

## AMS/FAST CHANGE REQUEST (CR) COVERSHEET

**Change Request Number:** 20-67

**Date Received:** 8/10/20

**Title:** AMS Procurement Guidance (Batch 4) Real Property Integration

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**Policy and Guidance:** (check all that apply)

- Policy
- Procurement Guidance
- Real Estate Guidance
- Other Guidance
- Non-AMS Changes

**Summary of Change:**

The purpose of this change is to integrate Real Property Guidance into Procurement Guidance T3.2.2 (Source Selection), T3.2.2.3 (Complex Source Selection), T3.2.2.5 (Commercial and/or Simplified Purchase Method) T3.8.1 (Agreements, Cooperative Agreements, Gifts & Bequests), T3.8.5 (Accounting Treatment of Leases), and T3.10.6 (Termination of Contracts).

Administrative Change for T3.8.1 - deleted "financial assistance" and replaced with "other".

**Reason for Change:**

The purpose of this change is to integrate Real Property Guidance into Procurement Guidance T3.2.2 (Source Selection), T3.2.2.3 (Complex Source Selection), T3.2.2.5 (Commercial and/or Simplified Purchase Method) T3.8.1 (Agreements, Cooperative Agreements, Gifts & Bequests), T3.8.5 (Accounting Treatment of Leases), and T3.10.6 (Termination of Contracts).

**Development, Review, and Concurrence:**

AAQ, AAP and AGC

**Target Audience:**

FAA Contracting Officers

**Briefing Planned:** No.

**ASAG Responsibilities:** None.

**Section / Text Location:**

T3.2.2 (Source Selection)

T3.2.2.3 (Complex Source Selection)

T3.2.2.5 (Commercial and/or Simplified Purchase Method)

T3.8.1 (Agreements, Cooperative Agreements, Gifts & Bequests)

T3.8.5 (Accounting Treatment of Leases)

T3.10.6 (Termination of Contracts)

**The redline version must be a comparison with the current published FAST version.**

I confirm I used the latest published version to create this change / redline

**or**

This is new content

**Links:**

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.2.2.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.2.2.3.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.2.2.5.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.8.1.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.8.5.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.10.6.pdf>

**Attachments:**

Redline and final documents.

**Other Files:**

N/A.

**Redline(s):**

**Section Revised:**

**3.2.2 A – Source Selection**

**Sections Removed:**

- 3.2.2 A 1 Source Selection Guide**
- 3.2.2 A 2 Public Announcement and Announcement of Competing Offerors**
- 3.2.2 A 3 Past Performance**
- 3.2.2 A 4 Cancelling a Screening Information Request**
- 3.2.2 A 5 Section 508 of Rehabilitation Act**
- 3.2.2 A 6 Spare Parts**
- 3.2.2 A 7 Source Selection Team Responsibilities**
- 3.2.2 A 8 Supplier Process Capability Evaluation and Appraisal**
- 3.2.2 A 9 Tiered Evaluation**
- 3.2.2 C 1 Section 508 Checklist**
- 3.2.2 D 1 Source Selection Guide**
- 3.2.2 D 2 Past Performance Samples**
  - 3.2.2 D 2.1 Sample 1 - Past Performance Instructions**
  - 3.2.2 D 2.2 Sample 2 - Past Performance Evaluation Factors**
  - 3.2.2 D 2.3 Sample 3B - Past Performance Questionnaire**
  - 3.2.2 D 2.4 Sample 3C - Business Management Past Performance Summary**
  - 3.2.2 D 2.5 Sample 4 Survey Form**

**Procurement Guidance - (7/2020 9/2020)**

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T3.2.2 - Source Selection Revised 7/2009

A Source Selection Revised 9/2020

- ~~1 Source Selection Guide~~ Revised 7/2010
- ~~2 Public Announcement and Announcement of Competing Offerors~~ Revised 1/2016
- ~~3 Past Performance~~ Revised 1/2016
- ~~4 Cancelling a Screening Information Request~~ Revised 10/2010
- ~~5 Section 508 of Rehabilitation Act~~ Revised 1/2016
- ~~6 Spare Parts~~ Revised 1/2016
- ~~7 Source Selection Team Responsibilities~~ Revised 1/2016
- ~~8 Supplier Process Capability Evaluation and Appraisal~~ Revised 1/2016
- ~~9 Tiered Evaluation~~ Revised 1/2016

B Clauses

C Forms Revised 9/2020

- ~~1 Section 508 Checklist~~ Added 7/2007

D Appendix Revised 9/2020

- ~~1 Source Selection Guide~~ Revised 1/2016
- ~~2 Past Performance Samples~~ Revised 1/2016
  - ~~2.1 Sample 1 - Past Performance Instructions~~
  - ~~2.2 Sample 2 - Past Performance Evaluation Factors~~ Revised 10/2010
  - ~~2.3 Sample 3B - Past Performance Questionnaire~~ Revised 1/2016

~~2.4 Sample 3C—Business Management Past Performance Summary~~ Revised 1/2016  
~~2.5 Sample 4 Survey Form~~ Revised 1/2016

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## **T3.2.2 - Source Selection** Revised 7/2009

### **A Source Selection** Revised 9/2020

Source selection is a phase of the acquisition process applicable to the acquisition of products, services, construction, and real property. Source selection establishes how a contractor or vendor will be selected, either competitively or through a single source acquisition. For more information on single source acquisitions, see AMS Guidance T3.2.2.4.

For competitive source selection methods, the FAA utilizes various methods for obtaining products, services, construction, and real property. The first method is described under AMS T3.2.2.3 Complex Source Selection and is used for complex, large dollar, developmental, noncommercial items, services, or complex real property acquisitions. The second method is described under T3.2.2.5 Commercial and Simplified Purchases and, is typically used for commercial items or real property acquisitions that are less complex, smaller in dollar value, and shorter term.

### ~~1 Source Selection Guide~~ Revised 7/2010

~~A guide to source selection is in Appendix 1 to this section T3.2.2.~~

### ~~2 Public Announcement and Announcement of Competing Offerors~~ Revised 1/2016

~~All procurements over \$150,000 must be publicly announced on the Internet or through other means. If the Internet is used, as a minimum the announcement should be placed on the Contracting Opportunities page contained in the FAA Acquisition System Toolset (FAST). This requirement does not apply to emergency actions, purchases from an established Qualified Vendors List (QVL) or Federal Supply Schedule (FSS), exercise of options, modifications, or changes. For actions under \$150,000, a public announcement is optional.~~

~~Publicizing the names of offerors competing for FAA contracts can be a method of encouraging small businesses to seek subcontracting opportunities with potential FAA contractors. The Contracting Officer (CO) may publicly announce names and addresses of offerors responding to a screening information request (SIR), provided the SIR includes a notice to the offerors and no offeror objects to the release of this information. The CO may make the public announcement after initial offers are received and/or after making a down select decision.~~

### ~~3 Past Performance~~ Revised 1/2016

~~a. General. Past performance can be one indicator of a prospective contractor's future performance. To help ensure that the best performing contractors are providing products and services to the FAA, past performance should be evaluated during source selection. If past performance is not evaluated, reasoning must be documented.~~

~~b. Recommendations for Using Past Performance in a Screening Information Request (SIR):~~

~~(1) General Considerations. Factors chosen for evaluation should be reasonable, logical, coherent, and directly related to requirements in the statement of work (SOW). The key to successful use of past performance in the screening process is a clear relationship between the SOW, instructions to offerors, and evaluation criteria. Past performance information that is not important to the current acquisition should not be included.~~

~~(2) Responsibility Determination. When the CO or product team considers it appropriate, the SIR states past performance will be used to evaluate the responsibility of the contractor. A contractor with a record of unsatisfactory past performance should be screened out of the selection process.~~

~~(3) Past Performance as a Separate Non-Cost/Price Factor. Including past performance as a stand-alone evaluation factor is better than integrating it with other non-cost/price evaluation factors. The source and type of past performance information to be included in the evaluation and the relative importance of past performance compared to price or cost and any other evaluation factors is at the broad discretion of the procurement team (CO, legal counsel, program official and other supporting staff).~~

~~(4) Non-Relevant Contract Experience/New Contractors. The SIR must state whether new contractors or contractors with non-relevant contract experience will be considered, or rated negatively.~~

~~(5) Size, Scope, Complexity, and Time frame. The SIR requests the offerors for references for ongoing projects and/or contracts completed within a specified period of time (three to five years is reasonable but can be for a shorter period if appropriate) for contracts that are similar in size, scope, and complexity to the SOW. Each of these terms (size, scope, and complexity) should be SOW specific and defined in the SIR. Gather past performance history from sources other than those provided by the offeror. Such sources include the Past Performance Information Retrieval System (PPIRS) database, PRISM database along with other agency contracting personnel, and listings of contract awards posted on FAA Contract Opportunities.~~

~~(6) Sub-factors. The procurement team must pay attention to what differentiates a "good" performer from a "poor" performer. Past performance sub-factors are shaped by those differentiators, be limited in number, and are tailored to the key performance criteria in the SOW.~~

~~(7) Relative Importance. The SIR may state whether all sub-factors are relatively equal, or whether certain sub-factors are more important than others.~~

~~(8) Major Subcontractors. If major subcontractors are likely to perform critical aspects of the contract, the procurement team evaluates past performance of these subcontractors to determine the overall likelihood of success of the prime contractor. The SIR states how such information will be evaluated.~~

~~(9) Affiliates, Divisions, etc. The past performance of the affiliates, divisions, etc. that are actually performing the work is considered. The procurement team must consider the degree of control that a parent organization will exert over the affiliate, division, etc. in determining whether both the parent organization and affiliate, division, etc. past performance is evaluated.~~

~~(10) Number of References. Ask for at least two points of contact (program/technical and contracts) for each past performance reference to assure that all aspects of the offeror's performance can be evaluated.~~

~~(11) Use of Other Sources. The instruction to offerors includes a statement that the Government may use past performance information obtained from sources other than those identified by the offeror, and that the information obtained may be used for both the responsibility determination and the best value decision. For each non-Federal reference, the SIR includes an authorization to release information.~~

~~(12) Inclusion of Past Performance Questionnaire (PPQ). The PPQ does not need to be included as an attachment in the SIR. If the PPQ is included in the SIR, note the past performance questions are not limited to those on the questionnaire.~~

~~(13) Sample SIR Provisions. Appendix 2 to this Guidance contains examples of SIR provisions and an example client authorization letter. The example is not the only way to include past performance in the SIR. Each SIR must contain instructions and evaluation information that best reflects the individual acquisition.~~

#### ~~e. Evaluating Past Performance.~~

~~(1) Relation to SIR. Instances of performance, both good and poor, are noted and related to SIR requirements. If problems were identified on a prior contract, the role the sponsor may have played in that result is taken into account. Evaluations consider the number and severity of problems, the demonstrated effectiveness of corrective actions taken (not just planned or promised), and the overall work record.~~

~~(2) Current Versus Older Performance. The age of the performance being evaluated may be weighted so that performance on older contracts receives less weight than performance on more recent contracts.~~

~~(3) Method of Scoring. The final past performance rating may be reflected by a color, a number, adjectival, or a combination of these methods, depending upon what system is being used overall to indicate the relative ranking of the offerors. A past performance rating is not a precise mechanical or scientific process and must include sound business judgment. Therefore, the documentation of the final rating includes a logical description of the underlying reasons for the conclusions reached.~~

~~(4) Disclosure of Negative Information. If the procurement team receives negative information that would have a significant effect on the likelihood of award to an offeror, then the procurement team discloses the information and provides the offeror an opportunity to~~

~~respond. This is true even if the SIR states that award may be made on initial offers. The SIR includes the appropriate provisions notifying the offerors that FAA retains this option.~~

~~(5) Evaluating Disputed/Negative Information. When the procurement team receives negative information, or information that is disputed, they should carefully consider the offeror's response and determine what weight to apply, based on the facts obtained from the questionnaire, interview, or other sources. The file must be documented to explain why the procurement team assigned a particular rating. This is especially important in situations involving unresolved disputes.~~

~~d. Obtaining Information on an Offeror's Past Performance.~~

~~(1) Reference Checks. The most commonly used method of obtaining past performance is to conduct reference checks from a variety of sources, including previous FAA program and contracting personnel, other Federal agencies, state and local governments, and commercial contractors.~~

~~(2) Other Sources. Dun & Bradstreet can obtain information on past performance on specific contractors for the FAA (Dun & Bradstreet charges for this information). In lieu of FAA paying for the report, the SIR may require offerors to provide a copy of a recent past performance report prepared by Dun & Bradstreet. Quality certifications and awards can also serve as a useful source of past performance information.~~

~~(3) Timetable. The process of collecting past performance information begins as soon as the proposal evaluation begins. It may be best to establish a team devoted entirely to this task during the screening, especially if FAA anticipates receiving a large number of proposals. Researchers must locate and question sources of information, either in person, by telephone or in writing. If the information shows a history of poor performance, the procurement team can eliminate the proposal from the competition as non responsible.~~

~~(4) Questionnaire or Survey Form. The first step in obtaining information from sources is to develop a questionnaire, or survey form, that reflects the evaluation rating system that will be used to assess the offerors strengths and weaknesses for the contract being considered. Questions are worded so that interviewees understand precisely what they are being asked to describe. To maintain accurate records and facilitate verification, the questionnaire (survey) record form include: Interviewer's name, agency/company name, reference's name (to be held in confidence), full mailing address and telephone number, date the questionnaire is completed, and description of the contract effort discussed. An example of a questionnaire is found in Appendix 2.4 Sample 3B.~~

~~(5) Information Collection. Once the questionnaire is prepared, the procurement team should contact references. There are various ways to collect the information: Face-to-face interviews, mailing the questionnaires, telephone interviews, electronic mail (ensuring security measures are taken), or some combination of these.~~

~~(6) Number of References. The SIR requires the offeror provide at least two references (one from the program office/one from contracts) for each of its proposed past performance examples. Additional references could be identified during interviews in order to survey a large enough sample to identify patterns in performance.~~

~~(7) Setting Up Interviews. Being well organized and efficient is important when conducting the interview so as not to waste the interviewee's time. It is helpful to call the reference to make an appointment to conduct an interview, rather than telephoning the references unannounced, thereby catching them unprepared or with little time to respond. If possible, the questionnaire is mailed or faxed to the reference in advance of the appointment. Interviewers take copious notes on the questionnaire to ensure that all information is captured. Tape recording is a good means for capturing all of the conversation; however, tape recording the conversation may cause the interviewee discomfort and reduce the amount of information provided. If tape recording is used during the interview, ensure the interviewee is aware of and agrees to the use of recording devices.~~

~~(8) Conducting Interviews. Evaluators look for patterns of either favorable or unfavorable overall performance, rather than focusing on individual successes or failures. It is important to look for actions that demonstrate high performance and not just unfavorable performance. This will help to get away from the old responsibility determination mode of just looking at performance problems. There appears to be a tendency for references to give an upward bias to ratings. The interviewer should ask enough questions to discriminate between "good" and "excellent." Evaluators request copies of any existing documentation in support of excellent or negative findings (i.e., correspondence, modifications, determinations, etc.). Investigating negative findings in depth prior to presenting them to offerors, in discussions if held, will alleviate unnecessary delays. Prior to concluding the interview, the evaluator asks the reference for a summary opinion, e.g., how would the interviewee rate the contractor's overall performance and would the interviewee like to do business with the contractor again?~~

~~(9) Concluding Telephone and Face-to-Face Interviews. Immediately following a telephone or face-to-face interview, the interviewer prepares a narrative summary of the conversation (this can be the questionnaire as filled in by the interviewer) and send it to the reference for verification, preferably by certified mail return receipt requested, fax, or electronic mail. The narrative states explicitly that if the reference does not object to its content within the time specified, it would be accepted as correct. If the reference indicates that the narrative is incorrect, then a corrected narrative is sent for verification. If a reference will not agree to the record and satisfactory corrections cannot be agreed upon, the record cannot be relied upon and must not be included in the offeror's rating. Another source may provide the same information, however.~~

~~(10) Mailing Questionnaires. If mailing questionnaires is the chosen method for collecting past performance information, mail the questionnaires to the references, provide a time-frame for return of responses, and wait for the responses. If mailed questionnaires are not received in a timely manner, follow-up telephone interviews are suggested (following guidance above if telephone interview occurs).~~

#### ~~4 Cancellling a Screening Information Request~~ Revised 10/2010

~~The CO, with the concurrence of the procurement team, may cancel a SIR at any time during the solicitation process. The notification of cancellation may be made through the same mechanism as the initial or subsequent SIRs. The CO must document cancellation for the contract file.~~

#### ~~5 Section 508 of Rehabilitation Act~~ Revised 1/2016

##### ~~a. Requirements for Accessibility.~~

~~Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) requires that persons with disabilities that are either Federal employees or members of the public seeking information or services from a Federal department are to have access to and use of information and data comparable to the access and use of information and data by Federal employees or members of the public who do not have disabilities. Section 508 applies to contract awards, task orders, delivery orders, orders under Government-wide Schedules and Interagency Agreements for electronic and information technology (EIT), as defined below. The procurement team (CO, program official, legal counsel, and other supporting staff) will insert Section 508 requirements into SIRs that include development, procurement, maintenance, or use of electronic and information technology unless an exception applies (see Exceptions to Section 508 below).~~

##### ~~b. Definition.~~

~~Electronic and information technology (EIT) means any equipment or interconnected system or subsystem of equipment used in automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For purposes of the preceding sentence, equipment is used by the FAA:~~

- ~~(1) If the equipment is used directly by FAA; or~~
- ~~(2) Is used by a contractor under a contract with FAA that:
  - ~~(a) Requires use of such equipment; or~~
  - ~~(b) Requires use, to a significant extent, of such equipment in performance of a service or furnishing of a product.~~~~

##### ~~c. EIT Products.~~ EIT includes, but is not limited to the following:

- ~~(1) Computers and other office equipment;~~
- ~~(2) Software and firmware;~~
- ~~(3) Services (including support Services);~~

- ~~(4) Telecommunication products;~~
- ~~(5) Information kiosks;~~
- ~~(6) Office equipment such as copiers and fax machines; and~~
- ~~(7) Websites.~~

~~d. Exceptions to Section 508.~~

~~(1) Section 508 does not apply to EIT if the following applies:~~

- ~~(a) Acquired by a contractor incidental to a FAA contract;~~
- ~~(b) For a national security system;~~
- ~~(c) Located in space frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment;~~
- ~~(d) That would impose an undue burden on FAA (see paragraph f. below); or~~
- ~~(e) That would impose a fundamental alteration in the nature of an EIT product or its components.~~

~~(2) EIT is not available~~

- ~~(a) When procuring commercial items, FAA must comply with those EIT standards that can meet with supplies or services that are available in the commercial marketplace in time to meet FAA's delivery requirements.~~
- ~~(b) When EIT is not available, the contract file must be documented as outlined below.~~

~~(3) Documentation supporting a Section 508 exception must be maintained in the contract file. The FAA Section 508 Procurement Checklist found below in Section C. "Forms" can aid in regulatory compliance. Required documentation includes the following if applicable:~~

- ~~(a) Applicable technical provisions of the Access Board's standards;~~
- ~~(b) Market research performed to locate items that meet the applicable technical provisions;~~

~~(c) The specific provisions that cannot be met;~~

~~(d) Undue burden documentation (see paragraph f. below); and~~

~~(e) Other applicable documentation.~~

~~(4) If an exception applies preventing FAA from meeting all of the applicable technical provisions, FAA may acquire EIT that meets some of those provisions.~~

~~*e. Applicability.*~~

~~(1) All EIT procured on or after June 21, 2001 must comply with Section 508 standards.~~

~~(2) The FAA does not have to retrofit EIT procured before June 21, 2001.~~

~~*f. Approval of Undue Burden.*~~

~~When applying the requirements of Section 508 (see paragraph a. "Requirements for Accessibility" above) would impose an undue burden, FAA must provide individuals with disabilities covered by Section 508 the information and data by an alternative means of access that allows the individual to use the information and data. Undue burden is defined as a significant difficulty or expense to the FAA.~~

~~(1) Documentation of an undue burden must include the following:~~

~~(a) A thorough and fully supported explanation as to why and to what extent compliance with each provision of "36 CFR Part 1194—Electronic and Information Technology Accessibility Standards" would create an undue burden for the EIT being procured; and~~

~~(b) Dollar value, market research performed, and alternative means of access that will be provided for individuals with disabilities to use the information or data. Alternative means of access include (but are not limited to):~~

~~(i) Voice, fax, or relay service;~~

~~(ii) Qualified sign language interpreters;~~

~~(iii) Teletypewriters (TTY);~~

~~(iv) Internet posting;~~

~~(v) Captioning;~~

~~(vi) Text to speech synthesis;~~

~~(vii) Readers;~~

~~(viii) Personal Assistants; or~~

~~(ix) Audio description.~~

~~(2) Final approval authority of an undue burden determination resides with the FAA Administrator. The Secretary of the Department of Transportation (DOT) formed the Undue Burden Advisory Board (UBAB), which will advise FAA on undue burden matters. The process for undue burden determinations is:~~

~~(a) Review by DOT Chief Information Officer;~~

~~(b) Review by DOT General Counsel;~~

~~(c) Review by UBAB and their submission of a recommendation to the FAA Administrator in the form of an "Undue Burden Report"; and~~

~~(d) Consideration of the report by the FAA Administrator or delegate. The resulting decision is final.~~

~~g. Sources of Further Information.~~

~~(1) U.S. Architectural and Transportation Barriers Compliance Board (U.S. Access Board~~

~~(2) Government wide Section 508 website~~

~~(3) FAA Section 508 website (FAA only)~~

**6 Spare Parts** Revised 1/2016

~~a. Shipping Spare Parts. For all shipments of spare parts, the contractor must include a packing list that includes at least the name, part number, Commercial and Government Entity (CAGE) Code, quantity, unit price, and national stock number (if available). Contracts that require shipment of spare parts include Clause 3.2.2.3 73 to establish this contractual requirement.~~

~~b. Spare Parts for Nationally Furnished Project Materiel.~~

~~(1) Requirements. The contracting officer includes coverage for spare parts in the screening information request and subsequent contract that facilitates availability, accessibility and tracking of spare parts.~~

~~(2) SIR Provision.~~ For contracts that will require the purchase and delivery of spare parts, the contracting officer establishes a discrete contract line item number for initial site and depot-level spare parts list contract line item number (CLIN) and corresponding delivery date. The CO also includes the SIR provision 3.2.2.3-74, "Submission of Initial Site and Depot-level Spare Parts List" as part of the instruction to vendors on the preparation of their SIR submissions to assure that the parts list will be furnished as part of the SIR submission.

~~(3) Contract Requirements.~~ The contracting officer includes a separately priced CLIN for the site and depot-level spare parts list and corresponding delivery due date of this contract deliverable. The list contains each item's name, part number, Commercial and Government Entity (CAGE) Code, unit price, national stock number (if available) and the quantity.

## ~~7 Source Selection Team Responsibilities~~ Revised 1/2016

The responsibilities described below are guidelines to help ensure successful source evaluation and selection. The source selection team managing the procurement must apportion these responsibilities to fit the specific procurement.

~~a. Source Selection Official.~~ The service or product team lead or Director (or equivalent position) of the requiring organization is the source selection official (SSO) for a procurement under an investment program subject to the Joint Resources Council (JRC) process (unless the JRC otherwise designates an SSO). For procurements not subject to the JRC investment decision process, the CO is the SSO. The SSO's responsibilities include the following:

~~(1) Assure team competence, cohesiveness, and effectiveness;~~

~~(2) Approve evaluation plans and assure the evaluation conforms to the stated evaluation criteria; and~~

~~(3) Make down-select decisions and assume full authority to select the source for award.~~

~~b. Source Evaluation Team.~~ The source evaluation team properly and efficiently performs source evaluation, and supports the source selection decision and related activities. Their responsibilities include the following:

~~(1) Draft all SIRs;~~

~~(2) Formulate the source evaluation plan;~~

~~(3) Review existing lessons learned reports that provide meaningful insight into the procurement;~~

~~(4) Ensure an in-depth review and evaluation of each submitted screening document against FAA requirements and stated evaluation criteria;~~

~~(5) Prepare the evaluation report (including recommendations, if applicable), using sound business judgment, to assist the SSO make down selection and/or award decisions;~~

~~(6) Oversee all procedural and administrative aspects of the procurement;~~

~~(7) Select advisors to assist the team in its evaluation, if required;~~

~~(8) Prepare documentation for the SSO's decision rationale, if requested by the SSO; and~~

~~(9) Participate in all debriefings;~~

~~e. Contracting Officer. The CO's responsibilities include the following:~~

~~(1) Serve as the SSO for procurements not subject to the JRC investment decision process;~~

~~(2) Ensure, when applicable, conflict of interest documentation is obtained from all source selection team members; with legal counsel, determine if any conflicts or apparent conflicts of interests exist; and if so, resolve them;~~

~~(3) Ensure source selection team members are briefed on sensitivities of the source selection process, prohibition against unauthorized disclosure of information (including their responsibility to safeguard proposals and any documentation related to the source selection team proceedings), and requirements concerning conflicts of interest; ensure source selection team members provide nondisclosure of information statements;~~

~~(4) Coordinate communications with industry and conducts all debriefings;~~

~~(5) Control all written documentation issued to industry;~~

~~(6) Lead screening, selection, and debriefing phases of source selection;~~

~~(7) Issue letters, public announcements, SIRs, SIR amendments, and other procurement documents; and~~

~~(8) Ensure the contract is signed by a contractor's representative with the authority to bind the contractor; with legal counsel, ensure all contractual documents comply with applicable laws, regulations, and policies.~~

~~d. Product or Service Team Lead or Director of the Requiring Organization. The product or service team lead or Director's (or equivalent position) responsibilities include the following:~~

~~(1) Serve as SSO if the procurement is subject to the JRC investment decision process (unless otherwise designated by the JRC);~~

~~(2) Assure FAA's program needs are acquired through the appropriate source selection~~

process;

~~(3) Assure SIRs include adequate definition of requirements; and~~

~~(4) Assure qualified technical evaluators, if required, assist the source evaluation team in the evaluation.~~

~~e. *Advisors.* The source evaluation team may appoint advisors to provide specialized expertise and guidance not otherwise available on the team.~~

~~f. *Nongovernmental Evaluators and Advisors.* The source evaluation team may use nongovernmental personnel as evaluators or advisors. Nongovernment personnel must comply with FAA's conflict of interest and nondisclosure of information policies. The SIR must include notice of any nongovernmental participation.~~

## **8 Supplier Process Capability Evaluation and Appraisal** Revised 1/2016

~~a. *General.* This guidance is designed to assist the Source Selection Official (SSO) in considering process capability of potential suppliers during proposal evaluations, mitigating process-related risk of the supplier during contract/agreement performance, and for fostering process improvement of the supplier throughout the lifecycle.~~

~~b. *Scope/Applicability.* Supplier Process Capability Evaluation and Appraisal are intended for use in new acquisitions and agreements, but may also be incorporated into existing contracts or agreements.~~

~~e. *Expected Benefits.*~~

~~(1) *Acquirer.* The FAA can expect reduced risk in supplier selection and in meeting program objectives by motivating suppliers to improve their processes without forcing compliance to specific practices. Other benefits would include enhanced quality, predictability, performance and cost effectiveness of products and services acquired.~~

~~(2) *Supplier.* Suppliers can expect reduced risk in meeting contract requirements by identifying and addressing process deficiencies that might negatively impact project success. Other benefits would include improved performance by identifying and addressing process deficiencies in critical process areas and potential for earning additional award fee where such incentives are part of the contract.~~

~~d. *Pre-award.* In the early phase of planning a source selection, the SSO determines whether process capability will be considered as a risk factor for source selection. The following criteria are considered when making this decision:~~

~~(1) The performance of specific processes is considered critical to accomplishment of the mission;~~

- ~~(2) The product or service being acquired is considered crucial to the FAA;~~
- ~~(3) A major component of the product or service to be provided is considered to be unprecedented;~~
- ~~(4) The total estimated value of a contract for research, engineering, and development (R,E&D) is equal to or greater than \$70 million, or a contract for acquisition is equal to or greater than \$300 million;~~
- ~~(5) There is lack of information on offeror's past performance or process capability data, or the past performance or process capability of the offeror is weak; and~~
- ~~(6) The product or service is especially complex.~~

~~If process capability will be used as an evaluation factor, or as an adjustment to risk at either the area or factor level, the SIR must include request for information on current status and commitment to process improvement, including evidence indicating process capability. The SIR must also identify particular aspects of the suppliers' performance capabilities that are considered critical to success of the contract, such as architecture and design, safety, security, human factors, integration, risk management, or quality assurance.~~

~~Process capability appraisals can be used after award to validate and confirm the successful offeror's proposal and/or to identify risks associated with process deficiencies to be addressed during contract performance. In order for a post-award appraisal to occur, the SIR must indicate that a post-award appraisal will be performed on the successful offeror's processes that are identified as critical or potentially risky.~~

~~e. *Post-award.* Post-award appraisals may be conducted on existing contracts with well-established project(s), or on new contracts using target projects selected from the supplier's sponsoring organization.~~

~~f. *Contract/Agreement Requirements.* Considerations in developing contract/agreement requirements include use of trade-off analysis to establish the level of surveillance of strong or weak areas. For example, if a supplier is strong in an area, it is inefficient to check on that area in the same way that would be applied in an area found to be weak. Additional Award fees may also be used as an incentive. Contract/Agreement performance requirements include completion of initiatives to remove critical deficiencies identified. Completion may be a factor in award fees. Depending on the decision of the SSO, contract requirements may include the following:~~

- ~~(1) Risk mitigation plans to remove deficiencies noted during pre-award;~~
- ~~(2) Performing scoped post-award and follow-up appraisal(s);~~
- ~~(3) Risk mitigation plans to remove deficiencies noted in post-award appraisal;~~
- ~~(4) Government "surveillance" for specific areas (weaknesses) to be addressed;~~

~~(5) An adequate reporting or insight mechanism to facilitate monitoring the risk mitigation plan;~~

~~(6) Consideration for creating additional process strengths; and~~

~~(7) Improvement in performing process improvement activities.~~

~~Risk mitigation planning describes in detail the schedule and actions that will be taken to remove deficiencies noted during the evaluation and selection process and those uncovered in the appraisal process, if a post award appraisal is performed.~~

## **9 Tiered Evaluation** Added 1/2016

### *a. General:*

~~(1) Tiered evaluation of offers is a process by which FAA promotes small business participation while providing FAA a means to continue the procurement if small business participation is insufficient.~~

~~(2) The Contracting Officer (CO) may use tiered evaluation of offers to promote competition in each tier of small business concerns while still allowing other than small business to participate without issuing another SIR.~~

~~(3) The CO must consider the tiers of small business concerns prior to evaluating offers from other than small business concerns.~~

### *b. Utilizing Tiered Evaluations:*

~~(1) The CO must specify in the SIR that a tiered evaluation of offers will be used in source selection, and offers from other than small business concerns will only be considered after the determination that an insufficient number of offers from responsible small business concerns were received.~~

~~(2) The CO will specify the tiered order of precedence for evaluating offers in the SIR, and determine the applicable tiers based upon market research of the availability of small business concerns. An example of a tiered order of precedence is (descending in order) as follows:~~

~~(a) Socially and economically disadvantaged business (SEDB) expressly certified by the Small Business Administration (SBA) for participation in SBA's 8(a) program;~~

~~(b) Service-disabled veteran-owned small business (SDVOSB);~~

~~(c) Small business (SB); and~~

~~(d) Other than small business.~~

~~(3) Once offers are received, the CO will evaluate a single tier of offers according to the order of precedence specified in the SIR. If no award can be made at the first tier, the evaluation will proceed to the next lower tier until award can be made. If no award can be made at the first tier, offerors from the first tier continue on in the evaluation and are evaluated against offerors from each subsequent tier.~~

## B Clauses

[view contract clauses](#)

## C Forms Revised 9/2020

[view procurement forms](#)

## ~~1 Section 508 Checklist~~ Added 7/2007

<b>Standards</b>	
Check the Access Board's standards that apply to the EIT purchase:	
	<del>1194.21 Software Applications and Operating Systems</del>
	<del>1194.22 Web-based Information or applications</del>
	<del>1194.23 Telecommunication Products</del>
	<del>1194.24 Video and Multimedia Products</del>
	<del>1194.25 Self-Contained Products</del>
	<del>1194.26 Desktop and Portable Computers</del>
	<del>1194.31 Functional Performance Criteria</del>
	<del>1194.41 Information, Documentation and Support</del>
	<del>Request vendor Section 508 compliance template (e.g. vendor's website or other website location)</del>
<b>Exceptions</b>	
	<del>EIT acquired by a contractor incidental to a FAA contract</del>
	<del>EIT for a national security system</del>
	<del>EIT located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment</del>
	<del>EIT that would impose an undue burden on the agency</del>
	<del>EIT that would impose a fundamental alteration in the nature of an EIT product or its components</del>
<b>Research</b>	
After market research, the product is considered:	
	<del>Compliant</del>

	Partially compliant
	Noncompliant
	EIT is not available

## D Appendix Revised 9/2020

### ~~1 Source Selection Guide~~ Revised 1/2016

#### ~~1.1 Introduction~~

~~a. *Purpose.* AMS Policy Section 3.2.2 outlines requirements for source selection. This guide contains additional information about processes and techniques for conducting a competitive source selection. The Contracting Officer (CO) uses business judgment to tailor source selection based on factors such as complexity, dollar value, urgency, and resources available.~~

~~b. *Procurement Integrity.* The Procurement Integrity Act applies to personnel involved in source selection. This Act and other similar statutes and regulations impose stringent requirements for safeguarding source selection and contractor proposal information, and other integrity issues. There are civil and criminal penalties for violating these requirements. All personnel involved in the source selection process must maintain the integrity of the procurement, and must understand the prohibitions and certification requirements of the Act and similar statutes and regulations. Any questions or other issues regarding procurement integrity are directed to legal counsel assigned to the source selection.~~

~~c. *Bias or Conflict of Interest.* Personnel involved in the source selection must not have any bias or conflict of interest that would affect the source selection. Financial interests in offerors or employment discussions with offerors are examples of conflicts of interests that would preclude an employee from participating in a source selection.~~

#### ~~1.2 Getting Started~~

~~a. *Procurement Planning.* Procurement planning starts when FAA identifies a need for supplies or services. Early and effective planning helps ensure needs are satisfied with the right product or service and at the right time.~~

~~b. *Market Research.* Market research is the first step in procurement planning. It is the process of collecting and analyzing information about capabilities, products, services, or practices within the marketplace. Information from market research shapes a procurement strategy and other aspects of a procurement, such as the statement of work, evaluation factors, contract type, and the amount and type of information to be requested in a screening information request (SIR). The extent and degree to which a source selection official documents the results of market research varies, based on factors such as urgency, estimated dollar value, complexity, and past experience. In some cases, one person can conduct market research but for more complex requirements, a team effort may be appropriate. (See AMS Procurement Guidance T3.2.1.2, Market Research and Analysis, for more information)~~

~~e. *Source Evaluation Team (SET).* Source evaluation is a multi-disciplined, team effort. As appropriate, the team includes representatives from functional areas such as contracting, program/technical, legal, logistics, and user organizations. The size and composition of the SET varies, depending on the nature of requirement. Whether the team is large or small, it is structured to ensure teamwork, unity of purpose, and appropriate communication among the team members throughout the process. A key to selecting personnel is identifying experience, education, and business and technical skills required for the evaluation. Required skills and experience are defined with enough flexibility to allow substitution of training for experience.~~

~~d. *Support Personnel.* Once the primary evaluation team is identified, additional support personnel may be desired or required. Examples of such personnel include administrative support, librarian/document control personnel, and information technology support.~~

~~e. *Key Members and Responsibilities.*~~

~~(1) *Source Selection Official.* The SSO does the following:~~

- ~~Ensures the selection process is conducted properly and according to applicable policies and laws;~~
- ~~Establishes the SET and ensures the team has the skills, expertise, and experience to perform the evaluation;~~
- ~~Ensures actual or apparent conflicts of interest are avoided;~~
- ~~Ensures premature or unauthorized disclosure of source selection information is avoided;~~
- ~~Approves the evaluation criteria and plan, and ensures the SIR is consistent with both;~~
- ~~Concurs with the CO's decision to release the SIR (if the SSO is other than the CO);~~
- ~~Makes down-select decisions; and~~
- ~~Makes the final source selection decision for an award, and ensures the rationale is documented before contract award~~

~~(2) *Source Evaluation Team.* The team does the following:~~

- ~~Drafts evaluation criteria and plan;~~
- ~~Drafts SIRs and ensures an in-depth review of each SIR section;~~
- ~~Selects advisors to the team, as necessary;~~
- ~~Conducts a comprehensive review and evaluation of proposals against SIR requirements and the approved evaluation criteria;~~
- ~~Prepares the necessary items for discussions with offerors, if applicable;~~
- ~~Prepares and submits the evaluation reports to the SSO;~~
- ~~Briefs the SSO, as requested;~~
- ~~Responds to special instructions from the SSO; and~~
- ~~Provides information for debriefings of unsuccessful offerors~~

~~(3) *Contracting Officer.* The CO does the following:~~

- ~~☐ Serves as the SSO (unless otherwise designated);~~
- ~~☐ Acts as the business advisor to the SSO and is a member of the SET (if not the SSO);~~
- ~~☐ Coordinates and controls communications with vendors and issues written communication to vendors;~~
- ~~☐ Leads during screening, selection, and debriefing phases of source selection;~~
- ~~☐ Issues letters, public announcements, SIRs, SIR amendments and other procurement documents; and~~
- ~~☐ Chairs all required debriefings~~

~~f. *Advisors.* The CO serves as a business advisor to the SSO (if the CO is not the SSO). Additionally, legal counsel, technical experts, or small business specialists may advise the SSO. If non-Governmental advisors are part of the SET, the SIR must include notice about their participation in the evaluation. Non-Government advisors must not have any organizational conflict of interest.~~

~~g. *Required Certificates.* The SSO and each SET member (including support personnel and advisors) must sign nondisclosure of information and conflict of interest certificates.~~

~~h. *Administrative Considerations.* Each procurement varies, but administrative needs may include facilities for evaluators and discussions with offerors, securable storage space for source selection materials, and other items such as computers, special software, phones, copiers, etc.~~

~~i. *Handling Source Selection Information.*~~

~~(1) SET members must handle proposal and evaluation material in a manner consistent with “For Official Use Only” or, as appropriate, a higher security classification. The SET establishes sufficient safeguards to protect the material whether it is in their possession or it is being disseminated, reproduced, transmitted, or stored. Additionally, procedures are established for proper disposal of the material when it is no longer required. (See AMS Procurement Guidance T3.13.1.A.7, Records Retention, and FAA Order 1350.15C Records Organization, Transfer and Destruction Standards).~~

~~(2) The Procurement Integrity Act precludes individuals from knowingly disclosing source selection information and contractor bid or proposal information before award of a contract to which the information relates. The SSO may, however, authorize release of source selection information to other authorized Government personnel who have signed a non-disclosure statement, provided the release would not jeopardize the integrity or successful completion of the procurement (when the release is after the SIR is issued, but before contract award).~~

~~j. *Security Responsibilities.* All SET members are responsible for the security of source selection information. In complex source selections, it may be beneficial to designate members of the SET to oversee and perform security control functions. Security procedures may also be needed for the source selection physical facilities, such as a sign in and out log, identification to access the area, visitor (e.g. maintenance/service personnel) control, or key or card control access. A security briefing for the SET may be used to emphasize that each member understands the following:~~

- ~~☐ Each member is responsible for security of the evaluation and proposal materials and other source selection and proprietary information related to the procurement;~~
- ~~☐ Each member is knowledgeable of, and will adhere to, governing security procedures and regulations;~~
- ~~☐ Each member does not discuss, communicate, or otherwise deal on matters related to the source selection with any individual not assigned by the SSO, and then only within appropriately secure areas; and~~
- ~~☐ Each member challenges any apparent unauthorized person within the physical location of the evaluation.~~

### **~~1.3 Evaluation Plan and Selection Methodology~~**

~~a. *Evaluation Plan.* The evaluation plan outlines the people, schedule, process, criteria and other information relevant to evaluating offeror responses to a SIR, and the basis for selecting an offeror for award. It is approved before receiving responses to a SIR requesting screening or qualification information. The evaluation plan is source selection sensitive information, so it must not be disclosed to anyone not authorized by the SSO to receive the information. The size and detail of the evaluation plan is based on the complexity of the procurement, but at a minimum it includes the following:~~

- ~~☐ Name of the SSO and SET members;~~
- ~~☐ Evaluation factors, relative importance of factors, and standards for rating offerors against the factors (SIR section M); and~~
- ~~☐ Basis for selection and award~~

~~b. *Selection Methodology.* Designing a procurement strategy includes an effective evaluation methodology. Depending on the circumstances, it may be in FAA's best interest to either do the following:~~

~~(1) *Award to best value offeror.* Under this method, both cost/price and non-cost/price factors are assessed based on the evaluation criteria, and the SSO selects the offeror proposing a combination of these factors representing the best value to FAA. The SSO considers non-cost strengths and weaknesses, risks, and cost/price for each offeror and applies business judgment to select the offeror representing the best value.~~

~~(2) *Award to the lowest priced, technically acceptable offeror.* This method may be the best value when FAA would not realize any value from a proposal exceeding minimum technical requirements. The SIR establishes certain standards that an offeror must meet to be considered technically acceptable. An offeror does not receive any additional credit for exceeding the established standards. The award is then made to the lowest priced, technically acceptable offeror.~~

### **~~1.4 Screening Information Request (SIR)~~**

~~a. *Purpose.* The FAA obtains information and offers from vendors through a SIR. The SIR includes information necessary for offerors to understand what FAA is buying, what information to provide,~~

and how responses will be evaluated. The success of a procurement is directly linked to the quality of the SIR. A well-written SIR includes the following:

- Facilitates a fair competition;
- Limits criteria to differentiators that add value;
- Clearly details information required from vendors;
- Clearly identifies evaluation and award criteria; and
- Conveys a clear understanding of FAA's requirements.

b. *The SIR Process.* For a given procurement, FAA may make a selection decision after one SIR, or may have a series of SIRs (with a screening decision after each one) to arrive at the selection decision. This process depends on the types of products or services to be acquired and the specific source selection approach. Generally, when multiple SIRs are contemplated, the initial SIR requests general information, and subsequent SIRs requests successively more specific information. Initial SIRs need not state firm requirements, thus allowing FAA to convey its needs to offerors in the form of desired features, or other appropriate means. Firm requirements ultimately are established in all contracts.

c. *SIR Contents.* Each SIR contains the following information:

- Paper Reduction Act number on the cover page;
- A statement identifying the purpose of the SIR (request for information, request for offer, establishment of a QVL or screening);
- A definition of need;
- A request for specific information (with specific page and time limitations, if applicable);
- A closing date stating when submittals must be received in order to be considered or evaluated;
- Evaluation criteria (and relative importance, if applicable);
- A statement informing offerors how communications with them will be conducted during the screening; and
- An evaluation/procurement schedule (including revisions, as required).

d. *Categories of SIRs.*

(1) *Qualification Information.* Qualification information, used to qualify vendors and establish qualified vendor lists (QVLs), are requested when a resultant QVL will be used for multiple FAA procurements. Qualification information screens those vendors meeting FAA's stated minimum capabilities / requirements to provide a particular product or service. Once qualification information is requested, received, and evaluated according to the evaluation plan, a QVL is established for the given product/service and vendors meeting FAA's qualification requirements are listed on the QVL. (See AMS Procurement Guidance T3.2.2.3. for more information on QVLs.)

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

~~(3) Request for Offer.~~ A request for offer is a request for an offeror to formally commit to provide the products or services required by FAA under stated terms and conditions. The response to the request for offer is a binding offer, which is intended to become a binding contract if signed by the CO. The request for offer may take the form of a SIR, a proposed contract, or a purchase order.

~~e. Changes in SIR Requirements.~~ If FAA's requirements change after release of a SIR, then all offerors competing at that stage are advised of the change(s) and allowed to update their submittals accordingly. The SSO may waive a requirement at any time after release of a SIR, without notifying other offerors, if the SIR states offeror specific waiver requests will be considered, and the waiver does not affect a significant requirement that changes the essential character or conditions of the procurement.

~~f. Common Problems.~~

~~(1) Inconsistency among the SIR and related documents.~~ Having the SIR and related documents to be aligned is critical. This is particularly important for the evaluation plan and the SIR to be consistent.

~~(2) Inconsistency Within the SIR.~~ Avoiding inconsistencies between the description of FAA's requirements, instructions on how to prepare a proposal, and information related to the evaluation factors is important. These inconsistencies may be caused by different groups of people developing the different SIR sections without proper coordination. Such inconsistencies can result in less advantageous offers, necessitate changes to the SIR, cause delays, lead to offerors losing confidence in the process, or result in litigation.

~~(3) Requesting Too Much Information from Vendors.~~ The instructions for preparing and submitting proposals focus on requesting only information necessary for the evaluation. The SIR requirements, each evaluation factor and subfactor, and the SIR preparation instructions are linked. Request only the essential information needed to evaluate SIRs against the evaluation factors and subfactors and do not ask for information that will not be evaluated. Instructions that require voluminous information can cause potential offerors to forego responding in favor of a less costly business opportunity. Excessively large proposals may increase the time and costs associated with the evaluation. Proposal page limitations are encouraged, but they need to be clearly defined and tailored to the needs of the acquisition. Focus exclusively on differentiators; failure to do so compromises the ability to identify the best offeror.

~~(4) Unnecessary Use of Design Requirements.~~ The description of FAA's requirements in the SIR can have a significant effect on a source selection using a tradeoff process. Use of detailed design requirements or overly prescriptive statements of work severely limits the offerors' flexibility to propose their best solutions. Functional or performance-based requirements provide flexibility and are used to the extent practicable. While it may be more difficult to develop evaluation criteria and conduct the evaluation process using this approach,

~~the benefits warrant it. These benefits include increased competition, access to the best commercial technology, better technical solutions, and fewer situations for protests.~~

~~g. *Ways to Improve the SIR.* A multi-disciplined team develops the SIR. The members are stakeholders in the procurement and continuously coordinate with each other to ensure consistency of the SIR with other documents such as the evaluation plan. Open communications with vendors is used to improve the SIR and to also promote understanding of FAA's requirements. This can be accomplished through various forms of communication, such as releasing draft statements of work or SIRs, advance procurement planning briefings for vendors, one-on-one meetings, or conferences with potential offerors.~~

### **1.5 Communications with Offerors**

~~a. Communications with potential offerors takes place throughout the source selection process. During the screening, selection, and debriefing phases of source selection, communications are coordinated through the CO. All SIRs clearly inform offerors of how communications will be handled during the initial screening phase. The purpose of communications is to ensure mutual understanding between FAA and offerors about all aspects of the procurement, including the offerors' submittals/ proposals. Information disclosed as a result of oral or written communication with an offeror may be considered in the evaluation of an offeror's submittal(s). To ensure that offerors fully understand the intent of the SIR and FAA's needs, FAA may hold a pre-submittal conference and/or one-on-one meetings with individual offerors. One-on-one communications may continue throughout the process, as required, at the discretion of the SET.~~

~~b. Communications with one offeror do not necessitate communications with other offerors, because communications will be offeror-specific. Regardless of the varying level of communications with individual offerors, the CO ensures such communications do not give any offeror an unfair competitive advantage. During these and future communications, as applicable, FAA encourages offerors to provide suggestions about all aspects of the procurement. Communications may necessitate changes in FAA's requirements or SIR. Where communications do not result in any changes in FAA's requirements, FAA is not required to request or accept offeror revisions. The use of technical transfusion is always prohibited. Auctioning techniques are prohibited, except in the use of "commercial competition techniques."~~

### **1.6 Evaluation Factors**

~~a. *Evaluation Factors and Subfactors.*~~

~~(1) Selecting the appropriate evaluation factors and subfactors is key to the source selection process. The factors and subfactors give offerors an insight into significant considerations FAA will use to select the best value offer. Structure the evaluation factors and subfactors and their relative importance to clearly reflect the needs of the acquisition. Evaluation factors and subfactors from the evaluation plan must be in Section M (or equivalent) of the SIR.~~

~~(2) Factors and subfactors are definable and measurable in readily understood terms. They also represent the key areas of importance and emphasis to be considered in the source selection decision. Factors and subfactors should be limited to the essential elements to distinguish among the information/offers; i.e., will be true differentiators.~~

~~(3) Common evaluation factors are technical, cost/price, past performance, and small business participation. Other evaluation factors may be appropriate, and one or more levels of subfactors may be needed.~~

~~(4) Steps involved in formulating evaluation factors and subfactors include the following:~~

- ~~• Conduct market research as a starting point for developing criteria;~~
- ~~• Brainstorm critical factors and subfactors;~~
- ~~• Identify key differentiators;~~
- ~~• Define the differentiators as evaluation factors and subfactors;~~
- ~~• Determine and define the evaluation factors and subfactors;~~
- ~~• Relative order of importance; and~~
- ~~• Assess feedback during SIR(s)~~

~~(5) *Evaluation Weights.* Assign relative importance to each evaluation factor and subfactor. Tailor the relative importance to specific requirements. Use priority statements to express the relative importance of the evaluation factors and subfactors. Priority statements relate one evaluation factor (or subfactor) to each of the other evaluation factors (or subfactors). For example:~~

~~"Technical is the most important factor and is more important than all of the remaining factors combined. Technical is significantly more important than past Performance. The past performance factor is more important than the cost factor and small business participation factor combined. The cost factor is more important than the small business participation factor."~~

~~b. *Numerical and Adjectival Ratings.* When using the tradeoff process, the evaluators assess the non-cost portion(s) of the offer and associated performance and proposal risks using numerical or adjectival ratings. The success of an evaluation is not so much dependent upon the type(s) of ratings used, but rather on the consistency with which the evaluators use them. For this reason, adjectival ratings must include definitions for each rating so that the evaluators have a common understanding of how to apply them.~~

~~e. *Result of Proposal Evaluation.* At the end of an evaluation, the result is each factor and sub-factor are evaluated, the merits and risks of a proposal are documented and adjectival ratings are assigned.~~

## **1.7 Evaluation**

~~a. *Conduct Training.* Before receipt of proposals, each evaluator becomes familiar with all pertinent documents, e.g., SIR, evaluation plan, and rating scales, etc.. The SET conducts training that includes an overview of these documents and the source selection process, with instructions on properly documenting each offeror's strengths, weaknesses, and risks. Training also includes ethics information and the protection of source selection information. This training is especially crucial when evaluators have little or no source selection experience.~~

~~b. *Documenting the Evaluation.* The SET performs an in-depth, systematic evaluation of offerors' proposals against evaluation factors and subfactors in the SIR(s). All evaluations must be documented. While the specific evaluation processes and tasks vary, the basic objective is to provide information about each offeror's strengths and weaknesses so the SSO can make an informed and reasoned decision. An orderly method for identifying, recording, and tracking strengths and weaknesses is imperative. Evaluation findings being supported with narrative statements is critical. Ratings alone are not conclusive information on which to make a source selection decision. All determinations relating to changes in requirements after release of the SIR must be documented in the evaluation report.~~

~~c. *Assignment and Use of Offeror Code Names.* Once proposals are received, the SET considers establishing a code name for each of the offerors. This helps protect the identities of offerors submitting proposals, the proprietary information in their proposals, and the contents of the evaluation reports and source selection documentation. The code names are assigned by the SET and then communicated to all evaluation personnel prior to the start of proposal evaluation. All SET members, evaluation team members, and support personnel involved in the evaluation and source selection must then use any assigned code names rather than the actual offeror names in all discussions and in all written documentation and communication (including the SSO Briefing). The SSO would not know the actual offeror names until after contract award. Additional guidance related to the assignment of code names is as follows:~~

~~(1) Code names are based on a series of like items (e.g., states such as Missouri, Arkansas, and Nebraska for an acquisition with three offerors);~~

~~(2) Care is taken to avoid choosing a series of names where one may be perceived as more valuable than another (e.g., if using precious metals, gold may be perceived as more valuable than bronze, or if using colors, red may be perceived more negatively than green);~~

~~(3) If there are more than three or four offerors, alphabetic characters are used for ease of reference (e.g., Offeror A, Offeror B etc.); and~~

~~(4) Code names would not be assigned in the following situations:~~

~~Only one proposal received; or~~

- ~~Where the names of all offerors competing are publicly known in accordance with AMS clause 3.2.2.3 72 "Announcing Competing Offerors" (July, 2004).~~

~~Note: Regardless of whether code names are used, SET members, evaluation team members, and support personnel are responsible at all times for the proper treatment of source selection sensitive information from the evaluations and/or proposals.~~

~~d. *Past Performance Evaluations.*—The past performance evaluators assess the performance risk associated with each proposal. The final assessment describes the degree of confidence in the offeror’s likelihood of successful contract performance based on that offeror’s demonstrated record of performance under similar contracts. (See AMS Procurement Guidance T3.2.2.A.3.c. for guidance on evaluating past performance.)~~

~~e. *Cost/Price Evaluations.*—For fixed priced contracts, the evaluation could be as simple as assessing adequate price competition and determining prices are fair and reasonable. Fixed priced contracts are evaluated for appropriateness (i.e., consider market prices, appropriate risk and the possibility of a “buy in”) for what is being offered. For cost reimbursement and/or time and material contracts, the offerors’ estimated costs are analyzed for both realism and reasonableness. The cost realism analysis enables evaluators to determine each offeror’s most probable cost of performance. This precludes an award decision based on an overly optimistic cost estimate. Additionally, whenever cost analysis is performed, profit or fee analysis is conducted. (See AMS Procurement Guidance T3.2.3 for guidance on cost and price methods.)~~

## **1.8 Selection and Award**

~~a. *Decisions.*—After the evaluators complete their evaluation, the results of the evaluation are presented to the SSO. The SSO may do the following:~~

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

~~b. *Presenting the Evaluation to the SSO.*—The SET prepares documentation of the evaluation to present to the SSO. The SSO uses this documentation as an aid when making a decision based on business judgment about which proposal represents the best value. At the request of the SSO, the SET may present the evaluation results through one or more briefings.~~

~~e. *Source Selection Decision.*—The SSO must document his/her rationale for selecting the successful offeror. The source selection decision document explains how the successful proposal compared to other offeror’s proposals based on the evaluation factors and subfactors in the SIR, and discusses the judgment used in making any tradeoffs. If the SSO disagrees with a finding of the SET, the SSO’s rationale is part of the decision document. When the SSO determines the best value proposal is other than the lowest priced proposal, the decision document justifies paying a price premium regardless of the superiority of the successful proposal’s non-cost rating. The justification clearly states the~~

~~benefits or advantages FAA receives for the added price and why it is in FAA's best interest. This justification is required even when the SIR indicates non-cost factors are more important than cost/price. The SSO should consult with legal counsel to review the source selection decision document to assure that the decision clearly articulates the business judgment of the SSO.~~

~~d. *Awarding the Contract.* After the SSO signs the source selection decision document, the CO executes and distributes the contract, subject to completing other requirements before award such as Congressional notification.~~

## ~~1.9 Debriefing of Offerors~~

~~a. *Overview.* The CO notifies all offerors who participated in the competitive process that they may request a single debriefing within three working days from receipt of award notification. Because each offeror puts considerable resources into preparing and submitting a proposal, fairness dictates a prompt debriefing and an explanation of why a proposal was unsuccessful.~~

~~b. *Purposes of a Debriefing.* A debriefing accomplishes the following:~~

- ~~Explains the rationale for the offeror's exclusion from the competition or non-selection for award;~~
- ~~Instills confidence in the offeror that it was treated fairly;~~
- ~~Assures the offeror that appropriately qualified personnel evaluated the proposal according to the SIR and applicable policies and laws;~~
- ~~Identifies strengths and weaknesses in the offeror's proposal so the offeror can prepare better proposals in future FAA procurements;~~
- ~~Gives the offeror an opportunity to provide feedback about the SIR process, communications, and the source selection; and~~
- ~~Reduces misunderstandings and reduces the risk of protests.~~

~~A debriefing is not any of the following:~~

- ~~Page-by-page analysis of the offeror's proposal;~~
- ~~Point-by-point comparison of the proposals of the debriefed offeror and other offerors; and~~
- ~~Debate or defense of FAA's award decision or evaluation results.~~

~~The debriefing must not reveal any information prohibited from disclosure or exempt from release under the Freedom of Information Act.~~

~~e. *Notification of Debriefing.* The CO informs the offeror of the scheduled debriefing date by electronic means with return receipt to acknowledge receipt. If the offeror requests a later debriefing date, the CO requires the offeror to acknowledge in writing that it was offered an earlier date, but requested a later date instead. This procedure protects FAA's interests if the offeror subsequently files a protest.~~

~~d. *Debriefing Methods and Location.* The CO debriefs one unsuccessful offeror at a time. The CO selects the method and location of the debriefing. Although face to face debriefings are frequently used, a debriefing may be by telephone or other electronic means acceptable to the offeror and FAA.~~

~~It may be burdensome for an offeror to attend in person and the needs of the offeror are given due consideration. The CO may provide an advance copy of the debriefing to the offeror and allow the offeror to provide written questions for FAA to review before the debriefing.~~

~~e. *Attendees.* The CO selects FAA attendees, and chairs and controls the debriefing. The CO asks an offeror to identify all individuals by name and position who will attend the debriefing. Normally, the CO does not restrict the number of personnel the debriefed offeror may bring unless there are space limitations. Ensuring appropriate FAA personnel attend the debriefing to be meaningful is important. The CO may rely on SET members to address specialized areas of the offerors' proposals. Legal counsel participates in preparation and review of the debriefing materials. If the offeror's legal counsel will attend the debriefing, FAA legal also attends. If there are indicators a protest is likely, inform FAA's legal counsel. The CO must not deny a debriefing because a protest is threatened or has already been filed.~~

~~f. *Preparing for a Debriefing.* The extent of preparation varies with the complexity of the source selection. Sometimes, preparing debriefing charts is sufficient. Other times, a written script and dry run rehearsals may be beneficial. Because debriefings are time sensitive, preparation may begin before proposal evaluation is complete. SET members may assist in preparing debriefing materials. The CO briefs all FAA personnel who will attend the debriefing on their roles during the debriefing.~~

~~g. *Information Provided.* In a post-award debriefing, the CO discloses the following:~~

- ~~• The evaluation rating; significant strengths and weaknesses; strengths and weaknesses; and deficiencies of the debriefed offeror's proposal;~~
- ~~• The debriefed offeror's total evaluated price/cost and the awardee's total evaluated price/cost; and~~
- ~~• A general summary of the rationale for the award decision.~~

~~h. *Handling Questions.* Ideally, the CO gets all questions in writing. As a general rule, FAA personnel do not answer questions "on the fly." The CO and other FAA personnel caucus to formulate a response before providing an answer. At the end of the debriefing, the CO advises the offeror that the debriefing is officially concluded. At the discretion of the CO, questions submitted by the offeror after the date on which the debriefing was conducted may be answered. In such cases, the CO must advise the offeror that the information is not considered part of the official debriefing (thereby not affecting the protest time period).~~

## **1.10 Oral Presentations**

~~a. *Introduction.* Oral presentations (sometimes referred to as oral proposals) provide offerors an opportunity to orally present information they would normally provide in writing. Oral presentations may be beneficial in a variety of procurements, and they are most useful when requirements are clear, complete, and stated in performance or functional terms. Oral presentations are ideal for gathering information about how qualified the offeror is to perform the work, how well the offeror understands the work, and how the offeror will approach the work. Oral presentations may be conducted in person or via video teleconference. A videotaped presentation does not constitute an oral presentation because it is not a real-time exchange of information.~~

~~b. *Scope of the Oral Presentation.* Before deciding if oral presentations are appropriate, the SET must select the evaluation factors. Then the SET decides whether the information needed to evaluate these factors can be better presented orally, in writing, or through a combination of both. Oral presentations can convey information in diverse areas such as responses to sample tasks, understanding the requirements, experience, and relevancy of past performance. Offerors should be required to submit briefing materials in advance of the presentations. This allows FAA attendees to review the materials and prepare any questions. Oral statements cannot be incorporated into the contract by reference, so any information to be made part of the contract needs to be submitted in writing. At a minimum, the offeror must submit certifications, representations, and a signed offer (including any exceptions to SIR terms and conditions) in writing. The offeror must submit any other factual data, such as cost or pricing data or subcontract commitments, as part of a written proposal, too.~~

~~e. *SIR Information.* If oral presentations are appropriate, the SIR must notify offerors that FAA will use oral presentations to evaluate and select an offeror for award. The proposal preparation instructions must contain explicit instructions and guidance regarding the extent and nature of the process to be used. The instructions discourage elaborate presentations because they may detract from the information being presented. At a minimum, include the following information in the SIR:~~

- ~~The type of information the offeror must address during the oral presentations and how it relates to the evaluation criteria;~~
- ~~The required format and content of the presentation charts and any supporting documentation;~~
- ~~Any restrictions on the number of charts and/or the number of bullets per chart and how FAA will handle material that does not comply with these restrictions;~~
- ~~The required submission date for the presentation charts and/or materials;~~
- ~~The approximate timeframe when the oral presentations will be conducted and how FAA will determine the order of the offerors' presentations;~~
- ~~Whether any rescheduling will be permitted if an offeror requests a change after the schedule has been established;~~
- ~~The total amount of time each offeror will have to conduct their oral presentation;~~
- ~~Who must make the presentation and a requirement that the offeror provide a list of names and position titles of the presenters;~~
- ~~Whether the presentation will be video or audio taped;~~
- ~~The location of the presentation site and a description of the site and resources available to the offeror;~~
- ~~Any rules and/or prohibitions regarding equipment and media;~~
- ~~How FAA will treat documents or information referenced in the presentation material but never presented orally;~~
- ~~Any limitations on FAA-offeror interactions during and after the presentation~~
- ~~Whether the presentation will constitute discussions;~~
- ~~Whether FAA will use the information in the oral presentation solely for source selection purposes or whether such information will become part of the contract (which will require a subsequent written submission of that information); and~~
- ~~Whether or not the offeror includes any cost (or price) data in the presentation.~~

~~d. *Timing and Sequencing.* Because preparing and presenting an oral presentation involves time and expense, offerors not likely to be candidates for award do not have to conduct oral presentations. This can be an important consideration with small businesses. When this is a concern, consider down selections to establish the likely candidates for award before oral presentations. The SIR clearly articulates the methods for down selection. The CO may draw lots to determine the sequence of the offerors' presentations. The time between the first and the last presentation is as short as possible to minimize any advantage to the offerors that present later.~~

~~e. *Time Limits.* Establish a total time limit for each offeror's presentation. It is not advisable to limit the time for individual topics or sections within the presentation; this detail is the presenter's responsibility. If planning a question and answer (Q&A) session, it is excluded from the allotted time and there is a separate time limit for Q&A. The amount of time allotted is determined using business judgment based upon the complexity of the procurement, experience, and lessons learned.~~

~~f. *Facility.* The presentations are conducted at a Government controlled facility. This helps guard against surprises and ensures a more level playing field. Nothing precludes conducting an oral presentation at an offeror's facility. This may be more efficient if site visits or other demonstrations are part of the source selection. If using a Government controlled facility, it may be made available for inspection and, if warranted, a practice session. Allowing offerors to get acquainted with the facility will help ensure that it does not detract from the presentation content.~~

~~g. *Recording the Presentations.* Having an exact record of the presentation could prove useful both during the evaluation process and in the event of a protest or litigation. The oral presentations can be recorded using a variety of media, e.g., videotapes, audio tapes, written transcripts, and/or a copy of the offeror's briefing slides or presentation notes. The SET is responsible for determining the method and level of detail of the record. If using videotaping, allow for the natural behavior of the presenters. If slides or view graphs are used, the camera views both the lectern and screen at the same time. Place the microphones so that all communications can be recorded clearly and at adequate volume. Every effort is made to avoid letting the recording become the focus of the presentation. The recording, which is considered source selection information, will become part of the official record. Provide a copy to the offeror and seal and securely store the master copy of the recording to ensure there are no allegations of tampering in the event of a protest or court action.~~

~~h. *FAA Attendance.* The CO chairs every presentation. All FAA personnel involved in evaluating the presentations attend every presentation.~~

~~i. *Presenters.* The offeror's key personnel who will perform or personally direct the work being described conduct their relevant portions of the presentations. Key personnel include project managers, task leaders, and other in-house staff of the offeror's and/or their prospective key subcontractor organizations. This will avoid the oral presentation becoming the domain of a professional presenter, which would increase costs, detract from the advantages of oral presentations, and adversely affect small businesses.~~

~~j. *Reviewing the Ground Rules.* Prior to each presentation, the CO reviews the ground rules with the attendees. This includes discussing any restrictions on FAA-offeror information exchanges,~~

~~information disclosure rules, documentation requirements, and housekeeping items. These ground rules are included in the SIR. If the evaluation includes a quiz, the CO discusses the related ground rules. For example, whether the offeror may caucus or contact outside sources by phone before answering. The ground rules must avoid too much control because it could inhibit the presentation. The CO controls all exchanges during the presentation if discussions will not be conducted.~~

~~k. *Evaluation of Presentations.* Evaluations should be performed immediately after each presentation. Using evaluation forms will help the evaluators collect their thoughts and impressions. Evaluators must document the rationale for their evaluation conclusions.~~

## **2 Past Performance Samples** Revised 1/2016

### **2.1 Sample 1 – Past Performance Instructions**

#### **Instructions for Providing Past Performance Information**

~~Offerors must submit the following information as part of their proposal for both the offeror and proposed major subcontractors: (The information may be submitted prior to the other parts of the proposal, to assist the government in reducing the evaluation period).~~

~~A. A list of the last “###” contracts and subcontracts completed during the past three years and all contracts and subcontracts currently in process. Contracts listed may include those entered into by the federal government, agencies of state and local governments, and commercial customers. Offerors that are newly formed entities without prior contracts list contracts and subcontracts as required above for all key personnel. Include the following information for each contract and subcontract:~~

- ~~1. Name of contracting activity;~~
- ~~2. Contract number;~~
- ~~3. Contract type;~~
- ~~4. Total contract value;~~
- ~~5. Contract work;~~
- ~~6. Contracting Officer and telephone;~~
- ~~7. Program manager and telephone;~~
- ~~8. Administrative Contracting Officer, if different from # 6, and telephone; and~~
- ~~9. List of major subcontractors.~~

~~B. The offeror may provide information on problems encountered on the contracts and subcontracts identified in A above and corrective actions taken to resolve those problems. Offerors provide general information on their performance on the identified contracts. General performance information will be obtained from the references. (Use this paragraph if written input from the offeror is desired in addition to the information obtained from the references.)~~

~~C. The offeror may describe any quality awards or certifications that indicate the offeror possesses a high quality process for developing and producing the product or service required. Such awards or~~

certifications include, the Malcolm Baldrige Quality Award, other government quality awards, and private sector awards or certifications (e.g., the automobile industry's QS 9000, Sematech's SSQA, or ANSI/EIA-599). Identify what segment of the company (one division or the entire company) that received the award or certification. Describe when the award or certification was bestowed. If the award or certification is over three years old, present evidence that the qualifications still apply.

D. Each offeror will be evaluated on its performance under existing and prior contracts for similar products or services. Performance information may be used for both responsibility determinations and as an evaluation factor against which offerors' relative rankings will be compared to assure best value to the government. The government will focus on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration. The Performance Information Form identified in the List of Attachments section will be used to collect this information. References other than those identified by the offeror may be contacted by the FAA with the information received used in the evaluation of the offeror's past performance.

E. Offerors should send their listed private sector references a letter to the following effect authorizing the reference to provide past performance information to the Government.

#### **Sample Client Authorization Letter (Optional)**

Dear "Client":

We are currently responding to the Federal Aviation Administration's SIR No. \_\_\_\_\_ for the procurement of \_\_\_\_\_.

The FAA is placing increased emphasis in its procurements on past performance as an evaluation factor. The FAA is requiring that clients of entities responding to its SIRs be identified and their participation in the evaluation process be requested. In the event you are contacted for information on work we have performed, you are hereby authorized to respond to those inquiries.

We have identified Mr./Ms. \_\_\_\_\_ of your organization as the point of contact based on his/her knowledge concerning our work. Your cooperation is appreciated. Any questions may be directed to: \_\_\_\_\_.

Sincerely,

#### **2.2 Sample 2 -- Past Performance Evaluation Factors** Revised 1/2016

Past performance will be evaluated as follows:

1. Past performance will receive 35 percent of the non-cost/price factors ratings. Sub-factors A, B, C, D and E are of equal importance and will receive up to 25 percent of the non-cost/price ratings with

~~the other 10 percent allocated to sub-factor G, quality awards. The criteria for a rating of excellent are described with each sub-factor.~~

~~A. Quality of Product or Service—compliance with contract requirements—accuracy of reports—technical excellence. Excellent = There were no quality problems.~~

~~B. Timeliness of Performance—met interim milestones—reliable—responsive to technical direction—completed on time, including wrap-up and contract administration—no liquidated damages assessed. Excellent = There were no unexcused delays.~~

~~C. Cost Control—within budget—current accurate and complete billings—relationship of negotiated costs to actuals—cost efficiencies. Excellent = There were no cost issues.~~

~~D. Business Practices—effective management—effective small/small disadvantaged business subcontracting program—reasonable/cooperative behavior—flexible—effective contractor recommended solutions—business like concern for government's interests. Excellent = Response to inquiries, technical/service/administrative issues was effective and responsive.~~

~~E. Customer Satisfaction—satisfaction of end users with the contractor's service. Excellent = 90 percent or more of end users surveyed rated the service as excellent or better.~~

~~F. Where the offeror has demonstrated an exceptional performance level in any of the above five sub-factors additional consideration can be given by the procurement team for that factor. It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceed the performance levels described as "excellent."~~

~~G. Receipt of widely recognized quality awards or certifications. Excellent = Malcolm Baldrige Quality award, or equivalent award, covering the entity submitting the offer.~~

~~2. Assessment of the offeror's past performance will be one means of evaluating the credibility of the offeror's proposal, and relative capability to meet performance requirements.~~

~~3. Information utilized will be obtained from the references listed in the proposal, other sources known to the FAA, consumer protection organizations, and others who may have useful and relevant information. Information will also be considered regarding any significant major subcontractors, and key personnel.~~

~~4. Award may be made from the initial offers without discussions. If discussions are held offerors are given an opportunity to address negative reports of past performance, if the offeror has not had a previous opportunity to review the rating. Recent contracts will be examined to ensure that corrective measures have been implemented. Prompt corrective action in isolated instances may not outweigh overall negative trends.~~

~~5. Lack of past performance history relating to this SIR (state how lack of past performance history will affect the evaluation, e.g. neutral rating).~~



**2.3 Sample 3B – Past Performance Questionnaire** Revised 1/2016

<b>SAMPLE 3B – PAST PERFORMANCE QUESTIONNAIRE</b>		
<b>I. CONTRACT IDENTIFICATION</b>		
i.	Name:	
ii.	Description	
iii.	Geographic distribution of services under this contract, i.e., local, nationwide, worldwide:	
iv.	Number of locations serviced by this contract:	
<b>II. EVALUATION</b>		
<b>A. PERFORMANCE HISTORY:</b>		
1.	To what extent did the contractor adhere to contract delivery schedules.	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
	<i>Comment:</i>	
2.	To what extent did the contractor submit required reports and documentation in a timely manner?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
	<i>Comment:</i>	
3.	To what extent were the contractor's reports and documentation accurate and complete?	Considerably surpassed minimum requirements 4 Exceeded minimum contractual requirements 3 Met minimum requirements 2 Less than minimum requirements 1
	<i>Comment:</i>	
4.	To what extent was the contractor able to solve contract performance problems without extensive guidance from government counterparts?	Considerably successful 4 Generally successful 3 Little success 2 No success 1

	<i>Comment:</i>	
5.	To what extent did the contractor display initiative in meeting requirements?	<p>Displayed considerable initiative 4</p> <p>Displayed some initiative 3</p> <p>Displayed little initiative 2</p> <p>Displayed no initiative 1</p>
	<i>Comment:</i>	
6.	Did the contractor commit adequate resources in timely fashion to the contract to meet the requirement and to successfully solve problems?	<p>Provided abundant resources 4</p> <p>Provided sufficient resources 3</p> <p>Provided minimal resources 2</p> <p>Provided insufficient resources 1</p>
	<i>Comment:</i>	
7.	To what extent did the contractor submit change orders and other required proposals in a timely manner?	<p>Considerably surpassed minimum requirements 4</p> <p>Exceeded minimum requirements 3</p> <p>Met minimum requirements 2</p> <p>Less than minimum 1</p>
	<i>Comment:</i>	
8.	To what extent did the contractor respond positively and promptly to technical directions, contract change orders, etc.?	<p>Considerably surpassed minimum requirements 4</p> <p>Exceeded minimum requirements 3</p> <p>Met minimum requirements 2</p> <p>Less than minimum requirements 1</p>
	<i>Comment:</i>	
9.	To what extent was the contractor's maintenance and problem tracking/reporting documentation timely, accurate, and have appropriate content?	<p>Considerably surpassed minimum requirements 4</p> <p>Exceeded minimum requirements 3</p> <p>Met minimum requirements 2</p> <p>Less than minimum requirements 1</p>
	<i>Comment:</i>	

10.	To what extent was the contractor effective in interfacing with the Government's staff?	Extremely effective 4 Generally effective 3 Generally ineffective 2 Extremely ineffective 1
<i>Comment:</i>		
<b>B. TERMINATION HISTORY</b>		
11.	Has this contract been partially or completely terminated for default or convenience?	Yes [ Default— Convenience ] No If yes, explain (e.g., inability to meet cost, performance, or delivery schedules).
<i>Comment:</i>		
12.	Are there any pending terminations?	Yes No If yes, explain and indicate the status.
<i>Comment:</i>		
<b>C. EXPERIENCE HISTORY</b>		
13.	How effective has the contractor been in identifying user requirements?	Extremely effective 4 Generally effective 3 Generally ineffective 2 Extremely ineffective 1
<i>Comment:</i>		
14.	What level of integration experience has the contractor demonstrated in the reconfiguration of government owned software, commercial software, and government furnished hardware?	Considerable surpass minimum experience 4 Exceeded minimum requirements 3 Met minimum contractual requirements 2 Less than minimum requirements 1
<i>Comment:</i>		
15.	To what extent was the maintenance and problem reporting/tracking documentation produced by the contractor's efforts satisfactory to the users?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum contractual requirements 2 Less than minimum requirements 1
<i>Comment:</i>		
16.	To what extent did the	Considerably surpassed minimum requirements 4

	contractor coordinate, integrate, and provide for effective subcontractor management?	Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
<i>Comment:</i>		
17.	To what extent did the contractor provide timely technical assistance, both on-site and off-site, when responding to problems encountered in the field?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
<i>Comment:</i>		
18.	To what extent did the contractor achieve effective logistics support, i.e., replacement parts, personnel, etc.?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
<i>Comment:</i>		
19.	To what extent did the contractor provide quality replacement parts?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
<i>Comment:</i>		
20.	To what extent did the contractor meet the repair/response times in the contract?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
<i>Comment:</i>		
21.	Did this contract include a Help Desk?	Yes No
	If yes, to what extent was the contractor responsive to users contacting the Help Desk for assistance?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2

		Less than minimum requirements-1
	<i>Comment:</i>	
22.	If there was a Help Desk, were users able to make contact with the Help Desk personnel on their first attempt?	<p>Always able on the first attempt 4</p> <p>More often than not on the first attempt 3</p> <p>Rarely able on the first attempt 2</p> <p>Never on the first attempt 1</p>
	<i>Comment:</i>	
23.	Were the Help Desk personnel courteous and responsive?	<p>Always courteous and responsive 4</p> <p>Usually courteous and responsive 3</p> <p>Rarely courteous and responsive 2</p> <p>Never courteous and responsive 1</p>
	<i>Comment:</i>	
24.	Were user questions resolved in a timely manner?	<p>Always resolved in a timely manner 4</p> <p>Usually resolved in a timely manner 3</p> <p>Rarely resolved in a timely manner 2</p> <p>Never resolved in a timely manner 1</p>
	<i>Comment:</i>	
25.	How technically qualified were the Help Desk personnel?	<p>Extremely qualified 4</p> <p>Satisfactorily qualified 3</p> <p>Minimally qualified 2</p> <p>Technically deficient 1</p>
	<i>Comment:</i>	
26.	How satisfied are you with the contractor's Help Desk problem escalation procedures?	<p>Extremely satisfied 4</p> <p>Satisfactorily satisfied 3</p> <p>Minimally satisfied 2</p> <p>Unsatisfied 1</p>
	<i>Comment:</i>	

27.	How technically qualified were the maintenance personnel?	Extremely qualified 4 Satisfactorily qualified 3 Minimally qualified 2 Technically deficient 1
<i>Comment:</i>		
<b>D. COST MANAGEMENT</b>		
28.	To what extent did the contractor meet the proposed cost estimates?	Less than estimated cost 4 Comparatively equal to estimate 3 Exceeded the costs 2 Considerably surpassed estimate 1
<i>Comment:</i>		
<b>E.</b>	<b>NARRATIVE SUMMARY</b>	Use this section to explain additional information not included above.
<i>Comment:</i>		

**2.4 Sample 3C – Business Management Past Performance Summary** Revised 1/2016

<b>Part A. Contract Summary</b>						
1. Contractor Name:				2. Contract Number:		
Street:				3. Contract Type:		
City:				4. Competitive:	yes	no
State:		Zip Code:		5. Follow-on:	yes	no
Telephone:				6. Period of Performance:		
7. Contract Cost Data			Estimated Cost		Fee	Total Value
Firm Fixed Price						
Initial Contract Cost			\$		\$	\$
Current Contract Cost			\$		\$	\$
8. Product Description and/or Services Provided:						

<b>Part B. Performance Evaluation of Contract (Summary)</b>					
<b>Performance Elements</b>	<b>Excellent</b>	<b>Good</b>	<b>Fair</b>	<b>Poor</b>	<b>Unsatisfactory</b>
9. Quality of Work					
10. Timely Performance					
11. Effectiveness of Management					
12. Compliance with Labor Standards					
13. Compliance with Safety Standards					
14. Handling Staff Integrity Issues					
15. Facility Maintenance & Repair					
16. Personnel Management Practices					
17. Overall Evaluation					
18. Remarks on excellent performance. Provide data supporting this observation. <i>[Continue on separate sheet(s) if needed.]</i>					
19. Remarks on unsatisfactory performance. Provide data supporting the observation. <i>[Continue on separate sheet(s) if needed.]</i>					
<b>Part C. Identification of Evaluator</b>					
20. Name:		21. Organization:			
22. Title:		23. Date:			
NOTE: If verbal telephonic response received, complete the following:	24. Information obtained by:			25. Signature	

**2.5 Sample 4 Survey Form** Revised 1/2016

Please provide concise comments regarding your overall assessment of the contractor's performance on the contract identified. Because of the nature of the contract to be awarded, please focus on system integration and installation aspects, when possible, rather than development or production. Please respond to each question in a narrative format. Please telefax your response to the attention of the following point of contact. Please call the individual cited before faxing your response.	
Responses are needed by	
<b>Section 1. Identification of Point of Contact</b>	
Program Name	

Name					
Address					
Telephone Number		Voice		FAX	
<b>Section 2. Performance Verification</b>					
Fact Finding Questionnaire for					
NOTE: We have reviewed the latest Contractor's Performance Annual Review (CPAR) on file		(dated)			
If you can provide any further information, please respond to the questionnaire. If there are no further updates, no further information will be required. (Use this paragraph when looking for additional information on CPARs.)					
<b>Contract Information</b>					
Contractor/Division:					
Program Name:					
Contract Type				Contract Number:	
Period of Contract				to:	
<b>Respondent Identification</b>					
Name		Position			
Telephone No. (Voice)		Telephone No. (FAX)			
Business Address					
City, ST		Zip Code			
Relation to Program:					
Give a brief, general description of what the contractor was required to deliver. (If the work included installation/integration of (WIDGET) systems, please identify locations and types of systems.) Please note that if a negative reply is supplied, a clarification request is submitted to the contractor, and they in turn have the right to be made aware of the comment.					
<b>Evaluation Criteria</b>					
<b>1. Contractor Management</b>					
1.a. Discuss responsiveness of the contractor's upper level management to your organization's concerns and needs.					
1.b. Describe how well the contractor's management interfaced with your staff and organization.					
1.c. Discuss how well the contractor's management system provided visibility into progress/problems/risks in the technical, cost, and schedule areas, and how well the risks were minimized.					
1.d. Discuss how well the contractor managed its subcontractors. (If there was a subcontractor, please include how the contractor maintained oversight of the sub.)					
1.e. If your contract involved the issuing of delivery orders, please discuss any problems the					

contractor had in responding to them (e.g., excessive workload due to conflicts with other contracts).

## **2. Technical**

2.a. Did the contractor exhibit and exercise a sound engineering approach to the contract?

2.b. Did the contractor personnel have adequate experience to perform the tasks required? (Please include specifics as to personnel to perform design, system integration, test, and equipment installations.)

2.c. Discuss how well the contractor met the specification requirements for the system, hardware, and software.

2.d. Discuss the contractor's ability to achieve the required reliability and maintainability without undue schedule delay or cost overrun.

2.e. How well was the contractor able to achieve a final design which was producible and supportable?

2.f. How well did the contractor respond when any technical problems were encountered (e.g., in areas of timelines and technical adequacy)?

2.g. If the contractor was required to perform work outside the Continental United States (CONUS), please indicate locations and types of work done; also please discuss how familiar the contractor was with CONUS work (e.g., work permits, local taxes, host nation agreements, etc.).

2.h. When encountering problems in the field, was the contractor able to provide timely technical assistance both on-site and off?

## **3. Logistics and Supportability**

3.a. Discuss any major problems incurred by the contractor in achieving effective logistics support.

3.b. Was Contractor Logistics Support (CLS) part of the contract? If so, was CLS timely and effective?

3.c. Discuss whether the support equipment and manuals were adequate.

3.d. Did any product failures occur while under warranty? If so, please indicate how responsive the contractor was to correct the deficiency.

## **4. Quality Assurance**

4.a. Discuss the contractor's quality assurance plan and its effectiveness.

4.b. Discuss the contractor's quality control during system design, integration, test, and

installation. (Please include discussion on amount of scrap, repair, and rework activities.)

**5. Schedule**

5.a. Did the contractor deliver on time? Discuss any schedule overruns and how the contractor minimized them:

5.b. If there were schedule changes, please explain what percentage was attributed to government changes (or your organization's changes) or other factors.

**6. Cost**

6.a. Contract Dollar Amounts

Original

Current

Estimate of Final

For Award Fee Contracts

Percentage of Award Fee Paid

6.b. Were there cost overruns? If yes, how much was attributable to the contractor?

6.c. Reasons for cost variances:

**7. Overall**

7.a. Based upon your answers to 1-6, how well did the contractor perform? (Mark with an "X".)

	<b><u>Exceptional</u></b>	<b><u>Satisfactory</u></b>	<b><u>Marginal</u></b>	<b><u>Unsatisfactory</u></b>
Management				
Technical				
Log & Support				
Quality Assurance				
Schedule				
Cost				

7.b. Please provide any additional comments which you believe are important in the evaluation of the contractor's performance.

7.c. If you had the chance to do this again, would you use this contractor again?

Thank you for your efforts and timely response.

(Your Name)

Chairperson

(Program Name)

**Sections Revised:**

- 3.2.2.3 – Complex Source Selection**
- 3.2.2.3 A 1 - General**

**Sections Added:**

- 3.2.2.3 A – Complex Source Selection Method**
- 3.2.2.3 A 2 – Source Selection Team Roles and Responsibilities**
- 3.2.2.3 A 3 – Security of Source Selection Information**
- 3.2.2.3 A 4 – Evaluation Plan**
- 3.2.2.3 A 5 – Selection Methodology**
- 3.2.2.3 A 6 – Screening Information Request (SIR)**
- 3.2.2.3 A 7 – Communications with Offerors**
- 3.2.2.3 A 8 – Evaluation Factors**
- 3.2.2.3 A 9 - Evaluation**
- 3.2.2.3 A 10 – Selection and Award**
- 3.2.2.3 A 11 – Debriefing of Offerors**
- 3.2.2.3 A 12 – Oral Presentations**
- 3.2.2.3 B – Other Source Selection Considerations**
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- 3.2.2.3 E 2.3 – Past Performance Questionnaire**
- 3.2.2.3 E 2.4 – Business Management Past Performance Summary**
- 3.2.2.3 E 2.5 – Survey Form**

**Sections Removed:**

- 3.2.2.3 A – Establishment of a Qualified Vendors List (QVL)**
- 3.2.2.3 A 2 – Public Announcement**
- 3.2.2.3 A 3 – Screening and Evaluation**
- 3.2.2.3 A 4 – Evaluating Prospective Vendors**
- 3.2.2.3 A 5 – Notifying Vendors Excluded from a QVL**
- 3.2.2.3 A 6 – Competing Requirements Among Vendors on QVL**

- 3.2.2.3 A 7 – Updating a QVL
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- 3.2.2.3 A 10 – QVL for Products
- 3.2.2.3 B Clauses
- 3.2.2.3 C Forms

## Procurement Guidance - (~~7/2020~~ 9/2020)

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### T3.2.2.3 - Complex and Noncommercial Source Selection Revised 9/2020

#### A. Complex Source Selection Method Added 9/2020

1. General Revised 9/2020
2. Source Selection Team Roles and Responsibilities Added 9/2020
3. Security of Source Selection Information Added 9/2020
4. Evaluation Plan Added 9/2020
5. Selection Methodology Added 9/2020
6. Screening Information Request (SIR) Added 9/2020
7. Communications with Offerors Added 9/2020
8. Evaluation Factors Added 9/2020
9. Evaluation Added 9/2020
10. Selection and Award Added 9/2020
11. Debriefing of Offerors Added 9/2020
12. Oral Presentations Added 9/2020

#### B. Other Source Selection Considerations Added 9/2020

1. Public Announcement and Announcement of Competing Offerors Added 9/2020
2. Past Performance Added 9/2020
3. Cancelling a Screening Information Request Added 9/2020
4. Section 508 of Rehabilitation Act Added 9/2020
5. Spare Parts Added 9/2020
6. Supplier Process Capability Evaluation and Appraisal Added 9/2020
7. Tiered Evaluation Added 9/2020
8. Qualified Vendors List (QVL) Added 9/2020
9. Two Phase Source Selection Added 9/2020

#### C. Clauses Added 9/2020

#### D. Forms Added 9/2020

1. Section 508 Checklist Added 9/2020

#### E. Appendix Added 9/2020

1. Guide for Establishing a Qualified Vendors List (QVL) Added 9/2020
2. Past Performance Samples for Products, Services, and Construction Added 9/2020
  - 2.1 Past Performance Instructions Added 9/2020
  - 2.2 Past Performance Evaluation Factors Added 9/2020
  - 2.3 Past Performance Questionnaire Added 9/2020
  - 2.4 Business Management Past Performance Summary Added 9/2020
  - 2.5 Survey Form Added 9/2020

~~A Establishment of a Qualified Vendors List (QVL)~~

~~1 General~~ Revised 1/2016

~~2 Public Announcement~~ Revised 1/2016

~~3 Screening and Evaluation~~ Revised 1/2016

~~4 Evaluating Prospective Vendors~~ Revised 1/2016

~~5 Notifying Vendors Excluded from a QVL~~ Revised 1/2016

~~6 Competing Requirements Among Vendors on QVL~~ Revised 1/2016

~~7 Updating a QVL~~ Revised 1/2016

~~8 Cancelling a QVL~~ Revised 1/2016

~~9 Availability of Information~~

~~10 QVL for Products~~ Revised 1/2016

~~B Clauses~~

~~C Forms~~

### T3.2.2.3 - Complex ~~and Noncommercial~~ Source Selection Revised 9/2020

#### A. Complex Source Selection Method Added 9/2020

##### 1. General Revised 9/2020

a. Purpose. AMS Policy Section 3.2.2.3 outlines requirements for source selection. This section contains information about processes and techniques for conducting a competitive complex source selection. The Contracting Officer (CO) uses business judgment to tailor source selection based on factors such as complexity, dollar value, urgency, and resources available.

b. Procurement Integrity. The Procurement Integrity Act applies to personnel involved in source selection. This Act and other similar statutes and regulations impose stringent requirements for safeguarding source selection and contractor proposal information, and other integrity issues. There are civil and criminal penalties for violating these requirements. All personnel involved in the source selection process must maintain the integrity of the procurement, and must understand the prohibitions and certification requirements of the Act and similar statutes and regulations. Any questions or other issues regarding procurement integrity are directed to the legal counsel assigned to the source selection. (See AMS Guidance T3.1.8)

c. Bias or Conflict of Interest. Personnel involved in the source selection must not have any bias or conflict of interest that would affect the source selection. Financial interests in offerors or employment discussions with offerors are examples of conflicts of interests that preclude an employee from participating in a source selection.

##### 2. Source Selection Team Roles and Responsibilities Added 9/2020

The responsibilities described below are guidelines to help ensure successful source evaluation and selection. The source selection team managing the procurement may be comprised of the Source Selection Official, Source Evaluations Team, Contracting Officer, Product or Service Team Lead or Director of the Requiring Service Organization, nongovernmental evaluators and advisors, and support personnel. The composition of the source selection team will vary based on the size and complexity of the procurement.

a. Source Selection Official. The Product or Service team lead or Director (or equivalent position) of the requiring organization is the source selection official (SSO) for a procurement under an investment program subject to the Joint Resources Council (JRC) process (unless the JRC otherwise designates an SSO). For procurements not subject to the JRC investment decision process, the CO is the SSO. The SSO's responsibilities include the following:

(1) Assure team competence, cohesiveness, and effectiveness;

- (2) Approve evaluation plans and assure the evaluation conforms to the plan and to the stated evaluation criteria; and
- (3) Make down-select decisions and assume full authority to select the source for award.
- (4) Ensure the selection process is conducted properly and according to applicable policies and laws;
- (5) Establish the Source Evaluation Team (SET) and ensures the team has the skills, expertise, and experience to perform the evaluation;
- (6) Ensure actual or apparent conflicts of interest are avoided; Ensures premature or unauthorized disclosure of source selection information is avoided;
- (7) Concur with the CO's decision to release the SIR (if the SSO is other than the CO); and
- (8) Make the final source selection decision for an award, and ensures the rationale is documented before contract award.

b. *Source Evaluation Team (SET)* . Source evaluation is a multi-disciplined, team effort. As appropriate, the team includes representatives from functional areas such as contracting, program/technical, legal, logistics, and user organizations. The size and composition of the SET varies, depending on the nature of requirement. Whether the team is large or small, it is structured to ensure teamwork, unity of purpose, and appropriate communication among the team members throughout the process. A key to selecting personnel is identifying experience, education, and business and technical skills required for the evaluation. Required skills and experience are defined with enough flexibility to allow for the substitution of training for experience. The source evaluation team properly and efficiently performs source evaluation, and supports the source selection decision and related activities. Their responsibilities include the following:

- (1) Draft all SIRs;
- (2) Formulate the source evaluation plan;
- (3) Review existing lessons learned reports that provide meaningful insight into the procurement;
- (4) Ensure an in-depth review and evaluation of each submitted screening document against FAA requirements and stated evaluation criteria;
- (5) Prepare the evaluation report (including recommendations, if applicable), using

sound business judgment, to assist the SSO make down selection and/or award decisions;

(6) Oversee all procedural and administrative aspects of the procurement;

(7) Select advisors to assist the team in its evaluation, if required;

(8) Prepare documentation for the SSO's decision rationale, if requested by the SSO; and

(9) Participate in all debriefings;

c. Contracting Officer. The CO's responsibilities include the following:

(1) Serve as the SSO for procurements not subject to the JRC investment-decision process;

(2) Ensure, when applicable, conflict of interest documentation is obtained from all source selection team members; with legal counsel, determine if any conflicts or apparent conflicts of interests exist; and if so, resolve them;

(3) Ensure source selection team members are briefed on sensitivities of the source selection process to include but not limited to the following:

- the prohibition against unauthorized disclosure of information (including their responsibility to safeguard proposals and any documentation related to the source selection team proceedings);
- requirements concerning conflicts of interest; and
- ensure source selection team members provide nondisclosure of information statements

(4) Coordinate communications with industry and conduct all debriefings;

(5) Control all written documentation issued to industry;

(6) Lead screening, selection, and debriefing phases of source selection;

(7) Issue letters, public announcements, SIRs, SIR amendments, and other procurement documents; and

(8) Ensure the contract is signed by a contractor's representative with the authority to bind the contractor; with legal counsel, ensure all contractual documents comply with applicable laws, regulations, and policies.

d. Product or Service Team Lead or Director of the Requiring Organization. The product or service team lead or Director's (or equivalent position) responsibilities include the following:

(1) Serve as SSO if the procurement is subject to the JRC investment-decision process (unless otherwise designated by the JRC);

(2) Assure FAA's program needs are acquired through the appropriate source selection process;

(3) Assure SIRs include adequate definition of requirements; and

(4) Assure qualified technical evaluators, if required, assist the source evaluation team in the evaluation.

e. *Advisors.* The source evaluation team may appoint advisors to provide specialized expertise and guidance not otherwise available on the team.

f. *Nongovernmental Evaluators and Advisors.* The source evaluation team may use nongovernmental personnel as evaluators or advisors. Nongovernment personnel must comply with FAA's conflict of interest and nondisclosure of information policies. The SIR must include notice of any nongovernmental participation.

g. *Support Personnel.* Once the primary evaluation team is identified, additional support personnel may be desired or required. Examples of such personnel include administrative support, librarian/document-control personnel, and information technology support.

### **3. Security of Source Selection Information** Added 9/2020

a. *Required Certificates.* The SSO and each SET member (including support personnel and advisors) must sign nondisclosure of information and conflict of interest certificates. (See AMS T3.1.6.A.2 Requirement for an Agreement Regarding Non-Disclosure of Information).

b. *Administrative Considerations.* Each procurement varies, but administrative needs may include private facilities for evaluators and discussions with offerors, securable storage space for source selection materials, and other items such as computers, special software, phones, copiers, etc.

c. *Handling Source Selection Information.*

(1) SET members must handle proposal and evaluation material in a manner consistent with "For Official Use Only" or, as appropriate, a higher security classification. The SET establishes sufficient safeguards to protect the material whether it is in their possession or it is being disseminated, reproduced, transmitted, or stored. Additionally, procedures are established for proper disposal of the material when it is no longer required. (See AMS Procurement Guidance T3.13.1.A.7, Records Retention, and FAA Order 1350.15C Records Organization, Transfer and Destruction Standards).

(2) The Procurement Integrity Act precludes individuals from knowingly disclosing source selection information and contractor bid or proposal information before award of a contract

to which the information relates. The SSO may, however, authorize release of source selection information after the SIR is issued but before contract award to other authorized Government personnel who have signed a non-disclosure statement, provided the release would not jeopardize the integrity or successful completion of the procurement.

d. Security Responsibilities. All SET members are responsible for the security of source selection information. In complex source selections, it may be beneficial to designate members of the SET to oversee and perform security control functions. Security procedures may also be needed for the physical facilities where source selection occurs, such as a sign in and out log, identification to access the area, visitor (e.g. maintenance/service personnel) control, or key or card control access. A security briefing for the SET may be used to emphasize that each member understands the following:

- Each member is responsible for security of the evaluation and proposal materials and other source selection and proprietary information related to the procurement;
- Each member is knowledgeable of, and will adhere to, governing security procedures and regulations;
- Each member does not discuss, communicate, or otherwise deal with matters related to the source selection with any individual not assigned by the SSO, and then only within appropriately secure areas; and
- Each member shall challenge any apparent unauthorized person within the physical location of the evaluation.

#### 4. Evaluation Plan Added 9/2020

The evaluation plan outlines the people, schedule, process, criteria and other information relevant to evaluating offeror responses to a SIR, and the basis for selecting an offeror for award. It is approved by the SSO, Evaluation Team Lead, CO, and Legal before receiving responses to a SIR requesting screening or qualification information. The evaluation plan is source selection sensitive information, so it must not be disclosed to anyone not authorized by the SSO to receive the information. The size and detail of the evaluation plan is based on the complexity of the procurement, but at a minimum it includes the following:

- Name of the SSO and SET members;
- Evaluation factors, relative importance of factors, and standards for rating offerors against the factors; and
- Basis for selection and award

#### 5. Selection Methodology Added 9/2020

Designing a procurement strategy includes an effective evaluation methodology. Depending on the circumstances, it may be in FAA's best interest to either do the following:

(1) Award to best value offeror. Under this method, both cost/price and non-cost/price factors are assessed based on the evaluation criteria, and the SSO selects the offeror proposing a combination of these factors representing the best value to FAA. The SSO considers non-cost strengths and weaknesses, risks, and cost/price for each offeror and applies business judgment to select the offeror representing the best value.

(2) Award to the lowest-priced, technically acceptable offeror. This method may be the best value when FAA would not realize any value from a proposal exceeding minimum technical requirements. The SIR establishes certain standards that an offeror must meet to be considered technically acceptable. An offeror does not receive any additional credit for exceeding the established standards. The award is then made to the lowest-priced, technically acceptable offeror.

## 6. Screening Information Request (SIR) Added 9/2020

a. Purpose. The FAA obtains information and offers from vendors through a SIR. The SIR includes information necessary for offerors to understand what FAA is buying, what information to provide, and how responses will be evaluated. The success of a procurement is directly linked to the quality of the SIR. A well-written SIR includes the following:

- Facilitates a fair competition;
- Limits criteria to differentiators that add value; Clearly
  - details information required from vendors; Clearly
  - identifies evaluation and award criteria; and
- Conveys a clear understanding of FAA's requirements.

b. The SIR Process. For a given procurement, FAA may make a selection decision after one SIR, or may have a series of SIRs (with a screening decision after each one) to arrive at the selection decision. This process depends on the types of products, services, or real property to be acquired and the specific source selection approach. Generally, when multiple SIRs are contemplated, the initial SIR requests general information, and subsequent SIRs requests successively more specific information. Initial SIRs need not state firm requirements, thus allowing FAA to convey its needs to offerors in the form of desired features, or other appropriate means. Firm requirements ultimately are established in all contracts.

c. SIR Contents. Each SIR contains the following information:

- Paperwork Reduction Act number on the cover page;
- A statement identifying the purpose of the SIR (request for information, request for offer/solicitation for offer, establishment of a QVL or screening);
- A definition or statement of need or requirements;
- A request for specific information (with specific page and time limitations, if applicable);
- A closing date stating when submittals must be received in order to be considered or evaluated;
- Evaluation criteria (and relative importance, if applicable);

- A statement informing offerors how communications with them will be conducted during the screening; and
- An evaluation/procurement schedule (including revisions, as required).

d. Categories of SIRs.

(1) Qualification Information. Qualification information, used to qualify vendors and establish qualified vendor lists (QVLs), are requested when a resultant QVL will be used for multiple FAA procurements. Qualification information screens those vendors meeting FAA's stated minimum capabilities / requirements to provide a particular product or service. Once qualification information is requested, received, and evaluated according to the evaluation plan, a QVL is established for the given product/service and vendors meeting FAA's qualification requirements are listed on the QVL. (See AMS Procurement Guidance T3.2.2.3.B.8 for more information on QVLs.)

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

(3) Request/Solicitation for Offer. A request/solicitation for offer is a request for an offeror to formally commit to provide the products, services, or real property required by FAA under stated terms and conditions. The response to the request/solicitation for offer is a binding offer, which is intended to become a binding contract if signed by the CO. The request/solicitation for offer may take the form of a SIR, a proposed contract, or a purchase order.

e. Changes in SIR Requirements. If FAA's requirements change after release of a SIR, then all offerors competing at that stage are advised of the change(s) and allowed to update their submittals accordingly. The SSO may waive a requirement at any time after release of a SIR, without notifying other offerors, if the SIR states offeror specific waiver requests will be considered, and the waiver does not affect a significant requirement that changes the essential character or conditions of the procurement.

f. Common Problems.

(1) Inconsistency among the SIR and related documents. Having the SIR and related documents to be aligned is critical. This is particularly important for the evaluation plan and the SIR to be consistent.

(2) Inconsistency within the SIR. Avoiding inconsistencies between the description of FAA's requirements, instructions on how to prepare a proposal, and information related to the evaluation factors is important. These inconsistencies may be caused by different groups of people developing the different SIR sections without proper coordination. Such inconsistencies can result in less advantageous offers, necessitate changes/amendments to the SIR, cause delays, lead to offerors losing confidence in the process, or result in litigation.

(3) Requesting Too Much Information from Vendors. The instructions for preparing and submitting proposals focus on requesting only information necessary for the evaluation. The SIR requirements, each evaluation factor and subfactor, and the SIR preparation instructions are linked. Request only the essential information needed to evaluate SIRs against the evaluation factors and subfactors and do not ask for information that will not be evaluated. Instructions that require voluminous information can cause potential offerors to forego responding in favor of a less costly business opportunity. Excessively large proposals may increase the time and costs associated with the evaluation. Proposal page limitations are encouraged, but they need to be clearly defined and tailored to the needs of the acquisition. Focus exclusively on differentiators; failure to do so compromises the ability to identify the best offeror.

(4) Unnecessary Use of Design Requirements. The description of FAA's requirements in the SIR can have a significant effect on a source selection using a tradeoff process. Use of detailed design requirements or overly prescriptive statements of work severely limits the offerors' flexibility to propose their best solutions. Functional or performance-based requirements provide flexibility and are used to the extent practicable. While it may be more difficult to develop evaluation criteria and conduct the evaluation process using this approach, the benefits warrant it. These benefits include increased competition, access to the best commercial technology, better technical solutions, and fewer situations for protests.

g. Ways to Improve the SIR. A multi-disciplined team develops the SIR. The members are stakeholders in the procurement and continuously coordinate with each other to ensure consistency of the SIR with other documents such as the evaluation plan. Open communications with vendors is used to improve the SIR and to also promote understanding of FAA's requirements. This can be accomplished through various forms of communication, such as releasing draft statements of work or SIRs, advance procurement planning briefings for vendors, one-on-one meetings, or conferences with potential offerors.

## 7. Communications with Offerors Added 9/2020

a. Communications with potential offerors takes place throughout the source selection process. During the screening, selection, and debriefing phases of source selection, communications are coordinated through the CO. All SIRs clearly inform offerors of how communications will be handled during the initial screening phase. The purpose of communications is to ensure mutual understanding between FAA and offerors about all aspects of the procurement, including the offerors' submittals/proposals. Information disclosed as a result of oral or written communication with an offeror may be considered in the evaluation of an offeror's submittal(s). To ensure that offerors fully understand the intent of the SIR and FAA's needs, FAA may hold a pre-submittal conference and/or one-on-one meetings with individual offerors. One-on-one communications may continue throughout the process, as required, at the discretion of the SET.

b. Communications with one offeror do not necessitate communications with other offerors, because communications will be offeror-specific. Regardless of the varying level of

communications with individual offerors, the CO ensures such communications do not give any offeror an unfair competitive advantage. During these and future communications, as applicable, FAA encourages offerors to provide suggestions about all aspects of the procurement. Communications may necessitate changes in FAA's requirements or SIR. Where communications do not result in any changes in FAA's requirements, FAA is not required to request or accept offeror revisions. The use of technical transfusion is always prohibited. Auctioning techniques are prohibited, except in the use of "commercial competition techniques."

## **8. Evaluation Factors** Added 9/2020

### a. Evaluation Factors and Subfactors.

(1) Selecting the appropriate evaluation factors and subfactors is key to the source selection process. The factors and subfactors give offerors an insight into significant considerations FAA will use to select the best value offer. Structure the evaluation factors and subfactors and their relative importance to clearly reflect the needs of the acquisition. Evaluation factors and subfactors from the evaluation plan must be in Section M (or equivalent) of the SIR.

(2) Factors and subfactors are definable and measurable in readily understood terms. They also represent the key areas of importance and emphasis to be considered in the source selection decision. Factors and subfactors should be limited to the essential elements to distinguish among the information/offers; i.e., will be true differentiators.

(3) Common evaluation factors are technical, cost/price, past performance, and small business participation. Other evaluation factors may be appropriate, and one or more levels of subfactors may be needed.

(4) Steps involved in formulating evaluation factors and subfactors include the following:

- Conduct market research as a starting point for developing criteria;
- Brainstorm critical factors and subfactors;
- Identify key differentiators;
- Define the differentiators as evaluation factors and subfactors;
- Determine and define the evaluation factors and subfactors;
- Relative order of importance; and
- Assess feedback during SIR(s)

(5) *Evaluation Weights.* Assign relative importance to each evaluation factor and subfactor. Tailor the relative importance to specific requirements. Use priority statements to express the relative importance of the evaluation factors and subfactors. Priority statements relate one evaluation factor (or subfactor) to each of the other evaluation factors (or subfactors). For example:

“Technical is the most important factor and is more important than all of the remaining factors combined. Technical is significantly more important than past Performance. The past performance factor is more important than the cost factor and small business participation factor combined. The cost factor is more important than the small business participation factor.”

b. Numerical and Adjectival Ratings. When using the tradeoff process, the evaluators assess the non-cost portion(s) of the offer and associated performance and proposal risks using numerical or adjectival ratings. The success of an evaluation is not dependent upon the type(s) of ratings used, but rather on the consistency with which the evaluators use them. For this reason, adjectival ratings must include definitions for each rating so that the evaluators have a common understanding of how to apply them.

c. Result of Proposal Evaluation. At the end of an evaluation, each factor and sub-factor are evaluated, the merits and risks of a proposal are documented and adjectival ratings are assigned.

## 9. Evaluation Added 9/2020

a. Conduct Training. Before receipt of proposals, each evaluator becomes familiar with all pertinent documents, e.g., SIR, evaluation plan, and rating scales, etc.. The SET conducts training that includes an overview of these documents and the source selection process, with instructions on properly documenting each offeror’s strengths, weaknesses, and risks. Training also includes ethics requirements and the protection of source selection information. This training is especially crucial when evaluators have little or no source selection experience.

b. Documenting the Evaluation. The SET performs an in-depth, systematic evaluation of offerors' proposals against evaluation factors and subfactors in the SIR(s). All evaluations must be documented. While the specific evaluation processes and tasks vary, the basic objective is to provide information about each offeror's strengths and weaknesses so the SSO can make an informed and reasoned decision. An orderly method for identifying, recording, and tracking strengths and weaknesses is imperative. Evaluation findings being supported with narrative statements is critical. Ratings alone are not conclusive information on which to make a source selection decision. All determinations relating to changes in requirements after release of the SIR must be documented in the evaluation report.

c. Assignment and Use of Offeror Code Names. Once proposals are received, the SET considers establishing a code name for each of the offerors. This helps protect the identities of offerors submitting proposals, the proprietary information in their proposals, and the contents of the evaluation reports and source selection documentation. The code names are assigned by the SET and then communicated to all evaluation personnel prior to the start of proposal evaluation. All SET members, evaluation team members, and support personnel involved in the evaluation and source selection must then use any assigned code names rather than the actual offeror names in all discussions and in all written documentation and communication (including the SSO Briefing). The SSO would not know the actual offeror names until after contract award. Additional guidance

related to the assignment of code names is as follows:

(1) Code names are based on a series of like items (e.g., states such as Missouri, Arkansas, and Nebraska for an acquisition with three offerors);

(2) Care is taken to avoid choosing a series of names where one may be perceived as more valuable than another (e.g., if using precious metals, gold may be perceived as more valuable than bronze, or if using colors, red may be perceived more negatively than green);

(3) If there are more than three or four offerors, alphabetic characters are used for ease of reference (e.g., Offeror A, Offeror B etc.); and

(4) Code names would not be assigned in the following situations:

- Only one proposal received; or
- Where the names of all offerors competing are publicly known in accordance with AMS clause 3.2.2.3-72 "Announcing Competing Offerors" (July, 2004).
- For real property acquisitions

Note: Regardless of whether code names are used, SET members, evaluation team members, and support personnel are responsible at all times for the proper treatment of source selection sensitive information from the evaluations and/or proposals.

d. Past Performance Evaluations. The past performance evaluators assess the performance risk associated with each proposal. The final assessment describes the degree of confidence in the offeror's likelihood of successful contract performance based on that offeror's demonstrated record of performance under similar contracts. (See AMS Procurement Guidance T3.2.2.3.B.2 for guidance on evaluating past performance.) For real property acquisitions, past performance will be considered as part of vendor responsibility determination. (See AMS Procurement Guidance T3.2.2.7)

e. Cost/Price Evaluations. For fixed priced contracts, the evaluation could be as simple as assessing adequate price competition and determining prices are fair and reasonable. Fixed priced contracts are evaluated for appropriateness (i.e., consider market prices, appropriate risk and the possibility of a "buy-in") for what is being offered. For cost- reimbursement and/or time-and-material contracts, the offerors' estimated costs are analyzed for both realism and reasonableness. The cost realism analysis enables evaluators to determine each offeror's most probable cost of performance. This precludes an award decision based on an overly optimistic cost estimate. Additionally, whenever cost analysis is performed, profit or fee analysis is conducted. (See AMS Procurement Guidance T3.2.3 for guidance on cost and price methods.)

## **10. Selection and Award** Added 9/2020

a. Decisions. After the evaluators complete their evaluation, the results of the evaluation are presented to the SSO. The SSO may do the following:

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

b. Presenting the Evaluation to the SSO. The SET prepares documentation of the evaluation to present to the SSO. The SSO uses this documentation as an aid when making a decision based on business judgment about which proposal represents the best value. At the request of the SSO, the SET may present the evaluation results through one or more briefings.

c. Source Selection Decision. The SSO must document his/her rationale for selecting the successful offeror. The source selection decision document explains how the successful proposal compared to other offeror's proposals based on the evaluation factors and subfactors in the SIR, and discusses the judgment used in making any tradeoffs. If the SSO disagrees with a finding of the SET, the SSO's rationale is part of the decision document. When the SSO determines, in a best value tradeoff source selection, that the best value proposal is other than the lowest-priced proposal, the decision document justifies paying a price premium regardless of the superiority of the successful proposal's non- cost rating. The justification clearly states the benefits or advantages FAA receives for the added price and why it is in FAA's best interest. This justification is required even when the SIR indicates non-cost factors are more important than cost/price. The SSO should consult with legal counsel to review the source selection decision document to assure that the decision clearly articulates the business judgment of the SSO.

d. Awarding the Contract. After the SSO signs the source selection decision document, the CO executes and distributes the contract, subject to completing other requirements before award such as Congressional notification, if applicable.

## **11. Debriefing of Offerors** Added 9/2020

a. Overview. The CO notifies all offerors who participated in the competitive process that they may request a single debriefing within three working days from receipt of award notification. Because each offeror puts considerable resources into preparing and submitting a proposal, fairness dictates a prompt debriefing and an explanation of why a proposal was unsuccessful.

b. Purposes of a Debriefing. A debriefing accomplishes the following:

- Explains the rationale for the offeror's exclusion from the competition or non-selection for award;
- Instills confidence in the offeror that it was treated fairly;
- Assures the offeror that appropriately qualified personnel evaluated the proposal according to the SIR and applicable policies and laws;
- Identifies strengths and weaknesses in the offeror's proposal so the offeror can prepare better proposals in future FAA procurements;
- Gives the offeror an opportunity to provide feedback about the SIR process, communications, and the source selection; and

- Reduces misunderstandings and reduces the risk of protests.

A debriefing is not any of the following:

- Page-by-page analysis of the offeror's proposal;
- Point-by-point comparison of the proposals of the debriefed offeror and other offerors; and
- Debate or defense of FAA's award decision or evaluation results.

The debriefing must not reveal any information prohibited from disclosure or exempt from release under the Freedom of Information Act.

c. Notification of Debriefing. The CO informs the offeror of the scheduled debriefing date by electronic means with return receipt to acknowledge receipt. If the offeror requests a later debriefing date, the CO requires the offeror to acknowledge in writing that it was offered an earlier date, but requested a later date instead. This procedure protects FAA's interests if the offeror subsequently files a protest.

d. Debriefing Methods and Location. The CO debriefs one unsuccessful offeror at a time. The CO selects the method and location of the debriefing. Although face-to-face debriefings are frequently used, a debriefing may be by telephone or other electronic means acceptable to the offeror and FAA. It may be burdensome for an offeror to attend in person and the needs of the offeror are given due consideration. The CO may provide an advance copy of the debriefing to the offeror and allow the offeror to provide written questions for FAA to review before the debriefing.

e. Attendees. The CO selects FAA attendees, and chairs and controls the debriefing. The CO asks an offeror to identify all individuals by name and position who will attend the debriefing. Normally, the CO does not restrict the number of personnel the debriefed offeror may bring unless there are space limitations. Ensuring appropriate FAA personnel attend the debriefing to be meaningful is important. The CO may rely on SET members to address specialized areas of the offerors' proposals. Legal counsel participates in preparation and review of the debriefing materials. If the offeror's legal counsel will attend the debriefing, FAA legal also attends. If there are indicators a protest is likely, inform FAA's legal counsel. The CO must not deny a debriefing because a protest is threatened or has already been filed.

f. Preparing for a Debriefing. The extent of preparation varies with the complexity of the source selection. Sometimes, preparing debriefing charts is sufficient. Other times, a written script and dry run rehearsals may be beneficial. Because debriefings are time sensitive, preparation may begin before proposal evaluation is complete. SET members may assist in preparing debriefing materials. The CO briefs all FAA personnel who will attend the debriefing on their roles during the debriefing.

g. Information Provided. In a post-award debriefing, the CO discloses the following:

- The evaluation rating; significant strengths and weaknesses; strengths and weaknesses; and deficiencies of the debriefed offeror's proposal;
- The debriefed offeror's total evaluated price/cost and the awardee's total

evaluated price/cost; and

- A general summary of the rationale for the award decision.

h. Handling Questions. Ideally, the CO gets all questions in writing. As a general rule, FAA personnel do not answer questions “on the fly.” The CO and other FAA personnel caucus to formulate a response before providing an answer. At the end of the debriefing, the CO advises the offeror that the debriefing is officially concluded. At the discretion of the CO, questions submitted by the offeror after the date on which the debriefing was conducted may be answered. In such cases, the CO must advise the offeror that the information is not considered part of the official debriefing (thereby not affecting the protest time period).

## **12. Oral Presentations** Added 9/2020

a. Introduction. Oral presentations (sometimes referred to as oral proposals) provide offerors an opportunity to orally present information they would normally provide in writing. Oral presentations may be beneficial in a variety of procurements, and they are most useful when requirements are clear, complete, and stated in performance or functional terms. Oral presentations are ideal for gathering information about how qualified the offeror is to perform the work, how well the offeror understands the work, and how the offeror will approach the work. Oral presentations may be conducted in person or via video teleconference. A videotaped presentation does not constitute an oral presentation because it is not a real-time exchange of information.

b. Scope of the Oral Presentation. Before deciding if oral presentations are appropriate, the SET must select the evaluation factors. Then the SET decides whether the information needed to evaluate these factors can be better presented orally, in writing, or through a combination of both. Oral presentations can convey information in diverse areas such as responses to sample tasks, understanding the requirements, experience, and relevancy of past performance. Offerors should be required to submit briefing materials in advance of the presentations. This allows FAA attendees to review the materials and prepare any questions. Oral statements cannot be incorporated into the contract by reference, so any information to be made part of the contract needs to be submitted in writing. At a minimum, the offeror must submit certifications, representations, and a signed offer (including any exceptions to SIR terms and conditions) in writing. The offeror must submit any other factual data, such as cost or pricing data or subcontract commitments, as part of a written proposal, too.

c. SIR Information. If oral presentations are appropriate, the SIR must notify offerors that FAA will use oral presentations to evaluate and select an offeror for award. The proposal preparation instructions must contain explicit instructions and guidance regarding the extent and nature of the process to be used. The instructions discourage elaborate presentations because they may detract from the information being presented. At a minimum, include the following information in the SIR:

- The type of information the offeror must address during the oral presentations and how it relates to the evaluation criteria;
- The required format and content of the presentation charts and any supporting documentation;
- Any restrictions on the number of charts and/or the number of bullets per chart and how

- FAA will handle material that does not comply with these restrictions; The
- required submission date for the presentation charts and/or materials;
  - The approximate timeframe when the oral presentations will be conducted and how FAA will determine the order of the offerors' presentations;
  - Whether any rescheduling will be permitted if an offeror requests a change after the schedule has been established;
  - The total amount of time each offeror will have to conduct their oral presentation;
  - Who must make the presentation and a requirement that the offeror provide a list of names and position titles of the presenters;
  - Whether the presentation will be video or audio taped;
  - The location of the presentation site and a description of the site and resources available to the offeror;
  - Any rules and/or prohibitions regarding equipment and media;
  - How FAA will treat documents or information referenced in the presentation material but never presented orally;
  - Any limitations on FAA-offeror interactions during and after the presentation
  - Whether the presentation will constitute discussions;
  - Whether FAA will use the information in the oral presentation solely for source selection purposes or whether such information will become part of the contract (which will require a subsequent written submission of that information); and
  - Whether or not the offeror includes any cost (or price) data in the presentation.

d. Timing and Sequencing. Because preparing and presenting an oral presentation involves time and expense, offerors not likely to be candidates for award do not have to conduct oral presentations. This can be an important consideration with small businesses. When this is a concern, consider down selections to establish the likely candidates for award before oral presentations. The SIR clearly articulates the methods for down selection. The CO may draw lots to determine the sequence of the offerors' presentations. The time between the first and the last presentation is as short as possible to minimize any advantage to the offerors that present later.

e. Time Limits. Establish a total time limit for each offeror's presentation. It is not advisable to limit the time for individual topics or sections within the presentation; this detail is the presenter's responsibility. If planning a question and answer (Q&A) session, it is excluded from the allotted time and there is a separate time limit for Q&A. The amount of time allotted is determined using business judgment based upon the complexity of the procurement, experience, and lessons learned.

f. Facility. The presentations are conducted at a Government-controlled facility. This helps guard against surprises and ensures a more level playing field. Nothing precludes conducting an oral presentation at an offeror's facility. This may be more efficient if site visits or other demonstrations are part of the source selection. If using a Government-controlled facility, it may be made available for inspection and, if warranted, a practice session. Allowing offerors to get acquainted with the facility will help ensure that it does not detract from the presentation content.

g. Recording the Presentations. Having an exact record of the presentation could prove useful both

during the evaluation process and in the event of a protest or litigation. The oral presentations can be recorded using a variety of media, e.g., videotapes, audio tapes, written transcripts, and/or a copy of the offeror's briefing slides or presentation notes. The SET is responsible for determining the method and level of detail of the record. If using videotaping, allow for the natural behavior of the presenters. If slides or view graphs are used, the camera views both the lectern and screen at the same time. Place the microphones so that all communications can be recorded clearly and at adequate volume. Every effort is made to avoid letting the recording become the focus of the presentation. The recording, which is considered source selection information, will become part of the official record. Provide a copy to the offeror and seal and securely store the master copy of the recording to ensure there are no allegations of tampering in the event of a protest or court action.

h. *FAA Attendance.* The CO chairs every presentation. All FAA personnel involved in evaluating the presentations attend every presentation.

i. *Presenters.* The offeror's key personnel who will perform or personally direct the work being described conduct their relevant portions of the presentations. Key personnel include project managers, task leaders, and other in-house staff of the offeror's and/or their prospective key subcontractor organizations. This will avoid the oral presentation becoming the domain of a professional presenter, which would increase costs, detract from the advantages of oral presentations, and adversely affect small businesses.

j. *Reviewing the Ground Rules.* Prior to each presentation, the CO reviews the ground rules with the attendees. This includes discussing any restrictions on FAA-offeror information exchanges, information disclosure rules, documentation requirements, and housekeeping items. These ground rules are included in the SIR. If the evaluation includes a quiz, the CO discusses the related ground rules. For example, whether the offeror may caucus or contact outside sources by phone before answering. The ground rules must avoid too much control because it could inhibit the presentation. The CO controls all exchanges during the presentation if discussions will not be conducted.

k. *Evaluation of Presentations.* Evaluations should be performed immediately after each presentation. Using evaluation forms will help the evaluators collect their thoughts and impressions. Evaluators must document the rationale for their evaluation conclusions.

## B. Other Source Selection Considerations Added 9/2020

### 1 Public Announcement and Announcement of Competing Offerors Added 9/2020

All procurements over \$150,000 must be publicly announced on the Internet or through other means. If the Internet is used, as a minimum the announcement should be placed on the Contracting Opportunities page contained in the FAA Acquisition System Toolset (FAST). This requirement does not apply to real property acquisitions, emergency actions, purchases from an established Qualified Vendors List (QVL) or Federal Supply Schedule (FSS), exercise of options, modifications, or changes. For actions under \$150,000, a public announcement is

optional.

For products, services, and construction procurements, publicizing the names of offerors competing for FAA contracts can be a method of encouraging small businesses to seek subcontracting opportunities with potential FAA contractors. The Contracting Officer (CO) may publicly announce names and addresses of offerors responding to a screening information request (SIR), provided the SIR includes a notice to the offerors and no offeror objects to the release of this information. The CO may make the public announcement after initial offers are received and/or after making a down select decision.

## **2 Past Performance** Added 9/2020

a. General. Past performance can be one indicator of a prospective contractor's future performance. To help ensure that the best performing contractors are providing products, and services, construction, and real property space to the FAA, past performance should be evaluated during source selection. If past performance is not evaluated, reasoning must be documented.

b. Recommendations for Using Past Performance in a Screening Information Request (SIR).

(1) General Considerations. Factors chosen for evaluation should be reasonable, logical, coherent, and directly related to requirements in the statement of work (SOW). The key to successful use of past performance in the screening process is a clear relationship between the SOW, instructions to offerors, and evaluation criteria. Past performance information that is not important to the current acquisition should not be included.

(2) Responsibility Determination. When the CO or procurement team considers it appropriate, the SIR states past performance will be used to evaluate the responsibility of the contractor. A contractor with a record of unsatisfactory past performance should be screened out of the selection process.

(3) Past Performance as a Separate Non-Cost/Price Factor. Including past performance as a stand-alone evaluation factor is better than integrating it with other non-cost/price evaluation factors. The source and type of past performance information to be included in the evaluation and the relative importance of past performance compared to price or cost and any other evaluation factors is at the broad discretion of the procurement team (CO, legal counsel, program official and other supporting staff).

(4) Non-Relevant Contract Experience/New Contractors. The SIR must state whether new contractors or contractors with non-relevant contract experience will be considered, or rated negatively.

(5) Size, Scope, Complexity, and Time-frame. The SIR requests the offerors for references for ongoing projects and/or contracts completed within a specified period of time (three to five years is reasonable but can be for a shorter period if appropriate) for contracts that are similar in size, scope, and complexity to the SOW. Each of these terms (size, scope, and

complexity) should be SOW specific and defined in the SIR. Gather past performance history from sources other than those provided by the offeror. Such sources include the Contractor Performance Assessment Reporting System (CPARS) database, PRISM database along with other agency contracting personnel, and listings of contract awards posted on FAA Contract Opportunities.

(6) Sub-factors. The procurement team must pay attention to what differentiates a "good" performer from a "poor" performer. Past performance sub-factors are shaped by those differentiators, be limited in number, and are tailored to the key performance criteria in the SOW.

(7) Relative Importance. The SIR may state whether all sub-factors are relatively equal, or whether certain sub-factors are more important than others.

(8) Major Subcontractors. If applicable, if major subcontractors are likely to perform critical aspects of the contract, the procurement team evaluates past performance of these subcontractors to determine the overall likelihood of success of the prime contractor. The SIR states how such information will be evaluated.

(9) Affiliates, Divisions, etc. The past performance of the affiliates, divisions, etc. that are actually performing the work is considered. The procurement team must consider the degree of control that a parent organization will exert over the affiliate, division, etc. in determining whether both the parent organization and affiliate, division, etc. past performance is evaluated.

(10) Number of References. Ask for at least two points of contact (program/technical and contracts) for each past performance reference to assure that all aspects of the offeror's performance can be evaluated.

(11) Use of Other Sources. The instruction to offerors includes a statement that the Government may use past performance information obtained from sources other than those identified by the offeror, and that the information obtained may be used for both the responsibility determination and the best value decision. For each non-Federal reference, the SIR includes an authorization to release information.

(12) Inclusion of Past Performance Questionnaire (PPQ). The PPQ does not need to be included as an attachment in the SIR. If the PPQ is included in the SIR, note the past performance questions are not limited to those on the questionnaire.

(13) Sample SIR Provisions. Appendix 2 to this Guidance contains examples of SIR provisions and an example client authorization letter. The example is not the only way to include past performance in the SIR. Each SIR must contain instructions and evaluation information that best reflects the individual acquisition.

### c. Evaluating Past Performance.

(1) Relation to SIR. Instances of performance, both good and poor, are noted and related

to SIR requirements. If problems were identified on a prior contract, the role the sponsor may have played in that result is taken into account. Evaluations consider the number and severity of problems, the demonstrated effectiveness of corrective actions taken (not just planned or promised), and the overall work record.

(2) Current Versus Older Performance. The age of the performance being evaluated may be weighted so that performance on older contracts receives less weight than performance on more recent contracts.

(3) Method of Scoring. The final past performance rating may be reflected by a color, a number, adjectival, or a combination of these methods, depending upon what system is being used overall to indicate the relative ranking of the offerors. A past performance rating is not a precise mechanical or scientific process and must include sound business judgment. Therefore, the documentation of the final rating includes a logical description of the underlying reasons for the conclusions reached.

(4) Disclosure of Negative Information. If the procurement team receives negative information that would have a significant effect on the likelihood of award to an offeror, then the procurement team discloses the information and provides the offeror an opportunity to respond. This is true even if the SIR states that award may be made on initial offers. The SIR includes the appropriate provisions notifying the offerors that FAA retains this option.

(5) Evaluating Disputed/Negative Information. When the procurement team receives negative information, or information that is disputed, they should carefully consider the offeror's response and determine what weight to apply, based on the facts obtained from the questionnaire, interview, or other sources. The file must be documented to explain why the procurement team assigned a particular rating. This is especially important in situations involving unresolved disputes.

d. Obtaining Information on an Offeror's Past Performance.

(1) Reference Checks. The most commonly used method of obtaining past performance is to conduct reference checks from a variety of sources, including previous FAA program and contracting personnel, other Federal agencies, state and local governments, and commercial contractors.

(2) Other Sources. Dun & Bradstreet can obtain information on past performance on specific contractors for the FAA (Dun & Bradstreet charges for this information). In lieu of FAA paying for the report, the SIR may require offerors to provide a copy of a recent past performance report prepared by Dun & Bradstreet. Quality certifications and awards can also serve as a useful source of past performance information.

(3) Timetable. The process of collecting past performance information begins as soon as the proposal evaluation begins. It may be best to establish a team devoted entirely to this task during the screening, especially if FAA anticipates receiving a large number of proposals. Researchers must locate and question sources of information, either in person,

by telephone or in writing. If the information shows a history of poor performance, the procurement team can eliminate the proposal from the competition as non-responsible.

(4) Questionnaire or Survey Form. The first step in obtaining information from sources is to develop a questionnaire, or survey form, that reflects the evaluation rating system that will be used to assess the offerors strengths and weaknesses for the contract being considered. Questions are worded so that interviewees understand precisely what they are being asked to describe. To maintain accurate records and facilitate verification, the questionnaire (survey) record form include: Interviewer's name, agency/company name, reference's name (to be held in confidence), full mailing address and telephone number, date the questionnaire is completed, and description of the contract effort discussed. An example of a questionnaire is found in Appendix 2.4 Sample 3B.

(5) Information Collection. Once the questionnaire is prepared, the procurement team should contact references. There are various ways to collect the information: Face-to-face interviews, mailing the questionnaires, telephone interviews, electronic mail (ensuring security measures are taken), or some combination of these.

(6) Number of References. The SIR requires the offeror provide at least two references (one from the program office/one from contracts) for each of its proposed past performance examples. Additional references could be identified during interviews in order to survey a large enough sample to identify patterns in performance.

(7) Setting Up Interviews. Being well organized and efficient is important when conducting the interview so as not to waste the interviewee's time. It is helpful to call the reference to make an appointment to conduct an interview, rather than telephoning the references unannounced, thereby catching them unprepared or with little time to respond. If possible, the questionnaire is mailed or faxed to the reference in advance of the appointment. Interviewers take copious notes on the questionnaire to ensure that all information is captured. Tape recording is a good means for capturing all of the conversation; however, tape recording the conversation may cause the interviewee discomfort and reduce the amount of information provided. If tape recording is used during the interview, ensure the interviewee is aware of and agrees to the use of recording devices.

(8) Conducting Interviews. Evaluators look for patterns of either favorable or unfavorable overall performance, rather than focusing on individual successes or failures. It is important to look for actions that demonstrate high performance and not just unfavorable performance. This will help to get away from the old responsibility determination mode of just looking at performance problems. There appears to be a tendency for references to give an upward bias to ratings. The interviewer should ask enough questions to discriminate between "good" and "excellent." Evaluators request copies of any existing documentation in support of excellent or negative findings (i.e., correspondence, modifications, determinations, etc.). Investigating negative findings in- depth prior to presenting them to offerors, in discussions if held, will alleviate unnecessary delays. Prior to concluding the interview, the evaluator asks the reference for a summary opinion, e.g.,

how would the interviewee rate the contractor's overall performance and would the interviewee like to do business with the contractor again?

(9) Concluding Telephone and Face-to-Face Interviews. Immediately following a telephone or face-to-face interview, the interviewer prepares a narrative summary of the conversation (this can be the questionnaire as filled in by the interviewer) and send it to the reference for verification, preferably by certified mail return-receipt requested, fax, or electronic mail. The narrative states explicitly that if the reference does not object to its content within the time specified, it would be accepted as correct. If the reference indicates that the narrative is incorrect, then a corrected narrative is sent for verification. If a reference will not agree to the record and satisfactory corrections cannot be agreed upon, the record cannot be relied upon and must not be included in the offeror's rating. Another source may provide the same information, however.

(10) Mailing Questionnaires. If mailing questionnaires is the chosen method for collecting past performance information, mail the questionnaires to the references, provide a time-frame for return of responses, and wait for the responses. If mailed questionnaires are not received in a timely manner, follow-up telephone interviews are suggested (following guidance above if telephone interview occurs).

### **3 Cancelling a Screening Information Request** Added 9/2020

The CO, with the concurrence of the procurement team, may cancel a SIR at any time during the solicitation process. The notification of cancellation may be made through the same mechanism as the initial or subsequent SIRs. The CO must document cancellation for the contract file.

### **4 Section 508 of Rehabilitation Act** Added 9/2020

#### *a. Requirements for Accessibility.*

Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) requires that persons with disabilities that are either Federal employees or members of the public seeking information or services from a Federal department are to have access to and use of information and data comparable to the access and use of information and data by Federal employees or members of the public who do not have disabilities. Section 508 applies to contract awards, task orders, delivery orders, orders under Government-wide Schedules and Interagency Agreements for electronic and information technology (EIT), as defined below. The procurement team (CO, program official, legal counsel, and other supporting staff) will insert Section 508 requirements into SIRs that include development, procurement, maintenance, or use of electronic and information technology unless an exception applies (see Exceptions to Section 508 below).

#### *b. Definition.*

Electronic and information technology (EIT) means any equipment or interconnected system or subsystem of equipment used in automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or

information. For purposes of the preceding sentence, equipment is used by the FAA:

- (1) If the equipment is used directly by FAA; or
- (2) Is used by a contractor under a contract with FAA that:
  - (a) Requires use of such equipment; or
  - (b) Requires use, to a significant extent, of such equipment in performance of a service or furnishing of a product.

c. EIT Products. EIT includes, but is not limited to the following:

- (1) Computers and other office equipment;
- (2) Software and firmware;
- (3) Services (including support Services);
- (4) Telecommunication products;
- (5) Information kiosks;
- (6) Office equipment such as copiers and fax machines; and
- (7) Websites.

d. Exceptions to Section 508.

- (1) Section 508 does not apply to EIT if the following applies:
  - (a) Acquired by a contractor incidental to a FAA contract;
  - (b) For a national security system;
  - (c) Located in space frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment;
  - (d) That would impose an undue burden on FAA (see paragraph f. below); or
  - (e) That would impose a fundamental alteration in the nature of an EIT product or its components.
- (2) EIT is not available

(a) When procuring commercial items, FAA must comply with those EIT standards that can met with supplies or services that are available in the commercial marketplace in time to meet FAA's delivery requirements.

(b) When EIT is not available, the contract file must be documented as outlined below.

(3) Documentation supporting a Section 508 exception must be maintained in the contract file. The FAA Section 508 Procurement Checklist found below in Section D. "Forms" can aid in regulatory compliance. Required documentation includes the following if applicable:

(a) Applicable technical provisions of the Access Board's standards;

(b) Market research performed to locate items that meet the applicable technical provisions;

(c) The specific provisions that cannot be met;

(d) Undue burden documentation (see paragraph f. below); and

(e) Other applicable documentation.

(4) If an exception applies preventing FAA from meeting all of the applicable technical provisions, FAA may acquire EIT that meets some of those provisions.

*e. Applicability.*

(1) All EIT procured on or after June 21, 2001 must comply with Section 508 standards.

(2) The FAA does not have to retrofit EIT procured before June 21, 2001.

*f. Approval of Undue Burden.*

When applying the requirements of Section 508 (see paragraph a. "Requirements for Accessibility" above) would impose an undue burden, FAA must provide individuals with disabilities covered by Section 508 the information and data by an alternative means of access that allows the individual to use the information and data. Undue burden is defined as a significant difficulty or expense to the FAA.

(1) Documentation of an undue burden must include the following:

(a) A thorough and fully supported explanation as to why and to what extent compliance with each provision of "36 CFR Part 1194

– Electronic and Information Technology Accessibility Standards” would create an undue burden for the EIT being procured; and

(b) Dollar value, market research performed, and alternative means of access that will be provided for individuals with disabilities to use the information or data. Alternative means of access include (but are not limited to):

- (i) Voice, fax, or relay service;
- (ii) Qualified sign language interpreters;
- (iii) Teletypewriters (TTY);
- (iv) Internet posting;
- (v) Captioning;
- (vi) Text-to-speech synthesis;
- (vii) Readers;
- (viii) Personal Assistants; or
- (ix) Audio description.

(2) Final approval authority of an undue burden determination resides with the FAA Administrator. The Secretary of the Department of Transportation (DOT) formed the Undue Burden Advisory Board (UBAB), which will advise FAA on undue burden matters. The process for undue burden determinations is:

- (a) Review by DOT Chief Information Officer;
- (b) Review by DOT General Counsel;
- (c) Review by UBAB and their submission of a recommendation to the FAA Administrator in the form of an "Undue Burden Report"; and
- (d) Consideration of the report by the FAA Administrator or delegate. The resulting decision is final.

g. Sources of Further Information.

- (1) U.S. Architectural and Transportation Barriers Compliance Board (U.S. Access Board
- (2) Government-wide Section 508 website

(3) FAA Section 508 website (FAA only)

## **5 Spare Parts** Added 9/2020

a. Shipping Spare Parts. For all shipments of spare parts, the contractor must include a packing list that includes at least the name, part number, Commercial and Government Entity (CAGE) Code, quantity, unit price, and national stock number (if available). Contracts that require shipment of spare parts include Clause 3.2.2.3-73 to establish this contractual requirement.

b. Spare Parts for Nationally Furnished Project Materiel.

(1) Requirements. The contracting officer includes coverage for spare parts in the screening information request and subsequent contract that facilitates availability, accessibility and tracking of spare parts.

(2) SIR Provision. For contracts that will require the purchase and delivery of spare parts, the contracting officer establishes a discrete contract line item number for initial site and depot-level spare parts list contract line item number (CLIN) and corresponding delivery date. The CO also includes the SIR provision 3.2.2.3-74, "Submission of Initial Site and Depot-level Spare Parts List" as part of the instruction to vendors on the preparation of their SIR submissions to assure that the parts list will be furnished as part of the SIR submission.

(3) Contract Requirements. The contracting officer includes a separately priced CLIN for the site and depot-level spare parts list and corresponding delivery due date of this contract deliverable. The list contains each item's name, part number, Commercial and Government Entity (CAGE) Code, unit price, national stock number (if available) and the quantity.

## **6 Supplier Process Capability Evaluation and Appraisal** Added 9/2020

a. General. This guidance is designed to assist the Source Selection Official (SSO) in considering process capability of potential suppliers during proposal evaluations, mitigating process-related risk of the supplier during contract/agreement performance, and for fostering process improvement of the supplier throughout the lifecycle.

b. Scope/Applicability. Supplier Process Capability Evaluation and Appraisal are intended for use in new acquisitions and agreements, but may also be incorporated into existing contracts or agreements.

c. Expected Benefits.

(1) Acquirer. The FAA can expect reduced risk in supplier selection and in meeting program objectives by motivating suppliers to improve their processes without forcing compliance to specific practices. Other benefits would include enhanced quality, predictability, performance and cost effectiveness of products and services acquired.

(2) *Supplier.* Suppliers can expect reduced risk in meeting contract requirements by identifying and addressing process deficiencies that might negatively impact project success. Other benefits would include improved performance by identifying and addressing process deficiencies in critical process areas and potential for earning additional award fee where such incentives are part of the contract.

d. *Pre-award.* In the early phase of planning a source selection, the SSO determines whether process capability will be considered as a risk factor for source selection. The following criteria are considered when making this decision:

(1) The performance of specific processes is considered critical to accomplishment of the mission;

(2) The product or service being acquired is considered crucial to the FAA;

(3) A major component of the product or service to be provided is considered to be unprecedented;

(4) The total estimated value of a contract for research, engineering, and development (R,E&D) is equal to or greater than \$70 million, or a contract for acquisition is equal to or greater than \$300 million;

(5) There is lack of information on offeror's past performance or process capability data, or the past performance or process capability of the offeror is weak; and

(6) The product or service is especially complex.

If process capability will be used as an evaluation factor, or as an adjustment to risk at either the area or factor level, the SIR must include request for information on current status and commitment to process improvement, including evidence indicating process capability. The SIR must also identify particular aspects of the suppliers' performance capabilities that are considered critical to success of the contract, such as architecture and design, safety, security, human factors, integration, risk management, or quality assurance.

Process capability appraisals can be used after award to validate and confirm the successful offeror's proposal and/or to identify risks associated with process deficiencies to be addressed during contract performance. In order for a post-award appraisal to occur, the SIR must indicate that a post-award appraisal will be performed on the successful offeror's processes that are identified as critical or potentially risky.

e. *Post-award.* Post-award appraisals may be conducted on existing contracts with well-established project(s), or on new contracts using target projects selected from the supplier's sponsoring organization.

f. *Contract/Agreement Requirements.* Considerations in developing contract/agreement requirements include use of trade-off analysis to establish the level of surveillance of strong or weak areas. For example, if a supplier is strong in an area, it is inefficient to check on that area in

the same way that would be applied in an area found to be weak. Additional Award fees may also be used as an incentive. Contract/Agreement performance requirements include completion of initiatives to remove critical deficiencies identified. Completion may be a factor in award fees. Depending on the decision of the SSO, contract requirements may include the following:

- (1) Risk mitigation plans to remove deficiencies noted during pre-award;
- (2) Performing scoped post-award and follow-up appraisal(s);
- (3) Risk mitigation plans to remove deficiencies noted in post-award appraisal;
- (4) Government “surveillance” for specific areas (weaknesses) to be addressed;
- (5) An adequate reporting or insight mechanism to facilitate monitoring the risk mitigation plan;
- (6) Consideration for creating additional process strengths; and
- (7) Improvement in performing process improvement activities.

Risk mitigation planning describes in detail the schedule and actions that will be taken to remove deficiencies noted during the evaluation and selection process and those uncovered in the appraisal process, if a post award appraisal is performed.

## **7 Tiered Evaluation** Added 9/2020

### *a. General.*

- (1) Tiered evaluation of offers is a process by which FAA promotes small business participation while providing FAA a means to continue the procurement if small business participation is insufficient.
- (2) The Contracting Officer (CO) may use tiered evaluation of offers to promote competition in each tier of small business concerns while still allowing other than small business to participate without issuing another SIR.
- (3) The CO must consider the tiers of small business concerns prior to evaluating offers from other than small business concerns.

### *b. Utilizing Tiered Evaluations.*

- (1) The CO must specify in the SIR that a tiered evaluation of offers will be used in source selection, and offers from other than small business concerns will only be considered after the determination that an insufficient number of offers from responsible small business concerns were received.

(2) The CO will specify the tiered order of precedence for evaluating offers in the SIR, and determine the applicable tiers based upon market research of the availability of small business concerns. An example of a tiered order of precedence is (descending in order) as follows:

(a) Socially and economically disadvantaged business (SEDB) expressly certified by the Small Business Administration (SBA) for participation in SBA's 8(a) program;

(b) Service-disabled veteran owned small business (SDVOSB);

(c) Small business (SB); and

(d) Other than small business.

(3) Once offers are received, the CO will evaluate a single tier of offers according to the order of precedence specified in the SIR. If no award can be made at the first tier, the evaluation will proceed to the next lower tier until award can be made. If no award can be made at the first tier, offerors from the first tier continue on in the evaluation and are evaluated against offerors from each subsequent tier.

## **8 Qualified Vendors List** Added 9/2020

A Qualified Vendors List (QVL) is a list of service or product providers who have had their products or services examined, tested or evaluated and who have satisfied all applicable qualification requirements. QVLs are intended as a mechanism to establish a pool of qualified vendors, any of which FAA would be satisfied with the products delivered or services performed. Pre-screening vendors allows only those most qualified contractors to perform a particular service or provide a particular product during a specific period. QVLs are most appropriate when the contracting office can reasonably anticipate recurring or repetitive requirements for the same or similar supplies or services. For detailed guidelines on establishing a qualified vendors list, the procurement team should refer to Appendix 1 Guide for Establishing a Qualified Vendors List (QVL).

## **9 Two-phase Ssource Sselection** Added 9/2020

(a) General. A Contracting Officer (CO) may utilize a two-phase process to solicit offers and select a source for award. The contracting officer can choose to use this optional method of solicitation when deemed beneficial to the FAA in meeting its needs.

(b) Phase One.

(1) The CO must make a public announcement in accordance with AMS T3.2.2.3.B.1, except that the notice must include the following information:

a) Notification that the procurement will be conducted using the specific procedures identified under this Section.

- b) A general notice of the scope or purpose of the procurement that provides sufficient information for sources to make informed business decisions regarding whether to participate in the procurement.
- c) A description of the basis on which potential sources are to be selected to submit offers in the second phase. (For real property acquisitions, the CO may use a market survey as means to identify sources that would submit offers in the second phase.)
- d) A description of the information that is to be required to be submitted if the request for information is made separate from the notice.
- e) Any other information that the CO deems is appropriate.

(2) Information Submitted by Offerors. Each offeror must submit basic information such as the offeror's qualifications, the proposed conceptual approach, costs likely to be associated with the approach, and past performance data, together with any additional information requested by the CO.

(3) Selection for participating in second phase. The CO must select the offerors based on the Phase One criteria that are eligible to participate in the second phase of the process. The CO must limit the number of the selected offerors to the number of sources that the CO determines is appropriate and in the best interests of the FAA.

(c) Phase Two.

(1) The contracting officer must conduct the second phase of the source selection consistent with T3.2.3.3.A.

(2) Only sources selected in the first phase will be eligible to participate in the second phase.

**C. Clauses** Added 9/2020

[view contract clauses](#)

**D. Forms** Added 9/2020

**1 Section 508 Checklist** Added 9/2020

<b><u>Standards</u></b>	
<u>Check the Access Board's standards that apply to the EIT purchase:</u>	
	<u>1194.21 Software Applications and Operating Systems</u>
	<u>1194.22 Web-based Information or applications</u>
	<u>1194.23 Telecommunication Products</u>
	<u>1194.24 Video and Multimedia Products</u>

	<u>1194.25 Self-Contained Products</u>
	<u>1194.26 Desktop and Portable Computers</u>
	<u>1194.31 Functional Performance Criteria</u>
	<u>1194.41 Information, Documentation and Support</u>
	<u>Request vendor Section 508 compliance template (e.g. vendor's website or other website location)</u>
<b><u>Exceptions</u></b>	
	<u>EIT acquired by a contractor incidental to a FAA contract</u>
	<u>EIT for a national security system</u>
	<u>EIT located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment</u>
	<u>EIT that would impose an undue burden on the agency</u>
	<u>EIT that would impose a fundamental alteration in the nature of an EIT product or its components</u>
<b><u>Research</u></b>	
<u>After market research, the product is considered:</u>	
	<u>Compliant</u>
	<u>Partially compliant</u>
	<u>Noncompliant</u>
	<u>EIT is not available</u>

**E. Appendix** Added 9/2020

**1. Guide to Establishing a Qualified Vendors List (QVL)** Added 9/2020

**1 Introduction**

A Qualified Vendors List (QVL) is a list of service or product providers who have had their products or services examined, tested or evaluated and who have satisfied all applicable qualification requirements. QVLs are intended as a mechanism to establish a pool of qualified vendors, any of which FAA would be satisfied with the products delivered or services performed. Pre-screening vendors allows only those most qualified contractors to perform a particular service or provide a particular product during a specific period.

**2 Purpose**

QVLs are most appropriate when the contracting office can reasonably anticipate recurring or repetitive requirements for the same or similar supplies or services. When planning a QVL, consider the scope of work to be performed, e.g., would it apply to only one region or center, or would requirements from several technical offices be combined. The procurement team should determine the extent of any testing, capability demonstrations, samples, etc. that may involve an expense. If testing, demonstrations, etc. are necessary, the SIR should be explicit as to whom would bear the cost. The procurement team must secure the necessary funds to accomplish these activities if FAA is to bear the costs.

### **3 Public Announcement**

If the total amount of potential procurements under the QVL are anticipated to exceed \$150,000, the CO must make a public announcement. In addition, all potential procurements of products available from Federal Prison Industries that are anticipated to exceed \$10,000 must follow the public announcement provisions in AMS 3.2.1.3.12. If it is anticipated that a planned QVL will not exceed \$150,000 over its anticipated life and public announcement is not otherwise required, wide dissemination of the intention to establish the QVL would improve the chances of obtaining additional quality vendors.

### **4 Screening and Evaluation**

a. Prepare screening and evaluation procedures according to AMS Policy Section 3.

b. The CO, in conjunction with the procurement team, should formulate appropriate evaluation criteria for screening and qualifying vendors. The procurement team should carefully craft evaluation criteria to focus on key discriminators. Evaluation criteria should be tailored to the particular requirement. The procurement team should develop an evaluation plan describing how vendors will be evaluated and against what criteria.

c. The screening information request (SIR) indicates the following:

(1) A QVL is being established;

(2) Types of products or services anticipated to be solicited and awarded;

(3) Criteria vendors must meet to qualify for the QVL;

(4) Information prospective vendors must submit (including the submission due date);

(5) Duration of the QVL;

(6) A brief explanation of the award process for procurements once the QVL has been established, including any method for eliminating firms from the QVL for repeatedly failing to respond to SIRs;

(7) Method for selecting vendors to compete for a specific requirement once the QVL is established;

(8) Method for updating the QVL, including any method for requiring vendors to re-qualify for the QVL;

(9) Method for canceling the QVL; and

(10) Geographical area limitations, if appropriate.

## **5 Evaluating Prospective Vendors**

a. The CO should prepare an evaluation plan. Evaluators must follow the plan and criteria, and provide a thorough evaluation of the qualified vendors expressing an interest.

b. The number of vendors on a QVL should be appropriate for the types of requirements being purchased.

## **6 Notifying Vendors Excluded from a QVL**

a. Notify vendors who were unsuccessful in qualifying for a QVL as soon as the decision is made on their individual submission, but no later than the issuance of the QVL. A debriefing should be provided, if requested, in accordance with AMS Policy Section 3.

b. A public announcement is recommended upon establishing a QVL.

## **7 Competing Requirements Among Vendors on QVL**

a. Vendors are to be informed in the initial SIR establishing the QVL of the method of selection for competing for planned procurements under the QVL. The CO has discretion to tailor the method of QVL vendor competition to the planned requirements or to the size and nature of the QVL. Once the CO establishes a method of competing requirements, it must be used for all procurements under that particular QVL.

b. There must be adequate competition for procurements under a QVL. The incumbent contractor should always be permitted to compete for any follow-on requirement solicited under the QVL, unless otherwise precluded from competing under follow-on competition by a specific Organizational Conflict of Interest provision or documented poor past performance.

## **8 Updating a QVL**

a. The CO should update QVLs on a periodic basis to allow new vendors an opportunity to qualify. There is no prescribed time when a QVL should be updated because every QVL will be different. Factors such as volume of procurements, size of the industry for the products or services, time and effort involved in establishing a new QVL will influence how often a QVL is updated.

b. At the stated time for updating a QVL, request a written confirmation of each vendor's desire to remain on the QVL. Any vendor not responding to the request for confirmation may be deleted as

an indication of lack of interest. Vendors may request to withdraw at any time by submitting a written request to the CO.

c. If at any time, a vendor on an established QVL has performance difficulties, changes ownership, or otherwise becomes less than highly qualified, the CO may request that vendor re-qualify by submitting qualification information again. Notify the vendor of the reasons it is being required to re-qualify.

## **9 Cancelling a QVL**

There may be situations when a QVL becomes underutilized. In these cases, the CO should consider canceling the QVL, when it is in the best interest of the Government. When canceling a QVL, the CO should notify all vendors in writing and provide a brief explanation of the reasons and whether there are any plans to replace or combine the QVL requirements with other requirements.

## **10 Availability of Information**

Names of firms on an established QVL should be provided to the public upon request. Potential subcontractors may wish to pursue opportunities which may exist for future projects. Also, the CO should consider sharing the information with other FAA offices. General information such as the nature of the QVL, vendor names, duration of the QVL, and a point of contact for further information could be distributed or posted on the Internet.

## **11 QVL for Products**

Products must meet specification requirements. Simply because a product or service appears on a QVL does not constitute endorsement of the product, manufacturer, or other source by FAA. The listing of a product or source does not release the supplier from compliance with the specification. However, it must not be stated or implied that a particular product or source is the only product or source of that type qualified, or that FAA in any way recommends or endorses the products or the sources listed. Reexamining a qualified product or manufacturer is necessary when: the manufacturer has modified its product, or changed the material or the processing sufficiently so that the validity of a previous qualification is questionable; the requirements in the specification have been amended or revised sufficiently to affect the character of the product; or it is otherwise necessary to determine that the quality of the product is maintained in conformance with the specification. Vendors who furnish evidence that their products have successfully passed qualification are eligible for award even though not yet included on the QVL.

### **2 Past Performance Samples for Products, Services, and Construction** Revised 1/2016 Added 9/2020

#### **2.1 Sample 1 - Past Performance Instructions** Added 9/2020

##### Instructions for Providing Past Performance Information

Offerors must submit the following information as part of their proposal for both the offeror and

proposed major subcontractors: (The information may be submitted prior to the other parts of the proposal, to assist the government in reducing the evaluation period).

A. A list of the last “##” contracts and subcontracts completed during the past three years and all contracts and subcontracts currently in process. Contracts listed may include those entered into by the federal government, agencies of state and local governments, and commercial customers. Offerors that are newly formed entities without prior contracts list contracts and subcontracts as required above for all key personnel. Include the following information for each contract and subcontract:

1. Name of contracting activity;
2. Contract number;
3. Contract type;
4. Total contract value;
5. Contract work;
6. Contracting Officer and telephone;
7. Program manager and telephone;
8. Administrative Contracting Officer, if different from # 6, and telephone; and
9. List of major subcontractors.

B. The offeror may provide information on problems encountered on the contracts and subcontracts identified in A above and corrective actions taken to resolve those problems. Offerors provide general information on their performance on the identified contracts. General performance information will be obtained from the references. (Use this paragraph if written input from the offeror is desired in addition to the information obtained from the references.)

C. The offeror may describe any quality awards or certifications that indicate the offeror possesses a high-quality process for developing and producing the product or service required. Such awards or certifications include, the Malcolm Baldrige Quality Award, other government quality awards, and private sector awards or certifications (e.g., the automobile industry's QS 9000, Sematech's SSQA, or ANSI/EIA-599). Identify what segment of the company (one division or the entire company) that received the award or certification. Describe when the award or certification was bestowed. If the award or certification is over three years old, present evidence that the qualifications still apply.

D. Each offeror will be evaluated on its performance under existing and prior contracts for similar products or services. Performance information may be used for both responsibility determinations and as an evaluation factor against which offerors' relative rankings will be compared to assure best value to the government. The government will focus on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration. The Performance Information Form identified in the List of Attachments section will be used to collect this information. References other than those identified by the offeror may be contacted by the FAA with the information received used in the evaluation of the offeror's past performance.

E. Offerors should send their listed private sector references a letter to the following

effect authorizing the reference to provide past performance information to the Government.

## Sample Client Authorization Letter (Optional)

Dear "Client":

We are currently responding to the Federal Aviation Administration's SIR No. \_\_\_\_\_ for the procurement of \_\_\_\_\_.

The FAA is placing increased emphasis in its procurements on past performance as an evaluation factor. The FAA is requiring that clients of entities responding to its SIRs be identified and their participation in the evaluation process be requested. In the event you are contacted for information on work we have performed, you are hereby authorized to respond to those inquiries.

We have identified Mr./Ms. \_\_\_\_\_ of your organization as the point of contact based on his/her knowledge concerning our work. Your cooperation is appreciated. Any questions may be directed to: \_\_\_\_\_.

Sincerely,

### **2.2 Sample 2 - Past Performance Evaluation Factors** Revised 1/2016 Added 9/2020

Past performance will be evaluated as follows:

1. Past performance will receive 35 percent of the non-cost/price factors ratings. Sub-factors A, B, C, D and E are of equal importance and will receive up to 25 percent of the non- cost/price ratings with the other 10 percent allocated to sub-factor G, quality awards. The criteria for a rating of excellent are described with each sub-factor.

A. Quality of Product or Service - compliance with contract requirements - accuracy of reports - technical excellence. Excellent = There were no quality problems.

B. Timeliness of Performance - met interim milestones - reliable - responsive to technical direction - completed on time, including wrap-up and contract administration - no liquidated damages assessed. Excellent = There were no unexcused delays.

C. Cost Control - within budget - current accurate and complete billings - relationship of negotiated costs to actuals - cost efficiencies. Excellent = There were no cost issues.

D. Business Practices - effective management - effective small/small disadvantaged business subcontracting program - reasonable/cooperative behavior - flexible - effective contractor recommended solutions - business-like concern for government's interests. Excellent = Response to inquiries, technical/service/administrative issues was effective and

responsive.

E. Customer Satisfaction - satisfaction of end users with the contractors service. Excellent = 90 percent or more of end users surveyed rated the service as excellent or better.

F. Where the offeror has demonstrated an exceptional performance level in any of the above five sub-factors additional consideration can be given by the procurement team for that factor. It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceed the performance levels described as "excellent."

G. Receipt of widely recognized quality awards or certifications. Excellent = Malcolm Baldrige Quality award, or equivalent award, covering the entity submitting the offer.

2. Assessment of the offeror's past performance will be one means of evaluating the credibility of the offeror's proposal, and relative capability to meet performance requirements.

3. Information utilized will be obtained from the references listed in the proposal, other sources known to the FAA, consumer protection organizations, and others who may have useful and relevant information. Information will also be considered regarding any significant major subcontractors, and key personnel.

4. Award may be made from the initial offers without discussions. If discussions are held offerors are given an opportunity to address negative reports of past performance, if the offeror has not had a previous opportunity to review the rating. Recent contracts will be examined to ensure that corrective measures have been implemented. Prompt corrective action in isolated instances may not outweigh overall negative trends.

4.5. Lack of past performance history relating to this SIR (state how lack of past performance history will affect the evaluation, e.g. neutral rating).

### **2.3 Sample 3B - Past Performance Questionnaire Revised 1/2016 Added 9/2020**

<b><u>SAMPLE 3B - PAST PERFORMANCE QUESTIONNAIRE</u></b>	
<b><u>I. CONTRACT IDENTIFICATION</u></b>	
<b><u>i. Name:</u></b>	
<b><u>ii. Description</u></b>	
<b><u>iii. Geographic distribution of services under this contract, i.e., local, nationwide, worldwide:</u></b>	

iv.	<u>Number of locations serviced by this contract:</u>	
<b><u>II. EVALUATION</u></b>		
<b><u>A. PERFORMANCE HISTORY:</u></b>		
1.	<u>To what extent did the contractor adhere to contract delivery schedules.</u>	<u>Considerably surpassed minimum requirements 4</u> <u>Exceeded minimum requirements 3</u> <u>Met minimum requirements 2</u> <u>Less than minimum requirements 1</u>
<b><u>Comment:</u></b>		
2.	<u>To what extent did the contractor submit required reports and documentation in a timely manner?</u>	<u>Considerably surpassed minimum requirements 4</u> <u>Exceeded minimum requirements 3</u> <u>Met minimum requirements 2</u> <u>Less than minimum requirements 1</u>
<b><u>Comment:</u></b>		
3.	<u>To what extent were the contractor's reports and documentation accurate and complete?</u>	<u>Considerably surpassed minimum requirements 4</u> <u>Exceeded minimum contractual requirements 3</u> <u>Met minimum requirements 2</u> <u>Less than minimum requirements 1</u>
<b><u>Comment:</u></b>		
4.	<u>To what extent was the contractor able to solve contract performance problems without extensive guidance from government counterparts?</u>	<u>Considerably successful 4</u> <u>Generally successful 3</u> <u>Little success 2</u> <u>No success 1</u>
<b><u>Comment:</u></b>		

5.	<u>To what extent did the contractor display initiative in meeting requirements?</u>	<u>Displayed considerable initiative 4</u> <u>Displayed some initiative 3</u> <u>Displayed little initiative 2</u> <u>Displayed no initiative 1</u>
<u><b>Comment:</b></u>		
6.	<u>Did the contractor commit adequate resources in timely fashion to the contract to meet the requirement and to successfully solve problems?</u>	<u>Provided abundant resources 4</u> <u>Provided sufficient resources 3</u> <u>Provided minimal resources 2</u> <u>Provided insufficient resources 1</u>
<u><b>Comment:</b></u>		
7.	<u>To what extent did the contractor submit change orders and other required proposals in a timely manner?</u>	<u>Considerably surpassed minimum requirements 4</u> <u>Exceeded minimum requirements 3</u> <u>Met minimum requirements 2</u> <u>Less than minimum 1</u>
<u><b>Comment:</b></u>		
8.	<u>To what extent did the contractor respond positively and promptly to technical directions, contract change orders, etc.?</u>	<u>Considerably surpassed minimum requirements 4</u> <u>Exceeded minimum requirements 3</u> <u>Met minimum requirements 2</u> <u>Less than minimum requirements 1</u>
<u><b>Comment:</b></u>		
9.	<u>To what extent was the contractor's maintenance and problem tracking/reporting documentation timely, accurate, and have appropriate content?</u>	<u>Considerably surpassed minimum requirements 4</u> <u>Exceeded minimum requirements 3</u> <u>Met minimum requirements 2</u> <u>Less than minimum requirements 1</u>
<u><b>Comment:</b></u>		

10.	<u>To what extent was the contractor effective in interfacing with the Government's staff?</u>	<u>Extremely effective 4</u> <u>Generally effective 3</u> <u>Generally ineffective 2</u> <u>Extremely ineffective 1</u>
<u>Comment:</u>		
<b><u>B. TERMINATION HISTORY</u></b>		
11.	<u>Has this contract been partially or completely terminated for default or convenience?</u>	<u>Yes [ Default Convenience ] No</u> <u>If yes, explain (e.g., inability to meet cost, performance, or delivery schedules).</u>
<u>Comment:</u>		
12.	<u>Are there any pending terminations?</u>	<u>Yes No</u> <u>If yes, explain and indicate the status.</u>
<u>Comment:</u>		
<b><u>C. EXPERIENCE HISTORY</u></b>		
13.	<u>How effective has the contractor been in identifying user requirements?</u>	<u>Extremely effective 4</u> <u>Generally effective 3</u> <u>Generally ineffective 2</u> <u>Extremely ineffective 1</u>
<u>Comment:</u>		
14.	<u>What level of integration experience has the contractor demonstrated in the reconfiguration of government owned software, commercial software, and government furnished hardware?</u>	<u>Considerable surpass minimum experience 4</u> <u>Exceeded minimum requirements 3</u> <u>Met minimum contractual requirements 2</u> <u>Less than minimum requirements 1</u>
<u>Comment:</u>		

15.	<u>To what extent was the maintenance and problem reporting/ tracking documentation produced by the contractor's efforts satisfactory to the users?</u>	<u>Considerably surpassed minimum requirements 4</u> <u>Exceeded minimum requirements 3</u> <u>Met minimum contractual requirements 2</u> <u>Less than minimum requirements 1</u>
<u><b>Comment:</b></u>		
16.	<u>To what extent did the contractor coordinate, integrate, and provide for effective subcontractor management?</u>	<u>Considerably surpassed minimum requirements 4</u> <u>Exceeded minimum requirements 3</u> <u>Met minimum requirements 2</u> <u>Less than minimum requirements 1</u>
<u><b>Comment:</b></u>		
17.	<u>To what extent did the contractor provide timely technical assistance, both on-site and off-site, when responding to problems encountered in the field?</u>	<u>Considerably surpassed minimum requirements 4</u> <u>Exceeded minimum requirements 3</u> <u>Met minimum requirements 2</u> <u>Less than minimum requirements 1</u>
<u><b>Comment:</b></u>		
18.	<u>To what extent did the contractor achieve effective logistics support, i.e., replacement parts, personnel, etc.?</u>	<u>Considerably surpassed minimum requirements 4</u> <u>Exceeded minimum requirements 3</u> <u>Met minimum requirements 2</u> <u>Less than minimum requirements 1</u>
<u><b>Comment:</b></u>		
19.	<u>To what extent did the contractor provide quality replacement parts?</u>	<u>Considerably surpassed minimum requirements 4</u> <u>Exceeded minimum requirements 3</u> <u>Met minimum requirements 2</u> <u>Less than minimum requirements 1</u>
<u><b>Comment:</b></u>		

20.	<u>To what extent did the contractor meet the repair/response times in the contract?</u>	<u>Considerably surpassed minimum requirements 4</u> <u>Exceeded minimum requirements 3</u> <u>Met minimum requirements 2</u> <u>Less than minimum requirements 1</u>
<u><b>Comment:</b></u>		
21.	<u>Did this contract include a Help Desk?</u>	<u>Yes No</u>
	<u>If yes, to what extent was the contractor responsive to users contacting the Help Desk for assistance?</u>	<u>Considerably surpassed minimum requirements 4</u> <u>Exceeded minimum requirements 3</u> <u>Met minimum requirements 2</u> <u>Less than minimum requirements 1</u>
<u><b>Comment:</b></u>		
22.	<u>If there was a Help Desk, were users able to make contact with the Help Desk personnel on their first attempt?</u>	<u>Always able on the first attempt 4</u> <u>More often than not on the first attempt 3</u> <u>Rarely able on the first attempt 2</u> <u>Never on the first attempt 1</u>
<u><b>Comment:</b></u>		
23.	<u>Were the Help Desk personnel courteous and responsive?</u>	<u>Always courteous and responsive 4</u> <u>Usually courteous and responsive 3</u> <u>Rarely courteous and responsive 2</u> <u>Never courteous and responsive 1</u>
<u><b>Comment:</b></u>		
24.	<u>Were user questions resolved in a timely manner?</u>	<u>Always resolved in a timely manner 4</u> <u>Usually resolved in a timely manner 3</u> <u>Rarely resolved in a timely manner 2</u> <u>Never resolved in a timely manner 1</u>
<u><b>Comment:</b></u>		

25.	<u>How technically qualified were the Help Desk personnel?</u>	<u>Extremely qualified 4</u> <u>Satisfactorily qualified 3</u> <u>Minimally qualified 2</u> <u>Technically deficient 1</u>
<u><i>Comment:</i></u>		
26.	<u>How satisfied are you with the contractor's Help Desk problem escalation procedures?</u>	<u>Extremely satisfied 4</u> <u>Satisfactorily satisfied 3</u> <u>Minimally satisfied 2</u> <u>Unsatisfied 1</u>
<u><i>Comment:</i></u>		
27.	<u>How technically qualified were the maintenance personnel?</u>	<u>Extremely qualified 4</u> <u>Satisfactorily qualified 3</u> <u>Minimally qualified 2</u> <u>Technically deficient 1</u>
<u><i>Comment:</i></u>		
<b><u>D. COST MANAGEMENT</u></b>		
28.	<u>To what extent did the contractor meet the proposed cost estimates?</u>	<u>Less than estimated cost 4</u> <u>Comparatively equal to estimate 3</u> <u>Exceeded the costs 2</u> <u>Considerably surpassed estimate 1</u>
<u><i>Comment:</i></u>		
<b><u>E.</u></b>	<b><u>NARRATIVE SUMMARY</u></b>	<u>Use this section to explain additional information not included above.</u>
<u><i>Comment:</i></u>		

**2.4 Sample 3C - Business Management Past Performance Summary** Revised 1/2016 Added 9/2020

**Part A. Contract Summary**

<u>1. Contractor Name:</u>				<u>2. Contract Number:</u>							
<u>Street:</u>				<u>3. Contract Type:</u>							
<u>City:</u>				<u>4. Competitive:</u>		<u>yes</u>	<u>no</u>				
<u>State:</u>		<u>Zip Code:</u>		<u>5. Follow-on:</u>		<u>yes</u>	<u>no</u>				
<u>Telephone:</u>				<u>6. Period of Performance:</u>							
<u>7. Contract Cost Data</u>			<u>Estimated Cost</u>		<u>Fee</u>		<u>Total Value</u>				
<u>Firm Fixed Price</u>											
<u>Initial Contract Cost</u>			\$		\$		\$				
<u>Current Contract Cost</u>			\$		\$		\$				
<u>8. Product Description and/or Services Provided.</u>											
<b><u>Part B. Performance Evaluation of Contract (Summary)</u></b>											
<b><u>Performance Elements</u></b>		<b><u>Excellent</u></b>		<b><u>Good</u></b>		<b><u>Fair</u></b>		<b><u>Poor</u></b>		<b><u>Unsatisfactory</u></b>	
<u>9. Quality of Work</u>											
<u>10. Timely Performance</u>											
<u>11. Effectiveness of Management</u>											
<u>12. Compliance with Labor Standards</u>											
<u>13. Compliance with Safety Standards</u>											
<u>14. Handling Staff Integrity Issues</u>											
<u>15. Facility Maintenance &amp; Repair</u>											
<u>16. Personnel Management Practices</u>											
<u>17. Overall Evaluation</u>											
<u>18. Remarks on excellent performance. Provide data supporting this observation. [Continue on separate sheet(s) if needed.]</u>											
<u>19. Remarks on unsatisfactory performance. Provide data supporting the observation. [Continue on separate sheet(s) if needed.]</u>											

<b><u>Part C. Identification of Evaluator</u></b>			
<u>20. Name:</u>		<u>21. Organization:</u>	
<u>22. Title:</u>		<u>23. Date:</u>	
<b><u>NOTE:</u></b> If verbal telephonic response received, complete the following:	<u>24. Information obtained by:</u>		<u>25. Signature</u>

**2.5 Sample 4 Survey Form** Revised 1/2016 Added 9/2020

<p><u>Please provide concise comments regarding your overall assessment of the contractor's performance on the contract identified. Because of the nature of the contract to be awarded, please focus on system integration and installation aspects, when possible, rather than development or production. Please respond to each question in a narrative format. Please telefax your response to the attention of the following point of contact. Please call the individual cited before faxing your response.</u></p>					
<u>Responses are needed by</u>					
<b><u>Section 1. Identification of Point of Contact</u></b>					
<u>Program Name</u>					
<u>Name</u>					
<u>Address</u>					
<u>Telephone Number</u>		<u>Voice</u>		<u>FAX</u>	
<b><u>Section 2. Performance Verification</u></b>					
<u>Fact Finding Questionnaire for</u>					
<u>NOTE: We have reviewed the latest Contractor's Performance Annual Review (CPAR) on file</u>		<u>(dated)</u>			
<p><u>If you can provide any further information, please respond to the questionnaire. If there are no further updates, no further information will be required. (Use this paragraph when looking for additional information on CPARs.)</u></p>					
<b><u>Contract Information</u></b>					
<u>Contractor/Division:</u>					
<u>Program Name:</u>					
<u>Contract Type</u>		<u>Contract Number:</u>			

<u>Period of Contract</u>		<u>to:</u>	
<b><u>Respondent Identification</u></b>			
<u>Name</u>		<u>Position</u>	
<u>Telephone No. (Voice)</u>		<u>Telephone No. (FAX)</u>	
<u>Business Address</u>			
<u>City, ST</u>		<u>Zip Code</u>	
<u>Relation to Program:</u>			
<p><u>Give a brief, general description of what the contractor was required to deliver. (If the work included installation/integration of (WIDGET) systems, please identify locations and types of systems.) Please note that if a negative reply is supplied, a clarification request is submitted to the contractor, and they in turn have the right to be made aware of the comment.</u></p>			
<b><u>Evaluation Criteria</u></b>			
<b><u>1. Contractor Management</u></b>			
<u>1.a. Discuss responsiveness of the contractor's upper level management to your organization's concerns and needs.</u>			
<u>1.b. Describe how well the contractor's management interfaced with your staff and organization.</u>			
<u>1.c. Discuss how well the contractor's management system provided visibility into progress/problems/risks in the technical, cost, and schedule areas, and how well the risks were minimized.</u>			
<u>1.d. Discuss how well the contractor managed its subcontractors. (If there was a subcontractor, please include how the contractor maintained oversight of the sub.)</u>			
<u>1.e. If your contract involved the issuing of delivery orders, please discuss any problems the contractor had in responding to them (e.g., excessive workload due to conflicts with other contracts).</u>			
<b><u>2. Technical</u></b>			
<u>2.a. Did the contractor exhibit and exercise a sound engineering approach to the contract?</u>			

2.b. Did the contractor personnel have adequate experience to perform the tasks required? (Please include specifics as to personnel to perform design, system integration, test, and equipment installations.)

2.c. Discuss how well the contractor met the specification requirements for the system, hardware, and software.

2.d. Discuss the contractor's ability to achieve the required reliability and maintainability without undue schedule delay or cost overrun.

2.e. How well was the contractor able to achieve a final design which was producible and supportable?

2.f. How well did the contractor respond when any technical problems were encountered (e.g., in areas of timelines and technical adequacy)?

2.g. If the contractor was required to perform work outside the Continental United States (CONUS), please indicate locations and types of work done; also please discuss how familiar the contractor was with CONUS work (e.g., work permits, local taxes, host nation agreements, etc.).

2.h. When encountering problems in the field, was the contractor able to provide timely technical assistance both on-site and off?

### 3. Logistics and Supportability

3.a. Discuss any major problems incurred by the contractor in achieving effective logistics support.

3.b. Was Contractor Logistics Support (CLS) part of the contract? If so, was CLS timely and effective?

3.c. Discuss whether the support equipment and manuals were adequate.

3.d. Did any product failures occur while under warranty? If so, please indicate how responsive the contractor was to correct the deficiency.

### 4. Quality Assurance

<u>4.a. Discuss the contractor's quality assurance plan and its effectiveness.</u>				
<u>4.b. Discuss the contractor's quality control during system design, integration, test, and installation. (Please include discussion on amount of scrap, repair, and rework activities.)</u>				
<b><u>5. Schedule</u></b>				
<u>5.a. Did the contractor deliver on time? Discuss any schedule overruns and how the contractor minimized them.</u>				
<u>5.b. If there were schedule changes, please explain what percentage was attributed to government changes (or your organization's changes) or other factors.</u>				
<b><u>6. Cost</u></b>				
<u>6.a. Contract Dollar Amounts</u>				
<u>Original</u>				
<u>Current</u>				
<u>Estimate of Final</u>				
<u>For Award Fee Contracts</u>				
<u>Percentage of Award Fee Paid</u>				
<u>6.b. Were there cost overruns? If yes, how much was attributable to the contractor?</u>				
<u>6.c. Reasons for cost variances.</u>				
<b><u>7. Overall</u></b>				
<u>7.a. Based upon your answers to 1-6, how well did the contractor perform? (Mark with an "X".)</u>				
	<b><u>Exceptional</u></b>	<b><u>Satisfactory</u></b>	<b><u>Marginal</u></b>	<b><u>Unsatisfactory</u></b>
<u>Management</u>				
<u>Technical</u>				
<u>Log &amp; Support</u>				

<u>Quality Assurance</u>				
<u>Schedule</u>				
<u>Cost</u>				
<u>7.b. Please provide any additional comments which you believe are important in the evaluation of the contractor's performance.</u>				
<u>7.c. If you had the change to do this again, would you use this contractor again?</u>				
<u>Thank you for your efforts and timely response.</u>				
<u>(Your Name)</u>	<u>Chairperson</u>			
<u>(Program Name)</u>				

## **~~A Establishment of a Qualified Vendors List (QVL)~~**

### **~~1 General~~** Revised 1/2016

~~a. A Qualified Vendors List (QVL) is a list of service or product providers who have had their products or services examined, tested or evaluated and who have satisfied all applicable qualification requirements. QVLs are intended as a mechanism to establish a pool of qualified vendors, any of which FAA would be satisfied with the products delivered or services performed. Pre-screening vendors allows only those most qualified contractors to perform a particular service or provide a particular product during a specific period.~~

~~b. QVLs are most appropriate when the contracting office can reasonably anticipate recurring or repetitive requirements for the same or similar supplies or services.~~

~~c. When planning a QVL, consider the scope of work to be performed, e.g., would it apply to only one region or center, or would requirements from several technical offices be combined.~~

~~d. The procurement team should determine the extent of any testing, capability demonstrations, samples, etc. that may involve an expense. If testing, demonstrations, etc. are necessary, the SIR should be explicit as to whom would bear the cost. The procurement team must secure the necessary funds to accomplish these activities if FAA is to bear the costs.~~

### **~~2 Public Announcement~~** Revised 1/2016

~~If the total amount of potential procurements under the QVL are anticipated to exceed \$150,000, the CO must make a public announcement. In addition, all potential procurements of products available~~

~~from Federal Prison Industries that are anticipated to exceed \$10,000 must follow the public announcement provisions in AMS 3.2.1.3.12. If it is anticipated that a planned QVL will not exceed \$150,000 over its anticipated life and public announcement is not otherwise required, wide dissemination of the intention to establish the QVL would improve the chances of obtaining additional quality vendors.~~

### ~~3 Screening and Evaluation~~ Revised 1/2016

~~a. Prepare screening and evaluation procedures according to AMS Policy Section 3.  
b. The CO, in conjunction with the procurement team, should formulate appropriate evaluation criteria for screening and qualifying vendors. The procurement team should carefully craft evaluation criteria to focus on key discriminators. Evaluation criteria should be tailored to the particular requirement. The procurement team should develop an evaluation plan describing how vendors will be evaluated and against what criteria.~~

~~c. The screening information request (SIR) indicates the following:~~

- ~~(1) A QVL is being established;~~
- ~~(2) Types of products or services anticipated to be solicited and awarded;~~
- ~~(3) Criteria vendors must meet to qualify for the QVL;~~
- ~~(4) Information prospective vendors must submit (including the submission due date);~~
- ~~(5) Duration of the QVL;~~
- ~~(6) A brief explanation of the award process for procurements once the QVL has been established, including any method for eliminating firms from the QVL for repeatedly failing to respond to SIRs;~~
- ~~(7) Method for selecting vendors to compete for a specific requirement once the QVL is established;~~
- ~~(8) Method for updating the QVL, including any method for requiring vendors to re-qualify for the QVL;~~
- ~~(9) Method for canceling the QVL; and~~
- ~~(10) Geographical area limitations, if appropriate.~~

### ~~4 Evaluating Prospective Vendors~~ Revised 1/2016

~~a. The CO should prepare an evaluation plan. Evaluators must follow the plan and criteria, and provide a thorough evaluation of the qualified vendors expressing an interest.~~

b. The number of vendors on a QVL should be appropriate for the types of requirements being purchased.

#### **5 Notifying Vendors Excluded from a QVL** Revised 1/2016

a. Notify vendors who were unsuccessful in qualifying for a QVL as soon as the decision is made on their individual submission, but no later than the issuance of the QVL. A debriefing should be provided, if requested, in accordance with AMS Policy Section 3.

b. A public announcement is recommended upon establishing a QVL.

#### **6 Competing Requirements Among Vendors on QVL** Revised 1/2016

a. Vendors are to be informed in the initial SIR establishing the QVL of the method of selection for competing for planned procurements under the QVL. The CO has discretion to tailor the method of QVL vendor competition to the planned requirements or to the size and nature of the QVL. Once the CO establishes a method of competing requirements, it must be used for all procurements under that particular QVL.

b. There must be adequate competition for procurements under a QVL. The incumbent contractor should always be permitted to compete for any follow-on requirement solicited under the QVL, unless otherwise precluded from competing under follow-on competition by a specific Organizational Conflict of Interest provision or documented poor past performance.

#### **7 Updating a QVL** Revised 1/2016

a. The CO should update QVLs on a periodic basis to allow new vendors an opportunity to qualify. There is no prescribed time when a QVL should be updated because every QVL will be different. Factors such as volume of procurements, size of the industry for the products or services, time and effort involved in establishing a new QVL will influence how often a QVL is updated.

b. At the stated time for updating a QVL, request a written confirmation of each vendor's desire to remain on the QVL. Any vendor not responding to the request for confirmation may be deleted as an indication of lack of interest. Vendors may request to withdraw at any time by submitting a written request to the CO.

c. If at any time, a vendor on an established QVL has performance difficulties, changes ownership, or otherwise becomes less than highly qualified, the CO may request that vendor re-qualify by submitting qualification information again. Notify the vendor of the reasons it is being required to re-qualify.

#### **8 Cancelling a QVL** Revised 1/2016

~~There may be situations when a QVL becomes underutilized. In these cases, the CO should consider canceling the QVL, when it is in the best interest of the Government. When canceling a QVL, the CO should notify all vendors in writing and provide a brief explanation of the reasons and whether there are any plans to replace or combine the QVL requirements with other requirements.~~

## **~~9 Availability of Information~~**

~~Names of firms on an established QVL should be provided to the public upon request. Potential subcontractors may wish to pursue opportunities which may exist for future projects. Also, the CO should consider sharing the information with other FAA offices. General information such as the nature of the QVL, vendor names, duration of the QVL, and a point of contact for further information could be distributed or posted on the Internet.~~

## **~~10 QVL for Products~~** ~~Revised 1/2016~~

~~Products must meet specification requirements. Simply because a product or service appears on a QVL does not constitute endorsement of the product, manufacturer, or other source by FAA. The listing of a product or source does not release the supplier from compliance with the specification. However, it must not be stated or implied that a particular product or source is the only product or source of that type qualified, or that FAA in any way recommends or endorses the products or the sources listed. Reexamining a qualified product or manufacturer is necessary when: the manufacturer has modified its product, or changed the material or the processing sufficiently so that the validity of a previous qualification is questionable; the requirements in the specification have been amended or revised sufficiently to affect the character of the product; or it is otherwise necessary to determine that the quality of the product is maintained in conformance with the specification. Vendors who furnish evidence that their products have successfully passed qualification are eligible for award even though not yet included on the QVL.~~

## **~~B Clauses~~**

~~[view contract clauses](#)~~

## **~~C Forms~~**

~~[view procurement forms](#)~~

**Section Revised:**

**3.2.2.5 A 1 – Simplified Purchasing**

**3.2.2.5 A 2 – Purchase Orders**

**3.2.2.5 A 3 – Blanket Purchase Agreement (BPA)**

**3.2.2.5 A 4 – Prohibited and Restricted Purchases**

**3.2.2.5 A 5 – FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops**

**Procurement Guidance - (~~7/2020~~ 9/2020)**

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T3.2.2.5 – Commercial and/or Simplified Purchase Method Revised 1/2016

A Simplified Purchasing

1 Simplified Purchasing Revised ~~4/2017~~ 9/2020

2 Purchase Orders Revised ~~7/2020~~ 9/2020

3 Blanket Purchase Agreement (BPA) Revised ~~7/2017~~ 9/2020

4 Prohibited and Restricted Purchases Revised ~~4/2020~~ 9/2020

5 FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops Revised ~~7/2019~~ 9/2020

B Clauses

C Forms

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### T3.2.2.5 – Commercial and/or Simplified Purchase Method Revised 1/2016

#### A Simplified Purchasing

##### 1 Simplified Purchasing Revised 4/2017 9/2020

a. *Scope of Simplified Purchasing.* Simplified purchasing covers methods used to obtain noncomplex products or services through a contract, purchase order, blanket purchase agreement, and Federal Supply Schedule order. For purpose of AMS Guidance T3.2.2.5, the term “services” also includes real property related services such as appraisals, titles, surveys, and renting of portable or short term storage units. Simplified purchase methods apply to noncomplex products or services that have been sold at established catalog or market prices or where prices can be determined fair and reasonable (see AMS Policy 3.2.2.5).

b. *Simplified Purchasing vs. Complex Source Selection.* The complexity of FAA’s requirement shapes the complexity of the process to solicit, evaluate, and select a vendor. Contracting methods described in AMS Policy 3.2.2.3, Complex Source Selection, are generally not a time and/or cost efficient means for acquiring noncomplex products or services. There are exceptions to this consideration, such as when the procurement involves cost-reimbursement pricing or indefinite-delivery arrangements; both noncomplex and complex work is required, in- depth evaluation is needed to select the best qualified vendor, or extensive contract terms and conditions are necessary.

c. Authorized users of the FAA purchase card must use methods described in T3.2.6 when procuring items; however, Contracting Officers (CO) or others delegated procurement authority outside of the purchase card program may determine, based on the factors surrounding each procurement, which purchasing method is appropriate, ~~either~~ Simplified Purchase Method or Complex Source Selection, ~~based on the factors surrounding each procurement.~~

d. *Micro-Purchase Threshold.*

(1) Simplified purchases with a total estimated potential value (TEPV) under the applicable micro-purchase threshold must be performed using the purchase card.

(2) The micro-purchase thresholds are:

(a) \$10,000 for commercial supplies;

(b) \$10,000 for construction (Note: Above \$10,000 may not be done as a simplified purchase); and

(c) \$10,000 for services.

(3) Procurement requests under the micro-purchase threshold must not be submitted for award under a contract unless approved by the cognizant procurement office.

e. *Funding*. All applicable funding requirements detailed in AMS Procurement Guidance T3.3.1 apply to procurement conducted using simplified methods. ~~These~~ includes:

- (1) Compliance with the Anti-Deficiency Act;
- (2) Ensuring sufficient funds are available;
- (3) Ensuring awards made subject to the availability of funds include the appropriate AMS Clauses (i.e., AMS Clause 3.3.1-10, Availability of Funds, or AMS Clause 3.3.1-11, Availability of Funds for the Next Fiscal Year); and
- (4) Ensuring that severable services crossing fiscal years are awarded using appropriate funds, and that the contract period does not exceed one year.

f. *Mandatory Sources and Other Requirements*. When using simplified purchase methods, COs or others with procurement authority (to include purchase card holders) must consider the following requirements:

- (1) *Strategic Sourcing Initiatives*. This includes the following:
  - (a) Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES). The SAVES program is a mandatory source for some equipment and office supplies (see AMS Procurement Guidance T3.8.6).
  - (b) Enterprise software licensing agreements such as Oracle.
- (2) *Federal Prison Industries, Inc. (FPI) (also known as UNICOR)*. For those products available through FPI, the procedures detailed in AMS Procurement Guidance T3.8.4, Government Sources of Products/Services, must be strictly followed.
- (3) *Randolph-Sheppard Act*. FAA must first consider the blind in the operation of vending facilities. (See AMS Procurement Guidance T3.8.4)
- (4) *Javits-Wagner-O'Day Act (JWOD)*. FAA must first consider items and services available through the AbilityOne Program (formerly JWOD) before going to other sources. (See AMS Procurement Guidance T3.8.4)
- (5) *General Services Administration (GSA) Federal Supply Schedules (FSS)*. When procuring items through a GSA FSS, FAA must follow the procedures detailed under AMS Procurement Guidance T3.8.3, Federal Supply Schedules. Note that GSA is not a mandatory source for FAA.

(6) *Section 508 Requirements.* FAA must procure products and services that comply with federal requirements for Section 508 of the Rehabilitation Act. (See AMS Procurement Guidance T3.2.2.[3.B.4](#))

(7) *Environmental Requirements.* FAA should acquire environmentally preferable, energy and water efficient, and recycled content products and services when possible. (See AMS Procurement Guidance T3.6.3 for additional information)

(8) *Labor Laws.* Depending on the nature of the requirement, FAA must comply with applicable labor laws when conducting procurements (i.e. the Service Contract Act for applicable services over \$10,000, and the Walsh-Healey Public Contracts Act for materials, supplies, articles, or equipment exceeding \$15,000). (See AMS Procurement Guidance T3.6.2 for additional information)

g. *Set-asides.* Purchases for products or services with the exception of real property related services with an anticipated value between \$10,000 and \$150,000, except those conducted using a purchase card, are automatically reserved for competition among SEDB (8(a)) vendors, unless the purchaser, with review of the cognizant Small and Small Disadvantaged Utilization Specialist, determines there is not a reasonable expectation of obtaining quotes or offers from responsible SEDB 8(a) concerns that are competitive in terms of market prices, quality, and delivery. More information on set-asides, to include SEDB 8(a) and others, is available in AMS Procurement Guidance T3.6.1.

h. *Competition.*

(1) *Over \$10,000.* Purchases over \$10,000 must be competed among two or more qualified vendors, unless the proposed action is supported by a single source justification or is set-aside under a small business preference program authorizing noncompetitive awards.

(2) *\$10,000 and under.* Competition is encouraged, but not mandatory for purchases \$10,000 and under. Purchasers should consider the administrative cost of the purchase versus potential savings that could result from competition. Purchases \$10,000 and under on a single source basis do not require file documentation justifying the single source decision. However, purchasers should use sound business judgment and have a documented reasonable basis for any decisions involving purchases.

(3) Purchasers may obtain competition by reviewing commercial catalog/price lists, or by soliciting quotes informally by telephone, email, or fax, or formally through written or electronic methods of request for quotation or offer.

i. *Solicitation.*

(1) *Request for Quotation.* A request for quotations (RFQ) may be used to obtain information on prices and availability of products and services. An RFQ is generally used when the purchaser expects to place an order, but does not wish to bind the vendor at the time the quotation is received. All of the terms and conditions to be included in any purchase that may result from the RFQ are to be included in the RFQ. An RFQ may be either written or oral.

(2) *Request/Solicitation for Offer*. A request/solicitation for offer (RFO/SFO) is appropriate when the purchaser needs some amount of discussion to clearly communicate needs and to understand products and services being offered. The purchaser should discuss all aspects of the RFO/SFO, including quality, warranty, payment and other significant aspects included in a written RFO/SFO. An RFO/SFO may be used when non-price-related information and evaluation is necessary.

j. *Discounts*. Quantity discounts are usually offered for purchasing a specific quantity or dollar value of items at one time, or a specified dollar total over an agreed-upon time period. A trade discount from the catalog/commercial list price is one that is offered to all customers by a vendor. This may include promotion of seasonal, new or slow-selling items or special discounts offered by a manufacturer or dealer. A prompt payment discount is one that is offered by a vendor for payment by the Government before the date payment is due. Such discounts are not considered in the evaluation of quotes or offers, but any discount offered is included in the award. The purchaser should seek discounts when appropriate.

k. *Competition- Evaluation and Basis for Award*.

(1) Purchasers must consider all timely and responsive quotations or offers received. Individual RFQs/RFOs must define the requirements for timeliness and responsiveness.

(2) Requirements solicited on an all-or-none basis specify that prospective vendors must furnish all of the requested items to be considered for award. If vendors are informed in the request for quotation or offer, the purchaser may consider the lowest cost alternative between a single award and multiple awards based on the prices for each item and the administrative costs of making multiple awards.

(3) An award is made to the responsive and responsible vendor offering the best value to FAA. Purchasers may evaluate vendors on the basis of lowest priced, technically acceptable offer or quote, which will result in the best value to FAA.

(4) Non-price related evaluation factors, such as past performance, quality of product/space/land offered, vendor qualifications, delivery terms or warranties, may also be evaluated but must be communicated to vendors.

l. *Price Reasonableness*.

(1) *Purchases of \$10,000 or less*. Purchasers do not need to document price analysis for purchases when they find no justifiable reason to question that the price is fair and reasonable. The administrative cost of verifying price reasonableness of purchases may more than offset potential savings from detecting instances of overpricing. When there are doubts about the reasonableness of the price, the purchaser should obtain additional quotes or take other action to verify price reasonableness, such as reviewing current published price lists, reviewing historical prices for purchases of the same or similar item or service, or requesting data from the vendor on sales prices to other customers.

(2) *Purchases Over \$10,000.* Procurements over \$10,000 must be supported by a written determination by the purchaser that the price is fair and reasonable. When possible, this determination is based on competition. When awards are made without competition or when only a single responsive quote or offer is received, the purchaser must use other price analysis techniques to determine if the price is reasonable. Price analysis techniques that the purchaser may consider, along with the independent Government cost estimate, include:

(a) Comparison of prior pricing for the same or similar items or services in comparable quantities;

(b) Application of rough yardsticks (e.g. dollars per pound or horsepower) to highlight significant inconsistencies that warrant additional pricing inquiry;

(c) Comparison with current published catalog or market prices, similar indexes, or discount or rebate arrangements;

(d) Ascertaining that law or regulation establishes pricing; and

(e) Other information gained through a market survey for similar products or services. (See AMS Guidance T3.2.1.2 Market Analysis for additional information on market surveys).

m. *Documenting the Award Decision.* Purchasers should have a rational basis for purchasing decisions. The extent of documentation substantiating purchase decisions depends on the value and circumstances of the purchase. If the purchase involves an item that is a viable exemption to an applicable prohibition or restriction (See AMS Procurement Guidance T3.2.2.5.A.4, Prohibited and Restricted Purchases), then the award decision must, despite the dollar value of the purchase, document the basis and background for the purchase.

(1) *Purchases of \$10,000 or less.* Documentation is not required except for awards that, without documentation, would appear questionable to a “reasonable person” with market knowledge of the products or services being purchased.

(2) *Purchases over \$10,000.* The purchaser must record prices received, names of vendors contacted, and discounts, and other terms quoted by each vendor. If competitive quotes or offers were solicited and award was made to other than the lowest priced, technically acceptable vendor, the purchaser must document evaluation criteria and results, and basis for the award decision.

n. *Rotating Awards for Requirements of \$10,000 or less.* When possible and economically feasible, purchasers should distribute simplified purchase awards of widely available products and services among vendors.

o. *Requisitioner Role.*

(1) The requisitioner defines the requirement by supplying applicable information or documentation to the purchaser that includes, but is not limited to, the following:

- (a) Part numbers;
- (b) Item descriptions;
- (c) Statements of work and specifications;
- (d) Packaging and shipment requirements;
- (e) Inspection and acceptance requirements;
- (f) Funding and any required approvals; and
- (g) Suggested vendors.

(2) As necessary, the requisitioner may assist the purchaser with evaluation of offered products and services.

(3) As part of market research, requisitioners may contact potential vendors about product or services offered, pricing, quality, warranty, delivery terms, and other information. Requisitioners should clearly communicate to prospective vendors that the contact is for market research purposes only and is not a commitment to purchase.

*p. Inspection and Acceptance.*

(1) Acceptance by a FAA representative constitutes acknowledgement that the supplies or services received conform to applicable contract or purchase requirements. Acceptance is documented using an inspection and acceptance form such as FAA Form 256, by a commercial shipping document or packing list, or through other means to include annotation on the purchase order form, or payment of valid invoice.

(2) Acceptance of the supplies or services is the responsibility of the CO or cardholder. This responsibility may be assigned to a program office or center representative.

(3) Each award must specify the place of acceptance as well as other necessary acceptance provisions.

## **2 Purchase Orders** Revised ~~7/2020~~ 9/2020

a. *Purchase order.* A purchase order is a simplified form for ordering supplies or services, generally issued on a fixed-price basis, at stated prices based upon specified terms and conditions. Purchase orders must specify the quantity of supplies or scope of services being ordered and contain a date by which the goods or services must be delivered to FAA.

b. *Unpriced purchase orders.* An unpriced purchase order is an order for supplies or services that does not have a price established at the time of its issuance.

(1) An unpriced purchase order may be appropriate when:

(a) It is impractical to obtain pricing in advance of issuance of the purchase order; or

~~or~~

(b) The purchase is for repairs to equipment requiring disassembly to determine the nature and extent of repairs; the material is available from only one source and for which cost cannot be readily established; or the order is for supplies or services for which prices are known to be competitive but exact prices are not known (e.g. miscellaneous repair parts, maintenance agreements).

(2) Unpriced purchase orders may be issued by using written purchase orders or through various electronic means. A realistic monetary limitation, either for each line item or for the total order, should be placed on each unpriced purchase order. The monetary limitation becomes an obligation subject to adjustment when the firm price is established. The contracting office should follow-up each order to ensure timely pricing. The Contracting Officer (CO) or designated representative should review the invoice price and, if reasonable, process the invoice for payment.

c. *Content.* Purchase orders should contain the following information:

(1) Trade and prompt payment discounts that are offered;

(2) The quantity of supplies or services ordered;

(3) Inspection provisions; origin or destination;

(4) A determinable date by which delivery of supplies or performance of services is required; and

(5) Information should be requested by the preparer of the purchase order as follows:

(a) Vendor's SSN or taxpayer identification number (TIN);

(b) Vendor's business status as one of the following classifications:

(i) Individual/sole proprietorship;

(ii) Corporation;

(iii) Partnership; or

(iv) Other (specify);

(6) The CO's signature. Electronic signatures may be used in the production of purchase orders by automated methods (see AMS Policy 3.1.9).

d. *Clauses.* The CO may print on the purchase order form, or include as an attachment, the clauses they consider to be generally suitable for their purchases. The following forms may be used for purchase orders:

(1) Optional form 347, Order for Supplies or Services;

(2) Optional form 348, Order for Supplies or Services Schedule-Continuation; or

(3) Other agency generated or contractor provided forms.

e. *Procedure.* Procurement under a purchase order valued over \$10,000 must be competed among two (2) or more qualified vendors, unless the action is supported by a single source justification (AMS Procurement Guidance T3.2.2.4) or conducted under a small business preference program authorizing noncompetitive awards (AMS Procurement Guidance T3.6.1).

(1) *Competitive Awards.*

(a) Before issuing a request for quotations (RFQ), the CO should develop a listing of potential sources based on the requirement. This list can be derived from sources to include, but not limited to:

(i) Previous vendors utilized in FAA or source lists kept in the contracting offices;

(ii) Qualified vendor lists;

(iii) The requiring or program office;

(iv) System for Award Management (SAM); and

(v) The Small Business Program (AAP-20).

(b) All procurements over \$150,000 must be publicly announced on [beta.SAM.gov](https://beta.SAM.gov) the ~~FAA~~ Contract Opportunities website or through other means. This requirement does not apply to emergency actions, purchases from an established QVL, exercise of options, or modifications within the scope of a purchase order.

(c) Once a list of potential sources is available, the CO should solicit as many sources as practicable, but must solicit quotations from at least two or more sources.

A listing of the vendors to whom the RFQ was distributed, as well as any responses or quotes, must be included in the official file.

(d) Prior to award of the purchase order, the CO must confirm that the vendor is not listed in the "Exclusions" portion of the "Performance Information" capability of SAM and has successfully registered in SAM. The CO should document this process in the file, which may include simply printing the results from each search or including a statement of the checks being completed in a memo to file.

(e) *Vendor Selection.* Once a qualified and responsible vendor is selected, the CO must support the decision with a written determination that the price is fair and reasonable and that the award is in the best interest of FAA. This determination must be included in the official file.

(f) *Price Analysis/Reasonableness.* See AMS Procurement Guidance T3.2.[3.A.5](#):1.

## (2) *Single source awards.*

(a) The rational basis for a single source decision must be documented by the service organization, reviewed by Legal for sufficiency, approved by the Service Organization Official, and concurred with by Contracts or, for purchase card transactions, the Purchase Cardholder. The single source documentation must be included in the official contract file.

(b) There are no predetermined or prescribed conditions for using a single source, and each single source decision stands alone and must be based on the circumstances surrounding each specific need.

(c) Single source procurements over \$10,000 (excluding emergencies) require market analysis to verify that FAA's technical and business interests are best met through a single source.

(d) A single source justification is not required for noncompetitive set-asides to 8(a)-certified Socially and Economically Disadvantaged Business (SEDB) or Service Disabled Veteran Owned Small Business ([SDVOSB](#)). (See AMS Procurement Guidance T3.6.1 "Small Business Development Program"). A single-source justification is also not required for procurements conducted in accordance with the Javits-Wagner-O'Day Act (Ability/One Program) or the Randolph-Sheppard Act as specified in AMS Guidance T3.8.4. ~~(See AMS Procurement Guidance T3.6.1).~~

(e) A single source justification is not required for a site-specific requirement for land or antenna/equipment space, where the location of NAS equipment is (1) necessary to the functionality of the NAS, and (2) of continued criticality to the NAS or mission of the FAA; or for operational facilities that house equipment

~~and/or personnel that provide Air Traffic Control services to aircraft operating in the NAS for land or antenna/equipment space, where the location of NAS equipment is (1) necessary to the functionality of the NAS, and (2) of continued criticality to the NAS or mission of the FAA. The head of the Technical Operations service organization, or designee, will provide an annual determination identifying equipment and facilities subject to this subsection. The factual evidence supporting the determination that a requirement for land or unmanned, antenna/ equipment space comes within the scope of this paragraph must have written approval from the Division level of the requiring office and be documented in the Negotiator's Report.~~

(fe) When the total estimated value is over \$150,000, the CO must issue a pre- award public announcement (excluding emergencies) summarizing the basis for the single source decision.

(gf) Additional information regarding single source awards can be found in AMS Procurement Guidance T3.2.2.4.

f. *Acceptance.*

(1) A quotation resulting from a RFQ is not an offer, and cannot be accepted by FAA to form a binding contract. A contract is formed when the supplier accepts the offer, which can be done by:

(a) The supplier accepting the purchase order in writing to FAA. The Contracting Officer should require written acceptance of a purchase order when it is desired to consummate a binding contract before the contractor undertakes performance; or

(b) The supplier furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

g. *Modification.* Each purchase order modification should identify the order it modifies, contain an appropriate modification number, and identify what authority is being used to modify the order. The Contracting Officer determines when it is necessary to obtain a contractor's written acceptance of a purchase order modification. Purchase orders may be modified by using:

(1) Standard Form 30, Amendment of Solicitation/Modification of Contract;

(2) An agency-designed form or an automated format; or

(3) A purchase order form.

h. *Termination.* A purchase order may be terminated, and the process to terminate an order depends on whether the order has been accepted.

(1) If the purchase order has been accepted in writing by the contractor, the termination should be processed in accordance with AMS termination clauses.

(2) If the purchase order has not been accepted in writing by the contractor, the CO should notify the contractor in writing that the purchase order has been canceled and request the contractor's acceptance of the cancellation. If the contractor:

(i) Accepts the cancellation and does not claim that costs were incurred, no further action is required.

(ii) Does not accept the cancellation or claims that costs were incurred, the CO should process the termination in accordance with the termination clauses. ~~†~~  
~~Purchase order checklist and Simplified Purchase Summary.~~

(1) Any purchase order with an anticipated value of \$10,000 or more must include a Purchase Order/GSA/FSS Order File Checklist (see Procurement Forms) in the official file.

(2) The CO may choose to use the Simplified Purchase Summary (see Procurement Forms) to document actions associated with the award of a purchase order.

### **3 Blanket Purchase Agreement (BPA)** Revised 7/2017 9/2020

a. A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for products or services by establishing "charge accounts" with qualified vendors. BPAs may be appropriate when other procurement vehicles such as using a purchase card, purchase order, or contract are not appropriate or available, and:

(1) A wide variety of items in a class of supplies or services are required, but the exact items, quantity, and delivery requirements are not known in advance and vary;

(2) FAA offices in given areas do not have or need purchasing authority, but need a commercial source for supplies or services;

(3) Establishing a BPA would avoid writing numerous purchase orders;

(4) There is no existing source for the same supply or service that FAA must use; these sources include:

(a) Federal Prison Industries, Inc. (UNICOR);

(b) Randolph-Sheppard Act or Javits-Wagner-O'Day Act (JWOD) programs;

(c) Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES) program;

(d) National Wireless program; and

(e) Active contracts containing the "Requirements" clause.

b. A BPA is not a contract. Instead, it is an understanding between FAA and a vendor that allows FAA to place future orders more quickly by identifying terms and conditions applying to those orders, a description of the supplies or services to be provided, and methods for issuing and pricing each order. The FAA is not obligated to place, nor must a vendor accept, any orders. Either party may cancel a BPA at any time. An enforceable contract exists only when FAA places an order against the BPA and it is accepted by the vendor.

c. *Establishing a BPA.*

(1) After determining a BPA would be advantageous, the Contracting Officer (CO) may concurrently establish BPAs for the same type of items or services with more than one vendor to provide maximum competition for orders.

(2) There is no maximum dollar limitation for a BPA; however, each BPA must have a total ceiling amount. If the anticipated total value of all orders against a BPA will exceed \$150,000, then it is subject to public announcement and applicable review requirements, including review by legal counsel for orders exceeding \$100,000 (as well as review by the Chief Financial Officer (CFO) (see AMS Procurement Guidance T3.2.1.4 for applicable standards) and Chief Information Officer (CIO) ([See AMS Guidance T3.2.1.A.3](#)) if information technology resources over \$250,000 are involved).

(3) Only a CO can place an individual order exceeding \$100,000.

(4) Using a BPA does not relieve the CO or authorized users from keeping obligations and expenditures within available funds.

(5) Price reasonableness and competition requirements apply to obtaining needs through BPAs. A BPA with one vendor does not justify purchasing from only one source; the initial BPA and future orders awarded under the BPA are subject to competition requirements. (Refer to AMS Procurement Guidance T3.2.2.4, Single Source).

(6) BPAs may include Federal Supply Schedule (FSS) contractors utilizing the BPA provision in their FSS contract.

(7) BPAs can be prepared without a Procurement Request (PR), but only after contacting vendors to arrange for maximum discounts, documentation requirements for individual purchases, periodic billings, and other necessary details.

(8) Open market purchases are not affected by an existing BPA. The same class of supplies or services offered through a BPA may be purchased on the open market, and both BPA and non-BPA vendors may be solicited.

d. *Mandatory Terms and Conditions.* A BPA must include:

(1) *Description of Agreement.* A statement that the vendor ~~must~~will furnish products or services, described in general terms, if and when requested by the CO, or the authorized representative, during a specified period and within a stipulated aggregate amount.

(2) *Extent of Obligation.* A statement that the FAA is obligated only to the extent of authorized orders actually placed under the BPA.

(3) *Purchase Limitation.* A statement specifying the dollar limitation for individual orders under the BPA.

(4) *Notice of Individuals Authorized to Purchase under the BPA.* The CO will furnish to the vendor a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual.

(5) *Clauses.* The BPA must include any prescribed clauses applicable to the dollar thresholds of particular orders against the BPA, e.g., Service Contract Act for orders for services over \$10,000.

(6) *Delivery Tickets.* A requirement that all shipments under the BPA, except subscriptions and other charges for newspapers, magazines, or other periodicals, will be accompanied by delivery tickets or sales slips with the following information as a minimum: name of individual who placed the order, name of contractor, BPA number, date of purchase, purchase number, itemized list of products or services furnished, quantity, unit price and extension of each item, and date of delivery or shipment.

(7) *Invoices.* Invoices are to be submitted at least monthly or upon expiration of the BPA for all deliveries made during the billing period. Each invoice must:

- (a) Identify the delivery tickets covered in the invoice;
- (b) State the total dollar value of each delivery ticket; and
- (c) Be supported by receipt copies of each delivery ticket.

e. *Procurement Request (PR).* A PR is not required for each order. Instead, the BPA can be bulk funded to the ceiling on the first order, and then each subsequent order applied to the BPA until funds are no longer available. Rather than obtaining a PR for each order, bulk funding is a process where the CO receives authorization through a PR to obligate funds against a specified lump sum of funds reserved for a specific purpose for a specified period of time. The amount of bulk funding should represent the anticipated need through the BPA, and not serve as means to avoid fiscal restrictions or appropriation law. The CO, or authorized BPA user, may make purchases based on an oral request or a memorandum from an authorized requisitioner in the program/requisitioning office. The program/requisitioning office should confirm oral requests in writing as a matter of record.

f. *Authorized Users.* Each person authorized to place orders against a BPA should receive written guidance from the CO on the limitations of authority and responsibilities associated with using the BPA. Authorized users must follow ordering procedures to ensure proper delivery, billing, and payment. Purchases that would normally be made as single order should not be split to avoid any user ordering limitations. Program/requisitioning offices should notify the CO whenever an authorized user changes or the need for purchasing against the BPA no longer exists; the CO should modify the BPA to reflect any changes in authorized users.

g. *Placing an Order.*

(1) When placing an order, the authorized user contacts the vendor and provides:

- (a) Authorized user's name, phone number, and office.
- (b) BPA number and order number assigned by the authorized user.
- (c) Description of required supply or service (part number, description, quantity, etc.).
- (d) Delivery address and telephone number.
- (e) Delivery date.
- (f) Reminder that the order is tax exempt.

(2) The authorized user should request any offered discounts, and inform the vendor that the BPA number and order number is to appear on the packing slip and invoice/billing statement.

(3) The authorized user should document the order in a log or by other means to record details of the transaction (item description, price, quantity, date, etc.).

h. *Segregation of Duties.* In accordance with Office of Management and Budget (OMB) Circular A-123, the same person may not make the purchase, receive supplies or services, and authorize payment. The same person may perform two of the functions, but not all three.

i. *Review.* The CO should review a sufficient random sample of BPA files at least annually to ensure that authorized users are following procedures.

j. *Unauthorized Commitments.* Only COs or people authorized by the CO may place orders against a BPA. Any purchase made by an unauthorized person, or any purchase placed against a BPA which exceeds the authorized limitation is an unauthorized commitment.

k. *Market Analysis.* The CO must maintain awareness in market conditions, sources of supply, and other factors that may warrant making new arrangements with different vendors or modifying existing arrangements.

1. *Expiration.* A BPA is considered complete when purchases under it equal its total dollar limitation or when the stated time period expires.

#### 4 Prohibited and Restricted Purchases Revised 4/2020 9/2020

a. This guidance is intended to assist FAA personnel in determining whether a particular item or service would be a permissible purchase using appropriated funds. There is no ironclad rule or readily available list that describes in every case whether a particular purchase using appropriated funding is permissible. FAA personnel should use common sense and sound judgment, based on appropriations law and related decisions of the Comptroller General.

b. The Government Accountability Office (GAO) established a "necessary expense" doctrine. This doctrine is described fully in Volume I, Third Edition, of "Principles of Federal Appropriations Law," (GAO Red Book) issued by GAO, Office of the General Counsel. This publication states, in part, that for an expenditure to be justified under the necessary expense theory, it must meet certain tests, including: "The expenditure must bear a logical relationship to the appropriation sought to be charged. In other words, it must make a direct contribution to carrying out either a specific appropriation or an authorized agency function for which more general appropriations are available" (~~GAO Red Book, Volume I, Chapter 4, Section B.1.~~). By projection, the necessary expense doctrine does not allow use of appropriated funds to purchase items or services that can be reasonably interpreted to meet personal convenience and are not for a necessary Governmental function." (GAO Red Book, Volume I, Chapter 4, Section B.1.) The CO or purchase cardholder, consulting with budget officials and legal counsel, should make determinations in this area with respect to the "necessary expense" doctrine -about questioned or questionable items or services. Almost any listing of prohibited items of purchase is subject to exceptions. To quote the GAO Red Book "The Comptroller General has never established a precise formula for determining the application of the necessary expense rule. In view of the vast differences among agencies, any formula would almost certainly be unworkable. Rather, the determination must be made essentially on a case-by-case basis."

c. *Prohibited and Restricted Items.* For FAA, the following are prohibited or restricted items of purchase (this is not a complete list):

(1) **Drinking water**, except when:

(a) A duly constituted public health authority pronounces ordinary drinking water to be unsafe for human consumption at the site;

(b) A viable and safe water source for FAA personnel is not available on or within a reasonable distance of the worksite;

(c) FAA personnel reasonably foresee a disaster or emergency, such as imminent landfall of a hurricane, and all of the following conditions are present:

(i) FAA personnel reasonably anticipate that drinking water at the site will be unsafe for human consumption;

(ii) The drinking water is for FAA personnel responding to or at the emergency or disaster site;

(iii) The amount of drinking water is commensurate with the anticipated response time at the site or the estimated time for the local drinking water to be considered safe for human consumption, whichever is shorter; and

(iv) The drinking water is purchased in a reasonable time-frame in advance of an imminent emergency or disaster, and the time-frame does not exceed the time required to purchase, stage, and properly distribute the drinking water; or

(d) The drinking water is provided in a controlled environment as may be necessary to enable collections for drug use analysis for safety sensitive positions.

(2) **Food or beverage**, except as described in AMS Procurement Guidance T3.2.2.5A.5, FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops.

(3) **Gifts, gift certificates, and prepaid gift cards.**

(4) **Membership fees** for individual employees. The FAA may purchase membership in a society or association in its own name.

(5) **Subscriptions** to print or online publications or magazines not related to official duties.

(6) **Clothing** or personal apparel of any description, except:

(a) Special type clothing required by FAA. The requestor's supervisor must prepare a written justification for special type clothing and coordinate the justification with legal counsel.

(i) Clothing (such as a shirt with FAA logo) for recruitment activities such as job fairs and professional liaison activities with recruitment sources (e.g., schools, colleges and universities, professional associations/organizations, or intergovernmental agency sources) may be authorized if it supports FAA business objectives and there is a bona fide need.

(ii) Clothing for air shows may be authorized if there is a bona fide need for FAA employees to be clearly identifiable.

(b) Clothing and equipment classified as personal protective equipment (PPE). The requestor's supervisor must prepare a written justification for PPE, but does not need coordination with legal counsel when the value of the procurement is below \$100,000. All PPE must:

(i) Have proper controls established to ensure that PPE is appropriate and accounted for; and

(ii) Be maintained and used according to standards established by the Occupational Safety and Health Administration (OSHA). See the OSHA website for more information.

(c) All clothing or PPE purchased by FAA remains the property of the Government and not the employee.

(7) **Rental of aircraft** by anyone not in an aircraft-related position.

(8) **Fans, air conditioning and cooling equipment, space heaters and heating equipment**, except as properly installed for general use in connection with the maintenance and operations requirements for the site.

(9) **Water coolers, vacuum cleaners, and other household appliances** (i.e. refrigerators, microwaves, etc.), except as requisitioned for general use by, or authorized in writing for purchase by, the authorities responsible for building maintenance and equipment.

(10) **Cellular or communication devices and services** covered by the National Wireless Program Office (NWPO). Devices provided through the NWPO include cellular phones, one and two-way pager devices, multi-functional server-based devices (e.g. Blackberries), and satellite phones.

(11) **Personalized stationery**, including paper pads, with the name, position, title, logo, or office of FAA personnel, except when:

(a) There is a clear business need approved by the head of the line of business or staff office; and

(b) The requestor notifies Office of Financial Analysis (AFA-1) of the planned purchase in advance.

(12) **Tote bags**.

(13) **Coffee mugs**.

(14) **Water bottles**.

(15) **Leather and other natural hide portfolios, binders, or planners**.

(16) **Give-away items**, including portfolio covers, flash drives, pens, and pencils, for internal or external marketing of products, services, or programs by FAA, with the following exception and conditions:

(a) Purchase of promotional items for recruitment activities, such as for job fairs and professional liaison activities with recruitment sources (e.g., schools, colleges and universities, professional associations/organizations, or intergovernmental agency sources), may be authorized when these items support FAA business objectives and there is a bona fide need. Where there is a bona fide need, the selection of items must meet all of the following criteria:

(1) Has a practical use appropriate for the audience, and are business related items, such as pens, rulers, calculators, post-it notes, business card holders, lanyards or note pads;

(2) The items cannot be a personal use item, such as coffee cups, water bottles, umbrellas, candy or food items, or fans;

(3) Is economically priced and reasonably portable; and

~~And~~

(4) Avoids the perception that taxpayer dollars have been frivolously spent.

(b) Recruitment items must comply with FAA branding order 1700.6C and display the FAA jobs website (<http://www.faa.gov/jobs>).

(17) **Coins**, including but not limited to, Challenge and Commemorative coins are strictly prohibited.

(18) **iPAD** and similar equipment and related services, with the following exceptions and conditions:

(a) All purchases of iPAD or similar equipment and related services must be coordinated with the Chief Information Officer's (CIO) Enterprise Program Management Service (EPMS).

(b) iPAD and similar equipment and related services for approved purchases may be procured using the FAA purchase card if the costs do not exceed established single and monthly purchase limits.

(c) LOB/SO CIOs are responsible for determining the level of acceptable security risk. As such, each LOB/SO must review the default device settings and modify accordingly to ensure the appropriate level of information assurance.

(d) Each LOB/SO must maintain an inventory of all iPAD or similar equipment.

(19) **Purchases for Non-Monetary Awards**, except:

(a) The FAA may purchase plaques, trophies, pins, flags, retirement plaques and certificates, or similar symbolic items for non-monetary awards to officially recognize

employees. Items purchased for a non-monetary award must not exceed \$250 per award' including but not limited to engraving, shipping and handling. FAA Corporate Awards and Recognition program are not subject to the \$250 per award limit, but should be reasonably priced and symbolic items. All official awards must comply with HRP, Performance Management PM- 9.2, Recognizing Employees. Requisitioning offices must maintain appropriate documentation for purchases related to non-monetary awards.

(b) To enhance an official awards ceremony, reasonable and nominally priced purchases, such as for decorations and related supplies, are permissible. An official awards ceremony is defined as publicized event that is anticipated to have an audience and the presentation of an award(s) recognizing FAA Federal employee(s). Awards presented at official awards ceremonies comply with HRP, Performance Management PM-9.2.

(c) Awards Programs are a structured process for organizations to recognize employees. All awards must be based on an act, service, accomplishment, contribution or performance that supports the LOB/SO Business Plan and/or FAA strategic priorities. Written justification is required for all awards given. The written justification varies in detail depending on the type and value of the award and must be attached to the purchase card request or Procurement Request in PRISM. For example, the written justification for informal, non-monetary awards must include: Name of the employee (or employees if it is a group award), Date, Reason for award, Type, and Cost of award. Additional information on awards ceremonies and non-monetary awards can be found in the Award Ceremonies and Non-Monetary Awards SOP. Directions for accessing the Award Ceremonies and Non-Monetary Awards SOP on the Standard Operating Procedures webpage of the Financial Services (ABA) website are as follows:

1. Go to <https://my.faa.gov/>
2. Click on the "Organizations" Tab
3. Click on "Financial Services" under "Finance and Management (AFN)"
4. Click on "Standard Operating Procedures"
5. Click on "Award Ceremonies and Non-Monetary Awards"

(20) **Business Cards**, except:

(a) The FAA may use appropriated funds to purchase business cards for employees if necessary to conduct business and approved in advance. Associate/Assistant Administrators, ATO Vice Presidents, and Regional Administrators/Center Directors determine who in their organization ~~is~~ are authorized business cards paid for with appropriated funds to conduct FAA business. Authority for this determination may be delegated to a lower level.

(b) Business cards purchased with appropriated funds are Government property. Employees should exercise good judgment and caution when using their cards in situations not directly related to conducting FAA business.

(c) All FAA business cards must comply with branding logo and template requirements in FAA Order 1700.6C. See the FAA website for more information (FAA only)

(d) Purchasers must use one of two printing sources when using appropriated funds to purchase business cards:

(1) FAA Aeronautical Center's Media Solutions Group; or

(2) Lighthouse for the Blind, Inc., Seattle, WA (pursuant to the mandatory source requirements of the Javits-Wagner-O'Day Act). See the Lighthouse for the Blind's website for ordering information.

**(21) Purchasing or Renting Portable Storage Units or Procuring Short-term Storage Services**, with the following exceptions and conditions:

(a) Before purchasing or renting storage units or procuring storage services, a determination must be made by the ~~Real Estate~~ Contracting Officer (~~RECO~~) that existing storage space is not available from other sources within FAA or elsewhere in Government. COs or purchase cardholders must coordinate storage requirements with a ~~RECO~~ Real eEstate CO. This coordination is intended to ensure that no in-house storage capabilities are available, and no real estate or facility factors exist that may affect the procurement, such as applicable real estate regulations or unique site requirements.

(b) Storage units or services for purposes of this guidance are limited to portable storage units or containers designed for temporary (less than six months) on-site use or temporary storage in a secured centralized storage center owned by the vendor. The storage units or containers must be classified as personal property and not affixed or attached ~~in~~ by a permanent means to the land (real property) upon which they may be situated for temporary use. If the portable storage unit or container is to be placed on land owned or leased by FAA, the CO or cardholder must ensure FAA has legally established rights to use the land before staging or storing a third party item of property (storage unit or container) procured under a service agreement.

(c) When possible, storage requirements for a construction project should be incorporated into the statement of work or specification under the associated construction contract.

(d) Purchase cards cannot be used:

(1) For purchase, rental, or lease of land or buildings;

(2) To purchase real property, which is defined as land, buildings, structures or rights over or under the land, or things that are permanently affixed or attached

to the land such as improvements to make it more productive or to make it serve a more beneficial end than the land itself; and

(3) For long-term storage unit rental or services (long-term is defined as six months or more), unless the purchase card is being used as a payment vehicle against a contract or lease signed by a ~~CO/RECO~~ or real estate CO and:

(i) The total cost of rental or purchase of storage services does not exceed the cardholder's delegated authority;

(ii) The portable units are not classified as real property (as defined above); and

(iii) The terms and conditions of the rental or storage services (i.e. termination authority) are set forth in writing and signed by both parties.

(22) Purchasing Printers and Other Printing Devices:

(a) Purchases of desktop and/or stand-alone imaging devices and related consumables require approved waivers in accordance with FAA Order 1720.37A.

(23) **Certain Telecommunications and Video Surveillance Services or Equipment** are prohibited, as provided in T3.6.4 A 16.

## 5 FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops Revised 7/2019 9/2020

a. FAA-sponsored conferences, seminars, ceremonies, and workshops are a routine element of FAA operations. FAA personnel must consider certain special requirements when planning and conducting such events. All such conferences must comply with the standard operating procedures (SOPs) specified by the Office of Financial Analysis. For current forms and guidance, please see the Financial Standard Operating Procedure "Planning Meetings, Conferences, Workshops, Training Events and Award Ceremonies in the FAA" at the Financial Services website <https://employees.faa.gov/org/staffoffices/afn/finance/sop/?selected=Planning Meetings, Conferences, Workshops, Training Events, and Award Ceremonies in the FAA>

b. *Securing Conference Space.* ~~See AMS Real Property Guidance 2.4.6, Appendix F, for real property considerations regarding short term conference and meeting space. Warranted Real Estate~~ The rReal eEstate Contracting Officers ~~(RECOs) under the real property organization (ALO-200)~~ have the authority to secure conference space. Generally, such space can be contracted for utilizing a standard purchase order or on a purchase card. If the conference space provider produces their own conference form, it must be reviewed for unacceptable terms/language and when acceptable, signed by a ~~warranted-r~~ Real eEstate Contracting Officer.

c. *Legal Review.* Legal counsel must first review any agreement in excess of \$100,000 (total Government expenditures including room charges for the attendees) between FAA and a ~~hotel~~conference space provider. Except as provided below, agreements below \$100,000 do not require legal review, but review may be sought at the discretion of the ~~RECO~~real estate CO or the ~~RECO's real estate CO's~~ delegated designate.

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

(a) 3.9.1-1 Contract Disputes; and

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

(2) Incorporation of the following clauses requires legal review regardless of the dollar value:

(a) Clauses making any law (including state law) other than Federal law controlling;

(b) Clauses that establish liability beyond what is funded or contingent liability beyond the limits imposed allowed the Federal Tort Claims Act; and

(c) Clauses requiring binding arbitration.

d. *Travel-related Costs.* Employee's travel, hotel, local transportation, and per diem must be paid with the FAA travel card. An employee's travel-related costs cannot be paid for under a contract, purchase order, or FAA purchase card.

e. *Items for Distribution to Conference Attendees.* Generally, personal use items, such as mugs, clothing, or bags, cannot be purchased and given to conference attendees. Conference planners must consult with legal counsel before purchasing any items to be distributed to conference or event attendees.

f. *Food and Beverage.*

(1) The FAA may purchase food and beverage for conference participants under the following narrowly defined circumstances:

(a) *Formal Conferences.*

(i) The term "formal conference" usually denotes topical matters of interest to and participation of multiple agencies and/or non-Governmental participants. Other indicators are registration, published substantive agenda, scheduled speakers and discussion panels.

(ii) The meals, beverages, and refreshments must be incidental to the conference.

(iii) The employees are not free to take meals elsewhere without being absent from the essential business of the meeting.

(iv) The meals, beverages, and refreshments must be part of a formal conference that includes both substantial functions at the time the meals, beverages and refreshments are served and substantial functions separate from when food, beverages, or refreshments are served.

(v) At formal conferences where the above criteria are met, FAA may also pay for the food, beverages, and refreshments of private citizens or Federal employees from other agencies when an administrative determination is made that their attendance is necessary to achieve the program or conference objectives.

(b) *Internal FAA Training Conferences.* The meals, beverages, and refreshments must be:

(i) Incidental to the conference;

(ii) Attendance at the meals must be necessary for full participation in the conference; and

(iii) The employees are not free to take meals elsewhere without being absent from the essential business of the meeting.

(c) *Award Ceremonies.* The FAA may purchase light refreshments for award ceremonies. If not awarded through a contract or purchase order, the FAA purchase card must be used to purchase light refreshments.

(d) *Cultural Awareness Ceremonies.* The FAA may purchase food or beverage if part of a formal program intended to both advance Equal Employment Opportunity objectives and provide cultural or ethnic awareness. Food and beverage must be part of a culture's food and beverage and offered as part of a larger program that serves an educational function.

(e) *Official Receptions.* For official receptions hosted by the Administrator (or designated senior executive) for foreign or non-Federal dignitaries, FAA may purchase light refreshments, meals, snacks, and beverages. The Administrator's official reception and representation funds must be used for these events (see FAA Order 1200.3E). The FAA purchase card may be used to purchase food or beverage for these events.

(2) Except for FAA award ceremonies and the Administrator's official receptions, FAA purchase card cannot be used as a procurement vehicle for food and beverage; a purchase order

or contract must be used instead. However, the purchase card may be used to make payment against a duly executed contract signed by a warranted real estate CO.

(3) Food and beverage costs must be reasonable, must not include alcoholic drinks, and cannot be purchased for amusement or social events, such as networking sessions, team-building exercises, or hospitality suites (except hospitality functions at the Administrator's official receptions).

(4) The FAA cannot purchase food and beverage for routine meetings to discuss day-to-day issues. Examples of routine meetings include those to discuss day-to-day operations, to develop business plans to accompany FAA goals, or to develop performance targets.

(5) The FAA may pay a facility rental fee that includes the cost of food or beverages provided to FAA employees where the fee is all-inclusive, not negotiable and competitively priced to those that do not include food.

(6) Foods that constitute "light refreshments" are snacks, such as cookies, and beverages. Light refreshments for morning, afternoon or evening breaks are defined to include: coffee, tea, milk, juice, soft drinks, water, donuts, bagels, fruit, pretzels, cookies, chips, ~~or~~ muffins or related items of similar value. This is distinguished from a meal such as breakfast, lunch or dinner, or multiple heavy hors d'oeuvres. Meals are not "light refreshments."

*g. Justification for Food and Beverage.* The FAA's policy is to not use, nor create the appearance of use of, Government funds to entertain Federal employees. Before contracting for a conference or event with food and beverage, the Director (or equivalent management level) of the organization sponsoring the event and legal counsel must approve a written justification explaining why food and beverage is necessary. The justification must describe:

- (1) Nature and purpose of the event;
- (2) Applicability of the event to FAA's programs or activities;
- (3) Any statutory, regulatory, or other authority for the event;
- (4) Participants;
- (5) Dates;
- (6) Facility and location;
- (7) Estimated cost;
- (8) Reason why food and beverage is necessary;

(9) Meal(s) that will need to be offset in attendees' travel vouchers; and

(10) Keynote functions which include meals. The description of the function is to include any keynote speakers, the type of presentation(s) being given and how they are integral to the conference.

h. *Travel Vouchers and Per Diem.* Conference attendees must offset in their travel vouchers the cost of meals paid for and provided by the Government. Light refreshments do not need to be offset in travel vouchers. See FAA Travel Policy for rules when meals are furnished by the Government.

i. *Registration Fees.* Registration fees are payments collected by FAA, or a support contractor on behalf of FAA, from private and other public participants attending an FAA- sponsored conference. If FAA wishes to charge a registration fee, it must have statutory authority to do so. Under 31 U.S.C. 3302(b), FAA must deposit registration fees in the U.S. Treasury, unless there is specific statutory authority for FAA to keep and use fees collected. Under 49 U.S.C. 45303, ~~t~~The FAA currently has statutory authority to credit back to its operations account authorized collections; therefore conference planners should check with legal counsel before depositing authorized registration fees into the ~~general treasury~~General Fund of the United States Treasury Department.- FAA may authorize a contractor providing conference services to charge a registration fee to conference participants. In cases where the FAA co-sponsors a conference and the co-sponsor incurs costs of the conference without FAA reimbursement, the co-sponsor is also permitted to collect registration fees. The registration fee amount is subject to the real estate Contracting Officer approval consistent with the contract terms and conditions and may include a reasonable profit for the contractor's efforts.

## **B Clauses**

[view contract clauses](#)

## **C Forms**

[view procurement forms](#)

**Section Revised:**

**3.8.1 A 1 – Agreements**

Procurement Guidance - (~~7/2020~~ 9/2020)

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T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests Revised 10/2007

A Agreements, Cooperative Agreements, Gifts and Bequests

1 Agreements Revised ~~7/2020~~ 9/2020

2 Section 106 Cooperative Agreements Revised 4/2017

3 Gifts and Bequests Revised 4/2020

4 Interagency Procurement Revised 4/2020

5 Reimbursable Agreements and Other Transaction Reimbursable Agreements Revised 7/2014

B Clauses

C Forms

D Appendix

1 Attachment 1 - Parallel Authorities

2 Attachment 2 - Sample Interagency Agreement Revised 10/2007

3 Attachment 3 - Sample Intra-agency Agreement Revised 10/2007

4 Attachment 4 - Sample Other Transaction - MOA with State, Municipality or Private Entity Revised 10/2019

5 Attachment 5 - Sample Other Transaction - Memorandum of Understanding (MOU) Revised 10/2007

6 Attachment 6 - Sample Section 106 Cooperative Agreement Revised 1/2018

7 Attachment 7 - Intellectual Property - Section 106 Cooperative Agreements

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### T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests Revised 10/2007

#### A. Agreements, Cooperative Agreements, Gifts and Bequests

##### 1 Agreements Revised ~~7/2020~~ 9/2020

a. *Applicability.* This section applies to interagency agreements, intra-agency agreements, other transactions, cooperative agreements, and international agreements for services, supplies (including construction) and real property to the extent authorized by law. This section **does not** apply to Airport Improvement Program grants and cooperative research and development agreements, which are governed by other directives, as follows:

(1) Airport Improvement (AIP) Grants authorized under 49 U.S.C. 47101 et seq. are covered in FAA Order 5100.38A, AIP Handbook, October 24, 1989.

(2) Cooperative Research and Development Agreements (CRDA) authorized under 15 U.S.C. 3710a et seq. are covered under FAA Order 9550.6A "Technology Transfer Program."

b. *Types of Agreements.*

(1) *General.*

(a) As discussed above, FAA has broad general authority to use various agreements, other than procurement contracts, to obtain or provide services and supplies when necessary to accomplish the mission of FAA. For additional information in determining which agreement type is the most suitable to accomplish the FAA's mission, please refer to the Agreement Type Guidelines document in FAA FAST References. (b) Agreements may be made on such terms and conditions as the Administrator may consider appropriate

(i) With or without reimbursement; *and*

(ii) With another Federal agency or instrumentality of the Federal government, a modal administration within the Department of Transportation, a state, local government, municipality, or other public entity, foreign governments, and private entities.

(c) Agreements are classified into six general categories as follows:

(i) Interagency Agreements;

(ii) Intra-agency Agreements;

(iii) Other Transactions;

(iv) Cooperative Agreements;

(v) International Agreements; and

(vi) Reimbursable Agreements and Other Transaction Reimbursable Agreements.

(2) *Interagency Agreements.* An interagency agreement is a written agreement between FAA and another Federal agency (as defined in Section 551(a) of Title 5 of the United States Code) where FAA agrees to receive from, or exchange supplies or services with, the other agency, and FAA funds are obligated. The requesting agency is the agency that needs the services, supplies or facilities; the servicing agency provides the services, supplies or facilities to the requesting agency. Interagency agreements under which FAA purchases services, supplies, or facilities through another Federal agency's contract is an interagency procurement, and AMS Guidance T3.8.1.A.4 "Interagency Procurement" must also be followed when placing this type of agreement.

(a) *OMB Circular A-76.* Where FAA requires the servicing agency to perform a commercial activity, the CO should conduct a cost comparison under OMB Circular A-76.

(b) *Joint Activities with Department of Defense (DOD).*

(i) DOD has the same exemptions from acquisition laws as are waived by the Administrator in the AMS when:

(A) The FAA and DOD are engaged in joint actions;

(B) DOD's contribution to the total cost of the activity is significant (more than ten (10) percent; and

(C) The purpose of the acquisition is to improve or replenish the national air traffic system. Joint actions include situations where both agencies share the same mission need and engage in joint activities to plan and implement the solution.

(ii) Where these three criteria are met, either FAA or DOD may conduct the acquisition using the policies of the AMS.

(3) *Intra-agency Agreements.* An Intra-agency agreement is a written agreement between FAA and the Office of the Secretary of Transportation (OST) or another DOT operating administration. The FAA may use an Intra-agency agreement to provide services or supplies to, or receive services or supplies from or through OST or another DOT operating administration.

Based on DOT Order 1200.9 DOT Inter and Intra Agency Agreements Order, for all DOT Intra-agency agreements, advance payments are mandatory unless prohibited by law. Initial advance payments must be collected when the agreement is first signed, and are to be collected based on the negotiated agreement or under continuing resolution rules, whichever applies. For intra-agency agreements with a period of performance starting at the beginning of a fiscal year, the sellers will draw advance payments as soon as Delphi opens for processing current year transactions.

All Intra-agency agreements with OST must use DOT Form 2300.1a. For Intra-Agency Agreements with the John A. Volpe Transportation Systems Center (Volpe Center), see the FAA Acquisition Executive (FAE) Memorandum "Intra-Agency Agreements (IAAs) with Volpe" dated December 8, 2017 at [fast.faa.gov/PPG\\_Procurement.cfm](http://fast.faa.gov/PPG_Procurement.cfm) for further guidance. Volpe Center Intra-agency agreements

are otherwise processed in PRISM in accordance with detailed business process instructions (FAA only).

(4) *Other Transactions.*

(a) An Other Transaction (OT) is typically an agreement between FAA and a non-Federal entity (either foreign or domestic) where FAA's purpose is to obtain a direct benefit that advances the agency's mission while also providing assistance to the general public. In some cases, including multi-party transactions, an OT provides the flexibility to develop partnering relationships with industry in meeting agency objectives. For example, FAA may enter into an OT agreement with another party to jointly develop a system, which FAA may eventually purchase through a procurement contract, but the system might also be purchased by airport authorities and foreign air traffic organizations. Another instance might be the construction of a fence, or the laying of cable that would benefit the airport authority (or the general public) and the FAA facility at the airport.

(b) In addition to joint funding agreements, in-kind contributions are allowed. The FAA is specifically authorized to use or accept the services, equipment, personnel, and facilities of non-Federal entities and to cooperate with them in the use of FAA's services, equipment, personnel, and facilities.

(c) OT agreements should be carefully drafted to avoid the inadvertent creation of a joint venture, which is separate legal entity formed to accomplish a discreet purpose. As a general rule, all parties to a joint venture agreement have joint and several liabilities for all claims arising under the agreement. In addition to other legal consequences, such agreements violate the Anti-deficiency Act and are prohibited.

(d) The CO must report all OT Agreements funded by the Department of Defense (DoD) and Department of Homeland Security (DHS) to USASpending.gov via FPDS. For OT Agreements funded by other sources, the CO must report all other financial assistance awards including any modifications totaling \$3,500 or more to USASpending.gov via the Federal Assistance Broker Submission system (FABS).

(5) *Section 106 Cooperative Agreements Distinguished.* FAA also has broad authority under 49 U.S.C 106 to enter into cooperative agreements with any Federal and non-Federal entity on such terms and conditions as the Administrator may deem appropriate. These agreements are used to provide assistance to a recipient and are more fully covered in Section 2 below.

(6) *International Agreements.*

(a) Agreements with foreign governments or quasi-governmental entities are most commonly used to establish a technical assistance or research and development relationship between FAA and the foreign entity. In such instances, FAA's interest is in encouraging aviation safety outside the United States pursuant to 49 U.S.C. 40113(e).

(b) When a foreign government is a party to the transaction, the agreement is a government-to-government agreement governed by international law. The FAA must obtain Department of State (DOS) clearance on the negotiation and final terms of such agreements.

(c) In negotiating agreements with foreign private civil aviation authorities and other quasi-governmental entities, FAA consults with DOS on foreign policy issues that might arise under such agreements.

(d) The program office lead or CO should coordinate with the Office of International Aviation (API), which has organizational responsibility for coordinating the agreement with the DOS and the responsible U.S. embassy, and for transmitting the agreement to the foreign entity for signature.

(e) Department of State clearance is not required for agreements with private contractors; however, the program office lead may consult with API in appropriate circumstances.

(f) *Approval of Administrator.* The FAA Administrator or designee must approve equipment purchases by a foreign government or quasi-governmental entity under any FAA prime contract.

(7) *Reimbursable Agreements and Other Transaction Reimbursable Agreements.* Agreements under which FAA provides services, supplies, or facilities to another Federal agency or non-Federal entity is a reimbursable agreement, and AMS Guidance T3.8.1A.5 must be followed. See also the FAA Financial Manual, Vol 4 Ch 6, and Reimbursable Agreement Standard Operating Procedure (SOP)"Creating, Executing, and Implementing Reimbursable Agreements" (FAA only) for reimbursable agreements and approved templates.

### *c. Requirements.*

(1) All agreements must be in writing and should contain a clear statement of requirements, applicable terms and conditions, the legal authority for the agreement, termination and dispute resolution provisions, and where appropriate, a fund citation and payment provision.

(2) There is no requirement for competition or public announcement.

(3) *Justification.* Each agreement must be supported by a written statement describing the technical, program, or business reasons justifying the agreement. If the agreement is an OT, the justification must also include a rationale for using an OT over other types of agreements, i.e. procurement contracts, grants, cooperative agreements, interagency agreements, and intra-agency agreements. The procurement or real property contracting officer (CO), acting within the warrant authority commensurate with the total estimated dollar value of the requirement, approves the written rationale. Agreements valued at \$10 million or more are also subject to Chief Financial Officer (CFO) approval as required by AMS Guidance T3.2.1.4, and the justification must be included in the business case submitted as part of the CFO review package.

(4) Agreements with private entities and public authorities, other than Federal agencies, may take the form of a memorandum of understanding or memorandum of agreement. A memorandum of understanding is not legally binding on the Government, while a memorandum of agreement creates a legally binding commitment.

(5) *Content.* All agreements must be in writing and at a minimum contain:

- (a) A clear statement of requirements;
- (b) The term of the agreement;
- (c) Procedure for modifications;
- (d) The legal authority for the agreement;
- (e) Termination and dispute resolution provisions;
- (f) A fund citation and payment provision, if appropriate, or description of in-kind contribution of both parties; and
- (g) Other terms and conditions, as appropriate, addressing such matters as intellectual property and indemnification provisions, and restoration and disposition of Government property.

(6) *Requirements for Agreements with Federal organizations.* All FAA agreements (including interagency and intra-agency agreements (except as noted below)) with Federal departments, agencies, or entities must include:

- (a) The common agreement number and the funding source;
- (b) The Treasury Account Symbol (TAS), or appropriation code, for both parties;
- (c) The Business Event Type Code (BETC) for both parties;
- (d) The effective date and duration of the agreement, to include the expiration of the funding source;
- (e) The amount and method of payment;
- (f) The Business Partner Network (BPN) number for both parties (which is equivalent to the Data Universal Numbering System (DUNS) Number for civilian agencies and the Department of Defense Activity Addressing Code (DoDAAC) for Defense agencies);
- (g) The method and frequency of performance (revenue and expenses) reporting;
- (h) If applicable, provisions for advance payments and method of liquidating such advance;
- (i) The parties' right to modify, cancel, or terminate the agreement;
- (j) A dispute resolution provision specifying that disputes must be resolved pursuant to the procedures and standards of the Business Rules for Intergovernmental Transactions described in the Treasury Financial Manual, Volume 1, Bulletin 2007-03, Section VII;

(k) A cancellation provision specifying that if a buyer, or requesting agency, cancels the order, the seller, or providing agency, is authorized to collect costs incurred before cancellation of the order plus any termination costs; and

(l) Point of contact information for CO, Contracting Officer's Representative (COR), and accounting office.

All FAA Intra-agency agreements with the OST must use DOT Form 2300.1a in accordance with (b)(3) above.

d. *Authority.*

(1) *General Authority.* 49 U.S.C. 106(l) (6) and/or 106(m) should be cited as general authority for all agreements, except where DOD exception applies, or where the agreement is with a foreign government to provide technical assistance. In Sections 49 U.S.C. 106(l) (6) and 106(m), Congress provided FAA with specific authority to "enter into and perform such contracts, leases, cooperative agreements or other transactions as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate."

Section 106(m) also clarifies that FAA may use or accept the services, equipment, personnel, and facilities of another Federal agency, as well as a private or public entity and may do so with or without reimbursement. That section also provides specific authority to the head of another Federal agency to make the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. Additionally, the head of another Federal agency is authorized, notwithstanding any other provision of law, to transfer to, or receive from the FAA non-administrative supplies or equipment without reimbursement.

(2) *Joint Activities with DOD.* For joint activities between DOD and FAA described in subparagraph b.(2)(b) above, the legal authority in 49 U.S.C. 40121(c)(2) may also be used.

(3) *Technical Assistance Agreements with Foreign Governments.* For technical assistance agreements with foreign governments described in Section b.(6) above, the legal authority is 49 U.S.C. 40113(e).

(4) *Parallel Authorities.* The Federal Aviation Act contains other specific program authorities applicable to certain types of agreements, which may be cited as parallel authority where appropriate. Legal counsel should be consulted for additional guidance in selecting any of the listed authorities. (See Appendix Attachment 1, *Parallel Authorities.*)

e. *Format.*

(1) *Other Transaction - Memorandum of Agreement (MOA).* Where the FAA intends to create a legally binding commitment with a non-Federal entity through an "Other Transaction," a Memorandum of Agreement should be executed by the parties. Appendix D of this section contains a sample format. ([See AMS Guidance T3.8.8.C for sample No Cost Land On-Airport Memorandum of Agreement \(MOA\).](#))

(2) *Other Transaction - Memorandum of Understanding (MOU)*. A Memorandum of Understanding is an agreement to agree and is not legally binding on either party. MOUs are appropriate where the parties seek only to memorialize policies and procedures of mutual concern, or describe other relationships *that are not intended to create legally binding obligations*.

(3) *Interagency Agreement, Intra-agency Agreement, and Cooperative Agreement*. Appendix D of this section contains sample formats for these types of agreements (except for Intra-agency agreements with OST that must use DOT Form 2300.1a as specified above in lieu of using the sample format for Intra-agency agreements).

(4) *Reimbursable Agreements (where FAA is the servicing agency)* AMS Guidance T3.8.1A.5 must be followed. See also the FAA Financial Manual and Reimbursable Agreement SOP for reimbursable agreements and approved templates (FAA only).

f. *Funding*.

(1) *General*. Funds must be obligated to an agreement within the period of their availability consistent with the purposes of the appropriation. Additionally, when FAA funds are obligated under an agreement with a servicing agency, the obligation maintains the same impact and restrictions when it is transferred to the servicing agency. For example, funds from the FAA's Operations, RE&D and F&E accounts may be used only for the purposes of the appropriation and do not lose their character once transferred to the servicing agency. Likewise, when FAA is the servicing agency, an obligation against an appropriation of a requesting agency maintains the same impact and restrictions as the appropriation of origin.

(2) *Economy Act*. Where the Economy Act is cited, funds must be obligated by the servicing agency **prior to expiration**, i.e. if the servicing agency is to perform the work itself, performance of the work must begin prior to that date. If the agency is to acquire the product or service through contract, the contract must have been executed and funds obligated to the contract prior to their expiration date. Any funds not properly obligated by the servicing agency must be returned to the requesting agency prior to their expiration date.

(3) *Military Interdepartmental Purchase Request (MIPR)*. The DOD uses MIPRs as the primary document to order goods or services from the FAA. The MIPR includes a description of the work or services DOD is requesting from the FAA, the unit price, the total price, and a fund cite. The FAA CO or other FAA official designated by their Directorate may accept the MIPR on behalf of the FAA. The person authorized to accept the MIPR should ensure the MIPR contains a clear statement of requirements before accepting the MIPR on behalf of the FAA. The DOD may use MIPR (DD Form 448) and Acceptance of MIPR (DD 448-2) to order goods from FAA. The Acceptance of MIPR Form specifies whether the identified work will be provided through reimbursement (Economy Act) or by the direct citation of funds (based on other authority) or a combination of both. Where FAA agrees to an MIPR based on reimbursement pursuant to the Economy Act, then the rules in subparagraph f.(2) above apply. If FAA accepts the funds on a direct cite basis, DOD will not record the funds as obligated until FAA provides DOD with a contract or other obligating document that cites the funds.

(4) *Other Situations*. Where the Economy Act is not cited as authority for FAA, funds are obligated at the time FAA signs the agreement and places funds on the agreement.

(5) *Disposition of Funds Received.* Funds received under an Agreement shall be credited to the appropriation from which the expenses were incurred, unless otherwise required by one of the specific program authorities cited in Paragraph D, Appendix Attachment 1, *Parallel Authorities*, or current and prior appropriation acts.

*g. Approval and Execution.*

(1) *Review and Approval.* The Administrator has delegated authority to award contracts, cooperative agreements and other transactions to the FAA Acquisition Executive (FAE); provided that the Administrator is given an opportunity to review any grant or cooperative agreement (other than those awarded under the preexisting authority contained in 49 U.S.C. 44912, 44505, and 47101, et seq.), or other transaction with a total cumulative value equal to, or greater than \$10 million, or which is of significant congressional interest.

The FAE subsequently redelegated this authority to the Chief of Contracting Office (COCO) for headquarters, service areas, and centers. The COCO may redelegate the authority to other qualified individuals, such as regional administrators, center directors, and purchase card program manager. Except for the purchase card program manager, the individuals receiving delegated authority from the COCO may not redelegate their authority.

The following factors, which are not all inclusive, typically indicate that the Administrator's review is required:

- (a) The total cumulative value equals or exceeds \$10 million; or
- (b) The total cumulative value is less than \$10 million, but the following conditions are present:
  - (i) The transaction is the subject of one or more congressional inquiries; or
  - (ii) The transaction is described in a statute, committee report, or agency budget; and
  - (iii) Either the schedule, performance, or estimated cost baseline will be significantly breached by 20% or more.

(2) *Execution of the Agreement.* The CO, or other employee who has been delegated such authority, executes the agreement on behalf of the FAA, provided that the estimated dollar value of the agreement does not exceed that individual's delegated authority.

*h. Legal Review.* All agreements require legal review prior to execution. Ideally, legal counsel should be involved at the early stages of the award process to assist with selection of the appropriate legal instrument, drafting appropriate terms and conditions, and other legal issues. AGC-7 in consultation with AGC-500 is responsible for providing legal review of all international government to government agreements and agreements with international quasi-governmental entities. In the Europe, Africa and Middle East (EAME) Region, AEU-7 provides legal review for agreements with foreign governments and quasi-governmental entities. AGC-500 and regional counsel are responsible for providing legal

review on all other agreements and will consult with AGC-7 on any agreements that may have foreign policy implications.

i. *Chief Financial Officer Approval.* Agreements valued at \$10 Million or more must be approved by the Chief Financial Officer (CFO) as required by AMS Guidance T3.2.1.4. The package submitted for CFO approval must include a justification as described in paragraph (c)(3) above as part of the business case. The justification must include a market analysis and supporting documentation for all alternatives considered.

j. *Disputes.* Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute may be resolved by the FAA Administrator, or designee whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding (see e.g. 49 U.S.C. 46110).

## **2 Section 106 Cooperative Agreements** Revised 4/2017

### a. *Applicability.*

(1) This section applies to cooperative agreements for services, supplies and real property issued under the authority of 49 U.S.C. 106 (l) and (m).

(2) FAA Order 9550.7A implements the Research Grants Program authorized by Public Law 101-508, Sections 9205, 9208, codified at 49 U.S.C. 44511, 44512 and Public Law 101-604, Section 107, codified at 49 U.S.C. 44912. Except for Chapter 8, Sections 1-4, 6-8, the provisions of FAA Order 9550.7A **do not** apply to cooperative agreements issued under the authority of 49 U.S.C. 106 (l) and (m).

### b. *Authority.*

(1) *General.* In Public Law 104-264, Congress provided the FAA with specific authority to "enter into and perform ...cooperative agreements...as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate" (see 49 U.S.C. 106(l)(6) and 106(m)). By its express terms, the statute applies to all activities of the agency and is not limited to research activities, or to non-profit entities (see for example, 49 U.S.C 44512).

(2) *Grants.* Public Law 104-264 does not provide new or additional authority to award grants, which continue to require specific program authority either in an appropriation or authorization statute.

### c. *Definitions.*

(1) *Cooperative Agreement.* A cooperative agreement is a legal instrument used when the principal purpose of the relationship is to transfer a thing of value to a recipient, either public or private, to carry out a public purpose of support or stimulation authorized by law instead of acquiring (by purchase, lease or barter) property or services for the direct use or benefit of the agency and there is substantial Federal

involvement in the activity. For example, the FAA might enter into a cooperative agreement with a university to provide funding to support research on fire resistant fabrics for use in aircraft that do not produce poisonous fumes. The agency's principal purpose is to stimulate the development of fire resistant fabrics to benefit the general public. The benefit to the FAA is indirect - improved safety for aircraft passengers, which also supports the mission of the FAA.

(2) *Grant*. A grant is similar to a cooperative agreement except that a grant does not require substantial involvement by the FAA in the performance of the effort. Substantial FAA involvement may be necessary when an activity is technically or managerially complex, or requires extensive close coordination with other federally supported work or multiple recipients.

d. *Appropriations*.

(1) *General Principles*.

(a) The core principles governing the obligation of Federal funds apply to cooperative agreements: appropriations may be used only for the purpose(s) for which they were made; funds must be obligated within the period of their availability and may not exceed the available appropriation. The bona fide need rule also applies; however, the prohibition against augmentation of obligations does not apply to transactions authorized by 49 U.S.C 106 and the credit back provisions of current and former FAA appropriations statutes.

(b) As a general rule, funds awarded under a cooperative agreement lose their character as Federal funds after award and are not subject to the same restrictions as when the Federal government itself spends appropriated funds. There are exceptions to this rule, including situations where a statute, program legislation, agency regulations or the grant agreement provides otherwise. For example, Title VI of the Civil Rights Act, 42 U.S.C. 2000d prohibits discrimination on the basis of race, color or national origin under any program or activity receiving Federal financial assistance. Similarly, the Rehabilitation Act of 1973, as amended, prohibits discrimination against handicapped individuals in any program or activity that receives Federal financial assistance.

(c) The statutory prohibition against advance payments does not apply, as the policy underlying the prohibition (payment for supplies and services upon receipt) is not relevant to an assistance relationship.

(d) F&E funds may be used for cooperative agreements only where the following three criteria are met: (a) the primary purpose is to benefit the public rather than FAA, (b) there is substantial FAA involvement, and (c) funds will be used to acquire, improve or establish air navigation facilities.

(2) *Office of Management and Budget (OMB) Guidance*. Several OMB Circulars imposed restrictions on projects funded with Federal funds. These Circulars A-21, A-87, A-102, A-110, and A-122 have been superseded by OMB Guidance "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" at <https://www.federalregister.gov/documents/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards> ("OMB Uniform Guidance").

In construing FAA's authority under 49 U.S.C. 106, the FAA's policy is to follow this OMB Uniform Guidance to the extent this OMB Uniform Guidance is consistent with the FAA's Acquisition Management System and the Administrator's authority to implement "such terms or conditions as the Administrator may deem appropriate."

e. *Content.* All cooperative agreements shall be in writing and should contain the following provisions:

- (1) A clear statement of purpose,
- (2) The legal authority for the agreement,
- (3) A description of the intended beneficiary,
- (4) A description of the level of FAA involvement,
- (5) The term of the agreement,
- (6) Authority and procedure for modifications,
- (7) Level of funding commitment and any limitations or conditions, e.g. milestone payments where the Government's share is distributed at the same ratio as the recipient's share,
- (8) Recipient standards - cost accounting; financial management systems; procurement, technical capability, property management and management organization, technical capability,
- (9) A fund citation and payment provision, if appropriate, or description of in-kind contribution of each party,
- (10) Allowable Costs. Describe any unallowable costs, e.g. profit and fee,
- (11) FAA's right to audit for a stated period of time,
- (12) Mandatory clauses if Federal funds are obligated, e.g. anti-lobbying, compliance with civil rights laws (see subparagraph 2.d., *Appropriations*, above.)
- (13) Small business opportunities,
- (14) Suspension/termination (a cooperative agreement may not be transferred to another recipient without the express, written consent of the FAA prior to the transfer),
- (15) Dispute resolution,
- (16) Debarment/suspension. (Cooperative agreements funded with Federal funds should not be awarded to suspended or debarred entities (at any tier). Appropriate flow through provisions should be included in the Agreement to prohibit sub-awards to suspended or debarred parties.)

(17) Other terms and conditions, as appropriate, such as indemnification and intellectual property.

f. *Evaluation/Selection of Recipients.* Cooperative agreements may be awarded at the discretion of the FAA on a non-competitive basis; however competition is encouraged whenever practicable. The following factors and any others appropriate for the particular proposal should be considered:

- (1) Technical merit and program value,
- (2) Cost/contribution of the parties,
- (3) Capability of the recipient to accomplish the objectives of the cooperative agreement.

g. *Justification.* Each cooperative agreement should be supported by a written justification describing the following:

- (1) The purpose of the cooperative agreement,
- (2) The expected benefit to the recipient and the general public,
- (3) FAA's substantial involvement in performance of the activity, and
- (4) The method for selection of the recipient(s).

h. *Administration.* Cooperative agreements awarded under this authority will be administered by the awarding activity subject to the continuing oversight of the FAA Acquisition Executive (ACQ-1), who is authorized to redelegate this authority, as appropriate.

### **3 Gifts and Bequests** Revised 4/2020

Under 49 U.S.C. 326, the Administrator has the authority to accept any conditional or unconditional gift or donation of money or property, real or personal, or of services for the FAA. Property accepted under this authority and proceeds from the sale of that property must be used, as nearly as possible, under the terms of the gift. Typically, a gift is characterized by the following criteria: (1) a unilateral transfer to the Government, with or without conditions; (2) the FAA is not obligated to provide anything in return; and (3) there is no continuing relationship with the donor. For example, an airport offers to purchase and provide the FAA with a system such as a MALSR, provided that the FAA places it at that airport, and the FAA is not required to provide anything in return, but is required to maintain the equipment. In that situation, the airport is making a gift and the organizational unit must process the transaction based on the above criteria as well as Chapter 6.19 of the FAA Financial Manual at <https://my.faa.gov/org/staffoffices/afn/finance/policy/financialmanual.html>. If the airport also requires FAA to service its MALSR's in return, a procurement contract should be used as the FAA would be procuring a system by providing services as consideration. If the airport retains title to the MALSR, but the FAA would be responsible for its maintenance, the agreement should be an "other transaction."

### **4 Interagency Procurement** Revised 4/2020

a. **Applicability.** This section applies to interagency procurement of services, supplies and real property. An interagency procurement is a type of interagency transaction in which one Federal agency (requesting agency) uses the contract vehicles and/or contracting services of another Federal agency (servicing agency) or agencies in order to obtain supplies, services, or real property. This section does not apply to orders placed under the General Service Administration's Federal Supply Schedules contracts, which are covered by AMS Policy 3.8.3 and AMS Guidance T3.8.3 "Federal Supply Schedules."

b. **Requirements.**

(1) **Procurement Laws and Directives.** Where FAA procures services, supplies or real property through another Federal agency contract or uses its contracting services, FAA is subject to the procurement laws applicable to that agency. In a similar vein, unless authorized by statute or regulation, other Federal agencies may not conduct acquisitions using the FAA's exemptions from acquisition laws. Joint activities with DOD as defined in AMS Guidance T3.8.1.A.1(b)(2) may be conducted using FAA AMS policy and procedures.

(2) **Best Interest Determination.** Each interagency procurement in which FAA is the requesting agency must be supported by a written best interest determination. The procurement or real property contracting officer (CO), acting within the warrant authority commensurate with the total estimated dollar value of the requirement, approves the determination. If the procurement is valued at \$10 million or more and requires CFO review and approval under AMS Guidance T3.2.1.4, the best interest determination must be done as part of the business case included in the CFO review package. The best interest determination must address the following elements:

(a) **Suitability.** Explain how use of the servicing agency's contract vehicle likely to result in a quality outcome that meets FAA's requirements and schedule, taking into account planning considerations described in AMS Policy 3.2.1 "Procurement Planning." For procurements valued at \$10 million or more, the determination must include information on the market analysis conducted.

(b) **Value.** Explain how use of another Federal agency's contract vehicle the most efficient and cost-effective means of procuring the services, supplies, or real property, as opposed to using a current FAA contract vehicle or placing a new contract directly with a vendor. Any servicing agency fees should be taken into account in assessing value.

(c) **Expertise.** Explain how the procurement team, including both contracting and program personnel, have the appropriate time, training, and expertise to effectively place and administer the contract work. The procurement team would consist of FAA personnel for a direct procurement - those in which FAA places an order directly with the contractor on another Federal agency's contract. The procurement team would consist of servicing agency personnel, possibly working in conjunction with FAA personnel, for an assisted procurement – those in which the servicing agency provides contracting support (such as conducting a task order competition) in addition to agreeing to allow FAA to use its contract(s).

(3) Templates. When FAA is the servicing agency in an assisted procurement, T3.8.1.D.2, Attachment 2, Sample Interagency Agreement, must be used. If the FAA is the requesting agency, a template or form required by the servicing agency may be used. Regardless of the template format, the CO must ensure the roles and responsibilities of the respective parties are described clearly in the agreement, including specifics on tasks such as performance monitoring, inspection and acceptance, approval of invoice payments, and restoration and disposition of property. For direct procurements, no interagency agreement document is required, but COs and program office personnel must use any templates required by the servicing agency in placing the order.

(4) Unsolicited Proposals. An interagency procurement may be used for acceptance of an unsolicited proposal, in addition to use of a single source contract action as described in AMS Guidance T3.2.2.6.A.5. Unsolicited proposals must be considered and processed in accordance with AMS Policy 3.2.2.6 and AMS Guidance T3.2.2.6 “Unsolicited Proposals,” but if an interagency procurement is used instead of a single source action, the interagency procurement best interest determination would replace the single source justification required under T3.2.2.6.A.5(b)(2).

(5) Review and Approval. Review and approval requirements for interagency procurements are the same as those for other FAA procurements.

(6) Administration. The CO administering an agreement for an assisted interagency procurement must ensure that the terms and conditions agreed to by the parties are reviewed at least annually for agreements that exceed one year. The FAA review should involve the CO, program office, and other technical and legal experts as necessary. The review should consist of a reexamination of the agreement, as supported by the best interest determination, in order to assess whether the agreement is meeting the needs of FAA. If the agreement is not meeting FAA’s needs, the review team should discuss these issues with the other party and amend or terminate the agreement as appropriate and allowed by the terms of the agreement. The annual assessment must be signed by the FAA CO and the reviewing official of the other party and documented in the agreement file.

(7) Documentation. COs entering into an agreement for an assisted interagency procurement must use the Interagency Agreement File Checklist in the FAST Procurement Forms when documenting the agreement file.

#### c. Authority.

(1) 49 U.S.C. 106(l) (6) should be cited as general authority for all assisted interagency procurement agreements.

(2) Where the FAA seeks to obtain supplies or services through another agency’s prime contract and to make advance payments, the Economy Act, 31 U.S.C 1535 should be cited as additional authority for FAA. In most cases, the Economy Act also provides authority for the other Federal agency.

## **5 Reimbursable Agreements and Other Transaction Reimbursable Agreements**

Revised 7/2014

a. *Applicability.* This section applies to reimbursable agreements for services, supplies and facilities where FAA is the servicing agency and another Federal agency or non-Federal entity is the requesting agency or the sponsor. There is no obligation of FAA funds associated with reimbursable agreements. This process does not apply to Small Scale Reimbursable Agreements (SSRAs), which are defined as reimbursable agreements with a total estimated value of less than \$30,000.

b. *Requirements.*

(1) When FAA provides services, supplies, or facilities to another Federal agency or non-Federal entity, FAA is essentially a contractor and subject to the terms and conditions of the requesting agency. When possible, FAA should use FAA-approved templates. If not possible, FAA should ensure that the other (sponsor) Federal agency's or the non-Federal entity agreement addresses the content required by T3.8.1A1.c(5). In addition to the requirements of AMS for reimbursable agreement, each CO must be familiar with and adhere to the requirements of FAA Order 2500.35D, the FAA's Financial Manual, and the FAA Reimbursable Agreement SOP referenced in T3.8.1A1.b(7).

(2) *Business Case Determination.* Each reimbursable agreement in which FAA is the servicing agency must be supported by a written business case determination that it is in the best interest of the agency to provide the service, supply or facility. The business case must also identify the benefits derived by FAA. This determination must be signed by the director of the program office, or their designated representative, and address the policy contained in Section 9 of FAA Order 2500.35D. The CO must ensure that one has been completed but determination as to whether or not the rational basis is appropriate and sufficient and whether to proceed with the reimbursable agreement lies with ABU. The CO will contact ABU with any concerns, and ABU will address them as needed with the program office.

c. *Reimbursable Agreement Process.*

(1) The program office will input a zero-dollar purchase request (PR) into the PRISM system to initiate a CO's involvement. See No Cost Requisitions and Awards (FAA only).

(2) The CO coordinates with the program official based on their PR and business case to evaluate the requirement that is needed by the requesting agency and the reimbursable agreement template chosen by the agreement coordinator.

(a) If using a modifiable agreement template, the CO will work with the agreement coordinator to determine any unique terms and conditions.

(b) If the project sponsor/requesting agency requires that FAA use their reimbursable agreement template, then the CO will ensure compliance with T3.8.1A1.c(5) and that the FAA as the servicing agency has the ability to comply with the requesting agency's requirements.

(3) If there are any assets to be acquired as part of the reimbursable agreement that must be capitalized, the program office/agreement coordinator is responsible for identifying these

assets in Section 4 of the reimbursable agreement. If Section 4 identifies assets, the CO must ensure that a copy of the agreement is provided to the Regional Capitalization Team and comply with FAA standardized asset capitalization procedures.

(a) Actual asset value may not be cited in the reimbursable agreement at time of execution; however, document must at least identify the asset.

(b) Software is an asset that must be capitalized.

(4) The program office is responsible for all aspects of pricing their services, supplies or facilities to ensure full reimbursement. Any negotiations between the requesting agency and the servicing agency will be conducted by program officials, and not the CO. The CO will need to check the Reimbursable Datasheet specifically Section 3, and ensure that the agreement amount and overhead percentage amount match the pricing on the reimbursable agreement. If the data sheet states that the overhead has been waived, the CO should access the reimbursable tool to validate that a properly executed “Reimbursable Agreement Waiver Request Form” has been uploaded. Since there is no obligation of dollars by the FAA, the role of the CO is to document the agreement made between the requesting and servicing agencies.

(5) As the servicing agency, the CO will sign the reimbursable agreement first and then forward to the requesting agency for final signature. The CO must have specific reimbursable agreement warrant authority for the total estimated potential value of the reimbursable agreement to sign the agreement even though the CO is not obligating dollars. Upon receipt of a fully executed reimbursable agreement from the requesting agency the CO will “award” the document in PRISM and annotate in the “notes” section the corresponding reimbursable agreement number assigned by the reimbursable tool and distribute the document to all applicable parties.

(6) *Reimbursable Agreement Administration.*

(a) *Invoicing and Payment.* The Accounting Office prepares the invoice and sends to the requesting agency for payment according to the terms and conditions in the reimbursable agreement. If the requesting agency's payment is more than 30 days past due, the program official notifies the CO and the CO contacts the requesting agency for payment. If no payment is received in the next 30 days, the issue is raised to successive levels of management within the contracting office for resolution.

(b) *Funding Log.* The CO is responsible for maintaining, as part of the contract file, a funding log to track all funds received from sponsor, either lump sum or incremental funding distribution. Acceptance of these funds will be executed by the CO. *The Program office is also responsible for tracking the funds.*

(c) *Performance.* The program office is responsible for monitoring performance. If the FAA is unable to fulfill the terms of the reimbursable agreement, the program office must notify the CO to initiate discussions with the requesting agency and possible termination of the agreement.

(d) *Modifications.* For reimbursable agreements the FAA as a servicing agency is acting in the capacity of a contractor. If a modification is required to the reimbursable agreement the requesting agency will initiate the modification. However, if the requesting agency asks the CO of the servicing agency to write the modification the CO will sign it, and forward to the requesting agency for CO signature. In no event will the FAA CO obligate or deobligate requesting agency funds.

(e) *Incremental Funding, Overruns, and Other Funding Notifications.* The program office is responsible for tracking all expenditures and requesting additional funds as required. As expenditures near 75% of available sponsor funding, the program office will notify the sponsor agency to ensure timely receipt of funding to prevent overruns.

(f) *Termination.* The servicing agency CO will be notified in the event any contract terms have been breached which may result in termination.

(g) *Closeout.* No charges may be incurred after the period of performance has expired. When performance is complete the CO will receive notice by email through the reimbursable tool. Included in the tool will be a closeout form that has already been validated by all responsible parties in the process. The CO will contact the requesting agency/sponsor by email to see if they have received all services, supplies or facilities as stated in the reimbursable agreement. When the CO receives an email response, then they can concur in the reimbursable tool. AMZ will send out an email notice through the reimbursable tool when the reimbursable agreement has been closed out. At this point the CO will go into PRISM and close the corresponding PRISM document.

(h) There is no file records retention requirement with reimbursable agreements as the reimbursable tool is the system of record and must contain all official documents.

## **B Clauses**

[view contract clauses](#)

## **C Forms**

[view procurement forms](#)

## **D Appendix**

## 1 Attachment 1 - Parallel Authorities

**49 U.S.C. 40108** - authorizes the FAA to establish training schools for FAA officers and employees. Authorizes attendance of officers and employees of other Federal entities, governments of foreign countries, and individuals from the aeronautics industry. Authorizes the Administrator to "*require payment or transfer of amounts or other consideration to offset the additional cost*" of any of "*those officers, employees, or individuals.*" **Amounts received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.**

**49 U.S.C. 40113(e)** - authorizes the Administrator to provide safety-related training and operational services to foreign aviation authorities with or without reimbursement. **Funds received shall be credited to the appropriation from which the expenses were incurred.**

**49 U.S.C. 44502 (a)(2)** - authorizes the Administrator to make an agreement with an airport owner or sponsor (includes a private owner of a public use airport) so that the owner or sponsor will provide site preparation work associated with acquiring, establishing, or improving an air navigation facility and be paid or reimbursed from the appropriated amounts (under section 48101(a)).

**49 U.S.C. 44502(d)** - authorizes the FAA to provide, by regulation, assistance, and sale of fuel, oil, equipment and supplies to an aircraft in an emergency. **The cost of the assistance may be credited to the appropriation from which the cost was paid.**

**49 U.S.C. 47301 - 47305** - provides authority to acquire, establish and construct airport property and airway property (except meteorological facilities) in foreign territory, authority to transfer property, train foreign citizens, accept payment from a government of a foreign country or international organization for facilities or services provided the government or organization, and **authority to credit funds so received to current appropriations.**

**49 U.S.C. 44903(c)** - provides authority to the Administrator to authorize an airport operator to use on a reimbursable basis, personnel employed by the Administrator, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality, to supplement State, local, and private law enforcement personnel.

**49 U.S.C. 44505(d)** - authorizes cooperative agreements on a cost-shared basis for research, engineering and development with Federal and non-Federal entities.

**49 U.S.C. 44912** - authorizes grants and cooperative agreements for research technologies to counter terrorist acts against civil aviation.

**49 U.S.C. 44913** - authorizes grants under the Explosive Detection K-9 Team Training Program.

**49 U.S.C. 44935(c)(2)** - authorizes reimbursement for travel, transportation, and subsistence expenses for security training of non-United States Government domestic and foreign individuals whose services will contribute significantly to carrying out civil aviation security programs.

**49 U.S.C. 47104** - authorizes project grants for airport development from the Airport and Airway Trust Fund.

**49 U.S.C. 47151** - authorizes the Administrator to give an interest in surplus airport property to a State, political subdivision of a State, or tax supported organization. Such surplus property may be used by the U.S. Government without charge if the President declares a national emergency.

**2 Attachment 2 - Sample Interagency Agreement** *Revised 10/2007*

**INTERAGENCY AGREEMENT**

**BETWEEN**

**THE FEDERAL AVIATION ADMINISTRATION (FAA)**

**and**

*[CO insert name of other agency] [CO*

*insert agreement number]*

**ARTICLE I. PARTIES**

*[CO also insert for both parties: Business Partner Network (BPN) number; Treasury Account Symbol (TAS) or appropriation code; and Business Event Type Code (BETC)]*

**ARTICLE 2. SCOPE**

a. Purpose:

The purpose of this Agreement between the Federal Aviation Administration (FAA) and *[CO insert name of the other agency]* is to *[CO insert description of the work to be performed.]*

b. Specific goals and objectives to be accomplished. *[CO describe the goals and objectives to be accomplished.]*:

c. Roles and responsibilities. *[CO describe roles and responsibilities of the parties.]*

**ARTICLE 3. EFFECTIVE DATE and TERM**

This Agreement is effective on the date of the last signature and shall continue in effect until *[CO insert completion date of the interagency agreement]*, or until earlier terminated by the parties, as provided herein.

**ARTICLE 4. DELIVERY/PERFORMANCE**

Work shall be accomplished according to the following schedule: [CO

insert work schedule to be followed in performing the work.]

## **ARTICLE 5. REPORTING REQUIREMENTS**

[CO describe method and frequency of reporting requirements, e.g. performance (revenue and expenses) reporting, Program Plans, Technical Reports, Progress Reports or Milestone Reporting, including financial reports, if required.]

## **ARTICLE 6. RELEASE OF TECHNICAL DATA**

No information, oral or written, concerning the results or conclusions made pursuant to this Agreement shall be published or released to the public without the prior written approval of the FAA Contracting Officer.

## **ARTICLE 7. LEGAL AUTHORITY**

This Agreement is entered into under the authority of the Federal Aviation Act of 1958, 49 U.S.C. 106(1) and 106(m), and 31 U.S.C. 1535.

*[Note 1. If this is a joint activity with Department of Defense (see T.3.8.1.b.2, Joint Activities with DOD), also cite 49 U.S.C. 40121(c) 2.]*

## **ARTICLE 8. POINTS OF CONTACT**

FAA Program Office/Technical Officer

\_\_\_\_\_

FAA Contracting Officer

\_\_\_\_\_

FAA Accounting Office

\_\_\_\_\_

Federal Agency

\_\_\_\_\_

\_\_\_\_\_

Address

\_\_\_\_\_

---

**ARTICLE 9. FUNDING AND PAYMENT**

a. Funds in the amount of \$[*CO insert amount*] are hereby obligated to this Interagency Agreement. Obligation is chargeable to Appropriation Code:

[*CO insert appropriation code here*] [*CO insert PR number here*]

[*CO insert information about expiration date of funding*]

b. A properly executed request for payment should be submitted to the FAA at the billing address identified below.

**Billing Address:**

---

---

Federal Aviation Administration

**c. Method of Payment**

[*CO insert description of method of payment*]

d. Upon termination or expiration of this Agreement, any FAA funds which have not been spent or obligated for allowable expenses prior to the date of termination and are not reasonably necessary to cover termination expenses shall be returned to the FAA.

*[Note 2. When the Economy Act is cited as authority, funds must be obligated by the servicing agency prior to their expiration, i.e. if the servicing agency is to perform the work itself, performance of the work must begin prior to that date. If the agency is to acquire the product or service through contract, the contract must have been executed and funds obligated to the contract prior to their expiration date. Any funds not properly obligated must be returned prior to their expiration date.]*

*[Note 3. Describe any other funding limitations, e.g. limits on the use of FAA funds for a multi-year contract.]*

*[Note 4. If applicable, insert provisions for advance payments and method of liquidating the advance]*

**ARTICLE 10. LIMITATION OF FUNDS**

The FAA's liability to make payments to [*CO insert name of other agency*] is limited to the amount of funds obligated hereunder, including written modifications to this Agreement.

## **ARTICLE 11. APPROVAL OF PRIME CONTRACT/MODIFICATIONS**

*[Note 5. If the FAA will obtain products or services through the other Federal agency's contractor, describe the role of the FAA Contracting and Legal Offices. Typically, the FAA reviews the underlying contract and modifications, drafts the statement of work and provides other technical assistance prior to award. FAA legal reviews the underlying contract to determine if it is in compliance with FAA specific statutes and funding limitations. The following is suggested:]*

Prior to executing any contract or modification to an existing contract in order to fulfill the requirements of Article [*CO insert Article Number*] of this Agreement, the [*CO insert name of other agency*] agency shall provide the FAA Contracting Officer with a copy of the contract or modification. The written concurrence of the FAA Contracting Officer shall be obtained by [*CO insert name of other agency*] prior to contract award, or execution of the modification.

## **ARTICLE 12. CHANGES, MODIFICATIONS**

a. Changes and/or modifications to this Agreement shall be in writing and signed by a FAA Contracting Officer and the Contracting Officer of [*CO insert name of other agency*] Agency, or their duly authorized representatives acting within the scope of their authority. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement. All requests for interpretation or modification shall be made in writing.

b. The FAA Technical Officer identified in Article 8 is responsible for the technical administration of this Agreement. The FAA Technical Officer is not authorized to make any changes that impact the cost, schedule or performance of this Agreement without the written consent of the FAA Contracting Officer.

## **ARTICLE 13. TERMINATION**

Either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, plus termination costs if any, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

[*CO will insert here any additional termination requirements that may apply, e.g. disposition of data, return, or other disposition of property to either party.*]

## **ARTICLE 14. ORDER OF PRECEDENCE**

In the event of any inconsistency between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

- a. The Agreement
- b. The Attachments

**ARTICLE 15. PROTECTION OF INFORMATION**

The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

[If appropriate, the CO may include specific provisions governing the release of data developed under the Agreement.]

**ARTICLE 16. DISPUTES**

Where possible, disputes will be resolved by informal discussion between the parties. If the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved pursuant to the procedures and standards of the Business Rules for Intragovernmental Transactions delineated in the Treasury Financial Manual, Volume 1, Bulletin 2007-03, Section VII.

**AGREED:**

<u>Federal Agency</u>	<u>Federal Aviation Administration</u>
BY: _____	BY: _____
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____

**3 Attachment 3 - Sample Intra-agency Agreement Revised 10/2007**

**INTRA-AGENCY AGREEMENT BETWEEN  
NORTHWEST MOUNTAIN VIDEO PRODUCTIONS (FAA) AND  
DEPARTMENT OF TRANSPORTATION (OST)**

The Northwest Mountain Video Productions group (ANM Video Productions) and the Department of Transportation (OST) mutually agree to the following:

**FAA RESPONSIBILITIES**

The responsibilities of ANM Video Productions under this agreement include but are not limited to the following:

- a. Provide a broadcast quality video production including storyboard construction, scripting, taping, editing, and graphics/animation not to exceed 20 finished minutes. The video (1DOT Safety Video) shall be approximately 15 minutes in length and depict safety messages provided by the various modals of the Department of Transportation.
- b. Completion of video storyboard by August 15, 1998.
- c. Completion of video script by November 25, 1998.
- d. Completion of location taping with professional talent by December 9, 1998.
- e. First cut video completion by January 15, 1999.
- f. Delivery of the finished product, with a BetaCam SP master (9 master tapes total) for distribution to OST and each participating modal on or before January 31, 1999.
- g. Distribution of one VHS format duplicate to OST and each participating modal administration.

**DOT RESPONSIBILITIES**

The Department of Transportation (OST) will reimburse ANM Video Productions (FAA) for the total cost of the product, including master tapes and VHS copies, in the amount of \$50,000.00.

Accounting Code [*CO to insert accounting code here*]

**Billing Address**

\_\_\_\_\_  
\_\_\_\_\_

NORTHWEST MOUNTAIN VIDEO PRODUCTIONS (FAA)	DEPARTMENT OF TRANSPORTATION (OST)
---	---------------------------------------

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**4 Attachment 4 - Sample Other Transaction - MOA with State, Municipality or Private Entity** Revised 10/2019

**MEMORANDUM OF AGREEMENT BETWEEN  
FEDERAL AVIATION ADMINISTRATION (FAA)  
AND**

**[CO insert Name of non-Federal Party (Parties)]**

**ARTICLE I. PARTIES**

The parties to this Agreement are the Federal Aviation Administration (FAA) and [CO insert name of Non-Federal party]

**ARTICLE 2. SCOPE**

a. Purpose:

The purpose of this Agreement between the Federal Aviation Administration (FAA) and [CO insert name of Non-Federal party] is to [CO insert description of purpose of the agreement].

b. Specific goals and objectives to be accomplished:

c. Management of the project:

d. Roles and responsibilities:

Parties are bound by a duty of good faith and best effort in achieving the goals of the Agreement e.

Contributions of the Parties:

[CO describe the contributions of each party, e.g. cost-share arrangement, in-kind contributions and total estimated project cost for both parties. Describe any limitations, e.g. risk of loss for in-kind contributions, responsibility for repairs, refurbishment, and disposition.]

f. Type of Agreement:

This Agreement is an "other transaction". It is not intended to be, nor shall it be construed as, a partnership, corporation, or other business organization.

**ARTICLE 3. EFFECTIVE DATE and TERM**

The effective date of this Agreement is the date on which it is signed by the FAA or [*CO insert name of non-Federal party*], whichever is later. This Agreement shall continue in effect until [*CO insert completion date*] or until earlier terminated by the parties as provided herein.

**ARTICLE 4. MILESTONES**

Work shall be accomplished according to the following milestones. [*CO insert information in the following spaces.*]

*Note. This schedule should be tailored as appropriate.*

<b><u>Milestone</u></b>	<b><u>Completion Date</u></b>	<b><u>Responsible Party</u></b>
Sign Agreement	_____	_____
Detailed SOW	_____	_____
Subcontract Selection(s)	_____	_____
Subcontract Approval(s)	_____	_____
Subcontract Award(s)	_____	_____
Project Completion	_____	_____

**ARTICLE 5. REPORTING REQUIREMENTS**

[*CO describe here reporting requirements, e.g. Program Plans, Technical Reports, Progress Reports or Milestone Reporting, including financial reports, if required.*]

**ARTICLE 6. INTELLECTUAL PROPERTY**

a. Rights in Data

The Government retains Government Purpose Rights in all data developed under this agreement.

"Data" means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information.

"Government Purpose Rights" means the rights to –

- (1) Use, modify, reproduce, release, perform, display, or disclose data within the government without restriction; and,

(2) Release or disclose technical data outside the government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for government purposes.

"Government Purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive acquisition by or on behalf of the government but do not include the rights to use, modify, reproduce, release, perform, display, or disclose data for commercial purposes or authorize others to do so.

**b. Rights in Inventions**

The respective rights of the Government and the other parties to this agreement are the same as those found at 3.5-10 Patent Rights - Ownership by the Contractor (January 2009).

*Note. This intellectual property provision is an example. Parties should carefully evaluate and include appropriate intellectual property provisions depending on the nature of the Agreement. For example, the FAA may wish to disclose technical data to the public for commercial or other purposes, which is not covered under the government purpose license described herein. Additionally, the Bayh-Dole Act, which governs rights in inventions made under funding agreements does not apply to agreements under the FAA's "other transaction" authority)*

**ARTICLE 7. LEGAL AUTHORITY**

This Agreement is entered into under the authority of 49 U.S.C. 106(1) and (m), which authorizes agreements and other transactions on such terms and conditions as the Administrator determines necessary.

**ARTICLE 8. POINTS OF CONTACT**

FAA Program Office/Technical Officer

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Non-FAA Party

\_\_\_\_\_

FAA Contracting Officer

\_\_\_\_\_

---

**ARTICLE 9. FUNDING AND PAYMENT**

a. The FAA will contribute \$ [*CO insert amount*] as its share of the cost to perform this Agreement. The [*Co insert name of non-Federal party*] will contribute [*CO describe schedule of in-kind contributions, if any*]. Funds in the amount of \$[*CO insert amount*] are hereby committed for the term of this Agreement. Obligation is chargeable to Appropriation Code [*CO insert appropriation code*] in procurement request number[*CO insert number*].

b. A properly executed request for payment should be submitted to the FAA at the billing address identified below.

**Billing Address:**

---

---

c. In the event of termination or expiration of this Agreement, any FAA funds which have not been spent or obligated for allowable expenses prior to the date of termination, and are not reasonably necessary to cover termination expenses shall be returned to the FAA.

**ARTICLE 10. LIMITATION OF FUNDS**

The Government’s liability to make payments to [*CO insert name of non-Federal party*] is limited to the amount of funds obligated hereunder, including written modifications to this Agreement.

**ARTICLE 11. APPROVAL OF SUBCONTRACTORS**

The Contracting Officer shall be reasonably notified in advance of entering into any subcontract. Any subcontractors and outside associates or consultants required by the contractor in connection with the services covered by this Agreement shall be limited to individuals or firms that are specifically agreed to by all parties. The contractor must obtain the Contracting Officer’s written consent before placing any subcontract.

**ARTICLE 12. AUDITS**

The Government has the right to examine or audit relevant financial records for a period not to exceed three years after expiration of the terms of this Agreement. The contractor/subcontractor must maintain an established accounting system that complies with generally accepted accounting principles. Commercial companies should ensure their record retention policies comply with this policy.

**ARTICLE 13. CHANGES, MODIFICATIONS**

Changes and/or modifications to this Agreement shall be in writing and signed by a FAA Contracting Officer and the [*CO identify representative or designee*] of [*CO insert name of non- Federal party*]. The modification shall cite the subject Agreement, and shall state the exact nature of the modification.

No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement.

#### **ARTICLE 14. TERMINATION**

In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.

[CO should include any additional termination requirements that may apply, e.g. return of property to either party or other method of disposition].

#### **ARTICLE 15. ORDER OF PRECEDENCE**

In the event of any inconsistency between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:

- (a) The Agreement,
- (b) The Attachments.

#### **ARTICLE 16. CONSTRUCTION OF THE AGREEMENT**

This Agreement is an "other transaction" issued under 49 U.S.C 106 (1) and (m) is not a procurement contract, grant or cooperative agreement. Nothing in this Agreement shall be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.

Each party acknowledges that all parties hereto participated equally in the negotiation and drafting of this Agreement and any amendments thereto, and that, accordingly, this Agreement shall not be construed more stringently against one party than against the other.

#### **ARTICLE 17. DISPUTES**

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved by [CO describe internal dispute resolution process, e.g. management of either party, or an oversight committee]. The decision is final unless it is timely appealed to the FAA Administrator, whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding.

#### **ARTICLE 18. WARRANTIES**

The FAA makes no express or implied warranties as to any matter arising under this Agreement, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that may be provided under this Agreement.

#### **ARTICLE 19. INSURANCE**

[CO insert name of non-Federal party] shall arrange by insurance or otherwise for the full protection of [CO insert name of non-Federal party] from and against all liability to third parties arising out of, or related to, its performance of this Agreement. The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by [CO insert name of non-Federal party], its employees, or contractors, or any third party acting on its behalf. [CO insert name of non-Federal party] agrees to hold the United States harmless against any claim by third persons for injury, death or property damage arising out of or in connection with its performance under this Agreement.

#### **ARTICLE 20. LIMITATION OF LIABILITY**

Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of [CO insert amount] funding obligated under this Agreement at the time the dispute arises. In no event shall the FAA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

#### **ARTICLE 21. LOWER TIER AGREEMENTS**

[CO insert name of non-Federal party] shall include Articles [CO insert article numbers] suitably modified in all lower tier Agreements, regardless of tier).

#### **ARTICLE 22. CIVIL RIGHTS ACT**

[CO insert name of non-Federal party] shall comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in Federally assisted programs and provide a certification to that effect.

#### **ARTICLE 23. OFFICIALS NOT TO BENEFIT**

AMS Clause 3.2.5-1, "Officials Not to Benefit" and Clause 3.2.5-7, "Disclosure Regarding Payments to Influence Certain Federal Transactions" are attached hereto and incorporated by reference into this Agreement.

#### **ARTICLE 24. PROTECTION OF INFORMATION**

The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

#### **AGREED:**

TBD

Federal Aviation Administration

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**5 Attachment 5 - Sample Other Transaction - Memorandum of Understanding (MOU)**

Revised 10/2007

**MEMORANDUM OF UNDERSTANDING THE  
FEDERAL AVIATION ADMINISTRATION**

**AND XYZ**

**1. Parties**

The parties to this Memorandum of Understanding ("MOU") are the Federal Aviation Administration ("FAA") and XYZ.

**2. Objectives**

The objectives of this MOU are as follows:

(a) \_\_\_\_\_

(b) \_\_\_\_\_

**3. Responsibilities of the Parties**

(a) FAA

\_\_\_\_\_

(b) XYZ

\_\_\_\_\_

**4. Funding**

**No funds are obligated under this MOU.** Each party shall bear the full cost it incurs in performing, managing, and administering its responsibilities under this MOU.

**5. Warranties**

Neither the FAA nor [*Insert name of other party*] makes any express or implied warranty as to any matter arising under this MOU.

**6. Protection of Confidential/Privileged Information**

Each party shall take appropriate measures to protect proprietary, privileged or otherwise confidential information obtained as a result of its activities under this MOU.

**7. Construction**

The parties understand and agree that this Memorandum of Understanding does not confer any legal rights, duties or obligations on either party and is not subject to dispute in any forum. Neither party is authorized or empowered to act on behalf of the other with regard to any matter, and neither party shall be bound by the acts or conduct of the other in connection with any activity under this MOU. This provision shall survive termination of this MOU.

**8. Effective Date/Term/Termination**

This MOU shall be effective on the date of the last signature of the parties and shall remain in force until terminated by mutual agreement or unilaterally by either party upon 30 days' notice to the other party.

**9. Authority**

The authority for this MOU is 49 U.S.C. 106 (f)(2)(A) and 106(l) and (m).

**XYZ**

**Federal Aviation Administration**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**6 Attachment 6 - Sample Section 106 Cooperative Agreement Revised 1/2018**

**COOPERATIVE AGREEMENT  
DTFAOI-98-C-00000  
Between  
ABC AIRLINES, INC. and  
the  
FEDERAL AVIATION ADMINISTRATION**

*Cooperative Agreement Letter*

The Federal Aviation Administration hereby enters into Cooperative Agreement No. DTFAO I - 98-C-00000 with:

ABC Airlines, Inc.

in accordance with the contributions designated in this document in Article III, Contributions of the Parties. The total funded amount of this Agreement is:

\$XXXXXXXX

The purpose of this Cooperative Agreement is to develop full Computer Assisted **Passenger Screening (CAPS) functionality for ABC Airlines, Inc.**

The period of performance for this Cooperative Agreement extends from the final signature date below to September 30, 1998. The terms and conditions of this Cooperative Agreement are described in the following pages. ABC Airlines, Inc. and the Federal Aviation Administration acknowledge acceptance of this Cooperative Agreement and agree to abide by all of the terms and conditions set forth herein. In WITNESS WHEREOF, the parties hereto affix their signatures as follows:

\_\_\_\_\_  
For ABC Airlines, Inc. For the FAA

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date of Signature Date of Signature

**COOPERATIVE AGREEMENT**

**DTFAOI-98-C-00000**

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**1. GENERAL PROVISIONS A.**

***Parties to the Agreement***

*The parties to this Cooperative Agreement (hereinafter the "Agreement") are as follows:*

- 1. The Federal Aviation Administration (FAA), an agency of the Department of Transportation, United States Government,*
- 2. ABC Airlines, Inc., (hereinafter designated "Lead Carrier"), a privately held for profit air carrier corporation subject to regulation by the FAA.*

***B. Effective Date and Milestones***

*The effective date of this Agreement is the last date of signature on the foregoing bilateral agreement letter. The following schedule applies for implementation of CAPS:*

*Milestone Completion Date Responsibility*

*Sign Cooperative Agreement 4/98 FAA, Lead Carrier*

*Convene Initial CAMCOM N/A Lead Carrier Submit*

*CAPS Development Plan 1/98 Lead Carrier Submit*

*Initial Monthly Progress Rpt\* Lead Carrier Submit*

*Initial Budget Rpt\* Lead Carrier*

*Approve CAPS Development Plan 4/98 FAA Commence*

*All CAPS Installations 3/98 Lead Carrier Complete All*

*CAPS Installations Lead Carrier Conduct Alpha Testing*

*1/98 Lead Carrier*

*Conduct Beta Testing 3/98 Lead Carrier*

*Commence Full Operations 7-98 Lead Carrier*

*\* Monthly reports thereafter*

### **C. Authority**

*This Agreement is authorized by 49 U.S. C. 106(l)(6), which permits the Administrator to enter*

*into cooperative agreements on such terms and conditions as the Administrator may consider appropriate. In addition, this Agreement is undertaken pursuant to a specific mandate by the White House Commission on Aviation Safety and Security pertaining to implementation of automated domestic passenger profiling. The goal of the Commission and of this Agreement is to raise the level of airline security for the traveling public.*

## **II. DESCRIPTION OF THE COMPUTER ASSISTED PASSENGER SCREENING (CAPS) IMPLEMENTATION EFFORT**

### **A. Background**

*During 1994 and 1995, ABC Airlines, in concert with the FAA's Aviation Security Research and Development, Human Factors Program, conducted research into Computer Assisted Passenger Screening*

*(CAPS). The purpose of the research was to evaluate the feasibility of creating a process to aid security personnel in assessing the threats posed (or not posed) by particular passengers traveling on civil aircraft.*

### **B. Objectives**

*The objectives of this Agreement are to achieve:*

*(1) Successful implementation of the basic CAPS program, as defined herein.*

*(2) Development of computer software interfaces and data retrieval methods for adapting CAPS.*

### **C. Scope**

*Lead Carrier will use the funds and in-kind contributions provided to it by the FAA, its own funds and in-kind contributions, and as appropriate, other resources as Lead Carrier is able to advance in achieving the foregoing objectives.*

*CAPS software must be Year 2000 compliant. This means that the software must accurately process date/time data, including but not limited to, calculating, comparing, and sequencing from, into, and between the twentieth and twenty-first centuries, the years 1999 and 2000, and leap year calculations. Furthermore, Year 2000 compliant technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time data with it.*

*Configuration Management of CAPS requirements and changes shall comply with FAA Security Division (ACS) directives and ACSSP amendments/changes.*

#### ***D. Coordination with Related Programs***

*The parties agree that this effort will be undertaken in coordination with other programs underway to raise the level of airline security for the traveling public, provided that no FAA funds obligated under this Agreement are used to finance or assume any obligation for other programs or initiatives, except by mutual written agreement.*

### ***III. CONTRIBUTIONS OF THE PARTIES***

*The contributions of the parties to this Agreement are as follows:*

#### ***A. FAA Contributions***

##### ***1. Cash Contributions***

*The FAA will provide cash contribution to the Lead Carrier as shown below.*

##### ***2. In-kind Contributions***

*The FAA will provide the following in-kind contributions as Government Furnished Information (GFI) subject to a schedule to be jointly determined by the parties:*

\_\_\_\_\_  
\_\_\_\_\_

##### ***3. Other Contributions***

*In addition to cash and in-kind contributions, the FAA will use best efforts to provide appropriate assistance, such as technical advice, to Lead Carrier from and through FAA operational organizations.*

## **B. Lead Carrier Contributions**

*Lead Carrier will contribute any necessary cash and in-kind resources required in excess of the FAA's contribution to achieve the objectives of this Agreement.*

## **C. Limitation of Funds**

*Notwithstanding any other provision herein, and unless expressly agreed in writing, the FAA's total cash contribution shall in no event exceed \$xxxxxx. Except as expressly stated in this Agreement, the FAA assumes no liability or obligation in connection with the implementation of CAPS functionality for any air carrier.*

## **D. Reimbursement of Costs**

*The parties agree that the FAA level of funding may not be, nor is it intended to be, sufficient to cover the costs of implementing CAPS as described in this Agreement. In the event that Lead Carrier's cash requirements are less than the FAA level of funding provided, Lead Carrier agrees to return any remaining funds to the FAA at the conclusion of this Agreement. Subject to the Limitation of Funds above, funds will be provided to Lead Carrier according to the following schedule:*

- *Fifty-percent (50%) of total amount \$xxxxxx.*
- *Fifty-percent (50%) of total amount \$xxxxxx.*

*These funds will serve to reimburse to a partial extent all reasonable, allowable, and allocable costs, excluding profit or fee in connection with such costs. In addition, while FAA funds may be used for the direct, general, and administrative expenses of accomplishing the objectives of this Agreement, in no case shall these funds be used for payment of legal or other costs for Lead Carrier relating to the formation of this Agreement. Lead Carrier will be accountable to FAA for the management of these funds and for any income earned on such funds while held in account by Lead Carrier, consistent with AMS T.3.8.1.*

*Financial reporting for funding will be in accordance with Article V, Required Submissions to the FAA.*

## **E. Selection of Alternatives**

*The FAA and Lead Carrier agree on the alternative CAPS development method as proposed by the Lead Carrier and evaluated by the FAA.*

## **IV. TECHNICAL DIRECTION**

*The parties agree on the following organization and roles for management of this Agreement.*

### **A. Management Structure**

*The CAPS implementation effort will be managed by a Cooperative Agreement Management Committee ("CAMCOM") consisting of one advisory FAA representative, the Cooperative Agreement Technical Representative (CATR), AAR-600 from the Security Equipment Product Team, Lead Carrier representation as the lead air carrier, and ABC Airlines representation (advisory only). The CAMCOM will be chaired by Lead Carrier, which agrees that the FAA and its contractors may attend and participate in all CAMCOM sessions in an advisory capacity.*

*Lead Carrier will appoint a CAPS Implementation Project Manager who will report to the CAMCOM on all operational matters and who will carry out the technical and administrative requirements of this Agreement. The Project Manager will be responsible for providing the information and documentation discussed in Article V, "Required Submissions to the FAA."*

### **B. FAA Role**

*The work performed under this Agreement is not subject to the technical direction of the FAA. The FAA CATR will perform oversight to ensure that Government funding is expended in a prudent, efficient, and effective manner. The FAA CATR is not authorized to alter the terms and conditions of this Agreement.*

## **V. REQUIRED SUBMISSIONS TO THE FAA A.**

### **CAPS Functional Specification**

*Lead Carrier shall provide a copy of the CAPS Functional Specification, for Lead Carrier's own implementation of CAPS. The Functional Specification shall demonstrate the traceability or mapping of the FAA CAPS Policy Requirements Document and all amendments to the CAPS Functional Specification of Lead Carrier. The traceability or mapping shall describe how each specific CAPS policy requirement is satisfied by the corresponding element of the Functional Specification.*

### **B. CAPS Operational Readiness Plan**

*Lead Carrier shall provide a copy of the CAPS Operational Readiness Plan to the FAA. The CAPS Operational Readiness Plan shall describe the approach for determining the completeness and readiness of Lead Carrier to bring CAPS into full operational use. The Plan shall include, but not be limited to, the following elements: (1) training completions; (2) operational procedures; (3) systems management; (4) system security; (5) maintenance; and (6) performance monitoring of CAPS as required by FAA CAPS Policy Requirements Document and all subsequent addendums.*

### **C. CAPS Quality Assurance Plan**

*Lead Carrier shall provide a copy of the CAPS Quality Assurance Plan to the FAA. The Quality Assurance Plan shall describe all activities being performed by Lead Carrier to assure the quality of all CAPS processes and products, including all CAPS life cycle artifacts and operational procedures.*

### **D. CAPS Project Plan**

*Lead Carrier shall provide a copy of the CAPS Project Plan to the FAA. The Project Plan shall describe all milestones, along with the work breakdown structure to accomplish the milestones.*

#### ***E. CAPS Monthly Project Report***

- Lead Carrier shall submit a CAPS Monthly Project Report to the FAA. The Progress Report shall include at the minimum the following information elements:*
- Accomplishments for the past month against the project plan,*
- Known technical risks in terms of a description of each risk, abatement strategies for each risk, and an indication of whether the risk is increasing or decreasing over the period,*
- Any updates to the CAPS Project Plans,*
- Progress expected to be made in the upcoming month against the current Project Plan.*

#### ***F. Alpha Test Plan and Report***

*The first test is intended to be a non-operational (not live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Alpha Test Plan to the FAA. The Test Plan shall describe the traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS alpha test shall be performed in accordance with a FAA approved test plan in an environment that will not affect the real-time operational aspects of the on-line computer reservation system. The test performed shall exercise all aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.*

*Lead Carrier shall provide formal written results to the FAA of alpha tests conducted at each CAPS implementation site. The alpha test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness alpha testing as required, and to mandate additional testing as needed.*

#### ***G. Beta Test Plan and Report***

*The second test is intended to be an operational (live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Beta Test Plan to the FAA. The Test Plan shall describe the traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS beta test shall be performed in accordance with an FAA approved test plan in an environment that affects the real-time operational aspects of the on-line computer reservation system. The tests performed shall exercise all aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.*

*Lead Carrier shall provide formal written results to the FAA of beta tests conducted at each CAPS implementation site. The beta test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness beta testing as required, and to mandate additional testing as needed.*

#### ***H. Verification of System/Software***

*Lead Carrier shall develop and use software test programs and test data to verify the correct design and construction of the CAPS software, and to correct performance of CAPS in an operational environment. In lieu of developing completely new test software and test data, Lead Carrier may utilize verification products included within the ABC Airlines developed version of CAPS. The FAA reserves the right to inspect CAPS software and systems components, and to witness actual tests performed by Lead Carrier using the test software and data. The FAA also reserves the right to utilize its own test data to verify the correct performance of CAPS.*

### ***I. Budget Report***

*The CAMCOM will provide the FAA CATR with monthly budget updates, to be prepared in a format jointly agreed to by the parties. The budget and updates are management documents prepared for the purpose of estimating project costs in the aggregate, and the fact that a cost or category of cost is not specifically identified in the budget shall not make such cost or cost category unallowable pursuant to Article III.D, Reimbursement of Costs.*

#### ***Summary of Deliverables and Schedule:***

*CAPS Functional Specification 30 days after execution of Cooperative Agreement CAPS*

*Operational Readiness Plan 60 days after execution of Cooperative Agreement CAPS*

*Quality Assurance Plan 60 days after execution of Cooperative Agreement CAPS Project*

*Plan 30 days after execution of Cooperative Agreement*

*CAPS Monthly Project Report 5 days after end of month*

*Alpha Test Plan and Report 30 days prior to test. Report: 10 days after completion of test. Beta*

*Test Plan and Report 30 days prior to test. Report: 10 days after completion of test. Verification of System/Software As requested*

*Budget Report 5 days after end of month*

*\* "Days" as shown are calendar days.*

### ***VI. INTELLECTUAL PROPERTY RIGHTS***

*The parties agree to the following stipulations regarding technology (software or otherwise) which may be developed as a consequence of this Agreement. Lead Carrier will ensure that all current and future carriers using the same CRS will have full access to CAPS functionality.*

#### ***A. Ownership Rights in Developed Technology***

*All intellectual property created or developed in the performance of this Agreement, whether in the form of patentable subject matter, copyright, trade secret information, 'know-how', or other intellectual property shall, as between the FAA and Lead Carrier, become and remain the property of Lead Carrier, either directly or by assignment from the FAA, subject only to the FAA's rights under subparagraph B. of this Article.*

#### ***B. U.S. Government Rights in Developed Technology***

*The FAA shall retain, reserve, and be granted by Lead Carrier as applicable a non-exclusive, non-transferable, irrevocable, paid-up license to use for U.S. Government purposes only, and to permit other U.S. Government agencies to use for U.S. Government purposes only, any or all of the developed technology resulting from this Agreement throughout the world. Neither the FAA nor any other U. S. Government agency shall permit any person or entity other than Lead Carrier to use the developed technology in whole or in part for commercial purposes without the express prior written consent of Lead Carrier. U.S. Government agencies may permit U.S. Government contractors to use Lead Carrier developed technology only under procurement contracts, grants, cooperative agreements, and interagency and intra-agency agreements awarded for U.S. Government purposes, with the written provision prohibiting the disclosure of developed technology and prohibiting its use for any commercial or non-U. S. Government purpose.*

#### ***C. Marking of Intellectual Property***

*Lead Carrier shall make reasonable efforts to ensure that any developed technology resulting from this Agreement is appropriately marked with legends indicating patent, copyright, or other form of ownership as may be required by law. To the extent provided by law, the U.S. Government and its employees shall be excused from liability for innocent infringement of Lead Carrier's rights in any developed technology produced under this Agreement without statutorily required markings.*

#### ***D. Survival***

*The provisions of this Article VI, Intellectual Property Rights, shall survive termination or expiration of this Agreement.*

#### ***E. Laws Governing Patents, Copyrights and Other Data Rights***

*All U.S. laws governing patents, copyrights, or other data rights shall remain in full force and effect, and the parties agree to abide by these laws.*

#### ***F. Recoupment***

*The FAA shall have the right to recoup its cash contributions under this Agreement out of any net revenues derived from Lead Carrier's licensing of developed technology resulting from performance pursuant to the Agreement. The percentage share is fixed at fifty percent (50%). The parties also agree on an expiration date for the FAA's recoupment right of ten (10) years from the expiration or termination date of this Agreement.*

## **VII. DISPUTE RESOLUTION**

*Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, either party may terminate this Agreement.*

## **VIII. TERM AND TERMINATION**

*The performance period of this Agreement is governed by the following stipulations.*

### **A. Term**

*This Agreement will remain in full force and effect from its effective date (last date of signature) through September 30, 1998.*

### **B. Termination**

*In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.*

### **C. Return of Funds**

*In the event of termination or expiration of this Agreement, any FAA funds which have been advanced to Lead Carrier by the FAA and which (1) have not been spent or obligated by Lead Carrier for allowable expenses prior to the date of termination, and (2) are not reasonably necessary to cover termination expenses shall be returned to the FAA. Any FAA funds which have been advanced and expended for allowable costs shall not be returned to the FAA, and Lead Carrier shall have no liability or obligation with respect to these funds, unless provided elsewhere in this Agreement.*

### **D. Termination Settlement**

*In the event of termination, no further funds will be advanced to Lead Carrier, except as reasonably necessary to effect the termination or to satisfy obligations incurred prior to the termination, consistent with the provisions of Article III.C., Federal Funding.*

## **IX. LIABILITY AND INDEMNIFICATION**

*Except as specifically provided in this Agreement, the FAA, for itself and its contractors, assumes no liability under this Agreement for loss arising out of the conduct or activities undertaken by Lead Carrier, affiliates, associates, or its contractors, or any third party in connection with this Agreement. The FAA*

*will not indemnify Lead Carrier, affiliates, associates, its contractors, or any third party against any third party claims or third party liability, but will assume liability for U.S. Government use of Lead Carrier's developed technology under the Government-purpose license granted under Article VI, Intellectual Property Rights.*

*Lead Carrier shall obtain appropriate insurance and take other appropriate steps to protect itself or others for any loss it may incur in connection with performance under this Agreement. The substance of Article IX shall be included in all contracts and other agreements with third parties at any tier. The provisions of Article IX shall survive termination or expiration of this Agreement.*

## **X. SPECIAL PROVISIONS**

### **A. FAA Agreements Officer**

*The FAA Agreements Officer has the authority to administer and modify this Agreement on behalf of the FAA.*

### **B. Notices**

*Any notice required or permitted to be given under this Agreement will be in writing and shall be either personally delivered, given by facsimile transmission, or sent by certified mail, return receipt requested, postage prepaid, or sent by Federal Express, as follows:*

*If to Lead Carrier If to the FAA: Project  
Manager Agreements Officer  
Lead Carrier, ABC Airlines Federal Aviation Administration  
Carrier Address 800 Independence Avenue, S.W*

*\_\_\_\_\_ Washington, D.C. 20591*

*Notices given hereunder will be deemed given on the date personally delivered, transmitted by facsimile, or if mailed, upon the date of signing of the Certified Mail - Return Receipt, or five days after mailing, whichever is less.*

### **C. Audit**

*The General Accounting Office, the Department of Transportation, and the FAA or its designee will have the right to review and audit the books and records of Lead Carrier and cognizant contractors (see pass-down requirement below) to the extent necessary to verify the allowability of costs under this Agreement and as otherwise required by law.*

*Lead Carrier shall maintain for the term of this Agreement and three (3) complete calendar years thereafter, such books and records as are reasonably necessary to accurately reflect its operations under this Agreement. The periods of access and examination shall continue, however, for the time necessary to dispose of appeals, litigation, claims, disputes, or exceptions arising from performance or costs/expenses incurred under this Agreement.*

*Lead Carrier shall include in contracts and agreements with other parties for the purpose of CAPS implementation, a provision granting the U.S. Government access to contractor or agreement party records for the same purposes in this subparagraph concerning audits. The provisions of this subparagraph shall survive termination or expiration of this Agreement.*

#### **D. Warranty**

*The FAA and Lead Carrier, individually and as parties to this Agreement, make no express or implied warranty as to any matter whatsoever concerning the Agreement, including accomplishment of objectives or success of the outcome.*

*These warranty provisions shall survive termination or expiration of this Agreement.*

#### **E. Force Majeure**

*Neither party will be liable to the other for any unforeseeable event not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this Agreement, and which it has not been able to overcome by the exercise of due diligence, including but not limited to natural disasters or human strife and disputes. The party unable to perform shall use its best efforts to resume performance, suspending it only for that period reasonably necessary to overcome the effects of the force majeure event. If performance is suspended for more than seven (7) days, the party unable to perform shall provide weekly progress reports with a forecast of recovery, for the period of suspension.*

#### **F. Security**

*The FAA CAPS requirements documents, including CAPS Factors and Weights, and all addendums containing policy guidance and clarification material, contain sensitive information and are subject to the provisions of 14 CFR 191. Lead Carrier agrees to take measures to ensure that this information is appropriately protected within its own organization. Public disclosure or publication of matters relating to this Agreement, including outcomes or results, must first receive the prior approval of the FAA Agreements Officer.*

*Lead Carrier shall include in contracts and agreements at any tier, the substance of this subparagraph concerning security. These security provisions shall survive termination or expiration of this Agreement.*

#### **G. Changes In Ownership**

*Lead Carrier will notify the FAA within forty-five (45) calendar days of any change in the ownership structure of Lead Carrier.*

#### **H. Lobbying Certification**

*Lead Carrier shall comply with the provisions of 31 USC 1352 prohibiting the recipient of a Federal cooperative agreement from using appropriated funds to pay any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of*

*Congress, or an employee of a Member of Congress in connection with any transaction enumerated in the foregoing Code. Lead Carrier must include a provision mandating compliance with 31 USC 1352 in all contracts or agreements which it enters under Article X.0, Contracting by Lead Carrier*

*Lead Carrier hereby declares that it has neither made nor agreed to make any payment with respect to this Agreement, using funds other than appropriated funds, which would be prohibited by 31 USC 1352 if the payment were made using appropriated funds.*

### ***I. Severability***

*In the event that any Article and/or parts of this Agreement are determined to be void, such Article or portions thereof shall lapse. No such lapse will affect the rights, responsibilities, and obligations of the parties under this Agreement, except as provided herein. If either party determines that such lapse has or may have a material effect on the performance of the Agreement, such party shall promptly notify the other party, and they shall negotiate in good faith a mutually acceptable amendment to the Agreement if appropriate to address the effect of the lapse.*

### ***J. Construction of Agreement***

*This Agreement shall be construed as an assistance agreement consistent with applicable Federal law.*

### ***K. Entire Agreement***

*This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties.*

### ***L. Amendments***

*This Agreement shall not be amended, altered, or modified except by an instrument in writing duly executed by Lead Carrier and the FAA Agreements Officer.*

### ***M. Relationship Of Parties***

*The legal relationship between the FAA and Lead Carrier shall be none other than that expressly specified in this Agreement, and nothing in this Agreement shall be construed to create any relationship of partnership, joint venture, agency, or fiduciary duty between the parties, or to impose any liability or obligation on either party except those liabilities and obligations expressly stated herein. Nothing in this Agreement shall be construed to confer any legal or equitable rights, express or implied, on any person or entity other than the parties hereto.*

### ***N. Limitation of Assignment***

*Neither party may assign its rights or obligations under this Agreement to any other entity or person without the other party's prior express written consent. Nothing in this provision, however, shall be construed to limit Lead Carrier's right to assign, license, or otherwise transfer rights to its developed*

technology to any entity or person subject to the U.S. Government's rights under Article VI, Intellectual Property Rights.

## **0. Contracting By Lead Carrier**

*Lead Carrier may enter into contracts in its own name for the purpose of carrying out the objectives of this Agreement. The terms and conditions awarded at all tiers will include such terms and conditions from this Agreement as appropriate or otherwise designated.*

## **P. Third Party Participation**

*Lead Carrier is authorized but not obligated to enlist the participation, support, or investment of third parties in the CAPS implementation project, subject to appropriate limitations regarding conflicts of interest.*

## **7 Attachment 7 - Intellectual Property - Section 106 Cooperative Agreements**

### **SECTION 106 COOPERATIVE AGREEMENTS**

#### **1.0 Patents and Inventions**

##### **1.1 Policy**

*a. The disposition of rights to inventions made by small business firms and non-profit organizations, including universities and other institutions of higher education, under FAA-assisted programs is governed by Chapter 18 of Title 35 of the United States Code, commonly called the Bayh-Dole Act, 35 U.S.C. §200, et seq. In accordance with the Presidential Memorandum entitled Government Patent Policy issued on February 18, 1983 and Executive Order 12591, FAA may apply the policies of that Act to all participants in cooperative agreements. The Department of Commerce (DOC) is the lead agency for implementing the Bayh- Dole Act and has published guidance to Federal agencies at Part 401 of Title 37 of the Code of Federal Regulations, 37 CFR §401.*

*b. FAA's standard Patent Rights clause is identical to that prescribed in 37 CFR §401.14(a) except that:*

*1. FAA has tailored the clause to apply to funding agreements (which term includes both grants and cooperative agreements), and to identify FAA as the interested Government agency;*

*2. pursuant to DOC guidance appearing in Part 401 of Title 37 of the Code of Federal Regulations, 37 CFR §401.5(d), FAA has added to paragraph b. of the clause a stipulation that FAA reserves the right to direct a recipient to transfer to a foreign government or research performer such rights to any subject invention as are required to*

*comply with any international treaty or agreement identified when the grant is made as being applicable to the assisted research;*

*3. as permitted by 37 CFR §401.5(f), FAA has added two subparagraphs to the end of paragraph f. 7 of the clause to require recipients, or their representatives to send to FAA confirmations of the Government licenses for and copies of any U.S. patents on subject inventions; and*

*4. the word "recipient" is substituted for "contractor", and "cooperative agreement" is substituted for "contract."*

*c. FAA patent policy with respect to procurement contracts is found in the Acquisition Management System, AMS. For patent policy relating to research grants, see Chapter 8, section 5 (as amended) of FAA Order 9550.7A, Research Grants Program.*

### *1.1.2 Standard Patent Rights Clause*

*Where appropriate, the Standard Patent Rights Clause found at 37 CFR §401.14, appropriately modified as explained below, should be used in every cooperative agreement awarded by the FAA unless a special patent clause has been negotiated that would better serve the interests of the FAA and the Government as a whole. The concurrence of legal counsel is required for the use of any special patent clauses that deviate from that set out at 37 CFR §401.14.*

*a. In cooperative agreements covered by a treaty or agreement that provide that an international organization or foreign government, research institute or inventor will own or share patent rights, FAA will acquire such patent rights as are necessary to comply with the applicable treaty or agreement.*

*b. If a recipient elects not to retain rights to an invention, FAA will allow the inventor to retain the principal patent rights unless the recipient, or the inventor's employer if other than the recipient, shows that it would be harmed by that action.*

*c. FAA will normally allow any patent rights not wanted by the recipient, or inventor to be dedicated to the public through publication in scientific journals or as a statutory invention registration. However, if another Federal agency is known to be interested in the relevant technology, FAA may give it an opportunity to review and patent the invention so long as that does not inhibit the dissemination of the research results to the scientific community.*

## *1.2 Copyright*

### *1.2.1 Rights to Copyrightable Material*

*The FAA shall apply the following principles governing the treatment of copyrightable material produced under FAA cooperative agreements.*

- a. FAA normally will acquire only such rights to copyrightable material as are needed to achieve its purposes or to comply with the requirements of any applicable government-wide policy or international agreement.*
- b. To preserve incentives for private dissemination and development, FAA normally will not restrict or take any part of income earned from copyrightable material except as necessary to comply with the requirements of any applicable government-wide policy or international agreement.*
- c. In exceptional circumstances, FAA may restrict or eliminate a recipient's control of FAA-supported copyrightable material (including computer software and associated documentation) and of income earned from it, if FAA determines that this would best serve the purposes of a particular program.*

#### *1.2.2 Standard Copyrightable Material Clause*

*The following copyrightable material clause should be used in every cooperative agreement awarded or entered into by FAA that relates to scientific or engineering research unless a special copyrightable material clause has been negotiated. The concurrence of legal counsel is required for the use of any special copyrightable material clauses that deviate from that set out below.*

#### **CLAUSE-COPYRIGHTABLE MATERIAL**

*a. "Subject writing" means any material that:*

- 1. is or may be copyrightable under Title 17 of the United States Code; and*
- 2. is produced by the recipient, or its employees in the performance of work under this grant, cooperative agreement or other transaction.*

*Subject writings include, but are not limited to, such items as reports, books, journal articles, sound recordings, videotapes, video discs, computer software and related documentation.*

*b. Copyright Ownership, Government License. Except as otherwise specified in the grant, cooperative agreement, or other transaction, or by this paragraph, the recipient may own or permit others to own copyright in all subject writings. The recipient agrees that if it or anyone else does own the copyright in a subject writing, the Federal government will have a non-exclusive, nontransferable, irrevocable, paid-up license to exercise or have exercised for or on behalf of the U.S. throughout the world all the exclusive rights provided by copyright. Such license, however, will not include the right to sell copies or phonorecords of the copyrighted works to the public.*

*c. Effect of International Agreements. If the cooperative agreement, or other transaction indicates it is subject to an identified international agreement or treaty, FAA can direct the*

*recipient to convey to any foreign participant or otherwise dispose of such rights to subject writings as are required to comply with that agreement or treaty.*

*d. Recipient Action to Protect Government Interests. The recipient agrees to acquire, through written agreement or an employee relationship, the ability to comply with the requirements of the preceding paragraphs and, in particular, to acquire the ability to convey rights in a subject writing to a foreign participant if directed by FAA under the previous paragraph. The recipient further agrees that any transfer of copyright or any other rights to a subject writing, by it or anyone whom it has allowed to own such rights, will be made subject to the requirements of this article.*

### **1.3 Special Patent and Copyright Situations**

#### **1.3.1 Special Grant Provisions**

*At the request of the prospective recipient, or on recommendation from FAA staff, the FAA Official authorized to award or administer the cooperative agreement, with the concurrence of the cognizant Program Manager and legal counsel, may negotiate special patent or copyright provisions when that Official determines that exceptional circumstances require restriction or elimination of the right of a prospective recipient to control principal rights to subject inventions or writings in order to better achieve the objectives of the program, the mission of the FAA, or (in the case of inventions) Chapter 18 of Title 35 of the United States Code. Every special copyright or patent provision will allow the recipient, after an invention has been made or copyrightable material created, to request that it be allowed to retain principal rights to that invention or material, unless doing so would be inconsistent with an obligation imposed on FAA by statute, international agreement or pact with other participants in or supporters of the research.*

#### **2.1 Cooperative Agreements Not Primarily for Experimental, Developmental, or Research Work**

*Cooperative agreements not primarily intended to support experimental, developmental, or research work should include appropriate patent or copyrightable material provisions when necessary to protect the interests of the FAA and the Government as a whole.*

**Sections Revised:**

**3.8.5 – Accounting Treatment of Leases**

**3.8.5 A 1 – Evaluation of Lease to Determine Accounting Treatment**

**Procurement Guidance - (~~7/2020~~ 9/2020)**

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[T3.8.5 Accounting Treatment of Leases](#) Added 1/2006 Revised 9/2020

[A General](#) Added 1/2006

[1 Evaluation of Lease to Determine Accounting Treatment](#) Added 1/2006 Revised 9/2020

[B Clauses](#) Added 1/2006

[C Forms](#) Added 1/2006

[D Appendix](#) Added 1/2006

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### **T3.8.5 Accounting Treatment of Leases** Added 1/2006 Revised 9/2020

#### **A General** Added 1/2006

##### **1 Evaluation of Lease to Determine Accounting Treatment** Added 1/2006 Revised 9/2020

Any cost lease must be evaluated prior to award to determine whether it should be classified as an operating lease, a capital lease, or lease purchase. This classification has profound effect on the amount of funding that must be scored (reserved) for the lease per the requirements of OMB Circular A-11, and COs must be aware that a capital lease is not to be entered into, unless the requesting office certifies that it has reserved appropriate funds for the capital lease IAW OMB Circular A-11 requirements. The evaluation is accomplished by the CO and the assigned accounting office. The CO follows the form directions and completes data fields on a form, "Evaluation of Lease to Determine Accounting Treatment" and submits the completed form to their supporting accounting office. Note: Some leases are "automatically" considered operating or capital leases – based on answers provided in sections 1 and 2 of the form. See form instructions for details. The lease data is entered into the accounting system and the tests are performed to determine whether the lease should be classified as operating or capital. The CO should reference the following sources for further information on lease determinations:

- (i) PRISM/DELPHI Business Process Solution: see Capital Leases
- (ii) PRISM/DELPHI Business Process Solution: see Leases
- (iii) Accounting Capitalization Desk Guide: see Accounting Capitalization Desk Guide
- (iv) OMB Circular A-11, Appendixes A & B: see OMB Circular A-1, Part 8, Appendix A and OMB Circular A-11, Part 8, Appendix B
- (v) ~~Real estate Realty Specialists and Real Estate~~ Contracting Officers refer to Guidance T3.8.8.B.8 Capitalization of Leases and Leasehold Improvements FAST; Real Property and Facilities see Real Property Guidance Section 3.1.5

#### **B Clauses** Added 1/2006

[view contract clauses](#)

#### **C Forms** Added 1/2006

[view procurement forms](#)

**D Appendix** Added 1/2006

1. Reserved for Copy of Sample personal property lease
2. PRISM/DELPHI Lease Business Process: Leases
3. PRISM/DELPHI Capital Lease Business Process: CAPITAL LEASES

**Sections Revised:**

**3.10.6 A – Termination of Contracts for Products, Services, and Construction**

**3.10.6 C – Clauses**

**3.10.6 D – Forms**

**Sections Added:**

**3.10.6 B – Termination of Real Property Contracts**

**3.10.6 B 1 – General Guidance**

**3.10.6 B 2 – Termination by the FAA**

**3.10.6 B 3 - Default**

**Procurement Guidance - (~~7/2020~~ 9/2020)**

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T3.10.6 Termination of Contracts

A Termination of Contracts for Products, Services, and Construction Revised 9/2020

1 General Guidance

2 Termination for Convenience of the FAA

3 Termination for Default

4 Delinquency Notices

5 Definitions

B Termination of Real Property Contracts Added 09/2020

1 General Guidance Added 9/2020

2 Termination by the FAA Added 9/2020

3 Default

CB Clauses Revised 9/2020

DC Forms Revised 9/2020

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## **T3.10.6 Termination of Contracts**

### **A Termination for Products, Services, and Construction Revised 9/2020**

#### **1 General Guidance**

a. The FAA termination requirements will:

1. Enable the FAA to establish contract requirements that protect the interests of the FAA;
2. Promote fair and rapid termination settlements;
3. Encourage settlement by agreement rather than by contracting officer's determination.

b. Contracting officer (CO) responsibilities. The CO will:

1. Select and include the appropriate termination clause(s) in contracts to provide the CO authority to terminate contracts for convenience, or for default;
2. Enforce provisions of termination clauses in a manner that is in the best interest of the FAA by terminating in whole or in part, for the convenience of the FAA or for contractor default;
3. Direct the contractor on how to proceed when a contract is terminated;
4. Establish a case file for each termination; retain pertinent documentation in the case file as a record of the activities related to the termination and settlement;
5. Enlist assistance of individuals with special qualifications to assist in the termination in areas such as legal, accounting, distribution, and logistics;
6. Arrange inspection of completed items, as needed;
7. Obtain title to completed end items or termination inventory, as appropriate;
8. Initiate action to obtain, all rights, titles, and interest under any subcontract terminated because of termination of the prime contract if it is in the best interest of the FAA to do so;
9. For construction contracts, direct action for site cleanup, protection of serviceable materials, removal of hazards, and any action necessary to leave a safe site;
10. Examine settlement proposal and subcontract settlement proposals;
11. Recognize the subcontractor's final judgment against the contractor, if any, as a cost of the settlement;
12. Approve subcontract settlement, unless otherwise waived by the contracting officer;
13. Initiate audits on the settlement proposal for prime and subcontractors as deemed necessary to protect the interest of the FAA;
14. Negotiate settlement agreements, when applicable, with prime contractors;
15. Issue a CO determination if a settlement agreement cannot be reached;
16. Reinstate contracts on a bilateral agreement basis when deemed in the best interest of the FAA to do so;
17. Release excess funds as quickly as possible retaining sufficient funds to settle the termination.

c. Contractor responsibilities. The contractor will:

1. Cooperate with the CO in the termination;
2. Comply with the termination clause invoked;
3. Comply with direction of the CO consistent with termination clause;

4. Stop work immediately on the terminated contract, or portion thereof;
5. Terminate all subcontracts related to the terminated portion of the contract;
6. Stop placing subcontracts under the contract or terminated portion;
7. Settle outstanding liabilities and claims arising out of subcontract terminations, with prior approval by the contracting officer;
8. Dispose of termination inventory as instructed or approved by the CO;
9. Take necessary action to protect and preserve property in which the FAA has or may acquire an interest, or, as directed by the contracting officer;
10. Advise the contracting officer of any special circumstances affecting the termination, such as a subcontractor's legal proceedings or other commitments related to the termination;
11. Perform accounting review of subcontractor settlements;
12. Submit subcontractor settlement proposals for CO approval, as requested by the CO, and settle subcontracts without prior consent of the CO;
13. Submit a settlement proposal, supported by accounting data or other data required by the CO to review the proposal;
14. Execute a settlement agreement by negotiation as quickly as possible;
15. Perform continuing portion of the contract, if any;
16. Submit any request for an equitable adjustment of price with respect to the continuing portion.

d. Termination Notices.

The CO may terminate contracts by written notice to the contractor, furnishing copies to any known assignee, guarantor, or surety of the contractor. Termination amendments will also be in written form to the foregoing parties. The CO should transmit the notice in a way to establish the time of receipt by the contractor, such as certified mail with return receipt. The CO will invoke the appropriate termination clause, indicate date of termination, direct the contractor on how to proceed, provide disposition instructions for property in which the FAA has or will have an interest, and otherwise comply with the termination clause.

e. Settlements.

1. General.

Settlements may be used in both convenience and default terminations. A settlement should compensate the contractor promptly for the work done and, possibly, preparations made for the terminated portion(s) of the contract, including a reasonable allowance for profit, when appropriate. Termination clauses define costs that may be considered. Cost principles should govern assertions, negotiations, or cost determinations relevant to termination settlements under contracts with other than educational institutions, and be a guide in negotiation of settlements under contracts for experimental, developmental or research work with educational institutions. Business judgment is an important element, in addition to accounting principles, in achieving a fair settlement.

2. Termination Settlements.

When contracts are terminated, the CO should settle all outstanding matters in a fair and prompt manner. Settlements should consider rights and liabilities of the parties such as:

- a. Costs owed the contractor for delivered/accepted supplies or services;

- b. Contractor obligation to reimburse the FAA with interest for overpayments to the contractor;
  - c. Materials acquired by the contractor for the contract that may necessitate contractor disposal;
  - d. Rights of the parties;
  - e. Construction site cleanup;
  - f. Some settlement preparation cost.
3. Approaches.
- The contracting officer may use various approaches to settle terminated contracts. Approaches that may be used include:
- a. Negotiation,
  - b. CO determination,
  - c. Cost out under vouchers in a cost-reimbursement contract;
  - d. By combination of methods.
4. Settlement Proposal.
- The CO should provide the contractor explicit direction on the preparation of the settlement proposal. Contractors should prepare and submit to the CO a settlement proposal on the outstanding liabilities and obligations of the parties. The proposal may be the basis for a negotiated settlement agreement. The proposal should cover all cost elements including settlements with subcontractors and any proposed profit. , With the consent of the CO, the contractor may file proposals in successive steps covering separate portions of the contractor's costs. Such interim proposals should include all costs of a particular type, except as the CO may otherwise authorize.
5. Settlement by Negotiation.
- Settlement by negotiation is the preferred method to arrive at a settlement agreement. The CO should document the settlement negotiation in a memorandum or similar documentation describing the principal elements of the settlement and include this as documentation in the termination file.
6. Settlement by determination.(Revised 06/2001)
- a. The CO should issue a determination to the contractor in instances where the FAA and the contractor cannot agree on a termination settlement, or if a settlement proposal is not submitted within the period required by the termination clause. The determination should state:
    - i. That it is the Contracting Officer's termination settlement determination, and
    - ii. That the amount due the contractor, if any, consistent with the termination clause and any cost principles affecting the contract. The CO should support his/her determination with schedules in sufficient detail to substantiate the basis and rationale for the amount.
  - b. The contractor may file a dispute with Office of Dispute Resolution for Acquisition based upon the settlement determination of the Contracting Officer - see termination clauses and Contract Disputes clause at 3.9.1-1.
7. Settlement Agreement.
- The settlement agreement should describe the elements of the settlement so that the obligations of the parties are clear and do not create any rights for the parties beyond

those in existence before execution of the settlement agreement. The settlement agreement will be in the form of a contract modification.

8. No cost settlement.

The CO may execute a no-cost settlement agreement if (a) the contractor has not incurred costs for the terminated portion of the contract or (b) the contractor is willing to waive the costs incurred and (c) no amounts are due the FAA under the contract.

9. Partial settlements.

Partial settlements are discouraged. The CO should attempt to settle all rights and liabilities of the parties under the terminated portion of the contract in one agreement. However, when a CO cannot promptly complete settlement under the terminated contract, he/she may enter a partial settlement reserving rights on the unresolved issues to a later time.

10. Settlement Conference.

The CO may hold a conference with the contractor to develop a definite program for effecting the settlement. When appropriate in the judgment of the CO and after consulting with the contractor, principal subcontractors may be requested to attend. Topics that should be discussed at the conference and documented include-

- a. General principles relating to the settlement of any settlement proposal, including obligations of the contractor under the termination clause of the contract;
- b. Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information that would have been delivered had the contract been completed;
- c. Status of any continuing work;
- d. Obligation of the contractor to terminate subcontracts and general principles to be followed in settling subcontractor settlement proposals;
- e. Names of subcontractors involved and the dates termination notices were issued to them;
- f. Contractor personnel handling review and settlement of subcontractor settlement proposals and the methods being used;
- g. Arrangements for transfer of title and delivery to the FAA of any material required by the FAA;
- h. General principles and procedures to be followed in the protection, preservation, and disposition of the contractor's and subcontractors' termination inventories, including the preparation of termination inventory schedules;
- i. Contractor accounting practices and preparation of SF 1439 (Schedule of Accounting Information
- j. Form in which to submit settlement proposals;
- k. Accounting review of settlement proposals;
- l. Any requirement for interim financing in the nature of partial payments;
- m. Tentative time schedule for negotiation of the settlement including submission by the contractor and subcontractors of settlement proposals, termination inventory schedules, and accounting information schedules to minimize impact upon employees affected adversely by the termination.

11. Settlement costs/profit. Settlement costs should be consistent with the termination clause invoked and the cost principles that may apply.

12. Settlement by determination. If the settlement is by determination and there is no appeal within the allowed time, the contractor should submit a voucher or invoice showing the amount finally determined due, less any portion previously paid; or there is an appeal, the contractor should submit a voucher or invoice showing the amount finally determined due on the appeal, less any portion previously paid. Pending determination of any appeal, the contractor may submit vouchers or invoices for charges that are not directly involved with the portion being appealed, without prejudice to the rights of either party on the appeal.

f. Payments.

1. Partial Payments. The CO may authorize partial payments on settlement proposals before settlement if the contractor requests them and the CO determines that it would not be contrary to the interest of the FAA.
2. Final Payments. After execution of a settlement agreement, the contractor should submit a voucher or invoice showing the amount agreed upon, less any portion previously paid. The CO should attach a copy of the settlement agreement to the voucher or invoice and forward the documents to the CO for payment.
3. Under Construction Contracts. If there are any outstanding labor violations in the case of construction contracts, the CO should withhold an appropriate amount from the final payment pending resolution of the violations.

g. Interest.

The FAA should not pay interest on the amount due under a settlement agreement or a settlement by determination. The FAA may, however, pay interest on a successful contractor appeal from a contracting officer's determination under the Resolution of Protests and Disputes procedures. Interest will be at a rate set by the Secretary of the Treasury under 50 U.S.C. (App) 1215(b)(2).

## **2 Termination for Convenience of the FAA**

The provisions of this section apply to contracts containing Clauses 3.10.6-1 through 3 and Alternates which permit termination for convenience of the FAA.

a. Fixed Price Contracts.

1. Profit. The CO may use any reasonable method to arrive at a fair profit. The CO may allow profit on preparations made and work done by the contractor for the terminated portion of the contract but not on the settlement expenses. Anticipatory profit is not allowed. Profit should not be allowed the contractor for material or services that, as of the effective date of termination, have not been delivered by a subcontractor, regardless of the percentage of completion.
2. Adjustment for Loss. The CO should not allow profit if it appears that the contractor would have incurred a loss had the entire contract been completed. The CO should negotiate or determine the amount of loss and make an adjustment in the amount of settlement based upon the degree of expected loss.

3. The contracting officer should ensure that no portion of an increase in price is included in a termination settlement made or in process.
4. Completed end items. The CO should (a) have completed end items inspected and accepted if they comply with the contract and (b) determine which accepted items should be delivered under the contract. These items should not be included in the settlement proposal. If accepted items are not to be delivered, the contractor may include them in the settlement proposal at the contract price as adjusted to reduce by freight cost or to add disposal costs, etc. Work in place accepted by the Government under a construction contract is not considered a completed item even though that work may have been paid for at the unit prices specified in the contract.
5. Equitable Adjustment After Partial Termination. Under the termination clause, after partial termination, a contractor may request an equitable adjustment in the price or prices of the continued portion of a fixed-price contract.

b. Cost Reimbursement Contracts.

1. Audit. The CO should obtain an audit on the settlement proposal unless only fee is proposed.
2. Final Settlement.
  - a. Settlements of cost reimbursable contracts should not provide for recovery of excess repurchase costs.
  - b. The settlement should not include costs that were disallowed or unallowed under the terms of the contract.
  - c. Settlement does not need to be based on agreement on every element if an overall settlement can be agreed to.
3. Partial Terminations. If the terminated portion is not severable, the settlement in a partial termination should be limited to a fee adjustment and reduction in estimated cost as well as other allowable costs associated with preparing a settlement proposal.
4. Fee. The CO should determine the fee adjustment in accordance with the contract, however, the fee is generally adjusted based upon percentage of completion.

### 3 Termination for Default

a. General.

1. Termination for default is the exercise of the FAA's contractual right to completely or partially terminate a contract by reason of the contractor's actual or anticipated failure to perform its contractual obligations. When the contracting officer has the right to terminate a contract for default, the total undelivered contract quantity, whether delinquent or not, may be terminated for default.
2. Procedures for default.
  - (a) The Default clause covers situations when the contractor fails to perform some of the other provisions of the contract (such as not furnishing a required performance bond) or so fails to make progress as to endanger performance of the contract. If the termination is predicated

upon this type of failure, the contracting officer shall give the contractor written notice specifying the failure and providing a period of 10 days (or longer period as necessary) in which to cure the failure. Upon expiration of the 10 days (or longer period), the contracting officer may issue a notice of termination for default unless it is determined that the failure to perform has been cured. A format for a cure notice is located in FAA FAST under Procurement Templates and Samples.

- (b) If termination for default appears appropriate, the contracting officer should, if practicable, notify the contractor in writing of the possibility of the termination. This notice shall call the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to show cause why the contract should not be terminated for default. The notice may further state that failure of the contractor to present an explanation may be taken as an admission that no valid explanation exists. When appropriate, the notice may invite the contractor to discuss the matter at a conference. A format for a show cause notice is located in FAA FAST under Procurement Templates and Samples.
3. Options in Lieu of Termination for Default. The CO may consider alternatives other than termination for default if in the best interest of the FAA to do so. Prospective alternatives may be to terminate for the convenience of the FAA if the failure to perform was beyond the control of the contractor; consider a surety or guarantor to complete the work; allow the contractor to use a third party to perform. Other reasonable and viable alternatives may also be considered.
  4. The FAA may, in appropriate cases, exercise termination or cancellation rights in addition to those in the contract clauses (see, for example Clause 3.10.6-4, Default (Fixed Price Supply and Service)).
  5. Damages. If a contract is terminated for default, or if a procedure in lieu of termination for default is followed, the contracting officer may consider FAA's entitlement to damages. Damages are in addition to repurchase costs, when repurchase costs are applicable.
  6. Sureties. Prior to terminating fixed price contracts for contractor default, the CO should notify sureties of the impending termination prior to issuing the actual termination notice. In addition, the contracting officer should consider proposals from sureties to complete the work.

b. Fixed-Price Contracts Terminated for Default.

1. FAA Rights and Obligations. Clauses 3.10.6-4 through 6 covering Termination for Default (Fixed Price) provide the FAA the right to terminate all or any part of a contract when the contractor:
  - a. Fails to make delivery or perform services according to contract schedule or
  - b. Fails to complete any material requirement of the contract within the time specified in the contract or
  - c. Fails to make progress to a degree that this failure endangers performance of the contract or
  - d. Fails to perform any other contract provision or
  - e. Fails to meet contractual obligations.

The FAA is not liable for the contractor's costs on undelivered work and is entitled to repayment of payments to the contractor for undelivered work. The CO may direct the contractor to transfer title and deliver to the FAA completed supplies and manufacturing materials. The supplies and manufacturing materials transferred from the contractor to the FAA may be used in continuing the terminated contract work or for use under another contract.

2. The FAA should pay the contractor the contract price for any supplies or services completed and delivered, and the amount agreed upon by the contracting officer and the contractor for any manufacturing materials obtained by the contractor.
3. The FAA should be protected from overpayment that might result from failure to provide for the FAA's potential liability to laborers and material suppliers for lien rights outstanding against the completed supplies or materials after the FAA has paid the contractor for them. To accomplish this, before paying for supplies or materials, the contracting officer shall take one or more of the following measures:
  - a. (a) Ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' claims or whether it is feasible to obtain similar bonds to cover outstanding liens.
  - b. (b) Require the contractor to furnish appropriate statements from laborers and material suppliers disclaiming any lien rights they may have to the supplies and materials.
  - c. (c) Obtain appropriate agreement by the FAA, the contractor, and lienors ensuring release of the FAA from any potential liability to the contractor or lienors.
  - d. (d) Withhold from the amount due for the supplies or materials any amount the contracting officer determines necessary to protect the FAA's interest, but only if the measures in subparagraphs (d)(1), (2), and (3) above cannot be accomplished or are considered inadequate.
  - e. (e) Take other appropriate action considering the circumstances and the degree of the contractor's solvency.
4. Repurchase Against Contractor's Account. When supplies or services are still required after termination for default, the contracting officer may repurchase the same or similar supplies or services against the contractor's account as soon as practicable. The repurchase must be at as reasonable a price as possible considering the quality required by the FAA and the time within which the supplies or services are required. Whenever practicable, the contracting officer should make necessary repurchase decisions before issuing the termination notice. If repurchase is made at a price higher than the price of the terminated supplies or services, the contracting officer must--after final payment of the repurchase contract-- make a written demand on the contractor for the excess amount, taking into account any increases or decreases in cost due to transportation charges, discounts, and other factors. The contractor is liable to the FAA for any excess costs incurred in acquiring supplies and services similar to those terminated for default, and any other damages, whether or not repurchase is made.

#### c. Contract Clause Cost Reimbursement Contracts Terminated for Default

Contract Clause 3.10.6-3 Termination (Cost Reimbursement) and Alternates provides the CO authority to terminate cost reimbursement contracts for default.

#### 4 -Delinquency Notices

The formats of the delinquency notices in this section may be used to satisfy the requirements of [T3.10.6.A.3](#) . All notices will be sent with proof of delivery requested.

(a) *Cure notice.* If a contract is to be terminated for default before the delivery date, a “Cure Notice” is required by the Default clause. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of “cure” remains in the contract delivery schedule or any extension to it. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic “cure” period of 10 days or more, the “Cure Notice” should not be issued. The “Cure Notice” may be in the following format:

You are notified that the Government considers your \_\_\_\_ [*specify the contractor’s failure or failures*] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within 10 days after receipt of this notice [*or insert any longer time that the Contracting Officer may consider reasonably necessary*], the Government may terminate for default under the terms and conditions of the \_\_\_\_\_ [*insert clause title*] clause of this contract.

(b) *Show cause notice.* If the time remaining in the contract delivery schedule is not sufficient to permit a realistic “cure” period of 10 days or more, the following “Show Cause Notice” may be used. It should be sent immediately upon expiration of the delivery period.

Since you have failed to \_\_\_\_ [*insert “perform Contract No. \_\_\_\_ within the time required by its terms,” or “cure the conditions endangering performance under Contract No \_\_\_\_\_ as described to you in the Government’s letter of \_\_\_\_\_ (date)”*], the Government is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to \_\_\_\_ [*insert the name and complete address of the contracting officer*], within 10 days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the Government and the liabilities that may be invoked if a decision is made to terminate for default.

Any assistance given to you on this contract or any acceptance by the Government of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the Government to condone any delinquency or to waive any rights the Government has under the contract.

## **5 Definitions**

- a. ‘Claim,’ as used in this part, means the same as the language in Resolution of Protests and Disputes.
- b. ‘Continued portion of the contract,’ as used in this part, means the portion of a partially terminated contract that the contractor must continue to perform.
- c. ‘Effective date of termination’ means the date on which the notice of termination requires the contractor to stop performance under the contract. If the termination notice is received by the

contractor subsequent to the date fixed for termination, then the effective date of termination means the date the notice is received.

d. 'Other work,' as used in this part, means any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.

e. 'Partial termination' means the termination of a part but not all, of the work that has not been completed and accepted under a contract.

f. 'Settlement agreement,' as used in this part, means a written agreement in the form of an amendment to a contract settling all or a severable portion of a settlement proposal.

g. 'Settlement proposal,' as used in this part, means a proposal for effecting settlement of a contract terminated in whole or in part, submitted by a contractor or subcontractor in the form, and supported by the data, required by this part. A settlement proposal is included within the generic meaning of the word 'claim' under false claims acts (see 18 U.S.C. 287 and 31 U.S.C. 3729).

h. 'Show cause' refers to a notice which the CO is required to issue prior to terminating a contract. The purpose of a show cause notice is to permit the contractor to present its defense against termination.

i. 'Terminated portion of the contract' means the portion of a terminated contract that relates to work or end items not completed and accepted before the effective date of termination that the contractor is not to continue to perform. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

j. 'Termination inventory' means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes FAA-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

k. 'Unsettled contract change' means any contract change or contract term for which a definitive modification is required but has not been executed.

## **B Clases Termination of Real Property Contracts Added 9/2020**

### **1 General Guidance Added 9/2020**

#### **a. The FAA termination requirements will:**

- 1. Enable the FAA to establish contract requirements that protect the interests of the FAA;**
- 2. Promote fair and rapid termination settlements;**
- 3. Encourage settlement by agreement rather than by contracting officer's determination.**

b. Contracting officer (CO) responsibilities. The CO will:

1. Select and include the appropriate termination clause(s) in contracts to provide the CO authority to terminate contracts for convenience, or for default;
2. Enforce provisions of termination clauses in a manner that is in the best interest of the FAA by terminating in whole or in part, for the convenience of the FAA or for contractor default;
3. Direct the vendor on how to proceed when a contract is terminated;
4. Ensure proper documentation is added to the official contract file;
5. Enlist assistance of individuals with special qualifications to assist in the termination in areas such as legal, accounting, etc.;
6. Direct action for site cleanup, protection of serviceable materials, removal of hazards, and any action necessary to leave a safe site;
7. Terminate utility contracts associated with leases that are not being renewed;
8. Negotiate agreements (tenant improvement costs, etc.), when applicable, with vendors;
9. Issue a CO determination if an agreement cannot be reached;
10. Reinstate contracts on a bilateral agreement basis when deemed in the best interest of the FAA to do so;
11. Release excess funds as quickly as possible retaining sufficient funds to settle the termination; and
12. Update final termination documentation in the real estate asset management system.

**2 Termination by the FAA** Added 9/2020

- a. The CO may terminate contracts, at any time, in whole or in part, if the CO determines that termination is in the Government's best interest.
- b. Written notice of the termination must be provided to the vendor indicating the date of the termination, directing the vendor on how to proceed, and providing disposition instructions for property in which the FAA has or will have an interest.
- c. AMS Clause 6.2.7 "Termination" and any other applicable termination clause must be cited.
- d. In the event the Government terminates a contract, the vendor may recover the balance of any tenant improvement costs or an unamortized balance of the tenant improvement allowance from the Government, whichever amount is less, over the term of the contract. The Government will make a one-time, lump sum payment to the vendor to settle any tenant improvement costs in their entirety if the entire lease is terminated, or prorate, if any portion thereof is cancelled.
- e. In the event a contract with a firm term is terminated prior to the end of the firm term, the FAA is contractually committed to make rental payments for the remainder of the firm term. (See T3.8.8.B.3 Firm Term Leases).

**3 Default** Added 9/2020

Each of the following will constitute a default by the Lessor:

- a. Failure to perform the work required to deliver the leased premises, ready for occupancy by the Government, within the time required by the contract;
- b. Failure to maintain, repair, operate or service the premises as specified, or failure to perform any other requirement of this contract as required, provided such failure remains uncured for a period of time as specified by the CO, following Vendor's receipt of written notice from the CO; or
- c. Repeated failure to comply with one or more requirements constitutes a default notwithstanding that one or all failures have been timely cured.

a:

If default occurs, the CO may, by written notice, terminate the contract in whole or in part. The CO must include AMS Clause 6.3.3.31 "Default by Lessor" in the contract.

**CB Clauses** Revised 9/2020

[view contract clauses](#)

**DC Forms** Revised 9/2020

[view procurement forms](#)