

AMS/FAST CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 20-50

Date Received: 28 Apr 20

Title: AAP-20 Organizational Changes - Procurement Guidance Sections T3.2.2.5, T3.2.2.7, and T3.6.1.

Initiator Name: Tim Eckert

Initiator Organization Name / Routing Code: Procurement Policy Branch, AAP-110

Initiator Phone: 202-267-7527

ASAG Member Name: Monica Rheinhardt

ASAG Member Phone: 202-267-1441

Policy and Guidance: (check all that apply)

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

Summary of Change:

Update of references to AAP-600 and AJA-8 as well as references to "Small Business Office", "Small Business Development Staff", "Small Business Development Office" etc. to AAP-20 (Small Business Program)

Reason for Change:

Administrative change consistent with reorganization

Development, Review, and Concurrence:

AAP-2, AAP-20, and Acquisition Policy

Target Audience:

Program Office and Contracting personnel

Briefing Planned: No.

ASAG Responsibilities: None.

Section / Text Location:

T3.2.2.5, T3.2.2.7, and T3.6.1.

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/guidanceT3.2.2.5.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.2.2.7.pdf>

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.6.1.pdf>

Attachments:

Redline and final documents.

Other Files:

N/A

Redline(s):

Section Revised:

3.2.2.5 A 2 – Purchase Orders

Procurement Guidance - (~~4/2020~~ 7/2020)

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

A Simplified Purchasing

1 Simplified Purchasing Revised 4/2017

2 Purchase Orders Revised ~~7/2017~~ 7/2020

3 Blanket Purchase Agreement (BPA) Revised 7/2017

4 Prohibited and Restricted Purchases Revised 4/2020

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

B Clauses

C Forms

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

A Simplified Purchasing

1 Simplified Purchasing Revised 4/2017

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. 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 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 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. This 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)

(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 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 for Offer*. A request for offer (RFO) 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, including quality, warranty, payment and other significant aspects included in a written RFO. An RFO 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, 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.

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.

(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 ~~7/2017~~ 7/2020

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

(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 ~~Office of Small Business Development~~ Small Business Program (AAP-20).

(b) All procurements over \$150,000 must be publicly announced on 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 T3.2.5:1.

(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 ~~The rational basis for a single source decision must be documented by the program official, reviewed by legal counsel, and approved by the CO and~~ 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. (See AMS Procurement Guidance T3.6.1).

(e) 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.

(f) 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. i.
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

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) (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 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.

l. *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

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." The CO or purchase cardholder, consulting with budget officials and legal counsel, should make determinations in this area 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

(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 HRPM, 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 Awards 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 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. 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 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 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

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](https://employees.faa.gov/org/staffoffices/afn/finance/sop/?selected=Planning%20Meetings,Conferences,Workshops,TrainingEvents,andAwardCeremoniesintheFAA)

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 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 Real Estate 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. Except as provided below, agreements below \$100,000 do not require review, but review may be sought at the discretion of the RECO or the RECO's delegate.

(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 beverage. The Administrator's official reception and representation funds must be used for these events (see FAA Order 1200.3). The FAA purchase card may be used to purchase food or beverage for these events.

(2) Except for FAA award ceremonies and the Administrator's official receptions, FAA purchase card cannot be used as a procurement vehicle for food and beverage; a purchase order or contract must be used instead. However, the purchase card may be used to make payment against a duly executed contract signed by a warranted CO.

(3) Food and beverage costs must be reasonable, must not include alcoholic drinks, and cannot be purchased for amusement or social events, such as networking sessions, 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. The FAA currently has statutory authority to credit back to its operations account authorized collections; therefore conference planners should check with legal counsel before depositing authorized registration fees into the general treasury. FAA may 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 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:

3.2.2.7 A 1 – Responsibility Determination of Prospective Contractors

Procurement Guidance - (~~4/2020~~ 7/2020)

T3.2.2.7 - Contractor Qualifications Revised 1/2009

A Contractor Qualifications

1 Responsibility Determination of Prospective Contractors Revised ~~7/2012~~ 7/2020

2 Team Arrangements Revised 1/2009

3 Debarment and Suspension Revised 4/2013

4 Notices to GSA and SAM Revised 7/2012

5 Prohibition Against Contracting with Inverted Domestic Corporations Revised 10/2015

B Clauses

C Forms

D Appendix 1 - Definitions Revised 10/2015

T3.2.2.7 - Contractor Qualifications Revised 1/2009

A Contractor Qualifications

1 Responsibility Determination of Prospective Contractors Revised ~~7/2012~~ 7/2020

a. *General Standards.* A responsible contractor:

- (1) Has or can obtain adequate financial resources to perform a contract;
- (2) Has the ability to meet any required or proposed delivery schedules;
- (3) Has a satisfactory performance history;
- (4) Has a record of integrity and proper business ethics;
- (5) Has appropriate accounting and operational controls that may include, but are not limited to:
 - (a) Production control;
 - (b) Property control systems;
 - (c) Quality assurance programs; and
 - (d) Appropriate safety programs; and
- (6) Is qualified and eligible to receive an award under applicable laws or regulations.

b. *Determination.*

- (1) The Contracting Officer's (CO) signature on a contract constitutes a determination that a prospective contractor is responsible with respect to that contract.
- (2) The burden of proof is on the prospective contractor to demonstrate its responsibility to perform under the terms of the contract.

c. *Obtaining Information.* When making a determination of responsibility, the CO should have, or obtain, information sufficient to be satisfied that a prospective contractor currently meets applicable standards. The CO should apply the following guidelines in collecting data/information:

- (1) Generally, the CO should obtain information on prospective contractors promptly after receipt of offers. Requests for information should ordinarily be limited to information from those offerors most likely to be considered for award, and may include requesting

preaward surveys. Depending on the circumstances, the CO may obtain this information before issuing the screening information request (SIR).

(a) A preaward survey may be useful when the information on hand or readily available to the CO is not sufficient to make a determination regarding responsibility. When the requirement is for smaller dollar amounts or commercial items, the CO should consider the cost of the preaward survey in relationship to the requirement.

(b) Preaward surveys should be managed and conducted by the surveying activity. Whether the surveying activity is within or outside of the contract administration office, the CO should obtain from the office or auditor:

(i) Any information required concerning the prospective contractor's financial competence and credit needs; and

(ii) The adequacy of the prospective contractor's accounting systems and the suitability of their use in administering the proposed type of contract.

(c) When a preaward survey discloses previous unsatisfactory performance, the surveying activity should specify the extent to which the prospective contractor has taken or plans corrective action. Lack of evidence that past failure to meet contractual requirements was the prospective contractor's fault does not necessarily indicate satisfactory performance.

(d) The surveying activity may provide an abbreviated survey report when it possesses information that supports a recommendation of complete award without an on-site survey and no special area for investigation has been requested.

(e) Information on financial resources and performance capability should be current as of the date of award.

(f) The CO's request to the surveying activity should include:

(i) Additional factors about which information is needed;

(ii) The complete SIR package (unless it was previously been furnished), and any information indicating prior unsatisfactory performance by the prospective contractor;

(iii) A statement whether the contracting office will participate in the survey;

(iv) The date by which the report is required. This date should be consistent with the scope of the survey requested and normally should allow at least 7 working days to conduct the survey; and

(v) When appropriate, limitations on the scope of the survey.

(2) In addition to the preaward survey, the CO may use the following sources of information to support responsibility determinations:

(a) Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices.

(b) The prospective contractor, including proposal information, questionnaire replies, financial data, information on production equipment, and personnel information.

(c) Other sources such as publications, suppliers, subcontractors, customers of the prospective contractor, and financial institutions; or

(d) If the contract is for construction, the CO may consider performance evaluation reports.

(3) The CO must review the "Exclusions" portion of the "Performance Information" capability in the System for Award Management (SAM) to ensure prospective contractors are not listed. (See Notices to SAM below).

(4) Contracting offices and cognizant contract administration offices that become aware of circumstances casting doubt on a contractor's ability to perform contracts successfully should promptly exchange relevant information.

d. *Documentation.* The CO should consider the following guidelines for documenting contractor responsibility determinations:

(1) A determination of responsibility requires no additional documentation beyond the CO's signature on the contract. Supporting documents such as the preaward survey reports, performance records, and related data/information should be included with other contract file documentation.

(2) If a prospective offeror who is otherwise eligible to receive an award is determined to be nonresponsible, the CO should insert signed documentation in the contract file supporting the nonresponsibility determination. Supporting documentation such as preaward survey reports, performance records, and related data/information should also be included in the file with the nonresponsibility determination.

(3) A nonresponsibility determination for a small business is processed in the same manner as for large businesses. There is no requirement to coordinate with the Small Business Administration (SBA); however the CO may choose to consult with FAA's ~~Office of Small~~

~~Business Development (OSBD) or local Small Business Development staff~~ Small Business Program (AAP-20) staff.

2 Team Arrangements Revised 1/2009

a. General.

- (1) Team arrangements are cooperative arrangements where:
 - (a) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or
 - (b) A potential prime contractor enters into an agreement with one or more other companies to have them act as subcontractors under a specific contract.
- (2) Benefits of team arrangements to both FAA and an offeror or contractor include, but are not limited to:
 - (a) Increases competitive edge and presents a stronger position to FAA;
 - (b) Provides companies access to new markets and opportunities;
 - (c) Allows companies to collaborate and focus on their core capabilities;
 - (d) Brings differing skills and experience together into one solution for FAA;
 - (e) More opportunities for small and small disadvantaged businesses; and
 - (f) Decreased costs.
- (3) Team arrangements may prove particularly appropriate for research and development (R&D) requirements; however they may be used in other types of acquisitions as well.
- (4) FAA will not normally require the dissolution of team arrangements.
- (5) Guidance on determining small business size standards for team arrangements can be found in AMS Procurement Guidance T3.6.1.

b. Joint Venture.

- (1) A joint venture is a separate legal entity, such as a partnership or corporation, formed by two or more parties to conduct business.
- (2) In a joint venture, each party contributes equity and shares:

- (a) In any revenues;
- (b) Expenses incurred; and
- (c) In the management or control of the venture.

(3) Joint ventures may be a continuing business relationship or for just one or more projects.

c. *Disclosure of Team Arrangements.* In order for FAA to recognize the validity of a team arrangement, the arrangement and company relationships must be fully disclosed:

- (1) In the offer; or
- (2) Before the arrangement becomes effective when formed after the submission of an offer or contract award.

d. *Antitrust Law and FAA Rights.*

- (1) All team arrangements must comply with all applicable antitrust statutes.
- (2) Despite any team arrangement, FAA retains the right to:
 - (a) Require consent to subcontracts;
 - (b) Determine the responsibility of the prime contractor;
 - (c) Provide to the prime contractor data rights owned or controlled by the Government;
 - (d) Hold the prime contractor responsible for contract performance; and
 - (e) Apply other AMS requirements such as those for competition or subcontracting.

3 Debarment and Suspension Revised 4/2013

a. *General.*

- (1) Debarment and suspension are discretionary actions that are appropriate means to implement FAA policy and should be undertaken only to protect the interest of FAA. Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts. FAA will not solicit offers from, award contracts to, consent to

subcontracts, or conduct business with contractors that are debarred, suspended, or proposed for debarment:

- (a) In their individual capacities;
- (b) As agents or representatives of other contractors; or
- (c) As sureties on FAA contracts.

(2) *Compelling Exception.* The FAA will not conduct business with contractors that are debarred, suspended, or proposed for debarment, unless the Administrator, or designee, determines that there is a compelling reason for such action.

(3) *Debarring/Suspending Official.* The Administrator is both the debarring official and the suspending official. However, the Administrator may authorize individuals to act as the debarring or suspending official. The debarring or suspending official is the only individual with the authority to make debarment or suspension decisions.

(4) *Effect on Divisions/Affiliates.* Suspension or debarment applies to all divisions or other organizational elements of the contractor, unless the suspension or debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring and suspending official(s) may also extend the debarment decision to include any affiliates of the contractor if they are:

- (a) Specifically named;
- (b) Given written notice of the proposed debarment; and
- (c) Given written notice of an opportunity to respond.

(5) *Continuation of Current Contracts.* Contractors debarred, suspended or proposed for debarment may continue to perform current contracts or subcontracts, unless the Administrator or designee determines otherwise. However, FAA should not renew or extend the current contract period, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment unless the Administrator, or designee, determines that there are compelling reasons for renewal or extension.

(6) *Ineligible Based on Statute or Regulation.* Contractors declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts under the conditions and for the periods set forth in the statute or regulation.

(7) *Initiating the Debarment/Suspension Action.* When the CO, or requisitioner/program official, determines that cause for debarment or suspension may exist, the information together with any supporting documentation should be provided to the Assistant Chief Counsel for the Procurement Legal Division (AGC-500). AGC-500 will appoint a

debarment/suspension officer to investigate whether cause for debarment or suspension exists. The FAA Acquisition Executive will have oversight responsibility and will monitor implementation of the debarment and suspension program.

(8) *The Administrative Record*. The debarment officer will assemble the Administrative Record, which is a consolidated set of records, information, and documentation that clearly demonstrates the basis for the debarment or suspension and the events and actions taken throughout the entire process such as:

- (a) Cause for debarment or suspension;
- (b) Notice of proposal to debar/suspend;
- (c) Contractor's responses, arguments, disputes;
- (d) Consideration given to contractor's responses;
- (e) Resolution of contractor's comments or disputes, etc.;
- (f) Findings of fact;
- (g) Other communications with the contractor;
- (h) Final report and recommendation to the Debarring Official/Suspending Official;
- (i) Debarring/Suspension Official determinations;
- (j) Final notice to the contractor/affiliate; and
- (k) Notice to the General Services Administration (GSA) regarding the debarment/suspension (see Notices to GSA and System for Award Management (SAM) below). The notice should include the FAA-accepted acronym "DOT- FAA."
- (l) Within 45 days of proper notification ("proper notification" is defined as: a referral from the Office of Inspector General that includes either a copy of the Federal, State, or local indictment or civil complaint or other official correspondence or documentation evidencing the indictment or civil complaint from the Department of Justice/United States Attorney. (Internet sources and local newspaper articles as well as unverified news sources are unacceptable for documentation)), FAA will either initiate a debarment or suspension proceeding, or make a decision that a debarment or suspension is not appropriate. If a decision is made not to initiate a debarment or suspension proceeding after proper notice is received, then a justification will be made part of the written record within 45 days after proper notice.

(9) *Scope of Debarment/Suspension.*

(a) Fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct should be considered as evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent criminal, or other seriously improper, conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct must be evidence of such knowledge, approval, or acquiescence.

(10) *Failure to Disclose Violation of Federal Criminal Law.* Whether or not AMS clause 3.2.5-13 is applicable, a contractor may be suspended and/or debarred for knowing failure by a principal to timely disclose to the Government, in connection with award, performance, or closeout of a Government contract performed by the contractor or a subcontract awarded thereunder, credible evidence of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act. Knowing failure to timely disclose credible evidence of any of the above violations remains a cause for suspension and/or debarment until three (3) years after final payment on a contract.

b. *Debarment.*

(1) *Causes for Debarment.* The debarring official should debar a contractor based upon the following:

(a) Conviction of or civil judgment for:

(i) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;

(ii) Violation of Federal or State antitrust statutes relating to the submission of offers;

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(iv) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see Section 202 of the Defense Production Act (Pub. L. 102-558)); or

(v) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) A preponderance of the evidence for the following:

(i) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as:

(A) Willful failure to perform in accordance with the terms of one or more contracts; or

(B) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(ii) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by:

(A) Failure to comply with the requirements of AMS Clause 3.6.3-16, Drug Free Workplace; or

(B) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace.

(iii) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see Section 202 of the Defense Production Act (Pub. L. 102-558)).

(iv) Commission of an unfair trade practice as defined herein (see also Section 201 of the Defense Production Act (Pub. L. 102-558)).

(v) Delinquent Federal taxes in an amount that exceeds \$3,000

(A) Federal taxes are considered delinquent for purposes of this provision if both of the following criteria apply:

(1) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(2) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(B) Examples.

(1) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(2) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(3) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(4) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(vi) Knowing failure by the principal, until three (3) years after the final payment on any FAA contract awarded to the contractor, to timely disclose to FAA, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of:

(A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;

(B) Violation of the civil False Claims Act (31 U.S.C. 3729-3733);
or

(C) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments.

(c) A determination by the Attorney General of the United States, or designee, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989). The Attorney General's determination is not reviewable in the debarment proceedings.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

(2) Debarment Procedure

(a) *Notice Of Proposed Debarment.* If after review of the record and any additional investigation, the debarring official determines that there is sufficient cause for debarment, the debarring official must issue a Notice of Proposed Debarment to the contractor and any specifically named affiliates. The notice should be mailed by certified mail, return receipt requested, stating that debarment is being considered. The notice should also state:

(i) The specific name the firm and any affiliate being considered for debarment;

(ii) That debarment is being considered;

(iii) The reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;

(iv) The cause(s) relied upon under Section 3.b, Debarment;

(v) That within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;

- (vi) The FAA's process for completing the debarment proceeding;
- (vii) The effect of the issuance of the notice of proposed debarment on the contractor; and
- (viii) The effect of debarment on the contractor and any affiliates.

(b) *Contractor's Response to the Notice of Proposed Debarment.* The contractor's response will be reviewed to identify issues that could affect the outcome and merit further exploration.

(c) *Mitigating Factors.* The existence of a cause for debarment does not require that the contractor be debarred. The debarring official may consider the following mitigating factors, none of which is by itself dispositive, in determining whether or not to debar a contractor:

- (i) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment, or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.
- (ii) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.
- (iii) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.
- (iv) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.
- (v) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.
- (vi) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.
- (vii) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

(viii) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

(ix) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

(x) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

(d) *Debarring Official's Decision.*

(i) *Actions Based Upon a Conviction or Civil Judgment or Without Genuine Dispute Over Material Facts.* In this type of action, the debarring official will consider the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the debarring official should make the decision within 30 working days after receipt of any information and argument submitted by the contractor, or within a reasonable time thereafter.

(ii) *Actions Not Based Upon a Conviction or Civil Judgment.* Where the proposed debarment is **not** based upon a conviction, civil judgment, or indictment, or the contractor's response to the Notice of Proposed Debarment raises a genuine dispute over facts material to the proposed debarment, the debarring official may, upon the request of a contractor:

(A) Provide the contractor an opportunity to appear informally with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(B) Make a transcribed record of the proceedings and make it available at cost to the contractor.

(iii) *Evidentiary Standard for Debarments not Based Upon Conviction or Civil Judgment.* In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(iv) *Demonstrating Responsibility.* If a cause for debarment exists, the contractor has the burden of demonstrating that, notwithstanding the existence of a cause or causes for debarment, the contractor is presently responsible to perform Government contracts.

(v) *Period of Debarment.*

(A) The debarring official should consider the facts and determine a debarment period commensurate with the seriousness of the cause(s) and sufficient to protect the Government's interest. Generally, debarment should not exceed three (3) years, except that debarment for violation of the provisions of the Drug- Free Workplace Act of 1988 may be for a period not to exceed five (5) years. Debarments subject to the Immigration and Nationality Act should not exceed one (1) year and may be extended for additional periods of one (1) year if the Attorney General or designee determines that the contractor continues to be in violation of the employment provisions of the Immigration and Nationality Act. If suspension precedes a debarment, the suspension period should be considered in determining the debarment period.

(B) The debarring official should extend the period of debarment if that official determines that extension is necessary to protect the Government. However, a debarment may not be extended solely on the basis on the facts and circumstances upon which the initial debarment action was based.

(e) Notice of Debarment to Contractor/Affiliates.

(i) The debarring official will provide the contractor and each affiliate identified for debarment/suspension with a Notice of Debarment/Suspension by mailing the notice by certified mail, return receipt requested. The notice will:

(A) Refer to the Notice of Proposed Debarment;

(B) Specify the reasons for debarment;

(C) State the period of suspension/debarment, including effective dates; and

(D) Advise that the debarment is effective throughout the executive branch of the Government unless the debarring official determines that there are compelling reasons for FAA to continue to do business with the contractor.

(ii) *Debarment Not Imposed.* If debarment is not imposed, the debarring official will promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

c. Suspension.

(1) *Applicability.* Suspension is appropriate when the suspending official determines that immediate action is necessary to protect the government's interest pending the completion of legal proceedings, or the agency investigation of the improper conduct.

(2) *Causes for Suspension.*

(a) The suspending official should suspend a contractor as defined herein, upon **adequate evidence**, of:

(i) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, performing a public contract or subcontract;

(ii) Violation of Federal or State antitrust statutes relating to the submission of offers;

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(iv) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by:

(A) Failure to comply with the requirements of the AMS Clause 3.6.3-16, "Drug Free Workplace;" or

(B) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace;

(v) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558));

(vi) Commission of an unfair trade practice as defined herein (see section 201 of the Defense Production Act (Pub. L. 102-558));

(vii) Delinquent Federal taxes in an amount that exceeds \$3,000. See the criteria at T3.2.2.7.A.3.b.(1)(b)(i)(B)(v) for when taxes are considered delinquent;

(viii) Knowing failure by the principal, until three (3) years after the final payment on any FAA contract awarded to the contractor, to timely disclose to

FAA, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of -

(A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;

(B) Violation of the civil False Claims Act (31 U.S.C. 3729-3733);

(C) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments; or

(ix) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Indictment for any of the causes in paragraph (a) above constitutes adequate evidence for suspension.

(c) The suspending official should upon **adequate evidence** also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

(3) *Suspension Procedure.*

(a) *Notice of Suspension.* If cause for suspension exists, the suspending official will issue a notice of suspension to the contractor and any specifically named affiliates, if applicable. No hearing is required prior to the imposition of suspension. The notice must be sent by certified mail, return receipt requested, and must state:

(i) That the contractor has been suspended and that the suspension is based upon an indictment or other adequate evidence that the contractor has committed irregularities of a serious nature in business dealings with the Government or seriously reflecting on the propriety of further Government dealings with the contractor. The irregularities must be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(ii) That the suspension is for a temporary period pending the completion of the investigation and such legal proceedings that may ensue;

(iii) The cause relied on for suspension (see Causes for Suspension);

(iv) The effect of the suspension on the contractor and affiliates;

(v) That within thirty (30) days after receipt of the notice, the contractor may submit in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional information that raises a genuine dispute over material facts; and

(vi) That additional proceedings may be conducted to determine disputed material facts unless:

(A) The action is based upon an indictment; or

(B) A determination is made, on the basis of Justice Department advice, that the substantial interests in the Government in a pending or contemplated legal proceeding based on the same facts as the suspension would be prejudiced.

(b) Suspending Official's Decision.

(i) In actions that are based on an indictment, in which the contractor's submission does not raise a genuine dispute over material facts, or in which the Department of Justice has denied additional proceedings to determine disputed facts, the suspending official's decision must be based on the administrative record, including any submission made by the contractor.

(ii) In actions not based upon an indictment or actions in which the Department of Justice has not denied additional proceedings, the suspending official may, upon the contractor's request, provide the contractor an opportunity to appear informally with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents. At the discretion of the suspending official, a transcribed record of the proceedings may be made and made available at cost to the contractor upon request.

(4) Other Actions by the Suspending Official.

(a) *Written Findings.* The suspending official must make written findings of fact and base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(b) *Suspending Official's.* The suspending official may modify or terminate the suspension or leave it in force. However, a decision to modify or terminate a suspension does not prevent any other agency from suspending or debarring the contractor under the same facts or circumstances.

(5) Period of Suspension.

(a) Suspensions must be for a temporary period as stated in 3.a. (ii) above unless otherwise terminated sooner by the CO. The CO must notify the Department of

Justice (DOJ) of the proposed termination of the suspension at least 30 days prior to the expiration of the initial 12-month period to give DOJ an opportunity to request an extension.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension must be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for another 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(6) *Notices to Contractor/Affiliates.* The suspending official must provide prompt written notice of the decision to the contractor and any affiliates involved.

4 Notices to GSA and SAM Revised 7/2012

a. *Notice to GSA.* The appropriate CO, at the direction of the debarring/suspending official, will provide GSA the information specified below within 5 working days after a debarment/suspension is effective:

- (1) The names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible in alphabetical order, with cross-references when more than one name is involved in a single action;
- (2) The name and official acronym ("DOT-FAA") of the agency or other authority taking the action;
- (3) The cause for the action other statutory or regulatory authority;
- (4) The effect of the action;
- (5) The termination date for each listing;
- (6) The DUNS No; and
- (7) The name and telephone number of the point of contract for the action.

b. *System for Award Management (SAM).*

(1) GSA operates the web-based SAM. The "Exclusions" portion of the "Performance Information" capability includes the:

(a) Names and addresses of all contractors debarred, suspended, proposed for debarment, declared ineligible, or excluded or disqualified under the

nonprocurement common rule, with cross-references when more than one name is involved in a single action;

(b) Name of the agency or other authority taking the action;

(c) Cause for the action or other statutory or regulatory authority;

(d) Effect of the action;

(e) Termination date for each listing;

(f) DUNS No.;

(g) Social Security Number (SSN), Employer Identification Number (EIN), or other Taxpayer Identification Number (TIN), if available; and

(h) Name and telephone number of the agency point of contact for the action.

(2) For information about adding a contractor to SAM, the CO should contact the DOT representative listed under the agency contacts on the SAM website.

5 Prohibition Against Contracting with Inverted Domestic Corporations Revised 10/2015

(a) To be eligible for a contract award, an offeror must represent it is not an inverted domestic corporation or subsidiary as defined under the “Definitions” section below. Any offeror that cannot so represent is ineligible for contract award.

(b) Contracting Officers must rigorously examine known circumstances that would lead a reasonable business person to question an offeror’s self-certification and, after consultation with legal counsel, take appropriate action when that questionable self-certification cannot be verified.

(c) *Waiver.* The FAA Administrator may waive the requirements of this Section if the FAA Administrator determines in writing that a waiver is required in the interest of national security, documents the determination, and reports it to Congress.

B Clauses

[view contract clauses](#)

C Forms

[view procurement forms](#)

D Appendix 1 - Definitions Revised 10/2015

"Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.

"Affiliates." Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly:

(a) Either one controls or has the power to control the other, or

(b) A third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

"Agency," as used in this subpart, means any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

"Civil judgment" means a judgment or finding of a civil offense by any court of competent jurisdiction.

"Contractor," as used in this subpart, means any individual or other legal entity that:

(a) Directly or indirectly (*e.g.*, through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or

(b) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

"Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

"Debarment," as used in this subpart, means action taken by a debarring official to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor so excluded is "debarred."

"Debaring official" means:

- (a) An agency head; or
- (b) A designee authorized by the agency head to impose debarment.

"Excluded Parties List" means a list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about parties debarred, suspended, or voluntarily excluded under the Nonprocurement Common Rule or the Federal Acquisition Regulation, parties who have been proposed for debarment under the Federal Acquisition Regulation, and parties determined to be ineligible.

"Indictment" means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense must be given the same effect as an indictment.

"Ineligible," as used in this subpart, means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh- Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts and Executive orders.

"Inverted Domestic Corporation" means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b) applied in accordance with the definitions of 6 U.S.C. 395 (c).

"Legal proceedings" means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

"Nonprocurement Common Rule" means the procedures used by Federal Executive Agencies to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions under Executive Order 12549. Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements.

"Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

"Suspending official" means:

- (a) An agency head; or
- (b) A designee authorized by the agency head to impose suspension.

"Suspension," as used in this subpart, means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor so disqualified is "suspended."

"Unfair trade practices," as used in this subpart, means the commission of any or the following acts by a contractor:

- (a) A violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) as determined by the International Trade Commission.
- (b) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement.
- (c) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished.

Sections Revised:

3.6.1 – Small Business Development Program

3.6.1 A – Small Business Development

3.6.1 A 1 – Procurement Team Responsibilities in Support of the Small Business

Development Program

3.6.1 A 2 – The FAA Small Business Development Program Office (SBDO) and

Liaison Representative Involvement

3.6.1 A 3 – Prime Contracting with Small Business

3.6.1 A 4 – Subcontracting with Small Business

3.6.1 A 7 – Contract Bundling

3.6.1 A 8 – Mentor-Protege

Procurement Guidance - (~~4/2020~~ 7/2020)

T3.6.1 - Small Business ~~Development~~ Program Revised ~~4/2009~~ 7/2020

A Small Business ~~Development~~ Program Revised ~~7/2005~~ 7/2020

1 Procurement Team Responsibilities in Support of the Small Business

~~Development~~ Program Revised ~~7/2019~~ 7/2020

2 The FAA Small Business ~~Development~~ Program Office (~~SBDO~~) and Liaison

Representative Involvement Revised ~~1/2017~~ 7/2020

3 Prime Contracting with Small Business Revised ~~1/2017~~ 7/2020

4 Subcontracting with Small Business Revised ~~10/2018~~ 7/2020

5 Bonding Assistance and the DOT Lending Program Revised 1/2018

6 Size Standard Verification Revised 7/2019

7 Contract Bundling Revised ~~1/2017~~ 7/2020

8 Mentor-Protégé Revised ~~4/2016~~ 7/2020

9 Joint Ventures Revised 10/2018

10 Tiered Evaluations Added 7/2016

B Clauses Revised 10/2006

C Forms

T3.6.1 - Small Business ~~Development~~ Program Revised ~~4/2009~~ 7/2020

A Small Business ~~Development~~Program Revised ~~7/2005~~ 7/2020

1 Procurement Team Responsibilities in Support of the Small Business ~~Development~~ Program Revised ~~7/2019~~ 7/2020

- a. Effective implementation of the FAA's small business ~~development~~ programs in their contracting actions, including achieving program goals;
- b. Develop small businesses by taking all reasonable action to increase small business participation in the FAA's procurements (including subcontracts);
- c. Consider the feasibility of breaking out requirements to increase opportunities for small businesses to successfully compete for prime contracts;
- d. Consider the extent of small business participation in contract performance during procurement planning;
- e. Obtain guidance from the FAA Small Business ~~Development~~ Program (~~AAP-20~~ Office (SBDPO)) liaison as it relates to small business development issues. In doing so, the service teams must coordinate with representatives of the cognizant local ~~SBDPO-AAP-20~~ staff as soon as requirements estimated to exceed \$150,000 are defined to receive assistance in identifying opportunities for small businesses. This requirement to coordinate does not apply to contract modifications or requirements having an anticipated dollar value exceeding \$10,000 but not over \$150,000 that are set-aside for SEDB 8(a) and/or SDVOSB firms or a small business if no SEDB 8(a) or SDVOSB firms that are competitive in terms of market prices, quality, and delivery can be identified. Use the Small Business Set-Aside Determination and Coordination Form to coordinate with ~~the SBDPO~~ AAP-20 and attach (as applicable) the statement of work, single source rational basis documentation, fully executed single source justification, market survey and market analysis to the form (see also AMS Policy on SDB 8(a) Set-Asides for use of this form). In addition, any requirements that had previously been procured through the Small Business/SDB/8(a) Program, but not currently proposed for reprocurement through the Small Business/SDB/8(a) program must be approved by the cognizant local ~~SBDPO~~ AAP-20 staff. If agreement cannot be reached, the FAA Acquisition Executive's approval is required prior to any public notice or solicitation of the requirement; and
- f. Participate and assist in the development of small business conferences and outreach efforts sponsored by ~~the SBDPO~~ AAP-20.

2 The FAA Small Business ~~Development~~ Program-~~Office (SBDPO)~~ and Liaison Representative Involvement Revised ~~4/2017~~ 7/2020

The Small Business ~~Development~~ Program ~~Office(AAP-20) (SBDPO) office~~ maintains a direct working relationship with the procurement teams. When appropriate, ~~the SBDPO~~AAP-20 interacts with all procurement teams in the following areas to provide support and ensure effective and consistent program implementation:

- a. Participates in procurement workshops to increase access to and award of FAA contracts by small businesses;
- b. Participates in acquisition and procurement planning meetings and other scheduled meetings with the procurement team as advisors;
- c. Identifies potential small businesses that qualify for a particular procurement;
- d. Provides the procurement team with source lists of small businesses;
- e. Ensures that the source selection criteria used to select firms for award is fair, consistent and does not limit opportunities for small businesses;
- f. Provides advertising recommendations to the integrated products teams to ensure all requirements are being advertised in media accessible to small businesses;
- g. Responds to written and telephone inquiries from small businesses and small businesses owned and controlled by a socially and economically disadvantaged individuals regarding procurement opportunities with FAA;
- h. Reviews final source lists to ensure an adequate representation of small businesses;
- i. Reviews questions presented at conferences, preparing answers to questions submitted by small businesses, interacting with the integrated product teams for distribution of responses to all potential contractors;
- j. Reviews annual representations and certifications and accompanying documentation using official records found on the System for Award Management (SAM) and VetBiz;
- k. Small Business Administration's Small Business websites will be utilized to support market Research;
- l. Reviews subcontracting plans;
- m. Ensures that small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals are entered into the ~~OSBD~~AAP-20 database;
- n. Assists in the proposal evaluation process as a non-voting member of the evaluation team;
- o. Conducts on-site pre-award verifications to verify that a sufficient percentage of the ownership, as well as the business control and management of the firm is vested in a disadvantaged group member(s),

service-disabled veteran(s) or woman (women) and verify compliance with small business program requirements;

p. Participates in debriefings of unsuccessful small businesses to ensure fair and equitable treatment to all firms;

q. Participates in postaward meetings with successful offerors to ensure a clear understanding of small business program guidelines and engagement of small businesses as subcontractors; and

r. Conducts on-site compliance reviews of contractors with subcontracting plans to ensure compliance with program requirements.

3 Prime Contracting with Small Business Revised ~~1/2017~~ 7/2020

a. While the use of small business set-asides as a method of procurement is not mandatory, small businesses must be afforded reasonable opportunities to compete for all procurements. All procurements must first be considered for set-aside before procuring the product or service on an unrestricted basis. Thus, procurement teams should take the following actions when appropriate:

(1) Set-aside procurements competitively in accordance with the policies and guidance contained in Acquisition Management System (AMS) Section 3.2.2 Source Selection;

(2) Consider the capabilities of small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals during the screening phase of each procurement;

(3) Breakout large requirements (if severable) into smaller sized requirements to provide for greater small business participation;

(4) Plan procurements of supplies and services so that more than one small business firm may perform the work (if the work exceeds the amount that a single small business can handle);

(5) Ensure that delivery schedules are established on a realistic basis to encourage small business participation to the extent consistent with actual requirements of FAA;

(6) Encourage teaming relationships among small and large businesses to enhance competition; and

(7) Utilize small businesses on qualified vendor lists on a rotational basis to increase opportunities to the greatest number of small businesses.

b. Conducting set-asides with small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, and service-disabled veteran owned small businesses:

- (1) All set-asides are to be conducted directly with small businesses independent of the Small Business Administration (SBA);
- (2) Procurements may be set-aside exclusively for small businesses;
- (3) Procurements may also be set-aside exclusively for competitive award among small disadvantaged businesses (SDBs) that are expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) program. Each firm claiming 8(a) status is required to provide a copy of its SBA 8(a) certification letter to the Contracting Officer (CO) as evidence of eligibility. There is no requirement for SBA's approval to make award to the selected small disadvantaged business (SDB).
- (4) Procurements may not be exclusively set-aside for women-owned businesses;
- (5) Industry should be notified of the applicable North American Industry Classification (NAIC) System code representing the predominant portion of the overall requirement in the public announcement to ensure small business size eligibility requirements are timely known; and
- (6) The service team will state the date when the firm must be 8(a) certified.
- (7) Procurements may be set-aside exclusively for competitive award among service-disabled veteran owned small businesses (SDVOSB) as defined by 38 U.S.C. 101. Each firm claiming SDVOSB status is required to complete the electronic annual representations and certifications via SAM at <https://www.sam.gov>. to self-certify its eligibility. The firm must also be verified by the Department of Veterans Affairs and appear in the Vendor Information Pages on the Veteran Affairs website.
- (8) There is no requirement to obtain the SBA's or Veteran Administration's approval to make award to the selected SDVOSB. However, unless the firm is designated as a SDVOSB on the VA website, the CO must not make an award to the firm as a SDVOSB.
- (9) *Combined Set-Asides* Procurements may also be set-aside for competitive award among offerors that qualify with the two categories. The requirements of section (b) are applicable to such combined set-asides.
- (10) A procurement may not be set-aside if:
 - (a) there is no reasonable expectation of obtaining offers from two or more responsible SDB(8(a)) concerns, small business concerns, or service-disabled veteran owned small business concerns that are competitive in terms of market prices, quality and delivery;
or

(b) it is in the best interest of the FAA to contract with a single source and the rational basis is documented; or

(c) extension of the current services.

c. Noncompetitive Awards to SDB (8(a)) and SDVOSB Firms. A rational basis for the decision to award a noncompetitive SDB (8(a)) or SDVOSB procurement should be documented. Procurement decision makers should consider potential SDB (8(a)) or SDVOSB sources of supply contained in the Source Net, System for Award Management (SAM), and Vetbiz, www.va.gov/osdbu, (market research) websites, available on the Small Business ~~Development Office~~ Program's (AAP-20) website. The ownership and control of the sources on this website have been verified by Veterans Affairs (VA). The public announcement requirements of the AMS Section 3.2.1.3.11 are not applicable to noncompetitive awards to SDB (8(a)) or SDVOSB firms if the product being procured is not available from Federal Prison Industries.

There is no requirement to obtain the SBA's or Veteran Administration's approval to make award to the selected SDVOSB. However, unless the firm is designated as a SDVOSB on the VA website, the CO must not make an award to the firm as a SDVOSB.

d. Noncompetitive awards above \$22 million to SEDB 8(a) firms: For such awards, the following additional requirements apply:

(1) The program official must prepare a written justification at a minimum documenting the rational basis for the award as follows:

(a) Description of the supplies/services being purchased;

(b) Determination that a noncompetitive contract is in the best interests of FAA;

(c) Determination that the anticipated cost of the contract will be fair and reasonable; and

(d) Applicable AMS references.

(2) The CO and program official must approve the justification, with concurrence by legal counsel (on the justification) and ~~AAP-20 the Small Business Program Development Office~~ (on the Small Business Set-Aside Determination and Coordination form) before negotiations on the contractor's proposal.

4 Subcontracting with Small Business Revised ~~10/2018~~ 7/2020

a. In procurements estimated to exceed \$700,000 (\$1,500,000 for construction), the CO must incorporate subcontracting provisions (including attainable and reasonable subcontracting goals for the participation of small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, women-owned small businesses and service disabled

veteran owned small businesses). A template Master Subcontracting Plan to satisfy the applicable requirements of AMS clause 3.6.1-4, Small, Small Disadvantaged, Women-Owned and Service-Disabled Veteran-Owned Small Business Subcontracting Plan is located in FAST under Procurement Templates & Samples. Subcontracting provisions are not required for; (1) commercial items; (2) when there are no subcontracting possibilities or (3) when the prime contractor is a small business or a small business owned and controlled by a socially and economically disadvantaged individual. The contract should include requirements for contractors to periodically report data on subcontracting accomplishments in sufficient detail to determine the extent of the contractor's attainment of subcontracting goals.

b. The following subcontracting considerations should be used in procurements that have subcontracting provisions as appropriate:

(1) Establishing goals requires much care to ensure that they are realistic and motivate the contractor. Percentage goals that are unrealistically low will only create a false sense of success and should be avoided. Likewise, goals that are too high can be counterproductive.

(2) Subcontracting requirements should be a subject for review and discussion at postaward conferences. It is important to monitor contractor performance in meeting goals. This is particularly important early in the life of the contract when the majority of subcontracts will be awarded. Prompt corrective action should be taken if it appears that a contractor will not meet its goal.

(3) The procurement team should notify the Small Business ~~Development~~ Program ~~Group~~ (SBDPG) or Small Business (AAP-20) Liaison Representative of the opportunity to review the subcontracting proposal in sufficient time to provide the representative a reasonable time to review the material and submit advisory recommendations prior to award. The CO is responsible for ensuring that the contractor attains all subcontracting goals. Subcontracting data (accomplishments) must be timely reported in the Electronic Subcontracting Reporting System (eSRS).

(4) The CO should provide a listing of potential small business subcontractors for information purposes. The FAA should not make any warranty as to their capabilities or abilities to perform any portion of the contract. The listing may be obtained from the ~~SBDPG~~ or Small Business AAP-20 Liaison Representative.

(5) Evaluate the percentage and dollar volume of planned subcontracting and total dollar volume of expected awards to small business subcontractors (including small businesses owned and controlled by socially and economically disadvantaged individuals, women- owned and service-disabled veteran owned concerns).

(6) There should be separate subcontracting goals for small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals, women-owned and service-disabled veteran owned concerns expressed as a percentage of total planned subcontracting dollars.

- (7) Identify principal product and service areas to be subcontracted and identify those areas where it is planned to use small business, small businesses owned and controlled by a socially and economically disadvantaged individual, women-owned and service- disabled veteran owned subcontractors.
- (8) Review via SAM representations and certifications of principal proposed small business and small disadvantaged business subcontractors, including the type of product or service and the dollar value to be awarded to each principal subcontractor. This information is to be used to assist the CO in making a determination as to the acceptability of the proposed subcontracting goals. The contractor is not contractually bound to make awards to the designated subcontractors nor is the Government approving the subcontracts.
- (9) Evaluate extent of complexity and variety of work to be performed by small businesses with greater weight on businesses performing substantive or high technology components or services. In this way, FAA can ensure that small businesses will receive technologically challenging or a meaningful portion of the overall contract.
- (10) Include monetary incentives for subcontracting such as including an award fee provision to provide incentives for providing meaningful, technically substantive subcontracting work to small businesses. Under this approach subcontracting proposals that provide appropriate percentage commitments would be accepted, but an award fee contract line item would be incorporated as part of the contract. Receipt of the award fee would be after either preliminary design review, critical design review, or other appropriate milestones. The percentage amount of the award fee pool would be based on the extent the contractor has provided meaningful, technically substantive work to eligible small businesses within the previously accepted percentage goals.
- (11) Evaluate past performance related to the offeror's compliance with prior subcontracting proposals and subcontracting plans, with greater weight on subcontracting proposals received from offerors that have successfully attained or exceeded subcontracting goals in the past.
- (12) Evaluate level of participation of small businesses evaluated based on the percentage of the total contract value (if appropriate). This is particularly recommended for requirements traditionally performed by small businesses that may be displaced due to the bundling of smaller set-aside requirements into one larger contract.
- (13) Contractors should be required to flow down similar subcontracting requirements under the prime contract to all subcontractors (except small businesses).
- (14) If an offeror submits an offer that does not address each of the subcontracting provisions, the CO should advise the offeror of the deficiency and request submission of a revised offer by a specific date; and (15) If the offeror does not submit an offer incorporating the subcontracting requirements within the time allotted, the offeror should be ineligible for award.

5 Bonding Assistance and the DOT Lending Program Revised 1/2018

Firms seeking bonding assistance may refer to the National association of Surety Bond Procedures (NASBP) website, <https://www.nasbp.org/home>, and/or click here, http://events.nasbp.org/STAFF/us/About/FindaProducer/us/FindProducers/Find_a_Producer.aspx?WebsiteKey=ecff5501-6102-4c5a-91f0-2c438675a280, to find bond producers in their area.

6 Size Standards Verification Revised 7/2019

a. To preserve the integrity and foster the objectives of the small business program, FAA must satisfy itself that the ownership, control, and day-to-day management requirements of the program are fulfilled. Each business claiming eligibility as a small business or small business owned and controlled by a socially and economically disadvantaged individual must be required to provide evidence of eligibility prior to award. Prospective contractors must complete electronic annual representations and certifications via SAM at <https://www.sam.gov> and as directed in Guidance subparagraph T3.6.1A3(b). The FAA reserves the right to review and verify each firm's program eligibility. If the firm is not a small business as defined by the North American Industry Classification (NAIC) code size standards, it will not qualify as a small business.

For set-asides restricted to small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals (8(a) certified) and/or service-disabled veteran owned small businesses verification will be performed using SAM and/or VetBiz. The contracting officer will reference the date of verification in the contract file. For agreements, the contractor retains eligible status for the term of the agreement. The contractor must recertify their business size prior to any extensions of the agreement including exercising an option period.

b. For unrestricted procurements, the successful offeror must complete electronic annual representations and certifications at SAM.

c. When subcontracting goals are established for small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals, small businesses owned and controlled by women, and service-disabled veteran owned small businesses, the prime contractor must verify a completed profile via SAM for such small businesses counted toward the successful offeror's subcontracting goals.

d. A successful small business program rests with FAA's ability to limit participation to bona fide small businesses and small businesses owned and controlled by socially and economically disadvantaged individuals for they are the intended recipients of the agency's procurement dollars earmarked for small business set-asides.

e. For the owner of the firm to be found to have controlling interest in the company, the following must exist:

- (1) The eligible owner holds the position of chairperson of the board, president or chief executive officer;

- (2) The eligible owner has the right to vote his or her shares or other equity interest to elect the majority of voting members of the board of directors or other governing body;
- (3) The eligible owner holds at least 51% unconditionally ownership and control of the operation; or
- (4) The eligible owner has direct full-time responsibility for the day-to-day management of the business, as evidenced by all of the following:
 - (a) Directly related managerial or technical experience and competency;
 - (b) Establishment of company policies;
 - (c) Determination and selection of business opportunities;
 - (d) Supervision and coordination of projects
 - (e) Control of major expenditures;
 - (f) Hiring and dismissing key personnel;
 - (g) Marketing and sales decisions; and
 - (h) Signature on major business documents.

7 Contract Bundling Revised ~~1/2017~~ 7/2020

a. Definitions:

- (1) A bundled contract is a contract that is entered into to meet requirements that are consolidated.
- (2) Bundling is consolidation of two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a SIR for a single contract that renders a contract likely to be unsuitable for award to a small business concern (including socially and economically disadvantaged (8(a)), small disadvantaged, and women-owned businesses) due to:
 - (a) The diversity, size, or specialized nature of the elements of the performance specified;
 - (b) The aggregate dollar value of the anticipated award;

(c) The geographical dispersion of the contract performance sites; or

(d) Any combination of the factors described in paragraphs (2) (i), (ii), and (iii) of this definition.

(3) Measurably Substantial Benefits are the dollar amount of benefits accruing from the bundling of requirements. These benefits can be in many forms to include cost savings, price reduction, quality efficiency, enhance performance, result in better terms and conditions, reduce acquisition cycle times and any other benefits

b. This section is not applicable to contracts whose total estimated bundled value (including all options) is less than \$10 Million.

c. Bundling of contractual requirements is discouraged unless it is necessary and justified. Bundling is necessary and justified if there are substantial benefits which are measurable and quantifiable. The service team must document the measurably substantial benefits to the Government. Benefits must be equivalent to 10% if the total anticipated contract value is \$94 million or less; or 5% if the contract value exceeds \$94 million.

d. To ensure that prime contract opportunities are provided to small businesses, the following alternatives must be considered prior to bundling:

(1) Breaking up the procurement into smaller discrete procurements to render them suitable for small business set asides;

(2) Breaking out discrete components, where practicable, to be set aside for small business; or

(3) When issuing multiple awards against a single solicitation, reserving one or more awards for small businesses.

e. If a service team determines that contract bundling is to be used, the service team must inform the administrator and include written justification in the file (a part of the acquisition strategy plan, separate memo, etc.) outlining the need for bundling and documenting the impact on attaining the FAA socioeconomic goals. Additionally, if bundling would result in any adverse impact to achievement of the agency's socio-economic goals, the SIR for the bundled procurement must be approved by the FAA Acquisition Executive (FAE).

In addition, the service team must notify the local Small Business ~~Development~~ Program (AAP-20) ~~Office (SBDPO)~~ prior to issuance of the SIR.

f. In a bundled procurement, the acquisition strategy should provide for maximum practicable participation by small business concerns. Some of the ways this can be accomplished include the following:

(1) Authorizing two or more small businesses to form a contract team and for that team to be considered a small business for purposes of a bundled requirement provided that each small business partner to the teaming arrangement individually qualifies as a small business under the assigned NAIC codes for the requirement.

(2) For SIRs that offer a significant opportunity for subcontracting, the CO should include proposed small business, small disadvantaged business and women- owned business subcontracting participation in the subcontracting plan as an evaluation factor.

(3) Including small business, small disadvantaged business and women-owned subcontracting goals in SIRs and contracts based on contract dollars versus planned subcontracting dollars.

(4) Consulting the local ~~SBDPO~~ AAP-20 and Source Net.

g. The requirements of this section do not apply to bundled contracts that are awarded in accordance with OMB Circular A-76 if a cost comparison has been performed under A-76 procedures.

h. The requirements of this section do not apply to contracts to be awarded and performed entirely outside of the United States.

8 Mentor-Protégé Revised 4/2016 7/2020

a. Definitions.

(1) SMALL DISADVANTAGED BUSINESSES (SDB), as used in the Mentor-Protégé Program, means small business concerns owned and controlled by socially and economically disadvantaged individuals as defined by the Acquisition Management System (AMS).

(2) HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) means institutions determined by the U.S. Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein.

(3) MINORITY EDUCATIONAL INSTITUTIONS (MI) means institutions verified by the U.S. Secretary of Education to meet the criteria set forth in 34 CFR 637.4. MIs include Hispanic-serving institutions as defined by 20 USC 1059c(b)(1).

(4) WOMEN-OWNED SMALL BUSINESSES (WO), as used in the Mentor-Protégé Program, means a small business where ownership and controlling interest (at least 51%) in the company is held by a woman.

(5) SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS (SDVSB) is a small business concern that is 51% owned and controlled by a service-disabled veteran(s).

(6) HIGH-TECH, as used herein means research and/or development efforts that are within or advances the state-of-the-art in technology discipline and are performed primarily by professional engineering, scientists, and highly skilled and trained technicians or specialists.

(7) SMALL DISADVANTAGED BUSINESS (SDB) is a small business concern that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals and that has its management and daily business controlled by one or more such individuals.

(8) SMALL BUSINESS (SB) is a business, including its affiliates, that is independently owned and operated and not dominant in producing the products or performing the services being purchased, and one that qualifies as a small business under the Federal Government's criteria and North American Industry Classification System (NAICS) Code size standards.

b. Purpose.

(1) The FAA Mentor-Protégé Program is designed to motivate and encourage firms to assist Small Businesses (SB), preferably Small Disadvantaged Businesses (SDB), Small Disadvantaged Businesses (SDB), Service-Disabled Veteran-Owned Small Business (SDVSB), Historically Black Colleges and Universities (HBCU), and Minority Institutions (MI) and Women-Owned Businesses (WOB), enhancing their capabilities to perform FAA prime contracts and subcontracts, foster long-term business relationships between these entities and Mentor Firms, and increase the overall number of these entities that receive FAA prime contract and subcontract awards. The "Mentor-Protégé Program Guide" may be obtained from the Small Business ~~Development~~ Program ~~Group (SBDPG)~~ (AAP-20) staff.

c. Incentives for Mentor Participation.

(1) Mentors may receive additional evaluation points (for Mentor-Protégé Program participation) toward the award of contracts during the evaluation of competitive offers.

(2) Mentors may receive credit toward attaining subcontracting goals contained in their FAA subcontracting plan(s) for Mentor-Protégé participation.

(3) Costs incurred by a mentor to provide developmental assistance (i.e., technical or managerial) described in Section 1.12 are allowable as indirect costs (appropriate documentation must be provided) unless the contract contains a line item specifically for the Mentor-Protégé Program. A ceiling on allowable developmental costs must be established at time of contract award.

(4) Procurements may be set-aside exclusively for competition among firms that are participants in the FAA Mentor-Protégé Program.

d. *Review and Approval on Mentor-Protégé Application and Agreement.*

(1) The Mentor-Protégé application and agreement is reviewed by ~~the SBDPG~~ [AAP-20](#). The review should be completed no later than 30 days after receipt. ~~The SBDPG~~ [AAP-20](#) should provide a copy of the submitted information to the cognizant FAA service team and Contracting Officer for a parallel review and concurrence.

(2) Upon approval of the agreement, the mentor may implement the developmental assistance program.

(3) An approved agreement must be incorporated into the mentor or protégé firm's award (for example: a contract, blanket purchase agreement, purchase order, memorandum of agreement, memorandum of understanding, etc.). It should be added to the subcontracting plan in contracts which contain such a plan.

(4) If the application is disapproved, then the mentor may provide additional information for reconsideration. The review of any supplemental material should be completed within 30 days after receipt by the SBDPG. Upon finding deficiencies that FAA considers correctable, the SBDPG should notify the mentor and request information to be provided within 30 days that may correct the deficiencies.

e. Additional Mentor-Protégé Program guidance is located on the ~~Small Business Development Office~~ [AAP-20](#) website.

9 Joint Ventures Revised 10/2018

a. *Small Business Exception to Affiliation.* A joint venture of two or more business concerns may submit an offer as a small business without regard to affiliation provided that each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:

(1) The procurement qualifies as a “bundled” requirement; or

(1) The procurement does not qualify as a “bundled” requirement, and:

(a) For a procurement having a receipts based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(b) For a procurement having an employee-based size standard, the dollar value of the procurement, including options, exceeds \$10 million.

b. *Mentor-Protégé Exception to Affiliation.* A joint venture between a protégé firm and its approved mentor will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAIC code assigned to the procurement. FAA approved Mentor-Protégé Program joint ventures are acceptable and/or Small Business Administration approved Mentor-Protégé Program joint ventures are acceptable.

c. *Subcontracting Limitations.* The subcontracting limitations specified in AMS Clauses 3.6.1-7, Limitations on Subcontracting and 3.6.1-12 Notice of Service-Disabled Veteran Owned Small Business Set-Aside, are applicable to Small Business Joint Ventures. A joint venture awarded a contract as a prime contractor must perform work according to the conditions and percentages detailed in AMS Clause 3.6.1-7 or 3.6.1-12 as applicable.

d. *Small Disadvantaged Businesses (SDB(8(a)) Exception to Affiliation.*

(1) If approved by the Small Business Administration (SBA), 8(a) participants may enter into joint venture agreement with one or more small business concerns, whether they be 8(a) participants or not, for the purpose of performing a specific 8(a) contract.

(2) A joint venture of at least one 8(a) concern and one or more other business concerns may submit an offer as a small business for a competitive 8(a) procurement as long as each are considered small under the size standard corresponding to the NAIC code assigned to the SIR, provided:

(a) The size of at least one 8(a) Participant to the joint venture is less than one half the size standard corresponding to the NAIC code assigned to the contract; and

(b) For a procurement:

(i) Having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAIC code assigned to the contract;

or

(ii) Having an employee-based size standard, the procurement exceeds \$10 million.

(3) For single source and competitive 8(a) procurements that do not exceed the dollar levels identified above, an 8(a) Participant entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the 8(a) contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the NAIC code assigned to the 8(a) SIR or contract.

(e) *Service-Disabled Veteran Owned Small Businesses (SDVOSB) Exception to Affiliation.*

(1) An SDVOSB may enter into a joint venture agreement with one or more other small business concerns for the purpose of performing an SDVOSB contract.

(2) A joint venture of at least one SDVOSB and one or more other business concerns may enter submit an offer as a small business for a competitive SDVOSB procurement, so long as each concern is small under the size standard corresponding to the NAICS code assigned to the SIR, provided:

(a) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(b) For a procurement having an employee-based size standard, the procurement exceeds \$10 million.

(2) For noncompetitive and competitive SDVOSB procurement that does not exceed the dollar level identified above, an SDVOSB entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the SDVOSB contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the NAICS code assigned to the SDVOSB SIR or contract.

10 Tiered Evaluations Added 7/2016

Refer to AMS guidance on tiered evaluations at T3.2.2A.9 for more information.

B Clauses Revised 10/2006

[view contract clauses](#)

C Forms

[view procurement forms](#)