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3 Procurement Policy

3.1 Overview

3.1.1 Introduction Revised 7/2007

The goal of the Federal Aviation Administration procurement system is to obtain high quality products, services, and real property in a timely, cost-effective manner, at prices that are fair and reasonable. The procurement system enables the FAA to be innovative and creative so that the right vendor is selected to implement a solution. The FAA procurement system is an integrated part of the lifecycle management process. The FAA procurement system focuses primarily on identifying sources, awarding, and administering contracts.

The FAA procurement system emphasizes competition, selects the vendor with the best value and provides a protest forum through the FAA's Dispute Resolution system. Open communications with industry from initial planning to contract award are the cornerstones of the process. Procurement documents are tailored to individual requirements and screening improves source selection by focusing efforts on those offerors most likely to receive an award. The procurement system emphasizes "common sense" decision-making, flexibility, business judgment, and a team concept for managing procurements. Service organizations have the proper level of authority to make decisions and are responsible and accountable for their actions.

The FAA's procurement system provides policy and guidance for executing contracts and agreements to acquire products, services, and real property. In support of the FAA's mission, the Administrator, or designee, has broad discretion to select contractors who provide products, services, and real property. Procurement officials should follow the policy and guidance contained herein but, based on prudent discretion and sound judgment, may employ any procedures that do not violate applicable statutes or regulations. The National Acquisition Evaluation Program strategically monitors the implementation of procurement requirements by periodically evaluating acquisition processes in support of FAA efforts to improve the quality of procurement practices.

3.1.2 Applicability

The FAA procurement system applies to all procurements conducted by the FAA, as set forth herein with the exception of assistance relationships, such as grants and cooperative agreements.

3.1.3 Fundamental Principles Revised 7/2013

The FAA procurement system will:

- Enable the selection of the contractor with the best value to satisfy the FAA's mission;
- Focus on key discriminators between vendors and their products or services to ensure timely, cost efficient, and quality contract performance;
- Promote discretion, sound business judgment, and flexibility at the lowest levels while maintaining fairness and integrity;
- Encourage the procurement of commercial and non-developmental items;

- Provide streamlined methods and initiate innovative processes to conduct timely and cost-effective procurements;
- Promote open communication and access to information throughout the procurement process and encourage use of electronic methods for information exchange;
- Encourage competition as the preferred method of contracting;
- Permit single-source contracting when necessary to fulfill the FAA's mission;
- Allow the use of a range of contract types and transactions best suited to a particular procurement;
- Authorize the use of purchase cards consistent with prudent business practice;
- Provide attainable and reasonable opportunities for small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals in consultation with the Department of Justice to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors v. Peña*, as well as the President's July 19, 1995, directive to the heads of executive departments and agencies on the "Evaluation of Affirmative Action Programs;"
- Provide an internal process for resolving protests and disputes in a timely, cost-effective and flexible manner;
- Promote high standards of conduct and professional ethics;
- Require appropriate file documentation to support business decisions;
- Assure adequate checks and balances; and
- Ensure public trust.

3.1.4 Contracting Authority Revised 10/2014

Pursuant to the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264, the Administrator is the final authority for carrying out all functions, powers, and duties of the Administration relating to the acquisition and maintenance of property and equipment of the Administration. The Administrator has broad authority "to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration . . .with any Federal agency, or any instrumentality of the United States, any territory, or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate."

The FAA Administrator may establish contracting activities and delegate to the Acquisition Executive broad authority to manage FAA's contracting functions. The Acquisition Executive is authorized to appoint Chief(s) of the Contracting Office (COCO) and redelegate the contracting authority to the COCO. The COCO may request that the Acquisition Executive further redelegate contracting authority to individuals within the COCO’s management or service area such as procurement and real property contracting officers, logistics management specialists, and managers of the purchase card program.

All individuals who are delegated contracting authority must have met the training requirements of the AMS and have demonstrated the appropriate knowledge and experience needed to execute this authority on behalf of the Government. Except for the purchase card program manager, these individuals may not redelegate their contracting authority. Contracting authority must be delegated to Contracting Officers or other qualified persons with a written warrant or other certificate of

appointment. Contracts, agreements, grants and other transactions may be entered into and signed on behalf of the FAA by Contracting Officers only, or other qualified persons with a written certificate of appointment. The certificate of appointment must expressly state the types of transactions and limitations authorized by the delegation. Absent specific authority in the delegation, that authority does not exist. Information on the limits of the contracting officer's authority must be readily available to the public and FAA personnel.

The Contracting Officer must have warrant authority commensurate with the total estimated potential value (see Appendix C) of a transaction. Modifications after the original award are considered standalone actions when calculating the total estimated potential value; a Contracting Officer's warrant must have a dollar limitation sufficient to award the total value of a modification, but not the entire value of the contract, order, lease, or agreement.

Key contracting duties and responsibilities are to be separated among individual people. For a particular requirement, the same person must not requisition, certify funds availability, approve, and obligate funds.

3.1.5 Conflict of Interest Revised 10/2008

Any member of a service organization or Office of Dispute Resolution for Acquisition (ODRA) who is a Federal employee that has a real or apparent conflict of interest must withdraw from participation in the procurement process when required by law (18 U.S.C. 208) or regulation (5 CFR Part 2635). To sustain the integrity of the procurement process, non- Federal members of a service organization or ODRA are held to the same standards.

3.1.6 Disclosure of Information Revised 10/2008

Source selection information and proceedings must not be discussed outside the service organization. The Source Selection Official (SSO) must determine the extent to which source selection information is disclosed and must execute a certificate of nondisclosure as appropriate.

3.1.7 Organizational Conflicts of Interest

The policy of the FAA is to avoid awarding contracts to contractors who have unacceptable organizational conflicts of interest. The FAA will resolve organizational conflict of interest issues on a case-by-case basis; and when necessary to further the interests of the agency, will waive or mitigate the conflict at its discretion.

3.1.8 Procurement Integrity Act Revised 1/2019

FAA is subject, with modifications as described in the AMS Guidance with FAA-specific language, to the Procurement Integrity Act (41 U.S.C. §§ 2101-2107).

3.1.9 Electronic Commerce in Contracting Revised 7/2018

The FAA may use electronic commerce, including electronic signatures, to conduct and administer procurement actions. The Electronic Signatures in Global and National Commerce Act (E-SIGN) provides equivalency between legally-required written records and the same information in electronic form.

Unless waived by the Chief of the Contracting Office, the FAA's official contract file for contract actions on or after October 1, 2013 must be created in electronic format, and stored and maintained in the "Electronic Document Storage (eDocS) system," the single repository for paperless contract files. Purchase card transactions, awards made by Real Estate Contracting Officers, awards made by personnel with Delegations of Procurement Authority and files that are required to be created or maintained in paper format such as documents associated with certain real estate transactions and documents requiring a raised seal signifying authenticity are excluded from this requirement.

Based on the National Institute of Standards and Technology (NIST) Policy Statement on Hash Functions dated August 5, 2015, the FAA must stop using Secure Hash Algorithm 1 (SHA-1) for generating digital signatures, generating time stamps and for other applications that require collision resistance. Further guidance on the use of SHA-1 is in NIST Special Publication (SP) 800-131A, Revision 1, dated November 6, 2015.

FAA must use SHA-256 or higher for the generation of digital signatures, generating time stamps, and other applications that require collision resistance. NIST provides further guidance on the use of SHA-256 in NIST SP 800-57 Part 1, section 5.6.2 as amended and SP 800-131A, Revision 1. Additional guidance on the use of SHA-3 is in NIST SP 800-185 as amended.

FAA may still use SHA-1 for the following applications: Verifying old digital signatures and time stamps, generating and verifying hash-based message authentication codes (HMACs), key derivation functions (KDFs), and random bit/number generation.

3.2 Contracting

3.2.1 Procurement Planning

3.2.1.1 Applicability Revised 4/2013

Written procurement plans are required for all FAA procurements except: real property, utilities, purchase card transactions and transactions less than $25,000. The specific content of a procurement plan may vary depending on the complexity of the procurement. The procurement planning templates in AMS must be used. Template A must be used for all simplified and commercial procurements and Template B must be used for all complex and non-commercial procurements.

3.2.1.2 Policy Revised 11/2009

Procurement planning is an indispensable component of the total acquisition process. Service organizations are expected to use procurement planning as an opportunity to evaluate/review the entire procurement process, so that sound judgments and decision-making will facilitate the success of the overall program. For procurements not covered by an implementation strategy and planning document, procurement planning should be appropriate and proportionate to the complexity and dollar value of the requirement.

3.2.1.2.1 Market Analysis Revised 4/2013

The purpose of market analysis is to initiate industry involvement, develop and refine the procurement strategy, obtain price information, determine whether commercial items exist, determine the level of competition, identify market practices, or obtain comments on requirements. The magnitude and degree of formality of the market analysis should be proportionate to the contemplated procurement. The market analysis may be as simple as a telephone call or as formal as a market survey advertisement to learn of industry capabilities. All market analyses, formal or informal, should be appropriately documented.

3.2.1.2.2 Procurement Plan Revised 4/2013

A plan for each contemplated procurement or class of procurements should address the significant considerations of the procurement action. A procurement plan may cover more than one contract. The procurement plan represents the service organization agreement for conducting the procurement. See paragraph 3.2.1.1 for documentation requirements.

3.2.1.2.3 Consideration of Agency Wide Contracts Revised 1/2014

Agency Wide Contracts must be used to the maximum extent possible. The procurement plan must document which agency wide contracts were considered. If an applicable agency wide contract is available for utilization and is not utilized; the procurement plan must include the rationale for not utilizing the existing agency wide contract.

3.2.1.2.4 Independent Government Cost Estimate Revised 1/2017

An independent Government cost estimate (IGCE) is required for any anticipated procurement action (to include modifications) whose total estimated value is $150,000 or more, except for:

- Modifications exercising priced options or providing incremental funding;
- Delivery orders for priced services or supplies under an indefinite-delivery contract;
- Acquisition of real property (i.e., land or space); or
- Supplies or services with prices set by law or regulation.

The Contracting Officer (CO) may require an IGCE for procurement actions (to include modifications) anticipated to be less than $150,000.

3.2.1.3 Guidance and Principles Revised 11/2009

For procurements not covered in a program with an implementation strategy and planning document, the following elements should be considered in planning for procurements.

3.2.1.3.1 Development

Preference should be given to using commercial and previously developed items whenever possible. Development of a product, and its associated costs and risks, should be avoided unless necessary to meet FAA needs. If developmental items are required, the need should be documented in the procurement plan.

3.2.1.3.2 Scope of Procurement

The scope of a procurement in terms of complexity, period of performance, dollar value, risk, and other factors should be considered in planning a procurement. As the scope of a procurement increases, the risk of unsuccessful management of the procurement also increases. Appropriate trade-offs should consider elements such as: managing a large complex procurement versus several smaller phased procurements; the systems integration role; total systems responsibility; timing of benefits; technological obsolescence; and other factors.

3.2.1.3.3 Budget Allocation Release

Consideration should be given to releasing contract-related budget information to industry in situations where the procurement involves development or multiple-year funding and is likely to be conducted competitively. If the service organization decides to release the information, the decision should be identified in the procurement plan.

3.2.1.3.4 Quality Assurance

For complex systems or hardware acquisition, the service organization should coordinate with representatives of the Quality Assurance office as soon as procurement requirements are defined, to establish quality assurance requirements for the proposed procurement.

3.2.1.3.5 Labor Relations

When planning procurements, the service organization should comply with applicable FAA labor relations directives.

3.2.1.3.6 Maintaining Competition

Consideration should be given to methods of maintaining competition throughout the lifecycle of any product or service. Methods to be considered may include dual sourcing, obtaining reprocurement data and data rights, open system designs, and any other appropriate methods.

3.2.1.3.7 Single-Source Approval Revised 11/2009

The service organization determines whether the procurement should be conducted on a competitive or single source basis. The rationale for the single source procurement should be included in the implementation strategy and planning document or the procurement plan. If an implementation strategy and planning document is not required and the service organization determines that based on the complexity of the procurement a procurement plan will be established, the procurement plan should include the justification for the single-source decision. Approval of the implementation strategy and planning document or the procurement plan constitutes approval of a single-source procurement; no further approval or documentation is necessary.

3.2.1.3.8 Pre-Release of Documents

Early release of program documents can be an important part of communication with industry. Releasing draft functional requirements, draft specifications, or a draft screening information request (SIR) can be beneficial to industry, as well as the FAA. Early and more complete releases of the SIR and feedback from industry should be part of the market analysis strategy.

3.2.1.3.9 Reserved

3.2.1.3.10 Reserved

3.2.1.3.11 Public Announcements Revised 6/2006

3.2.1.3.11.1 General Revised 1/2017

All procurements anticipated to exceed $150,000 must be publicly announced on the Internet or through other means. This requirement does not apply to noncompetitive awards to Socially and Economically Disadvantaged Business (SEDB) (8(a)) firms and Service-Disabled Veteran Owned Small Business (SDVOSB) firms, emergency single source actions, purchases from an established qualified vendor list (QVL) or FSS, exercise of options, or changes. For actions not anticipated to exceed $150,000, a public announcement is optional if it is not required by 3.2.1.3.11.2.

3.2.1.3.11.2 Procurements Involving Products from Federal Prison Industries Revised 7/2008

All procurements of products available from Federal Prison Industries (FPI) anticipated to exceed $10,000 must be publicly announced on the Internet or through other means, including procurements where FPI products are determined not to be the best value to FAA at the market survey stage. This requirement does not apply to a procurement that satisfies an exception in

AMS Policy 3.8.4.2 (concerning procurement of FPI products).

3.2.1.3.12 OMB Circular A-76, Performance of Commercial Activities.

OMB Circular A-76 (Revised), "Performance of Commercial Activities," establishes Federal policy for the competition of commercial activities. Inherently governmental activities are to be performed with Government personnel, but activities identified as not inherently governmental in nature are to be subjected to competition to determine if such activities should continue to be performed by Government personnel. The FAA will follow the policies of the Circular to the extent that such policies are consistent with FAA's statutory authority.

3.2.1.4 Chief Financial Officer Requirements Revised 1/2011

3.2.1.4.1 Contract Line Item Structure Added 1/2011

The Chief Financial Officer Act of 1990 requires FAA to furnish annual financial statements reflecting the assets of the agency to the Office of Management and Budget. To generate information needed for accurate financial statements, service organizations must establish appropriate contract line item structure and billing mechanisms for contracts so the agency can accurately state the value of its assets, and assure related accounting classifications are included on financial documents.

3.2.1.4.2 Chief Financial Officer Approval Added 1/2011

The Chief Financial Officer has approval authority over all proposed procurement actions of $10 million or more.

3.2.1.5 Disaster or Emergency Preparedness and Response Revised 7/2007

3.2.1.5.1 Local Area Set-Asides for Disaster or Emergency Added 7/2007

The Contracting Officer may set-aside procurements for competition among only offerors residing or doing business primarily in a geographic area where the President has declared a major disaster or emergency.

3.2.1.5.2 Continuity of Services-Mission Critical Contracts Added 7/2007

FAA may designate mission critical contracts that require continued contractor performance during times of National Emergency or Incidents of National Significance, such as pandemic influenza. These contracts must include provisions and contractor plans detailing how essential services or supplies will still be adequately delivered.

3.2.2 Source Selection

3.2.2.1 Applicability

Source selection policy and guidance apply to acquisitions for products and services except for real property, utilities, and agreements. There are two competitive procurement methods available for obtaining products and services through the FAA contracting process.

The first method is described under Complex and Noncommercial Source Selection and is used for complex, large dollar, developmental, noncommercial items and services. This is the method that typically would be used for investments approved by the Joint Resources Council.

The second method is described under Commercial and Simplified Purchase Method and, is typically used for commercial items that are less complex, smaller in dollar value, and shorter term. Such products or services may be routine in nature and are generally purchased on a fixed price basis.

3.2.2.2 Policy **Revised 1/2018**

The FAA procures products and services from sources offering the best value to satisfy FAA's mission needs. Considering complexity, dollar value, and availability of products and services in the marketplace, FAA has flexibility to use any method of procurement deemed appropriate to satisfy FAA's mission.

The FAA provides reasonable access to competition for vendors interested in doing business with FAA. Competition among two or more sources is the preferred method of procurement. When competition is not feasible, procurements may be on a single source basis if there is a documented rational for the decision; documentation for this decision is not required for procurements with a total estimated value of less than $10,000.

Except for those acquisitions where the agency purchase card is being used as the procurement vehicle, or those acquisitions subject to AMS 3.8.4.2, acquisitions with a total estimated value exceeding $10,000 but not over $150,000 are reserved exclusively for competition among socially and economically disadvantaged business [SEDB/(8(a))] vendors, pursuant to AMS policy 3.6.1.3.4. If the CO, with review by the cognizant small and disadvantaged business utilization specialist, determines that an SEDB/(8(a)) set-aside is not in FAA’s best interest due to quality, price, or delivery, then the decision must be documented.

The CO must issue a public announcement informing industry of FAA's procurement strategy before, or concurrent with, releasing an initial SIR. Each SIR must contain specific evaluation criteria that FAA will use to evaluate offeror’s submittals. When using complex and noncommercial source selection methods, FAA must include past performance as an evaluation factor. If appropriate, FAA may use process capability of suppliers as an evaluation factor according to established criteria. Cost or price considerations must be an evaluation factor in all final selection decisions. Any request for offer (RFO) must include a requirement for a formal cost or price proposal. The source evaluation team must document the findings of the evaluation. The source selection official (SSO) must base all selection or screening decisions

on evaluation criteria established in each SIR. The CO must conduct debriefings with all offerors that request them.

Responsible contractors only may receive awards. To be determined responsible, a prospective contractor:

- Has or can obtain adequate financial resources to perform a contract;
- Has the ability to meet any required or proposed delivery schedules;
- Has a satisfactory performance history;
- Has a satisfactory record of integrity and proper business ethics;
- Has appropriate accounting and operational controls that may include, but are not limited to: production control, property control systems, quality assurance programs, and appropriate safety programs; and
- Is qualified and eligible to receive an award under applicable laws or regulations.

The CO's signing of the contract constitutes a determination that the prospective contractor is responsible with respect to that contract. When an offer is rejected because the prospective contractor is non-responsible, the CO must make a determination of non-responsibility. The CO has broad discretion in making this determination.

3.2.2.3 Complex and Noncommercial Source Selection

This section establishes the FAA's policy for evaluating and selecting sources for the award of complex, noncommercial competitive contracts. This process consists of up to five distinct phases, with the screening phase being the cornerstone. The five phases are:

- Planning;
- Screening;
- Selection;
- Debriefing (as requested); and
- Lessons learned.

3.2.2.3.1 Selection Phases

3.2.2.3.1.1 Planning

Refer to the procurement planning section for further guidance.

3.2.2.3.1.2 Screening

Screening is the process by which the FAA will determine which offeror provides the best value to the FAA. The process is flexible and allows selection and award after one screening request. This process allows the FAA to make an award considering only price and the price-related factors included in the SIR. The number of distinct screening steps for a particular procurement will vary, based on the complexity of the procurement. Provided below is guidance associated

with the screening phase.

3.2.2.3.1.2.1 Screening Information Request Revised 7/2007

The purpose of the SIR is to obtain information, which will ultimately allow the FAA to identify the offeror that provides the best value, make a selection decision, and award the contract to conclude the competitive process. A SIR is a request by the FAA for documentation, information, presentations, proposals, or binding offers. Three categories of SIRs (see below) may be used according to the procurement strategy adopted by the service organization. Once the public announcement has been released, the SIR may be released to start the competitive process. The service organization will determine the type(s) of SIR(s) that are appropriate for each procurement.

For a given procurement, the FAA may make a selection decision after one SIR, or the FAA may have a series of SIRs (with a screening decision after each one) to arrive at the selection decision. This will depend on the types of products and services to be acquired and the specific source selection approach chosen by the service organization. When it is desired to make a selection decision after one SIR, that SIR should be a request for offer (see below). In general when multiple SIRs are contemplated, the initial SIR should request general information, and future SIRs should request successively more specific information.

Initial SIRs need not state firm requirements, thus allowing the FAA to convey its needs to offerors in the form of desired features, or other appropriate means. However, firm requirements ultimately will be established in all contracts.

Each SIR should contain the following information:

- Paper Reduction Act number OMB No. 2120-0595 on the cover page.
- A statement identifying the purpose of the SIR (request for information, request for offer, establishment of a QVL and screening).
- A definition of need,
- A request for specific information (with specific page and time limitations, if applicable),
- A closing date stating when submittals must be received in order to be considered or evaluated,
- Evaluation criteria (and relative importance, if applicable),
- A statement informing offerors how communications with them will be conducted during the screening, and
- An evaluation/procurement schedule (including revisions, as required).

The evaluation/procurement schedule should be realistic and should alert the offerors to the fact that the FAA plans to adhere to its schedule and that offerors interested in award will be expected to adhere to this schedule.

There are three categories of SIRs: qualification information, screening information, and request for offers. Each category of SIR is discussed in detail below.

Qualification Information

Qualification information, used to qualify vendors and establish qualified vendor lists (QVLs), should be requested only if it is intended that the resultant QVL will be used for multiple FAA procurements.

Qualification information screens for those vendors that meet the FAA's stated minimum capabilities/requirements to be qualified to provide a given product or service. All vendors that meet the FAA's qualification requirements will be listed on the appropriate QVL for the stated products or services.

Requested qualification information (including equipment/products) should be tailored to solicit the information that will allow the FAA to determine which of the vendors meet the FAA's minimum qualification requirements for the required products or services. For products, the information required to make such a determination might be equipment/products for FAA testing, vendor testing, testing data, product documentation, and production capability. For services, the information required to make such a determination might be a capabilities statement and performance experience. For software-intensive products or services, the information required to make such a determination might include descriptions about the offeror's software development and maintenance processes, in addition to other general information suggested above for products or services.

Once qualification information is requested, received, and evaluated in accordance with the evaluation plan, a QVL will be established for the given product/service. Once such a list is established, only qualified vendors may compete for the products or services. Where a product available from Federal Prison Industries (FPI) is to be acquired via a QVL, any such acquisition must include FPI and follow the procedures set forth at T 3.8.4.A.4 unless the acquisition satisfies an exception in AMS 3.8.4.2. Public announcement is not required once the QVL is established. This list can be updated at the FAA's discretion. Each list should be reviewed regularly to determine whether it should be updated.

Screening Information

Screening information allows the FAA to determine which offeror(s) are most likely to receive the award, and ultimately which offeror(s) will provide the FAA with the best value. The screening information requested in the SIR should focus on information that directly relates to the key discriminators for the procurement.

The following are examples of the types of information that may form the basis of a screening request:

- Equipment/products for FAA testing,
- Vendor testing,
- Testing data,
- Technical documentation (commercial, if available/practicable),
- Capability statements,
- Quality assurance information,
- Performance experience,
- Sample problems,

- Draft/model contracts,
- Technical proposals (including oral presentations, if appropriate/practicable),
- Commercial pricing information,
- Financial condition information,
- Cost or price information, and
- Cost or price proposals.

Request for Offer

A request for offer is a request for an offeror to formally commit to provide the products or services required by the acquisition under stated terms and conditions. The response to the request for offer is a *binding offer*, which is intended to become a binding contract if/when it is signed by the CO. The request for offer may take the form of a SIR, a proposed contract, or a purchase order.

3.2.2.3.1.2.2 Communications with Offerors

Communications with all potential offerors should take place throughout the source selection process. During the screening, selection, and debriefing phases of source selection, communications are coordinated with the CO. Communications may start in the planning phase and continue through contract award. All SIRs should clearly inform offerors how communications will be handled during the initial screening phase.

The purpose of communications is to ensure there are mutual understandings between the FAA and the offerors about all aspects of the procurement, including the offerors' submittals/ proposals. Information disclosed as a result of oral or written communication with an offeror may be considered in the evaluation of an offeror's submittal(s).

To ensure that offerors fully understand the intent of the SIR (and the FAA's needs stated therein), the FAA may hold a pre-submittal conference and/or one-on-one meetings with individual offerors. One-on-one communications may continue throughout the process, as required, at the discretion of the service organization. Communications with one offeror do not necessitate communications with other offerors, since communications will be offeror-specific. Regardless of the varying level of communications with individual offerors, the CO should ensure that such communications do not afford any offeror an unfair competitive advantage. During these and future communications, as applicable, the FAA should encourage offerors to provide suggestions about all aspects of the procurement.

Communications may necessitate changes in the FAA's requirements or screening information request and such changes should be processed consistent with Section 3.2.2.3.1.2.4. Where communications do not result in any changes in the FAA's requirements, the FAA is not required to request or accept offeror revisions. The use of technical transfusion is always prohibited. Technical leveling and auctioning techniques are prohibited, except in the use of commercial competition techniques as described in Section 3.2.2.5.3.

3.2.2.3.1.2.3 Receipt/Evaluation of Submittals

Once offerors have submitted responses to a SIR, the service organization will evaluate the submittals in accordance with the evaluation criteria stated therein and the evaluation plan. To be considered for an award, an offeror must submit a response to the initial SIR, within the time specified in the SIR.

Evaluation Criteria

The evaluation criteria form the basis on which each offeror's submissions are to be evaluated. Once the criteria have been established and disclosed to offerors, criteria should not be modified without first notifying offerors competing at that stage of the process and allowing such offerors to revise their submissions accordingly. Each SIR must contain the specific evaluation criteria to be used to evaluate offeror submittals for that specific SIR. Evaluation criteria should be tailored to the characteristics of a particular requirement and should be limited to only the key discriminators in the ultimate selection decision. The criteria should avoid, whenever possible, the inclusion of detailed sub-criteria (or sub-criteria in general). Further, efforts should be made to ensure that there are no overlapping criteria. Initial SIRs do not require cost or price proposals but should require submission of more generalized cost or price estimates. Cost or price considerations must be an evaluation factor in all selection decision(s). For software acquisitions the criteria should include, whenever appropriate, an evaluation of the maturity of the offeror's software acquisition, development and maintenance processes that are relevant to the procurement. Such evaluations should be performed using standardized instruments such as a Capability-Maturity-Model-based Evaluation.

Evaluation Plan

An evaluation plan must be prepared by the service organization and approved by the SSO for all procurements accomplished under this section. Evaluation plans should be concise and tailored to the specific needs of the procurement. The evaluation plan should include the name of the SSO and the names of the service organization members and evaluators, the evaluation criteria, the evaluation methods and processes, the schedule, and any other information related to the source selection. The evaluation plan should be completed and approved prior to the receipt of responses to any SIR requesting screening or qualification information.

Evaluation Method

The evaluation methodology should be set up to allow for maximum flexibility in selecting the offeror(s) providing the best value. To facilitate such flexibility, the following should be considered in setting up evaluations:

- Relative importance between criteria is not required (when relative importance is used, the relative order of importance between criteria should be disclosed).
- Each SIR may incorporate separate and/or distinct criteria that relate to the specific SIR discriminators.
- The use of either adjectival or numerical ratings is acceptable.
- Comparative evaluations between offerors' proposals/products are acceptable.
- The service organization should be selective/inventive concerning the screening requirements for document submissions (e.g., oral presentations, sample tests, plant

visits, etc.).

- Communications with offerors during the evaluation may help clarify submittals, allow a fuller understanding of the offeror submittals, and provide a more comprehensive evaluation.
- Testing of products is encouraged to the maximum extent practical ("try before you buy").
- Award based on initial offers to other than the low cost or price offer is allowed.

Evaluation Process

The evaluation will be conducted by the service organization, in accordance with the stated evaluation criteria and evaluation plan. The service organization (including any additional required evaluators and/or advisors) should be limited in size and dedicated through the completion of the acquisition. The service organization is expected to apply sound judgment in determining appropriate variations and adaptations necessary for individual situations, provided that these do not constitute a departure from the basic concepts and intent of the evaluation plan and SIR(s).

Communications may be considered in the evaluation of an offeror's submittal(s). Verifiable information from outside sources may be considered in the evaluation and should be disclosed to the offeror during the communication process. Any such findings should be noted in the evaluation report.

Evaluation Report

The service organization must document the results of the evaluation, including recommendations, if applicable.

3.2.2.3.1.2.4 Changes in Requirements

If, after release of a SIR, it is determined that there has been a change in the FAA's requirement(s), all offerors competing at that stage should be advised of the change(s) and afforded an opportunity to update their submittals accordingly.

The SSO has authority to waive a requirement at any time after release of a SIR, without notifying other offerors where the SIR states that offeror specific waiver requests will be considered, and the waiver does not affect a significant requirement that changes the essential character or conditions of the procurement.

All determinations relating to changes in requirements, including waivers, will be documented in the evaluation report.

3.2.2.3.1.2.5 SSO Decision

Based on a review of the service organization's evaluation report, the SSO may either:

- Make a selection decision (see the selection phase below);
- Make a screening decision by screening those offerors determined to be most likely to receive award, thus continuing the screening phase;
- Amend and re-open to initial offerors; or
- Cancel the procurement.

To ensure the integrity of the FAA competitive source selection process, all SSO decisions should be based on the evaluation criteria established in the SIR and have a rational basis. All offerors who are eliminated from the competition based on any screening decision should be provided with the basis for their elimination within five working days after the screening decision and should be informed that they may request a debriefing after contract award. During the screening process, the SSO may decide to eliminate an offeror from further consideration without considering the cost or pricing information that was submitted in the response to the SIR. However, the final selection decision must consider the cost or price information that was submitted as part of the proposal.

If a screening decision, rather than a selection decision, is made, the service organization should issue another SIR (and repeat the screening process stated above) in order to make a selection decision (or another screening decision) among the remaining offerors. The screening process, starting at the issuance of the SIR, may be repeated until a selection decision is made or the procurement is canceled. In some circumstances it may be appropriate to down-select to one offeror for negotiation. However, if the FAA and the selected offeror cannot come to an agreement, the FAA may select another competing offeror for communications/award without issuance of further SIRs.

3.2.2.3.1.3 Selection Revised 10/2012

The selection decision must be based on the stated evaluation criteria including cost or price considerations to identify the best value.

The service organization must brief the SSO on their evaluation findings. The selection of the offeror who is expected to provide the best value solution is a matter committed to the discretion of the SSO. The SSO applies sound business judgment to the evaluation of the offeror's proposed solution against the stated evaluation criteria. In each case, the SSO should provide a rational basis for the screening or selection decision. The SSO should document the selection decision in the SSO decision memorandum (in cases where the CO and the Contracting Officer’s Representative are the only service organization members, the evaluation report and the SSO decision memorandum may be one report). In making the selection decision, the SSO may accept or reject the service organization's recommendations provided there is a rational basis.

Based on the SSO's decision, the CO will transmit a proposed contract to the selected offeror. The selected offeror will return a properly executed contract. Upon the CO's signature, the proposed contract becomes a binding contract.

3.2.2.3.1.4 Debriefing

Once an award has been made, all offerors who participated in the competitive process will be notified of the award and given three working days from receipt of the award notification to request a debriefing. Debriefings are intended to provide meaningful feedback to offerors on their submission. The purpose of the debriefing is to improve the offeror's ability to successfully compete for future FAA business by discussing the strengths and weaknesses of the offeror's submissions. The debriefing should provide the offeror with the following information:

- SSO's Selection Decision;
- Offeror's evaluated standings relative to the successful offeror(s); and
- Summary of the evaluation findings (excerpts from evaluation summary documentation relating to the specific offeror).

The CO should request detailed questions from the unsuccessful offeror so the FAA can provide meaningful information during the debriefing. Debriefings should be conducted, as soon as practicable, with all offerors that request them.

3.2.2.3.1.5 Lessons Learned

A lessons learned memorandum is a valuable tool in which the service organization can relay its procurement experiences to other FAA acquisition personnel. Once an award has been made, the service organization should communicate its learning experiences. The communication should highlight those issues/processes that had significant impact on their procurement. Further, the service organization should discuss changes that could be made to ensure a more comprehensive evaluation and/or more timely award.

3.2.2.3.2 Reserved

3.2.2.3.2.1 Reserved

3.2.2.3.2.2 Reserved

3.2.2.3.2.3 Reserved

3.2.2.3.2.4 Reserved

3.2.2.3.2.5 Reserved

3.2.2.3.2.6 Reserved

3.2.2.4 Single-Source Selection Revised 1/2017

The FAA may contract with a single-source when in FAA's best interest and the rational basis for the decision is documented. This rational basis may be based on actions necessary and important to support FAA's mission, such as emergencies, standardization, and only source available to satisfy a requirement within the time required. For procurements not anticipated to exceed $10,000, there is no requirement for competition or single-source justification;

requirements must not be split to meet this exception. This section 3.2.2.4 is not applicable to noncompetitive awards made to socially and economically disadvantaged businesses (SEDB)/(8(a)) or service-disabled veteran owned small businesses (SDVOSB), both of which are governed under AMS policy 3.6.

The decision to contract with a single-source may be made as part of overall program planning. The rational basis must be documented and approved as a part of program planning in the Implementation Strategy and Planning Document, a procurement plan, or as a separate document. If an Implementation Strategy and Planning Document is not required and the service organization determines that a procurement plan is unnecessary, a separate single-source justification must be documented and endorsed by the service organization and approved by the CO.

Market analysis should be conducted to support each single-source decision, except for emergencies. The method and extent of the analysis depends on the requirement.

The program office must provide the CO with supporting documentation that justifies the proposed single source strategy decision. Examples of information that might be documented include results of market analysis, cost or price data, unique qualifications or performance capability, and past performance. Mere conclusions, without adequate objective supporting data, are insufficient.

After the decision to contract with a single source has been approved, a public announcement must be made for any action over $150,000, except in emergencies. The purpose of the announcement is to inform industry about the basis for the decision to contract with the single source.

A basic contract may be modified to exercise an option, or to satisfy a follow-on procurement for more of the same products or services without seeking additional competition when, based on market analysis, there is a rational basis not to compete the requirement and the rational basis is documented and approved as discussed in this subsection.

The Contracting Officer must justify and document in accordance with this Section any increase in ceiling price of a time-and-materials or labor-hour contract.

3.2.2.4.1 Single-Source Procurement Process

The single-source procurement process includes planning, communications, award, and lessons learned. The actions for an individual phase within the process may vary depending on the particular circumstances.

3.2.2.4.1.1 Emergencies

An emergency situation, including but not limited to a threat to loss of life or property, national security, or restoration of an air traffic control facility, may require immediate contracting with a single source. In these instances, once funds are committed, the CO may verbally authorize a

contractor to proceed and may combine single source phases or complete activities after the fact. As a minimum and as soon as practical, the CO should:

- Obtain funding certification;
- Document the single source decision; and
- Confirm authorization with written notification

3.2.2.4.1.2 Non-emergencies Revised 1/2017

For single-source non-emergency procurements, planning may include:

- Analyzing the market to determine potential sources;
- Developing an independent FAA cost estimate for any anticipated procurement action (to include modifications) whose total estimated value is $150,000 or more, if not exempted by AMS 3.2.1.2.4;
- Obtaining funding certification;
- Obtaining approval of rationale for single source, except for follow-on or exercise of options; and
- Issuing public announcement, if in excess of $150,000.

3.2.2.4.1.3 Lessons Learned

Communicating lessons learned is encouraged.

3.2.2.5 Commercial and Simplified Purchase Method Revised 6/2006

The FAA may acquire commercial products and services from the competitive market place by using the simplified purchase method described herein and best commercial practices. Commercial and simplified purchases are used for commercial items or for products or services that have been sold at established catalog or market prices and are generally purchased on a fixed-price basis. However, procurement of products available for purchase from Federal Prison Industries is governed by AMS 3.8.4.2.

3.2.2.5.1 Planning Revised 1/2017

Procurement planning should be accomplished for all simplified and commercial purchases. The level of planning and announcement should be dictated by the nature and complexity of the requirement, commercial availability, dollar value, urgency of the requirement, and degree of previous procurement history.

The purpose of procurement planning is to:

- Determine whether commercial items meet the FAA's needs;
- Identify potential commercial sources; and

- Publicly announce requirements in excess of $150,000.

Market analysis should be simple and straightforward, and may include information based on personal knowledge of the market, historical purchase information, qualified vendors list, commercial catalogs, trade journals, newspapers, other professional publications or local telephone directories.

Contracting mechanisms are at the discretion of the CO. Purchases may also be made using the following mechanisms:

- Purchase card;
- Purchase card checks;
- Purchase order;
- Contract;
- Orally (only in emergency situations) with proper documents processed as soon as possible following the oral order; and
- Other methods, including interagency agreements, when deemed appropriate and properly documented.

3.2.2.5.2 Sourcing Determination

The CO should solicit an appropriate number of vendors to ensure quality products and services are delivered in a timely manner at a fair and reasonable price. Requirements should be stated in commercial terms generally understood and accepted in the industry.

3.2.2.5.3 Screening

The CO should determine the appropriate screening approach and format for vendor's responses (e.g., electronic, written, oral, use of standard commercial or FAA forms). The CO may also conduct communications with individual offerors, as appropriate, to address offeror understanding of the requirement, performance capability, prices, and other terms and conditions. For commercially available products, the CO is encouraged to use "commercial competition techniques" such as continuing market research throughout the process by using vendor proposals as the source of prices and commercially available capabilities and sharing that information with other vendors.

3.2.2.5.4 Selection Decision and Award

The CO's selection decision should be based on the FAA's stated evaluation criteria. The selection decision for commercial or simplified purchases should be based on the best value to the FAA including, but not limited to, factors such as price, functional specifications, delivery capability, warranty, and payment terms. This may be accomplished through establishing specific evaluation criteria with an accompanying evaluation plan as described under Complex, Noncommercial Source Selection, and making the selection based on the stated criterion. It may also be based on the most favorable solution available in the commercial market, as determined

by the FAA, as described under Commercial and Simplified Purchase Method, or through a combination of methods depending on complexity, risk, dollar value, and urgency of the requirement.

3.2.2.5.4.1 Documentation

The method of selection and rationale for awards, and a determination that the price is fair and reasonable should be documented. The extent of the documentation depends on the complexity and dollar value of the procurement action.

3.2.2.5.5 Micro-Purchase Threshold Revised 4/2017

Simplified purchases with a total estimated potential value (TEPV) under the micro-purchase threshold must be performed using the purchase card. The micro-purchase threshold is $10,000 for commercial supplies, construction and services.

3.2.2.6 Unsolicited Proposals

3.2.2.6.1 Policy Added 10/2008

The FAA may consider and accept unsolicited proposals when in the best interest of FAA. Unsolicited proposals are a valuable means for FAA to obtain innovative or unique methods or approaches to accomplishing its mission from sources outside FAA. Advertising material, commercial item offers, contributions, or technical correspondence are not considered to be unsolicited proposals. A valid unsolicited proposal must:

- Be innovative and unique;
- Be independently originated and developed by the offeror;
- Be prepared without FAA supervision;
- Include sufficient detail to permit a determination that the proposed work could benefit FAA's research and development, or other mission responsibilities; and
- Not be an advance proposal for a known FAA requirement that can be acquired by competitive methods.

3.2.2.6.2 Receipt and Initial Review Revised 10/2008

Unsolicited proposals should be addressed to:

Federal Aviation Administration
Acquisition Policy and Oversight
Acquisition Policy Group (AAP-100)
Attn.: Unsolicited Proposal Coordinator
800 Independence Avenue SW, Room 439W
Washington, DC 20591

Once received, the FAA unsolicited proposal coordinator will review and determine if the document(s) meets the requirements of an unsolicited proposal.

3.2.2.6.3 Prohibitions Added 10/2008

FAA personnel should not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a SIR or in communications with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea available to FAA from other sources without restrictions.

FAA personnel must not disclose restrictively marked information included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

3.2.2.7 Contractor Qualifications

3.2.2.7.1 Applicability

This section applies to all contracts and to all proposed contracts with any prospective contractor that is located in the United States, its possessions, or Puerto Rico; or elsewhere, unless application would be inconsistent with the laws or customs where the contractor is located.

3.2.2.7.2 Contractor Responsibility

The CO must ensure that contracts are awarded only to responsible contractors (see Section 3.2.2.2). No award may be made unless the CO makes an affirmative determination of responsibility.

3.2.2.7.3 Contractor Team Arrangements

FAA will recognize the validity of contractor team arrangements, provided, the arrangements and company relationships are fully disclosed in an offer, or for arrangements entered into after submission of an offer, before the arrangement becomes effective.

3.2.2.7.4 Suspension and Debarment

FAA may suspend or debar contractors for cause. FAA will honor suspension, debarment, and ineligibility decisions of other agencies unless FAA has a compelling need to obtain the requirement from that contractor.

3.2.2.8 Describing FAA Needs

3.2.2.8.1 Applicability

The requirements herein apply to all FAA procurements and agreements except real property and utilities.

3.2.2.8.2 Policy

The FAA will describe its needs clearly and generally in writing, absent special or emergency circumstances. Service organizations may describe needs as minimum requirements, goals, or in another form well suited to the contemplated procurement.

3.2.2.9 Rehabilitation Act

The FAA must comply with Section 508 of the Rehabilitation Act of 1973 in developing, procuring, maintaining or using electronic and information technology. Section 508 of the Rehabilitation Act of 1973 applies to all new procurements after June 21, 2001.

3.2.3 Pricing Methodology, Principles and Standards Revised 10/2011

3.2.3.1 Applicability Revised 10/2011

This section applies to pre- and post-award pricing and analysis for contracts, subcontracts, orders, and modifications, excluding real property and utilities.

3.2.3.2 Cost and Price Analysis Revised 1/2016

The CO must make a determination that prices are fair and reasonable based on price analysis and, if necessary, cost analysis. Price analysis is the review of price without evaluating separate cost elements and profit/fee, and is required for all pricing actions. Cost analysis is the review of the individual cost elements and profit. Price analysis is the preferred method for evaluating competitive proposals. If the CO determines price competition is not adequate to support a determination of price reasonableness, the CO must require offerors to submit either certified cost or pricing data or information other than certified cost or pricing data. When the CO determines adequate price competition exists, certified cost or pricing data must not be requested. In situations with established catalog or market prices, prices set by law or regulation, or commercial items, price analysis is sufficient and the CO must not request cost data.

3.2.3.3 Pre- and Post Award Audits Revised 1/2012

The CO must request pre-award and post-award audits on all cost reimbursement contracts exceeding $100 million. In addition, FAA will request pre-award and post-award

audits on at least 15% of all cost reimbursement contracts not anticipated to exceed $100 million. For other contract types, the CO may use any method of cost or price analysis to determine fair and reasonable prices.

Pre-award audits and post-award incurred cost audits are the preferred mechanism to assist the CO in ensuring valid indirect and direct costs are billed under cost reimbursement contracts. The CO is responsible for ensuring indirect and direct costs under a cost reimbursement contract are allowable. In situations where an incurred cost audit is not obtained, the CO will still ensure that only allowable costs are paid.

The sponsoring service organization will fund required pre- and post- award audits and must include an estimate of the cost of audits in the Acquisition Program Baseline; the Implementation Strategy and Planning Document will describe the approach, responsible organizations, and activities for obtaining audits.

3.2.3.4 FAA Cost Principles **Added 10/2011**

The FAA contract cost principles, as described in AMS Procurement Guidance, must be used to price contracts, subcontracts, orders, and modifications whenever cost analysis is performed. Cost principles must also be used for determining, negotiating, or allowing costs when required by a contract clause. The CO must incorporate FAA cost principles in contracts with commercial organizations as the basis for:

- Determining reimbursable costs under (a) cost-reimbursement contracts and cost-reimbursement subcontracts under these contracts performed by commercial organizations and (b) the cost-reimbursement portion of time-and-materials contracts except when material is priced on a basis other than at cost;
- Negotiating indirect cost rates, when FAA has division or corporate contract administration responsibilities, quick close-out procedures are used, or indirect rate caps are negotiated in the contract;
- Proposing, negotiating, or determining costs under terminated contracts;
- Price revision of fixed-price incentive contracts;
- Price re-determination of price re-determination contracts; and
- Pricing changes and other contract modifications.

When another Government agency has division or corporate contract administration responsibilities, FAA may agree to cost principles of the administering agency to determine or negotiate indirect rates not covered by (a) or (b) above.

3.2.3.5 Cost Accounting Standards **Revised 10/2018**

All contractors and subcontractors must use Cost Accounting Standards (CAS) according to 48 CFR Part 99 for estimating, accumulating, and reporting costs in connection with pricing, administering, and settling disputes concerning all negotiated prime and subcontract procurements $1,000,000 or more, except for contracts or subcontracts exempted by these regulations. The

following categories of contracts and subcontracts are exempt from all CAS requirements:

- Negotiated contracts and subcontracts less than $1,000,000. For purposes of this paragraph, an order issued by one segment to another segment must be treated as a subcontract;
- Contracts and subcontracts with small businesses;
- Contracts and subcontracts with foreign governments or their agents or instrumentalities or (insofar as the requirements of CAS other than 9904.401 and 99.402 are concerned) any contract or subcontract awarded to a foreign concern;
- Contracts and subcontracts in which the price is set by law or regulation;
- Firm fixed-priced and fixed-price with economic price adjustment (provided that price adjustment is not based on actual costs incurred), time-and-materials and labor-hour contracts and subcontracts for acquisition of commercial items;
- Contracts or subcontracts of less than $7.5 million, provided that, at the time of award, the business unit of the contractor or subcontractor is not currently performing any CAS-covered contracts or subcontracts valued at $7.5 million or greater;
- Contracts and subcontracts to be executed and performed entirely outside the United States, its territories, and possessions; and
- Firm fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data.

3.2.4 Types of Contracts

3.2.4.1 Applicability

This section is applicable to contracts for procurement of all products and services.

3.2.4.2 Policy

Contracts may be of any type or combination of types except for cost plus a percentage of cost contracts, which are prohibited. The use of fixed-price contracts is strongly encouraged whenever appropriate. Development contracts may be incrementally phased fixed-price contracts. All contracts, except those issued in emergency situations, must be in writing.

3.2.4.3 Guidance and Principles **Revised 10/2018**

The types of contracts that may be used for FAA procurements are addressed in AMS guidance. Types of contracts other than those specified in the guidance may be used when approval has been obtained from an official one level above the CO within the contracting organization.

Contracting officers should clearly identify the type of contract(s) at the front of each contract and in SIRs, when appropriate. Where multiple types of contracts are used in one contract, performance requirements, terms and conditions, and prices (or estimated cost and fee) for each type of contract should be clearly separated and partitioned.

The multi-year contract may be used for the acquisition of products and services in accordance

with any applicable restrictions and appropriate appropriations acts.

3.2.5 Contractor Ethical Guidelines

3.2.5.1 Applicability

This policy is applicable to all contracts.

3.2.5.2 Policy

FAA business must be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none.

3.2.6 Purchase Card Program Added 1/2009

3.2.6.1 Applicability Added 1/2009

Purchase card policy and corresponding guidance apply only to actions conducted through the FAA purchase card program.

3.2.6.2 Policy Added 1/2009

All procurements using an FAA purchase card must be conducted according to applicable laws, regulations, and FAA policy. AMS procurement guidance for purchase cards establishes standards for competition and source selection that supersedes other applicable AMS policy and guidance.

3.2.7 Anti-Counterfeit Management Added 4/2014

3.2.7.1 Applicability Added 4/2014

Anti-Counterfeit policy and non-conforming parts requirements are applicable to (1) contracts over $50M; (2) construction contracts for NAS applications over $2M; and (3) office equipment and/or supplies for NAS applications over $2M.

3.2.7.2 Suspected Counterfeit and Non-Conforming Parts Added 4/2014

Anti-Counterfeit policy, guidance and procedures apply to securing the FAA equipment supply chain from counterfeit and non-conforming parts.

The CO must ensure that instruction to contractors result in the most efficient and economical way to mitigate the entry of suspected counterfeit and non-conforming parts in the FAA supply chain

by:

- Not knowingly procuring suspected counterfeit and non-conforming parts.

- Documenting all occurrences of suspected and confirmed counterfeit parts in the appropriate reporting system, including the Government-Industry Data Exchange Program (GIDEP).

- Making information about counterfeiting accessible at all levels of the FAA supply chain as a method to prevent further counterfeiting.

- Notifying the appropriate FAA investigative organization, or US Government intelligence authorities, and those who use the suspected and confirmed counterfeit parts, of incidents at the earliest opportunity

3.3 Contract Funding and Payment Revised 10/2011

3.3.1 Contract Funding and Payment

Contract payment processes expedite the performance of essential contracts. The FAA will structure payment plans and schedules that are conducive to efficient and economical contract performance.

3.3.1.1 Applicability

This section applies to all contracts except real property and utilities. This section includes:

- Payments;
- Prompt payment;
- Non-delivery payments (commercial and noncommercial);
- Contract funding; and
- Debt collection.

3.3.1.2 Policy

3.3.1.2.1 Payment

Prudent contract payment schemes expedite the performance of essential contracts. The CO should strive to structure the contract to allow frequent partial deliveries. If partial deliveries are not possible or the interval between deliveries is long, non-delivery payments may be necessary for efficient and economical contract performance.

3.3.1.2.2 Prompt Payment Revised 4/2012

The FAA should make payments for all acceptable deliveries within 30 days after receipt of a proper invoice and receiving report (15 days for contracts with small businesses, whenever practicable). Interest will apply to any payment later than 30 days. However, except under contracts for services, interest will not apply to late payments on interim vouchers under time-and-material, labor-hour, and cost reimbursement contracts.

3.3.1.2.3 Non-delivery Payments (Commercial and Noncommercial)

The CO may use any of the non-delivery payment methods available for use. Other types of non-delivery payments may be made as long as they are mutually agreed upon and the interest of the FAA and the U.S. taxpayer are protected (e.g., security, adequate accounting system, etc.). All non-delivery payment plans not described in this section require approval one level above the CO.

3.3.1.2.4 Contract Funding

The FAA must comply with the Anti-Deficiency Act and other fiscal laws.

3.3.1.2.5 Debt Collection

Debt collection is the responsibility of the CO in coordination with the payment office. Interest must be assessed on all uncollected debt in accordance with this section.

3.3.2 Reserved Revised 10/2011

3.4 Bonds, Insurance, and Taxes

3.4.1 Bonds and Insurance

3.4.1.1 Applicability Revised 7/2008

This section applies to construction contracts subject to the Miller Act, and to any other contracts that the CO determines would benefit from use of bonds, guarantees, and insurance to protect FAA's interest.

3.4.1.2 Policy Revised 10/2010

The FAA will comply with the intent of the Miller Act (40 U.S.C. 270a-270f) by requiring payment and performance bonds for construction contracts over $150,000. The FAA may also require proposal guarantees, payment bonds, performance bonds, and insurance for any contract when necessary to protect FAA's interests.

3.4.2 Taxes

3.4.2.1 Applicability

This section prescribes guidance for (a) using tax clauses in contracts (including foreign contracts), (b) asserting immunity or exemption from taxes, and (c) obtaining tax refunds. It explains Federal, State, and local taxes on certain products and services acquired by executive agencies and the applicability of such taxes to the Federal Government. It is for the general information of Government personnel and does not present the full scope of the tax laws and regulations.

3.4.2.2 Policy

The FAA policy is to provide appropriate contract clauses for (a) Federal Excise Taxes levied on the sale or use of particular products or services, (b) exemption of Federal Excise Taxes, and (c) exemption of Federal purchases and property from state and local taxes. The service organization must use the appropriate clauses for the tax situation at hand.

3.5 Patents, Rights in Data and Copyrights

3.5.1 Applicability

The policies prescribed in this section are applicable to all contracts involving intellectual property issues.

3.5.2 Policy

Patents, copyrights, and other rights in data are valuable intellectual property. The FAA acquires patents, copyrights, and other rights in data as necessary to:

- Enhance the competitive process;
- Ensure the ability to use, maintain, repair, and modify products procured under FAAcontracts;
- Recoup development costs of, and fund improvements in, products and equipment;
- Develop products for FAA and public use; and
- Protect its position in the competitive marketplace.

3.6 Socio-Economic and Other Policies and Programs

3.6.1 Small Business Development Program **Revised 7/2005**

3.6.1.1 Applicability **Revised 10/2012**

The policies in this Section apply to FAA procurements for products and services but exclude those

procurements using purchase cards, purchase card checks, electric utilities, real property, grants, memoranda of understanding, non-appropriated funds, contracts to be awarded and performed entirely outside of the United States, contracts with foreign governments or international organizations, agreements, and required sources of products/services and use of Government sources including products available from Federal Prison Industries (FPI) (refer to AMS Small Business Program Development Guidance).

3.6.1.2 Policy Revised 1/2010

The FAA must comply with Presidential directives, constitutional standards, public laws, and DOT Secretary Policy Statements to promote, expand, aggressively provide procurement opportunities as prime contractors and as subcontractors for small businesses, small businesses owned by socially and economically disadvantaged individuals, women-owned small businesses and service-disabled veteran owned small businesses. The FAA's Small Business Development staff currently has and will continue to have responsibility for:

- FAA's policy and program on the utilization of small business and small businesses owned and controlled by socially and economically disadvantaged individuals;
- Establishing mechanisms for monitoring and evaluating the effectiveness of the small business program; and
- Ensuring FAA-wide implementation and accomplishment of the small business program objectives.

Key features of the small business program will include:

- Competitive/noncompetitive set-asides;
- Establishment of eligibility criteria and measurable prime contracting and subcontracting goals;
- Vigorous outreach efforts;
- Mentor-Protégé Program; and
- Small business forums.

3.6.1.3 Principles for the Small Business Development Program Revised 7/2005

3.6.1.3.1 Program Goals Revised 7/2005

Prior to the end of each fiscal year, measurable annual FAA wide major procurement program goals (including subcontracting goals) will be established to provide attainable and reasonable opportunities for small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals to participate in contracts awarded by the FAA for the next fiscal year.

To ensure attainment of the program goals, senior management will be held responsible and goal achievement will be monitored at all levels in the agency. Additionally, the Small Business Development Staff will conduct vigorous outreach efforts that may include participating in Small Business Conferences, Small Business forums, etc.

3.6.1.3.2 Prime Contracting with Small Businesses Revised 1/2017

When appropriate, individual procurements may be set aside for competitive award among small businesses. Individual procurements may also be set-aside for small businesses two categories (combined set-asides).

3.6.1.3.3 Reserved Revised 1/2017

3.6.1.3.4 Set-Asides to Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals (8(a) Certified) Revised 1/2017

Except for those acquisitions being purchased using the agency purchase card, or those acquisitions subject to AMS 3.8.4.2, each acquisition of supplies or services having an anticipated dollar value exceeding $10,000, but not over $150,000, is automatically reserved exclusively for SEDB (8(a)) vendors unless the Contracting Officer, with review of the cognizant Small and Small Disadvantaged Utilization Specialist, determines there is not a reasonable expectation of obtaining offers from responsible SEDB (8(a)) concerns that are competitive in terms of market prices, quality and delivery. This requirement applies to Screening Information Requests (SIRs) issued on or after June 1, 2015. The Contracting Officer must submit the Small Business Set-Aside Determination and Coordination Form for all such acquisitions (see also AMS Small Business Development Program Guidance for use of this form). **These procurements may be either competitive or noncompetitive.**

In addition, other individual procurements outside the above specified range may be set-aside for competitive award among Socially and Economically Disadvantaged Businesses (SEDBs) that are 8(a) certified, when appropriate.

3.6.1.3.5 Noncompetitive Awards to SEDB (8(a)) Vendors Revised 7/2016

Individual procurements may be noncompetitively awarded to SEDB (8(a)) vendors when the anticipated total value of the procurement (including all options) is $6.5 million or below for procurements assigned manufacturing North American Industry Classification System codes and $4 million or below for all other procurements. Where a procurement exceeds the noncompetitive threshold, the procurement may be awarded on a noncompetitive basis to SEDB (8(a)) vendors if: (1) there is not a reasonable expectation that at least two or more SEDB (8(a)) sources will submit offers that are in the Government's best interest in terms of quality, price and/or delivery; or (2) the award will be made to a concern owned by an Indian tribe or an Alaska Native Corporation. Noncompetitive awards above $22 million to SEDB 8(a) vendors must be justified and documented as indicated in AMS Small Business Development Procurement Guidance.

3.6.1.3.6 Set-Asides to Service-Disabled Veteran Owned Small Businesses Revised 10/2008

When appropriate, individual procurements may be awarded noncompetitively or set-aside

competitively for award among service-disabled veteran owned small businesses.

3.6.1.3.7 Subcontracting with Small Businesses and Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals

When appropriate, subcontracting opportunities will be encouraged.

3.6.2 Labor Laws

3.6.2.1 Applicability Revised 10/2014

The Davis-Bacon Act (40 U.S.C. § 276a), Convict Labor (18 U.S.C. § 4082-(c)(2)), Copeland Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), Walsh-Healey Public Contracts Act (41 U.S.C. §§ 6501-6511), Equal Employment Opportunity (Executive Order 11,141, 29 FR 2477), Service Contract Act (41 U.S.C. §§ 6701-6707), and other labor laws and regulations will apply to acquisitions for products, services, and construction.

3.6.2.2 Policy Revised 4/2017

The FAA will comply with labor laws when acquiring products, services, and construction, consistent with the thresholds established herein the Acquisition Management System.

3.6.3 Environment, Conservation, Occupational Safety, and Drug-Free Workplace Revised 4/2009

3.6.3.1 Applicability Revised 4/2009

This section applies to all FAA Screening Information Requests (SIRs) and contracts performed in the United States.

3.6.3.2 Policy Revised 10/2016

It is the policy of FAA to contract with entities that are in compliance with applicable environmental, energy, safety, and drug-free workplace laws, orders, and regulations.

FAA will ensure that sustainable acquisition requirements are included to the maximum extent practicable for all applicable procurements in the planning, award, and execution phases of the acquisition.

To achieve sustainable acquisition goals, FAA will meet statutory mandates for purchasing preference. If statutory mandates do not exist, FAA will give preference to purchasing sustainable products and services identified by EPA programs. Where no statutory mandates, EPA programs,

or EPA recommended specifications, labels, or standards exist, FAA will give preference to non-federal specifications, standards, or labels to further advance sustainable procurements.

- FAA elects to follow the statutory mandates requiring purchase preference for: recycled-content products designated by EPA; energy and water efficient products and services, such as ENERGY STAR® qualified and Federal Energy Management Program (FEMP)-designated products; and the U.S. Department of Agriculture (USDA) BioPreferred and biobased designated products.
- Sustainable products and services identified by EPA programs include: Significant New Alternative Policy (SNAP) chemicals, WaterSense® certified products and services; Safer Choice® labeled products; and SmartWay® Transport partners and SmartWay products.
- Non-federal specifications, standards, or labels to further advance sustainable procurements must meet or exceed specifications, standards, or labels recommended by EPA or meet environmental criteria developed or adopted by voluntary consensus standards bodies consistent with section 12(d) of the National Technology Transfer and Advancement Act of 1995 (P.L. 104-113) and OMB Circular A-119.

Sustainable acquisition requirements are considered practicable unless there is an allowable exception for acquiring sustainable products or services. An allowable exception is available if any of the following conditions exist:

- Product or service cannot be acquired competitively within a reasonable performance schedule.
- Product or service cannot be acquired that meets reasonable performance requirements.
- Product or service cannot be acquired at a reasonable price. The price must be deemed unreasonable when the total life cycle costs are significantly higher for the sustainable product or service versus the non-sustainable product or service. Life cycle costs are determined by combining the initial costs of a product or service with any additional costs or revenues generated from that product or service during its entire life.
- An exception is provided by statute, such as the exception to procuring ENERGY STAR or FEMP-designated products under 42 U.S.C. § 8259b(b)(2).

If a product meets any of the aforementioned exceptions, FAA should strive to purchase a comparable product that is still environmentally sustainable (e.g., if a WaterSense product is not available at a reasonable price, FAA should purchase a similar product that is water efficient and available at a reasonable price). If at any point during the acquisition it is determined that a contract action cannot comply with the sustainable requirements due to an exception, the Contracting Officer must document, within the contract file, the exception being used and rationale for using the exception.

3.6.3.3 Environmental Performance and Sustainability Factors Revised 10/2016

3.6.3.3.1 Recycled-Content Products Revised 10/2016

In order to meet the objectives of Executive Order (EO) 13693, FAA will procure products

composed of recycled content, which are produced with waste materials and byproducts recovered or diverted from solid waste. Recycled-content products are designated in EPA's Comprehensive Procurement Guidelines (CPG) and FAA will purchase these products at the highest percentage of recovered content practicable. FAA should purchase uncoated paper (including office products or support services that include the supply of written documents) containing at least 50 percent post-consumer recycled content whenever practicable, but if not practicable, FAA will purchase uncoated printing and writing paper containing at least 30 percent post-consumer recycled content or higher. These considerations will be identified in procurement planning and SIR/contract documents.

3.6.3.3.2 Energy Conservation and Efficiency Revised 10/2016

In order to meet the objectives of EO 13693, the Energy Policy Act of 2005 (EPAct 2005), the Energy Independence and Security Act of 2007 (EISA 2007), and FAA Order 1053.1B (or the latest version), FAA will procure the most energy efficient products available, where life-cycle cost-effective and consistent with the mission need. In doing so, FAA will procure ENERGY STAR labeled and FEMP-designated products as well as electronic products or services that meet or exceed specifications, standards, or labels recommended by the EPA (e.g. Electronic Products Assessment Tool (EPEAT) electronic products is the highest assessment rating available in FY16). These considerations will be identified in the procurement planning and SIR/contract documents when procuring products or services affecting FAA energy consumption.

3.6.3.3.3 BioPreferred and Biobased Designated Products Added 10/2016

In order to meet the objectives of EO 13693, the Farm Security and Rural Investment Act of 2002, the Food Conservation and Energy Act of 2008, and the Agricultural Act of 2014, FAA will purchase and use USDA BioPreferred and biobased designated products, which are products derived from plants and other renewable agricultural, marine, and forestry materials and provide an alternative to conventional petroleum derived products. FAA will give preference to products composed of the highest percentage of biobased material practicable. These considerations will be identified in procurement planning, SIR/contract documents.

3.6.3.3.4 Alternatives to Ozone Depleting Substances and High Global Warming Potential Hydrofluorocarbons Added 10/2016

In order to meet the objectives of EO 13693 and the Clean Air Act, FAA will procure Significant New Alternative Policy (SNAP) chemicals or other alternatives to ozone-depleting substances and high global warming potential hydrofluorocarbons, where feasible, as identified by SNAP. FAA will ensure that the product complies with statutory mandates (e.g., biobased) if applicable to the product category. These considerations will be identified in the procurement planning and SIR/contract documents.

3.6.3.3.5 Water Conservation and Efficiency Added 10/2016

In order to meet the objectives of EO 13693 and FAA Order 1053.1B (or the latest version), FAA

will purchase WaterSense certified products and services. These considerations will be identified in the procurement planning and SIR/contract documents when procuring products or services affecting FAA water consumption.

3.6.3.3.6 Chemicals Management Added 10/2016

In order to meet the objectives of EO 13693, FAA will purchase Safer Choice labeled products to reduce the overall quantity of chemicals and toxic materials acquired, used, and disposed of. FAA will ensure that the product complies with the statutory mandates (e.g., biobased) if applicable to the product category. These considerations will be identified in the procurement planning and SIR/contract documents.

Additionally, FAA will implement EPA's Integrated Pest Management Principles and Water Efficient Landscaping practices to reduce and eliminate the use of toxic and hazardous chemicals and materials.

3.6.3.3.7 Fuel Efficient Products and Services Added 10/2016

In order to meet the objectives of EO 13693, FAA will improve supply chain efficiency by reducing the impact of shipping and transportation when procuring goods and services. As such, FAA will procure 1) SmartWay products; and 2) services from SmartWay Transport partners. These considerations will be identified in the procurement planning and SIR/contract documents.

3.6.3.4 Delivery of Electronic and Paper Documents Revised 10/2016

Contractors must submit acquisition-related documents electronically, to the maximum extent practicable. When paper documents are submitted to the FAA, they must be printed or copied double-sided. Refer to the Recycled-Content Products Policy above for additional requirements for delivery of paper documents.

3.6.3.5 Drug-Free Workplace Revised 4/2009

The FAA must deem any offer unqualified and ineligible for award unless the offeror has certified that it is a drug free workplace. After contract award, if there is adequate evidence to suspect that the contractor submitted a false certification or failed to comply with the certification, the FAA may suspend payments, terminate the contract for default, debar or suspend the contractor, or take other appropriate action to obtain quality performance by a lawfully operating contractor.

3.6.3.6 Hazardous and Radioactive Materials

3.6.3.6.1 Hazardous Material Identification and Safety Data Revised 10/2016

It is FAA policy to comply with Occupational Safety and Health Administration (OSHA)

regulations on hazardous materials, conditions and precautions. To comply with these regulations, FAA must obtain information from contractors when hazardous materials are provided to FAA. Contractors are required to identify any hazardous materials delivered under a contract, as defined in Federal Standard 313; and must provide Safety Data Sheets for all identified hazardous materials.

3.6.3.6.2 Notice of Radioactive Material Revised 10/2016

The contractor is required to notify the FAA, prior to delivery, of radioactive material that requires specific licensing under the Atomic Energy Act of 1954; or material with a specific activity that is greater than 0.002 microcuries per gram, or a specific activity per item exceeds 0.01 microcuries.

3.6.3.7 Waste Management Added 10/2016

Contractors must comply with the waste reduction and reporting requirements set forth by FAA with regard to increasing the diversion of non-hazardous solid waste, construction and demolition (C&D) debris, and organic and compostable materials from the waste stream. Waste management will further be accomplished through employing source reduction strategies (such as purchasing items that require less packaging materials during shipping) and reducing printing paper use. Waste management factors must be considered, to the maximum extent practicable, in acquisitions where their application would be meaningful and consistent with meeting FAA requirements. These factors must be identified in the procurement planning and SIR/ contract documents.

3.6.4 Foreign Acquisition Revised 4/2014

3.6.4.1 Buy American Act Added 10/2014

The FAA will comply with the tenets of the Buy-American Act (41 U.S.C. §§ 8301-8305) as part of the agency's best value determination during the contractor selection process.

3.6.4.2 Export Control Added 4/2014

The FAA will comply with all U. S. Export Control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130 and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 774.

3.6.5 Indian Incentive Program

The FAA is subject to the requirements of paragraph 1544 of 25 U.S.C. that establishes an incentive payment for contractors of Federal agencies that subcontract with or use suppliers who are Indian organizations or Indian-owned economic enterprises in performing the contract. This incentive payment may be equal to 5 percent of the amount paid, or to be paid, to a qualifying

subcontractor or supplier that is an Indian organization or Indian-Owned economic enterprise.

3.6.6 Fastener Quality Act

The FAA must comply with Pub. L. 101-592, as amended by Pub. L. 104-113 in equipment and construction applications which require the use of high-strength fasteners.

3.7 Freedom of Information Revised 10/2018

3.7.1 Applicability Revised 10/2018

Freedom of information is applicable to all FAA procurements including agreements, real property, utilities, credit cards, commercial and simplified purchase method.

3.7.2 Policy Revised 10/2018

The FAA will comply with the Freedom of Information Act which requires that the FAA provide information to the public by (i) publication in the Federal Register; (ii) providing an opportunity to read and copy records; or (iii) upon a reasonable request. Certain information may be exempted from disclosure; such as, classified information, trade secrets, and confidential commercial or financial information, interagency or intra-agency memoranda, or to personal and medical information pertaining to an individual.

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 will 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 must 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 must 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.

3.8.2.5 Cloud Computing Services Contracts Added 10/2016

All cloud computing services contracts will be conducted in accordance with Federal Risk and Authorization Management Program (FedRAMP) requirements. Further information on FedRAMP may be found at www.fedramp.gov.

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.

3.9 Resolution of Protests and Contract Disputes

3.9.1 Applicability

Protest and contract disputes guidance and principles outlined herein apply to all FAA Screening

Information Requests (SIRs), contract awards, and contracts.

3.9.2 Policy Revised 1/2017

By statute, and consistent with the Fundamental Principles of the AMS, the FAA Dispute Resolution Process, administered by the Office of Dispute Resolution for Acquisition (ODRA), serves as the Administrator's exclusive independent venue for bid protests and contract disputes arising under or relating to the AMS. Review of procurement controversies by the Administrator, through the ODRA, helps protect the quality and integrity of the Agency's acquisitions, promotes the public's confidence and ensures that AMS procedures and policies are followed.

The FAA is committed to the early and expeditious resolution of controversy using voluntary mediation, fact-finding, arbitration and other techniques collectively known as "alternative dispute resolution" (ADR). The FAA has pledged to utilize ADR techniques to the maximum extent practicable when such voluntary techniques will produce a fair and expeditious disposition of a controversy.

Protests concerning FAA SIRs or awards of contracts, and contract disputes arising under or related to FAA contracts, must be resolved or adjudicated at the agency level through the FAA Dispute Resolution Process set forth in 14 C.F.R, Part 17. Judicial review, where available, will be in accordance with 49 U.S.C. §46110 and will apply only to final agency decisions. The decision of the FAA will be considered a final agency decision only after an offeror or contractor has exhausted its administrative remedies for a protest or a contract dispute under the FAA Dispute Resolution Process.

3.9.3 Voluntary Waiver of Protest Revised 1/2017

Using procedures described herein, the FAA may determine that it is in the Government's best interest to include a voluntary waiver of protest provision or clause into a Screening Information Request (SIR), contract or class of SIRs or contracts. A provision or clause in such SIRs or contracts prohibiting protests is enforceable provided that:

(a) The Contracting Officer documents the rational basis detailing the factors considered in the determination that prohibiting protests is in the Government's best interest;

(b) The FAA Acquisition Executive (FAE) approves the written rational basis;

(c) The FAA Office of Chief Counsel is provided notice of the rational basis; and

(d) Prior notice is given to the Office of the FAA Administrator that the FAE intends to include a provision or clause that allows for the voluntary waiver protests in a SIR, contract or class of SIRs or contracts.

The use of a no protest provision or clause will only serve to limit protests of orders or contracts placed against an ordering vehicle such as an Indefinite Delivery, Basic Ordering Agreement or other master ordering agreement. Nothing in this section prohibits a challenge to any term or condition of the ordering vehicle made in accordance with the procedures of the FAA Office of

Dispute Resolution for Acquisition (ODRA).

3.9.4 FAA Dispute Resolution System Revised 1/2017

The ODRA is established as an organization that is independent of agency organizations responsible for procurement actions. Pursuant to a delegation of authority by the Administrator, the Director of the ODRA manages the FAA dispute resolution process, promotes ADR, conducts dispute resolution proceedings and recommends action to the Administrator on matters concerning protests or contract disputes. The ODRA is authorized, among other things, to

- Adjudicate protests and contract disputes on behalf of the FAA Administrator;
- Promulgate rules of procedure;
- Issue orders and decisions in accordance with delegations of authority from the FAA Administrator;
- Exercise broad discretion to resolve protests and contract disputes;
- Use ADR to settle protests and contract disputes; and
- Provide fair and impartial "Findings and Recommendations", supported by the case record and law.
- Recommend changes to the FAA acquisition system based on matters brought before the office.

The Director of the ODRA may redelegate to Special Masters and Dispute Resolution Officers (DROs) such delegated authority as is necessary for efficient resolution of an assigned protest or contract dispute, including the imposition of sanctions or other disciplinary actions.

The applicable ODRA rules of procedure are set forth in 14 CFR Parts 14 and 17, Procedures for Protests and Contract Disputes; Amendment of Equal Access to Justice Act Regulations, effective June 28, 1999. These ODRA Rules are incorporated by reference into this section. Further information and guidance concerning the ODRA dispute resolution process for contract disputes and protests can be found on the ODRA Website.

3.9.5 Initial Dispute Resolution at the Contracting Officer Level Revised 1/2017

Offerors and contractors initially should seek resolution of any concerns or controversies at the Contracting Officer level. Contracting Officers should make reasonable efforts to promptly and completely resolve such concerns or controversies, where possible, and will coordinate their dispute resolution efforts with the FAA Procurement Legal Division or their regional or center Assistant Chief Counsel's office. Attempts to resolve disputes at the contracting officer level do not waive or extend the deadlines set forth in 14 CFR Part 17 for filing at the ODRA.

3.9.6 Dispute Resolution at the ODRA Revised 1/2017

ADR is the primary means of dispute resolution that is employed by the ODRA. Upon request, the Office of Dispute Resolution for Acquisition will make available FAA DROs or appropriately qualified persons from outside the FAA to serve as neutrals in ADR proceedings involving

protests and contract disputes. The parties may also employ a neutral of their own choosing. With the agreement of the interested parties, the ODRA may provide ADR services in advance of the filing of a contract dispute or bid protest with the ODRA.

The parties may use any ADR technique proposed by the parties that is deemed by the DRO or neutral to be fair, reasonable, and in the best interest of the parties, including, but not limited to, informal communication, mediation, fact-finding, and binding or nonbinding arbitration. Binding arbitration may be employed only if the protester or contractor and the FAA agree to use this method to resolve the merits of the protest or contract dispute. If binding arbitration is agreed to, the decision of the DRO or neutral arbiter will become a final agency decision. If the parties have not agreed to binding arbitration and are unable otherwise to reach an agreement on the merits of the protest or contract dispute through ADR, then the ODRA will adjudicate the matter to a final Agency decision.

3.9.7 Obligation to Continue Performance

The FAA requires continued performance with respect to contract disputes arising under or related to a contract, in accordance with the provisions of the contract, pending resolution of the contract dispute.

3.9.8 Matters Not Subject to Protest Revised 1/2017

The following matters may not be protested before the Office of Dispute Resolution for Acquisition:

(a) FAA purchases from or through, state, local, and tribal governments and public authorities;
(b) FAA purchases from or through other federal agencies;
(c) Grants;
(d) Cooperative agreements;
(e) FAA transactions placed against an ordering vehicle containing a voluntary waiver of protest clause pursuant to paragraph 3.9.3 Voluntary Waiver of Protest; or
(f) Other transactions that do not fall into the category of procurement contracts subject to the AMS.

3.9.9 Confidentiality of the ADR Process

Settlement discussions and documentation provided to facilitate settlement of the issues will be protected and confidential, to the extent provided by law, ADR agreements and ODRA Protective Orders.

3.10 Contract Administration

3.10.1 Contract Administration

3.10.1.1 Applicability

The types of activities included in the contract administration phase are:

- Issuing contract modifications;
- Monitoring contract deliverables;
- Assuring that subcontracting policies and requirements are followed; and
- Reviewing the contractor's invoices for payment.
- Closing completed contracts.

3.10.1.2 Policy

The terms and conditions of the contract will be the guidance in performing these tasks.

3.10.2 Subcontracting Policies

3.10.2.1 Applicability

This applies to contracts with the exception of real property and utilities, where a prime contractor may need to subcontract a portion of the work.

3.10.2.2 Policy

The CO must consider requiring "Consent to Subcontracts" when the subcontract work is complex, the dollar value is substantial, or the Government's interest is not adequately protected by competition and the type of prime contract or subcontract.

The CO must consider conducting a Contractor Purchasing System Review for each contractor whose sales to the Government, using other than simplified purchases procedures, are expected to exceed $10 million during the next 12 months.

To the maximum extent practicable, the contractor must incorporate, and require its subcontractors at all tiers to incorporate commercial items or non-developmental items as components of items to be supplied under contract.

3.10.3 Government Property **Revised 1/2015**

3.10.3.1 Applicability **Revised 10/2018**

(a) This part prescribes policies and procedures for providing Government property to contractors;

contractors' management and use of Government property; and reporting, redistributing, and disposing of contractor inventory.

(b) It does not apply to—

(1) Government property provided under any statutory leasing authority, except as to non-Government use of property;

(2) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance based payments;

(3) Disposal of real property;

(4) Software and intellectual property; or

(5) Government property that is incidental to the place of performance, when the contract requires contractor personnel to be located on a Government site or installation, and when the property used by the contractor within the location remains accountable to the Government. Items considered to be incidental to the place of performance include, for example, office space, desks, chairs, telephones, computers, and fax machines.

3.10.3.2 Policy Revised 10/2018

(a) Contractors are ordinarily required to furnish all property necessary to perform Government contracts.

(b) Contracting officers will provide property to contractors only when it is clearly demonstrated—

(1) To be in the Government's best interest;

(2) That the overall benefit to the acquisition significantly outweighs the increased cost of administration, including ultimate property disposal;

(3) That providing the property does not substantially increase the Government's assumption of risk; and

(4) That Government requirements cannot otherwise be met.

(c) The contractor's inability or unwillingness to supply its own resources is not sufficient reason for the furnishing or acquisition of property.

(d) *Exception*. Property provided under contracts for repair, maintenance, overhaul or modification is not subject to the requirements of paragraph (b) of this section.

(e) Government property, other than foundations and similar improvements necessary for installing special tooling, special test equipment or equipment, will not be installed or constructed on contractor-owned real property in such fashion as to become nonseverable, unless the Head of the

Contracting Activity determines that such installation or construction is necessary and in the Government's interest.

3.10.3.2.1 General. **Added 10/2018**

(a) Contracting Officers will—

(1) Allow and encourage contractors to use voluntary consensus standards and industry-leading practices and standards to manage Government property in their possession;

(2) Eliminate to the maximum practical extent any competitive advantage a prospective contractor may have by using Government property;

(3) Ensure maximum practical reutilization of contractor inventory for government purposes;

(4) Require contractors to use Government property already in their possession to the maximum extent practical in performing Government contracts;

(5) Charge appropriate rentals when the property is authorized for use on other than a rent-free basis; and

(6) Require contractors to justify retaining Government property not needed for contract performance and to declare property as excess when no longer needed for contract performance.

(b) The FAA will not generally require to establish property management systems that are separate from a contractor's established procedures, practices, and systems used to account for and manage contractor-owned property.

3.10.3.2.2 Responsibility and Liability for Government Property **Added 10/2018**

(a) Generally, contractors are not held liable for loss of Government property under the following types of contracts:

(1) Cost-reimbursement contracts;

(2) Time-and-material contracts;

(3) Labor-hour contracts; and

(4) Fixed-price contracts awarded on the basis of submission of certified cost or pricing data.

(b) The contracting officer may revoke the Government's assumption of risk when the property administrator determines that the contractor's property management practices are noncompliant with contract requirements.

(c) A prime contractor that provides Government property to a subcontractor will not be relieved of any responsibility to the Government that the prime contractor may have under the terms of the

prime contract.

(d) With respect to loss of Government property, the contracting officer, in consultation with the property administrator, will determine—

(1) The extent, if any, of contractor liability based upon the amount of damages corresponding to the associated property loss; and

(2) The appropriate form and method of Government recovery (may include repair, replacement or other restitution).

3.10.3.2.3 Contractors' Property Management System Compliance Added 10/2018

(a) The contract property administrator will conduct an analysis of the contractor's property management policies, procedures, practices, and systems. This analysis will be accomplished as frequently as conditions warrant, in accordance with FAA procedures.

(b) The property administrator will notify the contractor in writing when the contractor's property management system does not comply with contractual requirements, will request prompt correction of deficiencies, and will request from the contractor a corrective action plan, including a schedule for correction of the deficiencies. If the contractor does not correct the deficiencies in accordance with the schedule, the contracting officer will notify the contractor, in writing, that failure to take the required corrective action(s) may result in—

(1) Revocation of the Government's assumption of risk for loss of Government property; and/or

(2) The exercise of other rights or remedies available to the contracting officer.

(c) If the contractor fails to take the required corrective action(s) in response to the notification provided by the contracting officer in accordance with paragraph (b) of this section, the contracting officer will notify the contractor in writing of any Government decision to apply the remedies described in paragraphs (b)(1) and (b)(2) of this section.

(d) When the property administrator determines that a reported case of loss of Government property is a risk assumed by the Government, the property administrator will notify the contractor in writing that it is granted relief of stewardship responsibility and liability. Where the property administrator determines that the risk of loss of Government property is not assumed by the Government, the property administrator will request that the contracting officer hold the contractor responsible and liable.

3.10.3.2.4 Transferring Accountability Added 10/2018

Government property will be transferred from one contract to another only when firm requirements exist under the gaining contract (see 3.10.3.2). Such transfers will be documented by modifications to both gaining and losing contracts. Once transferred, all property will be considered Government-furnished property to the gaining contract. The

warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the contractor as contractor-acquired property that is subsequently transferred to another contract with the same contractor.

3.10.4 Quality Assurance

3.10.4.1 Applicability

Quality Assurance policy and guidelines are applicable to all acquisitions for systems, equipment, material, and services.

3.10.4.2 Policy Revised 10/2011

For all acquisitions, FAA will:

- Ensure appropriate quality assurance requirements are included;
- Require contractors to act on contractual quality assurance commitments;
- Ensure Government quality and reliability needs are met; and
- Accept only products that meet agreed to requirements.

Additionally, for NAS system acquisitions:

- Require the contractor to report the status of requirements linked to critical performance requirements at specified regular intervals;
- Coordinate with the Quality Assurance Office to ensure appropriate quality assurance requirements are incorporated; and
- Delegate in-plant quality assurance and acceptance authority to the Quality Reliability Officer or other Government agent.

3.10.5 Product Improvement/Technology Enhancement

3.10.5.1 Applicability

Product Improvement/Technology Enhancement guidance and procedures apply to all FAA procurements, agreements, real property, utilities, and commercial and simplified purchase method.

3.10.5.2 Policy

The FAA encourages contractors to submit Product Improvement/Technology Enhancement proposals for review at any time during the performance of a contract. The ability to continuously exchange, upgrade, modify, or add new features to equipment and software in response to increased air traffic activity and/or new advancements in technology and methodology is essential. Contractor proposals which are particularly innovative and address

savings for the FAA may be given appropriate consideration in the negotiation.

3.10.6 Termination of Contracts

3.10.6.1 Applicability

This section applies to all FAA contracts, with the exception of real property and utilities.

3.10.6.2 Policy

The termination clauses or other contract clauses authorize contracting officers to terminate contracts for convenience, or for default, and to enter into settlement agreements.

The CO must terminate contracts, whether for default or convenience, when it is in the FAA's interest. The CO may effect a no-cost settlement instead of issuing a termination when (1) it is known that the contractor will accept one, (2) Government property was not furnished, and (3) there are no outstanding payments, debts due the Government, or other contractor obligations.

When the price of the undelivered balance is less than the cost of effecting a termination, the contract should not normally be terminated for convenience but should be permitted to run to completion.

3.10.7 Extraordinary Contractual Actions

3.10.7.1 Applicability

This section is applicable when the FAA intends to enter into, amend, or modify contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85-804 (referred to in this section as the "Act") as amended, and Executive Order 10789 (referred to in this section as the "Executive Order").

3.10.7.2 Policy

The FAA may authorize extraordinary contract relief pursuant to Public Law 85-804. Authority to provide such relief is retained by the DOT Secretary for indemnification requests, and by the FAA Administrator or designee for all other requests.

3.10.8 First Article Approval and Testing

First article testing and approval involves evaluating a contractor's initial, preproduction, or sample model or lot. FAA may utilize first article testing and approval to ensure that a contractor can furnish a product that conforms to all contract requirements for acceptance.

3.10.9 Closeout of Completed Contracts

The CO must close physically complete contracts and agreements in accordance with FAST Procurement Guidance. Closeout activities must include completion and signing of the Contract Closeout Checklist and a Contract Completion Statement.

3.11 Transportation

3.11.1 Applicability

Transportation guidance and procedures are applicable to all contracts in applying contract transportation and traffic management considerations in the acquisition of products, acquisition of transportation and transportation-related services, and transportation assistance with traffic management. The making and administration of contracts under which payments are made from Government funds for (1) the transportation of products, (2) transportation-related services, (3) transportation of contractor personnel and their personal belongings, and (4) acquiring transportation or transportation-related services by contract methods other than bills of lading, transportation requests, transportation warrants, and similar transportation forms.

3.11.2 Policy

The CO must ensure that instructions to contractors result in the most efficient and economical use of carrier services and equipment through transportation and traffic management administration. The contract office must obtain traffic management advice and assistance in the consideration of transportation factors required for:

- SIRs and awards;
- Contract administration, modification, and termination;
- Transportation of property by the Government to and from the contractor; and
- Plants.

3.12 Reserved

3.13 Other Administrative Matters

3.13.1 Applicability

This section is applicable to all screening information requests and contracts.

3.13.1.1 Plain Language Added 7/2006

When the statement of work for a contract requires the contractor to deliver any document that will be published, either electronically or in hard copy, for dissemination outside the FAA, or for broad dissemination within the FAA, the document must comply with FAA Order 1000.36, "FAA

Writing Standards."

3.13.2 Policy

3.13.2.1 AMS Contract Clauses and Provisions Revised 10/2018

AMS clauses and provisions used in screening information requests and contracts must be consistent with the procurement guidance and clause prescriptions, unless there is an approved rational basis for adopting a different approach. The Chief Counsel's office and Chief of the Contracting Office must approve in advance each such rational basis determination regarding the use or tailoring of a mandatory clause or provision.

3.13.2.2 Reserved

3.13.2.2.1 Reserved

3.13.2.2.2 Reserved

3.13.3 Reserved Revised 7/2013

3.13.4 Contract Data Reporting

The FAA will comply with the uniform reporting requirements of the Federal Procurement Data System.

3.13.5 Congressional Notification of Contract Awards

Through the Department of Transportation's Assistant Secretary for Governmental Affairs, the FAA will notify Congress of contract awards and contract modifications.

3.13.6 Seat Belt Use by Contractor Employees

The FAA will comply with the requirements of Executive Order 13043 entitled "Increasing Seat Belt Use in the U.S.".

3.14 Security

3.14.1 Applicability

This section is applicable to all screening information requests and contracts.

3.14.2 Policy

3.14.2.1 Contractor Personnel Security Program Revised 10/2018

The acquisition community must ensure an adequate level of security for contractor employees as stated in FAA Order 1600.72A, allowing for compliance with OMB Circular A-130, "Management of Federal Information Resources", Executive Order 12829 "National Industrial Security Program", and DOD Directives 5200.2 and 5220.22M.

All FAA employees and contractor and subcontractor employees are subject to the FAA's Insider Threat Detection and Mitigation Program (ITDMP) provided they meet the definition of an "FAA employee" and fall within the scope of the program as defined in FAA Order 1600.82. For more information on this Program, please see https://www.faa.gov/regulations_policies/orders_notices/ (FAA only).

3.14.2.1.1 Employment Suitability Revised 10/2007

Contractor employees (including contractors, subcontractors, or consultants) must be subject to the same investigative and personal identification verification requirements as Federal employees if in similar positions requiring recurring access to FAA facilities or access to FAA information systems or sensitive information.

3.14.3 Classified Information Revised 7/2007

The CO will ensure that all proposed and awarded procurement actions contain appropriate provisions and clauses if access to classified information is required, in accordance with The National Industrial Security Program Operating Manual, DOD 5220.22-M and FAA Order 1600.72A, Contractor and Industrial Security Program.

3.14.4 Sensitive Unclassified Information

The CO, in coordination with the service organization, will ensure that all contractual actions contain provisions and clauses to protect the unauthorized dissemination of FAA sensitive information. Such information may entail Sensitive Unclassified Information (SUI), For Official Use Only (FOUO), Sensitive Security Information (SSI), or any other designator assigned by the US Government to identify unclassified information that may be withheld from public release. The Freedom of Information Act (FOIA) provides in exemptions 2 through 9, the guidelines for withholding sensitive unclassified information from the public and how such information must be protected from unauthorized disclosure. Section 552a of Title 5, United States Code (the Privacy Act) identifies information, which if subject to unauthorized access, modification, loss, or misuse could adversely affect the national interest, the conduct of Federal programs or the privacy to which individuals are entitled.

3.14.5 Facility Security Program Revised 1/2019

The Facility Security Risk Management process, as developed through the FAA's Facility Security Management Program, FAA Order 1600.69C, must be an integral part of program

concept, planning, engineering design, and the implementation of required protective measures maintained throughout the lifecycle for physical security enhancements.

3.14.6 Information Security and Privacy (IS &P) Revised 10/2018

The Federal Information Security Modernization Act, 2014 (FISMA), OMB Circular A-130, and other federal standards and regulations describe information security for all agency information that is collected, stored, processed, disseminated, or transmitted using agency or non-agency owned information systems. For additional FAA IS &P Program policy, see FAA Order 1370.121 at https://www.faa.gov/regulations_policies/orders_notices/ (FAA only). The contractor must comply with all applicable policies as indicated in the Statement of Work/Specification.

Regarding possible security breaches, in accordance with OMB Memorandum 07-16, when the breach involves a Federal contractor or a public-private partnership operating a system of records on behalf of the agency, the agency is responsible for ensuring any notification and corrective actions are taken.

FAA will notify and consult with the United States Computer Readiness Support Team (US-CERT) regarding information security incidents involving the information and information systems that support the operations and assets of the FAA, including contractor systems that support the FAA.

Offerors must indicate in responding to SIRs for Information Technology (IT) or services in support of IT whether they will be using an international processing hub or exchange for FAA data or information, or if any subcontractors or third parties more than 50% foreign owned will be processing, storing, or backing up the data and information.

Protection of privacy is applicable to all FAA procurements including agreements, real property, utilities, credit cards, commercial and simplified purchase method. When the FAA contracts for the design, development, and/or operation of a system of records on individuals, the FAA will apply the requirements of the Privacy Act to the contractor and its employees working on the contract.