

# CHANGE REQUEST COVER SHEET

**Change Request Number:** 12-90

**Date Received:** 7/11/2012

**Title:** COR Title Change

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**Name:** Eugene Scott

**Phone:** 202-493-4639

**Policy OR Guidance:** Guidance

**Section/Text Location Affected:** varius

**Summary of Change:** Change of COTR title to COR in sections: T3.2.4 Appendix III, Attachment III B.1; T3.6.2(A)(6) Procedures for Construction Contracts; T3.6.2(A)(20) Project Labor Agreements; T3.8.2(A)(3) Inherently Governmental Functions; T3.10.1(A)(1) Contract Management; T3.10.1(A)(11) Contract Closeout; T3.10.1(A)(14) Bankruptcy; T3.10.1(A)(2) Basic Responsibility for Contract Administration; T3.10.1 Appendix I COR Delegation Memorandum; T3.10.1 Appendix 7 Guide for Creating and Maintaining Contract Administration Files; T3.10.1 Appendix 10 Common Authorities for Modifications; Award Letter - Construction sample

**Reason for Change:** The title change is consistent with Federal Acquisition Institute (FAI) recommendations

**Development, Review, and/or Concurrence:** AAP-100, Acquisition Career Management Office AAP-300 and COR Tiger Team

**Target Audience:** All AMS users

**Potential Links within FAST for the Change:** none

**Briefing Planned:** No

**ASAG Responsibilities:** Approve

**Potential Links within FAST for the Change:** none

**Links for New/Modified Forms (or) Documents (LINK 1)** [null](#)

**Links for New/Modified Forms (or) Documents (LINK 2)** [null](#)

**Links for New/Modified Forms (or) Documents (LINK 3)** [null](#)

## SECTIONS EDITED:

### Procurement Guidance:

*T3.10.1 Contract Administration*

*Contract Administration*

### **Section 1 : Contract Management** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

*T3.10.1 Contract Administration*

*Contract Administration*

### **Section 2 : Basic Responsibility for Contract Administration** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

*T3.2.4 - Types of Contracts*

*Appendices*

### **Section 3 : Appendix - Sample Award Fee Performance Evaluation Plan** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

*T3.6.2 - Labor Laws*

*Labor-Related Laws*

### **Section 6 : Procedures for Construction Contracts** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

*T3.6.2 - Labor Laws*

*Labor-Related Laws*

### **Section 20 : Project Labor Agreements** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

*T3.10.1 Contract Administration*

*Contract Administration*

### **Section 14 : Bankruptcy** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

*T3.10.1 Contract Administration*

*Appendices*

### **Section 1 : Appendix - COR Delegation Memorandum** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

*T3.10.1 Contract Administration*

*Appendices*

### **Section 7 : Appendix - Guide for Creating and Maintaining Contract Administration Files** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

### Procurement Guidance:

*T3.10.1 Contract Administration*

*Appendices*

### **Section 10 : Appendix - Common Authorities for Modifications** [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

## SECTIONS EDITED:

### **Section 1 : Contract Management**

**Old Content:** Procurement Guidance:

*T3.10.1 Contract Administration*

*Contract Administration*

**Section 1 : Contract Management**

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 COTR-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.

**New Content:** Procurement Guidance:

*T3.10.1 Contract Administration*

*Contract Administration*

**Section 1 : Contract Management**

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.

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**Red Line Content:** Procurement Guidance:

*T3.10.1 Contract Administration*

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## *Contract Administration*

### **Section 1 : Contract Management**

- 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 ~~COTR~~**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.
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- 

### **Section 2 : Basic Responsibility for Contract Administration**

**Old Content:** Procurement Guidance:

*T3.10.1 Contract Administration*

*Contract Administration*

### **Section 2 : Basic Responsibility for Contract Administration**

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 Technical Representative (COTR) and other functional specialists supporting a program.

**New Content:** Procurement Guidance:

*T3.10.1 Contract Administration*

*Contract Administration*

### **Section 2 : Basic Responsibility for Contract Administration**

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.

**Red Line Content:** Procurement Guidance:

*T3.10.1 Contract Administration*

*Contract Administration*

### **Section 2 : Basic Responsibility for Contract Administration**

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 ~~Technical~~ Representative (~~COTR~~~~COR~~) and other functional specialists supporting a program.

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**Section 3 : Appendix - Sample Award Fee Performance Evaluation Plan**

**Old Content:** Procurement Guidance:

*T3.2.4 - Types of Contracts*

*Appendices*

**Section 3 : Appendix - Sample Award Fee Performance Evaluation Plan**

**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 period; 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.

<u>Requirement</u>	<u>Attachment</u>
Evaluation Periods and Maximum Available Award Fee for Each Period	III-A
Performance Evaluation Factors and Evaluation Criteria	III-B

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 \_\_\_\_\_ days before start of the applicable period  
not there are changes

### **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 \_\_\_\_\_

**Evaluation Periods and Maximum Available Award Fee for Each Period**

Period Number	Start Date	End Date	Max. Available <u>Award Fee</u>
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**

<b>Adjectival Rating</b>	<b>Range of Performance Points</b>	<b>Description</b>
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**

1. PEB Chair and members appointed.
2. PEB Chair appoints performance monitors and informs contractor.
3. Monitors receive orientation and guidance.
4. Monitors assess performance and discuss results with contractor.
5. Monitors submit Performance Monitor reports to PEB.

**(Workdays)**

\_\_\_\_ days prior to first period  
\_\_\_\_ days prior to first period  
\_\_\_\_ days prior to first period  
Ongoing after start of period  
Last day of each \_\_\_\_ (insert month, quarter, etc.)

- |   |   |
|---|---|
| 6. PEB considers Performance Monitor reports and other requested performance information. | Ongoing   |
| 7. PEB discusses overall performance with contractor during period.                       | ____ days after end of period of each<br>____ (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**

**New Content:** Procurement Guidance:

*T3.2.4 - Types of Contracts*

*Appendices*

### **Section 3 : Appendix - Sample Award Fee Performance Evaluation Plan**

#### **SAMPLE PERFORMANCE EVALUATION PLAN**

Contract No. \_\_\_\_\_ with \_\_\_\_\_

#### I. Introduction

#### II. Organizational Structure for Award Fee Administration

#### III. Evaluation Requirements

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#### 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:

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(Signature)

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(Date)

Fee Determination Official

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(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 period; 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.

<u>Requirement</u>	<u>Attachment</u>
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**

PEB drafts proposed changes

PEB submits recommended changes to FDO for approval \_\_\_\_ days prior to end of each period

Through CO, FDO notifies contractor about whether or \_\_\_\_ days before start of the applicable period  
not there are changes**Schedule (Workdays)**

Ongoing

**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 \_\_\_\_\_

**Evaluation Periods and Maximum Available Award Fee for Each Period**

<b>Period Number</b>	<b>Start Date</b>	<b>End Date</b>	<b>Max. Available <u>Award Fee</u></b>
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.

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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 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 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**

1. PEB Chair and members appointed.
2. PEB Chair appoints performance monitors and informs contractor.
3. Monitors receive orientation and guidance.
4. Monitors assess performance and discuss results with contractor.
5. Monitors submit Performance Monitor reports to PEB.
6. PEB considers Performance Monitor reports and other requested performance information.
7. PEB discusses overall performance with contractor during period.
8. PEB meets and summarizes preliminary findings and position of PEBR.
9. PEB may meet with contractor to discuss preliminary findings and position.
10. PEB establishes findings and recommendations for PEB report.
11. PEB Chair submits PEB report to FDO.
12. FDO considers PEB report and discusses with PEB, as appropriate.
13. FDO sends PEB report to contractor.
14. Payment made to contractor based on contract modification.

##### **(Workdays)**

\_\_\_\_ days prior to first period  
 \_\_\_\_ days prior to first period  
 \_\_\_\_ days prior to first period  
 Ongoing after start of period  
 Last day of each \_\_\_\_ (insert month, quarter, etc.)  
 Ongoing  
 \_\_\_\_ days after end of period of each  
 \_\_\_\_ (insert month, quarter, etc.)  
 \_\_\_\_ days after end of period  
 \_\_\_\_ days after end of period  
 \_\_\_\_ days after end of period  
 \_\_\_\_ days after end of period  
 \_\_\_\_ days after end of period  
 \_\_\_\_ days after end of period  
 \_\_\_\_ 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**

**Red Line Content:** Procurement Guidance:

*T3.2.4 - Types of Contracts*

*Appendices*

**Section 3 : Appendix - Sample Award Fee Performance Evaluation Plan**

**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)

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## **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 period; 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.

<u>Requirement</u>	<u>Attachment</u>
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.

<u>Action</u>	<u>Schedule (Workdays)</u>
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 period

### 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 \_\_\_\_\_

### Evaluation Periods and Maximum Available Award Fee for Each Period

Period Number	Start Date	End Date	Max. Available <u>Award Fee</u>
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~~ 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**

<b>Adjectival Rating</b>	<b>Range of Performance Points</b>	<b>Description</b>
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**

1. PEB Chair and members appointed.
2. PEB Chair appoints performance monitors and informs contractor.
3. Monitors receive orientation and guidance.
4. Monitors assess performance and discuss results with contractor.
5. Monitors submit Performance Monitor reports to PEB.
6. PEB considers Performance Monitor reports and other requested performance information.
7. PEB discusses overall performance with contractor during period.

**(Workdays)**

\_\_\_\_ days prior to first period  
 \_\_\_\_ days prior to first period  
 \_\_\_\_ days prior to first period  
 Ongoing after start of period  
 Last day of each \_\_\_\_ (insert month, quarter, etc.)  
 Ongoing  
 \_\_\_\_ 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

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### **Section 6 : Procedures for Construction Contracts**

**Old Content:** Procurement Guidance:

*T3.6.2 - Labor Laws*

*Labor-Related Laws*

### **Section 6 : Procedures for Construction Contracts**

#### *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 rates 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 Technical Representative (COTR), 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 COTR, 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 COTR 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.

**New Content:** Procurement Guidance:

*T3.6.2 - Labor Laws*

*Labor-Related Laws*

**Section 6 : Procedures for Construction Contracts**

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 rates 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.

**Red Line Content:** Procurement Guidance:

*T3.6.2 - Labor Laws*

*Labor-Related Laws*

**Section 6 : Procedures for Construction Contracts**

*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 rates 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 ~~Technical~~ Representative (~~COTR~~~~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 ~~COTR~~~~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 ~~CO~~**TRCOR** 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.

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**Section 20 : Project Labor Agreements**

**Old Content:** Procurement Guidance:

*T3.6.2 - Labor Laws*

*Labor-Related Laws*

**Section 20 : Project Labor Agreements**

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 COTR 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.

**New Content:** Procurement Guidance:

*T3.6.2 - Labor Laws*

*Labor-Related Laws*

## **Section 20 : Project Labor Agreements**

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.

**Red Line Content: Procurement Guidance:**

*T3.6.2 - Labor Laws*

*Labor-Related Laws*

**Section 20 : Project Labor Agreements**

a. *Definitions.*

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- (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 ~~COTR~~**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 conform 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.

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## **Section 14 : Bankruptcy**

**Old Content:** Procurement Guidance:

*T3.10.1 Contract Administration*

*Contract Administration*

### **Section 14 : Bankruptcy**

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 COTR, 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 COTR 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.

**New Content: Procurement Guidance:**

*T3.10.1 Contract Administration*

*Contract Administration*

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(3) Request that the COR or QRO monitor the contract more closely if contract termination is considered unnecessary.

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**Red Line Content: Procurement Guidance:**

*T3.10.1 Contract Administration*

*Contract Administration*

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(4) Consult with and furnish information to Headquarters legal counsel, as appropriate, throughout the process.

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### **Section 1 : Appendix - COR Delegation Memorandum**

**Old Content:** Procurement Guidance:

*T3.10.1 Contract Administration*

*Appendices*

### **Section 1 : Appendix - COR Delegation Memorandum**

#### **SAMPLE**

#### **CONTRACTING OFFICER'S REPRESENTATIVE (COR) DELEGATION MEMORANDUM**

You are hereby delegated authority to act as the Contracting Officer's Representative (COR) for Contract No.[*insert*]. Your duties are to assist the Contracting Officer administer the contract throughout performance and closeout. Only the Contracting Officer may change this delegation and it must be in writing. As the COR, you must represent the Contracting Officer within the scope of the following authority, responsibilities, and limitations:

#### **AUTHORITY:**

As COR, you have the authority to:

1. Perform surveillance of the contract work and conduct inspections necessary to assure compliance with the contract terms and conditions. Resolve day-to-day matters within the scope of your authority.
2. Inspect all work in progress and after completion. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the contractor-furnished materials to be used and incorporated in the job (for construction).
3. Notify the prime contractor of any failure of the work or materials to conform to the contract, specifications, and drawings, and of any delays in the schedule (for construction).
4. Stop or suspend work ONLY in life-threatening situations (for construction).
5. Approve or reject all progress schedules, material submittals, and contractor-furnished materials that are required under the terms of the contract (for construction).
6. Receive and review, within seven days after the close of each payroll period, all prime and subcontractor certified payrolls; conduct and record a sufficient number of interviews with laborers and mechanics on Standard Form 1445, Labor Standards Interview, to insure that contractor employees working at the job site are being paid in accordance with labor provisions

of the contract. The initial interviews are to be conducted during the first 30 days of the contract and each 90 days, thereafter (for construction).

7. Make recommendations to the Contracting Officer when it appears there is a need for a change in scope or terms of contract if the contractor has submitted a request for waiver to address non-conformances, Engineering Change Proposals (ECPs) or Value Engineering Change Proposals (VECPs).

8. Perform, or cause to be performed, inspection(s) necessary for accepting deliverables (including Contract Line Item Numbers (CLINs) and Contract Data Requirements Lists (CDRLs)) as stated in the contract and to require the contractor to correct any deficiencies. Periodically, on-site surveillance visits may be required.

9. Assist the contractor interpret the contract specifications or technical requirements, provided any interpretation or clarification that the COR gives is within the limitations prescribed later in this delegation.

10. Certify invoices to the Contracting Officer for payment. Evaluates progress payment requests based on costs incurred and actual work accomplished.

11.\*Obtain and maintain a list of contractor employees who will be working at the site. The list is to be kept current by assuring new employees are added and terminated employees are deleted from the list. This is important to the security of the facility and the list may be used as a basis for background checks by the security office in the relevant location. A copy of this list must be provided to the security office at least quarterly, and at any time a contractor employee is added or deleted from the list. \*(This applies to service contracts only where the contractor will work on a Government site.)

#### RESPONSIBILITIES:

As COTR, you have the responsibility to:

1. Be familiar with and understand contract requirements (SOW, specification, CLINs and work breakdown structure), and implications of contractor performance to contract requirements.
2. Protect the Government's interests in actual performance of the work by seeing that work is accomplished according to the specifications, drawings, and contract (for construction).
3. Keep the Contracting Officer informed of any technical or contractual difficulties encountered, progress of the work and potential problem areas under the contract.
4. Report to the Contracting Officer instances of contractor or subcontractor discrimination against any employee or applicant for employment because of race, creed, color, or national origin, or failure to take affirmative action to prevent such discrimination.

5. Determine the amount and quality of the several kinds of work performed and materials furnished which are to be paid under the monthly progress payments.
6. Send the contractor's receipt for Government property.
7. Attend at least 40 hours of initial COR training prior to appointment and obtain 40 continuous learning points of refresher training by the biennial anniversary date of initial training or last refresher training.
8. Establish a technical performance review program for evaluation of the contractor's work.
9. Coordinate with Contracting Officer whether support contractors have signed nondisclosure forms and agreements.
10. Review the Contractor's performance of the technical requirements of the contract according to the contract terms, funding, conditions, and specifications. Notify the Contracting Officer, in writing, of any indication that the terms of the contract are not being met.
11. Monitor the contractor's compliance with safety and security requirements. Ensure contractor's performance of requirements is in agreement with provisions contained in security clauses 3.14-1 through 3.14-5, which are prescribed for use with all applicable FAA contracts.
12. Report any observed fraud, waste, or inefficiencies to the Contracting Officer.
13. Maintain liaison and direct communications with the contractor and the Contracting Officer. Meet with the contractor or its designated representative at the beginning of the contract to discuss working methods and scheduling and as otherwise needed. Also serve as the contact through which the contractor can relay questions and problems of a technical nature to the Contracting Officer.
14. Draft technical portions of Contracting Officer letters to the contractor.
15. Ensure appropriate confidentiality of contractor submissions with proprietary markings.
16. Review and evaluate the technical aspects of contractor proposals and furnish evaluation comments and recommendations to the Contracting Officer.
17. Assist the Contracting Officer in negotiating supplemental agreements.
18. Advise the Contracting Officer on contractual matters of a technical nature.
19. Recommend needed change orders to the Contracting Officer when in the best interest of the Government.
20. Inform the Contracting Officer as to the status and progress of performance under the contract.



21. Alert the Contracting Officer to any potential or existing problems.
22. Submit reports the Contracting Officer requires to perform his/her duties.
23. Provide the Contracting Officer a copy of all technical correspondence with the contractor.
24. In the absence of need for or presence of Quality Reliability Officer (QRO), inspect contract deliverables for conformance to the contract specifications and accept or reject them.
25. Furnish the Contracting Officer requests for waivers (whether generated by Government or contractor personnel) along with supporting paperwork.
26. Furnish copies of written communication between you and the contractor to the Contracting Officer.
27. Furnish information on contractor performance as input to the past performance data base or as otherwise requested by the Contracting Officer.
28. Report any discrepancies in payment vouchers to the Contracting Officer. Provide documentation to support the representation.
29. Maintain a file of all correspondence, data, submittals, and deliverable documents initiated or received by you in connection with subject contract.
30. Maintain an arms-length relationship with the contractor.
31. Practice claims avoidance, halting unauthorized accelerated production and/or directions of other Government employees.
32. Review all contractor-furnished reports, including any earned value management reports when appropriate.
33. Conduct business with industry in a manner that is above reproach.
34. Evaluate progress payment requests against the contractor's efforts including schedule, quality, performance, and the general progress of the contract.
35. Advise the Contracting Officer of any questions regarding vouchers or invoices so that they may be brought to the contractor's attention and resolved in a timely manner if possible.
36. Perform acceptance by 3-Way matching of goods/services in PRISM.
37. Seek guidance from the Contracting Officer for specific situations not covered in this delegation.
38. Assist in the analyses of Engineering Change Proposals (ECPs) and Value Engineering

Change Proposals (VECPs), validating and calculating estimated savings and the contractor's share for VECPs.

39. Ensure administration of Government furnished property.

40. Report through normal administrative channels to the DOT Inspector General and to the CO any evidence of prime or subcontractor kickback, attempt to bribe, or other suspected fraudulent behavior.

41. As required by FAA Order 1600.72A ensure completion of yearly security awareness training as provided by the Servicing Security Element (SSE). Provide a report to the SSE on an annual basis indicating each contractor completing the training. The report will indicate the name of the contractor, type of training received, and date training was received.

#### LIMITATIONS:

As COR, you must not:

1. Make or give the appearance of being able to make contractual commitments outside the scope of the contract or execute or agree to modifications or take actions that would commit the Government to a change in contract price, quality, quantity, or delivery schedule.
2. Sign any changes or modifications to contracts, agreements, or orders.
3. Make determinations regarding issues of contractor liability that may arise during contract performance. Such issues should be referred to the Contracting Officer.
4. Take part in a labor controversy or dispute involving the contractor or its employees.
5. Direct the contractor on how to perform the work.
6. Issue stop-work orders (see paragraph 4 above listed under Authority).
7. Supervise contractor employees implicitly or explicitly that could constitute personal services.
8. Engage in conduct prejudicial to the Government.
9. Use public office for gain.
10. Impede Government efficiency or economy.
11. Lose independence or impartiality.
12. Make a Government decision outside official channels.
13. Affect adversely the public's confidence in the Government.

The duties and responsibilities set forth herein are not intended to be all-inclusive. As COR, you must consult with the Contracting Officer when there are questions about your authority. This delegation remains in effect for the duration of the contract unless revoked in writing by the Contracting Officer. You are not authorized to redelegate your authority. If you have any questions concerning your role as COR, please contact me at *[insert phone number]*.

A copy of this delegation memorandum will be forwarded to the Contractor, and to the Acquisition Career Manager (AAP-300) at email 9-AJA-ACM-CORs/AWA/FAA.

Contracting Officer Name

COR Acknowledgement:

COR Name

Date

By signing this document, the designated COR is stating that the mandatory COR training course has been completed (in which case a copy of the certificate of the training is attached) or that the training will be completed in the near future.

**New Content:** Procurement Guidance:

*T3.10.1 Contract Administration*

*Appendices*

**Section 1 : Appendix - COR Delegation Memorandum**

SAMPLE

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As COR, you have the authority to:

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1. Perform surveillance of the contract work and conduct inspections necessary to assure compliance with the contract terms and conditions. Resolve day-to-day matters within the scope of your authority.
2. Inspect all work in progress and after completion. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the contractor-furnished materials to be used and incorporated in the job (for construction).
3. Notify the prime contractor of any failure of the work or materials to conform to the contract, specifications, and drawings, and of any delays in the schedule (for construction).
4. Stop or suspend work ONLY in life-threatening situations (for construction).
5. Approve or reject all progress schedules, material submittals, and contractor-furnished materials that are required under the terms of the contract (for construction).
6. Receive and review, within seven days after the close of each payroll period, all prime and subcontractor certified payrolls; conduct and record a sufficient number of interviews with laborers and mechanics on Standard Form 1445, Labor Standards Interview, to insure that contractor employees working at the job site are being paid in accordance with labor provisions of the contract. The initial interviews are to be conducted during the first 30 days of the contract and each 90 days, thereafter (for construction).
7. Make recommendations to the Contracting Officer when it appears there is a need for a change in scope or terms of contract if the contractor has submitted a request for waiver to address non-conformances, Engineering Change Proposals (ECPs) or Value Engineering Change Proposals (VECPs).
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28. Report any discrepancies in payment vouchers to the Contracting Officer. Provide documentation to support the representation.
29. Maintain a file of all correspondence, data, submittals, and deliverable documents initiated or received by you in connection with subject contract.
30. Maintain an arms-length relationship with the contractor.

31. Practice claims avoidance, halting unauthorized accelerated production and/or directions of other Government employees.
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5. Direct the contractor on how to perform the work.
6. Issue stop-work orders (see paragraph 4 above listed under Authority).
7. Supervise contractor employees implicitly or explicitly that could constitute personal services.
8. Engage in conduct prejudicial to the Government.
9. Use public office for gain.
10. Impede Government efficiency or economy.
11. Lose independence or impartiality.
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COR Acknowledgement:

COR Name

Date

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**Red Line Content: Procurement Guidance:**

***T3.10.1 Contract Administration***

***Appendices***

**Section 1 : Appendix - COR Delegation Memorandum**

SAMPLE

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10. Certify invoices to the Contracting Officer for payment. Evaluates progress payment requests based on costs incurred and actual work accomplished.

11.\*Obtain and maintain a list of contractor employees who will be working at the site. The list is to be kept current by assuring new employees are added and terminated employees are deleted from the list. This is important to the security of the facility and the list may be used as a basis for background checks by the security office in the relevant location. A copy of this list must be provided to the security office at least quarterly, and at any time a contractor employee is added or deleted from the list. \*(This applies to service contracts only where the contractor will work on a Government site.)

#### RESPONSIBILITIES:

As ~~COTR~~COR, you have the responsibility to:

1. Be familiar with and understand contract requirements (SOW, specification, CLINs and work breakdown structure), and implications of contractor performance to contract requirements.

2. Protect the Government's interests in actual performance of the work by seeing that work is accomplished according to the specifications, drawings, and contract (for construction).

3. Keep the Contracting Officer informed of any technical or contractual difficulties encountered, progress of the work and potential problem areas under the contract.

4. Report to the Contracting Officer instances of contractor or subcontractor discrimination against any employee or applicant for employment because of race, creed, color, or national origin, or failure to take affirmative action to prevent such discrimination.

5. Determine the amount and quality of the several kinds of work performed and materials furnished which are to be paid under the monthly progress payments.

6. Send the contractor's receipt for Government property.

7. Attend at least 40 hours of initial COR training prior to appointment and obtain 40 continuous learning points of refresher training by the biennial anniversary date of initial training or last refresher training.

8. Establish a technical performance review program for evaluation of the contractor's work.
9. Coordinate with Contracting Officer whether support contractors have signed nondisclosure forms and agreements.
10. Review the Contractor's performance of the technical requirements of the contract according to the contract terms, funding, conditions, and specifications. Notify the Contracting Officer, in writing, of any indication that the terms of the contract are not being met.
11. Monitor the contractor's compliance with safety and security requirements. Ensure contractor's performance of requirements is in agreement with provisions contained in security clauses 3.14-1 through 3.14-5, which are prescribed for use with all applicable FAA contracts.
12. Report any observed fraud, waste, or inefficiencies to the Contracting Officer.
13. Maintain liaison and direct communications with the contractor and the Contracting Officer. Meet with the contractor or its designated representative at the beginning of the contract to discuss working methods and scheduling and as otherwise needed. Also serve as the contact through which the contractor can relay questions and problems of a technical nature to the Contracting Officer.
14. Draft technical portions of Contracting Officer letters to the contractor.
15. Ensure appropriate confidentiality of contractor submissions with proprietary markings.
16. Review and evaluate the technical aspects of contractor proposals and furnish evaluation comments and recommendations to the Contracting Officer.
17. Assist the Contracting Officer in negotiating supplemental agreements.
18. Advise the Contracting Officer on contractual matters of a technical nature.
19. Recommend needed change orders to the Contracting Officer when in the best interest of the Government.
20. Inform the Contracting Officer as to the status and progress of performance under the contract.
21. Alert the Contracting Officer to any potential or existing problems.
22. Submit reports the Contracting Officer requires to perform his/her duties.
23. Provide the Contracting Officer a copy of all technical correspondence with the contractor.
24. In the absence of need for or presence of Quality Reliability Officer (QRO), inspect contract deliverables for conformance to the contract specifications and accept or reject them.

25. Furnish the Contracting Officer requests for waivers (whether generated by Government or contractor personnel) along with supporting paperwork.
26. Furnish copies of written communication between you and the contractor to the Contracting Officer.
27. Furnish information on contractor performance as input to the past performance data base or as otherwise requested by the Contracting Officer.
28. Report any discrepancies in payment vouchers to the Contracting Officer. Provide documentation to support the representation.
29. Maintain a file of all correspondence, data, submittals, and deliverable documents initiated or received by you in connection with subject contract.
30. Maintain an arms-length relationship with the contractor.
31. Practice claims avoidance, halting unauthorized accelerated production and/or directions of other Government employees.
32. Review all contractor-furnished reports, including any earned value management reports when appropriate.
33. Conduct business with industry in a manner that is above reproach.
34. Evaluate progress payment requests against the contractor's efforts including schedule, quality, performance, and the general progress of the contract.
35. Advise the Contracting Officer of any questions regarding vouchers or invoices so that they may be brought to the contractor's attention and resolved in a timely manner if possible.
36. Perform acceptance by 3-Way matching of goods/services in PRISM.
37. Seek guidance from the Contracting Officer for specific situations not covered in this delegation.
38. Assist in the analyses of Engineering Change Proposals (ECPs) and Value Engineering Change Proposals (VECPs), validating and calculating estimated savings and the contractor's share for VECPs.
39. Ensure administration of Government furnished property.
40. Report through normal administrative channels to the DOT Inspector General and to the CO any evidence of prime or subcontractor kickback, attempt to bribe, or other suspected fraudulent behavior.

41. As required by FAA Order 1600.72A ensure completion of yearly security awareness training as provided by the Servicing Security Element (SSE). Provide a report to the SSE on an annual basis indicating each contractor completing the training. The report will indicate the name of the contractor, type of training received, and date training was received.

#### LIMITATIONS:

As COR, you must not:

1. Make or give the appearance of being able to make contractual commitments outside the scope of the contract or execute or agree to modifications or take actions that would commit the Government to a change in contract price, quality, quantity, or delivery schedule.
2. Sign any changes or modifications to contracts, agreements, or orders.
3. Make determinations regarding issues of contractor liability that may arise during contract performance. Such issues should be referred to the Contracting Officer.
4. Take part in a labor controversy or dispute involving the contractor or its employees.
5. Direct the contractor on how to perform the work.
6. Issue stop-work orders (see paragraph 4 above listed under Authority).
7. Supervise contractor employees implicitly or explicitly that could constitute personal services.
8. Engage in conduct prejudicial to the Government.
9. Use public office for gain.
10. Impede Government efficiency or economy.
11. Lose independence or impartiality.
12. Make a Government decision outside official channels.
13. Affect adversely the public's confidence in the Government.

The duties and responsibilities set forth herein are not intended to be all-inclusive. As COR, you must consult with the Contracting Officer when there are questions about your authority. This delegation remains in effect for the duration of the contract unless revoked in writing by the Contracting Officer. You are not authorized to redelegate your authority. If you have any questions concerning your role as COR, please contact me at *[insert phone number]*.

A copy of this delegation memorandum will be forwarded to the Contractor, and to the Acquisition Career Manager (AAP-300) at email 9-AJA-ACM-CORs/AWA/FAA.

Contracting Officer Name

COR Acknowledgement:

COR Name

Date

By signing this document, the designated COR is stating that the mandatory COR training course has been completed (in which case a copy of the certificate of the training is attached) or that the training will be completed in the near future.

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**Section 7 : Appendix - Guide for Creating and Maintaining Contract Administration Files**

**Old Content:** Procurement Guidance:

*T3.10.1 Contract Administration*

*Appendices*

**Section 7 : Appendix - Guide for Creating and Maintaining Contract Administration Files**

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 Technical Representative (COTR) 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 COTR, 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 COTR or FAA Program Office designee for review and acceptance in PRISM, noting date sent to COTR/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 COTR/designee acceptance and release;
5. Upon confirmation of acceptance in PRISM by COTR/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 COTR review and/or action, be sure to give the COTR a suspense date and file a copy of the e-mail or memo and correspondence in a "COTR 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 COTR/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.

**New Content: Procurement Guidance:**

*T3.10.1 Contract Administration*

*Appendices*

**Section 7 : Appendix - Guide for Creating and Maintaining Contract Administration Files**

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.

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3. Forward voucher/invoice to COR or FAA Program Office designee for review and acceptance in PRISM, noting date sent to COR/designee;
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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.
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c. Tracking CDRLs. The CO should create a tracking system to manage submission of all CDRLs.

### **Red Line Content: Procurement Guidance:**

#### *T3.10.1 Contract Administration*

#### *Appendices*

### **Section 7 : Appendix - Guide for Creating and Maintaining Contract Administration Files**

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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 **COTR****COR** or FAA Program Office designee for review and acceptance in PRISM, noting date sent to **COTR****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 **COTR****COR**/designee acceptance and release;
5. Upon confirmation of acceptance in PRISM by **COTR****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 **COTR**~~COR~~ review and/or action, be sure to give the **COTR**~~COR~~ a suspense date and file a copy of the e-mail or memo and correspondence in a "**COTR**~~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 ~~CO~~**TRCOR**/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.

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### **Section 10 : Appendix - Common Authorities for Modifications**

**Old Content:** Procurement Guidance:

*T3.10.1 Contract Administration*

*Appendices*

### **Section 10 : Appendix - Common Authorities for Modifications**

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;

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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))

<b>Reasons for Modification</b>	<b>Authority</b>
<b>Supplies (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"><li>• Drawings, Designs, or Specifications</li><li>• Method of Shipment or Packing</li><li>• Place of Delivery</li></ul>	AMS Clause 3.10.1-12, Changes- Fixed-Price
<b>Services (no supplies to be furnished)</b>  Change to: <ul style="list-style-type: none"><li>• Description of Services</li><li>• Time of Performance</li><li>• Place of Performance</li></ul>	AMS Clause 3.10.1-12/alt1, Changes- Fixed-Price Alternate I
<b>Services (supplies to be furnished) (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"><li>• Description of Services</li><li>• Time of Performance</li><li>• Place of Performance</li><li>• Drawings, Designs, or Specifications</li><li>• Method of Shipment or Packing</li><li>• Place of Delivery</li></ul>	AMS Clause 3.10.1-12/alt2, Changes- Fixed-Price Alternate II
<b>A&amp;E or Other Professional Services (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"><li>• General scope</li></ul>	AMS Clause 3.10.1-12/alt3, Changes- Fixed-Price Alternate III
<b>Transportation Services (Fixed-Price)</b>	AMS Clause 3.10.1-12/alt4, Changes- Fixed-Price Alternate IV

<p>Change to:</p> <ul style="list-style-type: none"> <li>• Specifications</li> <li>• Work or services</li> <li>• Place of origin</li> <li>• Place of delivery</li> <li>• Tonnage to be shipped</li> <li>• Amount of Government-furnished property</li> </ul>	
<p><b>R&amp;D (Fixed-Price)</b></p> <p>Change to:</p> <ul style="list-style-type: none"> <li>• Drawings, Designs, or Specifications</li> <li>• Place of Inspection, Delivery, or Acceptance</li> </ul>	AMS Clause 3.10.1-12/alt5, Changes- Fixed-Price Alternate V
<p><b>Supplies (Cost-Reimbursement)</b></p> <p>Change to:</p> <ul style="list-style-type: none"> <li>• Drawings, Designs, or Specifications</li> <li>• Method of Shipment or Packing</li> <li>• Place of Delivery</li> </ul>	AMS Clause 3.10.1-13, Changes- Cost-Reimbursement
<p><b>Services (no supplies to be furnished) (Cost-Reimbursement)</b></p> <p>Change to:</p> <ul style="list-style-type: none"> <li>• Description of Services</li> <li>• Time of Performance</li> <li>• Place of Performance</li> </ul>	AMS Clause 3.10.1-13/alt1, Changes- Cost-Reimbursement Alternate I
<p><b>Services (supplies to be furnished) (Cost-Reimbursement)</b></p> <p>Change to:</p> <ul style="list-style-type: none"> <li>• Description of Services</li> <li>• Time of Performance</li> <li>• Place of Performance</li> <li>• Drawings, Designs, or Specifications</li> <li>• Method of Shipment or Packing</li> <li>• Place of Delivery</li> </ul>	AMS Clause 3.10.1-13/alt2, Changes- Cost-Reimbursement Alternate II
<p><b>Construction (Cost-Reimbursement)</b></p> <p>Change to:</p>	AMS Clause 3.10.1-13/alt3, Changes- Cost-Reimbursement Alternate III

<ul style="list-style-type: none"> <li>Plans and Specifications or Instructions</li> </ul>	
<b>Facilities (Cost-Reimbursement)</b>  Change to: <ul style="list-style-type: none"> <li>General Scope</li> </ul>	AMS Clause 3.10.1-13/alt4, Changes- Cost-Reimbursement Alternate IV
<b>R&amp;D (Cost-Reimbursement)</b>  Change to: <ul style="list-style-type: none"> <li>Drawings, Designs, or Specifications</li> <li>Place of Inspection, Delivery, or Acceptance</li> </ul>	AMS Clause 3.10.1-13/alt5, Changes- Cost-Reimbursement Alternate V
<b>Time and Materials or Labor Hours</b>  Change to: <ul style="list-style-type: none"> <li>Description of Services</li> <li>Time of Performance</li> <li>Place of Performance</li> <li>Drawings, Designs, or Specifications</li> <li>Method of Shipment or Packing</li> <li>Place of Delivery</li> <li>Amount of Government Furnished Property</li> </ul>	AMS Clause 3.10.1-14, Changes- Time and Materials or Labor Hours
<b>Construction, Dismantling, Demolition, or Removal of Improvements</b>  Change to: <ul style="list-style-type: none"> <li>Drawings, Designs, or Specifications</li> <li>Method or Manner of Performance</li> <li>Government-Furnished Facilities, Equipment, Materials, Services, or Site</li> <li>Accelerate the Performance of the Work</li> </ul>	AMS Clause 3.10.1-15, Changes- Construction, Dismantling, Demolition, or Removal of Improvements
<b>Construction (Changed Conditions)</b>  Change to: <ul style="list-style-type: none"> <li>Drawings or Specification within the Scope of the Contract</li> </ul>	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))

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Reasons for Modification	Authority
Accounting Code Change	AMS Procurement Guidance T3.10.1
COTR 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

**New Content: Procurement Guidance:**

*T3.10.1 Contract Administration*

## Appendices

### Section 10 : Appendix - Common Authorities for Modifications

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
<b>Supplies (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"><li>• Drawings, Designs, or Specifications</li><li>• Method of Shipment or Packing</li><li>• Place of Delivery</li></ul>	AMS Clause 3.10.1-12, Changes- Fixed-Price
<b>Services (no supplies to be furnished)</b>  Change to:	AMS Clause 3.10.1-12/alt1, Changes- Fixed-Price Alternate I

<ul style="list-style-type: none"> <li>• Description of Services</li> <li>• Time of Performance</li> <li>• Place of Performance</li> </ul>	
<b>Services (supplies to be furnished) (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"> <li>• Description of Services</li> <li>• Time of Performance</li> <li>• Place of Performance</li> <li>• Drawings, Designs, or Specifications</li> <li>• Method of Shipment or Packing</li> <li>• Place of Delivery</li> </ul>	AMS Clause 3.10.1-12/alt2, Changes- Fixed-Price Alternate II
<b>A&amp;E or Other Professional Services (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"> <li>• General scope</li> </ul>	AMS Clause 3.10.1-12/alt3, Changes- Fixed-Price Alternate III
<b>Transportation Services (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"> <li>• Specifications</li> <li>• Work or services</li> <li>• Place of origin</li> <li>• Place of delivery</li> <li>• Tonnage to be shipped</li> <li>• Amount of Government-furnished property</li> </ul>	AMS Clause 3.10.1-12/alt4, Changes- Fixed-Price Alternate IV
<b>R&amp;D (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"> <li>• Drawings, Designs, or Specifications</li> <li>• Place of Inspection, Delivery, or Acceptance</li> </ul>	AMS Clause 3.10.1-12/alt5, Changes- Fixed-Price Alternate V
<b>Supplies (Cost-Reimbursement)</b>  Change to: <ul style="list-style-type: none"> <li>• Drawings, Designs, or Specifications</li> <li>• Method of Shipment or Packing</li> <li>• Place of Delivery</li> </ul>	AMS Clause 3.10.1-13, Changes- Cost-Reimbursement
<b>Services (no supplies to be furnished) (Cost-</b>	AMS Clause 3.10.1-13/alt1, Changes- Cost-Reimbursement Alternate I

<b>Reimbursement)</b>  Change to: <ul style="list-style-type: none"> <li>• Description of Services</li> <li>• Time of Performance</li> <li>• Place of Performance</li> </ul>	
<b>Services (supplies to be furnished) (Cost-Reimbursement)</b>  Change to: <ul style="list-style-type: none"> <li>• Description of Services</li> <li>• Time of Performance</li> <li>• Place of Performance</li> <li>• Drawings, Designs, or Specifications</li> <li>• Method of Shipment or Packing</li> <li>• Place of Delivery</li> </ul>	AMS Clause 3.10.1-13/alt2, Changes- Cost-Reimbursement Alternate II
<b>Construction (Cost-Reimbursement)</b>  Change to: <ul style="list-style-type: none"> <li>• Plans and Specifications or Instructions</li> </ul>	AMS Clause 3.10.1-13/alt3, Changes- Cost-Reimbursement Alternate III
<b>Facilities (Cost-Reimbursement)</b>  Change to: <ul style="list-style-type: none"> <li>• General Scope</li> </ul>	AMS Clause 3.10.1-13/alt4, Changes- Cost-Reimbursement Alternate IV
<b>R&amp;D (Cost-Reimbursement)</b>  Change to: <ul style="list-style-type: none"> <li>• Drawings, Designs, or Specifications</li> <li>• Place of Inspection, Delivery, or Acceptance</li> </ul>	AMS Clause 3.10.1-13/alt5, Changes- Cost-Reimbursement Alternate V
<b>Time and Materials or Labor Hours</b>  Change to: <ul style="list-style-type: none"> <li>• Description of Services</li> <li>• Time of Performance</li> <li>• Place of Performance</li> <li>• Drawings, Designs, or Specifications</li> <li>• Method of Shipment or Packing</li> <li>• Place of Delivery</li> </ul>	AMS Clause 3.10.1-14, Changes- Time and Materials or Labor Hours

<ul style="list-style-type: none"> <li>Amount of Government Furnished Property</li> </ul>	
<b>Construction, Dismantling, Demolition, or Removal of Improvements</b>  Change to: <ul style="list-style-type: none"> <li>Drawings, Designs, or Specifications</li> <li>Method or Manner of Performance</li> <li>Government-Furnished Facilities, Equipment, Materials, Services, or Site</li> <li>Accelerate the Performance of the Work</li> </ul>	AMS Clause 3.10.1-15, Changes- Construction, Dismantling, Demolition, or Removal of Improvements
<b>Construction (Changed Conditions)</b>  Change to: <ul style="list-style-type: none"> <li>Drawings or Specification within the Scope of the Contract</li> </ul>	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**

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## Unilateral Modifications (SF 30: Other (Block 13D), Unilateral (Block 13E))

<b>Reasons for Modification</b>	<b>Authority</b>
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

**Red Line Content: Procurement Guidance:**

*T3.10.1 Contract Administration*

*Appendices*

**Section 10 : Appendix - Common Authorities for Modifications**

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
<b>Supplies (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"> <li>• Drawings, Designs, or Specifications</li> <li>• Method of Shipment or Packing</li> <li>• Place of Delivery</li> </ul>	AMS Clause 3.10.1-12, Changes- Fixed-Price
<b>Services (no supplies to be furnished)</b>  Change to: <ul style="list-style-type: none"> <li>• Description of Services</li> <li>• Time of Performance</li> <li>• Place of Performance</li> </ul>	AMS Clause 3.10.1-12/alt1, Changes- Fixed-Price Alternate I
<b>Services (supplies to be furnished) (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"> <li>• Description of Services</li> <li>• Time of Performance</li> <li>• Place of Performance</li> <li>• Drawings, Designs, or Specifications</li> <li>• Method of Shipment or Packing</li> <li>• Place of Delivery</li> </ul>	AMS Clause 3.10.1-12/alt2, Changes- Fixed-Price Alternate II
<b>A&amp;E or Other Professional Services (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"> <li>• General scope</li> </ul>	AMS Clause 3.10.1-12/alt3, Changes- Fixed-Price Alternate III
<b>Transportation Services (Fixed-Price)</b>  Change to:	AMS Clause 3.10.1-12/alt4, Changes- Fixed-Price Alternate IV



<ul style="list-style-type: none"> <li>• Specifications</li> <li>• Work or services</li> <li>• Place of origin</li> <li>• Place of delivery</li> <li>• Tonnage to be shipped</li> <li>• Amount of Government-furnished property</li> </ul>	
<b>R&amp;D (Fixed-Price)</b>  Change to: <ul style="list-style-type: none"> <li>• Drawings, Designs, or Specifications</li> <li>• Place of Inspection, Delivery, or Acceptance</li> </ul>	AMS Clause 3.10.1-12/alt5, Changes- Fixed-Price Alternate V
<b>Supplies (Cost-Reimbursement)</b>  Change to: <ul style="list-style-type: none"> <li>• Drawings, Designs, or Specifications</li> <li>• Method of Shipment or Packing</li> <li>• Place of Delivery</li> </ul>	AMS Clause 3.10.1-13, Changes- Cost-Reimbursement
<b>Services (no supplies to be furnished) (Cost-Reimbursement)</b>  Change to: <ul style="list-style-type: none"> <li>• Description of Services</li> <li>• Time of Performance</li> <li>• Place of Performance</li> </ul>	AMS Clause 3.10.1-13/alt1, Changes- Cost-Reimbursement Alternate I
<b>Services (supplies to be furnished) (Cost-Reimbursement)</b>  Change to: <ul style="list-style-type: none"> <li>• Description of Services</li> <li>• Time of Performance</li> <li>• Place of Performance</li> <li>• Drawings, Designs, or Specifications</li> <li>• Method of Shipment or Packing</li> <li>• Place of Delivery</li> </ul>	AMS Clause 3.10.1-13/alt2, Changes- Cost-Reimbursement Alternate II
<b>Construction (Cost-Reimbursement)</b>  Change to: <ul style="list-style-type: none"> <li>• Plans and Specifications or Instructions</li> </ul>	AMS Clause 3.10.1-13/alt3, Changes- Cost-Reimbursement Alternate III

<b>Facilities (Cost-Reimbursement)</b>  Change to: <ul style="list-style-type: none"> <li>• General Scope</li> </ul>	AMS Clause 3.10.1-13/alt4, Changes- Cost-Reimbursement Alternate IV
<b>R&amp;D (Cost-Reimbursement)</b>  Change to: <ul style="list-style-type: none"> <li>• Drawings, Designs, or Specifications</li> <li>• Place of Inspection, Delivery, or Acceptance</li> </ul>	AMS Clause 3.10.1-13/alt5, Changes- Cost-Reimbursement Alternate V
<b>Time and Materials or Labor Hours</b>  Change to: <ul style="list-style-type: none"> <li>• Description of Services</li> <li>• Time of Performance</li> <li>• Place of Performance</li> <li>• Drawings, Designs, or Specifications</li> <li>• Method of Shipment or Packing</li> <li>• Place of Delivery</li> <li>• Amount of Government Furnished Property</li> </ul>	AMS Clause 3.10.1-14, Changes- Time and Materials or Labor Hours
<b>Construction, Dismantling, Demolition, or Removal of Improvements</b>  Change to: <ul style="list-style-type: none"> <li>• Drawings, Designs, or Specifications</li> <li>• Method or Manner of Performance</li> <li>• Government-Furnished Facilities, Equipment, Materials, Services, or Site</li> <li>• Accelerate the Performance of the Work</li> </ul>	AMS Clause 3.10.1-15, Changes- Construction, Dismantling, Demolition, or Removal of Improvements
<b>Construction (Changed Conditions)</b>  Change to: <ul style="list-style-type: none"> <li>• Drawings or Specification within the Scope of the Contract</li> </ul>	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
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Accounting Code Change	AMS Procurement Guidance T3.10.1
<del>COTR</del> 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