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3.8 Special Categories of Contracting

3.8.1 Agreements

3.8.1.1 Applicability

3.8.1.2 Use of Agreements Revised 1/2012

It is FAA's policy to use various agreements, other than procurement contracts, to obtain or provide services and supplies when necessary to accomplish the mission of FAA. These agreements may be made with another Federal agency or instrumentality of the Federal government, a modal administration within the Department of Transportation, a state, local government, municipality, or other public entity, and private entities. (See 49 U.S.C. 106(l)). The following is a list of the more commonly used agreements (other than procurement contracts):

- ☐ Interagency agreements;
- ☐ Intra-agency agreements;
- ☐ Reimbursable agreements;
- ☐ Agreements with other public entities; and
- ☐ Agreements to provide services to a private entity on an individualized basis.

3.8.1.3 Principles for Agreements

Agreements with other Federal Agencies (as defined in section 551(1) of title 5) are appropriate where FAA provides services or supplies or facilities to another Federal agency, or where FAA is the requesting agency to receive services, or supplies, or facilities from another Federal agency or that agency's contractor. Where the FAA and the Department of Defense are engaged in joint actions to improve or replenish the national air traffic system, the AMS policies governing FAA acquisitions are applicable. In those instances where the FAA acquires goods or services through the Department of Defense or other agencies, the FAA is bound by the acquisition laws governing those agencies.

3.8.2 Service Contracting

3.8.2.1 Applicability

This section applies to advisory and assistance contracts and other services, including personal services such as employees support service as provided for in FAA's Personnel Management System. This section does not apply to FAA employees, temporary, part-time or permanent appointed or hired in accordance with the other applicable portions of the FAA Personnel Management System.

3.8.2.2 Policy

The FAA shall generally rely on the private sector for commercial services (see OMB Circular No. A-76, Policies for Acquiring Commercial or Industrial Products and Services Need by the Government). In no event may a contract be awarded for the performance of an inherently governmental function. Advisory and assistance contracts shall comply with all applicable laws concerning post-employment and other conflict of interest and ethics laws and policies.

3.8.2.3 Personal Services Contracts

3.8.2.3.1 Reserved

3.8.2.3.2 Determination

The FAA may award personal services contracts when the head of a line of business determines that a personal service contract is in the best interest of the agency after thorough evaluation, which includes, but is not limited to the following factors:

- ☐ Worker's compensation payments and other tax implications;
- ☐ Government's potential liability for services performed;
- ☐ Availability of temporary hires to perform the desired services;
- ☐ Demonstration of tangible benefits to the agency;
- ☐ Detailed cost comparison demonstrating a financial advantage to the Government from such contract;
- ☐ Potential post employment restrictions applicable to former employees;
- ☐ Legal determination that the work to be performed is not inherently governmental; and
- ☐ Potential post employment restrictions pursuant to Federal Workforce Restructuring Act of 1994 Public Law 103-226.

Although personal service contracts are permitted, they should be used only when there is a clear demonstrated financial and program benefit to the FAA. The determination required herein is non-delegable and shall be reviewed for legal sufficiency by the Office of the Chief Counsel.

3.8.2.4 Performance Based Service Contracts

Service contracts should incorporate performance based contracting methods to encourage contractor innovation and efficiency, and to help ensure contractors provide timely, cost-effective, and quality performance with measurable outcomes as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.

3.8.3 Federal Supply Schedule Contracts

3.8.3.1 Applicability

This section is applicable when FAA awards Federal Supply Schedule delivery orders for recurring products and services. Additionally, this section addresses requirements to utilize Federal Supply Schedules awarded by GSA, when the FAA is identified in the schedule as a mandatory/non-mandatory user of any supply/service on the schedule.

3.8.3.2 Policy

The FAA may consider awarding Federal Supply Schedule contracts, or placing orders against Federal Supply Schedules awarded by GSA, for recurring products and services when it is determined to be in the best interest of the FAA.

3.8.4 Required Sources of Products/Services and Use of Government Sources

3.8.4.1 Applicability Revised 2/2005

This section applies to procurement of all products and services, except for real property, utilities, and construction.

3.8.4.2 Government Sources for Products and Services Revised 10/2014

The CO may use available Government sources when they offer the best value to satisfy FAA's mission need. However, pursuant to FAA policy, the CO must acquire products and services offered through the Randolph-Sheppard Vending Facilities Program (20 U.S.C. 107) and AbilityOne (formerly the Javits-Wagner-O'Day Program) (41 U.S.C. §§ 8501-8506).

FAA policy also requires that FAA purchase products offered by Federal Prison Industries (FPI) when the FPI's product represents the best value to FAA, unless an exception below applies. In making a best value determination for FPI products, the CO must utilize the procedures in AMS Procurement Guidance T3.8.4.A.4. The CO must post an announcement for any procurement for products available from FPI in accordance with AMS Policy 3.2.1.3.12. This policy concerning FPI does not apply if:

- (a) The monetary value of the procurement would not require a competitive procurement process under AMS Policy 3.2.2.4;
- (b) A market analysis would not be required under AMS Policy 3.2.2.4 to support a single-source procurement of the product;
- (c) Suitable used or excess products are available from the government;
- (d) The products are acquired and used outside the United States;
- (e) Services are being acquired; or
- (f) FAA has obtained a waiver from FPI with respect to the particular product or class of products at issue in the procurement.

The CO may allow contractors with cost-reimbursement contracts to use Government sources when in FAA's best interest and the products or services are available. Contractors with fixed-price contracts to protect classified information may acquire security equipment through GSA sources after CO approval.

3.8.5 Leases Added 1/2006

3.8.5.1 Applicability Added 1/2006

This section applies to products, services and real property to the extent authorized by law. For Real Property specific policy and Guidance see Section 4.2 Real Property.

3.8.5.2 Policy Added 1/2006

It is the policy of the FAA to enter into leases for various products, services or real property when it is determined by the Contracting Officer, based on financial and other considerations, to be in the best interest of the Government compared to the outright purchase of such assets, real property, or services.

It is also FAA policy to avoid establishment of capital leases or lease purchases unless the requesting organization demonstrates they have complied with the requirements of OMB Circular A-11, Part 8, Appendix B “Scoring of Lease Purchases and Leases of Capital Assets”.

3.8.6 Strategic Sourcing Revised 7/2007

The FAA is leveraging its spending through strategic sourcing and will award contracts for products and services to help the agency optimize performance and minimize price to increase the value of each dollar spent. Therefore, when a needed product or service is available through a strategic sourcing contract, purchasing employees must use a strategic sourcing contract.

All strategic sourcing contracts are established following the AMS Policy and Guidance. To increase achievement of socio-economic acquisition goals, all strategic sourcing procurements must be balanced with socio-economic goals for small businesses, small disadvantaged businesses, women-owned small businesses, veteran-owned businesses, and service-disabled veteran-owned businesses in accordance with AMS Policy 3.6.1 Small Business Development Program.

When performance of any strategic sourcing contract requires access to FAA facilities and/or requires handling of sensitive material, the contract must include all of the appropriate clauses and/or restrictions and comply with FAA Order 1600.72A, Contractor and Industrial Security Program and FAA Order 1600.75, Protecting Sensitive Unclassified Information (SUI).

When an organization is going to strategically source a product or service, it must use mandatory government sources as described in AMS Policy 3.8.4 and Procurement Guidance T3.8.4A.

3.8.7 Construction Contracting Added 7/2007

3.8.7.1 Applicability Added 7/2007

This section applies to construction contracts, contracts for dismantling, demolition, or removal of improvements, and to the construction portion of contracts for products or services.

3.8.7.2 Policy Added 7/2007

If portions of multipurpose contracts are so commingled that priced deliverables for construction, service, or supply cannot be segregated and the predominant purpose of the contract is construction, the contract will be classified as construction.