

CHANGE REQUEST COVER SHEET

Change Request Number: 09-78

Date Received: 6/17/2009

Title: FAA Conferences- Addition of Legal Review Threshold

Name: Jeffrey Baker

Phone: 202-493-5723

Policy OR Guidance: Policy/Guidance

Section/Text Location Affected: AMS Procurement Guidance T3.2.2.5

Summary of Change: Addition of guidelines and a \$100,000 threshold to the legal review of FAA conferences.

Reason for Change: This revision is being submitted to ensure legal review requirements are consistent with the remainder of AMS.

Development, Review, and/or Concurrence: AGC, AJA-43, AJA-431, AJA-45, ARC

Target Audience: FAA Acquisition Community

Potential Links within FAST for the Change: None

Briefing Planned: No

ASAG Responsibilities: None

Potential Links within FAST for the Change: None

Links for New/Modified Forms (or) Documents (LINK 1)

Links for New/Modified Forms (or) Documents (LINK 2)

Links for New/Modified Forms (or) Documents (LINK 3)

SECTIONS EDITED:

Procurement Guidance:

T3.2.2.5 - Simplified Purchase Method [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.2.2.5 - Simplified Purchase Method

Simplified Purchasing

Section 5 : FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS EDITED:

T3.2.2.5 - Simplified Purchase Method (Revision 22, March 2009)

Old Content: Procurement Guidance:

T3.2.2.5 - Simplified Purchase Method (Revision 22, March 2009) New Content:
Procurement Guidance:

T3.2.2.5 - Simplified Purchase Method Red Line Content: Procurement Guidance:

T3.2.2.5 - Simplified Purchase Method ~~(Revision 22, March 2009)~~

Section 5 : FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops

Old Content: Procurement Guidance:

T3.2.2.5 - Simplified Purchase Method

Simplified Purchasing

Section 5 : FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops

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.

b. *Coordinating Space Needs.* The FAA should use Government-owned space when available in the location of the conference and if it satisfies all of FAA's needs. When adequate Government space is not available, conference planners may obtain commercial space. Before renting short-term meeting space, conference planners must coordinate with the cognizant FAA facilities management organization. In metropolitan Washington, DC, the Washington Area Facilities Management Office (ALO-100) coordinates use of both commercial and General Services Administration-controlled space. Personnel in Centers, and Service Areas should consult with their cognizant facilities management organization. After the request for conference space has been coordinated through the facilities management organization, conference planners may then discuss requirements with meeting space vendors or hotels. The conference or meeting space must not be used or occupied until an agreement is signed by a Contracting Officer (CO) or the space has been purchased by a person with delegated purchasing authority. Legal counsel must

first review any agreement between a FAA and a hotel. (See AMS Real Estate Guidance 2.4.6, Appendix F, for more information on short-term conference and meeting space).

c. *Procurement Method.* Any procurement mechanism, such as a contract, purchase order, BPA, or purchase card, may be used to purchase short-term conference or meeting space and related services.

(1) The FAA purchase card may be used to pay for meeting space and services. Cardholders cannot purchase food or beverage, *except* light refreshments for FAA award ceremonies or food and beverage for official receptions using the Administrator's reception and representation funds. When an all-inclusive, fixed price meeting space or service includes food and beverage, the purchase card cannot be used as a procurement method but it can be used to make payment against a duly executed contract signed by a warranted CO. (See AMS Procurement Guidance T3.2.6, Purchase Card Program, for additional information and restrictions related to using the purchase card).

(2) If the requirements for the procurement, including conference supplies and services such as conference space, audio visual equipment and support, food, beverage and associated catering, are valued in excess of \$10,000, then requirements must be competed among two or more sources (AMS Policy 3.2.2.2) to determine the best value for FAA. Price analysis of competing offers must be completed and documented.

(3) If the requirements, in addition to the costs assessed in (2) above, are valued at or above \$100,000 when the travel costs FAA will pay in support of the conference are included, then the conference must be approved by the Chief Financial Officer (CFO). (For CFO conference approval requirements, see <https://intranet.faa.gov/faaemployees/org/staffoffices/aba/oversight/>)

(4) A commercial rental agreement for meeting space or services must be signed by a CO or other person delegated purchasing authority. The amount of the agreement must be within the dollar limits of the procurement authority of the person signing the agreement. Cost of meeting space and services cannot be intentionally split to avoid limits on delegated procurement authority.

d. *Unauthorized Commitment.* Conference planners should be cautious about making any commitments involving commercial meeting space and services. Conference planners may visit facilities, discuss space needs, collect pricing information, tentatively reserve space (only if at no cost and without **any** liability), or request other conference-related information. They cannot make any commitment until a written agreement is signed by a CO or the space is acquired by a person delegated purchasing authority. An agreement signed by anyone other than a CO or space obtained by anyone other than a person delegated purchasing authority is an unauthorized commitment.

e. *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.

f. *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.

g. *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) Attendance at the meals and attendance when the refreshments are provided must be important for the FAA to ensure full participation in essential discussions, lectures, or speeches concerning the purpose of the conference.

(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 and members are not free to take meals elsewhere without being absent from the essential business of the meeting.

(c) *Award Ceremonies*. FAA may purchase light refreshments for award ceremonies. The FAA purchase card may be used to purchase light refreshments.

(d) *Cultural Awareness Ceremonies*. 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 or hospitality suites (except hospitality functions at official receptions).

(4) 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) 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.

h. *Justification for Food and Beverage.* The FAA's policy is to not use, nor create the appearance 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.

i. *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. Distinguishing meals from light refreshments is important and sometimes difficult. Foods that constitutes light refreshment are snacks, such as cookies, and beverages. A meal is an occasion in which food is eaten (specifically: breakfast, lunch or dinner). See FAA Travel Policy for rules when meals are furnished by the Government.

j. *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.

New Content: Procurement Guidance:

T3.2.2.5 - Simplified Purchase Method

Simplified Purchasing

Section 5 : FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops

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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 delegee.

(1) Changes to the following AMS clauses require legal review regardless of the dollar value:

(a) 3.9.1-1 Contract Disputes (November 2002); and

(b) 3.10.6-1 Termination for Convenience of the Government (Fixed Price) (October 1996).

(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;

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(c) Clauses requiring binding arbitration.

d. *Procurement Method.* Any procurement mechanism, such as a contract, purchase order, BPA, or purchase card, may be used to purchase short-term conference or meeting space and related services.

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