amount of any guarantee should be a specific amount equal to the largest single order that the CO estimates will be placed under the contract, or another amount that the CO deems necessary to protect the interest of the FAA.

c. *Failure to Submit Required Proposal Guarantee.* It is preferable for offerors to submit their guarantees with the proposals. However, the CO may determine the final cut-off for receipt of guarantees. Also, if a guarantee is proposed at an amount less than the solicitation specifies, but is equal to or greater than the difference between the proposal price and the

price of the next- higher proposal, the guarantee may be accepted.

d. *Screening Information Request (SIR) Requirements*. SIRs should describe guarantee requirements in sufficient detail for offerors to determine the amount of the required guarantee.

## 3 Bonds Revised 10/2010

a. *General*.

(1) *Requirement* . Bonds are not generally applicable to non-construction contracts but may be used if the contracting officer determines that such bonds are necessary to protect the interests of the FAA. The Miller Act (40 U.S.C.A Section 3131) requires performance and payment bonds for construction contracts exceeding $150,000. The contracting officer may waive performance and payment bonds as authorized by the Miller Act or other law if in the best interest of the Government.

(2) *SIR Requirements*. The SIR should describe the bond requirements.

(3) *Penal Amount*. The penal amount should reflect the minimum amount needed to protect the FAA's interests.

(4) *Additional Amounts of Protection*. The contracting officer may increase the bond requirements if the contract amount increases and the contracting officer deems it to be in the best interest of the FAA.

(5) *Notice to Proceed*. If the contract requires bonds, insurance, reinsurance or other forms of protection, the contractor must furnish them to the contracting officer in the time specified in the schedule. The contracting officer may consider these submissions in determining when to issue a notice to proceed.

(6) *Original Copy*. An original signed copy of any bond must be retained in the solicitation or contract file.

(7) *Authority of Agents*. Bonds signed by persons acting in a representative capacity must be accompanied by proof that the agent is authorized to act in that capacity. Proof may be a notarized power of attorney, or a properly executed corporate certificate or resolution, attested to by the corporate secretary.

(8) *Partnership as Principal*. When a partnership is a principal, the names of all members of the firm must be listed in the bond, following the trade name of the firm (if any) and the phrase "a partnership composed of ." When a corporation is a principal, the state of the incorporation should be listed.

(9) *Date*. Unless an annual bond is accepted, performance or payment bonds should be dated after the date of the contract.

(10) *Furnishing Information to Subcontractors and Suppliers Under Payment Bonds*. When a payment bond has been provided, the contracting officer may furnish the name and address of the surety or sureties to persons who have furnished, or have been requested to furnish, labor or materials for use in performing the contract. The contracting officer may furnish additional general information on such matters as the progress of work, the payments made, and the estimated percentage of completion.

(11) *Contract Increases*. When a contract price is increased or scope changes, the FAA may require additional bond protection in an amount adequate to protect suppliers of labor and material. Both the contractor and sureties should execute a consent of surety increasing the penal amount and submit it to the CO.

(12) *Surety Changes*. The original surety must execute a consent of surety in instances where an increased bond amount is obtained from a party other than the original surety.

(13) *Novations*. Novations require a consent of surety.

b. *Construction Contracts - Performance and Payment Bonds*

(1) *Penal Sums*

(a) *Requirements Contracts*. When determining the penal sum of bonds for requirements contracts, the contracting officer may consider the contract price to be the price payable for the estimated quantity.

(b) *Indefinite Quantity Contract*s. When determining the penal sum of bonds for indefinite-quantity contracts, the contracting officer should consider the contract price to be the price payable for the specified minimum quantity. When the minimum quantity is exceeded, additional amounts of performance and payment protection may be obtained as stated under performance and payment bond.

(2) *Performance Bonds*

(a) *Penal Amounts*. Penal amounts should generally be 100 percent of the original contract price, unless the contracting officer determines that a lesser amount would be adequate for the protection of the FAA. If a lesser amount is used, the clauses should be tailored to the situation. If the contract price increases, an additional amount equal to 100 percent of the increase shall be obtained.

(b) *Additional Amounts of Protection*. The contracting officer may increase the amount up to 100 percent of the increase in contract price.

(3) *Payment Bonds*

(a) *Requirement*. A payment bond is required only when a performance bond is required but may be used without a performance bond if the contracting officer

deems the use of payment bond to be in the FAA's interest. Examples of situations where a payment bond may be needed include:

(i) Supplies or services are unique to the FAA that can be obtained only from a source that is not the producer of the supplies or services

(ii) A contractor has sold all its assets to, or merged with, another firm and the FAA needs assurance of the new firm's responsibility

(iii) Uninterrupted provision of the supplies or services is essential to the continued operation of FAA functions.

(b) *Penal Amounts*.

(i) Unless the contracting officer makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must equal:

(A) 100 percent of the original contract price; and

(B) If the contract price increases, an additional amount equal to 100 percent of the increase.

(ii) The amount of the payment bond must be no less that the amount of the performance bond.

(c) *Furnishing Information to Subcontractors and Suppliers*. The contracting officer may furnish the name and address of the surety or sureties to persons who have furnished, or have been requested to furnish, labor or materials for use in performing the contract. The CO may furnish additional general information on such matters as the progress of work, the payments made and the estimated percentage of completion, if available.

c. *Other Than Construction Contracts -Performance and Payment Bonds*

(1) *Annual Performance Bonds (APB).* APB may be used for nonconstruction contracts only and should be applicable to the total of all covered contracts. The bond may be modified to cover new requirements.

(2) *Performance Bonds*. Performance bonds may be used if the contracting officers deems it necessary to protect the FAA's interest. The following situations may warrant a performance bond:

(a) FAA property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

(b) A contractor sells assets to or merges with another concern, and the FAA after recognizing the latter concern as the successor in interest, desires

assurance that it is financially capable.

(c) Substantial payments are made before delivery of end items starts.

(d) Contracts are for dismantling, demolition, or removal of improvements.

(3) *Payment Bonds*. A payment bond is required only when a performance bond is required and if the contracting officer deems the use of payment bond to be in the FAA's interest.

d. *Other Types of Bonds*. The contracting officer may use other types of bonds, such as patent infringement bonds (Clause 3.4.1-8, Patent Infringement Bond Requirements), deemed necessary to protect the interests of the FAA.

e. *Sureties*. This subsection describes the use of sureties to protect the Government from financial losses.

(1) *Requirements for Sureties*. Bonds must be supported by acceptable corporate sureties, or by assets acceptable as security for the contractor's obligation. The Contracting Officer should assure that adequate security for bonds is obtained to protect the interest of the FAA.

(2) *Corporate Sureties*. Corporate sureties must appear on the list contained in the Department of Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies." The amount of the bond may not exceed the underwriting limit stated for the surety in that list. Upon receipt of notification of termination of a company's authority to qualify as a surety on Federal bonds, the contracting officer shall review the outstanding contracts and take action necessary to protect the Government, including, where appropriate, securing new bonds with acceptable sureties in lieu of outstanding bonds with the named company.

(3) *Individual Sureties*. Individual sureties are discouraged.

(4) *Alternative Security*. Alternative security is not permitted for payment bonds for construction contracts. For other than payment bonds for construction contracts, the CO may accept the following alternative security in place of bonds and require the deposit of the assets as specified herein. Further, for bonds that do not use sureties as the security for the bond, the bond should include a statement pledging and identifying the security that will be used to support the bond. The contractor shall execute the bond form as the principal. Other types of alternative security than those described herein may not be used. The following are considered to be acceptable assets are:

(a) *Bonds or Notes*. U.S. bonds or notes maturing in less than 5 years from the date of contract, together with an agreement authorizing collection or sale in the event of default may be used. The par value of the bonds or notes must be at least equal to the penal amount of the bond. U.S. bonds or notes should be deposited in an amount equal at their par value to the penal sum of the bond

(the Act of February 24, 1919 (31 U.S.C. 9303) and Treasury Department Circular No. 154 dated July 1, 1978 (31 CFR Part 225)). The CO may turn the securities over to a designated agency official or deposit them with the Treasurer of the U.S. or other institution designated by the Treasurer.

(b) *Other Types of Assets*. Certified check, cashier's check, bank draft, postal money order, or an irrevocable, unconditional letter of credit (see OFPP Pamphlet No,7 "Guidance for Implementing Policy Letter 91-4" as guidance for using irrevocable letters of credit) issued by a federally insured financial institution is another type of asset that may be used as security. The deposit must be at least equal to the penal amount of the surety bond, and payable solely to the order of the FAA. The CO must deposit checks and drafts made out to the FAA with the designated official in the FAA with instructions to hold the funds for the benefit of the contractor. The procuring activity should establish records to account for all deposited items, such as the requiring the senior CO of the procuring activity to keep a perpetual inventory of all deposited items.

(c) *Bond Representations*. When the contractor pledges assets instead of providing a surety bond, the contractor must complete the bond form as principal and the bond form must describe the assets pledged.

(5) *Contract Administration*.

(a) *Information and Notices to Surety(ies).* The CO may furnish the following information to each surety upon request:

(i) correspondence related to -terminations, renewals,-nonperformance;

(ii) information indicating the surety's potential liability for contractor's performance failure such as notice of impending termination, demand for adequate assurances, assessment of liquidated, or other damages;

(iii) claims against the surety based upon the contractor's failure to perform that addresses the reasons and amount of the claim. Legal assistance may be engaged if the surety fails to pay.The CO may also provide other information in response to requests related to contractor performance and payment.

(b) *Surety Takeover in Performance Failure*. The CO may consider any surety proposal to complete the work prior to terminating a contract. The CO may allow the surety to complete the work if the CO has reason to believe that the firms or individuals proposed by the surety are capable to perform the work.

(c) *Contract Completion*.

(i) *Certificate of Completion*. After the contractor has met all the

contractual obligations, the CO may issue a Certificate of Completion to any surety. The certificate's terms may not release the surety from obligation under a payment bond.

(ii) *Asset Refund*. If alternative security was furnished, the CO should refund the assets under a payment bond upon completion of the work and receipt of a contractor's release.

(iii) *Substantial Completion Under Construction Contracts*. Upon request, the CO should furnish a Certificate of Substantial Completion to sureties of a construction contractor if the project has been determined to be substantially complete.

**4 Insurance**

a. *Requirement*. Contractors may be required to carry insurance when necessary to protect the interests of the FAA. The FAA CO must review insurance for use under the contract and may refuse insurance that is not in the FAA's interest. The CO should consider the insurance validation when issuing a Notice to Proceed. Examples that could require insurance are:

(1) Any contractor subject to Cost Accounting Standard (CAS) 416 (48 CFR 9004.416 is required to obtain insurance, by purchase or self-coverage, for the perils to which the contractor is exposed, except when (i) the Government agrees by contract to indemnify the contractor or relieves the contractor of liability for loss or damage to Government property.

(2) Contractors, whether or not their contracts are subject to CAS 416, are required by law and this regulation to provide insurance for certain types of perils (e.g., workers' compensation). Insurance is mandatory also when commingling of property, type of operation, circumstances of ownership, or condition of the contract make it necessary for the protection of the Government.

(3) Contractors awarded nonpersonal services contracts for health services are required to maintain medical liability insurance and indemnify the Government for liability producing acts or omissions by the contractor, its employees and agents. In addition, the CO may require other insurance as deemed necessary to protect the Government.

b. *Insurance Under Fixed-Price*

(1) *General*. Although the FAA is not ordinarily concerned with the contractor's insurance coverage if the contract is a fixed-price contract, in special circumstances contracting officer may specify insurance requirements under fixed-price contracts. Examples of such circumstances include the following:

(a) The contractor is, or has a separate operation, engaged principally in FAA work.

(b) FAA property is involved.

(c) The work is to be performed on a FAA facility.

(d) The FAA elects to assume risks for which the contractor ordinarily obtains commercial insurance.

(2) *Work on a FAA Installation*. The CO may include contract clause 3.4.1-10, Insurance- Work on a Federal Aviation Administration Installation in a fixed-price contract for work to be performed on a Government installation unless:

(a) only a small amount of work is required on the FAA site

(b) all work on the FAA site is to be performed outside the United States.The coverage specified is the minimum insurance required and should be included in the contract schedule or elsewhere in the contract. The contracting officer may require additional coverage and higher limits. When the clause, Insurance-Work on a Federal Aviation Administration Facility, is not required but is included because the contracting officer considers it to be in the FAA's interest to do so, any of the types of insurance specified in d. below, Amounts and Types of Insurance, may be omitted or the limits may be lowered, if appropriate.

c. *Insurance Under Non-Fixed-Price Contracts.*

(1) *Coverage*. Insurance referred to below in d. Amounts and Types of Insurance, below, is required for non-fixed-price contracts in both prime and subcontracts. Cost-reimbursement contracts (and subcontracts, if the terms of the prime contract are extended to the subcontract) ordinarily require the types of insurance listed in d below.

(2) *Professional services contracts* (PSC). PSC should require errors and omissions insurance described below in f. Errors and Omissions Insurance .d. Amounts and Types of Insurance. (1) Workers' Compensation and Employers' Liability Insurance. Compliance with applicable workers' compensation and occupational disease statutes is required, and employers' liability coverage must be obtained when available. If occupational diseases are not compensable by law, the contractor must carry insurance for occupational disease under the employers' liability section of the insurance policy. Employer's liability coverage of at least $100,000 is required where possible. The CO may modify recommended amounts stated herein, as deemed in the best interest of the FAA, if not in violation of statute and locality or governmental requirements.

(2) *General Liability Insurance*.

(a) *Bodily injury*. The contractor must carry bodily injury liability insurance, with minimum limits of $100,000 per person and $500,000 per occurrence.

(b) *Property*. The CO may require property damage liability in an amount to be determined by the contracting officer as deemed appropriate to the contract.

(3) *Automobile Liability Insurance*. The contracting officer shall require automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage.

e. *Self-Insurance*. The CO may approve a qualified program of self-insurance covering any kind of liability in place of any type of insurance discussed above in d., Amounts and Types of Insurance, Paragraph 4, if it is in the best interest of the FAA. Self insurance shall not apply to catastrophic risk. In jurisdictions where workers' compensation does not completely cover employers' liability to employees, a program of self-insurance for workers' compensation may be approved if:

(1) the contractor also maintains an approved program of self-insurance for any employer's liability that is not covered; or

(2) the contractor has shown that the combined cost to the FAA of self-insurance for workers' compensation and commercial insurance for employers' liability should not exceed the cost of covering both kinds of risks by commercial insurance.

f. *Errors and Omissions Insurance*.

(1) *Professional Services Contractors*. The CO may require professional services contracts such as the following categories to have errors and omissions (malpractice) (E&O) insurance:

(a) accountants

(b) architects

(c) engineers

(d) fiscal agents

(e) medical doctors and dentists.

For other professional services besides those listed above, the CO may require E&O insurance when in the interest of the FAA.

(2) *Amount*. Insurance coverage should be at least $200,000, unless the contracting officer determines that a different limit is needed in the interest of the FAA.

(3) *Waiver*. The CO may waive the requirement for errors and omissions insurance

in whole or in part, with the concurrence of assigned counsel.

(4) *Insurance Policies*. If an existing policy is amended to cover the FAA's requirements, the FAA shall be named as a loss payee.

(5) *Notice of Cancellation and Change*. Insurance policies other than E&O must contain an endorsement to the effect that a cancellation of or material change in policy that adversely affects the interest of the FAA should not be effective until at least 30 days after the written notice of cancellation or change is given to the CO.

g. *Notice to Proceed*. If the contract requires bonds, insurance, reinsurance or other forms of protection, the contractor must furnish them to the contracting officer in the time specified in the schedule. The contracting officer may consider these submissions in determining when to issue a notice to proceed.

**5 Definitions**

a. *'Attorney-in-fact,'* as used in this part, means an agent, independent agent, underwriter, or any other company or individual holding a power of attorney granted by a surety (see also 'power of attorney').

b. *'Bid guarantee'* means a form of security assuring that the bidder (a) will not withdraw a bid within the period specified for acceptance and will execute a written contract and furnish required bonds, including any necessary coinsurance or reinsurance agreements, within the time specified in the bid, unless a longer time allowed, after receipt of the specified forms.

c. *'Bond'* means a written instrument executed by a bidder or contractor (the 'principal'), and a second party (the 'surety' or 'sureties'), to assure fulfillment of the principal's obligations to a third party (the 'obligee' or 'Federal Aviation Administration'), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee. The types of bonds and related documents are as follows:

(1) An advance payment bond secures fulfillment of the contractor's obligations under an advance payment provision.

(2) An annual bid bond is a single bond furnished by a bidder, in lieu of separate bonds, which secure all bids (on other than construction contracts) requiring bonds submitted during a specific FAA fiscal year.

(3) An annual performance bond is a single bond furnished by a contractor, in lieu of separate performance bonds, to secure fulfillment of the contractor's obligations under contracts (other than construction contracts) requiring bonds entered into during a specific FAA fiscal year.

(4) A patent infringement bond secures fulfillment of the contractor's obligations under a patent provision.

(5) A payment bond assures payments as required by law to all persons supplying

labor or material in the prosecution of the work provided for in the contract.

(6) A performance bond secures performance and fulfillment of the contractor's obligations under the contract.

d. *'Consent of surety'* means an acknowledgment by a surety that its bond given in connection with a contract continues to apply to the contract as modified.

e. *'Insurance,'* as used in this part, means a contract which provides that for a stipulated consideration, one party undertakes to indemnity another against loss, damage, or liability arising from an unknown or contingent event.f. 'Penal sum' or 'penal amount' means the amount of money specified in a bond (or a percentage of the bid price in a bid bond) as the maximum payment for which the surety is obligated.

g. *'Power of attorney,'* as used in this part, means the authority given one person or corporation to act for and obligate another, as specified in the instrument creating the power; in corporate suretyship, an instrument under seal which appoints an attorney-in-fact to act in behalf of a surety company in signing bonds (see also 'attorney-in-fact').

h. '*Reinsurance'* means a transaction which provides that a surety for a consideration, agrees to indemnify another surety against loss which the latter may sustain under a bond which it has issued. 'Surety' means an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contract obligation. The types of sureties referred to are as follows:

(1) An individual surety is one person, as distinguished from a business entity, who is liable for the entire penal amount of the bond.

(2) A corporate surety is licensed under various insurance laws and, under its charter, has legal power to act as surety for others.

(3) A cosurety is one of two or more sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

**T3.4.2 - Taxes**

**A Taxes**

## 1 General

a. This section provides general information on a range of taxation issues including:

(1) Using tax clauses in contracts (including foreign contracts);

(2) Asserting immunity or exemption from taxes; or

(3) Obtaining tax refunds.

b. This section does not present the full scope of the tax laws and regulations. Therefore, contracting officers (CO) should work closely with legal counsel when tax questions arise.

c. COs must consult legal counsel before negotiating with any taxing authority for the purpose of:

(1) Determining whether or not a tax is valid or applicable; or

(2) Obtaining an exemption from, or refund of, a tax.

d. When the FAA's constitutional immunity from State or local taxation may be at issue, contractors should be discouraged from negotiating independently with taxing authorities if the contract involved is either:

(1) A cost-reimbursement contract, or

(2) A fixed-price contract containing a tax escalation clause.

e. The CO should consult legal counsel for the following before purchasing goods or services from a foreign source:

(1) Information on foreign tax treaties and agreements in force and on the implementation of any foreign-tax-relief programs and

(2) Resolution of other tax questions affecting the prospective contract.

## 2 Federal Excise Taxes

a. Federal excise taxes are levied on the sale or use of particular supplies or services. Subtitle D of the Internal Revenue Code of 1954, Miscellaneous Excise Taxes, 26 U.S.C. 4041, et seq., and its implementing regulations, 26 CFR 40 through 299, cover miscellaneous federal excise tax requirements. Questions arising in this area should be directed to legal counsel. The most common excise taxes are--

(1) Manufacturers' excise taxes imposed on certain motor-vehicle articles, tires and inner tubes, gasoline, lubricating oils, coal, fishing equipment, firearms, shells, and cartridges sold by manufacturers, producers, or

importers; and

(2) Special-fuels excise taxes imposed at the retail level on diesel fuel and special motor fuels.

b. Sometimes the law exempts the Federal Government from these taxes. COs should solicit prices on a tax-exclusive basis when the Government is exempt from these taxes, and on a tax- inclusive basis when no exemption exists.

c. COs should take maximum advantage of available Federal excise tax exemptions.

**3 General Exemptions**

a. No Federal manufacturers' or special-fuels excise taxes are imposed in many contracting situations as, for example, when the supplies are for any of the following:

(1) The exclusive use of any State or political subdivision, including the District of Columbia (26 U.S.C. 4041 and 4221);

(2) Shipment to a United States possession or Puerto Rico, or for export. Shipment or export must occur within 6 months of the time title passes to the Government. When the exemption is claimed, the words "for export or shipment to a possession" must appear on the contract or purchase document, and the contracting officer must furnish the seller proof of export (see 26 CFR 48.4221-3);

(3) Further manufacture, or resale for further manufacture (this exemption does not include tires and inner tubes) (26 CFR 48.4221-2);

(4) Use as fuel supplies, ships or sea stores, or legitimate equipment on vessels of war, including

(a) Aircraft owned by the United States and constituting a part of the armed forces; and

(b) Guided missiles and pilotless aircraft owned or chartered by the United States. When this exemption is to be claimed, the purchase should be made on a tax-exclusive basis. The CO shall furnish the seller an exemption certificate for Supplies for Vessels of War (an example is given in 26 CFR 48.4221-4(d)(2); the IRS will accept one certificate covering all orders under a single contract for a specified period of up to 12 calendar quarters) (26 U.S.C. 4041 and
4221);

(5) A nonprofit educational organization (26 U.S.C. 4041 and 4221); (6) Emergency vehicles (26 U.S.C. 4053 and 4064(b)(1)(c)).

b. *Other Federal Tax Exemptions.*

(1) Pursuant to 26 U.S.C. 4293, the Secretary of the Treasury has exempted the United States from the communications excise tax imposed in 26 U.S.C. 4251, when the supplies and services are for the exclusive use of the United States. (Secretarial Authorization, June 20, 1947, Internal Revenue Cumulative Bulletin, 1947-1, 205.)

(2) Pursuant to 26 U.S.C. 4483(b), the Secretary of the Treasury has exempted the United States from the federal highway vehicle users tax imposed in 26 U.S.C. 4481. The exemption applies whether the vehicle is owned or leased by the United States. (Secretarial Authorization, Internal Revenue Cumulative Bulletin, 1956-2, 1369.)

**4 State and Local Taxes**

a. *Definition*."State and local taxes" means taxes levied by the States, the District of Columbia, Puerto Rico, possessions of the United States, or their political subdivisions.

b. *Application of State and Local Taxes to the FAA*.

(1) Generally, purchases and leases made by the Federal Government are immune from State and local taxation. Whether any specific purchase or lease is immune, however, is a legal question requiring advice and assistance of legal counsel.

(2) When it is economically feasible to do so, the FAA should take maximum advantage of all exemptions from State and local taxation that may be available. If appropriate, the CO should provide a Standard Form 1094, U.S. Tax Exemption Form, or other evidence to establish that the purchase is being made by the FAA.

c. *Application of State and Local Taxes to FAA Contractors and Subcontractors*.

(1) Prime contractors and subcontractors must not normally be designated as agents of the Government for the purpose of claiming immunity from State or local sales or use taxes. Before any such determination is made the CO shall consult with legal counsel.

(2) When a prime contractor or a subcontractor under a prime contract makes a purchase instead of the FAA t, the right to an exemption of the transaction from a sales or use tax may not rest on the Government's immunity from direct taxation by States and localities. It may rest instead on provisions of the particular State or local law involved, or, in some cases, the transaction may not in fact be expressly exempt from the tax.

(3) Frequently, property (including property acquired under the progress payments clause of fixed-price contracts or the Government property clause of

cost-reimbursement contracts) owned by the Government is in the possession of a contractor or subcontractor. Situations may arise in which States or localities assert the right to tax Government property directly or to tax the contractor's or subcontractor's possession of, interest in, or use of that property. In such cases, the CO shall seek review and advice from legal counsel on the appropriate course of action.

d. *Matters Requiring Special Consideration.*

(1) The imposition of State and local taxes may result in special contract considerations including the following:

(a) With coordination of legal counsel, a contract may -

(i) State that the contract price includes or excludes a specified tax or

(ii) Require that the contractor take certain actions with regard to payment, nonpayment, refund, protest, or other treatment of a specified tax. Such special treatment may be appropriate when there is doubt as to the applicability or allocability of the tax, or when the applicability of the tax is being litigated.

(b) The applicability of State and local taxes to purchases by the FAA may depend on the place and terms of delivery. When the contract price will be substantial, alternative places and terms of delivery should be considered in light of possible tax consequences.

(c) Indefinite-delivery contracts for equipment rental may require the contractor to furnish equipment in any of the States. Since leased equipment remains the contractor's property, States and local governments impose a wide variety of property, use, or other taxes on equipment leased to the Government. The amount of these taxes can vary considerably from jurisdiction to jurisdiction.

(d) *The North Carolina State and Local Sales and Use Tax.*

(i) The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or

repaired for such counties and incorporated cities and towns in North Carolina. In United States v. Clayton, 250 F. Supp.
827 (1965), it was held that the United States is entitled to the benefit of the refund, but must follow the refund procedure of the Act and the regulations to recover what it is due.

(ii) The Act provides that, to receive the refund, claimants must file, within 6 months after the claimant's fiscal year closes, a written request substantiated by such records, receipts, and information as the Commissioner of Revenue may require. No refund will be made on an application not filed within the time allowed and in such manner as the Commissioner may require. The requirements of the Commissioner are set forth in regulations that provide that, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. In the event the contractor makes several purchases from the same vendor, the certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the sales and use taxes paid. The statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of sales or use tax paid by the contractor. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the claimant. Any local sales or use taxes included in the contractor's statement must be shown separately from the State sales or use taxes.

(iii) The clause prescribed at 3.4.2-9 requires contractors to submit to COs by November 30 of each year a statement disclosing North Carolina State and local sales and use taxes paid during the 12-month period that ended the preceding September 30. The CO should ensure that contractors comply with this requirement and shall obtain the annual refund to which the

Government may be entitled. The application for refund must be filed each year before March 31 and in the manner and form required by the Commissioner of Revenue. Copies of the form may be obtained from the State of North Carolina Department of Revenue, PO Box 25000, Raleigh, North Carolina 27640.

**5 State and Local Tax Exemptions**

a. Evidence needed to establish exemption from State or local taxes depends on the grounds for the exemption claimed, the parties to the transaction, and the requirements of the taxing jurisdiction. Such evidence may include the following:

(1) A copy of the contract or relevant portion;

(2) Copies of purchase orders, shipping documents, credit-card-imprinted sales slips, paid or acknowledged invoices, or similar documents that identify an agency or instrumentality of the United States as the buyer;

(3) A U.S. Tax Exemption Form (SF 1094);

(4) A State or local form indicating that the supplies or services are for the exclusive use of the United States;

(5) Any other State or locally required document for establishing general or specific exemption;

(6) Shipping documents indicating that shipments are in interstate or foreign commerce.

b. If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption, as follows:

(1) Under a contract containing the clause at 3.4.2-8, Federal, State, and Local Taxes, Competitive Contracts, or at 3.4.2-7, Federal, State, and Local Taxes (Noncompetitive Contract), in accordance with the terms of those clauses;

(2) Under a cost-reimbursement contract, if requested by the contractor and approved by the CO or at the discretion of the CO;

(3) Under a contract or purchase order that contains no tax provision,

if—

(i) Requested by the contractor and approved by the CO or at

the discretion of the CO; and

(ii) Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor consents to a reduction in the contract price.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

## T3.5 Intellectual Property Revised 1/2009

### A Patents, Copyrights, and Rights in Data Revised 1/2009

#### 1 General Revised 1/2009

a. The policies stated in this section are applicable to all contracts entered into by the FAA. Cooperative Agreements ("Section 106 Cooperative Agreements") and "Other Transaction Agreements" entered into under the authority of 49 U.S.C. 106 do not necessarily require the use of the Intellectual Property clauses found at Section 3.5 of the AMS. Specific provisions dealing with intellectual property in Section 106 Cooperative Agreements and Other Transaction Agreements must be negotiated. Contracting Officers should follow the guidance in this section and draft appropriate clauses in consultation with legal counsel.

b. The Government encourages the maximum practical commercial use of inventions made under Government contracts.

c. Generally, the FAA will not refuse to award a contract on the grounds that the prospective contractor may infringe a patent. The FAA may authorize and consent to the use of inventions in the performance of certain contracts, even though the inventions may be covered by U.S. patents.

d. Generally, contractors providing commercial items should indemnify the Government against liability for the infringement of U.S. patents.

e. The FAA recognizes rights in data developed at private expense, and limits its demands for delivery of that data. When such data is delivered, the FAA will acquire only those rights essential to its needs.

f. Generally, the FAA requires that contractors obtain permission from copyright owners before including copyrighted works owned by others in data to be delivered to the

Government.

## 2 Patents and Copyrights Revised 1/2009

a. Patent and copyright infringement liability.

(1) Pursuant to 28 U.S.C. 1498, the exclusive remedy for patent or copyright infringement by or on behalf of the Government is a suit for monetary damages against the Government in the Court of Federal Claims. There is no injunctive relief available, and there is no direct cause of action against a contractor that is infringing a patent or copyright with the authorization or consent of the Government (e.g., while performing a contract).

(2) The FAA may expressly authorize and consent to a contractor's use or manufacture of inventions covered by U.S. patents by inserting the clause at AMS 3.5-1, Authorization and Consent.

(3) Because of the exclusive remedies granted in 28 U.S.C. 1498, the FAA requires notice and assistance from its contractors regarding any claims for patent or copyright infringement by inserting the clause at AMS 3.5-2, Notice and Assistance Regarding Patent and Copyright Infringement.

(4) The FAA may require a contractor to reimburse it for liability for patent infringement arising out of a contract for commercial items by inserting the clause at AMS 3.5-3, Patent Indemnity.

b. Royalties.

(1) Reporting of royalties.

(a) To determine whether royalties anticipated or actually paid under FAA contracts are excessive, improper, or inconsistent with Government patent rights, the SIR provision at AMS 3.5-6, Royalty Information, requires prospective contractors to furnish royalty information. The contracting officer shall take appropriate action to reduce or eliminate excessive or improper royalties.

(b) If the response to a SIR includes a charge for royalties, the contracting officer shall, before award of the contract, forward the information to the office having cognizance of patent matters for the contracting activity (generally the legal office that services the contracting activity responsible for the acquisition). The cognizant office shall promptly advise the contracting officer of appropriate action.

(c) The contracting officer, when considering the approval of a subcontract, shall require royalty information if it is required under the prime contract. The contracting officer shall forward the information to the office having cognizance of patent matters. However, the contracting officer need not delay

consent while awaiting advice from the cognizant office.

(d) The contracting officer shall forward any royalty reports to the office having cognizance of patent matters for the contracting activity.

(2) Notice of Government as a licensee.

(a) When the Government is obligated to pay a royalty on a patent because of an existing license agreement and the contracting officer believes that the licensed patent will be applicable to a prospective contract, the FAA should furnish the prospective offerors with

(i) Notice of the license;

(ii) The number of the patent; and

(iii) The royalty rate cited in the license.

(b) When the Government is obligated to pay such a royalty, the SIR should also require offerors to furnish information indicating whether or not each offeror is the patent owner or a licensee under the patent. This information is necessary so that the FAA may either

(c) Evaluate an offeror's price by adding an amount equal to the royalty; or

(d) Negotiate a price reduction with an offeror when the offeror is licensed under the same patent at a lower royalty rate.

(3) Adjustment of royalties.

(a) If at any time the contracting officer believes that any royalties paid, or to be paid, under a contract or subcontract are inconsistent with Government rights, excessive, or otherwise improper, the contracting officer shall promptly report the facts to the office having cognizance of patent matters for the contracting activity concerned.

(b) In coordination with the cognizant office, the contracting officer shall promptly act to protect the FAA against payment of royalties

(i) With respect to which the Government has a royalty-free license;

(ii) At a rate in excess of the rate at which the Government is licensed; or

(iii) When the royalties in whole or in part otherwise constitute an improper charge.

(c) In appropriate cases, the contracting officer in coordination with the cognizant office shall demand a refund pursuant to any refund of royalties

clause in the contract (see T3.5.A.2.b(4)) or negotiate for a reduction of royalties.

(4) Refund of royalties. The clause at AMS 3.5-8, Refund of Royalties, establishes procedures to pay the contractor royalties under the contract and recover royalties not paid by the contractor when the royalties were included in the contractor's fixed price.

c. Security requirements for patent applications containing classified subject matter.

(1) Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from the issuance of a patent, may be a violation of 18 U.S.C. 792, et seq. (Chapter 37 - Espionage and Censorship), and related statutes, and may be contrary to the interests of national security.

(2) Upon receipt of a patent application under paragraph (a) or (b) of the clause at AMS 3.5-9, Filing of Patent Applications - Classified Subject Matter, the contracting officer shall ascertain the proper security classification of the patent application. If the application contains classified subject matter, the contracting officer shall inform the contractor how to transmit the application to the United States Patent Office in accordance with procedures provided by legal counsel. If the material is classified "Secret" or higher, the contracting officer shall make every effort to notify the contractor within 30 days of the Government's determination, pursuant to paragraph (a) of the clause.

(3) Upon receipt of information furnished by the contractor under paragraph (d) of the clause at AMS 3.5-9, the contracting officer shall promptly submit that information to legal counsel in order that the steps necessary to ensure the security of the application will be taken

(4) The contracting officer shall act promptly on requests for approval of foreign filing under paragraph (c) of the clause at AMS 3.5-9 in order to avoid the loss of valuable patent rights of the Government or the contractor.

d. Patented technology under trade agreements.

(1) Use of patented technology under the North American Free Trade Agreement.

(a) The requirements of this section apply to the use of technology covered by a valid patent when the patent holder is from a country that is a party to the North American Free Trade Agreement (NAFTA).

(b) Article 1709(10) of NAFTA generally requires a user of technology covered by a valid patent to make a reasonable effort to obtain authorization prior to use of the patented technology. However, NAFTA provides that this requirement for authorization may be waived in situations of national emergency or other circumstances of extreme urgency, or for public noncommercial use.

(c) Section 6 of Executive Order 12889, "Implementation of the North American

Free Trade Act," of December 27, 1993, waives the requirement to obtain advance authorization for an invention used or manufactured by or for the Federal Government. However, the patent owner shall be notified in advance whenever the agency or its contractor knows or has reasonable grounds to know, without making a patent search, that an invention described in and covered by a valid U.S. patent is or will be used or manufactured without a license. In cases of national emergency or other circumstances of extreme urgency, this notification need not be made in advance, but shall be made as soon as reasonably practicable.

(d) The contracting officer, in consultation with the office having cognizance of patent matters, shall ensure compliance with the notice requirements of NAFTA Article 1709(10) and Executive Order 12889. A contract award should not be suspended pending notification to the patent owner.

(e) Section 6(c) of Executive Order 12889 provides that the notice to the patent owner does not constitute an admission of infringement of a valid privately- owned patent.

(f) When addressing issues regarding compensation for the use of patented technology, FAA personnel should be advised that NAFTA uses the term "adequate remuneration." Executive Order 12889 equates "remuneration" to "reasonable and entire compensation" as used in 28 U.S.C. 1498, the statute that gives jurisdiction to the U.S. Court of Federal Claims to hear patent and copyright cases involving infringement by the Government.

(g) When questions arise regarding the notice requirements or other matters relating to this section, the contracting officer should consult with legal counsel.

(2) Use of patented technology under the General Agreement on Tariffs and Trade (GATT). Article 31 of Annex 1C, Agreement on Trade-Related Aspects of Intellectual Property Rights, to GATT (Uruguay Round) addresses situations where the law of a member country allows for use of a patent without authorization, including use by the Government.

## 3 Patent Rights under Government Contracts Revised 7/2012

This section prescribes policies, procedures, SIR provisions, and contract clauses pertaining to inventions made in the performance of work under an FAA contract or subcontract for experimental, developmental, or research work.

a. Definitions. As used in this subpart

Invention means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code, or any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.)

Made means

(1) When used in relation to any invention other than a plant variety, means the conception or first actual reduction to practice of the invention;

(2) When used in relation to a plant variety, means that the contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

Nonprofit organization means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention means any invention of the contractor made in the performance of work under a Government contract.

b. Policy.

(1) Introduction. In accordance with chapter 18 of title 35, U.S.C. (as implemented by 37 CFR part 401), Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies dated February 18, 1983, and Executive Order 12591, Facilitating Access to Science and Technology dated April 10, 1987, it is the policy and objective of the Government to

(a) Use the patent system to promote the use of inventions arising from federally supported research or development;

(b) Encourage maximum participation of industry in federally supported research and development efforts;

(c) Ensure that these inventions are used in a manner to promote free competition and enterprise without unduly encumbering future research and discovery;

(d) Promote the commercialization and public availability of the inventions made in the United States by United States industry and labor;

(e) Ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and

(f) Minimize the costs of administering patent policies.

(2) Contractor right to elect title.

(a) Generally, pursuant to 35 U.S.C. 202 and the Presidential memorandum and executive order cited in paragraph (a) of this section, each contractor may, after required disclosure to the Government, elect to retain title to any subject invention.

(b) A contract may require the contractor to assign to the Government title to any subject invention

(i) When the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government;

(ii) In exceptional circumstances, when an agency determines that restriction or elimination of the right to retain title in any subject invention will better promote the policy and objectives of chapter 18 of title 35, U.S.C. and the Presidential Memorandum;

(iii) When a Government authority, that is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities, determines that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities;

(iv) Reserved.

(v) Pursuant to statute or in accordance with agency regulations.

(c) When the Government has the right to acquire title to a subject invention, the contractor may, nevertheless, request greater rights to a subject invention.

(d) Consistent with 37 CFR part 401, when a contract with a small business concern or nonprofit organization requires assignment of title to the Government based on the exceptional circumstances enumerated in paragraph (b)(2)(ii) or (iii) of this section for reasons of national security, the contract shall still provide the contractor with the right to elect ownership to any subject invention that

(i) Is not classified by the agency; or

(ii) Is not limited from dissemination by the DOE within 6 months from the date it is reported to the agency.

(e) Contracts in support of DOE's naval nuclear propulsion program are exempted
from this paragraph (b).

(f) When a contract involves a series of separate task orders, the FAA may structure the contract to apply the exceptions at paragraph (b)(2)(ii) or (iii) of this section to individual task orders.

(3) Government license. The Government shall have at least a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, any subject invention throughout the world. The Government may require additional rights in order to comply with treaties or other international agreements. In such case, these rights shall be made a part of the contract.

(4) Government right to receive title.

(a) In addition to the right to obtain title to subject inventions pursuant to paragraph (b)(2)(i) through (v) of this section, the Government has the right to receive title to an invention

(i) If the contractor has not disclosed the invention within the time specified in the clause; or

(ii) In any country where the contractor

(A) Does not elect to retain rights or fails to elect to retain rights to the invention within the time specified in the clause;

(B) Has not filed a patent or plant variety protection application within the time specified in the clause;

(C) Decides not to continue prosecution of a patent or plant variety protection application, pay maintenance fees, or defend in a reexamination or opposition proceeding on the patent; or

(D) No longer desires to retain title.

(b) For the purposes of this paragraph, filing in a European Patent Office Region or under the Patent Cooperation Treaty constitutes election in the countries selected in the application(s).

(5) Utilization reports. The FAA has the right to require periodic reporting on how any subject invention is being used by the contractor or its licensees or assignees. In accordance with 35 U.S.C. 202(c)(5) and 37 CFR part 401, agencies shall not disclose such utilization reports to persons outside the Government without permission of the contractor. Contractors should mark as confidential/proprietary any utilization report to help prevent inadvertent release outside the Government.

(6) March-in rights.

(a) Pursuant to 35 U.S.C. 203, agencies have certain march-in rights that require the contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to responsible applicants, upon terms that are reasonable under the circumstances. If the contractor, assignee or exclusive licensee of a subject invention refuses to grant such a license, the agency can grant the license itself. March-in rights may be exercised only if the agency determines that this action is necessary

(i) Because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in the field(s) of use;

(ii) To alleviate health or safety needs that are not reasonably satisfied by the contractor, assignee, or their licensees;

(iii) To meet requirements for public use specified by Federal regulations and these requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(iv) Because the agreement required by paragraph (g) of this section has neither been obtained nor waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of its agreement obtained pursuant to paragraph (g) of this section.

(b) The agency shall not exercise its march-in rights unless the contractor has been provided a reasonable time to present facts and show cause why the proposed agency action should not be taken. The agency shall provide the contractor an opportunity to dispute or appeal the proposed action, in accordance with T3.5.3.d(1)(g).

(7) Preference for United States industry. In accordance with 35 U.S.C. 204, no contractor that receives title to any subject invention and no assignee of the contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless that person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for this agreement may be waived by the FAA upon a showing by the contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(8) Special conditions for nonprofit organizations' preference for small business concerns.

(a) Nonprofit organization contractors are expected to use reasonable efforts to attract small business licensees (see paragraph (i)(4) of the clause at AMS 3.5-10, Patent RightsOwnership by the Contractor). What constitutes reasonable

efforts to attract small business licensees will vary with the circumstances and the nature, duration, and expense of efforts needed to bring the invention to the market.

(b) Small business concerns that believe a nonprofit organization is not meeting its obligations under the clause may report the matter to the Secretary of Commerce. To the extent deemed appropriate, the Secretary of Commerce will undertake informal investigation of the matter, and may discuss or negotiate with the nonprofit organization ways to improve its efforts to meet its obligations under the clause. However, in no event will the Secretary of Commerce intervene in ongoing negotiations or contractor decisions concerning the licensing of a specific subject invention. These investigations, discussions, and negotiations involving the Secretary of Commerce will be in coordination with other interested agencies, including the Small Business Administration. In the case of a contract for the operation of a Government-owned, contractor-operated research or production facility, the Secretary of Commerce will coordinate with the agency responsible for the facility prior to any discussions or negotiations with the contractor.

(9) Minimum rights to contractor.

(a) When the Government acquires title to a subject invention, the contractor is normally granted a revocable, nonexclusive, paid-up license to that subject invention throughout the world. The contractor's license extends to any of its domestic subsidiaries and affiliates within the corporate structure of which the contractor is a part and includes the right to grant sublicenses to the extent the contractor was legally obligated to do so at the time of contract award. The contracting officer shall approve or disapprove, in writing, any contractor request to transfer its licenses. No approval is necessary when the transfer is to the successor of that part of the contractor's business to which the subject invention pertains.

(b) In response to a third party's proper application for an exclusive license, the contractor's domestic license may be revoked or modified to the extent necessary to achieve expeditious practical application of the subject invention. The application shall be submitted in accordance with the applicable provisions in 37 CFR part 404 and agency licensing regulations. The contractor's license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that country. (See the procedures at T3.5.A.3.d(1)(f)).

(10) Confidentiality of inventions. Publishing information concerning an invention before a patent application is filed on a subject invention may create a bar to a valid patent. To avoid this bar, the FAA may withhold information from the public that discloses any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) (see 35 U.S.C. 205 and 37 CFR part

401). Agencies may only withhold information concerning inventions for a reasonable time in order for a patent application to be filed. Once filed in any patent office, agencies are not required to release copies of any document that is a part of a patent application for those subject inventions. (See also T3.5.A.3.e(4)).

c. Reserved.

d. Procedures.

(1) General.

(a) Status as small business concern or nonprofit organization. If the FAA has reason to question the size or nonprofit status of the prospective contractor, the FAA may require the prospective contractor to furnish evidence of its nonprofit status.

(b) Exceptions.

(i) Before using any of the exceptions that would require the use of AMS 3.5-12, Patent Rights – Ownership by the Government in a contract with a small business concern or a nonprofit organization and before using an exception based on "exceptional circumstances" for any contractor, the agency shall follow the applicable procedures at 37 CFR 401.

(ii) A small business concern or nonprofit organization is entitled to an administrative review of the use of the exceptions in accordance with agency procedures and 37 CFR Part 401.

(c) Greater rights determinations. Whenever the contract contains the clause at AMS 3.5-12, Patent Rights Ownership by the Government, or a patent rights clause modified to address "exceptional circumstances" the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request greater rights to an identified invention within the period specified in the clause. The contracting officer may grant requests for greater rights if the contracting officer determines that the interests of the United States and the general public will be better served. In making these determinations, the contracting officer shall consider at least the following objectives (see 37 CFR
401.3(b) and 401.15):

(i) Promoting the utilization of inventions arising from federally supported research and development.

(ii) Ensuring that inventions are used in a manner to promote competition and free enterprise without unduly encumbering future research and discovery.

(iii) Promoting public availability of inventions made in the United States by United States industry and labor.

(iv) Ensuring that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(d) Retention of rights by inventor. If the contractor elects not to retain title to a subject invention, the FAA may consider and, after consultation with the contractor, grant requests for retention of rights by the inventor. Retention of rights by the inventor will be subject to the conditions in paragraphs (d) (except paragraph (d)(1)(i)), (e)(4), (f), (g), and (h) of the clause at AMS 3.5-10, Patent Rights Ownership by the Contractor.

(e) Government assignment to contractor of rights in Government employees' inventions. When a Government employee is a co-inventor of an invention made under a contract with a small business concern or nonprofit organization, the agency employing the co-inventor may license or assign whatever rights it may acquire in the subject invention from its employee to the contractor, subject at least to the conditions of 35 U.S.C. 202-204.

(f) Revocation or modification of contractor's minimum rights. Before revoking or modifying the contractor's license in accordance with T3.5.3.b(8)(i)B, the contracting officer shall furnish the contractor a written notice of intention to revoke or modify the license. The FAA will allow the contractor at least 30 days (or another time as may be authorized for good cause by the contracting officer) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency licensing regulations, any decisions concerning the revocation or modification.

(g) Exercise of march-in rights. When exercising march-in rights, agencies shall follow the procedures set forth in 37 CFR 401.6.

(h) Licenses and assignments under contracts with nonprofit organizations. If the contractor is a nonprofit organization, paragraph (i) of the clause at AMS 3.5-10 provides that certain contractor actions require agency approval.

(2) Contracts placed by or for other Government agencies. The following procedures apply unless an interagency agreement provides otherwise:

(a) When a Government agency requests the FAA to award a contract on its behalf, the request should explain any special circumstances surrounding the contract and specify the patent rights clause to be used. The clause should be selected and modified, if necessary, in accordance with the policies and procedures of this subpart. If, however, the request states that a clause of the requesting agency is required (e.g., because of statutory requirements, a deviation, or exceptional circumstances), the FAA shall use that clause rather than those of this subpart.

(1) If the request states that an agency clause is required and the work to be performed under the contract is not severable and is funded wholly or in part by the requesting

agency, then include the requesting agency clause and no other patent rights clause in the contract.

(2) If the request states that an agency clause is required, and the work to be performed under the contract is severable, then the contracting officer shall assure that the requesting agency clause applies only to that severable portion of the work and that the work for the FAA is subject to the appropriate patent rights clause.

(3) If the request states that a requesting agency clause is not required in any resulting contract, the FAA will use the appropriate patent rights clause, if any.

(b) Any action requiring an agency determination, report, or deviation involved in the use of the requesting agency's clause is the responsibility of the requesting agency unless the agencies agree otherwise. However, the FAA may not alter the requesting agency's clause without prior approval of the requesting agency.

(c) The requesting agency may require, and provide instructions regarding, the forwarding or handling of any invention disclosures or other reporting requirements of the specified clauses. Normally, the requesting agency is responsible for the administration of any subject inventions. This responsibility shall be established in advance of awarding any contracts.

(3) Subcontracts.

(a) The policies and procedures in this subpart apply to all subcontracts at any tier.

(b) Whenever a prime contractor or a subcontractor considers including a particular clause in a subcontract to be inappropriate or a subcontractor refuses to accept the clause, the contracting officer, in consultation with counsel, shall resolve the matter.

(c) It is Government policy that contractors shall not use their ability to award subcontracts as economic leverage to acquire rights for themselves in inventions resulting from subcontracts.

(3) Appeals.

(a) The designated agency official shall provide the contractor with a written statement of the basis, including any relevant facts, for taking any of the following actions:

(1) A refusal to grant an extension to the invention disclosure period under paragraph (c)(4) of the clause at AMS 3.5-10;

(2) A demand for a conveyance of title to the Government under T.3.5.A.3.2(d)(1)(i) and (ii);

(3) A refusal to grant a waiver under T3.5.A.3.b(7), Preference for United States industry; or

(4) A refusal to approve an assignment under T3.5.A.3.b(8).

(b) Any of these actions may be appealed by filing a contract claim with the Office of Dispute Resolution for Acquisition (ODRA) under the procedures established at Parts 14 and 17 of title 49 of the Code of Federal Regulations. The ODRA shall consider both the factual and legal basis for the action and its consistency with the policy and objectives of 35 U.S.C. 200-206 and 210.

(c) The decision of the ODRA may be appealed as provided at 49 U.S.C. 46110. This is the Contractor's sole remedy for an adverse decision of the ODRA.

e. Administration of patent rights clauses.

(1) Goals.

(a) Contracts having a patent rights clause should be so administered that

(i) Inventions are identified, disclosed, and reported as required by the contract, and elections are made;

(ii) The rights of the Government in subject inventions are established;

(iii) When patent protection is appropriate, patent applications are timely filed and prosecuted by contractors or by the Government;

(iv) The rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and

(v) Expeditious commercial utilization of subject inventions is achieved. (b) If a subject invention is made under a contract funded by more than one agency, at the request of the contractor or on their own initiative, the agencies shall designate one agency as responsible for administration of the rights of the Government in the invention.

(2) Administration by the FAA.

(a) The FAA should establish and maintain appropriate follow-up procedures to protect the Government's interest and to check that subject inventions are identified and disclosed, and when appropriate, patent applications are filed, and that the Government's rights therein are established and protected. Standard forms are available in the AMS for reporting subject inventions and confirmatory instruments. Follow-up activities for contracts that include a clause referenced in T3.5.A.3.d(h)(2) should be coordinated with the appropriate agency.

(b)

(i) The contracting officer administering the contract (or other representative specifically designated in the contract for this purpose) is responsible for receiving invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information submitted by the contractor pursuant to a patent rights clause.

(A) For other than confirmatory instruments, if the contractor fails to furnish documents or information as called for by the clause within the time required, the contracting officer shall promptly request the contractor to supply the required documents or information. If the failure persists, the contracting officer shall take appropriate action to secure compliance.

(B) If the contractor does not furnish confirmatory instruments within 6 months after filing each patent application, or within 6 months after submitting the invention disclosure if the application has been previously filed, the contracting officer shall request the contractor to supply the required documents.

(ii) The contracting officer shall promptly furnish all invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information relating to patent rights clauses to legal counsel.

(c) Contracting activities should establish appropriate procedures to detect and correct failures by the contractor to comply with its obligations under the patent rights clauses, such as failures to disclose and report subject inventions, both during and after contract performance. Government effort to review and correct contractor compliance with its patent rights obligations should be directed primarily toward contracts that are more likely to result in subject inventions significant in number or quality. These contracts include contracts of a research, developmental, or experimental nature; contracts of a large dollar amount; and any other contracts when there is reason to believe the contractor may not be complying with its contractual obligations. Other contracts may be reviewed using a spot-check method, as feasible. Appropriate follow-up procedures and activities may include the investigation or review of selected contracts or contractors by those qualified in patent and technical matters to detect failures to comply with contract obligations.

(d) Follow-up activities should include, where appropriate, use of Government patent personnel

(i) To interview agency technical personnel to identify novel developments made in contracts;

(ii) To review technical reports submitted by contractors with

cognizant agency technical personnel;

(iii) To check the Official Gazette of the United States Patent and Trademark Office and other sources for patents issued to the contractor in fields related to its Government contracts; and

(iv) To have cognizant Government personnel interview contractor personnel regarding work under the contract involved, observe the work on site, and inspect laboratory notebooks and other records of the contractor related to work under the contract.

(e) If a contractor or subcontractor does not have a clear understanding of its obligations under the clause, or its procedures for complying with the clause are deficient, the contracting officer should explain to the contractor its obligations. The withholding of payments provision (if any) of the patent rights clause may be invoked if the contractor fails to meet the obligations required by the patents rights clause. Significant or repeated failures by a contractor to comply with the patent rights obligation in its contracts shall be documented and made a part of the general file.

(3) Securing invention rights acquired by the Government.

(a) The FAA is responsible for implementing procedures necessary to protect the Government's interest in subject inventions. When the Government acquires the entire right, title, and interest in an invention by contract, the chain of title from the inventor to the Government shall be clearly established. This is normally accomplished by an assignment either from each inventor to the contractor and from the contractor to the Government, or from the inventor to the Government with the consent of the contractor. When the Government's rights are limited to a license, there should be a confirmatory instrument to that effect.

(b) The FAA will develop suitable assignments, licenses, and other papers evidencing any rights of the Government in patents or patents applications. Standard forms are available in the AMS for reporting subject inventions and confirmatory instruments. These instruments should be recorded in the U.S. Patent and Trademark Office (see Executive Order 9424, Establishing in the United States Patent Office a Register of Government Interests in Patents and Applications for Patents, (February 18, 1944).

(4) Protection of invention disclosures.

(a) The Government will, to the extent authorized by 35 U.S.C. 205, withhold from disclosure to the public any invention disclosures reported under the patent rights clauses of AMS 3.5-10 or AMS 3.5-12 for a reasonable time in order for patent applications to be filed. The Government will follow the policy in T3.5.3.b(9) regarding protection of confidentiality.

(b) The Government should also use reasonable efforts to withhold from disclosure to the public for a reasonable time other information disclosing a subject invention. This information includes any data delivered pursuant to contract requirements provided that the contractor notifies the FAA as to the identity of the data and the subject invention to which it relates at the time of delivery of the data. This notification shall be provided to both the contracting officer and to any patent representative to which the invention is reported, if other than the contracting officer.

(c) For more information on protection of invention disclosures, also see 37 CFR 401.13.

f. Licensing background patent rights to third parties.

(1) A contract with a small business concern or nonprofit organization shall not contain a provision allowing the Government to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless the Administrator has approved and signed a written justification in accordance with paragraph (b) of this section. The Administrator may not delegate this authority and may exercise the authority only if it is determined that the

(a) Use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the contract; and

(b) Action is necessary to achieve the practical application of the subject invention or work object.

(2) Any determination will be on the record after an opportunity for a hearing, and the FAA will notify the contractor of the determination by certified or registered mail. The notification shall include a statement that the contractor must bring any action for review of the Administrator's determination within 90 days after the notification pursuant to 49 U.S.C. 46110.

## 4 Rights in Data and Copyrights Revised 1/2009

This section sets forth policies and procedures regarding rights in data and copyrights, and acquisition of data by and for the FAA.

a. Definitions. As used in this subpart

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional

characteristics, and performance requirements, but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

Limited rights means the rights of the Government in limited rights data as set forth in a Limited Rights Notice.

Limited rights data means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications. (Agencies may, however, adopt the following alternate definition:

Limited rights data means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

Restricted rights means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice.

Unlimited rights means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

b. Policy.

(1) To carry out its missions and programs, the FAA acquires or obtains access to many kinds of data produced during or used in the performance of its contracts. The FAA requires data to

(a) Obtain competition among suppliers;

(b) Fulfill certain responsibilities for disseminating and publishing the results of its activities;

(c) Ensure appropriate utilization of the results of research, development, and demonstration activities including the dissemination of technical information to foster subsequent technological developments;

(d) Meet other programmatic and statutory requirements; and

(e) Meet specialized acquisition needs and ensure logistics support.

(2) Contractors may have proprietary interests in data. In order to prevent the compromise of these interests, the FAA will protect proprietary data from unauthorized use and disclosure. The protection of such data is also necessary to encourage qualified contractors to participate in and apply innovative concepts to Government programs. In light of these considerations, the FAA will balance the

Government's needs and the contractor's legitimate proprietary interests.

c. Data rights - General.

All contracts that require data to be produced, furnished, acquired, or used in meeting contract performance requirements, must contain terms that delineate the respective rights and obligations of the Government and the contractor regarding the use, reproduction, and disclosure of that data. Data rights clauses do not specify the type, quantity or quality of data that is to be delivered, but only the respective rights of the Government and the contractor regarding the use, disclosure, or reproduction of the data. Accordingly, the contract shall specify the data to be delivered.

d. Basic rights in data clause.

This section describes the operation of the clause at AMS 3.5-13, Rights in Data - General, and also the use of the provision at AMS 3.5-14, Representation of Limited Rights Data and Restricted Computer Software.

(1) Unlimited rights data. The Government acquires unlimited rights in the following data except for copyrighted works as provided in T3.5.A.4.d(3).

(a) Data first produced in the performance of a contract (except to the extent the data constitute minor modifications to data that are limited rights data or restricted computer software).

(b) Form, fit, and function data delivered under contract.

(c) Data (except as may be included with restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under a contract.

(d) All other data delivered under the contract other than limited rights data or restricted computer software T3.5.A.4(d)(2).

(2) Limited rights data and restricted computer software.

(a) General. The basic clause at AMS 3.5-13, Rights in Data - General, enables the contractor to protect qualifying limited rights data and restricted computer software by withholding the data from the Government and instead delivering form, fit, and function data.

(b) Alternate definition of limited rights data. For contracts that do not require the development, use, or delivery of items, components, or processes that are intended to be acquired by or for the Government, the FAA may adopt the alternate definition of limited rights data set forth in Alternate I to the clause at AMS 3.5-13. The alternate definition does not require that the data pertain to items, components, or processes developed at private expense; but rather that the data were developed at private expense and embody a trade secret or are

commercial or financial and confidential or privileged.

(c) Protection of limited rights data specified for delivery.

(i) The clause at AMS 3.5-13 with its Alternate II enables the FAA to require delivery of limited rights data rather than allow the contractor to withhold the data. To obtain delivery, the contract may identify and specify data to be delivered, or the contracting officer may require, by written request during contract performance, the delivery of data that has been withheld or identified to be withheld under paragraph (g)(1) of the clause. In addition, the contract may specifically identify data that are not to be delivered under Alternate II or which, if delivered, will be delivered with limited rights. The limited rights obtained by the Government are set forth in the Limited Rights Notice contained in paragraph (g)(3) of Alternate II. The FAA will not, without permission of the contractor, use limited rights data for purposes of manufacture or disclose the data outside the Government except as set forth in the Notice. Any disclosure by the Government shall be subject to prohibition against further use and disclosure by the recipient. The following are examples of specific purposes that may be adopted by an agency in its supplement and added to the Limited Rights Notice of paragraph (g)(3) of Alternate II of the clause:

(A) Use (except for manufacture) by support service contractors.

(B) Evaluation by nongovernment evaluators.

(C) Use (except for manufacture) by other contractors participating in the Government's program of which the specific contract is a part.

(D) Emergency repair or overhaul work.

(E) Release to a foreign government, or its instrumentalities, if required to serve the interests of the U.S. Government, for information or evaluation, or for emergency repair or overhaul work by the foreign government.

(ii) The provision at AMS 3.5-14, Representation of Limited Rights Data and Restricted Computer Software, helps the contracting officer to determine whether the clause at AMS 3.5-13 should be used with its Alternate II. This provision requests that an offeror state whether limited rights data are likely to be delivered. Where limited rights data are expected to be delivered, use Alternate II. Where negotiations are based on an unsolicited proposal, the need for Alternate II of the clause at AMS 3.5-13 should be addressed during negotiations or discussions, and if Alternate II was not included initially it may be added by

modification, if needed, during contract performance.

(iii) If data that would otherwise qualify as limited rights data is delivered as a computer database, the data shall be treated as limited rights data, rather than restricted computer software, for the purposes of paragraph (g) of the AMS 3.5-13.

(d) Protection of restricted computer software specified for delivery.

(i) Alternate III of the clause at AMS 3.5-13, enables the Government to require delivery of restricted computer software rather than allow the contractor to withhold such restricted computer software. To obtain delivery of restricted computer software the contracting officer shall

(A) Identify and specify the deliverable computer software in the contract; or

(B) Require by written request during contract performance, the delivery of computer software that has been withheld or identified to be withheld under paragraph (g)(1) of the clause.

(ii) In considering whether to use Alternate III, contracting officers should note that, unlike other data, computer software is also an end item in itself. Thus, the contracting officer shall use Alternate III if delivery of restricted computer software is required to meet agency needs.

(iii) Unless otherwise agreed (see paragraph (d)(4) of this subsection), the restricted rights obtained by the Government are set forth in the Restricted Rights Notice contained in paragraph (g)(4) (Alternate III). Such restricted computer software will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be

(A) Used or copied for use with the computers for which it was acquired, including use at any Government installation to which the computers may be transferred;

(B) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(C) Reproduced for safekeeping (archives) or backup purposes;

(D) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the

same restricted rights;

(E) Disclosed to and reproduced for use by support service contractors or their subcontractors, in accordance with paragraphs (3)(i) through (iv) of this section; and

(F) Used or copied for use with a replacement computer.

(iv) The restricted rights set forth in paragraph (d)(3) of this subsection are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of paragraph (g)(4) of Alternate III of the clause at AMS 3.5-13. However, the contracting officer may specify different rights in the contract, consistent with the purposes and needs for which the software is to be acquired. For example, the contracting officer should consider any networking needs or any requirements for use of the computer software from remote terminals. Also, in addressing such needs, the scope of the restricted rights may be different for the documentation accompanying the computer software than for the programs and databases. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of paragraph (g)(4) of Alternate III of the clause at AMS 3.5-13 shall be expressly stated in the contract or in a collateral agreement incorporated in and made part of the contract, and the notice modified accordingly.

(v) The provision at AMS 3.5-14, Representation of Limited Rights Data and Restricted Computer Software, helps the contracting officer determine whether to use the clause at AMS 3.5-13 with its Alternate III. This provision requests that an offeror state whether restricted computer software is likely to be delivered under the contract. In addition, the need for Alternate III should be addressed during negotiations or discussions with an offeror, particularly where negotiations are based on an unsolicited proposal. However, if Alternate III is not used initially, it may be added by modification, if needed, during contract performance.

(3) Copyrighted works.

(a) Data first produced in the performance of a contract.

(i) Generally, the contractor must obtain permission of the contracting officer prior to asserting rights in any copyrighted work containing data first produced in the performance of a contract. However, contractors are normally authorized, without prior approval of the contracting officer, to assert copyright in technical or scientific articles based on or containing such data that is published in academic, technical or professional journals, symposia proceedings and similar works.

(ii) The contractor must make a written request for permission to assert its copyright in works containing data first produced under the contract. In its request, the contractor should identify the data involved or furnish copies of the data for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which the permission is requested. Generally, a contracting officer should grant the contractor's request when copyright protection will enhance the appropriate dissemination or use of the data unless the

(A) Data consist of a report that represents the official views of the agency or that the agency is required by statute to prepare;

(B) Data are intended primarily for internal use by the Government;

(C) Data are of the type that the agency itself distributes to the public under an agency program;

(D) Government determines that limitation on distribution of the data is in the national interest; or

(E) Government determines that the data should be disseminated without restriction.

(iii) Alternate IV of the clause at AMS 3.5-13 provides a substitute paragraph (c)(1) granting permission for contractors to assert copyright in any data first produced in the performance of the contract without the need for any further requests. Except for contracts for management or operation of Government facilities and contracts and subcontracts in support of programs being conducted at those facilities or where international agreements require otherwise, Alternate IV shall be used in all contracts for basic or applied research to be performed solely by colleges and universities. Alternate IV shall not be used in contracts with colleges and universities if a purpose of the contract is for development of computer software for distribution to the public (including use in solicitations) by or on behalf of the Government. In addition, Alternate IV may be used in other contracts if an agency determines that it is not necessary for a contractor to request further permission to assert copyright in data first produced in performance of the contract. The contracting officer may exclude any data, or items or categories of data, from the provisions of Alternate IV by expressly so providing in the contract or by adding a paragraph (d)(4) to the clause, consistent with T3.5.A.4.d.(4)(b).

(iv) Pursuant to paragraph (c)(1) of the clause at AMS 3.5-13, the contractor grants the Government a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all data(other than computer software) first produced in

the performance of a contract. For computer software, the scope of the Government's license includes all of the above rights except the right to distribute to the public. The FAA may also obtain a license of different scope if the contracting officer determines, after consulting with legal counsel, such a license will substantially enhance the dissemination of any data first produced under the contract or if such a license is required to comply with international agreements. If the FAA obtains a different license, the contractor shall clearly state the scope of that license in a conspicuous place on the medium on which the data is recorded. For example, if the data is delivered as a report, the terms of the license shall be stated on the cover, or first page, of the report.

(v) The clause requires the contractor to affix the applicable copyright notices of 17 U.S.C. 401 or 402, and acknowledgment of Government sponsorship, (including the contract number) to data when it asserts copyright in data. Failure to do so could result in such data being treated as unlimited rights data (see T3.5.A.4.d(1)).

(b) Data not first produced in the performance of a contract.

(i) Contractors shall not deliver any data that is not first produced under the contract without either

(A) Acquiring for or granting to the Government a copyright license for the data; or

(B) Obtaining permission from the contracting officer to do otherwise.

(ii) The copyright license the Government acquires for such data will normally be of the same scope as discussed in paragraph (a)(4) of this subsection, and is set forth in paragraph (c)(2) of the clause at AMS 3.5-13. However, agencies may obtain a license of different scope if the agency determines, after consultation with its legal counsel, that such different license will not be inconsistent with the purpose of acquiring the data. If a license of a different scope is acquired, it must be so stated in the contract and clearly set forth in a conspicuous place on the data when delivered to the Government. If the contractor delivers computer software not first produced under the contract, the contractor shall grant the Government the license set forth in paragraph (g)(4) of Alternate III if included in the clause at AMS 3.4-13, or a license agreed to in a collateral agreement made part of the contract.

(4) Contractor's release, publication, and use of data.

(a) In contracts for basic or applied research with universities or colleges, the FAA will not place any restrictions on the conduct of or reporting on the results of unclassified basic or applied research, except as provided in applicable U.S.

Statutes. However, the FAA may restrict the release or disclosure of computer software that is or is intended to be developed to the point of practical application (including for agency distribution under established programs). This is not considered a restriction on the reporting of the results of basic or applied research. The FAA may also preclude a contractor from asserting copyright in any computer software for purposes of established agency distribution programs, or where required to accomplish the purpose for which the software is acquired.

(b) Except for the results of basic or applied research under contracts with universities or colleges, the FAA may place limitations or restrictions on the contractor's exercise of its rights in data first produced in the performance of the contract, including a requirement to assign copyright to the Government or another party. Any of these restrictions shall be expressly included in the contract.

(5) Unauthorized, omitted, or incorrect markings.

(a) Unauthorized marking of data.

(i) The FAA has, in accordance with paragraph (e) of the clause at AMS 3.5-13, the right to either return data containing unauthorized markings or to cancel or ignore the markings.

(ii) The FAA will not cancel or ignore markings without making written inquiry of the contractor and affording the contractor at least 60 days to provide a written justification substantiating the propriety of the markings.

(A) If the contractor fails to respond or fails to provide a written justification substantiating the propriety of the markings within the time afforded, the FAA may cancel or ignore the markings.

(B) If the contractor provides a written justification substantiating the propriety of the markings, the contracting officer shall consider the justification.

(C) If the contracting officer determines that the markings are authorized, the contractor will be so notified in writing.

(D) If the contracting officer determines, with concurrence of the Chief of the Contracting Office [COCO], that the markings are not authorized, the Contracting Officer shall provide a written determination to the Contractor. If the Contractor disagrees with the Contracting Officer determination, the Contractor may seek adjudication of that determination under AMS 3.9.1-1 "Contract Dispute." The decision of the Office of Dispute Resolution for Acquisition [ODRA] shall be final regarding the appropriateness of the markings unless the Contractor files an appeal pursuant to

49 U.S.C. 46110 in a court of competent jurisdiction within 90 days of receipt of the ODRA decision. This is the Contractor's sole remedy to an adverse decision of the ODRA. The markings will not be cancelled or ignored until final resolution of the matter, either by the contracting officer's determination, a decision pursuant to 14 CFR Parts 14 and 17, or by final disposition of the matter by court pursuant to 49 U.S.C. 46110.

(iii) The foregoing procedures may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request.

(b) Omitted or incorrect notices.

(i) Data delivered under a contract containing the clause without a limited rights notice or restricted rights notice, and without a copyright notice, will be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of the data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may, within 6 months (or a longer period approved by the contracting officer for good cause shown), request permission of the contracting officer to have omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the contractor's expense. The contracting officer may permit adding appropriate notices if the contractor

(A) Identifies the data for which a notice is to be added;

(B) Demonstrates that the omission of the proposed notice was inadvertent;

(C) Establishes that use of the proposed notice is authorized; and

(D) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(ii) The contracting officer may also

(A) Permit correction, at the contractor's expense, of incorrect notices if the contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or

(B) Correct any incorrect notices.

(6) Inspection of data at the contractor's facility. Contracting officers may obtain the

right to inspect data at the contractor's facility by use of the clause at AMS 3.5-13 with its Alternate V, which adds paragraph (j) to provide that right. The FAA may also adopt Alternate V for general use. The data subject to inspection may be data withheld or withholdable under paragraph (g)(1) of the clause. Inspection may be made by the contracting officer or designee (including nongovernmental personnel under the same conditions as the contracting officer) for the purpose of verifying a contractor's assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised up to 3 years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not subject to inspection under paragraph (j) of the Alternate. If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

e. Other data rights provisions.

(1) Special works.

(a) The clause at AMS 3.5-16, Rights in Data - Special Works, is for use in contracts (or may be made applicable to portions thereof) that are primarily for the production or compilation of data (other than limited rights data or restricted computer software) for the Government's own use, or when there is a specific need to limit distribution and use of the data or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples are contracts for

(i) The production of audiovisual works, including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translation, adaptation, and the like;

(ii) Histories of the respective agencies, departments, services, or units thereof;

(iii) Surveys of Government establishments;

(iv) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;

(v) The compilation of reports, books, studies, surveys, or similar documents that do not involve research, development, or experimental work;

(vi) The collection of data containing personally identifiable information such that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(vii) Investigatory reports;

(viii) The development, accumulation, or compilation of data (other than that resulting from research, development, or experimental work performed by the contractor), the early release of which could prejudice follow-on acquisition activities or agency regulatory or enforcement activities; or

(ix) The development of computer software programs, where the program

(A) May give a commercial advantage; or

(B) Is agency mission sensitive, and release could prejudice agency mission, programs, or follow-on acquisitions.

(b) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced other than for contract performance. Contracts for the production of audiovisual works, sound recordings, etc., may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(c) Paragraph (c)(1)(ii) of the clause, which enables the Government to obtain assignment of copyright in any data first produced in the performance of the contract, may be deleted if the contracting officer determines that such assignment is not needed to further the objectives of the contract.

(d) Paragraph (e) of the clause, which requires the contractor to indemnify the Government against any liability incurred as the result of any violation of trade secrets, copyrights, right of privacy or publicity, or any libelous or other unlawful matter arising out of or contained in any production or compilation of data that are subject to the clause, may be deleted or limited in scope where the contracting officer determines that, because of the nature of the particular data involved, such liability will not arise.

(e) When the audiovisual or other special works are produced to accomplish a public purpose other than acquisition for the Government's own use (such as for production and distribution to the public of the works by other than a Federal agency) agencies are authorized to modify the clause for use in contracts, with rights in data provisions that meet agency mission needs yet protect free speech and freedom of expression, as well as the artistic license of the creator of the work.

(2) Existing works. The clause at AMS 3.5-17, Rights in Data - Existing Works, is for use in contracts exclusively for the acquisition (without modification) of existing works such as, motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are means of

exhibition or transmission, time, type of audience, and geographical location. However, if the contract requires that works of the type indicated in this paragraph are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form), then see T3.5.A.4.e.(1).

(3) Commercial computer software.

(a) When contracting other than from GSA's Multiple Award Schedule contracts for the acquisition of commercial computer software, no specific contract clause prescribed in this subpart need be used, but the contract shall specifically address the Government's rights to use, disclose, modify, distribute, and reproduce the software. Commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public to the extent the license is consistent with Federal law and otherwise satisfies the needs of the FAA. The clause at AMS 3.5-18, Commercial Computer Software License, may be used when there is any confusion as to whether the Government's needs are satisfied or whether a customary commercial license is consistent with Federal law. Additional or lesser rights may be negotiated using the guidance concerning restricted rights as set forth in T3.5.A.4.d(2)(d), or the clause at AMS 3.5-18, Commercial Computer Software License. If greater rights than the minimum rights identified in the clause at AMS 3.5-18 are needed, or lesser rights are to be acquired, they shall be negotiated and set forth in the contract. This includes any additions to, or limitations on, the rights set forth in paragraph (b) of the clause at AMS 3.5-18 when used. Examples of greater rights may be those necessary for networking purposes or use of the software from remote terminals communicating with a host computer where the software is located. If the computer software is to be acquired with unlimited rights, the contract shall also so state. In addition, the contract shall adequately describe the computer programs and/or databases, the media on which it is recorded, and all the necessary documentation.

(b) If the contract incorporates, makes reference to, or uses a vendor's standard commercial lease, license, or purchase agreement, the contracting officer shall ensure that the agreement is consistent with paragraph (a)(1) of this subsection. The contracting officer should exercise caution in accepting a vendor's terms and conditions, since they may be directed to commercial sales and may not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commercial agreement shall be addressed in the contract and the contract terms shall take precedence over the vendor's standard commercial agreement. If the clause at AMS 3.5-18 is used, inconsistencies in the vendor's standard commercial agreement regarding the Government's right to use, reproduce or disclose the computer software are reconciled by that clause.

(c) If a prime contractor under a contract containing the clause at AMS 3.5-13, Rights in Data - General, with paragraph (g)(4) (Alternate III) in the clause, acquires restricted computer software from a subcontractor (at any tier) as a separate acquisition for delivery to or for use on behalf of the Government, the

contracting officer may approve any additions to, or limitations on the restricted rights in the Restricted Rights Notice of paragraph (g)(4) in a collateral agreement incorporated in and made part of the contract.

(4) Other existing data.

(a) Except for existing works pursuant to T3.5.A.4.e(2) or commercial computer software pursuant to T3.5.A.e(3), no clause contained in this subpart is required to be included in

(i) Contracts solely for the acquisition of books, periodicals, and other printed items in the exact form in which these items are to be obtained unless reproduction rights are to be acquired; or

(ii) Other contracts that require only existing data (other than limited rights data) to be delivered and the data are available without disclosure prohibitions, unless reproduction rights to the data are to be obtained.

(b) If the reproduction rights to the data are to be obtained in any contract of the type described in paragraph (b)(1) (i) or (ii) of this section, the rights shall be specifically set forth in the contract. No clause contained in this subpart is required to be included in contracts substantially for on-line data base services in the same form as they are normally available to the general public.

f. Acquisition of data.

(1) General

(a) It is the FAA's practice to determine, to the extent feasible, its data requirements in time for inclusion in SIR's. The data requirements may be subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the FAA and the contractor, efforts should be made to keep the contract data requirements to a minimum, consistent with the purposes of the contract.

(b) The contracting officer shall specify in the contract all known data requirements, including the time and place for delivery and any limitations and restrictions to be imposed on the contractor in the handling of the data. Further, and to the extent feasible, in major system acquisitions, the contracting officer shall set out data requirements as separate contract line items. In establishing the contract data requirements and in specifying data items to be delivered by a contractor, agencies may, consistent with paragraph (a) of this subsection, develop their own contract schedule provisions. Agency procedures may, among other things, provide for listing, specifying, identifying source, assuring delivery, and handling any data required to be delivered, first produced, or specifically used in the performance of the contract.

(c) Data delivery requirements should normally not require that a contractor

provide the Government, as a condition of the procurement, unlimited rights in data that qualify as limited rights data or restricted computer software. Rather, form, fit, and function data may be furnished with unlimited rights instead of the qualifying data, or the qualifying data may be furnished with limited rights or restricted rights if needed (see T3.5.A.4.d.(1)(c) and (d). If greater rights are needed, they should be clearly set forth in the solicitation and the contractor fairly compensated for the greater rights.

(2) Additional data requirements.

(a) In some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be feasible to ascertain all the data requirements at contract award. The clause at AMS 3.5-15, Additional Data Requirements, may be used to enable the subsequent ordering by the contracting officer of additional data first produced or specifically used in the performance of these contracts as the actual requirements become known. The clause shall normally be used in solicitations and contracts involving experimental, developmental, research or demonstration work (other than basic or applied research to be performed under a contract solely by a university or college when the contract amount will be $500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. If the contract is for basic or applied research to be performed by a university or college, and the contracting officer believes the contract effort will in the future exceed $500,000, even though the initial award does not, the contracting officer may include the clause in the initial award.

(b) Data may be ordered under the clause at AMS 3.5-15 at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contracting officer may relieve the contractor of the retention requirements for specified data items at any time during the retention period required by the clause. The contracting officer may permit the contractor to identify and specify in the contract data not to be ordered for delivery under the clause if the data is not necessary to meet the FAA's requirements for data. Also, the contracting officer may alter the clause by deleting the term "or specifically used" in paragraph (a) of the clause if delivery of the data is not necessary to meet the FAA's requirements for data. Any data ordered under this clause will be subject to the clause at AMS 3.5-13, Rights in Data - General, (or other equivalent clause setting forth the respective rights of the Government and the contractor) in the contract. Data authorized to be withheld under such clause will not be required to be delivered under the clause at AMS 3.5-15, except as provided in Alternate II or Alternate III, if included (see T3.5.A.4.d.1(c) and (d)).

(c) Absent an established program for dissemination of computer software, the FAA should not order additional computer software under the clause at AMS

3.5-15, for the sole purpose of disseminating or marketing the software to the public. In ordering software for internal purposes, the contracting officer shall consider, consistent with the Government's needs, not ordering particular source codes, algorithms, processes, formulas, or flow charts of the software if the contractor shows that this aids its efforts to disseminate or market the software.

(3) Major system acquisition.

(a) The clause at AMS 3.5-20, Technical Data Declaration, Revision, and Withholding of Payment - Major Systems, should be used when the FAA is acquiring a major system, as may be designated by the Administrator. When using the clause at AMS 3.5-20, the section of the contract specifying data delivery requirements (see T3.5.A.4.f.(1)(b)) shall expressly identify those line items of technical data to which the clause applies. Upon delivery of the technical data, the contracting officer shall review the technical data and the contractor's declaration relating to it to assure that the data are complete, accurate, and comply with contract requirements. If the data are not complete, accurate, or compliant, the contracting officer should request the contractor to correct the deficiencies,
and may withhold payment. Final payment shall not be made under the contract until it has been determined that the delivery requirements of those line items of data to which the clause applies have been satisfactorily met.

(b) In a contract for, or in support of, a major system awarded by the FAA, the following applies:

(i) The contracting officer shall require the delivery of any technical data relating to the major system or supplies for the major system, that are to be developed exclusively with Federal funds if the delivery of the technical data is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future. The clause at AMS 3.5-22, Major System - Minimum Rights, is used in addition to the clause at AMS 3.5-13, Rights in Data - General, and other required clauses, to ensure that the Government acquires at least those minimum rights appropriate for a major system in technical data developed with Federal funds.

(ii) Technical data, relating to a major system or supplies for a major system, procured or to be procured by the Government and also relating to the design, development, or manufacture of products or processes offered or to be offered for sale to the public (except for such data as may be necessary for the Government to operate or maintain the product, or use the process if obtained by the Government as an element of performance under the contract), shall not be required to be provided to the Government from persons who have developed such products or processes as a condition for the procurement of such products or processes by the Government.

g. Rights to technical data in successful proposals.

The clause at AMS 3.5-23, Rights to Proposal Data (Technical), allows the Government to acquire unlimited rights to technical data in successful proposals. Pursuant to the clause, the prospective contractor is afforded the opportunity to specifically identify pages containing technical data to be excluded from the grant of unlimited rights. This exclusion is not dispositive of the protective status of the data, but any excluded technical data, as well as any commercial and financial information contained in the proposal, will remain subject to the AMS policies relating to proposal information (e.g., will be used for evaluation purposes only). If there is a need to have access to any of the excluded technical data during contract performance, consideration should be given to acquiring the data with limited rights, if they so qualify, in accordance with T3.5.A.4.d.(2)(c).

h. Cosponsored research and development activities.

(1) In contracts involving cosponsored research and development that require the contractor to make substantial contributions of funds or resources (e.g., by cost-sharing or by repayment of nonrecurring costs), and the contractor's and the FAA's respective contributions to any item, component, process, or computer software, developed or produced under the contract are not readily segregable, the Contracting Officer may limit the acquisition of, or acquire less than unlimited rights to, any data developed and delivered under the contract. The Contracting Officer should make such decisions in consultation with legal counsel. Lesser rights shall, at a minimum, assure use of the data for agreed-to Governmental purposes (including reprocurement rights as appropriate), and address any disclosure limitations or restrictions to be imposed on the data. Also, consideration may be given to requiring the contractor to directly license others if needed to carry out the objectives of the contract. Since the purpose of the cosponsored research and development, the legitimate proprietary interests of the contractor, the needs of the FAA, and the respective contributions of both parties may vary, no specific clauses are prescribed, but a clause providing less than unlimited rights in the Government for data developed and delivered under the contract (such as license rights) may be tailored to the circumstances consistent with the foregoing and the policy set forth in T3.5.A.4.b. As a guide, a clause may be appropriate when the contractor contributes money or resources, or agrees to make repayment of nonrecurring costs, of a value of approximately 50 percent of the total cost of the contract (i.e., Government, contractor, and/or third party paid costs), and the respective contributions are not readily segregable for any work element to be performed under the contract. A clause may be used for all or for only specifically identified tasks or work elements under the contract. In the latter instance, its use will be in addition to whatever other data rights clause is prescribed under this subpart, with the contract specifically identifying which clause is to apply to which tasks or work elements. Further, this type of clause may not be appropriate where the purpose of the contract is to produce data for dissemination to the public, or to develop or demonstrate technologies that will be available, in any event, to the public for their direct use.

(2) Where the contractor's contributions are readily segregable (by performance requirements and the funding for the contract) and so identified in the contract, any resulting data may be treated under this clause as limited rights data or restricted computer software in accordance with T3.5.A.4.d.(2)(c) or (d), as applicable; or if this treatment is inconsistent with the purpose of the contract, rights to the data may, if so

negotiated and stated in the contract, be treated in a manner consistent with paragraph (a) of this section.

### 5 Foreign License and Technical Assistance Agreements Revised 1/2009

The FAA shall provide all necessary rules and regulations as are required for the proper application of the laws and policies of the U.S. Government regarding:

a. Elimination in agreements between domestic concerns and foreign governments or foreign concerns of charges for the use of patents in which the U.S. Government has a royalty-free license or of charges in agreements for the use of data that the U.S. Government has a right to use and disclose to others, that is in the public domain, or that was acquired by the U.S. Government with the unrestricted right to use, duplicate, or disclose and to have or permit others to do so;

b. Foreign license and technical assistance agreements between the U.S. Government and United States domestic concerns;

c. Guidance on negotiating contract prices and terms concerning patents and data, including royalties, in contracts between the U.S. Government and a foreign government or foreign concern; and

d. Regulations and guidance on controls on the exportation of data relating to certain designated items, such as arms or munitions of war, and guidance on reviews of agreements involving such data (see 22 CFR 124).

## B Clauses

view contract clauses

## C Forms Revised 1/2009

view procurement forms

## T3.6.1 - Small Business Development Program Revised 4/2009

## A Small Business Development Revised 7/2005

### 1 Procurement Team Responsibilities in Support of the Small Business Development Program Revised 4/2016

a. Effective implementation of the FAA's small business development programs in their contracting actions, including achieving program goals;

b. Develop small businesses by taking all reasonable action to increase small business

participation in the FAA's procurements (including subcontracts);

c. Consider the feasibility of breaking out requirements to increase opportunities for small businesses to successfully compete for prime contracts;

d. Consider the extent of small business participation in contract performance during procurement planning;

e. Obtain guidance from the FAA Small Business Development Program Office (SBDPO)/liaison as it relates to small business development issues. In doing-so, the service teams must coordinate with representatives of the cognizant local SBDPO staff as soon as requirements estimated to exceed $150,000 are defined to receive assistance in identifying opportunities for small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals. This requirement to coordinate does not apply to contract modifications. The $150,000 threshold applies to Screening Information Requests (SIRs) issued on or after June 1, 2015. Use the Small Business Set-Aside Determination and Coordination Form to coordinate with the SBDPO and attach (as applicable) the statement of work, single source rational basis documentation, fully executed single source justification, market survey and market analysis to the form (see also AMS Policy on SDB 8(a) Set-Asides for use of this form). In addition, any requirements that had previously been procured through the Small Business/SDB/8(a) Program, but not currently proposed for reprocurement through the Small Business/SDB/8(a) program must be approved by the cognizant local SBDPO staff. If agreement cannot be reached, the FAA Acquisition Executive's approval is required prior to any public notice or solicitation of the requirement; and

f. Participate and assist in the development of small business conferences and outreach efforts sponsored by the SBDPO.

## 2 The FAA Small Business Development Program Office (SBDO) and Liaison Representative Involvement Revised 4/2016

The Small Business Development Program Office (SBDPO) maintains a direct working relationship with the procurement teams. When appropriate, the SBDPO interacts with all procurement teams in the following areas to provide support and ensure effective and consistent program implementation:

a. Participates in procurement workshops to increase access to and award of FAA contracts by small businesses;

b. Participates in acquisition and procurement planning meetings and other scheduled meetings with the procurement team as advisors;

c. Identifies potential small businesses that qualify for a particular procurement;

d. Provides the procurement team with source lists of small businesses;

e. Ensures that the source selection criteria used to select firms for award is fair, consistent and does not limit opportunities for small businesses;

f. Provides advertising recommendations to the integrated products teams to ensure all requirements are being advertised in media accessible to small businesses;

g. Responds to written and telephone inquiries from small businesses and small businesses owned and controlled by a socially and economically disadvantaged individuals regarding procurement opportunities with FAA;

h. Reviews final source lists to ensure an adequate representation of small businesses;

i. Reviews questions presented at conferences, preparing answers to questions submitted by small businesses, interacting with the integrated product teams for distribution of responses to all potential contractors;

j. Reviews business declarations and accompanying documentation;

k. Reviews subcontracting plans;

l. Ensures that small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals are entered into the OSBD database;

m. Assists in the proposal evaluation process as a non-voting member of the evaluation team;

n. Conducts on-site pre-award verifications to verify that a sufficient percentage of the ownership, as well as the business control and management of the firm is vested in a disadvantaged group member(s), service-disabled veteran(s) or woman (women) and verify compliance with small business program requirements;

o. Participates in debriefings of unsuccessful small businesses to ensure fair and equitable treatment to all firms;

p. Participates in postaward meetings with successful offerors to ensure a clear understanding of small business program guidelines and engagement of small businesses as subcontractors; and

q. Conducts on-site compliance reviews of contractors with subcontracting plans to ensure compliance with program requirements.

**3 Prime Contracting with Small Business Revised 7/2016**

a. While the use of small business set-asides as a method of procurement is not mandatory, small businesses must be afforded reasonable opportunities to compete for all procurements. All procurements must first be considered for set-aside before procuring the product or service on an unrestricted basis. Thus, procurement teams should take the following actions when appropriate:

(1) Set-aside procurements competitively in accordance with the policies and guidance contained in Acquisition Management System (AMS)

Section 3.2.2 Source Selection;

(2) Consider the capabilities of small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals during the screening phase of each procurement;

(3) Breakout large requirements (if severable) into smaller sized requirements to provide for greater small business participation;

(4) Plan procurements of supplies and services so that more than one small business firm may perform the work (if the work exceeds the amount that a single small business can handle);

(5) Ensure that delivery schedules are established on a realistic basis to encourage small business participation to the extent consistent with actual requirements of FAA;

(6) Encourage teaming relationships among small and large businesses to enhance competition; and

(7) Utilize small businesses on qualified vendor lists on a rotational basis to increase opportunities to the greatest number of small businesses.

b. Conducting set-asides with small businesses, very small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, and service-disabled veteran owned small businesses:

(1) All set-asides are to be conducted directly with small businesses independent of the Small Business Administration (SBA);

(2) Procurements may be set-aside exclusively for small businesses and very small businesses;

(3) Procurements may also be set-aside exclusively for competitive award among small disadvantaged businesses (SDBs) that are expressly certified by the Small Business Administration (SBA) for participation in the SBA’s 8(a) program. Each firm claiming 8(a) status is required to provide a copy of its SBA 8(a) certification letter to the Contracting Officer (CO) as evidence of eligibility. There is no requirement for SBA's approval to make award to the selected small disadvantaged business (SDB).

(4) Procurements may not be exclusively set-aside for women-owned businesses;

(5) Industry should be notified of the applicable North American Industry Classification (NAIC) System code representing the predominant portion of the overall requirement in the public announcement to ensure small business size eligibility requirements are timely known; and

(6) The service team will state the date when the firm must be 8(a) certified.

(7) Procurements may be set-aside exclusively for competitive award among service-disabled veteran owned small businesses (SDVOSB) as defined by 38 U.S.C. 101. Each firm claiming SDVOSB status is required to provide a completed Business Declaration Form to self-certify its eligibility. The CO must verify the self-certification at the Vendor Information pages, available on the Small Business Development Office website.

(8) There is no requirement to obtain the SBA's or Veteran Administration's approval to make award to the selected SDVOSB. However, unless the firm is designated as a SDVOSB on the VA website, the CO must not make an award to the firm as a SDVOSB.

(9) *Combined Set-Asides* Procurements may also be set-aside for competitive award among offerors that qualify in up to three (3) categories. The requirements of section (b) are applicable to such combined set-asides.

(10) A procurement may not be set-aside if:

(a) there is no reasonable expectation of obtaining offers from two or more responsible SDB(8(a)) concerns, small business concerns, very small business concerns or service-disabled veteran owned small business concerns that are competitive in terms of market prices, quality and delivery; or

(b) it is in the best interest of the FAA to contract with a single source and the rational basis is documented; or

(c) extension of the current services.

c. Noncompetitive Awards to SDB (8(a)) and SDVOSB Firms. A rational basis for the decision to award a noncompetitive SDB (8(a)) or SDVOSB procurement should be documented. Procurement decision makers should consider potential SDB (8(a)) or SDVOSB sources of supply contained in the Source Net, System for Award Management (SAM), and Vetbiz, www.va.gov/osdbu, (market research) websites, available on the Small Business Development Office website. The ownership and control of the sources on this website have been verified by Veterans Affairs (VA). The public announcement requirements of the AMS Section 3.2.1.3.11 are not applicable to noncompetitive awards to SDB (8(a)) or SDVOSB firms if the product being procured is not available from Federal Prison Industries.

There is no requirement to obtain the SBA's or Veteran Administration's approval to make award to the selected SDVOSB. However, unless the firm is designated as a SDVOSB on the VA website, the CO must not make an award to the firm as a SDVOSB.

d. Noncompetitive awards above $22 million to SEDB 8(a) firms: For such awards, the following additional requirements apply:

(1) The program official must prepare a written justification at a minimum documenting the rational basis for the award as follows:

(a) Description of the supplies/services being purchased;

(b) Determination that a noncompetitive contract is in the best interests of FAA;

(c) Determination that the anticipated cost of the contract will be fair and reasonable; and

(d) Applicable AMS references.

(2) The CO and program official must approve the justification, with concurrence by legal counsel (on the justification) and the Small Business Program Development Office (on the Small Business Set-Aside Determination and Coordination form) before negotiations on the contractor's proposal.

**4 Subcontracting with Small Business Revised 4/2016**

a. In procurements estimated to exceed $700,000 ($1,500,000 for construction), the CO must incorporate subcontracting provisions (including attainable and reasonable subcontracting goals for the participation of small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, women-owned small businesses and service disabled veteran owned small businesses). A template Master Subcontracting Plan to satisfy the applicable requirements of AMS clause 3.6.1-4, Small, Small Disadvantaged, Women-Owned and Service-Disabled Veteran-Owned Small Business Subcontracting Plan is located in the Procurement Toolbox under the Samples & Templates section. Subcontracting provisions are not required for; (1) commercial items; (2) when there are no subcontracting possibilities or (3) when the prime contractor is a small business or a small business owned and controlled by a socially and economically disadvantaged individual. The contract should include requirements for contractors to periodically report data on subcontracting accomplishments in sufficient detail to determine the extent of the contractor’s attainment of subcontracting goals.

b. The following subcontracting considerations should be used in procurements that have subcontracting provisions as appropriate:

(1) Establishing goals requires much care to ensure that they are realistic and motivate the contractor. Percentage goals that are unrealistically low will only create a false sense of success and should be avoided. Likewise, goals that are too high can be counterproductive.

(2) Subcontracting requirements should be a subject for review and discussion at

postaward conferences. It is important to monitor contractor performance in meeting goals. This is particularly important early in the life of the contract when the majority of subcontracts will be awarded. Prompt corrective action should be taken if it appears that a contractor will not meet its goal.

(3) The procurement team should notify the Small Business Development Program Group (SBDPG) or Small Business Liaison Representative of the opportunity to review the subcontracting proposal in sufficient time to provide the representative a reasonable time to review the material and submit advisory recommendations prior to award. The CO is responsible for ensuring that the contractor attains all subcontracting goals. Subcontracting data (accomplishments) must be timely reported in the Electronic Subcontracting Reporting System (eSRS).

(4) The CO should provide a listing of potential small business subcontractors for information purposes. The FAA should not make any warranty as to their capabilities or abilities to perform any portion of the contract. The listing may be obtained from the SBDPG or Small Business Liaison Representative.

(5) Evaluate the percentage and dollar volume of planned subcontracting and total dollar volume of expected awards to small business subcontractors (including small businesses owned and controlled by socially and economically disadvantaged individuals, women- owned and service-disabled veteran owned concerns).

(6) There should be separate subcontracting goals for small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals, women-owned and service-disabled veteran owned concerns expressed as a percentage of total planned subcontracting dollars.

(7) Identify principal product and service areas to be subcontracted and identify those areas where it is planned to use small business, small businesses owned and controlled by a socially and economically disadvantaged individual, women-owned and service-disabled veteran owned subcontractors.

(8) Review business declarations of principal proposed small business and small disadvantaged business subcontractors, including the type of product or service and the dollar value to be awarded to each principal subcontractor. This information is to be used to assist the CO in making a determination as to the acceptability of the proposed subcontracting goals. The contractor is not contractually bound to make awards to the designated subcontractors nor is the Government approving the subcontracts.

(9) Evaluate extent of complexity and variety of work to be performed by small businesses with greater weight on businesses performing substantive or high technology components or services. In this way, FAA can ensure that small businesses will receive technologically challenging or a meaningful portion of the overall contract.

(10) Include monetary incentives for subcontracting such as including an award fee provision to provide incentives for providing meaningful, technically substantive subcontracting work to small businesses. Under this approach subcontracting proposals

that provide appropriate percentage commitments would be accepted, but an award fee contract line item would be incorporated as part of the contract. Receipt of the award fee would be after either preliminary design review, critical design review, or other appropriate milestones. The percentage amount of the award fee pool would be based on the extent the contractor has provided meaningful, technically substantive work to eligible small businesses within the previously accepted percentage goals.

(11) Evaluate past performance related to the offeror's compliance with prior subcontracting proposals and subcontracting plans, with greater weight on subcontracting proposals received from offerors that have successfully attained or exceeded subcontracting goals in the past.

(12) Evaluate level of participation of small businesses evaluated based on the percentage of the total contract value (if appropriate). This is particularly recommended for requirements traditionally performed by small businesses that may be displaced due to the bundling of smaller set-aside requirements into one larger contract.

(13) Contractors should be required to flow down similar subcontracting requirements under the prime contract to all subcontractors (except small businesses).

(14) If an offeror submits an offer that does not address each of the subcontracting provisions, the CO should advise the offeror of the deficiency and request submission of a revised offer by a specific date; and (15) If the offeror does not submit an offer incorporating the subcontracting requirements within the time allotted, the offeror should be ineligible for award.

**5 Bonding Assistance and the DOT Lending Program Revised 4/2009**

a. Firms seeking bonding assistance may refer to the National Association of Bond Producers (NASP) website. Users may click the “Find a Producer” link found in the upper right corner of the website, where they then can select the state in which the firm is seeking to qualify for bonding.

b. To promote the financial assistance programs available from the Office of Small and Disadvantaged Business Utilization (OSDBU, S-40), procurement teams should add the following information in each public announcement of a procurement:

"This Notice is for informational purposes for Minority, Women-Owned and Disadvantaged Business Enterprises: The Department of Transportation (DOT), Office of Small and Disadvantaged Business Utilization, has a program to assist small businesses, small businesses owned and controlled by a socially and economically disadvantaged individuals, and women- owned concerns to acquire short-term working capital assistance for transportation-related contracts. Loans are available under the DOT Short Term Lending Program (STLP) at prime interest rates to provide accounts receivable financing. The maximum line of credit is $750,000. For further information and applicable forms concerning the STLP, call the OSDBU at (800) 532-1169."

**6 Business Declaration Revised 4/2016**

a. To preserve the integrity and foster the objectives of the small business program, FAA must satisfy itself that the ownership, control, and day-to-day management requirements of the program are fulfilled. Each business claiming eligibility as a small business or small business owned and controlled by a socially and economically disadvantaged individual must be required to provide evidence of eligibility prior to award. The FAA reserves the right to review and verify each firm's program eligibility. If the firm is not a small business as defined by the North American Industry Classification (NAIC) code size standards, it will not qualify as a small business.

b. For set-asides restricted to small businesses, very small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals (8(a) certified) and/or service-disabled veteran owned small businesses, the Business Declaration Form must be included in the SIR, and completed by each offeror.

c. For unrestricted procurements, the successful offeror must complete and submit the Business Declaration Form to the CO.

d. When subcontracting goals are established for small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, small businesses owned and controlled by women, and service-disabled veteran owned small businesses, the prime contractor must obtain a completed Business Declaration Form for such small businesses counted toward the successful offeror's subcontracting goals.

e. A successful small business program rests with FAA's ability to limit participation to bona fide small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals for they are the intended recipients of the agency's procurement dollars earmarked for small business set-asides.

f. To that end, the business declaration is:

(1) A tool used to ensure that the small business program benefits only those businesses that are bona fide small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals by establishing a basis for determining a firm's eligibility to participate in a small business set- aside;

(2) A tool used internally by contracting personnel, Small Business Development Program Group (SBDPG) and Small Business Liaison Representatives to accurately report awards made to small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals on the Major Procurement Program Goal (Accomplishments) Report; and

(3) A tool used to periodically conduct recertification of compliance with small business size standards on short-term contracts (not more than five years duration) in the event of a merger, acquisition, or novation and long-term

contracts (more than five years duration). A contractor must rerepresent its size status according to the size standard in effect at the time of its rerepresentation that corresponds to the NAICS code that was initially assigned to the contract. The purpose of the rerepresentation is to improve the accuracy of small business size status reporting. If the contractor rerepresents that it is other than small, FAA may no longer include the value of options exercised or orders issued against the contract in its small business prime contracting goal achievements beginning October 1 of the fiscal year following the rerepresentation by amending the FDPS to reflect the new size status. It is the CO's discretion to exercise the option or terminate the contract taking into account the Government's need for continuity of operations, potential costs of disrupting operations, and the impact on small business. A contractor's change in size status as a result of a rerepresentation requirement will have no effect on subcontracting plan requirements that were imposed, or not imposed, at the time of contract award. The rerepresentation should have no effect on the terms and conditions of a contract and a contracting officer is not required to terminate the contract when, as a result of a protest, the concern is found to be other than small. Blanket purchase agreements (BPAs) are not contracts and the representation of size status for purposes of options on BPA Orders and multi-year BPA orders is required.

g. For the owner of the firm to be found to have controlling interest in the company, the following must exist:

(1) The eligible owner holds the position of chairperson of the board, president or chief executive officer;

(2) The eligible owner has the right to vote his or her shares or other equity interest to elect the majority of voting members of the board of directors or other governing body;

(3) The eligible owner holds at least 51% unconditionally ownership and control of the operation; or

(4) The eligible owner has direct full-time responsibility for the day-to-day management of the business, as evidenced by all of the following:

(a) Directly related managerial or technical experience and competency;

(b) Establishment of company policies;

(c) Determination and selection of business opportunities;

(d) Supervision and coordination of projects

(e) Control of major expenditures;

(f) Hiring and dismissing key personnel;

(g) Marketing and sales decisions; and

(h) Signature on major business documents.

**7 Contract Bundling Revised 4/2016**

a. Definitions:

(1) A bundled contract is a contract that is entered into to meet requirements that are consolidated.

(2) Bundling is consolidation of two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a SIR for a single contract that renders a contract likely to be unsuitable for award to a small business concern (including socially and economically disadvantaged (8(a)), small disadvantaged, and women-owned businesses) due to:

(a) The diversity, size, or specialized nature of the elements of the performance specified;

(b) The aggregate dollar value of the anticipated award;

(c) The geographical dispersion of the contract performance sites; or

(d) Any combination of the factors described in paragraphs (2)(i), (ii), and (iii) of this definition.

(3) Measurably Substantial Benefits are the dollar amount of benefits accruing from the bundling of requirements. These benefits can be in many forms to include cost savings, price reduction, quality efficiency, enhance performance, result in better terms and conditions, reduce acquisition cycle times and any other benefits

b. This section is not applicable to contracts whose total estimated bundled value (including all options) is less than $10 Million.

c. Bundling of contractual requirements is discouraged unless it is necessary and justified. Bundling is necessary and justified if there are substantial benefits which are measurable and quantifiable. The service team must document the measurably substantial benefits to the Government. Benefits must be equivalent to 10% if the total anticipated contract value is $94 million or less; or 5% if the contract value exceeds $94 million.

d. To ensure that prime contract opportunities are provided to small businesses, the following alternatives must be considered prior to bundling:

(1) Breaking up the procurement into smaller discrete procurements to render them suitable for small business set asides;

(a) Breaking out discrete components, where practicable, to be set aside for small business; or

(b) When issuing multiple awards against a single solicitation, reserving one or more awards for small businesses.

e. If a service team determines that contract bundling is to be used, the service team must inform the administrator and include written justification in the file (a part of the acquisition strategy plan, separate memo, etc.) outlining the need for bundling and documenting the impact on attaining the FAA socioeconomic goals. Additionally, if bundling would result in any adverse impact to achievement of the agency's socio-economic goals, the SIR for the bundled procurement must be approved by the FAA Acquisition Executive (FAE).

In addition, the service team must notify the local Small Business Development Program Office (SBDPO) prior to issuance of the SIR.

f. In a bundled procurement, the acquisition strategy should provide for maximum practicable participation by small business concerns. Some of the ways this can be accomplished include the following:

(1) Authorizing two or more small businesses to form a contract team and for that team to be considered a small business for purposes of a bundled requirement provided that each small business partner to the teaming arrangement individually qualifies as a small business under the assigned NAIC codes for the requirement.

(2) For SIRs that offer a significant opportunity for subcontracting, the CO should include proposed small business, small disadvantaged business and women- owned business subcontracting participation in the subcontracting plan as an evaluation factor.

(3) Including small business, small disadvantaged business and women-owned subcontracting goals in SIRs and contracts based on contract dollars versus planned subcontracting dollars.

(4) Consulting the local SBDPO and Source Net.

g. The requirements of this section do not apply to bundled contracts that are awarded in accordance with OMB Circular A-76 if a cost comparison has been performed under A-76 procedures.

h. The requirements of this section do not apply to contracts to be awarded and performed entirely outside of the United States.

**8 Mentor-Protégé Revised 4/2016**

a. *Definitions*.

(1) SMALL DISADVANTAGED BUSINESSES (SDB), as used in the Mentor-Protégé Program, means small business concerns owned and controlled by socially and economically disadvantaged individuals as defined by the Acquisition Management System (AMS).

(2) HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) means institutions determined by the U.S. Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein.

(3) MINORITY EDUCATIONAL INSTITUTIONS (MI) means institutions verified by the U.S. Secretary of Education to meet the criteria set forth in 34 CFR 637.4. MIs include Hispanic-serving institutions as defined by 20 USC 1059c(b)(1).

(4) WOMEN-OWNED SMALL BUSINESSES (WO), as used in the Mentor-Protégé Program, means a small business where ownership and controlling interest (at least 51%) in the company is held by a woman.

(5) SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS (SDVSB) is a small business concern that is 51% owned and controlled by a service disabled veteran(s).

(6) HIGH-TECH, as used herein means research and/or development efforts that are within or advances the state-of-the-art in technology discipline and are performed primarily by professional engineering, scientists, and highly skilled and trained technicians or specialists.

(7) SMALL DISADVANTAGED BUSINESS (SDB) is a small business concern that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and that has its management and daily business controlled by one or more such individuals.

(8) SMALL BUSINESS (SB) is a business, including its affiliates, that is independently owned and operated and not dominant in producing the products or performing the services being purchased, and one that qualifies as a small business under the Federal Government's criteria and North American Industry Classification System (NAICS) Code size standards.

b. *Purpose.*

(1) The FAA Mentor-Protégé Program is designed to motivate and encourage firms to assist Small Businesses (SB), preferably Small Disadvantaged Businesses (SDB), Small Disadvantaged Businesses (SDB), Service-Disabled Veteran-Owned Small Business (SDVSB), Historically Black Colleges and Universities (HBCU),and Minority Institutions (MI) and Women-Owned Businesses (WOB), enhancing their capabilities to perform FAA prime contracts and subcontracts, foster long-term business relationships between these entities and Mentor Firms, and increase the overall number of these entities that receive FAA prime

contract and subcontract awards. The "Mentor-Protégé Program Guide" may be obtained from the Small Business Development Program Group (SBDPG) staff.

c. *Incentives for Mentor Participation*.

(1) Mentors may receive additional evaluation points (for Mentor-Protégé Program participation) toward the award of contracts during the evaluation of competitive offers.

(2) Mentors may receive credit toward attaining subcontracting goals contained in their FAA subcontracting plan(s) for Mentor-Protégé participation.

(3) Costs incurred by a mentor to provide developmental assistance (i.e., technical or managerial) described in Section 1.12 are allowable as indirect costs (appropriate documentation must be provided) unless the contract contains a line item specifically for the Mentor-Protégé Program. A ceiling on allowable developmental costs must be established at time of contract award.

(4) Procurements may be set-aside exclusively for competition among firms that are participants in the FAA Mentor-Protégé Program.

d. *Review and Approval on Mentor-Protégé Application and Agreement*.

(1) The Mentor-Protégé application and agreement is reviewed by the SBDPG. The review should be completed no later than 30 days after receipt. The SBDPG should provide a copy of the submitted information to the cognizant FAA service team and Contracting Officer for a parallel review and concurrence.

(2) Upon approval of the agreement, the mentor may implement the developmental assistance program.

(3) An approved agreement must be incorporated into the mentor or protégé firm's award (for example: a contract, blanket purchase agreement, purchase order, memorandum of agreement, memorandum of understanding, etc.). It should be added to the subcontracting plan in contracts which contain such a plan.

(4) If the application is disapproved, then the mentor may provide additional information for reconsideration. The review of any supplemental material should be completed within 30 days after receipt by the SBDPG. Upon finding deficiencies that FAA considers correctable, the SBDPG should notify the mentor and request information to be provided within 30 days that may correct the deficiencies.

e. Additional Mentor-Protégé Program guidance is located on the Small Business Development Office website.

**9 Joint Ventures Revised 4/2016**

a. *Small Business Exception to Affiliation*. A joint venture of two or more business concerns may submit an offer as a small business without regard to affiliation provided that each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:

(1) The procurement qualifies as a "bundled" requirement; or

(2) The procurement does not qualify as a "bundled" requirement, and:

(a) For a procurement having a receipts based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(b) For a procurement having an employee-based size standard, the dollar value of the procurement, including options, exceeds $10 million.

b. *Mentor-Protégé Exception to Affiliation.* A joint venture between a protégé firm and its approved mentor will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAIC code assigned to the procurement. SBA approved Mentor- Protégé joint ventures are not acceptable. However, FAA approved Mentor-Protégé Program joint ventures are acceptable.

c. *Subcontracting Limitations*. The subcontracting limitations specified in AMS Clauses 3.6.1-7, Limitations on Subcontracting and 3.6.1-12 Notice of Service-Disabled Veteran Owned Small Business Set-Aside, are applicable to Small Business Joint Ventures. A joint venture awarded a contract as a prime contractor must perform work according to the conditions and percentages detailed in AMS Clause 3.6.1-7 or 3.6.1-12 as applicable.

d. *Small Disadvantaged Businesses (SDB(8(a)) Exception to Affiliation*.

(1) If approved by the Small Business Administration (SBA), 8(a) participants may enter into joint venture agreement with one or more small business concerns, whether they be 8(a) participants or not, for the purpose of performing a specific 8(a) contract.

(2) A joint venture of at least one 8(a) concern and one or more other business concerns may submit an offer as a small business for a competitive 8(a) procurement as long as each are considered small under the size standard corresponding to the NAIC code assigned to the SIR, provided:

(a) The size of at least one 8(a) Participant to the joint venture is less than one half the size standard corresponding to the NAIC code assigned to the contract; and

(b) For a procurement:

(i) Having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAIC code assigned to the contract;

or

(ii) Having an employee-based size standard, the procurement exceeds $10 million.

(3) For single source and competitive 8(a) procurements that do not exceed the dollar levels identified above, an 8(a) Participant entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the 8(a) contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the NAIC code assigned to the 8(a) SIR or contract.

(e) *Service-Disabled Veteran Owned Small Businesses (SDVOSB) Exception to Affiliation*.

(1) An SDVOSB may enter into a joint venture agreement with one or more other small business concerns for the purpose of performing an SDVOSB contract.

(2) A joint venture of at least one SDVOSB and one or more other business concerns may enter submit an offer as a small business for a competitive SDVOSB procurement, so long as each concern is small under the size standard corresponding to the NAICS code assigned to the SIR, provided:

(a) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(b) For a procurement having an employee-based size standard, the procurement exceeds $10 million.

(3) For noncompetitive and competitive SDVOSB procurement that does not exceed the dollar level identified above, an SDVOSB entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the SDVOSB contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the NAICS code assigned to the SDVOSB SIR or contract.

**10 Tiered Evaluations Added 7/2016**

Refer to AMS guidance on tiered evaluations at T3.2.2A.9 for more information.

**B Clauses Revised 10/2006**

view contract clauses

**C Forms**

view procurement forms

## T3.6.2 - Labor Laws Revised 4/2009

### A Labor-Related Laws

#### 1 General Revised 7/2007

a. The FAA remains subject to procurement-specific and general labor laws and applicable implementing regulations. Pertinent procurement-related labor laws are implemented in detailed regulations issued by Department of Labor (DOL) at Titles 29 and 41 of the Code of Federal Regulations (CFR) summarized as follows. Additional information is available on the DOL website.

(1) Davis-Bacon Act (29 CFR Parts 1, 5, 6, and 7)

(2) Copeland Anti-Kickback Act (29 CFR Parts 3, 5, 6, and 7)

(3) Contract Work Hours and Safety Standards Act (29 CFR Parts 5, 6, and 7)

(4) Walsh-Healey Public Contracts Act (41 CFR Chapter 50)

(5) Fair Labor Standards Act (29 CFR Chapter V, Parts 500-794)

(6) Service Contract Act (29 CFR Parts 4, 6, 8, 541, and 1925)

(7) Equal Employment Opportunity Act (41 CFR Chapter 60)

(8) Special Disabled and Vietnam Era Veterans (41 CFR Chapter 60)

(9) Employment of the Disabled (41 CFR Chapter 60)

(10) Occupational Safety and Health Act (29 CFR Parts 6 and 1925; 41 CFR Chapter 50)

b. DOL also issues "All Agency Memoranda" that interpret and explain various labor-related laws and regulations.

c. The Secretary of Labor, or designee if applicable, may make variations, tolerances, and exemptions from many regulatory requirements if such action is necessary and proper in the public interest or to prevent injustice and undue hardship. When applicable, DOL implementing regulations prescribe procedures for requesting variations, tolerances, and exemptions (exemption procedures are summarized in sections that follow).

d. The procurement team (Contracting Officer (CO), program official, legal counsel, and other supporting staff) ensures full and impartial administration of labor standards in contracts, and ensures contractors and subcontractors are informed of their obligations under

labor standards. Procurement teams should:

(1) Maintain sound relations with industry and labor, and show no preference for either union or non-union contractors.

(2) Remain impartial concerning any dispute between labor and contractor management and should not attempt conciliation, mediation, or arbitration of a labor dispute. Procurement teams should notify the agency responsible for conciliation, mediation, arbitration, e.g. the National Labor Relations Board, of a potential or actual labor dispute affecting, or threatening to affect, FAA programs.

(3) When appropriate, require contractors to notify the FAA of potential or actual labor disputes that could, or will, delay contract performance.

e. The CO should promptly refer, in writing, the following to the Department of Labor (DOL):

(1) Complaints alleging violations of labor-related laws;

(2) Apparent violations which have a significant impact;

(3) Any recurring violations; and

(4) Any failures to promptly correct identified violations.

f. The CO should seek advice from DOL when there is a question of whether a contractor's actions violate a labor-related law. Additionally, the CO should not directly discuss with the contractor any of its employee's complaints about possible labor law violations.

## 2 Labor Disputes Causing Strikes or Delays Revised 7/2007

(a) Labor disputes may cause strikes or delays which delay contract performance. Contractors are responsible for any reasonably avoidable delays in performance. However, a delay caused by a strike may be excusable if the strike was unforeseeable at time of award and the contractor or its subcontractors acted in good faith, diligently, and in a lawful manner to end the strike, such as seeking injunctive relief in court or engaging in private mediation or arbitration.

(b) Procurement teams should determine whether it is in the FAA's interest to remove products or materials from facilities in which the contractor is unable to deliver because of the strike. Two main factors to be considered are the criticality of need and the possibility/practicality of performance by another vendor. The CO, after consulting with legal counsel, must first notify the contractor in writing to request removal of the products or materials from the facility.

(1) If the contractor agrees, and FAA personnel will remove the items, FAA personnel should take extreme care to avoid use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(2) If the contractor disagrees, and the items are still critical, the CO should seek

advice from legal counsel on the next action to be taken.

### 3 Overtime Added 7/2007

For cost-type (excluding incentive fee), time and materials, and labor hour contracts, the CO should determine the extent an offer is based on the payment of overtime and shift premiums, and negotiate contracts without the use of overtime or premiums. Overtime may be occasionally necessary to meet urgent or unforeseen program needs. In those instances, the CO should require the contractor to submit requests for overtime in advance of incurring the cost for overtime. The CO should review and approve contractor requests for overtime. Approval of overtime should be prospective; however, if justified by emergency circumstances, approval may be retroactive.

### 4 Contract Work Hours and Safety Standards Act Revised 1/2012

a. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) applies to all contracts over $150,000 that may require or involve laborers or mechanics (the term "laborers or mechanics" includes apprentices, trainees, helpers, watchmen, guards, firefighters, fireguards, and workmen who perform services in connection with dredging or rock excavation in rivers or harbors, but does not include seaman). The Contract Work Hours and Safety Standards Act (CWHSSA) requires that laborers or mechanics cannot be required, or permitted, to work more than 40 hours in any workweek unless paid overtime at not less than 1 1/2 times the basic rate of pay.

b. *Liquidated Damages and Overtime Pay*.

(1) When overtime computations disclose under-payments, the contractor and any subcontractor is liable to the affected employee for the employee's unpaid wages and is also liable to the FAA for liquidated damages. The CO will compute liquidated damages for each affected employee in the sum of $10 for each calendar day that the employee was required, or permitted, to work in excess of the standard workweek of 40 hours without payment of overtime.

(2) If the contractor or any subcontractor fails or refuses to comply with overtime pay requirements and if the funds withheld by the FAA for labor standards violations are not sufficient to pay both the unpaid wages and the liquidated damages, the withheld funds will be used first to pay unpaid wages (or an equitable portion when the funds are not adequate for this purpose); and the balance, if any, used to pay liquidated damages.

(3) If the liquidated damages computation was incorrect or if the contractor or subcontractor inadvertently violated the provisions of the CHWSSA, the CO may:

(a) Make an adjustment in, or release the contractor or subcontractor from the liability for, liquidated damages of $500 or less; or

(b) Make a recommendation to DOL for an adjustment in, or release from, the liability when the liquidated damages are over $500.

(4) If the contractor is entitled to funds withheld or collected for liquidated damages, the CO should instruct the cognizant accounting office to pay the contractor the amount due. If the FAA is entitled to retain the funds, the CO should obtain instructions from the cognizant accounting office.

c. *Administration and Enforcement.* The same procedures and reports required for construction contract labor standards also apply to investigations of alleged violations of the CHWSSA when the contract is for other than a construction.

d. The CHWSSA does not apply to contracts:

(1) Valued at or below $150,000

(2) For commercial items;

(3) For the transportation or transmission of intelligence;

(4) To be performed outside the United States, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf Islands as defined by the Outer Shelf Lands Act;

(5) For work to be solely done in accordance with the Walsh-Healey Public Contracts Act;

(6) For supplies that include incidental services that do not require substantial employment of laborers or mechanics; or

(7) Exempt under regulations of the Secretary of Labor.

**5 Construction Contracts/Davis-Bacon Act**

a. *Davis-Bacon Act.* The Davis Bacon Act (40 U.S.C. 276a-278a-7) provides that contracts of $2,000 or more to which the U.S. or the District of Columbia are a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the U.S., will require that no laborer or mechanic employed directly upon the site of the work will receive less than the prevailing wage rates as determined by DOL.

b. *Related Laws.*

(1) The Copeland ("Anti-Kickback") Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force, intimidation, threat of dismissal, or otherwise, any person employed in the construction or repair of public buildings or public works, to give up any part of the compensation to which the person is entitled under a contract of employment. Contracts subject to the

Copeland Act will include a clause requiring contractors and subcontractors to comply with regulations issued by DOL. Additionally, the Copeland Act requires each contractor or subcontractor to furnish weekly statements of compliance regarding wages paid to each employee.

(2) The Contract Work Hours and Safety Standards Act applies to construction contracts involving laborers or mechanics.

c. *Applicability*.

(1) The Davis-Bacon Act and related laws apply to:

(a) Construction work to be performed by laborers and mechanics on a public building or public work site;

(b) Dismantling, demolition, or removal of improvements if construction at that site is anticipated under the same or a separate contract;

(c) Manufacture or fabrication of construction materials and components to be incorporated into the work when manufacture or fabrication is performed at the construction site;

(d) Painting of public buildings or public works, whether performed in connection with the original construction or as alteration or repair of an existing structure; and

(e) Hazardous waste cleanup contracts that require elaborate landscaping activities or substantial excavation and reclamation work (see DOL Memorandum No. 155, March 25, 1991).

(2) Davis-Bacon Act and related laws do not apply to:

(a) The manufacturing or fabrication of components or materials off the construction site, or their subsequent delivery to the site by the manufacturer or fabricator, unless the manufacturing or fabrication facility is operated solely in support of the construction project;

(b) Contracts requiring construction work that is so closely related to research, experiment, and development that it cannot be performed separately, or that is itself the subject of research, experiment, or development;

(c) Employees of railroads operating under collective bargaining agreements that are subject to the Railway Labor Act; or

(d) Employees who work at the contractors' or subcontractors' permanent home offices, fabrication shops, or tool yards not located at the site of the work. However, when employees go to the work site and perform construction activities there, the requirements of the Davis-Bacon Act and related laws are applicable for the actual time so spent, not including travel unless the employees transport materials or supplies to and from the site of the work.

d. *Non-construction Contracts Involving Some Construction*.

(1) The Davis-Bacon Act and related laws apply to construction work to be performed as part of contracts other than construction (supply, service, research and development, etc.) if:

(a) The construction work is to be performed on a public building or public work;

(b) The contract contains a substantial amount of construction work exceeding $2,000 in value (the word "substantial" relates to the construction work considered on its own rather than merely a value comparison of the construction work as compared to the total value of the contract); and

(c) The construction work is physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required by the contract.

(2) The Davis-Bacon Act and related laws do not apply if:

(a) The construction work is incidental to the furnishing of supplies, equipment, or services; and

(b) The construction work is so merged with non-construction work, or so fragmented in terms of the locations or time spans within which it is to be performed, that it cannot be segregated as a separate contractual requirement.

e. *Definitions*.

(1) "Building" or "work," generally means construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging shoring

rehabilitation and activation of plants, scaffolding , drilling, blasting, excavating, clearing and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not "building" or "work" unless conducted in connection with and at the site of such building or work as described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(2) "Construction, alteration, or repair," means all types of work done on a particular building or work at the site thereof, including without limitation, altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment of the site of the building or work by persons employed by the contractor or subcontractor.

(3) "Laborers or mechanics" includes:

(a) Those workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature, as distinguished from mental or managerial;

(b) Apprentices, trainees, helpers, and in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards;

(c) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR Part 541, for the time so spent; and

(d) Every person performing the duties of a laborer or mechanic, regardless of any contractual relationship alleged to exist between the contractor and those individuals. The terms exclude workers whose duties are primarily executive, supervisory, (except as provided in this section) administrative, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR Part 541 are not deemed to be laborers or mechanics.

(4) "Public building" or "public work," means building or work, the construction, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(5) "Site of the work," is defined as follows:

(a) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it is completed, and nearby property, as described in subparagraph (5)(b) below, used by the contractor or subcontractor during construction that, because of proximity, can reasonably be included in the "site."

(b) Except as provided in subparagraph (5)(c) below, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are parts of the "site of the work"; provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(c) The "site of work" does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a contractor or subcontractor whose locations, and continuance in operation, are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial vendor or material handler which are established by a vendor of materials for the project before proposal are received and are not on the project site, are not included in the "site of work." Such permanent, previously-established facilities are not a part of the "site of the work," even if their operations may for a period of time, be dedicated exclusively, or nearly so, to the performance of a contract.

(6) "Wages," means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness-resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(7) "Apprentice," means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of

Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who as been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(8) "Trainee," means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

## 6 Procedures for Construction Contracts Revised 7/2012

a. *Davis-Bacon Act Wage Determinations*.

(1) DOL is responsible for issuing wage rate determinations for construction reflecting prevailing wage and fringe benefits. The wage determinations apply to those laborers and mechanics employed by a contractor at the site of the work, including drivers who transport materials and equipment to and from the site. Wage determinations are issued for different types of construction, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of construction designated in the determination.

(a) *General Wage Determination.* General wage determinations contain prevailing wage rates for the types of construction designated in the determination, and are used in contracts performed within a specified geographical area. They contain no expiration date and remain valid until modified, superseded, or canceled by a notice in the Federal Register by DOL. Once incorporated in a contract, a wage determination normally remains effective for the life of the contract.

Modifications which may be issued do not apply to ongoing contracts unless specifically directed by DOL. General wage determinations are available online on the Department of Labor (DOL) website. This website provides a single location for COs to use in obtaining current or archived Davis-Bacon Act wage determinations.

(2) *Project Wage Determination.* When a general wage determination does not exist for a particular area, DOL will issue a project wage determination if requested by the CO using a Standard Form (SF) 308. A project wage determination is effective for 180 days and applies to specific contracts within that time period. Once incorporated into the contract, a project wage determination remains effective for the life of the contract unless directed otherwise by DOL.

b. *General Requirements*.

(1) The CO should ensure that only the appropriate wage determinations are incorporated in screening information requests (SIR's) and contracts. When multiple sites are included, or only a portion of the contract is for construction, the CO should indicate the work to which each wage determination or part thereof applies.

(2) If the wage determination contains more than one rate schedule, the CO should either include only the rate schedules that apply to the specific types of construction (building, heavy, highway, etc.) or include the entire wage determination and clearly indicate the parts of the work to which each rate schedule should be applied.

(3) The CO should use the following general guidelines in selecting the proper schedule(s) of wage rates:

(a) *Building* construction is generally the construction of sheltered enclosures with walk-in access, machinery, equipment, or supplies. It typically includes all construction of such structures, installation of utilities and equipment (both above and below grade level), as well as incidental grading, utilities and paving, unless there is an established area practice to the contrary.

(b) *Residential* construction is generally the construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height, and typically includes incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.

(c) *Highway* construction is generally the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, parking areas, and other similar projects that are not incidental to "building," "residential," or "heavy" construction.

(d) *Heavy* construction includes those projects that are not properly classified as either "building," "residential," or "highway," and is of a catch-all nature. Construction of FAA substations, transmission lines and access roads. Such heavy projects may sometimes be distinguished on the basis of their individual characteristics, and separate schedules issued (e.g., "dredging," "water and sewer line", "dams," "flood control," etc.).

(e) When the nature of a project is not clear, it is necessary to look at additional factors, with primary consideration given to locally-established area practices. If there is any doubt as to the proper application of wage rate schedules to the type or types of construction involved, the CO should contact DOL for guidance (further examples are contained in DOL Memoranda Numbers 130 and 131).

c. *Requesting Wage Determinations.*

(1) *General Wage Determination.* The CO may incorporate general wage determinations without notifying DOL.

(2) *Project Wage Determination.* To request a project wage determination, the CO will utilize the Department of Labor's (DOL) wage determination website. If a wage determination does not exist for a given area, the CO may request a project wage determination by submitting a Standard Form (SF) 308 to DOL.

d. The published wage determinations, with their most current modification received by the CO, will be incorporated into applicable SIR's. Incorporation by reference is not permitted.

e. *SIR's Issued without Wage Determinations.* The CO should include a notice in the SIR that wage determinations have been requested and that the SIR will be amended to incorporate any wage determination when received.

f. *Modifications of Wage Determinations.* If the CO has a wage determination for a particular acquisition, wage determination modifications received by the CO or published in the Federal Register less than 10 days prior to receipt of offers are not required to be incorporated if the CO determines there is not reasonable time to incorporate the modification. Modifications received after award are not effective and need not be incorporated in the contract.

g. *Award of Contract Without Required Wage Determination.* If DOL discovers after award that the wrong wage determination or rate schedule was specified, the CO will modify the contract to incorporate the corrected wage determination (retroactive to the date of award), or terminate the contract. If appropriate, the CO should equitably adjust the contract price.

h. *Posting Wage Determinations and Notice*. The contractor is required to keep a copy of the wage determination (and any approved additional classifications) posted at the worksite in a prominent place. The CO should furnish to the contractor DOL Form WH-1321, "Notice to Employees Working on Federal and Federally Financed Construction Projects," to be posted with the wage rates. The poster should include the name, address, and telephone number of the FAA person responsible for the administration of the contract, to inform workers to whom they may submit complaints or raise questions concerning labor standards.

i. *Wage Determination Appeals*. The Secretary of Labor has established a Wage Appeals Board which decides appeals of final decisions made by DOL concerning Davis-Bacon Act wage determinations. The FAA, or other interested parties, may file a petition for review under the procedures in 29 CFR Part 7 if reconsideration by DOL has been sought pursuant to 29 CFR 1.8 and denied.

j. *Satisfying Wage, Fringe Benefit, and Overtime Requirements.*

(1) Contractors are required to pay laborers and mechanics at least the combined hourly wage and fringe benefit amount specified in the wage determinations. In computing wages paid to laborers or mechanics, the contractor may include only the amounts paid in cash and contributions to bona fide benefit plans.

(2) Laborer and mechanic's overtime pay is based on 1 1/2 times the basic hourly rate of pay. When computing the basic hourly rate of pay, the contractor must use the hourly rate in the wage determination or the employee's actual rate, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contribution to fringe benefits.

k. *Additional Classifications*.

(1) If any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract, the CO will require the contractor submit Standard Form (SF) 1444, "Request for Authorization of Additional Classification and Rate" to the CO. Along with other pertinent data, this form contains the proposed additional classification and minimum wage rate including any fringe benefits payments. Upon receipt of the SF 1444, the CO should review the request to determine whether it meets the following criteria:

(a) The classification is appropriate and the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

(b) The classification is utilized in the area by the construction industry.

(c) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage races in the wage determination in the contract.

(2) If the criteria in subparagraphs (a) - (c) above are met and the contractor and the laborers or mechanics to be employed in the additional classification (if known) or their representatives agree to the proposed additional classification, and the CO approves, the CO will submit a report (including a copy of SF 1444) of that action to DOL, Wage and Hour Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for fringe benefits); or

(3) If the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the CO do not agree on the proposed additional classification, or if the criteria are not met, the CO will submit a report (including a copy of SF 1444) giving the views of all interested parties and the CO’s recommendation to DOL, Wage and Hour Division, for determination of appropriate classification and wage rate.

(4) Within 30 days of receipt of the report, DOL, Wage and Hour Division, will advise the CO of appropriate action, or will notify the CO that additional time is necessary.

(5) Upon receipt of DOL's decision, the CO should forward a copy of the action to the contractor, directing that the classification and wage rate be posted in accordance with paragraph (a) of the clause "Davis Bacon Act," and that workers in the affected classification receive no less than the minimum rate indicated from the first day on which work under the contract was performed in the classification.

l. *Apprentices and Trainees*. The CO or Contracting Officer’s Representative (COR) will review the contractor's employment and payment records for apprentices and trainees to ensure that the contractor has complied with the clause "Apprentices and Trainees." If a contractor has

classified employees as apprentices or trainees without complying with the requirements of clause, the CO will reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

m. *Subcontracts.* In accordance with the clause "Subcontracts (Labor Standards), the contractor and subcontractors at any tier are required to submit a fully executed SF 1413, "Statement and Acknowledgment, upon award of each subcontract. The CO will provide a copy of the SF 1413 to the prime contractor at contract award.

n. *Payrolls and Statements*.

(1) *Submission.* In accordance with the clause "Payrolls and Basic Records," the contractor must submit, within 7 calendar days after the regular payroll week covered, for the contractor and each subcontractor: (a) copies of weekly payrolls applicable to the contract, and (b) weekly payroll statements of compliance. The contractor may use DOL Form WH-347, "Payroll (For Contractor's Optional Use)," or a similar form and identical representation.

(2) *Withholding for Non-submission.* If the contractors fail to submit copies of its, or its subcontractor's payrolls promptly, the CO will withhold from any payment due to the contractor, approval of an amount that the CO considered necessary to protect the FAA's interests and the employees.

(3) *Examination.* The CO, or COR, will examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to:

(a) The correctness of classifications and rates;

(b) Fringe benefits payments;

(c) Hours worked;

(d) Deductions;

and

(e) Disproportionate employment ratios of laborers, apprentices, trainees, and journeymen.

(4) Fringe benefits payments, contributions made or costs incurred on other than a weekly basis will be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved.

(5) *Preservation.* The FAA will retain payrolls and statements of compliance for 3 years after completion of the contract and make them available for DOL if requested. Payrolls will not be returned to the contractor.

(6) *Disclosure Of Payroll Records.* Contractor payroll records in FAA's possession must be carefully protected from any public disclosure which is not required by law since payroll records may contain information in which the contractor's employees have a privacy interest as well as information in which the contractor may have a proprietary interest that the FAA may be obliged to protect. Questions concerning release of this information may involve the Freedom of Information Act (FOIA).

o. *Site Compliance Checking*.

(1) The CO or COR will investigate as necessary to ensure compliance with the labor standards requirements of the contract.

(2) *Regular Compliance Checks.* Compliance checks should include the following:

(a) Employee interviews to determine correctness of classifications and rates of pay, fringe benefits payments, and hours worked (see SF 1445).

(b) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(c) Payroll reviews of prime contractors and subcontractors to ensure that the payrolls submitted are on time and complete, as well as in compliance with contract requirements.

(d) Comparison of the information in this paragraph (b) with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

p. *Investigations*. The FAA is responsible for conducting labor standards investigations when available information indicates such action is warranted. In addition, DOL may conduct an investigation or request the FAA to do so.

(1) The FAA should conduct an investigation if a compliance check indicates that violations that are substantial in amount, willful, or uncorrected may have occurred. The investigation should include all aspects of the contractor's compliance with contract labor standards requirements, and should not be limited to specific areas raised in a complaint or uncovered during compliance checks. The investigation should be made by personnel familiar with labor laws and their application to contracts. If oral or written statements are taken from employees during an investigation, the statements, or excerpts or summaries thereof, should not be divulged to anyone other than authorized Government officials without the prior signed consent of the employee. Investigators may use the investigation and enforcement instructions issued by, and available upon written request from, DOL Wage and Hour Division. Any available DOL files pertinent to an investigation may be obtained upon written request to DOL, Wage and Hour Division. None of the material obtained from DOL files, other than computations of back wages and liquidated damages and summaries of back wages due, may be disclosed in any manner to anyone other than responsible federal officials charged with administering the contract, without obtaining the permission of DOL.

(2) The CO will review the investigation report upon receipt and make preliminary findings regarding the contractor. Adverse findings normally that are not supported by other evidence will not normally be based solely on employee statements that have not been authorized for disclosure by the employee and will require more corroborating evidence than unauthorized employee statements. However, if the investigation establishes a pattern of possible violations based on employees' statements that have not been authorized for disclosure, the pattern itself may constitute a suitable basis for a finding of noncompliance.

(3) *Notification to the Contractor.* The CO will take the following actions upon completing the review:

(a) Provide written notice to the contractor concerning the preliminary findings and proposed corrective actions, along with a statement of the contractor's right to request that the basis for the findings be made available, and to submit written rebuttal information within a reasonable period of time.

(b) Upon request from the contractor, make the basis for the findings available. However, the contractor will not be permitted to examine the investigation report. Also, the CO will not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of that employee.

(c) If the contractor submits a rebuttal, reconsider the preliminary findings based on the information it contains and notify the contractor of the final findings. If no rebuttal is submitted within a reasonable time, the preliminary findings will be considered final.

(d) Request the contractor to make restitution for underpaid wages and liquidated damages determined by the CO to be due, whether or not the violation is considered willful. If the request includes liquidated damages, it will also contain a written statement that the contractor may within 60 days request relief from such assessment.

(4) *Contracting Officer's Report.* After implementing those actions prescribed above, the CO will prepare and forward a report of violations, including findings and supporting evidence, to DOL. Standard Form 1446, Labor Standards Investigation Summary Sheet, will be completed and attached as the first page of the report. The CO will forward a copy of the report to DOL within 60 days if:

(a) underpayments exceeded $1,000;

(b) violations were willful or aggravated;

(c) no restitution was made; or

(d) future compliance has not been assured. If violations are willful and criminal, the report should be forwarded to the Department of Justice and DOL.

q. *Withholding from or Suspension of Contract Payments*.

(1) *Suspension of Contract Payments*. If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Davis-Bacon Act and Related Statutes, the FAA may suspend or cause to be suspended any further payment, advance, or guarantee of funds until, upon its own action or acting upon a written request from DOL, the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

(2) Upon final administrative determination, if restitution has not been made by the contractor or subcontractor, the CO will forward to Accounts Payable Standard Form (SF) 1093, Schedule of Withholdings Under the Davis-Bacon Act and/or Contract Work Hours and Safety Standards Act. The CO should include with the SF 1093 a listing of the name, last four digits of the social security number, and last known address of each affected employee; the amount due each employee; employee claims, if feasible; and a brief statement of the reason for requiring restitution. Also, the CO should indicate if restitution was not made because the employee could not be located. Underpaid employees may be assisted in the preparation of their claims. The accounting office will submit the SF 1093 with attached additional data, and effect payment to the Comptroller General (Claims Division) in accordance with their procedures.

(3) *Returning of Withheld Funds to Contractor*. When funds withheld are no longer necessary or exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, these funds will be paid the contractor in an expeditious manner.

(4) *Limitation on Forwarding or Returning Funds.* If the withholding was requested by DOL or if the findings are disputed, the CO should not forward the funds to the Comptroller General, Claims Division, or return them to the contractor without approval by DOL.

r. *Disposition of Disputes Concerning Contract Labor Standards Enforcement*.

(1) The areas of possible differences of opinion between COs and contractors pertaining to construction contract labor standards enforcement include:

(a) Misclassification of workers;

(b) Hours of work;

(c) Wage rates and payment;

(d) Payment of overtime;

(e) Withholding practices; and

(f) The applicability of the labor standards requirements under varying circumstances.

(2) Generally, these differences are settled administratively at the project level by the FAA. If necessary, these differences may be settled with assistance from DOL.

(3) When requesting the contractor to take corrective action in labor violation cases, the CO should inform the contractor of the following:

(a) Disputes concerning the labor standards requirements of the contract are to be resolved by DOL, not by the Disputes clause of the contract.

(b) The contractor may appeal the CO’s findings or part thereof by furnishing the CO a complete statement of the reasons for the disagreement with the findings.

(4) The CO should promptly transmit the CO's findings and the contractor's statement to DOL, Wage and Hour Division.

(5) The DOL, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to the FAA. The contractor or subcontractor may then appeal the DOL's findings in accordance with the procedures outlined in DOL regulations.

(6) DOL, Wage and Hour Division, may institute debarment proceedings against the contractor or subcontractor if DOL finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours and Safety Standards Act or the Copeland (Anti-Kickback) Act or any of the applicable statutes listed in 29 CFR 5.1 other than the Davis-Bacon Act, or has committed violations of the Davis-Bacon Act that constitute a disregard of its obligations to employees or subcontractors under section 3(a) of that Act.

s. *Contract Termination.*

If a contract or subcontract is terminated for violation of the labor standards clauses, the CO should submit a report to DOL, Wage and Hour Division, DOL, and the Comptroller General. The report will include:

(1) The number of the terminated contract;

(2) The name and address of the terminated contractor or subcontractor;

(3) The name and address of the contractor or subcontractor, if any, who is to complete the work;

(4) The amount and number of the replacement contract, if any; and

t. *Semi-Annual Enforcement Reports*. A semi-annual report on compliance with and enforcement of construction labor standards is required by DOL within 30 days after the reporting periods of October 1 through March 31 and April 1 through September 30 of each year.

## 7 Walsh-Healey Public Contracts Act Revised 10/2014

a. The Walsh-Healey Public Contracts Act (41 U.S.C §§ 6501-6511) requires all contracts, that will be performed within the U.S., Puerto Rico, or the Virgin Islands and exceed $15,000, for materials, supplies, articles, and equipment entered into by the U.S. or District of Columbia Government for the manufacture or furnishing of supplies must be with a regular dealer or manufacturer of those supplies and contracts must include requirements for representations, minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

b. Contracts for the following are exempt from the Walsh-Healey Act:

(1) Items under express statutory authority to purchase "in the open market," such as commercial items;

(2) Items under emergency, single source circumstances;

(3) Perishable or agricultural products;

(4) Public utilities;

(5) Supplies manufactured outside of the U.S., Puerto Rico, or Virgin Islands;

(6) Purchases against the account of a defaulting contractor where the Walsh-Healey clauses were not included in the defaulted contract;

(7) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers;

(8) Contract with certain coal dealers (partially exempt; see 41 CFR 50-201.604)

(9) Certain commodity exchange contracts (partially exempt; see 41 CFR 50-201.604)).

(10) Contracts with certain export merchants (partially exempt; see 41 CFR 50-201.604).

(11) Contracts with small business defense production pools and small business R&D pools (partially exempt; see 41 CFR 50-201.604); and

(12) Contracts with public utilities for certain uranium products (partially exempt; see 41 CFR 50-201.604).

c. *Request for Exemption.* Upon request, DOL may exempt specific contracts or classes of contracts from the inclusion or application of one or more of Walsh-Healey's stipulations.

(1) The CO may request partial or complete exemption. The request should state the reasons why the conduct of the FAA's business will be seriously impaired unless the exemption is granted.

(2) Requests for exemptions relating solely to safety and health standards should be transmitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC, 202l0. All other requests will be transmitted to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington DC, 202l0.

d. Rulings and interpretations of the Act are found at 41 CFR 50-206. The substance of certain rulings and interpretations is as follows:

(1) If a contract for $15,000 or less is subsequently modified to exceed $15,000, the contract becomes subject to Walsh-Healey for work performed after the date of the modification.

(2) If a contract for more than $15,000 is subsequently modified by mutual agreement to $15,000 or less, the contract is not subject to Walsh-Healey for work performed after the date of the modification.

(3) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the FAA, the prime contractor is required to include Walsh Healey provisions in contracts in excess of $15,000 awarded for and on behalf of the FAA for products that are to be used in the construction and equipment of FAA facilities.

(4) If a contract subject to Walsh-Healey is awarded to a contractor operating FAA- owned facilities, Walsh-Healey affects the employees of that contractor the same as employees of contractors operating privately owned facilities.

(5) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to Walsh-Healey unless it can be determined in advance that the aggregate amount of all orders estimated to be placed against the contract/agreement for one year after the effective date of the agreement will not exceed $15,000. A determination should be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

e. *Eligibility as a Manufacturer or Regular Dealer*.

(1) *Manufacturer*. An offeror qualifies as a manufacturer if it shows before award that it is:

(a) *Established*. An offeror that is an established manufacturer of the particular products of the general character sought by the Government and has a plant, equipment, and personnel to manufacture on the premises the products called for under the contract.

(b) *Newly entering*. An offeror that is newly entering into a manufacturing

activity and has made all necessary arrangements and commitments for manufacturing space, equipment, and personnel to perform on its own premises the manufacturing operations required for the fulfillment of the contract. To be eligible for this status, manufacturers must show that it:

(i) Has made written, legally binding arrangements or commitments before award to enter a manufacturing business. COs should not bar an offeror from receiving award because it has not yet done any manufacturing, even if the arrangements and commitments are contingent upon the award of
the Government contract;

(ii) Has not set up solely to produce on a Government contract and that its operations will not terminate upon completion of that contract;

(c) Every offeror must qualify as a manufacturer in its own right. The use, rent, or sharing of the manufacturing or producing establishment of another legal entity; i.e., arrangements for equipment, personnel, or space on a time-and-material or "as needed" basis, does not meet this requirement. Arrangements or definite commitments must be in the name of the offeror.

(d) An offeror that performs assembly operations may be considered a manufacturer, if it performs more than minimal operations, such as packaging only, upon the end product. Offerors may also be considered a manufacturer if it has the facilities to produce a significant portion of the component parts needed for the end product even if it only performs assembly operations under a particular acquisition

(e) An offeror's prior eligibility status as a prime contractor or a subcontractor on other contracts subject to Walsh-Healey is not evidence of the offeror's present eligibility as a manufacturer.

(2) *Regular Dealer*.

(a) *Qualifications*. An offeror qualifies as a regular dealer if it shows before award that it deals in the particular products of the general character (products either identical with those in stock or be products for which dealers in the same line of business would be an obvious source) offered to the Government. Regular dealers cannot qualify by showing that arrangements have been made to set up a business. Qualifying criteria include:

(i) *Space.* It has an establishment, or a leased or assigned space, where it regularly maintains a stock of products in which it claims to be a dealer. If the space is in a public warehouse, it must be maintained on a continuing and not on a demand basis.

(ii) *Inventory.* The stock maintained is a true inventory from which sales are made. This requirement is not satisfied by a stock of sample or display items, stock consisting of surplus items remaining from prior

orders, stock unrelated to the supplies offered, or stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made.

(iii) *Sales*. Sales are made regularly from stock, are not occasional, or are an exception to usual operations. Sales are made to the public and not just Federal, State, or local Government agencies. This requirement is not satisfied if the contractor merely seeks to sell to the public but has not yet made the sales. The number and amount of sales that must be made to the public will necessarily vary with the amount of total sales and the nature of the business.

(b) *Alternative qualifications*. For certain specific products (lumber and timber products, machine tools, petroleum, agricultural liming materials, raw or unmanufactured cotton linters, certain uranium products, used automatic data processing equipment, specialty advertising products, and products provided by information systems integrators), there are alternate qualifications for where the dealer need not physically maintain a stock. The requirements under this alternative are set forth at 41 CFR 50-201.101(a)(2) and 50-201.604.

f. *Determination Of Eligibility*.

(1) The responsibility for applying the eligibility requirements begins with the CO.

(2) The CO should investigate and determine the eligibility of the offeror and not rely on the offeror's attestation that it is a manufacturer or regular dealer when:

(a) The CO doubts the validity of the attestation;

(b) A protest has been lodged;

(c) This would be the first award to the otherwise successful offeror subject to Walsh-Healey by the individual acquisition office; or

(d) The procurement team is conducting a pre-award survey to determine responsibility or to prequalify a vendor, the procurement team should, while on site, confirm the offeror’s eligibility under Walsh-Healey.

(3) When the CO cannot accept the offeror's attestation, the CO will make a determination as to whether all of the applicable eligibility requirements have been met by obtaining/considering all available factual evidence including:

(a) Pre-award surveys;

(b) Experience of other acquisition offices;

(c) Information available from the cognizant contract administration office;

(d) Information provided directly by the offeror; and

(e) Other factual evidence that may be necessary to determine whether all of the applicable eligibility requirements have been met, including evidence obtained through an on-site survey conducted specifically for that purpose.

(4) If the CO determines that an otherwise successful offeror is ineligible, the CO will follow the procedures listed below:

(a) The offeror will be notified in writing that:

(i) It does not meet the eligibility requirements and the specific reasons therefore; and it may protest the determination by submitting evidence concerning its eligibility to the CO within 10 working days.

(ii) If, after review of the offeror's evidence, the CO's position has not changed, the offeror's protest and all pertinent material will be forwarded to DOL, Administrator of the Wage and Hour Division, for a final determination.

(A) DOL does not conduct pre-award investigations nor render final determinations of eligibility until the CO initially has determined whether the requirements have been met.

(B) If the CO forwards the case to DOL for review of eligibility, the award should normally be held in abeyance until the CO receives a final determination from DOL. However, award may be made pending a DOL decision if the CO determines the supplies are urgently needed or delay in award will result in substantial hardship to the Government (DOL, the protester, and any other concerned parties must be notified of the award decision).

(b) The CO will notify other offerors whose offers might become eligible for award when an award is being held in abeyance, and request them to extend their acceptance period, if necessary.

g. *Pre-Award Protests Against Eligibility.*

(1) When, before award, an unsuccessful offeror challenges the eligibility of the apparent successful offeror, the CO will:

(a) Promptly notify the apparent successful offeror of the protest;

(b) Notify both the protester and the apparent successful offeror in writing that eligibility evidence may be submitted to the CO within 10 working days;

(c) Notify offerors whose offers might become eligible for award that the award is to be held up because of a protest, and request them to extend their acceptance period, if necessary;

(d) Make a determination based on the evidence as provided in paragraph f.(4) above; and

(e) Notify the protester and the apparent successful offeror of the determination and the procedure to be followed if either party disagrees with the decision.

(2) If either party disagrees with the determination, the CO will forward the determination and entire record to DOL, Administrator of the Wage and Hour Division, for a final determination and notify the parties accordingly.

h. *Award Pending Final Determination.*

(1) Award may be made immediately if the CO certifies in writing that:

(a) The products to be acquired are an emergency requirement;

or

(b) Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

(2) The CO will give prompt written notice of the decision to award to DOL, the protester, and other concerned parties.

i. *Award*. The CO will mail a copy of DOL Publication WH-1313, "Notice to Employees Working on Government Contracts," along with the executed contract. Copies of the poster may be obtained in writing to the DOL, 200 Constitution Avenue NW, Washington, DC 20210, ATTN: Wage and Hour-ESA, Room S3018.

j. *Postaward.*

(1) *Protests*.

(a) If a protest is received after award, but before final contract completion, the CO will follow the procedures paragraph f. (4) above.

(b) If the contract has been completed before receipt of the protest, the CO will notify the protester that no action can be taken on the protest.

(2) *Award Made to an Ineligible Offeror*. If the CO discovers after an award that the offeror did not act in good faith in representing that it was a manufacturer or regular dealer of the supplies offered, the CO, immediately upon discovery, may exercise the right to:

(a) Terminate the contract;

(b) Make open market purchases or enter into other contracts for completing the original contract; and

(c) Charge any additional cost to the original contractor.

(3) *Breach of Stipulation*. If a contractor violates a stipulation under Walsh-Healey, the CO will submit a written notice to the appropriate regional office of DOL, Wage and Hour Division, listed in paragraph l. below, and furnish any available information.

k. *Regional Jurisdictions of DOL, Wage and Hour Division*. Geographic jurisdictions of the Regional Offices of DOL's, Wage and Hour Division, are to be contacted by COs, unless otherwise specified. The address and phone numbers for the DOL Regional Offices by geographic jurisdictions are attached.

l. *Definitions.*

(1) "Assembly," as used in this part, means the piecing or bringing together of various interdependent or interrelated parts or components to make an operable whole or unit.

(2) "Manufacturer," as used in this subpart, means a person that owns, operates, or maintains a factory or establishment that produces on the premises the materials, products, articles, or equipment required under the contract and of the general character described by the specifications.

(3) "Person," as used in this subpart, includes associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(4) "Regular dealer," as used in this subpart, means a person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, products, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

## 8 Fair Labor Standards Act

No contractor or subcontractor holding a service contract for any dollar amount will pay any of its employees working on the contract less than the nationally established minimum hourly wage (as specified in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206))

## 9 Service Contracts/Service Contract Act Revised 10/2014

a. *General.* The Service Contract Act of 1965 (41 U.S.C. §§ 6701-6707), selected provisions of

the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201), and related Department of Labor regulations (29 CFR parts 4, 6, 8, 541, and 1925) apply to service contracts.

b. *Service Contract Act.* The Service Contract Act (SCA) applies to contracts if the principal purpose is to furnish services in the U.S. through the use of service employees, unless exempted. Service contracts over $2,500 must contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowed compensation, and a statement of equivalent Federal employee classifications and wage rates. Additionally, the SCA limits the term of service contracts to 5 years (41 U.S.C. § 6707(d)).

c. *Exemptions from SCA.* The SCA does not apply to:

(1) Contracts performed outside of the U.S.;

(2) Contracts less than $2,500;

(3) Construction, alteration, or repair of public buildings or public works, including painting and decorating;

(4) Dismantling, demolition or removal of improvements when part of a construction contract;

(5) Work performed by a regular dealer or manufacturer (in accordance with the Walsh-Healey Public Contracts Act). Service contracts for remanufacturing of equipment may be subject to Walsh-Healey Public Contracts Act, rather than the SCA, if the work is so extensive as to be equivalent to manufacturing. Remanufacturing is considered to be major overhaul or modification of equipment, material, or an item which involves:

(a) complete or substantial teardown to the component level;

(b) substantially all of the parts are reworked and/or replaced, or outmoded parts are replaced;

(c) the equipment is reassembled; and

(d) the work is performed at a facility operated by the contractor. Remanufacturing does not include repair of damaged equipment or routine maintenance unless there is complete teardown, rework, and reassembly;

(6) Transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;

(7) Contracts for furnishing of services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;

(8) Public utility services;

(9) Employment contracts with an individual(s) (rather than a firm with multiple employees);

(10) Contracts with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly-scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for a substantial portion of the carrier's revenues;

(11) Carriage of freight or personnel if subject to regulated rates in section 10721 of the Interstate Commerce Act;

(12) Contracts principally for maintenance, calibration, or repair of automated data processing equipment, office information/word processing systems, scientific and medical equipment, and office/business equipment (if services are performed by the manufacturer or supplier of the equipment), subject to the following:

(a) the equipment is commercially available;

(b) the price of services is based on established catalog or market prices;

(c) employees used for Government contracts and commercial contracts are under the same overall compensation plan; and
(d) the contractor certifies in the contract to the aforementioned conditions; or

(13) *Employees* who are bona fide executive, administrative or professional employees (as defined and implemented in 29 CFR 541). Some support service contracts involve professional employees who may be exempt from SCA requirements. Professionals are those employees having recognizable status based on acquiring professional knowledge through prolonged study, such as accountancy, actuarial computation, architecture, dentistry, engineering, law, medicine, nursing, pharmacy, the sciences (such as biology, chemistry, physics, and teaching). To be a professional employee, a person must be involved essentially in discharging professional duties and exercising judgment.

d. *Examples of Contracts Covered by SCA*

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the SCA (see 29 CFR 4.130 for additional examples):

(1) Motor pool operation, parking, taxicab, and ambulance services;

(2) Packing, crating, and storage;

(3) Custodial, janitorial, housekeeping, and guard services;

(4) Food service and lodging;

(5) Snow, trash, and garbage removal;

(6) Some support services at Government installations, including grounds maintenance and landscaping;

(9) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services;

(10) Electronic equipment maintenance and operation and engineering support services;

(11) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, telecommunication, office and related business and construction equipment;

(12) Operation, maintenance, or logistics support of a Government facility;

(13) Data collection, processing and analysis services;

e. *Determining SCA Applicability*. Prior to issuing a screening information request, the CO should determine SCA applicability to the particular acquisition and anticipated categories of contractor employees. If the SCA applies to any anticipated categories of employees, the CO will request a wage determination from DOL.

## 10 Procedures for Service Contracts Revised 7/2007

*a. DOL Wage Determinations.* For contracts subject to the SCA, DOL will determine the hourly wage and fringe benefits to be paid employees. DOL wage determinations can be based on either that which prevails for a given locality or can be based on collective bargaining agreements (CBA) between employees and contractors. In certain instances, a DOL wage determination will not apply; in those cases, employees must be paid at least the nationally established minimum wage in the Fair Labor Standards Act.

(1) *Wage Determination Based on Collective Bargaining Agreement*. Follow-on (successor) contractors performing substantially the same services in the same locality must pay wage and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide CBA entered into under the incumbent's (predecessor) contract. However, this requirement will not apply if DOL determines, as a result of a hearing, that the CBA wages and fringe

benefits are substantially at variance with those which prevail for services of a similar character in the locality, or that they have not been reached as a result of arm's length negotiations.

b. *Requesting a Wage Determination.* When the SCA applies to a particular acquisition, the CO will submit a request to, and obtain a response from, DOL regarding the minimum wage and fringe benefits applicable to the acquisition. The CO will obtain an applicable wage determination through DOL's wage determinations online program. If WDOL does not contain the appropriate SCA wage determination for a contract action, the CO must use DOL's e98 electronic process, also available on their website, to request a wage determination. The CO will request a wage determination for:

(1) Each new screening information request (SIR) and contract over $2,500;

(2) Each contract modification which brings the contract value above $2,500, and

(a) Extends the existing contract pursuant to an option clause or otherwise; or

(b) Changes the scope of the contract whereby labor requirements are affected significantly.

(3) Each multiple-year contract over $2,500 upon:

(a) annual anniversary date if the contract is subject to annual appropriations; or

(b) biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years (unless otherwise advised by DOL).

c. *Utilizing WDOL and the e98 Process*. Instructions in selecting wage determinations from WDOL and using the e98 form are available in the WDOL.gov User's Guide provided on the website.

d. *Collective Bargaining Agreements*.

(1) Early in the acquisition cycle, the CO should determine whether an existing CBA will affect the planned acquisition. The CO should determine whether there is an existing (predecessor) contract and, if so, whether the incumbent prime contractor, or subcontractors, and any of their employees have a CBA.

(2) Section 4(c) of the SCA provides that a follow-on (successor) contractor must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) to service employees at least equal to those agreed upon by an incumbent contractor.

(3) Section 4(c) of the SCA is subject to the following limitations:

(a) It will not apply if the incumbent contractor enters into a CBA for the first time and the CBA does not become effective until after the expiration

of the incumbent's contract.

(b) If the incumbent contractor enters into a new or revised CBA during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement will not be effective for the purposes of section 4(c) of the SCA if:

(i) the FAA receives notice of the terms of the CBA after follow-on contract award, provided that the start of performance is within 30 days of award; and

(ii) The CO has given both the incumbent contractor and its employees' collective bargaining agent timely written notification of the applicable acquisition dates.

(4) If section 4(c) of the SCA applies, the CO will obtain a copy of any CBA between an incumbent contractor, or subcontractor, and its employees (the clause "Service Contract Act" requires the incumbent prime contractor to furnish the CO a copy of each CBA.) The CO may:

(a) Use the WDOL website to prepare a wage determination referencing the agreement and incorporate that wage determination, attached to a copy of the collective bargaining agreement, into the successor contract action. Unless requested to do so, it is not necessary to submit a copy of the collective bargaining agreement to the Department of labor.

(b) Use the e98 process on wdol.gov to request that DOL prepare the wage determination. Once reviewed by DOL, they may request a copy of the collective bargaining agreement from the CO.

(5) If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the CO will identify the locations to which the agreements apply.

(6) If the CBA does not apply to all service employees under the contract, the CO will utilize WDOL to obtain the prevailing wage determination for those classifications not covered by the collective bargaining agreement. The CO will also separately list in the solicitation and contract the service employee classifications: (a) subject to the CBA, and (b) not subject to any CBA.

e. *Notification to Interested Parties Under Collective Bargaining Agreements.*

(1) The CO should determine whether the incumbent prime contractor's, or its subcontractors', service employees performing on the current contract are represented by a collective bargaining agent. If there is a collective bargaining agent, the CO will give both the incumbent contractor and its employees' collective bargaining agent written notification of:

(a) The forthcoming follow-on contract and the applicable acquisition dates (issuance of SIR, receipt of offers, commencement of communication, award of contract, or start of performance, as applicable); or

(b) The forthcoming contract modification and applicable acquisition dates (exercise of option, extension of contract, change in scope, or start of performance, as applicable); or

(c) The forthcoming multiple-year contract anniversary date (annual anniversary date or biennial date, as applicable).

(2) The CO will give written notification at least 30 days in advance of the earliest applicable acquisition date or the applicable option exercise date in order for the time-of- receipt limitations to apply. The CO will retain a copy of the notification in the contract file.

f. *Place of Performance Unknown.* The CO should identify all possible places of performance, even though the actual place of performance will not be known until the successful offeror is chosen. The CO should obtain a wage determination for each locality where service may be performed. Should the CO subsequently learn of additional possible places of performance, the CO will obtain wage determinations for the additional places of performance and amend the solicitation to include all wage determinations.

g. *Wage Determinations Involving and Not Involving a Collective Bargaining Agreement.*

(1) *Wage Determination Not Involving a CBA.*

(a) If the CO has not received a response from DOL within 10 days, the CO should contact the Wage and Hour Division to determine when the wage determination, or revision to a wage determination, can be expected.

(b) When the CO has received a wage determination and DOL subsequently issues a wage determination revision, the revision will not be effective if the CO receives it less than 10 days before receipt of offers and the CO determines there is not reasonable time to incorporate the revision into the screening information request. If DOL issues a revision after contract award or modification award, the revision will not be effective, provided that contractor performance starts within 30 days of the contract award or modification. If the contract does not specify a start of performance date within 30 days of the award or modification, the CO will notify DOL and any revision received by the CO not less than 10 days before commencement of the work will be effective.

(2) *Wage Determination Involving a CBA.*

(a) A wage determination or revision based on a new or changed CBA will not be effective if notice of the terms of the new or changed CBA is received by the CO less than 10 days before receipt of offers and the CO determines there is not

reasonable time to incorporate the new or revised CBA into the SIR. If DOL issues a wage determination revision after follow-on contract award or modification, the revision will not be effective, provided that the contract start of performance is within 30 days of the award of the contract or of the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award of the contract or of the specified modification, or if contract performance does not commence within 30 days of the award of the contract or of the specified modification, any notice of the terms of a new or changed CBA received by the CO not less than 10 days before commencement of the work will be effective for purposes of the successor contract under section 4 (c) of the SCA.

(3) If DOL is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the SIR/contract action should proceed according to the following instructions:

(a) If a successorship/same locality/incumbent CBA situation exists, the CO will incorporate in the SIR/contract the wage and fringe benefit terms of the CBA, or the CBA itself, and include a wage determination referencing that collective bargaining agreement created by use of the WDOL website. The CO may incorporate the wage and fringe benefit terms of the CBA in other contract actions, such as exercise of options, in order to facilitate price adjustments for options in fixed price contracts.

(b) The terms of a new or changed CBA, negotiated by the incumbent contractor during the period of performance of the predecessor contract, will not apply to the successor contract under the conditions set forth in paragraph f.(2)(a) above.

h. *DOL Response to Late Requests for Wage Determination.*

If the CO has not requested a wage determination in a timely manner and the CO has not received a response from DOL, the CO should contact the Wage and Hour Division to determine when the wage determination or revision can be expected. If DOL is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the CO should use the latest wage determination or revision, if any, incorporated in the existing contract. If a CBA exists, the CO will incorporate the wage and fringe benefit terms of the CBA, or the CBA itself. If any new or revised wage determination is received, the CO will incorporate it in the SIR or contract within 30 days of receipt. When the wage determination is received after contract award or modification:

(1) The CO will equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating the wage determination or revision when there is no CBA involved. DOL may require retroactive application of the wage determination for a contractual action involving more than five service employees; or

(2) The CO will not equitably adjust the contract price if a CBA is involved since the wage determination or revision will be based on the economic terms of the CBA.

i. *Review of Wage Determination*.

The CO should review wage determinations received to ensure the correct response has been provided. Additionally, the CO should consider the following:

(1) *Based on Incumbent CBA.* If wages, fringe benefits, or periodic increases provided for in a CBA vary substantially from those prevailing for similar services in the locality, or that the CO believes the CBA was not the result of arm's length negotiations, the CO should consider bringing the matter to DOL for a hearing.

(2) *Based on other than Incumbent CBA*. Upon receiving a wage determination not predicated upon a CBA, the CO will ascertain:

(i) Whether the wage determination does not conform with wages and fringe benefits prevailing for similar services in the locality; or

(ii) Whether the wage determination contains significant errors or omissions.

(iii) If either is (i) or (ii) is evident, the CO will contact DOL to determine appropriate action.

(3) *Request for Hearing.* The FAA or other interested parties may request a hearing on an issue involving the review of a wage determination. To obtain a hearing, the CO should submit a request to the DOL, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC, 20210, with sufficient data to support that the rates at issue vary substantially from those prevailing for similar services in the same locality or that a CBA was not the result of arm’s length negotiations. The request should also include: (1) the number of the wage determinations at issue; (2) name of contracting agency; (3) status of the acquisition and any estimated acquisition dates (e.g., proposal receipt, award, and commencement of performance); (4) names and addressees, if known, of interested parties; and (5) a description of the work.

(4) Unless DOL determines that extraordinary circumstances exist, they will not consider requests for a hearing unless received before the commencement date of the contract or the follow-on option period, as the case may be.

j. *Delay of Acquisition Dates Over 60 Days.*

If any award was delayed, for whatever reason, more than 60 days from the date indicated on the submitted e98, the CO must submit a new e98. Any revision of a wage determination received by the CO as a result of that communication, or upon discovery by DOL of a delay, will supersede the earlier response.

k. *Discovery of Errors by the Department of Labor.*

If DOL determines, either before or after a contract award, that a CO made an erroneous

determination that the SCA did not apply to a particular acquisition or failed to include an appropriate wage determination in a covered contract, the CO within 30 days of notification by DOL will include in the contract the clause "Service Contract Act", and any applicable wage determination issued by DOL. DOL may require retroactive application of that wage determination. The CO should equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or revision.

*l. Statement of Equivalent Rates for Federal Hires.*

The statement required under clause "Statement of Equivalent Rates for Federal Hires" will set forth those wage rates and fringe benefits that would be paid by the FAA to various classes of employees . The rates listed will be hourly wages for GS step 1 employees or WG step 2 for non- supervisory or WG step 3 for supervisory wage, as applicable. Personnel offices can provide assistance in determining the appropriate Federal job categories and hourly wages.

m. *Notification to Contractors and Employees*.

(1) As soon as possible after contract award, the CO should inform the contractor of the labor standards requirements of the contract relating to the SCA and of the contractor's responsibilities under these requirements; unless it is clear that the contractor is fully informed.

(2) At the time of award, the CO should furnish to the contractor Department of Labor Publication WH-1313, "Notice to Employees Working on Government Contracts," for posting. The CO should also attach any applicable wage determination to Publication WH-1313.

n. *Additional Classes of Service Employees*.

(1) If the CO is aware that contract performance involves classes of service employees not listed in the wage determination, the CO should require the contractor to prepare and submit Standard Form (SF) 1444, "Request for Authorization of Additional Classification and Rate" (the form provides instructions for completing). This "conformance" procedure requires the contractor to match, as closely as possible, the unlisted job categories to those which are listed on the wage determination. The CO should review the completed SF 1444 and supporting documentation (which should also include the agreement or disagreement of the employees' representative or the affected employees themselves), add a statement whether the CO concurs with the contractor’s job classification, and forward the package to the Wage and Hour Division. Within 30 days of receipt of the request, the Wage and Hour Division will (a) approve, modify, or disapprove the request when the parties are in agreement, or (b) render a final determination in the event of disagreement among the parties. The Wage and Hour Division will notify the CO if more than 30 days will be required to act on the SF 1444.

(2) Some wage determinations will list a series of classes within a job classification family, for example, computer operator level I, II, and III. Generally, level I is the lowest, entry level, and establishment of a lower level through conformance is not permissible. Further, trainee classifications may not be conformed. Helpers in skilled maintenance trades (for example, electricians, machinists, and automobile mechanics)

may not be conformed, but may be used if listed on a wage determination. Conformance may not be used to artificially split or subdivide classifications listed in the wage determination. However, conforming procedures may be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title. (See 29 CFR 4.152.)

o. *Seniority Lists*.

If a contract is performed at a Federal facility where incumbent contractor employees may be hired/retained by a follow-on contractor, the incumbent prime contractor is required to furnish to the CO, no later than 10 days before contract completion, a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment for each person. At the commencement of the follow-on contract, the CO should provide a copy of the list to the follow-on contractor for determining employee eligibility for vacation or other fringe benefits (which are based upon length of service, including service with predecessor contractors) if such benefit is required by an applicable wage determination.

*p. Withholding of Contract Payments*.

Any violations of SCA renders contractors liable for the amount of any deductions, rebates, refunds, or underpayments, or nonpayment due employees. The CO may withhold, or will withhold or upon written request by DOL at a level no lower than Assistant Regional Administrator, the amount needed to pay underpaid employees. The withheld funds should be placed in a deposit account for later transfer to DOL for disbursement (the CO should consult with the cognizant accounting office).

## 11 Professional Employee Compensation Revised 7/2007

The Service Contract Act (SCA) was enacted to ensure contractors fairly compensate their blue collar and some white collar workers, but the SCA does not provide coverage for bona fide executive, administrative, or professional employees. Professional employees should be compensated fairly and properly. When meaningful numbers of professional employees will be provided under a planned service contract, the CO may require offerors to submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits. Unrealistically low professional employee compensation should be evaluated for the potential risk to contract performance.

## 12 Dismantling, Demolition, or Removal of Improvements

If a contract is solely for dismantling, demolition, or removal of improvements, the Service Contract Act applies unless further work which will result in the construction, alteration or repair of a public building or public work at that location is contemplated. If such further construction work is intended, even though by separate contract, then the Davis-Bacon Act applies to the contract for dismantling, demolition, or removal.

## 13 Convict Labor

a. The policies and procedures controlling the employment of prison inmates working on Government contracts are based 18 U.S.C. 4082(c)(2), Executive Order 11755, dated December 29, 1973, and Executive Order 12943, dated December 13,

1994. b. In performing a contract, contractors may employ:

(1) persons on parole or probation;

(2) persons who have been pardoned or who have served their terms;

(3) Federal prisoners; or

(4) Nonfederal prisoners authorized by the Attorney General to work at paid employment in the community if:

(a) The worker is paid or is in an approved work training program on a voluntary basis;

(b) Representatives of labor union organizations have been consulted;

(c) Paid employment will not (i) displace employed workers; (ii) be applied to skills in which there is a surplus of labor in the locality; (iii) impair existing contracts for services; and

(d) Pay and other conditions of employment will not be less than those for work of a similar nature in the locality where the work is being performed.

## 14 Equal Employment Opportunity Revised 7/2007

a. *General*

(1) Executive Order 11246, as amended, prohibits contractors and subcontractors from discriminating against any employee or applicant because of race, color, religion, sex, or national origin, and to take affirmative action to ensure these requirements are met regarding any existing employee.

(2) The FAA may not award a contract or modification, or approve a subcontract, with a contractor found ineligible by DOL's Office of Federal Contract Compliance Programs (OFCCP) because of noncompliance with EO 11246.

(3) Neither the FAA, nor its contractors, will solicit or contract in a manner to avoid applicability of the nondiscrimination and affirmative action or equal opportunity requirements.

(4) OFCCP has primary responsibility for administration and enforcement of affirmative action and equal opportunity requirements. Contractor disputes related to EO 11246 compliance are to be handled according to DOL regulations (41 CFR 60-1.1).

b. *Procedures*.

(1) *Other Than Construction*. Revised 07/2007

(a) The CO will obtain a pre-award clearance from the OFCCP area office for contracts, and subcontracts, totaling $10,000,000 or more, including options, and for modifications increasing the total contract value to $10,000,000 or more. Pre- award clearances remain valid for a 24-month period from the date of issuance. The CO may make verbal requests if confirmed in writing.

(b) The CO does not need to request a pre-award clearance if

(i) The specific proposed contractor is listed on OFCCP's National Pre- award Registry website

(ii) The projected award date is within 24 months of the proposed contractor's Notice of Compliance completion date in the Registry; and

(iii) The CO documents the Registry review in the contract file.

(c) The following information should be included in pre-award clearance request:

(i) Name, address, telephone number and any known corporate affiliation of the apparent prime contractor and any known subcontractors where their subcontract is expected to exceed $10,000,000;

(ii) Anticipated date of award;

(iii) Whether the prime or first tier subcontractor have held previous federal contracts or applicable subcontracts;

(iv) The places of contemplated performance;

(v) The period of performance; and

(vi) Estimated dollar amount of the contract and each first-tier subcontract.

(d) The CO should allow 30 days for obtaining the pre-award clearance. If waiting for the pre-award clearance would delay award of an urgent and critical contract, the CO may proceed with award, subject to concurrence by the Chief

of the Contracting Office (COCO). The CO must also immediately notify the OFCCP area office of the award. If OFCCP subsequently finds the contractor or subcontract is ineligible for the award, OFCCP will provide notice of the applicable course of action. (Revised 10/2002)

(2) *Construction.*

(a) Construction contractors are required to meet (i) the contract terms and conditions which cite affirmative action requirements in specified geographical areas or projects, and (ii) applicable requirements of DOL regulations (42 CFR 60-1 and 604).

(b) Periodically, OFCCP publishes in the Federal Register goals and timetables for minority and female utilization in the construction industry for certain geographic areas. The CO may contact the OFCCP regional office to request current information on affirmative action goals to be included in the clause "Affirmative Action for Construction Contracts."

(c) COs will give written notice to the appropriate OFCCP area office within 10 working days of award of a construction contract subject to these affirmative action requirements. The notification is to include the name, address, and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and the geographical area in which the contract is to be performed. When requested by OFCCP, the CO is to arrange a conference among contractor, the FAA's contracting personnel and EEO contract compliance personnel to discuss the contractor's compliance responsibilities.

c. *Inquiries and Complaints*. The CO should refer the following to the applicable OFCCP area office:

(1) An inquiry from a contractor regarding status of its compliance with Executive Order 11246, or rights of appeal;

(2) Labor union inquiries regarding the revision of a collective bargaining agreement in order to comply with Executive Order 11246;

(3) Complaints alleging violation of the "Equal Opportunity" clause. The CO will advise the complainant in writing of the referral. The prime contractor or subcontractor that is the subject of a complaint will not be advised in any manner, or for any reason, of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

d. *Enforcement*. OFCCP will provide written direction to the CO regarding any enforcement actions for contractor violations of EO 11246, DOL regulations, or the "Equal Opportunity" and related clauses. The CO should take necessary action as soon as possible after notification to implement any sanctions imposed by OFCCP for violations.

e. *Poster*. The CO will furnish to the prime contractor appropriate quantities of OFCCP's Equal Employment Opportunity posters prior to contract performance.

f. *Exemptions*. The following are totally or partially exempt from EO 11246:

(1) Contracts which agency head determines are necessary for national security;

(2) Contracts specifically exempted by OFCCP;

(3) Individual contracts and subcontracts less than $10,000 (unless the value of all contracts or subcontracts awarded to that contractor or subcontractor during any 12 month period will exceed $10,000);

(4) Contracts performed outside of the U.S.;

(5) Contracts with state or local governments;

(6) Work on or near Indian Reservations;

(7) Facilities not connected with contracts;

(8) Indefinite quantity contracts if the amount ordered during any year will, or does, not exceed $10,000.

g. *OFCCP Concurrence for Certain Exemptions.* The CO must request and obtain concurrence by the Director of OFCCP for the exemptions under subparagraphs f.(1), f.(2), and f.(5) above. The CO will prepare a written request delineating the reasons and authority for the exemption.

## 15 Equal Opportunity for Veterans Revised 1/2011

a. The Vietnam Era Veterans Readjustment Act of 1972 (38 U.S.C. 4211 and 4212), Executive Order 11701, 41 CFR Part 60-250 and Part 61-250, and the Veterans Employment Act of 1998 (Public Law 105-339) require contractors and subcontractors, when entering into contracts subject to the Act, to list all suitable employment openings with the appropriate local employment service office and take affirmative action to employ, and advance in employment, qualified special disabled veterans and veterans of the Vietnam Era without discrimination based on their disability or veteran's status.

b. *Definitions.*

(1) "Armed Forces service medal veteran" means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United State military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

(2) "Disabled Veteran" means:

(a) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

(b) A person who was discharged or released from active duty because of a service-connected disability.

(3) "Other protected veteran" means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under laws administered by the Department of Defense.

(4) "Qualified disabled veteran" means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

(5) "Recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval, or air service.

(6) "United States" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S.Virgin islands, and Wake Island.

*c. Applicability.* The Act applies to all contracts for supplies, services, and construction of $100,000 or more (including contracts with a State or local government, or any agency, instrumentality, or subdivision of that government, that does not work on or under the contract), unless waived by OFCCP.

d. *Waivers*.

(1) Subject to concurrence from the Director of OFCCP, the CO or Chief of Contracting Office (COCO) may waive any or all of the terms of the clause "Equal Opportunity for Veterans (AMS 3.6.2-12)," as follows:

(a) The CO may waive any individual contract if in the national interest; or

(b) The COCO may waive any groups or categories of contracts if in the national interest.

(2) The COCO, with the concurrence of OFCCP, may waive any implementing requirements of the Act when the COCO determines that the contract is essential to national security, and award without complying with such requirements is necessary to national security. The COCO will notify OFCCP in writing within 30 days of making this determination.

(3) The CO will prepare a written determination for waiver, with the appropriate signature level, delineating the reasons and authority for the waiver.

e. *Department of Labor Notices and Reports.*

(1) The CO will furnish notices for posting to the contractor when they are prescribed by OFCCP. See the DOL website.

(2) Contractors will submit a report (Standard Form VETS-100, "Federal Contractor Veterans' Employment Report") at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans unless all of the terms of the clauses "Equal Opportunity for Veterans," have been waived.

f. *Collective Bargaining Agreements*. If performance under the Act could affect a revision of a collective bargaining agreement, the CO should advise the affected labor unions or management that DOL will give them appropriate opportunity to present their views.

g. *Complaint Procedures*. The CO must forward any complaints about administration of the Act to the Veteran's Employment and Training Service of DOL, or to the Director, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, N.W., Washington, DC 20210, or to any OFCCP regional, district, or area office or through the local Veteran's Employment Representative or designee, at the local State employment office. The Director of OFCCP is primarily responsible for investigating complaints.

h. *Actions Because of Noncompliance*. The CO should take necessary action as soon as possible after notification to implement any sanctions imposed on a contractor by DOL for violations of the clause.

## 16 Employment of the Disabled Revised 7/2007

a. Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793), P.L. 93-112, section 503, and 41 CFR Parts 60-741 to 60-642 require Government contractors and subcontractors, when entering into contracts subject to the Act, to take affirmative action to employ, and advance in employment, qualified disabled individuals without discrimination based on their physical or mental disabled.

b. *Applicability.* The Rehabilitation Act applies to all contracts for supplies, services, and construction of $10,000 or more unless waived by the Secretary of Labor. The Act does not apply to contracts with a State or local government (or any agency, instrumentality, or subdivision of that government) that does not work on or under the contract.

c. *Waivers*

(1) Subject to concurrence from the Director of OFCCP, the CO or Chief of Contracting Office (COCO) may waive any or all of the terms of the clause "Affirmative Action for Disabled Workers," as follows:

(a) The CO may waive any individual contract if deemed to be in the national interest; or

(b) The COCO may waive any groups or categories of contracts if in the national interest and:

(i) It is impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(2) The COCO, with the concurrence of the Director of OFCCP, may waive any implementing requirements of the Act when the COCO determines that the contract is essential to national security, and award without complying with such requirements is necessary to national security. The COCO will notify the Director of OFCCP in writing within 30 days of making this determination.

(3) The CO will prepare a written determination for waiver, with the appropriate signature level, delineating the reasons and authority for the waiver.

(4) A waiver granted for a particular class of contracts may be withdrawn for any contract within that class whenever considered necessary by the Director to achieve the purposes of the Act. The withdrawal will not apply to contracts awarded before the withdrawal.

d. *Department of Labor Notices.* The CO will furnish to the contractor appropriate notices that state the contractor's obligations and the disabled individual's rights under the Employment of the Disabled program. The CO may obtain these notices from the applicable Department of Labor Regional Office, Office of Federal Contract Compliance Programs, shown in the attached list by geographic jurisdictions.

e. *Collective Bargaining Agreements*. If performance under the Act could affect a revision of a collective bargaining agreement, the CO should advise the affected labor unions or management that DOL will give them appropriate opportunity to present their views.

f. *Complaint Procedures*. The CO should forward any complaints about administration of the Act to the Veteran's Employment Service of DOL, through the local Veteran's Employment Representative or designee, at the local State employment office. The Director of OFCCP is primarily responsible for investigating complaints.

g. *Actions Because of Noncompliance*. The CO should take necessary action as soon as possible after notification to implement any sanctions imposed on a contractor by DOL for violations of the clause. These sanctions may include:

(1) Withholding from payments otherwise due;

(2) Termination or suspension of the contract; or

(3) Debarment.

## 17 Forced or Indentured Child Labor Added 7/2007

a. *General.*

(1) The FAA must take action to enforce laws prohibiting the manufacture or importation of products mined, produced, or manufactured wholly or in part by forced or indentured child labor (E.O. 13126). The Department of Labor maintains the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor (the List) that identifies products, by country of origin, that might have been mined, produced, or manufactured by forced or indentured child labor. The List is located at www.dol.gov/ilab.

(2) When issuing a solicitation for supplies expected to exceed $10,000, the CO must check the List for the required product(s). The appearance of a product on the List does not bar the purchase of the item in the identified country, but rather alerts the CO that such a product may have been mined, produced, or manufactured by forced or indentured child labor.

(3) Due to current trade agreements, the appearance of any end product on the list does not apply to a solicitation or contract if the identified country of origin is:

(a) Canada, and the anticipated value is $25,000 or more; or

(b) Mexico, and the anticipated value is $64,786 or more.

(4) Except as provided in subparagraph (3) of this section, before the CO may make award for an end product of a type identified by country of origin on the List, the offeror must certify that it will not supply an end product on the List that was mined in a country identified on the List, or that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any end product.

(5) If a CO has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product furnished pursuant to a contract, the CO must refer the matter for investigation to the Inspector General.

b. *Violations and Remedies.*

(1) Violations of this section include:

(a) The contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor;

(b) The contractor uses forced or indentured child labor in its mining, production, or manufacturing processes; or

(c) The contractor furnished an end product or component mined, produced, or manufactured, wholly or in part, by forced or indentured child labor.

(2) Remedies include:

(a) Termination of the contract.

(b) Suspension of the contractor.

(c) Debarring the contractor for a period not to exceed 3 years.

## 18 Trafficking in Persons Revised 10/2015

a. *Definitions.*

(1) Commercial Sex Act: Any sex act on account of which anything of value is given to or received by any person.

(2) Debt Bondage: The status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

(3) Severe Trafficking of Persons:

(a) Sex trafficking in which a commercial sex act is induced by force, fraud, coercion, or in which the person induced has not attained 18 years of age; or

(b) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery.

b. *General.*

(1) The Trafficking Victims Reauthorization Act of 2005 (Pub. Law No. 109-164), 22 USC 7104 (g) and National Security Directive NSPD-22 require FAA to take affirmative steps for its contracts to combat all forms of trafficking in persons. Contracts must prohibit any activities on the part of the contractor, subcontractor, or employee of the contractor or subcontractor that support or promote:

(a) Severe forms of trafficking of persons;

(b) Commercial sex acts;

(c) The use of forced labor in the performance of the contract; and

(d) All other activities associated with (a) through (c) above.

(2) Contractors must take action to ensure policies are in place to combat severe forms of trafficking of persons, commercial sex acts, and the use of forced labor.

(1) The FAA must take appropriate action, including termination, on contractors that support, promote, or fail to monitor the conduct of their employees and subcontractors with regard to severe forms of trafficking of persons, commercial sex acts, and the use of forced labor.

(2) AMS clause 3.6.2-39 "Trafficking in Persons" is required in all SIRs and contracts.

c. *Violations and remedies.*

(1) Violations of this section include:

(a) The contractor, subcontractor, or employee of the contractor or subcontractor engages in severe forms of trafficking in persons;

(b) Any contractor or subcontractor employee procures a commercial sex act during the performance time of the contract; or

(c) The contractor, subcontractor, or employee of the contractor or subcontractor uses forced labor in the performance of the contract.

(2) Remedies include:

(a) Removal of contractor or subcontractor employee from the performance of the contract;

(b) Suspension of contract payments;

(c) Loss of award fee for the period of noncompliance;

(d) Termination for default; or

(e) Suspension or debarment.

Possible mitigating or aggravating factors to be taken into account by the Contracting Officer in determining the remedy for a contractor violation are specified in clause 3.6.2-39.

d. *Compliance Plan*

*(1)* Contracts having at least $500,000 for either supplies (other than commercially available off-the-shelf items) acquired overseas, or services performed outside of the United States require a compliance plan that the contractor must maintain during the performance of the contract.

*(2)* This compliance plan must be appropriate to the size and complexity of the contract

as well as the nature and scope of the activities to be performed for the FAA.

*(3)* Specific requirements for the compliance plan are in clause 3.6.2-39. –Successful offerors on applicable acquisitions will also need to submit a certification in accordance with provision 3.6.2-45 "Certification Regarding Trafficking in Persons Compliance Plan".

**19 Nondisplacement of Qualified Workers** **Added 4/2009**

a. *Definitions.*

(1) Service contract or contract: Any contract or subcontract for services entered into by FAA or its contractors that is covered by the Service Contract Act.

(2) Employee: A service employee as defined in the Service Contract

Act. b. *General.*

(1) Each FAA SIR and contract must include AMS Clause 3.6.2-40, which requires that a contractor and its subcontractors, under a contract that succeeds a contract for performance of the same or similar services at the same location, to offer those employees under the predecessor contract whose employment will be terminated as a result of the award of the successor contract, a right of first refusal of employment under the contract in positions for which they are qualified.

(2) This right of first refusal does not apply to managerial and supervisory employees.

(3) There must be no employment openings under the contract until the right of first refusal has been provided.

(4) In no case must the period within which the employee must accept the offer of employment be less than 10 days.

(5) The contractor and any subcontractors must employ under this contract any employee who has worked for the contractor or subcontractor for at least 3 months immediately preceding the commencement of a contract and who would otherwise face lay-off or discharge, except that contractors and subcontractors:

(a) Are not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Act; and

(b) Are not required to offer a right of first refusal to any employee(s) of the predecessor contractor whom the contractor or any of its subcontractors reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job.

c. *Exceptions.*

(1) This requirement of a right of first refusal does not apply

to:

(a) Contracts under $100,000;

(b) Contracts awarded pursuant to the Javits-Wagner-O'Day Act;

(c) Guard, elevator operator, messenger, or custodial services provided to FAA under contracts with sheltered workshops employing the severely handicapped;

(d) Agreements for vending facilities entered into under the Randolph-Sheppard Act; and

(e) Employees who are hired to work under a Federal contract and one or more nonfederal service contracts as part of a single job, provided that the employees were not deployed in a manner to avoid the requirement.

(2) The requirement only applies to the extent that there are job vacancies the contractor or subcontractor need to fill for covered positions.

(3) Specific contract actions may be waived from this requirement of a right of first refusal if the FAE determines that the right of first refusal:

(a) Does not serve the purposes of this requirement; or

(b) Impairs the ability of FAA to procure services on an economical and efficient basis (e.g., when the acquisition team believes that waiving this requirement could result in lower prices with no detrimental effect on contract performance).

d. *Enforcement.* The Secretary of the Department of Labor is responsible for investigating and obtaining compliance with this requirement.

## 20 Project Labor Agreements Revised 7/2012

a. *Definitions.*

(1) Labor organization: a labor organization as defined in 29 U.S.C. 152(5);

(2) Large-scale construction project: a construction project where the cost to FAA of all contracts associated with the project is $25M or more; and

(3) Project Labor Agreement: a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project, and is an agreement as described in 29 U.S.C 158 (f).

b. *Determination*. Consistent with Executive Order 13502, dated February 6, 2009, for all large-scale construction projects, the CO in consultation with the program office and/or COR may require that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate a project labor agreement with one or more labor organizations if they determine that a project labor agreement will:

(1) Advance FAA's interest in achieving economy and efficiency in procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and

(2) Be consistent with the law.

The determination whether to enter into a project labor agreement must be documented in the contract file.

c. *Requirements*. All project labor agreements must:

(1) Bind all contractors and subcontractors engaged in construction on the construction project to comply with the project labor agreement;

(2) Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(3) Contain guarantees against strikes, lockouts, and other job disruptions;

(4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health;

(6) Fully confirm to all statutes, regulations, and Executive Orders; and

(7) Include any additional requirements deemed necessary to meet the needs of FAA.

d. *Additional Criteria*. Additional factors that may be considered in this determination whether to use a project labor agreement include but are not limited to the following:

(1) The size and complexity of the project;

(2) The importance of the project and the need to adhere to a particular timeline;

(3) The risk of labor unrest on the project and the circumstances that may lead to a heightened risk of labor disruption. Examples of such circumstances are the

history of labor unrest in the area, the anticipated working conditions on the project related to the environment or work schedules, and the expiration of one or more collective bargaining agreements that could lead to jurisdictional disputes;

(4) The impacts of a labor disruption to the users, the operation of the facility, and the region;

(5) The costs of a delay should a labor disruption occur; and

(6) The available labor pool relative to the particular skills required to complete the project.

e. *Implementation.* When a project labor agreement is required, FAA has the following submittal options:

(1) When offers are due. The screening information request (SIR) must fully specify all requirements for the project labor agreement;

(2) From the apparent successful offeror prior to award. The SIR must require that once the apparent successful offeror has been determined, the apparent successful offeror must submit a proposed project labor agreement to the CO; and

(3) After award. The SIR must require that the project labor agreement be negotiated within a certain number of days after contract award, and that a copy of the negotiated agreement must be submitted to the CO.

f. Possible submittal requirement considerations include but are not limited to the following:

(1) A large number of anticipated offerors could render each offeror having to negotiate a project labor agreement in advance a burden that could delay the submittal of offers;

(2) Requiring submittal of a project labor agreement from all offerors in advance might reduce cost risk in that the costs of such an agreement may be more accurately factored into an offeror's proposal; and

(3) Post-award execution of a project labor agreement could undercut the benefits of such an agreement as the work on the overall project will have already started.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

**D Attachment**

Address list of DOL Regional Offices of Federal Contract Compliance Programs (OFCCP) by geographic jurisdictions.

**Office of Federal Contract Compliance Programs Regional Offices**

1. New York

(New Jersey, New York, Puerto Rico, Virgin Islands, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

201 Varick Street Room 750
New York, NY 10014

(212) 337-2007, (212)620-7705 (Fax)

2. Philadelphia
(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

Curtis Center, Suite 750 West
170 S. Independence Mall West
Philadelphia, PA 19106

(215) 861-5763 (215)861-5769 (Fax)

3. Atlanta

(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Atlanta Federal Center
61 Forsyth Street,
S.W. Room 7B75
Atlanta, GA 30303

(404) 562-2424 (404) 562-2429 (Fax)

4. Chicago Region

(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, Iowa, Kansas, Missouri, Nebraska)

Kluczynski Federal Building
230 South Dearborn Street

Room 570

Chicago, IL 60604

(312) 353-0335 (312) 353-2813 (Fax)

5. Dallas

(Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Colorado, Montana, North Dakota, SouthDakota, Utah, Wyoming)

Federal Building, Room 840
525 South Griffin
St. Dallas, TX
75202

(214) 767-2804 (214) 767-2149 (Fax)

6. San Francisco

(Arizona, California, Guam, Hawaii, Nevada, Alaska, Idaho, Oregon, Washington)

71 Stevenson Street
Suite 1700
San Francisco, CA 94105

(415) 975-4720 (415) 975-4723 (Fax)

## T3.6.3 Environment, Conservation, Occupational Safety, and Drug Free Workplace

**Revised 4/2009**

## A Environment, Conservation, Occupational Safety, and Drug Free Workplace

**Revised 4/2009**

### 1 Contracting for Environmentally Preferable and Energy-Efficient Products, Services and Facilities **Revised 1/2014**

FAA must acquire (i) environmentally preferable, energy and water efficient, recycled content containing, non-ozone depleting, less or non-toxic, and biobased products and services, and (ii) Environmental Protection Agency (EPA) compliant facilities whenever possible. Throughout the acquisition process, FAA must consider:

(a) Obtaining and using renewable energy technology products and services considered to be environmentally preferable and energy and water efficient;

(b) Eliminating or reducing the generation of hazardous waste and the need for special material processing (including special handling, storage, treatment, or

disposal);

(c) Requiring the use of less-toxic, non-hazardous materials and non-ozone depleting substances;

(d) Realizing life-cycle cost savings;

(e) Promoting cost effective waste reduction when creating plans, drawings, specifications, standards and other product descriptions authorizing material substitutions, extensions of shelf-life, and process improvements;

(f) Requiring the use of biobased and recovered or recycled products;

(g) Ensuring the offeror's facility is not on the General Services Administration (GSA) "List of Parties Excluded from Federal Procurement and Nonprocurement Programs"; and

(h) Requiring contractors to manage the diversion of non-hazardous solid waste and Construction and Demolition (C&D) debris (generated as a result of their work) from municipal landfills or incineration facilities, including management, tracking, and reporting.

## 2 Responsibilities Revised 10/2013

a. *Program Office Responsibilities.*

(1) Program offices are responsible for identifying hazardous materials and any safety controls that may be required in the delivery of supplies, services, or construction to FAA.

(2) When preparing specifications and purchase descriptions for the acquisition of supplies, services, and construction, program offices must:

(a) Specify environmentally friendly products and ensure requirements comply with applicable laws and Executive Orders (such as Clean Air Act, Executive Orders 13423 and 13514);

(b) Consider energy and water conservation and efficiency data in acquisition planning;

(c) Incorporate FAA and EPA recycled content, biobased, non-ozone depleting, less-toxic, and energy and water efficient product standards into requirements; and

(d) Incorporate pollution prevention (such as waste reduction and diversion)

and electronics stewardship considerations into requirements.

(3) Program offices are responsible for reviewing and revising specifications or requirements during the planning phase of the acquisition to support FAA's procurement of environmentally preferable, energy and water efficient, biobased, less toxic, non-ozone depleting, and recycled content products. In addition to the program area specific resources available in AMS Guidance, refer to the GSA's Green Products Compilation Tool for a listing of products and services for which the EPA, DOE, and USDA have issued designations otherwise provided guidance for sustainability attributes.

(4) When required by law or FAA policy, program offices are responsible for documenting and certifying compliance with applicable environmental or conservation standards (i.e. the recycled content determination)

b. *Contracting Officer Responsibilities.*

(1) *Pre-Award.* The Contracting Officer (CO) must ensure:

(a) That Procurement Request (PR) packages include all required justifications (i.e. recycled content determination, Energy Star® etc.);

(b) The Screening Information Request (SIR) includes all required provisions to support FAA's procurement of environmentally preferable, energy and water efficient, biobased , less-toxic, non-ozone depleting, and recycled content products and services (i.e. energy efficiency standards for energy-consuming products, diverting non-hazardous solid waste, etc.). The GSA Green Products Compilation Tool is a reference as described in (a)(3) above.

(c) All required certifications (such as Toxic Chemical Release Inventory Form (Form R) certification or Material Safety Data Sheets (MSDS)) are received prior to contract award; and

(d) Offeror's facilities are Environmental Protection Agency (EPA) compliant.

(2) *Post Award.* The CO must:

(a) Ensure that all post-award certifications (e.g. minimum content standards, Energy Star®, biobased, etc.) or MSDS are submitted to FAA as required;

(b) Ensure that contractors notify FAA prior to delivering hazardous or radioactive material; and

(c) Cooperate with the Environmental Protection Agency (EPA) and its representatives as required.

(3) *Reporting Clean Air or Water Violations.* If a CO becomes aware of noncompliance with clean air or water standards in a prospective or performing contractor's facilities, the CO must notify and coordinate the award with EPA.

### 3 Hazardous Material Identification and Material Safety Data Revised 7/2008

a. The CO should obtain information before award about hazards that may be introduced into the workplace by the supplies being acquired such as:

(1) That required by Federal Standard No. 313 (including revisions adopted during the term of the contract) in obtaining hazardous material; or

(2) That identified by a FAA technical representative as potentially hazardous and requiring safety controls.

b. As required by 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, the successful offeror/contractor is required to submit Material Safety Data Sheets (MSDS) prior to contract award and with supplies at the time of delivery, unless the offeror/contractor certifies that the supplies are not hazardous. The CO should provide a copy of all MSDSs received to the safety officer and program office.

### 4 Notice of Radioactive Material Revised 4/2009

a. The procurement team requires contractors to notify FAA receiving activities prior to delivering radioactive material so FAA can initiate appropriate safeguards. The CO may waive the notification if the contractor certifies that a notification on prior deliveries is still accurate. However, the CO may only waive the notice after consultation with the cognizant contracting technical representatives.

b. The procurement team should require offerors to specify the number of days in advance of delivery that the receiving activity will be notified of an impending delivery. The determination of the number of days should be done in coordination with the installation/facility radiation protection officer (RPO). The RPO is responsible for insuring the proper license, authorization or permit is obtained prior to receipt of the radioactive material.

### 5 Ozone Depleting Substances Revised 7/2013

a. FAA must minimize procurement of materials and substances (such as those found in refrigerants, foam blowing agents, cleaning solvents, fire suppression, aerosols, sterilants, and adhesives, coatings, and inks) that contribute to depleting the stratospheric ozone. FAA must also give preference to procuring alternative chemicals, products and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere.

b. When preparing specifications and purchase descriptions for supplies and services,

program officials must ensure that each comply with the Clean Air Act and substitute safe alternatives to ozone depleting substances, as approved by the EPA's Significant New Alternatives Policy (SNAP) Program.

c. For contracts calling for the delivery of ozone-depleting substances or supplies that may contain or be manufactured with ozone-depleting substances, it must be specified in the Screening Information Request (SIR)/contract that only offerors with the appropriate EPA certifications will be considered for award. Required certifications based on service type (such as Section 608 Certification for stationary refrigeration and air conditioning technicians) can be found under EPA's Ozone Layer Protection Regulatory Programs .
d. Additional information regarding non-ozone depleting alternatives can be found in the following locations:

(1) EPA's SNAP Program website; and

(2) EPA's Ozone Layer Protection - Regulatory Programs website.

## 6 Chemicals Management Revised 4/2014

a. To the maximum extent practicable, FAA procurements must 1) reduce the overall quantity of chemicals and toxic materials acquired, used, and disposed of; and 2) increase the use of less or non-toxic alternatives.

(1) FAA must purchase and use less or non-toxic building product alternatives (such as paints, sealants, adhesives, carpet, engineered wood, etc.) wherever practicable. Products should meet the suggested Volatile Organic Compound (VOC) limits set forth in the Whole Building Design Guide's (WBDG) Federal Green Construction Guide for Specifiers.

(2) FAA must utilize environmentally preferable methods for indoor and outdoor cleaning and Integrated Pest Management (IPM).

(a) Cleaning product specifications should align with green cleaning guidelines set forth in EPA's Environmentally Preferable Purchasing Program. For example, preference should be given for cleaning products that:

(i) Have minimal presence of (or exposure to) harmful chemicals (such as corrosives, carcinogens, etc.) and Volatile Organic Compounds (VOCs);

(ii) (ii) Are biodegradable by standard methods and definitions; and

(iii) (iii) Contain biobased solvents.

(b) Indoor and outdoor pest management must be accomplished through an IPM approach that minimizes the use of chemical pesticides.

(3) FAA must utilize environmentally preferable methods for landscape management wherever practicable. For example:

(a) Preference should be given for snow and ice management methods that promote proactive ice prevention and employ the use of less-toxic chemical de- icing alternatives to calcium chloride and sodium chloride.

(b) Low-impact and biodegradable cleaning products should be specified for use on building exterior, sidewalks, pavement, and other hardscapes in a manner that promotes water efficiency and prevents runoff.

(c) Preference should be shown for organic or natural fertilizers (such as compost, grass clippings) in lieu of chemical fertilizers where their use would be meaningful and consistent with mission needs. Where synthetic fertilizers must be used, preference should be given to slow-release formulations and those which consider appropriate nutrient management practices based on local environmental sensitivities and regulations.

b. Additional information regarding less or non-toxic alternatives can be found at the following locations:

(1) Federal Green Construction Guide for Specifiers website
(2) Design for the Environment (DfE) website
(3) EPA Environmentally Preferable Purchasing Program (EPP) website

**7 Energy Conservation and Efficiency** **Revised 4/2015**

a. The procurement team (CO, program official, legal counsel, and others supporting a program) must make energy conservation and efficiency a contracting consideration when procuring products affecting energy consumption. Energy conservation and efficiency data must be considered along with estimated cost and other relevant factors in the preparation of plans, drawings, specifications, and other product descriptions. When procuring energy-consuming products:

(1) FAA must procure the most energy efficient products available, where life-cycle cost effective and consistent with the mission need;

(2) FAA must purchase Energy Star® or other energy-efficient items listed with the Department of Energy's (DOE) Federal Energy Management Program (FEMP) Product Energy Efficiency Recommendations products list;

(3) For products that consume power in standby mode and are listed on FEMP's Low Standby Power Devices product listing, FAA must;

(a) Purchase items which meet FEMP's standby power wattage recommendation or document why such items were not purchased; or

(b) If the FEMP has listed a product without a corresponding wattage recommendation, purchase items which use no more than one watt in

standby power consuming mode. If meeting the one watt requirement is impracticable, FAA will purchase items with the lowest standby wattage practicable.

(4) FAA must purchase Electronic Product Environmental Assessment Tool (EPEAT) Bronze-registered electronic products (such as personal computer products, imaging equipment, televisions) or higher if available (Gold registered products are preferred). All EPEAT- registered products are Energy Star® labeled); and

(5) FAA must purchase technologies that utilize renewable energy sources where their application and use would be practicable, life-cycle cost effective, and consistent with mission needs.

b. When contracting for service or construction that will include the provision of energy-consuming products, FAA will specify products that comply with the standards outlined above.

c. FAA is not required to procure Energy Star®, EPEAT registered, or FEMP-designated products if it is determined in writing by the program official that:

(1) An Energy Star ® product or FEMP designated product is not cost-effective over the life of the product taking energy cost savings into account;

(2) No Energy Star® or FEMP-designated product is reasonably available that meets the functional requirements of FAA, or

(3) No EPEAT standard for the product exists.

d. Information regarding EPEAT registered, Energy Star® or FEMP-designated products can be found at the following locations:

(1) Energy Star® website;

(2) FEMP website or

(3) EPEAT website

**8 Renewable Energy Certificates** **Revised 4/2015**

a. Renewable energy certificates (RECs), also known as renewable energy credits, represent the property rights to the environmental, social, and other non-power qualities of renewable electricity generation. A REC, and its associated attributes and benefits, can be sold separately from the underlying physical electricity associated with a renewable-based generation source. FAA has the option of purchasing RECs to help meet Federal renewable energy use requirements.

b. Starting in FY 2015, 100 percent of RECs purchased must be from new renewable sources, where “new” renewable sources means sources of renewable energy placed into service within 10 years prior to the start of the fiscal year. RECs purchased must be from renewable sources of

electricity derived from solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project. In addition, RECs must meet "vintage" requirements where "vintage" refers to the period of time during which the energy the RECs represent was generated. Refer to the following table for the vintage requirements for each fiscal year:

| **Fiscal Year** | **"Vintage", i.e., Period of Generation for RECs** |
|---|---|
| FY_2015 | 01 April 2014 – 31 December 2015 |
| FY 2016 | 01 April 2015 – 31 December 2016 |
| FY 2017 | 01 April 2016 – 31 December 2017 |
| FY 2018 | 01 April 2017 – 31 December 2018 |
| FY 2019 | 01 April 2018 – 31 December 2019 |
| FY 2020 | 01 April 2019 – 31 December 2020 |

RECs purchased for a given fiscal year must meet the corresponding vintage requirements in order for them to count towards that fiscal year's Federal renewable energy requirement.

c. In order to meet REC reporting requirements, FAA must obtain documentation under the contract showing both transference and ownership of the RECs, and it must also include the following information:

(1) Number of RECs sold in megawatt hours (MWhs);

(2) Fuel type (renewable fuel used to generate electricity associated with RECs sold);

(3) Period of generation for RECs sold (month or quarter, and year);

(4) Cost per REC (or total purchase price);

(5) Location of the generation facility; and

(6) Date the generation facility was placed in service;

Optional additional information may include:

(1) Renewable energy project name;

(2) Generator ID number; and

(3) Nameplate capacity.

Usually this documentation is in the form of an attestation from the REC provider and a certificate of transfer, which demonstrates rights to the renewable attributes of the power generated by the renewable resource transfer to the buyer.

## 9 Water Conservation and Efficiency Revised 4/2014

a. The procurement team (Contracting Officer (CO), program official, legal counsel, and others supporting a program) must make water conservation a contracting consideration when procuring products affecting FAA water consumption. Water conservation and efficiency data must be considered along with estimated cost and other relevant factors in the preparation of plans, drawings, specifications, and other product descriptions. When procuring water consuming products:

(1) FAA must procure the most water efficient products available, where life cycle cost- effective and consistent with the mission need.

(2) FAA must purchase WaterSense® labeled products or other water conserving products where available and life cycle cost effective.

b. When contracting for service or construction that will include the provision of water consuming products, FAA will specify products that comply with the standards outlined above. FAA should choose irrigation contractors that are certified through a WaterSense® labeled program.

c. FAA is not required to procure WaterSense® labeled products or other water conserving products if it is determined in writing by the program official that:

(1) A WaterSense® labeled product or other water conserving product is not cost- effective over the life of the product taking utility cost savings into account; or

(2) No WaterSense® labeled product or other water conserving product is reasonably available that meets the functional requirements of FAA.

d. For examples of common off-the-shelf water conserving products and efficiency standards, refer to Department of Energy's (DOE) guidance "Establishing Baseline and Meeting Water Conservation Goals of Executive Order 13423".

e. Information regarding WaterSense® labeled products can be found on the EPA's WaterSense® website.

## 10 Preference for Recycled Content and Biobased Products Revised 4/2015

a. According to Executive Orders 13423 and 13514, FAA procurements of designated recycled content products in EPA's Comprehensive Procurement Guidelines (CPG) will meet or exceed EPA guideline standards unless there is a price, performance, or availability justification for not doing so. For biobased products, preference is given for purchasing the highest percentage of biobased products practicable.

(1) *EPA-Designated Products*. FAA's Green Procurement Plan (GPP) (see Appendix 2) is based on EPA's CPG designations of recycled content products. FAA will give preference to procuring and using such products containing recovered materials versus

products made with virgin materials when such products are available competitively within a reasonable time frame, meet reasonable performance standards, and are available at a reasonable price. These products will be purchased containing the percentages of recovered materials (recycled content) indicated in the CPG. EPA's recommended recovered materials minimum content ranges, product specifications, and other product information can be obtained from EPA's CPG website . The major CPG categories are Paper and Paper Products, Vehicular Products, Construction Products, Transportation (Traffic Control) Products, Park & Recreation Products, Landscaping Products, Non- paper Office Products, and Miscellaneous Products.

(2) *Biobased Products*. In making procurement decisions, preference is given to such items composed of the highest percentage of biobased products practicable. A decision not to buy these items will be made when it is determined that the items are not available within a reasonable period of time, fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring office, or are available only at an unreasonable price. Contracting Officers should refer to the U.S. Department of Agriculture (USDA) listing of biobased products on the USDA biopreferred website when purchasing products that contain biobased material or services that could contain products that contain biobased material.

(3) *Special Requirements for Refined Oil*. FAA fleets must use re-refined oil unless it is not available or does not meet performance needs. This special requirement applies to recycled content products purchased by FAA.

b. *Environmental Substitution Guide for Products.* FAA's GPP provides information and guidance on purchasing and using environmentally preferable products and services.

c. *Recycled Content Determination or Justification for Exemption.*

1) *Recycled Content Determination.* Program officials are responsible for defining product specifications utilizing FAA's minimum content standards or preference standards when procuring EPA-designated items from outside vendors. The program official makes a written determination certifying that the statement of work/specifications for the requisition of materials/services specified complies with FAA's preference standards for recovered materials. The completed determination becomes part of the original contract file (see Sample in Appendix 3). A determination is not required when EPA-designated items containing recovered materials are obtained through GSA's Federal Supply Service or other established Federal supply sources.

(a) Printing and Writing Paper: In accordance with Executive Orders 13423 and 13514, FAA must use the following minimum content standards when purchasing uncoated printing and writing papers (including office paper products and support services that include the supply of written documents:

(i) 30 percent post-consumer fiber;

(ii) 20 percent post-consumer fiber, if papers containing 30 percent

post-consumer fibers are not reasonably available, do not meet reasonable performance requirements, or are only available at an unreasonable price.

(b) In addition, FAA should purchase uncoated paper containing at least 50 percent postconsumer fiber content whenever practicable.

(2) *Justification for Not Buying EPA-Designated Recycled Content Products*.

(a) FAA justifications not to buy recycled content products are to be in writing, and may conclude that recycled content products:

(i) Are not available competitively;

(ii) Are not available within a reasonable time frame;

(iv) Do not meet reasonable performance standards; or

(iv) Are only available at an unreasonable price.

Written justification is not required for purchases below the threshold level of $10,000.

(b) The procurement originator and/or CO, as appropriate, are to document the decision not to buy recycled content products. The original copy of the documentation becomes part of the original contract file (see Sample in Appendix 2). The procurement originator is responsible for submitting a copy of the form to the responsible program manager.

d. *Recycled Content CPG Items*. The requirement to purchase recycled-content CPG items applies to all purchases, including those purchases falling under the defined threshold level or made using a purchase card and/or credit card checks. FAA is to provide training and education to its acquisition personnel procuring recycled content products under the defined threshold level, $10,000.

e. *Federal Supply Sources for EPA-Designated Products*.

(1) Established Federal supply sources, such as the SAVES Program, General Services Administration (GSA), Advantage, Government Printing Office (GPO), the Defense Supply Center Richmond, and Ability One Program are competitive sources for EPA-designated items and other recycled content products.

(2) These sources also provide an additional service through independent estimation, certification, and verification of EPA-designated items containing recovered materials, thereby reducing overhead costs for procurement originators to track and monitor vendor compliance with GPP requirements. Information on Federal supply sources of recycled content and environmentally preferable products is contained in Sample Appendix 5.

f. *Contractors Use of EPA-Designated Products*.

(1) The requirement to buy recycled content items applies to contractors when they are purchasing or supplying EPA-designated products for use in the performance of a contract. The contractor is required to monitor and report on its GPP-related procurement activities as well as require its applicable sub-contractors to comply with FAA's GPP. It is the responsibility of FAA to ensure that appropriate new and existing contracts are revised to include GPP compliance provisions.

(2) Because FAA's contractors may procure a majority of the products regulated by EPA's guidelines, FAA COs should ensure that such contractors are familiar with all applicable GPP requirements contained in their contracts with FAA. During initial contract execution, the COs should brief contractors on their role in the procurement of recycled content products. COs may, at any time, when appropriate, emphasize to contractors the importance and requirements of Executive Orders 13423 and 13514.

g. *Life-Cycle Cost Analysis*. FAA is required to use life-cycle cost analysis, wherever feasible and appropriate, to assist in selecting products and services. Whenever possible, cost should be calculated over the life of the item, not just the initial, up-front cost. When comparing alternative products, the initial cost of the acquisition, as well as lifetime maintenance costs, operational costs, etc. should be considered in the analysis. A product having a higher initial cost may have lower operational cost or a higher resale value and will, therefore, prove to be a better value and more cost-effective compared to the alternatives.

h. *Specification Review/Revision*.

(1) FAA program offices are responsible for reviewing and revising specifications, product descriptions, and standards during the acquisition planning stage to enhance FAA's procurement of biobased and recycled content products. Standards or specifications unrelated to performance or presenting barriers to procuring biobased and recycled content products should be revised or eliminated when reviewing or drafting procurement specifications. When revising FAA specifications, program offices should eliminate requirements for virgin materials, express preference for biobased and recovered materials to the maximum extent practicable, and allow for the purchase of products containing biobased and recovered material.

(2) When developing, reviewing, or revising Federal specifications, product descriptions (including Commercial Item Descriptions), and standards, FAA should consider biobased and recovered materials and environmentally preferable purchasing criteria.

(3) When converting to Commercial Item Descriptions (CID) during procurement actions, FAA employees and contractor personnel should ensure environmental factors have been considered and the CID meets or exceeds USDA's biobased and EPA's recycled content recommendations.

i. *Promotion Program*. FAA is responsible for actively promoting its preference for biobased and recycled content products. This includes making biobased and recycled content product

suppliers aware of FAA's preference program, educating program and procurement offices about requirements to procure biobased and recycled content products, and providing FAA employees and contractors with information on sources of biobased and recycled products. FAA should internally and externally promote its desire to buy biobased and recycled products by:

(1) Including explicit biobased and recovered materials preference standards for USDA- designated biobased products and EPA-designated items in appropriate SIR and contract language, specifications, drawings, plans, statements of work, and during contract negotiations; and

(2) Providing informational materials, statements, and training to program and procurement offices regarding the agency's biobased and recovered materials preference program through internal documents, newsletters, and at appropriate conferences, workshops, and meetings.

j. *Vendor Procedures*.

(1) *Certification*. COs should ensure that vendors provide written certification that their products meet the minimum content standards in the SIR documents, maintain copies of the certification documents, and produce copies of the written certification upon request by FAA.

(2) *Verification.* FAA will periodically review vendor certification documents as part of the annual review and monitoring process. Such reviews should enable FAA to verify the contractor's compliance with Executive Orders 13423 and 13514.

k. *Annual Review and Monitoring*. FAA should take the following actions to track its procurement of USDA-designated biobased products and EPA-designated recycled content products:

(1) Review available data on purchases from central supply sources, purchases using the government purchase card, and purchases by contractors in the performance of their contracts for each USDA-designated biobased product and EPA-designated recycled content product that it purchases.

(2) Assess its progress in achieving FAA goal of ensuring that 95 percent of applicable new contract actions for products and services advance sustainable acquisition, including biobased and recycled content products acquisition, where such products and services meet FAA performance requirements.

(3) Determine whether biobased and recycled content products are not being purchased due to lack of training of CO(s), purchase cardholders, and/or product specifiers; and provide training as appropriate.

(4) Determine whether biobased and recycled content products are not being purchased due to price, performance, or availability constraints.

(5) Work with vendors, USDA, and the EPA to identify products that meet FAA's needs whenever performance is the constraint.

(6) Increase its promotion program and work with the USDA and EPA to identify sources whenever availability is the constraint.

l. *Annual Reports*.

(1) FAA is encouraged to incorporate into its Government Performance Results Act annual performance plan goals:

(a) To increase the procurement of products made from biobased and recovered materials;

(b) For solid waste prevention and recycling or for solid waste diversion; and

(c) For increasing the use of environmentally preferable products and services.

(2) FAA is responsible for tracking its purchasing of USDA-designated biobased products and EPA-Designated items and reporting this information annually through DOT to the Federal Environmental Executive (FEE). FAA should also report on its compliance with requirements to review and revise specifications, product descriptions, and standards to enhance the procurement of biobased, recycled content and environmentally preferable products.

## 11 Waste Management Revised 7/2014

a. *Non-hazardous Solid Waste*. The FAA must divert at least 50 percent of non-hazardous solid waste, excluding construction and demolition debris, by the end of Fiscal Year 2015 in accordance with Executive Order 13514. Pursuant to Executive Order 13423, every new contract for contractor operation of or maintenance at a Government owned or leased facility should require contractor programs to promote and implement cost-effective waste reduction and diversion in performing the contract, to the maximum extent practicable Where economically feasible, existing contracts for contractor operation of or maintenance at Government-owned or leased facilities should be modified to include the promotion and implementation of cost-effective non-hazardous solid waste reduction and diversion in contract performance.

b. *Construction and Demolition (C&D) Waste*.

(1) FAA must divert at least 50 percent of overall C&D waste from landfills or incineration facilities by the end of Fiscal Year 2015 in accordance with Executive Order 13514. Examples of materials to be diverted are as follows:

(a) Soil

(b) Inerts (such as concrete, masonry, or asphalt)

(c) Clean dimensional wood and pallet wood

(d) Green waste (biodegradable landscaping materials)

(e) Engineered wood products (such as plywood, particle board)

(f) Metal products (such as steel, wire, beverage containers)

(g) Cardboard, paper, and packaging

(h) Bitumen roofing materials

(i) Plastics (such as ABS, PVC)

(j) Carpet and/or padding

(k) Gypsum board

(l) Insulation

(m) Paint

(n) Fluorescent lamps

(2) For all construction, demolition, or facilities modernization contracts over $100,000 in awarded value, the contractor must submit a Waste Management Plan to the Contracting Officer (CO) no later than 15 days after contract award and prior to the start of construction activities in accordance with Clause 3.6.3-22 "Construction Waste Management". The clause also requires the contractor to divert at least 50 percent of the weight of the total non- hazardous solid waste generated by the work from landfills and incinerators (unless a lower percentage is specified in the clause by the CO).

(a) The contractor must track C&D waste diversion efforts and provide a Waste Diversion Summary Report each month. A sample Construction and Demolition Debris Diversion Report Form can be found in the FAA AMS Statement of Work Generator under DID FAA-EOSH-0001.

(b) Information regarding C&D waste management may be found at the following websites:

(i) EPA's Construction and Demolition Materials provides basic information on C&D materials, collection, handling, recycling, reuse, and disposal.

(ii) California C&D Debris recycling provides useful best practices for managing C&D waste.

(iii) Whole Building Design Guide provides a Construction Waste Management Database that contains information on companies that haul, collect, and process recyclable debris from construction projects.

c. FAA facilities must comply with the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

d. Every FAA contract that provides for performance on a Federal facility must stipulate that the contractor must provide information necessary for FAA to comply with the emergency planning and toxics release reporting requirements of EPCRA and PPA.

## 12 Energy Savings Performance Contracts Revised 4/2014

a. An Energy Savings Performance Contract (ESPC) is a contract that allows the FAA to accomplish energy projects for its facilities with little or no upfront capital costs. Under an ESPC, a contractor (i.e., an Energy Savings Company (ESCO)) finances the up-front cost of the project, guarantees the project improvements will generate enough energy and water cost savings to pay for the project over the contract period, and is paid back from the resultant energy and water savings over the contract period. Financed project costs may include ESCO services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair of an identified energy conservation measure or series of measures at one or more FAA facilities. If sufficient appropriated funding to cover the entire project is not available, or is not expected to be available in a reasonable time frame, FAA may award ESPCs to accomplish energy savings projects at FAA. FAA may contract with an ESCO for a period not to exceed 25 years.

b. *Procedures*. To solicit and award an ESPC, the CO must use the procedures, selection method, and terms and conditions provided in 10 CFR Part 436, Subpart B, at the Department of Energy (DOE) Federal Energy Management Program (FEMP) website and must use the "Qualified List" of ESCOs established by the DOE. The resulting award would be processed as an order under the applicable DOE contract consistent with AMS guidance on interagency procurement.

c. *Training*. All COs responsible for negotiating ESPCs must take DOE FEMP-sponsored contracting training for ESPCs (ESPC Contracting and Negotiations Webinar).

d. All ESPCs must comply with the National Energy Conservation Policy Act (42 U.S.C 8287) as set forth in the DOT Limited Delegation of Authority of July 11, 2012 until such time as the DOE statute or implementing regulations are revised.

## 13 Utility Energy Service Contracts Revised 4/2014

a. Under a Utility Energy Service Contract (UESC), FAA may contract with a local servicing utility for technical services and/or up-front project financing for energy efficiency, water conservation, and renewable energy investments at one or more FAA facilities. The utility finances the capital costs of the project with little or no up-front capital costs to the FAA, and the utility is then repaid over the contract term from the cost savings generated by the project. If sufficient appropriated funding to cover the entire project is not available, or not expected to be available in a reasonable time frame, FAA may award UESCs at FAA facilities. Unlike a

Energy Savings Performance Contract, a UESC is not required to include performance guarantees. Because of this, it is highly recommended that performance guarantees or assurances be incorporated into these contracts to reduce FAA risk. Performance assurances do not guarantee energy savings; however, they provide assurance that equipment installed will perform as expected. A UESC should also include measurement and verification of savings through equipment commissioning, recommissioning or retro-commissioning.

b. *Planning*. Acquisition planning for a UESC should include the following:

(1) Inclusion of applicable performance assurance criteria in the SIR and contract;

(2) Analysis that shows that the planned energy conservation measures are cost effective; and

(3) A competition or alternatives analysis as part of the selection process.

c. *Procedures*. To solicit and award a UESC, the CO must use the procedures, selection method, and terms and conditions provided on the Department of Energy Federal Energy Management Program (FEMP) website.

d. All UESCs must comply with the Energy Policy Act of 1992 (42 USC 8256).

**14 Drug Free Workplace** **Revised 4/2014**

a. *Applicability*. Drug-free workplace requirements apply to all contracts except those performed outside of the United States, its territories, and its possessions; or when application would be inconsistent with international obligations of the U.S. or foreign laws or regulations.

b. *Attestation*. The firm or individual attests to providing a drug-free workplace by their signature on the contract.

c. *Penalties*. After determining in writing that adequate evidence to suspect the specific cause identified exists, the CO may elect to suspend contract payments or to terminate the contract.

(1) The specific cause for suspension of contract payments, termination of a contract, or suspension and debarment is that such a number of contractor employees have been convicted of violations of criminal drug statutes occurring in the workplace to indicate that the contractor has failed to make a good-faith effort to provide a drug-free workplace.

(2) A determination to suspend contract payments, terminate a contract, or debar or suspend a contractor may be waived for a particular contract, only if such waiver is necessary to prevent a severe disruption of FAA's operation to the detriment of the Federal Government or the general public.

**B Clauses**

view contract clauses

## C Forms

view procurement forms

## D Appendix

### 1 Appendix - Definitions Revised 4/2009

a. "Biobased product" means a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine) or forestry materials.

b. *"Consumer product"* means any article (other than an automobile, as defined in section 501(1) of the Motor Vehicle Information and Cost Savings Act) that consumes energy and is distributed in commerce for personal use or consumption by individuals.

c. *"Covered product"* means a consumer product of one of the following types:

(1) Central air conditioners.

(2) Clothes dryers.

(3) Clothes washers.

(4) Dishwashers.

(5) Freezers.

(6) Furnaces.

(7) Home heating equipment, not including furnaces.

(8) Humidifiers and dehumidifiers.

(9) Kitchen ranges and ovens.

(10) Refrigerators and refrigerator-freezers.

(11) Room air conditioners.

(12) Television sets.

(13) Water heaters.

(14) Any other type of product that the Secretary of Energy classifies as a covered product under 42 U.S.C. 6292(b).

d. *"Energy efficiency standard"* means a performance standard that prescribes a minimum level of energy efficiency for a covered product, determined by test procedures prescribed under 42 U.S.C. 6293; and includes any other requirements that the Secretary of Energy may prescribe under 42 U.S.C. 6295(c).

e. *"Energy use and efficiency label"* means a label provided by a manufacturer of a covered product under 42 U.S.C. 6296.

f. *"EPA designated item"* means an item that is or can be made with recovered materials and is listed by EPA in a procurement guideline (40 CFR, chapter 1, subchapter I).

g. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Environmentally preferable product categories include:

(1) Building and Construction

(2) Carpets

(3) Cleaning

(4) Electronics

(5) Fleets

(6) Food Service

(7) Landscaping

(8) Meetings and Conferences

(9) Office Supplies

(10) Paper

h. *"Manufacture"* means to manufacture, produce, assemble, or import.

i. *"Manufacturer"* as used in this part, means any business that, or person who, manufactures a consumer product.

j. *"Post consumer material"* means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Post consumer material is a part of the broader category of "*recovered material content.""*

k. *"Recovered material content"* means waste materials and by-products which have been recovered or diverted from solid waste including post consumer material, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

l. "Recycled content products" means recovered material consistent with EPA's Comprehensive Procurement Guidelines (CPG) and Recovered Materials Advisory Notices (RMAN).

## 2 Appendix - FAA Green Procurement Plan Revised 7/2013

### 1. Purpose

a. The purpose of the Green Procurement Plan (GPP) is to enhance and sustain the FAA mission through cost-effective acquisition that complies with applicable requirements, reduces resource consumption, and minimizes waste generation. Green procurement is purchasing environmentally preferable products and services according to one or more of the established Federal "green" procurement preference requirements. This plan supplements requirements in the FAA Strategic Sustainability Performance Plan, FAA's Acquisition Management System (AMS), and FAA Order 1050.10C, *Prevention, Control, and Abatement of Environmental Pollution at FAA Facilities*.

b. FAA's GPP supports acquiring products and services through the use of sustainable environmental practices, including procuring biobased, environmentally preferable, low or non- toxic, energy-efficient, water-efficient, and recycled-content products.

Below are goals, objectives, and sustainable practices that FAA's GPP impacts either directly or indirectly:

### 1.1. Sustainable Acquisition

Ensure that 95% of new contracts, task orders, and delivery orders for products and services are energy-efficient (ENERGY STAR® or Federal Energy Management Program ((FEMP)-designated), water-efficient, biobased, environmentally preferable, Electronic Product Environmental Assessment Tool (EPEAT)-certified, non-ozone depleting, contain recycled-content, or non-toxic or less toxic alternatives when such products and services meet agency performance requirements, as applicable.

### 1.2. Pollution Prevention and Waste Reduction

a. Reduce using chemicals and toxic materials and purchase lower risk chemicals and toxic materials;

b. Minimize generating waste and pollutants through source reduction (i.e., purchasing less); and

c. Reduce printing paper use and acquire uncoated printing and writing paper containing at least 30% post-consumer fiber.

### 1.3. Sustainable Buildings

a. Construct or renovate buildings according to sustainability strategies, including resource conservation, reduction, use, siting and indoor environmental quality;

b. Enhance indoor environmental quality through purchasing low-emitting materials; and

c. Reduce environmental impact of materials and construction waste; purchase recycled-content, biobased and non-ozone-depleting products.

## 2. Roles and Responsibilities

This section outlines the roles and responsibilities in developing requirements for commodity purchases to meet GPP goals and objectives.

### 2.1. FAA Acquisition Executive (FAE)

The FAA Acquisition Executive (FAE) and associated staff are responsible for:

a. Overseeing and facilitating implementation of FAA's GPP;

b. Issuing procurement policies, guidance, and contract clauses and provisions consistent with green procurement requirements;

c. Ensuring Contracting Officers conduct compliance monitoring for their contract's consistency with green procurement requirements, and assist in any necessary corrective actions; and d. Reviewing contracts for quarterly data requests.

### 2.2. Office of Environment and Energy (AEE)

The Office of Environment and Energy (AEE), coordinating with the FAE, is responsible for:

a. Facilitating environmental programs in the areas of acquisitions, facilities management, standards, waste prevention, recycling, and logistics activities as they relate to GPP;

b. Distributing information on best practices through awareness and outreach programs to facilitate markets for environmentally preferable products, services, and new technologies;

c. Facilitating and coordinating educational and promotional programs for agency employees and contractors, as appropriate;

d. Promoting internally and externally FAA's GPP. This includes making recycled content suppliers aware of the FAA's preference program, educating program and acquisition offices about requirements to procure recycled content products, and providing FAA

employees and contractors with information on sources of recycled products; and

The Office of Environment and Energy (AEE), in coordination with AFN Contracting Officers, is responsible for:

e. Annually, the organizations will establish and document collaborative methods for setting, maintaining, and annually reviewing and updating objectives and targets for GPP performance that are appropriate for the nature and quantity of purchases made.

**2.3. Contracting Officers**

Contracting Officers (COs) are responsible for:

a. Ensuring contractor and program office awareness of GPP requirements applicable to their contracts;

b. Reviewing and approving the Request for Procurement Exemption, if required, and providing Life Cycle Cost Analysis assistance to the program offices, if necessary;

c. Providing guidance and facilitating acquisition planning for environmentally preferable goods and services including those available through Federal sources;

d. Assisting in any market research necessary to determine the availability of environmentally preferable good and services;

e. Ensuring that solicitations and contracts contain the appropriate FAA AMS clauses and provisions;

f. Ensuring contractual record keeping and reporting requirements for contractors and all subcontractors are incorporated into evaluation factors for contract award, if applicable;

g. Ensuring all contract actions from development through award, execution, and close-out meet GPP requirements, when appropriate;

h. Working with program offices to provide contractual green procurement data for compilation and distribution; and

i. Maintaining required documents in the contract file to include estimates, certifications, and written justifications for exceptions when required.

**2.4. Program Offices**

Program offices (including requisitioners) are responsible for the following:

a. Reviewing and revising procurement specifications or requirements during the planning phase of the acquisition to support FAA's procurement of environmentally preferable, energy- and water-efficient and recycled-content products. If the product or service involves the environmental attributes identified in Section 5. Environmental Attributes, then the

specifications, and/or purchase requisition will be reviewed for conformance, and modified, as appropriate;

b. Eliminating requirements for virgin materials, express preference for recovered materials to the maximum extent practicable, and maximize the purchase of products containing recovered material;

c. Identifying and documenting whether recycled-content, biobased content, and energy- and water-efficient products, alternative fuel vehicles, and products containing non-ozone-depleting substances are not readily available;

d. Determining if recycled-content and biobased products satisfy local requirements for price, availability, and performance and if FEMP-designated or ENERGY STAR® products are life- cycle cost effective and reasonably available;

e. Consulting early in the procurement process with appropriate parties (e.g., environmental specialists, contracts specialist) to facilitate the process of procurement planning, including Life- Cycle Cost Analysis;

f. Utilizing statements of work (SOWs) or specifications which eliminate virgin material requirements, promote the reuse of products, require the use of alternative fuels and alternative fueled vehicles, products containing recovered materials (e.g. U.S. Environmental Protection Agency (EPA) or U.S. Department of Agriculture (USDA)-designated products), products that are ENERGY STAR® or energy-efficient, products that are water-efficient, biobased products, products that are environmentally preferable, low or non-toxic products, EPEAT-certified products, and non-ozone depleting products;

g. Preparing any Request for Procurement Exemption or justification documentation; and

h. Providing oversight of contract execution to ensure green procurement requirements are addressed in accordance with the terms of the contract.

**3. Requirements**

a. The scope of FAA's GPP covers all agency acquisitions, including purchase card transactions. The GPP applies to contractors that construct/operate FAA facilities (see circular).

b. The following requirements establish the framework for FAA's GPP:

1. Resource Conservation and Recovery Act (RCRA) Section 6002, as amended, (42 U.S.C. 6962)

2. Farm Security and Rural Investment Act (FSRIA) of 2002, Section 9002

3. The Energy Policy Act (EPAct) of 2005

4. Food, Conservation, and Energy Act (FCEA) of 2008

5. Executive Order (EO) 13150, Federal Workforce Transportation

6. EO 13221, Energy Efficient Standby Power Devices

7. EO 13423, Strengthening Federal Environmental, Energy, and Transportation Management

8. Instructions for Implementing Executive Order 13423

9. EO 13514, Federal Leadership in Environmental, Energy, and Economic Performance

10. 40 Code of Federal Regulations (CFR) Part 247, Comprehensive Procurement Guideline for Products Containing Recovered Materials

11. FAA's Acquisition Management System (AMS):

(i) Policy 4.8: Environmental, Occupational Safety and Health, and Energy Considerations

(ii) Policy 3.6.3: Environment, Conservation, Occupational Safety, and Drug Free Workplace

(iii) Guidance T3.6.3: Environment, Conservation, Occupational Safety, and Drug Free Workplace

**4. Implementation**

FAA personnel involved in acquisitions will consider environmental and energy factors from requirement identification through the life-cycle acquisition process. This will enable FAA to reduce costs, improve efficiency, and reduce environmental impacts resulting from agency- procured products and services. Their actions will be consistent with the "waste management hierarchy:"- reduce, reuse, and recycle, in that order.

**5. Environmental Attributes**

Through the acquisition process, the following environmental attributes should be considered, as a result of the potentially significant environmental impacts:

1. Alternative fuels and alternative fuel vehicles

2. Biobased products

3. Energy Star® and energy-efficient products

4. Environmentally preferable products

5. EPEAT-registered electronics

6. Priority Chemicals

7. Non-ozone depleting substances

8. Recovered material

9. Renewable energy

10. Water-efficient products

11. Use of green meetings and conferences

For additional information, see Section 13. Information Resources.

**6. Federal Supply Sources**

a. Established Federal supply sources, such as the SAVES Program, General Services Administration (GSA), Government Printing Office (GPO), Ability One Program, Defense General Supply Center (DGSC), and UNICOR are competitive sources for green products and services. Procuring environmentally preferable products and services through these sources offers the following advantages:

1. Products have been competitively bid;

2. Products meet or exceed EPA minimum content standards for recovered materials; and

3. Electronic catalogs identifying green products.

b. For items not available through federal supply sources, GPP requirements will be incorporated during the acquisition planning phase. In developing plans, drawings, statements of work, specifications or other product descriptions, Program Offices will consider the following factors: energy efficiency, elimination of virgin material requirements, use of recovered materials or biobased components, reuse of product, life-cycle cost, recyclability, use of environmentally preferable products, waste prevention (including reduction or elimination of hazardous waste), and ultimate disposal.

**7. Procurement Exemption**

a. AMS Procurement Guidance T3.6.3A.7 requires 100 percent of purchases of EPA or USDA- designated items contain recycled content, unless the items:

1. Are not available competitively;

2. Are not available within a reasonable time frame;

3. Do not meet reasonable performance standards; or

4. Are only available at an unreasonable price.

b. The program office and/or CO as appropriate are responsible for documenting the decision not to buy recycled content products. The requisitioner is responsible for submitting a copy of

the form to the responsible program manager. Written justification is not required for purchases below the threshold level of $10,000.

**8. Life-Cycle Cost Analysis**

A life-cycle cost analysis, wherever feasible and appropriate, is used to assist in selecting products and services. Whenever possible, cost will be calculated applying life-cycle cost concepts to determine cost effectiveness of green alternatives over the life of the item, not just the initial, up-front cost. When comparing alternative products, the initial cost of the acquisition, as well as maintenance costs, installation costs, operational costs, and disposal costs over the lifetime of the product will be considered in the analysis. A product having a higher initial cost may have lower operational cost or a higher resale value and will, therefore, prove to be a better value and more cost-effective compared to the alternatives.

**9. Promotion Program**

FAA will promote the purchase of environmentally preferable products by:

a. Including explicit recovered materials preference standards for EPA or USDA-designated items in appropriate specifications, solicitations and contract language; and

b. Providing informational materials, vendor and product information, and training to program and procurement offices regarding FAA's recovered materials preference program through: electronic media such as FAA websites, memos, publications, newsletters, and at appropriate conferences, workshops, and meetings.

**10. Procedures for Vendor Certification, Estimation, and Verification**

COs should ensure that vendors (1) provide written certification that their products meet the minimum requirements in the solicitation documents; (2) maintain copies of certification documents; and (3) produce copies of the written certification upon request by the FAA. RCRA Section 6002 requires procuring agencies to obtain estimates and certifications of the recycled content in the products to be supplied under a contract, and to verify those estimates and certifications.

**11. Compliance Monitoring**

a. The Resource Conservation and Recovery Act of 1976 and the Farm Security and Rural Investment Act of 2002 require Federal agencies to establish affirmative procurement programs for purchasing EPA- and USDA-designated recycled content and biobased products, respectively. One required element of these programs is annual review and monitoring of the program (i.e., compliance monitoring).

b. FAA will review and evaluate the effectiveness of the GPP annually. FAA will take the actions to track its procurement of recycled content products consistent with AMS T3.6.3A.7.

See additional information on compliance monitoring options already in use within the federal government.

c. FAA will review new contracts, task orders, and delivery orders to ensure that, when applicable, 95% include products and services that are energy-efficient (ENERGY STAR® or Federal Energy Management Program ((FEMP)-designated), water-efficient, biobased, environmental preferable, Electronic Product Environmental Assessment Tool (EPEAT)-certified, non-ozone depleting, contain recycled-content, or non-toxic or less toxic alternatives where such products and services meet agency performance requirements.

**12. Data Tracking and Reporting**

The FAA will establish compliance monitoring procedures, in accordance with Department of Transportation (DOT) specifications and Office of Management and Budget (OMB) scorecard requirements, to ensure that green purchasing activities are consistent and that data are accurate. Corrective actions will be implemented, as necessary to improve the data quality that will be used in the OMB scorecard and annual reports. The FAA Procurement Policy Team (AAP-110) will track the Agency's purchasing of items within the scope of this GPP, and report this information to AEE, at established intervals. AEE will report on FAA's compliance with requirements to review and revise specifications, product descriptions, and standards to enhance the procurement of environmentally preferable products.

**13. Information Resources**

a. The Acquisition section of the Federal government's comprehensive environmental stewardship and compliance assistance web site is the portal for federal green purchasing programs. This site provides links to, and highlights from, programs which enable agencies to meet green procurement goals, including but not limited to: Environmentally Preferable Purchasing (EPP), Comprehensive Procurement Guidelines (CPG), the ENERGY STAR® Program, and FEMP.

b. Routinely used Government supply sources have green products, but these products must be sought and specifically requested. Products are available through supply catalogs published by the GSA and local contractors serving as AbilityOne Program distributors.

c. GSA offers a variety of environmental products and services to its Federal customers to assist them in their efforts to comply with procurement responsibilities outlined in Federal environmental laws and regulations. Environmental products can be viewed and purchased from the GSA Advantage! and GSA Global Supply online purchasing systems.

d. EPA's Database of Environmental Information for Products and Services provides a quick reference guide to the various programs and products. The EPA database provides links to contract language, specifications, and policies; environmental standards and guidelines; vendor lists of product brands; and other useful sources of information (e.g., fact sheets, guidance, case studies).

e. EPA maintains a list of designated recycled-content products and recommends the percentages of recycled content that the products must contain. Agencies can refer to EPA for a complete list of designated products, EPA's recommendations, and additional information.

f. USDA designates biobased products and provides guidance to assist agency purchasing of these products.

g. EPA's "Buying "Green" with the Government Credit Card" factsheet provides tips when using the Government purchase card that focus on buying products with recycled-content, buying products with reduced packaging; looking for the ENERGY STAR® label; asking if the product contains hazardous materials or toxic chemicals; and looking for other information on the environmental features of products.

h. Appendix B of OMB Circular A-123, Chapter 10 Environmental Requirements, prescribes policies and procedures to agencies regarding how to maintain internal controls that reduce the risk of fraud, waste, and error in Government charge card programs. The requirement for compliance with OMB Circular A-123, Appendix B is contained in the Management Plan for the FAA Purchase Card Program.

i. EPA's ENERGY STAR® Program provides a current list of qualified products.

j. EPA Priority Pollutant List provides a current list of regulated chemical pollutants.

k. EPA information on resource conservation for construction and demolition.

1. FEMP products and requirements.

m. FedCenter provides a compilation of the products for which EPA, DOE, and USDA have provided environmental or energy attribute recommendations.

n.. The Defense Logistics Agency (DLA) provides a catalog with environmental products.

o. The GSA Green Products Compilation Web Tool facilitates the procurement of green/sustainable products and services. The products listed are those for which the U.S. Environmental Protection Agency, U.S. Department of Energy, or U.S. Department of Agriculture has issued designations or otherwise provided guidance for environmental or energy attributes.

**14. Definitions**

**Alternative Fuel** – Fuel defined by Section 301 of the Energy Policy Act of 1992, as modified periodically by the Secretary of Energy by rule.

**Biobased Product** – A product determined by the Secretary of Agriculture to be a commercial or industrial product (other than food or feed) that is composed, in whole or in part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials.

**Certification** – Provided by offerors/bidders/vendors, it is written documentation certifying the percentage of recovered materials contained in products or to be used in the performance of the contract is at least the amount required by applicable specifications or other contractual requirements. Certification on multi-component or multi-material products should verify the

percentage of post-consumer materials and recovered material contained in the major constituents of the product. [US Environmental Protection Agency (EPA) Guidelines]

**Comprehensive Procurement Guidelines** – Regulations issued by EPA pursuant to Section 6002 of RCRA, as amended, (42 U.S.C. 6962) identifying items produced (or which can be produced) with recovered materials. [EO 13101 and Section 6002 of RCRA, as amended, (42 U.S.C. 6962)]

**Designated Item** – A product or category of products designated by EPA in the Comprehensive Procurement Guideline and whose procurement by government agencies will help to create markets for materials recovered from solid waste.

**Energy-Efficient or FEMP-designated Product** – a product designated by the Federal Energy Management Program, Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

**ENERGY STAR® Product** – A product that is rated for energy efficiency under an ENERGY STAR® Program established by Sec. 324A of the Energy Policy and Conservation Act.

**Environmentally Preferable Products and Services** – Products or services having a lesser or reduced effect on human health and the environment when compared with competing products or services, serving the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or product or service disposal.

**Electronic Product Environmental Assessment Tool (EPEAT)** – A procurement tool designed to help institutional purchasers in the public and private sectors evaluate, compare and select electronic products based on their environmental attributes. The first EPEAT standard applies to computer desktops, laptops and monitors.

**EPEAT-Registered Products** – Products which meet the and Electrical Engineers (IEEE) 1680-2006 Standard for the Environmental Assessment of Personal Computer Products, and products registered under similar standards developed after the date of this Policy Letter, and are listed on the EPEAT Product Registry located at www.epeat.net.

**Green Hierarchy** – The logical order by which waste prevention and effective environmental practices are applied.

**Greenhouse Gases** – Carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

**Green Products/Services** – Products and services meeting the requirements of one or more of the components of federal green procurement preference programs as defined in RCRA Section 6002; FSRIA ("Farm Bill") section 9002; the Energy Policy Act of 2005 (EP Act 2005); and 13150; Electronic Stewardship requirements; and any federal Green Procurement Program implemented after the date of this document.

**Life-Cycle Assessment** – The comprehensive examination of a product's environmental

and economic effects throughout its lifetime including new material extraction, transportation, manufacturing, use, and disposal.

**Life-Cycle Cost** – The amortized annual cost of a product, including costs associated with capital, installation, operations, maintenance, and disposal, discounted over the lifetime of the product.

**Ozone-depleting Substances** – Any substance designated as a Class I or Class II substance by the Environmental Protection Agency in 40 CFR Part 82.

**Postconsumer Material** – A material or finished product that has served its intended use and has been discarded for disposal or recovery having completed its life as a consumer item. "Postconsumer material" is a part of the broader category of "recovered materials."

**Preference** – When two products or services are equal in performance characteristics and price, the Government, in making purchasing decisions, will favor the more environmentally-sound or energy-efficient product.

**Procurement Preference Program** – The first element of an agency affirmative procurement program, in which an agency expresses a preference for purchasing recycled content products designated by EPA. [Section 6002 of RCRA, as amended, (42 U.S.C. 6962)]

**Recovered Material** – Waste materials and by-products recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process.

**Recyclability** – The ability of a product or material to be recovered or otherwise diverted from the solid waste stream for the purpose of recycling.

**Recycled Material** – A material utilized in place of raw or virgin material in product manufacturing (See "Recovered Material.")

**Recycling** – The series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use as raw materials in the manufacture of new products (other than fuel for producing heat or power by combustion).

**Renewable Energy** – Energy produced by solar, wind, biomass, landfill gas, hydrokinetic, ocean (including tidal, wave, current and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

**Scope 1** – Direct greenhouse gas emissions from sources that are owned or controlled by the federal agency.

**Scope 2** – Indirect greenhouse gas emissions resulting from the generation of electricity, heat, or steam purchased by a federal agency.

**Scope 3** – Indirect greenhouse gas emissions from sources not owned or directly controlled by

a federal agency but related to agency activities such as vendor supply chains, delivery services, and employee travel and commuting.

**Solid Waste** – Garbage, refuse, sludge, and other discarded solid materials, including those from industrial, commercial, and agricultural operations, and from community activities. This excludes solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flow, etc.... [RCRA, Section 1004)

**Specification** – A clear and accurate description of the technical requirements for materials, products, or services including the minimum requirement for materials' quality and construction and any equipment necessary for an acceptable product. In general, specifications are in the form of written descriptions, drawings, prints, commercial designations, industry standards, and other descriptive references. [EPA Guidelines]

**Sustainable** – To create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations.

**Verification** – Procedures used by procuring agencies to confirm both vendor estimates and certifications of the percentages of recovered material contained in the products supplied to them or to be used in the performance of a contract. [EPA Guidelines]

**Virgin Material** – A mined or harvested raw material to be used in manufacturing.

**Waste Prevention** – Any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials.

**Waste Reduction** – Preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

**Water-Efficient Product or Service** – A product or service that uses less water than competing products or services that serve the same purpose, including those meeting EPA's WaterSense standards.

## 3 Appendix - Recovered Materials Determination Revised 1/2012

The statement of work/specifications covering this procurement is subject to the FAA's Green Procurement Plan (GPP) for EPA-designated recycled content products. The items being procured are *(list items purchased under the listed categories)*:

_____ Paper and Paper Products

_____ Vehicular Products

_____ Construction Products

_____ Transportation Products

_____ Park and Recreation Products

_____Landscaping Products

_____ Non-paper Office Products

_____ Miscellaneous Products

I hereby certify that the statement of work/specifications for the requisition of materials/services listed above complies with applicable FAA preference standards for recycled/recovered materials.

_____ _____

Procurement Originator Date

## 4 Appendix - Justification for not Acquiring EPA-Designated Recycled Content Products

**Revised 4/2009**

Procurement Request No. _____

Products containing recovered materials and meeting FAA's preference standards for: *(list product(s)* was/were not obtained because: *(check appropriate reason)*:

___ Products did not meet the FAA's reasonable performance standards *(attach a description of the performance need and explain why a recycled content product will not meet that need, including a brief discussion of research conducted to demonstrate that recycled content products will not meet the need.)*

___ Products not readily available.

___ Products not available at a reasonable price.

Justification for Not Procuring Designed Recycled Content Products:

_____

| | |
|---|---|
| Signature of Procurement Originator | Date |
| Contracting Officer | Date |

## 5 Appendix - Sources of Recycled Content and Environmentally Preferable Products

**Revised 4/2009**

### General

Recycled content and environmentally preferable products are available to procuring agencies and their contractors through established supply sources.Table D.1, entitled "Supply Sources of Environmentally Preferable Products", provides an overview of EPA's Comprehensive Procurement Guidelines.

GSA Advantage:

GSA Advantage provides direct access to environmentally preferable products that comply with all Federal environment regulations. See GSA Advantage's environmental catalog.

Defense Supply Center Richmond:

The Defense Logistics Agency's (DLA) Defense Supply Center in Richmond, Virginia, has hundreds of available environmentally preferable products in its supply system. See the products listed in DLA's Environmental Product Catalog.

Government Printing Office:

The Government Printing Office (GPO) Online Paper Store offers 30 percent post consumer waste copier paper (in white and six colors) to Federal organizations. The environmentally friendly xerographic copier paper is available from GPO's web-based online system website.

AbilityOne Program (formerly the Javits-Wagner-O'Day (JWOLD) Program)

The AbilityOne Program provides environmentally preferable products available from its website.

SAVES Program:

General office supplies are contractually available to FAA through the SAVES Program. This program especially annotates environmentally preferable products with symbols to indicate items containing recycled material content, for example. Ordering details for each SAVES contract are located on the FAA Employee website (FAA only)**.**

**TableD.1 Supply Sources of Environmentally Preferable Products**

| **Products** | **GSA Advantage** | **Defense Supply Center Richmond** | **Government Printing Office** | **AbilityOne Program** | **SAVES Program** |
|---|---|---|---|---|---|
| Paper & Paper Products | X | | X (printing and writing papers only) | X | X |
| Vehicular Products | X | X | | | |
| Construction | X | X | | | |
| Products | | | | | |
| Transportation Products (traffic control) | X | | | | |
| Park and Recreation Products | X | | | | |
| Landscaping Products | X | X | | | |
| Non-Paper Office Products | X | X | | X | X |
| Miscellaneous Products | X | X | | X | X |
| Environmentally | X | X | X | X | X |

| | | | | | |
|---|---|---|---|---|---|
| Preferable Products | | | (soy-based inks) | | |

See the Energy Star Program and BioPreferred Program websites for additional sources of other environmentally preferable products.

**GSA Federal Supply Service**

GSA produces several publications (Table D.2) to assist customers to identify and requisition products.

**Table D.2 GSA Federal Supply Service Publications**

| Publication | Description |
|---|---|
| GSA Supply Catalog | Contains information on several thousand products available through the Federal Supply Service, including hundreds of recycled content and environmentally preferable products (highlighted in green for easy identification).<br><br>Also includes information on requisitioning these products through GSA. |
| GSA Marketips | A bimonthly bulletin frequently containing information about new recycled content and environmentally preferable products being introduced.<br><br>Includes customer training seminars scheduled through GSA's regional offices. |

**Government Printing Office**

A variety of recycled content printing and writing papers are available through GPO. Procurement originators should work through their Agency field printing organizations to request recycled paper for publications produced through GPO's Regional Printing and Procurement Offices, which are listed in Table D.3.

**Table D.3 GPO Regional Printing & Procurement Offices**

| **Regional Office** | **Location** | **Phone Number** |
|---|---|---|
| Atlanta | Atlanta, GA | 404-605-9160 |
| Boston | Boston, MA | 617-720-3680 |
| Charleston | N. Charleston, SC | 843-743-2036 |
| Chicago | Chicago, IL | 312-353-3916 |
| Columbus | Columbus, OH | 614-488-4616 |

| | | |
|---|---|---|
| Dallas | Dallas, TX<br><br>Oklahoma City Satellite Office<br><br>San Antonio Satellite Office | 214-767-0451<br><br>405-610-4146<br><br>210 675-1480 |
| Denver | Denver, CO | 303-236-5292 |
| Hampton | Newport News, VA | 757-873-2800 |
| Los Angeles | Lakewood, CA | 619-497-6050 |
| New York | New York, NY | 212-264-2252 |
| Philadelphia | Southampton, PA | 215-364-6465 |
| San Francisco | San Francisco, CA | 415-677-0340 |
| San Diego | San Diego, CA | 619-209-6178 |
| Seattle | Seattle, WA | 206-764-3726 |

### T3.6.4 Foreign Acquisition Revised 10/2007

#### A Foreign Acquisition

#### 1 Applicability of Buy American Added 10/2014

a. FAA-specific Buy American provisions (49 U.S.C. §50101) apply when acquiring steel or manufactured products, as described in Section 4 below. In many instances, the Buy American Act (41 U.S.C. §§ 8301-8305) requirements for supplies and construction will only apply when acquiring raw and unmanufactured materials.

b. Canadian and Mexican steel and manufactured products under certain conditions, and civil aircraft and related supplies of countries that are parties to the Agreement on Civil Aircraft, are treated as domestic for purposes of FAA Buy American and the Buy American Act. See Section 7 Trade Agreements below.

#### 2 Buy American Act - Supplies Revised 10/2012

a. The FAA is subject to the Buy American Act when acquiring supplies, services involving supplies, and construction, alteration or repair in the United States. With limited exceptions, the Buy American Act expresses a strong preference for acquiring only domestic end products. The Buy American Act uses a two-part test to define a domestic end product:

(1) The article must be manufactured in the United States; and

(2) The cost of domestic components must exceed 50 percent of the cost of all the components.

b. *Exceptions*. When one of the following exceptions applies, FAA may acquire a foreign end product without regard to Buy American Act restrictions:

(1) A supply purchase of $3,000 or less;

(2) The Administrator, in a written nondelegable determination, states that preference for a domestic end item is not in the public interest;

(3) The CO determines that articles, materials, and supplies are:

(a) For use outside of the U.S.;

(b) Unreasonable in terms of cost (see subsection d. below); or

(c) End items or components not mined, produced, or manufactured in the U.S. in sufficient and reasonably available commercial quantities and of a satisfactory quality. When a competitive acquisition results in no offers of domestic end products, the end products can be considered unavailable in the U.S. The articles listed in subsection e. below are considered unavailable domestically; or

(4) The purchase is for information technology that is a commercial item (AMS Policy Appendix C defines commercial item).

c. *Documentation*. The CO must document all exceptions to the Buy American

Act. d. *Determining Reasonableness of Cost*.

(1) This subsection applies to all acquisition of articles, materials, and supplies not covered by the below paragraph e. "Excepted Articles, Materials, and Supplies." If an offer for a domestic end product is not the low offer, and an offer for a foreign end product is the low offer, the CO must determine the reasonableness of the cost of the domestic offer by adding to the cost of the low foreign offer, inclusive of duty, evaluation percentages as follows:

(a) 6 percent, if the lowest domestic offer is from a large business concern; or

(b) 12 percent, if the lowest domestic offer is from a small business concern. The CO must use this factor in small business set-asides if the low offer is from a small business concern not offering a domestic end product.

The increased percentage is for evaluation purposes only in determining best value. It does not affect any vendor's offered price. Examples of best value reasonableness of cost evaluation scenarios are as follows:

*Example 1*. Lowest domestic offer is from a small business concern. Because a small business is offering a domestic end product, every vendor offering a foreign end product will have the price for the foreign product increased by 12% only for evaluation purposes.

| Offeror | Business | Domestic | Foreign | Evaluation | Offer | Evaluated |
|---|---|---|---|---|---|---|

| | Size | End Product | End Product CLIN | Factor | Price | Price (including applicable evaluation factor) |
|---|---|---|---|---|---|---|
| A | Large | | x | 12% | $100.00 | $112.00 |
| B | Small | | x | 12% | 170.00 | 190.40 |
| C | Large | x | | N/A | 200.00 | 200.00 |
| D | Small | x | | N/A | 175.00 | 175.00 |

The new adjusted prices will be used for evaluation purposes against all other vendors, and not just the vendor offering the domestic end product.

*Example 2*. Small business set-aside, low offer is from a small business concern offering the product of a small business concern that is not a domestic end product.

| Offeror | Business Size | Domestic End Product | Foreign End Product of another small business concern CLIN | Evaluation Factor | Offer Price | Evaluated Price (including applicable evaluation factor) |
|---|---|---|---|---|---|---|
| A | Small | | x | 12% | $100.00 | $112.00 |
| B | Small | x | | N/A | 150.00 | 150.00 |
| C | Small | | x | 12% | 200.00 | 224.00 |
| D | Small | x | | N/A | 175.00 | 175.00 |

The new adjusted prices will be used for evaluation purposes against all other vendors, and not just the vendor offering the domestic end product.

*Example 3*. Lowest domestic offer is from a large business concern.

| Offeror | Business Size | Domestic End Product | Foreign End Product of another small business concern CLIN | Evaluation Factor | Offer Price | Evaluated Price (including applicable evaluation factor) |
|---|---|---|---|---|---|---|
| A | Large | | x | 6% | $100.00 | $106.00 |

| | | | | | | |
|---|---|---|---|---|---|---|
| B | Large | x | | N/A | 150.00 | 150.00 |
| C | Small | | x | 6% | 200.00 | 212.00 |
| D | Large | x | | N/A | 175.00 | 175.00 |

The new adjusted prices will be used for evaluation purposes against all other vendors, and not just the vendor offering the domestic end product.

(2) The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low foreign offer after addition of the appropriate evaluation factor.

(3) The evaluation factor does not apply to offers of Canadian or Mexican end products, or to civil aircraft and related supplies of countries that are parties to the Agreement on Civil Aircraft. Offers of these products are considered domestic end products for
evaluation purposes (see below "Trade Agreements" section).

(4) The CO must apply the evaluation procedures to each line item of an offer unless either the offer or the solicitation specifies evaluation on a group basis. The evaluated cost of each offer received is adjusted by any applied Buy American Act evaluation factor for each CLIN, as described in this subsection.

(5) After applying the evaluation factor to the cost or price, the CO may determine which offer represents the best value for award purposes.

e. *Excepted Articles, Materials, and Supplies.* The following articles, materials or supplies are not mined, produced, or manufactured in the U.S. in sufficient and reasonably available commercial quantities of a satisfactory quality. These items may be treated as domestic products for purposes of the Buy American Act requirements:

| | | |
|---|---|---|
| Acetylene, black.<br><br>Agar, bulk.<br><br>Anise.<br><br>Antimony, as metal or oxide.<br><br>Asbestos, amosite, chrysotile, and crocidolite.<br><br>Bamboo shoots.<br><br>Bananas.<br><br>Bauxite. | Emetine, bulk.<br><br>Ergot, crude.<br><br>Erythrityl tetranitrate.<br><br>Fair linen, altar.<br><br>Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.<br><br>Goat and kidskins.<br><br>Goat hair canvas. | Petroleum, crude oil, unfinished oils, and finished products.<br><br>Pine needle oil.<br><br>Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.<br><br>Pyrethrum flowers.<br><br>Quartz crystals.<br><br>Quebracho.<br><br>Quinidine. |

| | | |
|---|---|---|
| Beef, corned, canned.<br><br>Beef extract.<br><br>Bephenium hydroxynapthoate.<br><br>Bismuth.<br><br>Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.<br><br>Brazil nuts, unroasted<br><br>Cadmium, ores and flue dust.<br><br>Calcium cyanamide.<br><br>Capers.<br><br>Cashew nuts.<br><br>Castor beans and castor oil.<br><br>Chalk, English.<br><br>Chestnuts.<br><br>Chicle.<br><br>Chrome ore or chromite.<br><br>Cinchona bark.<br><br>Cobalt, in cathodes, rondelles, or other primary ore and metal forms.<br><br>Cocoa beans.<br><br>Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly | Grapefruit sections, canned.<br><br>Graphite, natural, crystalline, crucible grade.<br><br>Hand file sets (Swiss pattern).<br><br>Handsewing needles.<br><br>Hemp yarn.<br><br>Hog bristles for brushes.<br><br>Hyoscine, bulk.<br><br>Ipecac, root.<br><br>Iodine, crude.<br><br>Kaurigum.<br><br>Lac.<br><br>Leather, sheepskin, hair type.<br><br>Lavender oil.<br><br>Manganese.<br><br>Menthol, natural bulk.<br><br>Mica.<br><br>Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).<br><br>Modacrylic fur ruff.<br><br>Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts. | Quinine.<br><br>Rabbit fur felt.<br><br>Radium salts, source and special nuclear materials.<br><br>Rosettes.<br><br>Rubber, crude and latex.<br><br>Rutile.<br><br>Santonin, crude.<br><br>Secretin.<br><br>Shellac.<br><br>Silk, raw and unmanufactured.<br><br>Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.<br><br>Spices and herbs, in bulk.<br><br>Sugars, raw.<br><br>Swords and scabbards.<br><br>Talc, block, steatite.<br><br>Tantalum.<br><br>Tapioca flour and cassava.<br><br>Tartar, crude; tartaric acid and cream of tartar in bulk.<br><br>Tea in bulk.<br><br>Thread, metallic (gold).<br><br>Thyme oil. |

| | | |
|---|---|---|
| prepared form.<br><br>Coffee, raw or green bean.<br><br>Colchicine alkaloid, raw.<br><br>Copra.<br><br>Cork, wood or bark and waste.<br><br>Cover glass, microscope slide.<br><br>Crane rail (85-pound per foot).<br><br>Cryolite, natural.<br><br>Dammar gum.<br><br>Diamonds, industrial, stones and abrasives. | Nitroguanidine (also known as picrite).<br><br>Nux vomica, crude.<br><br>Oiticica oil.<br><br>Olive oil.<br><br>Olives (green), pitted or unpitted, or stuffed, in bulk.<br><br>Opium, crude.<br><br>Oranges, mandarin, canned. | Tin in bars, blocks, and pigs.<br><br>Triprolidine hydrochloride.<br><br>Tungsten.<br><br>Vanilla beans.<br><br>Venom, cobra.<br><br>Water chestnuts.<br><br>Wax, carnauba.<br><br>Wire glass.<br><br>Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.<br><br>Yarn, 50 Denier rayon. |

**3 Buy American Act - Construction Materials** Revised 10/2015

a. The Buy American Act requires that only domestic materials be used in construction, alteration, or repair in the United States.

b. *Exceptions*. The FAA may acquire foreign construction material without regard to Buy American Act restrictions when one of the following exceptions applies:

(1) A construction material purchase of $3,000 or less.

(2) The Administrator, in written nondelegable determination, states applying the Buy American Act to a construction material is not in the public interest;

(3) When the CO determines the construction material:

(a) Is unreasonable in terms of cost. Unreasonable cost is when the cost of domestic construction material exceeds the cost of foreign construction material by more than 6 percent, unless the agency head determines a higher percentage to be appropriate (see Executive Order 10582);

(b) It is impracticable to use a particular domestic construction material; or

(c) The construction material is not mined, produced, or manufactured in the

U.S. in sufficient and reasonably available commercial quantities or of a satisfactory quality. Contractors may also request to use foreign construction material in the contract on these grounds. The contractor must fully document and substantiate the request according to AMS clause 3.6.4-3 "Buy American Act - Construction Materials." The CO will approve or disapprove the contractor's request.

(4) For construction contracts with an estimated acquisition value of $10,335,931 or more, Canadian and Mexican construction materials may be treated as domestic for purposes of Buy American Act restrictions, pursuant to the NAFTA Implementation Act.

(5) The Buy American Act restrictions do not apply to information technology that is a commercial item.

c. *Documentation for Exception*. The CO should document the basis for all exceptions taken.

d. *Excepted Material*. The CO should list excepted materials in the contract.

Documentation justifying the exception will be made available for public inspection.

e. *Alternate Offers*. Offerors may submit alternate offers based on use of equivalent domestic construction material to avoid possible rejection of the entire offer, if the Government determines that an exception permitting use of a particular foreign construction material does not apply.

f. *Noncompliance*. The CO is responsible for Buy American Act investigations when available information indicates such action is warranted. Unless fraud is suspected, the CO must notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, including proposed corrective action. If an investigation reveals a contractor or subcontractor used foreign construction material without authorization, the CO must take appropriate action, including one or more of the following:

(1) Process a determination of inapplicability of the Buy American Act.

(2) Consider requiring removal and replacement of the unauthorized foreign construction material.

(3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the Government's interests, the CO may determine in writing that the foreign construction material need not be removed and replaced. The determination to retain foreign construction material does not constitute a determination that an exception to the Buy American Act applies, and this should be stated in the determination. The determination to retain foreign construction material does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violating of the Buy American Act, or to exercise other contractual rights and remedies,

such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, the CO should consider exercising appropriate contractual remedies, such as terminating the contract for default, or consider preparing and forwarding a report for suspension or debarment, including findings and supporting evidence. If the noncompliance appears to be fraudulent, the CO should refer the matter to other appropriate agency officials for criminal investigation.

## 4 FAA Buy American - Steel and Manufactured Products Revised 10/2012

a. *FAA Buy American*. This section implements FAA-specific Buy American preferences at 49 U.S.C §50101. The CO will not obligate any funds for any project unless steel and manufactured products used in the project are produced in the United States. Projects funded by Research, Engineering and Development are excluded from this requirement.

b. *Delegation and Exceptions*. The Administrator delegated to the FAA Acquisition Executive (FAE) authority to make findings waiving the provisions of FAA Buy American (49 U.S.C. §50101) when:

(1) Requiring domestically produced steel and manufactured products is inconsistent with the public interest;

(2) Steel and manufactured products are not produced in the United States in sufficient and reasonably available quantities or of satisfactory quality; or

(3) In the case of acquisition of facilities and equipment under the Airport and Airway Improvement Act of 1982:

(a) The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment used in the project; and

(b) Final assembly of the facility or equipment has taken place in the United States; or

(4) Including domestic material will increase the cost of the overall project contract by more than 25 percent.

c. *Waiver Redelegation.* The FAE further delegated authority as follows:

(1) The Chief of the Contracting Office (COCO) has authority to make findings waiving FAA Buy American provisions when the cost of including domestic material will increase the cost of the overall project contract by more than 25 percent.

(2) The Contracting Officer has authority to make findings waiving FAA Buy American provisions when the cost of including domestic material will increase the

cost of the overall project contract by more than 25 percent for individual contract actions not exceeding $1,000,000 for supplies and $100,000 for construction contracts.

The FAE retains authority for waivers based on public interest and non-availability.

d. *Foreign Offers*. There is no restriction against a vendor offering foreign steel or manufactured products in its proposal. However, FAA may not award to that vendor unless it is pursuant to one of the exceptions listed above.

e. *Component Cost*. For the purposes of this section, labor costs involved in final assembly will not be included in calculating components costs.

f. *Order of Precedence*. Any acquisition of steel or manufactured product not subject to 49 U.S.C. §50101 should be treated as covered under the Buy American Act (unless a Buy American Act exception applies). In the event of a conflict, the "Buy American-Steel and Manufactured Products" clause takes precedence over other Buy American Act-related clauses.

**5 Balance of Payments Program**

a. The Balance of Payments Program is applicable to contracts for supplies, services, or construction for use *outside* the United States, and provides for the use of excess or near-excess foreign currency. The Balance of Payments Program restrictions have been waived under certain circumstances under the North American Free Trade Agreement **(**NAFTA) Implementation Act.

b. *Acquiring Foreign End Products.* The FAA may acquire foreign end products or services for use outside the U.S. if any of the following conditions is met:

(1) The CO determines that a requirement can only be filled by a foreign end product or service, and that it is not feasible to forgo filling it or to provide a domestic substitute;

(2) The acquisition is for perishable subsistence items, ice, books, utilities, communications, and other materials or services that, by their nature or as a practical matter, can only be acquired or performed in the country concerned and a U.S. Government capability does not exist;

(3) The acquisition of foreign end products or services is required by a treaty or executive agreement between governments;

(4) Petroleum supplies and their by-products are required;

(5) The end products or services are paid for with excess or near-excess foreign currencies;

(6) The end products or services are mined, produced, or manufactured in Panama and are required by and for the use of United States Forces in Panama; or

c. *Documentation.* The CO should briefly document the file if an exception to the Balance of Payments Program is applied.

d. *Construction Material*. Contracts will require use of domestic construction materials for construction, repair, or maintenance of real property outside the United States, except when the cost of these materials (including transportation and handling costs) exceeds the cost of foreign construction materials by more than 50 percent. A differential greater than 50 percent may be used when specifically authorized by the CO.

e. *Procedures.*

(1) Screening Information Requests (SIRs) should specifically identify articles, materials, supplies, and services that are excepted from the Balance of Payments Program. When quotations are obtained orally, vendors should be informed that only domestic end products or services will be acceptable, except for those items that have been excepted or when the price for the foreign end products or services meets the evaluation criteria.

(2) For purposes of evaluation, each foreign offer will be adjusted by increasing it 50 percent. If this adjustment results in a tie between a foreign offer as evaluated and a domestic offer, the domestic offer should be considered the successful offer. When this procedure results in the acquisition of foreign end products or services, the CO may conclude that acquisition of domestic end products or services is unreasonable in cost or inconsistent with the public interest.

f. *Foreign Excess Currency Program*

(1) DOT/M-60 distributes Office of Management and Budget (OMB) bulletins on excess currencies held by the U.S. for certain countries. The Department of the Treasury, Office of the Assistant Secretary for International Affairs, Office of Development Policy also provides other information that may be relevant.

(2) The CO may use excess and near-excess foreign currencies whenever feasible in payment of contracts over $1 million performed wholly or partly in any of the countries listed in the bulletins referenced in paragraph (1) above. Therefore, the CO should ascertain if the countries where work will be performed are listed for excess currency because the CO may make award, in some cases, to an offeror willing to accept payment, in whole or part, in excess or near-excess foreign currency, even though the offer, when compared to offers in United States dollars, is not the lowest received. Price differentials may be funded from excess or near-excess foreign currencies available without charge to FAA appropriations, subject to OMB Circular No. A-20, May 21, 1966.

(3) Before issuing SIRs for work to be performed wholly or partly in countries listed in the bulletins referenced in paragraph (1) above, the CO should obtain a determination from the FAA budget officials as to the feasibility of using excess or near-excess foreign currency.

(4) The CO should address the probability of using excess or near-excess foreign currency in the SIRs as follows:

(a) Require that offers be stated in U.S. dollars;

(b) Request that offers also be stated, in whole or in part, in excess or near-excess foreign currency; and

(c) Reserve the right to make the award to the responsive offeror

(i) that is willing to accept payment, in whole or in part, in excess or near-excess foreign currency, and

(ii) whose offer is most advantageous to the FAA, even though the total price may be higher than offers in U.S. dollars.

## 6 Payment in Local Foreign Currency

a. The FAA will pay local foreign contractors in local currency when FAA contracts are entered into and performed outside the U.S. unless an international agreement provides for payment in U.S. dollars or the contracting officer determines the use of local currency to be inequitable or inappropriate.

b. When the local currency increases in value in relation to the dollar, a violation of the Anti- Deficiency Act (31 U.S.C. 665) could occur. To avoid this possibility, the FAA should ensure the availability of adequate dollar appropriations to purchase local currency needed to make payments against the contract.

## 7 Trade Agreements Revised 10/2015

a. FAA acquisitions are subject to the following trade-related acts:

(1) The NAFTA Implementation Act (Pub. L. 103-182, 107 Stat. 2057) which involves offers of Canadian or Mexican end products; and

(2) The Agreement on Civil Aircraft (19 U.S.C. 2513) which involves aircraft and related supplies from countries participating in the Agreement.

b. FAA acquisitions are *not* subject to the following trade-related acts:

| TITLE | REFERENCE |
|---|---|
| United States-Bahrain Free Trade Agreement Implementation Act | P.L. 109-169 |
| The Caribbean Basin Trade Initiative (CBTI) under the Caribbean Basin Economic Recovery Act (Note: Except for Panama) | 19 U.S.C. 2701 |
| The Dominican Republic-Central America-United States Free Trade Agreement Implementation Act | P.L. 109-53 |

| | |
|---|---|
| The least developed country designation made by the U.S. Trade Representative, | 19 U.S.C. 2511(b)(4) |
| pursuant to the Trade Agreements Act | |
| United States- Australia Free Trade Agreement Implementation Act | P.L. 108-286 |
| United States-Chile Free Trade Agreement Implementation Act | P.L. 108-77 |
| United States-Colombia Trade Promotion Agreement Implementation Act | P.L. 112-42 |
| United States-Israel Free Trade Area Implementation Act | 19 U.S.C. 2112 |
| United States-Korea Free Trade Agreement Implementation Act | P.L. 112-41 |
| United States-Morocco Free Trade Agreement Implementation Act | P.L. 108-302 |
| United States – Oman Free Trade Agreement Implementation Act | P.L. 109-283 |
| United States-Panama Trade Promotion Agreement Implementation Act | P.L. 112-43 |
| United States-Peru Trade Promotion Agreement Implementation Act | P.L. 110-138 |
| United States-Singapore Free Trade Agreement Implementation Act | P.L. 108-78 |

c. *North American Free Trade Agreement.*

(1) As required by the NAFTA Implementation Act, the CO will evaluate offers of the following NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program as follows:

(a) NAFTA country construction materials under construction contracts with an estimated acquisition value equal to or exceeding $10,335,931.

(b) Canadian end products under supply contracts with an estimated value equal to or exceeding $25,000 and Mexican end products under supply contracts with an estimated value equal to or exceeding $79,507.

(c) Canadian and Mexican end products under service contracts with an estimated value equal to or exceeding $79,507.

(2) To determine whether NAFTA applies to the acquisition of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with- option-to purchase), the CO should calculate the estimated acquisition value as follows:

(a) If a fixed-term contract of 12 months or less is contemplated, use the total estimated value of the acquisition.

(b) If a fixed-term contract of more than 12 months is contemplated, use the total estimated value of the acquisition plus the estimated residual value of the leased equipment at the conclusion of the contemplated term of the contract.

(c) If an indefinite-term contract is contemplated, use the estimated monthly payment multiplied by 48.

(d) If there is any doubt as to the contemplated term of the contract, use the estimated monthly payment multiplied by 48.

(e) If a contemplated acquisition includes an option clause, when calculating the threshold for application of NAFTA provisions include the value of all options.

d. *Civil Aircraft and Related Articles.* The Buy American Act does not apply to acquiring civil aircraft and related articles of countries or instrumentalities that are parties to the Agreement on Civil Aircraft pursuant to a waiver from the U.S. Trade Representative, on February 19, 1980 (45FR 12349, February 25, 1980). The current list of countries and instrumentalities that are parties to the agreement are on the U.S. Trade Representative website. For the purpose of this waiver, an article is a product of a country or instrumentality when:

(1) It is wholly the growth, product, or manufacture of that country or instrumentality; or

(2) In the case of an article that consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

e. This section "Trade Agreements" does not apply to:

(1) Purchases below an applicable dollar threshold cited in a trade agreement;

(2) Purchases under small or small disadvantaged business programs;

(3) Purchases indispensable for national security or for national defense purposes, subject to policies established by the U.S. Trade Representative.

(4) Research and development contracts;

(5) Purchases of items for resale;

(6) Purchases from Federal Prison Industries, Inc. and nonprofit agencies employing people who are blind or severely disabled.

## 8 Restrictions on Certain Foreign Purchases Revised 7/2006

a. Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the FAA and its contractors and subcontractors must not acquire any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC'S implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

b. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from North Korea into the United States or its outlying areas. In addition, lists of entities and individuals subject to economic sanctions are included online in OFAC's List of Specially Designated Nationals and Blocked Persons. More information about these restrictions, as well as updates, is available in OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website.

c. Questions concerning the restrictions for foreign purchases may be addressed to:

Department of the Treasury
Office of Foreign Assets Control
Washington, DC
20220 (202) 622-
2490

## 9 Prohibition on Contracting with Entities that Engage in Certain Activities or Transactions Relating to Iran Revised 4/2013

a. *Certification.*

(1) As required by the Iran Sanctions Act of 1996 and the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, and Titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012 unless an exception applies or a waiver is granted according to paragraph (c) or (d) of this section, each offeror must certify that the offeror, and any other entity owned or controlled by or person controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act. Such activities, which are described under section 5 of the Iran Sanctions Act relate to the energy sector of Iran and the development by Iran of weapons of mass destruction or other military capabilities.

(2) As required in section 6(b)(1)(B) of the Iran Sanctions Act, unless an exception applies or a waiver is granted in accordance with paragraphs (c) or (d) of this section, each offeror must certify that the offeror, and any other entity owned or controlled by or person controlled by the offeror, does not knowingly engage in a transaction exceeding $3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, affiliates, the property and interests in property of which are blocked in accordance

with the International Emergency Economic Powers Act (see the Department of the Treasury's Office of Foreign Assets Control's (OFAC's) Specially Designated Nationals and Blocked Persons List on their website).

b. *Remedies*. Upon determining a false certification under paragraph (a) of this section, FAA will take one or more of the following actions:

(1) The CO may terminate the contract.

(2) The suspending official may suspend the contractor according to the procedures in AMS Suspensions Procurement Guidance.

(3) The debarring official may debar the contractor for a period of at least two years according to the procedures in AMS Debarment Procurement Guidance.

c. *Exception for trade agreements*. The certification requirements of paragraph (a) of this section do not apply to procuring eligible products, as defined in the NAFTA Implementation Act (Pub. L. 103-182, 107 Stat 2057) or the Agreement on Civil Aircraft (19 U.S.C. 2513) (see AMS Trade Agreements Procurement Guidance).

d. *Waiver*.

(1) The President may waive the requirement for certification on a case-by-case basis if the President determines and certifies in writing to the appropriate congressional committees (Committee on Armed Services of the Senate, Committee on Finance of the Senate, Committee on Banking, Housing, and Urban Affairs of the Senate, Committee on Foreign Relations of the Senate, Committee on Armed Services of the House of Representatives, Committee on Ways and Means of the House of Representatives, Committee on Financial Services of the House of Representatives, and Committee on Foreign Services of the House of Representatives) that it is in the national interest to do so.

(2) If FAA or a contractor seeks a waiver of the requirement, it must submit the request through the Office of Federal Procurement Policy (OFPP), allowing sufficient time for review and approval. Upon receipt of the waiver request, OFPP will consult with the President's National Security Council, the Office of Terrorism and Financial Intelligence in the Department of the Treasury, and the Office of Terrorism Finance and Economic Sanctions Policy, Bureau of Economic, Energy, and Business Affairs in the State Department, allowing sufficient time for review and approval.

(3) In general, all waiver requests should include the following information:

(a) Agency name, complete mailing address, and point of contact name, telephone number, and email address.

(b) Offeror's name, complete mailing address, and point of contact name.

(c) Description/nature of product or service.

(d) The total cost and length of the contract.

(e) Justification with market research demonstrating that no other offeror can provide the product or service and stating why the product or service must be procured from this offeror, as well as why it is in the national interest for the President to waive the prohibition on contracting with this offeror that-

(i) Conducts activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996; or

(ii) Exports sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf of or at the direction of the government of Iran.

(iii) Engages in any transactions with Iran's Revolutionary Guard Corps as described in a(2) above. In addition to the requirements of d(3) above, the justification for such transactions must address why a waiver is essential
to the security interests of the United States.

(f) Documentation regarding this offeror's past performance and integrity (see the Past Performance Information Retrieval System and any other relevant information).

(g) Information regarding the offeror's relationship or connection with other firms that conduct activities as specified under subparagraph d(3)(e) above.

(h) The activities in which the offeror is engaged as specified in subparagraph d.(3)(e) above.

e. *Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Section 106.* The head of an executive agency may not enter into or extend a contract for the procurement of goods and services with a person that exports certain sensitive technology to Iran, as determined by the President and listed on the System for Award Management (SAM).

## 10 Customs and Duties

a. Except as provided elsewhere in the Customs Regulations (see 19 CFR 10.100), all shipments of imported supplies purchased under Government contracts are subject to the usual Customs entry and examination requirements. However, DOT/FAA are not covered by the applicable Treasury regulation/statute allowing entry of duty free goods.

## 11 International Agreements and Coordination Revised 1/2007

a. Treaties and agreements between the United States. and foreign governments affect contracting within foreign countries. The CO should determine the existence and applicability of any international agreement to contracts being planned or processed, and ensure compliance

with these agreements.

b. When applicable, the CO should conduct the necessary advance acquisition planning and coordination between the appropriate United States executive agencies and foreign interests as required by these agreements.

c. Many international agreements are compiled in the "United States Treaties and Other International Agreements" series published by the Department of State. Copies of this publication are normally available in overseas legal offices and United States diplomatic missions.

d. All contracts with Taiwanese firms or organizations must be awarded through the American Institute of Taiwan (AIT). AIT is under contract to the Department of State.

**12 Examination of Records by Comptroller General**

a. The CO should, whenever possible, include the clause "Audit and Records" in negotiated contracts with foreign contractors.

b. *Exceptions*. The clause may be omitted from contracts with foreign contractors in the following instances (authority cited for the HOA is not delegable):

(1) HOA, with concurrence of the Comptroller General, or designee, determines that the omission will serve the best interests of the U.S.; or

(2) The contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, document, papers, or records available for examination and the HOA determines, after taking into account the price and availability of the property or services from the U.S. sources, that the public interest would be best served by the omission of the clause.

c. *Congressional Notification*. When the CO does not include clause "Audit and Records," the CO will prepare and forward a determination to DOT/M-60 for inclusion in a report to Congress explaining why the omission of the clause will serve the interest of the United States. The determination should:

(1) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;

(2) Describe the efforts to include the clause;

(3) When applicable, state the reasons for the contractor's refusal to include the clause;

(4) Describe the price and availability of the property or services from the United States and other sources; and

(5) Determine that it will serve the interest of the United States to omit the clause.

## 13 Inconsistency Between English Version and Translation of Contract

When translation of a contract from English into another language is anticipated, the CO should include a statement indicating that the English meaning will control in the event of an inconsistency between the translated and English terms.

## 14 Export Control Added 4/2014

a. All FAA employees, contractors and other agents working in support of the FAA must be familiar with export control requirements and seek appropriate guidance before transferring or disclosing items, services, or information to a foreign entity or foreign national, and must comply with U.S. export control requirements.

b. *Foreign Nationals.* In addition to being subject to AMS Personnel Security Guidance, the use of foreign nationals on a contract may be considered an export and thus require a successful export control review to be conducted prior to the foreign national working on the contract.

c. *Export Control Review Process*. Before transferring or disclosing items, services or information to a foreign entity or foreign national, the following process must be followed consistent with FAA Order 1240.13 and the FAA Export Control Compliance-Supplemental Guidance ("Supplemental Guidance") found at https://employees.faa.gov/org/staffoffices/apl/offices/api/) (***FAA Only***). The export control review effort is a team effort between the Contracting Officers, FAA Lines of Business (LOBs)/program offices, and AGC-500. Depending on the foreign party (e.g. Government entity vs. private corporation), different types of contract vehicles (e.g. international agreement vs. contract) may be required and the transaction itself may fall under different FAA offices (e.g., ATO International). If there is a question as to the appropriate vehicle for the transaction with a foreign entity, contact the LOB international staff or the Office of International Affairs (API).

(1) *Initial Determination.*

Consistent with FAA Order 1240.13 and the Supplemental Guidance Key Questions, the COR must initially determine if the item, services or information to be provided under the contract or Other Transaction (OT) Agreement is export controlled. Examples of export controlled items include FAA equipment, parts and maintenance services delivered outside the United States even for FAA purposes. It also includes giving or sending items such as documents, CDs, key fobs, thumb drives, etc., to a foreign entity or foreign national.

If the item, services, or information is initially determined to be export controlled, then a formal Export Control Review is required. The Export Control Review process is set forth in detail in the Supplemental Guidance. This review involves the following:

(a) Completing the Export Control Workbook ("Workbook") with all required information, including the Export Control Classification Number (found at www.bis.doc.gov). When completing the Workbook, be as detailed as possible. A Workbook should be completed for each export control review. The Workbook is available at https://employees.faa.gov/org/staffoffices/apl/offices/api/ ***(FAA only).***

(b) Emailing the completed Export Control Workbook to AGC-500 at 9-AWA-AGC-EXPORTS@faa.gov. In the email subject line, write: "[Country Name] Export Control [Item Description]" (e.g. Bermuda Export Control Mode-S).

(c) When the Export Control Review is completed, AGC-500 will provide an email from the export control mailbox stating whether the transaction is "Export Eligible."

(i) If the transaction is "Export Eligible" or "Not Controlled" then it may proceed (e.g., the documentation may be released at an industry day, for a vendor visit, or with a SIR; or a particular foreign national may work on the contract).

(ii) If the transaction is "Not Export Eligible," or if an export license is required, then AGC-500 and the procurement team must discuss the issue before taking further action.

(2) *Name Checking.*

Name checking is an important part of the export control review process because some foreign nationals and entities are on what are commonly known as "prohibited persons lists." People and entities on these lists are prohibited from receiving exports.

Instructions for completing a name check are included in the Workbook. Full name, organization and citizenship information is required to complete the name check against the Consolidated Screening List at https://employees.faa.gov/org/staffoffices/apl/offices/api/ (***FAA only***).

Because of a slightly different focus between the two lists, checking the System for Award Management (SAM) "Exclusions" list cannot substitute for checking the Consolidated Screening List. Each list must be checked at the appropriate time for each acquisition.

(3) *Documentation.*

Completed Export Control Workbooks and export eligibility determinations from AGC-500 must be retained in the contract file, either in hard copy or electronically.

(4) *Responsibilities.*

(a) *Contracting Officer.*

(i) Identifying potential export control issues during acquisition planning activities, SIR/contract issuance, and contract administration;

(ii) Checking foreign nationals identified in the- Workbook against the Consolidated Screening List to determine if recipients of the export controlled items are on the lists of prohibited persons/entities, and documenting the results of the name check and the date the check was conducted.

(iii) Ensuring that appropriate export clauses are included in contracts and OT agreements either performed abroad, by foreign nationals, or involving deliveries to foreign locations.

(iv) Ensuring that all required security reviews, initial export control determinations and any required export control reviews are performed for foreign nationals working on FAA contracts and OT Agreements.

(v) Supporting CFIUS Reviews, as requested.

(vi) Supporting AGC-500 during the export review process.

(b) *COR/Program Office.*

(i) Identifying/anticipating export control issues in program activities, including, but not limited to, acquisition planning, contract administration, program industry days, and meeting with foreign entities and foreign nationals.

(ii) Answering Supplemental Guidance Key Questions, make the initial export control review determination, and advise the Contracting Officer of such determination and its basis in writing.

(iii) Supporting the Contracting Officer with respect to any export control issues that arise and relaying potential export controlled activities identified to the Contracting Officer.

(iv) Completing the Workbook, including identifying the Export Control Classification Numbers (ECCN) and recipients.

(v) Supporting CFIUS Reviews, as requested.

(vi) Supporting AGC-500 during the Export Control Review process.

(c) *AGC-500.*

AGC-500 is responsible for conducting the export control review once a completed Export Control Workbook is submitted to the Export Control Mailbox, and providing an export eligibility determination to the CO.

d. *Committee on Foreign Investment in the United States Review (CFIUS).*

(1) *CFIUS Background.*

CFIUS is an inter-agency committee authorized to review transactions that could result in control of a U.S. business by a foreign person ("covered transaction") in order to determine the effect of such transactions on the national security of the United States. CFIUS operates pursuant to section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007 (FINSA) (section 721) and as implemented by Executive Order 11858, as amended, and regulations at 31 C.F.R. Part 800.

CFIUS issues arise when a non-U.S. company seeks to buy or merge with a U.S. company. CFIUS examines the covered transaction in order to identify and address, as appropriate, any national security concerns that arise as a result of the transaction. During the review period, CFIUS members, through the Department of the Treasury as Committee Chair, may request additional information on related FAA contracts.

(2) *CFIUS Review Responsibilities.*

(a) Contracting Officers: Contracting Officers are responsible for identifying all contracts (and any subcontract) that the FAA has with the U.S. business involved in the covered transaction that is subject to the CFIUS review and for identifying/producing any contract provisions affecting contractor roles access or duties.

(b) Contracting Officer's Representative: The COR is responsible for identifying the contractor's duties and data, software, systems, equipment, etc., that the contractor has delivered or has continuing access to and helping determine whether this could affect national security.

e. *Foreign Visitors*. Certain types of visits by foreign nationals to FAA facilities, and meetings with FAA personnel, regardless of the location, are subject to export control requirements. In particular, visits or meetings involving the demonstration of technology and/or software, and visits or meetings that involve the release of source code or other technical documentation to foreign nationals may require a review of the Supplemental Guidance Key Questions. Cognizant FAA LOBs and Staff Offices are responsible for

ensuring that all information to be shared with foreign nationals during visits or meetings with the FAA has been reviewed. FAA Order 1600.74 Visitor Procedures for FAA Facilities contains guidelines for the conduct of visits by foreign nationals to FAA facilities.

f. *Foreign Travel*. See FAA International Travel Policy and FAA Order 1600.61B International Travel Security Briefing & Contact Reporting Requirements for FAA Employees and Contractors.

g. *Definitions.*

Note: These definitions are applicable to the export control review process only.

**Business Process**: Any explanation of the management, operational, and supporting processes that the FAA conducts to accomplish its mission. Examples of business processes include, but are not limited to, the following: how to create a flight procedure, how to redesign airspace, how to certify aircraft parts, how to conduct Safety Risk Management reviews, how to mobilize disaster relief efforts, and organizational charts with roles and responsibilities. Business process information is not export-controlled.

**Consolidated Screening List**: A list of entities and individuals for which the USG maintains restrictions on certain financial transactions, exports, re-exports or transfers of items, services or information.

**Country of Concern**: Countries subject to sanctions or embargoes, or countries that condone terrorist-supporting activities (e.g., Cuba, Iran, North Korea, Sudan, Syria). The EAR identifies countries of concern as "Country Group E" and lists them in the EAR at 15 CFR 740, Supplement 1. The U.S. Departments of State and Treasury track a broader list for countries of concern subject to their regulations. Transactions with countries of concern receive a higher degree of scrutiny and usually require a transaction-specific license. See the Additional Resources section of the Supplemental Guidance for more detail.

**Export**: Any item, service or information that is sent from the United States to a foreign destination is an export. Export means taking or sending an item, service or information out of the United States even if the item (e.g., test equipment) will be returned to the United States. Export also means giving an item, service or information to a foreign national or entity who might take it out of the United States. Items include commodities, software or technology, and technical data. Services include the furnishing of assistance (including training, design, maintenance, testing, installation, enhancement or use of item(s)) to a foreign national or entity whether in the United States or abroad. The release of technology or source code to a foreign national in the United States is "deemed" to be an export to the home country of the foreign national under the EAR.

For a definition of information, see Technical Data/Documentation.

**Export Administration Regulations (EAR)**: U.S. Department of Commerce regulations for the export and re-export of most commercial items. The EAR does not control all items, services or information. Other U.S. government agencies may regulate other items not controlled by the EAR.

**Export-Controlled**: Items, services or information subject to U.S. export control requirements.

**Export Control Classification Number (ECCN)**: A U.S. Department of Commerce alpha-numeric export code, e.g., 5A991, which describes the item, service or information being exported and indicates licensing requirements. All ECCNs are listed in the Commerce Control List (CCL) and can usually be obtained from a hardware/software manufacturer.

**Export Control Review**: An FAA process, including a legal review and a name check of foreign nationals and entities against the U.S. Government Consolidated Screening List, to determine whether a potential transaction is eligible for export.

**Export Control Workbook**: An FAA document that includes worksheets for equipment/hardware, software, and training, as well as contact information for API and/or FAA Line of Business (LOB) Points of Contact, and country information, and which highlights potential areas of concern and informs AGC-500 that foreign nationals involved in the transaction have been checked against the Consolidated Screening List. A completed Workbook is required for all export control reviews.

Note**:** In accordance with the Paperwork Reduction Act, the export control review process and Workbook have been established for the Government to complete. The Export Control Workbook is for internal FAA use and must be completed by FAA employees, contractors and other agents working in support of the Agency.

**Export Eligible**: A legal determination that the intended transaction would be a lawful export. The determination is based on an identification of an export code, whether a transaction-specific license is required, and a confirmation that the person(s) and organization(s) to which the export is being made are not identified on the list(s) of known or suspected export violators.

**Foreign Entity**: Any organization, corporation or government agency located, incorporated or organized to do business in a country other than the United States. Foreign entities also include foreign branches, subsidiaries, and affiliates of U.S. companies, as well as other U.S. entities located in foreign countries.

**Foreign National**: A non-U.S. citizen. Holders of U.S. green cards and those with permanent residency in the United States are not considered foreign nationals for export control purposes.

**International Traffic in Arms Regulations (ITAR)**: Regulations that control the export

and import of defense articles and defense services. The U.S. Department of State is responsible for the administration of the ITAR.

**Name Check**: A process that includes a review of foreign nationals and organizations involved in an international transaction against the Consolidated Screening List. The name check is part of the Export Control Workbook, which must be completed for all export control reviews.

**Publicly Available/Public Domain**: Information is publicly available or in the public domain when it is generally accessible to the interested public in any form. Examples of items that are publicly available include: Web Page Documents, Performance Specifications, and Business Process Information. Information that is publicly available or that exists in the public domain, with the exception of encryption software, is not export-controlled. Information related to commercial space transportation may be subject to ITAR and treated differently even if publicly available; consult the designated LOB Point of Contact or AGC-500.

**Technical Data/Documentation**: Information, other than software or items posted on public websites, which is required for the design, development, prototyping, production, manufacture, assembly, use, testing, maintenance (inspection, overhaul, repair, preservation, and replacement of parts), rebuild, preventative maintenance, enhancement or modification of NAS systems, mission support systems, administrative systems, aircraft, or commercial space or launch systems. Training courses often involve the transfer of technical data. Examples of documentation include Maintenance Handbooks, Interface Control Documents, test plans, test procedures, schematics, configuration documents, software developers' kits, etc., regardless of medium or storage format. Characteristics of technical data include materials that usually are proprietary or sensitive. Most technical data is export-controlled.

**Transaction**: The transfer or disclosure of items, services or information to a foreign entity or foreign national. Transactions may also include allowing foreign nationals to visit FAA facilities or work on FAA contracts.

## 15 Definitions Revised 4/2014

a. *"Canadian end product"* means an article that (a) is wholly the growth, product, or manufacture of Canada, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

b. *"Civil aircraft and related articles"* means (a) all aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard; (b) the engines (and parts and

components for incorporation into the engines) of these aircraft; (c) any other parts, components, and subassemblies for incorporation into the aircraft; and (d) any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act of 1979.

c. *"Components"* means those articles, materials, and supplies incorporated directly into the end products, or in the case of construction those articles, materials, and supplies incorporated directly into construction materials.

d. *"Construction"* means construction, alteration, or repair of any public building or public work in the United States.

e. *"Construction Materials*" means an article, material, or supply brought to the construction site for incorporation into the building or work. *"Construction Materials*" also includes an item brought to the site pre-assembled from articles, materials, and supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

f. *"Customs territory of the United States,"* as it applies to customs and duties, means the States, the District of Columbia, and Puerto Rico.

g. *"Domestic construction material"* means (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining whether a construction material is domestic, only the construction material and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the construction material and any applicable duty (whether or not a duty-free entry certificate is issued).

h. *"Domestic end product"* means (a) an unmanufactured end product mined or produced in the United States, or (b) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining if an end product is domestic, only the end product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the end product and any applicable duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic.

i. *"Domestic offer"* means an offered price for a domestic end product, including transportation to destination.

j. *"Domestic services"* means services performed in the United States. If services provided

under a single contract are performed both inside and outside the United States, they shall be considered domestic if 25 percent or less of their total cost is attributable to services (including incidental supplies used in connection with these services) performed outside the United States.

k. *"End product"* means those articles, materials, and supplies to be acquired for public use under the contract.

l. *"Foreign construction material"* means a construction material other than a domestic construction material.

m. *"Foreign contractor"* means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

n. *"Foreign end product"* means an end product other than a domestic end product.

o. *"Foreign offer"* means an offered price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate is issued).

p. *"Foreign services"* means services other than domestic services.

q. *"Instrumentality"* does not include an agency or division of the government of a country, but may be construed to include arrangements such as the European Union.

r. *"Manufactured product"* as it applies to "Buy American-Steel and Manufactured Products" means an item produced as a result of the manufacturing process.

s. *"Manufacturing process"* as it applies to "Buy American-Steel and Manufactured Products" means the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials.

t. *"Mexican end product"* means an article that (a) is wholly the growth, product, or manufacture of Mexico, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Mexico into a new and different article of commerce with a name, character, or use distinct from, that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

u. *"North American Free Trade Agreement (NAFTA) country"* means Canada or Mexico.

v. *"NAFTA country construction material"* means a construction material that (a) is wholly the growth, product, or manufacture of a NAFTA country or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

w. *"NAFTA country end product"* means a Canadian end product or a Mexican end product.

x. *"Person"* (1) Means-(i) A natural person;(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and (iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and (2) Does not include a government or governmental entity that is not operating as a business enterprise.

y. *"Petroleum terms"*

1. *"Crude oil"* means crude petroleum, as it is produced at the wellhead, and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and that are not natural gas products.

2. *"Finished products"* means any one or more of the following petroleum oils, or a mixture or combination of these oils, to be used without further processing except blending by mechanical means:

(a) *"Asphalt"*-- a solid or semi-solid cementitious material that (1) gradually liquefies when heated, (2) has bitumens as its predominating constituents, and (3) is obtained in refining crude oil.

(b) *"Fuel oil"*--a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, or residues.

(c) *"Gasoline"*--a refined petroleum distillate that, by its composition, is suitable for use as a carburant in internal combustion engines.

(d) *"Jet fuel"*--a refined petroleum distillate used to fuel jet propulsion engines.

(e) *"Liquefied gases"*--hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures.

(f) *"Lubricating oil"*--a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces.

(g) *"Naphtha"*--a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes.

(h) *"Natural gas products"*--liquids (under atmospheric conditions), including natural gasoline, that:

(1) Are recovered by a process of absorption, adsorption, compression,

refrigeration, cycling, or a combination of these processes, from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir, and

(2) When recovered and without processing in a refinery, definitions of products contained in subdivision (b), (c), (d), and (g) of this definition.

(i) *"Residual fuel oil"*--a topped crude oil or viscous residuum that, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specification MIL-F-859 for Navy Special Fuel Oil and any more viscous fuel oil, such as No. 5 or Bunker C.

3. *"Unfinished oils"* means one or more of the petroleum oils listed under the definition of finished oils, or a mixture or combination of these oils, that are to be further processed other than by blending by mechanical means.

z. *"Sanctioned European Union (EU) construction"* means construction to be performed in a sanctioned member state of the EU and the contract is awarded by a contracting activity located in the United States or its territories.

aa. *"Sanctioned EU end product"* means an article that (a) is wholly the growth product or manufacture of a sanctioned member state of the EU or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character or use distinct form that from which it was so transformed in a sanctioned member state of the EU. The term includes services (except transportation services) incidental to its supply; provided, that the value of these incidental services does not exceed that of the product itself. It does not include service contracts as such.

bb. *"Sanctioned EU services"* means services to be performed in a sanctioned member state of the EU when the contract is awarded by a contracting activity located in the United States or its territories.

cc. *"Sanctioned member state of the EU"* means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom.

dd. *"United States"* as it relates to the Buy American Act or the Balance of Payments Program means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

**B Clauses**

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**C Forms**

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## T3.6.5 Indian Incentive Program

### A Indian Incentive Program

### 1 Requirements Revised 10/2012

a. *General.* The FAA is subject to the requirements of 25 U.S.C. 1544 that establishes an incentive payment for Federal contractors subcontracting with or using suppliers who are Indian organizations or Indian-owned economic enterprises in performing the contract. This incentive payment may be equal to five percent of the amount paid or to be paid to a qualifying subcontractor or supplier that is an Indian organization or Indian-owned economic enterprise.

b. *Declarations*.

(1) *Self-declarations*. An Indian organization or Indian-owned economic enterprise may self-declare as to its eligibility under the Indian incentive program using FAA's Business Declaration Form (see AMS Procurement Guidance T3.6.1, Small Business Utilization).

(2) *Reliance on Self-declarations*. COs and prime contractors acting in good faith, may rely on the self-declaration of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges the status or the CO has independent reason to question the status.

(3) *Challenges to Self-declarations*. To be considered timely, challenges must:

(a) Be in writing;

(b) Identify the basis for the challenge;

(c) Provide detailed evidence supporting the claim; and

(d) Be filed with and received by the CO before award of the subcontract in question. Challenges received after award of the subcontract must be referred to Bureau of Indian Affairs (BIA), but the BIA determination must have prospective application only.

c. *Responsibilities.*

(1) *CO Actions*. The CO will:

(a) Determine if a subcontracting plan will be required under AMS clause 3.6.1-4, "Small, Small Disadvantaged, Women-Owned and Service Disabled Veteran Owned Small Business Subcontracting Plan" and if subcontracting opportunities exist pursuant to AMS clause 3.6.5-1, "Utilization of Indian Organizations and Indian-Owned Economic Enterprises." If the CO determines that a subcontracting plan is required and there are opportunities for subcontracting to Indian organizations and Indian-owned economic enterprises,

as defined by the clause, the CO may seek funding according to FAA procedures to provide an incentive payment under clause 3.6.5-1 Utilization of Indian Organizations and Indian- Owned Economic Enterprises.

(b) Insert AMS clause 3.6.5-1, "Utilization of Indian Organizations and Indian- Owned Economic Enterprises," into the screening information request and contract when funds are available for this type of incentive payment.

(c) Refer self-declaration challenges to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn.: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW, MS-334A-SIB, Washington, D.C., 20245. The BIA will determine the eligibility and notify the CO. The BIA will acknowledge receipt of the request from the CO within five working days. Within 45 additional working days, BIA will advise the CO, in writing, of its determination.

(d) Notify the prime contractor upon receipt of a challenge.

(e) Authorize an incentive payment of five percent of the amount paid to the subcontractor subject to the terms and conditions of the contract and the availability of funds.

(2) *Contractor Actions*. If a challenge is received before the subcontract is awarded, the contractor will withhold award of the subcontract pending the determination by BIA. However, if the prime contractor determines, and the CO agrees, that award must be made in order to permit timely performance of the prime contract, the contractor may proceed with the award of the subcontract.

(3) *Bureau of Indian Affairs (BIA).*

(a) The BIA will determine the eligibility of the firm and notify the CO within 50 working days after receipt of the request.

(b) If the BIA determination is not received within the prescribed time period, the CO and the contractor may rely on the self-declaration of the subcontractor.

**2 Definitions** **Revised 10/2012**

a. Definitions are in AMS clause 3.6.5-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

**B Clauses**

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**C Forms**

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## T3.7 Privacy and Freedom of Information

### A Protection of Individual Privacy

#### 1 General

a. The Privacy Act provides safeguards for individual privacy when the FAA contracts for the design, development, or operation of a system of records on individuals on behalf of the FAA to accomplish a program function. The Act requires that the contractor follow all of the rules on privacy that apply to the FAA.

b. An FAA employee may be criminally and/or civily liable for violations of the Act. When the contract provides for operation of a system of records on individuals, contractors and their employees are considered employees of the FAA for purposes of the criminal penalties of the Act.

c. The Contracting Officer shall determine whether a contract will involve the design, development or operation of a system of records as defined in the Privacy Act. If so, the Contracting Officer shall insure that the contract specifically identifies the system of records on individuals and the design, development, or operation work to be performed. The statement of work should identify the FAA rules and regulations implementing the Privacy Act.

#### 2 Implementing Rules

The Department of Transportation's implementing rules and regulations for the Privacy Act are contained at 49 CFR Part 10.

### B Clauses

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### C Forms

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## T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests Revised 10/2007

### A. Agreements, Cooperative Agreements, Gifts and Bequests

#### 1 Agreements Revised 7/2014

a. *Applicability.* This section applies to interagency agreements, intra-agency agreements, other transactions, cooperative agreements, and international agreements for services, supplies (including construction) and real property to the extent authorized by law. This section **does not** apply to Airport Improvement Program grants and cooperative research and development agreements, which are governed by other directives, as follows:

(1) Airport Improvement (AIP) Grants authorized under 49 U.S.C. 47101 et seq. are covered in FAA Order 5100.38A, AIP Handbook, October 24, 1989.

(2) Cooperative Research and Development Agreements (CRDA) authorized under 15 U.S.C. 3710a et seq. are covered under FAA Order 9550.6A "Technology Transfer Program."

b. *Types of Agreements.*

(1) *General.*

(a) As discussed above, FAA has broad general authority to use various agreements, other than procurement contracts, to obtain or provide services and supplies when necessary to accomplish the mission of FAA.

(b) Agreements may be made on such terms and conditions as the Administrator may consider appropriate

(i) With or without reimbursement; *and*

(ii) With another Federal agency or instrumentality of the Federal government, a modal administration within the Department of Transportation, a state, local government, municipality, or other public entity, foreign governments, and private entities.

(c) Agreements are classified into six general categories as follows:

(i) Interagency Agreements;

(ii) Intra-agency Agreements;

(iii) Other Transactions;

(iv) Cooperative Agreements;

(v) International Agreements; and

(vi) Reimbursable Agreements and Other Transaction Reimbursable Agreements.

(2) *Interagency Agreements.* An interagency agreement is a written agreement between FAA and another Federal agency (as defined in Section 551(a) of Title 5 of the United States Code) where FAA agrees to receive from, or exchange supplies or services with, the other agency, and FAA funds are obligated. The requesting agency is the agency that needs the services, supplies or facilities; the servicing agency provides the services, supplies or facilities to the requesting agency. Interagency agreements under which FAA purchases services, supplies, or facilities

through another Federal agency's contract is an interagency procurement, and AMS Guidance T3.8.1.A.4 "Interagency Procurement" must also be followed when placing this type of agreement.

(a) *OMB Circular A-76.* Where FAA requires the servicing agency to perform a commercial activity, the CO should conduct a cost comparison under OMB Circular A-76.

(b) *Joint Activities with Department of Defense (DOD).*

(i) DOD has the same exemptions from acquisition laws as are waived by the Administrator in the AMS when:

(A) The FAA and DOD are engaged in joint actions;

(B) DOD's contribution to the total cost of the activity is significant (more than ten (10) percent; and

(C) The purpose of the acquisition is to improve or replenish the national air traffic system. Joint actions include situations where both agencies share the same mission need and engage in joint activities to plan and implement the solution.

(ii) Where these three criteria are met, either FAA or DOD may conduct the acquisition using the policies of the AMS.

(3) *Intra-agency Agreements*. An Intra-agency agreement is a written agreement between FAA and the Office of the Secretary of Transportation (OST) or another DOT operating administration. The FAA may use an Intra-agency agreement to provide services or supplies to, or receive services or supplies from or through OST or another DOT operating administration.

All Intra-agency agreements with OST and with the John A. Volpe Transportation Systems Center (Volpe Center) must use DOT Form 2300.1a. For Volpe Center Intra-agency agreements, the statement of work must be attached to the completed Form 2300.1a. Volpe Center Intra-agency agreements are otherwise processed in PRISM in accordance with detailed business process instructions (FAA only).

(4) *Other Transactions*.

(a) An Other Transaction (OT) is typically an agreement between FAA and a non-Federal entity (either foreign or domestic) where FAA's purpose is to obtain a direct benefit that advances the agency's mission while also providing assistance to the general public. In some cases, including multi-party transactions, an OT provides the flexibility to develop partnering relationships with industry in meeting agency objectives. For example, FAA may enter into an OT agreement with another party to jointly develop a system, which FAA may eventually purchase through a procurement contract, but the system might also be purchased by airport authorities and foreign air traffic organizations. Another instance might be the construction of a fence, or the laying of cable that would benefit the airport authority (or the general public) and the FAA facility at the airport.

(b) In addition to joint funding agreements, in-kind contributions are allowed. The FAA is specifically authorized to use or accept the services, equipment, personnel, and facilities of non-Federal entities and to cooperate with them in the use of FAA's services, equipment, personnel, and facilities.

(c) OT agreements should be carefully drafted to avoid the inadvertent creation of a joint venture, which is separate legal entity formed to accomplish a discreet purpose. As a general rule, all parties to a joint venture agreement have joint and several liabilities for all claims arising under the agreement. In addition to other legal consequences, such agreements violate the Anti-deficiency Act and are prohibited.

(5) *Section 106 Cooperative Agreements Distinguished.* FAA also has broad authority under 49 U.S.C 106 to enter into cooperative agreements with any Federal and non-Federal entity on such terms and conditions as the Administrator may deem appropriate. These agreements are used to provide assistance to a recipient and are more fully covered in Section 2 below.

(6) *International Agreements.*

(a) Agreements with foreign governments or quasi-governmental entities are most commonly used to establish a technical assistance or research and development relationship between FAA and the foreign entity. In such instances, FAA's interest is in encouraging aviation safety outside the United States pursuant to 49 U.S.C. 40113(e).

(b) When a foreign government is a party to the transaction, the agreement is a government-to-government agreement governed by international law. The FAA must obtain Department of State (DOS) clearance on the negotiation and final terms of such agreements.

(c) In negotiating agreements with foreign private civil aviation authorities and other quasi-governmental entities, FAA consults with DOS on foreign policy issues that might arise under such agreements.

(d) The program office lead or CO should coordinate with the Office of International Aviation (API), which has organizational responsibility for coordinating the agreement with the DOS and the responsible U.S. embassy, and for transmitting the agreement to the foreign entity for signature.

(e) Department of State clearance is not required for agreements with private contractors; however, the program office lead may consult with API in appropriate circumstances.

(f) *Approval of Administrator.* The FAA Administrator or designee must approve equipment purchases by a foreign government or quasi-governmental entity under any FAA prime contract.

(7) *Reimbursable Agreements and Other Transaction Reimbursable Agreements.* Agreements under which FAA provides services, supplies, or facilities to another Federal agency or non-Federal entity is a reimbursable agreement, and AMS Guidance T3.8.1A.5 must be followed. See also the FAA Financial Manual, Vol 4 Ch 6, and Reimbursable Agreement Standard Operating Procedure (SOP)"Creating, Executing, and Implementing Reimbursable Agreements" (FAA only) for reimbursable agreements and approved templates.

c. *Requirements*.

(1) All agreements must be in writing and should contain a clear statement of requirements, applicable terms and conditions, the legal authority for the agreement, termination and dispute resolution provisions, and where appropriate, a fund citation and payment provision.

(2) There is no requirement for competition or public announcement.

(3) *Justification.* Each agreement should be supported by a written statement describing the technical, program, or business reasons justifying the agreement. The procurement or real property contracting officer (CO), acting within the warrant authority commensurate with the total estimated dollar value of the requirement, approves the written rationale. Agreements valued at $10 million or more are also subject to Chief Financial Officer (CFO) approval as required by AMS Guidance T3.2.1.4, and the justification must be included in the business case submitted as part of the CFO review package.

(4) Agreements with private entities and public authorities, other than Federal agencies, may take the form of a memorandum of understanding or memorandum of agreement. A memorandum of understanding is not legally binding on the Government, while a memorandum of agreement creates a legally binding commitment.

(5) *Content.* All agreements must be in writing and at a minimum contain:

(a) A clear statement of requirements;

(b) The term of the agreement;

(c) Procedure for modifications;

(d) The legal authority for the agreement;

(e) Termination and dispute resolution provisions;

(f) A fund citation and payment provision, if appropriate, or description of in-kind contribution of both parties; and

(g) Other terms and conditions, as appropriate, addressing such matters as intellectual property and indemnification provisions, and restoration and disposition of Government property.

(6) *Requirements for Agreements with Federal organizations.* All FAA agreements (including interagency and intra-agency agreements (except as noted below)) with Federal departments, agencies, or entities must include:

(a) The common agreement number and the funding source;

(b) The Treasury Account Symbol (TAS), or appropriation code, for both parties;

(c) The Business Event Type Code (BETC) for both parties;

(d) The effective date and duration of the agreement, to include the expiration of the funding source;

(e) The amount and method of payment;

(f) The Business Partner Network (BPN) number for both parties (which is equivalent to the Data Universal Numbering System (DUNS) Number for civilian agencies and the Department of Defense Activity Addressing Code (DoDAAC) for Defense agencies);

(g) The method and frequency of performance (revenue and expenses) reporting;

(h) If applicable, provisions for advance payments and method of liquidating such advance;

(i) The parties' right to modify, cancel, or terminate the agreement;

(j) A dispute resolution provision specifying that disputes must be resolved pursuant to the procedures and standards of the Business Rules for Intergovernmental Transactions described in the Treasury Financial Manual, Volume 1, Bulletin 2007-03, Section VII;

(k) A cancellation provision specifying that if a buyer, or requesting agency, cancels the order, the seller, or providing agency, is authorized to collect costs incurred before cancellation of the order plus any termination costs; and

(l) Point of contact information for CO, Contracting Officer's Representative (COR), and accounting office.

All FAA Intra-agency agreements with the OST and with the Volpe Center must use DOT Form 2300.1a in accordance with (b)(3) above.

d. *Authority.*

(1) *General Authority.* 49 U.S.C. 106(l) (6) and/or 106(m) should be cited as general authority for all agreements, except where DOD exception applies, or where the agreement is with a foreign government to provide technical assistance. In Sections 49 U.S.C. 106(l) (6) and 106(m), Congress provided FAA with specific authority to "enter into and perform such contracts, leases, cooperative agreements or other transactions as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate."

Section 106(m) also clarifies that FAA may use or accept the services, equipment, personnel, and facilities of another Federal agency, as well as a private or public entity and may do so with or without reimbursement. That section also provides specific authority to the head of another Federal agency to make the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. Additionally, the head of another Federal agency is authorized, notwithstanding any other provision of law, to transfer to, or receive from the FAA non-administrative supplies or equipment without reimbursement.

(2) *Joint Activities with DOD.* For joint activities between DOD and FAA described in subparagraph b.(2)(b) above, the legal authority in 49 U.S.C. 40121(c)(2) may also be used.

(3) *Technical Assistance Agreements with Foreign Governments.* For technical assistance agreements with foreign governments described in Section b.(6) above, the legal authority is 49 U.S.C. 40113(e).

(4) *Parallel Authorities*. The Federal Aviation Act contains other specific program authorities applicable to certain types of agreements, which may be cited as parallel authority where appropriate. Legal counsel should be consulted for additional guidance in selecting any of the listed authorities**.** (See Appendix Attachment 1, *Parallel Authorities*.)

e. *Format.*

(1) *Other Transaction - Memorandum of Agreement (MOA).* Where the FAA intends to create a legally binding commitment with a non-Federal entity through an "Other Transaction," a Memorandum of Agreement should be executed by the parties. Appendix D of this section contains a sample format.

(2) *Other Transaction - Memorandum of Understanding (MOU).* A Memorandum of Understanding is an agreement to agree and is not legally binding on either party. MOUs are appropriate where the parties seek only to memorialize policies and procedures of mutual concern, or describe other relationships *that are not intended to create legally binding obligations*.

(3) *Interagency Agreement, Intra-agency Agreement, and Cooperative Agreement.* Appendix D of this section contains sample formats for these types of agreements (except for Intra-agency agreements with OST and with the Volpe Center that must use DOT Form 2300.1a as specified above in lieu of using the sample format for Intra-agency agreements).

(4) *Reimbursable Agreements (where FAA is the servicing agency)* AMS Guidance T3.8.1A.5 must be followed. See also the FAA Financial Manual and Reimbursable Agreement SOP for reimbursable agreements and approved templates (FAA only).

f. *Funding.*

(1) *General.* Funds must be obligated to an agreement within the period of their availability consistent with the purposes of the appropriation. Additionally, when FAA funds are obligated under an agreement with a servicing agency, the obligation maintains the same impact and restrictions when it is transferred to the servicing agency. For example, funds from the FAA's Operations, RE&D and F&E accounts may be used only for the purposes of the appropriation and do not lose their character once transferred to the servicing agency. Likewise, when FAA is the servicing agency, an obligation against an appropriation of a requesting agency maintains the same impact and restrictions as the appropriation of origin.

(2) *Economy Act.* Where the Economy Act is cited, funds must be obligated by the servicing agency **prior to expiration**, i.e. if the servicing agency is to perform the work itself, performance of the work must begin prior to that date. If the agency is to acquire the product or service through contract, the contract must have been executed and funds obligated to the contract prior to their expiration date. Any funds not properly obligated by the servicing agency must be returned to the requesting agency prior to their expiration date.

(3) *Military Interdepartmental Purchase Request (MIPR)*. The DOD uses MIPRs as the primary document to order goods or services from the FAA. The MIPR includes a description of the work or services DOD is requesting from the FAA, the unit price, the total price, and a fund cite. The FAA CO or other FAA official designated by their Directorate may accept the MIPR on behalf of the FAA. The person authorized to accept the MIPR should ensure the MIPR contains a clear statement of requirements before accepting the MIPR on behalf of the FAA. The DOD may use MIPR (DD Form 448) and Acceptance of MIPR (DD 448-2) to order goods from FAA. The Acceptance of MIPR Form specifies whether the identified work will be provided through reimbursement (Economy Act) or by the direct citation of funds (based on other authority) or a combination of both. Where FAA agrees to an MIPR based on reimbursement pursuant to the Economy Act, then the rules in subparagraph f.(2) above apply. If FAA accepts the funds on a direct cite basis, DOD will not record the funds as obligated until FAA provides DOD with a contract or other obligating document that cites the funds.

(4) *Other Situations*. Where the Economy Act is not cited as authority for FAA, funds are obligated at the time FAA signs the agreement and places funds on the agreement.

(5) *Disposition of Funds Received.* Funds received under an Agreement shall be credited to the appropriation from which the expenses were incurred, unless otherwise required by one of the specific program authorities cited in Paragraph D, Appendix Attachment 1, *Parallel Authorities*, or current and prior appropriation acts.

g. *Approval and Execution.*

(1) *Review and Approval.* The Administrator has delegated authority to award contracts, cooperative agreements and other transactions to the FAA Acquisition Executive (FAE); provided that the Administrator is given an opportunity to review any grant or cooperative agreement (other than those awarded under the preexisting authority contained in 49 U.S.C. 44912, 44505, and 47101, et seq.), or other transaction with a total cumulative value equal to, or greater than $10 million, or which is of significant congressional interest.

The FAE subsequently redelegated this authority to the Chief of Contracting Office (COCO) for headquarters, service areas, and centers. The COCO may redelegate the authority to other qualified individuals, such as regional administrators, center directors, and purchase card program manager. Except for the purchase card program manager, the individuals receiving delegated authority from the COCO may not redelegate their authority.

The following factors, which are not all inclusive, typically indicate that the Administrator's review is required:

(a) The total cumulative value equals or exceeds $10 million; or

(b) The total cumulative value is less than $10 million, but the following conditions are present:

(i) The transaction is the subject of one or more congressional inquiries; or

(ii) The transaction is described in a statute, committee report, or agency budget; and

(iii) Either the schedule, performance, or estimated cost baseline will be significantly breached by 20% or more.

(2) *Execution of the Agreement.* The CO, or other employee who has been delegated such authority, executes the agreement on behalf of the FAA, provided that the estimated dollar value of the agreement does not exceed that individual's delegated authority.

h. *Legal Review.* All agreements require legal review prior to execution. Ideally, legal counsel should be involved at the early stages of the award process to assist with selection of the appropriate legal instrument, drafting appropriate terms and conditions, and other legal issues. AGC-7 in consultation with AGC-500 is responsible for providing legal review of all international government to government agreements and agreements with international quasi-governmental entities. In the Europe, Africa and Middle East (EAME) Region, AEU-7 provides legal review for agreements with foreign governments and quasi-governmental entities. AGC-500 and regional counsel are responsible for providing legal review on all other agreements and will consult with AGC-7 on any agreements that may have foreign policy implications.

i. *Chief Financial Officer Approval.* Agreements valued at $10 Million or more must be approved by the Chief Financial Officer (CFO) as required by AMS Guidance T3.2.1.4. The package submitted for CFO approval must include a justification as described in paragraph (c)(3) above as part of the business case. The justification must include a market analysis and supporting documentation for all alternatives considered.

j. *Disputes.* Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute may be resolved by the FAA Administrator, or designee whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding (see e.g. 49 U.S.C. 46110).

## 2 Section 106 Cooperative Agreements Revised 4/2013

a. *Applicability.*

(1) This section applies to cooperative agreements for services, supplies and real property issued under the authority of 49 U.S.C. 106 (l) and (m).

(2) FAA Order 9550.7A implements the Research Grants Program authorized by Public Law 101-508, Sections 9205, 9208, codified at 49 U.S.C. 44511, 44512 and Public Law 101-604, Section 107, codified at 49 U.S.C. 44912. Except for Chapter 8, Sections 1-4, 6-8, the provisions of FAA Order 9550.7A ***do not*** apply to cooperative agreements issued under the authority of 49 U.S.C. 106 (l) and (m).

b. *Authority.*

(1) *General*. In Public Law 104-264, Congress provided the FAA with specific authority to "enter into and perform …cooperative agreements…as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate" (see 49 U.S.C.

106(*l*)(6) and 106(m)). By its express terms, the statute applies to all activities of the agency and is not limited to research activities, or to non-profit entities (see for example, 49 U.S.C 44512).

(2) *Grants*. Public Law 104-264 does not provide new or additional authority to award grants, which continue to require specific program authority either in an appropriation or authorization statute.

c. *Definitions.*

(1) *Cooperative Agreement.* A cooperative agreement is a legal instrument used when the principal purpose of the relationship is to transfer a thing of value to a recipient, either public or private, to carry out a public purpose of support or stimulation authorized by law instead of acquiring (by purchase, lease or barter) property or services for the direct use or benefit of the agency and there is substantial Federal involvement in the activity. For example, the FAA might enter into a cooperative agreement with a university to provide funding to support research on fire resistant fabrics for use in aircraft that do not produce poisonous fumes. The agency's principal purpose is to stimulate the development of fire resistant fabrics to benefit the general public. The benefit to the FAA is indirect - improved safety for aircraft passengers, which also supports the mission of the FAA.

(2) *Grant.* A grant is similar to a cooperative agreement except that a grant does not require substantial involvement by the FAA in the performance of the effort. Substantial FAA involvement may be necessary when an activity is technically or managerially complex, or requires extensive close coordination with other federally supported work or multiple recipients.

d. *Appropriations.*

(1) *General Principles.*

(a) The core principles governing the obligation of Federal funds apply to cooperative agreements: appropriations may be used only for the purpose(s) for which they were made; funds must be obligated within the period of their availability and may not exceed the available appropriation. The bona fide need rule also applies; however, the prohibition against augmentation of obligations does not apply to transactions authorized by 49 U.S.C 106 and the credit back provisions of current and former FAA appropriations statutes.

(b) As a general rule, funds awarded under a cooperative agreement lose their character as Federal funds after award and are not subject to the same restrictions as when the Federal government itself spends appropriated funds. There are exceptions to this rule, including situations where a statute, program legislation, agency regulations or the grant agreement provides otherwise. For example, Title VI of the Civil Rights Act, 42 U.S.C. 2000d prohibits discrimination on the basis of race, color or national origin under any program or activity receiving Federal financial assistance. Similarly, the Rehabilitation Act of 1973, as amended, prohibits discrimination against handicapped individuals in any program or activity that receives Federal financial assistance.

(c) The statutory prohibition against advance payments does not apply, as the policy underlying the prohibition (payment for supplies and services upon receipt) is not relevant to an assistance relationship.

(d) F&E funds may be used for cooperative agreements only where the following three criteria are met: (a) the primary purpose is to benefit the public rather than FAA, (b) there is substantial FAA involvement, and (c) funds will be used to acquire, improve or establish air navigation facilities.

(2) *Office of Management and Budget (OMB) Circulars*. Several OMB Circulars impose restrictions on projects funded with Federal funds. In construing FAA's authority under 49 U.S.C. 106, the FAA's policy is to follow the guidance of these circulars to the extent such standards are consistent with the FAA's Acquisition Management System and the Administrator's authority to implement "such terms or conditions as the Administrator may deem appropriate."

(a) *Office of Management and Budget Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*."

(i) OMB Circular A-110 establishes pre-award and post-award standards for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. The circular does not apply to such awards or agreements where a statute specifically prescribes policies or specific standards that are inconsistent with the circular.

(ii) The circular defines an award as "financial assistance that provides support or stimulation to accomplish a public purpose." Awards include grants and other agreements in the form of money or property in lieu of money by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services in lieu of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals, and contracts which are required to be entered into and administered under procurement laws and regulations.

(b) *OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments.* (Note that sub-awards made by State and local governments to organizations covered by OMB Circular A-110 are covered by Circular A-110).

(c) *Allowable Costs.* The following OMB Circulars describe basic cost principles applicable to the organization incurring the cost. *(a) OMB Circular A-87, Cost Principles for State Local and Indian Tribal Governments, (b) OMB Circular A-122, Cost Principles for Non-profit Organizations*, excluding educational institutions and other organizations specified in the circular, and *(c) OMB Circular A-21, Cost Principles for Educational Institutions.*

(d) *Treatment of Commercial Organizations.* The FAA may extend the coverage of OMB Circular A-110 to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments and international organizations.

e. *Content.* All cooperative agreements shall be in writing and should contain the following provisions: (Examples of these provisions and other clauses are included in Appendix F. OMB Circulars A-110 and A-102 also provide additional guidance for cooperative agreements funded by appropriated funds.)

(1) A clear statement of purpose,

(2) The legal authority for the agreement,

(3) A description of the intended beneficiary,

(4) A description of the level of FAA involvement,

(5) The term of the agreement,

(6) Authority and procedure for modifications,

(7) Level of funding commitment and any limitations or conditions, e.g. milestone payments where the Government's share is distributed at the same ratio as the recipient's share,

(8) Recipient standards - cost accounting; financial management systems; procurement, technical capability, property management and management organization, technical capability,

(9) A fund citation and payment provision, if appropriate, or description of in-kind contribution of each party,

(10) Allowable Costs. Describe any unallowable costs, e.g. profit and fee,

(11) FAA's right to audit for a stated period of time,

(12) Mandatory clauses if Federal funds are obligated, e.g. anti-lobbying, compliance with civil rights laws (see subparagraph 2.d., *Appropriations*, above.**)**

(13) Small business opportunities,

(14) Suspension/termination (a cooperative agreement may not be transferred to another recipient without the express, written consent of the FAA prior to the transfer),

(15) Dispute resolution,

(16) Debarment/suspension. (Cooperative agreements funded with Federal funds should not be awarded to suspended or debarred entities (at any tier). Appropriate flow through provisions should be included in the Agreement to prohibit sub-awards to suspended or debarred parties.)

(17) Other terms and conditions, as appropriate, such as indemnification and intellectual property.

f. *Evaluation/Selection of Recipients.* Cooperative agreements may be awarded at the discretion of the FAA on a non-competitive basis; however competition is encouraged whenever practicable. The following factors and any others appropriate for the particular proposal should be considered:

(1) Technical merit and program value,

(2) Cost/contribution of the parties,

(3) Capability of the recipient to accomplish the objectives of the cooperative agreement.

g. *Justification.* Each cooperative agreement should be supported by a written justification describing the following:

(1) The purpose of the cooperative agreement,

(2) The expected benefit to the recipient and the general public,

(3) FAA's substantial involvement in performance of the activity, and

(4) The method for selection of the recipient(s).

h. *Administration.* Cooperative agreements awarded under this authority will be administered by the awarding activity subject to the continuing oversight of the FAA Acquisition Executive (ACQ-1), who is authorized to redelegate this authority, as appropriate.

## 3 Gifts and Bequests Revised 7/2006

Under 49 U.S.C. 326, the Administrator has the authority to accept any conditional or unconditional gift or donation of money or property, real or personal, or of services for the FAA. Property accepted under this authority and proceeds from the sale of that property must be used, as nearly as possible, under the terms of the gift. FAA Order 2700.20A implements the Administrator's gift authority and must be consulted in determining whether a transaction should be processed as a gift. Typically, a gift is characterized by the following criteria: (1) a unilateral transfer to the Government, with or without conditions; (2) the FAA is not obligated to provide anything in return; and (3) there is no continuing relationship with the donor. For example, an airport offers to purchase and provide the FAA with a system such as a MALSR, provided that the FAA places it at that airport, and the FAA is not required to provide anything in return, but is required to maintain the equipment. In that situation, the airport is making a gift and the organizational unit must process the transaction using the process of FAA Order 2700.20A. If the airport also requires FAA to service its MALSR's in return, a procurement contract should be used as the FAA would be procuring a system by providing services as consideration. If the airport retains title to the MALSR, but the FAA would be responsible for its maintenance, the agreement should be an "other transaction."

## 4 Interagency Procurement Revised 10/2010

a. Applicability. This section applies to interagency procurement of services, supplies and real property. An interagency procurement is a type of interagency transaction in which one Federal agency (requesting agency) uses the contract vehicles and/or contracting services of another Federal agency (servicing agency) or agencies in order to obtain supplies, services, or real property. This section does not apply to orders placed under the General Service Administration's Federal Supply Schedules contracts, which are covered by AMS Policy 3.8.3 and AMS Guidance T3.8.3 "Federal Supply Schedules."

b. Requirements.

(1) Procurement Laws and Directives. Where FAA procures services, supplies or real property through another Federal agency contract or uses its contracting services, FAA is subject to the procurement laws applicable to that agency. In a similar vein, unless authorized by statute or regulation, other Federal agencies may not conduct acquisitions using the FAA's exemptions from acquisition laws. Joint activities with DOD as defined in AMS Guidance T3.8.1.A.1(b)(2) may be conducted using FAA AMS policy and procedures.

(2) Best Interest Determination. Each interagency procurement in which FAA is the requesting agency must be supported by a written best interest determination. The procurement or real property contracting officer (CO), acting within the warrant authority commensurate with the total estimated dollar value of the requirement, approves the determination. If the procurement is valued at $10 million or more and requires CFO review and approval under AMS Guidance T3.2.1.4, the best interest determination must be done as part of the business case included in the CFO review package. The best interest determination must address the following elements:

(a) Suitability. Explain how use of the servicing agency's contract vehicle likely to result in a quality outcome that meets FAA's requirements and schedule, taking into account planning considerations described in AMS Policy 3.2.1 "Procurement Planning." For procurements valued at $10 million or more, the determination must include information on the market analysis conducted.

(b) Value. Explain how use of another Federal agency's contract vehicle the most efficient and cost-effective means of procuring the services, supplies, or real property, as opposed to using a current FAA contract vehicle or placing a new contract directly with a vendor. Any servicing agency fees should be taken into account in assessing value.

(c) Expertise. Explain how the procurement team, including both contracting and program personnel, have the appropriate time, training, and expertise to effectively place and administer the contract work. The procurement team would consist of FAA personnel for a direct procurement - those in which FAA places an order directly with the contractor on another Federal agency's contract. The procurement team would consist of servicing agency personnel, possibly working in conjunction with FAA personnel, for an assisted procurement – those in which the servicing agency provides contracting support (such as conducting a task order competition) in addition to agreeing to allow FAA to use its contract(s).

(3) Templates. When FAA is the requesting agency in an assisted procurement, T3.8.1.D.2, Attachment 2, Sample Interagency Agreement, must be used. The CO must ensure the roles and responsibilities of the respective parties are described clearly in the agreement, including specifics on tasks such as performance monitoring, inspection and acceptance, approval of invoice payments, and restoration and disposition of property. For direct procurements, no interagency agreement document is required, but COs and program office personnel must use any templates required by the servicing agency in placing the order.

(4) Unsolicited Proposals. An interagency procurement may be used for acceptance of an unsolicited proposal, in addition to use of a single source contract action as described in AMS Guidance T3.2.2.6.A.5. Unsolicited proposals must be considered and processed in accordance with AMS Policy 3.2.2.6 and AMS Guidance T3.2.2.6 "Unsolicited Proposals," but if an interagency procurement is used instead of a single source action, the interagency

procurement best interest determination would replace the single source justification required under T3.2.2.6.A.5(b)(2).

(5) Review and Approval. Review and approval requirements for interagency procurements are the same as those for other FAA procurements.

(6) Administration. The CO administering an agreement for an assisted interagency procurement must ensure that the terms and conditions agreed to by the parties are reviewed at least annually for agreements that exceed one year. The FAA review should involve the CO, program office, and other technical and legal experts as necessary. The review should consist of a reexamination of the agreement, as supported by the best interest determination, in order to assess whether the agreement is meeting the needs of FAA. If the agreement is not meeting FAA's needs, the review team should discuss these issues with the other party and amend or terminate the agreement as appropriate and allowed by the terms of the agreement. The annual assessment must be signed by the FAA CO and the reviewing official of the other party and documented in the agreement file.

(7) Documentation. COs entering into an agreement for an assisted interagency procurement must use the Interagency Agreement File Checklist in the FAST Procurement Forms when documenting the agreement file.

c. Authority.

(1) 49 U.S.C. 106(l) (6) should be cited as general authority for all assisted interagency procurement agreements.

(2) Where the FAA seeks to obtain supplies or services through another agency's prime contract and to make advance payments, the Economy Act, 31 U.S.C 1535 should be cited as additional authority for FAA. In most cases, the Economy Act also provides authority for the other Federal agency.

## 5 Reimbursable Agreements and Other Transaction Reimbursable Agreements

**Revised 7/2014**

a. *Applicability*. This section applies to reimbursable agreements for services, supplies and facilities where FAA is the servicing agency and another Federal agency or non-Federal entity is the requesting agency or the sponsor. There is no obligation of FAA funds associated with reimbursable agreements. This process does not apply to Small Scale Reimbursable Agreements (SSRAs), which are defined as reimbursable agreements with a total estimated value of less than $30,000.

b. *Requirements*.

(1) When FAA provides services, supplies, or facilities to another Federal agency or non-Federal entity, FAA is essentially a contractor and subject to the terms and conditions of the requesting agency. When possible, FAA should use FAA-approved templates. If not possible, FAA should ensure that the other (sponsor) Federal agency's or the non-Federal entity agreement addresses the content required by

T3.8.1A1.c(5). In addition to the requirements of AMS for reimbursable agreement, each CO must be familiar with and adhere to the requirements of FAA Order 2500.35D, the FAA's Financial Manual, and the FAA Reimbursable Agreement SOP referenced in T3.8.1A1.b(7).

(2) *Business Case Determination*. Each reimbursable agreement in which FAA is the servicing agency must be supported by a written business case determination that it is in the best interest of the agency to provide the service, supply or facility. The business case must also identify the benefits derived by FAA. This determination must be signed by the director of the program office, or their designated representative, and address the policy contained in Section 9 of FAA Order 2500.35D. The CO must ensure that one has been completed but determination as to whether or not the rational basis is appropriate and sufficient and whether to proceed with the reimbursable agreement lies with ABU. The CO will contact ABU with any concerns, and ABU will address them as needed with the program office.

c. *Reimbursable Agreement Process*.

(1) The program office will input a zero dollar purchase request (PR) into the PRISM system to initiate a CO's involvement. See No Cost Requisitions and Awards (FAA only).

(2) The CO coordinates with the program official based on their PR and business case to evaluate the requirement that is needed by the requesting agency and the reimbursable agreement template chosen by the agreement coordinator.

(a) If using a modifiable agreement template, the CO will work with the agreement coordinator to determine any unique terms and conditions.

(b) If the project sponsor/requesting agency requires that FAA use their reimbursable agreement template, then the CO will ensure compliance with T3.8.1A1.c(5) and that the FAA as the servicing agency has the ability to comply with the requesting agency's requirements.

(3) If there are any assets to be acquired as part of the reimbursable agreement that must be capitalized, the program office/agreement coordinator is responsible for identifying these assets in Section 4 of the reimbursable agreement. If Section 4 identifies assets, the CO must ensure that a copy of the agreement is provided to the Regional Capitalization Team and comply with FAA standardized asset capitalization procedures.

(a) Actual asset value may not be cited in the reimbursable agreement at time of execution; however, document must at least identify the asset.

(b) Software is an asset that must be capitalized.

(4) The program office is responsible for all aspects of pricing their services, supplies

or facilities to ensure full reimbursement. Any negotiations between the requesting agency and the servicing agency will be conducted by program officials, and not the CO. The CO will need to check the Reimbursable Datasheet specifically Section 3, and ensure that the agreement amount and overhead percentage amount match the pricing on the reimbursable agreement. If the data sheet states that the overhead has been waived, the CO should access the reimbursable tool to validate that a properly executed "Reimbursable Agreement Waiver Request Form" has been uploaded. Since there is no obligation of dollars by the FAA, the role of the CO is to document the agreement made between the requesting and servicing agencies.

(5) As the servicing agency, the CO will sign the reimbursable agreement first and then forward to the requesting agency for final signature. The CO must have specific reimbursable agreement warrant authority for the total estimated potential value of the reimbursable agreement to sign the agreement even though the CO is not obligating dollars. Upon receipt of a fully executed reimbursable agreement from the requesting agency the CO will "award" the document in PRISM and annotate in the "notes" section the corresponding reimbursable agreement number assigned by the reimbursable tool and distribute the document to all applicable parties.

(6) *Reimbursable Agreement Administration*.

(a) *Invoicing and Payment*. The Accounting Office prepares the invoice and sends to the requesting agency for payment according to the terms and conditions in the reimbursable agreement. If the requesting agency's payment is more than 30 days past due, the program official notifies the CO and the CO contacts the requesting agency for payment. If no payment is received in the next 30 days, the issue is raised to successive levels of management within the contracting office for resolution.

(b) *Funding Log*. The CO is responsible for maintaining, as part of the contract file, a funding log to track all funds received from sponsor, either lump sum or incremental funding distribution. Acceptance of these funds will be executed by the CO. *The Program office is also responsible for tracking the funds.*

(c) *Performance*. The program office is responsible for monitoring performance. If the FAA is unable to fulfill the terms of the reimbursable agreement, the program office must notify the CO to initiate discussions with the requesting agency and possible termination of the agreement.

(d) *Modifications*. For reimbursable agreements the FAA as a servicing agency is acting in the capacity of a contractor. If a modification is required to the reimbursable agreement the requesting agency will initiate the modification. However, if the requesting agency asks the CO of the servicing agency to write the modification the CO will sign it, and forward to the requesting agency for CO signature. In no event will the FAA CO obligate or deobligate requesting agency funds.

(e) *Incremental Funding*, Overruns, and Other Funding Notifications. The program office is responsible for tracking all expenditures and requesting

additional funds as required. As expenditures near 75% of available sponsor funding, the program office will notify the sponsor agency to ensure timely receipt of funding to prevent overruns.

(f) *Termination*. The servicing agency CO will be notified in the event any contract terms have been breached which may result in termination.

(g) *Closeout*. No charges may be incurred after the period of performance has expired. When performance is complete the CO will receive notice by email through the reimbursable tool. Included in the tool will be a closeout form that has already been validated by all responsible parties in the process. The CO will contact the requesting agency/sponsor by email to see if they have received all services, supplies or facilities as stated in the reimbursable agreement. When the CO receives an email response, then they can concur in the reimbursable tool. AMZ will send out an email notice through the reimbursable tool when the reimbursable agreement has been closed out. At this point the CO will go into PRISM and close the corresponding PRISM document.

(h) There is no file records retention requirement with reimbursable agreements as the reimbursable tool is the system of record and must contain all official documents.

## B Clauses

view contract clauses

## C Forms

view procurement forms

## D Appendix

### 1 Attachment 1 - Parallel Authorities

**49 U.S.C. 40108 -** authorizes the FAA to establish training schools for FAA officers and employees. Authorizes attendance of officers and employees of other Federal entities, governments of foreign countries, and individuals from the aeronautics industry. Authorizes the Administrator to "*require payment or transfer of amounts or other consideration to offset the additional cost*" of any *of "those officers, employees, or individuals*." **Amounts received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.**

**49 U.S.C. 40113(e) -** authorizes the Administrator to provide safety-related training and

operational services to foreign aviation authorities with or without reimbursement. **Funds received shall be credited to the appropriation from which the expenses were incurred.**

**49 U.S.C. 44502 (a)(2) -** authorizes the Administrator to make an agreement with an airport owner or sponsor (includes a private owner of a public use airport) so that the owner or sponsor will provide site preparation work associated with acquiring, establishing, or improving an air navigation facility and be paid or reimbursed from the appropriated amounts (under section 48101(a)).

**49 U.S.C. 44502(d) -** authorizes the FAA to provide, by regulation, assistance, and sale of fuel, oil, equipment and supplies to an aircraft in an emergency. **The cost of the assistance may be credited to the appropriation from which the cost was paid.**

**49 U.S.C. 47301 - 47305 -** provides authority to acquire, establish and construct airport property and airway property (except meteorological facilities) in foreign territory, authority to transfer property, train foreign citizens, accept payment from a government of a foreign country or international organization for facilities or services provided the government or organization, and **authority to credit funds so received to current appropriations**.

**49 U.S.C. 44903(c) -** provides authority to the Administrator to authorize an airport operator to use on a reimbursable basis, personnel employed by the Administrator, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality, to supplement State, local, and private law enforcement personnel.

**49 U.S.C. 44505(d) -** authorizes cooperative agreements on a cost-shared basis for research, engineering and development with Federal and non-Federal entities.

**49 U.S.C. 44912 -** authorizes grants and cooperative agreements for research technologies to counter terrorist acts against civil aviation.

**49 U.S.C. 44913 -** authorizes grants under the Explosive Detection K-9 Team Training Program.

**49 U.S.C. 44935(c)(2) -** authorizes reimbursement for travel, transportation, and subsistence expenses for security training of non-United States Government domestic and foreign individuals whose services will contribute significantly to carrying out civil aviation security programs.

**49 U.S.C. 47104 -** authorizes project grants for airport development from the Airport and Airway Trust Fund**.**

**49 U.S.C. 47151 -** authorizes the Administrator to give an interest in surplus airport property to a State, political subdivision of a State, or tax supported organization. Such surplus property may be used by the U.S. Government without charge if the President declares a national emergency.

## 2 Attachment 2 - Sample Interagency Agreement Revised 10/2007

**INTERAGENCY**

**AGREEMENT BETWEEN**

**THE FEDERAL AVIATION ADMINISTRATION (FAA)**

**an d**

**[*CO insert name of other agency*] [*CO insert agreement number*]**

### ARTICLE I. PARTIES

[*CO also insert for both parties: Business Partner Network (BPN) number; Treasury Account Symbol (TAS) or appropriation code; and Business Event Type Code (BETC)*]

### ARTICLE 2. SCOPE

a. Purpose:

The purpose of this Agreement between the Federal Aviation Administration (FAA) and [*CO insert name of the other agency*] is to [*CO insert description of the work to be performed.*]

b. Specific goals and objectives to be accomplished. [*CO describe the goals and objectives to be accomplished.*]:

c. Roles and responsibilities. [*CO describe roles and responsibilities of the parties.*]

### ARTICLE 3. EFFECTIVE DATE and TERM

This Agreement is effective on the date of the last signature and shall continue in effect until [*CO insert completion date of the interagency agreement*], or until earlier terminated by the parties, as provided herein.

### ARTICLE 4. DELIVERY/PERFORMANCE

Work shall be accomplished according to the following

schedule: [*CO insert work schedule to be followed in*

*performing the work.*]

**ARTICLE 5. REPORTING REQUIREMENTS**

[*CO describe method and frequency of reporting requirements, e.g. performance (revenue and expenses) reporting, Program Plans, Technical Reports, Progress Reports or Milestone Reporting, including financial reports, if required.*]

**ARTICLE 6. RELEASE OF TECHNICAL DATA**

No information, oral or written, concerning the results or conclusions made pursuant to this Agreement shall be published or released to the public without the prior written approval of the FAA Contracting Officer.

**ARTICLE 7. LEGAL AUTHORITY**

This Agreement is entered into under the authority of the Federal Aviation Act of 1958, 49 U.S.C. 106(1) and 106(m), and 31 U.S.C. 1535.

> [*Note 1. If this is a joint activity with Department of Defense (see T.3.8.1.b.2, Joint Activities with DOD), also cite 49 U.S.C. 40121(c) 2.*]

**ARTICLE 8. POINTS OF CONTACT**

FAA Program Office/Technical Officer

_____

FAA Contracting Officer

_____

FAA Accounting Office

_____

Federal Agency

_____

_____

Address

_____

_____

**ARTICLE 9. FUNDING AND PAYMENT**

a. Funds in the amount of $[*CO insert amount*] are hereby obligated to this Interagency Agreement. Obligation is chargeable to Appropriation Code:

[*CO insert appropriation code here*] [*CO insert PR number here*]

[*CO insert information about expiration date of funding*]

b. A properly executed request for payment should be submitted to the FAA at the billing address identified below.

**Billing Address:**

_____

_____

Federal Aviation Administration

**c. Method of Payment**

[*CO insert description of method of payment*]

d. Upon termination or expiration of this Agreement, any FAA funds which have not been spent or obligated for allowable expenses prior to the date of termination and are not reasonably necessary to cover termination expenses shall be returned to the FAA.

> [*Note 2. When the Economy Act is cited as authority, funds must be obligated by the servicing agency prior to their expiration, i.e. if the servicing agency is to perform the work itself, performance of the work must begin prior to that date. If the agency is to acquire the product or service through contract, the contract must have been executed and funds obligated to the contract prior to their expiration date. Any funds not properly obligated must be returned prior to their expiration date.*]
>
> [*Note 3. Describe any other funding limitations, e.g. limits on the use of FAA funds for a multi-year contract.*]
>
> [Note 4. *If applicable, insert provisions for advance payments and method of liquidating the advance*]

**ARTICLE 10. LIMITATION OF FUNDS**

The FAA's liability to make payments to [*CO insert name of other agency*] is limited to the amount of funds obligated hereunder, including written modifications to this Agreement.

**ARTICLE 11. APPROVAL OF PRIME CONTRACT/MODIFICATIONS**

> [*Note 5. If the FAA will obtain products or services through the other Federal agency's contractor, describe the role of the FAA Contracting and Legal Offices. Typically, the FAA reviews the underlying contract and modifications, drafts the statement of work and provides other technical assistance prior to award. FAA legal*

*reviews the underlying contract to determine if it is in compliance with FAA specific statutes and funding limitations. The following is suggested:*]

Prior to executing any contract or modification to an existing contract in order to fulfill the requirements of Article [*CO insert Article Number*] of this Agreement, the [*CO insert name of other agency*] agency shall provide the FAA Contracting Officer with a copy of the contract or modification. The written concurrence of the FAA Contracting Officer shall be obtained by [*CO insert name of other agency*] prior to contract award, or execution of the modification.

**ARTICLE 12. CHANGES, MODIFICATIONS**

a. Changes and/or modifications to this Agreement shall be in writing and signed by a FAA Contracting Officer and the Contracting Officer of [*CO insert name of other agency*] Agency, or their duly authorized representatives acting within the scope of their authority. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement. All requests for interpretation or modification shall be made in writing.

b. The FAA Technical Officer identified in Article 8 is responsible for the technical administration of this Agreement. The FAA Technical Officer is not authorized to make any changes that impact the cost, schedule or performance of this Agreement without the written consent of the FAA Contracting Officer.

**ARTICLE 13. TERMINATION**

Either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, plus termination costs if any, in each case on or prior to the termination date)by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

[*CO will insert here any additional termination requirements that may apply, e.g. disposition of data, return, or other disposition of property to either party.*]

**ARTICLE 14. ORDER OF PRECEDENCE**

In the event of any inconsistency between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

a. The Agreement

b. The Attachments

**ARTICLE 15. PROTECTION OF INFORMATION**

The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

[*If appropriate, the CO may include specific provisions governing the release of data developed under the Agreement.*

**ARTICLE 16. DISPUTES**

Where possible, disputes will be resolved by informal discussion between the parties. If the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved pursuant to the procedures and standards of the Business Rules for Intragovernmental Transactions delineated in the Treasury Financial Manual, Volume 1, Bulletin 2007-03, Section VII.

**AGREED:**

| Federal Agency | Federal Aviation Administration |
|---|---|
| BY: _____ | BY: _____ |
| TITLE: _____ | TITLE: _____ |
| DATE: _____ | DATE: _____ |

**3 Attachment 3 - Sample Intra-agency Agreement** **Revised 10/2007**

INTRA-AGENCY AGREEMENT BETWEEN
NORTHWEST MOUNTAIN VIDEO PRODUCTIONS (FAA) AND
DEPARTMENT OF TRANSPORTATION (OST)

The Northwest Mountain Video Productions group (ANM Video Productions) and the Department of Transportation (OST) mutually agree to the following:

**FAA RESPONSIBILITIES**

The responsibilities of ANM Video Productions under this agreement include but are not limited to the following:

a. Provide a broadcast quality video production including storyboard construction, scripting, taping, editing, and graphics/animation not to exceed 20 finished minutes. The video (1DOT Safety Video) shall be approximately 15 minutes in length and depict safety messages provided by the various modals of the Department of Transportation.

b. Completion of video storyboard by August 15,1998.

c. Completion of video script by November 25, 1998.

d. Completion of location taping with professional talent by December 9, 1998.

e. First cut video completion by January 15, 1999.

f. Delivery of the finished product, with a BetaCam SP master (9 master tapes total) for distribution to OST and each participating modal on or before January 31, 1999.

g. Distribution of one VHS format duplicate to OST and each participating modal administration.

**DOT RESPONSIBILITIES**

The Department of Transportation (OST) will reimburse ANM Video Productions (FAA) for the total cost of the product, including master tapes and VHS copies, in the amount of $50,000.00.

Accounting Code *[CO to insert accounting code here]*

**Billing Address**

_____

_____

| NORTHWEST MOUNTAIN<br><br>VIDEO PRODUCTIONS (FAA) | DEPARTMENT OF TRANSPORTATION (OST) |
|---|---|

By _____ By _____

Title _____ Title _____

Date _____ Date _____

**4 Attachment 4 - Sample Other Transaction - MOA with State, Municipality or Private Entity** **Revised 10/2007**

**MEMORANDUM OF AGREEMENT BETWEEN**

**FEDERAL AVIATION ADMINISTRATION**

**(FAA) AND**

***[CO insert Name of non-Federal Party (Parties)]***

**ARTICLE I. PARTIES**

The parties to this Agreement are the Federal Aviation Administration (FAA) and [*CO insert name of Non-Federal party*]

**ARTICLE 2. SCOPE**

a. Purpose:

The purpose of this Agreement between the Federal Aviation Administration (FAA) and [*CO insert name of Non-Federal party*] is to [*CO insert description of purpose of the agreement*].

b. Specific goals and objectives to be accomplished:

c. Management of the project:

d. Roles and responsibilities:

Parties are bound by a duty of good faith and best effort in achieving the goals of the

Agreement e. Contributions of the Parties:

*[CO describe the contributions of each party, e.g. cost-share arrangement, in-kind contributions and total estimated project cost for both parties. Describe any limitations, e.g. risk of loss for in- kind contributions, responsibility for repairs, refurbishment, and disposition.*]

f. Type of Agreement:

This Agreement is an "other transaction". It is not intended to be, nor shall it be construed as, a partnership, corporation, or other business organization.

**ARTICLE 3. EFFECTIVE DATE and TERM**

The effective date of this Agreement is the date on which it is signed by the FAA or [*CO insert name of non-Federal party*], whichever is later. This Agreement shall continue in effect until [*CO insert completion date*] or until earlier terminated by the parties as provided herein.

**ARTICLE 4. MILESTONES**

Work shall be accomplished according to the following milestones. [*CO insert information in the following spaces.*]

*Note. This schedule should be tailored as appropriate.*

| **Milestone** | **Completion Date** | **Responsible Party** |
|---|---|---|

| | | |
|---|---|---|
| Sign Agreement | _____ | _____ |
| Detailed SOW | _____ | _____ |
| Subcontract Selection(s) | _____ | _____ |
| Subcontract Approval(s) | _____ | _____ |
| Subcontract Award(s) | _____ | _____ |
| Project Completion | _____ | _____ |

**ARTICLE 5. REPORTING REQUIREMENTS**

[*CO describe here reporting requirements, e.g. Program Plans, Technical Reports, Progress Reports or Milestone Reporting, including financial reports, if required.*]

**ARTICLE 6. INTELLECTUAL PROPERTY**

a. Rights in Data

The Government retains Government Purpose Rights in all data developed under this agreement.

"Data" means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information.

"Government Purpose Rights" means the rights to –

> (1) Use, modify, reproduce, release, perform, display, or disclose data within the government without restriction; and,
>
> (2) Release or disclose technical data outside the government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for government purposes.

"Government Purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive acquisition by or on behalf of the government but do not include the rights to use, modify, reproduce, release, perform, display, or disclose data for commercial purposes or authorize others to do so.

b. Rights in Inventions

The respective rights of the Government and the other parties to this agreement are the same as those found at T.5-10 "Patent Rights – Retention by the Contractor (Short Form).

> *Note. This intellectual property provision is an example. Parties should carefully evaluate and include appropriate intellectual property provisions depending on the nature of the Agreement. For example, the FAA may wish to disclose technical data to the public for commercial or other purposes, which is not covered under the government purpose license described herein. Additionally, the Bayh-Dole Act, which governs rights in inventions made under funding agreements does not apply to agreements under the FAA's "other transaction" authority)*

**ARTICLE 7. LEGAL AUTHORITY**

This Agreement is entered into under the authority of 49 U.S.C. 106(1) and (m), which authorizes agreements and other transactions on such terms and conditions as the Administrator determines necessary.

**ARTICLE 8. POINTS OF CONTACT**

FAA Program Office/Technical Officer

_____

_____

_____

Non-FAA Party

_____

FAA Contracting Officer

_____

_____

**ARTICLE 9. FUNDING AND PAYMENT**

a. The FAA will contribute $ [*CO insert amount*] as its share of the cost to perform this Agreement. The [*Co insert name of non-Federal party*] will contribute [*CO describe schedule of in-kind contributions, if any*]. Funds in the amount of $[*CO insert amount*] are hereby committed for the term of this Agreement. Obligation is chargeable to Appropriation Code [*CO insert appropriation code*] in procurement request number[*CO insert number*].

b. A properly executed request for payment should be submitted to the FAA at the billing address identified below.

**Billing Address:**

_____

c. In the event of termination or expiration of this Agreement, any FAA funds which have not been spent or obligated for allowable expenses prior to the date of termination, and are not reasonably necessary to cover termination expenses shall be returned to the FAA.

**ARTICLE 10. LIMITATION OF FUNDS**

The Government's liability to make payments to [*CO insert name of non-Federal party*] is limited to the amount of funds obligated hereunder, including written modifications to this Agreement.

**ARTICLE 11. APPROVAL OF SUBCONTRACTORS**

The Contracting Officer shall be reasonably notified in advance of entering into any subcontract. Any subcontractors and outside associates or consultants required by the contractor in connection with the services covered by this Agreement shall be limited to individuals or firms that are specifically agreed to by all parties. The contractor must obtain the Contracting Officer's written consent before placing any subcontract.

**ARTICLE 12. AUDITS**

The Government has the right to examine or audit relevant financial records for a period not to exceed three years after expiration of the terms of this Agreement. The contractor/subcontractor must maintain an established accounting system that complies with generally accepted accounting principles. Commercial companies should ensure their record retention policies comply with this policy.

**ARTICLE 13. CHANGES, MODIFICATIONS**

Changes and/or modifications to this Agreement shall be in writing and signed by a FAA Contracting Officer and the [*CO identify representative or designee*] of [*CO insert name of non- Federal party*]. ]. The modification shall cite the subject Agreement, and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement.

**ARTICLE 14. TERMINATION**

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

[*CO should include any additional termination requirements that may apply, e.g. return of property to either party or other method of disposition*].

## ARTICLE 15. ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

(a) The Agreement,

(b) The Attachments.

## ARTICLE 16. CONSTRUCTION OF THE AGREEMENT

This Agreement is an "other transaction" issued under 49 U.S.C 106 (1) and (m) is not a procurement contract, grant or cooperative agreement. Nothing in this Agreement shall be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.

Each party acknowledges that all parties hereto participated equally in the negotiation and drafting of this Agreement and any amendments thereto, and that, accordingly, this Agreement shall not be construed more stringently against one party than against the other.

## ARTICLE 17. DISPUTES

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved by [*CO describe internal dispute resolution process, e.g. management of either party, or an oversight committee*]. The decision is final unless it is timely appealed to the FAA Administrator, whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding.

## ARTICLE 18. WARRANTIES

The FAA makes no express or implied warranties as to any matter arising under this Agreement, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that may be provided under this Agreement.

## ARTICLE 19. INSURANCE

[*CO insert name of non-Federal party*] shall arrange by insurance or otherwise for the full protection of [*CO insert name of non-Federal party*] from and against all liability to third parties arising out of, or related to, its performance of this Agreement. The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by [*CO insert name of non-Federal party*], its employees, or contractors, or any third party acting on its behalf. [*CO insert name of non-Federal party*] agrees to hold the United States harmless against any claim by third persons for injury, death or property damage arising out of or in connection with its performance under this Agreement.

## ARTICLE 20. LIMITATION OF LIABILITY

Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of [*CO insert amount*] funding obligated under this Agreement at the time the dispute arises. In no event shall the FAA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

**ARTICLE 21. LOWER TIER AGREEMENTS**

[*CO insert name of non-Federal party*] shall include Articles [*CO insert article numbers*] suitably modified in all lower tier Agreements, regardless of tier).

**ARTICLE 22. CIVIL RIGHTS ACT**

*[CO insert name of non-Federal party*] shall comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in Federally assisted programs and provide a certification to that effect.

**ARTICLE 23. OFFICIALS NOT TO BENEFIT**

AMS Clause 3.2.5-1, "Officials Not to Benefit" and Clause 3.2.5-7, "Disclosure Regarding Payments to Influence Certain Federal Transactions" are attached hereto and incorporated by reference into this Agreement.

**ARTICLE 24. PROTECTION OF INFORMATION**

The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

**AGREED:**

| TBD | Federal Aviation Administration |
|---|---|
| BY: _____ | BY: _____ |
| TITLE: _____ | TITLE: _____ |
| DATE: _____ | DATE: _____ |

**5 Attachment 5 - Sample Other Transaction - Memorandum of Understanding (MOU)**

**Revised 10/2007**

**MEMORANDUM OF UNDERSTANDING THE FEDERAL AVIATION ADMINISTRATION**

**AND**

**XYZ**

**1. Parties**

The parties to this Memorandum of Understanding ("MOU") are the Federal Aviation Administration ("FAA") and XYZ.

**2. Objectives**

The objectives of this MOU are as follows:

(a)_____

(b)_____

**3. Responsibilities of the Parties**

(a) FAA

_____

(b) XYZ

_____

**4. Funding**

**No funds are obligated under this MOU**. Each party shall bear the full cost it incurs in performing, managing, and administering its responsibilities under this MOU.

**5. Warranties**

Neither the FAA nor [*Insert name of other party*] makes any express or implied warranty as to any matter arising under this MOU.

**6. Protection of Confidential/Privileged Information**

Each party shall take appropriate measures to protect proprietary, privileged or otherwise confidential information obtained as a result of its activities under this MOU.

**7. Construction**

The parties understand and agree that this Memorandum of Understanding does not confer any legal rights, duties or obligations on either party and is not subject to dispute in any forum. Neither party is authorized or empowered to act on behalf of the other with regard to any matter, and neither party shall be bound by the acts or conduct of the other in connection with any activity under this MOU. This provision shall survive termination of this MOU.

**8. Effective Date/Term/Termination**

This MOU shall be effective on the date of the last signature of the parties and shall remain in force until terminated by mutual agreement or unilaterally by either party upon 30 days notice to the other party.

**9. <u>Authority</u>**

The authority for this MOU is 49 U.S.C. 106 (f)(2)(A) and 106(*l*) and (m).

| **XYZ** | **Federal Aviation Administration** |
|---|---|
| By _____ | By _____ |
| Title _____ | Title _____ |
| Date _____ | Date _____ |

**6 Attachment 6 - Sample Section 106 Cooperative Agreement** **Revised 4/2013**

**COOPERATIVE AGREEMENT DTFAOI-98-C-00000 Between ABC AIRLINES, INC. and the FEDERAL AVIATION ADMINISTRATION**

*Cooperative Agreement Letter*

The Federal Aviation Administration hereby enters into Cooperative Agreement No. DTFAO I-98-C-00000 with:

ABC Airlines, Inc.

in accordance with the contributions designated in this document in Article III, Contributions of the Parties. The total funded amount of this Agreement is:

$xxxxxx xx

The purpose of this Cooperative Agreement is to develop full Computer Assisted **Passenger Screening (CAPS) functionality for ABC Airlines, Inc.**

The period of performance for this Cooperative Agreement extends from the final signature date below to September 30, 1998. The terms and conditions of this Cooperative Agreement

are described in the following pages. ABC Airlines, Inc. and the Federal Aviation Administration acknowledge acceptance of this Cooperative Agreement and agree to abide by all of the terms and conditions set forth herein. In WITNESS WHEREOF, the parties hereto affix their signatures as follows:

_____ _____
For ABC Airlines, Inc. For the FAA

_____ _____
Name Name

_____
Date of Signature Date of Signature

***COOPERATIVE***

***AGREEMENT DTFAOI-98-***

***C-00000***

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***1. GENERAL***

***PROVISIONS A. Parties***

***to the Agreement***

*The parties to this Cooperative Agreement (hereinafter the "Agreement') are as follows:*

*1. The Federal Aviation Administration (FAA), an agency of the Department of Transportation, United States Government,*

*2. ABC Airlines, Inc., (hereinafter designated "Lead Carrier"), a privately held for profit air carrier corporation subject to regulation by the FAA.*

***B. Effective Date and Milestones***

*The effective date of this Agreement is the last date of signature on the foregoing bilateral agreement letter. The following schedule applies for implementation of CAPS:*

*Milestone Completion Date Responsibility*

*Sign Cooperative Agreement 4/98 FAA, Lead Carrier*

*Convene Initial CAMCOM N/A Lead Carrier*

*Submit CAPS Development Plan 1/98 Lead*

*Carrier Submit Initial Monthly Progress Rpt**

*Lead Carrier Submit Initial Budget Rpt** Lead*

*Carrier*

*Approve CAPS Development Plan 4/98 FAA*

*Commence All CAPS Installations 3/98 Lead*

*Carrier Complete All CAPS Installations Lead*

*Carrier Conduct Alpha Testing 1/98 Lead Carrier*

*Conduct Beta Testing 3/98 Lead Carrier*

*Commence Full Operations 7-98 Lead Carrier*

** Monthly reports thereafter*

***C. Authority***

*This Agreement is authorized by 49 U.S. C. 106(l)(6), which permits the Administrator*

*to enter into cooperative agreements on such terms and conditions as the Administrator*

*may*
*consider appropriate. In addition, this Agreement is undertaken pursuant to a specific mandate by the White House Commission on Aviation Safety and Security pertaining to implementation of automated domestic passenger profiling. The goal of the Commission and of this Agreement is to raise the level of airline security for the traveling public.*

***II. DESCRIPTION OF THE COMPUTER ASSISTED PASSENGER SCREENING (CAPS) IMPLEMENTATION EFFORT***

***A. Background***

*During 1994 and 1995, ABC Airlines, in concert with the FAA's Aviation Security Research and Development, Human Factors Program, conducted research into Computer Assisted Passenger Screening*

*(CAPS). The purpose of the research was to evaluate the feasibility of creating a process to aid security personnel in assessing the threats posed (or not posed) by particular passengers traveling on civil aircraft.*

***B. Objectives***

*The objectives of this Agreement are to achieve:*

> *(1) Successful implementation of the basic CAPS program, as defined herein.*
>
> *(2) Development of computer software interfaces and data retrieval methods for adapting CAPS.*

***C. Scope***

*Lead Carrier will use the funds and in-kind contributions provided to it by the FAA, its own funds and in-kind contributions, and as appropriate, other resources as Lead Carrier is able to advance in achieving the foregoing objectives.*

*CAPS software must be Year 2000 compliant. This means that the software must accurately process date/time data, including but not limited to, calculating, comparing, and sequencing from, into, and between the twentieth and twenty-first centuries, the years 1999 and 2000, and leap year calculations. Furthermore, Year 2000 compliant technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time data with it.*

*Configuration Management of CAPS requirements and changes shall comply with FAA Security Division (ACS) directives and ACSSP amendments/changes.*

***D. Coordination with Related Programs***

*The parties agree that this effort will be undertaken in coordination with other programs underway to raise the level of airline security for the traveling public, provided that no FAA funds obligated under this Agreement are used to finance or assume any obligation for other programs or initiatives, except by mutual written agreement.*

***III. CONTRIBUTIONS OF THE PARTIES***

*The contributions of the parties to this Agreement are as follows:*

***A. FAA Contributions***

***1. Cash Contributions***

*The FAA will provide cash contribution to the Lead Carrier as shown below.*

***2. In-kind Contributions***

*The FAA will provide the following in-kind contributions as Government Furnished Information (GFI) subject to a schedule to be jointly determined by the parties:*

_____

_____

***3. Other Contributions***

*In addition to cash and in-kind contributions, the FAA will use best efforts to provide appropriate assistance, such as technical advice, to Lead Carrier from and through FAA operational organizations.*

***B. Lead Carrier Contributions***

*Lead Carrier will contribute any necessary cash and in-kind resources required in excess of the FAA's contribution to achieve the objectives of this Agreement.*

***C. Limitation of Funds***

*Notwithstanding any other provision herein, and unless expressly agreed in writing, the FAA's total cash contribution shall in no event exceed $xxxxxx. Except as expressly stated in this Agreement, the FAA assumes no liability or obligation in connection with the implementation of CAPS functionality for any air carrier.*

***D. Reimbursement of Costs***

*The parties agree that the FAA level of funding may not be, nor is it intended to be, sufficient to cover the costs of implementing CAPS as described in this Agreement. In the event that Lead Carrier's cash requirements are less than the FAA level of funding provided, Lead Carrier agrees to return any remaining funds to the FAA at the conclusion of this Agreement. Subject to*
*the Limitation of Funds above, funds will be provided to Lead Carrier according to the following schedule:*

• *Fifty-percent (50%) of total amount $xxxxxx.*

• *Fifty-percent (50%) of total amount $xxxxxx.*

*These funds will serve to reimburse to a partial extent all reasonable, allowable, and allocable costs, excluding profit or fee in connection with such costs. In addition, while FAA funds may be used for the direct, general, and administrative expenses of accomplishing the objectives of this Agreement, in no case shall these funds be used for payment of legal or other costs for Lead Carrier relating to the formation of this Agreement. Lead Carrier will be accountable to FAA for the management of these funds and for any income earned on such funds while held in account*
*by Lead Carrier, consistent with AMS T.3.8.1.*

*Financial reporting for funding will be in accordance with Article V, Required Submissions to the FAA.*

***E. Selection of Alternatives***

*The FAA and Lead Carrier agree on the alternative CAPS development method as proposed by the Lead Carrier and evaluated by the FAA.*

***IV. TECHNICAL DIRECTION***

*The parties agree on the following organization and roles for management of this Agreement.*

***A. Management Structure***

*The CAPS implementation effort will be managed by a Cooperative Agreement Management Committee ("CAMCOM") consisting of one advisory FAA representative, the Cooperative Agreement Technical Representative (CATR), AAR-600 from the Security Equipment Product Team, Lead Carrier representation as the lead air carrier, and ABC Airlines representation (advisory only). The CAMCOM will be chaired by Lead Carrier, which agrees that the FAA and its contractors may attend and participate in all CAMCOM sessions in an advisory capacity.*

*Lead Carrier will appoint a CAPS Implementation Project Manager who will report to the CAMCOM on all operational matters and who will carry out the technical and administrative requirements of this Agreement. The Project Manager will be responsible for providing the information and documentation discussed in Article V, "Required Submissions to the FAA.*

***B. FAA Role***

*The work performed under this Agreement is not subject to the technical direction of the FAA. The FAA CATR will perform oversight to ensure that Government funding is expended in a prudent, efficient, and effective manner. The FAA CATR is not authorized to alter the terms and conditions of this Agreement.*

***V. REQUIRED SUBMISSIONS TO THE***

***FAA A. CAPS Functional Specification***

*Lead Carrier shall provide a copy of the CAPS Functional Specification, for Lead Carrier's own implementation of CAPS. The Functional Specification shall demonstrate the traceability or mapping of the FAA CAPS Policy Requirements Document and all amendments to the CAPS Functional Specification of Lead Carrier. The traceability or mapping shall describe how each specific CAPS policy requirement is satisfied by the corresponding element of the Functional Specification.*

***B. CAPS Operational Readiness Plan***

*Lead Carrier shall provide a copy of the CAPS Operational Readiness Plan to the FAA. The CAPS Operational Readiness Plan shall describe the approach for determining the completeness and readiness of Lead Carrier to bring CAPS into full operational use. The Plan shall include, but not be limited to, the following elements: (1) training completions; (2) operational procedures; (3) systems management; (4) system security; (5) maintenance; and (6) performance monitoring of CAPS as required by FAA CAPS Policy Requirements Document and all subsequent addendums.*

***C. CAPS Quality Assurance Plan***

*Lead Carrier shall provide a copy of the CAPS Quality Assurance Plan to the FAA. The Quality Assurance Plan shall describe all activities being performed by Lead Carrier to assure the quality of all CAPS processes and products, including all CAPS life cycle artifacts and operational procedures.*

***D. CAPS Project Plan***

*Lead Carrier shall provide a copy of the CAPS Project Plan to the FAA. The Project Plan shall describe all milestones, along with the work breakdown structure to accomplish the milestones.*

***E. CAPS Monthly Project Report***

- *Lead Carrier shall submit a CAPS Monthly Project Report to the FAA. The Progress Report shall include at the minimum the following information elements:*
- *Accomplishments for the past month against the project plan,*
- *Known technical risks in terms of a description of each risk, abatement strategies for each risk, and an indication of whether the risk is increasing or decreasing over the period,*
- *Any updates to the CAPS Project Plans,*
- *Progress expected to be made in the upcoming month against the current Project Plan.*

***F. Alpha Test Plan and Report***

*The first test is intended to be a non-operational (not live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Alpha Test Plan to the FAA. The Test Plan shall describe the traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS alpha test shall be performed in accordance with a FAA approved test plan in an environment that will not affect the real- time operational aspects of the on-line computer reservation system. The test performed shall exercise all aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.*

*Lead Carrier shall provide formal written results to the FAA of alpha tests conducted at each CAPS implementation site. The alpha test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness alpha testing as required, and to mandate additional testing as needed.*

***G. Beta Test Plan and Report***

*The second test is intended to be an operational (live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Beta Test Plan to the FAA. The Test Plan shall describe the traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS beta test shall be performed in accordance with an FAA approved test plan in an environment that affects the real-time operational aspects of the on-line computer reservation system. The tests performed shall exercise all aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.*

*Lead Carrier shall provide formal written results to the FAA of beta tests conducted at each CAPS implementation site. The beta test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness beta testing as required, and to mandate additional testing as needed.*

***H. Verification of System/Software***

*Lead Carrier shall develop and use software test programs and test data to verify the correct design and construction of the CAPS software, and to correct performance of CAPS in an operational environment. In lieu of developing completely new test software and test data,*

*Lead Carrier may utilize verification products included within the ABC Airlines developed version of CAPS. The FAA reserves the right to inspect CAPS software and systems components, and to witness actual tests performed by Lead Carrier using the test software and data. The FAA also reserves the right to utilize its own test data to verify the correct performance of CAPS.*

***I. Budget Report***

*The CAMCOM will provide the FAA CATR with monthly budget updates, to be prepared in a format jointly agreed to by the parties. The budget and updates are management documents prepared for the purpose of estimating project costs in the aggregate, and the fact that a cost or category of cost is not specifically identified in the budget shall not make such cost or cost category unallowable pursuant to Article III.D, Reimbursement of Costs.*

***Summary of Deliverables and Schedule:***

*CAPS Functional Specification 30 days after execution of Cooperative Agreement*

*CAPS Operational Readiness Plan 60 days after execution of Cooperative*

*Agreement CAPS Quality Assurance Plan 60 days after execution of Cooperative*

*Agreement CAPS Project Plan 30 days after execution of Cooperative Agreement*

*CAPS Monthly Project Report 5 days after end of month*

*Alpha Test Plan and Report 30 days prior to test. Report: IO days after completion of*

*test. Beta Test Plan and Report 30 days prior to test. Report: 10 days after completion*

*of test. Verification of System/Software As requested*

*Budget Report 5 days after end of month*

** "Days" as shown are calendar days.*

***VI. INTELLECTUAL PROPERTY RIGHTS***

*The parties agree to the following stipulations regarding technology (software or otherwise) which may be developed as a consequence of this Agreement. Lead Carrier will ensure that all current and future carriers using the same CRS will have full access to CAPS functionality.*

***A. Ownership Rights in Developed Technology***

*All intellectual property created or developed in the performance of this Agreement, whether in the form of patentable subject matter, copyright, trade secret information, "know-how', or other intellectual property shall, as between the FAA and Lead Carrier, become and remain the property of Lead Carrier, either directly or by assignment from the FAA, subject only to*

*the FAA's rights under subparagraph B. of this Article.*

***B. U.S. Government Rights in Developed Technology***

*The FAA shall retain, reserve, and be granted by Lead Carrier as applicable a non- exclusive, non-transferable, irrevocable, paid-up license to use for U.S. Government purposes only, and to permit other U.S. Government agencies to use for U.S. Government purposes only, any or all of the developed technology resulting from this Agreement throughout the world. Neither the FAA nor any other U. S. Government agency shall permit any person or entity other than Lead Carrier to use the developed technology in whole or in part for commercial purposes without the express prior written consent of Lead Carrier. U.S. Government agencies may permit U.S. Government contractors to use Lead Carrier developed technology only under procurement contracts, grants, cooperative agreements, and interagency and intra-agency agreements awarded for U.S. Government purposes, with the written provision prohibiting the disclosure of developed technology and prohibiting its use for any commercial or non-U. S. Government purpose.*

***C. Marking of Intellectual Property***

*Lead Carrier shall make reasonable efforts to ensure that any developed technology resulting from this Agreement is appropriately marked with legends indicating patent, copyright, or other form of ownership as may be required by law. To the extent provided by law, the U.S. Government and its employees shall be excused from liability for innocent infringement of Lead Carrier's rights in any developed technology produced under this Agreement without statutorily required markings.*

***D. Survival***

*The provisions of this Article VI, Intellectual Property Rights, shall survive termination or expiration of this Agreement.*

***E. Laws Governing Patents, Copyrights and Other Data Rights***

*All U.S. laws governing patents, copyrights, or other data rights shall remain in full force and effect, and the parties agree to abide by these laws.*

***F. Recoupment***

*The FAA shall have the right to recoup its cash contributions under this Agreement out of any net revenues derived from Lead Carrier's licensing of developed technology resulting from performance pursuant to the Agreement. The percentage share is fixed at fifty percent (50%). The parties also agree on an expiration date for the FAA's recoupment right of ten (10) years from the expiration or termination date of this Agreement.*

***VII. DISPUTE RESOLUTION***

*Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, either party may terminate this Agreement.*

## *VIII. TERM AND TERMINATION*

*The performance period of this Agreement is governed by the following stipulations.*

### *A. Term*

*This Agreement will remain in full force and effect from its effective date (last date of signature) through September 30, 1998.*

### *B. Termination*

*In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.*

### *C. Return of Funds*

*In the event of termination or expiration of this Agreement, any FAA funds which have been advanced to Lead Carrier by the FAA and which (1) have not been spent or obligated by Lead Carrier for allowable expenses prior to the date of termination, and (2) are not reasonably necessary to cover termination expenses shall be returned to the FAA. Any FAA funds which have been advanced and expended for allowable costs shall not be returned to the FAA, and Lead Carrier shall have no liability or obligation with respect to these funds, unless provided elsewhere in this Agreement.*

### *D. Termination Settlement*

*In the event of termination, no further funds will be advanced to Lead Carrier, except as reasonably necessary to effect the termination or to satisfy obligations incurred prior to the termination, consistent with the provisions of Article III.C., Federal Funding.*

## *IX. LIABILITY AND INDEMNIFICATION*

*Except as specifically provided in this Agreement, the FAA, for itself and its contractors, assumes no liability under this Agreement for loss arising out of the conduct or activities undertaken by Lead Carrier, affiliates, associates, or its contractors, or any third party in connection with this Agreement. The FAA will not indemnify Lead Carrier, affiliates, associates, its contractors, or any third party against any third party claims or third party liability, but will assume liability for U.S. Government use of Lead Carrier's developed technology under the Government-purpose license granted under Article VI, Intellectual Property Rights.*

*Lead Carrier shall obtain appropriate insurance and take other appropriate steps to protect itself or others for any loss it may incur in connection with performance under this Agreement. The substance of Article IX shall be included in all contracts and other*

*agreements with third parties at any tier. The provisions of Article IX shall survive termination or expiration of this Agreement.*

## *X. SPECIAL PROVISIONS*

### *A. FAA Agreements Officer*

*The FAA Agreements Officer has the authority to administer and modify this Agreement on behalf of the FAA.*

### *B. Notices*

*Any notice required or permitted to be given under this Agreement will be in writing and shall be either personally delivered, given by facsimile transmission, or sent by certified mail, return receipt requested, postage prepaid, or sent by Federal Express, as follows:*

*If to Lead Carrier If to the FAA:*
*Project Manager Agreements*
*Officer*
*Lead Carrier, ABC Airlines Federal Aviation Administration*
*Carrier Address 800 Independence Avenue, S.W*

_____*Washington, D.C. 20591*

*Notices given hereunder will be deemed given on the date personally delivered, transmitted by facsimile, or if mailed, upon the date of signing of the Certified Mail - Return Receipt, or five days after mailing, whichever is less.*

### *C. Audit*

*The General Accounting Office, the Department of Transportation, and the FAA or its designee will have the right to review and audit the books and records of Lead Carrier and cognizant contractors (see pass-down requirement below) to the extent necessary to verify the allowability of costs under this Agreement and as otherwise required by law.*

*Lead Carrier shall maintain for the term of this Agreement and three (3) complete calendar years thereafter, such books and records as are reasonably necessary to accurately reflect its operations under this Agreement. The periods of access and examination shall continue, however, for the time necessary to dispose of appeals, litigation, claims, disputes, or exceptions arising from performance or costs/expenses incurred under this Agreement.*

*Lead Carrier shall include in contracts and agreements with other parties for the purpose of CAPS implementation, a provision granting the U.S. Government access to contractor or agreement party records for the same purposes in this subparagraph concerning audits. The provisions of this subparagraph shall survive termination or expiration of this Agreement.*

### *D. Warranty*

*The FAA and Lead Carrier, individually and as parties to this Agreement, make no express or implied warranty as to any matter whatsoever concerning the Agreement, including accomplishment of objectives or success of the outcome.*

*These warranty provisions shall survive termination or expiration of this Agreement.*

***E. Force Majeure***

*Neither party will be liable to the other for any unforeseeable event not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this Agreement, and which it has not been able to overcome by the exercise of due diligence, including but not limited to natural disasters or human strife and disputes. The party unable to perform shall use its best efforts to resume performance, suspending it only for that period reasonably necessary to overcome the effects of the force majeure event. If performance is suspended for more than seven (7) days, the party unable to perform shall provide weekly progress reports with a forecast of recovery, for the period of suspension.*

***F. Security***

*The FAA CAPS requirements documents, including CAPS Factors and Weights, and all addendums containing policy guidance and clarification material, contain sensitive information and are subject to the provisions of 14 CFR 191. Lead Carrier agrees to take measures to ensure that this information is appropriately protected within its own organization. Public disclosure or publication of matters relating to this Agreement, including outcomes or results, must first receive the prior approval of the FAA Agreements Officer.*

*Lead Carrier shall include in contracts and agreements at any tier, the substance of this subparagraph concerning security. These security provisions shall survive termination or expiration of this Agreement.*

***G. Changes In Ownership***

*Lead Carrier will notify the FAA within forty-five (45) calendar days of any change in the ownership structure of Lead Carrier.*

***H. Lobbying Certification***

*Lead Carrier shall comply with the provisions of 31 USC 1352 prohibiting the recipient of a Federal cooperative agreement from using appropriated funds to pay any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any transaction enumerated in the foregoing Code. Lead Carrier must include a provision mandating compliance with 3 1 USC 13 52 in all contracts or agreements which it enters under Article X.0, Contracting by Lead Carrier*

*Lead Carrier hereby declares that it has neither made nor agreed to make any payment with respect to this Agreement, using funds other than appropriated funds, which would be prohibited by 31 USC 1352 if the payment were made using appropriated funds.*

***1. Severability***

*In the event that any Article and/or parts of this Agreement are determined to be void, such Article or portions thereof shall lapse. No such lapse will affect the rights, responsibilities, and obligations of the parties under this Agreement, except as provided herein. If either party determines that such lapse has or may have a material effect on the performance of the Agreement, such party shall promptly notify the other party, and they shall negotiate in good faith a mutually acceptable amendment to the Agreement if appropriate to address the effect of the lapse.*

***J. Construction of Agreement***

*This Agreement shall be construed as an assistance agreement consistent with applicable Federal law.*

***K. Entire Agreement***

*This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties.*

***L. Amendments***

*This Agreement shall not be amended, altered, or modified except by an instrument in writing duly executed by Lead Carrier and the FAA Agreements Officer.*

***M. Relationship Of Parties***

*The legal relationship between the FAA and Lead Carrier shall be none other than that expressly specified in this Agreement, and nothing in this Agreement shall be construed to create any relationship of partnership, joint venture, agency, or fiduciary duty between the parties, or to impose any liability or obligation on either party except those liabilities and obligations expressly stated herein. Nothing in this Agreement shall be construed to confer any legal or equitable rights, express or implied, on any person or entity other than the parties hereto.*

***N. Limitation of Assignment***

*Neither party may assign its rights or obligations under this Agreement to any other entity or person without the other party's prior express written consent. Nothing in this provision, however, shall be construed to limit Lead Carrier's right to assign, license, or otherwise transfer rights to its developed technology to any entity or person subject to the U.S. Government's rights under Article VI, Intellectual Property Rights.*

***0. Contracting By Lead Carrier***

*Lead Carrier may enter into contracts in its own name for the purpose of carrying out the objectives of this Agreement. The terms and conditions awarded at all tiers will include such terms and conditions from this Agreement as appropriate or otherwise designated.*

***P. Third Party Participation***

*Lead Carrier is authorized but not obligated to enlist the participation, support, or investment of third parties in the CAPS implementation project, subject to appropriate limitations regarding conflicts of interest.*

## 7 Attachment 7 - Intellectual Property - Section 106 Cooperative Agreements

***SECTION 106 COOPERATIVE AGREEMENTS***

### *1.0 Patents and Inventions*

*1.1 Policy*

*a. The disposition of rights to inventions made by small business firms and non-profit organizations, including universities and other institutions of higher education, under FAA-assisted programs is governed by Chapter 18 of Title 35 of the United States Code, commonly called the Bayh-Dole Act, 35 U.S.C. §200, et seq. In accordance with the Presidential Memorandum entitled Government Patent Policy issued on February 18, 1983 and Executive Order 12591, FAA may apply the policies of that Act to all participants in cooperative agreements. The Department of Commerce (DOC) is the lead agency for implementing the Bayh- Dole Act and has published guidance to Federal agencies at Part 401 of Title 37 of the Code of Federal Regulations, 37 CFR §401.*

*b. FAA's standard Patent Rights clause is identical to that prescribed in 37 CFR §401.14(a) except that:*

*1. FAA has tailored the clause to apply to funding agreements (which term includes both grants and cooperative agreements), and to identify FAA as the interested Government agency;*

*2. pursuant to DOC guidance appearing in Part 401 of Title 37 of the Code of Federal Regulations, 37 CFR §401.5(d), FAA has added to paragraph b. of the clause a stipulation that FAA reserves the right to direct a recipient to transfer to a foreign government or research performer such rights to any subject invention as are required to comply with any international treaty or agreement identified when the grant is made as being applicable to the assisted research;*

*3. as permitted by 37 CFR §401.5(f), FAA has added two subparagraphs to the end of paragraph f. 7of the clause to require recipients, or their representatives to send to FAA confirmations of*

*the Government licenses for and copies of any U.S. patents on subject inventions; and*

*4. the word "recipient" is substituted for "contractor", and "cooperative agreement" is substituted for "contract."*

*c. FAA patent policy with respect to procurement contracts is found in the Acquisition Management System, AMS. For patent policy relating to research grants, see Chapter 8, section 5 (as amended) of FAA Order 9550.7A, Research Grants Program.*

*1.1.2 Standard Patent Rights Clause*

*Where appropriate, the Standard Patent Rights Clause found at 37 CFR §401.14, appropriately modified as explained below, should be used in every cooperative agreement awarded by the FAA unless a special patent clause has been negotiated that would better serve the interests of the FAA and the Government as a whole. The concurrence of legal counsel is required for the use of any special patent clauses that deviate from that set out at 37 CFR §401.14.*

*a. In cooperative agreements covered by a treaty or agreement that provide that an international organization or foreign government, research institute or inventor will own or share patent rights, FAA will acquire such patent rights as are necessary to comply with the applicable treaty or agreement.*

*b. If a recipient elects not to retain rights to an invention, FAA will allow the inventor to retain the principal patent rights unless the recipient, or the inventor's employer if other than the recipient, shows that it would be harmed by that action.*

*c. FAA will normally allow any patent rights not wanted by the recipient, or inventor to be dedicated to the public through publication in scientific journals or as a statutory invention registration. However, if another Federal agency is known to be interested in the relevant technology, FAA may give it an opportunity to review and patent the invention so long as that does not inhibit the dissemination of the research results to the scientific community.*

*1.2 Copyright*

*1.2.1 Rights to Copyrightable Material*

*The FAA shall apply the following principles governing the treatment of copyrightable material produced under FAA cooperative agreements.*

*a. FAA normally will acquire only such rights to copyrightable material as are needed to achieve its purposes or to comply with the requirements of any applicable government-wide policy or international agreement.*

*b. To preserve incentives for private dissemination and development, FAA normally will not restrict or take any part of income earned from copyrightable material except as necessary to comply with the requirements*

*of any applicable government-wide policy or international agreement.*

*c. In exceptional circumstances, FAA may restrict or eliminate a recipient's control of FAA-supported copyrightable material (including computer software and associated documentation) and of income earned from it, if FAA determines that this would best serve the purposes of a particular program.*

*1.2.2 Standard Copyrightable Material Clause*

*The following copyrightable material clause should be used in every cooperative agreement awarded or entered into by FAA that relates to scientific or engineering research unless a special copyrightable material clause has been negotiated. The concurrence of legal counsel is required for the use of any special copyrightable material clauses that deviate from that set out below.*

***CLAUSE-COPYRIGHTABLE MATERIAL***

*a. "Subject writing" means any material that:*

*1. is or may be copyrightable under Title 17 of the United States Code; and*

*2. is produced by the recipient, or its employees in the performance of work under this grant, cooperative agreement or other transaction.*

*Subject writings include, but are not limited to, such items as reports, books, journal articles, sound recordings, videotapes, video discs, computer software and related documentation.*

*b. Copyright Ownership, Government License. Except as otherwise specified in the grant, cooperative agreement, or other transaction, or by this paragraph, the recipient may own or permit others to own copyright in all subject writings. The recipient agrees that if it or anyone else does own the copyright in a subject writing, the Federal government will have a non- exclusive, nontransferable, irrevocable, paid-up license to exercise or have exercised for or on behalf of the U.S. throughout the world all the exclusive rights provided by copyright. Such license, however, will not include the right to sell copies or phonorecords of the copyrighted works to the public.*

*c. Effect of International Agreements. If the cooperative agreement, or other transaction indicates it is subject to an identified international agreement or treaty, FAA can direct the recipient to convey to any foreign participant or otherwise dispose of such rights to subject writings as are required to comply with that agreement or treaty.*

*d. Recipient Action to Protect Government Interests. The recipient agrees to acquire, through written agreement or an employee relationship, the ability to comply with the requirements of the preceding paragraphs and, in particular, to acquire the ability to convey rights in a subject writing to a foreign participant if directed by FAA under the previous paragraph. The recipient further agrees that any transfer of copyright or any other rights to a subject writing, by it or anyone whom it has allowed to own such rights, will be made subject to the requirements of this article.*

### *1.3 Special Patent and Copyright Situations*

#### *1.3.1 Special Grant Provisions*

*At the request of the prospective recipient, or on recommendation from FAA staff, the FAA Official authorized to award or administer the cooperative agreement, with the concurrence of the cognizant Program Manager and legal counsel, may negotiate special patent or copyright provisions when that Official determines that exceptional circumstances require restriction or elimination of the right of a prospective recipient to control principal rights to subject inventions or writings in order to better achieve the objectives of the program, the mission of the FAA, or (in the case of inventions) Chapter 18 of Title 35 of the United States Code. Every special copyright or patent provision will allow the recipient, after an invention has been made or copyrightable material created, to request that it be allowed to retain principal rights to that invention or material, unless doing so would be inconsistent with an obligation imposed on FAA by statute, international agreement or pact with other participants in or supporters of the research.*

### *2.1 Cooperative Agreements Not Primarily for Experimental, Developmental, or Research Work*

*Cooperative agreements not primarily intended to support experimental, developmental, or research work should include appropriate patent or copyrightable material provisions when necessary to protect the interests of the FAA and the Government as a whole.*

## T3.8.2 Service Contracting Revised 10/2008

### A Service Contracting

### 1 General Requirements Revised 4/2006

a. A service contract directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. Services may be either nonpersonal or personal, and may be performed by professional or nonprofessional personnel on an individual or organizational basis.

b. When planning, acquiring, and managing services, the service team should:

(1) Clearly define needs, outputs, objectives, or problems to be solved;

(2) Ensure Federal employees retain inherently Governmental functions;

(3) Avoid personal services relationships, unless approved in advance;

(4) Follow ethics requirements and protect against conflicts of interest;

(5) Adequately monitor contractor performance; and

(6) Appropriately document the basis for decisions.

## 2 Contractor Versus Government Performance Revised 4/2006

a. Government-wide policy is to rely on the private sector for commercial services, if certain criteria are met, consistent with Office of Management and Budget (OMB) Circular No. A-76, (Revised), "Performance of Commercial Activities," and the Supplement to Circular No. A-76. This Circular requires agencies to:

(1) Identify activities performed by Federal employees as either commercial or inherently Governmental;

(2) Perform inherently Governmental activities with Federal employees; and

(3) Use a cost competition between the private sector and Federal employees to determine if Federal employees should perform a commercial activity.

b. When a Federal Activities Inventory Reform (FAIR) Act inventory identifies an in-house function as commercial in nature and suitable for public-private competition, the Contracting Officer should refer to OMB Circular A-76 and the Supplement for guidance. (See AMS

Procurement Guidance T3.2.1.3 "Implementing OMB Circular No. A-76" for AMS-specific guidance on conducting A-76 competitions).

## 3 Inherently Governmental and Critical Functions Revised 4/2013

a. *Inherently Governmental Functions.*

(1) The FAA cannot contract for inherently Governmental functions. Inherently Governmental functions are those activities so closely related to the public interest that only Federal employees can perform the functions. These functions include activities that require either use of discretion in applying Government authority, or use of value judgments in making decisions for the Government. Governmental functions normally fall into two categories:

(a) The act of governing, which requires discretionary use of Government authority; or

(b) Decisions affecting monetary transactions and entitlements.

(2) The following functions are considered inherently Governmental (this list is not all inclusive):

(a) Determining FAA program priorities and budget

requests;

(b) Conducting monetary transactions or entitlements;

(c) Interpreting and executing laws that will bind FAA to take or not take some action by contract, policy, regulation, authorization, or order;

(d) Determining FAA policy;

(e) Exercising ultimate control over acquisition, use, or disposal of FAA's property, including collecting, controlling, or disbursing funds, and on what terms;

(f) Determining budget policy, guidance and strategy;

(g) Directing and controlling Federal employees;

(h) Selecting or non-selecting individuals for Federal employment (including interviewing for employment)

(i) Approving position descriptions and performance standards for Federal employees;

(j) Determining and defining supplies or services to be acquired by FAA (the contractor may not identify its own work requirements, or write its own statement of work or task assignments);

(k) Approving contractual documents, such as those documents defining requirements, incentive plans, and evaluation criteria;

(l) Awarding, administering, and terminating contracts (including functions delegated to a Contracting Officer's Representative);

(m) Determining whether contract costs are reasonable, allocable, and

allowable; (n) Drafting Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, General Accountability Office, or other Federal audit entity;

(o) Approving FAA responses to Freedom of Information Act (FOIA) requests (other than routine responses that do not require the exercise of judgment whether documents are released or withheld), and approving FAA responses to the administrative appeals of denials of FOIA requests;

(p) Approving FAA licensing actions and inspections; and

(q) Performing adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).

(3) Effort under contracts requiring advice, recommendations, reports, analyses, or other similar work is considered effort closely associated with performing inherently Governmental functions. Such closely associated effort could influence the authority, accountability, and responsibilities of FAA officials. These contracts require active monitoring and administration to ensure contractors do not perform inherently Governmental functions and Federal employees properly exercise their authority.

(4) Prior to issuing a screening information request (SIR) or contract for services, the CO must determine whether the services are inherently Governmental functions. b. *Critical Functions.*

(1) "Critical functions" are functions necessary for an agency to effectively perform and maintain control of its mission and operations. These functions are typically recurring and long-term.

(2) Examples of critical FAA functions include (this list is not all-inclusive):

- Aviation safety;
- Air traffic operations;
- FAA information systems; and
- Security and hazardous material safety

(3) Before issuing a SIR or contract for services, the CO and program official should determine if the procurement is in support of a critical FAA function. Where a critical FAA function is not inherently Governmental, both FAA and contractor employees may support the function.

(4) The CO and program official should use informed judgment when determining whether the services support a critical FAA function. In making this determination, the overall importance of the function to FAA's mission and operations should be considered. The more important the function, the more important it is that FAA have the internal capability to maintain control of its mission and operations. Sufficient internal capability generally requires that FAA have an adequate number of Federal employees having the necessary expertise to oversee any contractors supporting the critical function, and perform the needed work without adverse impact in the event of contractor default. The CO and program official must monitor the contractor performance supporting a critical FAA function during contract performance.

c. *Reporting.* COs will indicate in PRISM at the beginning of the "Inherently Governmental Functions" field whether the services are closely associated with inherently governmental functions, supporting critical functions, or a combination of closely associated with inherently governmental functions and supporting critical functions. If none of these, the services will be indicated as "other functions." If not a services contract, NA (Not Applicable) will be indicated.

## 4 Support Services Contracting Revised 10/2015

a. *Description.* Support services contracts require contractor personnel with specific

expertise, knowledge, skill, or experience to help implement or improve the FAA's systems, programs, functions, or goals. Although not a comprehensive description, support services include:

> *Technical, engineering, and scientific* expertise, advice, analysis, studies, or reports in areas such as: information technology design, programming, networking, installation, operation, data management, and customer support; definition and design of systems, equipment, software and facilities; system engineering; requirements management and specification development; modeling and simulation; risk analysis and management; cost estimating; human factors engineering; information security; testing and operational evaluation; logistics support analysis; technical writing; and expertise and analysis on the effectiveness, efficiency, or economy of technical operations of equipment, systems, services, or procedures.
>
> *Professional, management, and administrative* expertise, advice, analysis, studies, or reports in areas such as: program management, execution, and control; procurement management; employee training and development; payroll and finance administration; budget formulation and execution; cost and benefit analysis; economic and regulatory analysis; environmental analysis; management and organizational evaluation; staffing, workload and workflow analysis; conferences, seminars, and meetings; public events and writing; and expertise and analysis on the effectiveness, efficiency, or economy of management and general administrative operations and procedures.
>
> ***Note**:* Consistent with the definition of a service contract under "General Requirements" above, support services do not include contracts for leasing facilities or equipment, subscription services, commercial licensing agreements, or anything else furnishing an end item of supply rather than performing an identifiable task. Additionally, services subject to the Service Contract Act (e.g., janitorial, grounds maintenance, guard services, mail delivery, etc.) are not support services. Also excluded are services for direct support of FAA operations (e.g., telecommunications, flight services, satellite services, utilities, etc.).

b. *Analysis and Rationale.* The entire service team (Contracting Officer (CO), Contracting Officer's Representative (COR), attorney, and program official) should ensure:

> (1) There is a good business case, considering need, benefit, cost, and alternatives, for acquiring support services:
>
> (2) Support services do not overlap or duplicate services being acquired elsewhere in FAA;
>
> (3) There is a solid, well-documented rationale for selecting the contractor; and
>
> (4) The FAA has the expertise to monitor the contractor's performance.

c. *Acquisition Strategy Review Board (ASRB).* Support services expected to have a total estimated value greater than $5 million require the review and approval process specified in the Acquisition Strategy Review Board (ASRB) Standard Operating Procedure. The ASRB Standard Operating Procedure is located at the Acquisition & Contracting (AAQ) KSN site (FAA only).

d. *T&M/LH*. When support services are obtained on a time and materials or labor hour basis, the CO and program official/COR should ensure:

(1) The statement of work clearly defines expected outputs or objectives;

(2) The contract or task includes only those labor categories necessary to achieve required outputs, and the basis for selecting the labor categories is documented in the contract file;

(3) The contract identifies specific education, experience, and other appropriate requirements for each labor category;

(4) The solicitation requires the offeror to propose specific personnel for the labor categories, and to provide a resume for each proposed person. The solicitation may include a provision for submitting resumes within a reasonable time after contract award, subject to CO's approval of each proposed person. The provision should specify any costs incurred before approval of resumes may be disallowed if the CO determines a person's qualifications do not meet the terms and conditions of the contract;

(5) The source evaluation team reviews the offeror's proposed personnel to ensure that each person meets the position requirements for the labor category. For offerors allowed to submit resumes after award, the CO and program official/COR review resumes to ensure proposed personnel meet position requirements;

(6) Review of contractor's invoices includes a comparison of labor categories, rates and hours charged to the contract with the work actually performed;

(7) The contractor submits employee resumes and obtains CO's approval of any personnel changes after contract award, and the contract file is documented with CO's approval of the personnel changes; and

(8) Periodic spot checks of contractor employee's qualifications against contractually-specified qualifications.

e. *Additional Procedures*. Support services obtained through a multiple award schedule or program, e.g., eFAST, must follow all additional required procedures, such as competing task orders or comparing rates and capabilities among multiple sources.

f. *Invoices*. The CO must review and approve all invoices submitted under a service contract. This excludes invoices provided under the purchase card

program.

g. *Ceiling*. A contract ceiling established at the time of initial award must have a documented relationship to the amount of work expected to be performed. This applies to contract types in which ceilings are required, i.e., time and materials.

h. *Determining Final Content*. Government personnel, and not contractors who will perform the work, must always determine the final results of market surveys and prepare the final content of statements of work and independent Government cost estimates.

i. *Conflict of Interest*. An apparent or actual conflict of interest must be avoided. Support services solicitations and new contracts with a total value of $10,000 or more, and modifications of $1,000,000 or more to existing support services contracts, must include AMS clause 3.1.7-6 "Disclosure of Certain Employee Relationships." The CO must notify legal counsel when the contractor discloses a former FAA employee or relative of a current FAA employee working under the contract, and when the CO has reason to believe the contractor has made an incomplete or improper disclosure. The CO collects facts surrounding each contractor disclosure and, with legal counsel, assesses the information to determine whether an apparent or actual conflict of interest exists. Depending on the assessment, the CO may require the contractor to provide and implement a plan to avoid, neutralize, or mitigate a conflict of interest involving its employee(s). The CO documents this assessment and any actions taken.

j. *Contractor Identification*. Contractors providing support services for FAA, as defined in this Section, must identify themselves as supporting an FAA office or program when there is any reasonable question regarding their status. This identification must be in all forms of support- related communication including meetings and teleconferences, individual phone calls, and email. For example, in meetings where everyone is introducing themselves or when making or receiving calls though the FAA telephone system, such contractors must identify themselves as contract support. At meetings where there is a “sign-in” sheet or similar roster, contractors must identify themselves as contract support. Similarly, the signature block of support contractor personnel using the FAA email system (in addition to the “ctr” in the email address) must identify the individual as a support contractor. Such identification will reduce the potential for appearances of an employer-employee relationship between FAA and its contract support personnel. FAA program managers, CORs, and contracting personnel are responsible for ensuring compliance with this requirement as part of the administration of individual support contracts.

## 5 Personal Services **Revised 9/2006**

a. *Employee/Employer Relationship*. A personal service contract is a contract that, by its express terms, or *as administered*, establishes what is tantamount to an employer-employee relationship between the FAA and the contractor’s personnel. Such a relationship is created when an FAA employee exercises relatively continuous supervision and control over one or more contractor employees.

b. *Supervision.* Supervision includes directing or assigning work to specific contractor employees; directing that a contractor employee be hired, fired, promoted, rewarded,

transferred or granted leave, or exercising control over how specific contractor employees perform their job. Any one of these elements might create an employer-employee relationship and therefore a personal services contract. In addition, if the nature of the work or ability of the contractor employee(s) is such that they do not require or receive much supervision, but a FAA employee provides what supervision the contractor employee receives, then the contract is for personal services.

c. *Warning Signs.* Possible warning signs of when supervision might be present include: performance of the work in FAA furnished offices or property; principal tools and equipment are furnished by the FAA; the services are applied directly to the integral efforts of the FAA, or an organizational subpart in furtherance of that organization's assigned function or the FAA mission; comparable services are performed in FAA or other agencies using Government employees; and the need for the service provided can reasonably be expected to last beyond one year. The presence (or absence) of one or even all of these factors in a particular contract does not necessarily determine whether a contract is for, or being administered as, a personal services contract. Instead the presence of these factors indicates that the contract as written or administered, must be particularly carefully scrutinized to assure that FAA employees are not supervising contractor employees, and thus creating a personal services contract.

d. *Monitoring/Technical Direction.* Simple monitoring of a contractor's performance, providing technical direction, issuing task orders, or providing comments on the contractors' work, in accordance with the contract's terms, do not in themselves create a personal services contract. Performing any of these functions in a manner not provided for by the contract, however, could create a personal services contract as well as expose the FAA to additional liability.

e. *Determination.* The FAA may award personal services contracts when the vice president of the relevant service organization (for ATO contracts) or head of the line of business (for non- ATO contracts) determines that a personal service contract is in the best interest of the agency after thorough evaluation which includes, but is not limited to the following factors:

(1) Federal and state income tax requirements;

(2) Workmen's compensation, social security and related implications;

(3) The FAA's potential liability for services performed;

(4) The availability of temporary hires to perform the desired services;

(5) Demonstration of tangible benefits to the agency;

(6) A detailed cost comparison demonstrating a financial advantage to the FAA from such contract;

(7) Potential post employment restrictions applicable to former employees; and

(8) A legal determination that the work to be performed is not inherently governmental. The required determination is non-delegable and must be reviewed for

legal sufficiency by the Office of the Chief Counsel. Additionally, the vice president (for ATO) or head of the line of business (for non-ATO) must provide a copy of each approved determination to the Acquisition Executive.

f. *Benefits to the FAA.* Although personal services contracts are permitted, they should be used only when there is a clear demonstrated financial and program benefit to the FAA. Therefore, this authority should be conservatively applied.

g. *Personnel Involvement*. Prior to entering into a personal service contract, the Contracting Officer should make arrangements with the appropriate personnel office concerning federal, state, and other tax withholding requirements.

## 6 Advisory and Assistance Services Revised 4/2006

a. Advisory and assistance are services provided under contract by nongovernmental sources to support or improve agency policy development, decision-making, management, and administration, or to support or improve the operation of managerial or hardware systems. Advisory and assistance contracts provide outside points of view from individuals with special skills or knowledge from industry, universities or research foundations. The use of these services helps to prevent too-limited judgments on critical issues, facilitating alternative solutions to complex issues. Examples of advisory and assistance functions include studies, analyses and evaluations; and management and professional support (including consultants, experts and advisors).

b. Before awarding an advisory and assistance contract, the Contracting Officer should consult with legal counsel about any funding restrictions that may apply to the procurement.

## 7 Temporary Services Revised 4/2006

The FAA may obtain temporary services from private agencies, or may contract directly with individuals, for up to 240 work days during any 24 month period subject to the following:

a. The guidelines concerning personal service contracts must be met (see "Personal Services Contracts," above). For example, when obtaining secretarial services on a temporary basis, FAA personnel may not recruit, test, select, reassign, reward, grant leave to, approve time cards, discipline, or separate a temporary help service employee. The contractor is responsible for taking such actions, because it is the employer.

b. Temporary service contracts are appropriate to fulfill a critical need, where use of a temporary appointment (up to one year) or a term appointment (one to four years) is not appropriate or feasible. However, temporary service contracts should not be used to circumvent controls on employment levels. For example, the FAA may not use temporary help services merely because hiring is frozen or ceiling levels are insufficient.

c. Temporary service contracts may not be used in lieu of appointing a surplus or displaced Federal employee as required by the President’s memorandum of September 12, 1995, titled "Career Transition Assistance for Federal Employees."

## 8 Concession Contracts Added 4/2006

a. A concession contract is a specialized contractual agreement between FAA and a contractor (the concessionaire). These contracts are normally used when the FAA requires a service to be performed, the concessionaire performs the service and collects funds from third parties, and the FAA provides significant support, such as facilities. Concession contracts may require the concessionaire to pay the FAA. Examples of concession contracts include food service and day care centers.

b. *General Requirements.* Each concession contract is unique and tailored to the specific situation. Concession contracts need not include the clauses normally required by the FAA. However, the contract must clearly define the rights and responsibilities of the parties. Among the issues that the Contracting Officer must consider:

(1) What facilities or services will FAA provide to the concessionaire?

(2) Will the facility be provided at no cost, or will the concessionaire be required to pay a use fee?

(3) Are other payments to FAA required, and if so, how will they be calculated?

(4) How will the quality of service be evaluated, and what types of corrective actions may be initiated by FAA for inadequate performance?

(5) What liabilities will be assumed by each party?

(6) What labor and/or compensation standards are to be established for concessionaire employees?

(7) What are the parties' responsibilities for property maintenance, repair and replacement?

(8) What insurance requirements are advisable?

(9) Are there public safety and health considerations which must be addressed?

(10) What termination rights should be included?

(11) What provisions for changes should be included?

(12) Is the work to be performed in spaces which subject the concessionaire to FAA policies?

(13) What services will the FAA require the concessionaire to provide (e.g., hours of operation, full service cafeteria, etc.).

(14) Will there be any restrictions on who is allowed to use the services? For

example, federal laws require 50 percent of children in child care facilities located on federal facilities to be dependents of federal employees. In the case of fitness centers, will membership be limited to federal employees only?

(15) Will any FAA-furnished property be provided, and if so, how will it be accounted for?

(16) Are there any licensing requirements which must be met?

(17) Are there any limitations on the types of service or products that may be sold under the concession contract? For example, cafeterias are prohibited from competing with snack bars being operated under the Randolph-Sheppard Act for items such as pre- packaged goods (candy bars, canned soda, individual packages of potato chips, etc.). Vending services are prohibited from selling or distributing tobacco products on federal property.

## 9 Cafeteria/Vending Services Added 4/2006

Blind vendors licensed by State licensing agencies designated by the Secretary of Education under the provisions of the Randolph-Sheppard Act (20 U.S.C. 107 et seq.) must be given priority in the location and operation of cafeterias and vending facilities, including vending machines on property owned, leased, or otherwise acquired or controlled by the FAA, provided the location or operation of such facility would not adversely affect the interests of the United States. Additional guidance on implementation of this law is at 34 C.F.R. Part 395 and AMS Procurement Guidance T3.8.4 "Required Sources of Products/Services."

## 10 Child Care Services Added 4/2006

Child care services include child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services. These contracts must include requirements for criminal history background checks on employees who will perform child care services (42 U.S.C. 13041), any special state requirements (such as cleanliness requirements), and security/screening requirements for anyone (including janitors and repairmen) that comes in contact with children.

## 11 Nonpersonal Health Care Services Added 4/2006

For nonpersonal health care contracts with physicians, dentists and other health care providers, the Contracting Officer should require the contractor to obtain and maintain appropriate levels of malpractice insurance and include similar provisions in its subcontracts with other providers. See AMS clause 3.8.2-15, "Indemnification and Medical Liability Insurance."

## 12 Guard Services Revised 4/2011

The FAA may contract for guard services. Typical requirements for guard services include, but are not limited to: U.S. citizenship, minimum age of 21, high school diploma or equivalent, firearm training, testing and certification, and other additional technical training specified in the contract scope of work. Each guard must complete the following so that a NACI background investigation can be completed by the Office of Personnel Management:

a. OMB I-9, Eligibility Verification;

b. DOT 1681, ID Card/Credential Application;

c. SF-85, Questionnaire for Low Risk Positions;

d. OF-306, Declaration for Federal Employment; and

e. Fingerprint Cards.

## 13 Contractor-Assisted Maintenance of the NAS Revised 10/2008

Contractor assistance may be used to augment FAA's workforce for maintenance and maintenance and restoration of National Airspace System (NAS) equipment, sub-systems, and systems to accomplish the mission of the NAS. Contractor maintenance support includes all maintenance performed by non-Federal personnel. Maintenance includes, but is not limited to, evaluating equipment and system operation, and evaluating documentation such as facilities logs, data files, technical performance records, and administrative and logistics support. Considerations for contracts for non-Federal personnel for maintenance and restoration of the NAS systems are:

a. All maintenance performed by contractors on NAS equipment must conform to FAA order 6000.15 "General Maintenance Handbook for National Airspace System (NAS) Facilities," system/sub-systems/equipment technical manuals, and all appropriate FAA directives.

b. Contractor personnel who perform maintenance activities on NAS equipment must have at a minimum the same level of knowledge, skills, and abilities required of FAA personnel maintaining the same or similar equipment, sub-systems, or systems. The contractor must provide and maintain the necessary documentation to support its level of knowledge, skill and ability.

c. Certified pre-employment drug testing is mandatory for all contractor personnel before performing work for FAA. Contractor personnel maintaining any part of the NAS must be subject to random drug and alcohol testing according to DOT 3910.1 "Drug and Alcohol-Free Departmental Workplace."

d. Contractor personnel must meet FAA security requirements. Contractor personnel are subject to background investigations and technical inspections at the same level as performed for FAA personnel who are providing maintenance support of the NAS systems.

e. Contracts for maintenance support of the NAS systems are subject to union coordination according to current union contracts, applicable orders, rules, regulations, and any established national and local Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA).

f. Contract limitations on NAS equipment/systems must not exceed the following guidance:

(1) For a period not to exceed two years during which FAA workforce training and/or support requirements are being satisfied.

(2) For a period not to exceed two years during which sufficient FAA employees are recruited and trained to assume full maintenance.

(3) For an extended period not to exceed five years when it is determined to be in the best interest of the Government.

g. Contract for maintenance support are excluded from this guidance if they fall within the follow area:

(1) Local or regional contracts not providing periodic or on-call maintenance for equipment that is an integral part of the NAS reportable facility or service. Examples of exclusions include janitorial, tower maintenance, and buildings and grounds.

(2) Contracts for systems that are in the precommissioned status, even though the testing may consist of periods of operational use

(3) Contracts that have a duration of less than one year and do not relate to restoration/maintenance of critical NAS equipment, e.g., radar and air traffic control frequencies.

(4) Contracts issued for telephone or other services, e.g., computer repair.

(5) Contracts maintained by the FAA Logistics Center such as exchange and repair.

## 14 Other Requirements for Service Contracting Added 4/2006

a. *Conflict of Interest and Ethics Requirements.* As applicable, solicitations and contracts must include conflict of interest and ethics-related provisions consistent with AMS policy 3.1.5 - 3.1.7.

b. *Key Personnel*. Solicitations and contracts should include AMS clause 3.8.2-17 “Key Personnel and Facilities,” or a similar clause, to list named individuals who are considered key for successful performance of a contract. The Contracting Officer must approve substitution of any key personnel.

c. *Labor Standards*. The Contracting Officer should include applicable labor standards, such as the Service Contract Act or Davis-Bacon Act, in solicitations and contracts when appropriate. (See AMS Procurement Guidance T.3.6.2 "Labor Laws" for additional guidance for determining when such provisions are appropriate).

d. *Security Requirements* The service team must take appropriate actions to protect the Government's interest when contractor employees, subcontractors, or consultants may have access to FAA facilities, classified information, sensitive information, or resources. (See AMS Procurement Guidance T3.14.1 "Security" for additional guidance on security requirements for contractor personnel).

e. *Insurance Requirements* The contract should require the contractor to obtain appropriate levels of insurance coverage. Some situations may require special types of coverage to address higher risks, such as those for research or health care that involve personal risk where higher than normal insurance premiums are inherent in the requirement.

f. *State and Local Requirements.* Contracts may include state or local requirements, provided that the FAA does not waive its sovereign immunity. The Contracting Officer should consult with legal counsel about the potential effect of any state or local requirements.

## 15 Uncompensated Overtime Added 4/2006

a. Contractor's use of uncompensated overtime is not encouraged.

b. When professional or technical services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed, the solicitation must require offerors to identify in their proposals and subcontractor proposals:

(1) Uncompensated overtime hours; and

(2) Uncompensated overtime rate for direct charge, Fair Labor Standards Act--exempt personnel (such as executive, professional, and administrative employees). This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

c. The Contracting Officer must ensure that use of uncompensated overtime on the basis of the number of hours provided will not degrade the level of technical expertise required to fulfill the Government's requirements. The Contracting Officer must conduct a risk assessment and evaluate, for award on that basis, any proposals that reflect factors such as: unrealistically low labor rates or other costs that may result in quality or service shortfalls, and unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

## 16 Performance-Based Acquisition Added 4/2006

a. *Performance-Based Acquisition (PBA).* Performance-based acquisition is a method of

structuring all aspects of an acquisition around the purpose of the work to be performed. The contract requirements are described in clear, specific, and objective terms with measurable outcomes, as opposed to describing either the manner by which the work is to be performed or broad and imprecise statements of work. It is the preferred method for describing work in service contracts and should be used when appropriate. PBA typically includes:

(1) Performance requirements that define work in measurable, mission-related terms where the accomplishment of the effort is measurable;

(2) Performance standards (i.e., quality, quantity, and timeliness) tied to the performance requirements;

(3) A Government quality assurance (QA) plan that describes how the contractor's performance will be measured against the performance standards;

(4) If the acquisition is either critical to agency mission accomplishment or requires relatively large expenditures of funds, positive and negative incentives tied to the government QA plan measurements.

b. *Statements of Work.* When preparing statements of work, the service team should, to the maximum extent practicable:

(1) Describe the work in terms of "what" is to be the required output rather than either "how" the work is to be accomplished or the number of hours to be provided;

(2) Establish <u>minimum</u> position requirements but avoid explicit qualification descriptions of personnel (i.e. years' experience, degree(s), certification(s), etc.), with the exception of "key" personnel. If "key" personnel and qualification descriptions are included in a contract, administration of the contract must be in accordance with Headquarters Contracting Divisions' Standard Operating Procedure (SOP) – "Ensuring Compliance with Contractor Personnel Qualifications Requirements" (FAA only), or, if applicable, Region/Center procedures.

(3) Enable assessment of work performance against measurable performance standards;

(4) Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work; and

(5) Avoid combining requirements into a single acquisition that is too broad for the FAA
or a prospective contractor to manage effectively.

c. *PBA Resource Information* The Office of Federal Procurement Policy's "Seven Steps to PBSA" guide is available online and provides detailed information, examples, and other links for PBA.

d. *Service Team Responsibility*. Service teams should consider PBA as the preferred method to obtain services, if appropriate, and should consider the feasibility of converting existing

contracts and tasks to performance-based acquisitions, if appropriate.

## 17 Services Crossing Fiscal Years Added 4/2006

a. *Services Funded with Annual Appropriations.* When the period of a contract, option, or order does not exceed one year, severable services funded by annual appropriations may begin in one fiscal year and end in the next fiscal year.

b. *Training Services Crossing Fiscal Years.*

(1) *Determining Nonseverability*. In certain instances, training courses may be treated as nonseverable services that permit current fiscal year funds to be used for training occurring in the next fiscal year. When the training obligation is incurred and performance begins in one fiscal year, the entire cost may be charged to that year even though performance extends into the following year. However, if performance does not begin in the fiscal year in which the obligation was made (i.e., execution of the contract),
the Contracting Officer should use the following criteria to determine nonseverability and document the determination in writing:

(a) A valid need for training exists in the current fiscal year;

(b) The need cannot be met during the current fiscal year due to circumstances beyond the agency's control; and

(c) The time period between procurement of the services and performance of the services is not excessive.

(2) *Justifying the Time Lapse*. The Contracting Officer should evaluate whether the time period is not excessive under (1)(a) above on a case by case basis using the specific factors that support the determination. The Comptroller General has determined that a two week lapse of time between the procurement of the services and the date performance began was not excessive where the need for the training arose six months earlier, but the vendor controlled the scheduling of the training class which was not available until the following fiscal year.

## 18 Architect-Engineer Services Revised 7/2013

a. *Description.* Architect-Engineer (A-E) services include:

(1) Professional services of an architectural or engineering nature, as defined by applicable State law, which are required to be performed or approved by a person licensed, registered, or certified to provide such services.

(2) Professional services of an architectural or engineering nature performed by contract that are associated with:

(a) Research;

(b) Planning;

(c) Development;

(d) Design

(e) Construction;

(f) Alteration;

(g) Repair or improvement of real property.

(3) Other professional services of an architectural or engineering nature, and incidental services commonly performed by members of the architectural and engineering professions (and individuals in their employ), including:

(a) Studies;

(b) Investigations;

(c) Surveying and mapping;

(d) Tests;

(e) Evaluations;

(f) Consultations;

(g) Comprehensive planning;

(h) Program management;

(i) Conceptual designs;

(j) Plans and specifications;

(k) Value engineering;

(l) Construction phase services;

(m) Soils engineering;

(n) Drawing reviews;

(o) Preparation of operating and maintenance manuals; and

(p) Other related services.

b. *General.*

(1) The statement of work (SOW) for a design contract must require the architect-engineer, when preparing the construction design specifications or other deliverables, to specify compliance with applicable environmental or conservation standards pursuant to AMS Procurement Guidance T3.6.3. These standards include:

(a) Pollution control, clean air and water;

(b) Energy and water conservation and efficiency;

(c) Hazardous material identification and material safety data;

(d) Use of recovered recycled materials;

(e) Radioactive material;

(f) Environmentally Preferable and Energy-Efficient Products and Services;

(g) Ozone depleting substances;

(h) Toxic chemical release; and

(i) Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings

(2) No construction contract may be awarded to the firm that designed the project, unless the project is being solicited and awarded as a design-build.

(3) The SIR should detail the format of the designs and deliverables to be submitted to the FAA; however the SIR should not preclude the firm from proposing use of modern design methods.

(4) Any information deemed Sensitive Unclassified Information (SUI) must be handled, released, or distributed per guidelines established in AMS Procurement Guidance T3.14.1 and FAA Order 1600.75.

c. *Evaluation Criteria.*

(1) The FAA should evaluate offers for A-E services using appropriate criteria. Examples of evaluation criteria that could typically apply to A-E services include:

(a) Professional qualifications of the A-E firm;

(b) Specialized experience and technical competence in the type of work required;

(c) Ability to perform the services in a timely manner;

(d) Past performance on contracts of a similar scope and complexity, including cost control, quality of work, and compliance with schedules;

(e) Geographical location and knowledge of the project location, if warranted by the nature and size of the project; and

(f) Other criteria as needed.

(2) The FAA may conduct design competitions where firms are evaluated based on their conceptual design for a project. Design competitions may be appropriate when:

(a) Unique situations, such as memorials or structures of unusual national significance, are present;

(b) Sufficient time is available to submit and evaluate conceptual drawings; and

(c) Design competition will substantially benefit the project and FAA.

d. *Evaluation Boards.*

(1) If appropriate, FAA may use ad hoc or standing A-E evaluation boards to assess A-E proposals. Duties of these boards may include:

(a) Review of design packages or proposals;

(b) Evaluation of offerors according to factors established in the SIR;

(c) Holding discussions as necessary; and

(d) Preparing a source selection report.

(2) Evaluation boards should include members specializing in architecture, engineering, construction, and acquisition. Non-Government advisors may serve on these boards.

(3) An offeror cannot be eligible for award while any of its principals or associates are members of the evaluation board.

e. *Liability.*

(1) A-E contractors must be responsible for the professional quality, technical accuracy, and coordination of all services required under their respective contracts.

(2) A-E firms may be liable to the Government for costs resulting from errors or deficiencies in designs furnished under contract. In coordination with technical

personnel and legal counsel, the CO must consider the extent to which the A-E contractor may be reasonably liable when modifying a construction contract due to errors or deficiencies in design provided under contract.

(3) After considering the FAA's best interest and all reasonable costs involved in recovery efforts, the CO must include in the contract file a written statement of the basis for the decision to recover or not to recover any costs from an A-E contractor that resulted from errors or deficiencies.

**B Clauses**

view contract clauses

**C Forms** **Revised 4/2006**

view procurement forms

## T3.8.3 Federal Supply Schedules **Revised 1/2009**

### A Federal Supply Schedules

### 1 General **Revised 10/2007**

a. *Definitions*.

(1) *Multiple Award Schedule (MAS)*: Contracts awarded by General Services Administration (GSA) or Department of Veterans Affairs (VA) for similar or comparable supplies, or services, established with more that one supplier, at varying prices; and

(2) *Special Item Number (SIN)*: A group of generically similar (but not identical) supplies or services that are intended to serve the same general purpose or function.

b. The Federal Supply Schedule (FSS) program is directed and managed by GSA and provides Federal agencies with a simplified process for obtaining commercial supplies and services associated with volume buying. Indefinite delivery contracts are awarded to provide supplies and services at stated prices for given periods of time.

c. The terms and conditions of an order placed against a FSS contract are governed by the terms of the FSS basic contract, and the FSS basic contract is governed by applicable clauses of the Federal Acquisition Regulations (FAR).

d. GSA may establish special ordering procedures for a particular schedule. In this case, that schedule will specify the special ordering procedures.

e. GSA schedule contracts require all schedule contractors to publish an "Authorized Federal

Supply Schedule Pricelist." The pricelist contains all supplies and services offered by a schedule contractor. In addition, each pricelist contains the pricing and terms and conditions pertaining to each Special Item Number (SIN) that is on schedule. The schedule contractor is required to provide one copy of its pricelist upon request. Pricelists may also be obtained by:

(1) Submitting a written e-mail request to schedules.infocenter@gsa.gov; or

(2) Telephone at 1-800-488-3111.

f. GSA issues FSS publications that give an overview of the FSS program and address pertinent topics. Copies can be ordered by:

(1) Requesting copies through the GSA website;

(2) Submitting a written e-mail request to CMLS@gsa.gov; or

(3) Completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Service (7SM), P.O. Box 6477, Fort Worth, TX 76115.

## 2 GSA Advantage and e-Buy Revised 10/2007

a. GSA offers an on-line shopping service called "GSA Advantage" through which a Contracting Officer (CO) or purchase card holder may place orders against Schedules. See the GSA Advantage website. FAA personnel may search the site using specific information (national stock number, part number, common name), review delivery options, place orders directly with Schedule contractors, and pay for orders using a purchase card.

b. FAA may also use GSA Advantage to place orders through GSA's Global Supply System (formerly known as "GSA Stock" or "Customer Supply Center").

c. Complementing GSA Advantage is "e-Buy," GSA's electronic Request for Quotation (RFQ) system. E-Buy allows COs to post requirements, obtain quotes, and issue orders electronically. The system can be found on the E-Buy website.

## 3 GSA Global Supply Revised 10/2007

a. GSA, through its Stock Program, purchases a wide variety of common-use items and makes them available to Federal agencies via a network of distribution centers. The GSA Global Supply Catalog contains an alphabetical index of stock items, descriptions, National Stock Numbers (NSN), and prices. GSA also operates regional Customer Supply Centers, which are retail outlets for small quantity, immediate supply items, i.e. office supplies. The FAA may purchase Government stock items when in the FAA's best interest. Methods for ordering GSA stock items include:

(1) GSA Global Supply online site: Orders can be placed online, by registered

users;

(2) Telephone/Fax: Orders can be placed by calling (800) 525-8027 or by fax to (800) 856-7057; and

(3) FEDSTRIP (Federal Standard Requisitioning and Issue Procedure): Orders utilizing FEDSTRIP can be placed by:

(a) Using the FEDSTRIP feature on the GSA Global Supply website;

(b) Mail, using a Standard Form (SF) 344, to GSA Global Supply, Room 6A06, 819 Taylor Street, Fort Worth, TX 76102; or

(c) FEDSTRIP requisitions can be submitted through GSA Advantage website.

b. Additional information. Additional information regarding GSA Global Supply can be found at the GSA Global Supply website or by calling (800) 525-8027.

c. Registered Users. Users registered with GSA Advantage gain access to the GSA Global Supply website with the same user ID and password.

**4 Use of Federal Supply Schedules** **Revised 1/2009**

a. *General*.

(1) Although GSA has already determined that prices are fair and reasonable, with the exception of prices of certain orders for services (see below), FAA must select the FSS product or service which represents the best value for FAA. FAA should consider, as appropriate, factors such as delivery, features, capabilities, trade-in terms, probable life, warranties, maintenance availability, past performance, environmental factors, and energy efficiency.

(2) FAA is exempt from mandatory use of FSS contracts that GSA or the FAR designates as mandatory.

(3) Before procuring supplies through an FSS, the CO must confirm that the items are not covered by FAA mandatory sources, including the Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES) Program.

(4) FAA's requirements should be performance-based to the maximum extent practicable. Program officials must not "over-scope" requirements to the point that it hinders competition. If an FAA requirement is for a specific "brand name" product available from only one manufacturer, and no other equal product will be satisfactory, the program official must document the rational basis for requiring the brand name product.

(5) The CO must request pricing from three or more vendors when using an FSS to

obtain supplies or services. To ensure FAA receives the full benefit of competition, the CO is encouraged to seek pricing from as many vendors as reasonably possible (but at least three).

(6) Single source procurements using FSS contracts, or procurements involving schedules that only have one vendor, must be justified, documented, reviewed and approved as single source actions. (Refer to AMS Policy 3.2.2.4)

(7) For support services on a time and materials or labor hour basis, the CO and program official must review resumes of proposed contractor personnel. (Refer to AMS Procurement Guidance T3.8.2).

(8) For services that require a statement of work, the program official is responsible for evaluating the level of effort and mix of labor proposed to perform the specific task being ordered.

(9) The evaluation criteria and the basis on which the selection will be made must be plainly stated and strictly adhered to.

(10) For administrative convenience, the CO may add items not available through FSS (also referred to as open market items) to a FSS blanket purchase agreement or FSS individual task or delivery order only if:

(a) All applicable acquisition rules pertaining to the purchase of the items not on the FSS have been followed;

(b) The CO has determined the price for the items not on the FSS is fair and reasonable;

(c) The items are clearly labeled on the order as items not on the FSS; and

(d) All clauses applicable to items not on the FSS are included in the order.

(11) Supplies offered on a Schedule are listed at fixed prices, and services are priced either at hourly rates or at a fixed price for performance of a specific task.

(12) Orders placed under an established FSS are exempt from public announcement requirements (as stated in AMS Policy 3.2.1.3.12).

b. *Ordering supplies or services without a SOW.* When ordering supplies or service listed in a FSS and a statement of work (SOW) is not required, COs must place orders with the schedule contractor that can provide the supply or service that represents the best value to FAA.

(1) Before placing an order, COs must consider reasonably available information about the supply or service offered under MAS contracts by surveying three or more schedule contractors through the GSA Advantage Online shopping service or by requesting pricing from three or more schedule contractors.

(2) If the use of a single source is required or only one vendor is present on an applicable schedule and the total dollar value is $10,000 or less, no single-source justification is required.

(3) If the use of a single source is required and the total dollar value is above $10,000, a single-source justification is required and must be:

(a) Compliant with the requirements in AMS Policy 3.2.2.4;

(b) Developed by the servicing organization;

(c) Reviewed by legal counsel; and

(d) Approved by the CO.

(4) In addition to those items detailed in AMS Procurement Guidance T3.10.1, the CO must document the Schedule contracts considered, noting the contractor from which the supply or service was ordered.

c. *Ordering Procedures for Service Requiring a Statement of Work*.

(1) *SOW*. All SOWs must include the work to be performed, location of work, period of performance, deliverable schedule, applicable performance standards, and any special requirements.

(2) *Request for Quotation (RFQ) Procedures*. The CO must provide the RFQ, which includes the SOW and evaluation criteria, to at least three schedule contractors that offer services that will meet FAA's needs, and may post it to e-Buy.

(a) If the use of a single source is required or only one vendor is present on an applicable schedule and the total dollar value is $10,000 or less, no single-source justification is required.

(b) If the use of a single source is required and the total dollar value is above $10,000, a single-source justification is required and must be:

(i) Compliant with the requirements in AMS Policy 3.2.2.4;

(ii) Developed by the servicing organization;

(iii) Reviewed by legal counsel; and

(iv) Approved by the CO.

(3) In addition to those items detailed in AMS Procurement Guidance T3.10.1, the CO must document:

(a) The Schedule contracts considered, noting the contractor from which the supply or service was ordered;

(b) Description of the services purchased;

(c) The evaluation methodology used in selecting the contractor;

(d) The rationale for any tradeoffs;

(e) The price reasonableness determination; and

(f) The rationale for not using a firm-fixed price or performance-based order.

d. There may be circumstances when the quantity of the order has a potential to reduce price. FSS contracts contain a "level," or maximum order threshold, at which customers must request price decreases from the contractor before placing an order. FSS contractors are authorized to offer price reductions in accordance with commercial practices, and the FSS contractors are not required to extend the same price reductions to all ordering activities that they gave to an individual ordering activity for a specific order. Despite the presence of the maximum order threshold, the customer may request a price reduction on any order.

e. COs may establish blanket purchase agreements (BPAs) with FSS contractors. COs may use BPAs to establish accounts with FSS contractors to fill recurring requirements. All FSS contracts contain BPA provisions. If using a BPA is in FAA's best interest, COs should refer to the applicable FSS contract for BPA requirements. As detailed in AMS Procurement Guidance T3.2.2.5, a BPA with a vendor does not justify purchasing from only one source, as the initial BPA and future orders awarded are subject to competition requirements. Other FAA requirements detailed in AMS Procurement Guidance T3.2.2.5 include the need to publicly announce BPAs anticipated having a total value over $100,000, only a warranted CO may place orders exceeding $100,000, and reviews to include legal counsel and the Chief Information Officer apply.

f. *Termination*.

(1) *Termination for Default.* A CO may terminate individual orders for default, and may include charging the contractor with excess costs resulting from repurchase. The schedule contracting office must be notified of all instances where an order has been terminated for default, and refer to GSA for specific termination procedures.

(2) *Termination for Convenience*. A CO may terminate individual orders for convenience, and the contracting officer must endeavor to enter into a "no cost" settlement agreement with the contractor.

g. *Disputes.*

(1) Under the Disputes clause of a schedule contract, the CO may:

(a) Issue decisions on disputes arising from performance of an order and notify the schedule contracting officer of the decision; or

(b) Refer the dispute to the schedule CO.

(2) Disputes pertaining to the terms and conditions of schedule contracts must be referred to the schedule contracting officer for resolution.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

**T3.8.4 Government Sources of Products/Services** **Revised 1/2010**

**A Use of Government Sources** **Revised 7/2007**

**1 Mandatory Sources** **Revised 1/2016**

a. *General.* The FAA will generally satisfy requirements for products and services from commercial sources, or when in FAA's best interest, from or through Government sources. In some cases, FAA must purchase from or through Government sources or programs: Randolph- Sheppard Act, and Javits-Wagner-O'Day Act (JWOD) are mandatory sources for satisfying certain FAA purchases.

b. Except as otherwise provided by law or FAA policy, FAA will satisfy requirements for products and services from or through the sources listed below in descending order of priority:

(1) FAA inventory and excess inventory from other agencies;

(2) Supply or service sources mandated by the Randolph-Sheppard Act and by the Javits- Wagner-O'Day Act (JWOD); and

(3) Commercial sources, Federal Supply Schedules, or other sources.

c. The Strategic Acquisition of Various Equipment and Supplies (SAVES) program is a mandatory source when applicable (see AMS Procurement Guidance T3.8.6). Supplies procured through the SAVES program comply with JWOD requirements.

**2 Excess Inventory** **Revised 7/2007**

a. The FAA should consider using excess personal property to fulfill its requirements when it is cost effective and the excess personal property will meet FAA's needs. Excess personal property (which excludes real property, Government-furnished property, and contractor-acquired property) is any personal property under the control of a Federal agency that is not

required for its own needs. The FAA Reutilization and Disposal Process and Procedure Guide, dated 10/2006, provides additional guidance about excess personal property.

b. FAA offices may obtain more information about Government-wide personal property program by contacting GSA Federal Acquisition Service at (800) 488-3111 or GSA's Federal Acquisition Service website.

c. *GSAXCess*. GSA established GSAXCess as a central website for agencies to both post and search for excess property. The website provides an efficient means to search for excess property available in other agencies that may meets the needs of the FAA, or to post excess property no longer needed for operations.

**3 Acquisition Procedures for Purchases from Federal Prison Industries** **Revised 1/2016**

a. *General*. Federal Prison Industries, Inc. (FPI, also known as UNICOR) is a self supporting, wholly owned Government-owned corporation of the District of Columbia that provides training and employment for prisoners confined in federal penal and correctional institutes through the sale of its products and services to Government agencies. Classes of FPI produced products and services are listed in the FPI schedule which can be accessed at http://www.unicor.gov/ or by submitting a written request to Federal Prison Industries, Inc., Department of Justice, Washington, DC 20534.

b. *Applicability*. The procedures in AMS Procurement Guidance T3.8.4.A.3.c apply to all procurements involving products available from FPI, including procurements from a Qualified Vendors List, unless one or more of the exceptions below apply:

(1) The monetary value of the procurement would not require a competitive procurement process under AMS Procurement Policy 3.2.2.4 (pertaining to procurements that do not exceed $10,000);

(2) A market analysis would not be required under AMS Procurement Policy 3.2.2.4 to support a single-source procurement of the product (e.g., emergency procurement);

(3) Suitable used or excess products are available from the government;

(4) The products are acquired and used outside the United States;

(5) Services are being acquired; or

(6) The FAA has obtained a waiver from FPI. If FAA seeks a waiver from applying AMS Policy and Guidelines normally applicable to acquisitions involving products available from FPI, then it will request a waiver with respect to a particular product or class of products by using the waiver procedures on FPI's website.

c. *FPI Acquisition Procedures*. The FAA must use the following acquisition process for procurements involving products available from FPI. The three principal stages in this process are market analysis, competition (if required), and award.

(1) *Market Analysis Stage*. The FAA will conduct market analysis before purchasing a product of the type listed in the FPI Schedule. The market analysis will compare the product offered by FPI to the products available from private-sector suppliers that best meet FAA's needs in terms of price, quality, and time of delivery.

If the FAA Contracting Officer (CO) determines that the FPI product is equivalent in terms of price, quality, and time of delivery to those products available from the private sector that best meet FAA's needs, the CO will determine that the product offered by FPI is the best value to FAA and acquire that product from FPI without proceeding to the competition stage described below. The "equivalence" determination in the preceding sentence requires that FPI's product be equivalent with respect to each of the three criteria of price, quality, and time of delivery, but does not require that FPI's product be equivalent in a precise mathematical sense if such a comparison is infeasible.

The CO's procurement determination will be documented and made part of the contract file. This is a unilateral determination made at the discretion of the CO. If insufficient information is obtained through market analysis to support a best value determination, the CO will move to the competition stage.

(2) *Competition Stage*. If the CO does not determine that the product offered by FPI is the best value to FAA at the market analysis stage, then FAA will acquire the product using competitive procedures set forth below:

(a) The CO must post a public announcement for any acquisition for products available from FPI in accordance with AMS Procurement Policy 3.2.1.3.12.

(b) The FAA will solicit offers for the procurement and will include FPI in the solicitation process. A timely offer from FPI will be considered in light of the product description, product specifications, and product evaluation criteria listed in the solicitation.

(3) *Award Stage*.

(a) Award will be made to the source offering the product that FAA determines will provide the best value to FAA in terms of the product description, product specifications, and product evaluation criteria listed in the solicitation.

(b) *Procurement from FPI*. If the CO determines that FPI's products offer the best value to FAA, then FAA will enter into a procurement agreement with FPI. The agreement will be similar to FAA's agreements with other Federal agencies and may require representations and certifications appropriate for the particular procurement.

## 4 Randolph-Sheppard Act Added 7/2007

The Randolph-Sheppard Act gives priority to the blind in operating vending facilities. The Act requires agencies to provide suitable vending facility sites to blind vending operators in Government-owned or occupied buildings, and requires vending machine income to be shared with blind vendors or state agencies for the blind on property under the Government jurisdiction. The FAA must comply with the provisions of the Randolph-Sheppard Act. FAA procedures for vending facility operations under the Randolph-Sheppard Act are contained in Appendix 2.

## 5 Javits-Wagner-O'Day Act (JWOD) Revised 1/2016

a. The JWOD Act governs products and services offered for sale by workshops of the blind or other severely handicapped persons. The Committee for Purchase from People Who are Blind or Severely Disabled (referred to below as the "Committee") is an independent Government activity responsible for determining products and services to be purchased from the central non-profit agencies National Institute for the Blind (NIB) and SourceAmerica (formerly NISH) (both are referred to below as AbilityOne (previously JWOD) agencies).

b. The FAA must comply with the provisions of the JWOD Act by considering certain purchases from the Committee when they are capable of providing required products or services and meeting FAA's required delivery dates.

c. The Committee maintains a "Procurement List" of all supplies and services that Government agencies must purchase. Examples of items on the Procurement List include cleaning supplies, clocks, office supplies, writing instruments, and breakroom supplies. FAA ordering offices may obtain a copy of the Procurement List, or information whether a given product or service is on the Procurement List, from: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, Room 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461, telephone (703) 603-7740. The Procurement List is also available on the AbilityOne website.

d. GSA's Federal Acquisition Service is the primary distributor of AbilityOne office supplies and other general use products. When a product is not available through FAA's SAVES Program (see AMS Procurement Guidance T3.8.6), FAA ordering offices may purchase AbilityOne items from GSA's Stock Program (AbilityOne items are identified in the GSA Supply Catalog and GSA Customer Supply Center Catalogs), from Federal Supply Schedule commercial vendors (limited to certain vendors on GSA Schedule 75 III A), or directly from SourceAmerica or NIB (the FAA ordering office must obtain direct order authorization from SourceAmerica or NIB prior to placing orders directly) .

e. FAA ordering offices may obtain items on the Procurement List from commercial sources if:

(1) The AbilityOne agency cannot provide items within required delivery dates and a commercial source can; or

(2) The AbilityOne agency cannot economically produce the required quantities. Prior to purchasing from a commercial source, the ordering office must obtain a waiver from the AbilityOne agency.

f. Agencies representing AbilityOne accept the Government purchase card for most items; whenever possible, purchasers should use this method of payment.

## 6 Other Government Sources Revised 1/2016

a. *Federal Supply Schedules*. The GSA Federal Supply Schedule (FSS) program provides Federal agencies with a simplified process for obtaining commonly used products and services at prices associated with volume buying. The FAA may purchase from FSS contractors used when in FAA's best interest, e.g., these sources represent the best value, prices are most advantageous, delivery is most expeditious, or quality products or services are offered. (See AMS Procurement Guidance T3.8.3, Federal Supply Schedules, for additional guidance on this subject.)

b. *Defense Logistics Agency*. The Defense Logistics Agency (DLA) is responsible for assuring that Federal agencies are supplied with their fuel requirements. When in the FAA's best interest, DLA may be used. However, it may not always be to FAA's advantage to use DLA contracts to fulfill fuel needs; COs may be able to obtain better prices and services through local competition. Information about DLA-managed stock, including fuel, can be found on the DLA website.

c. *Printing and Related Products.*

(1) "Government printing" means printing, binding and blank bookwork for the use of an executive department, independent agency, or establishment of the Government. "Related products," means products that are used and equipment that is usable in printing and binding operations. The purchase of preprinted documents is not considered printing services, and is not subject to this section.

(2) The FAA may acquire products and services from the Government Printing Office (GPO), or those managed by GSA, if in FAA's best interest.

(3) Requisitioners should obtain approval from the cognizant FAA printing office before purchasing in any manner, whether directly or through purchases of other products or services, printing and related products. Examples of printing requiring this approval include composition, plate making, presswork, binding, silk-screening of specialty advertising items, and micro-graphics (when used as a substitute for printing). Note that simple copying of a printed document does not constitute printing.

## 7 Use of Government Sources by Contractors Revised 1/2016

a. *General.* The CO may authorize contractors, or subcontractors, performing under cost-reimbursement contracts, other types of contracts when appropriate, or contracts under Javitts-Wagner-O'Day Act, to use Government sources of supply. Government sources of supply include: stock programs of GSA and Departments of Defense and Veteran's Affairs, and Federal Supply Schedules. The CO should consider the following before authorizing contractor use of Government sources: administrative costs of placing orders, impact of

potential delivery delays, cost, suitability, and recommendations from the contractor. The CO should issue authorizations to subcontractors through, and with the approval of, the prime contractor.

b. *Authorization*.

(1) *Ordering Against FSS Contracts*. Contractors must follow the terms of the applicable FSS contract and include with each order a copy of the authorization letter (unless previously provided to the FSS contractor). If an FSS contractor refuses to honor the contractor's order, the CO should report the matter to GSA, FCO, Washington, DC 20406.

(2) *Ordering from Government Stock*. The CO should request authorization from the agency managing the stock. The CO should also submit with the request: the contractor's mailing, freight, and billing addresses; a copy of the authorization letter; the prime contract number; and the effective date and duration of the contract.

(a) GSA. Submit request to GSA, FXS, Washington, DC 20406, after obtaining an activity address code for the contractor.

(b) VA. Submit request to Deputy Assistant Secretary for Acquisition and Materiel Management (Code 90), Department of Veteran's Affairs, 801 Vermont Avenue, Washington, DC 20420.

(3) Title to property obtained by the contractor will vest in the parties as provided by the contract, unless otherwise stated.

(4) Appendix 1 contains a sample letter authorizing cost-reimbursement contractor's use of Government contracts.

## 8 National Wireless Program Revised 1/2016

a. To take advantage of economies of scale and thereby provide wireless devices and related services at a substantially reduced cost, FAA has centralized the procurement of non-secure devices and secured and non-secured services. Only the National Wireless Program (NWP) may enter into contracts with cellular and satellite providers. No other person or organization is authorized to enter into any contract or renew current contracts for cellular devices, services, or peripherals on behalf of the FAA, regardless of the procurement method used.

b. FAA Order 1830.9 further specifies internal management and operating procedures related to the management of cellular and satellite devices and services, transferring and porting telephone numbers.

## B Clauses

view contract clauses

## C Forms

view procurement forms

## D Appendix

### 1 Contractor Authorization Letter for Use of FSS Contracts Revised 1/2016

**CONTRACTOR AUTHORIZATION LETTER FOR USE OF FSS CONTRACTS**

*Contractor Name*

*Address*

As a Government cost-reimbursement contractor under contract_____, you are hereby authorized to place orders under GSA's Federal Supply Schedule (FSS) Program, subject to the conditions listed below.

1. This authorization expires on _____.

2. Purchases made under this authorization are limited to $_____.

3. This authorization is limited to the following FSS contract(s) _____.

4. This authorization (*does/does not)* apply to overhead supplies, and (*does/does not)* apply to production supplies.

5. This authorization is limited to the following facility (*insert contractor facility name and location*).

6. Vesting of title for supplies purchased under this authorization must be as follows (*insert vesting information*).

7. (*Other limitations may be inserted here)* Any supplies or services purchased under this authorization must be properly accounted for and properly used. You are authorized to order only those supplies and services required in the performance of your contract(s) referred to above. You are responsible for compliance with the applicable policies and procedures prescribed for purchases from FSS contracts.

*Contracting Officer*

### 2 FAA Procedures for Vending Facility Operations Under Randolph-Sheppard

Revised 1/2016

1. GENERAL. The Randolph-Sheppard Act, and Department of Education Regulations implementing the act and amendments, gives the blind priority in operating vending

facilities.

2. RESPONSIBILITY. The Chief of the Contracting Office (COCO), or their designated representative, administers FAA's vending facility program.

3. PRIORITIES. Blind vendors licensed by State licensing agencies designated by the Secretary of Education under the provisions of the Randolph-Sheppard Act must have priority pursuant to 34 CFR 395 in the location and operation of food service and/or automated vending facilities, on property occupied and controlled by FAA. Because contracts/permits for food service and/or automated vending facilities do not involve the expenditure of appropriated funds, no further set aside requirements apply.

4. CRITERIA FOR ESTABLISHING NEW CAFETERIAS AND OTHER TYPES OF VENDING ESTABLISHMENTS.

a. The FAA must first determine if a facility is subject to the Randolph-Sheppard Act provisions (see paragraph 13 through 16). If not, the following factors should be considered in determining feasibility of relying on nearby food establishments in lieu of establishing vending facilities on FAA-controlled and occupied property:

(1) Accessibility. Food establishments must be conveniently located so that employees can reach them, obtain service, and return to duty within the time allowed for that purpose.

(2) Suitability. To be acceptable, good quality service must be available at reasonably competitive prices, in clean, neat surroundings.

(3) Adequacy. The nearby food establishments must be able to serve FAA employees and their other patrons during required service hours, with reasonable promptness.

b. If it is not feasible to depend on nearby food establishments, FAA may establish a vending facility if the following prerequisites are met and documented in writing:

(1) Justification. There must be adequate justification for establishing a vending facility as set forth in this paragraph.

(2) Space. Sufficient and satisfactory space must be available.

(3) Funding. Sufficient funds must be available to FAA to defray the costs for which the Government will be responsible.

(4) Necessity. The services must be necessary for the health or efficiency of FAA employees while on duty.

(5) Codes. It must be possible to establish and operate each vending facility conforming with safety, health, and sanitary codes.

5. FOOD SERVICE EQUIPMENT. Generally, FAA may furnish, install and connect all original food service equipment of fixed or substantially permanent nature, except vending

machines operated under the provisions of the Randolph-Sheppard Act. If a facility is accepted by the State Licensing Agency (SLA) under the Randolph-Sheppard Act, then the SLA is required to provide the food service equipment. Other food service equipment, including cash registers, should be provided by the concessionaire. Consult with FAA legal counsel's office regarding any vested title to equipment.

6. SPACE RENTAL FEES AND UTILITY CHARGES.

a. Blind vendors will not be charged for Government space. Utilities and other support services may be provided without charge.

b. Employee welfare and recreation associations, commercial cafeteria operators, and/or commercial vending machine operators should be assessed charges for space at a rate equivalent to commercial rents for comparable property and services. Utility charges should be assessed, based either on separate metering or appropriate proration by space occupied or by other acceptable methods for prorations.

c. Space rental and/or utility charges may be waived or reduced upon written determination by the Contracting Officer that uninterrupted operation of the vending facility is essential to the efficiency of operations of the activity and a significant factor in hiring and retaining employees and promoting employee morale.

7. TERM OF CONTRACT. (This paragraph does not apply to permits issued to SLAs for the blind under the Randolph-Sheppard Act).

a. There is no statutory limitation for the term of a cafeteria contract in non-GSA activities. However, each contract will establish a definite period beyond which the contract and extensions will not be allowed to run.

b. The contract may permit termination by either of the contracting parties, without cause, after 90 days written notice to allow the parties ample time in which to prepare for the transition necessitated by termination.

8. BONDS. At the discretion of the Contracting Officer and if required by the solicitation, the operator may be required to furnish a performance bond to guarantee the faithful performance of his obligations under the contract. The performance bond, if required, will be of an amount determined by the Contracting Officer to be adequate to protect the Government's interest and will be furnished prior to commencement of operations of the facilities.

9. INSURANCE. All contracts will include the clause for contractor liability insurance.

10. HOURS OF SERVICE. Hours will be determined on a case-by-case basis by the Contracting Officer and the appropriate facility manager.

11. MONETARY RECEIPTS. Monies received by the Government from operators for space, utilities, and other services will be deposited into the U. S. Treasury as miscellaneous receipts, via the servicing Accounting Division.

12. AUDIT. The Contracting Officer should arrange periodic spot reviews and audits during

the term of agreement.

13. JUSTIFICATION FOR EXEMPTION FROM BLIND VENDORS OPERATING FACILITIES. Facilities are subject to the exemptions stipulated in paragraph 16 (Exemption).

a. Blind persons licensed by a SLA for the blind will be given priority in the operation of vending facilities, including cafeterias, on FAA-controlled property.

b. When the location and/or operation of a blind vending facility would adversely affect the interests of the United States, a complete, written justification will be furnished to the Secretary of Education, who will make the final determination. Each determination will be a matter of public record by publication in the Federal Register.

c. The regulations governing this program (34 CFR Part 395) do not define "adversely affect the interests of the United States," because the Statute requires a case-by-case determination. If a regional or center director believes that the establishment of a blind vending facility would adversely affect the interests of the United States, he/she will make a written finding to that effect, with concurrence of regional or center legal counsel, and be addressed to the Secretary of Education.

14. ACQUISITION AND OCCUPATION OF FEDERAL PROPERTY. Any FAA acquired (purchased, rented, or leased), constructed, or substantially altered or renovated building is required to have one or more satisfactory sites for a blind-operated vending facility.

a. Substantial alteration or renovation is considered to be a permanent material change in the floor area of a building that would render it appropriate for the location and operation of a vending facility by a blind vendor.

b. "Satisfactory site" means an area fully accessible to vending facility patrons which has:

(1) A minimum of 250 square feet available for the vending and storage articles necessary for the operation of a vending facility; and

(2) Sufficient electrical, plumbing, heating, and ventilation outlets for the location and operation of vending facilities in accordance with applicable health laws and building codes.

15. OFFERING TO STATE LICENSING AGENCIES (SLA).

a. A service area, region or center will notify the appropriate SLA of buildings to be acquired or substantially altered or renovated. This notice (see Figure 2-2, for example notice) should be by certified or registered mail with return receipt requested. This notification will be provided at least 60 days in advance of the intended acquisition date or the initiation of actual construction, alteration, or renovation. As a practical matter, the SLA should be contacted early in the planning or design stage of a project. The notice will enable the SLA to determine if it wants a vending facility in the building and will:

(1) Indicate that a satisfactory site or sites for the location and operation of a blind vending facility is included in the plans for the building;

(2) Forward a copy of a single line drawing indicating the proposed location of such site or sites, and

(3) Assure the SLA that, subject to the approval of the FAA, it will be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to completion of the final space layout of the building.

b. Responsibility for notification rests with the COCO who will be the designated contact point for the SLA. A copy of the notice and response, if any, will be provided to the Division for Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education, Washington, DC 20202.

c. The SLA will be given the opportunity to visit the proposed vending facility site prior to preparation of the final space layout.

d. The SLA must respond within 30-days, acknowledging receipt of the notice from the FAA service area, region or center, and indicating whether it is interested in establishing a vending facility, and if interested, indicating its agreement or alternate selection of location and its selection of type of vending facility.

e. If no response is received within the 30-day period, the FAA service area, region or center will notify the Secretary of Education at the address in (b) above that the State licensing agency's failure to respond has been construed as a determination by the SLA that the number of persons using the property is or will be insufficient to support a vending facility and that a satisfactory site to be operated under the auspices of the SLA will not be incorporated, unless directed by the Secretary of Education. This notification will also be provided if the SLA responds and affirmatively indicates that it has made such a determination.

16. EXEMPTION.

a. The Secretary of Education has determined that the requirement to provide a satisfactory site, as stated in paragraph 15(a)(1) above, does not apply:

(1) When fewer than 100 Federal employees will be located in the building during normal working hours; or

(2) When a building in which services are to be provided to the general public contains less than 15,000 square feet to be used for Federal Government purposes; or

(3) When a service area, region or center is leasing all or part of a privately owned building in which the lessor or any of its tenants have an existing restaurant or other food facility in a part of the building not covered by the lease and operation of a vending facility would be in substantially direct competition with such restaurant or other food operation; or

(4) When the SLA and the Secretary of Education determine that the number of persons using the Federal property is or will be insufficient to support a vending facility; or

(5) When there is an existing vending facility on the Federal property that is not covered by contract with, or by permits issued to SLAs. However, the SLA must be notified of the expiration of the existing contract or permit.

17. COLLECTION AND DISTRIBUTION OF VENDING MACHINE INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY.

a. Definitions. The following terms, as defined in 34 CFR 395.1, are unique to this program and require special attention.

(1) Vending machine. For the purpose of assigning vending machine income, a vending machine is a coin (or currency) operated machine which dispenses those articles and services that are sold in blind-operated vending facilities. The machine operated by the United States Postal Service for selling postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones will not be considered vending machines.

NOTE: The income from copy machines is to be made available for distribution to blind vendors in those cases where in the past such machines have been available within vending facilities operated by blind vendors.

(2) Vending machine income means receipts remaining to vending machine operators after deducting either:

(a) All applicable costs incurred (costs of goods, service maintenance, repair, cleaning, depreciation, supervisory and administrative personnel, normal accounting, accounting for income sharing and so forth); or

(b) Monies paid to the FAA or an employee welfare and recreation association by a commercial vending firm.

This definition applies to machines operated, serviced, or maintained on Federal property by, or with the approval of the FAA. It also applies to a commercial vending concern which operates, services, and maintains vending machines on FAA property for, or with the approval of the FAA. Receipts do not include a blind vendor's receipts. Commissions paid do not include those paid to a blind vendor.

(3) Direct competition means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor. Vending machines or vending facilities operated in areas where the majority of the employees normally do not have direct access (in terms of interrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor must not be considered in direct competition with that vending facility.

(4) Normal working hours means an eight-hour work period between the hours (approximately) of 8:00 a.m. - 6:00 p.m., Monday through Friday.

(5) Individual location, installation or facility means a single building or a self-contained group of buildings. A self-contained group of buildings is two or more buildings in close proximity to each other between which a majority of Federal employees working in the buildings regularly move from one building to another in the normal course of their official business during a normal working day.

b. Mandatory Distribution Requirements.

(1) Pursuant to 34 CFR 395.32, vending machine income, from vending machines on FAA- controlled property is required to be distributed to SLA. Distribution is made according to a formula which distinguishes situations in which the vending machine is in direct competition with a vending facility operated by a blind vendor from one that does not exist, the distribution formula further distinguishes between buildings which are open only during normal work hours from those which are open during non-normal work hours.

(2) Summary of distribution formula:

(a) One hundred percent of the vending machine income from a vending machine in "direct competition" with blind-operated vending facilities will be disbursed to the appropriate SLA.

(b) Fifty percent of the vending machine income from vending machines not in "direct competition: with blind-operated vending facilities will be disbursed to the appropriate SLA.

(c) Thirty percent of the vending machine income from vending machines, not in "direct competition" with blind-operated vending facilities and located in a building where at least 50 percent of the total work hours worked on the premises occurs during other than normal working hours," will be disbursed to the appropriate SLA.

c. Exemptions.

(1) The mandatory distribution requirements do not apply if vending machines are not in "direct competition" with a blind vending facility, and the total vending machine income from all such machines at any "individual location, installation, or facility" does not exceed $3,000.00 annually.

(2) The mandatory distribution requirements do not apply to existing arrangements under which the SLA receives a percentage of vending machine commissions less than that specified above, so long as the arrangement is covered by a contract with a specified expiration date, and upon expiration the contract is renegotiated according to the distribution formula.

(3) All arrangements pertaining to the operation of vending machines on Federal

property not covered by contract with, or by permits issued to, SLA agencies must be renegotiated upon expiration of the existing contract or other arrangement to conform with the requirements of this guidance.

d. Responsibility. The COCO, or their designated representative, will be responsible for:

(1) Assuring that vending machine income is collected and accounted for. Under no circumstances, will the FAA become involved in the actual physical collection of vending machine income.

(2) Assuring that vending machine income is disbursed by the operator to the SLA quarterly on a calendar year basis. The operator must provide the COCO, or their designated representative, with a quarterly certified statement showing that such action has been taken.

The first payment of income must be made at the end of the first full quarter following the effective date of this directive.

(3) Determining, subject to the approval of the regional or center director, when a vending machine is in "direct competition" with a blind vending facility. A determination that a vending machine is not in "direct competition" with a blind vending facility must be also subject to concurrence of the SLA. In the event of a disagreement between the FAA service area, region or center and the SLA in the determination of whether a situation of direct competition exists, the disagreement should be resolved informally through negotiations between the FAA service area, region or center and the SLA. If the negotiations do not resolve the disagreement, the matter would be appropriate for submittal to arbitration.

18. APPLICATION FOR SLA PERMIT. (See paragraph 20(a) for definition of Cafeteria)

a. This paragraph prescribes procedures for submission, review, and approval of permits for the establishment of vending facilities, other than cafeterias, on FAA-controlled property. The provisions of this paragraph and 34 CFR 395.35 will be complied with in establishing a vending facility.

b. Authorization. In accordance with 34 CFR 395.34, the SLA will submit the Department of Education form, Application and Permit for the Establishment of a Vending Facility on Federal and Other Property (see Figure 2-3), for review and approval by the COCO, or their designated representative.

c. Review of the permit. Upon receipt of a permit, COCO, or their designated representative, will:

(1) Discuss all details of the permit with the SLA in order to develop a full and clear understanding of the type of facility proposed, the nature of the items to be sold, provisions for fixtures and equipment, the hours of operation, and etc.

(2) Compare the type of facility to be provided, and types of articles and services to be sold with the requirements as determined by FAA. Any discrepancies should be

discussed and resolved with the SLA.

(3) Ensure that no new vending facility exists in their space without a permit in place.

(4) Require ATO Technical Operations (ATO-W) engineers developing or substantially changing a large staffed facility (such as ATCT, ARTCC, etc.) and/or facility managers to submit written requests for establishment of new vending facilities to the COCO for approval. The COCO would make determination for Randolph-Sheppard applicability, and approve or deny establishment of a vending facility based on the criteria provided. See the Randolph-Sheppard Act for the difference between cafeteria and snack bar as provided by this statute.

(5) Add the following clause to the permit if the SLA requests approval to prepare and sell brewed coffee and/or food items:

> "Approval for the preparation and serving of brewed coffee and/or food items is subject to certification by the State licensing agency that the blind vendor is capable of performing these tasks in a safe and sanitary manner, in accordance with all applicable health, sanitation and building codes or ordinances, or that a sighted assistant will be employed to perform these tasks."

19. TERMS OF THE PERMIT.

a. The permit will be issued in the name of the applicant SLA.

b. The permit will be issued for an indefinite period of time, subject to suspension or termination if either party does not comply with any of the terms and conditions of the permit.

c. The permit will provide that:

(1) No charge will be made by the FAA to the SLA for normal maintenance and repair of the building, or for cleaning areas adjacent to the designated vending facility boundaries, or for trash removal from a designated collection point.

(2) The SLA will be responsible for cleaning and maintaining the appearance of and for the security of the vending facility within the designated boundaries of such facility and for all costs of every kind in conjunction with vending facility equipment, merchandise and other products to be sold except as provided in (5) below. SLA will be liable for the loss of, or damage to, property of the U. S. Government when such loss or damage is caused by the acts or omissions of SLA, the blind vendor or the employees or agents of the blind vendor. The SLA will also be responsible for the acts or omissions of the blind vendor, his employee or agents.

(3) Articles sold at such vending facilities may consist of newspapers, periodicals, publications, confections, tobacco products, foods, nonalcoholic beverages, or other articles or services which are determined by the SLA, in consultation with the COCO, or their designated representative, to be suitable for a particular location.

(4) Vending facilities will be operated in accordance with applicable health, sanitation and building codes, ordinances and regulations.

(5) Installation, modification, relocation, removal, and renovation of vending facilities will be subject to the prior approval of the COCO, or their designated representative, and the SLA. Costs of installation, modification, removal, relocation or renovation will be paid by the initiating party. In any case of suspension or termination for noncompliance by either party, the costs of removal from the building will be paid by the non-complying party.

(6) The permit to the SLA will also contain, if applicable, appropriate requirements for reimbursement or direct payment for support services such as utilities and telephone service.

d. If the blind licensee fails to provide satisfactory service or otherwise fails, to comply with the requirements of the permit issued to the SLA, the COCO, or their designated representative, will coordinate with legal counsel and then notify the SLA of the deficiency in writing and request corrective action within a specified reasonable time. The notice will indicate that failure to correct the deficiency will result in temporary suspension or termination of the permit, as appropriate. Any actual suspension or termination action will not be taken without prior coordination with Region or Center legal counsel.

e. FAA and SLA may terminate the permit by mutual agreement after providing ninety (90) day notice to the other party of the intended termination, including the reason therefor and supporting documentation.

f. Upon approval of the permit by the COCO, or their designated representative, two copies of the approved permit must be forwarded to the SLA. The original permit will be retained in the region or center.

20. OPERATION OF CAFETERIAS BY BLIND VENDORS.

a. Definition. "Cafeteria" means a food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria. Table or booth seating facilities are always provided.

b. Priority afforded blind vendors. A priority will be afforded blind vendors in operated cafeterias. This priority may be afforded by the following methods pursuant to 34 CFR 395.33.

(1) FAA may initially decide to competitively negotiate the cafeteria contract and invite the SLA to respond to the solicitation. The SLA's proposal will be evaluated in the same manner as that of all other offerors. If the proposal is likely to be considered for award by the Contracting Officer, the Secretary of Education will be consulted as required by 34 CFR 395.33 (a) to determine whether award to the SLA is proper.

(2) The Contracting Officer may award to other than the SLA when the FAA believes that

award to the SLA would adversely affect the interests of the United States and the Secretary of Education has agreed and issued a final determination to that effect. The Contracting Officer may also award to other than the SLA if the Regional Administrator or Center Director determines and the Secretary of Education agrees that the blind vendor does not have the capacity to operate a cafeteria in such a manner as to provide food service at a comparable cost and of comparable high quality as that available from other providers of cafeteria services.

(3) If the SLA submits a proposal and it is not likely to be considered for award by the Contracting Officer, award may be made to another offeror following normal best value acquisition procurement procedures, but only after consultations between the COCO, or their designated representative, and Region or Center legal counsel.

(4) FAA service areas, regions and centers may enter into direct negotiations with the SLA to determine whether the SLA is capable of operating the cafeteria in a manner comparable to-operation by a commercial food service operator. If it is determined that the SLA has the capability and can operate the cafeteria at a reasonable cost with food of high quality, a contract will be awarded to the solicitation. If the negotiations do not result in a contract awarded to the SLA, the cafeteria contract will be placed by competitively negotiation and the SLA will be invited to respond to the solicitation. Direct negotiations with the SLA should be conducted at an early stage so that the cafeteria contract can be competitively negotiated and awarded in a timely manner if negotiations with the SLA fail.

c. Terms of contract.

(1) The operation of a cafeteria by a blind vendor will be covered by a contractual agreement and not by a permit.

(2) The SLA will be expected to perform under contractual arrangements, applicable to commercial cafeteria operators. These may include, but are not limited to, the following:

(a) Submission of detailed quarterly income statements (see Figure 2-1).

(b) Provision of all necessary supplemental cafeteria equipment and utensils.

(c) Performance of preventive maintenance on all Government-owned equipment.

(d) Compliance with all applicable health, sanitation, and building codes or ordinances.

(3) Termination actions will not be taken without prior coordination with regional or center legal counsel.

(4) All contracts for the operation of cafeterias on FAA-controlled property with other than SLA's will, upon expiration, be processed under section 13, unless the State licensing agency informs the FAA that it is not prepared to exercise its priority at that time.

21. ARBITRATION OF STATE LICENSING AGENCY COMPLAINTS.

a. If the SLA alleges that the FAA is in violation of the Randolph-Sheppard Act as amended or Department of Education regulations, and the matter cannot be resolved informally, the SLA may file a complaint with the Secretary of Education to seek arbitration of the matter. The procedures for administering SLA complaints and conducting arbitration hearings will be pursuant to 34 CFR 395.37 and the Department of Education "Revised Interim Policies and Procedures for Convening and Conducting an Arbitration pursuant to Sections 5 (b) and 6 of the Randolph-Sheppard Act as Amended.

b. When it has been determined that an arbitration panel will be convened, unless directed otherwise, the appropriate regional or center director will appoint one FAA employee to serve as a panel member. In addition, a regional or center attorney will represent the FAA before the panel.

c. The Secretary of Education will pay all reasonable costs of arbitration.

22. EMPLOYEE WELFARE AND RECREATION ASSOCIATIONS AUTHORITY. The FAA may negotiate a vending facility agreement solely with an employee welfare and recreational association if: (a) the SLA is not interested in establishing a vending facility, (b) there are no acceptable SEDB firms available to perform the services, and (c) after solicitation of commercial concerns which might be interested in the vending facility, all proposals received are unacceptable and not susceptible to upgrading through further negotiations.

23. DETERMINATION AND FINDING. A written determination which justifies negotiations with an employee welfare and recreation association by the Contracting Officer must be approved by the COCO, or their designated representative, and placed in the contract file.

24. PREREQUISITES. Negotiations with an employee association will be based upon the following prerequisites:

a. The association must conduct a continuing, self-supporting operation with sales prices within the means of the employees at the facility.

b. See paragraph 6b for the FAA policy concerning space rental and utility charges to be assessed employee welfare and recreation associations.

c. Prior to commencement of negotiation with an employee association, the association will furnish the Contracting Officer a copy of its constitution and bylaws.

d. Any services rendered by the officers or members of the association in connection with the vending facility operation will be without remuneration of any kind.

e. Vending machine income will be distributed to the SLA in accordance with the criteria set forth in Paragraph 17.

f. Any remaining income derived from the vending facility operation will be used for the

benefit of the employee association's welfare activities.

g. An agreement will be entered into between the association and the Contracting Officer, which provides for all of the aforementioned prerequisites and contains a commitment from the employee association that it will comply with the applicable provisions of this guidance. The agreement should be in format acceptable to both parties and concurred with by Government counsel prior to submission to the association and prior to execution by the Government.

25. TYPES OF CONTRACT (see Figure 2-4, Sample Contract).

a. Contracts may be of the following types, dependent on the nature of the operation and what is in the best interest of the Government.

(1) Percentage of gross receipts. This type of contract provides that revenues to the Government will be computed at a fixed percentage of the operator's gross receipts received during a specified period of time. It may also provide for a price adjustment clause to be included which provides that revenues to the Government will be computed at predetermined percentages (upward or downward) for various levels of gross revenues received during a specified period of time.

(2) Fixed sums of money per month or other specified period. This type of contract provides for a reasonable fixed sum for depreciation of Government-owned equipment and charges for building services such as space rental, utilities and cleaning in the vending facility area.

(3) A combination of (1) and (2) above.

b. Contracting Officers, if circumstances so warrant, may utilize other methods of determining return to the Government, provided that the method is fair and reasonable.

c. The factual basis for determining the return to the Government will be included in the contract file.

d. The type of contract contemplated will be clearly set forth in the solicitation which will not, however, bind the Government absolutely to that contract type.

e. Revocable permits may be used for the operation of vending facilities other than cafeterias. The permit will set forth:

(1) Location;

(2) Amount of space necessary for the operation of the vending facility;

(3) Type of facility and equipment; and

(4) Number, location and type of vending machines and other terms and conditions to be included in the permit

26. REQUEST FOR OFFERS.

a. Requests for offers will contain all information necessary to enable a prospective offeror to prepare his proposal. The following elements should be included:

(1) Location and type of facility, including types and number of vending machines required. Specify the items permitted to be sold in the vending machines.

(2) Days and hours of service.

(3) Estimated average number of persons to be employed on each shift.

(4) Terms of contract, including any options.

(5) Description of operational and storage space available for the operation, including ingress and egress restrictions and security requirements, include applicable drawings.

(6) Scope of proposed activity, standards of quality to be expected, pricing policies, and minimum menu requirements.

(7) Statement of condition of premises, scope of utilities to be provided by the FAA, listing of Government and operator furnished equipment.

(8) Manner and types of payments required by the Government, bonding and insurance requirements, if any, and accounting statements required to be submitted to the Government.

(9) Garbage disposal and cleaning requirements.

(10) Statement that the contractor must comply with all applicable health, sanitation and building codes of ordinances.

(11) Gross receipts from the activity for the current and past 3 years, and

(12) Any other information deemed necessary by the Contracting Office to assure complete understanding of requirements.

b. Factors other than price that will be given consideration in evaluation proposals will be included in the SIR.

c. The following is a suggested list of evaluation criteria which may be used:

(1) Understanding of requirements.

(2) Approach to performance of contract

(3) Management.

(4) Experience in providing food services at offices or industrial building comparable to those described in the proposed contract.

(5) Past compliance with all applicable health, sanitation and building codes or ordinances.

(6) Level of proposed staffing, including manager and supervisors.

(7) Menu pricing, portion sizes and variety based on cyclical menus.

(8) Adequacy of accounting and inventory systems and procedures.

Figure 2-1. INCOME STATEMENT

PERIOD FROM _____ TO _____
DATE DATE

SALES Food
Vending Machines
TOTAL INCOME FROM SALES

COST OF GOODS
SOLD Inventory
Purchases Total
Inventory
TOTAL COST OF GOODS

SOLD GROSS PROFIT

Less: OVERHEAD
Accounting &
Legal
Depreciation
Interest &
Penalties
Laundry
Miscellaneous
Payroll Taxes
Other Taxes- Unempl.Tax
Sales Tax

Repair & Maintenance
Rent
Salaries
Supplies - Office

Cleaning
Kitchen
Telephone
TOTAL OVERHEAD

NET INCOME, (LOSS) FROM

OPERATIONS Less: Bad Debt

NET INCOME, (LOSS)

Payments must be mailed in accordance with the provisions of the contract
Amount Due Federal Aviation Administration Paid by Check No. _____in the amount of _____

Figure 2-2. NOTICE OF THE FEDERAL AVIATION ADMINISTRATION'

S INTENTION TO ACQUIRE OR OTHERWISE OCCUPY A BUILDING

NOTICE NO. _____ DATE _____

This is to inform you that not less than 60 days from the date hereof, the Federal Aviation Administration, _____ (address )_____ intends to acquire or otherwise Occupy _____ square feet of space in which _____ Federal Government employees are _____ or will be located during normal working hours, in _____.
(If this is a lease action, just insert city and state.)

Accordingly, as provided by the Randolph-Sheppard Act (20 USC 107 et. seq.) and regulations issued pursuant thereto, notice in hereby given that a satisfactory site or sites for the location and operation of a vending facility by a blind vendor is included in the plans for the building to be acquired or otherwise occupied. Receipt of this notice will be acknowledged in writing promptly but no later than within 30 days form the date of receipt. Indication will be made at that time whether you are interested in establishing a vending facility. We assure you that, in the event we receive written advice of your interest in establishing a vending facility, you will be afforded the opportunity to determine the suitability of the proposed site or sites. We further assure you that, subject to the approval of this agency, you will be given the opportunity to select the location and type of vending facility to be operated by a blind vendor. An opportunity to make your determination and selection, as indicated above, will be offered to you prior to the completion of the final space layout but no later than_____ date . Your prompt attention to this matter will be appreciated.

_____ _____
Signer's Name (Type or Print) Signature

CHECK APPROPRIATE BOX

☐ We are interested in establishing a vending facility in connection with the proposed acquisition.

☐ We are not interested in establishing a vending facility in connection with the proposed acquisition, because in our estimation, the operation would not be feasible. Therefore, we waive our priority right to a satisfactory site in this building pursuant to 34 CFR 395.31 (d).

Receipt of Notice No. is hereby acknowledged.

_____ _____
Approval Official (Type or Print) Signature

_____ _____
Title (Type or Print) Date

Complete this form and return the Original to the Federal Aviation Administration, (regional or center address)

_____

and one copy to the Division for the Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education, Washington, DC 20201. Retain one copy for your records.

Figure 2-3. DEPARTMENT OF EDUCATION APPLICATION FOR

PERMIT DEPARTMENT OF EDUCATION OFFICE OF SPECIAL

EDUCATION AND
REHABILITATIVE SERVICES

WASHINGTON, DC

APPLICATION AND PERMIT FOR THE ESTABLISHMENT OF A VENDING FACILITY ON FEDERAL AND OTHER PROPERTY AS AUTHORlZED BY P.L. 74-732, AS AMENDED BY P.L. 83-565 AND TITLE II OF P.L. 93-516 (RANDOLPH-SHEPPARD ACT)

The_____(designated State Licensing Agency) of the State of _____ requests approval of___ (Federal or other property Agency/Owner) to place a vending facility on the property located _____.

SATISFACTORY SITE:_____
It has been determined that this location meets the criteria of a satisfactory site as defined in 34 CFR 395.1 (q).

TYPE, LOCATION AND SIZE OF FACILITY: Type of facility:_____

Facility location_____ . The facility will operate days of the week from _____ a.m. to_____ p.m. commencing on _____.

MACHINE INCOME SHARING: Both parties will comply with 34 CFR 395.35. This permit will be issued for an indefinite period of time subject to suspension or termination on the basis of noncompliance by either party with any of the agreed upon terms and conditions of the permit. By mutual agreement the State licensing agency and the FAA may terminate the permit after providing notice of the intended termination, including the reason therefore and supporting documentation to the other part. Both parties will comply with all regulations issued in Title VI of the Civil Rights Act of 1964. Reason for denial of the application will be set forth in writing to the State.

| | |
|---|---|
| _____ | _____ |
| Approving FAA Official | Approving Licensing Agency |
| _____ | _____ |
| Title Date | Title Date |

Figure 2-4. SAMPLE CONTRACT.

1. GENERAL. The following clauses are suggested for use in vending facility contracts. It is intended that use of these suggested clauses will distinguish vending facility contracts, in which revenue accrues to the Government, from other contracting procedures which involve the expenditure of Government funds, while adhering to generally accepted business standards and practices.

2. DEFINITIONS.

a. The term "Secretary" means the Secretary of Transportation and the term "head of the agency" means the Administrator, Federal Aviation Administration. The term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

b. The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated contracting officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his written authority

c. The words "Contractor," and "Operator" will be considered to be synonymous, as are the words "contract and "agreement."

d. "Operating Facilities" means furniture, furnishings, special lighting fixtures, draperies,

decorations, decorating or other special finishing work, signs, appliances, and trade fixtures, etc., furnished and installed or used by the Operator in its operations at the facility.

e. "Gross Receipts" means the total amount received, realized by or accruing to the Operator from all sales, for cash or credit, of services, materials or other merchandise, made pursuant to the privileges authorized by this contract rendered at or from the of determination of the amount due the Operator for each transaction, whether for cash or credit, and not at the time of billing or payment, unless otherwise specifically stated in this contract; provided, however, that any taxes imposed by law which are separately stated and paid by the customer, and directly payable to the taxing authority by the Operator, will be excluded from gross receipts.

3. ASSIGNMENT. No sublease, transfer, subcontract, or assignment of any part hereof or interest herein, directly or indirectly voluntarily or involuntarily, will be made by the Operator of this contract, unless such sublease, transfer, subcontract or assignment is first approved in writing by the Contracting Officer and is subject to whatever limitations the Government may wish to apply; provided, however, that the Operator may, if specified elsewhere in this contract, install or use equipment or other operating facilities which are owned by others and leased to the Operator for its use under this contract.

4. GOVERNMENT-OPERATOR RELATI0NSHIP. Nothing in this contract will be construed as in any way creating or establishing a partnership relationship between the parties hereto or as constituting the Operator as an agent or representative of the Government for any purpose or in any manner whatsoever.

5. FEDERAL, STATE, AND LOCAL LAW. The Operator will, at its own cost and expense: (a) comply with all Federal, State and local laws, including but not limited to county and local ordinances, rules or regulations now or hereafter in force, which are applicable to the operation of its vending facility; (b) obtain and pay for all necessary licenses and permits; (c) pay all fees and charges assessed under Federal, State and local law insofar as they are applicable to its vending facility.

6. TERMINATION.

a. Either party may terminate this contract without cause by giving the other party written notice of its intention to do so. Other than a termination by the government in the interests of the National Defense, any such notice of termination will be given at least ninety (90) days in advance of the effective date of termination.

b. The Contracting Officer may, by written notice to the Operator, terminate this contract. in whole or in part, for default upon the happening of any of the following events:

(1) Filing by, or the final adjudication against, the Operator of any petition in bankruptcy, or the making of any transfer or assignment for the benefit of creditors, which transfer or assignment has not been authorized previously by the Government.

(2) The abandonment of the vending facility or discontinuance thereof Should this occur, the Government will not be responsible for the protection of the Operator's merchandise, fixtures, supplies or equipment, and may remove same from the premises for storage or disposal.

(3) The failure of the Operator to perform or observe any of the terms, covenants or conditions of the contract, after the expiration of any period of warning or notice given by the Contracting Officer to the operator concerning such failure.

c. The Government' s termination of this contract for default will be deemed to be a decision of the Contracting Officer as to a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

d. In the event this contract is terminated for default, the Government may retain as liquidated damages any monies which have been prepaid or advanced to the Government, based on occupancy to the end of the contract period.

e. In the event of termination in accordance with paragraph a. clause 5, the Operator will be entitled to have any monies that have been prepaid or advanced to the Government based on occupancy of the premises to the end of the contract period refunded to it by the Government.

f. If after notice of termination for default of this contract under this Clause, it is determined for any reason that the Operator was not at fault under this Clause, or that the default was excusable under this clause, the termination will be deemed to have been properly effected pursuant to paragraph a. of his Clause.

7. WAIVER OF PERFORMANCE. The failure of the Government to insist in any one or more instances upon a strict performance by the Operator of any of the terms of this contract will not be construed as a waiver or relinquishment thereof for the future, but rather, said terms will continue and remain in full force and effect. No waiver by the Government of any terms hereof will be deemed to have been made in any instance unless specifically expressed in writing as an amendment to this contract.

8. WORK STOPPAGE OR STRIKE. Except as a result of damage to or destruction of the premises by fire or other casualty, in the event operation of the Operator are curtailed, interrupted, or otherwise handicapped in whole or in part for any reason, including but not limited to strikes and labor disputes, such conditions will not relieve the Operator of its obligation to pay the revenue specified in this contract nor to pay for utilities consumed under such conditions, unless and except as otherwise specifically provided for elsewhere in this contract.

9. FAIR LABOR STANDARDS ACT. (Public Law 93A259, enacted April 8,1974, amends the Fair Labor Standards Act of 1937, as amended (29 U.S.C. 201 et seq.).) The administration and enforcement of this Act are the responsibility of the U. S. Department of Labor; any questions as to the requirements of the Act or its applicability to the work required by this contract should be addressed to the Administrator, Wage and Hour Division, U. S. Department of Labor, Washington, DC. 20210 or to a Labor Department Regional Office.

10. SECURITY. The Operator and each of his employee engaged in work under this contract will execute and submit to the Federal Aviation Administration a Standard Form FDA258, (3 copies), and Standard Form 86, (1 copy). The executed forms will be furnished to the Contracting Officer's Representative (COR) not later than the first day Operator' s employees report to the facility to perform services under this contract.

Personnel of the Operator will not be allowed to perform services under this contract until the Contracting Officer has received the appropriate forms. The necessary forms will be furnished to the Operator by the COR.

Personnel of the Operator who have previously submitted Standard Forms 86 and FDA258 for work under other: Federal Aviation Administration contracts need not submit new forms if they have been continuously employed at the same FAA facility since the original submission of the forms.

All personnel of the Operator, who are cleared for security purposes will be allowed to continue to perform work under the contract; any individual who is not so cleared may not be employed by the Operator under this contract.

11. FACILITY RULES AND REGULATIONS. The Operator will observe and obey all rules, regulations, and implementations thereof promulgated as authorized by law for the care, operation, maintenance and protection of the facility, which rules, regulations and implementations thereof would be applicable and valid irrespective of this clause. Failure of the Operator, any of those persons under its control or its subcontractors to observe such rules, regulations or implementations will, in addition to assessment of any other penalty provided by law, because for termination of this contract for default.

12. RESTRICTIONS.

a. Unless specifically authorized in writing by the Contracting Officer, the Operator will not remove any Government-owned equipment from premises, advertise the concession operations in any manner, or prepare foods and beverages on the premises for sale at any location not covered by the contract.

b. Since the facilities to be provided hereunder are for the benefit and convenience of Federal employees, patronage from other sources that interfere with such purposes may be limited or prohibited by the Government at is sole discretion.

13. PROMOTION. The Operator agrees to use its best efforts in every proper manner to maintain and develop the business conducted by it under this contract, to increase same, and not to divert or cause or allow any business to be diverted form the facility.

14. SANITATION.

a. All cafeteria operating under the contract will be conducted in conformance with the requirements for a Grade A food establishment, as set forth in the Food Service Sanitation Manual No. FDA-78-2081, of the Food and Drug Administration (GPO Stock No. 017-012-00267-6) (or revision thereof), or in conformance with local requirements for a top-grade establishment, if the latter should be more stringent, provided, however, that the Operator will not be responsible for any structural deficiencies in the facility which are the responsibility of the Government.

b. Each food handler will be required to pass a medical examination annually or as may be required by applicable local regulations, whichever requirement is more stringent, to determine that he has no communicable disease. Those found to be or suspected of suffering

from a communicable disease will be removed from duty immediately.

c. Food handlers will not be permitted to operate the cash register or handle money nor will any person operating the cash register or handling money be permitted to handle food.

15. INSPECTIONS

a. Health. The facility operated under the contract may be inspected periodically by the Contracting Officer, representatives of local health departments, or the Regional Flight Surgeon. After each inspection, the Operator will be advised of any unsatisfactory conditions for which he is responsible. Deficiencies reported will be corrected promptly by the Operator.

b. Fire Prevention. Periodic inspections will be performed by a FAA-appointed fire inspector; any unsafe conditions found by such official will be immediately corrected by the Operator.

c. Industrial Safety. Periodic inspections will be performed by an FAA-appointed Safety Officer; any unsafe conditions found by such official will be immediately corrected by the operator

16. ESTABLISHMENT AND CONTROL OF PRICES AND SERVICES.

a. The Contracting Officer reserves the right to control the nature, types, and quantities of merchandise and services which may be sold or furnished by the Operator If the Operator refuses or fails within forty-eight (48) hours after receipt of written notice form the Contracting Officer to discontinue the sale of any product or service which the Contracting Officer determines to be in violation of the rights granted hereunder or which the Contract Officer determines should not be dispensed, or if the Contracting Officer is forced to make repeated and frequent demands upon the Operator to cease the sale of such products or services, such refusal, failure or demands will be cause for termination for default of this contract.

b. The Operator will maintain and operate the vending facility to such extent and in such manner as provided in the contract, sell the articles and services authorized, and provide the management, personnel, equipment, goods and commodities necessary therefore.

c. All rates and prices established by the Operator for goods or services sold hereunder will be reasonable and subject to approval by the Contracting Officer.

d. Reasonableness of prices will be judged primarily by comparison with those currently charged for comparable goods or services furnished or sold outside the facility under similar conditions, with due allowance for accessibility, hours and time of operation, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given other factors as the Contracting Officer may dream significant.

e. Only quality foods, such as Grade A poultry, U. S. Choice grades of beef U.S. No.1 grade pork, Grade A or fancy vegetables, and Grade A or B canned goods may be used. All foods served will be wholesome and free from spoilage and decay. Uncooked items, such as fresh fruits will be clean and free from blemish. Salads and sandwiches will be made fresh daily

and all foods, will, when served, be attractive in appearance at the proper temperature, and moist, dry, tender, etc., as appropriate.

f. Prices will be posted by the Operator, preferably adjacent to the item.

17. RESPONSIBILITIES OF THE GOVERNMENT. The Government will provide space for operation of the vending facility and such additional space as it may deem necessary including a reasonable use of existing elevators, corridors, passageways, driveways, and loading platforms. The Government will, as it deems necessary provide lighting, ventilation, and the utilities required for the operation of the vending facility. In addition, the Government will:

a. Make such improvements and alterations as it may deem necessary or desirable to prepare or recondition assigned space for its intended purpose, including improvements and alterations necessary to conform to applicable health and sanitary requirements.

b. Maintain and repair the following: (i) the building structure in areas assigned, for the Operator's use, including painting and redecoration; (ii) gas, water, steam. sewer, and electrical lines, ventilation, and existing air conditioning lines, all to the point of connection with food service equipment or to the point of outlet in vending facility areas if not so connected; (iii) electrical lighting fixtures (including relamping); space heating systems, floors and floor coverings (except rugs and carpets) and wall and ceiling; provided that Operator will bear the expense of all repairs necessary because of damage caused by the fault or negligence of the Operator or any of his employees.

18. RESPONSIBILITES OF TO OPERATOR.

a. The Operator will provide prompt, efficient, and courteous service. He will obtain licenses and permits as required by State and local authorities, and will observe all applicable building, health, sanitary, and other regulations and laws. He will use reasonable care in the use of space and Government-owned equipment, and, upon contract termination, will yield up such space and equipment in the same condition as when received, except for ordinary wear and tear and damage or destruction beyond his control and not due to his fault or negligence.

b. The Operator will maintain an effective program for the extermination of rodents and vermin in areas assign›d for his use. Although the Government will provide cleaning of the dining area floors and waxing of the floor as specified in the contract, the Operator will provide necessary intermittent cleaning of the dining area floors between the cleanings provided by the Government. All cleaning and mopping of the area behind the counter and all kitchen and storage areas, as specified herein, will be done by the Operator.

c. The Operator will employ sufficient and suitable personnel, secure and maintain insurance, and observe other contract requirements? all as more specifically set forth hereinafter. Except as otherwise stated herein, he will pay each and every fee, cost, or other charge incident to, or resulting from operations under the contract.

19. EMPLOYEE OF OPERATOR.

a. The Operator will employ a full-time qualified manager during the hours of _____ days a week. In addition, the Operator will employ _____ full-time working supervisors

during each shift, _____a day, and _____days a week or a representative of the Operator at times other than those specified here. If the above supervisors, will visit the facility monthly for general supervisory purposes at times agreed upon by the Contracting Officer and the Operator. Upon 4~8 hours advance notice from the Contracting Officer a representative of executive status will visit the facilities to adjust matters requiring attention.

b. The Government may require the Operator to remove from the contract operations any employee who is considered incompetent, careless, insubordinate, unsuitable or otherwise objectionable or whose continued employment is considered contrary to the public interest by the Contracting Off1cer.

c. The operator will require its employee to wear a uniform and badge by which they may be known and distinguished as the employees of said Operator. Uniforms will be clean. Hairnets, headbands or caps must be used by employees engaged in the preparation and serving of food to keep hair from food contact surfaces. The Operator will provide his employees with frequent changes of uniforms to assure cleanliness.

d. The Operator will require its employees to observe a strict impartiality as to quantities and services and in all circumstances to exercise courtesy and considerations in dealing with vending facility patrons. Serving utensils will be used by the Operator's employees to keep direct handling of food to a minimum.

e. Employees of the Operator hall not smoke or carry lighted cigarettes or tobacco products in the food preparation or serving area.

f. Each employee of the Operator will be a citizen of the United States of America or an alien who has been lawfully admitted for permanent residence, as evidenced by an Alien Registration Receipt Card, Form 1-151, or other evidence from the Immigration and Naturalization service that employment will not affect his immigration status.

g. The Operator will employ a full-time, on-site manager who possesses the necessary qualifications to supervise the establishment effectively. The on-site manager will have previously had, as a minimum, two years of consecutive employment in a position with comparable responsibilities. The proposed manager's qualifications (resume) will be subject to the approval of the Contracting Officer. No one other than the person approved by the Contracting Officer will be assigned to manage the vending facility. These provisions also apply to any replacement of the manager.

h. The Operator' s manager will be delegated the authority essential to the day-to-day effective operation of the cafeteria for personnel supervision and training, menu planning, purchasing, cost control, sanitation, etc. The Operator's manager will be replaced on 30 days notice upon request of the Contracting Officer if he determines there are operational deficiencies resulting from inferior management.

i. The Operator will at all times provide an adequate staff of food service employees to perform the varied and essential duties, inherent in a successful food service operation. Except as otherwise provided in this contract, staffing will be provided as submitted in the Operator's proposal and any changes are subject to approval of the Contracting Officer.

j. The Operator will pay all employees not less frequently than once every tow weeks, without deduction or rebate on any account, except as provided or allowed by law.

k. The Operator will provide adequate, trained relief personnel to substitute for its regular employees when they are absent so that a high quality concession service will be maintained at all time.

l. The Operator will require its employees to comply with such instructions pertaining to conduct and building regulations as are in effect for the control of persons in the building or as may be issued for that purpose by Government representatives.

m. The Operator will schedule an employee-training program that will continue for the duration of this contract and any extensions thereof to insure that its employees perform their jobs with highest standards of efficiency and sanitation

n. All articles found by the Operator, its agents or employees or found by patrons and given to the Operator, will be turned in to the Government as lost-and-found items.

o. Violations of the foregoing responsibilities may result in termination of the Contract

20. PAYMENT TO THE GOVERNMENT.

a. Payment of $_____to the Government will be made monthly, in accordance with the provisions of the contract. Payments will be made not later than the day of each calendar month.

b. All payments will be mailed to the Chief, Accounting Division, located at _____.

Checks will be made payable to the Federal Aviation Administration and will reference the contract number, period of time covered, and facility served.

21. EQUIPMENT.

a. Equipment to be provided by the Government. The Government will proved and the Operator may cause the equipment listed herein. The Government will also:

(1) furnish and install replacement equipment when it determines that the original equipment is worn out or beyond economical repair; and

(2) furnish and install such additional equipment of a similar type which it may deem necessary in connection with an expansion of these services, should any expansion be required.

b. Title to all Government furnished equipment will remain in the Government. No Government furnished equipment will be removed from the premises for any purposes except by the Government or with the prior approval of the COR. The Operator will acknowledge receipt of all Government-owned equipment in writing.

c. Minor repairs to Government Furnished Equipment. Throughout the contract period or any extension thereof the Operator will maintain, adjust, and repair the Government furnished equipment provided for his use in a manner satisfactory to the COR; provided, that the responsibility of the Operator for repairs to Government furnished cafeteria equipment will be limited to repairs made at one time which cost less then 10% of the original cost of equipment. The Operator will also repair or replace any Government furnished equipment that may be damaged as a result of his own or his employees fault or negligence, regardless of cost: The Operator will:

(1) Service the dishwasher and care for it in accordance with the instructions of the manufacturer.

(2) Keep the deep fat fryer and toaster clean and in serviceable condition.

(3) Keep the canopy free form grease and thoroughly clean.

(4) Clean air filters daily and grease traps for the dishwasher and sink when required.

d. Replacement or Major Repairs to Government Furnished Equipment. If the cost of repairing a piece of Government furnished equipment will exceed the limitations specified in paragraph b. above or the equipment has become obsolete or no longer useful for its original purpose, the Operator will notify the Contracting Officer so that arrangements may be made for appropriate repairs of replacements. The decision of the Contracting Officer as to whether a piece of equipment is to be repaired or replaced will be final.

e. Equipment to be provided by the Operator. The Operator will provide all required equipment not provided by the Government. The Operator will repair, replace and supplement such equipment as necessary to insure sanitary, efficient and satisfactory operation of the vending facility.

f. Final Disposition of Equipment. At the end of the contract period or extension thereof, all equipment will be disposed of as provided in the contract.

22. SURRENDER OF POSSESSION.

a. As of the date this contract expires or is terminated as provided for elsewhere in this contract, the Operator will immediately and peaceably yield up to the Government the premises in good repair in all respects, reasonable wear and tear excepted, and the Government may without further notice take possession of the premises.

b. Upon prior written notice to the Contracting Office the Operator will have the right at any time during the term of this contract to remove any operating facilities it may erect or install or use in the premises, and any or all fixtures and equipment and other property installed or placed by it at its expense in or about the leased premises; subject, however, to any valid lien which the Government may have thereon for unpaid charges and fees; and provided that, upon removal of any such operating facilities, the Operator will restore the premises to a condition

satisfactory to the Contracting Officer.

c. The Operator will be deemed to have abandoned to the Government any operating facilities and other facilities, equipment and property of the Operator which it has failed to remove from the premises or from the possession of the Government within fifteen (15) calendar days after the end of the period of this contract, or effective date of termination thereof, unless the Contracting Officer grant additional time for this purpose in writing; provided, however, that the Government may, prior to the expiration of said fifteen (15) day period, remove same and restore the premises to a satisfactory condition and hold the Operator liable for all costs incident thereto. In the event it is necessary for the Government to remove such facilities, equipment or property, the Government will not be subject to any liability by reason of the removal or the custodial care of same.

23. ESTABLISHMENT OF OPERATING FACILITIES.

a. The Operator will provide and install at its own costs and expense, all operating facilities and furnish all supplies and materials required for the proper and adequate operation of the vending facility under this contract.

b. All such installations will be subject to the Contracting Officer's approval for conformity with safety standards and similar criteria and with regulations established for the facility and for compatibility of design, quality, conditions, or color arrangement with the architectural and general character of the vending facility area and the facility. In addition, all installations will conform to applicable state and Federal building, plumbing, electrical, or similar codes or ordinances. The Operator will provide all necessary maintenance for the operating facilities.

24. ACCOUNTING RECORDS OF THE OPERATOR.

a. In the event this contract provides for payment of revenue to the Government which is computed in any manner upon the gross receipts or net receipts of the Operator derived from its operations, the Operator will maintain accounting records, in accordance with accepted accounting practices, of all its transactions that are connected with operations under this contract. These records should be kept current during the contract period at the business address of the current operator during the contract period and be retained at that location for a period extending 3 years from the date of termination or expiration of this contract, unless a longer period of time specifically is started elsewhere in this contract.

b. The Operator will permit any verification, examination or audit of these accounting records deemed advisable by the Government. In addition, any verification, examination or audit of the accounting records of any proprietary or affiliate concern during the term of this contract, and for 3 years afterwards, during regular business hours will be allowed.

c. The Operator also will permit inspection by the officers, employees, or representatives of the Government of any accounting, bookkeeping, or similar equipment used by the Operator in the development and maintenance of these accounting records.

25. ACCOUNTING DATA.

The Operator will submit a copy of its quarterly incomes statement to the Contracting Officer through the Contracting Officer's Representative.

### T3.8.5 Leases Added 1/2006

### A General Added 1/2006

#### 1 Evaluation of Lease to Determine Accounting Treatment Added 1/2006

Any cost lease must be evaluated prior to award to determine whether it should be classified as an operating lease, a capital lease, or lease purchase. This classification has profound effect on the amount of funding that must be scored (reserved) for the lease per the requirements of OMB Circular A-11, and COs must be aware that a capital lease is not to be entered into, unless the requesting office certifies that it has reserved appropriate funds for the capital lease IAW OMB Circular A-11 requirements. The evaluation is accomplished by the CO and the assigned accounting office. The CO follows the form directions and completes data fields on a form, "Evaluation of Lease to Determine Accounting Treatment" and submits the completed form to their supporting accounting office. Note: Some leases are "automatically" considered operating or capital leases – based on answers provided in sections 1 and 2 of the form. See form instructions for details. The lease data is entered into the accounting system and the tests are performed to determine whether the lease should be classified as operating or capital. The CO should reference the following sources for further information on lease determinations:

(i) PRISM/DELPHI Business Process Solution: see Capital Leases

(ii) PRISM/DELPHI Business Process Solution: see Leases

(iii) Accounting Capitalization Desk Guide: see Accounting Capitalizaton Desk Guide

(iv) OMB Circular A-11, Appendixes A & B: see OMB Circular A-1, Part 8, Appendix A and OMB Circular A-11, Part 8, Appendix B

(v) Realty Specialists and Real Estate Contracting Officers refer to FAST; Real Property and Facilities see Real Property Guidance Section 3.1.5

### B Clauses Added 1/2006

view contract clauses

### C Forms Added 1/2006

view procurement forms

## D Appendix Added 1/2006

1. Reserved for Copy of Sample personal property lease

2. PRISM/DELPHI Lease Business Process: Leases

3. PRISM/DELPHI Capital Lease Business Process: CAPTIAL LEASES

## T3.8.6 Strategic Sourcing Added 1/2007

### A Strategic Sourcing Added 1/2007

#### 1 General Revised 1/2012

a. Strategic sourcing is implemented through the Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES) program, and other FAA-wide initiatives, such as the National Wireless Program and Software Enterprise License Agreements.

b. Any organization creating a strategic sourcing vehicle must establish and publish procedures for use including procedures for exceptions, waivers, and integration with existing strategic sourcing contracts.

#### 2 Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES) Program Revised 1/2016

a. SAVES contracts provide the FAA with a simplified process for obtaining commonly used products and services at prices associated with volume buying, while maintaining or improving the quality of purchases and vendors' service levels. These products include non-NAS information technology (IT) hardware (enterprise servers and peripherals), commercial-off-the- shelf (COTS) software, video teleconferencing equipment and support, general office supplies, office equipment (printers, copiers and multifunctional devices), courier services (overnight mail), and express and ground delivery services. In addition, this process helps agencies optimize performance, minimize price, increase achievement of socio-economic acquisition goals, evaluate total life cycle management cost, improve vendor access to business opportunities, and otherwise increase the value of each dollar spent.

b. Under SAVES, FAA entered into indefinite delivery contracts or blanket purchase agreements (BPAs) with commercial vendors providing products and services at pre-negotiated pricing or discounts. The SAVES contracts and agreements are continuously being monitored to ensure that FAA is obtaining quality products and services at competitive prices. Notify the SAVES Program Office if you encounter any performance issues. Quarterly reviews will be conducted and, if necessary, the contract terms will be renegotiated before an option year is exercised on an existing contract. Ordering offices place orders directly with SAVES contractors using their Government purchase card or through a CO using a purchase

order.

c. Purchases of products or services available through a SAVES contract from other sources must only be considered if there would be a significant adverse impact to air traffic control operations or in the case of a bonafide emergency. If an item available through SAVES is purchased from another source due to an adverse impact to air traffic control operations or a bona fide emergency, the basis must be recorded with the order and/or purchase card documentation.

d. Unless a purchase meets one of the two conditions discussed in subparagraph 2.(c), purchases must not be made outside of the SAVES contracts unless the purchasing organization submits and receives approval of a waiver from the SAVES Program Office using the SAVES Waiver Request Form. The waiver justification for the purchase of products and services, which are available through the SAVES contract, must include rationale in addition to pricing, (e.g., availability, quality of product or service, etc.)

e. *SAVES Waiver Threshold*. Waivers with a total value of $50 or less do not require approval from the SAVES Program Offices, but must be documented in the purchase file.

f. Use of SAVES Office Supply and Office Equipment contracts by organizations and facilities located outside the continental United States, including Alaska, Hawaii, U.S. Territories, and foreign countries is optional. Product availability and shipping costs to these locations often make the purchase of these items locally a better value for the FAA.

## 3 SAVES Website Added 1/2007

Information about the SAVES Program and links to the SAVES contract information, purchasing processes and instructions, pricing, contact information, vendor web portal instructions, etc. for each SAVES contract is located on the FAA employee website (FAA only).

## 4 SAVES Ordering for Office Supplies, Office Equipment, and IT Hardware Revised 10/2012

a. SAVES contracts have been competed, comply with laws prescribing mandatory sources (such as AbilityOne vendors) for certain products, conform to environmentally friendly and energy efficient purchasing, and include prices determined to be fair and reasonable.

b. As requirements become known, ordering offices may place orders against existing SAVES contracts. Ordering offices do not need separate justification to use a SAVES contract, nor should they publicly announce or compete a planned order. Ordering details for each SAVES contract are located on the FAA employee website.

c. The terms and conditions of a SAVES basic contract governs individual orders. Additional terms and conditions are not required and should not be included in individual orders.

d. *Brand Name-Mandatory Products.*

(1) *Orders by 1102 Series Contracting Officers*. For brand name-mandatory acquisitions with a total value of $150,000 or less procured through the use of SAVES, a rational basis for the brand-name mandatory determination must be documented by the program official using the single source justification template in AMS Procurement Guidance T3.2.2.4 Appendix 1 and approved by the CO. For brand name-mandatory acquisitions with a total value over $150,000 procured through the use of SAVES, a rational basis for the brand-name mandatory determination must be documented by the program official using the single source justification template in AMS Procurement Guidance T3.2.2.4 Appendix 1, and approved by legal counsel and the CO. (see AMS Procurement Guidance T3.2.2.8A(5)).

(2) *Orders by Purchase Cardholders or Personnel with Delegations of Procurement Authority (DPA).* For brand-name mandatory acquisitions, the ordering office must document the rational basis for the brand-name mandatory determination, and for acquisitions over $10,000 must obtain approval by legal counsel and the SAVES Contracting Officer's Representative (COR) using the single source justification template in AMS Procurement Guidance T3.2.2.4 Appendix 1.

e. Ordering offices may order on-line, by telephone or fax. Payment must be made with either Government purchase card or purchase order. Purchase orders must be signed by a CO. Purchasing from the SAVES contracts does not change the existing policy and guidance for purchase card or purchase order purchasing processes. All purchasing provisions and restrictions in the purchase card and purchase order policies are applicable when purchasing from the SAVES contracts. Purchases through the SAVES contracts do not change existing policy and guidance to the FAA personal property order.

f. SAVES contractors are to deliver products as expeditiously as possible. Acceptable levels of service delivery are specified in SAVES contracts. FAA users can order standard delivery or one of several expedited delivery alternatives. Products or services delivered faster than the standard delivery will incur increased delivery charges, as specified in SAVES contracts.

**B Clauses** **Added 1/2007**

view contract clauses

**C Forms** **Added 1/2007**

view procurement forms

**T3.8.7 Construction Contracting** **Revised 8/2009**

## A Construction Contracting Added 7/2007

### 1 General Added 7/2007

a. Guidance in this section applies to construction contracts, contracts for dismantling, demolition, or removal of improvements, and to the construction portion of contracts for products or services. In the event that the portions of multipurpose contracts are so commingled that priced deliverables for construction, service, or supply cannot be segregated, AMS guidance applicable to the predominant purpose of the contract applies.

b. "Construction" means construction, alteration, or repair of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include but are not limited to improvements of all types, such as maintenance facilities, duct banks, air traffic control facilities, communication towers, radar facilities, office facilities, airport facilities, and navigational aids.

c. When performing construction, alteration, or repair work in FAA-leased space, the Contracting Officer (CO) must consult with his or her local Real Estate Contracting Officer (RECO) to determine FAA's alteration rights and responsibilities.

### 2 Dismantling, Demolition and Removal of Improvements Added 7/2007

a. If a contract is solely for dismantling, demolition, or removal of improvements and will exceed $2,500, the Service Contract Act applies unless further work is contemplated that will result in the construction, alteration or repair of a public building or public work at that location is contemplated. If further construction work is intended, even though by separate contract, then the Davis-Bacon Act applies to the contract for dismantling, demolition, or removal.

### 3 Salvageable Property Added 7/2007

a. The procurement team (CO, program official, legal counsel, and other support staff) should consider the usefulness to FAA of all salvageable property. Any of the property having a salvage value that is less than its usefulness to FAA should be expressly designated in the contract for retention by FAA. The contract may provide that:

(1) The FAA pays the contractor for the reasonable costs of the dismantling or demolition of the structure(s);

(2) The contractor pays FAA for the right to salvage and remove the materials resulting from the dismantling or demolition operation; or

(3) A combination of both. Both the FAA and contractor must ensure compliance with environmental laws and regulations, including handling of hazardous waste.

b. The procurement team should determine the fair market value of any property not to be retained by FAA, because the contractor may receive title to this property. Its value will

therefore be important in determining what payment, if any, should be made to the contractor, and whether additional compensation will be made if the contract is terminated. Personal Property Managers, in conjunction with the procurement team, must approve the disposition of Government property to be transferred to contractors under dismantling, demolition or removal of improvements contracts.

## 4 Laws, Regulations and Standards Added 7/2007

a. *Davis-Bacon Act.* The Davis-Bacon Act applies to construction contracts valued at $2,000 or more.

b. *State Regulation of Federal Construction Projects.*

(1) FAA contractors may encounter requests from State and local governments for the FAA's contractors to obtain building permits, zoning approval, sanitation approval, etc. Based on the "Supremacy" clause of Article 6 of the United States Constitution, construction contractors are not required to obtain most permits or approvals for work done on Federal construction projects. The States do have enforcement authority for safety and environmental protection as specified by the Occupational Safety and Health Administration (OSHA), the Comprehensive Environmental Response, compensation and Liability (Superfund) Act (CERCLA), and the Resource Conservation and Recovery Act (RCRA).

(2) Contractors who encounter attempts by State or local government entities to assess various types of fees against a FAA construction project should be advised to inform the CO immediately if the assessing entity attempts in any way to prevent or hinder the contractor at the job site. The CO should seek legal advice from either Regional Counsel or AGC-500.

c. *Local Employment in Construction Contracts.* Occasionally, efforts are made by State or local governments to have FAA limit employment on construction projects to local residents or firms. Such a restriction has been held to be improper, and should not be used in FAA contracts (reference Washington State Supreme Court case Laborers Local Union No. 374 v. Felton Construction Co., Nov. 24, 1982, and 42 Comp. Gen. 1, B-198952, 81-1 CPD 467). FAA recognizes that Tribal Employment Rights Ordinances (TERO) which affects projects on or near certain Indian reservations may have an effect on contractor labor. FAA should inform offerors of the existence of a TERO in the screening information request (SIR).

d. *Domestic Materials*. The Buy American Act applies to construction, alteration, and repair contracts performed in the United States. It requires contractors to use domestic materials, except under specific circumstances. Also, the Buy American provisions of the Aviation Safety and Capacity Expansion Act of 1990 require FAA to use domestic steel and manufactured products, unless an exception applies. (See AMS Procurement Guidance T3.6.4)

## 5 Design-Build Revised 1/2016

a. *General.* Design-build is a contracting technique that allows a single procurement for both design and construction of a project. Design-build allows the contractor flexibility, to the extent allowable or reasonable, for innovation in design, materials, and construction methods utilized in a construction project.

b. *Considerations for Using Design-Build.*

(1) When planning a design-build, the procurement team (Contracting Officer (CO), program official, legal counsel and others supporting a project) should consider the following factors:

(a) Extent to which requirements are defined;

(b) Time constraints;

(c) The potential for delays, modifications, and scope changes;

(d) Potential regulatory or environmental issues;

(e) Construction issues, including differing site conditions and schedules;

(f) Risks to FAA, including potential liabilities and meeting stipulated performance standards;

(g) Availability and type of funding, including funding issues that may arise from a large design-build project that covers multiple fiscal years; and

(h) Availability of qualified design-build contractors.

(2) When considering design-build, the procurement team must judge who is in the best position, FAA or a contractor, to manage and control potential issues or risks for a particular project. Under a design-build, the contractor assumes the greater responsibility and risk. Claims for design errors or delays are not allowed and the potential for other types of claims are greatly reduced.

c. *Design-Build Source Selection.*

(1) *Two-Phase SIR.* While a CO may choose to award a contract based on one SIR requiring a single offer (that includes an offeror's technical and pricing information), the CO may instead issue a two-phase SIR that allows the CO to screen technical proposals and down-select offerors prior to requesting a price proposal.

(a) Phase one involves the request for and evaluation of technical proposals from offerors, and no pricing is involved. The goal is to determine the acceptability of the technical proposals prior to the submission of pricing. Technical information that may be requested from offerors includes, but is not limited to:

(i) Technical capabilities;

(ii) Experience/past performance (such as experience in a given field or industry or on-airport experience);

(iii) Engineering approach;

(iv) Special manufacturing processes; and

(v) Joint experience of design and construction management teams.

(b) Phase two involves the submission of pricing proposals by only those offerors determined to be technically acceptable in step one. Trade-offs in phase 2 are allowable.

(c) Factors the CO should consider for using a two-phase SIR include:

(i) Specifications or descriptions are not definite or complete;

(ii) Definite criteria exist for the evaluation of technical proposals, experience, or past performance;

(iii) Two or more sources are expected; and

(iv) FAA personnel (i.e. CO, engineers, etc.) are available to evaluate/manage a two-phase SIR.

(2) *Cost-Reimbursement Contract.* When a design-build project involves numerous uncertainties or the project has yet to be fully developed, a cost-reimbursement, rather than a fixed-price, contract may be appropriate. Rare situations that may warrant a cost- reimbursement design-build contract are:

(a) Highly technical or next generation projects that do not have an effective design benchmark; and

(b) Projects with multiple uncertainties, for example:

(i) Site conditions or locations that create unique and unplanned impacts to the project;

(ii) New technology that may create integration issues when introduced to current systems; and

(iii) Hazardous waste remediation where the scope of the clean-up cannot be completely defined.

(3) *Design Competition*. Design-build may include “design competition” as a basis for selecting a vendor for the project. FAA provides general design requirements or constraints and offerors prepare a preliminary design or specification for FAA

evaluation. Depending on the scope of the project and availability of funding, FAA may authorize a fixed payment to compensate offerors for work done during the design competition.

## 6 Reserved Revised 10/2014

## 7 Planning and Pre-Solicitation Revised 7/2016

a. *Type of Contract and Pricing.* Generally, construction should be acquired on a firm-fixed price basis. Pricing may be on a lump sum basis (when a lump sum is paid for the total work or defined parts of the work), on a unit price basis (when a unit price is paid for a specified quantity of work units), or using a combination of the two.

b. *Options.* If in FAA's best interest, COs may include options in construction contracts. Solicitations must state whether options will or will not be evaluated for purposes of award. Appropriate use of options in construction contracts includes:

(1) Additional work is anticipated but sufficient funds are not anticipated or available prior to the time of award, and it would not be in FAA's best interest to award a separate contract or have another contractor work on the site; and

(2) If fixed building equipment is installed under the contract and it would be in FAA's best interest to have the installer maintain and service the equipment during the warranty period.

c. *Property.* Before issuing the solicitation, the CO must document if materials for the project will be Government Furnished Property (GFP) or furnished by the contractor. The requiring organization prepares the GFP list, and the list must be included in the solicitation to ensure that any proposals received account for the source of project material.

d. *Insurance.* If in the best interest of FAA, the CO may require the contractor to carry insurance, especially if the work is to be done on an FAA facility or FAA property is involved. The CO must ensure the contractor submits all required insurance documents and the documents are acceptable before issuing the notice to proceed (NTP). An original copy of the proof of insurance must be retained in the contract file.

e. *Bonds.* Per the Miller Act (40 U.S.C.A Section 3131), performance and payment bonds are required for all construction contracts that exceed $150,000. The amount of the bonds should reflect the minimum amount required to protect FAA interests. An original copy of any bond must be retained in the contract file. The CO will not issue the NTP until required bonds have been received.

f. *Source Evaluation Plan.* The CO's method of selection and evaluation criteria must be documented in the contract file. This may be done by establishing an evaluation plan as described under Complex and Noncommercial Source Selection (See AMS 3.2.2.3).

g. *Basis for Award.* Award may be based on the lowest price, technically acceptable offer when best value is expected to result from a technically acceptable proposal with the lowest price.

(1) All evaluation factors (non-cost) that will be used to determine if an offeror is technically acceptable will be set forth in the solicitation.

(2) The solicitation must specify that award will be made to the lowest priced offer meeting or exceeding the acceptability standards for non-cost factors.

(3) Tradeoffs are not permitted.

(4) Non-cost factors are used to evaluate acceptability and not to rank proposals.

(5) Discussions regarding proposals may occur.

h. *Differing Site Conditions.* The purpose of the "Differing Site Conditions" clause is to encourage offerors to limit inclusion of contingency costs in their offers for conditions that are not reasonably foreseeable. The clause will also assist FAA and the contractor in complying with the Archaeological Resources Protection Act of 1979 (36 CFR 1214).

i. *Construction Moratoriums.* When in the planning stages of a construction project, the procurement team must consider any impacts construction moratoriums may have upon the project and its related schedule.

j. *Disclosure of the Size of Construction Projects.* When the estimated price of the proposed construction project is $150,000 or more, public announcement (if required) and SIRs should state the size of the requirements in terms of a physical description of the project and the estimated price. The estimated price may be described in a price range as determined by the procurement team or in terms of one of the following price ranges:

(1) Between $50,000 and $100,000;

(2) Between $100,000 and $250,000;

(3) Between $250,000 and $500,000;

(4) Between $500,000 and $1,000,000;

(5) Between $1,000,000 and $5,000,000;

(6) Between $5,000,000 and $10,000,000; or

(7) More than $10,000,000

k. *Environment and Conservation.*

(1) If a CO becomes aware of contractor noncompliance with environmental standards (to include clean air and water standards), the CO is to notify FAA officials and the Environmental Protection Agency (EPA).

(2) The CO has a responsibility to help coordinate and ensure that any hazardous materials present or introduced during the performance of a contract are appropriately managed and tracked.

(3) Products used for a project must adhere to agency goals established in FAA's Green Procurement Plan (GPP), and each contract must include GPP compliance provisions to ensure the contractor understands applicable FAA energy conservation and recovered material, or recycled content product, standards.

(4) Refer to AMS Procurement Guidance T3.6.3 for additional guidance on the protection of the environment and proper conservation during construction contracts, and AMS Real Estate Guidance 2.4.16.3 for information regarding the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings.

l. *Subcontracting Plan.* When a project is expected to exceed $1 million is not an 8(a), SDVOSB, or small business set-aside, and subcontracting opportunities exist, the CO should include provisions for a small business subcontracting plan in the solicitation.

m. *Patent and Data Rights.* The CO should ensure appropriate patent and data rights clauses are included in the solicitation when the project is for other than standard types of construction and may involve unique products, materials, or processes.

n. *Value Engineering*. Value engineering provisions in the solicitation may be appropriate to allow the contractor to initiate changes in design, specifications, or other requirements and share in any savings that may result.

## 8 Pre-Award Revised 1/2016

a. *Public Announcement.* All procurements, including construction, over $150,000 must be publicly announced on the Internet or through other means. For example, the announcement could be placed on the FAA Contracting Opportunities website.

b. *Inspection of Site and Examination of Data.*

(1) The procurement team should make appropriate arrangements for prospective offerors to inspect the work site prior to submission of offers. The procurement team should also allow prospective offerors the opportunity to examine data in the possession of FAA that may provide information concerning the performance of the work, such as boring samples, original boring logs, geology reports, and record and plans of previous construction. The SIR should notify offerors of the time(s) and place(s) for the site inspection and data examination, as well as the name and telephone

number of the contact point at the facility. The procurement team should keep a record of the identity and affiliation of all offeror representatives who inspect the site or examine FAA site information.

(2) Significant site information should be made available to all offerors, including information regarding any utilities to be furnished during construction. FAA personnel must not provide information that conflicts with the provisions of the SIR.

(3) The CO must notify all potential offerors of any clarification or correction to the SIR package.

c. *Past Performance.* Past performance can aid in selecting the contractor who is most likely to perform satisfactorily. Key to the successful use of past performance in the screening process is establishing a clear relationship between the statement of work (SOW), the instructions to offerors, and the evaluation criteria. Past performance information that is not important to the current acquisition should not be included.

d. *Pre-Award Survey.* COs may use pre-award surveys to aid in gathering past performance information. The pre-award survey can give the CO a sense of how the contractor will perform, especially if concentrating on projects that are similar in type and scope to the one being solicited. The scope of the pre-award survey is at the discretion of the CO as it may be affected by the size and complexity of the solicitation and project.

## 9 Post-Award Revised 1/2016

a. *Assignment of Inspection and Contract Administration.*

(1) Due to the locations and complexity of most construction projects, COs often accomplish their administrative and inspection functions through utilization of Contracting Officer's Representatives (COR). These personnel are normally present at the job site each day, and are in the best position to observe day-to-day activities and performance. CORs on site perform such delegated duties as daily performance inspections, Department of Labor wage rate interviews with contractor personnel, provide minor clarifications of specifications and drawings, and insure contractor compliance with all safety and labor requirements on site. The duties of these individuals must be clearly annotated by the CO in a delegation letter. A copy of the delegation letter is provided to the COR and the contractor. See AMS Procurement Toolbox templates and samples for sample COR delegation letter.

(2) Only the CO, or person delegated specific authority to execute contract modifications, may authorize a change to the original contract.

b. *Notice to Proceed (NTP).* The NTP is issued to give notice to the contractor when on-site work can be started, when the project is to be completed based upon the performance time in the contract, and any other information deemed pertinent by the CO. Prior to its issuance, the CO must ensure all required submittals have been delivered to and approved by the FAA, that all required insurance and bonding documents have been submitted and are acceptable, and other coordination or applicable documentation has been completed.

c. *Preconstruction Conference.* The CO may conduct a preconstruction conference (to discuss matters such as applicable labor standards, the authority of various personnel, safety, and environmental considerations) prior to the start of a construction or demolition contract. Pre-construction conferences are not a requirement for each project. When deciding on a conference, the CO should weigh the administrative costs, time, and possible travel expenses for all parties involved, against the complexity of the requirement, the impact of the requirement on entities involved with the site, and the past performance and technical knowledge of the contractor. For a preconstruction conference agenda and checklist, see AMS Procurement Forms.

d. *Use and Possession Prior to Completion.* Beneficial occupancy occurs when the Government takes possession of, or puts to use, a completed or partially completed part of the work. It does not constitute acceptance of the facility as constructed. The clause "Use and Possession Prior to Completion" addresses some of the issues associated with beneficial occupancy. If it is foreseen prior to contract inception that beneficial occupancy will become an issue, or if it becomes an issue during contract performance, the CO should consider negotiating contract terms which cover relevant issues for that contract, e.g., date of warranty, builder's risk coverage, coordination with the contractor, etc. Legal counsel should be consulted on the legal ramifications of beneficial occupancy. Phased (partial) acceptance can be used as an alternative to beneficial occupancy, if the need can be identified sufficiently in advance to structure the contract accordingly, and it is determined in the best interests of the parties.

e. *Airport Coordination.* Local airport authorities and/or other Federal agencies may have requirements and regulations outside of those imposed by the FAA that a contractor is required to adhere to when completing a construction project on an airport. These additional requirements may include additional security, insurance, and safety requirements. It is the responsibility of the contractor to coordinate with other authorities or agencies prior to performance to ensure they satisfy any applicable local regulations.

f. *Property Protection.* The FAA must ensure that the contractor understands that throughout the performance of the contract, care must be taken by the contractor to protect FAA and/or other property that may be affected during construction.

g. *Prime Contractor Performance.* The use of subcontractors by a prime contractor during the performance of a construction contract is inevitable and at times presents a savings to the FAA through the contract. For example, the prime contractor may lack the internal capability to provide specific trades required to meet all the terms and conditions of the contract. The CO should assure adequate interest in and supervision of work involved in projects. The contractor shall be required to perform a significant part of the contract with its own work force and express this requirement in terms of a percentage of the total work, for example:

> (1) The prime contractor must perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees on site.
>
> (2) Construction by special trade contractors: The prime contractor must perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees on site.

h. *Contractor's Daily Log*. For any construction contract of $2,000 or more, the contractor is required to submit to the CO a "Daily Log" of activity on the site. The logs must include the workers used by classification, construction equipment moved on and off the site, materials and equipment delivered to the site, inspections and tests performed, and total cumulative hours worked.

i. *Suspension of Work*. The COR should notify the CO when a suspension order is necessary to prevent the contractor from proceeding with work that will have to be removed or changed. Only the CO can order a suspension of work; when possible, the CO should use partial, rather than, total suspension orders.

j. *Warranties*. The CO should obtain information about any warranties from the contractor. This information should include effective dates and names, addresses, and contacts. A list of warranty or guarantee expiration dates is made and retained, and copies are provided to the user.

k. *Asbestos NESHAP Compliance*. The contractor must comply with all federal, state, and local requirements regarding building demolition and/or the removal of any asbestos in accordance with the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP). AMS clause 3.6.3-24 "Asbestos NESHAP Compliance" applies in such situations.

## 10 Contract Acceptance Inspection (CAI) Revised 4/2012

a. *Definitions*:

(1) *Contract Acceptance Inspection (CAI)*: Formal inspection by the Project Implementer of a constructed facility when work under the contract is considered to be substantially complete. The CAI is typically requested by the prime contractor and coordinated with the Project Implementer.

(2) *Joint Acceptance Inspection (JAI)*: The JAI is an activity to gain consensus of all involved groups that projects for facility, system, or equipment establishment, improvement, or relocation are completed in accordance with national criteria and that the facility is capable of performing its advertised functions.

(3) *Project Implementer (PI)*: The PI is the FAA organization implementing the project, although funding may be provided by other organizations. In most cases this will be ATO Technical Operations (ATO-W) Engineering Services.

b. *Contract Acceptance Inspection (CAI)*. The Project Implementer, usually a Contracting Officer's Representative (COR) appointed in ATO-W Engineering Services and delegated by the Contracting Officer (CO), is responsible for formally inspecting a constructed facility from the construction or equipment installation contractor and recommending acceptance or non-acceptance to the CO. This inspection is typically conducted before the beginning of JAI.

c. The CO's responsibility is to formally accept the constructed facility. The CO must notify the contractor when a CAI has been completed and work under a contract has been either

accepted or rejected. This should be done through the CAI letter (see Procurement Forms) that describes:

(1) What is being accepted from the contractor (item and description);

(2) The acceptance date of the item; and

(3) Any outstanding commitments the contractor has for the item (e.g. punch list items, warranties, etc.).

d. All CAI letters and associated information should be filed in the official contract file. This documentation is used to support completion of the contract, and to provide data to properly capitalized items.

## 11 Contract Completion/Closeout Revised 8/2009

a. A construction or installation project must be considered physically and financially complete and funds deobligated, when necessary, within one year after the final acceptance and inspection (e.g., CAI) has been completed.

b. Prior to final payment, the CO must ensure:

(1) Receipt of all required warranty documentation;

(2) Return of issued ID media (Badges, etc.);

(3) Receipt of any state tax exemption certificates or completion statements as required from the contractor;

(4) Certification that all government property has either been utilized in the performance of the contract or returned to the FAA;

(5) Confirmation from the requiring organization that the job has been completed as contracted;

(6) Receipt of any other applicable items required from the contractor that are unique to the procurement; and

(7) Receipt of a final release of claims on file signed by the contractor for the final amount of the contract.

## B Clauses Added 7/2007

view contract clauses

## C Forms Added 7/2007

view procurement forms

## T3.10.1 Contract Administration Revised 1/2009

### A Contract Administration

### 1 Contract Management Revised 7/2012

a. Contracts are managed to ensure that FAA receives a specific product or service in a timely manner. In certain circumstances, a modification to contractual requirements, with or without consideration from the contractor, may be in the FAA's best interest. If such a situation arises, the Contracting Officer (CO) documents the circumstances. When the CO intends to substantially alter the obligations of the parties without consideration, the CO first obtains concurrence of legal counsel and the Chief of the Contracting Office (COCO) before execution, and must document the rationale.

b. The Appendices to this guidance includes memoranda, letters, and agreements used for contract administration actions described in this section. The CO may adapt the COR-related memoranda to fit the specific situation. The stop work order, novation, and change of name agreement in the Appendices may be modified by the CO, subject to legal counsel's concurrence.

c. Use of AMS contract file content checklists is mandatory; these checklists are in FAST under Procurement Form Templates.

### 2 Basic Responsibility for Contract Administration Revised 7/2012

COs are responsible for administering contracts covered by AMS. This is accomplished through a team effort with the program office, and working through the Contracting Officer's Representative (COR) and other functional specialists supporting a program.

### 3 Assignment of Contracting Officer's Representative Revised 10/2014

a. Designating a Contracting Officer's Representative (COR). The CO may designate an individual to act as his/her representative to facilitate contract administration. A COR resolves technical issues, gives technical direction to the contractor, and interprets technical processes and procedures for the CO. Other functions include interpreting technical requirements; assisting with the acquisition strategy; assisting with or developing the statement of work; preparing Government cost estimates; assisting in negotiation of costs or price of technical requirements; monitoring and evaluating contractor performance; reviewing and accepting services, supplies, and equipment; reconciling invoices and recommending payments. Requiring organizations should ensure that the person recommended as COR has qualifications and expertise appropriate for the nature of the contract and duties to be delegated. The CO appoints a representative by written memorandum describing specific delegated authority and responsibilities. The memorandum is provided by the CO to the COR at the time the

assignment is made or changed in any way. See the Appendix to this Guidance for a sample delegation memorandum. Also see AMS COR Handbook for additional information about COR duties.

b. Basic Training and Biennial Refresher Training Requirements. See AMS Policy Section 5, Acquisition Career Program, for complete training requirements.

(1) The designated COR must meet the initial training requirement for certification by completing the designated hours of COR training. The required training is established as a three level certification program. Training and certification for Levels I and II will be completed prior to appointment. Level III certification must be completed no later than six months after appointment. Training may be completed online or in a classroom. Information regarding online and classroom training providers can be obtained from the Acquisition Career Management Office (AAP-300).

(2) The COR must provide documentation showing certification or a waiver to the CO.

c. Authority of the Contracting Officer's Representative. A duly-assigned COR is authorized to perform the actions delegated by the CO in a memorandum of delegation. When determining the support needed from a representative, the CO should consider the specific requirements and needs of the contract and clearly specify the authority that he/she is granting to the representative in a written memorandum of delegation. One memorandum of delegation for all situations may not be appropriate because contractual situations are distinct and have varying needs. The sample delegation memorandum in the Appendix to this Guidance may be modified to reflect the specific needs of the contract and CO. Depending on the scope, duration, complexity and aggregate total of the contract, a COR may not be required.

d. Changing the Contracting Officer's Representative. To change the representative on a contract, the CO must revoke the previous delegation and issue a succeeding delegation to another representative. Both of these memoranda are in writing and issued concurrently. The CO must forward copies of COR changes to the Acquisition Career Management Team (AAP-300), as they occur.

e. Notifying the Contractor. The CO furnishes copies of all delegation and revocation memoranda to the contractor so that they are aware of the representative and his or her authority and responsibilities.

## 4 Communications with Vendors Revised 4/2007

Teamwork is an important element for successful contract performance. COs should establish good working relationships with vendors, and regular communication helps build this relationship. Post award conferences, either in person or by telephone, are one means to establish communication and lay the foundation for teamwork at the start of contract performance. After performance has begun, recurring communication ensures everyone working under the contract understands the objectives and is focused on a common goal, and that any potential problems or schedule difficulties are identified and addressed before adversely impacting FAA or the contractor. Communication is especially critical: at the beginning of contract performance;

whenever either party detects a problem; and before and after significant milestones. Communication should occur routinely even when no problems may be encountered.

## 5 Use of Government Excess Equipment Revised 4/2007

The CO may authorize a cost reimbursement contractor to use excess FAA or DOT equipment, if a good business decision. The FAA Property Management organization makes arrangements for excess property upon written request by the contractor and approval by the CO. When FAA provides excess property to contractors, appropriate AMS property clauses must be part of the contract.

## 6 Contract Modifications Revised 10/2012

a. *Authority*. Only a CO or person delegated specific authority to execute contract modifications, may execute contract modifications.

b. *Ceiling-Priced Modifications*.

(1) Contract modifications should be priced before execution, if this can be done without adversely affecting FAA's interests. If a ceiling-priced modification is entered into authorizing the contractor to start performance before final agreement on the modification's price, the CO must include in the modification:

(a) All requirements for performance or delivery;

(b) The contract type, maximum price or cost to be negotiated, FAA's maximum liability pending definitization and a provision permitting the CO to determine a reasonable price or cost (subject to the disputes provisions); and

(c) A definitization schedule with dates for submission of the contractor's price proposal, required cost or pricing data, make-or-buy and subcontracting plans if required, a date for starting negotiations, and a target date for definitization. The definitization should be completed within 180 days after the date of the ceiling- priced modification or before completion of 40% of the work to be performed, whichever occurs first.

(2) If agreement on the modification's price is not reached by the target date or within any extension of it granted by the CO, the CO may, with approval of the Chief of the Contracting Office, determine a reasonable price or fee, subject to contractor appeal as provided in the "Contract Disputes" clause. In any event, the contractor must proceed with completion of the contract, subject only to the "Limitation of FAA Liability" clause.

c. *Types of Contract Modifications*. Contract modifications fall into the following categories (see the Appendix to this guidance section for a detailed description of the types of modifications and associated authorities for modifying contracts):

(1) *Bilateral*. A bilateral modification is a contract modification jointly agreed

to by a CO and contractor. The contractor's oral or written agreement is sufficient to indicate contractor agreement; however the CO must obtain the contractor's written agreement in the form of a bilateral contract modification following the oral agreement. Bilateral modifications are used to:

(a) Make equitable adjustments when necessary;

(b) Definitize quick-response contracts;

(c) Reflect other agreements of the parties which modify the terms of contracts; or

(d) Make changes requested by the contractor.

(2) *Unilateral*. A unilateral modification is a contract modification made by the CO, without advance concurrence by the contractor. Unilateral modifications are used to:

(a) Make administrative changes;

(b) Issue changes under the Changes clause; or

(c) Make changes authorized by clauses other than a Changes clause (e.g., Property clause, Options clause, Differing Site Conditions clause, etc.).

d. *Extension of Contracts.*

(1) *Before Expiration*. The CO may extend a contract before it expires, using a bilateral contract modification. However, contract extensions may constitute a single source procurement, and as such, become subject to requirements for single source justification and approval. When considering a contract extension, the CO will first determine, in consultation with legal counsel, if the extension constitutes new work. If so, the CO must comply with single source requirements in AMS policy 3.2.2.4 for market analysis, documentation, and approval.

(2) *After Expiration.* The CO must **not** extend a contract after it has expired.

## 7 Suspension and Stop-Work Orders Revised 7/2011

a. *General*.

(1) Suspensions of work or stop-work orders are tools available to the Government to interrupt the contractor's work in appropriate situations. (See "Stop Work Order" example in the Appendix to this Guidance). The CO should assure that the appropriate clauses governing stop work and suspensions of work are in all contracts.

(2) The CO's suspension or stop-work order should be in writing and include information required by the clauses, such as:

(a) A description of the work to be suspended/stopped;

(b) Instructions concerning the contractor's issuance of further orders for materials or services;

(c) Guidance to the contractor on action to be taken on any affected subcontracts; and

(d) Other suggestions for minimizing the contractor's costs.

(3) If either the suspension or stop-work is used, the interruption of work should not be for an unreasonable length of time. Also, the CO should work with the program official, legal counsel, and others supporting the program, to resolve the outstanding issues, and make a decision to terminate the contract, cancel the suspension or stop-work order, or continue the suspension or stop-work order while the issues are being resolved.

b. *Suspensions*.

(1) Suspensions may be used in fixed-price construction or architect-engineer contracts in situations such as:

(a) Delays caused by waiting for a decision from FAA;

(b) Weather-related reasons;

(c) Technological advancement;

(d) Production or engineering breakthroughs;

(e) Realignment of FAA programs or objectives;

(f) Public safety concerns;

(g) Emergency situations or other urgent conditions;

(h) Differing site conditions; or

(i) Violation of substantive contract terms, including FAA's smoking, harassment-free workplace, or other policies.

(2) Generally, the decision to suspend work should be made jointly by the CO and program official. However, in cases of public safety concerns, emergency situations, or other urgent conditions, the CO may:

(a) Suspend work pending discussion with the program official;

(b) Notify the contractor orally and follow-up immediately with a written notice.

c. *Stop-work Orders*. Stop-work orders may be considered in supply, service or research and development contracts when the work must be interrupted pending a decision by the Government.

## 8 Novations and Change-of-Name Agreements Revised 10/2014

a. *Novation*.

(1) Novation is a legal instrument executed by the contractor (transferor), the successor in interest (transferee) and the Government by which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets. Novations typically occur when the assets of the transferor are purchased by another company but may also be considered when a contractor is unable to perform and another viable contractor is willing to assume the original contractor's rights and duties under the contract.

(2) When in its best interest, the FAA may recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of:

(a) All of the contractor's assets; or

(b) The entire portion of the assets involved in performing the contract. Examples of such transactions include, but are not limited to

(i) Sale of the contractor's assets with a provision for assuming liabilities;

(ii) Transfer of the contractor's assets incident to a merger or corporate consolidation; and

(iii) Incorporation of a proprietorship or partnership, or formation of a partnership.

(3) A novation agreement may not be necessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the Government.

(4*) Contractor (Transferor) Responsibilities.* Contractors requesting a novation of a contract to recognize a successor in interest must provide the information the CO needs to evaluate and process the novation request. This includes information that validates that novation of the contract is in the best interest of the FAA and should include:

(a) Three copies of the proposed novation agreement (see "Paragraph (7) Content of Novation Agreement") signed by the original contractor and the successor in interest;

(b) One copy each, as applicable, of the following:

(i) The document describing the proposed transaction, purchase/sale agreement or memorandum of understanding;

(ii) A list of all affected contracts between the transferor and the FAA, as of the date of sale or transfer of assets, showing for each, as of that date, the

(A) Contract number and type;

(B) Name and address of the contracting office;

(C) Total dollar value, as amended; and

(D) Approximate remaining unpaid balance;

(iii) Evidence of the transferee's capability to perform;

(c) Any other relevant information requested by the CO;

(d) One copy of each of the following documents, as applicable, as the documents become available except as provided in (5) below:

(i) An authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree;

(ii) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets;

(iii) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets;

(iv) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the

purpose of receiving the assets involved in performing the Government contracts;

(v) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer;

(vi) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants;

(vii) Evidence that any security clearance requirements have been met;

(viii) The consent of sureties on all contracts listed under (4)(b)(ii) of this section if bonds are required, or a statement from the transferor that none are required.

(5) The CO may modify this list of documents, provided that the CO receives information sufficient to protect the Government's interest.

(6) *CO Responsibilities.* The CO has the primary responsibility to process the novation and determine, in consultation with legal counsel, if it is in the best interest of the FAA.

(a) *Novations Involving More Than One Contract*. When multiple contracts are involved, the CO administering the contract with the largest unpaid dollar balance should coordinate the novation agreement for all FAA contracts.

(b) *Coordination with Other Executive Agencies*. The FAA may elect to have its contracts included in the novation agreement (the "global agreement") being processed by the responsible contracting officer for all of the other executive agencies. If this election is made, the FAA CO should negotiate a separate advance agreement with the contractor that addresses any issues unique to the FAA, if appropriate. This agreement should be attached to and incorporated in the global novation agreement.

(c) *Evaluating the Novation Request*. The CO should consider all the information collected as a result of the proposed novation request with emphasis on the successor’s ability to perform including:

(i) Contractor submissions under (5) above;

(ii) Information provided by other contracting offices;

(iii) Information indicative of the successor’s responsibility such as debarment and suspension information;

(iv) National Institute of Health's Past Performance Database;

(v) Organizational conflict of interest;

(vi) Any other information that reflects the successor's ability to perform the contract.

(d) *Conflict of Interest (COI).* If the CO determines that a COI exists and cannot be resolved, but the novation is in the best interest of the FAA, the CO may initiate action to waive or mitigate the COI in accordance with AMS Procurement Guidance T.3.1.7.

(e) Coordinate the action with legal counsel to assure legal sufficiency.

(f) *CO's Decision*.

(i) *Rejecting the Novation Request*. If the CO determines that it is not in the best interest of the FAA to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the Government, and the contract may be terminated for reasons of default, should the original contractor not perform.

(ii) *Executing the Novation.* If the CO approves the novation, he/she should

(A) Prepare and sign a written contract modification for each affected contract;

(B) Incorporate a copy of the agreement into the contract modification;

(C) Place the original contract modification in the official contract file;

(D) Distribute the modification to the transferor; the transferee, affected FAA contracting offices, the paying office and any other distribution that is required for contract modifications.

(7) *Content of the Novation Agreement*. Appendix 5 to this guidance is a novation agreement that provides a guide to preparing novation agreements. This may be adapted, subject to legal counsel's review, to fit specific cases but should include the following provisions:

(a) Successor contractor/transferee Responsibilities;

(b) The transferee assumes all the transferor's obligations under the contract;

(c) The transferor waives all rights under the contract against the

Government;

(d) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and

(e) A statement that nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.

(8) Any separate agreement between the transferor and the transferee regarding assumption of liabilities (e.g., an Advance Agreement covering the treatment of long-term incentive compensation plans, cost accounting standards noncompliance issues, environmental cleanup costs, final overhead costs) and any other issues should be incorporated in the novation agreement.

b. *Change of Name Agreements*.

A change of name agreement is appropriate when only the contractor's name changes and the rights and obligations of the parties are not affected.

(1) *Contractor's Responsibilities.* The contractor should submit the following to the CO:

(a) A written request to the CO to change the name;

(b) The document effecting the name change, authenticated by a proper official of the State having jurisdiction;

(c) The opinion of the contractor's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date;

(d) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the contract number and type, and name and address of the contracting office. The CO may request the total dollar value as amended and the remaining unpaid balance for each contract.

(2) *CO's Responsibilities*. The CO will then prepare a contract modification in the new name of the firm, and reference in the body of the modification the former name and date of the vendor's request. The modification should state something similar to: "This modification changes the name of the Contractor from [*enter contractor's previous name*] to that shown above. This change is made at the request of the Contractor received on [*insert date*]."

(3) A format for a Change of Name agreement is in Appendix 6.

**9 Conversion of FAR Contracts to AMS** **Revised 4/2007**

a. Contracts awarded under the Federal Acquisition Regulations (FAR) system are not automatically converted to AMS contracts. The CO, jointly with the program official and legal counsel, should consider the merits of converting existing FAR contracts to AMS. Circumstances where conversion may benefit both FAA and contractors include contracts with:

(1) A potential for litigation (to include clause 3.9.1-1 Contract Disputes);

(2) A significant term or delivery schedule remaining;

(3) Potential of new work being added to the existing contract; or

(4) One or more options.

b. The above list is not all-inclusive. COs may consider other situations if they believe the conversion would be advantageous. Contracts near completion, relatively inactive, or the result of extensive negotiation of clauses may not need to be converted. In all cases, converting a contract from FAR to AMS, whether in whole or in part, requires legal counsel's review before bilateral signature of the parties.

## 10 Contract Files Revised 7/2011

a. The files containing records of all contractual actions should be maintained by the organization or person administering the contract. Documentation in the files should be a sufficiently complete history of the transaction and:

(1) Provide a complete background as a basis for informed decisions at each stage in the acquisition process;

(2) Support actions taken;

(3) Provide information for reviews and investigations; and

(4) Furnish essential facts in the event of litigation or Congressional inquiries.

b. A contract file should consist of the following:

(1) Contracting office documentation of the acquisition, basis for award, assignment of contract administration if applicable (including payment responsibilities), and any subsequent actions taken by the contracting office;

(2) Contract administration files that document actions reflecting the basis for and the performance of contract administration responsibilities;

(3) Government-furnished/contractor-acquired property file; and

(4) Paying office contract file, which documents actions prerequisite to, substantiating, and reflecting contract payments.

c. The contract files that contain proprietary or source selection information should be identified as such and protected from disclosure to unauthorized persons.

d. A guide describing creation and maintenance of contract administration files is in Appendix 7 to this Guidance.

e. File content checklists for contracts, purchase orders/FSS orders, blanket purchase agreements, and agreements are in the Procurement Form Templates area of FAST. These checklists will assist in organizing the file and ensuring that required clearances and documents are properly filed. The CO must use and incorporate the following checklists in applicable files:

(1) Contract Organization and File Content List

(2) Contract Organization and File Content List--Modification

(3) Purchase Order/GSA/FSS Order File Checklist*

(4) Blanket Purchase Agreement (BPA) File Checklist

(5) Interagency Agreement File Checklist

* Note: Checklist not required for orders with a total value of less than $10,000.

**11 Contract Closeout Revised 7/2016**

a. *Background.* Closeout of contract files occurs at the end of the contract administration process. The CO should assure file integrity throughout the life of the contract. Maintaining an accurate record of contract modifications and obligations facilitates contract closeout, and also minimizes costs associated with administration and closeout processes. Timely closeout deobligates excess funds and returns the excess funds for possible use elsewhere. The time frame for closing a contract is based on both the type of contract and date of physical completion. AMS Guidance regarding both Records Retention and Electronic Contract Files also applies.

b. *Definitions.*

(1) A contract is considered to be physically complete when:

(a) The contractor has completed the required deliveries and the Government has inspected and accepted the supplies;

(b) The contractor has performed all services and the Government has accepted the services;

(c) All option provisions, if any, have expired; and

(d) The Government has given the contractor a notice of complete contract termination.

(2) A purchase order, or delivery order against a Federal Supply Schedule contract, is considered to be physically complete when:

(a) Property or services have been received within the terms of the contract;

(b) Final payment has been made to the contractor; and

(c) The recipient acknowledges the acceptance of the goods/services in PRISM (applicable only when 3-way matching is used per AMS Invoice Guidance).

c. *Time Frames*. Closeout of contract files should occur during the time frames identified below, as evidenced by completion of the "Contract Closeout Checklist" or the closeout section of the "Purchase Order/GSA/FSS Order File Checklist" (See Procurement Forms in FAST). Closeout in PRISM is required for all contracts, purchase orders, and delivery/task orders.

(1) Files for contracts using commercial and simplified purchase procedures must be closed out upon final payment.

(2) Contract files for firm-fixed-price contracts, other than those using commercial and simplified purchase procedures, must be closed out within 6 months after the date on which the CO receives evidence of physical completion (for example, signed receipt or delivered product).

(3) Contract files for contracts requiring settlement of indirect cost rates must be closed out within 36 months of the month in which the CO receives evidence of physical completion.

(4) Contract files for all other contracts must be closed out within 20 months of the month in which the CO receives evidence of physical completion.

(5) All delivery/task orders must be individually closed out within the time frame established for the basic contract as specified in subsections (2), (3), or (4) above. The time frame for the delivery/task order begins when the CO receives evidence of physical completion of the delivery/task order.

d. *Preparation for Closeout*. To prepare for contract closeout, 60 days prior to either final delivery or estimated contract or interagency agreement completion date, the CO should perform a comprehensive review of the contract or interagency agreement to determine whether any documentation is missing and whether any step in the closeout process can be initiated before physical completion. If documents are missing, the CO should attempt to obtain them in a timely manner and insert them into the file. To determine whether steps in the closeout process can begin before the contract or interagency agreement is physically complete, the CO should review the "Contract Closeout Checklist." Following are examples of

actions the CO may be able to take before the contract is physically complete:

(1) Ensure that the contractor has a current list of contractor employees holding FAA security badges and verify that the list corresponds to the FAA Servicing Security Element's list.

(2) Ensure that all information in PRISM is current and correct.

(3) Reconcile the contract's funding status and invoice payment log with Accounts Payable. Identify final invoices. (Contracts and Interagency Agreements).

(4) If the contract includes a "Patent Rights" clause, check to see whether final patent or royalty reports have been received.

(5) If the contract includes "Government Property" clauses or contractor-acquired property, ensure that the property administrator or Contracting Officer's Representative provides disposition instructions to the Contractor. (Contracts and Interagency Agreement).

e. *Closeout Procedures.* When the contract or interagency agreement is physically complete, the CO is responsible for initiating contract closeout. The contract file should not be closed if the contract is in litigation or under appeal. When closing both fixed-price and cost-type contracts, the CO must verify that the documents and activities included in the "Contract Closeout Checklist" have been received or are complete. After completion of the "Contract Closeout Checklist" and notification of final payment from Accounts Payable, the CO must complete and sign a "Contract File Completion Statement" (Appendix 11). For purchase orders (PO) or GSA Federal Supply Schedule (FSS) orders, the CO will use the closeout portion of the "Purchase Order/GSA/FSS Order File Checklist" in place of the "Contract Closeout Checklist" and "Contract File Completion Statement." To facilitate receipt of required closeout documentation, the CO will need to take some or all of the following actions:

(1) Reconcile the contract's funding status and invoice payment log with Accounts Payable. To accomplish this, contact the Finance Office and obtain reports documenting the obligations and expenditures under the contract.

(2) Send a memorandum to the program official to confirm contract completion.

(3) Send a memorandum to the COR requesting termination of all contractor personnel accounts on contract-specific FAA systems (See Appendix 12 for memorandum). The COR should return the signed memo to the CO within 30 days. For contractor employees transferring to a follow-on contract for the same services, the CO must notify the Servicing Security Element (SSE) of all employee transfers in order to retain such contractor accounts.

(4) For all cost-type contracts not closed with Quick Closeout procedures, the CO must request the Headquarters Cost/Price Analysis Services group (AAP-500) to initiate a DCAA audit.

(5) Send a memorandum to the Property Administrator requesting completion and

transfer of the Government Property section of the contract file. (Note: the CO must sign the property report submitted by the Property Administrator).

(6) Send a letter to the contractor indicating that the contract is complete and requesting required documents. Required documents might include:

(a) Final voucher.

(b) Confirmation of settlement of subcontracts.

(c) Government Furnished Property (GFP) and Contractor Acquired Property (CAP)inventory.

(d) Report of inventions and subcontracts, if applicable (AMS Clause 3.5-12).

(e) Patent and royalty reports.

(f) Contractor's release.

(g) Contractor's assignment of refunds, rebates, credits, and other amounts.

(h) List of contractor personnel holding FAA badges, indicating the badge numbers and when they were returned to the FAA Servicing Security Element.

(7) Review and approval of the final voucher should include:

(a) Verification that all contractual requirements have been satisfied.

(b) Completion of any fee adjustments.

(c) Verification that contractual funding limitations have not been exceeded.

(d) Identification of any offsets applied.

(e) Verification of accuracy of Contractor Release and Assignment.

(f) Verification that all previous Contractor vouchers have been paid.

(g) Approval for payment with signature and date.

(h) Deobligation modification processed and distributed for any funds determined to be in excess.

(8) Completion and submittal of the Contractor Performance Assessment Reporting System (CPARS) evaluation for the contract.

(9) Closeout in PRISM.

f. *Quick-closeout Procedures.* In some circumstances, the CO may determine that a contract is

a candidate for quick closeout. Quick closeout allows the CO to negotiate the settlement of indirect costs without a DCAA audit and in advance of the determination of final indirect cost rates. The procedures for quick closeout are the same as for regular closeout except that a DCAA audit is not requested. The determinations of final indirect costs under quick closeout procedures are final for the contracts it covers and no adjustments are made to other contracts for over or under recoveries of costs allocated or allocable to the contracts covered by the advance agreement. Additionally, indirect cost rates used in the quick closeout of a contract are not considered a binding precedent when establishing the final indirect cost rates for other contracts.

(1) To determine whether a contract is a candidate for quick closeout, the contract must meet the following criteria:

(a) The contract is physically complete;

(b) The amount of unsettled indirect costs is not more than $5,000,000 and the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15% of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year; and

(c) Agreement can be reached on a reasonable estimate of allocable dollars.

(2) After the CO has made a decision that the use of quick closeout procedures is appropriate, the CO must:

(a) Ensure adequate rationale for the decision is included in the file;

(b) Require the contractor to submit a final voucher and a summary of all costs by cost element and fiscal year for the contract(s) in question, as well as a copy of the contractor's final indirect cost rate proposal for each fiscal year quick closeout is involved;

(c) Notify the cognizant audit activity, either verbally or in writing, identify the contract(s), and request:

(i) The contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and

(ii) Any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information;

(d) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information;

(e) Establish final indirect cost rates using one of the following rates:

(i) The contract's ceiling indirect cost rates, if applicable, and if less than paragraphs (e)(ii) through (vi) of this section;

(ii) The contractor's claimed actual rates adjusted based on the contractor's indirect cost history, if less than paragraphs (e)(iii) through (vi) of this section;

(iii) Recommended rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source;

(iv) The contractor's negotiated billing rates, if less than paragraphs (e)(v) or (vi) of this section;

(v) The previous year's final rates;

(vi) Final rates for another fiscal year closest to the period for which quick-closeout rates are being established;

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents.

g. *Deobligation of Funds Prior to Closeout*.

(1) *Actions Before Deobligation.* For contracts that require the establishment of final cost rates, after completion of contractor performance the CO may deobligate unused funding prior to the finalization of the contractor's final cost rates. Prior to deobligating unused funding, the CO must:

(a) Confirm that contractor performance, including any applicable closeout requirement, is complete except for the establishment of final rates; and

(b) Receive written authorization from the funding program office that the funds may be deobligated (a purchase request requesting the deobligation of funds satisfies this requirement).

(2) *Reconciliation*. After establishment of the contractor's final cost rates, FAA will reconcile the final funding requirement.

(a) If the contract funding required after establishment of final cost rates is greater than the amount established prior to the agreement on final cost rates, the FAA program office will provide the necessary additional appropriation and funding, and the CO will modify the contract to increase the final funding amount.

(b) If the contract funding required after establishment of final cost rates is lower than the amount established prior to the agreement on final cost rates, the CO will further lower the final contract funding amount and the contractor will

pay to the FAA the amount of overpayment within 60 days of written demand from FAA, or FAA may offset any overpayment from other amounts owed to the contractor. The FAA retains all other rights to collect funds due from the contractor.

h. *Contract File Documentation.* Official closeout documentation for contracts and interagency agreements, the signed "Contract File Completion Statement," and the completed "Contract Closeout Checklist" should be filed in the official contract file behind a marked tab. For POs or GSA FSS orders, the documentation should be filed in the official file and noted on the "Purchase Order/GSA/FSS Order File Checklist."

## 12 Final Indirect Cost Rates Revised 7/2012

a. *Cognizant Federal Agency*. A contractor (or its operating divisions) may do business with more than one Federal agency. To avoid inconsistent or duplicated activities, one agency is designated as the cognizant agency for settling the final indirect cost rates with the contractor. The cognizant agency, which could be FAA, is normally the one with the largest dollar amount of negotiated contracts, including options. Once an agency assumes cognizance, it should remain so for at least five years to ensure continuity and ease of administration. If at the end of the five-year period another agency has the largest dollar amount of negotiated contracts, including options, then the two agencies should coordinate and determine which will assume cognizance. However, cognizance may transfer before the five-year period expires if circumstances warrant it and the affected agencies agree.

b. *Billing Rates*.

(1) A billing rate is an indirect cost rate established temporarily for interim reimbursement of incurred indirect costs, and is adjusted as necessary pending establishment of final indirect cost rates.

(2) The cognizant Contracting Officer (CO) (or cognizant Federal agency official) or auditor responsible for establishing the final indirect cost rates is also responsible for determining the billing rates.

(3) The cognizant CO (or cognizant Federal agency official) or auditor establishes billing rates based on information from recent review, previous rate audits or experience, or similar reliable data or experience of other contracting activities. In establishing billing rates, the cognizant CO (or cognizant Federal agency official) or auditor should ensure billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the cognizant CO (or cognizant Federal agency official) or auditor determines the dollar value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal, the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

(4) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the cognizant CO (or cognizant Federal agency official) or

auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When the parties cannot agree, the cognizant CO (or cognizant Federal agency official) may unilaterally determine billing rates.

(5) The elements of indirect cost and the base or bases used in computing billing rates must not be interpreted as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement.

(6) When the contractor provides the certified final indirect cost rate proposal to the cognizant CO, the contractor and the Government may mutually agree to revise billing rates to reflect the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant CO/agency official or the auditor.

c. *Reimbursing Indirect Costs*. Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

d. *Final Indirect Cost Rates*.

(1) Final indirect cost rates must be established on the basis of CO determination procedure or auditor determination procedure. The establishment of a business unit's final indirect cost rates provides uniformity of approach with a contractor when more than one contract or agency is involved; economy of administration; and timely settlement under cost-reimbursement contracts.

(2) These rates are binding for all cost-reimbursement contracts for all agencies and their contracting offices, unless otherwise specifically prohibited by statute. An agency must not perform an audit of indirect cost rates when the CO determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government.

(3) Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

(4) Final indirect cost rates must be used for contract closeout for a business unit, unless the quick-closeout procedure in AMS Procurement Guidance T3.10.1.A.11.F is used.

(5) Within 120 days (or longer period, if approved in writing by the CO) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts and rates. To determine whether a period longer than 120 days is appropriate, the CO should consider whether there are extenuating circumstances, such as:

(a) Pending closeout of subcontracts awaiting Government audit.

(b) Pending contractor, subcontractor, or Government claims.

(c) Delays in the disposition of Government property.

(d) Delays in contract reconciliation.

(e) Any other pertinent factors.

(6) If the contractor fails to submit a completion invoice or voucher within the time specified in subparagraph c.(2) of this section, the cognizant CO may determine the amounts due to the contractor under the contract, and document it in a unilateral modification to the contract.

(7) The CO must coordinate a possible unilateral decision on final indirect rates and resolution efforts with Headquarters Procurement Legal Division, or Region or Center Assistant Chief Counsel's office, as applicable.

e. *CO Determination Procedure*.

(1) The cognizant CO (or cognizant Federal agency official) is responsible for establishing the final indirect cost rates for:

(a) Business units of a multidivisional corporation under the cognizance of a corporate administrative contracting officer (ACO) with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor’s organization.

(b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.

(c) Educational institutions

(d) State and local governments

(e) Nonprofit organizations other than educational and state and local governments

(2) According to AMS clause 3.2.4-5 "Allowable Cost and Payment," the contractor must submit a certified final indirect cost rate proposal to the CO (or cognizant Federal agency official) and to the cognizant auditor. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, CO, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Each contractor must submit an adequate proposal to the CO (or cognizant Federal agency official) and auditor within the 180 day period following the expiration of each of its

fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the CO. A contractor must support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 6 of the Defense Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors, available on their website.

(3) The auditor must submit to the cognizant CO (or cognizant Federal agency official) an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.

(4) The cognizant CO (or cognizant Federal agency official) heads the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest must be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.

(5) The Government negotiating team must develop a negotiation position. The cognizant
CO must:

(a) Not resolve any questioned costs until obtaining adequate documentation on the costs and the contract auditor's opinion on the allowability of the costs; and

(b) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(6) The cognizant CO:

(a) Conducts negotiations;

(b) Prepares a written indirect cost rate agreement conforming to the requirements of the contracts; and

(c) Prepares, signs, and places in the contractor general file:

(i) The disposition of significant matters in the advisory audit report;

(ii) Reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues;

(iii) Reasons why any recommendations of the auditor or other Government advisors were not followed; and

(iv) Identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; and

(v) Promptly distribute resulting documents to include executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications, T3.10.1.

(vi) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

f. *Auditor Determination Procedure*.

(1) The cognizant Government auditor establishes final indirect cost rates for:

(a) Business units of a multidivisional corporation under the cognizance of a corporate ACO, with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.

(b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.

(c) For business units not included, the CO (or cognizant Federal agency official) will determine whether the rates will be CO or auditor determined.

(d) Educational institutions.

(e) State and local governments.

(f) Nonprofit organizations other than educational and state and local governments

(2) The auditor determination may be used for business units that are covered when the CO (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

(a) The business unit has primarily fixed-price contracts, with only minor involvement in cost-reimbursement contracts.

(b) The administrative cost of CO determination would exceed the expected benefits.

(c) The business unit does not have a history of disputes and there are few cost problems.

(d) The CO (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(3) Procedures.

(a) The contractor must submit to the cognizant CO (or cognizant Federal agency official) and auditor a final indirect cost rate proposal.

(b) Upon receipt of a proposal, the auditor:

(i) Audits the proposal and seeks agreement on indirect costs with the contractor;

(ii) Prepares an indirect cost rate agreement conforming to the requirements of the contracts. The agreement must be signed by the contractor and the auditor;

(iii) If agreement with the contractor is not reached, forwards the audit report to the CO (or cognizant Federal agency official) identified in the Federal Directory of Contract Administration Services Components, available on their website, who will then resolve the disagreement; and

(iv) Distributes Resulting Documents. Copies of the documented audit report prepared under auditor determination or audit report prepared under auditor determination must be furnished, as appropriate, to the contracting offices and Government audit offices.

g. *Certification*.

(1) Certificate of Indirect Costs. A proposal must not be accepted and no agreement be made to establish final indirect cost rates unless the contractor certifies the costs.

(a) Waiver of Certification. The agency head, or designee, may waive the certification requirement when determined to be in the interest of the United States. The reasons for the determination documented in writing and made available to the public. A waiver may be appropriate for a contract with:

(1) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization;

(2) A state or local government subject to OMB Circular A-87;

(3) An educational institution subject to OMB Circular A-21; and

(4) A nonprofit organization subject to OMB Circular A-122.

(b) Failure to certify.

(1) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the CO may unilaterally establish the rates.

(2) Rates established unilaterally are based on audited historical data or other available data as long as unallowable costs are excluded; and set low enough to ensure that unallowable costs will not be reimbursed.

(c) False Certification. The CO should consult with legal counsel to determine appropriate action when a contractor's certificate of final indirect costs is thought to be false.

(d) Penalties for Unallowable Costs. Penalties for submission of unallowable costs in final indirect cost rate proposals are outlined in AMS clause 3.10.1-3.

## 13 Contract Audit Revised 7/2012

*a. Contract Audit - Post Award.*

(1) The auditor is responsible for:

(a) Submitting information and advice to the requesting activity, based on the auditor's analysis of the contractor's financial and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs.

(b) Reviewing the financial and accounting aspects of the contractor's cost control system.

(c) Performing other analyses and reviews that require access to the contractor's financial and accounting records supporting proposed and incurred costs.

(2) *Audit Cognizance*. Normally, DCAA is the responsible Government audit agency. However, there may be instances where an agency other than DCAA desires cognizance of a particular contractor. In those instances, the two agencies should agree on the most efficient and economical approach to meet contract audit requirements.

(3) *Assigning Audit Services*. COs should coordinate with Headquarters Cost/Price Services (AAP-500) when requesting audit services directly from the responsible audit agency. DCAA's audit office locator is online at http://www.dcaa.mil. The audit request should include a suspense date and should identify any information needed by the CO. The responsible audit agency may decline requests for services on a case-by-case basis,

if resources of the audit agency are inadequate to accomplish the tasks. Declinations must be in writing.

## 14 Bankruptcy Revised 7/2012

a. *General*. The CO must proactively monitor contracts to the extent practicable for indications of contractor financial difficulty, and respond appropriately to a written notification of bankruptcy. If the contractor provides the CO with a written notification of bankruptcy, the CO must protect FAA's rights and interests under contracts with the contractor.

b. *Contractor Financial Difficulties*. When the CO becomes aware of contractor financial difficulties, he or she must verify accuracy of the information, and follow the steps described below. Information relating to contractor financial difficulties should come from sources such as, but not limited to, the COR, QRO, Finance Office, Office of Inspector General, a financial institution, Dun and Bradstreet, or a newspaper article.

(1) Determine whether the contractor is performing in a timely manner and making satisfactory progress.

(2) Consider terminating the contractor for default if performance is untimely or otherwise unsatisfactory and the reason is within the contractor's control.

(3) Request that the COR or QRO monitor the contract more closely if contract termination is considered unnecessary.

(4) Notify the cognizant small and disadvantaged business utilization specialist if a small business contractor is involved.

(5) Notify the bonding company, if appropriate.

c. *Notification of Bankruptcy*. Upon receipt of a contractor notification of bankruptcy, as required by AMS clause 3.10.1-7, "Bankruptcy," the CO must:

(1) Furnish the notification of bankruptcy to Headquarters Assistant Chief Counsel for Procurement Law and other appropriate offices, such as finance, property, and other FAA contracting offices.

(2) Determine the amount of FAA's potential claim against the contractor. In assessing this impact, identify and review any contracts that have not been closed out, including those that are physically completed or terminated.

(3) Take actions necessary to protect FAA's rights and interests, including Government property.

(4) Consult with and furnish information to Headquarters legal counsel, as appropriate, throughout the process.

## 15 Reporting Executive Compensation and First-Tier Subcontract Awards Revised 10/2012

a. *Scope*. The Federal Funding Accountability and Transparency Act, as amended, requires contractors to report subcontracted award data and the total compensation of the five most highly compensated executives of the contractor and subcontractor(s).

b. *Applicability*. This reporting requirement applies to all contracts with a value of $25,000 or more. Reporting subcontract information is limited to the first-tier subcontractor(s). As described in AMS clause 3.13-14, there is an additional subcontract reporting exemption for contractors and subcontractors who had gross income in the previous tax year under $300,000. Specific reporting requirements for executive compensation are also outlined in AMS clause 3.13-14.

c. *Review*. The CO will ensure contractors comply with the reporting requirements of AMS clause 3.13-14. Contractor reports will be reviewed as necessary to ensure the information is consistent with contract information. In such reviews, the CO is not required to address data for which FAA would not normally have supporting information, such as compensation information required of contractors and first-tier subcontractors. However, the CO will inform the contractor of any inconsistencies with the contract information and require that the contractor correct the report, or provide a reasonable explanation why it believes the information to be correct. The reports may be reviewed at http://www.fsrs.gov.

d. *Failure to Comply*. If the contractor fails to comply with the reporting requirements, the CO will immediately bring this to the contractor's attention. If the contractor still does not comply, appropriate contractual remedies should be taken. In addition, the CO should make the contractor's failure to comply with the reporting requirements a part of the contractor's past performance evaluation.

e. When COs report contracting data to the Federal Procurement Data System (FPDS), certain data will then pre-populate from FPDS to assist the contractor complete and submit the reports.

## 16 Contractor Performance Documentation and Maintenance Added 4/2013

a. This section provides policies and establishes responsibilities for recording and maintaining contractor performance information in the Contractor Performance Assessment Reporting System (CPARS). This section does not apply to determinations of fees under award or incentive fee contracts.

b. Past performance information is relevant information, for future source selection purposes, regarding a contractor’s actions under previously awarded contracts. It includes, for example, the contractor’s record of conforming to contract requirements and to standards of good workmanship; the contractor’s record of forecasting and controlling costs; the contractor’s adherence to contract schedules, including the administrative aspects of performance; the contractor’s history of reasonable and cooperative behavior and commitment to customer satisfaction; the contractor’s record of meeting small business subcontracting objectives; the contractor’s record of integrity and business ethics, and generally, the contractor’s business-

like concern for the interest of the customer.

c. Past performance evaluations must be prepared as specified in the FAA CPARS Guide, Appendix 11. Generally reporting is done on an annual basis and should be completed no later than sixty (60) days after the end of the applicable reporting period. The content of the evaluations should be tailored to the size, content, and complexity of the contractual requirements.

d.

(1) Except as provided in this paragraph (d), FAA must prepare an evaluation of contractor performance for each contract or order that exceeds the following thresholds.

(i) Services exceeding $5,000,000

(ii) Supply contracts exceeding $10,000,000

(iii) Construction contracts exceeding $10,000,000

(iv) Research & Development contracts exceeding $5,000,000

(2) An evaluation of contractor performance is required for each order that exceeds the above specified thresholds placed against a Federal Supply Schedule contract, a task order contract or a delivery order contract, or any other ordering Agreement. Evaluations of multiple orders under an ordering contract or agreement may be combined in accordance with the guidance provided in the FAA CPARS Guide.

(3) Contracts or orders made pursuant to the Javits-Wagner-O'Day (JWOD) Act with firms under the AbilityOne program or with Federal Prison Industries, Inc. (FPI) do not require evaluations.

(4) An evaluation may be performed for any contract or order that does not meet the above thresholds.

e. Roles and Responsibilities. Responsibility for completing CPARS evaluations rests with the Assessing Official (AO), who may be the Program Manager (PM), the Contracting Officer's Representative (COR), or the other individual familiar with the contract, program, project, or task/job/delivery order requirements and execution. The AO may be supported in this process by the Assessing Official Representative (AOR). The AOR may be the Performance Evaluator, Quality Assurance Evaluator, Requirements Indicator, or Task Monitor for tasks under IDIQ contracts, or any other individual familiar with the contractor's performance. The AO and AOR are responsible for entering the ratings and narratives for each evaluation performed.

f. Non-Disclosure. The completed CPARS evaluation must not be made available to anyone other than Government personnel and the contractor whose performance is being evaluated.

Agency support contractors must not have access to CPARS evaluations of other contractors.

## B Clauses

view contract clauses

## C Forms

view procurement forms

## D Appendices

### 1 Appendix – Reserved Revised 7/2014

### 2 Appendix – Reserved Revised 7/2014

### 3 Appendix - When Should a COR be Appointed Revised 4/2012

**When Should a COR be Appointed?**

**Usually Necessary:**

- Contracts for items, services or construction with technical complexity, such as:
  - Major systems
  - Highly technical services such as engineering, programming, architecture and engineering (A&E) etc.
  - Evolving technologies (e.g. NEXTGEN)
  - Large scale construction (e.g. ATCT, ARTCC)
- Contracts with a long performance time, such as:
  - Janitorial
- Items, services or construction requiring extensive oversight and inspection, such as:
  - Guard services
- Contracts with a contract type other than firm-fixed-price (e.g. cost-type, T&M/LH)
- Service or construction contracts with numerous task orders (e.g. TSSC, NISC, eFAST)
- High-visibility contracts
- Contracts with numerous contractor personnel, especially when performing at an FAA site
- Contracts requiring delivery/monitoring of extensive Government furnished property

**Usually Not Necessary:**

- Contracts delivering commercial fixed-price items or services, such as:
  - Spare parts
  - Office equipment and maintenance
  - Tree trimming/small landscaping projects
  - Other items of a low complexity

- Commercial services with a short performance time, such as:
  - Copier repair
  - Elevator repair
  - Small scale moving services
- Purchase orders with simple terms and conditions that require minimal oversight and inspection
- Short-term contracts to address requirements for a bona-fide emergency

## 4 Appendix - Stop-Work Order Revised 4/2011

STOP-WORK
ORDER

Pending a decision from the FAA, you are hereby instructed to stop all work immediately and to make no further commitments under contract [*insert number*] pursuant to clause 3.10.1-9 titled "Stop-Work Order." Under the requirements of this clause, please take steps necessary to minimize the incurrence of costs allocable to the period of work stoppage and advise all subcontractors and vendors to do the same. This stop-work order is in effect for 90* days from the date you receive this letter.

**A longer period may be indicated based upon mutual agreement of the parties.*

## 5 Appendix - Novation Agreement Revised 4/2011

NOVATION
AGREEMENT

The [*insert name of transferor*] (Transferor), a corporation duly organized and existing under the laws of [*insert state*] with its principal office in [*insert city here*]; the [*insert name of transferee*] (Transferee), [*if appropriate add "formerly known as the* [*insert former name*] a corporation duly organized and existing under the laws of [*insert state*] with its principal office in [*insert city here*]; and the United States of America (Government) enter into this Agreement as of [*insert the date transfer of assets became effective*] under applicable State law.

(a) The parties agree to the following facts:

(1) The Government, represented by various Contracting Officers of the[insert name(s) of agency(ies) [*insert name(s) of agency(ies)*], has entered into certain contracts with the Transferor, namely: [*insert contract or purchase order identifications or delete "namely" and insert "as shown in the attached list marked `Exhibit A' and incorporated in this Agreement by reference."*] The term "the contracts," as used in this Agreement, means the above contracts and

purchase orders and all other contracts and purchase orders, including all modifications, made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders). Included in the term "the contracts" are also all modifications

made under the terms and conditions of these contracts and purchase orders between the Government and the Transferee, on or after the effective date of this Agreement.

(2) As of [*insert date]* ], the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a [*insert term descriptive of the legal transaction involved between the Transferor and the Transferee*.]

(3) The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.

(4) The Transferee has assumed all obligations and liabilities of the Transferor under the contracts by virtue of the above transfer.

(5) The Transferee is in a position to fully perform all obligations that may exist under the contracts.

(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contracts.

(7) Evidence of the above transfer has been filed with the Government.

*(When a change of name is also involved; e.g., a prior or concurrent change of the Transferee's name, an appropriate statement shall be inserted (see example in paragraph (8) below.)*

(8) A certificate dated [*insert date*], signed by the Secretary of State of [*insert name of State*], *to the effect that the corporate name of EFG Corporation* [*insert name of transferor*] *was changed to XYZ Corporation* [*insert name of transferee*] *on* [*insert date*], *has been filed with the Government.*

(b) In Consideration of these facts, the Parties agree that by this agreement

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government that it now has or may have in the future in connection with the contracts.

(2) The Transferee agrees to be bound by and to perform each contract in accordance with the conditions contained in the contracts. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the contracts as if the Transferee were the original party to the contracts.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contracts, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contracts as if the Transferee were the original party to the contracts. Following the effective date of this Agreement, the term "Contractor," as used in the contracts, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contracts, shall be considered to have discharged those parts of the Government's obligations under the contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contracts, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee--

(i) Assumes under this Agreement; or

(ii) May undertake in the future should these contracts be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contracts shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA ,

By _____

Title _____

[*insert name of company*],

By _____

Title _____

(CORPORATE SEAL)

[*insert name of company*],

By_____

Title _____

CORPORATE

SEAL

CERTIFICATE

I, [*insert name of secretary*], certify that I am the Secretary of ABC Corporation, that [*insert name*], who signed this Agreement for this corporation, was then [*insert information*] of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this day of _____ 19 ____. By _____

(CORPORATE SEAL)

CERTIFICATE

I, [*insert name*], certify that I am the Secretary of [*insert name of company*], that [*insert name*], who signed this Agreement for this corporation, was then [*insert information*] of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of _____19___.

By _____

CORPORATE SEAL

## 6 Appendix - Change of Name Agreement Revised 4/2011

CHANGE OF NAME AGREEMENT

The [*insert new name of company*] (Contractor), a corporation duly organized and existing under the laws of [insert State], and the United States of America (Government), enter into this Agreement as of [*insert date*] when the change of name became effective under applicable State law.

(a) The parties agree to the following facts:

(1) The Government, represented by various Contracting Officers of the [*insert name(s) of agency(ies)*], has entered into certain contracts and purchase orders with [*insert original name of company*], namely [*insert contract or purchase order identifications; or delete "namely" and*

*insert "as shown in the attached list marked "Exhibit A*"] and incorporated in this Agreement by reference." The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Contractor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) [*Insert former name of company*], by an amendment to its certificate of incorporation, dated [*insert date*], has changed its corporate name to [*insert new name of company*].

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and of the Contractor under the contracts are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

(b) In consideration of these facts, the parties agree that--

(1) The contracts covered by this Agreement are amended by substituting the name [insert new name of company] for the name [*insert original name of company*] wherever it appears in the contracts; and

(2) Each party has executed this Agreement as of the day and year first above written.

United States of America ,

By _____

Title _____

[*Insert new name of company*]

By _____

Title _____

Corporate Seal

Certificate

I, [*insert name*] , certify that I am the Secretary of [*insert new name of company*]; that [*insert name*], who signed this Agreement for this corporation, was then [*insert information*]

of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this [*insert number*] day of [*insert month*] 19[*insert year*].

By _____

Corporate
Seal

## 7 Appendix - Guide for Creating and Maintaining Contract Administration Files

**Revised 7/2012**

The following guidance is intended to assist contracting personnel maintain contract files and perform contract administration. When contracting personnel invest time at contract award to create files and tracking tools, and maintain those files as changes occur, it ultimately helps reduce time required for contract administration and closeout. Organized and maintained files allow contracting personnel to quickly and easily locate documents and information when needed, making contract administration more efficient and less burdensome. The procedures outlined below provide enough detail for effective administration of large contracts. For administration of smaller contracts, contracting personnel can choose those sections that apply.

### 1. Establishing Contract Administration Files (or Basic Contract Files).

Contract File folders should be used for all files related to the contract. Labels on folders should be typed so they can be easily read and should include the contract number and title of contents (e.g., Basic Contract Folder, Modification Folder, Voucher/Invoice Folder). The Basic Contract File should include the documents listed in the subparagraphs below. Documents should be placed in the folder(s) in the order listed in the "Contract Organization and File Content List" (see Procurement Forms in FAST) and separated by marked tabs or in separate folders. The "Contract Organization and File Content List" should be annotated with the contractor's mailing address and fax number, contractor's point of contact and telephone numbers, Contracting Officer's Representative (COR) name and telephone number, and Quality Reliability Officer (QRO) name and telephone number.

a. *Basic Contract Documents*. A copy of the table of contents should be included in each folder of the Basic Contract File. (Some contracts are large enough to require more than one folder.)

1. Original Signed Contract - Sections A thru J.
2. Distribution Sheet (the Distribution Sheet should be annotated with the date each copy of the contract was distributed.
3. Requisition or procurement request (PR) and appropriate automated procurement system award form.

4. Copies of COR, QRO, Property Administrator, and Contract Administrator Designation memoranda.
5. Any other applicable documents listed in the Contract Organization and File Content List.

b. *Contract Data Requirements List (CDRL) Folder*. Copies of documents delivered under CDRLs should be filed in the order received, with each version separated by tabs.

c. *Voucher/Invoice Folder*. Each voucher/invoice should be filed with its signed voucher/invoice approval certification and record of payment. Vouchers/invoices should be filed chronologically. A financial spreadsheet should be filed on the left side of each Voucher/Invoice Folder. Guidance on creating financial spreadsheets can be found in paragraph (2)(a), below.

d. *Working Copy of the Contract*. A working copy of the contract should be maintained electronically and in hard copy in a binder. Both copies should be updated to reflect the most current version of the contract each time a modification is issued. To facilitate this process, all modifications should be issued with contract change pages. Changes in the contract change pages should be highlighted (e.g., bold, shaded, or italicized font).

e. *Other Contract Folders*. Folders should be created for the following contract documentation, as applicable:

1. Incoming Correspondence;
2. Outgoing Correspondence;
3. Subcontracts;
4. Government Furnished Property/Information;
5. Memoranda to the File;
6. Program Management Reviews/Progress /Status Reports;
7. Quality Reliability Officer (QRO) Reports;
8. Contractor and Industrial Security; and
9. Modifications.

**2. Processing Vouchers/Invoices.**

a. *Financial Spreadsheet*. A financial spreadsheet should be developed to track total contract obligations and invoice payments. This provides the current balance of contract funds. For contracts containing many Contract Line Item Numbers (CLINs), it may be helpful to develop a spreadsheet for each CLIN. For contracts containing task orders, it may be helpful to develop a spreadsheet for each task order. If spreadsheets are created for each CLIN or task order, a summary financial spreadsheet should be created to provide the current balance of funds for the entire contract.

b. *Processing Vouchers/Invoices.*

1. Review each voucher/invoice for errors;
2. Record costs and fees separately in spreadsheets;
3. Forward voucher/invoice to COR or FAA Program Office designee for review and acceptance in PRISM, noting date sent to COR/designee;
4. Set up a "Voucher Suspense Desk File" with a copy of the approval certification;

note date due to Accounts Payable. Set a suspense date a few days earlier to trigger COR/designee acceptance and release;

5. Upon confirmation of acceptance in PRISM by COR/designee, authorize payment of invoice;
6. Make a copy of approval certification and invoice;
7. Place in voucher/invoice folder;
8. Any disallowances must be noted with a memo to the file explaining the deduction and/or rejection and steps taken to notify the contractor. A letter should be written to the contractor explaining the deduction and/or rejection and a copy included with the invoice;
9. Confirm payment was made; and
10. Conduct periodic reviews of payments with Accounts Payable.

**3. Correspondence**

a. *Processing Incoming Correspondence*.

1. Create an incoming correspondence log sheet. As correspondence is received, it should be annotated in the log and filed in the incoming correspondence folder. Completed log sheets should be filed on the right side of each folder on top of incoming correspondence. Completed log sheets can be filed in hand-written form; however, if the information is typed in an electronic document, the log can be searched electronically.
2. Incoming correspondence by serial number, CDRL number or reference, subject, and date.
3. Review the correspondence and take action as required. If the correspondence requires COR review and/or action, be sure to give the COR a suspense date and file a copy of the e-mail or memo and correspondence in a "COR Suspense Desk File."
4. If the appropriate action includes providing a response to the contractor, prepare a written response using the outgoing correspondence procedures described in paragraph (3)(b), below.

b. *Processing Outgoing Correspondence*.

1. Create an outgoing correspondence log sheet. Completed log sheets should be filed on the right side of each folder. Completed log sheets can be filed in hand-written form; however, if the information is typed in a Microsoft Word document, the log can be searched electronically.
2. Log all outgoing correspondence using the next available serial number, entering CDRL number or reference, subject, and date. (Note: to make outgoing correspondence easier to track, it can be helpful to include in the correspondence serial number the calendar or fiscal year and program acronym.)
3. When preparing outgoing correspondence, it is helpful to create an electronic outgoing correspondence directory to create and store electronic copies of correspondence. The serial number from the outgoing correspondence log should be typed in the top right corner of the outgoing letter. The subject line of the letter should be included in the log for quick reference.
4. The file copy of letters to the contractor should be filed in the outgoing correspondence folder with relevant documents.

**4. Processing Modifications to the Basic Contract**

a. *Preparing the Modification.*

Each modification should include an SF-30 or appropriate automated procurement system modification form to meet the requirements of the specific modification. If an SF-30 is used to award the modification, the file must also contain the automated procurement system modification form.

1. A modification summary, each page of which should be annotated with the contract, requisition, modification, and page numbers. The modification summary should include:
2. A preamble summarizing all changes included in the modification.
3. A section by section, detailed description of the changed or modified parts of the contract. This description should include from/to statements to explain the change.
4. If funds are involved, Section G is always modified to show the new CLIN and appropriation data and amount as well as the affect the modification has on total contract value. This amount should match the amount on the SF-30 and automated procurement system modification form.
5. Contract change pages (with changes highlighted) for the working copy of the contract. The modification number should be printed in the top left corner of each modified page.

b. *Distributing the Modification*. Prepare a Distribution Sheet to document proper distribution of the modification. Annotate the Distribution Sheet with the date distribution was made.

c. *Filing the Modification.* The modification file should include the documents listed in the subparagraphs below. If the modification is large enough to be filed in its own folder, it is helpful to include a table of contents listing the modification and all other supporting documents included in the folder. Copies of the modified/changed contract pages should be filed in the working copy of the contract. The electronic version of the working contract should be updated to include the changed pages.

1. Signed SF-30 and automated procurement system modification form, the modification, and any associated documents (e.g., memoranda to the file, Determinations and Findings, contractor proposals, negotiation memoranda)
2. Requisition or PR.
3. Distribution Sheet.
4. Any other applicable documents listed in the "Contract Organization and File Content List-Modifications" checklist.

d. *Other Actions Related to Modifications*:

1. Update or create appropriate financial spreadsheets (described in paragraph 2.a); and
2. Create a Modification Summary Table. This document provides a quick reference documenting by modification number the description, type (bilateral or unilateral), dollar amount, and date of each modification. The electronic version of the table can be searched, allowing quick retrieval of modification information.

**5. Preparing Memoranda to the File**.

Typed or hand-written notes should be prepared to document telephone calls and meetings, and filed in a single folder as memoranda to the file. These notes should include a list of participants, the topic, the date, and action items assigned for each telephone call and meeting.

**6. Maintaining the Subcontract File**.

If applicable, ensure that the contract has an approved Subcontracting Plan that has been incorporated into the contract by reference and has been made an attachment to the basic contract. File copies of all subcontracting documentation in the Subcontract File. Ensure that the contractor submits the required subcontracting information to the Electronic Subcontracting Reporting System (eSRS) electronically in accordance with AMS clause 3.6.1-4 "Small, Small Disadvantaged, Women-Owned, and Service-Disabled Veteran Owned Small Business Subcontracting Plan (January 2010).

**7. Processing CDRLs**

a. *Submission and Review of CDRLs*. The contractor should submit CDRLs in hard copy or electronically in accordance with the contract (Block 15 of CDRL). Procedures should be established to ensure that all CDRLs are reviewed by the CO and responsible program/technical representatives and that comments are provided to the CO in a timely manner. Most CDRLs have a time limit for Government review and response. The document transmitting comments to the CO should be filed so it can be used to support COR/technical review.

b. *Processing Comments and Changes to and Approving CDRLs*. CDRL discrepancy forms should be developed to transmit comments to the contractor. Comments regarding CDRLs and approval of CDRLs should be transmitted to the contractor under a transmittal letter prepared by the CO. The transmittal letter should include re-submittal requirements if applicable. The transmittal letter should be filed in the outgoing correspondence folder. Changes to CDRLs, including extensions to submission or review dates, should include adequate consideration. These revisions must be documented in a contract modification establishing the new terms.

c. *Tracking CDRLs*. The CO should create a tracking system to manage submission of all CDRLs.

**8 Appendix - Contract File Completion Statement** **Revised 4/2011**

CONTRACT FILE COMPLETION STATEMENT

Contract Administration Office (If different from the Contracting Office):

Name: _____

Address: _____

Contracting Office Name:_____

Address:_____

_____

Contract No._____

Last Modification No._____

Last Call or Order No._____

Contractor's Name:_____

Address:_____

_____

Dollar Amount of Excess Funds (if any):_____

Voucher Number and Date, if Final Payment has been made:

Voucher No.: _____ Date: _____

Invoice No. and date, if final approved invoice forwarded to disbursing office or other agency/activity

Voucher No.: _____ Date: _____

_____ _____

## 9 Appendix – Reserved Revised 7/2014

## 10 Appendix - Common Authorities for Modifications Revised 7/2016

As described in AMS Procurement Guidance T3.10.1, contract terms may be modified by the Contracting Officer (CO) when in the best interest of FAA. Modifications can either be bilateral or unilateral:

1. Bilateral modification: a contract modification jointly agreed to by the CO and contractor.

2. Unilateral modification: a contract modification made by the CO that does not require concurrence by the contractor.

To issue a modification, the CO must have the authority to do so. The basis for the authority to modify a contract may be an AMS clause incorporated into a contract, a law or statute, or simply the terms and conditions of the contract.

The tables below provide varying actions that support a contract modification. The actions covered include change orders, administrative changes, supplemental agreements, and other actions that support a modification. Each table describes:

1. The type of action;

2. Whether it is a bilateral or unilateral modification; and

3. Reasons and authorities supporting a modification depending on the kind of requirement (i.e., supply, service, or construction) and type of contract (i.e., fixed-price or cost-reimbursement).

Each table also provides guidance into how each factor relates to Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract.

**Table 1: Change Orders**

Unilateral Modification (SF 30: Change Order (Block 13A), Unilateral (Block 13E))

| **Reasons for Modification** | **Authority** |
|---|---|
| **Supplies (Fixed-Price)**<br><br>Change to:<br><br>- Drawings, Designs, or Specifications<br>- Method of Shipment or Packing<br>- Place of Delivery | AMS Clause 3.10.1-12, Changes-Fixed-Price |
| **Services (no supplies to be furnished)**<br><br>Change to:<br><br>- Description of Services<br>- Time of Performance<br>- Place of Performance | AMS Clause 3.10.1-12/alt1, Changes- Fixed-Price Alternate I |
| **Services (supplies to be furnished) (Fixed-Price)**<br><br>Change to: | AMS Clause 3.10.1-12/alt2, Changes- Fixed-Price Alternate II |

| | |
|---|---|
| ☐ Description of Services<br>☐ Time of Performance<br>☐ Place of Performance<br>☐ Drawings, Designs, or Specifications<br>☐ Method of Shipment or Packing<br>☐ Place of Delivery | |
| **A&E or Other Professional Services (Fixed-Price)**<br><br>Change to:<br><br>☐ General scope | AMS Clause 3.10.1-12/alt3, Changes- Fixed-Price Alternate III |
| **Transportation Services (Fixed-Price)**<br><br>Change to:<br><br>☐ Specifications<br>☐ Work or services<br>☐ Place of origin<br>☐ Place of delivery<br>☐ Tonnage to be shipped<br>☐ Amount of Government-furnished property<br><br>Place of delivery<br>☐ Tonnage to be shipped<br>☐ Amount of Government-furnished property | AMS Clause 3.10.1-12/alt4, Changes- Fixed-Price Alternate IV |
| **R&D (Fixed-Price)**<br><br>Change to:<br><br>☐ Drawings, Designs, or Specifications<br>☐ Place of Inspection, Delivery, or Acceptance | AMS Clause 3.10.1-12/alt5, Changes- Fixed-Price Alternate V |
| **Supplies (Cost-Reimbursement)**<br><br>Change to:<br><br>☐ Drawings, Designs, or Specifications<br>☐ Method of Shipment or Packing<br>☐ Place of Delivery | AMS Clause 3.10.1-13, Changes- Cost-Reimbursement |
| **Services (no supplies to be furnished) (Cost-Reimbursement)**<br><br>Change to:<br><br>☐ Description of Services | AMS Clause 3.10.1-13/alt1, Changes- Cost-Reimbursement Alternate I |

| | |
|---|---|
| ☐ Time of Performance<br>☐ Place of Performance | |
| **Services (supplies to be furnished) (Cost-Reimbursement)**<br><br>Change to:<br><br>☐ Description of Services<br>☐ Time of Performance<br>☐ Place of Performance<br>☐ Drawings, Designs, or Specifications<br>☐ Method of Shipment or Packing<br>☐ Place of Delivery | AMS Clause 3.10.1-13/alt2, Changes- Cost-Reimbursement Alternate II |
| **Construction (Cost-Reimbursement)**<br><br>Change to:<br><br>☐ Plans and Specifications or Instructions | AMS Clause 3.10.1-13/alt3, Changes- Cost-Reimbursement Alternate III |
| **Facilities (Cost-Reimbursement)**<br><br>Change to:<br><br>☐ General Scope | AMS Clause 3.10.1-13/alt4, Changes- Cost-Reimbursement Alternate IV |
| **R&D (Cost-Reimbursement)**<br><br>Change to:<br><br>☐ Drawings, Designs, or Specifications<br>☐ Place of Inspection, Delivery, or Acceptance | AMS Clause 3.10.1-13/alt5, Changes- Cost-Reimbursement Alternate V |
| **Time and Materials or Labor Hours**<br><br>Change to:<br><br>☐ Description of Services<br>☐ Time of Performance<br>☐ Place of Performance<br>☐ Drawings, Designs, or Specifications<br>☐ Method of Shipment or Packing<br>☐ Place of Delivery<br>☐ Amount of Government Furnished Property | AMS Clause 3.10.1-14, Changes- Time and Materials or Labor Hours |
| **Construction, Dismantling, Demolition, or Removal of Improvements** | AMS Clause 3.10.1-15, Changes- Construction, Dismantling, Demolition, or Removal of |

| | |
|---|---|
| Change to:<br><br>- Drawings, Designs, or Specifications<br>- Method or Manner of Performance<br>- Government-Furnished Facilities, Equipment, Materials, Services, or | Improvements |
| Site<br>- Accelerate the Performance of the Work | |
| **Construction (Changed Conditions)**<br><br>Change to:<br><br>- Drawings or Specification within the Scope of the Contract | AMS Clause 3.10.1-16, Changes and Changed Conditions |

**Table 2: Administrative Changes**

Unilateral Modification (SF 30: Administrative Change (Block 13B), Unilateral (Block 13E))

| **Reasons for Modification** | **Authority** |
|---|---|
| Accounting Code Change | AMS Procurement Guidance T3.10.1 |
| COR Change | AMS Procurement Guidance T3.10.1 |
| Change-of-Name Agreement | AMS Procurement Guidance T3.10.1 |

**Table 3: Supplemental Agreements**

Bilateral Modifications (SF 30: Supplemental Agreement (Block 13C), Bilateral (Block 13E))

| **Reasons for Modification** | **Authority** |
|---|---|
| Negotiated Price or Other Adjustment Resulting from Changes Clause (Increase or Decrease) | Reference Applicable Changes Clause |
| Change in Term or Conditions or Order | Reference Applicable Changes Clause |
| Adjustments to Wage Determinations and collective bargaining agreements | AMS Clause 3.6.2-30, Fair Labor Standards Act and Service Contract Act--Price Adjustment (Multiple Year and Option Contracts) |
| Novation Agreement and Change-of-Name | AMS Procurement Guidance T3.10.1 & AMS Clause 3.10.1-25, Novation and Change-of-Name Agreements |
| Settlement of Agreement Under the Disputes Clause | AMS Clause 3.9.1-1, Contract Disputes |

| | |
|---|---|
| Assignment of Claims | AMS Clause 3.3.1-15, Assignment of Claims |
| Extension of Delivery Date of Performance Period | Reference Applicable Changes Clause |

**Table 4: Other**

Unilateral Modifications (SF 30: Other (Block 13D), Unilateral (Block 13E))

| **Reasons for Modification** | **Authority** |
|---|---|
| Option for Increased Quantity (Specific Line Item) | AMS Clause 3.2.4-32, Option for Increased Quantity |
| Option for Increased Quantity (Separately Priced Line Item) | AMS Clause 3.2.4-33, Option for Increased Quantity- Separately Priced Line Item |
| Option to Extend Services | AMS Clause 3.2.4-34, Option to Extend Services |
| Option to Extend the Term of the Contract | AMS Clause 3.2.4-35, Option to Extend the Term of the Contract |
| Termination for Convenience of the Government (Fixed-Price) | AMS Clause 3.10.6-1, Termination for Convenience of the Government (Fixed-Price) |
| Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) | AMS Clause 3.10.6-2, Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) |
| Termination (Cost-Reimbursement) | AMS Clause 3.10.6-3, Termination (Cost-Reimbursement) |
| Termination (Cost-Reimbursement) (Construction) | AMS Clause 3.10.6-3/alt1, Termination (Cost-Reimbursement) Alternate I |
| Termination (Cost-Reimbursement) (Contracts with Agencies of the Federal Government, or state, local or foreign governments or their agencies) | AMS Clause 3.10.6-3/alt2, Termination (Cost-Reimbursement) Alternate II |
| Termination (Cost-Reimbursement) (Construction with agencies of the Federal Government, state, local or foreign governments or their agencies) | AMS Clause 3.10.6-3/alt3, Termination (Cost-Reimbursement) Alternate III |
| Termination (Cost-Reimbursement) (T&M and LH) | AMS Clause 3.10.6-3/alt4, Termination (Cost-Reimbursement) Alternate IV |
| Termination (Cost-Reimbursement) (T&M and LH with agencies of the Federal Government, state, local or foreign governments or their agencies) | AMS Clause 3.10.6-3/alt5, Termination (Cost-Reimbursement) Alternate V |
| Default (Fixed-Price Supply and Service) | AMS Clause 3.10.6-4, Default (Fixed-Price Supply and Service) |
| Default (Fixed-Price R&D) | AMS Clause 3.10.6-5, Default |

| | |
|---|---|
| | (Fixed-Price Research and Development) |
| Default (Fixed-Price Construction) | AMS Clause 3.10.6-6, Default (Fixed Price Construction) |
| Availability of Funds | AMS Clause 3.3.1-10, Availability of Funds |
| Availability of Funds for the Next Fiscal Year | AMS Clause 3.3.1-11, Availability of Funds for the Next Fiscal Year |
| Excusable Delays | AMS Clause 3.10.6-7, Excusable Delays |
| Government Delay of Work | AMS Clause 3.10.1-11, Government Delay of Work |
| Government Property | AMS Clause 3.10.3-2, Government Property - Basic Clause |
| Government Property (Fixed-Price) | AMS Clause 3.10.3-2/alt1,Government Property - Basic Clause Alternate I |
| Government Property (T&M/LH or Cost Reimbursement) | AMS Clause 3.10.3-2/alt2, Government Property - Basic Clause Alternate II |
| Government Property Consolidated Facilities | AMS Clause 3.10.3-3, Government Property Consolidated Facilities |
| Government Property (Facilities Acquisition) | AMS Clause 3.10.3-6, Government Property (Facilities Acquisition) |
| Government Property (Facilities Use) | AMS Clause 3.10.3-7, Government Property - Facilities Use |
| Government Property (Facilities Use) (Research) | AMS Clause 3.10.3-7/alt1, Government Property (Facilities Use). Alternate I |
| Suspension of Work | AMS Clause 3.10.1-8, Suspension of Work |
| Disputes (Continued Performance) | AMS Clause 3.9.1-1, Contract Disputes |
| Variation in Quantity (Fixed-Price contracts for supplies and services that involve the furnishing of supplies) | AMS Clause 3.2.2.8-2, Variation in Quantity |
| Variation in Estimated Quantities (Fixed-Price Construction) | AMS Clause 3.2.2.8-4, Variation in Estimated Quantities |

**Table 5: Other**

Bilateral Modifications (SF 30: Other (Block 13D), Bilateral (Block 13E))

| **Reasons for Modification** | **Authority** |
|---|---|
| Addition of new work using a single source procurement (out of scope changes, additional quantities, time extensions that constitute new work, etc.) | AMS Policy 3.2.2.4 |

## 11 FAA CPARS Guide Revised 10/2014

## FAA Use of Contractor Performance Assessment Reporting System (CPARS)

### 1.0 Introduction

This Guide assigns responsibilities and provides procedures for systematically assessing contractor performance in accordance with AMS Procurement Guidance T3.10.1A16.

### 1.1 Background

The Contractor Performance Assessment Reporting System (CPARS) is a paperless contracting initiative housed and maintained by the DoD. Since the National Institutes of Health (NIH) discontinued use of its Contractor Performance System (CPS), CPARS has been mandated for use across all Federal Government agencies as the "feeder" system for entering contract performance data into the Government-wide Past Performance Information Retrieval System (PPIRS). Use of the CPARS is strongly encouraged, as it ensures that the FAA's contract performance evaluations will be entered into the PPIRS database to enhance the centralized data repository of contractor performance information. All CPARS evaluations must be initiated and completed electronically within the system. This Guide refers only to the CPARS module under which performance evaluations for most CPARS evaluations will be done. Any performance evaluations for architect-engineer or construction contracts will be done under the separate ACASS and CCASS modules respectively. Information on all modules is available on the CPARS website.

### 1.2 Purpose

The primary purpose of the CPARS is to ensure current and accurate data on contractor past performance is available for use in source selections. The completed past performance assessments are available through PPIRS. In addition to the sources of information outlined in AMS Procurement Guidance T3.2.2A.3, the Contracting Officer may use information available through PPIRS to support responsibility determinations of prospective contractors. Senior FAA and contractor officials may also use the information derived from the CPARS for other management purposes consistent with AMS Guidance.

CPARS assesses a contractor's performance, both positively and negatively as appropriate, providing a record on a given contract during a specified period of time. Each assessment must be based on objective data (or measurable, subjective data when objective data is not available) supportable by program and contract management data (see Section 1.4). CPARS performance expectations should be addressed in the Government and contractor's initial post-award meeting.

### 1.3 Responsibility for Completing CPARS Assessments

Responsibility for completing quality CPARS assessments in a timely manner rests with the Assessing Official (AO), who may be the Program Manager (PM), the Contracting Officer's

Representative (COR), or the other individual familiar with the contract, program, project, or task/job/delivery order execution. The AO may be supported in this process by the Assessing Official Representative (AOR). The AOR may be the Performance Evaluator, Quality Assurance Evaluator, Requirements Indicator, or Task Monitor for tasks under IDIQ contracts, or any other individual familiar with the contractor's performance. The AO and AOR shall be responsible for entering the ratings and narratives for each evaluation performed.

The CPARS process is designed with checks-and-balances to facilitate the objective and consistent evaluation of contractor's performance. Both the Government's and contractor's perspectives are captured in the CPARS evaluation.

### 1.4 CPAR Evaluation Methodology

The value of the CPARS to a future source selection team is dependent on the level of effort the AO takes in preparing a quality and timely narrative to accompany the CPAR's ratings. It is paramount the AO submits a rating consistent with the definitions of each rating and thoroughly describes the circumstances supporting the rating. The definitions of each rating, together with related guidance for preparing the narrative, are provided in Attachment 1.

Each evaluation must be based on objective data (or subjective data when objective data is not available) supported by program and contract management records. The following sources of data are recommended:

- Contractor operations reviews
- Status and progress reviews
- Production and management reviews
- Management and engineering process reviews (e.g. risk management, requirements management, etc.)
- Cost performance reports and other cost and schedule metrics
- Other program measures and metrics such as:
    - Measures of progress and status of critical resources
    - Measures of product size and stability
    - Measures of product quality and process performance
    - Customer feedback/comments and satisfaction ratings
- Systems engineering and other technical progress reviews
- Technical interchange meetings
- Physical and functional configuration audits
- Quality reviews and quality assurance evaluations
- Subcontracting reports
- Earned contract incentives and award fee determinations

Subjective assessments concerning the cause or ramifications of the contractor's performance may be provided; however, speculation or conjecture is prohibited.

### 1.5 Uses of Summary CPAR Data

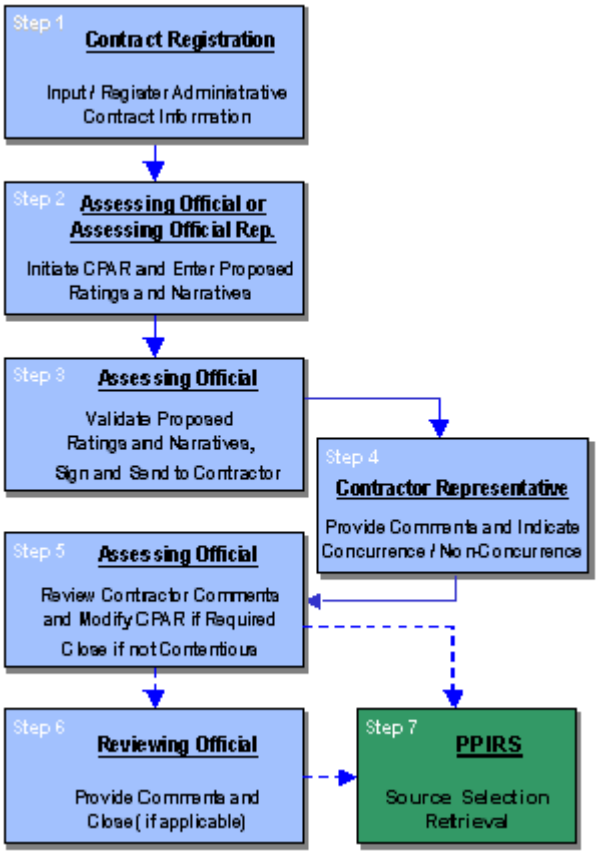
Summary data from the CPARS database or from the reports themselves may be used to measure the status of industry performance and support continuous process improvement.

Further analysis of data from the CPARS database may be accomplished by the CPARS Focal Point for internal Government use but is not authorized for release outside the Government.

### 1.6 Change-of-Name/Novation

In the event of a contract novation or the change of the contractor's name, see AMS Procurement Guidance T3.10.1A.8 for guidance in these circumstances since the Dun & Bradstreet Universal Numbering System (DUNS), Commercial and Government Entity (CAGE) codes and contractor names may be affected in the CPARS. The AO of each contract affected by any such changes is ultimately responsible for ensuring that the contract information in the CPARS is current and correct.

### 1.7 Basic Workflow Diagram




### 2.0 Thresholds for Mandatory Evaluations

All contracts or orders which exceed the following thresholds must include the applicable contract clause addressing CPARS evaluations and have an evaluation completed in CPARS:

- Services contracts exceeding $5,000,000;
- Supply contracts exceeding $10,000,000;
- Construction contracts exceeding $10,000,000
- Research and development contracts exceeding $5,000,000

In addition to contracts that must have CPARS evaluations performed, FAA may choose to perform CPARS evaluations for contracts that do not meet the above thresholds.

### 2.1 CPARS for Indefinite-Delivery Contracts, Basic Ordering Agreements (BOAs) and Blanket Purchase Agreements (BPAs)

For indefinite-delivery contracts and BPAs, but excluding Basic Ordering Agreements, (BOAs) the dollar value of individual orders is combined to determine if the threshold to require completing CPARS evaluation(s) has been met.

The cognizant program office for the contract or agreement shall determine how CPARS evaluations' will be completed:

- One CPARS evaluation for each order,
- By combining all orders into one CPARS evaluation), or
- Combining similar orders together. For example, orders for one type of service are combined into one evaluation and orders for a different type of service are combined into separate evaluations.

Combining orders into one CPARS evaluation may not be feasible, when contracts are used by multiple activities within the agency, or when individual orders are significantly different. The cognizant program office should avoid combining into one CPARS evaluation multiple orders that are for different products or services or those that are different contract types.

When orders are combined, the narrative describing the contractor's performance on each order, both positive and negative, must be included so that the breadth and quality of information is available for source selection official use.

If a consolidated CPARS evaluation for orders is completed, the period of performance for the assessment is based on the effective date/award date of the basic contract and each subsequent, exercised option year period. Where possible, each order number and title may be included in Block 17. Narrative must be provided on the contractor's performance on each order (in Block
20) so that the breadth and quality of information on the order is available for source selection official use.

If separate CPARS for any single orders are completed, the period of performance for the assessments is based on the effective date/award date of each individual order.

For BOA orders, a CPARS evaluation must only be completed on each order meeting the threshold.

### 2.2 CPARs for Orders Under Federal Supply Schedules

For CPARS evaluations on Federal Supply Schedule Orders, the period of performance for the assessment must be based on the effective date/award date of the individual order.

### 2.3 Joint Ventures

When the joint venture on a contract using CPARS has a unique CAGE code and DUNS number, a single CPAR will be prepared for the joint venture using those CAGE and DUNS codes. If the joint venture does not have a unique CAGE code and DUNS code, separate CPARS containing identical narratives will be prepared for each participating contractor and will reference that the evaluation is based on performance under a joint venture and will identify the contractors that were part of the joint venture.

### 2.4 Letter or Ceiling Priced Contracts

Assessment information regarding performance under letter or ceiling priced contracts using CPARS must be included in the annual evaluation. If the final negotiated contract type is not a cost-type contract, cost information for the period such an action was in effect (if applicable) must be included under the Cost rating element in the CPARS. If the final negotiated contract type is a cost-type, cost information for the entire period of performance must be included under the Cost rating element. The supporting narrative must fully explain the contractor's performance during the action, including throughout definitization. The contractor's performance under the undefinitized period must be separately identified but considered in the overall CPARS.

### 2.5 Subcontractor Assessments

Assessments shall not be completed on subcontractor performance. However, an assessment shall address the prime contractor's ability to manage and coordinate subcontractor efforts, if applicable, as well as compliance with requirements of the Small Business Subcontracting Program.

## 3.0 FAA Responsibilities

The FAA will:

- Establish procedures to implement CPARS. These procedures shall include training requirements for Focal Points, AOs, ROs, and Contractor Representatives to ensure procedures for monitoring the timely completion of reports, report integrity (e.g., quality of reports) and overall CPARS system administration are in place.
- Establish CPARS Focal Point(s)
- Register new contracts using CPARS in the system within 30 calendar days after contract award with the information for blocks 1-14 of the CPARS form. Registering the contract will establish the record and facilitate subsequent CPARS reporting.

### 3.1 CPARS Roles and Responsibilities

#### 3.1.1 Agency Point of Contact (DOT Office of the Senior Procurement Executive (M-60))

The Agency Point of Contact is DOT, which responsible for administrative oversight of the CPARS process. Duties include:

- Obtaining Command Point of Contact access to CPARS
- Assigning of Senior Command Official(s)
- Serving on CPARS Operational Requirements Committee

- Monitoring to ensure effective implementation of the CPARS process

### 3.1.2 Senior Command Official (FAA Acquisition Policy Group (AAP-100))

- Obtaining Senior Command Official access to CPARS by contacting the Agency Point of Contact
- Coordination and submittal of subordinate organization CPARS Focal Points to the CPARS Program Office
- Assistance to subordinate organization CPARS Focal Points (e.g., training, monitoring, and policy)
- Evaluating quality and compliance metrics of subordinate organizations
- Providing metrics for management, as requested
- Reviewing and providing subordinate organization issues to the CPARS Focal Point and/or the CPARS Program Office

### 3.1.3 Focal Point (FAA Procurement and Information Services Team (AAP-120))

- Registering contracts using CPARS in the system within 30 calendar days of contract award
- Training in their prospective agency
- Assigning access authorization for FAA and contractor personnel (complete contract authorization based on information from the Contracting Officer, COR/Project Officer, and contractor personnel authorized to appoint a designated representative)
- CPARS account management and maintenance
- Control and monitoring of CPARS, including the status of overdue evaluations
- Establishing processes to monitor quality reports in a timely manner
- Troubleshoot user errors-if cannot be mitigated, contact the CPARS Help Desk

### 3.1.4 Assessing Official (AO) (FAA COR, Program/Project Manager, or Program Office Representative)

- Responsible for completing the CPARS
- Reviewing comments from the designated contractor representative once the evaluation has been returned by the contractor or after 30 days have lapsed
- After receiving and reviewing the contractor's comments on the CPAR, the AO may revise the assessment, including the narrative. The AO will notify the contractor of any revisions made to a report as a result of the contractor's comments. Such a revised report will not be sent to the contractor for further comment. The contractor will have access to both the original and final reports in CPARS when the FAA finalizes the evaluation.

### 3.1.5 Contractor Representative

The contractor on a given contract must designate two representatives to whom the evaluations shall be sent automatically and electronically. The name, title, e-mail address and phone number of the designated contractor representative must be provided to the Contracting Officer who will, in turn, provide that information to the CPARS Focal Point for authorization access. Any changes in designated contractor personnel will be the sole responsibility of the contractor to inform the Contracting Officer or Contract Specialist who shall in turn forward the

information to the CPARS Focal Point. The designated contractor representative has the authority to:

- Receive the Government evaluation from the AO
- Review, comment and return the evaluation within 60 calendar days. If the contractor desires a meeting or teleconference with the AO to discuss the CPAR, it must be requested, in writing, no later than seven calendar days from the receipt of the CPAR. The meeting or teleconference shall be held during the contractor's 60-day review period.

### 3.1.6 Reviewing Official (RO) (FAA Contracting Officer)

The Reviewing Official is the final arbiter when there is disagreement between the government and the contractor. The RO must review and sign the assessment when the contractor indicates non-concurrence with the CPARS or when the contractor is non-responsive. The RO has the authority to:

- Provide narrative comment (the Reviewing Official's comments supplement those provided by the AO. They do not replace the ratings provided by the AO).
- Sign the CPARS (at this point it is considered final and is posted in the CPARS and is available for Source Selection Official use in the PPIRS)
- Ensuring a copy of the completed evaluation is placed in the contract file

## 4.0 Frequency of Reporting

Generally, reporting is done on an annual basis. When an out-of-cycle CPARS is required, however, it is acceptable to complete two CPARS in a given year for the contract. Out-of-cycle CPARS do not alter the annual reporting requirement. For example, if the regular CPARS period of performance ends on 30 September 2012 and an out-of-cycle CPARS is completed which covers a performance period that ends on 1 May 2012, the next intermediate CPARS report is still required to cover the period of performance from 1 October 2011 to 30 September 2012. A period of performance overlap is only permitted when an out-of-cycle CPARS report has been prepared.

### 4.1 Initial Reports

An initial CPARS is required for new contracts using CPARS that have a period of performance greater than 365 calendar days. The initial CPARS must reflect evaluation of at least the first 180 calendar days of performance under the contract, and may include up to the first 365 calendar days of performance. For contracts with a period of performance of less than 365 calendar days, see "Final Reports" below.

### 4.2 Intermediate Reports

Intermediate CPARS are required every 12 months throughout the entire period of performance of the contract after the initial report and up to the final report. An intermediate CPARS is also required:

- Upon a significant change in the quality of contractor performance, or
- Upon a significant change within the agency, provided that a minimum of six months of performance has occurred, such a change in program management responsibility:

An intermediate CPARS must be done prior to any transfer of Assessing Official duties from one individual to another to ensure continuity.

An intermediate CPARS is limited to contractor performance occurring after the preceding normal cycle CPARS. To improve efficiency in preparing the CPARS, the CPARS may be completed together with other reviews (e.g., award fee determinations, major program events, program milestones and quality assurance surveillance records).

### 4.3 Final Report

A final CPARS must be completed upon contract completion or delivery of the final major end item on contract. Final Reports are to be prepared on all contracts using CPARS with a period of performance of less than 365 calendar days. The final CPARS does not include cumulative information but is limited to the period of contractor performance occurring after the preceding CPARS. The CPARS Focal Point has the authority to approve extensions when special circumstances arise.

### 4.4 Out-of-Cycle Reports

An Out-of-Cycle CPARS may be appropriate when there is a significant change in performance that alters the assessment in one or more evaluation area(s). The contractor may request a new assessment or the AO may unilaterally prepare a new evaluation and process a new CPARS through the automated CPARS system. The determination as to whether or not to update an evaluation will be made solely by the AO. The evaluation will follow the same workflow as the annual evaluations and will be posted electronically in CPARS and PPIRS after review/coordination through the FAA and contractor.

### 4.5 Addendum Reports

Addendum reports may be prepared, after the final past performance evaluation, to record the contractor's performance relative to contract closeout, warranty performance and other administrative requirements.

## 5.0 Records Retention and Disposition

All records created under this document must be retained and disposed of in accordance with agency procedures and any applicable program security requirements.

### 5.1 CPARS Markings and Protection

Anyone granted access to CPARS is responsible for ensuring that all CPARS are appropriately marked and handled. All CPARS forms, attachments, and working papers must be marked "FOR OFFICIAL USE ONLY/SOURCE SELECTION INFORMATION". Caution must be exercised in transmitting any CPARS as an attachment to an email message. CPARS may also contain information that is proprietary to the contractor. Information

contained on the CPARS, such as trade secrets, protected commercial information, or financial data obtained from the contractor in confidence, must be protected from unauthorized disclosure. AOs and ROs must annotate on the CPARS if it contains material that is a trade secret, etc., to ensure that future readers of the evaluations in the PPIRS are informed and will protect as required. The following guidance applies to protection both internal and external to the FAA.

### 5.1.1 Internal FAA Protection

CPARS must be treated as source selection information at all times. Information contained in the CPARS must be protected in the same manner as information contained in source selection files.

### 5.1.2 External Government Protection

Due to the sensitive nature of CPARS, disclosure of CPARS data to contractors other than the contractor that is the subject of the report, or other entities outside the FAA, is not authorized. Disclosure of CPARS data to advisory and assistance support contractors other than the contractor that is the subject of the report is strictly prohibited. A contractor will be granted access to its CPARS maintained in CPARS by the appropriate Focal Point.

## 5.2 Freedom of Information Act (FOIA)

Contractor performance information is privileged source selection information. It is also protected by the Privacy Act and is not releasable under the Freedom of Information Act. Performance assessments may be withheld from public disclosure under Exemption 5 of the Freedom of Information Act. The FOIA office must coordinate the request with the CPARS PMO and local FAA Focal Point.

## 5.3 Use of CPARS in Source Selection

CPARS provides an assessment of ongoing performance of contractors. Each report consists of a narrative evaluation by the AO, the contractor's comments, if any, relative to the assessment and the RO's acknowledged consideration and reconciliation of significant discrepancies between the AO's evaluation and the contractor's comments. Source selection officials retrieve CPARS by using the PPIRS.

## 5.4 CPARS Format

For information on the CPARS format see Attachments 2, 3, or the CPARS website.

Attachment 1

| Evaluation Rating Definitions (Excluding Utilization of Small Business) | | |
|---|---|---|
| **Rating** | **Definition** | **Note** |
| Dark Blue/Exceptional | Performance meets contractual requirements and exceeds many to the Government's benefit. | To justify an Exceptional rating, identify multiple significant events and state how they were of benefit to |

| | | |
|---|---|---|
| | The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the contractor was highly effective. | the Government. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there must have been NO significant weaknesses identified. |
| Purple/Very Good | Performance meets contractual requirements and exceeds some to the Government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor was effective. | To justify a Very Good rating, identify a significant event and state how it was a benefit to the Government. There must have been no significant weaknesses identified. |
| Green/Satisfactory | Performance meets contractual requirements. The contractual performance of the element or sub- element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory. | To justify a Satisfactory rating, there must have been only minor problems, or major problems the contractor recovered from without impact to the contract. There must have been NO significant weaknesses identified. Contractors will not be assessed a rating lower than Satisfactory solely for not performing beyond the requirements of the contract. |
| Yellow/Marginal | Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only marginally effective or were not fully implemented. | To justify Marginal performance, identify a significant event in each category that the contractor had trouble overcoming and state how it impacted the Government. A Marginal rating must be supported by referencing the management tool that notified the contractor of the contractual deficiency (e.g., management, quality, safety, or environmental deficiency |

| | | |
|---|---|---|
| | | report or letter). |
| Red/Unsatisfactory | Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains a serious problem(s) for which the contractor's corrective actions appear or were ineffective. | To justify an Unsatisfactory rating, identify multiple significant events in each category that the contractor had trouble overcoming and state how it impacted the Government. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating must be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g., management, quality, safety, or environmental deficiency reports, or letters). |

NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change the assessment status.

NOTE 2: N/A (not applicable) must be used if the ratings are not going to be applied to a particular area for evaluation.

| **Evaluation Ratings Definitions (Utilization of Small Business)** | | |
|---|---|---|
| **Rating** | **Definition** | **Note** |
| Dark Blue/Exceptional | Exceeded all negotiated subcontracting goals or exceeded at least one goal and met all of the other negotiated subcontracting goals for the current period. Had exceptional success with initiatives to assist, promote, and utilize small business (SB), small disadvantaged business (SDB), women- owned small business (WOSB), veteran-owned small business (VOSB) and service disabled veteran owned small business (SDVOSB). Complied with AMS, 3.6.1-3 Utilization of | To justify an Exceptional rating, identify multiple significant events and state how they were a benefit to small business utilization. A singular benefit, however, could be of such magnitude that it constitutes an Exceptional rating. Ensure that small businesses are given meaningful, innovative work directly related to the project, rather than peripheral work, such as cleaning offices, supplies, landscaping, etc. Also, there must have been no significant weaknesses |

| | | |
|---|---|---|
| | Small, Small Disadvantaged and Women-Owned, and Service-Disabled Veteran Owned Small Business Concerns (February 2009). Exceeded any other small business participation requirements incorporated in the contract, including the use of small businesses in mission critical aspects of the program. Went above and beyond the required elements of the subcontracting plan and other small business requirements of the contract. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner. | identified. |
| Purple/Very Good | Met all of the negotiated subcontracting goals in the traditional socio- economic categories (SB, SDB and WOSB) and met at least one of the other socio-economic goals (SDVOSB) for the current period. Had significant success with initiatives to assist, promote and utilize SB, SDB, WOSB, VOSB, and SDVOSB. Complied with AMS, 3.6.1-3. Met or exceeded any other small business participation requirements incorporated in the contract, including the use of small businesses in mission critical aspects of the program. Endeavored to go above and beyond the required elements of the subcontracting plan. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an | To justify a Very Good rating, identify a significant event and state how they were a benefit to small business utilization. Ensure that small businesses are given meaningful, innovative work directly related to the project, rather than peripheral work, such as cleaning offices, supplies, landscaping, etc. There must be no significant weaknesses identified. |

| | | |
|---|---|---|
| | accurate and timely manner. | |
| Green/Satisfactory | Demonstrated a good faith effort to meet all of the negotiated subcontracting goals in the various socio-economic categories for the current period. Complied with AMS, 3.6.1-3. Met any other small business participation requirements included in the contract. Fulfilled the requirements of the subcontracting plan included in the contract. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner. | To justify a Satisfactory rating, there must have been only minor problems, or major problems the contractor has addressed or taken corrective action. There must have been no significant weaknesses identified. |
| Yellow/Marginal | Deficient in meeting key subcontracting plan elements. Deficient in complying with AMS, 3.6.1-3, and any other small business participation requirements in the contract. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Failed to satisfy one or more requirements of a corrective action plan currently in place; however, does show an interest in bringing performance to a satisfactory level and has demonstrated a commitment to apply the necessary resources to do so. Required a corrective action plan. | To justify a Marginal rating, identify a significant event that the contractor had trouble overcoming and how it impacted small business utilization. A Marginal rating must be supported by referencing the actions taken by the government that notified the contractor of the contractual deficiency. |
| Red/Unsatisfactory | Noncompliant with AMS 3.6.1-3, and any other small business participation requirements in the contract. Did not submit Individual Subcontract Reports and/or Summary | To justify an Unsatisfactory rating, identify multiple significant events that the contractor had trouble overcoming and state how it impacted small business utilization. A |

| | | |
|---|---|---|
| | Subcontract Reports in an accurate or timely manner. Showed little interest in bringing performance to a satisfactory level or is generally uncooperative. Required a corrective action plan. | singular problem, however, could be of such serious magnitude that it alone constitutes an Unsatisfactory rating. An Unsatisfactory rating must be supported by referencing the actions taken by the government to notify the contractor of the deficiencies. When an Unsatisfactory rating is justified, the Contracting Officer must consider whether the contractor made a good faith effort to comply with the requirements of the subcontracting plan required and any other applicable clauses. |

NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change assessment status.

NOTE 2: Zero percent is not a goal unless the Contracting Officer determined when negotiating the subcontracting plan that no subcontracting opportunities exist in a particular socio-economic category. In such cases, the contractor will be considered to have met the goal for any socio- economic category where the goal negotiated in the plan was zero.

**Attachment 2 Instructions for Completing a Systems CPARS Evaluation**

A2.1 The Systems Business Sub-Sectors (not all of which are applicable to FAA procurements) are Aircraft, Shipbuilding, Space, Ordnance, Ground Vehicles, Training Systems, or Other Systems.

A2.2 **Block 1 Name/Address of Contractor**. State the name and address of the division or subsidiary of the contractor that is performing the contract. Identify the parent corporation (no address required). Identify the CAGE code, DUNS+4 number, Federal Supply Classification (FSC) or Service Code, and North American Industrial Classification System (NAICS) Code. All codes can be accessed by using the on-screen “lookup” function provided in the electronic form.

A2.3 **Block 2 Type Report**. Indicate whether the CPARS is an initial, intermediate, or final report. If this is an “out-of-cycle” report, select “out-of-cycle.” If this is a report to record contractor performance relative to contract closeout or other administrative requirements, select “Addendum.”

A.2.4 **Block 3 Period of Performance Being Assessed**. State the period of performance covered by the report (dates must be in MM/DD/YYYY format). The

initial period of performance should not cover less than six months of actual performance.

A2.4.1 **Period of Performance for Delayed Starts, Protests or Phase In Periods**. In the case of delayed starts or protests, the initial period of performance may cover more than twelve months of time since contract award, but normally no more than twelve months of actual contract performance. Initial periods reporting on performance greater than 12 months (such as for phase-in periods) must be approved by the CPARS Focal Point and coordinated with the contractor. The period of performance should not already include reported efforts except when an out-of-cycle CPARS has been processed.

A2.4.2 **Period of Performance for Intermediate/Final Reports.** CPARS assessments for intermediate and final reports should cover a 12 month period of performance. Exceptions to this rule for special circumstances, such as a period of performance that ends one month before contract completion or in those instances (up to six months beyond the annual period) where the performance has been extended must be approved by the CPARS Focal Point.

A2.4.3 **Period of Performance for Out-of-Cycle Reports**. Select "Out-of-Cycle" from the drop-down menu if the AO elects to prepare an out-of-cycle report which will be posted to CPARS for a time period which overlaps the regularly scheduled performance period if there has been a significant change in the performance which alters the assessment in one or more evaluation area(s) since the last performance period. If the AO chooses to have the Out-of-Cycle report posted in the CPARS AIS (and ultimately the PPIRS), the CPARS will be processed through the regular work flow (Government and contractor review). See Paragraph 4.4 for more information on Out-of-Cycle reports.

A.2.3.5 **Block 4a Contract Number**. Use the contract number as identified on the contract, except in the case of BOAs, BPAs, GSA schedule and other agency orders. If an order/call is issued under a BOA, BPA, GSA schedule or other agency contract/agreement, the contract number in CPARS should match the master contract number. The order/call number field should be used to reflect the contract/schedule/agreement number for the order/call.

A2.6 **Block 4b Business Sector and Sub Sector**. Select Services/IT/Operations

A2.7 **Block 5 Contracting Office (Organization and Code).** Identify the contracting office symbol.

A2.8 **Block 6 Location of Contract Performance**. Provide a geographical reference (e.g., nearest city and installation name).

A2.9 **Block 7a Contracting Officer**. Self-explanatory.

A2.9.1 **Block 7b Phone Number**. Include commercial phone number in the following format: (XXX) XXX-XXXX

A2.10 **Block 8a Contract Award Date**. Identify the date of contract award or select the date on the on-screen, drop-down calendar.

A2.10.1 **Block 8b Contract Effective Date**. Identify the date (MM/DD/YYYY) that actual contract performance is set to begin or select the on-screen calendar only if that date is later than Block 8a, Contract Award Date.

A2.11 **Block 9 Contract Completion Date**. Identify the last possible date of contract performance (e.g., the last calendar day of the last option period) or select the date on the on- screen, drop-down calendar.

A2.12 **Block 10 Contract Percent Complete/Delivery Order Status**. State the current percent of the contract that is complete. If Cost Performance Reports (CPR) or Cost/Schedule Status Reports (C/SSR) data is available, calculate percent complete by dividing cumulative Budgeted Cost of Work Performed (BCWP) by Contract Budget Base (CBB) (less management reserve) and multiply by 100. CBB is the sum or negotiated cost plus estimated cost of authorized undefinitized work. If CPR or C/SSR data is not available, estimate percent complete by dividing the number of months elapsed by total number of months in contract period of performance and multiplying by 100. In the event an Indefinite Delivery contract is utilized, estimate the percent complete.

A2.13 **Block 11 Awarded Value**. Enter the total value of the contract, including unexercised options. For delivery/task/job order contracts where orders will be assessed under a single CPAR, enter the maximum ordering amount under the contract, including options. For delivery/task/job order contracts where orders will be assessed on an individual basis, enter the awarded value of the individual order. For BOAs/BPAs where orders/calls will be assessed individually, enter the awarded value of the individual order/call.

A2.14 **Block 12 Current Contract Dollar Value**. State the current obligated amount including modifications and options that have been exercised. For incentive contracts, state the target price or total estimated amount. For delivery/task order contracts where orders will be assessed under a single CPAR, state the total amount obligated on all delivery orders, including modifications. For delivery/task/job order contracts where orders will be assessed on an individual basis, state the current obligated amount of the individual order, including modifications. For BOAs/BPAs where orders/calls will be assessed individually, state the current obligated amount of the individual order/call, including modifications.

A2.15 **Block 13 Basis of Award**. Identify the basis of award by selecting competitive or non- competitive. If the CPAR is for a single order/call, select the basis of award for that order/call.

A2.16 **Block 14 Contract Type**. Identify the contract type. For mixed contract types, select the predominant contract type and identify the other contract type in the "mixed" block.

A2.17 **Block 15 Key Subcontractors and Description of Effort Performed**. Identify subcontractors, including CAGE code and DUNS +4 number, performing either a critical aspect of the contracted effort or more than 25 percent of the dollar value of the effort

A2.18 **Block 16 (Systems) Program Title and Phase of Acquisition**. Provide a descriptive narrative of the program. Spell out all abbreviations and acronyms. Identify overall program phase and production lot (for example, concept development, engineering and manufacturing

development, low-rate initial production, or full-rate production (Lot 1)), and any specific aspects of the phase of the acquisition being evaluated. Identify milestone phases, if applicable. Block 16 (Ship Repair and Overhaul) – Type of Availability. Not applicable to FAA contracts.

A2.19 **Block 17 Contract Effort Description**. This section is of critical importance to future source selection teams. The description should be detailed enough to assist a future source selection officials in determining the relevance of this program to their source selection. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort. For intermediate CPARs, a description of key milestone events that occurred in the review period may be beneficial (e.g., Critical Design Review (CDR), Functional Configuration Audit (FCA)), as well as major contract modifications during the period. Ensure all acronyms are identified.

Provide a complete description of the contract effort that identifies key technologies, components, subsystems, and requirements. For task/delivery/job order contracts, state the number of tasks issued during the period, tasks completed during the period, and tasks that remain active.

For contracts that include multiple functional disciplines or activities, separate them into categories to:

1. Reflect the full scope of the contract, and
2. Allow grouping of similar work efforts within the categories to avoid unnecessary segregation of essentially similar specialties or activities. Each category or area should be separately numbered, titled and described within Block 17 to facilitate cross- referencing with the evaluation of the contractor's performance within each category in Blocks 18 and 19.

A2.20 **Small Business Utilization**. Answer the following questions:

1. Does this contract include a subcontracting plan?
2. Is small business subcontracting under this contract included in a comprehensive small business subcontracting plan?
3. Is small business subcontracting under this contract included in a commercial small business subcontracting plan?
4. Date of last Individual Subcontracting Report (ISR)/Summary Subcontracting Report (SSR)?

A2.21 **Block 18 Evaluation Areas**. Evaluate each area based on the following criteria:

A2.21.1 Each area assessment must be based on objective data that will be provided in Block 20. Facts to support specific areas of evaluation must be requested from the AORs, AOs and other Government specialists familiar with the contractor's performance on the contract under review. Such specialists may, for example, be from engineering, manufacturing, quality, logistics (including provisioning), contracting, maintenance, security, etc.

A2.21.2 The amount of risk inherent in the effort should be recognized as a significant factor

and taken into account when assessing the contractor's performance. For example, if a contractor meets an extremely tight schedule, a dark blue (exceptional) may be appropriate, or meeting a tight schedule with few delinquencies, a green (satisfactory) with a plus sign assessment may be given in recognition of the inherent schedule risk. When a contractor identifies significant technical risk and takes action to abate those risks, the effectiveness of these actions should be included in the narrative supporting the Block 18 ratings.

A2.21.3 The CPAR is designed to assess prime contractor performance. In those evaluation areas where subcontractor actions have significantly influenced the prime contractor's performance in a negative or positive way, record the subcontractor actions in Block 20.

A2.21.4 Many of the evaluation areas in Block 18 represent groupings of diverse elements. The AO should consider each element and use the area rating to highlight significant issues. In addition, the AO should clearly focus on the contractor's "results" as they may be appropriate for the period being assessed in determining the overall area rating.

A2.21.5 Evaluate all areas which pertain to the contract under evaluation unless they are not applicable (N/A).

A2.21.6 When performance has changed from one period to another such that a change in ratings results, the narrative in Block 20 must address each change.

A2.21.7 The AO should use customary industry quantitative measures where they are applicable if the contract is for commercial products.

A2.21.8 Ratings will be in accordance with the definitions described in Attachment 2, "Evaluation Ratings Definitions."

A2.22 **Block 18a Technical (Quality of Product).** This element is comprised of an overall rating and six sub-elements. Activity critical to successfully complying with contract requirements must be assessed within one or more of these sub-elements. The overall rating at the element level is the AO's integrated evaluation as to what most accurately depicts the contractor's technical performance or progress toward meeting requirements. This assessment is not a roll-up of the sub-element assessments.

A2.22.1 **Block 18a(1) Product Performance**. Assess the achieved product performance relative to performance parameters required by the contract.

A2.22.2 **Block 18a(2) Systems Engineering**. Assess the contractor's effort to transform operational needs and requirements into an integrated system design solution.

A2.22.2.1 Areas of focus should be: the planning and control of technical program tasks, the quality and adequacy of the engineering support provided throughout all phases of contract execution, the integration of the engineering specialties, management of interfaces, interoperability, and the management of a totally integrated effort of all engineering concerns to meet cost, technical performance, and schedule objectives.

A2.221.2.2 System engineering activities ensure that integration of these engineering concerns is addressed up-front and early in the design/development process. The assessment should cover these disciplines: systems architecture, design, manufacturing, integration and support, configuration control, documentation, test and evaluation.

A2.22.2.3 The assessment for test and evaluation should consider success/problems/failure in developing test and evaluation objectives; planning (ground/air/sea) test, simulations and/or demonstrations; in accomplishing those objectives and on the timeliness of coordination and feedback of the test results (simulations/demonstrations) into the design and/or manufacturing process.

A2.22.2.4 Other activities include production engineering, logistics support analysis, supportability considerations (maintenance personnel/skills availability or work hour constraints, operating, and cost constraints, allowable downtime, turnaround time to service/maintain the system, standardization requirements), survivability, human factors, reliability, quality, maintainability, availability, inspection, etc. Although some of these activities will be specifically addressed in other elements/sub-elements (such as product assurance), the focus of the assessment of systems engineering is on the integration of those specific disciplines/activities.

A2.22.2.5 The assessment of systems engineering needs to remain flexible to allow the evaluator to account for program-unique technical concerns and to allow for the changing systems engineering environment as a program moves through the program phases, e.g., Engineering and Manufacturing Development, Production.

A2.22.3 **Block 18a(3) Software Engineering**. Assess the contractor's success in meeting contract requirements for all applicable software engineering based activities and processes.

A2.22.3.1 Software engineering activities include, as appropriate, software development (design, code, and unit test); application of reuse, COTS, and other non-developmental software components; integration (including software component integration, system integration and test, and acceptance test support); and sustainment. Software processes include, for example: software size, effort, and schedule estimation; requirements analysis, development, and management; software configuration management; software risk identification and management; metrics collection and analysis, technical reviews, decision analysis, and software quality assurance and control, each as they specifically address software engineering activities.

A2.22.3.2 Consider the contractor's success with respect to:

1. Planning a software development, integration, and testing effort that includes compatible cost, schedule, and performance baselines
2. Delivering expected software driven capabilities on cost and on schedule
3. Effective software metrics collection/analysis and status monitoring/reporting that provide the software visibility necessary to identify timely corrective actions and appropriately execute them
4. Staffing with the software knowledge, skills, and abilities needed to execute the contract across the lifecycle; timely assignment of the appropriate numbers of software staff

5. Awareness and control of software size and stability to enable tracking and allowing growth according to vetted enhancements vice scope creep
6. Effective testing and integration of developed software within the larger system test and evaluation effort
7. Effective processes to acquire, integrate, and test commercial off-the-shelf software and to achieve planned software reuse
8. Achieving software assurance
9. Consistent application of documented software engineering and management processes, including technical reviews, in alignment with contract requirements

A2.22.4 **Block 18a(4) Logistic Support/Sustainment**. Assess the success, as appropriate, of the contractor's performance in accomplishing logistics planning. For example, maintenance planning; manpower and personnel; supply support; support equipment; technical provisioning data; training and support; computer resources support; facilities; packaging, handling, storage and transportation; design interface; the contractor's performance of logistics support analysis activities and the contractor's ability to successfully support fielded equipment. When the contract requires technical and/or engineering data deliverables, the cognizant cataloging and/or standardization activity comments should be solicited.

A2.22.5 **Block 18a(5) Product Assurance**. Assess how successfully the contractor meets program quality objectives; e.g., production, reliability, maintainability, inspection, testability, and system safety, and controls the overall manufacturing process. The PM must be flexible in how contractor success is measured, e.g., data from design test/operational testing successes, field reliability and maintainability and failure reports, user comments and acceptance rates, improved subcontractor and vendor quality, and scrap and rework rates. These quantitative indicators may be useful later, for example, in source selection evaluations, in demonstrating continuous improvement, quality and reliability leadership that reflects progress in total quality management. Assess the contractor's control of the overall manufacturing process to include material control, shop floor planning and control, status and control, factory floor optimization, factory design, and factory performance.

A2.22.6 **Block 18a(6) - Other Technical Performance**. Assess all the other technical activity critical to successful contract performance. Identify any additional assessment aspects that are unique to the contract or that cannot be captured in another sub-element.

A2.23 **Block 18b Schedule**. Assess the timeliness of the contractor against the completion of the contract, task orders, milestones, delivery schedules, administrative requirements, etc. Assess the contractor's adherence to the required delivery schedule by assessing the contractor's efforts during the assessment period that contribute to or affect the schedule variance. Also, address significance of scheduled events (e.g., design reviews), discuss causes, and assess the effectiveness of contractor corrective actions.

A2.24 **Block 18c Cost Control**. (Not Applicable for Firm-Fixed Price or Firm-Fixed Price with Economic Price Adjustment). Assess the contractor’s effectiveness in forecasting, managing, and controlling contract cost. Is the contractor experiencing cost growth or underrun, discuss the causes and contractor-proposed solutions for the cost overruns. For contracts where task or contract sizing is based upon contractor-provided person hour estimates, the relationship of these estimates to ultimate task cost should be assessed. In addition, the extent to which the contractor demonstrates a sense of cost responsibility, through the efficient use of resources, in

each work effort should be assessed.

A2.24.1 Assessment information regarding performance under a UCA must be included in the annual evaluation. If the final negotiated contract type is not a cost-type, cost information for the period the UCA was in effect must be included under the Cost element. The contractor's performance under the UCA must be separately identified but considered in the overall annual ratings.

A2.25 **Block 18d Management**. This element is comprised of an overall rating and three sub- elements. Activity critical to successfully executing the contract must be assessed within one or more of the sub-elements. This overall rating at the element level is the AO's integrated assessment as to what most accurately depicts the contractor's performance in managing the contracted effort. It is not a roll-up of the sub-element assessments.

A2.25.1 Block 18d(1) Management Responsiveness. Assess the timeliness, completeness and quality of problem identification, corrective action plans, proposal submittals (especially responses to change orders, Engineering Change Proposals (ECPs), or Letter or Ceiling Priced Contracts), the contractor's history of reasonable and cooperative behavior, effective business relations, and customer satisfaction. Consider the contractor's responsiveness to the program as it relates to meeting contract requirements during the period covered by the report.

A2.25.2 Block 18d(2) Subcontract Management. Assess the contractor's success with timely award and management of subcontracts. Assess the prime contractor's effort devoted to managing subcontracts and whether subcontractors were an integral part of the contractor's team. Consider efforts taken to ensure early identification of subcontract problems and the timely application of corporate resources to preclude subcontract problems from impacting overall prime contractor performance.

A2.25.3 Block 18d(3) Program Management and Other Management. Assess the extent to which the contractor discharges its responsibility for integration and coordination of all activity needed to execute the contract; identifies and applies resources required to meet schedule requirements; assigns responsibility for tasks/actions required by contract; communicates appropriate information to affected program elements in a timely manner. Assess the contractor's risk management practices, especially the ability to identify risks and formulate and implement risk mitigation plans. If applicable, identify any other areas that are unique to the contract, or that cannot be captured elsewhere under the Management element.

A2.25.3.1 Integration and coordination of activities should reflect those required by the Integrated Master Plan/Schedule. Also consider the adequacy of the contractor's mechanisms for tracking contract compliance, recording changes to planning documentation and management of cost and schedule control system, and internal controls, as well as the contractor's performance relative to management of data collection, recording, and distribution as required by the contract.

A2.26 **Block 18e Utilization of Small Business**. FAA AMS T3.6.1 and Clause 3.6.1-4 contain requirements for complying with the Small Business Subcontracting Program. Assess whether the contractor provided maximum practicable opportunity for Small Business (including Alaska Native Corporations (ANCs) and Indian Tribes) (including Small Disadvantaged Businesses (which also includes ANCs and Indian Tribes), Women Owned Small Businesses,

Veteran Owned, Service Disabled Veteran Owned Small Business, Historically Black Colleges and Minority Institutions and ANCs and Indian Tribes that are not Small Disadvantaged Businesses or Small Businesses) to participate in contract performance consistent with efficient performance of the contract.

A2.26.1 Assess compliance with all terms and conditions in the contract relating to Small Business participation. Where applicable, assess compliance with Small Business Subcontracting Plan (Test Program)) including any program specific data required in the contract. Assess achievement on each individual goal stated within the contract or subcontracting plan including good faith effort if the goal was not achieved.

A3.26.2 It may be necessary to seek input from the Small Business specialist, ACO or PCO in regards to the contractor's compliance with these criteria, especially when a comprehensive plan is submitted. In cases where the contractor has a comprehensive subcontracting plan, request the DCMA Comprehensive Subcontracting Plan Manager to provide input including any program specific performance information.

A2.26.3 For contracts subject to a commercial subcontracting plan, the Utilization of Small Business factor should be rated "green" as long as an approved plan remains in place, unless liquidated damages have been assessed by the Contracting Officer who approved the commercial plan (see AMS 3.6.1-6). In such case, the Utilization of Small Business area must be rated "red".

A2.26.4 This area must be rated for all contracts and task orders that contain a small business subcontracting goal.

A2.26.5 Ratings will be in accordance with definitions described in Attachment 1, "Evaluation Rating Definitions (Utilization of Small Business)."

A2.26.6 A contract may have no more than one subcontracting plan. Evaluations of the utilization of small business are required for contracts and orders placed against basic ordering agreement (BOA) and blanket purchase agreement (BPA) if a subcontracting plan is required. Evaluations of utilization of small business for single-agency task orders and delivery orders (to include FSS) are not required and will not be accomplished unless the Contracting Officer determines that such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation. Execution of any subcontracting plan may be addressed in block 20.

A2.27 **Block 18f Other Areas.** Specify additional evaluation areas that are unique to the contract or that cannot be captured elsewhere on the form. More than one type of entry may be included but should be separately labeled. If extra space is needed, use Block 20.

A2.27.1 If the contract contains an award fee clause, enter "award fee" in the "Other Areas" Block (18f). The AO should translate the award fee earned to color ratings which could prove more useful for using past performance to assess future performance risk in upcoming source selections. If award fee information is included in the CPAR, use Block 20 to provide a description for each award fee. Include the scope of the award fee by describing the extent to which it covers the total range of contract performance activities, or is restricted to certain elements of the contract.

A2.27.2 If any other type of contract incentive is included in the contract (excluding contract share incentives on fixed price or cost-type incentive contracts), it should be reported in a manner similar to the procedures described above for award fee (by entering "Incentive" in Block 18f).

A2.27.3 Use Block 18f in those instances where an aspect of the contractor's performance does not fit into any of the other blocks on the form. As an example, this block may be used to address security issues, provide an assessment of provisioning line items or other areas as appropriate.

A2.28 **Block 19 Variance (Contract-to-Date).** If Cost Performance Report (CPR) or Cost/Schedule Status Review (C/SSR) data are available, identify the current percent cost variance to date, the Government's estimated completion cost variance (percent), and the cumulative schedule variance (percent). Indicate the cutoff date for the CPR or C/SSR used.

A2.28.1 Compute current cost variance percentage by dividing cumulative cost variance to date (column 11 of the CPR, column 6 of the C/SSR) by the Budgeted Cost of Work Performed (BCWP) and multiply by 100.

A2.28.2 Compute completion cost variance percentage by dividing the Contract Budget Baseline (CBB) less the Government's Estimate At Completion (EAC) by CBB and multiplying by 100. The calculation is [(CBB - EAC)/CBB] X 100. The CBB must be the current budget base against which the contractor is performing (including formally established Over Target Baselines (OTB)). If an OTB has been established since the last CPAR, a brief description in Block 20 of the nature and magnitude of the baseline adjustment must be provided. Subsequent CPARs must evaluate cost performance in terms of the revised baseline and reference the CPAR that described the baseline adjustment. For example, "The contract baseline was formally adjusted on (date); see CPAR for (period covered by report) for an explanation."

A2.28.3 Compute cumulative schedule variance percentage by dividing the Budgeted Cost of Work Performed (BCWP) less budgeted cost of work scheduled (BCWS) by BCWS and multiply by 100. The calculation is [(BCWP - BCWS)/BCWS] X 100. If the schedule variance exceeds 15 percent (positive or negative), briefly discuss in Block 20 the significance of this variance for the contract effort.

A2.29 **Block 20 AO Narrative (see Paragraph 1.4).** A factual narrative is required for all assessments regardless of color rating (e.g., even "green" or “satisfactory” ratings require narrative support). Cross-reference the comments in Block 20 to their corresponding evaluation area in Block 18 or 19. Each narrative statement in support of the area assessment must contain objective data. An exceptional cost performance assessment could, for example, cite the current underrun dollar value and estimate at completion. A marginal engineering design/support assessment could, for example, be supported by information concerning personnel changes. Key engineers familiar with the effort may have been replaced by less experienced engineers. Sources of data include operational test and evaluation results; technical interchange meetings; production readiness reviews; earned contract incentives; or award fee evaluations. The AO’s comments in Block 20 may be up to 16,000 characters

(approximately three pages) in CPARS.

A2.29.1 The AO must choose the applicable choice to the following statement after block 20: "Given what I know today about the contractor's ability to execute what he promised in his proposal, I (definitely would not, probably would not, might or might not, probably would or definitely would) award to him today given that I had a choice."

A2.30 **Block 21 AO Signature**. The AO enters his or her name, title, and organization, phone number (in the following format: (XXX)XXX-XXXX ), email address, FAX number, and signs and dates the form prior to making it available to the contractor for review.

A2.31 **Block 22 Contractor Comments.** Completed at the option of the contractor. The contractor's narrative comments may be up to 16,000 characters (approximately three pages).

A2.32 **Block 23 Contractor Representative Signature**. The contractor representative reviewing/commenting on the CPAR will enter his or her name, title, phone number, email address, FAX number, and signs and dates the form prior to returning it to the AO.

A2.33 **Block 24 RO Comments**. The RO must acknowledge consideration of any significant discrepancies between the AO assessment and the contractor's comments. The RO's narrative comments may be up to 16,000 characters (approximately three pages).

A2.34 **Block 25 - RO Signature**. The RO will enter his or her name, title, organization (AF users do not include a code), phone number in the following format: (XXX) XXX-XXXX, email address, FAX number, and date when completing the CPAR.

**Attachment 3 Instructions for Completing a Services, Information Technology, or Operations Support CPAR**

A3.1 All business sectors, except Systems, and construction and architect-engineer, will be completed on this form.

A3.2 **Block 1 Name/Address of Contractor**. State the name and address of the division or subsidiary of the contractor that is performing the contract. Identify the parent corporation (no address required). Identify the CAGE code, DUNS+4 number, Federal Supply Classification (FSC) or Service Code, and North American Industrial Classification System (NAICS) code. All codes can be accessed by using the on-screen "lookup" function provided in the electronic form.

A3.3 **Block 2 Type Report**. Indicate whether the CPAR is an initial, intermediate, or final report. If this is an "out-of-cycle" report, select "out-of-cycle." If this is a report to record contractor performance relative to contract closeout or other administrative requirements, select "Addendum."

A3.4 **Block 3 Period of Performance Being Assessed**. State the period of performance covered by the report (dates must be in MM/DD/YYYY format). The initial period of performance should not cover less than six months of actual performance.

A3.4.1 **Period of Performance for Delayed Starts, Protests or Phase-In Periods**. In the case of delayed starts or protests, the initial period of performance may cover more than twelve months of time since contract award, but normally no more than twelve months of actual contract performance. Initial periods reporting on performance greater than 12 months (such as for phase-in periods) must be approved by the CPAR Focal Point and coordinated with the contractor. The period of performance should not already include reported efforts except when an out-of-cycle CPAR has been processed.

A3.4.2 **Period of Performance for Intermediate/Final Reports**. CPAR assessments for intermediate and final reports should cover a 12 month period of performance. Exceptions to this rule for special circumstances, such as a period of performance that ends one month before contract completion or in those instances (up to six months beyond the annual period) where the performance has been extended must be approved by the CPAR Focal Point.

A3.4.3 **Period of Performance for Out-of-Cycle Reports**. Select "Out-of-Cycle" from the drop-down menu if the AO elects to prepare an out-of-cycle report which will be posted to the CPARS AIS for a time period which overlaps the regularly scheduled performance period if there has been a significant change in the performance which alters the assessment in one or more evaluation area(s) since the last performance period. If the AO chooses to have the Out-of- Cycle report posted in the CPARS AIS (and ultimately the PPIRS), the CPAR will be processed through the regular work flow (Government and contractor review). See Paragraph 4.4 for more information on Out-of-Cycle reports.

A3.5 **Block 4a Contract Number**. Use the contract number as identified on the contract, except in the case of BOAs, BPAs, GSA schedule and other agency orders. If an order/call is issued under a BOA, BPA, GSA schedule or other agency contract/agreement, the contract number in CPARS should match the master contract number. The order number field should be used to reflect the contract/schedule/agreement number for the order/call.

A3.6 **Block 4b Business Sector and Sub-Sector**. Service/IT/Operations

A3.7 **Block 5 Contracting Office (Organization and Code).** Identify the contracting office symbol.

A3.8 **Block 6 - Location of Contract Performance**. Provide a geographical reference (e.g., nearest city and installation name) if performance is on a military installation.

A3.9 **Block 7a Contracting Officer**. Self-explanatory.

A3.9.1 **Block 7b Phone Number**. Include the commercial phone number in the following format: (XXX) XXX-XXXX

A3.10 **Block 8a Contract Award Date**. Identify the date of contract award or select the date on the on-screen, drop-down calendar.

A3.10.1 **Block 8b Contract Effective Date**. Identify the date (MM/DD/YYYY) that actual contract performance is set to begin or select the on-screen calendar date only if that date is later than Block 8a, Contract Award Date.

A3.11 **Block 9 Contract Completion Date.** Identify the last possible date of contract performance (e.g., the last calendar day of the last option period) or select the date on the on- screen, drop-down calendar.

A3.12 **Block 10 N/A**. Not applicable.

A3.13 **Block 11 Awarded Value**. Enter the total value of the contract, including unexercised options. For delivery/task/job order contracts where orders will be assessed under a single CPAR, enter the maximum ordering amount under the contract, including options. For delivery/task/job order contracts where orders will be assessed on an individual basis, enter the awarded value of the individual order. For BOAs/BPAs where orders/calls will be assessed individually, enter the awarded value of the individual order.

A3.14 **Block 12 Current Contract Dollar Value**. State the current obligated amount including modifications and options that have been exercised. For incentive contracts, state the target price or total estimated amount. For delivery/task/job order contracts where orders will be assessed under a single CPAR, state the total amount obligated on all delivery orders, including modifications. For delivery/task/job order contracts where orders will be assessed on an individual basis, state the current obligated amount of the individual order, including modifications. For BOAs where orders will be assessed individually, state the current obligated amount of the individual order, including modifications.

A3.15 **Block 13 Basis of Award**. Identify the basis of award by selecting competitive or non- competitive. If the CPAR is for a single order/call, select the basis of award for that order/call.

A3.16 **Block 14 Contract Type**. Identify the contract type. For mixed contract types, select the predominant contract type and identify the other contract type in the "mixed" block.

A3.17 **Block 15 Key Subcontractors and Description of Effort Performed**. Identify subcontractors, including CAGE code and DUNS +4 number, performing either a critical aspect of the contracted effort or more than 25 percent of the dollar value of the effort. If possible, include the amount of subcontract costs of the total contract effort. Discussion of the prime contractor’s management of the subcontractor should be included in Block 18d- Business Relations.

A3.18 **Block 16 Program Title and Phase of Acquisition**. Provide a descriptive narrative of the program. Spell out all abbreviations and acronyms. Identify the type of services (for example, professional services, maintenance, installation or information technology services).

A3.19 **Block 17 Contract Effort Description**. Provide a description of the contract effort that identifies the key requirements and/or type of effort. This section is of critical importance to future source selection officials. The description should be detailed enough so that it can be used in determining the relevance of this program to future source selections. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort. Ensure acronyms are identified. For task/delivery order contracts, state the number of orders issued during the period.

A3.20 **Small Business Utilization**. Answer the following questions:

1. Does this contract include a subcontracting plan?
2. Is small business subcontracting under this contract included in a comprehensive small business subcontracting plan?
3. Is small business subcontracting under this contract included in a commercial small business subcontracting plan?
4. Date of last Individual Subcontracting Report (ISR) /Summary Subcontracting Report (SSR)

A3.21 **Block 18 Evaluation Areas**. Evaluate each area based on the following criteria:

A3.21.1 Each area assessment must be supported by objective data (or subjective observations) that will be provided in Block 20. Facts to support specific areas of evaluation must be requested from the PM, Contracting Officer and other specialists familiar with the contractor's performance on the contract under review. Such specialists may, for example include the Contracting Officer's Representative (COR) for the program and may also be from engineering, manufacturing, quality, logistics (including provisioning), contracting, maintenance, security, data, etc.

A3.21.2 The amount of risk inherent in the effort should be recognized as a significant factor and taken into account when assessing the contractor's performance. When a contractor identifies significant technical risk and takes action to abate those risks, the effectiveness of these actions should be included in the narrative supporting the Block 18 ratings.

A3.21.3 The CPAR is designed to assess prime contractor performance. In those evaluation areas where subcontractor actions have significantly influenced the prime contractor's performance in a negative or positive way, record the subcontractor actions in Block 20.

A3.21.4 Evaluate all areas which pertain to the contract under evaluation, unless they are not applicable ("N/A").

A3.21.5 When performance has changed from one period to another such that a change in ratings results, the narrative in Block 20 must address each change.

A3.21.6 The AO should use customary industry quantitative measures where they are applicable if the contract is for commercial products.

A3.21.7 Ratings will be in accordance with the definitions in Attachment 2.

A3.21.8. A fundamental principle of assigning ratings is that contractors will not be assessed a rating lower than satisfactory solely for not performing beyond the requirements of the contract.

A3.22 **Block 18a Quality of Product or Service**. Assess the contractor's conformance to contract requirements, specifications and standards of good workmanship (e.g., commonly accepted technical, professional, environmental, or safety and health standards). List and

assess any sub-elements to indicate different efforts where appropriate. Include, as applicable, information on the following:

1. Are the reports data accurate?
2. Does the product or service provided meet the specifications of the contract?
3. Does the contractor's work measure up to commonly accepted technical or professional standards?
4. What degree of FAA technical direction was required to solve problems that arise during performance?

For Operations Support: Assess how successfully the contractor meets program quality objectives such as production, reliability, maintainability and inspection. The AO must be flexible in how contractor success is measured; e.g., using data from field reliability and maintainability and failure reports, user comments and acceptance rates, and scrap and rework rates. These quantitative indicators may be useful later, for example, in source selection evaluations, in demonstrating continuous improvement, quality and reliability leadership that reflects progress in total quality management. Assess the contractor's control of the overall production process to include material control, shop planning and control, and providing status updates.

A3.23 **Block 18b Schedule**. Assess the timeliness of the contractor against the completion of the contract, task orders, milestones, delivery schedules, and administrative requirements (e.g., efforts that contribute to or affect the schedule variance).

This assessment of the contractor's adherence to the required delivery schedule should include the contractor's efforts during the assessment period that contributes to or affect the schedule variance. This element applies to contract closeout activities as well as contract performance. Instances of adverse actions such as the assessment of liquidated damages or issuance of Cure Notices, Show Cause Notices, and any other notifications to the contractor of serious contract performance issues are indicators of problems which may have resulted in variance to the contract schedule and should, therefore, be noted in the evaluation.

A3.24 **Block 18c Cost Control**. (Not required for Firm-Fixed Price or Firm-Fixed Price with Economic Price Adjustment). Assess the contractor's effectiveness in forecasting, managing, and controlling contract cost. Include, as applicable, the following information:

1. Does the contractor keep within the total estimated cost (what is the relationship of the negotiated costs and budgeted costs to actuals)?
2. Did the contractor do anything innovative that resulted in cost savings?
3. Were billings current, accurate and complete?
4. Are the contractor's budgetary internal controls adequate?

Assessment information regarding performance under a UCA must be included in the annual evaluation. If the final negotiated contract type is not a cost-type, cost information for the period the UCA was in effect must be included under the cost element. The contractor's performance under the UCA will be separately identified but considered in the overall annual ratings.

A3.25 **Block 18d Business Relations**. Assess the integration and coordination of all activity needed to execute the contract, specifically the timeliness, completeness and quality of

problem identification, corrective action plans, proposal submittals, the contractor's history of reasonable and cooperative behavior (to include timely identification of issues in controversy), customer satisfaction, timely award and management of subcontracts. Include, as applicable, information on the following:

1. Is the contractor oriented toward the customer?
2. Is interaction between the contractor and the government satisfactory or does it need improvement?
3. Include the adequacy of the contractor's accounting, billing, and estimating systems and the contractor's management of Government Property (GFP) if a substantial amount of GFP has been provided to the contractor under the contract.
4. Address the timeliness of awards to subcontractors and management of subcontractors, including subcontract costs. Consider efforts taken to ensure early identification of subcontract problems and the timely application of corporate resources to preclude subcontract problems from impacting overall prime contractor performance.
5. Assess the prime contractor's effort devoted to managing subcontracts and whether subcontractors were an integral part of the contractor's team.

A3.26 **Block 18e Management of Key Personnel (For Services and Information Technology Business Sectors only - Not Applicable to Operations Support).** Assess the contractor's performance in selecting, retaining, supporting, and replacing, when necessary, key personnel. For example:

1. How well did the contractor match the qualifications of the key position, as described in the contract, with the person who filled the key position?
2. Did the contractor support key personnel so they were able to work effectively?
3. If a key person did not perform well, what action was taken by the contractor to correct this?
4. If a replacement of a key person was necessary, did the replacement meet or exceed the qualifications of the position as described in the contract schedule?

A3.27 **Block 18f Utilization of Small Business**. FAA AMS T3.6.1 and Clause 3.6.1-4 contain requirements for complying with the Small Business Subcontracting Program. Assess whether the contractor provided maximum practicable opportunity for Small Business (including Alaska Native Corporations (ANCs) and Indian Tribes) (including Small Disadvantaged Businesses (which also includes ANCs and Indian Tribes), Women Owned Small Businesses, Service Disabled Veteran Owned Small Business, Historically Black Colleges and Universities and Minority Educational Institutions and ANCs and Indian Tribes that are not Small Disadvantaged Businesses or Small Businesses) to participate in contract performance consistent with efficient performance of the contract.

A3.27.1 Assess compliance with all terms and conditions in the contract relating to Small Business participation Assess any small business participation goals which are stated separately in the contract. Assess achievement on each individual goal stated within the contract or subcontracting plan including good faith effort if the goal was not achieved.

A3.27.2 It may be necessary to seek input from the Small Business Office or Contracting Officer in regards to the contractor's compliance with these criteria,

especially when a comprehensive plan is submitted

A3.27.3 For contracts subject to a commercial subcontracting plan, the Utilization of Small Business factor should be rated “satisfactory” as long as an approved plan remains in place, unless liquidated damages have been assessed by the Contracting Officer who approved the commercial plan In such case, the Utilization of Small Business area must be rated “unsatisfactory”.

A3.27.4 This area must be rated for all contracts and task orders that contain a small business subcontracting goal.

A3.27.5 Ratings will be in accordance with definitions described in Attachment 2, "Evaluation Ratings Definitions (Utilization of Small Business)."

A3.27.6 A contract must have no more than one subcontracting plan. Evaluations of the utilization of small business are required for contracts and orders placed against basic ordering agreement (BOA) and blanket purchase agreement (BPA) if a subcontracting plan is required. Evaluations of utilization of small business for single-agency task orders and delivery orders (to include FSS) are not required and will not be accomplished unless the Contracting Officer determines that such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation. Execution of any subcontracting plan may be addressed in block 20.

A3.28 **Block 18g Other Areas.** Specify additional evaluation areas that are unique to the contract, or that cannot be captured elsewhere on the form. More than one type of entry may be included, but should be separately labeled. If extra space is needed, use Block 20.

A3.28.1 If the contract contains an award fee clause, enter "award fee" in the "Other Areas" Block (18g). The AO should translate the award fee earned to adjectival ratings which could prove more useful for using past performance to assess future performance risk in upcoming source selections. If award fee information is included in the CPAR, use Block 20 to provide a description for each award fee. Include the scope of the award fee by describing the extent to which it covers the total range of contract performance activities, or is restricted to certain elements of the contract.

A3.28.2 If any other type of contract incentive is included in the contract (excluding contract share incentives on fixed price or cost-type contracts), it should be reported in a manner similar to the procedures described above for award fee (by entering "Incentive" in Block 18g).

A3.28.3 Use Block 18g in those instances where an aspect of the contractor's performance does not fit into any of the other blocks on the form.

A3.29 **Block 19 N/A.** Not applicable.

A3.30 **Block 20 Assessing Official Narrative (see Paragraph 1.4).** A factual narrative is required for all assessments regardless of rating. Cross-reference the comments in Block 20 to their corresponding evaluation area in Block 18. Each narrative statement in support of the area assessment must contain objective data. An exceptional cost performance assessment

could, for example, cite the current underrun dollar value and estimate at completion. A marginal assessment could, for example, be supported by information concerning personnel changes or schedule delinquency rate. Key personnel familiar with the effort may have been replaced by less experienced personnel. Sources of the data used by the AO for the assessment may include customer/field surveys or evaluation of contractor reports. The Contracting Officer should be contacted to ensure that all applicable data has been incorporated. Block 20 comments may be up to 16,000 characters (approximately three pages) in CPARS.

A3.30.1 The AO must choose the applicable choice to the following statement after Block 20: "Given what I know today about the contractor's ability to execute what he promised in his proposal, I (definitely would not, probably would not, might or might not, probably would or definitely would) award to him today given that I had a choice."

A3.31 **Block 21 AO Signature**. The AO enters his or her name, title, and organization, phone number (in the following format: (XXX)XXX-XXXX), email address, FAX number, and signs and dates the form prior to making it available to the contractor for review.

A3.32 **Block 22 Contractor Comments**. Completed at the option of the contractor. The contractor's narrative comments may be up to 16,000 characters (approximately three pages).

A3.33 **Block 23 Contractor Representative Signature**. The contractor representative reviewing/commenting on the CPAR will enter his or her name, title, phone number, email address, FAX number, and signs and dates the form prior to returning it to the AO.

A3.34 **Block 24 RO Comments**. The RO must acknowledge consideration of any significant discrepancies between the AO assessment and the contractor's comments. The RO's narrative comments may be up to 16,000 characters (approximately three pages).

A3.35 **Block 25 - RO Signature**. The RO will enter his or her name, title, organization, phone number in the following format: (XXX)XXX-XXXX, email address, FAX number, and date when completing the CPAR.

Attachment 4 CPARS Website Features

Features of the CPARS website include:

1. The "production" CPAR system for actual entry of the performance evaluation data;
2. The "practice" CPAR system. The practice system is a mirror image of the functionality of the CPAR system using a separate database of simulated CPAR records. The practice system allows users to gain familiarity with the system without actually entering live performance evaluation data;
3. A "requirements" page that describes hardware and software required, security access levels, security features, how to obtain a user account and technical service support, and answers to frequently asked questions.
4. Instructions on Internet Explorer (IE) fixes that may be necessary for FAA access to CPARS;
5. A Quality Checklist that tutors users on completing a quality evaluation;
6. Link to reference material;

7. Link to CPARS Training;
8. Access Request forms;
9. Software Release history; and
10. Metrics (updated quarterly).

## T3.10.2 Subcontracting Policies

### A Subcontracting

### 1 Consent for Subcontract Revised 4/2011

a. The Contracting Officer (CO) may include requirements for subcontract consent in contracts that could include subcontracts when the CO determines that it is in the best interest of the FAA to review subcontracts in advance.

b. *Considerations.* The CO and product team/procurement team should consider the specific situation in determining if consent to subcontract is necessary. If subcontract consent will **not** be required, the CO may still specify that contractors provide the CO a subcontract notice prior to entering subcontracts. Some of the elements that could affect the decision to include the requirement for subcontract consent are:

(1) *Approved Purchasing System*. Contractors or offerors that have approved purchasing systems should not require subcontractor consent because their purchasing systems have already been reviewed and determined acceptable under a contractor's procurement system review (CPSR). In exceptional circumstances, consent to certain subcontracts or classes of subcontracts may be required even though the contractor's purchasing system has been approved. Reasons for doing so include the fact that a CPSR or continuing surveillance has revealed sufficient weaknesses in a particular area of subcontracting to warrant special attention by the contracting officer.

(2) *Type of Contract*. The type of contract is also relevant to the consideration of subcontractor consent.

(a) *Cost Type/Labor Hour/Time and Material or other Best Effort Type Contracts*. The need for subcontractor consent is greater in contracts that reimburse the contractor for effort performed where the contractor's obligation is to deliver its best effort. The FAA bears more risk in these kinds of contracts because the FAA pays for the effort delivered. Contracts predicated upon best effort require the FAA to assure to the extent possible that the contractor has exercised good judgment and minimized the FAA's risk by engaging subcontractors that have higher probability for success.

(b) *Fixed Price Contracts* . The contractor's obligation in a fixed price contract to successfully complete the work increases contractor risk which behooves contractors to enlist reliable subcontractors. There should not be any need for subcontractor consent in fixed price contracts unless extraordinary

circumstances are present. Such circumstances could include subcontracts for critical systems, subsystems, or components, or other subcontracts selected by the contracting officer as needing special surveillance. The contract should address these requirements.

c. *Reviewing the Subcontractor*.

(1) The CO, jointly with the IPT/procurement team, should determine the information needed to review a subcontractor and request the contractor to submit that. The following elements may be considered:

(a) Is the decision to subcontract consistent with the contractor's approved make- or-buy program?

(b) Is the subcontract for special test equipment or facilities that are available from Government sources?

(c) Is the selection of the particular supplies, equipment, or services technically justified?

(d) Has the contractor complied with the prime contract requirements regarding small business subcontracting, including, if applicable, its plan for subcontracting with small, small disadvantaged and women-owned small business concerns?

(e) Was adequate price competition obtained or its absence properly justified?

(f) Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?

(g) Has the contractor performed price analysis or price comparisons?

(h) Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?

(i) Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government-furnished facilities?

(j) Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?

(k) Does the prime contractor comply with applicable cost accounting standards for awarding the subcontract?

(l) Is the proposed subcontractor on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs?

(2) The CO should review the contractor's submission with the IPT/procurement team

to determine consent. The CO should make the final determination with the input of the team.

(3) The CO should notify the contractor in writing of consent or the withholding of consent, including any changes or corrections required. The consent should disclaim any implication that the FAA's consent constitutes a determination of the acceptability of the subcontract terms or price, or of the allowability of costs.

(4) Subcontracts should be consistent with the FAA's procurement policy. Contracting officers should be aware of subcontract conditions that could be deemed the basis for denial such as:

(a) Subcontracts providing for payment on a cost-plus-a-percentage-of-cost basis;

(b) Subcontracts creating a relationship between the FAA and the subcontractor;

(c) Subcontracts that make the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor binding on the Government.

## 2 Contractors Purchasing Systems Reviews Revised 4/2011

a. *General*. The objective of a contractor purchasing system review (CPSR) is to determine if the contractor's purchasing system will use FAA funding efficiently and effectively consistent with the best interests of the FAA and is compliant with the FAA's policy on subcontracting. The review provides the contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system. The CO may conduct a CPSR when there are probable benefits to the FAA such as relieving the FAA of providing subcontractor consent on a case by case basis. CPSR's are generally beneficial to the FAA when there will be a continuous relationship with the FAA involving large contract values and multiple contract relationships. CPSR's should not be considered under $10 million unless there is substantial benefit to be derived by the FAA in the CO's opinion.

b. *CPSR Process*. The CO may determine the information needed to conduct the CPSR. The CO (or delegates) should obtain the kind of information or conduct reviews that would validate the contractor's capability to be efficient and protect the FAA's interest.

c. *Review Cycle*. Once a CPS has been approved, the CO may establish a regular review schedule of about every 3 years, unless circumstances warrant greater or less frequency. The CO should maintain sufficient surveillance to be aware of the contractor's effective management of the system and to identify significant deviations. Evidence of deficiencies may require spontaneous review and withdrawing approval.

d. *Extent of review*. The CO should conduct a complete evaluation of the contractor's purchasing system. Things to consider include:

(1) Whether competition is relied on as the preferred method;

(2) Pricing policies and techniques that support fair and reasonable prices;

(3) Methods of evaluating subcontractor responsibility, including the contractor's use of the "List of Parties Excluded from Federal Procurement and Nonprocurment Programs" and, if the contractor has subcontracts with parties on the list, the documentation, systems, and procedures the contractor has established to protect the FAA's interests.

(4) Treatment accorded affiliates and other concerns having close working arrangements with the contractor;

(5) Policies and procedures pertaining to small business concerns;

(6) Planning, award, and postaward management of major subcontract programs;

(7) Compliance with Cost Accounting Standards in awarding subcontracts;

(8) Appropriateness of types of contracts used;

(9) Management control systems, including internal audit procedures, to administer payments to subcontractors.

e. *System approval*. The CO should notify the contractor of a system approval specifically addressing the following:

(1) Identification of the plant or plants covered;

(2) The effective date of approval and period for which approval is valid;

(3) Applicability - the approval may apply to all Federal Government contracts at that plant to the extent that cross-servicing arrangements exist;

(4) Any special waiver to contract requirements such as those for advance notification in fixed-price contracts but not generally for cost-reimbursement contracts);

(5) Automatic termination:

(a) at the end of the approval period; or

(b) when any significant change occurs in the system unless approved by the contracting officer;

(6) FAA's right to withdraw at any time at the contracting officer's discretion;

(7) Identification of any class or classes of subcontracts that will still require

advance consent. (Reasons for selecting the subcontracts include the fact that a CPSR or continuing surveillance has revealed sufficient weaknesses in a particular area of subcontracting to warrant special attention by the contracting officer.)

**3 Definitions** Revised 4/2011

a. *"Approved purchasing system"* means a contractor's purchasing system that has been reviewed and approved in accordance with this part.

b. *"Consent to subcontract"* means the contracting officer's written consent for the prime contractor to enter into a particular subcontract.

c. *"Contractor,"* as used in this section, means the total contractor organization or a separate entity of it, such as an affiliate, division, or plant, that performs its own purchasing.

d. *"Contractor purchasing system review (CPSR*)" means the complete evaluation of a contractor's purchasing of material and services, subcontracting, and subcontract management from development of the requirement through completion of subcontract performance.

e. *"Facilities"* means property used for production, maintenance, research, development or testing. It includes plant equipment and real property. It does not include material, special test equipment, special tooling, or agency-peculiar property

f. *"Subcontract"* means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

g. "*Subcontractor"* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

**T3.10.3 Government Property** Revised 10/2009

## A Government Property

### 1 Applicability

This guidance applies to all FAA Screening Information Requests (SIR) and contracts that provide Government property to contractors, and establishes policies for contractors' use and management of Government property, reporting, redistributing, and disposing of contractor inventory. It does not apply to providing property under any statutory leasing authority.

Contractors are ordinarily responsible for furnishing all property necessary to perform FAA contracts. However, when authorized the FAA may provide various types of property to contractors.

### 2 Responsibilities Revised 7/2013

a. *Contracting Officer.*

(1) Pre-award. The Contracting Officer (CO) coordinates with the Property Administration Office regarding Government property before issuing a SIR, to ensure that contracts contain the appropriate Government property provisions.

(2) Terms and Conditions. The CO should assure that the terms and conditions of the contract clearly address the contractor's obligations regarding the Government property.

(3) Prior Approval. The CO is the only person with the authority to approve a contractor's use of Government property. The CO should include the property description and the terms and conditions for contractor possession of Government property in the contract.

(4) Property Administration Delegation. Property Administration is the responsibility of the CO when Government property is authorized on a FAA contract. In accordance with AMS policy, the CO must delegate property administration authority to the property administration office. (A sample memo is in Appendix 1.) The property administration office will identify a specialist to serve as property administrator (PA) to administer the Government property requirements under the contract. The delegation should clearly delineate the authority of the PA. The CO should provide a copy of the contract and modifications that affect Government property to the delegated PA. The CO should also provide the contractor a copy of the letter of PA delegation. (A sample letter is in Appendix 2.)

b. *Property Administration Office*

(1) Provides pre-award Government property support and guidance.

(2) Administers contract provisions, requirements, and obligations, relating to government property in the possession of contractors.

(3) Participates in pre-award surveys and post award reviews.

(4) Evaluates the contractors' property control system, approving the system or recommending disapproval where systems create an unacceptable risk of loss, misuse, damage or destruction of property.

(5) Reviews contracts assigned for property administration to assure that property is identified in the contract.

(6) Provides guidance, counsel, and direction relative to government property administration.

(7) Monitors compliance with regulations and contract requirements pertaining to FAA's GFP.

(8) Develops and applies a property systems analysis program to assess the effectiveness of the contractors' government property control system. Establishes a property administration plan that provides for surveys of the contractors' system and integrates this plan into the entire property administration program.

(9) Reviews documentation required by the contract and takes appropriate action to protect the Government's interest.

(10) Renders liability determinations for loss, damage, and destruction of property on the basis of contract terms and conditions.

(11) Verifies submission of annual financial reports from contractors and provides reconciliation support to the program office.

(12) Ensures that the contractor promptly reports excess Government property for disposition in accordance with contract provisions and provides disposition instructions for unrequired property. Also, serves as plant clearance officer when appropriate.

(13) Ensures final accounting of all Government property, and certifies completion of disposal actions and resolutions of lost, damage, or destroyed property issues.

c. *FAA Program Office/Custodial Office.*

(1) Identifies and makes available required Government property.

(2) Initiates, processes and maintains source documents, which authorize the furnishing or acquisition of Government property in accordance with contract requirements.

(3) Performs inventory verification to assure that Government property is physically, quantitatively, and technically allocable to the contract.

(4) Validates the contractor's annual financial property reports.

d. *Contractor*.

(1) The contractor should make property requirements known to the CO in the early stages of project preparation and as required to continue contract performance. A categorized equipment requirements list should be included with the project proposal.

(2) The contractor must have a written property control system that fulfills contract requirements for the management of Government property.

(3) The contractor has the primary responsibility for exercising reasonable care and control of Government property in its possession and for maintaining property records in accordance with the FAA's instructions. Government property must only be used for the purpose set forth in the contract. The contractor is accountable for all Government property furnished until relieved of that responsibility in accordance with the terms of the contract. Responsibility for reasonable care and control of Government property provided under the contract and in the possession of a subcontractor remains with the prime contractor until the CO or PA rescinds it.

(4) The contractor must comply with all provisions of the property clauses as provided for in the contract.

(5) All Government property obtained by the contractor through contract must be properly marked with Government tags.

(6) The contractor must structure property controls within framework of the property management system so that lost, stolen, or damaged property as well as excess property is immediately identified and reported.

**3 Contractor's Property Control System**

a. The Property Administrator shall review and approve the contractor's property control system to determine that it is in compliance with the Government property clauses of the contract. If another Government agency has reviewed and approved the contractor's property control system, the FAA may accept that approval if there is an interagency agreement with the approving agency.

b. The Property Administrator notifies the contractor in writing when its property control system is not in compliance with FAA's contract requirements and request correction of deficiencies within a specified time period. If the contractor does not correct the deficiencies within the specified time period, the Property Administrator shall notify the Contracting Officer administering the contract. The Contracting Officer:

1. Notifies the contractor in writing of any required corrections and establishes a schedule for completion of actions;

2. Cautions the contractor that failure to take the required corrective actions within the time specified will result in withholding or withdrawing system approval; and
3. Advises the contractor that its liability for loss of or damage to Government property may increase, if approval is withheld or withdrawn.

## 4 Audit of Property Control System

The Property Administrator may audit the contractor's property control system as frequently as conditions warrant. These audits may take place any time during contract performance, upon contract completion or termination, or at any time thereafter during the period the contractor is required to retain such records. The contractor shall make all such records and related correspondence available to the auditors.

## 5 Official FAA Property Records

a. Contractor records of Government property established and maintained under the terms of the contract are the Government's/FAA's official property records. Duplicate official records should not be furnished to or maintained by Government personnel, except as provided in paragraph b. below.

b. Contracts may provide for the contracting office to maintain the Government's/FAA's official Government property records when the contracting office retains contract administration and Government property is furnished to contractor.

c. The Government property files, whether maintained by the contracts office, PA or the contractor, as a minimum, should consist of the following:

1. A copy of the applicable portions of the contract that list the Government-furnished property (GFP);
2. Contracting Officer's letters delegating the property administrator (PA) to the contract;
3. Written evidence that the contractor's property control system was reviewed and approved as required;
4. Record of property system analyses performed, deficiencies disclosed, and corrective actions taken;
5. A copy of the contractor's annual financial and inventory reports of Government property.
6. Copies of liability determinations for any lost, damaged, or destroyed property;
7. Copies of property disposal actions, including determinations, screening, authorization and documentation of completion.

## 6 Types of Property Provided to Contractors **Revised 10/2009**

a. *Facilities*. The FAA will not furnish facilities to contractors unless the CO determines it is in FAA's best interest. However, if Government-furnished facilities are authorized, FAA should not:

(1) Furnish new facilities unless existing Government-owned facilities are either inadequate or cannot be economically furnished.

(2) Use research and development funds to provide contractors with new construction or improvements of general utility.

(3) Provide facilities to contractors solely for non-Government use.

b. *Material*. The FAA may provide material to a contractor when necessary to achieve significant economy, standardization, or expedited production, or when it is otherwise in FAA's interest. Solicitations should sufficiently specify any Government-furnished material.

c. *Motor Vehicles*.

(1) The FAA will not furnish motor vehicles to contractors for contract performance unless the CO determines it is in the Government's best interest. The FAA program office must document the rational basis for furnishing motor vehicles to contractors, which should address at least the following:

(a) Why vehicles are necessary for contract performance;

(b) Availability of other means of transportation;

(c) Predictability of the number of vehicles required and whether it is expected to remain fairly constant;

(d) Whether the proposed contract will bear the entire cost of the vehicle program;

(e) Whether substantial savings are expected;

(f) Whether the vehicles will be used on any contract other than that for which the vehicles were provided (and if so, whether an appropriate department or agency official has approved);

(g) Whether the vehicles will be used only for performance of the contract and prohibited for home-to-work transportation; and

(h) Expectation that prospective contractors do not or would not have an existing and continuing capability to provide vehicles from their own resources.

(2) The CO must approve and authorize contractor use of Government-provided motor vehicles. The authorization must:

(a) Be in writing;

(b) Cite the contract number;

(c) Specify the limitations of the authority, including its duration, and any other pertinent information;

(d) List the vehicles being furnished;

(e) Provide a prohibition from use of any Government-provided vehicle for home- to-work transportation, unless authorized in accordance with 31 U.S.C. 1344 and subpart 101-6.4 of Federal Management Regulations; and

(f) Include language reiterating the need for proof of motor vehicle insurance.

d. *Special Tooling*. Contracts authorizing the furnishing of existing special tooling should contain a description of the special tooling, the terms and conditions of shipment, and the terms covering the cost of adapting and installing the tooling.

(1) The FAA in all cases acquires title under cost-reimbursement contracts.

(2) Title or rights to title under fixed price contracts may be acquired by the FAA after consideration of the following factors:

(a) The current or probable future need of the Government for the items involved (including in-house use) and the estimated cost of producing them if not acquired.

(b) The estimated residual value of the items.

(c) The administrative burden and other expenses incident to reporting, record keeping, preparation, handling transportation, and storage.

(d) The amount offered by the contractor for the right to retain the items.

(3) Decision not to acquire title to special tooling, or rights to title, special requirements may be included in the Schedule of the contract (e.g. requirements governing the contractor's capitalization of special tooling costs).

e. *Special Test Equipment*. Contracting officers may also authorize contractors to acquire special test equipment for the FAA when it is in the best interest of the Government. The CO should attempt to use existing Government/FAA owned test equipment that may be available within FAA, DOT or at other Federal agencies. The FAA's property officer should be contacted for assistance.

(1) The SIR (and the contract) should separately identify each item to be furnished by the FAA or acquired or fabricated by the contractor for the FAA. Individual items of less than $5,000 may be grouped by category.

(2) Notice and approval. The CO should assure that the property provisions of the

contract require the contractor to obtain the approval of the CO prior to acquiring or fabricating special test equipment. In reviewing the request, the CO should first determine if there is existing equipment that will meet the contractor's needs and provide a response to the contractor within 30 days after receipt of the notice.

f. *Government Information*. The CO may provide Government furnished intellectual property to the contractor when necessary for performing the contract. Rights to ownership should be clearly communicated in the contract. The SIR (and the contract) should identify those applicable clauses in AMS 3.5. The contractor shall establish techniques to protect the Government's proprietary interests in the distribution and control of information.

g. *Production and Research Property - "as is"*

(1) The CO may provide FAA production and research property on an "as is"' basis for performing fixed-price, time-and-material, and labor-hour contracts. It may also be furnished under a facilities contract, in which case the contract should provide that the contractor will not be reimbursed for transporting, installing, modifying, repairing, or otherwise making the property ready for use.

(2) For other than facilities contracts, the offerors should be permitted to inspect the property before submitting offers. The SIR should specify the following:

(a) Conditions, (such as time and place) under which it may be inspected;

(b) The property is offered in its current condition, f.o.b. present location (provide specific locations);

(c) Offerors must satisfy themselves that the property is suitable for their use;

(d) The successful offeror should bear the cost of transporting, installing, modifying, repairing, or otherwise making the property suitable for use; and

(e) Evaluations will be made to eliminate any competitive advantage resulting from using the property.

h. *Production and Research Property - Special Restrictions*

(1) Government production and research property, other than foundations and similar improvements necessary for installing special tooling, special test equipment, or plant equipment, should not be installed or constructed on land not owned by the Government in such fashion as to be nonseverable, unless the CO determines that the location is in the best interest of the Government and includes contract provisions for:

(a) The contractor to reimburse the Government for the fair value of the property at contract completion or termination or within a reasonable time thereafter (for example, the provision may require the contractor to purchase the property at a value determined by appraisal or at a price equal to its acquisition cost less depreciation at a specified rate);

(b) An option for the FAA to acquire the underlying land; or(c) An alternative provision that would be in the best interest of the Government.

(2) If patent or other proprietary rights of a contractor could restrict the disposal of Government production and research property, the condition in either subparagraph (1)(a) or (1)(c) above should be satisfied before the property is provided.

(3) If Government production and research property is not available to all offerors, the SIR should identify the offerors to whom the property is available.

i. *Agency-peculiar Property*.

(1) Agency-peculiar property may be furnished to contractors when necessary for use as a standard or model, for testing the contractor's end item where suitable commercial equipment is not available, to establish equipment compatibility, or for other reasons that the contracting officer determines to be in the Government's interest.

(2) Agency-peculiar property may be furnished under a facilities contract, a supply or service contract containing the appropriate Government property terms.

(3) The CO should provide special instructions for security, liability, maintenance, and/or property control, when agency-peculiar property requires special handling or safeguards.

j. *Property by Transfer*. Government property should be transferred only if there is a requirement under the gaining contract. Transfers of Government property, as Government/FAA furnished property, should be documented by a modification to the gaining contract. A modification or other documentation listing all items of property transferred is required for the losing contract.

**7 Contractor Use and Rental of Government Property**

a. Availability. The CO should not continue to make FAA production and research property available to a contractor where such property is no longer required for the performance of FAA contracts. However, CO's who believe it to be in the Government's best interest for a prospective contractor or subcontractor to use existing FAA production and research property for non-FAA use may authorize such use in the contract on either a rental or rent-free basis.

b. Rental--Use and Charges. The CO should include terms covering rent obligations of a contractor when 'use and charges' are appropriate. Rent should be computed in accordance with the clause 'Use and Charges' or as otherwise determined to be in the Government's best interest by the CO. Rent, for example, may be charged on the basis of use rather than the rental period, or on some other equitable basis. In such cases, the terms related to the rental should be clearly set out in the contract. The CO should ensure the collection of any rent due the Government from the contractor.

c. Rent-free use.

1. The following FAA production and research property is exempt from the above "Rental-- Use and Charges":

    a. That which is located in FAA-owned, contractor-operated plants operated on a cost-plus-fee basis;
    b. That which is left in place or installed on contractor-owned property for mobilization or future FAA production purposes. However, rent may apply to that portion of property or its capacity used or authorized for use.
    c. Items of equipment that are part of a general program approved by the Federal Emergency Management Agency (FEMA) and present unusual problems in relation to the time required for their preparation for shipment, installation, and operation because of size, complexity, or performance characteristics.
    d. Any other Government production and research property that may be excepted by FEMA.

2. The CO may grant written authorization for rent-free use of production and research property in the possession of nonprofit organizations when:

    a. The use of the property is directly or indirectly in the national interest;
    b. The property will not be used for the direct benefit of a profit-making organization; and
    c. The FAA receives some direct benefit (such as rights to use the results of the work without charge) from its use. As a minimum, the contractor should furnish a report on the work for which the property was provided.

3. If a contract is modified after award to eliminate rent for using FAA production and research property, the CO should initiate an equitable adjustment to reflect the elimination of rent and any other amount attributable.

d. Contracts with foreign governments or international organizations. If the CO authorizes foreign governments or international organizations to use FAA production and research property for its own benefit, costs should be recovered or rental charged as deemed appropriate by the CO.

e. Use of Government production and research property on independent research and development programs. The CO cognizant of Government production and research property in the possession of a contractor may authorize a contractor to use the property on an independent research and development (IR&D) program, if:

1. Such use will not conflict with the primary use of the property or enable the contractor to retain property that should otherwise be released;
2. The contractor agrees not to include as a charge against any FAA contract the rental value of the property used on its IR&D program; and

3. A rental charge for the portion of the contractor's IR&D program cost allocated to commercial work, computed in accordance with the "Rental--Use and Charges" clause or as CO deems appropriate and deducted from any agreed-upon Government share of the contractor's IR&D costs.

f. Non-Government use of plant equipment.

1. The CO's advance written approval is required for any non-Government use of active plant equipment. If the CO authorizes this type of use, the CO should require the contractor to insure the property against loss, damage or destruction. Facilities contracts may be modified to require such insurance.
2. This type of use should be granted only when it is in the Government's best interest:

    a. To keep the equipment in a high state of operational readiness through regular use;
    b. Because substantial savings to the Government would accrue through overhead cost-sharing and receipt of rental; or
    c. To avoid an inequity to a contractor who is required by the FAA to retain the equipment in place.

**8 Relief from Responsibility**

a. Unless the contract or PA provides otherwise, the contractor should be relieved of property control responsibility for Government property under the following circumstances:

1. The PA determines that reasonable and proper consumption of property in the performance of the contract has occurred;
2. The PA authorizes retention by the contractor in return for appropriate consideration from the contractor;
3. The PA authorizes the sale of property, provided the proceeds are returned to the Government;
4. The property is transferred to another contractor.

b. Nonprofit organizations are relieved of responsibility for property when title to the property is transferred to the contractor.

**9 Contractors' Liability**

a. Subject to the terms of the contract and the circumstances surrounding the particular case, the contractor may be liable for shortages, loss, damages, or destruction of Government property. The contractor may also be liable when the use or consumption of Government property unreasonably exceeds the allowances provided for by the contract, the bill of material, or other appropriate criteria.

b. The contractor shall investigate and report to the Property Administrator all cases of loss, damage, or destruction of Government property in its possession or control as soon as the

facts become known or when requested by the Property Administrator. A report shall be furnished when completed and accepted products or end items are lost, damaged or destroyed while in the contractor's possession or control.

c. The contractor shall require its subcontractors possessing or controlling Government property to investigate and report all instances of loss, damage or destruction of such property.

d. The CO makes a determination of the contractor's liability for any property that is lost, damaged, destroyed, or consumed in excess of that normally anticipated in a manufacturing or processing operation.

1. The determination is furnished to the contractor in writing;
2. The FAA is reimbursed where required by the determination; and
3. Property rendered unserviceable by damage is properly disposed of, and the determination is cross-referenced to the shipping or other documents evidencing disposal.

**10 Reporting, Redistribution, and Disposal of Contractor Inventory**

a. Disposal methods.

The PA may require delivery of any contractor inventory, including transfers of Government property to another FAA contract. If the PA does not exercise these rights, the contractor inventory will be disposed of by one of the following methods in the priority indicated:

1. Purchase or retention at cost by prime contractor or subcontractor of contractor-acquired property;
2. Return of contractor-acquired property to suppliers;
3. Use within the Government through the use of prescribed screening procedures;
4. Donation to eligible donees;
5. Sale (including purchase or retention at less than cost by the prime contractor or subcontractor);
6. Donation to public bodies in lieu of abandonment; or
7. Abandonment or destruction.

b. Restrictions on purchase or retention of contractor inventory.

A contractor's or subcontractor's authority to purchase, retain, or dispose of contractor inventory is subject to any contract provisions and to applicable Government restrictions on the disposition of property that is classified for security reasons, possesses military offensive or defensive characteristics, or is dangerous to public health, safety, or welfare.

c. Contractor-acquired property.

1. Purchase or retention at cost.

(a) The Property Administrator should encourage contractors to purchase or

retain contractor-acquired property at cost. However, the contractor should not include any part of the cost of property purchased or retained in any claim for reimbursement against the FAA. The CO should adjust cost-reimbursement contracts for previously reimbursed costs. When the property is for use on a continuing FAA contract or commercial operation, handling and transportation charges may be considered an allowable cost (included in the contractor's settlement proposal as "other costs" in the case of a termination), provided that the charges are reasonable.

(b) If a contractor purchases or retains contractor inventory for use on a continuing FAA contract that is subsequently terminated, the property should be allocated to the continuing contract, even though its purchase would otherwise constitute undue anticipation of production schedules. If, as a result of the purchase or retention of property from a terminated contract for use on other FAA contracts, the contractor terminates subcontracts under the other FAA contracts, reasonable termination charges of the subcontracts may be included as an allocable cost under the contract that generated the excess property.

2. Return to suppliers.

The Property Administrator should encourage contractors to return allocable quantities of contractor-acquired property to suppliers for full credit less either the supplier's normal restocking charge or 25 percent of the cost, whichever is less. Contractors may be reimbursed for reasonable transportation, handling, and restocking charges, but not for the cost of the returned property. Under cost-reimbursement contracts, appropriate adjustments should be made for costs previously reimbursed. A contractor's property control system should include procedures to ensure property is returned to the supplier for appropriate credit whenever feasible.

3. Cost-reimbursement contracts.

Under cost-reimbursement contracts, property purchased or retained by the contractor or returned to suppliers should not be reported on inventory schedules. The cognizant contract administration office, in coordination with the cognizant auditor, should periodically review such transactions to protect the Government's interests.

## 11 Inventory Schedules

a. Submission

(1) When property is no longer needed to perform the contract, the contractor should prepare inventory schedules in accordance with the contract and instructions from the PA and should promptly submit the schedules to the delegated property administrator. Inventory schedules may also be used for screening with other Federal agencies.

(2) The certificate on the inventory schedule must be executed when contractor inventory is reported. The prime contractor should execute this certificate,

except that for subcontractor termination inventory the subcontractor should execute the certificate.

(3) The contractor's inventory schedules should not include any items that the contractor can reasonably use on other work without financial loss. However, the schedules should include common items specified by the contracting officer for delivery to the Government/FAA or which is Government-furnished property.

(4) The contractor may electronically reproduce inventory schedules provided no change is made in the name, content or sequence of the data elements. All essential elements of data must be included and the form must be signed.

b. Acceptance

Within 15 days after receipt of inventory schedules, the PA should review them, determine their acceptability, and request the contractor to correct any inadequate listings. Inventory schedules should not be rejected if the information is adequate for disposal purposes, even if complete cost data on work-in-process are not available. Rejection should be limited, when possible, to specific items and should not necessarily render the entire schedule unacceptable. If substantial errors are discovered that were not apparent on termination inventory schedules previously found acceptable, the final phase of a plant clearance period should not begin until corrected schedules have been submitted, unless the PA determines otherwise.

c. Information verification. The PA, with the assistance of other Government personnel as necessary, should verify that

(1) The inventory is present at the location indicated;

(2) The inventory is allocable to the contract;

(3) The quantity and condition are correctly stated; and

(4) The contractor has endeavored to divert items to other work. The PA should require the contractor to promptly correct any discrepancies on the inventory schedule or resubmit the schedule as necessary.

d. The contractor will report inventory on the following forms as appropriate:

(1) Standard Form 1426, Inventory Schedule A (Metals In Mill Product Form) and SF 1427, Inventory Schedule A--Continuation Sheet. These forms are to be used to list metals in raw or primary form as furnished by the mill and on which there have been no subsequent fabricating operations.

(2) Standard Form 1428, Inventory Schedule B and SF 1429, Inventory Schedule B-Continuation Sheet. These forms are to be used to list all contractor inventory (including plant equipment).

(3) Standard Form 1430, Inventory Schedule C (Work in Process) and SF

1431, Inventory Schedule C--Continuation Sheet. These forms are to be used to list all work in process.

(4) Standard Form 1432, Inventory Schedule D (Special Tooling and Special Test Equipment) and SF 1433, Inventory Schedule D--Continuation Sheet. These forms are to be used to list such contractor inventory as dies, jigs, gauges, fixtures, special tools, and special test equipment.

(5) Standard Form 1434, Termination Inventory Schedule E. This is a short form to be used with SF 1438, Settlement Proposal (Short Form). Applicability is limited to termination settlement proposals under $10,000.

**12 Scrap**

a. The contractor may not be required to itemize scrap on inventory schedules if the material is physically segregated in the contractor's plant; and the contractor submits a statement describing the material, estimating its cost, and providing other information necessary for the PA to verify whether the property is scrap. The contractor should sort the scrap to the extent economically feasible to assure the highest sale proceeds.

b. The PA should review the schedules of property reported as scrap and, if necessary, physically inspect the property involved. If the PA determines that any of the property is serviceable, usable, or salvable, the contractor should resubmit it on appropriate inventory schedules.

**13 Recovering Precious Metals**

a. GSA is responsible for initiating the Government-wide precious metals recovery program (see FPMR 101-42.3 for procedures and requirements in recovering precious metals).

b. FAA will assure that contractors generating contractor inventory containing precious metal-bearing scrap identify and promptly report such items. Agencies having no recovery and disposal facility available may request information or recovery assistance from the GSA regional office serving the area or the Defense Logistics Agency, ATTN: DLSC-LC, 8720 John J. Kingman Road, Fort Belvoir, VA 22060.

c. Precious metals should be packaged in nonporous, smooth containers in a manner to prevent loss through leakage or damage to the containers. (Glass containers should not be used.) Grindings or sweepings should not be packaged in paper or wooden containers, because loss occurs by adhesion to the containers. Containers should be marked to show the type of precious metals.

d. The shipping document should indicate the net weight of each item to the nearest ounce (troy or avoirdupois). Shipment will be made by the most economical means available, consistent with adequate safeguards to prevent loss or theft.

**14 Screening of Contractor Inventory**

a. General.

(1) Serviceable or usable property included in the contractor's inventory schedules that is not purchased or retained by the prime contractor or subcontractor or returned to suppliers should be screened for use by Government agencies before disposition by donation or sale. The PA should assure the widespread dissemination of information concerning the availability of contractor inventory.

(2) There are four categories of screening: standard, agency, limited, and special items. The PA should determine the categories of screening required, initiate prescribed screening, and assure accomplishment of transfer and donation. The following table lists the type of property and screening period for each of these categories. When circumstances warrant, the PA may extend the period for agency screening or arrange for more extensive screening than that prescribed. In the event of a conflict between this table and a specific contract requirement, items should be screened as provided by the contract.

**Screening Requirements by Type of Property**

| **Screening Categories** | **Type of Property** | **Period** |
|---|---|---|
| | | |
| Standard | Line items valued at $1,000 or more ($500 for furniture). | 90 days |
| | | |
| Agency | Special tooling, perishables, property bearing a security classification, property dangerous to public health and safety, regardless of acquisition cost, and agency-peculiar property. | 30 days |
| Limited | Special tooling, scrap and salvage, property in condition codes 4, 7, X, and S, work-in- process inventory schedules (the total acquisition cost of which is reported as $2,500 or less), and line items of less than $1,000 ($500 for furniture) (except perishables, property bearing a security classification, and property dangerous to public health and safety). | 30 days |
| | Special test equipment with standard components. Special test equipment without standard components.<br><br>Printing equipment. Automatic data | |

| | | |
|---|---|---|
| Special Items | processing equipment.<br><br>Nuclear materials. | |

b. Standard screening

(1) Standard screening applies to serviceable property with a line item value of $1,000 or more ($500 for furniture) that does not meet the criteria for another screening category.

(2) Standard screening begins on the date the PA receives acceptable contractor inventory schedules and ends 90 days thereafter. The period is broken into three phases as follows:

(a) 1st through 30th day--screening by the contracting agency. The agency should screen the listed items for its use. When screening is completed, the PA should delete the retained items from the schedules.

(b) 31st through 75th day--screening by all Federal agencies. Not later than the 31st day, the PA will send four copies of the revised schedules and Standard Form (SF) 120, Report of Excess Personal Property, to the General Services Administration (GSA) regional office that serves the region in which the property is located. If the PA receives a request for property transfer after submission of the SF 120, and before receiving a GSA property transfer order, a prompt request will be forwarded to GSA for approval to withdraw the items from the inventory schedule. The regional GSA office will prepare and issue circulars and catalogs to all Federal agencies within the region. GSA will honor requests for transfer of property on a "first-come first-served" basis through the 75th day. The GSA regional office will transmit to the PA the approved orders and shipping instructions for property to be transferred. The 75th day is the surplus release date and will be shown on the SF 120. The PA may not extend this date.

(c) 76th through 90th day--screening by GSA for possible donation. During this period, GSA will arrange for screening of all remaining property for possible donation to eligible donees. The
90th day is the screening completion date and will be shown on the SF 120. The PA will not extend this date.

c. Agency screening. Agency screening is the procedure for screening certain types of property (see Table 3.10.3.A) only within the contracting agency. The screening period begins on the

date the PA receives acceptable inventory schedules and ends 30 days later.

d. Limited screening. Items that are scrap or salvage or that otherwise have a limited potential for use (except special tooling) are not ordinarily subject to standard or agency screening. The PA will include listings of such property in a special file, which will be made available to GSA for limited screening. The screening period for such property begins on the date the PA receives acceptable inventory schedules and ends 30 days later. This period is apportioned into two phases, as follows:

(1) 1st through 15th day--GSA selection of items for Federal utilization; and

(2) 16th through 30th day--GSA selection of items for donation;

(3) For special tooling, the screening period described above begins upon completion of agency screening.

e. Special items screening. Special procedures are established for the following types of property:

(1) Special test equipment with standard components:

(a) Contractors reporting special test equipment that contains standard, general, or multipurpose components will describe the composite unit to clearly reflect its capability. Standard components that can be economically removed and reused will be listed and described in sufficient detail to permit screening.

(b) If the contractor has a requirement for the standard components to meet other approved special test equipment or facilities requirements, the contractor will annotate the SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment), to reflect this requirement. Screening should be accomplished in accordance with agency procedures for the first 30 days. If there are no agency requirements for the composite unit, and if the administrative contracting officer approves the retention, the contractor will have priority for the standard components for which it has indicated a requirement.

(c) Standard components that have not been retained by the agency or the contractor will be screened in accordance with standard requirements for the 31st through 75th day. Standard components will not be removed from the composite unit until a requirement has been established. If no requirements exist, the composite units will be donated or sold in accordance with prescribed procedures.

(2) Special test equipment without standard components. Special test equipment

without standard components will receive agency screening for 30 days. Items for which no requirements exist will receive limited screening for an additional 30 days.

(3) Nuclear materials.

(a) The possession, use, and transfer of certain nuclear materials are subject to the regulatory controls of the Nuclear Regulatory Commission (NRC). The materials are defined as follows:

(i) By-product material--any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to producing or using special nuclear material.

(ii) Source material--uranium or thorium, or any combination thereof, in any physical or chemical form; or ores which contain by weight one- twentieth of 1 percent (0.05 percent) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(iii) Special nuclear material--plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the NRC determines to be special nuclear material (but not including source material); or any material artificially enriched by any nuclear material.

(b) The PA will submit listings of excess nuclear material in the categories described above for screening by the contracting activity. If there are no requirements, the ultimate method of disposal will be dependent upon the license issued by the NRC or the respective states and pertinent Federal and agency regulations.

f. Waiver of screening requirements. Agency heads or their designees may authorize exceptions from screening requirements; provided:

(1) There are compelling circumstances clearly in the Government's interest, and

(2) The contracting agency prepares a written notice, including justification, and provides a copy to the Administrator, General Services Administration, and the contract administration office 10 days before the effective date of the exception.

g. Reimbursement of costs for transfer of contractor inventory. The contracting agency will not

be reimbursed for the acquisition cost of any property selected by another agency or for overhead or administrative costs associated with such property. The transferee will pay any transportation costs that are not the contractor's responsibility. Costs for packing, crating, preparation for shipment, and loading of contractor inventory are chargeable to the contract for assets subject to the Government property clauses and such costs are ordinarily included in the contractor's settlement proposal for termination inventory. The transferee will pay such costs for property subject to property clauses unless such costs are otherwise the contractor's responsibility. The contract administration office is responsible for obtaining packing, crating, and handling services. To accelerate plant clearance, the transferee should include all appropriate data, including funding data, in the transfer or shipping document.

**15 Report of Excess Personal Property**

a. This subsection provides instructions for completing SF 120, Report of Excess Personal Property, when reporting contractor inventory.

b. All items on the form are self-explanatory, except as follows: Item 1, Report number. Enter the serial number of the report and any other identifying number or symbol required by the reporting agency. If the report is a correction or withdrawal (complete or partial) of a prior report, the original report number should be entered, followed by the letter a, b, or c, etc., to identify the number of successive correcting or withdrawing reports. Item 3, Total cost. Enter the total of all amounts shown on the inventory schedules. Item 4, Type of report. Box b--Check if necessary to correct an original report and complete items 1, 2, 3, 4, 5, and 7. Complete the remaining items only to the extent necessary to show the correction. Box c--Check for partial withdrawals of contractor inventory previously reported and complete items 1, 2, 3, 4, 5, and 7. Re-identify in column 18(b) the line items or portions of line items withdrawn. In column 18(e), show the number of units withdrawn. In column 18(g), show the acquisition cost of the units withdrawn. In item 3, enter the total acquisition cost of all items withdrawn. Box d--Check for total withdrawal of contractor inventory previously reported and complete items 1, 2, 3, 4, 5, and 7. Provide explanatory remarks in column 18(b). Item 5, To. Enter the name(s) and address(es) of the screening agencies or the GSA regional office serving the geographic area in which the property is located. Item 6, Appropriation or fund to be reimbursed. No entry should be made in this item if the net proceeds are to be deposited in the Treasury as miscellaneous receipts. However, in exchange/sale transactions an appropriation number is required. Item 8, Report approved by. Enter signature and title of the Federal official approving report. Item 12, GSA control number. Not to be used by reporting activity. Item 13, FSC group number, if known. If inventory schedules contain multiple FSC groups, insert "See Inventory Schedules." Item 14, Location of property. Enter the name of contractor holding the property and the specific address where the property is located. Item 15, Reimbursement required. Enter X in the block designated "No." Item 16, Agency control number. Leave blank. Item 17, Surplus release date. Item 18, Excess property list. Leave blank. Column a, Item number. Leave blank. Column b, Description. Enter the following information:

(1) Identification of attached inventory schedules and the number of pages for each schedule.

(2) The screening completion date.

(3) The following notation: "It is imperative that fund appropriations for the transportation of the materials be furnished with the transfer order, the transferee is responsible for funding, packing, crating, and handling." Include this additional notation: "Fund appropriations for packing, crating, and handling of inventory described herein must also be provided by the transferee."

(4) Contract number.

(5) When reporting motor vehicles in Federal Supply Groups 23, 24, and 38--

(a) In column 18(b), the estimated one-time cost of repairs (parts and labor); and

(b) In column 18(c), a condition code based on the estimated cost of repairs.

c. Columns c through h. Leave blank, except as they are used for subparagraph (5)(b) of this subsection.

**16 Donations**

a. Property may be donated only after it has been determined to be surplus following appropriate utilization screening. The donation of surplus property to an authorized donee is subordinate to any need for property by a Federal agency.

b. The GSA is responsible for making necessary arrangements for donation screening of serviceable property during the last 15 days of the 90-day screening period.

c. Items that have been selected for donation will not be retained longer than 42 calendar days from the surplus release date. The PA will authorize release to the eligible donees immediately upon receipt of GSA approval and shipping instructions. If approval and shipping instructions, including provision for payment of all costs incident to donation, are not received within the 42- day period, the property will be otherwise disposed of as surplus. All costs incident to donation that are not the responsibility of the contractor should be borne by the done.

d. Agencies having a current essential requirement may withdraw property undergoing donation screening. In all other cases, property may be withdrawn only after GSA concurrence.

**17 Sale of Surplus Contractor Inventory**

a. The Administrator, GSA, exercises general supervision and direction over the disposition of surplus personal property, including sales of surplus contractor inventory. Policy and procedures for sales of contractor inventory are contained in the Federal Property Management Regulations (FPMR) 41 CFR Part 101-10.

b. Reportable property submitted to GSA on SF 120 for utilization screening and not otherwise transferred or donated will automatically be programmed for sale by the GSA regional office.

c. All other property requiring sale will be reported to GSA on SF 126, Report of Personal Property for Sale, and in accordance with any additional instructions provided by the GSA regional office cognizant of the location where the property is physically located.

**18 Exemptions from Sale by GSA**

a. Notwithstanding any statement to be contrary contained herein, 49 USC 40110 authorizes the FAA to dispose of airport and airway property and technical equipment used for the special purposes of the Administration without regard to Title II of the Federal Property and Administrative Services Act, 40 USC 481, et seq. The term, "airport property" means an interest in property used or useful in operating and maintaining an airport. The term "airway property" means an interest in property used or useful in operating and maintaining a ground installation, facility, or equipment desirable for the orderly and safe operation of air traffic, including air navigation, air traffic control, airway communication, and meteorological facilities (see 49 USC 47301). The term "technical equipment" used for the special purpose of the Administration includes but is not limited to FAA unique equipment, special tooling, and special test equipment or components thereof.

b. For disposal of items not covered by paragraph 17.a, agency heads may seek exemptions from the Administrator, GSA, by submitting a letter explaining the impairment or adverse effect of sale by GSA and justifying the need for the exemption.

c**.** GSA regional offices may authorize sale by the reporting activity of perishable items or small lots of limited-value property at isolated locations.

d**.** Proceeds of sale. Except for sales conducted under the authority of the FAA Administrator, proceeds of any sale are to be credited to the Treasury of the United States as miscellaneous receipts, except where the contract or any subcontract thereunder authorizes the proceeds to be credited to the price or cost of the work (40 U.S.C. 485(a) and (e)).

e**.** Contractor inventory in foreign countries. Contractor inventory located in foreign countries should be sold or disposed of in accordance with agency procedures (see 40 U.S.C. 511-514).

**19 Destruction or Abandonment**

a. Surplus property may be destroyed or abandoned only after every effort has been made to dispose of it by other authorized methods. Before authorizing destruction or abandonment, the PA should determine in writing that:

(1) The property has no commercial value and no value to the Government;

(2) The estimated cost of care and handling is greater than the probable sale price;

or

(3) Because of its nature, the property constitutes a danger to public health, safety, or welfare.

b. Unless permitted by the contract, no contractor inventory will be abandoned on the contractor's premises without the contractor's written consent.

c. Surplus property for which a determination has been made under subparagraph (a)(1) or (2) of this section may, however, be donated to public bodies in lieu of abandonment or destruction. All costs incident to donation should be borne by the donee.

**20 Removal and Storage**

a. General. Contractor inventory should be removed from the contractor's premises as soon as possible to preclude storage expenses.

b. Special storage at the contractor's risk. When the contractor finds it necessary to remove property from the premises before expiration of the plant clearance period, the contractor may, with the concurrence of the PA, store property in a warehouse or other storage location on or off the contractor's premises. The PA should assure that the contractor recognizes its obligation to the property continues until plant clearance is completed and the expense related to this storage is the contractor's. The expense of storage, including any cost incident to the transportation to and from the storage area, should normally be borne by the contractor and should not be charged directly or indirectly to Government contracts unless the Contracting Officer determines that the storage is for the convenience of the FAA.

**21 Special Storage at the FAA's Expense**

a. Contractor inventory may be stored at the FAA's expense only when the Contracting Officer determines that it should be retained in storage for anticipated use.

b. When the property administrator recommends that the contracting office execute a storage agreement with the contractor, the request should be accompanied with adequate data to justify the agreement (e.g., property to be stored, storage period, and cost to the FAA).

c. If the contractor will not agree to storage on its premises, the PA will submit adequate information to permit a decision by the contracting office for storage on a Government or commercial facility (e.g., storage space required; necessary packing, crating, and shipping services; and information as to available Government or commercial storage facilities in the local area).

**22 Subcontractor Inventory**

Subcontractors at all tiers are subject to the requirements pertaining to contractor inventory. Prime contractors and subcontractors are responsible for review and approval of inventory

schedules submitted by their respective next-lower-tier subcontractors. This includes review and, if necessary, physical survey of subcontractor inventory that is contained in a termination settlement proposal to assure that it is physically, technically, and quantitatively allocable to the contract, and cannot be reasonably diverted to other work of the subcontractor.

The PA should assure that prime contractors have performed adequate allocability reviews of subcontractor inventory and have determined that materials reasonably usable on other prime or subcontractor work are not included in a termination settlement proposal. The PA for the prime contractor plant is responsible for determining the adequacy of screening, allocability reviews, and proper crediting of proceeds for the disposal of subcontractor inventory by the prime contractor.

## 23 Accounting for Contractor Inventory

Following disposition of all contractor inventory, and after due application of proceeds, the PA will prepare a final report accounting for all property reported by the contractor and its disposition. The report will indicate any inventory lost, damaged, destroyed, or otherwise unaccounted for, as well as any changes in quantity or value of inventory made by the contractor after submission of the initial schedules. The report will be transmitted to the Contracting Officer.

## 24 Definitions Revised 4/2012

a. Accessory item - an item that facilitates or enhances the operation of plant equipment but which is not essential for its operation.

b. Agency-peculiar property - agency peculiar property, means Government-owned personal property that is peculiar to the mission of an agency (e.g., military or space property). It excludes Government material, special test equipment, special tooling, and facilities.

c. Auxiliary item - an item without which the basic unit of plant equipment cannot operate.

d. Common item - material that is common to the applicable Government contract and the contractor's other work.

e. Contractor-acquired property (CAP) - property acquired or otherwise provided by the contractor for performing a contract and to which the Government has title.

f. Contractor inventory

> (1) Any property acquired by and in the possession of a contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;
>
> (2) Any property that the Government is obligated or has the option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder),

before completion of the work, for the convenience or at the option of the Government; and

(3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

g. Contracting Officer's Representative (COR) – designated representative of the Contracting Officer responsible for the technical aspects of contract administration.

h. Custodial records - written memoranda of any kind, such as requisitions, issue hand receipts, tool checks, and stock record books, used to control items issued from tool cribs, tool rooms, and stockrooms.

i. Discrepancies incident to shipment - all deficiencies incident to shipment of Government property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and property actually received. Such deficiencies include loss, damage, destruction, improper status and condition coding, errors in identity or classification, and improper consignment.

j. Facilities - when used in other than a facilities contract, means property used for production, maintenance, research, development, or testing. It includes plant equipment and real property. It does not include material, special test equipment, special tooling, or agency-peculiar property.

k. Facilities contract - a contract under which Government facilities are provided to a contractor or subcontractor by the Government for use in connection with performing one or more related contracts for supplies or services. It is used occasionally to provide special tooling or special test equipment. Facilities contracts may take any of the following forms:

(1) Facilities acquisition contract providing for the acquisition, construction , and installation of facilities.

(2) Facilities use contract providing for the use, maintenance, accountability, and disposition of facilities.

(3) A consolidated facilities contract, which is a combination of facilities acquisition and a facilities use contract.

l. Government-furnished property (GFP) - property in the possession of, or directly acquired by, the Government and subsequently made available to the contractor.

m. Government production and research property - Government-owned facilities, Government owned special test equipment, and special Blank Side tooling to which the Government has title or the right to acquire title.

n. Government property - all property owned by or leased to the Government or acquired by the Government under the terms of the contract. It includes both Government-furnished property and contractor-acquired property as defined in this section.

o. Individual item record - a separate card, form, document or specific line(s) of computer data used to account for one item of property.

p. Line item - a single line entry on a reporting form that indicates a quantity of property having the same description and condition code from any one contract, at any one reporting location.

q. Material - property that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. It includes assemblies, components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract.

r. Nonprofit organization - any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

s. Nonseverable - when related to Government production and research property, means property that cannot be removed after erection or installation without substantial loss of value or damage to the property or to the premises where installed.

t. Personal property - property of any kind or interest in it, except real property, records of the Federal Government, and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

u. Plant clearance - all actions relating to the screening, redistribution, and disposal of contractor inventory from a contractor's plant or work site. The term "contractor's plant" includes a contractor-operated Government facility.

v. Plant clearance officer - an authorized representative of the contracting officer assigned responsibility for plant clearance.

w. Plant clearance period - the period beginning on the effective date of contract completion or termination and ending 90 days (or such longer period as may be agreed to) after receipt by the Contracting Officer of acceptable inventory schedules for each property classification. The final phase of the plant clearance period means that period after receipt of acceptable inventory schedules.

x. Plant equipment - personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

y. Precious metals - uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are silver, gold, and the platinum group metals- platinum, palladium, iridium, osmium, rhodium, and ruthenium.

z. Property administrator - an authorized representative of the Contracting Officer assigned to administer the contract requirements and obligations relating to Government property.

aa. Public body - any State, Territory, or possession of the United States, any political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, any agency or instrumentality of any of the foregoing, any Indian tribe, or any agency of the Federal Government.

bb. Real property - land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

cc. Reportable property - contractor inventory that must be reported for screening in accordance with subparts 10 through 19 before disposition as surplus, to a separate contract or to a special contract requirement governing their use or disposition.

dd. Reporting activity - the Government activity that initiates the Standard Form 120, Report of Excess Personal Property (or when acceptable to GSA, by data processing output).

ee. Salvage - property that because of its worn, damaged, deteriorated, or incomplete condition or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs, but has some value in excess of its scrap value.

ff. Scrap - personal property that has no value except for its basic material content.

gg. Screening completion date - the date on which all screening required by subpart 14 is to be completed. It includes screening within the Government and the donation-screening period.

hh. Serviceable or usable property - property that has a reasonable prospect of use or sale either in its existing form or after minor repairs or alterations.

ii. Special test equipment - either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including standard or general-purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

jj. Special tooling - jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.

kk. Stock record - perpetual inventory record which shows by nomenclature the quantities of each item received and issued and the balance on hand. Property - all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency- peculiar property.

ll. Summary Record - a separate card, form, document or specific line(s) of computer data used to account for multiple quantities of a line item of special tooling, special test equipment, or plant equipment costing less than $5,000 per unit.

mm. Surplus property - contractor inventory not required by any Federal agency.

nn. Surplus release date (SRD) - the date on which screening of personal property for Federal use is completed and the property is not needed for any Federal use. On that date, property becomes surplus and is eligible for donation.

oo. Termination inventory - any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

pp. Utility distribution system - includes distribution and transmission lines, substations, or installed equipment forming an integral part of the system by which gas, water, steam, electricity, sewerage, or other utility services are transmitted between the outside building or structure in which the services are used and the point of origin, disposal, or connection with some other system. It does not include communication services.

qq. Work-in-process - material that has been released to manufacturing, engineering, design or other services under the contract and includes undelivered manufactured parts, assemblies, and products, either complete or incomplete.

## B Clauses

view contract clauses

## C Forms

view procurement forms

## D Appendix

### 1 Appendix - Sample Delegation Memo

Appendix 1 - Sample Delegation Memo (Added 07/2004)

The basic text for a Property Administrator delegation memo

is: ACTION: Delegation of Property Administrator for

Contract DTFA01-XX-C-XXXXX

Contracting Officer, (Insert Appropriate FAA Office

Designator) (Insert Appropriate Office Address)

The subject contract specifies that Government owned property is authorized. **John Doe** is the Technical Officer for this contract and can be reached at 202-123-4567.

Please assign a Property Administrator to be responsible for all property administration functions associated with this contract and have him or her acknowledge acceptance of this delegation by signing and returning a copy of this memorandum. A copy of the memorandum will be retained in the contract file.

A copy of the contract and related modifications are attached.

John Doe Contracting Officer ENDORSEMENT

Delegation of Property Administration responsibilities is accepted and has been assigned to:_____

Signature:_____

Date:_____

## 2 Appendix - Sample Designation Letter

Appendix 2 - Sample Designation Letter (Added 07/2004)

The basic text for a Property Administrator designation letter

is: Dear (company official):

The subject contract specifies that Government Furnished Property (GFP) and/or Contractor Acquired Property (CAP) will be provided. Therefore, as Contracting Officer I have delegated **John Doe** as the FAA Property Administrator (PA).

The PA shall be responsible for all property administration functions. The PA has no authority to issue directions or enter into agreements that may constitute assignment of new work or change the expressed terms, conditions, or specifications in the contract.

You are cautioned against accepting oral or written instructions on property matters from

sources other than the Contracting Officer or from the Property Administrator.

Please forward the name and telephone number of the property administrator responsible for Government Property Management and a copy of your Property Control System (PCS) to **John Doe** for review and approval.

Direct all correspondence and inquiries regarding property to (Insert Appropriate Office Address) Attention: **John Doe**.

At the time of issuance, you will forward to the undersigned a copy of all correspondence you direct to the Property Administrator.

Sincerely, Jane

Doe Contracting

Officer

## T3.10.4 Quality Assurance Revised 7/2007

### A Quality Assurance

### 1 Objectives Revised 7/2007

The quality assurance objectives related to the National Airspace System (NAS) acquisitions for systems, equipment, material, and services are:

a. To establish appropriate quality assurance program requirements for use in the acquisition process.

b. To require and obtain delivery of systems, equipment, material, and services that conform to established technical requirements.

c. To utilize ANSI/ASQ Q9000 series standards on acquisitions when a higher-level quality standard has been identified. Third-Party Registration of an offeror's/contractor's quality system is not required.

d. To eliminate the potential safety risk posed by nonconforming parts in NAS construction. Included in the category of nonconforming parts are suspected unapproved parts (SUP).

### 2 Responsibilities Revised 10/2010

a. *Product or Service Team*. The product or service team should coordinate with the Acquisition Quality Assurance Group (AJA-44) and should include quality assurance

provisions in procurement planning documents, screening information requests (SIR), specifications, engineering requirements, purchase descriptions, work statements, work orders, and procurement requests necessary to meet the quality assurance objectives set forth above. The product or service team should ensure that appropriate criteria are developed for evaluating the quality assurance plans included in prospective contractors' proposals.

b. *Office of Acquisition and Contracting*. The Office of Acquisition and Contracting implements agency policy, standards, and procedures for the quality assurance programs involved in NAS acquisitions for systems, equipment, material, and services. In addition, the Office provide guidance, oversight, and support to regions, service centers, and centers for implementing quality assurance programs to ensure compliance with the quality assurance policy.

c. *Quality Reliability Officer (QRO).* The QRO has the responsibility to provide on-site support at the contractor's facility under the authority delegated by the Contracting Officer. The QRO ensures that the contractor's quality system satisfies the contract quality assurance requirements, and is authorized to accept or reject systems, equipment, and material in accordance with the contract requirements.

d. *Contracting Officer (CO).* Before issuing the SIR, the CO ensures appropriate QA provisions are included in the documentation. The CO coordinates with the Acquisition Quality Assurance Group regarding appropriate QA provisions. After contract award, the CO forwards copies of the contract to the Acquisition Quality Assurance Group. The draft letter of QRO designation to the contractor is forwarded by the Quality Assurance Group to the CO for signature. A sample letter is in Appendix 1.

> (1) The CO should coordinate with the Acquisition Quality Assurance Group before issuing new SIRs or other draft SIRs outside of the FAA to ensure that contracts contain appropriate quality assurance provisions.
>
> (2) Once the contract is executed, the CO ensures the contractor delivers the systems, equipment, material, and services in accordance with all quality provisions of the contract.

e. *Regions, Service Areas, and Centers*. The regions, service areas, and centers should include appropriate requirements for quality assurance programs in their NAS acquisitions for systems, equipment, material, and services

## 3 Levels of Quality Requirements and Standards Revised 10/2014

The quality standard or requirements to be used on FAA procurements is dependent on several factors such as criticality, complexity, and dollar value of the system, equipment, material, or service, as well as the nature of the procurement (i.e. fixed price vs. cost, R&D vs. production, etc.). A critical application of an item is one in which the failure of the item could injure personnel or jeopardize a vital agency mission. Complex items have quality characteristics, not wholly visible in the end item, for which conformance must be established progressively through precise measurements, inspections, tests, and controls applied during purchasing, manufacturing, performance, assembly, and functional operations. Noncomplex items have

quality characteristics for which simple measurement and test of the end item are sufficient to determine conformance to contract requirements. Basically there are three levels of contract quality requirements.

a. *Contractor Inspection* This simplest level, contractor inspection, is used for small purchases whereby the item being procured is not complex or critical. Using this requirement, the contractor is solely responsible for inspecting the item, and there is no government source inspection or involvement.

b. *Standard Inspection*. There is a wide variety of clauses to use depending upon the nature of the procurement. The appropriate standard inspection clause(s) should be used on all FAA procurements when the item procured warrants something greater than Contractor Inspection (i.e. other than non-complex small purchases). The various standard inspection clauses essentially require an inspection system acceptable to the government, provide for government inspection at source, and provide various administrative details such as handling unacceptable items.

c. *Higher-Level Contract Quality Requirements*. The final level is usually referred to as "Higher-Level Contract Quality Requirements." This is used on those procurements that are for NAS systems and equipment whereby the product is sufficiently complex and critical to warrant a requirement for a complete Quality Assurance System approach rather than just a final inspection requirement. The Office of Acquisition and Contracting is using the ANSI/ASQ Q9000 series standards on acquisitions when a higher-level quality requirement has been identified.

## 4 Acceptance Revised 7/2007

a. Acceptance by a Government representative constitutes acknowledgment that the supplies or services conform with applicable contract requirements, subject to other terms and conditions of the contract. Acceptance is ordinarily evidenced by execution of an acceptance certificate on an inspection and acceptance form such as FAA Form 256, or by a commercial shipping document/packing list.

b. Acceptance of supplies or services is the responsibility of the CO. This responsibility may be assigned to a cognizant Quality Reliability Officer (QRO) (e.g. for final acceptance at origin) or to a program office or regional representative (e.g. for final acceptance at destination). Acceptance by any of these persons is binding on the government.

c. Each contract should specify the place of acceptance as well as other necessary acceptance provisions.

d. A certificate of conformance may be used in certain instances instead of source inspection (whether the contract calls for final acceptance at source or destination) at the discretion of the CO when based upon the past performance of the contractor, and based upon the associated risk of receiving a defective item, it is concluded that a certificate of conformance is in the Government’s best interest. In no case, however, must the Government’s right to inspect

supplies under the inspection provisions of the contract be prejudiced.

## 5 Warranties Revised 7/2007

a. *General.*

(1) Warranties should provide:

(a) A contractual right for the correction of defects notwithstanding any other requirement of the contract pertaining to acceptance of the supplies or services by the FAA; and

(b) A stated period of time or use, or the occurrence of a specified event, after acceptance by the FAA to assert a contractual right for the correction of defects.

(2) The benefits derived from a warranty must be commensurate with the cost of the warranty to the FAA.

(3) In many cases an item is customarily warranted in a trade, and the cost of the item will be the same whether or not a warranty is included. In this case, it is the FAA's best interest to include such a warranty.

(4) Special warranty clauses whose terms substantially differ from those typically offered by vendors to their customers will likely result in a higher contract price. The decision to include a special warranty provision in a contract is a business decision; however, the CO should consider the standard market practices for each commodity as well as the costs and benefits to FAA when making that decision. Special warranty clauses developed for use by the FAA when used for products or equipment use the date of receipt (rather than the date of acceptance) to start the warranty period. Incorporating an express warranty into a contract negates the remedies available under the Universal Commercial Code (UCC).

(5) Warranty clauses must not limit the FAA's rights under an inspection clause in relation to latent defects, fraud, or gross mistakes that amount to fraud.

b. *Criteria.* In determining whether a warranty is appropriate for an acquisition, the CO must consider the following factors:

(1) Nature and use of the supplies and service:

(a) Complexity and function;

(b) Degree of development;

(c) End use;

(d) Difficulty in detecting defects before acceptance; and

(e) Potential harm to the FAA if the item is defective.

(2) Cost:

(a) Contractor's charge; and

(b) FAA cost of administering or enforcing the warranty.

(3) *Administration and Enforcement*. The FAA's ability to enforce the warranty is essential to the effectiveness of the warranty. This ability to enforce the warranty depends on:

(a) Nature and complexity of the item;

(b) Location and intended use of the item;

(c) Estimated storage time for the item;

(d) Distance from the source of the item to the requiring activity; and

(e) Ability in tracing defects.

c. *Terms and conditions.* The CO must ensure warranties clearly state:

(1) Exact nature of the item and its components that the contractor warrants;

(2) Extent of the contractor's warranty, including all of the contractor's obligations to the FAA for breach of warranty;

(3) Specific remedies available to the FAA; and

(4) Scope and duration of the warranty.

d. *Commercial items*

(1) The CO should take advantage of commercial warranties, to include extended warranties, where appropriate and in the FAA's best interest, offered by the contractor for the repair and replacement of commercial items.

(2) The UCC provides substantial warranty protection to buyers, and despite being applicable to the purchase of goods, can be used as a guide when drafting a warranty provision for the acquisition of services.

## 6 Government-Industry Data Exchange Program Revised 7/2007

Government-Industry Data Exchange Program (GIDEP) is a cooperative activity between

Government and industry participants seeking to reduce or eliminate expenditure of time and money by making maximum use of existing knowledge. This program provides a means to exchange technical data essential in quality assurance, research, development, design, production, and the operational phase of the life cycle of systems and equipment. Primary objectives are to improve safety, reliability, quality, and logistics support. FAA participates in the GIDEP and encourages participation by major contractors of the systems, equipment, and material in the National Airspace System.

## 7 Considerations for Use of Clauses Revised 7/2007

Depending on the nature of the requirement, different AMS quality assurance clauses apply. Clause 3.10.4-1 is for use when only contractor inspection is needed. Clauses 3.10.4-2 through 3.10.4-12 are the various "standard inspection" clauses. Clause 3.10.4-13 is used in addition to the standard clauses when a higher-level QA system requirement is needed. Clause 3.10.4-14 is used with the standard and higher-level clauses when it is contemplated that a QRO will be assigned. Clause 3.10.4-15 is used when it is contemplated that a certificate of conformance (in lieu of source inspection) may be desired. Finally, clause 3.10.4-16 should be used in all fixed-price supply type contracts.

## 8 Construction Nonconforming Parts Revised 7/2007

a. *Prevention of Construction Nonconforming Parts.* The reviewing of construction design, specification and drawings by the requiring organization may be a useful tool in identifying potential nonconforming parts, including SUP. The contractor's inspection system is identified in clause 3.10.4-10(b).

b. *Detection of Nonconforming Parts.* The contractor's inspection system should detect nonconforming parts. As required in clause 3.10.4-10(b), the contractor maintains an adequate inspection system and performs inspections to ensure work performed under the contract conforms to contract requirement.

c. *Segregating and Disposing Nonconforming Parts.* The contractor's process should ensure that nonconforming parts, including SUP, are separated from acceptable parts and dispose as required by contract requirements. As required in clause 3.10.4-10 (f), the contractor segregates and removes rejected material from the premises.

d. *Optional Reporting.*

(1) SUP identified as nonconforming parts may be reported via the toll free FAA Hotline: 1-800-255-1111.

(2) SUPs identified as nonconforming parts may also be reported to the FAA GIDEP Coordinator (AJA-432) for preparation of Agency Action Notices and Alerts.

## B Clauses Revised 7/2007

view contract clauses

**C Forms**

view procurement forms

Data Item Description (DID)

Contract Deliverable Requirements List (CDRL)

**D Appendix** **Revised 7/2007**

APPENDIX - Sample QRO designation letter

The basic text for a QRO designation letter is: Dear (company official):

In accordance with the enclosed letter, John Doe is the delegated Quality Reliability Officer (QRO) under Contract DTFA01-XX-X-XXXXX.

The QRO has no authority to issue directions or enter into agreements which may constitute new assignments of work or change the expressed terms, conditions or specifications of the contract.

Please note documentation to be furnished to the QRO as stipulated in the enclosed letter of designation.

You are cautioned against accepting oral or written instructions on quality matters from sources other than the Contracting Officer or from the Quality Reliability Officer.

At the time of issuance, you shall forward to the undersigned a copy of all correspondence you direct to the QRO.

Sincerely,

Contracting
Officer

Enclosure

**T3.10.5 Product Improvement/Technology Enhancement**

**A Product Improvement/Technology Enhancement**

### 1 General Revised 7/2013

a. At any time during the performance of a contract, a Contractor may submit, or the FAA may solicit product improvement or technology enhancement proposals for FAA review. Contractors are encouraged to discuss product improvement/technology enhancement ideas with the integrated product team prior to preparing and submitting a formal proposal. These proposals should suggest methods for performing more economically and/or methods for incorporating emerging technology. Changes may be proposed to save money, to improve performance or reliability, to save energy, water, or space, to reduce environmental impact, to satisfy increased data processing requirements, to incorporate technological advances in software, or for other technical or business reasons that the Contractor believes may be advantageous to the FAA. Discontinuance of equipment is subject to negotiations and to the FAA's written approval prior to the introduction of a substitute product.

b. Any proposed change may be approved, in whole or in part, and incorporated into a contract modification signed by both parties. Until the effective date of the modification, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject a proposed change is not subject to dispute.

c. The proposal should address the functions of systems, equipment, facilities, services and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, quality, and safety. The extent and detail provided in a proposal should be proportionate to the complexity and/or value of the proposed change. If the proposed change will result in a reduction in the overall life cycle costs, the Contractor should also propose a reasonable method for sharing in the proposed savings.

### B Clauses

view contract clauses

### C Forms

view procurement forms

## T3.10.6 Termination of Contracts

### A Termination

### 1 General Guidance

a. The FAA termination requirements will:

1. Enable the FAA to establish contract requirements that protect the interests of the FAA;

2. Promote fair and rapid termination settlements;
3. Encourage settlement by agreement rather than by contracting officer's determination.

b. Contracting officer (CO) responsibilities. The CO will:

1. Select and include the appropriate termination clause(s) in contracts to provide the CO authority to terminate contracts for convenience, or for default;
2. Enforce provisions of termination clauses in a manner that is in the best interest of the FAA by terminating in whole or in part, for the convenience of the FAA or for contractor default;
3. Direct the contractor on how to proceed when a contract is terminated;
4. Establish a case file for each termination; retain pertinent documentation in the case file as a record of the activities related to the termination and settlement;
5. Enlist assistance of individuals with special qualifications to assist in the termination in areas such as legal, accounting, distribution, and logistics;
6. Arrange inspection of completed items, as needed;
7. Obtain title to completed end items or termination inventory, as appropriate;
8. Initiate action to obtain, all rights, titles, and interest under any subcontract terminated because of termination of the prime contract if it is in the best interest of the FAA to do so;
9. For construction contracts, direct action for site cleanup, protection of serviceable materials, removal of hazards, and any action necessary to leave a safe site;
10. Examine settlement proposal and subcontract settlement proposals;
11. Recognize the subcontractor’s final judgment against the contractor, if any, as a cost of the settlement;
12. Approve subcontract settlement, unless otherwise waived by the contracting officer;
13. Initiate audits on the settlement proposal for prime and subcontractors as deemed necessary to protect the interest of the FAA;
14. Negotiate settlement agreements, when applicable, with prime contractors;
15. Issue a CO determination if a settlement agreement cannot be reached;
16. Reinstate contracts on a bilateral agreement basis when deemed in the best interest of the FAA to do so;
17. Release excess funds as quickly as possible retaining sufficient funds to settle the termination.

c. Contractor responsibilities. The contractor will:

1. Cooperate with the CO in the termination;
2. Comply with the termination clause invoked;
3. Comply with direction of the CO consistent with termination clause;
4. Stop work immediately on the terminated contract, or portion thereof;
5. Terminate all subcontracts related to the terminated portion of the contract;
6. Stop placing subcontracts under the contract or terminated portion;
7. Settle outstanding liabilities and claims arising out of subcontract terminations, with prior approval by the contracting officer;
8. Dispose of termination inventory as instructed or approved by the CO;
9. Take necessary action to protect and preserve property in which the FAA has or

may acquire an interest, or, as directed by the contracting officer;

10. Advise the contracting officer of any special circumstances affecting the termination, such as a subcontractor's legal proceedings or other commitments related to the termination;
11. Perform accounting review of subcontractor settlements;
12. Submit subcontractor settlement proposals for CO approval, as requested by the CO, and settle subcontracts without prior consent of the CO;
13. Submit a settlement proposal, supported by accounting data or other data required by the CO to review the proposal;
14. Execute a settlement agreement by negotiation as quickly as possible;
15. Perform continuing portion of the contract, if any;
16. Submit any request for an equitable adjustment of price with respect to the continuing portion.

d. Termination Notices.

The CO may terminate contracts by written notice to the contractor, furnishing copies to any known assignee, guarantor, or surety of the contractor. Termination amendments will also be in written form to the foregoing parties. The CO should transmit the notice in a way to establish the time of receipt by the contractor, such as certified mail with return receipt. The CO will invoke the appropriate termination clause, indicate date of termination, direct the contractor on how to proceed, provide disposition instructions for property in which the FAA has or will have an interest, and otherwise comply with the termination clause.

e. Settlements.

1. General.
   Settlements may be used in both convenience and default terminations. A settlement should compensate the contractor promptly for the work done and, possibly, preparations made for the terminated portion(s) of the contract, including a reasonable allowance for profit, when appropriate. Termination clauses define costs that may be considered. Cost principles should govern assertions, negotiations, or cost determinations relevant to termination settlements under contracts with other than educational institutions, and be a guide in negotiation of settlements under contracts for experimental, developmental or research work with educational institutions. Business judgment is an important element, in addition to accounting principles, in achieving a fair settlement.
2. Termination Settlements.
   When contracts are terminated, the CO should settle all outstanding matters in a fair and prompt manner. Settlements should consider rights and liabilities of the parties such as:
   a. Costs owed the contractor for delivered/accepted supplies or services;
   b. Contractor obligation to reimburse the FAA with interest for overpayments to the contractor;
   c. Materials acquired by the contractor for the contract that may necessitate contractor disposal;
   d. Rights of the parties;
   e. Construction site cleanup;
   f. Some settlement preparation cost.

3. Approaches.
   The contracting officer may use various approaches to settle terminated contracts. Approaches that may be used include:
   a. Negotiation,
   b. CO determination,
   c. Cost out under vouchers in a cost-reimbursement contract;
   d. By combination of methods.
4. Settlement Proposal.
   The CO should provide the contractor explicit direction on the preparation of the settlement proposal. Contractors should prepare and submit to the CO a settlement proposal on the outstanding liabilities and obligations of the parties. The proposal may be the basis for a negotiated settlement agreement. The proposal should cover all cost elements including settlements with subcontractors and any proposed profit. , With the consent of the CO, the contractor may file proposals in successive steps covering separate portions of the contractor's costs. Such interim proposals should include all costs of a particular type, except as the CO may otherwise authorize**.**
5. Settlement by Negotiation.
   Settlement by negotiation is the preferred method to arrive at a settlement agreement. The CO should document the settlement negotiation in a memorandum or similar documentation describing the principal elements of the settlement and include this as documentation in the termination file.
6. Settlement by determination.(Revised 06/2001)
   a. The CO should issue a determination to the contractor in instances where the FAA and the contractor cannot agree on a termination settlement, or if a settlement proposal is not submitted within the period required by the termination clause. The determination should state:

      i. That it is the Contracting Officer's termination settlement determination, and
      ii. That the amount due the contractor, if any, consistent with the termination clause and any cost principles affecting the contract. The CO should support his/her determination with schedules in sufficient detail to substantiate the basis and rationale for the amount.

   b. The contractor may file a dispute with Office of Dispute Resolution for Acquisition based upon the settlement determination of the Contracting Officer - see termination clauses and Contract Disputes clause at 3.9.1-1.
7. Settlement Agreement.
   The settlement agreement should describe the elements of the settlement so that the obligations of the parties are clear and do not create any rights for the parties beyond those in existence before execution of the settlement agreement. The settlement agreement will be in the form of a contract modification.
8. No cost settlement.
   The CO may execute a no-cost settlement agreement if (a) the contractor has not incurred costs for the terminated portion of the contract or (b) the contractor is willing to waive the costs incurred and (c) no amounts are due the FAA under the contract.
9. Partial settlements.
   Partial settlements are discouraged. The CO should attempt to settle all rights and liabilities of the parties under the terminated portion of the contract in one agreement. However, when a CO cannot promptly complete settlement under the

terminated contract, he/she may enter a partial settlement reserving rights on the unresolved issues to a later time.

10. Settlement Conference.
    The CO may hold a conference with the contractor to develop a definite program for effecting the settlement. When appropriate in the judgment of the CO and after consulting with the contractor, principal subcontractors may be requested to attend. Topics that should be discussed at the conference and documented include-
    a. General principles relating to the settlement of any settlement proposal, including obligations of the contractor under the termination clause of the contract;
    b. Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information that would have been delivered had the contract been completed;
    c. Status of any continuing work;
    d. Obligation of the contractor to terminate subcontracts and general principles to be followed in settling subcontractor settlement proposals;
    e. Names of subcontractors involved and the dates termination notices were issued to them;
    f. Contractor personnel handling review and settlement of subcontractor settlement proposals and the methods being used;
    g. Arrangements for transfer of title and delivery to the FAA of any material required by the FAA;
    h. General principles and procedures to be followed in the protection, preservation, and disposition of the contractor's and subcontractors' termination inventories, including the preparation of termination inventory schedules;
    i. Contractor accounting practices and preparation of SF 1439 (Schedule of Accounting Information
    j. Form in which to submit settlement proposals;
    k. Accounting review of settlement proposals;
    l. Any requirement for interim financing in the nature of partial payments;
    m. Tentative time schedule for negotiation of the settlement including submission by the contractor and subcontractors of settlement proposals, termination inventory schedules, and accounting information schedules to minimize impact upon employees affected adversely by the termination.
11. Settlement costs/profit. Settlement costs should be consistent with the termination clause invoked and the cost principles that may apply.
12. Settlement by determination. If the settlement is by determination and there is no appeal within the allowed time, the contractor should submit a voucher or invoice showing the amount finally determined due, less any portion previously paid; or there is an appeal, the contractor should submit a voucher or invoice showing the amount finally determined due on the appeal, less any portion previously paid. Pending determination of any appeal, the contractor may submit vouchers or invoices for charges that are not directly involved with the portion being appealed, without prejudice to the rights of either party on the appeal.

f. Payments.

1. Partial Payments. The CO may authorize partial payments on settlement proposals

before settlement if the contractor requests them and the CO determines that it would not be contrary to the interest of the FAA.

2. Final Payments. After execution of a settlement agreement, the contractor should submit a voucher or invoice showing the amount agreed upon, less any portion previously paid. The CO should attach a copy of the settlement agreement to the voucher or invoice and forward the documents to the CO for payment.
3. Under Construction Contracts. If there are any outstanding labor violations in the case of construction contracts, the CO should withhold an appropriate amount from the final payment pending resolution of the violations.

g. Interest.

The FAA should not pay interest on the amount due under a settlement agreement or a settlement by determination. The FAA may, however, pay interest on a successful contractor appeal from a contracting officer's determination under the Resolution of Protests and Disputes procedures. Interest will be at a rate set by the Secretary of the Treasury under 50 U.S.C. (App) 1215(b)(2).

**2 Termination for Convenience of the FAA**

The provisions of this section apply to contracts containing Clauses 3.10.6-1 through 3 and Alternates which permit termination for convenience of the FAA.

a. Fixed Price Contracts.

1. Profit. The CO may use any reasonable method to arrive at a fair profit. The CO may allow profit on preparations made and work done by the contractor for the terminated portion of the contract but not on the settlement expenses. Anticipatory profit is not allowed. Profit should not be allowed the contractor for material or services that, as of the effective date of termination, have not been delivered by a subcontractor, regardless of the percentage of completion.
2. Adjustment for Loss. The CO should not allow profit if it appears that the contractor would have incurred a loss had the entire contract been completed. The CO should negotiate or determine the amount of loss and make an adjustment in the amount of settlement based upon the degree of expected loss.
3. The contracting officer should ensure that no portion of an increase in price is included in a termination settlement made or in process.
4. Completed end items. The CO should (a) have completed end items inspected and accepted if they comply with the contract and (b) determine which accepted items should be delivered under the contract. These items should not be included in the settlement proposal. If accepted items are not to be delivered, the contractor may include them in the settlement proposal at the contract price as adjusted to reduce by freight cost or to add disposal costs, etc. Work in place accepted by the Government under a construction contract is not considered a completed item even though that work may have been paid for at the unit prices specified in the contract.
5. Equitable Adjustment After Partial Termination. Under the termination clause, after partial termination, a contractor may request an equitable adjustment in the price or prices of the continued portion of a fixed-price contract.

b. Cost Reimbursement Contracts.

1. Audit. The CO should obtain an audit on the settlement proposal unless only fee is proposed.
2. Final Settlement.
    a. Settlements of cost reimbursable contracts should not provide for recovery of excess repurchase costs.
    b. The settlement should not include costs that were disallowed or unallowed under the terms of the contract.
    c. Settlement does not need to be based on agreement on every element if an overall settlement can be agreed to.
3. Partial Terminations. If the terminated portion is not severable, the settlement in a partial termination should be limited to a fee adjustment and reduction in estimated cost as well as other allowable costs associated with preparing a settlement proposal.
4. Fee. The CO should determine the fee adjustment in accordance with the contract, however, the fee is generally adjusted based upon percentage of completion.

**3 Termination for Default**

a. General.

1. Termination for default is the exercise of the FAA's contractual right to completely or partially terminate a contract by reason of the contractor's actual or anticipated failure to perform its contractual obligations. When the contracting officer has the right to terminate a contract for default, the total undelivered contract quantity, whether delinquent or not, may be terminated for default.
2. Process.
    a. Show cause notice. Prior to terminating a contract for default, the CO should issue a show cause notice.
    b. The "show cause" notifies the contractor of the potential termination and the liabilities to the contractor in a termination for default. The "show cause" notice will request the contractor to explain why the contract should not be terminated. The CO should consider the response, if any, in determining if the failure was excusable or inexcusable.
    c. If the contractor can establish that its failure to perform arose out of causes beyond its control and without its fault or negligence, and are thus excusable, the default termination will be deemed a termination for the convenience of the FAA, and the rights and obligations of the parties will be governed accordingly.
    d. If the failure was not excusable, the CO may proceed to terminate the contract for default
3. Options in Lieu of Termination for Default. The CO may consider alternatives other than termination for default if in the best interest of the FAA to do so. Prospective alternatives may be to terminate for the convenience of the FAA if the failure to perform was beyond the control of the contractor; consider a surety or guarantor to complete the work; allow the contractor to use a third party to perform. Other reasonable and viable alternatives may also be considered.

4. The FAA may, in appropriate cases, exercise termination or cancellation rights in addition to those in the contract clauses (see, for example Clause 3.10.6-4, Default (Fixed Price Supply and Service)).
5. Damages. If a contract is terminated for default, or if a procedure in lieu of termination for default is followed, the contracting officer may consider FAA's entitlement to damages. Damages are in addition to repurchase costs, when repurchase costs are applicable.
6. Sureties. Prior to terminating fixed price contracts for contractor default, the CO should notify sureties of the impending termination prior to issuing the actual termination notice. In addition, the contracting officer should consider proposals from sureties to complete the work.

b. Fixed-Price Contracts Terminated for Default.

1. FAA Rights and Obligations. Clauses 3.10.6-4 through 6 covering Termination for Default (Fixed Price) provide the FAA the right to terminate all or any part of a contract when the contractor:
    a. Fails to make delivery or perform services according to contract schedule or
    b. Fails to complete any material requirement of the contract within the time specified in the contract or
    c. Fails to make progress to a degree that this failure endangers performance of the contract or
    d. Fails to perform any other contract provision or
    e. Fails to meet contractual obligations.

    The FAA is not liable for the contractor's costs on undelivered work and is entitled to repayment of payments to the contractor for undelivered work. The CO may direct the contractor to transfer title and deliver to the FAA completed supplies and manufacturing materials. The supplies and manufacturing materials transferred from the contractor to the FAA may be used in continuing the terminated contract work or for use under another contract.

2. The FAA should pay the contractor the contract price for any supplies or services completed and delivered, and the amount agreed upon by the contracting officer and the contractor for any manufacturing materials obtained by the contractor.
3. The FAA should be protected from overpayment that might result from failure to provide for the FAA's potential liability to laborers and material suppliers for lien rights outstanding against the completed supplies or materials after the FAA has paid the contractor for them. To accomplish this, before paying for supplies or materials, the contracting officer shall take one or more of the following measures:
    a. (a) Ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' claims or whether it is feasible to obtain similar bonds to cover outstanding liens.
    b. (b) Require the contractor to furnish appropriate statements from laborers and material suppliers disclaiming any lien rights they may have to the supplies and materials.
    c. (c) Obtain appropriate agreement by the FAA, the contractor, and lienors ensuring release of the FAA from any potential liability to the contractor or lienors.

d. (d) Withhold from the amount due for the supplies or materials any amount the contracting officer determines necessary to protect the FAA's interest, but only if the measures in subparagraphs (d)(1), (2), and (3) above cannot be accomplished or are considered inadequate.
e. (e) Take other appropriate action considering the circumstances and the degree of the contractor's solvency.

4. Repurchase Against Contractor’s Account. When supplies or services are still required after termination for default, the contracting officer may repurchase the same or similar supplies or services against the contractor’s account as soon as practicable. The repurchase must be at as reasonable a price as possible considering the quality required by the FAA and the time within which the supplies or services are required. Whenever practicable, the contracting officer should make necessary repurchase decisions before issuing the termination notice. If repurchase is made at a price higher than the price of the terminated supplies or services, the contracting officer must--after final payment of the repurchase contract-- make a written demand on the contractor for the excess amount, taking into account any increases or decreases in cost due to transportation charges, discounts, and other factors. The contractor is liable to the FAA for any excess costs incurred in acquiring supplies and services similar to those terminated for default, and any other damages, whether or not repurchase is made.

c. Contract Clause Cost Reimbursement Contracts Terminated for Default

Contract Clause 3.10.6-3 Termination (Cost Reimbursement) and Alternates provides the CO authority to terminate cost reimbursement contracts for default.

**4 Definitions**

a. ‘Claim,' as used in this part, means the same as the language in Resolution of Protests and Disputes.

b. 'Continued portion of the contract,' as used in this part, means the 8ortion of a partially terminated contract that the contractor must continue to perform.

c. ‘Effective date of termination' means the date on which the notice of termination requires the contractor to stop performance under the contract. If the termination notice is received by the contractor subsequent to the date fixed for termination, then the effective date of termination means the date the notice is received.

d. 'Other work,' as used in this part, means any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.

e. 'Partial termination' means the termination of a part but not all, of the work that has not been completed and accepted under a contract.

f. 'Settlement agreement,' as used in this part, means a written agreement in the form of an amendment to a contract settling all or a severable portion of a settlement proposal.

g. 'Settlement proposal,' as used in this part, means a proposal for effecting settlement of a contract terminated in whole or in part, submitted by a contractor or subcontractor in the form, and supported by the data, required by this part. A settlement proposal is included within the generic meaning of the word 'claim' under false claims acts (see 18 U.S.C. 287 and 31 U.S.C. 3729).

h. ‘Show cause’ refers to a notice which the CO is required to issue prior to terminating a contract. The purpose of a show cause notice is to permit the contractor to present its defense against termination.

i. 'Terminated portion of the contract' means the portion of a terminated contract that relates to work or end items not completed and accepted before the effective date of termination that the contractor is not to continue to perform. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

j. 'Termination inventory' means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes FAA-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

k. 'Unsettled contract change' means any contract change or contract term for which a definitive modification is required but has not been executed.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

## T3.10.7 Extraordinary Contractual Actions

### A Extraordinary Contractual Actions

#### 1 Authority

a. *Public Law 85-804 and Executive Order 10789.* Public Law 85-804, as amended, (referred to as the "the Act) and Executive Order 10789 (hereinafter referred to as the "the EO") grant the Administrator and the DOT Secretary authority to conduct extraordinary contractual actions (entering or modifying contracts) in support of the national defense.

(1) *Indemnification Approval Authority Reserved to the Department of Transportation Secretary.*

(a) One of the provisions of the ACT and the EO permits the FAA to indemnify contractors in situations that involve unusually hazardous or nuclear risks to protect them from undue risk incident to performing such contractual activities. The FAA may protect contractors from this type of risk through incorporation of Clause 3.10.7 or its Alternate I - "Indemnification Under Public Law 85-804" (the clause). These clauses must not be used in any other type of situation and must have the prior approval of the approving authority as specified the following (b).

(b) The DOT Secretary is the approving authority and his/her advance appoval is required prior to including the indemnification clause in a screening information request (SIR), contract or modification.

(2) *The Administrator as Approving Authority.* The Administrator is the approving authority for all other extraordinary actions that facilitate the national defenses except for those involving unusually hazardous or nuclear risks discussed in subparagraph (1) above. The Administrator may also delegate this authority to a Contract Adjustment Board. (See the following subparagraph (3) "Contract Adjustment Board".

(3) *Contract Adjustment Board.* The Administrator may establish and delegate his/her authority under subparagraph A.1.a to a contract adjustment board (the board). The board, by virtue of the delegation, has authority to approve, authorize and direct appropriate action and to make all appropriate determinations and findings. The determinations of the board are not subject to appeal; however, the board may reconsider and modify, correct, or reverse its previous determinations. The board will also establish its own procedures and has authority to take all actions necessary or appropriate to conduct its functions.

b. *Limitations.*

(1) The authority conferred by the Act and the EO may not be (i) used unless the approving authority finds that the action will facilitate the national defense and/or (ii) relied upon when other sufficient or adequate legal authority exists within the agency. The fact that losses occur under a contract is not sufficient basis for exercising the authority conferred by the Act. Whether appropriate action will facilitate the national defense is a judgment to be made on the basis of all the facts of the case.

(2) The Act is not authority for:

(a) Using a cost-plus-a-percentage-of-cost system of contracting;

(b) Making any contract that violates existing law limiting profit or fees;

(c) Providing for other than reasonable access to contracts for supplies or services;

(d) Waiving any bid bond, payment bond, performance bond, or other bond required by law;

(e) Obligating the FAA for any amount over $25 million, unless the Senate and House Committees on Armed Services are notified in writing of the proposed obligation and 60 days of continuous session of Congress have passed since the transmittal of such notification.

c. Actions authorized under the Act and EO must be accomplished as expeditiously as practicable, consistent with the exercise of sound judgment appropriate to the use of such extraordinary authority. The Act and EO that every contract entered into, amended, or modified under this section contain:

(1) A citation of the Act and the EO;

(2) A brief statement of the circumstances justifying the action; and

(3) A description of the finding that the action will facilitate the national defense.

**2 Guidance**

a. *Types of Actions.* Most actions under this section fall into one of three categories. They are:

(1) *Modifications Without Consideration*.

(a) A modification without consideration may be allowed if a contractor, whose continued performance is essential to the national defense, is faced with an actual or threatened loss under a contract that would impair the contractor's ability to continue its production capability. A modification may also be justified when a contractor suffers losses resulting from actions by the FAA which is acting as the other contracting party, even though the FAA is not directly liable under the contract.

(b) When a contract modification without consideration becomes a factor, the CO should obtain additional information such as the following in addition to that specified in subparagraph d. "Facts and Evidence" to conduct an investigation:

(i) Statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit;

(ii) A statement and evidence of the contractor's present estimate of total costs under the contracts involved if it is enabled to complete them, broken down between costs accrued to date and completion costs, and between costs paid and those owed;

(iii) A statement and evidence of the contractor's estimate of the final price of the contract, taking into account all known or contemplated escalation, changes, extras, and the like;

(iv) A statement of any claims known or contemplated by the contractor against the Government involving the contracts, other than those stated in response to the

foregoing subparagraph (c) of this section;

(v) An estimate of the contractor's total profit or loss under the contract(s) if it is enabled to complete them at the estimated final contract price, broken down between profit or loss to date and completion profit or loss;

(vi) An estimate of the contractor's total profit or loss from other Government business and all other sources, from the date of the first contract involved to the estimated completion date of the last contract involved;

(vii) A statement of the amount of any tax refunds to date, and an estimate of those anticipated, for the period from the date of the first contract involved to the estimated completion date of the last contract involved;

(viii) A detailed statement of efforts the contractor has made to obtain funds from commercial sources to enable contract completion;

(ix) A statement of the minimum amount the contractor needs as a modification without consideration to enable contract completion, and the detailed basis for that amount;

(x) An estimate of the time required to complete each contract if the request is granted;

(xi) A statement of the factors causing the loss under the contracts involved;

(xii) A statement of the course of events anticipated if the request is denied;

(xiii) Balance sheets, preferably certified by a certified public accountant, (i) for the contractor's fiscal year immediately preceding the date of the first contract, (ii) for each subsequent fiscal year, (iii) as of the request date, and (iv) projected as of the completion date of all the contracts involved (assuming the contractor is enabled to complete them at the estimated final prices), together with income statements for annual periods subsequent to the date of the first balance sheet. Balance sheets and income statements should be both consolidated and broken down by affiliates. They should show all transactions between the contractor and its affiliates, stockholders, and partners, including loans to the contractor guaranteed by any stockholder or partner; (xiv) A list of all salaries, bonuses, and other compensation paid or furnished to the principal officers or partners, and of all dividends and other withdrawals, and of all payments to stockholders in any form since the date of the first contract involved.

(2) *Correction of Mistakes.*

(a) Correction of a mistake involves such things as failure to express the intent of the parties in the contract, an obvious mistake by the contractor that was overlooked by the contracting officer, or a mutual mistake as to a matter of fact. An upward adjustment of a contract price may be granted under these conditions.

(b) When a request involves possible correction of a mistake, the contractor may be asked to furnish, in addition to the facts and evidence listed in subparagraph (d) "Facts and Evidence", any of the following information:

(i) A statement and evidence of the precise error made, ambiguity existing, or misunderstanding arising, showing what it consists of, how it occurred, and the intention of the parties.

(ii) A statement explaining when the mistake was discovered, when the contracting officer was given notice of it, and whether this notice was given before completion of work under, or the effective termination date of, the contract.

(iii) An estimate of profit or loss under the contract, with detailed supporting analysis.

(iv) An estimate of the increase in cost to the Government resulting from the adjustment requested, with detailed supporting analysis.

(3) *Formalization of an Informal Commitment.*

(a) The third category of contractual adjustments, formalization of an informal commitment, is authorized in order to permit payment to persons who have taken action without a formal contract. For instance, a contractor, acting in good faith and relying on the apparent authority of an FAA official, may have carried out work for which there was not a proper contractual arrangement.

(b) When a request involves possible formalizing of an informal commitment, the contractor may also be asked to furnish the following information in addition to those specified in subparagraph d. "Facts and Evidence":

(i) Copies of any written instructions or assurances (or a sworn statement of any oral instructions or assurances) given the contractor, and identification of the Government official who gave them.

(ii) A statement as to when the contractor furnished or arranged to furnish the supplies or services involved, and to whom.

(iii) Evidence that the contractor relied upon the instructions or assurances, with a full description of the circumstances that led to this reliance.

(iv) Evidence that, when performing the work, the contractor expected to be compensated directly for it by the Government and did not anticipate recovering the costs in some other way.

(v) A cost breakdown supporting the amount claimed as fair compensation for the work performed.

(vi) A statement and evidence of the impracticability of providing, in

an appropriate contractual instrument, for the work performed..

b. *Contractor's Responsibility.* It is the contractor' responsibility to seek contract adjustment when appropriate. The contractor should do this in a written request to the contracting officer. The request should include all the information necessary for the contracting officer to conduct an investigation such as the following:

(1) The precise adjustment requested:

(2) The essential facts, summarized chronologically in narrative form;

(3) The contractor's conclusions based on these facts, showing when the contractor considers itself entitled to the adjustment; and

(4) Whether or not

(a) All obligations under the contracts involved have been discharged;
(b) Final payment under the contracts involved has been made;
(c) Any proceeds from the request will be subject to assignment or other transfer, and to whom; and
(d) The contractor has sought the same, or a similar or related, adjustment from the General Accounting Office or any other part of the Government, or anticipated doing so.

c. *Contracting Officer's Responsibilities.*

(1) *Gather Information.* The contracting officer is responsible to gather information necessary to conduct an initial investigation. Information such as that specified in subparagraphs A.2.a.(1) - "Modifications Without Consideration", A.2.a.(2) - "Correction of Mistakes", A.2.a.(3) - Formalization of an Informal Commitment", and A.2. d. "Facts and Evidence" are examples of the types of information that may be useful to establishing the facts. The contracting officer should assemble a case file containing all the pertinent documentation including information submitted by the contractor. The case file will serve as a basis for review and approval or rejection of the case and should be well-organized to facilitate review by the product team, legal, and if necessary, the approving authority. The contracting officer should maintain complete records of all actions taken under this Section 3.10.7 - Extraordinary Contractual Actions as part of the case file, whether approved or denied.

(2) *Perform the Initial Investigation.* The contracting officer in concert with legal and the product team will make a thorough initial investigation to establish the facts necessary to decide a given case. Facts and evidence, including signed statements of material facts within the knowledge of individuals when documentary evidence is lacking, and audits if considered necessary to establish financial or cost facts, shall be obtained from contractor and Government personnel. As part of this initial investigation, the contracting officer should ascertain if other Government agencies are involved - see the following subparagraph (3) "Liaison With Other Agencies". This initial investigation will determine whether to reject the case or process it further. If rejection is warranted at this juncture, the contracting officer will notify the contractor in writing.

(3) *Involve Affected Agencies.* When a case involves matters of interest to more than one Government agency, the contracting officer should do the following:

(a) Maintain liaison with affected agencies to determine whether joint action should be taken.

(b) Assure availability of funds required from other agencies. When additional funds are required from another agency, the contracting agency may not approve adjustment requests before receiving advice that the funds will be available. The request for this advice shall give the contractor's name, the contract number, the amount of proposed relief, a brief description of the contract, and the accounting classification or fund citation. If the other agency makes additional funds available, the agency considering the adjustment request shall be solely responsible for any action taken on the request.

(c) When essentiality to the national defense is an issue, agencies considering requests for amendment without consideration involving another agency shall obtain advice on the issue from the other agency before making the final decision. When this advice is received, the agency considering the request for amendment without consideration shall be responsible for taking whatever action is appropriate.

(4) *Submit Cases to the Administrator as Approving Authority.* The contracting officer will submit cases that have merit through appropriate channels to the approving authority. The contracting officer should include a memorandum for the signature of the approving authority that contains key the following information.:

(5) *Insert Contract Information.* The contracting officer should include the following information in contract(s) entered into or modified under the Act and the EO:

(a) A citation of the Act and the EO

(b) A brief statement of the circumstances justifying the action; and

(c) A recital of the finding that the action will facilitate the national defense.

(6) *Reports to Congress*. The EO requires the submission of an annual report to Congress by March 15, listing actions taken on requests for relief, including indemnity, under the Act's authority. The contracting officer should provide input as follows for the report:

(a) The total number of requests, total dollar amount requested and the total dollar amount approved or denied; and

(b) For each approved request that involves actual or potential cost to the FAA in excess of $50,000, the report should include the name of the contractor, the actual cost or estimated potential cost, a description of the property or services involved, and a statement of the circumstances justifying the action. The report should omit any information classified 'Confidential' or higher.

d. *Facts and Evidence.*

(1) *General. The following should be included:*

(a) Description and information of the contract(s) such as key dates, modifications, items acquired, price or prices, schedules, special provisions;

(b) History of performance such as when work began, progress made, exact statement of contractor's remaining obligations, and the contractor's expectations regarding completion;

(c) Statement of payment received, due, yet to be received or to become due, including advance and progress payments, amounts withheld by the FAA and information as to any obligations of the FAA yet to be performed under the contract(s);

(d) A detailed analysis of the request's monetary elements, including precisely how the actual or estimated dollar amount was determined and the effect of approval or denial on the contractor's profits before Federal income taxes;

(e) A statement of the contractor's understanding of why the request's subject matter cannot now, and could not at the time it arose be disposed of under the contract's terms;

(f) The best supporting evidence available to the contractor, including contemporaneous memorandums, correspondence, and affidavits;

(g) Relevant financial statements, cost analyses, or other such data, preferable certified by a certified public accountant, as necessary to support the request's monetary elements;

(h) A list of persons connected with the contract(s) who have factual knowledge of the subject matter, including when possible, their names, offices or titles, addresses and telephone numbers;

(i) A statement and evidence of steps taken to reduce losses and claims to a minimum; (j) Any other relevant statements or evidence that may be required.

e. *Indemnification Requests.* Contractors that request inclusion of the indemnification clause should supply information such as the following to the contracting officer. The information should be adequate for the contracting officer to ascertain the validity of the request. Information such as the following is generally relevant:

(1) Identification of the contract for which the indemnification clause is requested;

(2) Identification and definition of the unusually hazardous or nuclear risks for which indemnification is requested, with a statement indicating how the contractor

would be exposed to them;

(3) A statement, executed by a corporate official with binding contractual authority, of all insurance coverage applicable to the risks to be defined in the contract as unusually hazardous or nuclear, including

(a) Names of insurance companies, policy numbers, and expiration dates;

(b) A description of the types of insurance provided (including the extent to which the contractor is self-insured or intends to self-insure), with emphasis on identifying the risks insured against and the coverage extended to persons or property, or both;

(c) Dollar limits per occurrence and annually, and any other limitation, for relevant segments of the total insurance coverage;

(d) Deductibles, if any, applicable to losses under the policies;

(e) Any exclusions from coverage under such policies for unusually hazardous or nuclear risks; and

(f) Applicable workers' compensation insurance coverage.

(4) The controlling or limiting factors for determining the amount of financial protection the contractor is to provide and maintain, with information regarding the availability, cost, and terms of additional insurance or other forms of financial protection.

(5) Whether the contractor's insurance program has been approved or accepted by any Government agency; and whether the contractor has an indemnification agreement covering similar risks under any other Government program, and, if so, a brief description of any limitations.

(6) If the contractor is a division or subsidiary of a parent corporation,--

(a) A statement of any insurance coverage of the parent corporation that bears on the risks for which the contractor seeks indemnification and

(b) A description of the precise legal relationship between parent and subsidiary or division.

f. Disposition. When approving or denying a contractor's request, the approving authority will sign and date a Memorandum of Decision containing--

(1) The contractor's name and address, the contract identification, and the nature of the request;

(2) A concise description of the supplies or services involved;

(3) The decision reached and the actual cost or estimated potential cost involved, if any;

(4) A statement of the circumstances justifying the decision;

(5) Identification of any of the foregoing information classified "Confidential" or higher (instead of being included in the memorandum, such information may be set forth in a separate classified document referenced in the memorandum); and

(6) If some adjustment is approved, a statement in substantially the following form: "I find that the action authorized herein will facilitate the national defense." The case files supporting this statement will show the derivation and rationale for the dollar amount of the award. When the dollar amount exceeds the amounts supported by audit or other independent reviews, the approving authority will further document the rationale for deviating from the recommendation.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

## T3.10.9 First Article Approval and Testing

### A First Article

#### 1 General

a. First article testing and approval involves evaluating a contractor's initial, preproduction, or sample model or lot to ensure the contractor can furnish a product conforming to all contract requirements. First article testing may be appropriate when:

(1) The contractor has not previously furnished the product to the Government;

(2) The product was previously furnished to the Government, but changes in processes or specifications occurred; production was discontinued for an extended period, or the product developed problems during its life;

(3) The product is based on a performance specification; or

(4) It is essential to have a first article as a manufacturing standard.

b. First article testing generally need not be conducted for research and development products or commercial items.

#### 2 Minimizing Risk Revised 10/2010

a. To minimize risk to both FAA and the contractor, the first article test is preferably conducted before the contractor acquires materials or components for use in production. Departing from this sequence of testing and then purchasing materials increases risk to both parties and should be avoided when possible. Also, appropriation statutes may include restrictions on ordering long lead items or production units prior to completion of the first article testing (the CO should review appropriation statutes for these potential restrictions).

b. When establishing delivery schedules, the procurement team should consider the time needed to conduct the first article test, order and receive materials or components, and produce items. Risk can be minimized by establishing realistic schedules that include sufficient time to complete all the requirements that precede production, including first article testing and ordering and delivery of materials and components. However, circumstances may arise that do not allow this customary sequence leading to production. In unique circumstances where this cannot be done, the procurement team may consider possible alternatives that would facilitate an expedient delivery schedule of acceptable items. For example, under Alternate II to the "First Article Approval" clauses, the CO may authorize the contractor in writing to either "...acquire *specific* material and components or commence production *to the extent essential* to meet the delivery schedule" prior to first article approval. The authorization is limited to *specific* materials and components and production *to the extent essential.* The procurement team should examine the specific facts and minimize FAA's risk by authorizing only specific items and extent of production truly necessary to meet schedule. Long lead items are possible candidates for this type of early authorization.

c. The CO should include first article testing clause/alternate clause most appropriate in the situation.

## 3 Testing and Approval Revised 10/2010

The procurement team should determine the appropriate first article testing method and clearly delineate the requirements in the contract. The following illustrates factors that should be considered when establishing first article requirements, and stated in the contract:

a. Will FAA or the contractor conduct the first article test;

b. Performance or other characteristics that must be met;

c. Detailed technical requirements for first article testing;

d. First article test report data required in contractor-performed testing;

e. Tests FAA will use when it performs the tests;

f. If the approved first article will serve as the manufacturing model;

and

g. Disposition of the approved first article.

### 4 Waiving First Article Revised 10/2010

Alternate II of the "First Article Approval" clauses authorizes the CO to waive the first article in instances where supplies identical or similar to those called for have previously been delivered by the offeror and accepted by the Government. The procurement team should use this approach when appropriate for the circumstances. If the potential to waive first article testing exists, the procurement team may consider alternative offers based on including or omitting the testing in the price and delivery schedule. Evaluation criteria should indicate how this will be treated in the evaluation.

### 5 Coordination

The CO should facilitate the testing and acceptance by coordinating actions and individuals that will participate in the process. The following illustrates the nature of the facilitation:

a. Distribute copies of test requirements to entities involved with the testing or approval, such as to Government laboratories that have this responsibility.

b. Notify the Government entity that has responsibility for first article testing or approval sufficiently in advance of their receiving either a test item or test report.

c. Specify that the Government laboratory or other activity responsible for first article testing or evaluation inform the contracting office promptly whether to approve, conditionally approve, or disapprove the first article.

### 6 Changes

Any changes in the drawings, designs, or specifications determined by the CO to be necessary as a result of first article testing should be made under the "Changes" clause, and not by the notice of approval, conditional approval, or disapproval furnished to the contractor.

## B Clauses

view contract clauses

## C Forms

view procurement forms

## T3.13.1 Other Administrative Procedures Revised 1/2009

### A Administrative Matters

### 1 Numbering System for Procurement Instruments Revised 7/2010

a. A uniform numbering system allows FAA to identify, control, and track each procurement action, from procurement request through award and close-out. This numbering system is applied through FAA's automated procurement system, PRISM. Use of PRISM is required for all procurement requests and procurement instruments, including written screening information requests, purchase orders, delivery orders, task orders, agreements, leases, contracts, and all forms of awards, regardless of monetary consideration. For further information on procurement document numbering in PRISM, see the associated PRISM business process solution Federal Procurement Data System (FPDS) User Guide (FAA Only)

b. The Procurement Instrument Identification Number (PIIN) must consist of 14 alphanumeric characters:

(1) *Positions One and Two.* A two-digit alphabetic code identifying the procuring agency. This code must always be "DT" which means the Department of Transportation.

(2) *Positions Three* and *Four*. A two-digit alphabetic code identifying the DOT operating administration. This code must always be "FA" which means Federal Aviation Administration.

(3) *Positions Five and Six.* A two-digit alphabetic code identifying the procurement office* of the operating administration that issued the procurement instrument, as follows:

| | | |
|---|---|---|
| WA - Headquarters | EA - Eastern Region | CE - Central Region |
| AC - Aeronautical Center | SO - Southern Region | NM - Northwest Mountain Region |
| CT - Technical Center | SW - Southwest Region | NE - New England Region |
| AL - Alaskan Region | WP - Western Pacific Region | GL - Great Lakes Region |

***NOTE**: Starting for all FY 2011 awards, the following changes are made to the above alphabetic codes to recognize consolidation of the nine contracting office regions into the three contracting office service areas:

CE (Central Region), GL (Great Lakes Region), and SW (Southwest Region) change to CN (Central Logistics Service Area); AL (Alaskan Region), NM (Northwest Mountain Region), and WP (Western-Pacific Region) change to WN (Western Logistics Service Area); and EA (Eastern Region), NE (New England Region), and SO (Southern Region) change to EN (Eastern Logistics Service Area). WA (Headquarters), AC (Aeronautical Center) and CT

(Technical Center) are unchanged.

(4) *Positions Seven and Eight.* A two-digit numeric code that is the last two digits of the fiscal year in which the PIIN is assigned.

(5) *Position Nine.* A one-digit alphabetic code identifying the type of procurement instrument (i.e., agreement, contract, etc.) as follows:

A - *Agreement*. Use for all agreements not otherwise covered, including Blanket Purchasing Agreement (BPA), Basic Ordering Agreement (BOA), and Other Transaction Agreement (OTA).

C - *Contract.* Use for all contracts, including letter contracts, except for contracts with Government activities or corporations (See PIIN element E). Does not apply to real property transactions.

D - *Indefinite-Delivery Contract*. Use for indefinite quantity, definite quantity, and requirements contracts.

E - *Contract with Government Activity or Corporation*. Use for contracts with income producing Federal Government entities, including National Industries for the Blind, National Industries for the Severely Handicapped, and Federal Prison Industries (UNICOR). Does not apply to real property transactions.

F - *Delivery Order*. Use when placing orders directly against DOT or FAA contracts and against contracts administered by another agency, i.e., General Services Administration (GSA), Department of Veterans Affairs (VA), Office of Personnel Management (OPM), or Department of Defense (DOD), pursuant to an interagency agreement or when authorized by statute or regulation. Does not apply to real property transactions.

G - *Grant*. Reserved for grants when a PIIN formatted number is assigned.

H - *Cooperative Agreement*. Reserved for cooperative agreements with municipalities and quasi-government agencies. Does not apply to real property transactions.

J - *Outgrant/Outlease (Accounts Receivable) or Permits*. Use when FAA outleases (grants the right to use Federal real property under FAA control to others) land or space to public or private entities. Does not include permits or memorandum/letters of understanding/agreements providing rights to other federal agencies. Outgrants are not considered reimbursable agreements.

K - *Land Purchase and Condemnation*. Use for acquisition of permanent real estate interests (fee simple) by purchase or condemnation. Does not include leasehold interests (land or space) or easements in real property.

L - *Lease Agreement*. Use for leasing real and personal property, and products

or equipment. Also, includes instruments for both land and space where the Government obtains real estate rights, and all easements including aerial easements for a limited period of time, and may or may not be monetary in consideration. Does NOT include Interagency Agreements.

P - *Purchase Order*. Use for all commercial-off-the-shelf purchase orders. (Assign V, then W when numbering capacity of P becomes exhausted during a fiscal year). Also, includes orders less than $100,000 for multiple payee leases, appraisals, surveys, title, closing, and other work related to leasing or acquiring real estate rights.

Q - *Request for Quote*. Use when soliciting contracts by request for quote.

R - *Request for Offer*. Use when soliciting contracts by screening information request (SIR) for qualifications, information, or offer.

S - *Sales Contract (Account Receivable)*. Use for sales and other disposal of real and personal property.

T - *Task Order*. Use when placing task orders for services directly against external contracts, i.e., GSA, VA, OPM, and DOD contracts.

U - *Utilities.* Use for contracts for electric, telephone, water, natural gas, and other utilities, including delivery/task orders against external contracts. Includes FAA delivery orders against GSA area-wide and GSA commodity contracts for utilities.

V - See P - Purchase Orders. W - See P - Purchase Orders.

X - *Interagency Agreement*. Use when obtaining products or services from or through another Federal agency when that servicing agency may be in a position or equipped to supply, render, or obtain by contract. Does not apply to real property transactions.

Z - *Reimbursable Agreement*. Use when FAA enters into an agreement to *provide* products or services and receives payment for the products or services rendered and not covered otherwise.

The letters M, N, and Y are reserved. These letters may not be used to identify an FAA procurement instrument in lieu of the above designated codes assigned to the type of instrument.

(6) *Positions Ten through Fourteen.* At the discretion of the Chief of the Contracting Office, these characters may be numeric or alphanumeric. A separate set of serial numbers may be used for any type of procurement instrument.

c. *Illustration of the PIIN.* An example of a PIIN is as follows: DTFAAC-11-R-00001 identifies an RFO issued by the Department of Transportation, Federal Aviation Administration, Aeronautical Center, Oklahoma City, OK in fiscal year 11.

d. *Supplementary PIINs.* A supplementary number must be used with the basic PIIN to identify the following:

(1) *Amendments to Screening Information Request (SIR).* Amendments must be assigned a four position numeric serial number, sequentially beginning with 0001. A sample amendment number would be DTFAEN-11-R-00001-0001.

(2) *Modifications to Contracts, Agreements, and Orders.* Modifications to contracts, agreements, and orders must be numbered sequentially with a four-position numeric serial number beginning with 0001.

(3) *BPA Calls*. BPA calls against BPA setups must be numbered sequentially with a four-position numeric serial number beginning with 0001.

(4) *Delivery and Task Orders*. Delivery/task orders against internal FAA contracts must be numbered sequentially with a four-position numeric serial number beginning with 0001.

e. *Contract Line Item Number (CLIN).* CLINs are numbered consecutively beginning with 001, according to the functionality of PRISM.

f. *Procurement Request (PR).* Requisitioning Office PRs will continue to be numbered according to the following convention, beginning with the FAA Region code for the requisitioning office two character designator (see below), followed by the last two digits of the budget year for which the obligation is intended (corresponding with the budget year in the project and accounting codes of the request), then a five digit sequential number assigned by PRISM, and finally a two or three character suffix, if required.

Regional Identifier Codes:

| | | |
|---|---|---|
| WA - Headquarters | EA - Eastern Region | CE - Central Region |
| AC - Aeronautical Center | SO - Southern Region | NM - Northwest Mountain Region |
| CT - Technical Center | SW - Southwest Region | NE - New England Region |
| AL - Alaskan Region | WP - Western Pacific Region | GL - Great Lakes Region |

Currently, the only authorized suffix is "RE" for real estate PRs. Examples of requisition numbering are: AL-11-00001, indicates a standard PR issued by the Alaskan Region intended for award in FY11. A PR with the number GL-12-00001-RE indicates that it originated in the Great Lakes Region, intended for award in FY12, and is specially designated for Real Estate. Refer to PRISM Business Process Solution: Award Types and PRISM Document Numbering Masks (FAA only) for further information on numbering requisitions.

## 2 Contract Format

Each request for offer or contract should be tailored to include only those elements required, at an appropriate level of detail, to make the contract a binding and enforceable document.

For uniformity, the format of each request for offer or contract may be structured according to the following outline:

*Part I - The Schedule.*

Section A - Contract

Section B - Supplies or Services and Prices/Costs

Section C - Description/Specifications/Work

Statement Section D - Packaging and Marking

Section E - Inspection and Acceptance

Section F - Deliveries or Performance

Section G - Contract Administration Data

Section H - Special Contract Requirements

*Part II - Contract Clauses.*

Section I - Contract Clauses

*Part III - List of Documents, Exhibits, and Attachments.*

Section J - List of Documents, Exhibits, and Attachments

*Part IV - Representations and Instructions.*

Section K - Representations, Certifications, and Other Statements of Offerors

Section L - Instructions, Conditions, and Notices to Offerors

Section M - Evaluation Factors for Award

## 3 Congressional Affairs Notification Revised 10/2012

a. The following require official notification to Congress *before* releasing an award and distributing the contractual instrument:

(1) *New Awards*. Congress must be notified at least 48 hours, excluding Federal holidays and weekends, before awarding any contract or other agreement of $3.5 million or more (total value including all options or ceilings), excluding interagency agreements. The DOT Assistant Secretary for Government Affairs (I-1) or designee notifies Congress, and advises the Contracting Officer (CO) that the contract or agreement may be released. The CO may sign the contract or agreement, but

information about the award must not be released outside of DOT until completing the Congressional notification procedures in this section.

(2) *Modifications and Delivery/Task Orders*. Notification is not required for modifications and delivery/task orders of $3.5 million or more if Congress was notified about the initial award; otherwise, Congressional notification is required.

b. Notification must be made via form DOT F 4220.41, "Contract Award Notification," to the DOT Assistant Secretary for Government Affairs (I-1), with concurrent courtesy copies to:

(1) FAA Office of Government and Industry Affairs (AGI-1);

(2) FAA Acquisition Executive (ACQ-1);

(3) Chief Operating Officer (if ATO is the requiring organization) or Associate/Assistant Administrator (if other than ATO is the requiring organization), through the CO's management; and

(4) The Office of Communications (AOC-1).

c. The CO must complete all blocks of form DOT F 4220.41 and send it to the Assistant Secretary for Government Affairs (I-1), via email or fax at (202) 366-7346. Block 9 of the form may be revised to show an applicable AMS procurement method. The CO is responsible for documenting the date I-1 received the form; to confirm receipt, the CO may call (202) 366-4573.

d. Unless I-1 or designee requests the CO or other designated official not to proceed with award, awards may be announced on the **third** working day following I-1's receipt of DOT F 4220.41.

e. The official contract file must include a copy of form DOT F 4220.41 and documentation of I-1's receipt of the form.

## 4 Press Release and Public Announcement of Award Revised 7/2010

a. Congressional notification procedures must be completed before the CO or other designated official issues a press release or public announcement.

b. *Press Release*. A press release may be appropriate for awards of interest to the general public. The determination of what is or is not newsworthy must consider factors such as dollar amount of the action, uniqueness, or public interest associated with the requirement. The CO should contact the Office of Public Affairs (AOC-300) for advice, and help with preparing a press release; Service Area, Region and Center personnel should coordinate a press release with their local public affairs office. The CO should request a press release approximately four weeks before planned award.

c. *Public Announcement*. Although AMS policy does not require public announcement for all awards, the CO should consider announcing an award involving large funding amounts,

subcontracting opportunities, or high public visibility. Award information should be announced promptly and via FAA Contract Opportunities website, the Internet, trade magazines, or local newspapers. Award announcements are for informational purposes only and should include:

(1) Contract number;

(2) Contractor name and address;

(3) Brief description of the requirement;

(4) Total value;

(5) Award date; and

(6) Contracting Officer's name, email, and telephone.

## 5 Federal Procurement Data System (FPDS) and FPDS Data Quality Revised 7/2012

a. *Use for Data*. The FAA uses the Federal Procurement Data System (FPDS) module within PRISM as the means for collecting, maintaining, and reporting procurement award data to Congress, the Executive Branch, FAA management, audit and evaluation organizations, and the private sector. These audiences use the data to measure and assess the impact of FAA procurement on the U.S. economy, the extent to which small business and small disadvantaged business firms share in FAA awards, the impact of competition on the procurement process, and for other policy and management purposes.

b. *FPDS User Guide*. The PRISM FPDS User Guide provides full instructions and a complete list and description of the data reporting fields and options within fields, and when to appropriately use the options. The FPDS User Guide (FAA only) is on the National PRISM website under Training.

c. *Public Access*. The Federal Funding Accountability Transparency Act requires FAA to make procurement award data publicly available. Government-wide award data is sent through FPDS- NG to the public website USASpending.gov. The FAA submits its award data to FPDS-NG by using the General Services Administration's Business Services. This process allows FAA to automatically send daily batch files to FPDS-NG, bypassing FPDS-NG's front-end edit checks, once an award passes the FAA's own edit checks.

d. *System for Award Management*. The CO must ensure that the awardee is registered in the System for Award Management (SAM) System before award is made.

e. *Annual Certification*. After the close of each fiscal year, the FAA Acquisition Executive certifies to the percentage of FPDS data that is accurate, timely, and complete. To support of this annual certification, the CO must enter all FPDS data for awards when the award is approved in PRISM. The CO must enter complete and accurate information for each data field in FPDS. The PRISM FPDS User Guide provides an explanation of each data element to be entered.

f. *File Documentation*. The PRISM FPDS User Guide requires the CO to print and place a copy of the completed FPDS form in the contract file. If subsequent FPDS award exception reports require corrections to FPDS entries, the CO must correct the entries and print another form with changes and place it in the contract file.

g. *Reviewing Exception Reports*. At least quarterly, the CO's branch manager or team lead must review the PRISM award exception report to ensure all procurement actions have been entered and the data is accurate and complete. The branch manager or team lead must ensure that corrections are made within 30 days of the date of the report.

## 6 Record Requirements Revised 1/2012

a. The PRISM Federal Procurement Data System (FPDS) module will include the index of unclassified records of all procurements exceeding $25,000 by fiscal year.

b. For procurements under AMS, FAA will be able to access, as a minimum, the following information:

(1) The date of contract award.

(2) Information identifying the source to which the contract was awarded.

(3) The property or services obtained by the Government under the procurement.

(4) The total cost of the procurement.

(5) Single source procurements.

(6) The identity of the organization or activity that conducted the procurement.

(7) Awards to small disadvantaged businesses using either set-asides or unrestricted competition.

(8) Awards to business concerns owned and controlled by women.

(9) The number of offers received in response to a screening information request.

(10) Task or delivery order contracts.

## 7 Records Retention Revised 1/2012

FAA Order 1350.15C, "Records Organization, Transfer, and Destruction Standards" describes retention periods and destruction information for acquisition and procurement files. Generally, closed official contract, purchase order, and lease files are transferred to the Federal Records Center after final payment. These records may be transferred in an electronic format consistent with Federal Records Center procedures. These records are then destroyed 6 years and 3

months after final payment, while actions below $100,000 are destroyed 3 years after final payment. See item number 4400, Acquisition and Procurement, of FAA Order 1350.15C for full instructions on record retentions**.**

## 8 Annual Procurement Forecast Revised 1/2007

a. In order to provide the small business community with reasonable procurement opportunities and to comply with the President's desire to expand procurement opportunities for small businesses, it is the policy of the FAA to make its Annual Procurement Forecast available to interested business owners. The forecast is for informational and marketing purposes only and does not constitute a specific offer or commitment by the FAA to fund any of the procurements listed.

b. Whether on the Internet or in hard copy, this document must be provided to the public and to the FAA Small Business Development Staff (AJA-8), not later than October 1, of each fiscal year.

Contracting Officers should obtain the information from program offices. A sample format is attached as Appendix 1.

c. Information should include as a minimum:

(1) All planned new procurement actions scheduled for award during the current fiscal year excluding interagency agreements, federal supply schedules and credit card purchases;

(2) A brief description of the anticipated procurement;

(3) The estimated dollar amount of the procurement in a range, e.g. $500,000-$1,000,000;

(4) A name and phone number of a person knowledgeable about the procurement;

(5) The anticipated fiscal year quarter of the screening information request release and contract award;

(6) The method of procurement (i.e. set-aside, single source unrestricted).

## 9 Reports Revised 10/2010

a. *Requirements.* The FAA remains subject to certain statutory, regulatory, and policy requirements and must continue to report the following:

(1) *Report of Proposed Federal Construction.* Construction programs estimated to exceed $500,000 are subject to Davis-Bacon Act regulations at 29 CFR 1.4. This CFR section requires the FAA to furnish the Department of Labor a general outline of its proposed construction programs for the upcoming fiscal

year. The report must identify the estimated number of projects that will require wage determinations, the anticipated types of construction, and the locations of construction. Due Annually; March 20 (see Procurement Toolbox, Procurement Form Template #90).

(2) *Randolph-Sheppard Vending Facilities Report.* Randolph-Sheppard Act regulations at 34 CFR 395.38 require that each Federal property managing agency file an annual report with the Department of Education. This report will reflect the number of applications received for establishing vending facilities, vending machine income collected and disbursed to the State licensing agency in each state, and the amount retained. Due Annually; January 6 (see Procurement Toolbox, Procurement Form Template # 91).

(3) *Resource Conservation and Recovery Act Report (RCRA) and Executive Order(EO) 12873 Annual Report*. Section 6002 of RCRA requires Office of the Federal Procurement Policy (OFPP) to report to Congress on the actions taken by agencies to implement this statute. EO 12873 reinforces affirmative procurement, waste minimization, and recycling efforts and requires Federal agencies to report on their efforts to the Office of the Federal Environmental Executive (OFEE). To simplify the reporting process and reduce the reporting burden placed on agencies, the OFPP and the OFEE have merged the reporting requirements of section 6002 of RCRA, and EO 12873 into a single annual report. The report is divided into the Agency Summary Report and the Supply Center Summary Report. The report covers commercial purchases of items contained in the Comprehensive Procurement Guidelines, as well as affirmative procurement, waste minimization and recycling efforts. Due Annually; February 26 (see Procurement Toolbox, Procurement Form Template #92).

(4) *Semiannual Labor Compliance Report.* Davis-Bacon Act regulations at 29 CFR 5.7 require data on compliance with and enforcement of the construction labor standards requirements of the Davis-Bacon Act and Contract Work Hours and Safety Standards Act. The report will identify enforcement actions taken by the contracting offices. Due Semi-Annually; October 20 & April 20 (see Procurement Toolbox, Procurement Form Template #93).

(5) *Lobbying Disclosure Report.* Public Law 101-121 requires contractors to disclose any lobbying activities. The Lobbying Disclosure Act of 1995 eliminated the requirement to forward a copy of each disclosure form, SF LLL to Congress semiannually. Therefore, this report is no longer required. The original SF LLL should continue to be retained in the contract file.

(6) *Major Procurement Program Goals (MPPG).* Pursuant to Executive Order 12928 of 9/16/94, the FAA Administrator will report to the Administrator of the Small Business Administration through the Secretary of the Department of Transportation on the extent of achievements against the MPPG established. Three reports that include the number and dollar obligation of all procurements for each MPPG, excluding interagency agreements, are required by the Small Business Development Staff (AJA-8).

b. *Responsibilities.*

(1) The Chief of the Contracting Office (COCO) in Headquarters, Logistics Service Areas, and Aeronautical Center must collect, compile and submit for their respective organizations the reports outlined below. Reports must be received by Procurement Information and Services Branch (AJA-A12), or other designated recipient, prior to the stated due dates. The COCO must also provide negative responses when there is no data to report for a particular report during the reporting period.

(2) The Procurement Information and Services Branch (AJA-A12) will consolidate the reports that are required to be submitted to AJA-A12 into a single agency-wide report for submission to the various requesters prior to their prescribed due dates. All other reports will be submitted by the Logistics Service Areas, Centers, and Headquarters, directly to the requester.

c. Specifics about each report are as follows:

| Title of Report | Format | Reporting Period | Due Date to AJA-A12 |
|---|---|---|---|
| Report of Proposed Federal Construction | FAA Form 4474-5 | Annually; prospective activity for the next fiscal year. | March 20 |
| Randolph Sheppard Vending Facilities Report | Interagency Form 1270-ED-AN | Annually; for the prior calendar year. | January 6 |
| Resource Conservation and Recovery Act Report | OFPP and OFEE prescribed format. Negative responses required. | Annually; for the prior calendar year. | February 26 |
| Semiannual Labor Compliance Report | No prescribed format; an original and one copy is required. | Semi-annually; for the prior 6 month period. | October 20; April 20 |
| Lobbying Disclosure Report | No longer required. | Not applicable. | Not applicable. |
| Major Procurement Program Goals (Projection) | Format prescribed by AJA-8; Report directly to AJA-8 by Memorandum from the ATO Vice Presidents, FAA Associate and Assistant Administrators, Regional Administrators and | Annual, prior to October 1 of each fiscal year. (See AMS Section 3.6.1.3) | N/A |

| | | | |
|---|---|---|---|
| | Center Directors.<br><br>(See Appendix 2) | | |
| Pre-AMS Major Procurement Program Goals (Actuals) | Format prescribed by AJA-8; Report directly to AJA-8 in writing from the FAA Headquarters Director of Acquisition and Contracting, Regional Administrators and Center Directors.<br><br>(See Appendix 3) | Quarterly, by the 15th of the month following the reporting period. (See AMS Section 3.6.1.2) | N/A |
| Post AMS Major Procurement Program Goals (Actuals) | Format prescribed by AJA-8; Report directly to AJA-8 in writing from the FAA Headquarters Director of Acquisition and Contracting, Regional Administrators and Center Directors.<br><br>(See Appendix 4) | Quarterly, by the 15th of the month following the reporting period. (See AMS Section 3.6.1.2) | N/A |

## 10 Contractor Attendance at FAA-Sponsored and Other Government Training Revised 10/2015

a. *FAA Sponsored Training.*

*(1) General* Prior to attending any FAA-sponsored training, all support contractors are required to submit the "Support Contractor Authorization " form (see Procurement Forms) to the appropriate Contracting Officer. Contracting Officers may authorize support contractors to participate in FAA-sponsored training, if training is authorized in the support contract and the training hours may be billed as direct hours to the contract. When training is NOT specifically authorized in the provisions of the contract FAA will NOT pay direct hourly charges associated with the number of hours spent in training. The following conditions apply when training is not specifically authorized in the provisions of the FAA contract.

(a) *Unique Content.* Support contractors may be allowed to attend FAA sponsored training related to Agency-unique subject areas (such as the AMS), on a space-available basis. However, FAA will not pay direct hourly charges associated with the number of hours spent in training.

(b) *Non-unique Content.* In principle, when training is NOT covered under the support contract there is a presumption that the contractor is obligated to provide contractor personnel with the requisite expertise and training. Therefore, if the FAA provides training in an area that is not Agency-unique, the contract price should be

reduced accordingly.

(c) *Unauthorized Actions.* If training is authorized by anyone other than the Contracting Officer, and the contract provisions do not provide for the training, the action is unauthorized and must be processed as an unauthorized commitment. (See T3.1.4 Delegations)

*(2) Responsibilities.*

(a) *Contracting Officer.* The Contracting Officer may include language in contracts regarding the inclusion of contractors in FAA sponsored training and make the final determination whether or not a course is FAA-unique. The Contracting Officer is the only person with authority to approve Government training for a contractor, since it involves the expenditure of government funds. The Contracting Officer should provide a copy of the signed authorization to the Course Manager and retain the original in the contract file.

(b) *Contractors.* Prior to attending FAA-sponsored training, a support contractor must submit a *"Support Contractor Authorization"* form to the appropriate Contracting Officer. The form should be approved by both the requestor's manager and the Contracting Officer and provided to the Course Manager on or before the first day of class.

(c) *Course Instructor.* The Course Instructor is not authorized to admit support contractor employees to a course without the Contracting Officer's authorization on the approval form. Any issues regarding attendance of support contractors are to be referred to the Course Manager.

(d) *FAA Course Manager.* The Course Manager should provide guidance to support contractors regarding the requirement for "Support Contractor Authorization" form and manage any issues referred by the Course Instructor pertaining to the support contractor's authorization to attend the training. Additionally, the Course Manager should retain copies of signed forms with the training roster and ensure that a signed authorization is on file for all support contractors attending FAA sponsored training. The class roster should indicate the support contractor's company name and include the following legend: *"Failure to correctly indicate that you are an employee of a support contractor will be a material misrepresentation under the terms of the contract."*

b. *Other Government Training*.

FAA contractors may be eligible to take free-of-charge training through other Government sources such as the Federal Acquisition Institute (FAI) or Defense Acquisition University (DAU). Contractor eligibility to take a course will be determined by the Government entity sponsoring the training. Contractors must follow the Government sponsor's eligibility, registration and approval procedures,

If required by the other Government entity, FAA approval of the training will be provided by the FAA Contracting Officer or the Contracting Officer's designee. The contractor must request

FAA approval using the support contractor training authorization form in the FAST. FAA will consider whether the training is necessary for the contractor's performance under the contractor's FAA contract, or whether the training would be beneficial to the FAA.

## 11 Plain Language Added 7/2006

When the statement of work for a contract requires the contractor to deliver any document that will be published, either electronically or in hard copy, for dissemination outside the FAA, or for broad dissemination within the FAA, the document must comply with FAA Order 1000.36, "FAA Writing Standards." Typical documents covered by this requirement include scientific reports, study or survey results, newsletters, regulations, advisory circulars, orders, manuals, ATO Leaders Report, Reports to Congress, and FAA Today. This requirement does not apply to technical documents arising from contract administration, such as earned value management system reports, design review data packages, test plans, or integrated logistics support plans.

There is an equivalent contract clause implementing the above requirement.

## 12 Approval of Multiple-Award Procurement Programs Revised 10/2010

a. The FAA's multiple-award procurement programs expedite contracting processes for recurring needs by establishing more than one competitively awarded task/delivery order contract or agreement, or qualified vendors list, in broad categories of work, such as information technology or engineering services. As FAA organizations identify specific needs, they place orders against an individual contract, agreement, or qualified vendors list using procedures established under the particular multiple-award program.

b. Before any FAA organization establishes a new multiple-award procurement program, it must document the program's benefit, administrative cost, span of use, ordering procedures, and internal oversight mechanisms. Written approval, based on potential size, complexity, and scope of aggregate needs, is also required before an FAA organization may begin any activity to establish a multiple award procurement program, as follows:

(1) Joint Resources Council (JRC) approves any multiple award procurement program that is part of the procurement strategy for an investment program subject to JRC approval. The justification for the procurement program is described in the Integrated Strategy and Planning Document, and is approved by the JRC at the final investment decision.

(2) FAA Acquisition Executive approves any multiple award procurement program, qualified vendors list, or blanket purchase agreement intended to satisfy recurring needs across more than one ATO service organization, ATO service area, or non-ATO line of business or staff office.

(3) Chief of the Contracting Office approves any multiple award procurement program, qualified vendors list, or blanket purchase agreement intended to satisfy recurring needs of one ATO service organization, ATO service area, or non-ATO line

of business or staff office.

c. The FAA organization establishing the multiple award procurement program must send a copy of the approved justification to the Director of Acquisition and Contracting at Headquarters.

**B Clauses**

view contract clauses

**C Forms**

view procurement forms

**D Appendix** **Revised 1/2009**

Sample 1 – Annual Procurement Forecast

Sample 2 - Major Procurement Program Goals (MPPG) Projection

Sample 3 - Pre-AMS MPPG (Actuals) Report

Sample 4 - Post AMS MPPG (Actuals) Report

**APPENDIX**
**SAMPLE 1**

**ANNUAL PROCUREMENT FORECAST**
**FORMAT**

| **Program Office & Point of Contact** | **Description of Procurement Planning Procurement Information** | **Incumbent Contractor & Current Contract Number (if available)** |
|---|---|---|
| (Include Office Title, Release Routing Symbol**,** Method Telephone Number whether with Area Code) | (Include Brief Description, SIC Code Estimated Value, Performance Location indicating City & State) | (Include Estimated SIR Date, Estimated Award Date, of Procurement, indicate Set- Aside or not) |

* Do Not Include Modifications to Existing Procurements

Method of Procurement: (i.e., set-aside, single Source unrestricted)

**APPENDIX**
**SAMPLE 2**

**DEPARTMENT OF**

**TRANSPORTATION FEDERAL**

**AVIATION ADMINISTRATION**

**MAJOR PROCUREMENT PRORAM GOALS**

**(PROJECTION) FISCAL YEAR**

(DOLLARS IN
MILLIONS)

REPORTING OFFICE: _____

Fiscal Year % of No.
of

$ Goal Goal Actions

(1) Total Procurements……..... _____ N/A ___ _____

(2) Awards to Small Businesses……....._____ _____% (% of 1) _____

(3) Awards to SEDB (8(a))……....._____ _____% (% of 1) _____

(4) Awards to Small Disadvantaged Businesses…..... _____ _____ % (% of 1) ___

(5) Awards to Small Businesses Owned and Controlled by Women….....____ _____ % (% of 1) _

(6) Total Subcontracts Awarded by Prime Contractors….....____ N/A ___ _____

(7) Subcontracts Awarded to Small Businesses.....____ _____% (% of 6) __

(8) Subcontracts Awarded to Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals…….....____ _____% (% of 6) _____

(9) Subcontracts Awarded to Small Businesses
Owned and Controlled by Women.....____ _____% (% of 6) _____

**APPENDIX**
**SAMPLE 3**

**PRE-ACQUISITION MANAGEMENT SYSTEM**
**(AMS)**

## MAJOR PROCUREMENT PROGRAM GOALS (ACTUALS) REPORT

## (MPPGR) DATA ITEM DESCRIPTIONS (2/98)

**Pre-AMS reports are to be generated containing the following data elements:**

**Pre-AMS Procurement Obligations,** as used in the MPPGR, is the sum of all procurement obligations that are **not** awarded pursuant to the AMS (excludes interagency agreements).

**Total Awards (Item 1)** are all pre-AMS procurement obligations awarded to large and small businesses excluding all interagency agreements. Item 1 must be equal to or greater than the sum of Items 2 - 5.

**Awards to Small Business Concerns (Item 2)** are all pre-AMS procurement obligations awarded to small business concerns (i.e. 8(a) businesses, small business concerns owned and controlled by socially and economically disadvantaged individuals, small businesses owned and controlled by women and all other small businesses). Item 2 must be equal to the sum of Items 3
- 5.

**Awards to 8(a) Concerns (Item 3)** are all pre-AMS procurement obligations awarded to 8(a) firms via FSS, 8(a) competitive set-asides and/or 8(a) non-competitive set-asides only. Do not count in Item 3 if counted in Items 4 or 5.

**Awards to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged (SDB) Individuals (Item 4)** are all pre-AMS procurement obligations awarded to SDBs excluding awards to 8(a) firms via 8(a) competitive set-asides and/or 8(a) non- competitive set-asides. Do not count these awards in Item 4 if counted in Items 3 or 5.

**Awards to Small Business Concerns Owned and Controlled by Women (WOB) (Item 5)** are all pre-AMS procurement obligations awarded to WOBs excluding awards to 8(a) firms via 8(a) competitive set-asides and/or 8(a) non-competitive set-asides. Do not count these awards in Item
5 if counted in Items 3 or 4.

**Total Subcontracts Awarded by Prime Contractors (Item 6)** are all pre-AMS subcontract obligations awarded to large and small businesses. Item 6 must be equal to or greater than the sum of Items 7 - 9.

**Subcontracts Awarded to Small Business Concerns (Item 7)** are all pre-AMS subcontract obligations awarded to small businesses. Item 7 must be equal to or greater than the sum of Items 8 and 9.

**Subcontracts Awarded to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (Item 8)** are all pre-AMS subcontract

obligations awarded to SDBs. Do not count these awards in Item 8 if counted in Item 9.

**Subcontracts Awarded to Small Business Concerns Owned and Controlled by Women (Item 9)** are all pre-AMS subcontract obligations awarded to WOBs. Do not count these awards in Item 9 if counted in Item 8.

**Actual This Period (Column 3)** are all pre-AMS procurement obligations awarded during the current reporting period.

**Cumulative Actual to Date (Column 4)** are all pre-AMS procurement obligations awarded from October 1 of the current fiscal year through end of the current reporting period.

**Number of Actions (Column 5)** are the number of pre-AMS procurement actions that correlate to the "Actual This Period" procurement obligations (Column 3) or the "Cumulative Actual to Date"
(Column 4).

**SAMPLE 3 –**
**(cont'd.)**

**FEDERAL AVIATION ADMINISTRATION PRE-ACQUISITION MANAGEMENT SYSTEM**

**MAJOR PROCUREMENT PROGRAM GOALS (ACTUAL) REPORT***

REPORTING OFFICE/DATE OF REPORT _____

FISCAL YEAR _____

(Dollars in
)

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 |
|---|---|---|---|---|
| | | **Actual This Period** | **Cumulative Actual to Date** | **Number of Actions** |
| 1. | Total Awards | $ | $ | |
| 2. | Awards to small Business Concerns (Include Items 3, 4, and 5 below) | $ | $ | |
| 3. | Awards to 8(a) Concerns | $ | $ | |
| 4. | Awards to Small Business Concerns owned and Controlled by Socially and Economically Disadvantaged Individuals (Exclude | $ | $ | |

| | | | | |
|---|---|---|---|---|
| | Item 3) | | | |
| 5. | Awards to Small business Concerns Owned and Controlled by Women (Exclude Item 3) | $ | $ | |
| 6. | Total Subcontracts Awarded by Prime Contractors | $ | $ | |
| 7. | Subcontracts Awarded to Small Business Concerns | $ | $ | |
| 8. | Subcontracts Awarded to Small business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals | $ | $ | |
| 9. | Subcontracts Awarded to Small Business Concerns Owned and Controlled by Women | $ | $ | |

* INCLUDE ALL PRE-AMS PROCUREMENT ACTIONS ON THIS REPORT EXCEPT INTERAGENCY AGREEMENTS.

**APPENDIX**
**SAMPLE 4**

**POST-ACQUISITION MANAGEMENT SYSTEM**
**(AMS)**

**MAJOR PROCUREMENT PROGRAM GOALS (ACTUALS) REPORT**

**(MPPGR) DATA ITEM DESCRIPTIONS (2/98)**

**Post-AMS reports are to be generated containing the following data elements:**

**Post-AMS Procurement Obligations,** as used in the MPPGR, are all procurement obligations that are awarded pursuant to the AMS only (excludes interagency agreements).

**Total Awards (Item 1)** are all post-AMS procurement obligations awarded to large and small businesses excluding all interagency agreements. Item 1 must be equal to or greater than the sum of Items 2 - 5.

**Awards to Small Business Concerns (Item 2)** are all post-AMS procurement obligations awarded to small business concerns (i.e. very small businesses, 8(a) businesses, small business concerns owned and controlled by socially and economically disadvantaged individuals, small businesses owned and controlled by women and all other small businesses). Item 2 must be equal to the sum of Items 2.1 - 5.

**Very Small Business Set-Asides (Item 2.1)** are all post-AMS procurement obligations awarded to very small businesses via FSS and/or very small business set-asides only. Do not include awards to very small businesses if the award was not made as a result of a FSS and/or

very small business set-aside. Do not count very small business set-aside awards in Items 3, 4, or 5. Do not count in Item 2.1 if counted in Items 3, 4, or 5.

**SEDB Set-Asides (8(a) (Item 3))** are all post-AMS procurement obligations awarded to 8(a) firms via FSS and/or SEDB set-asides only. Do not include awards to 8(a) firms if the award was not made as a result of a FSS and/or SEDB set-aside (8(a)). Do not count in Item 3 if counted in Items 2.1, 4, or 5.

**Awards to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged (SDB) Individuals (Item 4)** are all post-AMS procurement obligations awarded to SDBs excluding awards to 8(a) firms via SEDB 8(a) set-asides (Item 3). Do not count these awards in Item 4 if counted in Items 2.1, 3, or 5.

**Awards to Small Business Concerns Owned and Controlled by Women (WOB) (Item 5)** are all post-AMS procurement obligations awarded to WOBs excluding awards to 8(a) firms via SEDB 8(a) set-asides. Do not count these awards in Item 5 if counted in Items 2.1, 3, or 4.

**Total Subcontracts Awarded by Prime Contractors (Item 6)** are all post-AMS subcontract obligations awarded to large and small businesses. Item 6 must be equal to or greater than the sum of Items 7 - 9.

**Subcontracts Awarded to Small Business Concerns (Item 7)** are all post-AMS subcontract obligations awarded to small businesses. Item 7 must be equal to or greater than the sum of Items 8 and 9.

**Subcontracts Awarded to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (Item 8)** are all post-AMS subcontract obligations awarded to SDBs. Do not count these awards in Item 8 if counted in Item 9.

**Subcontracts Awarded to Small Business Concerns Owned and Controlled by Women (Item 9)** are all post-AMS subcontract obligations awarded to WOBs. Do not count these awards in Item 9 if counted in Item 8.

**Fiscal Year Goal (Column 3)** are the agency-wide fiscal year goals established for each post- AMS MPPGR category (Column 2).

**Actual This Period (Column 4)** are all post-AMS procurement obligations awarded during the current reporting period.

**Cumulative Actual to Date (Column 5)** are all post-AMS procurement obligations awarded from October 1 of the current fiscal year through the end of the current reporting period.

**Number of Actions (Column 6)** are the number of post-AMS procurement actions that correlate to the "Actual This Period" procurement obligations (Column 3) or the "Cumulative Actual to Date" (Column 4).

**SAMPLE 4 –**
**(cont'd.)**

**FEDERAL AVIATION ADMINISTRATION POST-ACQUISITION MANAGEMENT SYSTEM**

**MAJOR PROCUREMENT PROGRAM GOALS (ACTUAL) REPORT***

REPORTING OFFICE/DATE OF REPORT _____

FISCAL YEAR _____

(Dollars in )

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 |
|---|---|---|---|---|---|
| | | **Fiscal Year $ Goal** | **Actual This Period** | **Cumulative Actual to Date** | **Number of Actions** |
| 1. | Total Awards | $ | $ | | |
| 2. | Awards to small Business Concerns (Includes Items 2.1, 3, 4, and 5 below) | $ | $ | | |
| 2.1 | Very Small Business Set-Asides | | | | |
| 3. | SEDB (8(a)) Set-Asides | $ | $ | | |
| 4. | Awards to Small Business Concerns owned and Controlled by Socially and Economically Disadvantaged Individuals (Exclude Item 3) | $ | $ | | |
| 5. | Awards to Small business Concerns Owned and Controlled by Women (Exclude Item 3) | $ | $ | | |
| 6. | Total Subcontracts Awarded by Prime Contractors | $ | $ | | |
| 7. | Subcontracts Awarded to Small Business Concerns | $ | $ | | |
| 8. | Subcontracts Awarded to Small business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals | $ | $ | | |
| 9. | Subcontracts Awarded to Small Business Concerns Owned and Controlled by Women | $ | $ | | |

*EXCLUDE INTERAGENCY AGREEMENTS AND AWARDS NOT MADE UNDER THE ACQUISITION MANAGEMENT SYSTEM ONLY.

(NOTE: PROVIDE THE DETAIL FOR ITEMS 2, 3, 4, AND 5 ON A SEPARATE SHEET. DETAIL THE INDIVIDUAL AWARDS (EXCEPT FOR SIMPLIFIED PURCHASES) THAT EQUATE TO THE TOTAL "ACTUAL THIS PERIOD" REPORTED. INCLUDE NAME OF CONTRACTOR, AWARD AMOUNT, APPLICABLE STANDARD INDUSTRIAL CLASSIFICATION AND ETHNIC GROUP.)

## T3.14.1 Security Revised 1/2009

### A Security

### 1 Facility/Security

FAA Facility (per Order 1600.69, FAA Facility Security Management Program,Appendix 1,#29) is defined as any building, structure, warehouse, appendage, storage area, utilities, and component, which, when related by function and location form an operating entity owned, operated or controlled by the FAA**.**

### 2 Information and Systems Security

FAA ISS requirements are located in FAA Order 1370.82 with implementation in the ISS Handbook (1370.82A). Prior to the development of an information Security Certification and Authorization Package (SCAP), the information system (IS) owner coordinates with the Office of Security and Investigations (ASI) representative and reviews system-specific physical, personnel, classified material, and operations security assessments and/or requirements. System owners work closely with their ASI representatives to meet the needs of the system while maintaining compliance with existing FAA orders. AIS-300 is responsible for review of security plans and SCAPs. (See Security under FAST homepage for additional guidance).

### 3 Personnel Security Revised 4/2014

a. *Definitions.*

(1) *Access*. The ability to physically enter or pass through an FAA area or a facility; or having the physical ability or authority to obtain FAA sensitive information, materials, or resources; or the ability to obtain FAA sensitive information by technical means including the ability to read or write information or data electronically stored or processed in a digital format such as on a computer, modem, the Internet, or a local- or wide area network (LAN or WAN). When used in conjunction with classified information, access is the ability, authority, or opportunity to obtain knowledge of such information, materials, or resources, in accordance with the provisions of Executive Order (EO)12968, Access to Classified Information.

(2) *Classified Acquisition*. An acquisition that consists of one or more contracts in which offerors would be required to have access to classified information (Confidential, Secret, or Top Secret) to properly submit an offer or quotation to understand the performance requirements of a classified contract under the acquisition or to perform the contract.

(3) *Classified Contract*. Any contract, purchase order, consulting agreement, lease agreement, interagency agreement, memorandum of agreement, or any other agreement between FAA and another party or parties that requires the release or disclosure of classified information to the contractor and/or contractor employees in order for them to perform under the contract or provide the services or supplies contracted for.

(4) *Classified Information*. Official information or material that requires protection in the interest of national security and is labeled or marked for such purpose by appropriate classification authority in accordance with the provision of Executive Order 12958, Classified National Security.

(5) *Contractor Employee*. A person employed as or by a contractor, subcontractor, or consultant supporting FAA or any non-FAA person who performs work or services for FAA within FAA facilities.

(6) *Electronic Questionnaires for Investigations Processing (eQIP)*. Government system used to electronically process initial and subsequent investigation requests.

(7) *FAA facility*. Any staffed or unstaffed building structure, warehouse, appendage, storage area, utilities and components, which when related by function and location form an operating entity owned, operated or controlled by FAA.

(8) *Foreign National*. Any citizen or national of a country other than the United States who has not immigrated to the United States and is not a Legal Permanent Resident (LPR) of the United States.

(9) *Immigrant Alien*. Any person not a citizen or national of the United States who has been lawfully admitted for permanent residence to the United States by the U.S. Citizen and Immigration Service (USCIS). (Refer to the Immigration and Nationality Act (INA)(8 United States Code 1101), Sections 101(a)(3) and (20).

(10) *Non-Immigrant Alien*. Any person not a citizen or national of the United States who has been authorized to work in the United States by the USCIS, but who has not been lawfully admitted for permanent residence. (Refer to the INA, Sections 101(a)(3) and (20).

(11) *Operating Office*. An FAA line of business, an office or service in FAA headquarters or an FAA division-level organization in a region or center, or any FAA activity or organization that utilizes the services and/or work of a contractor.

(12) *Quality Assurance Program*. A system that provides a means of continuous review and oversight of a program/process to ensure (1) compliance with applicable

laws and regulations; (2) the products and services are dependable and reliable.

(13) *Resources*. FAA physical plant, sensitive equipment, information databases including hardware, software and manual records pertaining to agency mission or personnel.

(14) *Sensitive Information*. Any information which if subject to unauthorized access, modification, loss, or misuse could adversely affect the national interest, the conduct of Federal programs or the privacy to which individuals are entitled under Section 552a of Title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an EO or an Act of Congress to be kept secret in the interest of national defense or foreign policy. Sensitive data includes propriety data.

(15) *Sensitive Unclassified Information (SUI)*. Unclassified information withheld from public release and protected from unauthorized disclosure because of its sensitivity. Section 552a of Title 5, United States Code (the Privacy Act) identifies information, which if subject to unauthorized access, modification, loss, or misuse could adversely affect the national interest, the conduct of Federal programs or the privacy to which individuals are entitled.

(16) *Servicing Security Element (SSE)*. The FAA headquarters, region, or center organizational element responsible for providing security services to a particular activity.

(17) *Vendor Applicant Process (VAP)*. FAA system utilized to process and manage personnel security information for contractor personnel.

b. The National Industrial Security Program (NISP) was established by EO 12829, January 6, 1993, to protect the Government's classified information. The NISP Operating Manual (NISPOM) prescribes the requirements, restrictions, and other safeguards necessary to prevent unauthorized disclosure of classified information and to control authorized disclosure of Classified information released by the U.S. Government. NISPOM is available online at the NISP Library.

c. AMS Policy Section 3.5, Patents, Data, and Copyrights, contains policy for safeguarding classified information in patent applications and patents.

d. *Classified Information-Responsibilities of the Contracting Officer (CO).*

(1) Comply with NISP requirements.

(2) The CO must contact the personnel security specialists in the local office regarding FAA procedures and requirements for any contracting activity requiring access to classified information, whether that information is owned by another agency or FAA. The responsible security organizations includes the following:

(a) Headquarters – ASI-200

(b) Regions – 700-designated organizations, such as "ASO-700"

(c) Technical Center – ACT-8

(d) Aeronautical Center – AMC-700

(3) *Prescreening Information Request Phase.* COs should review all proposed Screening Information Requests (SIRs) to determine whether access to classified information may be required by offerors, or by a contractor during contract performance. If access to classified information may be required, the CO must comply with subparagraph d.(1) and d.(2) above.

(4) *SIR Phase.* COs must:

(a) Ensure the classified acquisition is conducted in accordance with the requirements of d.(1) and d.(2) above;

(b) Include appropriate security requirements and clauses in SIRs (see AMS Clause 3.14-1, Security Requirements, and its alternates); and as appropriate in SIRs and contracts when the contractor may require access to classified information. Requirements for security safeguards in addition to those provided in AMS Clause 3.14-1, Security Requirements, might be necessary in some instances; and

(c) Ensure the use of Contract Security Classification Specification, DD Form 254 when classified contracts are employed.

e. *Employment Suitability and Security Clearances for Contractor Personnel.* FAA's policy on personnel security for contractor employees, including those working on a FAA contract employed at contractor facilities, requires that procurement personnel take appropriate actions to protect the Government's interest where it appears that contractor employees, subcontractors, or consultants may have access to FAA facilities, classified information, sensitive information, and/or resources. Additional details of the agency's contractor and industrial security program are provided in FAA Order 1600.72A.

(1) *Security Clearances for Contractor Employees.*

(a) FAA Order 1600.72A provides that contracts requiring contractor employees to have access to classified information must be prepared and processed according to the procedures contained in the National Industrial Security Program Operating Manual (NISPOM)

(b) In the case of a contract or agreement where the FAA requires persons not employed by the U.S. Government to have access to classified information, a statement to that effect should be included in the SIR and the requirements of FAA Order 1600.72A.

(2) *Employment Suitability of Contractor Employees.*

(a) FAA Order 1600.72A provides specific guidance for determining suitability of FAA contractor employees for access to FAA facilities, sensitive information, and/or resources. It outlines risk levels and associated investigations requirements, and identified additional specific requirements and exemptions from investigative requirements.

(b) As it pertains to suitability determinations, at a minimum, the following actions are required:

(i) Each SIR should include provisions that require the contractor to submit an interim-staffing plan describing the anticipated positions and key employees, as appropriate.

(ii) CO and the appropriate SSE, with input from the Operating Office (e.g., Contracting Officer's Representative (COR), have the responsibility to make an initial determination as to the applicability of the order in any given SIR and/or contract. An assessment will be made up-front as to whether any positions contained in the staffing plan will require access to FAA facilities, sensitive information, and/or resources. If the CO determines that the order does not apply to a given SIR/contract, this will be documented in a memorandum to file, indicating the matter was given due consideration, addressed adequately, and said determination made.

(iii) The Operating Office, with input from the CO, has the responsibility to make initial position risk/sensitivity level designations based on the initial list of positions and the Statement of Work (SOW). FAA Order 1600.72A contains guidelines with a systematic process of uniformly designating program, position risk, and sensitivity levels. The Office of Personnel Management's Position Designation Automated Tool is to be used in conjunction with this process and to document the designations for all new contract awards. The FAA form 1600.77 Contractor Position Risk/Sensitivity Level Designation may continue to be used for existing contracts.

(iv) For modifications to existing contracts, the appropriate SSE will approve the Operating Office's initial position risk/sensitivity level designations prior to the execution of the modification and these positions and risk level designations should be included in AMS Clause 3.14-2 at the time the contract is modified. For new contracts, the same process would be followed for determining risk/sensitivity level designations, using information required by way of a provision in the SIR, with final positions and risk levels being inserted into Clause 3.14-2 at time of contract award.

(v) AMS Clause 3.14-2 will require the contractor to submit the completed documentation for each employee in a stated position, as necessary to permit the SSE to make an employment suitability

determination. This documentation must be submitted through applicable systems or directly to the SSE (for Privacy Act reasons) for approval, or denial of access, using the process described in FAA Order 1600.72A.

(vi) For new contracts, contractor employees must be required to submit the required documentation prior to performing or providing services or supplies under any FAA contract actions. Depending upon the nature and extent of access required, after an initial review of the documentation submitted by the contractor or contractor employee, the SSE may grant interim suitability for the contractor employee to commence performing or providing services or supplies under the contract pending completion of
the check and/or investigation and final suitability determination.

(vii) For modifications to existing contracts, contractor employees may continue working under the contract pending submission of the necessary documentation, if any, and completion of a suitability investigation by the SSE. Note there is a period of 30 days that cannot be exceeded in which contractors must submit the forms after the positions and associated risks have been identified via contract modification. The SSE may establish conditions governing such access pending completion of suitability investigation.

(viii) Notification of termination of employees performing within a stated position under a contract must be provided via the VAP to the FAA by the contractor within one (1) day.

(ix) COs will notify the SSE whenever a contract is issued or when the status of a contract changes (i.e., replaced, defaulted, terminated, etc.). Prior coordination of new contracts should have occurred between the Operating Office, the CO, and the SSE.

(c) *Procedures for Processing Security Investigations*.

(i) Upon contract award, the CO or company will communicate to the personnel security specialist (PSS) a point of contact (POC) who will enter data into the Vendor Applicant Process (VAP) (vap.faa.gov). This POC should be a representative designated by the contractor, and each contract may have a maximum of 5 POCs per contract. The VAP administrator will provide a Web ID and password to each POC.

(ii) The following information must be entered by the POC into the VAP for each contractor employee requiring an investigation:

(AA) Name

(BB) Date and place of birth (city and state);

(CC) Social Security Number (SSN);

(DD) Position and Office Location;

(EE) Contract number;

(FF) Current e-mail address and telephone number for applicant (personal or work); and

(GG) Any known information regarding current security clearance or previous investigations (e.g. the name of the investigating entity, type of background investigation conducted, contract number, labor category (Position), and approximate date the previous background investigation was completed).

(iii) The PSS will examine the information in VAP and check for prior investigations and clearance information.

(AA) If a prior investigation exists and there has not been a 2 year break in service, the PSS will notify the vendor and CO/COR that no investigation is required and that final suitability is approved.

(BB) If no previous investigation exists, the PSS will send the applicant an e-mail (with a copy to the CO or company):

(1) Stating that no previous investigation exists and the applicant must complete a form through the Electronic Questionnaires for Investigations Processing (eQIP) system;

(2) Instructing the applicant how to enter and complete the eQIP form;

(3) Providing where to send/fax signature and release pages and other applicable forms; and

(4) Providing instructions regarding fingerprints.

(iv) The applicant must complete the eQIP form and submit other applicable material within 15 days of receiving the e-mail from the PSS.

(v) If the eQIP form requires additional information, it will be rejected to the applicant with the reason for the rejection.

(vi) The PSS will notify the applicant and CO/COR of any interim suitability determinations.

(d) *Removal of Contractor Employees*. The POC, CO, or COR may notify the SSE/PSS when a contractor employee is removed from a contract by using the Removal Entry Screen of VAP.

(e) *Reports*. The POCs, COs, and CORs have the ability to run security reports from VAP for contracts and contractor employees.

f. *Costs of Investigations.* To pay for investigations, allotments of funds are made to regions, centers, and headquarters. Unless there has been a specific allotment to the SSE to pay for all contractor employee investigations for operating officers that the SSE services, each operating office must arrange to pay the costs for investigations on those employees working under contracts for which it is responsible. Security screenings, including fingerprint checks on contractor employees are funded through operational funds by each office or division. The operating office responsible for payment must provide the SSE with the accounting code information necessary to have the cost charged appropriately.

## 4 Foreign Nationals

Aliens and foreign nationals employed or hired by the contractor to perform services for the FAA must have resided within the United States for three (3) years of the last five (5) years unless a waiver of this requirement has been granted by the SSE in accordance with FAA regulations (see AMS Clause 3.14-3, Foreign Nationals as Contractor Employees).

## 5 Related Security Guidance and Tools

The following sections refer to areas within the procurement toolbox that contain security issues to be considered during contract formulation.

T3.1.6 Nondisclosure of Information

T3.2.1 Procurement Planning

T3.2.2.5 Commercial and Simplified Purchase Method

T3.2.2.6 Unsolicited Proposals

T3.2.2.7 Contractor Qualifications

T3.3.1 Contract Funding, Financing &

Payment T3.5 Patents, Rights in Data, and

Copyrights T3.6.4 Foreign Acquisitions

## 6 Sensitive Unclassified Information Revised 7/2012

a. *General*.

(1) FAA Order 1600.75, "Protecting Sensitive Unclassified Information (SUI)," outlines policy and guidance on protecting sensitive unclassified information (SUI).

(2) When a contract, order, lease, or agreement requires a contractor or offeror to have access to SUI, the Contracting Officer (CO) must incorporate appropriate security clauses into the solicitation or contract. These include clauses on safeguarding standards, personnel security suitability, and non-disclosure agreements.

(3) SUI may include information such as Personally Identifiable Information (PII), sensitive NAS data, construction drawings, or equipment specifications. Prospective FAA vendors may need access to this information to ensure they can accurately propose and perform the work that FAA requires.

(4) When a screening information request (SIR) includes information determined to be SUI, the CO (and anyone else granted access to the SUI) must take reasonable care disseminating the SUI documents and ensure the recipient has a *need-to-know* and is *authorized* to receive it.

b. *FOUO and SSI*. There are over 50 types of SUI; however the two types generally handled within FAA are:

(1) *For Official Use Only (FOUO).* FOUO is the primary designation given to SUI by FAA, and consists of information that could adversely affect the national interest, the conduct of Federal programs, or a person's privacy if released to unauthorized individuals. Uncontrolled issuance of FOUO may allow someone to:

(a) Circumvent agency laws, regulations, legal standards, or security measures; or

(b) Obtain unauthorized access to an information system.

(2) *Sensitive Security Information (SSI).* SSI is a designation unique to the FAA, DOT, and the Department of Homeland Security (DHS), and applied to information obtained or developed while conducting security activities, including research and development. Unauthorized disclosure of SSI can:

(a) Constitute an unwarranted invasion of privacy;

(b) Reveal trade secrets or privileged or confidential information; or

(c) Be detrimental to transportation safety or security.

c. *Distribution of SUI Information*. When distributing SUI information, the CO (and anyone else granted access to the SUI, including prime contractors, subcontractors, suppliers, etc.) must ensure the persons receiving the information are *authorized* to receive the SUI and have a *need- to-know*. Methods of pre-award SUI dissemination utilized in FAA include FedBizOpps and hardcopy dissemination.

d. *Federal Business Opportunities (FedBizOpps)*. FedBizOpps is an E-Gov initiative that provides a secure environment for distributing sensitive acquisition information (to include SUI) to vendors during the solicitation phase of procurement. This system electronically disseminates information or data to the vendor community while still protecting SUI from unauthorized distribution. Data that can be uploaded into FedBizOpps includes construction plans, equipment specifications, security plans, and SIRs. As FAA utilizes the FAA Contract Opportunities website to announce procurement opportunities, COs will utilize the Non-FBO Secure Document Link functionality in FedBizOpps when electronically distributing SUI.

(1) FedBizOpps provides several security measures to include:

(a) During processing of a vendor's access request to FedBizOpps, the vendor's profile is retrieved from the System for Award Management (SAM). Using the Data Universal Numbering System (DUNS) number, FedBizOpps ensures that the vendor seeking access is a viable vendor in SAM;

(b) *Marketing Partner Identification Number (MPIN).* A number required by FedBizOpps to access SUI. This number is unique to each vendor, and chosen by the vendor when each register with SAM;

(c) Vendors receive an e-mail after registration to confirm the validity of their identity and contact information;

(d) The access level of the data in FedBizOpps can be adjusted; the CO can specifically allow access to only certain vendors, or if a vendor requests access to the data and they are not specifically authorized, the system will verify with the CO if access should be granted (termed "Explicit Access Request");

(e) *Export Control.* When export control is selected in FedBizOpps, the system requires that the vendor be certified by the Defense Logistics Information Service Joint Certification Program before SUI will be released. This is usually reserved for technology related to military or space application; and

(f) The system tracks which Government users and vendors access the data through FedBizOpps.

(2) Use of FedBizOpps requires the CO to adhere to the following process:

(a) Upload SUI files into the FedBizOpps website (http://www.fbo.gov) by the procurement request (PR) and solicitation numbers. Note that the problems may arise when uploading attachments greater that 100 mb.

(b) "Release" the solicitation: Prior to it being made available to anyone through FedBizOpps, the CO must determine the scope of vendors allowed to access the data and release the data for authorized viewing.

(c) Once established in FedBizOpps, the system provides the CO a web address to provide to vendors that will link authorized persons directly into

the applicable data. The CO can email this link to individual vendors when access has been restricted, or can place it on a public announcement via the internet so, if properly registered, all interested parties may view the data. Prior to downloading the data, the vendor must electronically sign an SUI policy statement in FedBizOpps.

(3) Web-based training and user guides are available to both FAA users and contractors at http://www.fbo.gov.

e. *Hardcopy Dissemination of SUI Using FedBizOpps*. At times, electronic versions of documents or data do not exist, and the SUI must be disseminated in a hardcopy form. In situations such as this, the CO must still utilize FedBizOpps for vendor verification and for the vendor to electronically read and certify to SUI policy. This will eliminate the need for the CO to manually validate vendor information and document in hardcopy form the vendor's certification to properly handle and protect SUI. Once the vendor is verified by FedBizOpps and has agreed to the SUI policy, the hardcopy documentation can then be forwarded to that vendor. Processes for distributing SUI in hardcopy form to vendors are:

(1) The CO may upload a "Document Security Notice and SUI Request Form" into FedBizOpps for the vendor to download, complete, sign, and return to the CO requesting the SUI data. Because the form can only be accessed after vendor verification and certification to SUI policy has taken place, hardcopy documentation can be distributed to the vendor after the CO receives a completed form. In some situations a portion of the SUI may be available in digital media and the remainder in hardcopy form; the CO may upload into FedBizOpps the digital portion for the vendor to download directly and the request form for the vendor to request the remaining hardcopy documentation; or

(2) The CO may request the vendor to use the "CD" link for hardcopy SUI documentation. Once the vendor links to the SUI, has properly accessed FedBizOpps, and certified to SUI policy, they may select the "CD" link. Once the vendor selects the link, the system sends the CO an e-mail with the vendor's information and request for the SUI. This link can be used for both hardcopy documentation and information that the CO desires to distribute via a CD or other like media. f. *Registration with FedBizOpps*.

(1) The process in which a CO registers for FedBizOpps is:

(a) Access the FedBizOpps website at http://www.fbo.gov.

(b) Click the "Register Now" link for buyers.

(c) Enter name, position, and e-mail information.

(d) Use the Agency drop-down menu to select the proper agency from the list provided. FAA users will select Department of Transportation/Federal Aviation Administration (FAA) for “Agency,” and the proper FAA location in which the user resides for the “Contracting Office Location.” The location list for FAA includes Headquarters and each region and center.

(e) Select the type of user account required. COs will choose Buyer from the menu.

Note: If a CO needs to release solicitations and post SUI in FedBizOpps, the CO must register for buyer and engineer user rights. The user rights of an engineer allow for the posting of SUI, while those of the buyer group does not; however, the system does allow for a single user to have the rights of both user groups.

(f) Complete the remaining fields.

(g) Once the user clicks submit, the registration request is sent to the Administrator at DOT for processing. When approved, the user will receive an e- mail stating the result of the request and the appropriate username and password to use with FedBizOpps.

(2) The process in which a vendor registers in FedBizOpps is:

(a) Access the FedBizOpps website at http://www.fbo.gov.

(b) Click the "Register Now" link for vendors.

(c) The vendor will enter their DUNS Number for authentication.

(d) The vendor will review/update information retrieved from SAM, and enter other information to include a user name and password.

(e) Once submitted, the registration is analyzed and authenticated. If approved, the vendor will receive a confirmation page via e-mail detailing key information for FedBizOpps.

g. *Other Electronic Transfer and Dissemination*. Transfer and dissemination of SUI information beyond the intranet (internet or extranet, modem, DSL, wireless, etc.) must use at least 128 bit symmetric key encryption following NIST Special Publication 800-21 *Guideline For Implementing Cryptography in the Federal Government*. All transfers must use standard commercial products (such as PGP and Secret Agent) with encryption algorithms that are at least 128 bit symmetric (3DES, AES, RC4, IDEA, etc.), and follow the instructions outlined in this order. Authorized users that use project extranets for electronic project management during or after contract award to transfer SUI information are responsible for verifying and certifying to the CO that project extranets meet applicable physical and technical security requirements as determined by the Chief Information Officer. Access to the sites must be password protected and access must be granted only on a need-to-know basis. A record of those individuals who have had electronic access must be maintained by the CO or other disseminator in accordance with the system of keeping long-term records.

h. *Record Keeping*. Those who disseminate SUI information must obtain a signed "Document Security Notice and SUI Request Form" from anyone who receives the information (except for those vendors that utilize FedBizOpps for electronic data). Records of the signed forms

must be maintained by the disseminator and destroyed 2 years after final disposition of the related SUI material (FAA Order 1350.15C and GRS 18 Item 1). At the completion of work, secondary and other disseminators must turn over their dissemination records to FAA, to be kept with the permanent files. The only records that the CO must keep for those vendors that utilize FedBizOpps to request SUI are the request forms for hardcopy documentation and any documentation detailing subsequent dissemination by the vendor and their subcontractors or suppliers. Records of those who accessed SUI information via FedBizOpps and their associated SUI policy certifications are stored in FedBizOpps itself.

i. *Retaining and Destroying Documents*. The requirements above must continue throughout the entire term of contract and for whatever specific time thereafter as may be necessary. Necessary record copies for legal purposes (such as those retained by the architect, engineer, or contractor) must be safeguarded against unauthorized use for the term of retention. Documents no longer needed must be destroyed (such as after contract award, after completion of any appeals process, or completion of the work). Destruction must be by burning or shredding hardcopy, and physically destroying CDs, deleting and removing files from electronic recycling bins, and removing material from computer hard drives using a permanent erase utility or similar software.

j. *Notice of Disposal*. For all contracts using SUI, the contractor must notify the CO that it and its subcontractors have properly disposed of the SUI documents, except the contractor's record copy, at the time of Release of Claims to obtain final payment.

k. *State and Local Governments*. To comply with local regulations, FAA must provide localities with documents to issue building permits and to approve code requirements. Public safety entities such as fire departments and utility departments require unlimited access on a need-to- know basis. These authorities must be informed at the time they receive the documents that the information requires restricted access from the general public. When these documents are retired to local archives, they should be stored in restricted access areas. This will not preclude the dissemination of information to those public safety entities.

l. *Proprietary Information Owned by Architect/Engineers*. All professional services consultants must sign the "Document Security Notice and SUI Request Form" that documents containing SUI created under contract to the Federal Government must be handled according to the procedures under this guidance.

m. *Private Sector Plan Rooms*. Numerous private sector businesses provide plan rooms, which provide access to construction plans and specifications for bidding purposes as a service to construction contractors and subcontractors. Before receiving SUI from any source for dissemination, the private sector plan room must demonstrate to FAA that they will adhere to the procedures outlined this guidance, and sign the "Document Security Notice and SUI Request Form."

**B Clauses** **Revised 1/2009**

view contract clauses

**C Forms** Revised 1/2009

view procurement forms

The following security forms apply to FAA procurement:

- *FAA Form 1600-77 – Contractor Position Risk Sensitivity Designation Level Record*: For use by FAA personnel in designating position risk/sensitivity levels for contractor employees, and may be obtained in electronic format via the FAST Toolset (Procurement Forms).
- *DD Form 254 – Contract Security Classification Specification*: For use by FAA personnel when classified contracts are employed.

## T3.15.1 Systems and Parts Obsolescence Management

### A Systems and Parts Obsolescence Management

### 1 Objective

The intent of this document is to recommend procedures and methods, which should provide program managers, logistical support managers, and any individuals involved with National Airspace Systems (NAS) acquisition and transition planning options to manage systems and parts obsolescence.

Systems obsolescence relates to commercial off-the-shelf (COTS) product obsolescence. Sample guidelines contained in the Forms Section C of this document may be used for COTS-based systems acquisitions.

Parts obsolescence is referred to as diminishing manufacturing sources and material shortages (DMSMS) for custom developed electronic modules. DMSMS is defined as the loss or pending loss of manufacturers or suppliers of critical items and new materials due to discontinuance of production. The following sections of this document relate to DMSMS.

### 2 Statement of Issue

Rapid changes in technology and the move from Military Specification (MIL-SPEC) parts to industrial and commercial grade parts have caused the semiconductor industry to experience a tremendous turnover in the market. This is due in part to congressional mandates and the shrinking military influence for MIL-SPEC parts brought on by the reduction in defense weapon systems. This has had a profound effect on agencies like the FAA because many of the systems were procured using Military Standards to establish logistics requirements. Today many of the systems are still operational and form a vital part of NAS. Changes in microelectronics in 2-year or less time frames are creating a continuous DMSMS issue which impacts system's cost, and maintenance requirements.

It is advantageous for FAA to initiate, or join an existing program that performs parts obsolescence and material shortage projections and analysis at the onset of a program and

through its life cycle. Parts obsolescence and DMSMS impacts design considerations, cost, scheduling, supply, support cost, and maintenance resources. A coordinated management implementation strategy should be implemented to deal with the issues that affect the reliability and availability of NAS systems and equipment.

There are methods, procedures and tools designed to give early identification of DMSMS to assist program managers and logistical support managers with decision related to cost and schedule. Program managers and logistical support persons should consider the utilization of these techniques and tools.

**3 Planning**

In accordance with Section 6.1 of the Federal Aviation Administration Acquisition System Toolset, Integrated Logistics Support (ILS) is a critical functional discipline that establishes and maintains a support system for all FAA products and services. The principles of ILS include ensuring active participation of all project management teams.

DMSMS and parts obsolescence issues are important parts of the life cycle acquisition process. Item managers should be included as part of the acquisition process from onset of a program.

**4 Logistics Center**

Long-term planning is an integral part of logistics. Before new NAS equipment is installed, detailed logistics support life cycle requirements are analyzed by the Federal Aviation Administration’s Logistics Center’s (FAALC) provisioners, engineers, Logistic Integrator(s), and Logistics Management Specialists. New systems may demand new repair techniques that require special test equipment and procedures. The requirements, as well as replacement items and the components needed to repair failed equipment, should be analyzed and included in the Federal Aviation Administration’s (FAA) plans for a modernized NAS.

As new NAS equipment is fielded, tested and declared operational, it is "commissioned." In order for a facility, system, sub-system, or equipment to be considered commissioned it must be formally accepted, supportable, and placed into operational use or service as part of the NAS, and its controlling Airway Facilities sector has assumed formal maintenance responsibility. The Logistics Center provides the supply support to keep older and often obsolete systems and equipment in continual operating condition until "decommissioning."

**5 Requirements Organization's Role And Responsibility**

The requirements organization should include DMSMS provisions in procurement planning documents, screening information request (SIRS), specifications, engineering requirements, purchase descriptions, work statements, work orders, and procurement request necessary to meet the DMSMS objectives set forth in paragraph A.1. See Section C for Sample Contract Data Requirement List and Sample Data Item Description.

## 6 Contracting Organization's Role And Responsibility

Prior to issuance of the SIR, the contracting officer ensures appropriate DMSMS provisions are included in the documentation.

## 7 Logistics Integrator(s) Role And Responsibility

The function of a Logistics Integrator(s) should include making part availability projections, performing part and materials analysis, and interfacing with one or more of the already established part obsolescence systems.

Some available systems already on line that manage computerized parts obsolescence and DMSMS programs are: the United States Air Force Material Command's Diminishing Manufacturing Sources and Material Shortages program; the Defense Supply Center, Columbus; the Government Industry Data Exchange Program (GIDEP) and commercial companies.

## 8 GIDEP Coordinator's Role And Responsibility

The FAA GIDEP Coordinator's function is assigned to the Procurement Support and Information Services Branch, ASU-110. The GIDEP coordinator's responsibilities include:

a. Serves as the focal point for coordination of users of the GIDEP system in FAA Headquarters, Regions, and Centers.

b. Serves as the source for obtaining information on DMSMS parts via the GIDEP's Urgent Data Request (UDR) system. See section C for UDR form. Additional information on the UDR system and GIDEP is available on the internet (http://www.gidep.org)

## B Clauses

view contract clauses

## C Forms

view procurement forms

## D Appendix

Sample 1 – Contract Data Requirement List for Commercial Product Management Plan

Sample 2 – Data Item Description for Commercial Product Management Plan

## T3.16 Commercial Licensing Agreement Added 4/2006

### A Commercial Licensing Agreement Revised 1/2016

1. Commercial Licensing Agreements (agreements) provide terms and conditions for the FAA to use various commercial software programs that the Government does not own. Often there are embedded terms in the agreements that could create legal problems for the FAA or the agreements may provide terms that conflict with other contract provisions. These conflicts also have potential to create legal problems, and both issues could cause unexpected liabilities.

2. The Contracting Officer (CO) should use the attached Appendix "Checklist For Review of Commercial Form Contracts" (software licenses, etc.) to examine pertinent clauses and agreement requirements to prevent unfavorable terms or conflict with FAA contracts.

3. Only the CO is authorized to enter into Commercial Licensing Agreements.

4. The CO must consult with legal counsel to ensure that agreement terms and conditions minimize FAA's liability, and strike a balance between the FAA's requirements needs and the contractor's proprietary interest.

### B Clauses Added 4/2006

view contract clauses

### C Forms Added 4/2006

view procurement forms

### D Appendix Revised 1/2016

**Checklist for Review of Commercial Form Contracts (Software licenses, etc.)**

1. Review AMS clause 3.5-18, "Commercial Computer Software-Restricted Rights," which either is, or should be added into, the basic contract. Delete all clauses and terms inconsistent with AMS, e.g., "breach," "payment," "termination," "binding arbitration."

2. Delete any "Governing Law" provision unless it specifies Federal law; e.g., "This agreement must be subject to the laws of the state of Michigan."

3. Scrutinize the document for any attempts to impose additional license fees, i.e., if the software is to be used by anyone in the FAA not specifically identified in the agreement or contract.

4. Check for clauses that attempt to restrict use of the software to specific machines or networks in specific locations. Delete as necessary.

5. Delete any and all indemnity or attorney's fees provisions in contractor's favor. See Anti- Deficiency and Equal Access to Justice Acts, respectively.

6. Delete integration or merger clauses; the FAA contract will govern the rights and responsibilities of the parties, not a stand-alone license agreement.

7. Avoid open items (e.g., form blanks not filled in); these items must be negotiated and recorded prior to execution.

8. No incorporation of future prices, terms, etc. (For example, software licenses cannot automatically renew each year if the FAA will become obligated to pay a yearly licensing fee.)

9. Delete any interest-for-late-payment terms varying from the Prompt Payment Act.

10. Eliminate extensive warranty disclaimers, particularly disclaimers for defects in "third party products," where a subcontractor or supplier provides input into the final contract deliverable.

11. Watch for and delete clause that give the contractor exclusive control over infringement litigation. The Department of Justice would represent FAA in any such litigation, and expect a certain amount of control.

12. Delete damages and/or liability clauses which are inconsistent with FAA clauses.

13. Delete injunctive release terms that could arbitrarily stop performance.

14. Ensure that the FAA use of copyrighted material will not be considered an infringement of the copyright.

## T3.17 American Recovery and Reinvestment Act Revised 5/2009

### A Implementation of Recovery and Reinvestment Act for Contracts Added 4/2009

#### 1 General Requirements Added 4/2009

a. The American Recovery and Reinvestment Act ("Recovery Act"), Public Law 111-5, authorizes additional F&E funding for improvements to power systems, air route traffic control centers, air traffic control towers, terminal radar approach control facilities, and navigation and landing equipment. The FAA has identified priority F&E projects within the aforementioned areas. Special contracting requirements described in this guidance apply **only** to procurements funded through the Recovery Act.

b. The Recovery Act does not provide authority to waive any documentation or approval

required for procurement planning, solicitation, evaluation, and award. The Contracting Officer (CO) must comply with existing AMS policy and guidance for any project funded through the Recovery Act.

c. The Recovery Act requires special reporting from both contractors and FAA. Timeliness and accuracy of data is critical.

d. Thorough and complete contract documentation and data reporting is especially important considering Recovery Act requirements for increased oversight and review by the Inspector General (IG) and Government Accountability Office (GAO).

e. The ATO Capital Program Formulation Group (AJF-25) at headquarters will track status of projects, funding, and expenditures for Recovery Act. COs will provide their program offices with estimated procurement lead times and status of solicitation, evaluation and award of Recovery Act projects.

## 2 Public Announcement Added 4/2009

a. The CO must post presolicitation announcements for all Recovery Act actions exceeding $25,000 on FAA Contract Opportunities. This includes presolicitation announcement for any order expected to exceed $25,000 under a task or delivery order contract, including Government Wide Acquisition Contracts (GWAC), multi-agency contracts, and Federal Supply Schedule contracts.

b. For Recovery Act procurements, the following special formatting is required for public announcements:

(1) All presolicitation notices must include the word "RECOVERY" as the first word in the title field preceding the actual title in the announcement.

(2) Presolicitation notices for task and delivery orders must also include the following statement in the "Description" field preceding the actual description: "THIS NOTICE IS FOR INFORMATION PURPOSES ONLY. THIS OPPORTUNITY IS AVAILABLE ONLY TO CONTRACTS UNDER COMMITS, etc.) (insert contracting program name, e.g., BITS, FSS 07 85P,

(3) Contract award announcements are required for any contract, and task and delivery orders exceeding $25,000, including GWAC, multi-agency contracts, and Federal Supply Schedule contracts. To facilitate transparency and ensure consistency in tracking award announcements for Recovery Act funds, the CO must insert the word "RECOVERY" as the first word in the title field preceding the remaining title in the FAA Contract Opportunities.

## 3 Solicitation and Award Revised 1/2010

*a. Competition and Fixed Price Awards.* To the extent practicable, Recovery Act awards should be competitive and fixed priced. The CO should properly document the rationale when competition or a fixed priced arrangement is not appropriate for Recovery Act-funded awards.

*b. Separate Tracking of Recovery Act Funds.* To maximize transparency of Recovery Act funds required for reporting by the contractor, the CO should structure contract awards to allow for separate tracking Recovery Act funds and projects. For example, the CO should consider awarding dedicated separate contracts when using Recovery Act funds or establishing CLIN structures so that Recovery funds are not co-mingled with other funds.

c. *Contractor Reporting Clause*. The CO must insert AMS clause 3.17-1 "American Recovery and Reinvestment Act-Reporting Requirements" in all solicitations, contracts, orders, and modifications funded in whole or in part with Recovery Act funds, except classified solicitations, contracts, and orders. FAA-generated forms and instructions must be used in conjunction with this clause. COs must not use Recovery Act funds on new or existing contracts and orders if this clause is not incorporated.

d. *Buy American Act for Recovery Construction*. Existing FAA Buy American-Steel and Manufactured Products guidance and clause meet the intent of Recovery Act requirements for domestic preference for steel and manufactured products. All solicitations, contracts, orders, and modifications must include the AMS clause 3.6.4-5 "Buy American--Steel and Manufactured Products" and AMS provision 3.6.4-18 "Certification Regarding Steel and Manufactured Products."

e. *Inspector General and Comptroller General Oversight*. To allow for oversight on use of Recovery Act funding, all solicitations, contracts, orders, and modifications must include the AMS clause 3.17-2 "Authority of the Inspector General and Comptroller General Relating to Contracts Using American Recovery and Reinvestment Act Funding."

f. *Procurement Milestones*. Upon receiving a procurement request (PR) that cites Recovery Act funds, the CO must send notification to the requesting program office to include:

PR Number and date PR was received;
Planned date of SIR issuance; and
Planned date of award.

Program offices will use these milestones to track the obligation of their Recovery Act funded requirements and report on the status of the funds. After the milestones are established, the CO should prepare updates to program offices upon request.

g. *Management Notification*. The CO must notify senior management, e.g., ATO Vice President or Associate Administrator, through his or her respective management chain, of any award over $25,000 using recovery funds. Notification should occur before signing the award. The notification will be through email and include a subject line "Information - Recovery Act Contract Award," and the contractor's name, brief description of service/supplies, dollar amount, contract type, whether a new award or modification to an existing contract, and period of performance. The CO must also send a courtesy copy of this notification, along with the name of a primary point of contact for the contractor, to ATO Capital Program Formulation Group (AJF-25) at headquarters (send to: kelly.holliday@faa.gov ).

h. *Congressional Notification.* Regardless of dollar value, all awards, including

modifications or delivery/task orders, that use recovery funds must follow the procedures for Congressional Affairs notification specified in Procurement Guidance T3.13.1 A3. (*Note*: the T3.13.1 exemption for modifications/orders under previously announced awards does not apply to Recovery Act awards). The notification form, DOT-4220.41, Contract Award Notification, must also include "RECOVERY" in bold on line (1) "Operating Administration."

## 4 Reporting Revised 1/2010

a. *Contractor Reporting on Use of Funds*.

(1) Contractors that receive any awards (including modifications) funded by the Recovery Act must report information including, but not limited to, the dollar amount of contractor invoices, the supplies delivered and services performed and the amount for which the contractor has invoiced, an assessment of the completion status of the work, and an estimate of jobs created and retained as a result of the Recovery Act funded award.

(2) At the time of award, ATO Capital Program Formulation Group (AJF-25) will provide FAA Recovery Act reporting forms and instructions to the contractor. Contractors must report data using the following FAA form:

Monthly Prime and Subcontractor Employment Report

This form must be submitted electronically (in MS Excel format) to an FAA email box for Recovery Act reporting: 9-AJF-CWP-StimulusTracking@faa.gov

ATO Capital Program Formulation Group (AJF-25) will compile all monthly contractor job related information into a report that ABU will consolidate for all FAA Recovery Act projects and grants. ABU will present the consolidated report to the Secretary of Transportation.

b. *Failure to Report*. The CO must make the contractor's failure to comply with the reporting requirements a part of the contractor's past performance information. As with other contract deliverables, the CO may use remedies such as withholding payment or seeking other consideration for a contractor's failure to deliver contractually specified reports within required timeframes.

c. *Purchase Cards*. A special area in the comments field in U.S. Bank's online system has been established for Recovery Act-funded transactions. Purchase card holders must include an adequate description of the supplies/services purchased and the F&E JCN under which the purchase was made in the comments field.

## 5 FPDS and Special Notice Requirements Revised 7/2010

a. *TAS Code*. When entering data in FPDS on any action (including modifications) funded by the Recovery Act, the CO must enter the Treasury Account Symbol (TAS) in the "Product

Title Description" field. The TAS code must be entered with "TAS::" preceding the code and "::TAS" following the code. The TAS code for FAA actions is 69 1304. The entry would appear as follows: TAS::69 1304::TAS

b. *Awards*. The CO must include "RECOVERY" as the first word in the contract description for any Recovery Act contract or order, or modification to an existing contract or order.

c. *Noncompetitive or Not Fixed Price*. For all Recovery Act awards that are not competitively awarded or not fixed price, the CO must prepare a summary of the contract with a description of products or services consistent with the chart below:

| **Description of Contract Action** | **Rationale Required?** |
|---|---|
| (1) A contract is competitively awarded and is fixed price | Not Required |
| (2) A contract is awarded that is not fixed price | Required |
| (3) A contract is awarded without competition | Required |
| (4) An order is issued under a new or existing single award indefinite delivery-indefinite quantity (IDIQ) contract | Required if order is made under a contract described in (2) or (3) |
| (5) An order is issued under a new or existing multiple-award IDIQ contract | Required if one or both of the following conditions exist: |
| | i. the order is not fixed price<br><br>ii. the order is awarded pursuant to an exception to the competition requirements applicable to the underlying vehicle |
| (6) A modification is issued | Required if modification is made:<br><br>i. to a contract described in (2) or (3) above; or<br><br>ii. to an order requiring posting as described in (4) or (5) above |

**6 Whistleblower Protections under the American Recovery and Investment Act** **Added 4/2009**

a. This implements Section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), and applies to all contracts funded in whole or in part by that Act.

b. *Definitions.*

"Board" means the Recovery Accountability and Transparency Board established by Section 1521 of ARRA.

"Covered information" means information that the employee reasonably believes is evidence of gross mismanagement of the contract or subcontract related to covered funds, gross waste of

covered funds, a substantial and specific danger to public health or safety related to the implementation or use of covered funds, an abuse of authority related to the implementation or use of covered funds, or a violation of law, rule, or regulation related to an agency contract (including the competition for a negotiation of a contract) awarded or issued relating to covered funds.

"Covered funds" means funds appropriated by or otherwise made available by the ARRA.

“Inspector General” means the Department of Transportation Inspector General appointed under the Inspector General Act of 1978, as amended.

“Non-Federal employer,” as used in this section, means any employer that receives ARRA funds, including a contractor, subcontractor, or other recipient of funds pursuant to a contract or other agreement awarded and administered in accordance with the Federal Aviation Administration Acquisition Management System.

c. General.

(1) Non-Federal employers are prohibited from discharging, demoting or otherwise discriminating against an employee as a reprisal for disclosing covered information to any of the following entities:

(a) The Board.

(b) An Inspector General.

(c) The Comptroller General.

(d) A member of Congress.

(e) A State or Federal regulatory or law enforcement agency.

(f) A person with supervisory authority over the employee or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct.

(g) A court or grand jury.

(h) The head of a Federal agency, or its representatives.

(2) A contracting officer who receives a complaint of reprisal of the type described in paragraph (1) must forward it to legal counsel or to the appropriate party in accordance with agency procedures.

d. *Procedures for filing complaints.*

(1) An employee who believes that he or she has been subject to reprisal prohibited by ARRA Section 1553 should submit a complaint regarding the reprisal to the Inspector

General of the agency that awarded the contract.

(2) The complaint must be signed and must contain

(a) The name of the contractor;

(b) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;

(c) The covered information giving rise to the disclosure;

(d) The nature of the disclosure giving rise to the discriminatory act; and

(e) The specific nature and date of the reprisal.

e. *Procedures for investigating complaints.*

(1) Except as provided under T3.17.A.6.d.(1), unless the Inspector General determines that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has previously been invoked to resolve such complaint, the Inspector General will investigate the complaint, and upon completion of the investigation submit a report of the findings to

(a) The employee and any person acting on the employee's behalf;

(b) The employee's employer;

(c) The head of the appropriate agency: and,

(d) The Board.

(2) Except as provided at Section T3.17.A.6.e.(1)(c), the Inspector General will, not later than 180 days after receiving a complaint under T3.17.A.6.e.(1):

(a) Make a determination that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has been previously invoked to resolve such complaint; or

(b) Submit a report under T3.17.A.6.e.

(c) If the Inspector General is unable to complete an investigation under this section in time to submit a report within 180 days after receiving the complaint

(i) If the employee submitting the complaint agrees to the extension of time, the Inspector General will submit a report under T3.17.A.6.e. within such additional period of time as must be agreed upon between the Inspector General and the employee submitting the complaint.

(ii) The Inspector General should extend the period for not more than 180 days without obtaining the agreement of the person submitting the complaint to such extension, provided that the Inspector General provides a written explanation for the decision which will be provided to both the employee submitting the complaint and the non-Federal employer.

(d)

(i) The Inspector General should decide not to conduct or continue an investigation upon providing to the employee submitting the complaint and the employee's employer a written explanation.

(ii) Upon receipt of the Inspector General's decision not to conduct or continue an investigation, the employee must immediately assume the right to a civil remedy under ARRA Section 1553 (c)(3).

f. *Access to Investigative File of Inspector General.*

(1) The non-Federal employee alleging reprisal under this section must have access to the investigation file of the Inspector General, in accordance with the Privacy Act, 5 U.S.C. § 552a. The investigation of the Inspector General must be deemed closed for the purposes of disclosure under such section when an employee files an appeal to the agency head or a court of competent jurisdiction.

(2) In the event the employee alleging reprisal brings a civil action under T3.17.A.6.g., the person alleging the reprisal and the non-Federal employer must have access to the investigative file of the Inspector General in accordance with the Privacy Act.

(3) The inspection should exclude from disclosures made under T3.17.A.1.f.—

(a) Information protected from disclosure by a provision of law; and

(b) Any additional information the Inspector General determines disclosure of which would impede a continuing investigation, provided that such information is disclosed once such disclosure would no longer impede such investigation, unless the inspector general determines that the disclosure of law enforcement techniques, procedures, or information could reasonably be expected to risk circumvention of the law or disclose the identity of a confidential source.

(4) An Inspector General investigating an alleged reprisal under this section should not respond to any inquiry or disclose any information from or about any person alleging such reprisal, except in accordance with the 5 U.S.C. 552a.

g. *Remedies and enforcement authority.*

(1) *Burden of Proof.*

(a) *Disclosure as contributing factor in reprisal.*

(i) An employee alleging a reprisal under this section must be deemed to have affirmatively established the occurrence of the reprisal if the person demonstrates that a disclosure described in T3.17.A.6.c. was a contributing factor in the reprisal.

(ii) A disclosure should be demonstrated as a contributing factor in a reprisal for purposes of this paragraph by circumstantial evidence, including--

(A) Evidence that the official undertaking the reprisal knew of the disclosure; or

(B) Evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal.

(2) *Opportunity for rebuttal*.

(a) The Administrator should not find the occurrence of a reprisal with respect to a reprisal that is affirmatively established under T3.17.A.6.c. if the non- Federal employer demonstrates by clear and convincing evidence that the non-Federal employer would have taken the action constituting the reprisal in the absence of the disclosure.

(b) No later than 30 days after receiving an Inspector General report under T3.17.A.6.d., the Administrator concerned must determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the complainant to a reprisal prohibited by T3.17.A.6.g.(1) and must either issue an order denying relief in whole or in part or must take one or more of the following actions:

(i) Order the employer to take affirmative action to abate the reprisal.

(ii) Order the employer to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay),compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(iii) Order the employer to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

(c)

(i) The complainant must be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant should bring a de novo action at law or equity against the employer to seek compensatory

damages and other relief available under this section in the appropriate district court of United States, which must have jurisdiction over such an action without regard to the amount in controversy if

(A) The Administrator

(a) Issues an order denying relief in whole or in part under paragraph (a) of this

(b) Has not issued an order within 210 days after the submission of a complaint under section 3.17.A.6.c, or in the case of an extension of time section 3.17.A.6.c, within 30 days after the expiration of the extension of time; or

(c) Decides under 3.17.A.6.c

(i) not to investigate or to discontinue an investigation; and

(B) There is no showing that such delay or decision is due to the bad faith of the complainant.

(ii) Such an action must, at the request of either party to the action, be tried by the court with a jury.

(d) Whenever an employer fails to comply with an order, the Administrator must request the Department of Justice to file an action for enforcement of such order in the district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court should grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney's fees and costs.

(e) Any person adversely affected or aggrieved by an order issued under this section should obtain review of the order's conformance with the law, and this section, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review should be filed more than 60 days after issuance of the order by the Administrator.

**7 Federally Registered Lobbyists** **Added 5/2009**

a. The Presidential Memorandum of March 20, 2009, "Ensuring Responsible Spending of Recovery Act Funds," requires that public funds are committed responsibly and in a transparent matter.

b. COs should allow lobbyist communications on procurement opportunities through normal channels, such as the FAA Contract Opportunities page, and at widely attended

gatherings (e.g., offeror conferences).

c. COs must not have private communications with a lobbyist to discuss market survey information, or for any other purpose. The CO must document that such communications are not being conducted with a lobbyist.

d. As required by T3.2.2, Source Selection Process, a lobbyist must submit question(s) in writing. In addition, both the lobbyist question(s) and the CO's answer(s) must be made available on the FAA Recovery Act website within three days of receipt at: http://www.faa.gov/recovery/

e. For more detailed information, see the Presidential Memorandum of March 20, 2009 at: https://www.gpo.gov/fdsys/pkg/DCPD-200900177/content-detail.html

**B Clauses** **Added 4/2009**

view contract clauses

**C Forms** **Revised 1/2010**

view procurement forms

AJF-25 will send the "Monthly Prime and Subcontractor Employment Report" form directly to the contractor. AJF-25 will copy the CO on the electronic transmission of the Monthly Prime and Subcontractor Employment Report form to the contractor. When the contractor submits the completed form to AJF-25, the contractor will also provide a copy of the completed form to the
CO as proof of submission. Form (MS Excel file):

Monthly Prime and Subcontractor Employment Report

Instructions for Forms:

Monthly Prime and Subcontractor Employment Report