AMS/FAST CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 21-89

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Title: Batch# 9 AMS Guidance

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Policy and Guidance: (check all that apply)

- ☐ Policy
- ☒ Guidance
- ☐ Procurement Forms, Templates and Samples
- ☐ Real Property Templates and Samples
- ☐ Procurement Clauses
- ☐ Real Property Clauses
- ☐ Other FAST Tools and Resources

Summary of Change:
Updated guidance with administrative changes and substantive changes to correspond with the changes made in the procurement forms, templates, samples, and tools and resources documents. T3.6.2 was revised to reflect the process to obtain a pre-award clearance from OFCCP IAW OFCCP guidance. T3.6.3 was updated with the latest standards for Seismic Safety.

Reason for Change: Ensure compliance with documents in the procurement forms, templates, samples, and tools and resources sections of FAST and existing AMS policy/guidance to provide for efficient and effective guidance for the use by the AAQ community.

Development, Review, and Concurrence: AAP-110, AAP-100, AAQ, ACG

Target Audience: Acquisition workforce

Briefing Planned: No.

ASAG Responsibilities: None.

Section / Text Location:
Procurement Guidance/T3.6.2
Procurement Guidance/T3.6.3
Procurement Guidance/T3.8.1
Procurement Guidance/T3.8.3
Procurement Guidance/T3.8.4
Procurement Guidance/T3.8.6
Procurement Guidance/T3.8.7

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

- [x] 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/guidanceT3.6.2.pdf
https://fast.faa.gov/docs/procurementGuidance/guidanceT3.6.3.pdf
https://fast.faa.gov/docs/procurementGuidance/guidanceT3.8.1.pdf
https://fast.faa.gov/docs/procurementGuidance/guidanceT3.8.3.pdf
https://fast.faa.gov/docs/procurementGuidance/guidanceT3.8.4.pdf
https://fast.faa.gov/docs/procurementGuidance/guidanceT3.8.6.pdf
https://fast.faa.gov/docs/procurementGuidance/guidanceT3.8.7.pdf

Attachments: Redline and final documents.

Other Files: N/A.

Redline(s):

Section Revised: T3.6.2 – Labor Laws

Procurement Guidance - (~~7/2021~~9/2021)

T3.6.2 - Labor Laws Revised 4/2009

A Labor-Related Laws

1 General Revised 10/2020

a. While the FAA is not subject to the procurement-specific labor laws, we adhere to their spirit and intent within the parameters and flexibility of the AMS. Pertinent procurement-related labor laws are implemented in detailed regulations issued by Department of Labor (DOL) at Titles 29 and 41 of the Code of Federal Regulations (CFR) summarized as follows. Additional information is available on the DOL website.

(1) Davis-Bacon Act (29 CFR Parts 1, 5, 6, and 7)

(2) Copeland Anti-Kickback Act (29 CFR Parts 3, 5, 6, and 7)

(3) Contract Work Hours and Safety Standards Act (29 CFR Parts 5, 6, and 7)

(4) Walsh-Healey Public Contracts Act (41 CFR Chapter 50)

(5) Fair Labor Standards Act (29 CFR Chapter V, Parts 500-794)

(6) Service Contract Labor Standards (29 CFR Parts 4, 6, 8, 541, and 1925)

(7) Equal Employment Opportunity Act (41 CFR Chapter 60)

(8) Special Disabled and Vietnam Era Veterans (41 CFR Chapter 60)

(9) Employment of the Disabled (41 CFR Chapter 60)

(10) Occupational Safety and Health Act (29 CFR Parts 6 and 1925; 41 CFR Chapter 50)

b. DOL also issues "All Agency Memoranda" that interpret and explain various labor-related laws and regulations.

c. The Secretary of Labor, or designee if applicable, may make variations, tolerances, and exemptions from many regulatory requirements if such action is necessary and proper in the public interest or to prevent injustice and undue hardship. When applicable, DOL implementing regulations prescribe procedures for requesting variations, tolerances, and exemptions (exemption procedures are summarized in sections that follow).

d. The procurement team (Contracting Officer (CO), program official, legal counsel, and other supporting staff) ensures full and impartial administration of labor standards in contracts, and ensures contractors and subcontractors are informed of their obligations under labor standards. Procurement teams should:

(1) Maintain sound relations with industry and labor, and show no preference for either union or non-union contractors.

(2) Remain impartial concerning any dispute between labor and contractor management and should not attempt conciliation, mediation, or arbitration of a labor dispute. Procurement teams should notify the agency responsible for conciliation, mediation, arbitration, e.g. the National Labor Relations Board, of a potential or actual labor dispute affecting, or threatening to affect, FAA programs.

(3) When appropriate, require contractors to notify the FAA of potential or actual labor disputes that could, or will, delay contract performance.

e. The CO should promptly refer, in writing, the following to the Department of Labor (DOL):

(1) Complaints alleging violations of labor-related laws;

(2) Apparent violations which have a significant impact;

(3) Any recurring violations; and

(4) Any failures to promptly correct identified violations.

f. The CO should seek advice from DOL when there is a question of whether a contractor's actions violate a labor-related law. Additionally, the CO should not directly discuss with the contractor any of its employee's complaints about possible labor law violations.

2 Labor Disputes Causing Strikes or Delays Revised 7/2007

(a) Labor disputes may cause strikes or delays which delay contract performance. Contractors are responsible for any reasonably avoidable delays in performance. However, a delay caused by a strike may be excusable if the strike was unforeseeable at time of award and the contractor or its subcontractors acted in good faith, diligently, and in a lawful manner to end the strike, such as seeking injunctive relief in court or engaging in private mediation or arbitration.

(b) Procurement teams should determine whether it is in the FAA's interest to remove products or materials from facilities in which the contractor is unable to deliver because of the strike. Two main factors to be considered are the criticality of need and the possibility/practicality of performance by another vendor. The CO, after consulting with legal counsel, must first notify the contractor in writing to request removal of the products or materials from the facility.

(1) If the contractor agrees, and FAA personnel will remove the items, FAA personnel should take extreme care to avoid use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(2) If the contractor disagrees, and the items are still critical, the CO should seek advice from legal counsel on the next action to be taken.

3 Overtime Added 7/2007

For cost-type (excluding incentive fee), time and materials, and labor hour contracts, the CO should determine the extent an offer is based on the payment of overtime and shift premiums, and negotiate contracts without the use of overtime or premiums. Overtime may be occasionally necessary to meet urgent or unforeseen program needs. In those instances, the CO should require the contractor to submit requests for overtime in advance of incurring the cost for overtime. The CO should review and approve contractor requests for overtime. Approval of overtime should be prospective; however, if justified by emergency circumstances, approval may be retroactive.

4 Contract Work Hours and Safety Standards Act Revised 1/2012

a. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) applies to all contracts over $150,000 that may require or involve laborers or mechanics (the term "laborers or mechanics" includes apprentices, trainees, helpers, watchmen, guards, firefighters, fireguards, and workmen who perform services in connection with dredging or rock excavation in rivers or harbors, but does not include seaman). The Contract Work Hours and Safety Standards Act (CWHSSA) requires that laborers or mechanics cannot be required, or permitted, to work more than 40 hours in any workweek unless paid overtime at not less than 1 1/2 times the basic rate of pay.

b. *Liquidated Damages and Overtime Pay.*

(1) When overtime computations disclose under-payments, the contractor and any subcontractor is liable to the affected employee for the employee's unpaid wages and is also liable to the FAA for liquidated damages. The CO will compute liquidated damages for each affected employee in the sum of $10 for each calendar day that the employee was required, or permitted, to work in excess of the standard workweek of 40 hours without payment of overtime.

(2) If the contractor or any subcontractor fails or refuses to comply with overtime pay requirements and if the funds withheld by the FAA for labor standards violations are not sufficient to pay both the unpaid wages and the liquidated damages, the withheld funds will be used first to pay unpaid wages (or an equitable portion when the funds are not adequate for this purpose); and the balance, if any, used to pay liquidated damages.

(3) If the liquidated damages computation was incorrect or if the contractor or subcontractor inadvertently violated the provisions of the CHWSSA, the CO may:

(a) Make an adjustment in, or release the contractor or subcontractor from the liability for, liquidated damages of $500 or less; or

(b) Make a recommendation to DOL for an adjustment in, or release from, the liability when the liquidated damages are over $500.

(4) If the contractor is entitled to funds withheld or collected for liquidated damages, the CO should instruct the cognizant accounting office to pay the contractor the amount due. If the FAA is entitled to retain the funds, the CO should obtain instructions from the cognizant accounting office.

c. *Administration and Enforcement.* The same procedures and reports required for construction contract labor standards also apply to investigations of alleged violations of the CHWSSA when the contract is for other than a construction.

d. The CHWSSA does not apply to contracts:

(1) Valued at or below $150,000

(2) For commercial items;

(3) For the transportation or transmission of intelligence;

(4) To be performed outside the United States, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and Outer Continental Shelf Islands as defined by the Outer Shelf Lands Act;

(5) For work to be solely done in accordance with the Walsh-Healey Public Contracts Act;

(6) For supplies that include incidental services that do not require substantial employment of laborers or mechanics; or

(7) Exempt under regulations of the Secretary of Labor.

5 Construction Contracts/Davis-Bacon Act Revised 7/2019

a. *Davis-Bacon Act.* The Davis Bacon Act (40 U.S.C. 276a-278a-7) provides that contracts of $2,000 or more to which the U.S. or the District of Columbia are a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the U.S., will require that no laborer or mechanic employed directly upon the site of the work will receive less than the prevailing wage rates as determined by DOL. For purposes of FAA procurement, the Davis Bacon Act will only apply to contracts greater than $10,000.

b. *Related Laws.*

(1) The Copeland ("Anti-Kickback") Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force, intimidation, threat of dismissal, or otherwise, any person employed in the construction or repair of public buildings or public works, to give up any part of the compensation to which the person is entitled under a contract of employment. Contracts subject to the Copeland Act will include a clause requiring contractors and subcontractors to comply with regulations issued by DOL. Additionally, the Copeland Act requires each contractor or subcontractor to furnish weekly statements of compliance regarding wages paid to each employee.

(2) The Contract Work Hours and Safety Standards Act applies to construction contracts involving laborers or mechanics.

c. *Applicability*.

(1) The Davis-Bacon Act and related laws apply to:

(a) Construction work to be performed by laborers and mechanics on a public building or public work site;

(b) Dismantling, demolition, or removal of improvements if construction at that site is anticipated under the same or a separate contract;

(c) Manufacture or fabrication of construction materials and components to be incorporated into the work when manufacture or fabrication is performed at the construction site;

(d) Painting of public buildings or public works, whether performed in connection with the original construction or as alteration or repair of an existing structure; and

(e) Hazardous waste cleanup contracts that require elaborate landscaping activities or substantial excavation and reclamation work (see DOL Memorandum No. 155, March 25, 1991).

(2) Davis-Bacon Act and related laws do not apply to:

(a) The manufacturing or fabrication of components or materials off the construction site, or their subsequent delivery to the site by the manufacturer or fabricator, unless the manufacturing or fabrication facility is operated solely in support of the construction project;

(b) Contracts requiring construction work that is so closely related to research, experiment, and development that it cannot be performed separately, or that is itself the subject of research, experiment, or development;

(c) Employees of railroads operating under collective bargaining agreements that are subject to the Railway Labor Act; or

(d) Employees who work at the contractors' or subcontractors' permanent home offices, fabrication shops, or tool yards not located at the site of the work. However, when employees go to the work site and perform construction activities there, the requirements of the Davis-Bacon Act and related laws are applicable for the actual time so spent, not including travel unless the employees transport materials or supplies to and from the site of the work.

d. *Non-construction Contracts Involving Some Construction*.

(1) The Davis-Bacon Act and related laws apply to construction work to be performed as part of contracts other than construction (supply, service, research and development, etc.) if:

(a) The construction work is to be performed on a public building or public work;

(b) The contract contains a substantial amount of construction work exceeding $10,000 in value (the word "substantial" relates to the construction work considered on its own rather than merely a value comparison of the construction work as compared to the total value of the contract); and

(c) The construction work is physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required by the contract.

(2) The Davis-Bacon Act and related laws do not apply if:

(a) The construction work is incidental to the furnishing of supplies, equipment, or services; and

(b) The construction work is so merged with non-construction work, or so fragmented in terms of the locations or time spans within which it is to be performed, that it cannot be segregated as a separate contractual requirement.

(3) Consistent with Executive Order 13706 “Establishing Paid Sick Leave for Federal Contractors”, contracts subject to the Davis-Bacon Act must include AMS Clause 3.6.2-46 “Paid Sick Leave”.

e. *Definitions*.

(1) "Building" or "work," generally means construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging shoring rehabilitation and activation of plants, scaffolding , drilling, blasting, excavating, clearing and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not "building" or "work" unless conducted in connection with and at the site of such building or work as described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(2) "Construction, alteration, or repair," means all types of work done on a particular building or work at the site thereof, including without limitation, altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment of the site of the building or work by persons employed by the contractor or subcontractor.

(3) "Laborers or mechanics" includes:

(a) Those workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature, as distinguished from mental or managerial;

(b) Apprentices, trainees, helpers, and in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards;

(c) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR Part 541, for the time so spent; and

(d) Every person performing the duties of a laborer or mechanic, regardless of any contractual relationship alleged to exist between the contractor and those individuals. The terms exclude workers whose duties are primarily executive, supervisory, (except as provided in this section) administrative, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR Part 541 are not deemed to be laborers or mechanics.

(4) "Public building" or "public work," means building or work, the construction, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(5) "Site of the work," is defined as follows:

(a) The "site of the work" is limited to the physical place or places where the construction called for in the contract will remain when work on it is completed, and nearby property, as described in subparagraph (5)(b) below, used by the contractor or subcontractor during construction that, because of proximity, can reasonably be included in the "site."

(b) Except as provided in subparagraph (5)(c) below, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are parts of the "site of the work"; provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(c) The "site of work" does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a contractor or subcontractor whose locations, and continuance in operation, are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial vendor or material handler which are established by a vendor of materials for the project before proposal are received and are not on the project site, are not included in the "site of work." Such permanent, previously-established facilities are not a part of the "site of the work," even if their operations may for a period of time, be dedicated exclusively, or nearly so, to the performance of a contract.

(6) "Wages," means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-

Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness-resulting from occupational activity, or insurance to provide any of the foregoing;
unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(7) "Apprentice," means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(8) "Trainee," means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

6 Procedures for Construction Contracts **Revised ~~10/2020~~9/2021**

a. *Davis-Bacon Act Wage Determinations*.

(1) DOL is responsible for issuing wage rate determinations for construction reflecting prevailing wage and fringe benefits. The wage determinations apply to those laborers and mechanics employed by a contractor at the site of the work, including drivers who transport materials and equipment to and from the site. Wage determinations are issued for different types of construction, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of construction designated in the determination.

(a) *General Wage Determination.* General wage determinations contain prevailing wage rates for the types of construction designated in the determination, and are used in contracts performed within a specified geographical area. They contain no expiration date and remain valid until modified, superseded, or canceled by a notice in the Federal Register by DOL. Once incorporated in a contract, a wage determination normally remains effective for the life of the contract.

Modifications which may be issued do not apply to ongoing contracts unless specifically directed by DOL. General wage determinations are available online on the Department of Labor (DOL) website. This website provides a single location for COs to use in obtaining current or archived Davis-Bacon Act wage determinations.

(2) *Project Wage Determination.* When a general wage determination does not exist for a particular area, DOL will issue a project wage determination if requested by the CO using a Standard Form (SF) 308. A project wage determination is effective for 180 days and applies to specific contracts within that time period. Once incorporated into the contract, a project wage determination remains effective for the life of the contract unless directed otherwise by DOL.

b. *General Requirements*.

(1) The CO should ensure that only the appropriate wage determinations are incorporated in screening information requests (SIR's) and contracts. When multiple sites are included, or only a portion of the contract is for construction, the CO should indicate the work to which each wage determination or part thereof applies.

(2) If the wage determination contains more than one rate schedule, the CO should either include only the rate schedules that apply to the specific types of construction (building, heavy, highway, etc.) or include the entire wage determination and clearly indicate the parts of the work to which each rate schedule should be applied.

(3) The CO should use the following general guidelines in selecting the proper schedule(s) of wage rates:

(a) *Building* construction is generally the construction of sheltered enclosures with walk-in access, machinery, equipment, or supplies. It typically includes all construction of such structures, installation of utilities and equipment (both above and below grade level), as well as incidental grading, utilities and paving, unless there is an established area practice to the contrary.

(b) *Residential* construction is generally the construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height, and typically includes incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.

(c) *Highway* construction is generally the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, parking areas, and other similar projects that are not incidental to "building," "residential," or "heavy" construction.

(d) *Heavy* construction includes those projects that are not properly classified as either "building," "residential," or "highway," and is of a catch-all nature. Construction of FAA substations, transmission lines and access roads. Such heavy projects may sometimes be distinguished on the basis of their individual characteristics, and separate schedules issued (e.g., "dredging," "water and sewer line", "dams," "flood control," etc.).

(e) When the nature of a project is not clear, it is necessary to look at additional factors, with primary consideration given to locally-established area practices. If there is any doubt as to the proper application of wage rate schedules to the type or types of construction involved, the CO should contact DOL for guidance (further examples are contained in DOL Memoranda Numbers 130 and 131).

c. *Requesting Wage Determinations.*

(1) *General Wage Determination.* The CO may incorporate general wage determinations without notifying DOL.

(2) *Project Wage Determination.* To request a project wage determination, the CO will utilize the Department of Labor's (DOL) wage determination website. If a wage determination does not exist for a given area, the CO may request a project wage determination by submitting a Standard Form (SF) 308 to DOL.

d. The published wage determinations, with their most current modification received by the CO, will be incorporated into applicable SIR's. Incorporation by reference is not permitted.

e. *SIR's Issued without Wage Determinations.* The CO should include a notice in the SIR that wage determinations have been requested and that the SIR will be amended to incorporate any wage determination when received.

f. *Modifications of Wage Determinations.* If the CO has a wage determination for a particular acquisition, wage determination modifications received by the CO or published in the Federal Register less than 10 days prior to receipt of offers are not required to be incorporated if the CO determines there is not reasonable time to incorporate the modification and the CO documents the file with said determination. Note also that if the contract has not been awarded within 90 days after bid opening/receipt of offers, any wage determination modification published on ~~beta.~~SAM.gov prior to award of the contract shall be effective with regard to that contract unless the FAA Administrator or his or her designee requests and obtains an extension of the 90-day period from the DOL Administrator. Modifications received after award are not effective and need not be incorporated in the contract.

g. *Award of Contract Without Required Wage Determination.* If DOL discovers after award that the wrong wage determination or rate schedule was specified, the CO will modify the contract to incorporate the corrected wage determination (retroactive to the date of award), or terminate the contract. If appropriate, the CO should equitably adjust the contract price.

h. *Posting Wage Determinations and Notice*. The contractor is required to keep a copy of the wage determination (and any approved additional classifications) posted at the worksite in a prominent place. The CO should furnish to the contractor DOL Form WH-1321, "Notice to Employees Working on Federal and Federally Financed Construction Projects," to be posted with the wage rates. The poster should include the name, address, and telephone number of the FAA person responsible for the administration of the contract, to inform workers to whom they may submit complaints or raise questions concerning labor standards.

i. *Wage Determination Appeals*. The Secretary of Labor has established a Wage Appeals Board which decides appeals of final decisions made by DOL concerning Davis-Bacon Act wage determinations. The FAA, or other interested parties, may file a petition for review under the procedures in 29 CFR Part 7 if reconsideration by DOL has been sought pursuant to 29 CFR 1.8 and denied.

j. *Satisfying Wage, Fringe Benefit, and Overtime Requirements.*

(1) Contractors are required to pay laborers and mechanics at least the combined hourly wage and fringe benefit amount specified in the wage determinations. In computing wages paid to laborers or mechanics, the contractor may include only the amounts paid in cash and contributions to bona fide benefit plans.

(2) Laborer and mechanic's overtime pay is based on 1 1/2 times the basic hourly rate of pay. When computing the basic hourly rate of pay, the contractor must use the hourly rate in the wage determination or the employee's actual rate, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contribution to fringe benefits.

k. *Additional Classifications*.

(1) If any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract, the CO will require the contractor submit Standard Form (SF) 1444, "Request for Authorization of Additional Classification and Rate" to the CO. Along with other pertinent data, this form contains the proposed additional classification and minimum wage rate including any fringe benefits payments. Upon receipt of the SF 1444, the CO should review the request to determine whether it meets the following criteria:

(a) The classification is appropriate and the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

(b) The classification is utilized in the area by the construction industry.

(c) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage races in the wage determination in the contract.

(2) If the criteria in subparagraphs (a) - (c) above are met and the contractor and the laborers or mechanics to be employed in the additional classification (if known) or their representatives agree to the proposed additional classification, and the CO approves, the CO will submit a report (including a copy of SF 1444) of that action to DOL, Wage and Hour Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for fringe benefits); or

(3) If the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the CO do not agree on the proposed additional classification, or if the criteria are not met, the CO will submit a report (including a copy of SF 1444) giving the views of all interested parties and the CO’s recommendation to DOL, Wage and Hour Division, for determination of appropriate classification and wage rate.

(4) Within 30 days of receipt of the report, DOL, Wage and Hour Division, will advise the CO of appropriate action, or will notify the CO that additional time is necessary.

(5) Upon receipt of DOL's decision, the CO should forward a copy of the action to the contractor, directing that the classification and wage rate be posted in accordance with paragraph (a) of the clause "Davis Bacon Act," and that workers in the affected classification receive no less than the minimum rate indicated from the first day on which work under the contract was performed in the classification.

l. *Apprentices and Trainees*. The CO or Contracting Officer’s Representative (COR) will review the contractor's employment and payment records for apprentices and trainees to ensure that the contractor has complied with the clause "Apprentices and Trainees." If a contractor has classified employees as apprentices or trainees without complying with the requirements of clause, the CO will reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

m. *Subcontracts.* In accordance with the clause "Subcontracts (Labor Standards), the contractor and subcontractors at any tier are required to submit a fully executed SF 1413, "Statement and Acknowledgment, upon award of each subcontract. The CO will provide a copy of the SF 1413 to the prime contractor at contract award.

n. *Payrolls and Statements*.

(1) *Submission.* In accordance with the clause "Payrolls and Basic Records," the contractor must submit, within 7 calendar days after the regular payroll week covered, for the contractor and each subcontractor: (a) copies of weekly payrolls applicable to the contract, and (b) weekly payroll statements of compliance. The contractor may use DOL Form WH-347, "Payroll (For Contractor’s Optional Use)," or a similar form and identical representation.

(2) *Withholding for Non-submission.* If the contractors fail to submit copies of its, or its subcontractor’s payrolls promptly, the CO will withhold from any payment due to the contractor, approval of an amount that the CO considered necessary to protect the FAA’s interests and the employees.

(3) *Examination.* The CO, or COR, will examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to:

(a) The correctness of classifications and rates;

(b) Fringe benefits payments;

(c) Hours worked;

(d) Deductions; and

(e) Disproportionate employment ratios of laborers, apprentices, trainees, and journeymen.

(4) Fringe benefits payments, contributions made or costs incurred on other than a weekly basis will be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved.

(5) *Preservation.* The FAA will retain payrolls and statements of compliance for 3 years after completion of the contract and make them available for DOL if requested. Payrolls will not be returned to the contractor.

(6) *Disclosure Of Payroll Records.* Contractor payroll records in FAA's possession must be carefully protected from any public disclosure which is not required by law since payroll records may contain information in which the contractor's employees have a privacy interest as well as information in which the contractor may have a proprietary interest that the FAA may be obliged to protect. Questions concerning release of this information may involve the Freedom of Information Act (FOIA).

o. *Site Compliance Checking*.

(1) The CO or COR will investigate as necessary to ensure compliance with the labor standards requirements of the contract.

(2) *Regular Compliance Checks.* Compliance checks should include the following:

(a) Employee interviews to determine correctness of classifications and rates of pay, fringe benefits payments, and hours worked (see SF 1445).

(b) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(c) Payroll reviews of prime contractors and subcontractors to ensure that the payrolls submitted are on time and complete, as well as in compliance with contract requirements.

(d) Comparison of the information in this paragraph (b) with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

p. *Investigations*. The FAA is responsible for conducting labor standards investigations when available information indicates such action is warranted. In addition, DOL may conduct an investigation or request the FAA to do so.

(1) The FAA should conduct an investigation if a compliance check indicates that violations that are substantial in amount, willful, or uncorrected may have occurred. The investigation should include all aspects of the contractor's compliance with contract labor standards requirements, and should not be limited to specific areas raised in a complaint or uncovered during compliance checks. The investigation should be made by personnel familiar with labor laws and their application to contracts. If oral or written statements are taken from employees during an investigation, the statements, or excerpts or summaries thereof, should not be divulged to anyone other than authorized Government officials without the prior signed consent of the employee. Investigators may use the investigation and enforcement instructions issued by, and available upon written request from, DOL Wage and Hour Division. Any available DOL files pertinent to an investigation may be obtained upon written request to DOL, Wage and Hour Division. None of the material obtained from DOL files, other than computations of back wages and liquidated damages and summaries of back wages due, may be disclosed in any manner to anyone other than responsible federal officials charged with administering the contract, without obtaining the permission of DOL.

(2) The CO will review the investigation report upon receipt and make preliminary findings regarding the contractor. Adverse findings normally that are not supported by other evidence will not normally be based solely on employee statements that have not been authorized for disclosure by the employee and will require more corroborating evidence than unauthorized employee statements. However, if the investigation establishes a pattern of possible violations based on employees' statements that have not been authorized for disclosure, the pattern itself may constitute a suitable basis for a finding of noncompliance.

(3) *Notification to the Contractor.* The CO will take the following actions upon completing the review:

(a) Provide written notice to the contractor concerning the preliminary findings and proposed corrective actions, along with a statement of the contractor's right to request that the basis for the findings be made available, and to submit written rebuttal information within a reasonable period of time.

(b) Upon request from the contractor, make the basis for the findings available. However, the contractor will not be permitted to examine the investigation report. Also, the CO will not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of that employee.

(c) If the contractor submits a rebuttal, reconsider the preliminary findings based on the information it contains and notify the contractor of the final findings. If no rebuttal is submitted within a reasonable time, the preliminary findings will be considered final.

(d) Request the contractor to make restitution for underpaid wages and liquidated damages determined by the CO to be due, whether or not the violation is considered willful. If the request includes liquidated damages, it will also contain a written statement that the contractor may within 60 days request relief from such assessment.

(4) *Contracting Officer's Report.* After implementing those actions prescribed above, the CO will prepare and forward a report of violations, including findings and supporting evidence, to DOL. Standard Form 1446, Labor Standards Investigation Summary Sheet, will be completed and attached as the first page of the report. The CO will forward a copy of the report to DOL within 60 days if:

(a) underpayments exceeded $1,000;

(b) violations were willful or aggravated;

(c) no restitution was made; or

(d) future compliance has not been assured. If violations are willful and criminal, the report should be forwarded to the Department of Justice and DOL.

q. *Withholding from or Suspension of Contract Payments*.

(1) *Suspension of Contract Payments*. If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Davis-Bacon Act and Related Statutes, the FAA may suspend or cause to be suspended any further payment, advance, or guarantee of funds until, upon its own action or acting upon a written request from DOL, the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

(2) Upon final administrative determination, if restitution has not been made by the contractor or subcontractor, the CO will forward to Accounts Payable Standard Form (SF) 1093, Schedule of Withholdings Under the Davis-Bacon Act and/or Contract Work Hours and Safety Standards Act. The CO should include with the SF 1093 a listing of the name, last four digits of the social security number, and last known address of each affected employee; the amount due each employee; employee claims, if feasible; and a brief statement of the reason for requiring restitution. Also, the CO should indicate if restitution was not made because the employee could not be located. Underpaid employees may be assisted in the preparation of their claims. The accounting office will submit the SF 1093 with attached additional data, and effect payment to the Comptroller General (Claims Division) in accordance with their procedures.

(3) *Returning of Withheld Funds to Contractor.* When funds withheld are no longer necessary or exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, these funds will be paid the contractor in an expeditious manner.

(4) *Limitation on Forwarding or Returning Funds.* If the withholding was requested by DOL or if the findings are disputed, the CO should not forward the funds to the Comptroller General, Claims Division, or return them to the contractor without approval by DOL.

r. *Disposition of Disputes Concerning Contract Labor Standards Enforcement*.

(1) The areas of possible differences of opinion between COs and contractors pertaining to construction contract labor standards enforcement include:

(a) Misclassification of workers;

(b) Hours of work;

(c) Wage rates and payment;

(d) Payment of overtime;

(e) Withholding practices; and

(f) The applicability of the labor standards requirements under varying circumstances.

(2) Generally, these differences are settled administratively at the project level by the FAA. If necessary, these differences may be settled with assistance from DOL.

(3) When requesting the contractor to take corrective action in labor violation cases, the CO should inform the contractor of the following:

(a) Disputes concerning the labor standards requirements of the contract are to be resolved by DOL, not by the Disputes clause of the contract.

(b) The contractor may appeal the CO’s findings or part thereof by furnishing the CO a complete statement of the reasons for the disagreement with the findings.

(4) The CO should promptly transmit the CO's findings and the contractor's statement to DOL, Wage and Hour Division.

(5) The DOL, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to the FAA. The contractor or subcontractor may then appeal the DOL's findings in accordance with the procedures outlined in DOL regulations.

(6) DOL, Wage and Hour Division, may institute debarment proceedings against the contractor or subcontractor if DOL finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours

and Safety Standards Act or the Copeland (Anti-Kickback) Act or any of the applicable statutes listed in 29 CFR 5.1 other than the Davis-Bacon Act, or has committed violations of the Davis-Bacon Act that constitute a disregard of its obligations to employees or subcontractors under section 3(a) of that Act.

s. *Contract Termination.*

If a contract or subcontract is terminated for violation of the labor standards clauses, the CO should submit a report to DOL, Wage and Hour Division, DOL, and the Comptroller General. The report will include:

(1) The number of the terminated contract;

(2) The name and address of the terminated contractor or subcontractor;

(3) The name and address of the contractor or subcontractor, if any, who is to complete the work;

(4) The amount and number of the replacement contract, if any; and

t. *Semi-Annual Enforcement Reports*. A semi-annual report on compliance with and enforcement of construction labor standards is required by DOL within 30 days after the reporting periods of October 1 through March 31 and April 1 through September 30 of each year.

7 Walsh-Healey Public Contracts Act Revised ~~10/2014~~9/2021

a. The Walsh-Healey Public Contracts Act (41 U.S.C §§ 6501-6511) requires all contracts, that will be performed within the U.S., Puerto Rico, or the Virgin Islands and exceed $15,000, for materials, supplies, articles, and equipment entered into by the U.S. or District of Columbia Government for the manufacture or furnishing of supplies must be with a regular dealer or manufacturer of those supplies and contracts must include requirements for representations, minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

b. Contracts for the following are exempt from the Walsh-Healey Act:

(1) Items under express statutory authority to purchase "in the open market," such as commercial items;

(2) Items under emergency, single source circumstances;

(3) Perishable or agricultural products;

(4) Public utilities;

(5) Supplies manufactured outside of the U.S., Puerto Rico, or Virgin Islands;

(6) Purchases against the account of a defaulting contractor where the Walsh-Healey clauses were not included in the defaulted contract;

(7) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers;

(8) Contract with certain coal dealers (partially exempt; see 41 CFR 50-201.604)

(9) Certain commodity exchange contracts (partially exempt; see 41 CFR 50-201.604)).

(10) Contracts with certain export merchants (partially exempt; see 41 CFR 50-201.604).

(11) Contracts with small business defense production pools and small business R&D pools (partially exempt; see 41 CFR 50-201.604); and

(12) Contracts with public utilities for certain uranium products (partially exempt; see 41 CFR 50-201.604).

c. *Request for Exemption.* Upon request, DOL may exempt specific contracts or classes of contracts from the inclusion or application of one or more of Walsh-Healey's stipulations.

(1) The CO may request partial or complete exemption. The request should state the reasons why the conduct of the FAA's business will be seriously impaired unless the exemption is granted.

(2) Requests for exemptions relating solely to safety and health standards should be transmitted to the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, Washington, DC, 202l0. All other requests will be transmitted to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington DC, 202l0.

d. Rulings and interpretations of the Act are found at 41 CFR 50-206. The substance of certain rulings and interpretations is as follows:

(1) If a contract for $15,000 or less is subsequently modified to exceed $15,000, the contract becomes subject to Walsh-Healey for work performed after the date of the modification.

(2) If a contract for more than $15,000 is subsequently modified by mutual agreement to $15,000 or less, the contract is not subject to Walsh-Healey for work performed after the date of the modification.

(3) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the FAA, the prime contractor is required to include Walsh

Healey provisions in contracts in excess of $15,000 awarded for and on behalf of the FAA for products that are to be used in the construction and equipment of FAA facilities.

(4) If a contract subject to Walsh-Healey is awarded to a contractor operating FAA- owned facilities, Walsh-Healey affects the employees of that contractor the same as employees of contractors operating privately owned facilities.

(5) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to Walsh-Healey unless it can be determined in advance that the aggregate amount of all orders estimated to be placed against the contract/agreement for one year after the effective date of the agreement will not exceed $15,000. A determination should be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

e. *Eligibility as a Manufacturer or Regular Dealer*.

(1) *Manufacturer*. An offeror qualifies as a manufacturer if it shows before award that it is:

(a) *Established*. An offeror that is an established manufacturer of the particular products of the general character sought by the Government and has a plant, equipment, and personnel to manufacture on the premises the products called for under the contract.

(b) *Newly entering*. An offeror that is newly entering into a manufacturing activity and has made all necessary arrangements and commitments for manufacturing space, equipment, and personnel to perform on its own premises the manufacturing operations required for the fulfillment of the contract. To be eligible for this status, manufacturers must show that it:

(i) Has made written, legally binding arrangements or commitments before award to enter a manufacturing business. COs should not bar an offeror from receiving award because it has not yet done any manufacturing, even if the arrangements and commitments are contingent upon the award of the Government contract;

(ii) Has not set up solely to produce on a Government contract and that its operations will not terminate upon completion of that contract;

(c) Every offeror must qualify as a manufacturer in its own right. The use, rent, or sharing of the manufacturing or producing establishment of another legal entity; i.e., arrangements for equipment, personnel, or space on a time-and-material or "as needed" basis, does not meet this requirement. Arrangements or definite commitments must be in the name of the offeror.

(d) An offeror that performs assembly operations may be considered a manufacturer, if it performs more than minimal operations, such as packaging only, upon the end product. Offerors may also be considered a manufacturer if it has the facilities to produce a significant portion of the component parts needed for the end product even if it only performs assembly operations under a particular acquisition

(e) An offeror's prior eligibility status as a prime contractor or a subcontractor on other contracts subject to Walsh-Healey is not evidence of the offeror's present eligibility as a manufacturer.

(2) *Regular Dealer.*

(a) *Qualifications*. An offeror qualifies as a regular dealer if it shows before award that it deals in the particular products of the general character (products either identical with those in stock or be products for which dealers in the same line of business would be an obvious source) offered to the Government. Regular dealers cannot qualify by showing that arrangements have been made to set up a business. Qualifying criteria include:

(i) *Space.* It has an establishment, or a leased or assigned space, where it regularly maintains a stock of products in which it claims to be a dealer. If the space is in a public warehouse, it must be maintained on a continuing and not on a demand basis.

(ii) *Inventory.* The stock maintained is a true inventory from which sales are made. This requirement is not satisfied by a stock of sample or display items, stock consisting of surplus items remaining from prior orders, stock unrelated to the supplies offered, or stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made.

(iii) *Sales*. Sales are made regularly from stock, are not occasional, or are an exception to usual operations. Sales are made to the public and not just Federal, State, or local Government agencies. This requirement is not satisfied if the contractor merely seeks to sell to the public but has not yet made the sales. The number and amount of sales that must be made to the public will necessarily vary with the amount of total sales and the nature of the business.

(b) *Alternative qualifications*. For certain specific products (lumber and timber products, machine tools, petroleum, agricultural liming materials, raw or unmanufactured cotton linters, certain uranium products, used automatic data processing equipment, specialty advertising products, and products provided by information systems integrators), there are alternate qualifications for where the dealer need not physically maintain a stock. The requirements under this alternative are set forth at 41 CFR 50-201.101(a)(2) and 50-201.604.

f. *Determination Of Eligibility*.

(1) The responsibility for applying the eligibility requirements begins with the CO.

(2) The CO should investigate and determine the eligibility of the offeror and not rely on the offeror's attestation that it is a manufacturer or regular dealer when:

(a) The CO doubts the validity of the attestation;

(b) A protest has been lodged;

(c) This would be the first award to the otherwise successful offeror subject to Walsh-Healey by the individual acquisition office; or

(d) The procurement team is conducting a pre-award survey to determine responsibility or to prequalify a vendor, the procurement team should, while on site, confirm the offeror’s eligibility under Walsh-Healey.

(3) When the CO cannot accept the offeror's attestation, the CO will make a determination as to whether all of the applicable eligibility requirements have been met by obtaining/considering all available factual evidence including:

(a) Pre-award surveys;

(b) Experience of other acquisition offices;

(c) Information available from the cognizant contract administration office;

(d) Information provided directly by the offeror; and

(e) Other factual evidence that may be necessary to determine whether all of the applicable eligibility requirements have been met, including evidence obtained through an on-site survey conducted specifically for that purpose.

(4) If the CO determines that an otherwise successful offeror is ineligible, the CO will follow the procedures listed below:

(a) The offeror will be notified in writing that:

(i) It does not meet the eligibility requirements and the specific reasons therefore; and it may protest the determination by submitting evidence concerning its eligibility to the CO within 10 working days.

(ii) If, after review of the offeror's evidence, the CO's position has not changed, the offeror's protest and all pertinent material will be forwarded to DOL, Administrator of the Wage and Hour Division, for a final determination.

(A) DOL does not conduct pre-award investigations nor render final determinations of eligibility until the CO initially has determined whether the requirements have been met.

(B) If the CO forwards the case to DOL for review of eligibility, the award should normally be held in abeyance until the CO receives a final determination from DOL. However, award may be made pending a DOL decision if the CO determines the supplies are urgently needed or delay in award will result in substantial hardship to the Government (DOL, the protester, and any other concerned parties must be notified of the award decision).

(b) The CO will notify other offerors whose offers might become eligible for award when an award is being held in abeyance, and request them to extend their acceptance period, if necessary.

g. *Pre-Award Protests Against Eligibility.*

(1) When, before award, an unsuccessful offeror challenges the eligibility of the apparent successful offeror, the CO will:

(a) Promptly notify the apparent successful offeror of the protest;

(b) Notify both the protester and the apparent successful offeror in writing that eligibility evidence may be submitted to the CO within 10 working days;

(c) Notify offerors whose offers might become eligible for award that the award is to be held up because of a protest, and request them to extend their acceptance period, if necessary;

(d) Make a determination based on the evidence as provided in paragraph f.(4) above; and

(e) Notify the protester and the apparent successful offeror of the determination and the procedure to be followed if either party disagrees with the decision.

(2) If either party disagrees with the determination, the CO will forward the determination and entire record to DOL, Administrator of the Wage and Hour Division, for a final determination and notify the parties accordingly.

h. *Award Pending Final Determination.*

(1) Award may be made immediately if the CO certifies in writing that: (a)

The products to be acquired are an emergency requirement; or

(b) Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

(2) The CO will give prompt written notice of the decision to award to DOL, the protester, and other concerned parties.

i. *Award*. The CO will mail a copy of DOL Publication WH-1313, "Notice to Employees Working on Government Contracts," along with the executed contract. Copies of the poster may be obtained in writing to the DOL, 200 Constitution Avenue NW, Washington, DC 20210, ATTN: Wage and Hour-ESA, Room S3018.

j. *Postaward.*

(1) *Protests*.

(a) If a protest is received after award, but before final contract completion, the CO will follow the procedures paragraph f. (4) above.

(b) If the contract has been completed before receipt of the protest, the CO will notify the protester that no action can be taken on the protest.

(2) *Award Made to an Ineligible Offeror*. If the CO discovers after an award that the offeror did not act in good faith in representing that it was a manufacturer or regular dealer of the supplies offered, the CO, immediately upon discovery, may exercise the right to:

(a) Terminate the contract;

(b) Make open market purchases or enter into other contracts for completing the original contract; and

(c) Charge any additional cost to the original contractor.

(3) *Breach of Stipulation*. If a contractor violates a stipulation under Walsh-Healey, the CO will submit a written notice to the appropriate regional office of DOL, Wage and Hour Division, listed in paragraph l. below, and furnish any available information.

k. *Regional Jurisdictions of DOL, Wage and Hour Division*. Geographic jurisdictions of the Regional Offices of DOL's, Wage and Hour Division, are to be contacted by COs, unless otherwise specified. The address and phone numbers for the DOL Regional Offices by geographic jurisdictions are ~~attached~~located in the Regional Office Directory at https://www.dol.gov/agencies/ofccp/contact/regional-offices.

l. *Definitions.*

(1) "Assembly," as used in this part, means the piecing or bringing together of various interdependent or interrelated parts or components to make an operable whole or unit.

(2) "Manufacturer," as used in this subpart, means a person that owns, operates, or maintains a factory or establishment that produces on the premises the materials, products, articles, or equipment required under the contract and of the general character described by the specifications.

(3) "Person," as used in this subpart, includes associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(4) "Regular dealer," as used in this subpart, means a person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, products, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

8 Fair Labor Standards Act

No contractor or subcontractor holding a service contract for any dollar amount will pay any of its employees working on the contract less than the nationally established minimum hourly wage (as specified in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206))

9 Service Contracts/Service Contract Labor Standards Revised ~~10/2020~~9/2021

a. *General.* The Service Contract Labor Standards (41 U.S.C. §§ 6701-6707), selected provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201), and related Department of Labor regulations (29 CFR parts 4, 6, 8, 541, and 1925) apply to service contracts.

b. *Service Contract Labor Standards.* The Service Contract Labor Standards (SCLS) applies to contracts if the principal purpose is to furnish services in the U.S. through the use of service employees, unless exempted. Service contracts greater than $10,000 must contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowed compensation, and a statement of equivalent Federal employee classifications and wage rates. Additionally, the SCLS limits the term of service contracts to 5 years (41 U.S.C. § 6707(d)).

Consistent with Executive Order 13706 “Establishing Paid Sick Leave for Federal Contractors”, contracts subject to the Service Contract Labor Standards must include AMS clause 3.6.2-46 “Paid Sick Leave”.

c. *Exemptions from SCLS.* The SCLS does not apply to:

(1) Contracts performed outside of the U.S.; (2)

Contracts $10,000 or less;

(3) Construction, alteration, or repair of public buildings or public works, including painting and decorating;

(4) Dismantling, demolition or removal of improvements when part of a construction contract;

(5) Work performed by a regular dealer or manufacturer (in accordance with the Walsh-Healey Public Contracts Act). Service contracts for remanufacturing of equipment may be subject to Walsh-Healey Public Contracts Act, rather than the SCLS, if the work is so extensive as to be equivalent to manufacturing. Remanufacturing is considered to be major overhaul or modification of equipment, material, or an item which involves:

(a) complete or substantial teardown to the component level;

(b) substantially all of the parts are reworked and/or replaced, or outmoded parts are replaced;

(c) the equipment is reassembled; and

(d) the work is performed at a facility operated by the contractor. Remanufacturing does not include repair of damaged equipment or routine maintenance unless there is complete teardown, rework, and reassembly;

(6) Transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;

(7) Contracts for furnishing of services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;

(8) Public utility services;

(9) Employment contracts with an individual(s) (rather than a firm with multiple employees);

(10) Contracts with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly-scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for a substantial portion of the carrier's revenues;

(11) Carriage of freight or personnel if subject to regulated rates in section 10721 of the Interstate Commerce Act;

(12) Contracts principally for maintenance, calibration, or repair of automated data processing equipment, office information/word processing systems, scientific and medical equipment, and office/business equipment (if services are performed by the manufacturer or supplier of the equipment), subject to the following:

(a) the equipment is commercially available;

(b) the price of services is based on established catalog or market prices;

(c) employees used for Government contracts and commercial contracts are under the same overall compensation plan; and
(d) the contractor certifies in the contract to the aforementioned conditions; or

(13) *Employees* who are bona fide executive, administrative or professional employees (as defined and implemented in 29 CFR 541). Some support service contracts involve professional employees who may be exempt from SCLS requirements. Professionals are those employees having recognizable status based on acquiring professional knowledge through prolonged study, such as accountancy, actuarial computation, architecture, dentistry, engineering, law,

medicine, nursing, pharmacy, the sciences (such as biology, chemistry, physics, and teaching). To be a professional employee, a person must be involved essentially in discharging professional duties and exercising judgment.

d. *Examples of Contracts Covered by SCLS*

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the SCLS (see 29 CFR 4.130 for additional examples):

(1) Motor pool operation, parking, taxicab, and ambulance services;

(2) Packing, crating, and storage;

(3) Custodial, janitorial, housekeeping, and guard services;

(4) Food service and lodging;

(5) Snow, trash, and garbage removal;

(6) Some support services at Government installations, including grounds maintenance and landscaping;

(7) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services;

(8) Electronic equipment maintenance and operation and engineering support services;

(9) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, telecommunication, office and related business and construction equipment;

(10) Operation, maintenance, or logistics support of a Government facility;

(11) Data collection, processing and analysis services;

e. *Determining SCLS Applicability.* Prior to issuing a screening information request, the CO should determine SCLS applicability to the particular acquisition and anticipated categories of contractor employees. If the SCLS applies to any anticipated categories of employees, the CO will include the appropriate Wage Determination from the Wage Determination website (~~www.beta.SAM.gov~~ www.SAM.gov) in the SIR. If there is no Wage Determination available for the location of the services to be performed, the CO will request a new Wage Determination from DOL using the e98 process.

10 Procedures for Service Contracts **Revised ~~10/2020~~9/2021**

a. DOL Wage Determinations. For contracts subject to the SCLS, DOL will determine the hourly wage and fringe benefits to be paid employees. DOL wage determinations can be based on either that which prevails for a given locality or can be based on collective bargaining agreements (CBA) between employees and contractors. In certain instances, a DOL wage determination will not apply; in those cases, employees must be paid at least the nationally established minimum wage in the Fair Labor Standards Act.

(1) *Wage Determination Based on Collective Bargaining Agreement*. Follow-on (successor) contractors performing substantially the same services in the same locality must pay wage and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide CBA entered into under the incumbent’s (predecessor) contract. However, this requirement will not apply if DOL determines, as a result of a hearing, that the CBA wages and fringe benefits are substantially at variance with those which prevail for services of a similar character in the locality, or that they have not been reached as a result of arm's length negotiations.

b. *Requesting a Wage Determination.* When the SCLS applies to a particular acquisition, the CO will submit a request to, and obtain a response from, DOL regarding the minimum wage and fringe benefits applicable to the acquisition. The CO will obtain an applicable wage determination through DOL’s wage determinations online program (www.~~beta.~~SAM.gov). If there is not an appropriate SCLS wage determination for a contract action, the CO must use DOL’s e98 electronic process, also available on its website, to request a wage determination. The CO will request a wage determination for:

(1) Each new screening information request (SIR) and contract over $10,000;

(2) Each contract modification which brings the contract value above $10,000, and

(a) Extends the existing contract pursuant to an option clause or otherwise; or

(b) Changes the scope of the contract whereby labor requirements are affected significantly.

(3) Each multiple-year contract over $10,000 upon:

(a) annual anniversary date if the contract is subject to annual appropriations; or

(b) biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years (unless otherwise advised by DOL).

c. *Utilizing ~~beta.~~SAM.gov and the e98 Process*. Instructions in selecting wage determinations from and using the e98 form are available in the ~~beta.~~SAM.gov Learning Center provided on its website.

d. *Collective Bargaining Agreements*.

(1) Early in the acquisition cycle, the CO should determine whether an existing CBA will affect the planned acquisition. The CO should determine whether there is an existing (predecessor) contract and, if so, whether the incumbent prime contractor, or subcontractors, and any of their employees have a CBA.

(2) Section 4(c) of the SCLS provides that a follow-on (successor) contractor must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) to service employees at least equal to those agreed upon by an incumbent contractor.

(3) Section 4(c) of the SCLS is subject to the following limitations:

(a) It will not apply if the incumbent contractor enters into a CBA for the first time and the CBA does not become effective until after the expiration of the incumbent's contract.

(b) If the incumbent contractor enters into a new or revised CBA during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement will not be effective for the purposes of section 4(c) of the SCLS if:

(i) the FAA receives notice of the terms of the CBA after follow-on contract award, provided that the start of performance is within 30 days of award; and

(ii) The CO has given both the incumbent contractor and its employees' collective bargaining agent timely written notification of the applicable acquisition dates.

(4) If section 4(c) of the SCLS applies, the CO will obtain a copy of any CBA between an incumbent contractor, or subcontractor, and its employees (the clause AMS 3.6.2-28 "Service Contract Labor Standards" requires the incumbent prime contractor to furnish the CO a copy of each CBA.) The CO may:

(a) Use the ~~beta.~~SAM.gov to prepare a wage determination referencing the agreement and incorporate that wage determination, attached to a copy of the collective bargaining agreement, into the successor contract action. Unless requested to do so, it is not necessary to submit a copy of the collective bargaining agreement to the Department of labor.

(b) Use the e98 process on ~~beta.~~SAM.gov to request that DOL prepare the wage determination. DOL may request a copy of the collective bargaining agreement from the CO in order to prepare the wage determination.

(5) If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the CO will identify the locations to which the agreements apply.

(6) If the CBA does not apply to all service employees under the contract, the CO will utilize ~~beta.~~SAM.gov to obtain the prevailing wage determination for those classifications not covered by the collective bargaining agreement. The CO will also separately list in the solicitation and contract the service employee classifications: (a) subject to the CBA, and (b) not subject to any CBA.

e. *Notification to Interested Parties Under Collective Bargaining Agreements.*

(1) The CO should determine whether the incumbent prime contractor's, or its subcontractors', service employees performing on the current contract are represented by a collective bargaining agent. If there is a collective bargaining agent, the CO will give both the incumbent contractor and its employees' collective bargaining agent written notification of:

(a) The forthcoming follow-on contract and the applicable acquisition dates (issuance of SIR, receipt of offers, commencement of communication, award of contract, or start of performance, as applicable); or

(b) The forthcoming contract modification and applicable acquisition dates (exercise of option, extension of contract, change in scope, or start of performance, as applicable); or

(c) The forthcoming multiple-year contract anniversary date (annual anniversary date or biennial date, as applicable).

(2) The CO will give written notification at least 30 days in advance of the earliest applicable acquisition date or the applicable option exercise date in order for the time-of- receipt limitations to apply. The CO will retain a copy of the notification in the contract file.

f. *Place of Performance Unknown.* The CO should identify all possible places of performance, even though the actual place of performance will not be known until the successful offeror is chosen. The CO should obtain a wage determination for each locality where service may be performed. Should the CO subsequently learn of additional possible places of performance, the CO will obtain wage determinations for the additional places of performance and amend the solicitation to include all wage determinations.

g. *Wage Determinations Involving and Not Involving a Collective Bargaining Agreement.*

(1) *Wage Determination Not Involving a CBA.*

(a) If the CO has not received a response from DOL within 10 days, the CO should contact the Wage and Hour Division to determine when the wage determination, or revision to a wage determination, can be expected.

(b) When the CO has received a wage determination and DOL subsequently issues a wage determination revision, the revision will not be effective if the CO receives it less than 10 days before receipt of offers and the CO determines there is not reasonable time to incorporate the revision into the screening information request. If DOL issues a revision after contract award or modification award, the revision will not be effective, provided that contractor performance starts within 30 days of the contract award or modification. If the contract does not specify a start of performance date within 30 days of the award or modification, the CO will notify DOL and any revision received by the CO not less than 10 days before commencement of the work will be effective.

(2) *Wage Determination Involving a CBA.*

(a) A wage determination or revision based on a new or changed CBA will not be effective if notice of the terms of the new or changed CBA is received by the CO less than 10 days before receipt of offers and the CO determines there is not reasonable time to incorporate the new or revised CBA into the SIR. If DOL issues a wage determination revision after follow-on contract award or modification, the revision will not be effective, provided that the contract start of performance is within 30 days of the award of the contract or of the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award of the contract or of the specified modification, or if contract performance does not commence within 30 days of the award of the contract or of the specified modification, any notice of the terms of a new or changed CBA received by the CO not less than 10 days before commencement of the work will be effective for purposes of the successor contract under section 4 (c) of the SCLS.

(3) If DOL is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the SIR/contract action should proceed according to the following instructions:

(a) If a successorship/same locality/incumbent CBA situation exists, the CO will incorporate in the SIR/contract the wage and fringe benefit terms of the CBA, or the CBA itself, and include a wage determination referencing that collective bargaining agreement created by use of the ~~beta.~~SAM.gov website. The CO may incorporate the wage and fringe benefit terms of the CBA in other contract actions, such as exercise of options, in order to facilitate price adjustments for options in fixed price contracts.

(b) The terms of a new or changed CBA, negotiated by the incumbent contractor during the period of performance of the predecessor contract, will not apply to the successor contract under the conditions set forth in paragraph f.(2)(a) above.

h. *DOL Response to Late Requests for Wage Determination.*

If the CO has not requested a wage determination in a timely manner and the CO has not received a response from DOL, the CO should contact the Wage and Hour Division to determine when the wage determination or revision can be expected. If DOL is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the CO should use the latest wage determination or revision, if any, incorporated in the existing contract. If a CBA exists, the CO will incorporate the wage and fringe benefit terms of the CBA, or the CBA itself. If any new or revised wage determination is received, the CO will incorporate it in the SIR or contract within 30 days of receipt. When the wage determination is received after contract award or modification:

(1) The CO will equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating the wage determination or revision when there is no CBA involved. DOL may require retroactive application of the wage determination for a contractual action involving more than five service employees; or

(2) The CO will not equitably adjust the contract price if a CBA is involved since the wage determination or revision will be based on the economic terms of the CBA.

i. *Review of Wage Determination*.

The CO should review wage determinations received to ensure the correct response has been provided. Additionally, the CO should consider the following:

(1) *Based on Incumbent CBA*. If wages, fringe benefits, or periodic increases provided for in a CBA vary substantially from those prevailing for similar services in the locality, or that the CO believes the CBA was not the result of arm's length negotiations, the CO should consider bringing the matter to DOL for a hearing.

(2) *Based on other than Incumbent CBA.* Upon receiving a wage determination not predicated upon a CBA, the CO will ascertain:

(i) Whether the wage determination does not conform with wages and fringe benefits prevailing for similar services in the locality; or

(ii) Whether the wage determination contains significant errors or omissions.

(iii) If either is (i) or (ii) is evident, the CO will contact DOL to determine appropriate action.

(3) *Request for Hearing.* The FAA or other interested parties may request a hearing on an issue involving the review of a wage determination. To obtain a hearing, the CO should submit a request to the DOL, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC, 20210, with sufficient data to support that the rates at issue vary substantially from those prevailing for similar services in the same locality or that a CBA was not the result of arm's length negotiations. The request should also include: (1) the number of the wage determinations at issue; (2) name of contracting agency; (3) status of the acquisition and any estimated acquisition dates (e.g., proposal receipt, award, and commencement of performance); (4) names and addresses, if known, of interested parties; and (5) a description of the work.

(4) Unless DOL determines that extraordinary circumstances exist, they will not consider requests for a hearing unless received before the commencement date of the contract or the follow-on option period, as the case may be.

j. *Delay of Acquisition Dates Over 60 Days.*

If any award was delayed, for whatever reason, more than 60 days from the date indicated on the submitted e98, the CO must submit a new e98. Any revision of a wage determination received by the CO as a result of that communication, or upon discovery by DOL of a delay, will supersede the earlier response.

k. *Discovery of Errors by the Department of Labor.*

If DOL determines, either before or after a contract award, that a CO made an erroneous determination that the SCLS did not apply to a particular acquisition or failed to include an appropriate wage determination in a covered contract, the CO within 30 days of notification by DOL will include in the contract the clause "Service Contract Labor Standards", and any applicable wage determination issued by DOL. DOL may require retroactive application of that wage determination. The CO should equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or revision.

l. Statement of Equivalent Rates for Federal Hires.

The statement required under clause "Statement of Equivalent Rates for Federal Hires" will set forth those wage rates and fringe benefits that would be paid by the FAA to various classes of employees. The rates listed will be hourly wages for GS step 1 employees or WG step 2 for non- supervisory or WG step 3 for supervisory wage, as applicable. Personnel offices can provide assistance in determining the appropriate Federal job categories and hourly wages.

m. *Notification to Contractors and Employees*.

(1) As soon as possible after contract award, the CO should inform the contractor of the labor standards requirements of the contract relating to the SCLS and of the contractor's responsibilities under these requirements; unless it is clear that the contractor is fully informed.

(2) At the time of award, the CO should furnish to the contractor Department of Labor Publication WH-1313, "Notice to Employees Working on Government Contracts," for posting. The CO should also attach any applicable wage determination to Publication WH-1313.

n. *Additional Classes of Service Employees*.

(1) If the CO is aware that contract performance involves classes of service employees not listed in the wage determination, the CO should require the contractor to prepare and submit Standard Form (SF) 1444, "Request for Authorization of Additional Classification and Rate" (the form provides instructions for completing). This "conformance" procedure requires the contractor to match, as closely as possible, the unlisted job categories to those which are listed on the wage determination. The CO should review the completed SF 1444 and supporting documentation (which should also include the agreement or disagreement of the employees' representative or the affected employees themselves), add a statement whether the CO concurs with the contractor’s job classification, and forward the package to the Wage and Hour Division. Within 30 days of receipt of the request, the Wage and Hour Division will (a) approve, modify, or disapprove the request when the parties are in agreement, or (b) render a final determination in the event of disagreement among the parties. The Wage and Hour Division will notify the CO if more than 30 days will be required to act on the SF 1444.

(2) Some wage determinations will list a series of classes within a job classification family, for example, computer operator level I, II, and III. Generally, level I is the lowest, entry level, and establishment of a lower level through conformance is not permissible. Further, trainee classifications may not be conformed. Helpers in skilled maintenance trades (for example, electricians, machinists, and automobile mechanics) may not be conformed, but may be used if listed on a wage determination. Conformance may not be used to artificially split or subdivide classifications listed in the wage determination. However, conforming procedures may be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title. (See 29 CFR 4.152.)

o. *Seniority Lists*.

If a contract is performed at a Federal facility where incumbent contractor employees may be hired/retained by a follow-on contractor, the incumbent prime contractor is required to furnish to the CO, no later than 10 days before contract completion, a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment for each person. At the commencement of the follow-on contract, the CO should provide a copy of the list to the follow-on contractor for determining employee eligibility for vacation or other fringe benefits (which are based upon length of service, including service with predecessor contractors) if such benefit is required by an applicable wage determination.

p. Withholding of Contract Payments.

Any violations of SCLS renders contractors liable for the amount of any deductions, rebates, refunds, or underpayments, or nonpayment due employees. The CO may withhold, or will withhold or upon written request by DOL at a level no lower than Assistant Regional Administrator, the amount needed to pay underpaid employees. The withheld funds should be placed in a deposit account for later transfer to DOL for disbursement (the CO should consult with the cognizant accounting office).

11 Professional Employee Compensation Revised 10/2020

The Service Contract Labor Standards (SCLS) was enacted to ensure contractors fairly compensate their blue collar and some white collar workers, but the SCLS does not provide coverage for bona fide executive, administrative, or professional employees. Professional employees should be compensated fairly and properly. When meaningful numbers of professional employees will be provided under a planned service contract, the CO may require offerors to submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits. Unrealistically low professional employee compensation should be evaluated for the potential risk to contract performance.

12 Dismantling, Demolition, or Removal of Improvements Revised 10/2020

If a contract is solely for dismantling, demolition, or removal of improvements, the Service Contract Labor Standards applies unless further work which will result in the construction, alteration or repair of a public building or public work at that location is contemplated. If such further construction work is intended, even though by separate contract, then the Davis-Bacon Act applies to the contract for dismantling, demolition, or removal.

13 Convict Labor

a. The policies and procedures controlling the employment of prison inmates working on Government contracts are based 18 U.S.C. 4082(c)(2), Executive Order 11755, dated December 29, 1973, and Executive Order 12943, dated December 13, 1994. b. In

performing a contract, contractors may employ:

(1) persons on parole or probation;

(2) persons who have been pardoned or who have served their terms;

(3) Federal prisoners; or

(4) Nonfederal prisoners authorized by the Attorney General to work at paid employment in the community if:

(a) The worker is paid or is in an approved work training program on a voluntary basis;

(b) Representatives of labor union organizations have been consulted;

(c) Paid employment will not (i) displace employed workers; (ii) be applied to skills in which there is a surplus of labor in the locality; (iii) impair existing contracts for services; and

(d) Pay and other conditions of employment will not be less than those for work of a similar nature in the locality where the work is being performed.

14 Equal Employment Opportunity Revised ~~7/2007~~9/2021

a. *General*

(1) Executive Order 11246, as amended, prohibits contractors and subcontractors from discriminating against any employee or applicant because of race, color, religion, sex, or national origin, and to take affirmative action to ensure these requirements are met regarding any existing employee.

(2) The FAA may not award a contract or modification, or approve a subcontract, with a contractor found ineligible by DOL's Office of Federal Contract Compliance Programs (OFCCP) because of noncompliance with EO 11246.

(3) Neither the FAA, nor its contractors, will solicit or contract in a manner to avoid applicability of the nondiscrimination and affirmative action or equal opportunity requirements.

(4) OFCCP has primary responsibility for administration and enforcement of affirmative action and equal opportunity requirements. Contractor disputes related to EO 11246 compliance are to be handled according to DOL regulations (41 CFR 60-1.1).

b. *Procedures*.

(1) *Other Than Construction*. **Revised** ~~07/2007~~9/2021

(a) The CO will obtain a pre-award clearance from ~~the~~ OFCCP ~~area~~regional office for contracts, and subcontracts, totaling $10,000,000 or more, including options, and for modifications increasing the total contract value to $10,000,000 or more. Pre- award clearances remain valid for a 24-month period from the date of issuance. The CO may make verbal requests if confirmed in writing.

(b) The CO does not need to request a pre-award clearance if

(i) The specific proposed contractor is listed on OFCCP's National Pre-award Registry website;

(ii) The projected award date is within 24 months of the proposed contractor's Notice of Compliance completion date in the Registry; and

(iii) The CO documents the Registry review in the contract file.

(c) ~~The following information should be included in~~ In making a pre-award clearance request, the "EEO Pre-Award Clearance" Template located in Procurement Templates must be used. The request should include the following information:

(i) Name, address, point of contact and telephone number ~~and any known corporate affiliation of the apparent prime~~of the proposed contractor;

(ii) Name, address, point of contact and ~~any known subcontractors where their~~telephone number of each proposed first-tier subcontractor with a proposed subcontract ~~is expected to exceed~~estimated at $10~~,000,000;~~ million or more;

(~~ii~~iii) Anticipated date of award;
~~(iii) Whether the prime or first tier subcontractor have held previous federal contracts or applicable subcontracts;~~

(iv) ~~The places~~Place(s) of ~~contemplated~~contract

performance;

(v) ~~The period of performance; and~~

~~(vi)~~ Estimated dollar amount of ~~the~~ contract ~~and each first-tier subcontract.~~(if excess of $10 million, including options);

~~(d~~(vi) Proposed contract and/or solicitation number; and

(vii) Name, address, point of contact, telephone number, and e-mail address of the contracting office/agency.

(d) Within 15 days of the clearance request, OFCCP will inform the CO of its intention to conduct a pre-award compliance evaluation. If OFCCP does not inform the CO within that period of its intention to conduct a pre-award compliance evaluation, clearance shall be presumed and the CO is authorized to proceed with the award. If OFCCP informs the CO of its intention to conduct a pre-award compliance evaluation, OFCCP shall be allowed an additional 20 days after the date that it so informs the CO to provide its conclusions. If OFCCP does not provide the CO with its conclusions within that period, clearance shall be presumed and the CO is authorized to proceed with the award.

(e) The CO should allow 30 days for obtaining the pre-award clearance. If waiting for the pre-award clearance would delay award of an urgent and critical contract, the CO ~~may proceed with~~ shall immediately inform the OFCCP regional office of the expiration date of the offer or the required date of award~~, subject to concurrence~~ and request clearance be provided before that date. If the OFCCP regional office advises that a pre-award evaluation cannot be completed by the required date, the CO shall submit a written justification for the award to the Chief of the Contracting Office (COCO~~).~~) for concurrence. The CO must also immediately notify the OFCCP ~~area~~regional office of the award. If OFCCP subsequently finds the contractor or subcontract is ineligible for the award, OFCCP will provide notice of the applicable course of action. ~~(Revised 10/2002)~~

(2) *Construction.*

(a) Construction contractors are required to meet (i) the contract terms and conditions which cite affirmative action requirements in specified geographical areas or projects, and (ii) applicable requirements of DOL regulations (42 CFR 60-1 and 604).

(b) Periodically, OFCCP publishes in the Federal Register goals and timetables for minority and female utilization in the construction industry for certain geographic areas. The CO may contact the OFCCP regional office to request current information on affirmative action goals to be included in the clause "Affirmative Action for Construction Contracts."

(c) COs will give written notice to the appropriate OFCCP area office within 10 working days of award of a construction contract subject to these affirmative action requirements. The notification is to include the name, address, and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and the geographical area in which the contract is to be performed. When requested by OFCCP, the CO is to arrange a conference among contractor, the FAA's contracting personnel and EEO contract compliance personnel to discuss the contractor's compliance responsibilities.

c. *Inquiries and Complaints*. The CO should refer the following to the applicable OFCCP area office:

(1) An inquiry from a contractor regarding status of its compliance with Executive Order 11246, or rights of appeal;

(2) Labor union inquiries regarding the revision of a collective bargaining agreement in order to comply with Executive Order 11246;

(3) Complaints alleging violation of the "Equal Opportunity" clause. The CO will advise the complainant in writing of the referral. The prime contractor or subcontractor that is the subject of a complaint will not be advised in any manner, or for any reason, of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

d. *Enforcement*. OFCCP will provide written direction to the CO regarding any enforcement actions for contractor violations of EO 11246, DOL regulations, or the "Equal Opportunity" and related clauses. The CO should take necessary action as soon as possible after notification to implement any sanctions imposed by OFCCP for violations.

e. *Poster.* The CO will furnish to the prime contractor appropriate quantities of OFCCP’s Equal Employment Opportunity posters prior to contract performance.

f. *Exemptions*. The following are totally or partially exempt from EO 11246:

(1) Contracts which agency head determines are necessary for national security;

(2) Contracts specifically exempted by OFCCP;

(3) Individual contracts and subcontracts less than $10,000 (unless the value of all contracts or subcontracts awarded to that contractor or subcontractor during any 12 month period will exceed $10,000);

(4) Contracts performed outside of the U.S.;

(5) Contracts with state or local governments;

(6) Work on or near Indian Reservations;

(7) Facilities not connected with contracts;

(8) Indefinite quantity contracts if the amount ordered during any year will, or does, not exceed $10,000.

g. *OFCCP Concurrence for Certain Exemptions.* The CO must request and obtain concurrence by the Director of OFCCP for the exemptions under subparagraphs f.(1), f.(2), and f.(5) above. The CO will prepare a written request delineating the reasons and authority for the exemption.

15 Equal Opportunity for Veterans Revised 1/2011

a. The Vietnam Era Veterans Readjustment Act of 1972 (38 U.S.C. 4211 and 4212), Executive Order 11701, 41 CFR Part 60-250 and Part 61-250, and the Veterans Employment Act of 1998 (Public Law 105-339) require contractors and subcontractors, when entering into contracts subject to the Act, to list all suitable employment openings with the appropriate local employment service office and take affirmative action to employ, and advance in employment, qualified special disabled veterans and veterans of the Vietnam Era without discrimination based on their disability or veteran's status.

b. *Definitions.*

(1) "Armed Forces service medal veteran" means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United State military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

(2) "Disabled Veteran" means:

(a) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

(b) A person who was discharged or released from active duty because of a service-connected disability.

(3) "Other protected veteran" means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under laws administered by the Department of Defense.

(4) "Qualified disabled veteran" means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

(5) "Recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval, or air service.

(6) "United States" means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S.Virgin islands, and Wake Island.

c. Applicability. The Act applies to all contracts for supplies, services, and construction of $100,000 or more (including contracts with a State or local government, or any agency, instrumentality, or subdivision of that government, that does not work on or under the contract), unless waived by OFCCP.

d. *Waivers*.

(1) Subject to concurrence from the Director of OFCCP, the CO or Chief of Contracting Office (COCO) may waive any or all of the terms of the clause "Equal Opportunity for Veterans (AMS 3.6.2-12)," as follows:

(a) The CO may waive any individual contract if in the national interest; or

(b) The COCO may waive any groups or categories of contracts if in the national interest.

(2) The COCO, with the concurrence of OFCCP, may waive any implementing requirements of the Act when the COCO determines that the contract is essential to national security, and award without complying with such requirements is necessary to national security. The COCO will notify OFCCP in writing within 30 days of making this determination.

(3) The CO will prepare a written determination for waiver, with the appropriate signature level, delineating the reasons and authority for the waiver.

e. *Department of Labor Notices and Reports.*

(1) The CO will furnish notices for posting to the contractor when they are prescribed by OFCCP. See the DOL website.

(2) Contractors will submit a report (Standard Form VETS-100, "Federal Contractor Veterans' Employment Report") at least annually to the Secretary of Labor regarding employment of Vietnam era and special disabled veterans unless all of the terms of the clauses "Equal Opportunity for Veterans," have been waived.

f. *Collective Bargaining Agreements*. If performance under the Act could affect a revision of a collective bargaining agreement, the CO should advise the affected labor unions or management that DOL will give them appropriate opportunity to present their views.

g. *Complaint Procedures*. The CO must forward any complaints about administration of the Act to the Veteran's Employment and Training Service of DOL, or to the Director, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, N.W., Washington, DC 20210, or to any OFCCP regional, district, or area office or through the local Veteran's Employment Representative or designee, at the local State employment office. The Director of OFCCP is primarily responsible for investigating complaints.

h. *Actions Because of Noncompliance*. The CO should take necessary action as soon as possible after notification to implement any sanctions imposed on a contractor by DOL for violations of the clause.

16 Employment of the Disabled Revised 7/2007

a. Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793), P.L. 93-112, section 503, and 41 CFR Parts 60-741 to 60-642 require Government contractors and subcontractors, when entering into contracts subject to the Act, to take affirmative action to employ, and advance in employment, qualified disabled individuals without discrimination based on their physical or mental disabled.

b. *Applicability*. The Rehabilitation Act applies to all contracts for supplies, services, and construction of $10,000 or more unless waived by the Secretary of Labor. The Act does not apply to contracts with a State or local government (or any agency, instrumentality, or subdivision of that government) that does not work on or under the contract.

c. *Waivers*

(1) Subject to concurrence from the Director of OFCCP, the CO or Chief of Contracting Office (COCO) may waive any or all of the terms of the clause "Affirmative Action for Disabled Workers," as follows:

(a) The CO may waive any individual contract if deemed to be in the national interest; or

(b) The COCO may waive any groups or categories of contracts if in the national interest and:

(i) It is impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(2) The COCO, with the concurrence of the Director of OFCCP, may waive any implementing requirements of the Act when the COCO determines that the contract is essential to national security, and award without complying with such requirements is

necessary to national security. The COCO will notify the Director of OFCCP in writing within 30 days of making this determination.

(3) The CO will prepare a written determination for waiver, with the appropriate signature level, delineating the reasons and authority for the waiver.

(4) A waiver granted for a particular class of contracts may be withdrawn for any contract within that class whenever considered necessary by the Director to achieve the purposes of the Act. The withdrawal will not apply to contracts awarded before the withdrawal.

d. *Department of Labor Notices.* The CO will furnish to the contractor appropriate notices that state the contractor's obligations and the disabled individual's rights under the Employment of the Disabled program. The CO may obtain these notices from the applicable Department of Labor Regional Office, Office of Federal Contract Compliance Programs, shown in the attached list by geographic jurisdictions.

e. *Collective Bargaining Agreements*. If performance under the Act could affect a revision of a collective bargaining agreement, the CO should advise the affected labor unions or management that DOL will give them appropriate opportunity to present their views.

f. *Complaint Procedures*. The CO should forward any complaints about administration of the Act to the Veteran's Employment Service of DOL, through the local Veteran's Employment Representative or designee, at the local State employment office. The Director of OFCCP is primarily responsible for investigating complaints.

g. *Actions Because of Noncompliance*. The CO should take necessary action as soon as possible after notification to implement any sanctions imposed on a contractor by DOL for violations of the clause. These sanctions may include:

(1) Withholding from payments otherwise due;

(2) Termination or suspension of the contract; or

(3) Debarment.

17 Forced or Indentured Child Labor Added 7/2007

a. *General.*

(1) The FAA must take action to enforce laws prohibiting the manufacture or importation of products mined, produced, or manufactured wholly or in part by forced or indentured child labor (E.O. 13126). The Department of Labor maintains the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor (the List) that identifies products, by country of origin, that might have been mined, produced, or manufactured by forced or indentured child labor. The List is located at www.dol.gov/ilab.

(2) When issuing a solicitation for supplies expected to exceed $10,000, the CO must check the List for the required product(s). The appearance of a product on the List does not bar the purchase of the item in the identified country, but rather alerts the CO that such a product may have been mined, produced, or manufactured by forced or indentured child labor.

(3) Due to current trade agreements, the appearance of any end product on the list does not apply to a solicitation or contract if the identified country of origin is:

(a) Canada, and the anticipated value is $25,000 or more; or

(b) Mexico, and the anticipated value is $64,786 or more.

(4) Except as provided in subparagraph (3) of this section, before the CO may make award for an end product of a type identified by country of origin on the List, the offeror must certify that it will not supply an end product on the List that was mined in a country identified on the List, or that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any end product.

(5) If a CO has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product furnished pursuant to a contract, the CO must refer the matter for investigation to the Inspector General.

b. *Violations and Remedies.*

(1) Violations of this section include:

(a) The contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor;

(b) The contractor uses forced or indentured child labor in its mining, production, or manufacturing processes; or

(c) The contractor furnished an end product or component mined, produced, or manufactured, wholly or in part, by forced or indentured child labor.

(2) Remedies include:

(a) Termination of the contract.

(b) Suspension of the contractor.

(c) Debarring the contractor for a period not to exceed 3 years.

18 Trafficking in Persons Revised 7/2018

a. *Definitions.*

(1) Commercial Sex Act: Any sex act on account of which anything of value is given to or received by any person.

(2) Debt Bondage: The status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

(3) Severe Trafficking of Persons:

(a) Sex trafficking in which a commercial sex act is induced by force, fraud, coercion, or in which the person induced has not attained 18 years of age; or

(b) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery.

b. *General.*

(1) The Trafficking Victims Reauthorization Act of 2005 (Pub. Law No. 109-164), 22 USC 7104 (g) and National Security Directive NSPD-22 require FAA to take affirmative steps for its contracts to combat all forms of trafficking in persons. Contracts must prohibit any activities on the part of the contractor, subcontractor, or employee of the contractor or subcontractor that support or promote:

(a) Severe forms of trafficking of persons;

(b) Commercial sex acts;

(c) The use of forced labor in the performance of the contract; and

(d) All other activities associated with (a) through (c) above.

(2) Contractors must take action to ensure policies are in place to combat severe forms of trafficking of persons, commercial sex acts, and the use of forced labor.

(3) The FAA must take appropriate action, including termination, on contractors that support, promote, or fail to monitor the conduct of their employees and subcontractors with regard to severe forms of trafficking of persons, commercial sex acts, and the use of forced labor.

(4) AMS clause 3.6.2-39 “Trafficking in Persons” is required in all SIRs and contracts.

c. *Violations and remedies.*

(1) Violations of this section include:

(a) The contractor, subcontractor, or employee of the contractor or subcontractor engages in severe forms of trafficking in persons;

(b) Any contractor or subcontractor employee procures a commercial sex act during the performance time of the contract; or

(c) The contractor, subcontractor, or employee of the contractor or subcontractor uses forced labor in the performance of the contract.

(2) Remedies include:

(a) Required removal of a contractor or subcontractor employee from the performance of the contract;

(b) Suspension of contract payments until the contractor has taken the appropriate remedial action;

(c) Loss of award fee for the period of noncompliance consistent

with the Performance Evaluation Plan (PEP);

(d) Declining to exercise available options under the contract;

(e) Termination for default; or

(f) Suspension or debarment.

(3) Credible Information. Upon receipt of information regarding a violation listed in this section, the contracting officer will promptly notify, in accordance with Agency procedures, the FAA Office of Security and Hazardous Material Safety (ASH) and the FAA Debarring/Suspending Official. If information regarding the violation is found to be credible, ASH must then promptly notify the DOT-IG and if appropriate, law enforcement officials with jurisdiction over the alleged offense.

The Contracting Officer may also direct the contractor to take specific steps to abate the alleged violation or to enforce the requirements of its compliance plan.

(4) Review of DOT-IG report.

(a) The FAA Administrator will ensure that the DOT-IG provides the Contracting Officer a copy of the DOT-IG report of an investigation of a violation of trafficking in persons prohibitions specified in clause 3.6.2-39.

(b) Upon receipt of a report from the DOT-IG that provides support for the allegations, the FAA Administrator, in accordance with FAA procedures will delegate to an authorized agency official, such as the FAA debarring/ suspending official, the responsibility to-

(i) Expeditiously conduct an administrative proceeding, allowing the contractor an opportunity to respond to the report;
(ii) Make a final determination as to whether the allegations are substantiated; and
(iii) Notify the Contracting Officer of the determination.

(c) The debarring/suspending official has the authority, at any time before or after the final determination as to whether the allegations are substantiated, to use the suspension and debarment procedures in AMS Debarment and Suspension Guidance to suspend, propose for debarment, or debar the contractor, if appropriate, also considering the appropriate mitigating and /or aggravating factors specified in clause 3.6.2-39.

(d) After a final determination that the allegations of a trafficking in persons violation are substantiated, the Contracting Officer must consider taking any of the possible remedies cited above. When determining the appropriate remedies, the Contracting Officer must consider the appropriate mitigating and/or aggravating factors specified in clause 3.6.2-39.

d. *Compliance Plan*

(1) Contracts having at least $500,000 for either supplies (other than commercially available off-the-shelf items) acquired overseas, or services performed outside of the United States require a compliance plan that the contractor must maintain during the performance of the contract.
(2) This compliance plan must be appropriate to the size and complexity of the contract as well as the nature and scope of the activities to be performed for the FAA.
(3) Specific requirements for the compliance plan are in clause 3.6.2-39. –Successful offerors on applicable acquisitions will also need to submit a certification in accordance with provision 3.6.2-45 “Certification Regarding Trafficking in Persons Compliance Plan”.

19 Reserved Revised 1/2020

20 Project Labor Agreements Revised 7/2012

a. *Definitions*.

(1) Labor organization: a labor organization as defined in 29 U.S.C. 152(5);

(2) Large-scale construction project: a construction project where the cost to FAA of all contracts associated with the project is $25M or more; and

(3) Project Labor Agreement: a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project, and is an agreement as described in 29 U.S.C 158 (f).

b. *Determination*. Consistent with Executive Order 13502, dated February 6, 2009, for all large-scale construction projects, the CO in consultation with the program office and/or COR may require that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate a project labor agreement with one or more labor organizations if they determine that a project labor agreement will:

(1) Advance FAA's interest in achieving economy and efficiency in procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and

(2) Be consistent with the law.

The determination whether to enter into a project labor agreement must be documented in the contract file.

c. *Requirements*. All project labor agreements must:

(1) Bind all contractors and subcontractors engaged in construction on the construction project to comply with the project labor agreement;

(2) Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(3) Contain guarantees against strikes, lockouts, and other job disruptions;

(4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health;

(6) Fully confirm to all statutes, regulations, and Executive Orders; and

(7) Include any additional requirements deemed necessary to meet the needs of FAA.

d. *Additional Criteria*. Additional factors that may be considered in this determination whether to use a project labor agreement include but are not limited to the following:

(1) The size and complexity of the project;

(2) The importance of the project and the need to adhere to a particular timeline;

(3) The risk of labor unrest on the project and the circumstances that may lead to a heightened risk of labor disruption. Examples of such circumstances are the history of labor unrest in the area, the anticipated working conditions on the project related to the environment or work schedules, and the expiration of one or more collective bargaining agreements that could lead to jurisdictional disputes;

(4) The impacts of a labor disruption to the users, the operation of the facility, and the region;

(5) The costs of a delay should a labor disruption occur; and

(6) The available labor pool relative to the particular skills required to complete the project.

e. *Implementation.* When a project labor agreement is required, FAA has the following submittal options:

(1) When offers are due. The screening information request (SIR) must fully specify all requirements for the project labor agreement;

(2) From the apparent successful offeror prior to award. The SIR must require that once the apparent successful offeror has been determined, the apparent successful offeror must submit a proposed project labor agreement to the CO; and

(3) After award. The SIR must require that the project labor agreement be negotiated within a certain number of days after contract award, and that a copy of the negotiated agreement must be submitted to the CO.

f. Possible submittal requirement considerations include but are not limited to the following:

(1) A large number of anticipated offerors could render each offeror having to negotiate a project labor agreement in advance a burden that could delay the submittal of offers;

(2) Requiring submittal of a project labor agreement from all offerors in advance might reduce cost risk in that the costs of such an agreement may be more accurately factored into an offeror's proposal; and

(4) Post-award execution of a project labor agreement could undercut the benefits of such an agreement as the work on the overall project will have already started.

B Clauses

view contract clauses

C Procurement Forms **Revised 9/2021**

~~view procurement forms~~

~~**D Attachment**~~

~~Address list of DOL Regional Offices of Federal Contract Compliance Programs (OFCCP) by geographic jurisdictions.~~

~~**Office of Federal Contract Compliance Programs Regional Offices**~~

~~1. New York~~

~~(New Jersey, New York, Puerto Rico, Virgin Islands, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)~~

~~201 Varick Street Room 750~~
~~New York, NY 10014~~

~~(212) 337-2007, (212)620-7705 (Fax)~~

~~2. Philadelphia~~
~~(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)~~

~~Curtis Center, Suite 750 West~~
~~170 S. Independence Mall West~~
~~Philadelphia, PA 19106~~

~~(215) 861-5763 (215)861-5769 (Fax)~~

~~3. Atlanta~~

~~(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)~~

~~Atlanta Federal Center~~

~~61 Forsyth Street, S.W.~~
~~Room 7B75~~
~~Atlanta, GA 30303~~

~~(404) 562-2424 (404) 562-2429 (Fax)~~

~~4. Chicago Region~~

~~(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, Iowa, Kansas, Missouri, Nebraska)~~

~~Kluczynski Federal Building~~
~~230 South Dearborn Street~~

~~Room 570~~

~~Chicago, IL 60604~~

~~(312) 353-0335 (312) 353-2813 (Fax)~~

~~5. Dallas~~

~~(Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)~~

~~Federal Building, Room 840~~
~~525 South Griffin St.~~
~~Dallas, TX 75202~~

~~(214) 767-2804 (214) 767-2149 (Fax)~~

~~6. San Francisco~~

~~(Arizona, California, Guam, Hawaii, Nevada, Alaska, Idaho, Oregon, Washington)~~

~~71 Stevenson Street~~
~~Suite 1700~~
~~San Francisco, CA 94105~~

~~(415) 975-4720 (415) 975-4723 (Fax)~~

Document Name

D Procurement Samples **Revised 9/2021**

Document Name
-

E Procurement Templates Added 9/2021

Document Name
EEO Pre-Award Template

F Procurement Tools and Resources Added 9/2021

Document Name
-

Section Revised T3.6.3 - Environment, Conservation, Occupational Safety, and Drug Free Workplace

Procurement Guidance - (~~7/2021~~9/2021)

T3.6.3 Environment, Conservation, Occupational Safety, and Drug Free Workplace

Revised 4/2009

A Environment, Conservation, Occupational Safety, and Drug Free Workplace

Revised 4/2009

1 Sustainability Considerations **Revised ~~9/2020~~9/2021**

a. Contracting Sustainable Products and Services

FAA will ensure that all contract actions and purchases comply with statutory requirements, where applicable to the product or service. FAA should prioritize products and services that meet more than one of the applicable requirements and is encouraged to procure products and services in a cost-effective manner that advance achievement of energy and environmental performance goals. FAA will use Category Management solutions to the maximum extent practicable, which can help meet sustainability goals and better leverage the government's buying power

(1) FAA will meet statutory mandates that require purchase preference for products that:

(a) Meet minimum requirements for recycled-content products designated by Environmental Protection Agency's (EPA) Comprehensive Procurement Guidelines (CPG);

(b) Are ENERGY STAR®-qualified or Federal Energy Management Program (FEMP)-designated products, identified by EPA and DOE; and

(c) Are designated BioPreferred and biobased designated by the U.S. Department of Agriculture (USDA).

(2) FAA will maximize substitution of alternatives to ozone-depleting substances in its procurements, as identified under EPA's Significant New Alternatives Policy (SNAP) program.

(3) FAA should also seek sustainable products and services identified by other EPA programs, including WaterSense®, Safer Choice®, and SmartWay® as well as non-federal specifications, standards or labels that meet or exceed those recommended by EPA or meet criteria developed or adopted by consensus standards bodies as presented in OMB Circular A-119 and EPA guidelines.

(4) FAA may also establish agency-specific standards, policies, programs, and incentives for sustainable acquisition, as long as they meet or exceed statutory requirements

If at any point during the acquisition it is determined that a contract action cannot comply with the sustainable requirements due to an exception, the CO must use the Rationale for not Complying with the Sustainable Acquisition Requirements template located in Procurement Templates to document~~, within the contract file,~~ the exception~~ being used and rationale for the exception (Appendix 2).~~.

(5) *Life-Cycle Cost Analysis*. FAA will consider full life-cycle costs and savings in planning and implementing projects and making cost-effectiveness determinations about investments in capital assets and services. To assist in selecting products and services, costs should be calculated over the life of the item, not just the initial, up-front cost. When comparing alternative products, the initial cost of the acquisition, as well as lifetime maintenance costs, operational costs, resale value, etc.

should be considered in the analysis. A product having a higher initial cost may have lower operational cost or a higher resale value and will, therefore, prove to be a better value and more cost-effective compared to the alternatives.

(6) *Contractors Use of Sustainable Products and Services*. The requirement to promote sustainable acquisition applies to contractors when they are purchasing or supplying products or services for use in the performance of a contract. The contractor is required to monitor and report on its procurement activities as well as require its applicable subcontractors to comply with sustainable acquisition requirements.

(7) *Tracking and Reporting.* FAA will track compliance toward 100 percent compliance with sustainable acquisition requirements through quarterly agency contract compliance reviews.

(8) *Promotion Program*. FAA should provide informational materials, statements, and training to program and procurement offices regarding the agency's sustainable acquisition program through internal documents, newsletters, and at appropriate conferences, workshops, and meetings.

b. Contracting for Sustainable Real Property

(1) *Energy Star Buildings.* Section 435 of the EISA mandates that all new space must be acquired in buildings having either an Energy Star label for the most recent year, or a commitment from the Lessor to earn the Energy Star label within one year of signing the lease. There are four exemptions to the requirement for the Energy Star label:

a. No space is offered in a building with an Energy Star label in the delineated area that meets the functional requirements of an agency, including location needs;
b. The agency will remain in a building they currently occupy;
c. The lease will be in a building of historical, architectural, or cultural significance verified by listing or eligibility for listing on the National Register of Historic Places; or
d. The lease is less than 10,000 gross square feet of space.

The CO shall incorporate into the Solicitation for Offer (SFO) the provisions for Energy Star designation. The determination of whether or not a particular building meets the requirements for an exception to the requirement for an Energy Star label shall be based upon a review of supporting documentation submitted to the CO by the Lessor/Offeror.

The acquisition of space that complies shall be considered financially feasible if the rental offered for a conforming building is no more than 10% over the market rate for a comparable conventional building in the same rental market. If unable to obtain space designated as Energy Star compliant (e.g., if a compliant space is unavailable or the acquisition would not be financially feasible), the CO must provide a written statement for such inability in the Negotiator Report.

(2) *Sustainable Buildings.* Executive Order (EO) 13693 sets goals for federal agency compliance with the Guiding Principles for High Performance and Sustainable Buildings (Guiding Principles). The EO directs the FAA to incorporate the HPSB Guiding Principles into 15% of its existing owned building inventory greater than 5,000 square feet (it should be noted that Energy Independence and Security Act (EISA) requires Energy Star labeled buildings for 10,000 gross square feet or above) by 2025 and demonstrate annual progress thereafter toward 100% conformance.

2 Responsibilities **Revised ~~1/2020~~9/2021**

a. *Program Office Responsibilities.*

(1) Program offices are responsible for identifying hazardous materials and any safety controls that may be required in the delivery of supplies, services, or construction to FAA.

(2) When preparing specifications and purchase descriptions or utilizing SOWs for the acquisition of supplies, services, and construction, program offices must:

(a) Meet sustainable acquisition requirements.

(b) Review and revise specifications or requirements during the planning phase of the acquisition to be in compliance with FAA's procurement of sustainable products and services. Additional information on specific products and services is contained in the sections below. The Green Procurement Compilation at https://sftool.gov/greenprocurement is a web-based, centralized resource to assist federal agencies with sustainable acquisition. It is searchable by product or service type and contains information on associated sustainable acquisition requirements as well as where to purchase the products. Also visit the FAA SAVES Program website (FAA only) for sustainable products and services. For construction projects, visit Federal Green Construction Guide for Specifiers at https://www.wbdg.org/design/greenspec.php.

b. *Contracting Officer (CO) Responsibilities.*

(1) *Pre-Award.* The CO must ensure:

(a) Procurement Request (PR) packages are complete;

(b) The Screening Information Request (SIR) includes all required clauses and provisions to support FAA's procurement of sustainable products and services (e.g., energy- and water- efficient, biobased, recycled content);

(c) All required certifications are received prior to contract award;

(d) ~~Documentation~~The Rationale for not Complying with the Sustainable Acquisition Requirements is used to document any exception in the contract file ~~of any exceptions being used and the rationale for the exceptions (Appendix 2);~~;

(e) EPA reports (e.g. Toxics Release Inventory Form (Form R) are submitted on time; and

(f) Notification and coordination with EPA if a CO becomes aware of noncompliance with environmental standards (e.g. Clean Water Act (CWA), Clean Air Act (CAA)) in a prospective or performing contractor's facilities.

(2) *Post Award.* The CO must:

(a) Ensure that all required post-award certifications and estimations are submitted to FAA as required.

(b) Periodically review vendor certification and estimation documents as part of the annual report and monitoring process.

(c) Ensure that such contractors are familiar with all applicable sustainable acquisition requirements contained in contracts with FAA. During initial contract execution, the COs should brief contractors on their role in the sustainable acquisition process.

(d) Monitor contract performance and ensure that contractors are meeting their purchasing and reporting requirements as they relate to sustainable acquisition.

(e) Ensure that contractors notify the FAA prior to delivering hazardous or radioactive material.

3 Hazardous Material Identification and Safety Data Revised 10/2016

a. The program office should obtain information before award about hazards that may be introduced into the workplace by the supplies being acquired such as:

(1) That required by Federal Standard No. 313 (including revisions adopted during the term of the contract) in obtaining hazardous material; or

(2) That identified by a FAA technical representative as potentially hazardous and requiring safety controls.

b. As required by 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, the successful offeror/contractor is required to submit Safety Data Sheets prior to contract award and with supplies at the time of delivery, unless the offeror/contractor certifies that the supplies are not hazardous. The CO must provide a copy of all Safety Data Sheets received to the safety officer and program office.

4 Notice of Radioactive Material Revised 10/2016

a. The procurement team requires contractors to notify FAA receiving activities prior to delivering radioactive material so FAA can initiate appropriate safeguards. The CO may waive the notification if the contractor certifies that the notification on prior deliveries is still accurate. However, the CO may only waive the notice after consultation with the cognizant contracting technical representatives.

b. The procurement team should require offerors to specify the number of days in advance of delivery that the receiving activity will be notified of an impending delivery. The determination of the number of days should be done in coordination with the installation/facility radiation protection officer (RPO). The RPO is responsible for insuring the proper license, authorization or permit is obtained prior to receipt of the radioactive material.

5 Alternatives to Ozone Depleting Substances and High Global Warming Potential Hydrofluorocarbons Revised 1/2020

a. FAA will maximize substitution of SNAP chemicals or other alternatives to ozone-depleting substances and high global warming potential hydrofluorocarbons, where feasible, as identified by SNAP, to reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere. Under SNAP, EPA identifies lists of acceptable and unacceptable substitutes for ozone-depleting substances that include air conditioning and refrigeration; fire suppression; cleaning solvents; foam-blowing agents; aerosols; adhesives, coatings and inks; sterilants; and tobacco expansion. FAA will ensure that the product complies with statutory mandates (e.g., biobased) if applicable to the product category. Products identified under the SNAP program as well as other alternatives to ozone-depleting substances may be purchased from the Green Procurement Compilation website at https://sftool.gov/greenprocurement.

b. If there are no non-ozone depleting options for a particular procurement, then FAA will specify in the SIR/contract that only offerors with the appropriate EPA certifications will be considered for award under EPA's Ozone Layer Protection Regulatory Programs.

6 Chemicals Management Revised 1/2020

a. FAA should purchase Safer Choice labeled products to reduce the overall quantity of chemicals and toxic materials acquired, used, and disposed of (e.g., aircraft cleaning products, deicers, floor care products). Under EPA’s Safer Choice Program products are less toxic, and include requirements for performance, packaging, pH and volatile organic compounds. Safer Choice products may be purchased using the Green Procurement Compilation website at https://sftool.gov/greenprocurement. FAA will ensure that the product complies with statutory mandates (e.g., biobased) if applicable to the product category.

b. Additionally, FAA will implement EPA’s Integrated Pest Management (IPM) Principles and Water-Efficient Landscaping practices to reduce and eliminate the use of toxic and hazardous chemicals and materials.

7 Energy Conservation and Efficiency Revised 9/2020

In order to meet the objectives of EO 13834, the Energy Policy Act of 2005 (EPAct 2005), the Energy Independence and Security Act of 2007 (EISA 2007), and FAA Order 1053.1B (or the latest version), the FAA procurement team (CO, program official, legal counsel, and others supporting a program) will make energy conservation and efficiency a contracting consideration when procuring products affecting energy consumption. Energy conservation and efficiency data must be considered along with estimated cost and other relevant factors in the preparation of plans, drawings, specifications, and other product descriptions. When procuring energy-consuming products:

a. FAA will purchase ENERGY STAR certified, or FEMP designated products.

FAA will promote electronics stewardship throughout the acquisition lifecycle and ensure a procurement preference for environmentally sustainable electronic products in accordance with statutory mandates, such as the Electronic Product Environmental Assessment Tool (EPEAT)-registered products. EPEAT is a procurement tool designed to help purchasers evaluate, compare, and select products (e.g., computer desktops, laptops, and monitors) on the basis of their environmental attributes. All EPEAT registered products are ENERGY STAR ©-labeled. The decision not to procure ENERGY STAR certified and FEMP designated products will be based on a determination that such procurement items:

1. Are not reasonably available within a reasonable period of time;
2. Fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or
3. Are only available at an unreasonable price.

b. For products that consume power in standby mode and are listed on FEMP's Low Standby Power Devices product listing, FAA will:

(1) Purchase items which meet FEMP's standby power wattage recommendation or document why such items were not purchased; or

(2) If FEMP has listed a product without a corresponding wattage recommendation, purchase items which use no more than one watt in standby power consuming mode. If meeting the one-watt requirement is impracticable, FAA will purchase items with the lowest standby wattage practicable. This requirement applies only to commercially available, off-the shelf products, where life cycle cost-effective and practicable.

c. Energy efficient products (i.e., ENERGY STAR, FEMP) (may be purchased from the Green Procurement Compilation website at https://sftool.gov/greenprocurement.

8 Renewable Energy Certificates Revised 1/2020

a. FAA has the option of purchasing renewable energy certificates (RECs) to help meet Federal renewable energy use requirements. FAA can conduct their own procurement for these RECs or can work with GSA, Defense Logistics Agency (DLA) and Western Area Power Administration (WAPA) to draw on procurement expertise and coordinate bulk purchases with other agencies.

b. In order to count a REC toward the renewable energy target, in order to meet the objectives of EO 13834, the electricity will have been generated by a renewable generator that was placed into service within fifteen (15) years prior to the start of the fiscal year in which FAA intends to count the REC toward the renewable energy targets. RECs purchased will be from renewable sources of electricity derived from solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project. Municipal solid waste REC purchases are discouraged as this source of renewable energy negatively impacts the FAA's greenhouse gas emission reduction performance. In addition, RECs will meet "vintage" requirements where "vintage" refers to the period of time during which the energy the RECs represent was generated. Refer to the following table for the vintage requirements for each fiscal year:

Fiscal Year	**"Vintage", i.e., Period of Generation for RECs**
FY 2019	01 April 2018 – 31 December 2019
FY 2020	01 April 2019 – 31 December 2020
FY 2021	01 April 2020 - 31 December 2021
FY 2022	01 April 2021 – 31 December 2022
FY 2023	01 April 2022 – 31 December 2023
FY 2024	01 April 2023 - 31 December 2024
FY 2025	01 April 2024 – 31 December 2025
FY 2026	01 April 2025 - 31 December 2026
FY 2027	01 April 2026 - 31 December 2027
FY 2028	01 April 2027 - 31 December 2028
FY 2029	01 April 2028 - 31 December 2029
FY 2030	01 April 2029 - 31 December 2030

RECs purchased for a given fiscal year will meet the corresponding vintage requirements in order for them to count towards that fiscal year's Federal renewable energy requirement.

c. In order to meet REC reporting requirements, FAA will obtain documentation under the contract showing both transference and ownership of the RECs, and it will also include the following information:

(1) Number of RECs sold in megawatt hours (MWhs);

(2) Fuel type (renewable fuel used to generate electricity associated with RECs sold);

(3) Period of generation for RECs sold (month or quarter, and year);

(4) Cost per REC (or total purchase price);

(5) Location of the generation facility; and

(6) Date the generation facility was placed in service.

Optional additional information may include:

(1) Renewable energy project name;

(2) Generator ID number; and

(3) Nameplate capacity.

Usually this documentation is in the form of an attestation from the REC provider and a certificate of transfer, which demonstrates rights to the renewable attributes of the power generated by the renewable resource transfer to the buyer.

9 Water Conservation and Efficiency Revised 1/2020

The procurement team (CO, program official, legal counsel, and others supporting a program) will make water conservation a contracting consideration when procuring products affecting FAA water consumption. Water conservation and efficiency data will be considered along with estimated cost and other relevant factors in the preparation of plans, drawings, specifications, and other product descriptions. In order to meet the objectives of EO 13834 and FAA Order 1053.1C (or the latest version), when procuring water consuming products-

a. FAA will purchase WaterSense certified products.

b. FAA will procure WaterSense certified services.

WaterSense products may be purchased from the Green Procurement Compilation website at https://sftool.gov/greenprocurement.

10 BioPreferred and Biobased Designated Products Revised 1/2020

In order to meet the objectives of EO 13834, the Farm Security and Rural Investment Act of 2002, the Food Conservation and Energy Act of 2008, and the Agricultural Act of 2014, FAA will purchase and use USDA BioPreferred and biobased products. FAA will give preference to products composed of the highest percentage of biobased material practicable. The decision not to procure such products will be based on a determination that such products within a product category:

1. Are not reasonably available within a reasonable period of time;
2. Fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or
3. Are only available at an unreasonable price.

Biobased products are derived from plants and other renewable agricultural, marine, and forestry materials and provide an alternative to conventional petroleum derived products. Biobased products may be purchased from the Green Procurement Compilation website at https://sftool.gov/greenprocurement.

11 Preference for Recycled-Content Products Revised 1/2020

a. In order to meet the objectives of EO 13834, FAA will procure products composed of recycled content, which are produced with waste materials and byproducts recovered or diverted from solid waste. Recycled-content products are designated in EPA's CPG and FAA is required to purchase these products at the highest percentage of recovered content practicable.

FAA will give preference to procuring and using such products containing recovered materials versus products made with virgin materials. These products will be purchased containing the percentages of recovered materials (recycled content) indicated in the CPG. The major CPG categories are Paper and Paper Products, Vehicular Products, Construction Products, Transportation (Traffic Control) Products, Park & Recreation Products, Landscaping Products, Non-paper Office Products, and Miscellaneous Products.

b. Printing and Writing Paper. FAA should purchase uncoated paper (including office paper products or support services that include the supply of written documents) containing at least 50 percent post-consumer recycled fiber content whenever practicable. If not practicable, in order to meet the objectives of EO 13693, FAA will purchase uncoated printing and writing paper containing at least 30 percent post-consumer recycled content or higher.

c. *Recycled-Content Products Threshold and Exceptions*. The requirement to purchase recycled-content CPG items applies to all purchases, including those purchases falling under the defined threshold level or made using a purchase card and/or credit card checks. The decision not to procure such items will be based on a determination that such products within a product category:

1. Are not reasonably available within a reasonable period of time;
2. Fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or
3. Are only available at an unreasonable price.

d. When all sustainable acquisition requirements for toner cartridges cannot be met in the same product, remanufactured and recycled content should receive purchasing priority over biobased toner.

e. Recycled-content products designated in the CPG may be purchased from the Green Procurement Compilation website at https://sftool.gov/greenprocurement.

12 Reserved Revised 1/2020

13 Waste Management and Pollution Prevention Revised ~~1/2020~~9/2021

a. *Non-hazardous Solid Waste*. FAA demonstrate incremental improvement on reducing the tons of non-hazardous solid waste sent to treatment and disposal facilities in order to meet the objectives of EO 13834. Each contract for contractor operation of or maintenance at a Government owned or leased facility should require contractor programs to promote and implement cost-effective waste reduction and diversion in performing the contract, to the maximum extent practicable. Where economically feasible, existing contracts for contractor operation of or maintenance at Government-owned or leased facilities should be modified to include the promotion and implementation of cost-effective non-hazardous solid waste reduction and diversion in contract performance.

(1) The contractor must track non-hazardous solid waste diversion efforts and provide a Non-Hazardous Solid Waste Diversion Report each month in accordance with AMS clause 3.6.3-7 "Waste Management and Pollution Prevention."

(2) A sample Non-Hazardous Solid Waste Diversion Report Form can be found in the FAA AMS Statement of Work Generator and DID Library under DID FAA-EOSH-002.

b. *Construction and Demolition (C&D) Waste*.

(1) FAA will also demonstrate incremental improvement on reducing the tons of non-hazardous construction and demolition (C&D) materials and debris sent to treatment and disposal facilities Examples of materials to be diverted are as follows:

(a) Soil;

(b) Inerts (e.g., concrete, masonry, or asphalt);

(c) Clean dimensional wood and pallet wood;

(d) Green waste (e.g., biodegradable landscaping materials);

(e) Engineered wood products (e.g., plywood, particle board);

(f) Metal products (e.g., steel, wire, beverage containers);

(g) Cardboard, paper, and packaging;

(h) Bitumen roofing materials;

(i) Plastics (e.g., ABS, PVC);

(j) Carpet and/or padding;

(k) Gypsum board;

(l) Insulation;

(m) Paint; and

(n) Fluorescent lamps.

(2) For all construction, demolition, or facilities modernization contracts over $150,000 in awarded value, the contractor must submit a Waste Management Plan to the CO no later than fifteen (15) days after contract award and prior to the start of construction activities in accordance with Clause 3.6.3-22 "Construction Waste Management." (Note that Real Property Clause 6.6.13 “Construction Waste Management” is required in all standard space leases where build-out occurs).

(a) The contractor must track C&D waste diversion efforts and provide a Construction and Demolition Debris Diversion Report each month in accordance with the above clause.

(b) A sample Construction and Demolition Debris Diversion Report Form can be found in the FAA AMS Statement of Work Generator and DID Library under DID FAA-EOSH-001.

(3) The Whole Building Design Guide (www.wbdg.org) provides a Construction Waste Management Database that contains information on companies that haul, collect, and process recyclable debris from construction projects.

c. FAA facilities must comply with the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

d. Every FAA contract that provides for performance on a Federal facility must stipulate that the contractor must provide information necessary for FAA to comply with the emergency planning and toxics release reporting requirements of EPCRA and PPA.

14 Energy Savings Performance Contracts Revised 4/2017

a. An Energy Savings Performance Contract (ESPC) is a contract that allows the FAA to accomplish energy projects for its facilities with little or no upfront capital costs. Under an ESPC, a contractor (i.e., an Energy Savings Company (ESCO)) finances the up-front cost of the project, guarantees the project improvements will generate enough energy and water cost savings to pay for the project over the contract period, and is paid back from the resultant energy and water savings over the contract period. Financed project costs may include ESCO services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair of an identified energy conservation measure or series of measures at one or more FAA facilities. If sufficient appropriated funding to cover the entire project is not available, or is not expected to be available in a reasonable time frame, FAA may award ESPCs to accomplish energy savings projects at FAA. FAA may contract with an ESCO for a period not to exceed 25 years.

b. *Procedures*. To solicit and award an ESPC, the CO must use the procedures, selection method, and terms and conditions provided in 10 CFR Part 436, Subpart B, at the DOE FEMP website at http://energy.gov/eere/femp/energy-savings-performance-contracts-federal-agencies and must use the "Qualified List" of ESCOs established by the DOE. The resulting award would be processed as an order under the applicable DOE contract consistent with AMS guidance on interagency procurement.

c. *Training.* All COs responsible for negotiating ESPCs must take DOE FEMP-sponsored contracting training for ESPCs (ESPC Contracting and Negotiations Webinar).

d. All ESPCs must comply with the National Energy Conservation Policy Act (42 U.S.C 8287) as set forth in the DOT Limited Delegation of Authority of July 11, 2012 until such time as the DOE statute or implementing regulations are revised.

15 Utility Energy Service Contracts Revised 4/2017

a. Under a Utility Energy Service Contract (UESC), FAA may contract with a local servicing utility for technical services and/or up-front project financing for energy efficiency, water conservation, and renewable energy investments at one or more FAA facilities. The utility finances the capital costs of the project with little or no up-front capital costs to the FAA, and the utility is then repaid over the contract term from the cost savings generated by the project. If sufficient appropriated funding to cover the entire project is not available, or not expected to be available in a reasonable time frame, FAA may award UESCs at FAA facilities. Unlike a
Energy Savings Performance Contract, a UESC is not required to include performance guarantees. Because of this, it is highly recommended that performance guarantees or assurances be incorporated into these contracts to reduce FAA risk. Performance assurances do not guarantee energy savings; however, they provide assurance that equipment installed will perform as expected. A UESC should also include measurement and verification of savings through equipment commissioning, recommissioning or retro-commissioning.

b. *Planning*. Acquisition planning for a UESC should include the following:

(1) Inclusion of applicable performance assurance criteria in the SIR and contract;

(2) Analysis that shows that the planned energy conservation measures are cost effective; and

(3) A competition or alternatives analysis as part of the selection process.

c. *Procedures*. To solicit and award a UESC, the CO must use the procedures, selection method, and terms and conditions provided on the Department of Energy FEMP website at http://energy.gov/eere/femp/utility-energy-service-contracts-federal-agencies.

d. All UESCs must comply with the Energy Policy Act of 1992 (42 USC 8256).

16 Drug Free Workplace Revised 10/2016

a. *Applicability.* Drug-free workplace requirements apply to all contracts except those performed outside of the United States, its territories, and its possessions; or when application would be inconsistent with international obligations of the U.S. or foreign laws or regulations.

b. *Attestation*. The firm or individual attests to providing a drug-free workplace by their signature on the contract.

c. *Penalties*. After determining in writing that adequate evidence to suspect the specific cause identified exists, the CO may elect to suspend contract payments or to terminate the contract.

(1) The specific cause for suspension of contract payments, termination of a contract, or suspension and debarment is that such a number of contractor employees have been convicted of violations of criminal drug statutes occurring in the workplace to indicate that the contractor has failed to make a good-faith effort to provide a drug-free workplace.

(2) A determination to suspend contract payments, terminate a contract, or debar or suspend a contractor may be waived for a particular contract, only if such waiver is necessary to prevent a severe disruption of FAA's operation to the detriment of the Federal Government or the general public.

17 Environmental Review Added 9/2020

a. The National Environmental Policy Act (NEPA) requires federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach. Specifically, all federal agencies are required to consider the environmental impact of Federal actions affecting the environment. FAA Order 1050.1F (or the latest version) contains FAA's implementing procedures for complying with NEPA. The FAA integrates its environmental review under other statutes (e.g., the Endangered Species Act and the National Historic Preservations Act) into the NEPA process.

b. The appropriate level of environmental review must be determined by the program office Environmental Specialist or the project designated Environmental Specialist. Order 1050.1F contains specific procedures for the following procurement actions:

(1) The acquisition and disposition of real property;

(2) The acquisition, repair, replacement, maintenance, or upgrading of grounds, infrastructure, buildings, structures, or facilities; and

(3) The acquisition of equipment.

18 Environmental Due Diligence and Real Property Added 9/2020

FAA real property transactions are subject to the requirements of FAA Order 1050.19C (or the latest version), and Paragraph 2-7 of Order 1050.1F, in order to identify and minimize potential environmental liabilities associated with the condition of the property and past activities at the site. Environmental due diligence requirements must be completed prior to executing contracts for the initial acquisition or disposal of real property, including the conveyance, sale or transfer of any FAA land, buildings, and structures. The level of environmental due diligence required varies depending on the specifics of each real property transaction.

19 Seismic Safety ~~Added 9/2020~~Revised 9/2021

a. General

It is FAA's policy to mitigate seismic hazards in FAA occupied buildings in order to ensure the safety of its employees. Every effort should be made in the space acquisition process to ensure that FAA employees are housed in seismically safe buildings. New or succeeding leases are to be for space in buildings that comply with seismic standards as described in the most recently published version of the National Institute of Standards and Technology (NIST~~) RP-8,~~), Standards for Seismic Safety for Existing Federally Owned or Leased Buildings~~, December 2011.~~

~~RP-8~~ ("the Standards") requires a "Seismic Safety Certification" to be executed by a qualified structural engineer prior to signing any new lease or ~~renewing existing leases.~~succeeding lease. The requirements for the Seismic Safety Certification are found in ~~RP-8.~~the Standards. In addition, Section 1.3 of ~~RP-8~~the Standards lists a number of *exemptions* and one *exception* that may relieve the Agency of the Seismic Safety Certification. Any exemption or exception **must** be applied on a case-by-case basis.

b. Leased Facilities

A licensed structural engineer **must** certify on the Life Safety Compliance/Seismic Certification ~~(Form 2.6.4)~~ the level of seismic compliance. Documentation for seismic compliance must be kept in the lease contract file. An alternate document such as a letter from the Lessor stating the building meets the seismic compliance does not take the place of the required certification form. The~~ RP-8~~ Standards shall apply to all or portions of a building leased by the FAA, unless an exemption or exception applies under the provisions of ~~RP-8~~the Standards.

For applicable documents related to Seismic Safety for real estate procurements, see Real Property Procurement Templates and Samples.

B Clauses

view contract clauses

C Procurement Forms Revised 9/2021

~~view procurement forms~~

Document Name
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D Procurement Samples Revised 9/2021

Document Name
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E Procurement Templates Added 9/2021

Document Name
Rationale for not Complying with the Sustainable Acquisition Requirements

F Procurement Tools and Resources Added 9/2021

Document Name
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G Appendix Revised 9/2021

1 Appendix – Definitions Revised 1/2020

Biobased. Products derived from plants and other renewable agricultural, marine, and forestry materials and provide an alternative to conventional petroleum derived products.

BioPreferred. A U.S. Department of Agriculture (USDA) program that increases the purchase and use of biobased products. There are two major parts of the program: (1) mandatory purchasing requirements for federal agencies and their contractors; and (2) a voluntary labeling initiative for biobased products.

Comprehensive Procurement Guidelines (CPG). EPA's guidelines to promote the use of materials recovered from solid waste. These guidelines ensure that recycled-content products collected in recycling programs are used again in the manufacture of new products. EPA is required to designate products that are or can be made with recovered materials, and to recommend practices for buying these products. Once a product is designated, procuring agencies are required to purchase it with the highest recovered material content level practicable. Currently there are 61 products designated in eight categories.

Electronic Product Environmental Assessment Tool (EPEAT). A procurement tool designed using a grant from the EPA and managed by the Green Electronics Council (GEC) to help purchasers evaluate, compare, and select products (e.g., computer desktops, laptops, and monitors) on the basis of their environmental attributes. EPEAT-registered products must meet environmental performance criteria that address: materials selection, design for product longevity, reuse and recycling, energy conservation, end-of-life management, and corporate performance.

ENERGY STAR. A joint EPA and DOE program that identifies and promotes energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of or other forms of communication about products and buildings that meet the highest energy efficiency standards.

Federal Energy Management Program (FEMP) Designated Products. Products designated under DOE FEMP as being among the highest 25 percent of equivalent products for energy efficiency.

Green Procurement Compilation (GPC). A comprehensive green purchasing resource developed by the U.S. General Services Administration (GSA) designed for federal contracting personnel and program managers. It identifies applicable green purchasing requirements by consolidating and organizing information from federal environmental programs in one place. The GPC allows users to quickly identify federal green purchasing requirements for the products and services bought; to search by keyword or browse by category to find products and services; to determine procurement options available to federal buyers, including applicable GSA Multiple Award Schedules, Federal Strategic Sourcing Initiative solutions, and GSA Global Supply; to learn more about federal environmental programs and other EPA recommended standards and labels; and to discover optional environmental programs and additional procurement guidance to help sustainability goals.

Hydrofluorocarbons (HFC). Compounds containing only hydrogen, fluorine, and carbon atoms. They were introduced as alternatives to ozone depleting substances in serving many industrial, commercial, and personal needs. HFCs are emitted as by-products of industrial processes and are also used in manufacturing. They do not significantly deplete the stratospheric ozone layer, but they are powerful greenhouse gases with global warming potentials ranging from 140 (HFC-152a) to 11,700 (HFC-23).

Integrated Pest Management (IPM). The implementation of diverse methods of pest controls, paired with monitoring to reduce unnecessary pesticide applications. In IPM, pesticides are used in combination with other crop management approaches to minimize the effects of pests while supporting a profitable system that has negligible negative effects.

Low Standby Power Devices. Products with low standby power – the level of power consumption that occurs when a device is in the lowest power-consuming mode—typically when the product is switched off or not performing its primary purpose. Federal agencies are required to purchase energy-consuming products with a standby power level of one (1) watt or less when compliant models are available on the market. If a product with a standby power level of one (1) watt or less is not currently available, a product with the lowest possible standby power level in the product category should be purchased.

Ozone-Depleting Substances (ODS). Compounds that contribute to stratospheric ozone depletion. ODS include chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), halons, methyl bromide, tetrachloride, hydrobromoluorocarbons, chlorobromomethane, and methyl chloroform. ODS are generally very stable in the troposphere and only degrade under intense ultraviolet light in the stratosphere. When they break down, they release chlorine or bromine atoms, which then deplete the ozone.

Recycled-Content Products. Items produced with waste materials and byproducts recovered or diverted from solid waste.

Renewable Energy. Electric energy produced by solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

Renewable Energy Certificates (REC). The technology and environmental (non-energy) attributes that represent proof that one (1) megawatt-hour (MWh) of electricity was generated from an eligible renewable energy resource, that can be sold separately from the underlying generic electricity with which they are associated, and that were produced by sources of renewable energy placed into service within fifteen (15) years prior to the start of the fiscal year. RECs are also referred as renewable energy credits.

Safer Choice (Formerly known as Design for the Environment). An EPA program that helps consumers, businesses, and purchasers find products that perform well and are safer for human health and the environment. Safer Choice products are less toxic, and also include requirements for performance, packaging, pH, and volatile organic compounds.

Significant New Alternative Policy (SNAP). An EPA program that identifies and promotes alternatives to ozone depleting substances in the following sectors: adhesives, coatings, and inks; aerosols; cleaning solvents; fire suppression and explosion protection; foam blowing agents; refrigeration and air conditioning; sterilants; and tobacco expansion.

SmartWay. An EPA public-private initiative to reduce greenhouse gas emissions and air pollution created by freight transportation in corporate supply chains. SmartWay aims to accelerate the availability, adoption and market penetration of advanced fuel-efficient technologies and operational practices in the freight supply chain, while assisting companies with fuel savings, lowering costs and reducing adverse environmental impacts.

Solid Waste. Non-hazardous solid waste, including food and compostable material but not construction and demolition materials and debris.

Sustainable Acquisition. An acquisition of goods and services in order to create and maintain conditions under which humans and nature can exist in productive harmony; and permit fulfillment of the social, economic, and other requirements of present and future generations.

Water-Efficient Landscaping. An approach that utilizes designs and plants suited to local conditions and saves water, prevents pollution and protects the environment while producing attractive landscapes.

WaterSense. An EPA program that seeks to help consumers to identify and promote high-performance products and programs that help preserve the Nation's water supply. Products and services that have earned the WaterSense label have been certified to be at least 20 percent more efficient without sacrificing performance.

~~2 Appendix – Rationale for not Complying with the Sustainable Acquisition Requirements~~ ~~Revised 1/2020~~

~~Procurement Request No.:__________~~

~~Sustainable acquisition requirements are considered practicable unless there is an allowable exception for acquiring a sustainable product or service. An allowable exception is available if any of the following conditions exist (check the one that applies):~~
~~_____Procurement items are not reasonably available within a reasonable period of time~~
~~_____Procurement items fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies~~
~~_____Procurement items are only available at an unreasonable price~~

~~Rationale for Not Complying with the Sustainable Acquisition Requirements:~~

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________________________________ ________________________

~~Signature of Procurement Originator Date~~

________________________________ ________________________

~~Contracting Officer Date~~

Section Revised T3.8.1 - Agreements, Cooperative Agreements, Gifts & Bequests

Procurement Guidance - (~~7/2021~~9/2021)

T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests Revised 10/2007

A~~.~~ Agreements, Cooperative Agreements, Gifts and Bequests

1 Agreements Revised ~~7/2021~~9/2021

a. *Applicability.* This section applies to interagency agreements, intra-agency agreements, other transactions, cooperative agreements, and international agreements for services, supplies (including construction) and real property to the extent authorized by law. This section **does not** apply to Airport Improvement Program grants and cooperative research and development agreements, which are governed by other directives, as follows:

(1) Airport Improvement (AIP) Grants authorized under 49 U.S.C. 47101 et seq. are covered in FAA Order 5100.38A, AIP Handbook, October 24, 1989.

(2) Cooperative Research and Development Agreements (CRDA) authorized under 15 U.S.C. 3710a et seq. are covered under FAA Order 9550.6A "Technology Transfer Program."

b. *Types of Agreements.*

(1) *General.*

(a) As discussed above, FAA has broad general authority to use various agreements, other than procurement contracts, to obtain or provide services and supplies when necessary to accomplish the mission of FAA. For additional information in determining which agreement type is the most suitable to accomplish the FAA's mission, please refer to the Agreement Type Guidelines document in FAA FAST References. (b) Agreements may be made on such terms and conditions as the Administrator may consider appropriate

(i) With or without reimbursement; *and*

(ii) With another Federal agency or instrumentality of the Federal government, a modal administration within the Department of Transportation, a state, local government, municipality, or other public entity, foreign governments, and private entities.

(c) Agreements are classified into six general categories as follows:

(i) Interagency Agreements;

(ii) Intra-agency Agreements;

(iii) Other Transactions;

(iv) Cooperative Agreements;

(v) International Agreements; and

(vi) Reimbursable Agreements and Other Transaction Reimbursable Agreements.

(2) *Interagency Agreements.* An interagency agreement is a written agreement between FAA and another Federal agency (as defined in Section 551(a) of Title 5 of the United States Code) where FAA agrees to receive from, or exchange supplies or services with, the other agency, and FAA funds are obligated. The requesting agency is the agency that needs the services, supplies or facilities; the servicing agency provides the services, supplies or facilities to the requesting agency. Interagency agreements under which FAA purchases services, supplies, or facilities through another Federal agency's contract is an interagency procurement, and AMS Guidance T3.8.1.A.4 "Interagency Procurement" must also be followed when placing this type of agreement.

(a) *OMB Circular A-76.* Where FAA requires the servicing agency to perform a commercial activity, the CO should conduct a cost comparison under OMB Circular A-76.

(b) *Joint Activities with Department of Defense (DOD).*

(i) DOD has the same exemptions from acquisition laws as are waived by the Administrator in the AMS when:

(A) The FAA and DOD are engaged in joint actions;

(B) DOD's contribution to the total cost of the activity is significant (more than ten (10) percent; and

(C) The purpose of the acquisition is to improve or replenish the national air traffic system. Joint actions include situations where both agencies share the same mission need and engage in joint activities to plan and implement the solution.

(ii) Where these three criteria are met, either FAA or DOD may conduct the acquisition using the policies of the AMS.

(3) *Intra-agency Agreements*. An Intra-agency agreement is a written agreement between FAA and the Office of the Secretary of Transportation (OST) or another DOT operating administration. The FAA may use an Intra-agency agreement to provide services or supplies to, or receive services or supplies from or through OST or another DOT operating administration.

Based on DOT Order 1200.9 DOT Inter and Intra Agency Agreements Order, for all DOT Intra-agency agreements, advance payments are mandatory unless prohibited by law. Initial advance payments must be collected when the agreement is first signed, and are to be collected based on the negotiated agreement or under continuing resolution rules, whichever applies. For intra-agency agreements with a period of performance starting at the beginning of a fiscal year, the sellers will draw advance payments as soon as Delphi opens for processing current year transactions.

All Intra-agency agreements with OST must use FS Form 7600A and FS Form 7600B~~.~~ located in Procurement Templates. For Intra-Agency Agreements with the John A. Volpe Transportation Systems

Center (Volpe Center), see the FAA Acquisition Executive (FAE) Memorandum "Intra-Agency Agreements (IAAs) with Volpe" dated December 8, 2017 ~~at fast.faa.gov/PPG_Procurement.cfm~~located in Procurement Tools and Resources and the FAA Acquisition Strategy for Proposed IAA with Volpe in Procurement Templates for further guidance. Volpe Center Intra-agency agreements are otherwise processed in PRISM in accordance with detailed business process instructions (FAA only).

(4) *Other Transactions*.

(a) An Other Transaction (OT) is typically an agreement between FAA and a non-Federal entity (either foreign or domestic) where FAA's purpose is to obtain a direct benefit that advances the agency's mission while also providing assistance to the general public. In some cases, including multi-party transactions, an OT provides the flexibility to develop partnering relationships with industry in meeting agency objectives. For example, FAA may enter into an OT agreement with another party to jointly develop a system, which FAA may eventually purchase through a procurement contract, but the system might also be purchased by airport authorities and foreign air traffic organizations. Another instance might be the construction of a fence, or the laying of cable that would benefit the airport authority (or the general public) and the FAA facility at the airport.

(b) In addition to joint funding agreements, in-kind contributions are allowed. The FAA is specifically authorized to use or accept the services, equipment, personnel, and facilities of non-Federal entities and to cooperate with them in the use of FAA's services, equipment, personnel, and facilities.

(c) OT agreements should be carefully drafted to avoid the inadvertent creation of a joint venture, which is separate legal entity formed to accomplish a discreet purpose. As a general rule, all parties to a joint venture agreement have joint and several liabilities for all claims arising under the agreement. In addition to other legal consequences, such agreements violate the Anti-deficiency Act and are prohibited.

(d) The Federal Funding Accountability Transparency Act requires FAA to make procurement award data publicly available. Financial Assistance Other Transaction Agreements (OTAs) over $10K are required to be entered into the Financial Assistance Broker system. The CO must report all OT Agreements funded by the Department of Defense (DoD) and Department of Homeland Security (DHS) to USASpending.gov via FPDS.

(5) *Section 106 Cooperative Agreements Distinguished.* FAA also has broad authority under 49 U.S.C 106 to enter into cooperative agreements with any Federal and non-Federal entity on such terms and conditions as the Administrator may deem appropriate. These agreements are used to provide assistance to a recipient and are more fully covered in Section 2 below.

(6) *International Agreements.*

(a) Agreements with foreign governments or quasi-governmental entities are most commonly used to establish a technical assistance or research and development relationship between FAA and the foreign entity. In such instances, FAA's interest is in encouraging aviation safety outside the United States pursuant to 49 U.S.C. 40113(e).

(b) When a foreign government is a party to the transaction, the agreement is a government-to-government agreement governed by international law. The FAA must obtain Department of State (DOS) clearance on the negotiation and final terms of such agreements.

(c) In negotiating agreements with foreign private civil aviation authorities and other quasi-governmental entities, FAA consults with DOS on foreign policy issues that might arise under such agreements.

(d) The program office lead or CO should coordinate with the Office of International Aviation (API), which has organizational responsibility for coordinating the agreement with the DOS and the responsible U.S. embassy, and for transmitting the agreement to the foreign entity for signature.

(e) Department of State clearance is not required for agreements with private contractors; however, the program office lead may consult with API in appropriate circumstances.

(f) *Approval of Administrator.* The FAA Administrator or designee must approve equipment purchases by a foreign government or quasi-governmental entity under any FAA prime contract.

(7) *Reimbursable Agreements and Other Transaction Reimbursable Agreements.* Agreements under which FAA provides services, supplies, or facilities to another Federal agency or non-Federal entity is a reimbursable agreement, and AMS Guidance T3.8.1A.5 must be followed. See also the FAA Financial Manual, Vol 4 Ch 6, and Reimbursable Agreement Standard Operating Procedure (SOP)"Creating, Executing, and Implementing Reimbursable Agreements" (FAA only) for reimbursable agreements and approved templates.

c. *Requirements*.

(1) All agreements must be in writing and should contain a clear statement of requirements, applicable terms and conditions, the legal authority for the agreement, termination and dispute resolution provisions, and where appropriate, a fund citation and payment provision.

(2) There is no requirement for competition or public announcement.

(3) Justification. Each agreement must be supported by a written statement describing the technical, program, or business reasons justifying the agreement. If the agreement is an OT, the justification must also include a rationale for using an OT over other types of agreements, i.e. procurement contracts, grants, cooperative agreements, interagency agreements, and intra-agency agreements. The procurement or real property contracting officer (CO), acting within the warrant authority commensurate with the total estimated dollar value of the requirement, approves the written rationale. Agreements valued at $10 million or more are also subject to Chief Financial Officer (CFO) approval as required by AMS Guidance T3.2.1.4, and the justification must be included in the business case submitted as part of the CFO review package.

(4) Agreements with private entities and public authorities, other than Federal agencies, may take the form of a memorandum of understanding or memorandum of agreement. A memorandum of

understanding is not legally binding on the Government, while a memorandum of agreement creates a legally binding commitment.

(5) *Content.* All agreements must be in writing and at a minimum contain:

(a) A clear statement of requirements;

(b) The term of the agreement;

(c) Procedure for modifications;

(d) The legal authority for the agreement;

(e) Termination and dispute resolution provisions;

(f) A fund citation and payment provision, if appropriate, or description of in-kind contribution of both parties; and

(g) Other terms and conditions, as appropriate, addressing such matters as intellectual property and indemnification provisions, and restoration and disposition of Government property.

(6) *Requirements for Agreements with Federal organizations.* All FAA agreements (including interagency and intra-agency agreements (except as noted below)) with Federal departments, agencies, or entities must include:

(a) The common agreement number and the funding source;

(b) The Treasury Account Symbol (TAS), or appropriation code, for both parties;

(c) The Business Event Type Code (BETC) for both parties;

(d) The effective date and duration of the agreement, to include the expiration of the funding source;

(e) The amount and method of payment;

(f) The Business Partner Network (BPN) number for both parties (which is equivalent to the Data Universal Numbering System (DUNS) Number for civilian agencies and the Department of Defense Activity Addressing Code (DoDAAC) for Defense agencies);

(g) The method and frequency of performance (revenue and expenses) reporting;

(h) If applicable, provisions for advance payments and method of liquidating such advance;

(i) The parties' right to modify, cancel, or terminate the agreement;

(j) A dispute resolution provision specifying that disputes must be resolved in accordance with instructions provided in the Treasury Financial Manual (TFM) Volume I, Part 2, Chapter 4700, Appendix 5 (Overall Intra-governmental Transactions (IGT) Processes and General Information);

(k) A cancellation provision specifying that if a buyer, or requesting agency, cancels the order, the seller, or providing agency, is authorized to collect costs incurred before cancellation of the order plus any termination costs; and

(l) Point of contact information for CO, Contracting Officer's Representative (COR), and accounting office.

All FAA Intra-agency agreements with the OST must use FS Form 7600A and FS Form 7600B in accordance with (b)(3) above.

d. *Authority.*

(1) *General Authority*. 49 U.S.C. 106(l) (6) and/or 106(m) should be cited as general authority for all agreements, except where DOD exception applies, or where the agreement is with a foreign government to provide technical assistance. In Sections 49 U.S.C. 106(l) (6) and 106(m), Congress provided FAA with specific authority to "enter into and perform such contracts, leases, cooperative agreements or other transactions as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate."

Section 106(m) also clarifies that FAA may use or accept the services, equipment, personnel, and facilities of another Federal agency, as well as a private or public entity and may do so with or without reimbursement. That section also provides specific authority to the head of another Federal agency to make the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. Additionally, the head of another Federal agency is authorized, notwithstanding any other provision of law, to transfer to, or receive from the FAA non-administrative supplies or equipment without reimbursement.

(2) *Joint Activities with DOD.* For joint activities between DOD and FAA described in subparagraph b.(2)(b) above, the legal authority in 49 U.S.C. 40121(c)(2) may also be used.

(3) *Technical Assistance Agreements with Foreign Governments.* For technical assistance agreements with foreign governments described in Section b.(6) above, the legal authority is 49 U.S.C. 40113(e).

(4) *Parallel Authorities*. The Federal Aviation Act contains other specific program authorities applicable to certain types of agreements, which may be cited as parallel authority where appropriate. Legal counsel should be consulted for additional guidance in selecting any of the listed authorities**.** (See Appendix Attachment 1, *Parallel Authorities*.)

e. *Format.*

(1) *Other Transaction - Memorandum of Agreement (MOA).* Where the FAA intends to create a legally binding commitment with a ~~non-Federal~~state, municipality or private entity through an "Other Transaction," a Memorandum of Agreement should be executed by the parties. ~~Appendix D of this section contains a sample format. (See AMS Guidance T3.8.8.C for sample No Cost Land On-Airport Memorandum of Agreement (~~ When executing an MOA~~)).~~, the Other Transaction - MOA with State, Municipality or Private Entity Template located in Procurement Templates must be used.

(2) *Other Transaction - Memorandum of Understanding (MOU).* A Memorandum of Understanding is an agreement to agree and is not legally binding on either party. MOUs are appropriate where the parties seek only to memorialize policies and procedures of mutual concern, or describe other relationships *that are not intended to create legally binding obligations*. When executing an MOU, the Sample Other Transaction - Memorandum of Understanding (MOU) template located in Procurement Templates must be used.

(3) *Interagency Agreement, Intra-agency Agreement, and Cooperative Agreement.* ~~Appendix D of this section contains sample formats for~~When these types of agreements ~~(except for Intra~~are executed, the applicable template (Inter-agency ~~agreements with OST that must use FS~~Agreement Template, Intra-agency Agreement Form 7600A ~~and FS~~, Intra-agency Agreement Form 7600B ~~as specified above in lieu of using the sample format for Intra-agency agreements).~~, Intellectual Property - Section 106 Cooperative Agreements, or Section 106 Cooperative Agreement Template) located in Procurement Templates must be used.

(4) *Reimbursable Agreements (where FAA is the servicing agency)* AMS Guidance T3.8.1A.5 must be followed. See also the FAA Financial Manual and Reimbursable Agreement SOP for reimbursable agreements and approved templates (FAA only).

f. *Funding.*

(1) *General.* Funds must be obligated to an agreement within the period of their availability consistent with the purposes of the appropriation. Additionally, when FAA funds are obligated under an agreement with a servicing agency, the obligation maintains the same impact and restrictions when it is transferred to the servicing agency. For example, funds from the FAA's Operations, RE&D and F&E accounts may be used only for the purposes of the appropriation and do not lose their character once transferred to the servicing agency. Likewise, when FAA is the servicing agency, an obligation against an appropriation of a requesting agency maintains the same impact and restrictions as the appropriation of origin.

(2) *Economy Act.* Where the Economy Act is cited, funds must be obligated by the servicing agency **prior to expiration**, i.e. if the servicing agency is to perform the work itself, performance of the work must begin prior to that date. If the agency is to acquire the product or service through contract, the contract must have been executed and funds obligated to the contract prior to their expiration date. Any funds not properly obligated by the servicing agency must be returned to the requesting agency prior to their expiration date.

(3) *Military Interdepartmental Purchase Request (MIPR).* The DOD uses MIPRs as the primary document to order goods or services from the FAA. The MIPR includes a description of the work or services DOD is requesting from the FAA, the unit price, the total price, and a fund cite. The FAA CO

or other FAA official designated by their Directorate may accept the MIPR on behalf of the FAA. The person authorized to accept the MIPR should ensure the MIPR contains a clear statement of requirements before accepting the MIPR on behalf of the FAA. The DOD may use MIPR (DD Form 448) and Acceptance of MIPR (DD 448-2) to order goods from FAA. The Acceptance of MIPR Form specifies whether the identified work will be provided through reimbursement (Economy Act) or by the direct citation of funds (based on other authority) or a combination of both. Where FAA agrees to an MIPR based on reimbursement pursuant to the Economy Act, then the rules in subparagraph f.(2) above apply. If FAA accepts the funds on a direct cite basis, DOD will not record the funds as obligated until FAA provides DOD with a contract or other obligating document that cites the funds.

(4) *Other Situations*. Where the Economy Act is not cited as authority for FAA, funds are obligated at the time FAA signs the agreement and places funds on the agreement.

(5) *Disposition of Funds Received.* Funds received under an Agreement shall be credited to the appropriation from which the expenses were incurred, unless otherwise required by one of the specific program authorities cited in Paragraph D, Appendix Attachment 1, *Parallel Authorities*, or current and prior appropriation acts.

g. *Approval and Execution.*

(1) *Review and Approval.* The Administrator has delegated authority to award contracts, cooperative agreements and other transactions to the FAA Acquisition Executive (FAE); provided that the Administrator is given an opportunity to review any grant or cooperative agreement (other than those awarded under the preexisting authority contained in 49 U.S.C. 44912, 44505, and 47101, et seq.), or other transaction with a total cumulative value equal to, or greater than $10 million, or which is of significant congressional interest.

The FAE subsequently redelegated this authority to the Chief of Contracting Office (COCO) for headquarters, service areas, and centers. The COCO may redelegate the authority to other qualified individuals, such as regional administrators, center directors, and purchase card program manager. Except for the purchase card program manager, the individuals receiving delegated authority from the COCO may not redelegate their authority.

The following factors, which are not all inclusive, typically indicate that the Administrator's review is required:

(a) The total cumulative value equals or exceeds $10 million; or

(b) The total cumulative value is less than $10 million, but the following conditions are present:

(i) The transaction is the subject of one or more congressional inquiries; or

(ii) The transaction is described in a statute, committee report, or agency budget; and

(iii) Either the schedule, performance, or estimated cost baseline will be significantly breached by 20% or more.

(2) *Execution of the Agreement.* The CO, or other employee who has been delegated such authority, executes the agreement on behalf of the FAA, provided that the estimated dollar value of the agreement does not exceed that individual's delegated authority.

h. *Legal Review.* All agreements require legal review prior to execution. Ideally, legal counsel should be involved at the early stages of the award process to assist with selection of the appropriate legal instrument, drafting appropriate terms and conditions, and other legal issues. AGC-7 in consultation with AGC-500 is responsible for providing legal review of all international government to government agreements and agreements with international quasi-governmental entities. In the Europe, Africa and Middle East (EAME) Region, AEU-7 provides legal review for agreements with foreign governments and quasi-governmental entities. AGC-500 and regional counsel are responsible for providing legal review on all other agreements and will consult with AGC-7 on any agreements that may have foreign policy implications.

i. *Chief Financial Officer Approval.* Agreements valued at $10 Million or more must be approved by the Chief Financial Officer (CFO) as required by AMS Guidance T3.2.1.4. The package submitted for CFO approval must include a justification as described in paragraph (c)(3) above as part of the business case. The justification must include a market analysis and supporting documentation for all alternatives considered.

j. *Disputes.* For agreements with non-federal entities, and not covered above in (A)(1)(c)(6)(j), where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute may be resolved by the FAA Administrator, or designee whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding (see e.g. 49 U.S.C. 46110).

2 Section 106 Cooperative Agreements Revised 4/2017

a. *Applicability.*

(1) This section applies to cooperative agreements for services, supplies and real property issued under the authority of 49 U.S.C. 106 (l) and (m).

(2) FAA Order 9550.7A implements the Research Grants Program authorized by Public Law 101-508, Sections 9205, 9208, codified at 49 U.S.C. 44511, 44512 and Public Law 101-604, Section 107, codified at 49 U.S.C. 44912. Except for Chapter 8, Sections 1-4, 6-8, the provisions of FAA Order 9550.7A ***do not*** apply to cooperative agreements issued under the authority of 49 U.S.C. 106 (l) and (m).

b. *Authority.*

(1) *General*. In Public Law 104-264, Congress provided the FAA with specific authority to "enter into and perform …cooperative agreements…as may be necessary to carry out the functions of the Administrator and the Administration" with any Federal or non-Federal entity "on such terms and conditions as the Administrator may consider appropriate" (see 49 U.S.C. 106(*l*)(6) and 106(m)). By its

express terms, the statute applies to all activities of the agency and is not limited to research activities, or to non-profit entities (see for example, 49 U.S.C 44512).

(2) *Grants*. Public Law 104-264 does not provide new or additional authority to award grants, which continue to require specific program authority either in an appropriation or authorization statute.

c. *Definitions.*

(1) *Cooperative Agreement.* A cooperative agreement is a legal instrument used when the principal purpose of the relationship is to transfer a thing of value to a recipient, either public or private, to carry out a public purpose of support or stimulation authorized by law instead of acquiring (by purchase, lease or barter) property or services for the direct use or benefit of the agency and there is substantial Federal involvement in the activity. For example, the FAA might enter into a cooperative agreement with a university to provide funding to support research on fire resistant fabrics for use in aircraft that do not produce poisonous fumes. The agency's principal purpose is to stimulate the development of fire resistant fabrics to benefit the general public. The benefit to the FAA is indirect - improved safety for aircraft passengers, which also supports the mission of the FAA.

(2) *Grant*. A grant is similar to a cooperative agreement except that a grant does not require substantial involvement by the FAA in the performance of the effort. Substantial FAA involvement may be necessary when an activity is technically or managerially complex, or requires extensive close coordination with other federally supported work or multiple recipients.

d. *Appropriations.*

(1) *General Principles.*

(a) The core principles governing the obligation of Federal funds apply to cooperative agreements: appropriations may be used only for the purpose(s) for which they were made; funds must be obligated within the period of their availability and may not exceed the available appropriation. The bona fide need rule also applies; however, the prohibition against augmentation of obligations does not apply to transactions authorized by 49 U.S.C 106 and the credit back provisions of current and former FAA appropriations statutes.

(b) As a general rule, funds awarded under a cooperative agreement lose their character as Federal funds after award and are not subject to the same restrictions as when the Federal government itself spends appropriated funds. There are exceptions to this rule, including situations where a statute, program legislation, agency regulations or the grant agreement provides otherwise. For example, Title VI of the Civil Rights Act, 42 U.S.C. 2000d prohibits discrimination on the basis of race, color or national origin under any program or activity receiving Federal financial assistance. Similarly, the Rehabilitation Act of 1973, as amended, prohibits discrimination against handicapped individuals in any program or activity that receives Federal financial assistance.

(c) The statutory prohibition against advance payments does not apply, as the policy underlying the prohibition (payment for supplies and services upon receipt) is not relevant to an assistance relationship.

(d) F&E funds may be used for cooperative agreements only where the following three criteria are met: (a) the primary purpose is to benefit the public rather than FAA, (b) there is substantial FAA involvement, and (c) funds will be used to acquire, improve or establish air navigation facilities.

(2) *Office of Management and Budget (OMB) Guidance*. Several OMB Circulars imposed restrictions on projects funded with Federal funds. These Circulars A-21, A-87, A-102, A-110, and A-122 have been superseded by OMB Guidance "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" at https://www.federalregister.gov/documents/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards ("OMB Uniform Guidance").

In construing FAA's authority under 49 U.S.C. 106, the FAA's policy is to follow this OMB Uniform Guidance to the extent this OMB Uniform Guidance is consistent with the FAA's Acquisition Management System and the Administrator's authority to implement "such terms or conditions as the Administrator may deem appropriate."

e. *Content.* All cooperative agreements shall be in writing and should contain the following provisions:

(1) A clear statement of purpose,

(2) The legal authority for the agreement,

(3) A description of the intended beneficiary,

(4) A description of the level of FAA involvement,

(5) The term of the agreement,

(6) Authority and procedure for modifications,

(7) Level of funding commitment and any limitations or conditions, e.g. milestone payments where the Government's share is distributed at the same ratio as the recipient's share,

(8) Recipient standards - cost accounting; financial management systems; procurement, technical capability, property management and management organization, technical capability,

(9) A fund citation and payment provision, if appropriate, or description of in-kind contribution of each party,

(10) Allowable Costs. Describe any unallowable costs, e.g. profit and fee,

(11) FAA's right to audit for a stated period of time,

(12) Mandatory clauses if Federal funds are obligated, e.g. anti-lobbying, compliance with civil rights laws (see subparagraph 2.d., *Appropriations,* above.**)**

(13) Small business opportunities,

(14) Suspension/termination (a cooperative agreement may not be transferred to another recipient without the express, written consent of the FAA prior to the transfer),

(15) Dispute resolution,

(16) Debarment/suspension. (Cooperative agreements funded with Federal funds should not be awarded to suspended or debarred entities (at any tier). Appropriate flow through provisions should be included in the Agreement to prohibit sub-awards to suspended or debarred parties.)

(17) Other terms and conditions, as appropriate, such as indemnification and intellectual property.

f. *Evaluation/Selection of Recipients.* Cooperative agreements may be awarded at the discretion of the FAA on a non-competitive basis; however competition is encouraged whenever practicable. The following factors and any others appropriate for the particular proposal should be considered:

(1) Technical merit and program value,

(2) Cost/contribution of the parties,

(3) Capability of the recipient to accomplish the objectives of the cooperative agreement.

g. *Justification.* Each cooperative agreement should be supported by a written justification describing the following:

(1) The purpose of the cooperative agreement,

(2) The expected benefit to the recipient and the general public,

(3) FAA's substantial involvement in performance of the activity, and

(4) The method for selection of the recipient(s).

h. *Administration.* Cooperative agreements awarded under this authority will be administered by the awarding activity subject to the continuing oversight of the FAA Acquisition Executive (ACQ-1), who is authorized to redelegate this authority, as appropriate.

3 Gifts and Bequests **Revised 4/2020**

Under 49 U.S.C. 326, the Administrator has the authority to accept any conditional or unconditional gift or donation of money or property, real or personal, or of services for the FAA. Property accepted under this authority and proceeds from the sale of that property must be used, as nearly as possible, under the terms of the gift. Typically, a gift is characterized by the following criteria: (1) a unilateral transfer to the Government, with or without conditions; (2) the FAA is not obligated to provide anything in return;

and (3) there is no continuing relationship with the donor. For example, an airport offers to purchase and provide the FAA with a system such as a MALSR, provided that the FAA places it at that airport, and the FAA is not required to provide anything in return, but is required to maintain the equipment. In that situation, the airport is making a gift and the organizational unit must process the transaction based on the above criteria as well as Chapter 6.19 of the FAA Financial Manual at https://my.faa.gov/org/staffoffices/afn/finance/policy/financialmanual.html. If the airport also requires FAA to service its MALSR's in return, a procurement contract should be used as the FAA would be procuring a system by providing services as consideration. If the airport retains title to the MALSR, but the FAA would be responsible for its maintenance, the agreement should be an "other transaction."

4 Interagency Procurement Revised ~~4/2020~~9/2021

a. Applicability. This section applies to interagency procurement of services, supplies and real property. An interagency procurement is a type of interagency transaction in which one Federal agency (requesting agency) uses the contract vehicles and/or contracting services of another Federal agency (servicing agency) or agencies in order to obtain supplies, services, or real property. This section does not apply to orders placed under the General Service Administration's Federal Supply Schedules contracts, which are covered by AMS Policy 3.8.3 and AMS Guidance T3.8.3 "Federal Supply Schedules."

b. Requirements.

(1) Procurement Laws and Directives. Where FAA procures services, supplies or real property through another Federal agency contract or uses its contracting services, FAA is subject to the procurement laws applicable to that agency. In a similar vein, unless authorized by statute or regulation, other Federal agencies may not conduct acquisitions using the FAA's exemptions from acquisition laws. Joint activities with DOD as defined in AMS Guidance T3.8.1.A.1(b)(2) may be conducted using FAA AMS policy and procedures.

(2) Best Interest Determination. Each interagency procurement in which FAA is the requesting agency must be supported by a written best interest determination. The procurement or real property contracting officer (CO), acting within the warrant authority commensurate with the total estimated dollar value of the requirement, approves the determination. If the procurement is valued at $10 million or more and requires CFO review and approval under AMS Guidance T3.2.1.4, the best interest determination must be done as part of the business case included in the CFO review package. The best interest determination must address the following elements:

(a) Suitability. Explain how use of the servicing agency's contract vehicle likely to result in a quality outcome that meets FAA's requirements and schedule, taking into account planning considerations described in AMS Policy 3.2.1 "Procurement Planning." For procurements valued at $10 million or more, the determination must include information on the market analysis conducted.

(b) Value. Explain how use of another Federal agency's contract vehicle the most efficient and cost-effective means of procuring the services, supplies, or real property, as opposed to using a current

FAA contract vehicle or placing a new contract directly with a vendor. Any servicing agency fees should be taken into account in assessing value.

(c) Expertise. Explain how the procurement team, including both contracting and program personnel, have the appropriate time, training, and expertise to effectively place and administer the contract work. The procurement team would consist of FAA personnel for a direct procurement - those in which FAA places an order directly with the contractor on another Federal agency's contract. The procurement team would consist of servicing agency personnel, possibly working in conjunction with FAA personnel, for an assisted procurement – those in which the servicing agency provides contracting support (such as conducting a task order competition) in addition to agreeing to allow FAA to use its contract(s).

(3) Templates. When FAA is the servicing agency in an assisted procurement~~, T3.8.1.D.2, Attachment 2, Sample~~ the Interagency Agreement Template located in Procurement Templates, must be used. If the FAA is the requesting agency, a template or form required by the servicing agency may be used . Regardless of the template format, the CO must ensure the roles and responsibilities of the respective parties are described clearly in the agreement, including specifics on tasks such as performance monitoring, inspection and acceptance, approval of invoice payments, and restoration and disposition of property. For direct procurements, no interagency agreement document is required, but COs and program office personnel must use any templates required by the servicing agency in placing the order.

(4) Unsolicited Proposals. An interagency procurement may be used for acceptance of an unsolicited proposal, in addition to use of a single source contract action as described in AMS Guidance T3.2.2.6.A.5. Unsolicited proposals must be considered and processed in accordance with AMS Policy 3.2.2.6 and AMS Guidance T3.2.2.6 "Unsolicited Proposals," but if an interagency procurement is used instead of a single source action, the interagency procurement best interest determination would replace the single source justification required under T3.2.2.6.A.5(b)(2).

(5) Review and Approval. Review and approval requirements for interagency procurements are the same as those for other FAA procurements.

(6) Administration. The CO administering an agreement for an assisted interagency procurement must ensure that the terms and conditions agreed to by the parties are reviewed at least annually for agreements that exceed one year. The FAA review should involve the CO, program office, and other technical and legal experts as necessary. The review should consist of a reexamination of the agreement, as supported by the best interest determination, in order to assess whether the agreement is meeting the needs of FAA. If the agreement is not meeting FAA's needs, the review team should discuss these issues with the other party and amend or terminate the agreement as appropriate and allowed by the terms of the agreement. The annual assessment must be signed by the FAA CO and the reviewing official of the other party and documented in the agreement file.

(7) Documentation. COs entering into an agreement for an assisted interagency procurement must use the Interagency Agreement File Checklist in the FAST Procurement ~~Forms~~Checklists when documenting the agreement file.

c. Authority.

(1) 49 U.S.C. 106(l) (6) should be cited as general authority for all assisted interagency procurement agreements.

(2) Where the FAA seeks to obtain supplies or services through another agency's prime contract and to make advance payments, the Economy Act, 31 U.S.C 1535 should be cited as additional authority for FAA. In most cases, the Economy Act also provides authority for the other Federal agency.

5 Reimbursable Agreements and Other Transaction Reimbursable Agreements

Revised 7/2014

a. *Applicability*. This section applies to reimbursable agreements for services, supplies and facilities where FAA is the servicing agency and another Federal agency or non-Federal entity is the requesting agency or the sponsor. There is no obligation of FAA funds associated with reimbursable agreements. This process does not apply to Small Scale Reimbursable Agreements (SSRAs), which are defined as reimbursable agreements with a total estimated value of less than $30,000.

b. *Requirements*.

(1) When FAA provides services, supplies, or facilities to another Federal agency or non-Federal entity, FAA is essentially a contractor and subject to the terms and conditions of the requesting agency. When possible, FAA should use FAA-approved templates. If not possible, FAA should ensure that the other (sponsor) Federal agency's or the non-Federal entity agreement addresses the content required by T3.8.1A1.c(5). In addition to the requirements of AMS for reimbursable agreement, each CO must be familiar with and adhere to the requirements of FAA Order 2500.35D, the FAA's Financial Manual, and the FAA Reimbursable Agreement SOP referenced in T3.8.1A1.b(7).

(2) *Business Case Determination*. Each reimbursable agreement in which FAA is the servicing agency must be supported by a written business case determination that it is in the best interest of the agency to provide the service, supply or facility. The business case must also identify the benefits derived by FAA. This determination must be signed by the director of the program office, or their designated representative, and address the policy contained in Section 9 of FAA Order 2500.35D. The CO must ensure that one has been completed but determination as to whether or not the rational basis is appropriate and sufficient and whether to proceed with the reimbursable agreement lies with ABU. The CO will contact ABU with any concerns, and ABU will address them as needed with the program office.

c. *Reimbursable Agreement Process*.

(1) The program office will input a zero-dollar purchase request (PR) into the PRISM system to initiate a CO's involvement. See No Cost Requisitions and Awards (FAA only).

(2) The CO coordinates with the program official based on their PR and business case to evaluate the requirement that is needed by the requesting agency and the reimbursable agreement template chosen by the agreement coordinator.

(a) If using a modifiable agreement template, the CO will work with the agreement coordinator to determine any unique terms and conditions.

(b) If the project sponsor/requesting agency requires that FAA use their reimbursable agreement template, then the CO will ensure compliance with T3.8.1A1.c(5) and that the FAA as the servicing agency has the ability to comply with the requesting agency's requirements.

(3) If there are any assets to be acquired as part of the reimbursable agreement that must be capitalized, the program office/agreement coordinator is responsible for identifying these assets in Section 4 of the reimbursable agreement. If Section 4 identifies assets, the CO must ensure that a copy of the agreement is provided to the Regional Capitalization Team and comply with FAA standardized asset capitalization procedures.

(a) Actual asset value may not be cited in the reimbursable agreement at time of execution; however, document must at least identify the asset.

(b) Software is an asset that must be capitalized.

(4) The program office is responsible for all aspects of pricing their services, supplies or facilities to ensure full reimbursement. Any negotiations between the requesting agency and the servicing agency will be conducted by program officials, and not the CO. The CO will need to check the Reimbursable Datasheet specifically Section 3, and ensure that the agreement amount and overhead percentage amount match the pricing on the reimbursable agreement. If the data sheet states that the overhead has been waived, the CO should access the reimbursable tool to validate that a properly executed "Reimbursable Agreement Waiver Request Form" has been uploaded. Since there is no obligation of dollars by the FAA, the role of the CO is to document the agreement made between the requesting and servicing agencies.

(5) As the servicing agency, the CO will sign the reimbursable agreement first and then forward to the requesting agency for final signature. The CO must have specific reimbursable agreement warrant authority for the total estimated potential value of the reimbursable agreement to sign the agreement even though the CO is not obligating dollars. Upon receipt of a fully executed reimbursable agreement from the requesting agency the CO will "award" the document in PRISM and annotate in the "notes" section the corresponding reimbursable agreement number assigned by the reimbursable tool and distribute the document to all applicable parties.

(6) *Reimbursable Agreement Administration*.

(a) *Invoicing and Payment*. The Accounting Office prepares the invoice and sends to the requesting agency for payment according to the terms and conditions in the reimbursable agreement. If the requesting agency's payment is more than 30 days past due, the program official notifies the CO and the CO contacts the requesting agency for payment. If no payment is received in the next 30 days, the issue is raised to successive levels of management within the contracting office for resolution.

(b) *Funding Log*. The CO is responsible for maintaining, as part of the contract file, a funding log to track all funds received from sponsor, either lump sum or incremental funding distribution. Acceptance of these funds will be executed by the CO. *The Program office is also responsible for tracking the funds.*

(c) *Performance*. The program office is responsible for monitoring performance. If the FAA is unable to fulfill the terms of the reimbursable agreement, the program office must notify the CO to initiate discussions with the requesting agency and possible termination of the agreement.

(d) *Modifications*. For reimbursable agreements the FAA as a servicing agency is acting in the capacity of a contractor. If a modification is required to the reimbursable agreement the requesting agency will initiate the modification. However, if the requesting agency asks the CO of the servicing agency to write the modification the CO will sign it, and forward to the requesting agency for CO signature. In no event will the FAA CO obligate or deobligate requesting agency funds.

(e) *Incremental Funding*, Overruns, and Other Funding Notifications. The program office is responsible for tracking all expenditures and requesting additional funds as required. As expenditures near 75% of available sponsor funding, the program office will notify the sponsor agency to ensure timely receipt of funding to prevent overruns.

(f) *Termination*. The servicing agency CO will be notified in the event any contract terms have been breached which may result in termination.

(g) *Closeout*. No charges may be incurred after the period of performance has expired. When performance is complete the CO will receive notice by email through the reimbursable tool. Included in the tool will be a closeout form that has already been validated by all responsible parties in the process. The CO will contact the requesting agency/sponsor by email to see if they have received all services, supplies or facilities as stated in the reimbursable agreement. When the CO receives an email response, then they can concur in the reimbursable tool. AMZ will send out an email notice through the reimbursable tool when the reimbursable agreement has been closed out. At this point the CO will go into PRISM and close the corresponding PRISM document.

(h) There is no file records retention requirement with reimbursable agreements as the reimbursable tool is the system of record and must contain all official documents.

B Clauses

view contract clauses

C Procurement Forms Revised 9/2021

~~view procurement forms~~

~~D~~

Document Name

D Procurement Samples Revised 9/2021

Document Name

E Procurement Templates Added 9/2021

Document Name
FAA Acquisition Strategy for Proposed IAA with Volpe
Intellectual Property - Section 106 Cooperative Agreement
Interagency Agreement Template
Intra-agency Agreement Form 7600a
Intra-agency Agreement Form 7600b
Other Transaction - Memorandum of Understanding (MOU)
Other Transaction - MOA with State, Municipality or Private Entity Template
Section 106 Cooperative Agreement Template

F Procurement Tools and Resources Added 9/2021

Document Name
FAE Memo Intra-Agency Agreements (IAAs) with Volpe

G Appendix Revised 9/2021

1 Attachment 1 - Parallel Authorities

49 U.S.C. 40108 - authorizes the FAA to establish training schools for FAA officers and employees. Authorizes attendance of officers and employees of other Federal entities, governments of foreign countries, and individuals from the aeronautics industry. Authorizes the Administrator to "*require payment or transfer of amounts or other consideration to offset the additional cost*" of any *of "those officers, employees, or individuals*." **Amounts received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.**

49 U.S.C. 40113(e) - authorizes the Administrator to provide safety-related training and operational services to foreign aviation authorities with or without reimbursement. **Funds received shall be credited to the appropriation from which the expenses were incurred.**

49 U.S.C. 44502 (a)(2) - authorizes the Administrator to make an agreement with an airport owner or sponsor (includes a private owner of a public use airport) so that the owner or sponsor will provide site preparation work associated with acquiring, establishing, or improving an air navigation facility and be paid or reimbursed from the appropriated amounts (under section 48101(a)).

49 U.S.C. 44502(d) - authorizes the FAA to provide, by regulation, assistance, and sale of fuel, oil, equipment and supplies to an aircraft in an emergency. **The cost of the assistance may be credited to the appropriation from which the cost was paid.**

49 U.S.C. 47301 - 47305 - provides authority to acquire, establish and construct airport property and airway property (except meteorological facilities) in foreign territory, authority to transfer property, train foreign citizens, accept payment from a government of a foreign country or international organization for facilities or services provided the government or organization, and **authority to credit funds so received to current appropriations**.

49 U.S.C. 44903(c) - provides authority to the Administrator to authorize an airport operator to use on a reimbursable basis, personnel employed by the Administrator, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality, to supplement State, local, and private law enforcement personnel.

49 U.S.C. 44505(d) - authorizes cooperative agreements on a cost-shared basis for research, engineering and development with Federal and non-Federal entities.

49 U.S.C. 44912 - authorizes grants and cooperative agreements for research technologies to counter terrorist acts against civil aviation.

49 U.S.C. 44913 - authorizes grants under the Explosive Detection K-9 Team Training Program.

49 U.S.C. 44935(c)(2) - authorizes reimbursement for travel, transportation, and subsistence expenses for security training of non-United States Government domestic and foreign individuals whose services will contribute significantly to carrying out civil aviation security programs.

49 U.S.C. 47104 - authorizes project grants for airport development from the Airport and Airway Trust Fund**.**

49 U.S.C. 47151 - authorizes the Administrator to give an interest in surplus airport property to a State, political subdivision of a State, or tax supported organization. Such surplus property may be used by the U.S. Government without charge if the President declares a national emergency.

~~**2 Attachment 2 - Sample Interagency Agreement** Revised 7/2021~~

~~**INTERAGENCY AGREEMENT**~~

~~**BETWEEN**~~

~~**THE FEDERAL AVIATION ADMINISTRATION (FAA)**~~

~~**and**~~

~~**[*CO insert name of other agency*] [*CO***~~

~~***insert agreement number*]**~~

~~ARTICLE 1. PARTIES~~

~~[*CO also insert for both parties: Business Partner Network (BPN) number; Treasury Account Symbol (TAS) or appropriation code; and Business Event Type Code (BETC)*]~~

~~ARTICLE 2. SCOPE~~

~~a. Purpose:~~

~~The purpose of this Agreement between the Federal Aviation Administration (FAA) and [*CO insert name of the other agency*] is to [*CO insert description of the work to be performed.*]~~

~~b. Specific goals and objectives to be accomplished. [*CO describe the goals and objectives to be accomplished.*]:~~

~~c. Roles and responsibilities. [*CO describe roles and responsibilities of the parties.*]~~

~~ARTICLE 3. EFFECTIVE DATE and TERM~~

~~This Agreement is effective on the date of the last signature and shall continue in effect until [*CO insert completion date of the interagency agreement*], or until earlier terminated by the parties, as provided herein.~~

~~ARTICLE 4. DELIVERY/PERFORMANCE~~

~~Work shall be accomplished according to the following schedule: [*CO*~~

~~*insert work schedule to be followed in performing the work.*]~~

~~ARTICLE 5. REPORTING REQUIREMENTS~~

~~[*CO describe method and frequency of reporting requirements, e.g. performance (revenue and expenses) reporting, Program Plans, Technical Reports, Progress Reports or Milestone Reporting, including financial reports, if required.*]~~

~~ARTICLE 6. RELEASE OF TECHNICAL DATA~~

~~No information, oral or written, concerning the results or conclusions made pursuant to this Agreement shall be published or released to the public without the prior written approval of the FAA Contracting Officer.~~

~~ARTICLE 7. LEGAL AUTHORITY~~

~~This Agreement is entered into under the authority of the Federal Aviation Act of 1958, 49 U.S.C. 106(1) and 106(m), and 31 U.S.C. 1535.~~

> ~~[*Note 1. If this is a joint activity with Department of Defense (see T.3.8.1.b.2, Joint Activities with DOD), also cite 49 U.S.C. 40121(c) 2.*]~~

~~ARTICLE 8. POINTS OF CONTACT~~

~~FAA Program Office/Technical Officer~~

____

~~FAA Contracting Officer~~

____

~~FAA Accounting Office~~

____

~~Federal Agency~~

____

____

~~Address~~

____

____

~~ARTICLE 9. FUNDING AND PAYMENT~~

~~a. Funds in the amount of $[*CO insert amount*] are hereby obligated to this Interagency Agreement. Obligation is chargeable to Appropriation Code:~~

~~[*CO insert appropriation code here*] [*CO insert PR number here*]~~

~~[*CO insert information about expiration date of funding*]~~

~~b. A properly executed request for payment should be submitted to the FAA at the billing address identified below.~~

~~**Billing Address:**~~

____

____

~~Federal Aviation Administration~~

~~**c. Method of Payment**~~

~~[*CO insert description of method of payment*]~~

~~d. Upon termination or expiration of this Agreement, any FAA funds which have not been spent or obligated for allowable expenses prior to the date of termination and are not reasonably necessary to cover termination expenses shall be returned to the FAA.~~

> ~~[*Note 2. When the Economy Act is cited as authority, funds must be obligated by the servicing agency prior to their expiration, i.e. if the servicing agency is to perform the work itself, performance of the work must begin prior to that date. If the agency is to acquire the product or service through contract, the contract must have been executed and funds obligated to the contract prior to their expiration date. Any funds not properly obligated must be returned prior to their expiration date.*]~~
>
> ~~[*Note 3. Describe any other funding limitations, e.g. limits on the use of FAA funds for a multi-year contract.*]~~
>
> ~~[Note 4. *If applicable, insert provisions for advance payments and method of liquidating the advance*]~~

~~**ARTICLE 10. LIMITATION OF FUNDS**~~

~~The FAA's liability to make payments to [*CO insert name of other agency*] is limited to the amount of funds obligated hereunder, including written modifications to this Agreement.~~

~~**ARTICLE 11. APPROVAL OF PRIME CONTRACT/MODIFICATIONS**~~

> ~~[*Note 5. If the FAA will obtain products or services through the other Federal agency's contractor, describe the role of the FAA Contracting and Legal Offices. Typically, the FAA reviews the underlying contract and modifications, drafts the statement of work and provides other technical assistance prior to award. FAA legal reviews the underlying contract to determine if it is in compliance with FAA specific statutes and funding limitations. The following is suggested:*]~~

~~Prior to executing any contract or modification to an existing contract in order to fulfill the requirements of Article [*CO insert Article Number*] of this Agreement, the [*CO insert name of other agency*] agency shall provide the FAA Contracting Officer with a copy of the contract or~~

~~modification. The written concurrence of the FAA Contracting Officer shall be obtained by [*CO insert name of other agency*] prior to contract award, or execution of the modification.~~

~~ARTICLE 12. CHANGES, MODIFICATIONS~~

~~a. Changes and/or modifications to this Agreement shall be in writing and signed by a FAA Contracting Officer and the Contracting Officer of [*CO insert name of other agency*] Agency, or their duly authorized representatives acting within the scope of their authority. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement. All requests for interpretation or modification shall be made in writing.~~

~~b. The FAA Technical Officer identified in Article 8 is responsible for the technical administration of this Agreement. The FAA Technical Officer is not authorized to make any changes that impact the cost, schedule or performance of this Agreement without the written consent of the FAA Contracting Officer.~~

~~ARTICLE 13. TERMINATION~~

~~Either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, plus termination costs if any, in each case on or prior to the termination date)by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.~~

~~[*CO will insert here any additional termination requirements that may apply, e.g. disposition of data, return, or other disposition of property to either party.*]~~

~~ARTICLE 14. ORDER OF PRECEDENCE~~

~~In the event of any inconsistency between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:~~

~~a. The Agreement~~

~~b. The Attachments~~

~~ARTICLE 15. PROTECTION OF INFORMATION~~

~~The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.~~

~~[*If appropriate, the CO may include specific provisions governing the release of data developed under the Agreement.*~~

~~**ARTICLE 16. DISPUTES**~~

~~Where possible, disputes will be resolved by informal discussion between the parties. If the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved in accordance with instructions provided in the Treasury Financial Manual (TFM) Volume I, Part 2, Chapter 4700, Appendix 5 (Overall Intra-governmental Transactions (IGT) Processes and General Information).~~

~~**AGREED:**~~

~~Federal Agency~~	~~Federal Aviation Administration~~
~~BY: ______________________~~	~~BY: ____________________~~
~~TITLE: ___________________~~	~~TITLE: _________________~~
~~DATE: ___________________~~	~~DATE: _________________~~

~~**3 Attachment 3 - Sample Intra-agency Agreement** Revised 10/2007~~

~~INTRA-AGENCY AGREEMENT BETWEEN~~
~~NORTHWEST MOUNTAIN VIDEO PRODUCTIONS (FAA) AND~~
~~DEPARTMENT OF TRANSPORTATION (OST)~~

~~The Northwest Mountain Video Productions group (ANM Video Productions) and the Department of Transportation (OST) mutually agree to the following:~~

~~**FAA RESPONSIBILITIES**~~

~~The responsibilities of ANM Video Productions under this agreement include but are not limited to the following:~~

~~a. Provide a broadcast quality video production including storyboard construction, scripting, taping, editing, and graphics/animation not to exceed 20 finished minutes. The video (1DOT Safety Video) shall be approximately 15 minutes in length and depict safety messages provided by the various modals of the Department of Transportation.~~

~~b. Completion of video storyboard by August 15,1998.~~

~~c. Completion of video script by November 25, 1998.~~

~~d. Completion of location taping with professional talent by December 9, 1998.~~

~~e. First cut video completion by January 15, 1999.~~

~~f. Delivery of the finished product, with a BetaCam SP master (9 master tapes total) for distribution to OST and each participating modal on or before January 31, 1999.~~

~~g. Distribution of one VHS format duplicate to OST and each participating modal administration.~~

~~**DOT RESPONSIBILITIES**~~

~~The Department of Transportation (OST) will reimburse ANM Video Productions (FAA) for the total cost of the product, including master tapes and VHS copies, in the amount of $50,000.00.~~

~~Accounting Code *[CO to insert accounting code here]*~~

~~**Billing Address**~~

____

____

~~NORTHWEST MOUNTAIN VIDEO PRODUCTIONS (FAA)~~	~~DEPARTMENT OF TRANSPORTATION (OST)~~

~~By~~ ______________________________ ~~By~~ ________________________

~~Title~~ ______________________________ ~~Title~~ ________________________

~~Date~~ ______________________________ ~~Date~~ ________________________

~~**4 Attachment 4 - Sample Other Transaction - MOA with State, Municipality or Private Entity** Revised 10/2019~~

~~**MEMORANDUM OF AGREEMENT BETWEEN**~~

~~**FEDERAL AVIATION ADMINISTRATION (FAA)**~~

~~**AND**~~

~~***[CO insert Name of non-Federal Party (Parties)***~~]

~~**ARTICLE I. PARTIES**~~

~~The parties to this Agreement are the Federal Aviation Administration (FAA) and [*CO insert name of Non-Federal party*]~~

~~**ARTICLE 2. SCOPE**~~

~~a. Purpose:~~

~~The purpose of this Agreement between the Federal Aviation Administration (FAA) and [*CO insert name of Non-Federal party*] is to [*CO insert description of purpose of the agreement*].~~

~~b. Specific goals and objectives to be accomplished:~~

~~c. Management of the project:~~

~~d. Roles and responsibilities:~~

~~Parties are bound by a duty of good faith and best effort in achieving the goals of the Agreement e.~~

~~Contributions of the Parties:~~

~~*[CO describe the contributions of each party, e.g. cost-share arrangement, in-kind contributions and total estimated project cost for both parties. Describe any limitations, e.g. risk of loss for in- kind contributions, responsibility for repairs, refurbishment, and disposition.*]~~

~~f. Type of Agreement:~~

~~This Agreement is an "other transaction". It is not intended to be, nor shall it be construed as, a partnership, corporation, or other business organization.~~

~~**ARTICLE 3. EFFECTIVE DATE and TERM**~~

~~The effective date of this Agreement is the date on which it is signed by the FAA or [*CO insert name of non-Federal party*], whichever is later. This Agreement shall continue in effect until [*CO insert completion date*] or until earlier terminated by the parties as provided herein.~~

~~**ARTICLE 4. MILESTONES**~~

~~Work shall be accomplished according to the following milestones. [*CO insert information in the following spaces.*]~~

~~*Note. This schedule should be tailored as appropriate.*~~

~~**Milestone**~~	~~**Completion Date**~~	~~**Responsible Party**~~
~~Sign Agreement~~	________________	__________________
~~Detailed SOW~~	________________	__________________
~~Subcontract Selection(s)~~	________________	__________________
~~Subcontract Approval(s)~~	________________	__________________
~~Subcontract Award(s)~~	________________	__________________
~~Project Completion~~	________________	__________________

~~ARTICLE 5. REPORTING REQUIREMENTS~~

~~[*CO describe here reporting requirements, e.g. Program Plans, Technical Reports, Progress Reports or Milestone Reporting, including financial reports, if required.*]~~

~~ARTICLE 6. INTELLECTUAL PROPERTY~~

~~a. Rights in Data~~

~~The Government retains Government Purpose Rights in all data developed under this agreement.~~

~~"Data" means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, computer software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information.~~

~~"Government Purpose Rights" means the rights to –~~

> ~~(1) Use, modify, reproduce, release, perform, display, or disclose data within the government without restriction; and,~~
>
> ~~(2) Release or disclose technical data outside the government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for government purposes.~~

~~"Government Purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive acquisition by or on behalf of the government but do not include the rights to use, modify, reproduce, release, perform, display, or disclose data for commercial purposes or authorize others to do so.~~

~~b. Rights in Inventions~~

~~The respective rights of the Government and the other parties to this agreement are the same as those found at 3.5-10 3.5-10 Patent Rights - Ownership by the Contractor (January 2009).~~

> ~~*Note. This intellectual property provision is an example. Parties should carefully evaluate and include appropriate intellectual property provisions depending on the nature of the Agreement. For example, the FAA may wish to disclose technical data to the public for commercial or other purposes, which is not covered under the government purpose license described herein. Additionally, the Bayh-Dole Act, which governs rights in inventions made under funding agreements does not apply to agreements under the FAA's "other transaction" authority)*~~

~~ARTICLE 7. LEGAL AUTHORITY~~

~~This Agreement is entered into under the authority of 49 U.S.C. 106(1) and (m), which authorizes agreements and other transactions on such terms and conditions as the Administrator determines necessary.~~

~~ARTICLE 8. POINTS OF CONTACT~~

~~FAA Program Office/Technical Officer~~

____

____

____

~~Non-FAA Party~~

____

~~FAA Contracting Officer~~

____

____

~~ARTICLE 9. FUNDING AND PAYMENT~~

~~a. The FAA will contribute $ [*CO insert amount*] as its share of the cost to perform this Agreement. The [*Co insert name of non-Federal party*] will contribute [*CO describe schedule of in-kind contributions, if any*]. Funds in the amount of $[*CO insert amount*] are hereby committed for the term of this Agreement. Obligation is chargeable to Appropriation Code [*CO insert appropriation code*] in procurement request number[*CO insert number*].~~

~~b. A properly executed request for payment should be submitted to the FAA at the billing address identified below.~~

~~**Billing Address:**~~

____

____

~~c. In the event of termination or expiration of this Agreement, any FAA funds which have not been spent or obligated for allowable expenses prior to the date of termination, and are not reasonably necessary to cover termination expenses shall be returned to the FAA.~~

~~**ARTICLE 10. LIMITATION OF FUNDS**~~

~~The Government's liability to make payments to [*CO insert name of non-Federal party*] is limited to the amount of funds obligated hereunder, including written modifications to this Agreement.~~

~~**ARTICLE 11. APPROVAL OF SUBCONTRACTORS**~~

~~The Contracting Officer shall be reasonably notified in advance of entering into any subcontract. Any subcontractors and outside associates or consultants required by the contractor in connection with the services covered by this Agreement shall be limited to individuals or firms that are specifically agreed to by all parties. The contractor must obtain the Contracting Officer's written consent before placing any subcontract.~~

~~**ARTICLE 12. AUDITS**~~

~~The Government has the right to examine or audit relevant financial records for a period not to exceed three years after expiration of the terms of this Agreement. The contractor/subcontractor must maintain an established accounting system that complies with generally accepted accounting principles. Commercial companies should ensure their record retention policies comply with this policy.~~

~~**ARTICLE 13. CHANGES, MODIFICATIONS**~~

~~Changes and/or modifications to this Agreement shall be in writing and signed by a FAA Contracting Officer and the [*CO identify representative or designee*] of [*CO insert name of non- Federal party*].]. The modification shall cite the subject Agreement, and shall state the exact nature of the modification. No oral statement by any person shall be interpreted as modifying or otherwise affecting the terms of this Agreement.~~

~~**ARTICLE 14. TERMINATION**~~

~~In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice~~

~~of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations, which might require payment.~~

~~[*CO should include any additional termination requirements that may apply, e.g. return of property to either party or other method of disposition*].~~

~~ARTICLE 15. ORDER OF PRECEDENCE~~

~~In the event of any inconsistency between the terms of the Agreement, the inconsistency shall be resolved by giving preference in the following order:~~

~~(a) The Agreement,~~

~~(b) The Attachments.~~

~~ARTICLE 16. CONSTRUCTION OF THE AGREEMENT~~

~~This Agreement is an "other transaction" issued under 49 U.S.C 106 (1) and (m) is not a procurement contract, grant or cooperative agreement. Nothing in this Agreement shall be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.~~

~~Each party acknowledges that all parties hereto participated equally in the negotiation and drafting of this Agreement and any amendments thereto, and that, accordingly, this Agreement shall not be construed more stringently against one party than against the other.~~

~~ARTICLE 17. DISPUTES~~

~~Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute will be resolved by [*CO describe internal dispute resolution process, e.g. management of either party, or an oversight committee*]. The decision is final unless it is timely appealed to the FAA Administrator, whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding.~~

~~ARTICLE 18. WARRANTIES~~

~~The FAA makes no express or implied warranties as to any matter arising under this Agreement, or as to the ownership, merchantability, or fitness for a particular purpose of any property, including any equipment, device, or software that may be provided under this Agreement.~~

~~ARTICLE 19. INSURANCE~~

~~[*CO insert name of non-Federal party*] shall arrange by insurance or otherwise for the full protection of [*CO insert name of non-Federal party*] from and against all liability to third parties arising out of, or related to, its performance of this Agreement. The FAA assumes no liability under this Agreement for any losses arising out of any action or inaction by [*CO insert name of non-Federal party*], its~~

~~employees, or contractors, or any third party acting on its behalf. [*CO insert name of non-Federal party*] agrees to hold the United States harmless against any claim by third persons for injury, death or property damage arising out of or in connection with its performance under this Agreement.~~

~~ARTICLE 20. LIMITATION OF LIABILITY~~

~~Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of [*CO insert amount*] funding obligated under this Agreement at the time the dispute arises. In no event shall the FAA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.~~

~~ARTICLE 21. LOWER TIER AGREEMENTS~~

~~[*CO insert name of non-Federal party*] shall include Articles [*CO insert article numbers*] suitably modified in all lower tier Agreements, regardless of tier).~~

~~ARTICLE 22. CIVIL RIGHTS ACT~~

~~*[CO insert name of non-Federal party*] shall comply with Title VI of the Civil Rights Act of 1964 relating to nondiscrimination in Federally assisted programs and provide a certification to that effect.~~

~~ARTICLE 23. OFFICIALS NOT TO BENEFIT~~

~~AMS Clause 3.2.5-1, "Officials Not to Benefit" and Clause 3.2.5-7, "Disclosure Regarding Payments to Influence Certain Federal Transactions" are attached hereto and incorporated by reference into this Agreement.~~

~~ARTICLE 24. PROTECTION OF INFORMATION~~

~~The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.~~

~~AGREED:~~

~~TBD~~	~~Federal Aviation Administration~~
~~BY: ________________~~	~~BY: ________________~~
~~TITLE: ________________~~	~~TITLE: ________________~~
~~DATE: ________________~~	~~DATE: ________________~~

~~5 Attachment 5 - Sample Other Transaction - Memorandum of Understanding (MOU)~~

~~Revised 10/2007~~

~~**MEMORANDUM OF UNDERSTANDING THE FEDERAL AVIATION ADMINISTRATION**~~

~~**AND XYZ**~~

~~**1. Parties**~~

~~The parties to this Memorandum of Understanding ("MOU") are the Federal Aviation Administration ("FAA") and XYZ.~~

~~**2. Objectives**~~

~~The objectives of this MOU are as follows:~~

~~(a)~~ ____

~~(b)~~ ____

~~**3. Responsibilities of the Parties**~~

~~(a) FAA~~

____

~~(b) XYZ~~

____

~~**4. Funding**~~

~~**No funds are obligated under this MOU**. Each party shall bear the full cost it incurs in performing, managing, and administering its responsibilities under this MOU.~~

~~**5. Warranties**~~

~~Neither the FAA nor [*Insert name of other party*] makes any express or implied warranty as to any matter arising under this MOU.~~

~~**6. Protection of Confidential/Privileged Information**~~

~~Each party shall take appropriate measures to protect proprietary, privileged or otherwise confidential information obtained as a result of its activities under this MOU.~~

~~**7. Construction**~~

~~The parties understand and agree that this Memorandum of Understanding does not confer any legal rights, duties or obligations on either party and is not subject to dispute in any forum. Neither party is~~

~~authorized or empowered to act on behalf of the other with regard to any matter, and neither party shall be bound by the acts or conduct of the other in connection with any activity under this MOU. This provision shall survive termination of this MOU.~~

~~8. Effective Date/Term/Termination~~

~~This MOU shall be effective on the date of the last signature of the parties and shall remain in force until terminated by mutual agreement or unilaterally by either party upon 30 days' notice to the other party.~~

~~9. Authority~~

~~The authority for this MOU is 49 U.S.C. 106 (f)(2)(A) and 106(*l*) and (m).~~

~~XYZ~~	**~~Federal Aviation Administration~~**
~~By ____________________~~	~~By ____________________~~
~~Title ____________________~~	~~Title ____________________~~
~~Date ____________________~~	~~Date ____________________~~

~~6 Attachment 6 - Sample Section 106 Cooperative Agreement~~ ~~Revised 1/2018~~

~~COOPERATIVE AGREEMENT~~
~~DTFAOI-98-C-00000~~
~~Between~~
~~ABC AIRLINES, INC. and~~
~~the~~
~~FEDERAL AVIATION ADMINISTRATION~~

~~Cooperative Agreement Letter~~

~~The Federal Aviation Administration hereby enters into Cooperative Agreement No. DTFAO I-98-C-00000 with:~~

~~ABC Airlines, Inc.~~

~~in accordance with the contributions designated in this document in Article III, Contributions of the Parties. The total funded amount of this Agreement is:~~

~~$xxxxxxxx~~

~~The purpose of this Cooperative Agreement is to develop full Computer Assisted~~
~~**Passenger Screening (CAPS) functionality for ABC Airlines, Inc.**~~

~~The period of performance for this Cooperative Agreement extends from the final signature date below to September 30, 1998. The terms and conditions of this Cooperative Agreement are described in the following pages. ABC Airlines, Inc. and the Federal Aviation Administration acknowledge acceptance of this Cooperative Agreement and agree to abide by all of the terms and conditions set forth herein. In WITNESS WHEREOF, the parties hereto affix their signatures as follows:~~

_______________________________ _______________________________

~~For ABC Airlines, Inc. For the FAA~~

_______________________________ _______________________________

~~Name~~

____

~~Date of Signature Date of Signature~~

~~*COOPERATIVE AGREEMENT*~~

~~*DTFAOI-98-C-00000*~~

~~*TABLE OF CONTENTS*~~

~~***1. GENERAL PROVISIONS A.***~~

~~***Parties to the Agreement***~~

~~*The parties to this Cooperative Agreement (hereinafter the "Agreement') are as follows:*~~

~~*1. The Federal Aviation Administration (FAA), an agency of the Department of Transportation, United States Government,*~~

~~*2. ABC Airlines, Inc., (hereinafter designated "Lead Carrier"), a privately held for profit air carrier corporation subject to regulation by the FAA.*~~

~~***B. Effective Date and Milestones***~~

~~*The effective date of this Agreement is the last date of signature on the foregoing bilateral agreement letter. The following schedule applies for implementation of CAPS:*~~

~~*Milestone Completion Date Responsibility*~~

~~*Sign Cooperative Agreement 4/98 FAA, Lead Carrier*~~

~~*Convene Initial CAMCOM N/A Lead Carrier Submit*~~

~~*CAPS Development Plan 1/98 Lead Carrier Submit*~~

~~*Initial Monthly Progress Rpt* Lead Carrier Submit*~~

~~*Initial Budget Rpt* Lead Carrier*~~

~~*Approve CAPS Development Plan 4/98 FAA Commence*~~

~~*All CAPS Installations 3/98 Lead Carrier Complete All*~~

~~*CAPS Installations Lead Carrier Conduct Alpha Testing*~~

~~*1/98 Lead Carrier*~~

~~*Conduct Beta Testing 3/98 Lead Carrier*~~

~~*Commence Full Operations 7-98 Lead Carrier*~~

~~** Monthly reports thereafter*~~

~~***C. Authority***~~

~~*This Agreement is authorized by 49 U.S. C. 106(l)(6), which permits the Administrator to enter*~~

~~*into cooperative agreements on such terms and conditions as the Administrator may consider appropriate. In addition, this Agreement is undertaken pursuant to a specific mandate by the White House Commission on Aviation Safety and Security pertaining to implementation of automated domestic passenger profiling. The goal of the Commission and of this Agreement is to raise the level of airline security for the traveling public.*~~

~~***II. DESCRIPTION OF THE COMPUTER ASSISTED PASSENGER SCREENING (CAPS) IMPLEMENTATION EFFORT***~~

~~***A. Background***~~

~~*During 1994 and 1995, ABC Airlines, in concert with the FAA's Aviation Security Research and Development, Human Factors Program, conducted research into Computer Assisted Passenger Screening*~~

~~*(CAPS). The purpose of the research was to evaluate the feasibility of creating a process to aid security personnel in assessing the threats posed (or not posed) by particular passengers traveling on civil aircraft.*~~

~~***B. Objectives***~~

~~*The objectives of this Agreement are to achieve:*~~

~~*(1) Successful implementation of the basic CAPS program, as defined herein.*~~

~~*(2) Development of computer software interfaces and data retrieval methods for adapting CAPS.*~~

~~***C. Scope***~~

~~*Lead Carrier will use the funds and in-kind contributions provided to it by the FAA, its own funds and in-kind contributions, and as appropriate, other resources as Lead Carrier is able to advance in achieving the foregoing objectives.*~~

~~*CAPS software must be Year 2000 compliant. This means that the software must accurately process date/time data, including but not limited to, calculating, comparing, and sequencing from, into, and*~~

~~*between the twentieth and twenty-first centuries, the years 1999 and 2000, and leap year calculations. Furthermore, Year 2000 compliant technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time data with it.*~~

~~*Configuration Management of CAPS requirements and changes shall comply with FAA Security Division (ACS) directives and ACSSP amendments/changes.*~~

~~***D. Coordination with Related Programs***~~

~~*The parties agree that this effort will be undertaken in coordination with other programs underway to raise the level of airline security for the traveling public, provided that no FAA funds obligated under this Agreement are used to finance or assume any obligation for other programs or initiatives, except by mutual written agreement.*~~

~~***III. CONTRIBUTIONS OF THE PARTIES***~~

~~*The contributions of the parties to this Agreement are as follows:*~~

~~***A. FAA Contributions***~~

~~***1. Cash Contributions***~~

~~*The FAA will provide cash contribution to the Lead Carrier as shown below.*~~

~~***2. In-kind Contributions***~~

~~*The FAA will provide the following in-kind contributions as Government Furnished Information (GFI) subject to a schedule to be jointly determined by the parties:*~~

____

____

~~***3. Other Contributions***~~

~~*In addition to cash and in-kind contributions, the FAA will use best efforts to provide appropriate assistance, such as technical advice, to Lead Carrier from and through FAA operational organizations.*~~

~~***B. Lead Carrier Contributions***~~

~~*Lead Carrier will contribute any necessary cash and in-kind resources required in excess of the FAA's contribution to achieve the objectives of this Agreement.*~~

~~***C. Limitation of Funds***~~

~~Notwithstanding any other provision herein, and unless expressly agreed in writing, the FAA's total cash contribution shall in no event exceed $xxxxxx. Except as expressly stated in this Agreement, the FAA assumes no liability or obligation in connection with the implementation of CAPS functionality for any air carrier.~~

~~D. Reimbursement of Costs~~

~~The parties agree that the FAA level of funding may not be, nor is it intended to be, sufficient to cover the costs of implementing CAPS as described in this Agreement. In the event that Lead Carrier's cash requirements are less than the FAA level of funding provided, Lead Carrier agrees to return any remaining funds to the FAA at the conclusion of this Agreement. Subject to the Limitation of Funds above, funds will be provided to Lead Carrier according to the following schedule:~~

~~• Fifty-percent (50%) of total amount $xxxxxx.~~

~~• Fifty-percent (50%) of total amount $xxxxxx.~~

~~These funds will serve to reimburse to a partial extent all reasonable, allowable, and allocable costs, excluding profit or fee in connection with such costs. In addition, while FAA funds may be used for the direct, general, and administrative expenses of accomplishing the objectives of this Agreement, in no case shall these funds be used for payment of legal or other costs for Lead Carrier relating to the formation of this Agreement. Lead Carrier will be accountable to FAA for the management of these funds and for any income earned on such funds while held in account by Lead Carrier, consistent with AMS T.3.8.1.~~

~~Financial reporting for funding will be in accordance with Article V, Required Submissions to the FAA.~~

~~E. Selection of Alternatives~~

~~The FAA and Lead Carrier agree on the alternative CAPS development method as proposed by the Lead Carrier and evaluated by the FAA.~~

~~IV. TECHNICAL DIRECTION~~

~~The parties agree on the following organization and roles for management of this Agreement.~~

~~A. Management Structure~~

~~The CAPS implementation effort will be managed by a Cooperative Agreement Management Committee ("CAMCOM") consisting of one advisory FAA representative, the Cooperative Agreement Technical Representative (CATR), AAR-600 from the Security Equipment Product Team, Lead Carrier representation as the lead air carrier, and ABC Airlines representation (advisory only). The~~

~~*CAMCOM will be chaired by Lead Carrier, which agrees that the FAA and its contractors may attend and participate in all CAMCOM sessions in an advisory capacity.*~~

~~*Lead Carrier will appoint a CAPS Implementation Project Manager who will report to the CAMCOM on all operational matters and who will carry out the technical and administrative requirements of this Agreement. The Project Manager will be responsible for providing the information and documentation discussed in Article V, "Required Submissions to the FAA.*~~

~~***B. FAA Role***~~

~~*The work performed under this Agreement is not subject to the technical direction of the FAA. The FAA CATR will perform oversight to ensure that Government funding is expended in a prudent, efficient, and effective manner. The FAA CATR is not authorized to alter the terms and conditions of this Agreement.*~~

~~***V. REQUIRED SUBMISSIONS TO THE FAA A.***~~

~~***CAPS Functional Specification***~~

~~*Lead Carrier shall provide a copy of the CAPS Functional Specification, for Lead Carrier's own implementation of CAPS. The Functional Specification shall demonstrate the traceability or mapping of the FAA CAPS Policy Requirements Document and all amendments to the CAPS Functional Specification of Lead Carrier. The traceability or mapping shall describe how each specific CAPS policy requirement is satisfied by the corresponding element of the Functional Specification.*~~

~~***B. CAPS Operational Readiness Plan***~~

~~*Lead Carrier shall provide a copy of the CAPS Operational Readiness Plan to the FAA. The CAPS Operational Readiness Plan shall describe the approach for determining the completeness and readiness of Lead Carrier to bring CAPS into full operational use. The Plan shall include, but not be limited to, the following elements: (1) training completions; (2) operational procedures; (3) systems management; (4) system security; (5) maintenance; and (6) performance monitoring of CAPS as required by FAA CAPS Policy Requirements Document and all subsequent addendums.*~~

~~***C. CAPS Quality Assurance Plan***~~

~~*Lead Carrier shall provide a copy of the CAPS Quality Assurance Plan to the FAA. The Quality Assurance Plan shall describe all activities being performed by Lead Carrier to assure the quality of all CAPS processes and products, including all CAPS life cycle artifacts and operational procedures.*~~

~~***D. CAPS Project Plan***~~

~~*Lead Carrier shall provide a copy of the CAPS Project Plan to the FAA. The Project Plan shall describe all milestones, along with the work breakdown structure to accomplish the milestones.*~~

~~***E. CAPS Monthly Project Report***~~

- ~~*Lead Carrier shall submit a CAPS Monthly Project Report to the FAA. The Progress Report shall include at the minimum the following information elements:*~~
- ~~*Accomplishments for the past month against the project plan,*~~
- ~~*Known technical risks in terms of a description of each risk, abatement strategies for each risk, and an indication of whether the risk is increasing or decreasing over the period,*~~
- ~~*Any updates to the CAPS Project Plans,*~~
- ~~*Progress expected to be made in the upcoming month against the current Project Plan.*~~

~~***F. Alpha Test Plan and Report***~~

~~*The first test is intended to be a non-operational (not live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Alpha Test Plan to the FAA. The Test Plan shall describe the traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS alpha test shall be performed in accordance with a FAA approved test plan in an environment that will not affect the real- time operational aspects of the on-line computer reservation system. The test performed shall exercise all aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.*~~

~~*Lead Carrier shall provide formal written results to the FAA of alpha tests conducted at each CAPS implementation site. The alpha test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness alpha testing as required, and to mandate additional testing as needed.*~~

~~***G. Beta Test Plan and Report***~~

~~*The second test is intended to be an operational (live) test. Prior to the test, Lead Carrier shall provide a copy of the CAPS Beta Test Plan to the FAA. The Test Plan shall describe the traceability of test cases to each CAPS Functional Specification element for Lead Carrier. The CAPS beta test shall be performed in accordance with an FAA approved test plan in an environment that affects the real-time operational aspects of the on-line computer reservation system. The tests performed shall exercise all aspects of the CAPS requirements so that known inputs are evaluated against the CAPS criteria and weights to produce results that can be compared against expected CAPS output.*~~

~~*Lead Carrier shall provide formal written results to the FAA of beta tests conducted at each CAPS implementation site. The beta test report shall include the plan against which the test was conducted, test results, and documented acceptance by the affected air carrier. The FAA reserves the right to witness beta testing as required, and to mandate additional testing as needed.*~~

~~***H. Verification of System/Software***~~

~~*Lead Carrier shall develop and use software test programs and test data to verify the correct design and construction of the CAPS software, and to correct performance of CAPS in an operational environment. In lieu of developing completely new test software and test data, Lead Carrier may utilize verification products included within the ABC Airlines developed version of CAPS. The FAA*~~

~~*reserves the right to inspect CAPS software and systems components, and to witness actual tests performed by Lead Carrier using the test software and data. The FAA also reserves the right to utilize its own test data to verify the correct performance of CAPS.*~~

~~***I. Budget Report***~~

~~*The CAMCOM will provide the FAA CATR with monthly budget updates, to be prepared in a format jointly agreed to by the parties. The budget and updates are management documents prepared for the purpose of estimating project costs in the aggregate, and the fact that a cost or category of cost is not specifically identified in the budget shall not make such cost or cost category unallowable pursuant to Article III.D, Reimbursement of Costs.*~~

~~***Summary of Deliverables and Schedule:***~~

~~*CAPS Functional Specification 30 days after execution of Cooperative Agreement CAPS*~~

~~*Operational Readiness Plan 60 days after execution of Cooperative Agreement CAPS*~~

~~*Quality Assurance Plan 60 days after execution of Cooperative Agreement CAPS Project*~~

~~*Plan 30 days after execution of Cooperative Agreement*~~

~~*CAPS Monthly Project Report 5 days after end of month*~~

~~*Alpha Test Plan and Report 30 days prior to test. Report: IO days after completion of test. Beta*~~

~~*Test Plan and Report 30 days prior to test. Report: 10 days after completion of test. Verification*~~

~~*of System/Software As requested*~~

~~*Budget Report 5 days after end of month*~~

~~** "Days" as shown are calendar days.*~~

~~***VI. INTELLECTUAL PROPERTY RIGHTS***~~

~~*The parties agree to the following stipulations regarding technology (software or otherwise) which may be developed as a consequence of this Agreement. Lead Carrier will ensure that all current and future carriers using the same CRS will have full access to CAPS functionality.*~~

~~***A. Ownership Rights in Developed Technology***~~

~~*All intellectual property created or developed in the performance of this Agreement, whether in the form of patentable subject matter, copyright, trade secret information, "know-how', or other intellectual property shall, as between the FAA and Lead Carrier, become and remain the property*~~

~~*of Lead Carrier, either directly or by assignment from the FAA, subject only to the FAA's rights under subparagraph B. of this Article.*~~

~~***B. U.S. Government Rights in Developed Technology***~~

~~*The FAA shall retain, reserve, and be granted by Lead Carrier as applicable a non- exclusive, non-transferable, irrevocable, paid-up license to use for U.S. Government purposes only, and to permit other U.S. Government agencies to use for U.S. Government purposes only, any or all of the developed technology resulting from this Agreement throughout the world. Neither the FAA nor any other U. S. Government agency shall permit any person or entity other than Lead Carrier to use the developed technology in whole or in part for commercial purposes without the express prior written consent of Lead Carrier. U.S. Government agencies may permit U.S. Government contractors to use Lead Carrier developed technology only under procurement contracts, grants, cooperative agreements, and interagency and intra-agency agreements awarded for U.S. Government purposes, with the written provision prohibiting the disclosure of developed technology and prohibiting its use for any commercial or non-U. S. Government purpose.*~~

~~***C. Marking of Intellectual Property***~~

~~*Lead Carrier shall make reasonable efforts to ensure that any developed technology resulting from this Agreement is appropriately marked with legends indicating patent, copyright, or other form of ownership as may be required by law. To the extent provided by law, the U.S. Government and its employees shall be excused from liability for innocent infringement of Lead Carrier's rights in any developed technology produced under this Agreement without statutorily required markings.*~~

~~***D. Survival***~~

~~*The provisions of this Article VI, Intellectual Property Rights, shall survive termination or expiration of this Agreement.*~~

~~***E. Laws Governing Patents, Copyrights and Other Data Rights***~~

~~*All U.S. laws governing patents, copyrights, or other data rights shall remain in full force and effect, and the parties agree to abide by these laws.*~~

~~***F. Recoupment***~~

~~*The FAA shall have the right to recoup its cash contributions under this Agreement out of any net revenues derived from Lead Carrier's licensing of developed technology resulting from performance pursuant to the Agreement. The percentage share is fixed at fifty percent (50%). The parties also agree on an expiration date for the FAA's recoupment right of ten (10) years from the expiration or termination date of this Agreement.*~~

~~***VII. DISPUTE RESOLUTION***~~

~~*Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, either party may terminate this Agreement.*~~

~~***VIII. TERM AND TERMINATION***~~

~~*The performance period of this Agreement is governed by the following stipulations.*~~

~~***A. Term***~~

~~*This Agreement will remain in full force and effect from its effective date (last date of signature) through September 30, 1998.*~~

~~***B. Termination***~~

~~*In addition to any other termination rights provided by this Agreement, either party may terminate this Agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving the other party at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop the accrual of any additional obligations which might require payment.*~~

~~***C. Return of Funds***~~

~~*In the event of termination or expiration of this Agreement, any FAA funds which have been advanced to Lead Carrier by the FAA and which (1) have not been spent or obligated by Lead Carrier for allowable expenses prior to the date of termination, and (2) are not reasonably necessary to cover termination expenses shall be returned to the FAA. Any FAA funds which have been advanced and expended for allowable costs shall not be returned to the FAA, and Lead Carrier shall have no liability or obligation with respect to these funds, unless provided elsewhere in this Agreement.*~~

~~***D. Termination Settlement***~~

~~*In the event of termination, no further funds will be advanced to Lead Carrier, except as reasonably necessary to effect the termination or to satisfy obligations incurred prior to the termination, consistent with the provisions of Article III.C., Federal Funding.*~~

~~***IX. LIABILITY AND INDEMNIFICATION***~~

~~*Except as specifically provided in this Agreement, the FAA, for itself and its contractors, assumes no liability under this Agreement for loss arising out of the conduct or activities undertaken by Lead Carrier, affiliates, associates, or its contractors, or any third party in connection with this Agreement. The FAA*~~

~~will not indemnify Lead Carrier, affiliates, associates, its contractors, or any third party against any third party claims or third party liability, but will assume liability for U.S. Government use of Lead Carrier's developed technology under the Government-purpose license granted under Article VI, Intellectual Property Rights.~~

~~Lead Carrier shall obtain appropriate insurance and take other appropriate steps to protect itself or others for any loss it may incur in connection with performance under this Agreement. The substance of Article IX shall be included in all contracts and other agreements with third parties at any tier. The provisions of Article IX shall survive termination or expiration of this Agreement.~~

~~X. SPECIAL PROVISIONS~~

~~A. FAA Agreements Officer~~

~~The FAA Agreements Officer has the authority to administer and modify this Agreement on behalf of the FAA.~~

~~B. Notices~~

~~Any notice required or permitted to be given under this Agreement will be in writing and shall be either personally delivered, given by facsimile transmission, or sent by certified mail, return receipt requested, postage prepaid, or sent by Federal Express, as follows:~~

~~If to Lead Carrier If to the FAA: Project~~
~~Manager Agreements Officer~~
~~Lead Carrier, ABC Airlines Federal Aviation Administration~~
~~Carrier Address 800 Independence Avenue, S.W~~

______________________________~~Washington, D.C. 20591~~

~~Notices given hereunder will be deemed given on the date personally delivered, transmitted by facsimile, or if mailed, upon the date of signing of the Certified Mail - Return Receipt, or five days after mailing, whichever is less.~~

~~C. Audit~~

~~The General Accounting Office, the Department of Transportation, and the FAA or its designee will have the right to review and audit the books and records of Lead Carrier and cognizant contractors (see pass-down requirement below) to the extent necessary to verify the allowability of costs under this Agreement and as otherwise required by law.~~

~~Lead Carrier shall maintain for the term of this Agreement and three (3) complete calendar years thereafter, such books and records as are reasonably necessary to accurately reflect its operations under this Agreement. The periods of access and examination shall continue, however, for the time necessary to dispose of appeals, litigation, claims, disputes, or exceptions arising from performance or costs/expenses incurred under this Agreement.~~

~~Lead Carrier shall include in contracts and agreements with other parties for the purpose of CAPS implementation, a provision granting the U.S. Government access to contractor or agreement party records for the same purposes in this subparagraph concerning audits. The provisions of this subparagraph shall survive termination or expiration of this Agreement.~~

~~D. Warranty~~

~~The FAA and Lead Carrier, individually and as parties to this Agreement, make no express or implied warranty as to any matter whatsoever concerning the Agreement, including accomplishment of objectives or success of the outcome.~~

~~These warranty provisions shall survive termination or expiration of this Agreement.~~

~~E. Force Majeure~~

~~Neither party will be liable to the other for any unforeseeable event not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this Agreement, and which it has not been able to overcome by the exercise of due diligence, including but not limited to natural disasters or human strife and disputes. The party unable to perform shall use its best efforts to resume performance, suspending it only for that period reasonably necessary to overcome the effects of the force majeure event. If performance is suspended for more than seven (7) days, the party unable to perform shall provide weekly progress reports with a forecast of recovery, for the period of suspension.~~

~~F. Security~~

~~The FAA CAPS requirements documents, including CAPS Factors and Weights, and all addendums containing policy guidance and clarification material, contain sensitive information and are subject to the provisions of 14 CFR 191. Lead Carrier agrees to take measures to ensure that this information is appropriately protected within its own organization. Public disclosure or publication of matters relating to this Agreement, including outcomes or results, must first receive the prior approval of the FAA Agreements Officer.~~

~~Lead Carrier shall include in contracts and agreements at any tier, the substance of this subparagraph concerning security. These security provisions shall survive termination or expiration of this Agreement.~~

~~G. Changes In Ownership~~

~~Lead Carrier will notify the FAA within forty-five (45) calendar days of any change in the ownership structure of Lead Carrier.~~

~~H. Lobbying Certification~~

~~*Lead Carrier shall comply with the provisions of 31 USC 1352 prohibiting the recipient of a Federal cooperative agreement from using appropriated funds to pay any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any transaction enumerated in the foregoing Code. Lead Carrier must include a provision mandating compliance with 3 1 USC 13 52 in all contracts or agreements which it enters under Article X.0, Contracting by Lead Carrier*~~

~~*Lead Carrier hereby declares that it has neither made nor agreed to make any payment with respect to this Agreement, using funds other than appropriated funds, which would be prohibited by 31 USC 1352 if the payment were made using appropriated funds.*~~

~~***1. Severability***~~

~~*In the event that any Article and/or parts of this Agreement are determined to be void, such Article or portions thereof shall lapse. No such lapse will affect the rights, responsibilities, and obligations of the parties under this Agreement, except as provided herein. If either party determines that such lapse has or may have a material effect on the performance of the Agreement, such party shall promptly notify the other party, and they shall negotiate in good faith a mutually acceptable amendment to the Agreement if appropriate to address the effect of the lapse.*~~

~~***J. Construction of Agreement***~~

~~*This Agreement shall be construed as an assistance agreement consistent with applicable Federal law.*~~

~~***K. Entire Agreement***~~

~~*This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties.*~~

~~***L. Amendments***~~

~~*This Agreement shall not be amended, altered, or modified except by an instrument in writing duly executed by Lead Carrier and the FAA Agreements Officer.*~~

~~***M. Relationship Of Parties***~~

~~*The legal relationship between the FAA and Lead Carrier shall be none other than that expressly specified in this Agreement, and nothing in this Agreement shall be construed to create any relationship of partnership, joint venture, agency, or fiduciary duty between the parties, or to impose any liability or obligation on either party except those liabilities and obligations expressly stated herein. Nothing in this Agreement shall be construed to confer any legal or equitable rights, express or implied, on any person or entity other than the parties hereto.*~~

~~***N. Limitation of Assignment***~~

~~*Neither party may assign its rights or obligations under this Agreement to any other entity or person without the other party's prior express written consent. Nothing in this provision, however, shall be construed to limit Lead Carrier's right to assign, license, or otherwise transfer rights to its developed technology to any entity or person subject to the U.S. Government's rights under Article VI, Intellectual Property Rights.*~~

~~***0. Contracting By Lead Carrier***~~

~~*Lead Carrier may enter into contracts in its own name for the purpose of carrying out the objectives of this Agreement. The terms and conditions awarded at all tiers will include such terms and conditions from this Agreement as appropriate or otherwise designated.*~~

~~***P. Third Party Participation***~~

~~*Lead Carrier is authorized but not obligated to enlist the participation, support, or investment of third parties in the CAPS implementation project, subject to appropriate limitations regarding conflicts of interest.*~~

~~**7 Attachment 7 - Intellectual Property - Section 106 Cooperative Agreements**~~

~~***SECTION 106 COOPERATIVE AGREEMENTS***~~

~~***1.0 Patents and Inventions***~~

~~*1.1 Policy*~~

~~*a. The disposition of rights to inventions made by small business firms and non- profit organizations, including universities and other institutions of higher education, under FAA-assisted programs is governed by Chapter 18 of Title 35 of the United States Code, commonly called the Bayh-Dole Act, 35 U.S.C. §200, et seq. In accordance with the Presidential Memorandum entitled Government Patent Policy issued on February 18, 1983 and Executive Order 12591, FAA may apply the policies of that Act to all participants in cooperative agreements. The Department of Commerce (DOC) is the lead agency for implementing the Bayh- Dole Act and has published guidance to Federal agencies at Part 401 of Title 37 of the Code of Federal Regulations, 37 CFR §401.*~~

~~*b. FAA’s standard Patent Rights clause is identical to that prescribed in 37 CFR §401.14(a) except that:*~~

~~*1. FAA has tailored the clause to apply to funding agreements (which term includes both grants and cooperative agreements), and to identify FAA as the interested Government agency;*~~

~~2. pursuant to DOC guidance appearing in Part 401 of Title 37 of the Code of Federal Regulations, 37 CFR §401.5(d), FAA has added to paragraph b. of the clause a stipulation that FAA reserves the right to direct a recipient to transfer to a foreign government or research performer such rights to any subject invention as are required to comply with any international treaty or agreement identified when the grant is made as being applicable to the assisted research;~~

~~3. as permitted by 37 CFR §401.5(f), FAA has added two subparagraphs to the end of paragraph f. 7of the clause to require recipients, or their representatives to send to FAA confirmations of~~

~~the Government licenses for and copies of any U.S. patents on subject inventions; and~~

~~4. the word "recipient" is substituted for "contractor", and "cooperative agreement" is substituted for "contract."~~

~~c. FAA patent policy with respect to procurement contracts is found in the Acquisition Management System, AMS. For patent policy relating to research grants, see Chapter 8, section 5 (as amended) of FAA Order 9550.7A, Research Grants Program.~~

~~1.1.2 Standard Patent Rights Clause~~

~~Where appropriate, the Standard Patent Rights Clause found at 37 CFR §401.14, appropriately modified as explained below, should be used in every cooperative agreement awarded by the FAA unless a special patent clause has been negotiated that would better serve the interests of the FAA and the Government as a whole. The concurrence of legal counsel is required for the use of any special patent clauses that deviate from that set out at 37 CFR §401.14.~~

~~a. In cooperative agreements covered by a treaty or agreement that provide that an international organization or foreign government, research institute or inventor will own or share patent rights, FAA will acquire such patent rights as are necessary to comply with the applicable treaty or agreement.~~

~~b. If a recipient elects not to retain rights to an invention, FAA will allow the inventor to retain the principal patent rights unless the recipient, or the inventor's employer if other than the recipient, shows that it would be harmed by that action.~~

~~c. FAA will normally allow any patent rights not wanted by the recipient, or inventor to be dedicated to the public through publication in scientific journals or as a statutory invention registration. However, if another Federal agency is known to be interested in the relevant technology, FAA may give it an opportunity to review and patent the invention so long as that does not inhibit the dissemination of the research results to the scientific community.~~

~~*1.2 Copyright*~~

~~*1.2.1 Rights to Copyrightable Material*~~

~~*The FAA shall apply the following principles governing the treatment of copyrightable material produced under FAA cooperative agreements.*~~

~~*a. FAA normally will acquire only such rights to copyrightable material as are needed to achieve its purposes or to comply with the requirements of any applicable government-wide policy or international agreement.*~~

~~*b. To preserve incentives for private dissemination and development, FAA normally will not restrict or take any part of income earned from copyrightable material except as necessary to comply with the requirements of any applicable government-wide policy or international agreement.*~~

~~*c. In exceptional circumstances, FAA may restrict or eliminate a recipient's control of FAA-supported copyrightable material (including computer software and associated documentation) and of income earned from it, if FAA determines that this would best serve the purposes of a particular program.*~~

~~*1.2.2 Standard Copyrightable Material Clause*~~

~~*The following copyrightable material clause should be used in every cooperative agreement awarded or entered into by FAA that relates to scientific or engineering research unless a special copyrightable material clause has been negotiated. The concurrence of legal counsel is required for the use of any special copyrightable material clauses that deviate from that set out below.*~~

~~***CLAUSE-COPYRIGHTABLE MATERIAL***~~

~~*a. "Subject writing" means any material that:*~~

~~*1. is or may be copyrightable under Title 17 of the United States Code; and*~~

~~*2. is produced by the recipient, or its employees in the performance of work under this grant, cooperative agreement or other transaction.*~~

~~*Subject writings include, but are not limited to, such items as reports, books, journal articles, sound recordings, videotapes, video discs, computer software and related documentation.*~~

~~*b. Copyright Ownership, Government License. Except as otherwise specified in the grant, cooperative agreement, or other transaction, or by this paragraph, the recipient may own or permit others to own copyright in all subject writings. The recipient agrees that if it or anyone else does own the copyright in a subject writing, the Federal government will have a non- exclusive,*~~

~~*nontransferable, irrevocable, paid-up license to exercise or have exercised for or on behalf of the U.S. throughout the world all the exclusive rights provided by copyright. Such license, however, will not include the right to sell copies or phonorecords of the copyrighted works to the public.*~~

~~*c. Effect of International Agreements. If the cooperative agreement, or other transaction indicates it is subject to an identified international agreement or treaty, FAA can direct the recipient to convey to any foreign participant or otherwise dispose of such rights to subject writings as are required to comply with that agreement or treaty.*~~

~~*d. Recipient Action to Protect Government Interests. The recipient agrees to acquire, through written agreement or an employee relationship, the ability to comply with the requirements of the preceding paragraphs and, in particular, to acquire the ability to convey rights in a subject writing to a foreign participant if directed by FAA under the previous paragraph. The recipient further agrees that any transfer of copyright or any other rights to a subject writing, by it or anyone whom it has allowed to own such rights, will be made subject to the requirements of this article.*~~

~~***1.3 Special Patent and Copyright Situations***~~

~~***1.3.1 Special Grant Provisions***~~

~~*At the request of the prospective recipient, or on recommendation from FAA staff, the FAA Official authorized to award or administer the cooperative agreement, with the concurrence of the cognizant Program Manager and legal counsel, may negotiate special patent or copyright provisions when that Official determines that exceptional circumstances require restriction or elimination of the right of a prospective recipient to control principal rights to subject inventions or writings in order to better achieve the objectives of the program, the mission of the FAA, or (in the case of inventions) Chapter 18 of Title 35 of the United States Code. Every special copyright or patent provision will allow the recipient, after an invention has been made or copyrightable material created, to request that it be allowed to retain principal rights to that invention or material, unless doing so would be inconsistent with an obligation imposed on FAA by statute, international agreement or pact with other participants in or supporters of the research.*~~

~~***2.1 Cooperative Agreements Not Primarily for Experimental, Developmental, or Research Work***~~

~~*Cooperative agreements not primarily intended to support experimental, developmental, or research work should include appropriate patent or copyrightable material provisions when necessary to protect the interests of the FAA and the Government as a whole.*~~

Section Revised T3.8.3 - Federal Supply Schedules

Procurement Guidance - (~~7/2021~~9/2021)

T3.8.3 Federal Supply Schedules **Revised 1/2009**

A Federal Supply Schedules

1 General **Revised ~~10/2007~~9/2021**

a. *Definitions*.

(1) *Multiple Award Schedule (MAS)*: Contracts awarded by General Services Administration (GSA) or Department of Veterans Affairs (VA) for similar or comparable supplies, or services, established with more ~~that~~than one supplier, at varying prices; and

(2) *Special Item Number (SIN)*: A group of generically similar (but not identical) supplies or services that are intended to serve the same general purpose or function.

b. The Federal Supply Schedule (FSS) program is directed and managed by GSA and provides Federal agencies with a simplified process for obtaining commercial supplies and services associated with volume buying. Indefinite delivery contracts are awarded to provide supplies and services at stated prices for given periods of time.

c. The terms and conditions of an order placed against a FSS contract are governed by the terms of the FSS basic contract, and the FSS basic contract is governed by applicable clauses of the Federal Acquisition Regulations (FAR).

d. GSA may establish special ordering procedures for a particular schedule. In this case, that schedule will specify the special ordering procedures.

e. GSA schedule contracts require all schedule contractors to publish an "Authorized Federal Supply Schedule Pricelist." The pricelist contains all supplies and services offered by a schedule contractor. In addition, each pricelist contains the pricing and terms and conditions pertaining to each Special Item Number (SIN) that is on schedule. The schedule contractor is required to provide one copy of its pricelist upon request. Pricelists may also be obtained by:

(1) Submitting a written e-mail request to schedules.infocenter@gsa.gov; or (2)

Telephone at 1-800-488-3111.

f. GSA issues FSS publications that give an overview of the FSS program and address pertinent topics. Copies can be ordered by:

(1) Requesting copies through the GSA website;

(2) Submitting a written e-mail request to CMLS@gsa.gov; or

(3) Completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Service (7SM), P.O. Box 6477, Fort Worth, TX

76115.

2 GSA Advantage and e-Buy Revised 10/2007

a. GSA offers an on-line shopping service called "GSA Advantage" through which a Contracting Officer (CO) or purchase card holder may place orders against Schedules. See the GSA Advantage website. FAA personnel may search the site using specific information (national stock number, part number, common name), review delivery options, place orders directly with Schedule contractors, and pay for orders using a purchase card.

b. FAA may also use GSA Advantage to place orders through GSA's Global Supply System (formerly known as "GSA Stock" or "Customer Supply Center").

c. Complementing GSA Advantage is "e-Buy," GSA's electronic Request for Quotation (RFQ) system. E-Buy allows COs to post requirements, obtain quotes, and issue orders electronically. The system can be found on the E-Buy website.

3 GSA Global Supply Revised 10/2007

a. GSA, through its Stock Program, purchases a wide variety of common-use items and makes them available to Federal agencies via a network of distribution centers. The GSA Global Supply Catalog contains an alphabetical index of stock items, descriptions, National Stock Numbers (NSN), and prices. GSA also operates regional Customer Supply Centers, which are retail outlets for small quantity, immediate supply items, i.e. office supplies. The FAA may purchase Government stock items when in the FAA's best interest. Methods for ordering GSA stock items include:

(1) GSA Global Supply online site: Orders can be placed online, by registered users;

(2) Telephone/Fax: Orders can be placed by calling (800) 525-8027 or by fax to (800) 856-7057; and

(3) FEDSTRIP (Federal Standard Requisitioning and Issue Procedure): Orders utilizing FEDSTRIP can be placed by:

(a) Using the FEDSTRIP feature on the GSA Global Supply website;

(b) Mail, using a Standard Form (SF) 344, to GSA Global Supply, Room 6A06, 819 Taylor Street, Fort Worth, TX 76102; or

(c) FEDSTRIP requisitions can be submitted through GSA Advantage website.

b. Additional information. Additional information regarding GSA Global Supply can be found at the GSA Global Supply website or by calling (800) 525-8027.

c. Registered Users. Users registered with GSA Advantage gain access to the GSA Global Supply website with the same user ID and password.

4 Use of Federal Supply Schedules Revised ~~7/2021~~9/2021

a. *General*.

(1) Although GSA has already determined that prices are fair and reasonable, with the exception of prices of certain orders for services (see below), FAA must select the FSS product or service which represents the best value for FAA. FAA should consider, as appropriate, factors such as delivery, features, capabilities, trade-in terms, probable life, warranties, maintenance availability, past performance, environmental factors, and energy efficiency.

(2) FAA is exempt from mandatory use of FSS contracts that GSA or the FAR designates as mandatory.

(3) Before procuring supplies through an FSS, the CO must confirm that the items are not covered by FAA mandatory sources, including the Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES) Program.

(4) FAA's requirements should be performance-based to the maximum extent practicable. Program officials must not "over-scope" requirements to the point that it hinders competition. If an FAA requirement is for a specific "brand name" product available from only one manufacturer, and no other equal product will be satisfactory, the program official must document the rational basis for requiring the brand name product in the ~~single source justification template.~~Single Source Justification for Products, Services, and Construction Template. (Refer to AMS T3.2.2.8.A.5 Brand Name and T3.2.2.4 Single Source for guidance on required documentation for rational basis.)

(5) The CO must request pricing from three or more vendors when using an FSS to obtain supplies or services. To ensure FAA receives the full benefit of competition, the CO is encouraged to seek pricing from as many vendors as reasonably possible (but at least three).

(6) Single source procurements using FSS contracts, or procurements involving schedules that only have one vendor, must be justified, documented, reviewed and approved as single source actions. (Refer to AMS Policy 3.2.2.4)

(7) For support services on a time and materials or labor hour basis, the CO and program official must review resumes of proposed contractor personnel. (Refer to AMS Procurement Guidance T3.8.2).

(8) For services that require a statement of work, the program official is responsible for evaluating the level of effort and mix of labor proposed to perform the specific task being ordered.

(9) The evaluation criteria and the basis on which the selection will be made must be plainly stated and strictly adhered to.

(10) For administrative convenience, the CO may add items not available through FSS (also referred to as open market items) to a FSS blanket purchase agreement or FSS individual task or delivery order only if:

(a) All applicable acquisition rules pertaining to the purchase of the items not on the FSS have been followed;

(b) The CO has determined the price for the items not on the FSS is fair and reasonable;

(c) The items are clearly labeled on the order as items not on the FSS; and

(d) All clauses applicable to items not on the FSS are included in the order.

(11) Supplies offered on a Schedule are listed at fixed prices, and services are priced either at hourly rates or at a fixed price for performance of a specific task.

(12) Orders placed under an established FSS are exempt from public announcement requirements (as stated in AMS Policy 3.2.1.3.12).

b. *Ordering supplies or services without a SOW*. When ordering supplies or service listed in a FSS and a statement of work (SOW) is not required, COs must place orders with the schedule contractor that can provide the supply or service that represents the best value to FAA.

(1) Before placing an order, COs must consider reasonably available information about the supply or service offered under MAS contracts by surveying three or more schedule contractors through the GSA Advantage Online shopping service or by requesting pricing from three or more schedule contractors.

(2) If the use of a single source is required or only one vendor is present on an applicable schedule and the total dollar value is $10,000 or less, no single-source justification is required.

(3) If the use of a single source is required and the total dollar value is above $10,000, a single-source justification is required and must be:

(a) Compliant with the requirements in AMS Policy 3.2.2.4;

(b) Developed and approved by the service organization;

(c) Reviewed by legal counsel; and

(d) Concurred with by the CO.

(4) In addition to those items detailed in AMS Procurement Guidance T3.10.1, the CO must document the Schedule contracts considered, noting the contractor from which the supply or service was ordered.

c. *Ordering Procedures for Service Requiring a Statement of Work.*

(1) *SOW*. All SOWs must include the work to be performed, location of work, period of performance, deliverable schedule, applicable performance standards, and any special requirements.

(2) *Request for Quotation (RFQ) Procedures*. The CO must provide the RFQ, which includes the SOW and evaluation criteria, to at least three schedule contractors that offer services that will meet FAA's needs, and may post it to e-Buy.

(a) If the use of a single source is required or only one vendor is present on an applicable schedule and the total dollar value is $10,000 or less, no single- source justification is required.

(b) If the use of a single source is required and the total dollar value is above $10,000, a single-source justification is required and must be:

(i) Compliant with the requirements in AMS Policy 3.2.2.4;

(ii) Developed and approved by the service organization;

(iii) Reviewed by legal counsel; and

(iv) Concurred with by the CO.

(3) In addition to those items detailed in AMS Procurement Guidance T3.10.1, the CO must document:

(a) The Schedule contracts considered, noting the contractor from which the supply or service was ordered;

(b) Description of the services purchased;

(c) The evaluation methodology used in selecting the contractor;

(d) The rationale for any tradeoffs;

(e) The price reasonableness determination; and

(f) The rationale for not using a firm-fixed price or performance-based order.

d. There may be circumstances when the quantity of the order has a potential to reduce price. FSS contracts contain a "level," or maximum order threshold, at which customers must request price decreases from the contractor before placing an order. FSS contractors are authorized to offer price reductions in accordance with commercial practices, and the FSS contractors are not required to extend the same price reductions to all ordering activities that they gave to an individual ordering activity for a specific order. Despite the presence of the maximum order threshold, the customer may request a price reduction on any order.

e. COs may establish blanket purchase agreements (BPAs) with FSS contractors. COs may use BPAs to establish accounts with FSS contractors to fill recurring requirements. All FSS contracts contain BPA provisions. If using a BPA is in FAA's best interest, COs should refer to the applicable FSS contract for BPA requirements. As detailed in AMS Procurement Guidance T3.2.2.5, a BPA with a vendor does not justify purchasing from only one source, as the initial BPA and future orders awarded are subject to competition requirements. Other FAA requirements detailed in AMS Procurement Guidance T3.2.2.5 include the need to publicly announce BPAs anticipated having a total value over $100,000, only a warranted CO may place orders exceeding $100,000, and reviews to include legal counsel and the Chief Information Officer apply.

f. *Termination*.

(1) *Termination for Default.* A CO may terminate individual orders for default, and may include charging the contractor with excess costs resulting from repurchase. The schedule contracting office must be notified of all instances where an order has been terminated for default, and refer to GSA for specific termination procedures.

(2) *Termination for Convenience*. A CO may terminate individual orders for convenience, and the contracting officer must endeavor to enter into a "no cost" settlement agreement with the contractor.

g. Disputes.

(1) Under the Disputes clause of a schedule contract, the CO may:

(a) Issue decisions on disputes arising from performance of an order and notify the schedule contracting officer of the decision; or

(b) Refer the dispute to the schedule CO.

(2) Disputes pertaining to the terms and conditions of schedule contracts must be

referred to the schedule contracting officer for resolution.

B Clauses

view contract clauses

C Procurement Forms Revised 9/2021

~~view procurement forms~~

Document Name
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D Procurement Samples Added 9/2021

Document Name
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E Procurement Templates Added 9/2021

Document Name
Single Source Justification for Products, Services, and Construction Template

F Procurement Tools and Resources Added 9/2021

Document Name
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Section Revised T3.8.4 - Government Sources of Products/Services

Procurement Guidance - (7/2021)

T3.8.4 Government Sources of Products/Services **Revised 1/2010**

A Use of Government Sources **Revised 7/2007**

1 Mandatory Sources **Revised 10/2017**

a. *General.* The FAA will generally satisfy requirements for products and services from commercial sources, or when in FAA's best interest, from or through Government sources. In some cases, FAA must purchase from or through Government sources or programs: Randolph- Sheppard Act, and Javits-Wagner-O'Day Act (Ability One Program) are mandatory sources for satisfying certain FAA purchases.

b. Except as otherwise provided by law or FAA policy, FAA will satisfy requirements for products and services from or through the sources listed below in descending order of priority:

(1) FAA inventory and excess inventory from other agencies;

(2) Supply or service sources mandated by the Randolph-Sheppard Act and by the Javits-Wagner-O'Day Act (Ability One Program); and

(3) Commercial sources, Federal Supply Schedules, or other sources.

c. The Strategic Acquisition of Various Equipment and Supplies (SAVES) program is a mandatory source when applicable (see AMS Procurement Guidance T3.8.6). Supplies procured through the SAVES program comply with Ability One Program requirements.

2 Excess Inventory **Revised 7/2007**

a. The FAA should consider using excess personal property to fulfill its requirements when it is cost effective and the excess personal property will meet FAA's needs. Excess personal property (which excludes real property, Government-furnished property, and contractor-acquired property) is any personal property under the control of a Federal agency that is not required for its own needs. The FAA Reutilization and Disposal Process and Procedure Guide, dated 10/2006, provides additional guidance about excess personal property.

b. FAA offices may obtain more information about Government-wide personal property program by contacting GSA Federal Acquisition Service at (800) 488-3111 or GSA's Federal Acquisition Service website.

c. *GSAXCess.* GSA established GSAXCess as a central website for agencies to both post and search for excess property. The website provides an efficient means to search for excess property available in other agencies that may meets the needs of the FAA, or to post excess property no longer needed for operations.

3 Acquisition Procedures for Purchases from Federal Prison Industries Revised 1/2016

a. *General*. Federal Prison Industries, Inc. (FPI, also known as UNICOR) is a self supporting, wholly owned Government-owned corporation of the District of Columbia that provides training and employment for prisoners confined in federal penal and correctional institutes through the sale of its products and services to Government agencies. Classes of FPI produced products and services are listed in the FPI schedule which can be accessed at http://www.unicor.gov/ or by submitting a written request to Federal Prison Industries, Inc., Department of Justice, Washington, DC 20534.

b. *Applicability*. The procedures in AMS Procurement Guidance T3.8.4.A.3.c apply to all procurements involving products available from FPI, including procurements from a Qualified Vendors List, unless one or more of the exceptions below apply:

(1) The monetary value of the procurement would not require a competitive procurement process under AMS Procurement Policy 3.2.2.4 (pertaining to procurements that do not exceed $10,000);

(2) A market analysis would not be required under AMS Procurement Policy 3.2.2.4 to support a single-source procurement of the product (e.g., emergency procurement);

(3) Suitable used or excess products are available from the government;

(4) The products are acquired and used outside the United States;

(5) Services are being acquired; or

(6) The FAA has obtained a waiver from FPI. If FAA seeks a waiver from applying AMS Policy and Guidelines normally applicable to acquisitions involving products available from FPI, then it will request a waiver with respect to a particular product or class of products by using the waiver procedures on FPI's website.

c. *FPI Acquisition Procedures*. The FAA must use the following acquisition process for procurements involving products available from FPI. The three principal stages in this process are market analysis, competition (if required), and award.

(1) *Market Analysis Stage*. The FAA will conduct market analysis before purchasing a product of the type listed in the FPI Schedule. The market analysis will compare the product offered by FPI to the products available from private-sector suppliers that best meet FAA's needs in terms of price, quality, and time of delivery.

If the FAA Contracting Officer (CO) determines that the FPI product is equivalent in terms of price, quality, and time of delivery to those products available from the private sector that best meet FAA's needs, the CO will determine that the product offered by FPI is the best value to FAA and acquire that product from FPI without proceeding to the competition stage described below. The "equivalence" determination in the preceding sentence requires that FPI's product be equivalent with respect to each of the three criteria of price, quality, and time of delivery, but does not require that FPI's product be equivalent in a precise mathematical sense if such a comparison is infeasible.

The CO's procurement determination will be documented and made part of the contract file. This is a unilateral determination made at the discretion of the CO. If insufficient information is obtained through market analysis to support a best value determination, the CO will move to the competition stage.

(2) *Competition Stage*. If the CO does not determine that the product offered by FPI is the best value to FAA at the market analysis stage, then FAA will acquire the product using competitive procedures set forth below:

(a) The CO must post a public announcement for any acquisition for products available from FPI in accordance with AMS Procurement Policy 3.2.1.3.12.

(b) The FAA will solicit offers for the procurement and will include FPI in the solicitation process. A timely offer from FPI will be considered in light of the product description, product specifications, and product evaluation criteria listed in the solicitation.

(3) *Award Stage*.

(a) Award will be made to the source offering the product that FAA determines will provide the best value to FAA in terms of the product description, product specifications, and product evaluation criteria listed in the solicitation.

(b) *Procurement from FPI*. If the CO determines that FPI's products offer the best value to FAA, then FAA will enter into a procurement agreement with FPI. The agreement will be similar to FAA's agreements with other Federal agencies and may require representations and certifications appropriate for the particular procurement.

4 Randolph-Sheppard Act Added 7/2007

The Randolph-Sheppard Act gives priority to the blind in operating vending facilities. The Act requires agencies to provide suitable vending facility sites to blind vending operators in Government-owned or occupied buildings, and requires vending machine income to be shared with blind vendors or state agencies for the blind on property under the Government jurisdiction. The FAA must comply with the provisions of the Randolph-Sheppard Act. FAA procedures for vending facility operations under the Randolph-Sheppard Act are contained in Appendix 2.

5 Javits-Wagner-O'Day Act (Ability One Program) Revised 10/2017

a. The Javits-Wagner-O'Day Act governs products and services offered for sale by workshops of the blind or other severely handicapped persons. The Committee for Purchase from People Who are Blind or Severely Disabled (referred to below as the "Committee") is an independent Government activity responsible for determining products and services to be purchased from the central non-profit agencies National Institute for the Blind (NIB) and SourceAmerica (formerly NISH) (both are referred to below as AbilityOne (previously JWOD) agencies).

b. The FAA complies with the provisions of the Javits-Wagner-O'Day Act by considering certain purchases from the Committee when they are capable of providing required products or services and meeting FAA's required delivery dates.

c. The Committee maintains a "Procurement List" of all supplies and services that Government agencies must purchase. Examples of items on the Procurement List include cleaning supplies, clocks, office supplies, writing instruments, and breakroom supplies. FAA ordering offices may obtain a copy of the Procurement List, or information whether a given product or service is on the Procurement List, from: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, Room 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461, telephone (703) 603-7740. The Procurement List is also available on the AbilityOne website.

d. GSA's Federal Acquisition Service is the primary distributor of AbilityOne office supplies and other general use products. When a product is not available through FAA's SAVES Program (see AMS Procurement Guidance T3.8.6), FAA ordering offices may purchase AbilityOne items from GSA's Stock Program (AbilityOne items are identified in the GSA Supply Catalog and GSA Customer Supply Center Catalogs), from Federal Supply Schedule commercial vendors (limited to certain vendors on GSA Schedule 75 III A), or directly from SourceAmerica or NIB (the FAA ordering office must obtain direct order authorization from SourceAmerica or NIB prior to placing orders directly) .

e. FAA ordering offices may obtain items on the Procurement List from commercial sources if:

(1) The AbilityOne agency cannot provide items within required delivery dates and a commercial source can; or

(2) The AbilityOne agency cannot economically produce the required quantities. Prior to purchasing from a commercial source, the ordering office must obtain a waiver from the AbilityOne agency.

f. Agencies representing AbilityOne accept the Government purchase card for most items; whenever possible, purchasers should use this method of payment.

6 Other Government Sources Revised 1/2016

a. *Federal Supply Schedules*. The GSA Federal Supply Schedule (FSS) program provides Federal agencies with a simplified process for obtaining commonly used products and services at prices associated with volume buying. The FAA may purchase from FSS contractors used when in FAA's best interest, e.g., these sources represent the best value, prices are most advantageous, delivery is most expeditious, or quality products or services are offered. (See AMS Procurement Guidance T3.8.3, Federal Supply Schedules, for additional guidance on this subject.)

b. *Defense Logistics Agency*. The Defense Logistics Agency (DLA) is responsible for assuring that Federal agencies are supplied with their fuel requirements. When in the FAA's best interest, DLA may be used. However, it may not always be to FAA's advantage to use DLA contracts to fulfill fuel needs; COs may be able to obtain better prices and services through local competition. Information about DLA-managed stock, including fuel, can be found on the DLA website.

c. *Printing and Related Products.*

(1) "Government printing" means printing, binding and blank bookwork for the use of an executive department, independent agency, or establishment of the Government. "Related products," means products that are used and equipment that is usable in printing and binding operations. The purchase of preprinted documents is not considered printing services, and is not subject to this section.

(2) The FAA may acquire products and services from the Government Printing Office (GPO), or those managed by GSA, if in FAA's best interest.

(3) Requisitioners should obtain approval from the cognizant FAA printing office before purchasing in any manner, whether directly or through purchases of other products or services, printing and related products. Examples of printing requiring this approval include composition, plate making, presswork, binding, silk-screening of specialty advertising items, and micro-graphics (when used as a substitute for printing). Note that simple copying of a printed document does not constitute printing.

7 Use of Government Sources by Contractors **Revised ~~1/2016~~9/2021**

a. *General.* The CO may authorize contractors, or subcontractors, performing under cost-reimbursement contracts, other types of contracts when appropriate, or contracts under Javitts-Wagner-O'Day Act, to use Government sources of supply. Government sources of supply include: stock programs of GSA and Departments of Defense and Veteran's Affairs, and Federal Supply Schedules. The CO should consider the following before authorizing contractor use of Government sources: administrative costs of placing orders, impact of potential delivery delays, cost, suitability, and recommendations from the contractor. If the CO determines authorization is appropriate, the CO shall draft an authorization letter using the Contractor Authorization Letter for Use of FSS Contracts located in Procurement Templates and send copy to the contractor. The CO should issue authorizations to subcontractors through, and with the approval of, the prime contractor.

b. *Authorization*.

(1) *Ordering Against FSS Contracts*. Contractors must follow the terms of the applicable FSS contract and include with each order a copy of the authorization letter (unless previously

provided to the FSS contractor). If an FSS contractor refuses to honor the contractor's order, the CO should report the matter to GSA, FCO, Washington, DC 20406.

(2) *Ordering from Government Stock*. The CO should request authorization from the agency managing the stock. The CO should also submit with the request: the contractor's mailing, freight, and billing addresses; a copy of the authorization letter; the prime contract number; and the effective date and duration of the contract.

(a) GSA. Submit request to GSA, FXS, Washington, DC 20406, after obtaining an activity address code for the contractor.

(b) VA. Submit request to Deputy Assistant Secretary for Acquisition and Materiel Management (Code 90), Department of Veteran's Affairs, 801 Vermont Avenue, Washington, DC 20420.

(3) Title to property obtained by the contractor will vest in the parties as provided by the contract, unless otherwise stated.

~~(4) Appendix 1 contains a sample letter authorizing cost-reimbursement contractor's use of Government contracts.~~

8 National Wireless Program Revised 1/2016

a. To take advantage of economies of scale and thereby provide wireless devices and related services at a substantially reduced cost, FAA has centralized the procurement of non-secure devices and secured and non-secured services. Only the National Wireless Program (NWP) may enter into contracts with cellular and satellite providers. No other person or organization is authorized to enter into any contract or renew current contracts for cellular devices, services, or peripherals on behalf of the FAA, regardless of the procurement method used.

b. FAA Order 1830.9 further specifies internal management and operating procedures related to the management of cellular and satellite devices and services, transferring and porting telephone numbers.

B Clauses

view contract clauses

C Procurement Forms Revised 9/2021

~~view procurement forms~~

Document Name

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D Procurement Samples Revised 9/2021

Document Name
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E Procurement Templates Added 9/2021

Document Name
Contractor Authorization Letter for Use of FSS Contracts

F Procurement Tools and Resources Added 9/2021

Document Name
-

G Appendix Revised 9/2021

~~**1 Contractor Authorization Letter for Use of FSS Contracts** Revised 1/2016~~

~~**CONTRACTOR AUTHORIZATION LETTER FOR USE OF FSS CONTRACTS**~~

~~*Contractor Name*~~

~~*Address*~~

~~As a Government cost-reimbursement contractor under contract _ ________, you are hereby authorized to place orders under GSA's Federal Supply Schedule (FSS) Program, subject to the conditions listed below.~~

~~1. This authorization expires on ______.~~

~~2. Purchases made under this authorization are limited to $_____.~~

~~3. This authorization is limited to the following FSS contract(s) _____.~~

~~4. This authorization (*does/does not)* apply to overhead supplies, and (*does/does not)* apply to production supplies.~~

~~5. This authorization is limited to the following facility (*insert contractor facility name and location*).~~

~~6. Vesting of title for supplies purchased under this authorization must be as follows (*insert vesting information*).~~

~~7. (*Other limitations may be inserted here*) Any supplies or services purchased under this authorization must be properly accounted for and properly used. You are authorized to order only those supplies and services required in the performance of your contract(s) referred to above. You are responsible for compliance with the applicable policies and procedures prescribed for purchases from FSS contracts.~~

~~*Contracting Officer*~~

~~2~~1 FAA Procedures for Vending Facility Operations Under Randolph-Sheppard

Revised 1/2016

1. GENERAL. The Randolph-Sheppard Act, and Department of Education Regulations implementing the act and amendments, gives the blind priority in operating vending facilities.

2. RESPONSIBILITY. The Chief of the Contracting Office (COCO), or their designated representative, administers FAA's vending facility program.

3. PRIORITIES. Blind vendors licensed by State licensing agencies designated by the Secretary of Education under the provisions of the Randolph-Sheppard Act must have priority pursuant to 34 CFR 395 in the location and operation of food service and/or automated vending facilities, on property occupied and controlled by FAA. Because contracts/permits for food service and/or automated vending facilities do not involve the expenditure of appropriated funds, no further set aside requirements apply.

4. CRITERIA FOR ESTABLISHING NEW CAFETERIAS AND OTHER TYPES OF VENDING ESTABLISHMENTS.

a. The FAA must first determine if a facility is subject to the Randolph-Sheppard Act provisions (see paragraph 13 through 16). If not, the following factors should be considered in determining feasibility of relying on nearby food establishments in lieu of establishing vending facilities on FAA-controlled and occupied property:

(1) Accessibility. Food establishments must be conveniently located so that employees can reach them, obtain service, and return to duty within the time allowed for that purpose.

(2) Suitability. To be acceptable, good quality service must be available at reasonably competitive prices, in clean, neat surroundings.

(3) Adequacy. The nearby food establishments must be able to serve FAA employees and their other patrons during required service hours, with reasonable promptness.

b. If it is not feasible to depend on nearby food establishments, FAA may establish a vending facility if the following prerequisites are met and documented in writing:

(1) Justification. There must be adequate justification for establishing a vending facility as set forth in this paragraph.

(2) Space. Sufficient and satisfactory space must be available.

(3) Funding. Sufficient funds must be available to FAA to defray the costs for which the Government will be responsible.

(4) Necessity. The services must be necessary for the health or efficiency of FAA employees while on duty.

(5) Codes. It must be possible to establish and operate each vending facility conforming with safety, health, and sanitary codes.

5. FOOD SERVICE EQUIPMENT. Generally, FAA may furnish, install and connect all original food service equipment of fixed or substantially permanent nature, except vending machines operated under the provisions of the Randolph-Sheppard Act. If a facility is accepted by the State Licensing Agency (SLA) under the Randolph-Sheppard Act, then the SLA is required to provide the food service equipment. Other food service equipment, including cash registers, should be provided by the concessionaire. Consult with FAA legal counsel's office regarding any vested title to equipment.

6. SPACE RENTAL FEES AND UTILITY CHARGES.

a. Blind vendors will not be charged for Government space. Utilities and other support services may be provided without charge.

b. Employee welfare and recreation associations, commercial cafeteria operators, and/or commercial vending machine operators should be assessed charges for space at a rate equivalent to commercial rents for comparable property and services. Utility charges should be assessed, based either on separate metering or appropriate proration by space occupied or by other acceptable methods for prorations.

c. Space rental and/or utility charges may be waived or reduced upon written determination by the Contracting Officer that uninterrupted operation of the vending facility is essential to the efficiency of operations of the activity and a significant factor in hiring and retaining employees and promoting employee morale.

7. TERM OF CONTRACT. (This paragraph does not apply to permits issued to SLAs for the blind under the Randolph-Sheppard Act).

a. There is no statutory limitation for the term of a cafeteria contract in non-GSA activities. However, each contract will establish a definite period beyond which the contract and extensions will not be allowed to run.

b. The contract may permit termination by either of the contracting parties, without cause, after 90 days written notice to allow the parties ample time in which to prepare for the transition necessitated by termination.

8. BONDS. At the discretion of the Contracting Officer and if required by the solicitation, the operator may be required to furnish a performance bond to guarantee the faithful performance of his obligations under the contract. The performance bond, if required, will be of an amount determined by the Contracting Officer to be adequate to protect the Government's interest and will be furnished prior to commencement of operations of the facilities.

9. INSURANCE. All contracts will include the clause for contractor liability insurance.

10. HOURS OF SERVICE. Hours will be determined on a case-by-case basis by the Contracting Officer and the appropriate facility manager.

11. MONETARY RECEIPTS. Monies received by the Government from operators for space, utilities, and other services will be deposited into the U. S. Treasury as miscellaneous receipts, via the servicing Accounting Division.

12. AUDIT. The Contracting Officer should arrange periodic spot reviews and audits during the term of agreement.

13. JUSTIFICATION FOR EXEMPTION FROM BLIND VENDORS OPERATING FACILITIES. Facilities are subject to the exemptions stipulated in paragraph 16 (Exemption).

a. Blind persons licensed by a SLA for the blind will be given priority in the operation of vending facilities, including cafeterias, on FAA-controlled property.

b. When the location and/or operation of a blind vending facility would adversely affect the interests of the United States, a complete, written justification will be furnished to the Secretary of Education, who will make the final determination. Each determination will be a matter of public record by publication in the Federal Register.

c. The regulations governing this program (34 CFR Part 395) do not define "adversely affect the interests of the United States," because the Statute requires a case-by-case determination. If a regional or center director believes that the establishment of a blind vending facility would adversely affect the interests of the United States, he/she will make a written finding to that effect, with concurrence of regional or center legal counsel, and be addressed to the Secretary of Education.

14. ACQUISITION AND OCCUPATION OF FEDERAL PROPERTY. Any FAA acquired (purchased, rented, or leased), constructed, or substantially altered or renovated building is required to have one or more satisfactory sites for a blind-operated vending facility.

a. Substantial alteration or renovation is considered to be a permanent material change in the floor area of a building that would render it appropriate for the location and operation of a vending facility by a blind vendor.

b. "Satisfactory site" means an area fully accessible to vending facility patrons which has:

(1) A minimum of 250 square feet available for the vending and storage articles necessary for the operation of a vending facility; and

(2) Sufficient electrical, plumbing, heating, and ventilation outlets for the location and operation of vending facilities in accordance with applicable health laws and building codes.

15. OFFERING TO STATE LICENSING AGENCIES (SLA).

a. A service area, region or center will notify the appropriate SLA of buildings to be acquired or substantially altered or renovated. This notice (see Figure 2-2, for example notice) should be by certified or registered mail with return receipt requested. This notification will be provided at least 60 days in advance of the intended acquisition date or the initiation of actual construction, alteration, or renovation. As a practical matter, the SLA should be contacted early in the planning or design stage of a project. The notice will enable the SLA to determine if it wants a vending facility in the building and will:

(1) Indicate that a satisfactory site or sites for the location and operation of a blind vending facility is included in the plans for the building;

(2) Forward a copy of a single line drawing indicating the proposed location of such site or sites, and

(3) Assure the SLA that, subject to the approval of the FAA, it will be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to completion of the final space layout of the building.

b. Responsibility for notification rests with the COCO who will be the designated contact point for the SLA. A copy of the notice and response, if any, will be provided to the Division for Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education, Washington, DC 20202.

c. The SLA will be given the opportunity to visit the proposed vending facility site prior to preparation of the final space layout.

d. The SLA must respond within 30-days, acknowledging receipt of the notice from the FAA service area, region or center, and indicating whether it is interested in establishing a vending facility, and if interested, indicating its agreement or alternate selection of location and its selection of type of vending facility.

e. If no response is received within the 30-day period, the FAA service area, region or center will notify the Secretary of Education at the address in (b) above that the State licensing agency's failure to respond has been construed as a determination by the SLA that the number of persons using the property is or will be insufficient to support a vending facility and that a satisfactory site to be operated under the auspices of the SLA will not be incorporated, unless directed by the Secretary of Education. This notification will also be provided if the SLA responds and affirmatively indicates that it has made such a determination.

16. EXEMPTION.

a. The Secretary of Education has determined that the requirement to provide a satisfactory site, as stated in paragraph 15(a)(1) above, does not apply:

(1) When fewer than 100 Federal employees will be located in the building during normal working hours; or

(2) When a building in which services are to be provided to the general public contains less than 15,000 square feet to be used for Federal Government purposes; or

(3) When a service area, region or center is leasing all or part of a privately owned building in which the lessor or any of its tenants have an existing restaurant or other food facility in a part of the building not covered by the lease and operation of a vending facility would be in substantially direct competition with such restaurant or other food operation; or

(4) When the SLA and the Secretary of Education determine that the number of persons using the Federal property is or will be insufficient to support a vending facility; or

(5) When there is an existing vending facility on the Federal property that is not covered by contract with, or by permits issued to SLAs. However, the SLA must be notified of the expiration of the existing contract or permit.

17. COLLECTION AND DISTRIBUTION OF VENDING MACHINE INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY.

a. Definitions. The following terms, as defined in 34 CFR 395.1, are unique to this program and require special attention.

(1) Vending machine. For the purpose of assigning vending machine income, a vending machine is a coin (or currency) operated machine which dispenses those articles and services that are sold in blind-operated vending facilities. The machine operated by the United States Postal Service for selling postage stamps or other postal products and services, machines

providing services of a recreational nature, and telephones will not be considered vending machines.

NOTE: The income from copy machines is to be made available for distribution to blind vendors in those cases where in the past such machines have been available within vending facilities operated by blind vendors.

(2) Vending machine income means receipts remaining to vending machine operators after deducting either:

(a) All applicable costs incurred (costs of goods, service maintenance, repair, cleaning, depreciation, supervisory and administrative personnel, normal accounting, accounting for income sharing and so forth); or

(b) Monies paid to the FAA or an employee welfare and recreation association by a commercial vending firm.

This definition applies to machines operated, serviced, or maintained on Federal property by, or with the approval of the FAA. It also applies to a commercial vending concern which operates, services, and maintains vending machines on FAA property for, or with the approval of the FAA. Receipts do not include a blind vendor's receipts. Commissions paid do not include those paid to a blind vendor.

(3) Direct competition means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor. Vending machines or vending facilities operated in areas where the majority of the employees normally do not have direct access (in terms of interrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor must not be considered in direct competition with that vending facility.

(4) Normal working hours means an eight-hour work period between the hours (approximately) of 8:00 a.m. - 6:00 p.m., Monday through Friday.

(5) Individual location, installation or facility means a single building or a self-contained group of buildings. A self-contained group of buildings is two or more buildings in close proximity to each other between which a majority of Federal employees working in the buildings regularly move from one building to another in the normal course of their official business during a normal working day.

b. Mandatory Distribution Requirements.

(1) Pursuant to 34 CFR 395.32, vending machine income, from vending machines on FAA-controlled property is required to be distributed to SLA. Distribution is made according to a formula which distinguishes situations in which the vending machine is in direct competition with a vending facility operated by a blind vendor from one that does not exist, the distribution formula further distinguishes between buildings which are open only during normal work hours from those which are open during non-normal work hours.

(2) Summary of distribution formula:

(a) One hundred percent of the vending machine income from a vending machine in "direct competition" with blind-operated vending facilities will be disbursed to the appropriate SLA.

(b) Fifty percent of the vending machine income from vending machines not in "direct competition: with blind-operated vending facilities will be disbursed to the appropriate SLA.

(c) Thirty percent of the vending machine income from vending machines, not in "direct competition" with blind-operated vending facilities and located in a building where at least 50 percent of the total work hours worked on the premises occurs during other than normal working hours," will be disbursed to the appropriate SLA.

c. Exemptions.

(1) The mandatory distribution requirements do not apply if vending machines are not in "direct competition" with a blind vending facility, and the total vending machine income from all such machines at any "individual location, installation, or facility" does not exceed $3,000.00 annually.

(2) The mandatory distribution requirements do not apply to existing arrangements under which the SLA receives a percentage of vending machine commissions less than that specified above, so long as the arrangement is covered by a contract with a specified expiration date, and upon expiration the contract is renegotiated according to the distribution formula.

(3) All arrangements pertaining to the operation of vending machines on Federal property not covered by contract with, or by permits issued to, SLA agencies must be renegotiated upon expiration of the existing contract or other arrangement to conform with the requirements of this guidance.

d. Responsibility. The COCO, or their designated representative, will be responsible for:

(1) Assuring that vending machine income is collected and accounted for. Under no circumstances, will the FAA become involved in the actual physical collection of vending machine income.

(2) Assuring that vending machine income is disbursed by the operator to the SLA quarterly on a calendar year basis. The operator must provide the COCO, or their designated representative, with a quarterly certified statement showing that such action has been taken.

The first payment of income must be made at the end of the first full quarter following the effective date of this directive.

(3) Determining, subject to the approval of the regional or center director, when a vending machine is in "direct competition" with a blind vending facility. A determination that a vending machine is not in "direct competition" with a blind vending facility must be also subject to concurrence of the SLA. In the event of a disagreement between the FAA service area, region or center and the SLA in the determination of whether a situation of direct competition exists, the disagreement should be resolved informally through negotiations between the FAA service area, region or center and the SLA. If the negotiations do not resolve the disagreement, the matter would be appropriate for submittal to arbitration.

18. APPLICATION FOR SLA PERMIT. (See paragraph 20(a) for definition of Cafeteria)

a. This paragraph prescribes procedures for submission, review, and approval of permits for the establishment of vending facilities, other than cafeterias, on FAA-controlled property. The provisions of this paragraph and 34 CFR 395.35 will be complied with in establishing a vending facility.

b. Authorization. In accordance with 34 CFR 395.34, the SLA will submit the Department of Education form, Application and Permit for the Establishment of a Vending Facility on Federal and Other Property (see Figure 2-3), for review and approval by the COCO, or their designated representative.

c. Review of the permit. Upon receipt of a permit, COCO, or their designated representative, will:

(1) Discuss all details of the permit with the SLA in order to develop a full and clear understanding of the type of facility proposed, the nature of the items to be sold, provisions for fixtures and equipment, the hours of operation, and etc.

(2) Compare the type of facility to be provided, and types of articles and services to be sold with the requirements as determined by FAA. Any discrepancies should be discussed and resolved with the SLA.

(3) Ensure that no new vending facility exists in their space without a permit in place.

(4) Require ATO Technical Operations (ATO-W) engineers developing or substantially changing a large staffed facility (such as ATCT, ARTCC, etc.) and/or facility managers to submit written requests for establishment of new vending facilities to the COCO for approval. The COCO would make determination for Randolph-Sheppard applicability, and approve or deny establishment of a vending facility based on the criteria provided. See the Randolph-Sheppard Act for the difference between cafeteria and snack bar as provided by this statute.

(5) Add the following clause to the permit if the SLA requests approval to prepare and sell brewed coffee and/or food items:

"Approval for the preparation and serving of brewed coffee and/or food items is subject to certification by the State licensing agency that the blind vendor is capable of performing these tasks in a safe and sanitary manner, in accordance with all applicable health, sanitation and building codes or ordinances, or that a sighted assistant will be employed to perform these tasks."

19. TERMS OF THE PERMIT.

a. The permit will be issued in the name of the applicant SLA.

b. The permit will be issued for an indefinite period of time, subject to suspension or termination if either party does not comply with any of the terms and conditions of the permit.

c. The permit will provide that:

(1) No charge will be made by the FAA to the SLA for normal maintenance and repair of the building, or for cleaning areas adjacent to the designated vending facility boundaries, or for trash removal from a designated collection point.

(2) The SLA will be responsible for cleaning and maintaining the appearance of and for the security of the vending facility within the designated boundaries of such facility and for all costs of every kind in conjunction with vending facility equipment, merchandise and other products to be sold except as provided in (5) below. SLA will be liable for the loss of, or damage to, property of the U. S. Government when such loss or damage is caused by the acts or omissions of SLA, the blind vendor or the employees or agents of the blind vendor. The SLA will also be responsible for the acts or omissions of the blind vendor, his employee or agents.

(3) Articles sold at such vending facilities may consist of newspapers, periodicals, publications, confections, tobacco products, foods, nonalcoholic beverages, or other articles or services which are determined by the SLA, in consultation with the COCO, or their designated representative, to be suitable for a particular location.

(4) Vending facilities will be operated in accordance with applicable health, sanitation and building codes, ordinances and regulations.

(5) Installation, modification, relocation, removal, and renovation of vending facilities will be subject to the prior approval of the COCO, or their designated representative, and the SLA. Costs of installation, modification, removal, relocation or renovation will be paid by the initiating party. In any case of suspension or termination for noncompliance by either party, the costs of removal from the building will be paid by the non-complying party.

(6) The permit to the SLA will also contain, if applicable, appropriate requirements for reimbursement or direct payment for support services such as utilities and telephone service.

d. If the blind licensee fails to provide satisfactory service or otherwise fails, to comply with the requirements of the permit issued to the SLA, the COCO, or their designated representative, will coordinate with legal counsel and then notify the SLA of the deficiency in writing and request corrective action within a specified reasonable time. The notice will indicate that failure to correct the deficiency will result in temporary suspension or termination of the permit, as appropriate. Any actual suspension or termination action will not be taken without prior coordination with Region or Center legal counsel.

e. FAA and SLA may terminate the permit by mutual agreement after providing ninety (90) day notice to the other party of the intended termination, including the reason therefor and supporting documentation.

f. Upon approval of the permit by the COCO, or their designated representative, two copies of the approved permit must be forwarded to the SLA. The original permit will be retained in the region or center.

20. OPERATION OF CAFETERIAS BY BLIND VENDORS.

a. Definition. "Cafeteria" means a food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria. Table or booth seating facilities are always provided.

b. Priority afforded blind vendors. A priority will be afforded blind vendors in operated cafeterias. This priority may be afforded by the following methods pursuant to 34 CFR 395.33.

(1) FAA may initially decide to competitively negotiate the cafeteria contract and invite the SLA to respond to the solicitation. The SLA's proposal will be evaluated in the same manner as that of all other offerors. If the proposal is likely to be considered for award by the Contracting Officer, the Secretary of Education will be consulted as required by 34 CFR 395.33 (a) to determine whether award to the SLA is proper.

(2) The Contracting Officer may award to other than the SLA when the FAA believes that award to the SLA would adversely affect the interests of the United States and the Secretary of Education has agreed and issued a final determination to that effect. The Contracting Officer may also award to other than the SLA if the Regional Administrator or Center Director determines and the Secretary of Education agrees that the blind vendor does not have the capacity to operate a cafeteria in such a manner as to provide food service at a comparable cost and of comparable high quality as that available from other providers of cafeteria services.

(3) If the SLA submits a proposal and it is not likely to be considered for award by the Contracting Officer, award may be made to another offeror following normal best value acquisition procurement procedures, but only after consultations between the COCO, or their designated representative, and Region or Center legal counsel.

(4) FAA service areas, regions and centers may enter into direct negotiations with the SLA to determine whether the SLA is capable of operating the cafeteria in a manner comparable to-operation by a commercial food service operator. If it is determined that the SLA has the capability and can operate the cafeteria at a reasonable cost with food of high quality, a contract will be awarded to the solicitation. If the negotiations do not result in a contract awarded to the SLA, the cafeteria contract will be placed by competitively negotiation and the SLA will be invited to respond to the solicitation. Direct negotiations with the SLA should be conducted at an early stage so that the cafeteria contract can be competitively negotiated and awarded in a timely manner if negotiations with the SLA fail.

c. Terms of contract.

(1) The operation of a cafeteria by a blind vendor will be covered by a contractual agreement and not by a permit.

(2) The SLA will be expected to perform under contractual arrangements, applicable to commercial cafeteria operators. These may include, but are not limited to, the following:

(a) Submission of detailed quarterly income statements (see Figure 2-1).

(b) Provision of all necessary supplemental cafeteria equipment and utensils.

(c) Performance of preventive maintenance on all Government-owned equipment.

(d) Compliance with all applicable health, sanitation, and building codes or ordinances.

(3) Termination actions will not be taken without prior coordination with regional or center legal counsel.

(4) All contracts for the operation of cafeterias on FAA-controlled property with other than SLA's will, upon expiration, be processed under section 13, unless the State licensing agency informs the FAA that it is not prepared to exercise its priority at that time.

21. ARBITRATION OF STATE LICENSING AGENCY COMPLAINTS.

a. If the SLA alleges that the FAA is in violation of the Randolph-Sheppard Act as amended or Department of Education regulations, and the matter cannot be resolved informally, the SLA may file a complaint with the Secretary of Education to seek arbitration of the matter. The procedures for administering SLA complaints and conducting arbitration hearings will be pursuant to 34 CFR 395.37 and the Department of Education "Revised Interim Policies and Procedures for Convening and Conducting an Arbitration pursuant to Sections 5 (b) and 6 of the Randolph-Sheppard Act as Amended.

b. When it has been determined that an arbitration panel will be convened, unless directed otherwise, the appropriate regional or center director will appoint one FAA employee to serve as a panel member. In addition, a regional or center attorney will represent the FAA before the panel.

c. The Secretary of Education will pay all reasonable costs of arbitration.

22. EMPLOYEE WELFARE AND RECREATION ASSOCIATIONS AUTHORITY. The FAA may negotiate a vending facility agreement solely with an employee welfare and recreational association if: (a) the SLA is not interested in establishing a vending facility, (b) there are no acceptable SEDB firms available to perform the services, and (c) after solicitation of commercial concerns which might be interested in the vending facility, all proposals received are unacceptable and not susceptible to upgrading through further negotiations.

23. DETERMINATION AND FINDING. A written determination which justifies negotiations with an employee welfare and recreation association by the Contracting Officer must be approved by the COCO, or their designated representative, and placed in the contract file.

24. PREREQUISITES. Negotiations with an employee association will be based upon the following prerequisites:

a. The association must conduct a continuing, self-supporting operation with sales prices within the means of the employees at the facility.

b. See paragraph 6b for the FAA policy concerning space rental and utility charges to be assessed employee welfare and recreation associations.

c. Prior to commencement of negotiation with an employee association, the association will furnish the Contracting Officer a copy of its constitution and bylaws.

d. Any services rendered by the officers or members of the association in connection with the vending facility operation will be without remuneration of any kind.

e. Vending machine income will be distributed to the SLA in accordance with the criteria set forth in Paragraph 17.

f. Any remaining income derived from the vending facility operation will be used for the benefit of the employee association's welfare activities.

g. An agreement will be entered into between the association and the Contracting Officer, which provides for all of the aforementioned prerequisites and contains a commitment from the employee association that it will comply with the applicable provisions of this guidance. The agreement should be in format acceptable to both parties and concurred with by Government counsel prior to submission to the association and prior to execution by the Government.

25. TYPES OF CONTRACT (see Figure 2-4, Sample Contract).

a. Contracts may be of the following types, dependent on the nature of the operation and what is in the best interest of the Government.

(1) Percentage of gross receipts. This type of contract provides that revenues to the Government will be computed at a fixed percentage of the operator's gross receipts received during a specified period of time. It may also provide for a price adjustment clause to be included which provides that revenues to the Government will be computed at predetermined percentages (upward or downward) for various levels of gross revenues received during a specified period of time.

(2) Fixed sums of money per month or other specified period. This type of contract provides for a reasonable fixed sum for depreciation of Government-owned equipment and charges for building services such as space rental, utilities and cleaning in the vending facility area.

(3) A combination of (1) and (2) above.

b. Contracting Officers, if circumstances so warrant, may utilize other methods of determining return to the Government, provided that the method is fair and reasonable.

c. The factual basis for determining the return to the Government will be included in the contract file.

d. The type of contract contemplated will be clearly set forth in the solicitation which will not, however, bind the Government absolutely to that contract type.

e. Revocable permits may be used for the operation of vending facilities other than cafeterias. The permit will set forth:

(1) Location;

(2) Amount of space necessary for the operation of the vending facility;

(3) Type of facility and equipment; and

(4) Number, location and type of vending machines and other terms and conditions to be included in the permit

26. REQUEST FOR OFFERS.

a. Requests for offers will contain all information necessary to enable a prospective offeror to prepare his proposal. The following elements should be included:

(1) Location and type of facility, including types and number of vending machines required. Specify the items permitted to be sold in the vending machines.

(2) Days and hours of service.

(3) Estimated average number of persons to be employed on each shift.

(4) Terms of contract, including any options.

(5) Description of operational and storage space available for the operation, including ingress and egress restrictions and security requirements, include applicable drawings.

(6) Scope of proposed activity, standards of quality to be expected, pricing policies, and minimum menu requirements.

(7) Statement of condition of premises, scope of utilities to be provided by the FAA, listing of Government and operator furnished equipment.

(8) Manner and types of payments required by the Government, bonding and insurance requirements, if any, and accounting statements required to be submitted to the Government.

(9) Garbage disposal and cleaning requirements.

(10) Statement that the contractor must comply with all applicable health, sanitation and building codes of ordinances.

(11) Gross receipts from the activity for the current and past 3 years, and

(12) Any other information deemed necessary by the Contracting Office to assure complete understanding of requirements.

b. Factors other than price that will be given consideration in evaluation proposals will be included in the SIR.

c. The following is a suggested list of evaluation criteria which may be used:

(1) Understanding of requirements.

(2) Approach to performance of contract

(3) Management.

(4) Experience in providing food services at offices or industrial building comparable to those described in the proposed contract.

(5) Past compliance with all applicable health, sanitation and building codes or ordinances.

(6) Level of proposed staffing, including manager and supervisors.

(7) Menu pricing, portion sizes and variety based on cyclical menus.

(8) Adequacy of accounting and inventory systems and procedures.

Figure 2-1. INCOME STATEMENT

PERIOD FROM ________ TO
DATE DATE

SALES Food
Vending Machines
TOTAL INCOME FROM SALES

COST OF GOODS SOLD
Inventory
Purchases Total
Inventory
TOTAL COST OF GOODS SOLD

GROSS PROFIT

Less: OVERHEAD
Accounting & Legal
Depreciation
Interest & Penalties
Laundry Miscellaneous
Payroll Taxes
Other Taxes- Unempl.Tax
Sales Tax

Repair & Maintenance
Rent
Salaries
Supplies - Office
Cleaning
Kitchen
Telephone
TOTAL OVERHEAD

NET INCOME, (LOSS) FROM OPERATIONS

Less: Bad Debt

NET INCOME, (LOSS)

Payments must be mailed in accordance with the provisions of the contract
Amount Due Federal Aviation Administration Paid by Check No. _________in the amount of

____

Figure 2-2. NOTICE OF THE FEDERAL AVIATION ADMINISTRATION' S

INTENTION TO ACQUIRE OR OTHERWISE OCCUPY A BUILDING

NOTICE NO. ______________________ DATE ________________

This is to inform you that not less than 60 days from the date hereof, the Federal Aviation Administration, ____________________(address) __________intends to acquire or otherwise Occupy square feet of space in which Federal Government employees are or will be located during normal working hours, in ____________.
(If this is a lease action, just insert city and state.)

Accordingly, as provided by the Randolph-Sheppard Act (20 USC 107 et. seq.) and regulations issued pursuant thereto, notice in hereby given that a satisfactory site or sites for the location and operation of a vending facility by a blind vendor is included in the plans for the building to be acquired or otherwise occupied. Receipt of this notice will be acknowledged in writing promptly but no later than within 30 days form the date of receipt. Indication will be made at that time whether you are interested in establishing a vending facility. We assure you that, in the event we receive written advice of your interest in establishing a vending facility, you will be afforded the opportunity to determine the suitability of the proposed site or sites. We further assure you that, subject to the approval of this agency, you will be given the opportunity to select the location and type of vending facility to be operated by a blind vendor. An opportunity to make your determination and selection, as indicated above, will be offered to you prior to the completion of the final space layout but no later than ____________date . Your prompt attention to this matter will be appreciated.

______________________________ __________________
Signer's Name (Type or Print) Signature

CHECK APPROPRIATE BOX

☐ We are interested in establishing a vending facility in connection with the proposed acquisition.

☐ We are not interested in establishing a vending facility in connection with the proposed acquisition, because in our estimation, the operation would not be feasible. Therefore, we waive our priority right to a satisfactory site in this building pursuant to 34 CFR 395.31 (d).

Receipt of Notice No. is hereby acknowledged.

_________________________________ _________________
Approval Official (Type or Print) Signature

______________________ __________________

Title (Type or Print) Date

Complete this form and return the Original to the Federal Aviation Administration, (regional or center address)

____

and one copy to the Division for the Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education, Washington, DC 20201. Retain one copy for your records.

Figure 2-3. DEPARTMENT OF EDUCATION APPLICATION FOR PERMIT

DEPARTMENT OF EDUCATION OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

WASHINGTON, DC

APPLICATION AND PERMIT FOR THE ESTABLISHMENT OF A VENDING FACILITY ON FEDERAL AND OTHER PROPERTY AS AUTHORlZED BY P.L. 74-732, AS AMENDED BY P.L. 83-565 AND TITLE II OF P.L. 93-516 (RANDOLPH-SHEPPARD ACT)

The ____________(designated State Licensing Agency) of the State of ___________requests approval of __________(Federal or other property Agency/Owner) to place a vending facility on the property located ________________.

SATISFACTORY SITE: __________________________

It has been determined that this location meets the criteria of a satisfactory site as defined in 34 CFR 395.1 (q).

TYPE, LOCATION AND SIZE OF FACILITY: Type of facility:______________________

Facility location _____________. The facility will operate days of the week from ________a.m. to ___________p.m. commencing on ___________.

MACHINE INCOME SHARING: Both parties will comply with 34 CFR 395.35. This permit will be issued for an indefinite period of time subject to suspension or termination on the basis of noncompliance by either party with any of the agreed upon terms and conditions of the permit. By mutual agreement the State licensing agency and the FAA may terminate the permit after providing notice of the intended termination, including the reason therefore and supporting documentation to the other part. Both parties will comply with all regulations issued in Title VI of the Civil Rights Act of 1964. Reason for denial of the application will be set forth in writing to the State.

Approving FAA Official	Approving Licensing Agency
Title Date	Title Date

Figure 2-4. SAMPLE CONTRACT.

1. GENERAL. The following clauses are suggested for use in vending facility contracts. It is intended that use of these suggested clauses will distinguish vending facility contracts, in which revenue accrues to the Government, from other contracting procedures which involve the expenditure of Government funds, while adhering to generally accepted business standards and practices.

2. DEFINITIONS.

a. The term "Secretary" means the Secretary of Transportation and the term "head of the agency" means the Administrator, Federal Aviation Administration. The term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

b. The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated contracting officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his written authority

c. The words "Contractor," and "Operator" will be considered to be synonymous, as are the words "contract and "agreement."

d. "Operating Facilities" means furniture, furnishings, special lighting fixtures, draperies, decorations, decorating or other special finishing work, signs, appliances, and trade fixtures, etc., furnished and installed or used by the Operator in its operations at the facility.

e. "Gross Receipts" means the total amount received, realized by or accruing to the Operator from all sales, for cash or credit, of services, materials or other merchandise, made pursuant to the privileges authorized by this contract rendered at or from the of determination of the amount due the Operator for each transaction, whether for cash or credit, and not at the time of billing or payment, unless otherwise specifically stated in this contract; provided, however, that any taxes imposed by law which are separately stated and paid by the customer, and directly payable to the taxing authority by the Operator, will be excluded from gross receipts.

3. ASSIGNMENT. No sublease, transfer, subcontract, or assignment of any part hereof or

interest herein, directly or indirectly voluntarily or involuntarily, will be made by the Operator of this contract, unless such sublease, transfer, subcontract or assignment is first approved in writing by the Contracting Officer and is subject to whatever limitations the Government may wish to apply; provided, however, that the Operator may, if specified elsewhere in this contract, install or use equipment or other operating facilities which are owned by others and leased to the Operator for its use under this contract.

4. GOVERNMENT-OPERATOR RELATI0NSHIP. Nothing in this contract will be construed as in any way creating or establishing a partnership relationship between the parties hereto or as constituting the Operator as an agent or representative of the Government for any purpose or in any manner whatsoever.

5. FEDERAL, STATE, AND LOCAL LAW. The Operator will, at its own cost and expense: (a) comply with all Federal, State and local laws, including but not limited to county and local ordinances, rules or regulations now or hereafter in force, which are applicable to the operation of its vending facility; (b) obtain and pay for all necessary licenses and permits; (c) pay all fees and charges assessed under Federal, State and local law insofar as they are applicable to its vending facility.

6. TERMINATION.

a. Either party may terminate this contract without cause by giving the other party written notice of its intention to do so. Other than a termination by the government in the interests of the National Defense, any such notice of termination will be given at least ninety (90) days in advance of the effective date of termination.

b. The Contracting Officer may, by written notice to the Operator, terminate this contract. in whole or in part, for default upon the happening of any of the following events:

(1) Filing by, or the final adjudication against, the Operator of any petition in bankruptcy, or the making of any transfer or assignment for the benefit of creditors, which transfer or assignment has not been authorized previously by the Government.

(2) The abandonment of the vending facility or discontinuance thereof Should this occur, the Government will not be responsible for the protection of the Operator's merchandise, fixtures, supplies or equipment, and may remove same from the premises for storage or disposal.

(3) The failure of the Operator to perform or observe any of the terms, covenants or conditions of the contract, after the expiration of any period of warning or notice given by the Contracting Officer to the operator concerning such failure.

c. The Government' s termination of this contract for default will be deemed to be a decision of the Contracting Officer as to a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

d. In the event this contract is terminated for default, the Government may retain as liquidated damages any monies which have been prepaid or advanced to the Government, based on occupancy to the end of the contract period.

e. In the event of termination in accordance with paragraph a. clause 5, the Operator will be entitled to have any monies that have been prepaid or advanced to the Government based on occupancy of the premises to the end of the contract period refunded to it by the Government.

f. If after notice of termination for default of this contract under this Clause, it is determined for any reason that the Operator was not at fault under this Clause, or that the default was excusable under this clause, the termination will be deemed to have been properly effected pursuant to paragraph a. of his Clause.

7. WAIVER OF PERFORMANCE. The failure of the Government to insist in any one or more instances upon a strict performance by the Operator of any of the terms of this contract will not be construed as a waiver or relinquishment thereof for the future, but rather, said terms will continue and remain in full force and effect. No waiver by the Government of any terms hereof will be deemed to have been made in any instance unless specifically expressed in writing as an amendment to this contract.

8. WORK STOPPAGE OR STRIKE. Except as a result of damage to or destruction of the premises by fire or other casualty, in the event operation of the Operator are curtailed, interrupted, or otherwise handicapped in whole or in part for any reason, including but not limited to strikes and labor disputes, such conditions will not relieve the Operator of its obligation to pay the revenue specified in this contract nor to pay for utilities consumed under such conditions, unless and except as otherwise specifically provided for elsewhere in this contract.

9. FAIR LABOR STANDARDS ACT. (Public Law 93A259, enacted April 8,1974, amends the Fair Labor Standards Act of 1937, as amended (29 U.S.C. 201 et seq.).) The administration and enforcement of this Act are the responsibility of the U. S. Department of Labor; any questions as to the requirements of the Act or its applicability to the work required by this contract should be addressed to the Administrator, Wage and Hour Division, U. S. Department of Labor, Washington, DC. 20210 or to a Labor Department Regional Office.

10. SECURITY. The Operator and each of his employee engaged in work under this contract will execute and submit to the Federal Aviation Administration a Standard Form FDA258, (3 copies), and Standard Form 86, (1 copy). The executed forms will be furnished to the Contracting Officer's Representative (COR) not later than the first day Operator' s employees report to the facility to perform services under this contract. Personnel of the Operator will not be allowed to perform services under this contract until the Contracting Officer has received the appropriate forms. The necessary forms will be furnished to the Operator by the COR.

Personnel of the Operator who have previously submitted Standard Forms 86 and FDA258 for work under other: Federal Aviation Administration contracts need not submit new forms if they have been continuously employed at the same FAA facility since the original submission of the forms.

All personnel of the Operator, who are cleared for security purposes will be allowed to continue to perform work under the contract; any individual who is not so cleared may not be employed by the Operator under this contract.

11. FACILITY RULES AND REGULATIONS. The Operator will observe and obey all rules, regulations, and implementations thereof promulgated as authorized by law for the care, operation, maintenance and protection of the facility, which rules, regulations and implementations thereof would be applicable and valid irrespective of this clause. Failure of the Operator, any of those persons under its control or its subcontractors to observe such rules, regulations or implementations will, in addition to assessment of any other penalty provided by law, because for termination of this contract for default.

12. RESTRICTIONS.

a. Unless specifically authorized in writing by the Contracting Officer, the Operator will not remove any Government-owned equipment from premises, advertise the concession operations in any manner, or prepare foods and beverages on the premises for sale at any location not covered by the contract.

b. Since the facilities to be provided hereunder are for the benefit and convenience of Federal employees, patronage from other sources that interfere with such purposes may be limited or prohibited by the Government at is sole discretion.

13. PROMOTION. The Operator agrees to use its best efforts in every proper manner to maintain and develop the business conducted by it under this contract, to increase same, and not to divert or cause or allow any business to be diverted form the facility.

14. SANITATION.

a. All cafeteria operating under the contract will be conducted in conformance with the requirements for a Grade A food establishment, as set forth in the Food Service Sanitation Manual No. FDA-78-2081, of the Food and Drug Administration (GPO Stock No. 017-012-00267-6) (or revision thereof), or in conformance with local requirements for a top-grade establishment, if the latter should be more stringent, provided, however, that the Operator will not be responsible for any structural deficiencies in the facility which are the responsibility of the Government.

b. Each food handler will be required to pass a medical examination annually or as may be required by applicable local regulations, whichever requirement is more stringent, to determine that he has no communicable disease. Those found to be or suspected of suffering from a communicable disease will be removed from duty immediately.

c. Food handlers will not be permitted to operate the cash register or handle money nor will any person operating the cash register or handling money be permitted to handle food.

15. INSPECTIONS

a. Health. The facility operated under the contract may be inspected periodically by the Contracting Officer, representatives of local health departments, or the Regional Flight Surgeon. After each inspection, the Operator will be advised of any unsatisfactory conditions for which he is responsible. Deficiencies reported will be corrected promptly by the Operator.

b. Fire Prevention. Periodic inspections will be performed by a FAA-appointed fire inspector; any unsafe conditions found by such official will be immediately corrected by the Operator.

c. Industrial Safety. Periodic inspections will be performed by an FAA-appointed Safety Officer; any unsafe conditions found by such official will be immediately corrected by the operator

16. ESTABLISHMENT AND CONTROL OF PRICES AND SERVICES.

a. The Contracting Officer reserves the right to control the nature, types, and quantities of merchandise and services which may be sold or furnished by the Operator If the Operator refuses or fails within forty-eight (48) hours after receipt of written notice form the Contracting Officer to discontinue the sale of any product or service which the Contracting Officer determines to be in violation of the rights granted hereunder or which the Contract Officer determines should not be dispensed, or if the Contracting Officer is forced to make repeated and frequent demands upon the Operator to cease the sale of such products or services, such refusal, failure or demands will be cause for termination for default of this contract.

b. The Operator will maintain and operate the vending facility to such extent and in such manner as provided in the contract, sell the articles and services authorized, and provide the management, personnel, equipment, goods and commodities necessary therefore.

c. All rates and prices established by the Operator for goods or services sold hereunder will be reasonable and subject to approval by the Contracting Officer.

d. Reasonableness of prices will be judged primarily by comparison with those currently charged for comparable goods or services furnished or sold outside the facility under similar conditions, with due allowance for accessibility, hours and time of operation, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given other factors as the Contracting Officer may dream significant.

e. Only quality foods, such as Grade A poultry, U. S. Choice grades of beef U.S. No.1 grade pork, Grade A or fancy vegetables, and Grade A or B canned goods may be used. All foods served will be wholesome and free from spoilage and decay. Uncooked items, such as fresh fruits will be clean and free from blemish. Salads and sandwiches will be made fresh daily and all foods, will, when served, be attractive in appearance at the proper temperature, and moist, dry, tender, etc., as appropriate.

f. Prices will be posted by the Operator, preferably adjacent to the item.

17. RESPONSIBILITIES OF THE GOVERNMENT. The Government will provide space for operation of the vending facility and such additional space as it may deem necessary including a reasonable use of existing elevators, corridors, passageways, driveways, and loading platforms. The Government will, as it deems necessary provide lighting, ventilation, and the utilities required for the operation of the vending facility. In addition, the Government will:

a. Make such improvements and alterations as it may deem necessary or desirable to prepare or recondition assigned space for its intended purpose, including improvements and alterations necessary to conform to applicable health and sanitary requirements.

b. Maintain and repair the following: (i) the building structure in areas assigned, for the Operator's use, including painting and redecoration; (ii) gas, water, steam. sewer, and electrical lines, ventilation, and existing air conditioning lines, all to the point of connection with food service equipment or to the point of outlet in vending facility areas if not so connected; (iii) electrical lighting fixtures (including relamping); space heating systems, floors and floor coverings (except rugs and carpets) and wall and ceiling; provided that Operator will bear the expense of all repairs necessary because of damage caused by the fault or negligence of the Operator or any of his employees.

18. RESPONSIBILITES OF TO OPERATOR.

a. The Operator will provide prompt, efficient, and courteous service. He will obtain licenses and permits as required by State and local authorities, and will observe all applicable building, health, sanitary, and other regulations and laws. He will use reasonable care in the use of space and Government-owned equipment, and, upon contract termination, will yield up such space and equipment in the same condition as when received, except for ordinary wear and tear and damage or destruction beyond his control and not due to his fault or negligence.

b. The Operator will maintain an effective program for the extermination of rodents and vermin in areas assign›d for his use. Although the Government will provide cleaning of the dining area floors and waxing of the floor as specified in the contract, the Operator will provide necessary intermittent cleaning of the dining area floors between the cleanings provided by the Government. All cleaning and mopping of the area behind the counter and all kitchen and storage areas, as specified herein, will be done by the Operator.

c. The Operator will employ sufficient and suitable personnel, secure and maintain insurance, and observe other contract requirements? all as more specifically set forth hereinafter. Except as otherwise stated herein, he will pay each and every fee, cost, or other charge incident to, or resulting from operations under the contract.

19. EMPLOYEE OF OPERATOR.

a. The Operator will employ a full-time qualified manager during the hours of _____________ days a week. In addition, the Operator will employ _________ full-time working supervisors during each shift, ________a day, and _______days a week or a representative of the Operator at times other than

those specified here. If the above supervisors, will visit the facility monthly for general supervisory purposes at times agreed upon by the Contracting Officer and the Operator. Upon 4~8 hours advance notice from the Contracting Officer a representative of executive status will visit the facilities to adjust matters requiring attention.
b. The Government may require the Operator to remove from the contract operations any employee who is considered incompetent, careless, insubordinate, unsuitable or otherwise objectionable or whose continued employment is considered contrary to the public interest by the Contracting Off1cer.

c. The operator will require its employee to wear a uniform and badge by which they may be known and distinguished as the employees of said Operator. Uniforms will be clean. Hairnets, headbands or caps must be used by employees engaged in the preparation and serving of food to keep hair from food contact surfaces. The Operator will provide his employees with frequent changes of uniforms to assure cleanliness.

d. The Operator will require its employees to observe a strict impartiality as to quantities and services and in all circumstances to exercise courtesy and considerations in dealing with vending facility patrons. Serving utensils will be used by the Operator's employees to keep direct handling of food to a minimum.

e. Employees of the Operator hall not smoke or carry lighted cigarettes or tobacco products in the food preparation or serving area.

f. Each employee of the Operator will be a citizen of the United States of America or an alien who has been lawfully admitted for permanent residence, as evidenced by an Alien Registration Receipt Card, Form 1-151, or other evidence from the Immigration and Naturalization service that employment will not affect his immigration status.

g. The Operator will employ a full-time, on-site manager who possesses the necessary qualifications to supervise the establishment effectively. The on-site manager will have previously had, as a minimum, two years of consecutive employment in a position with comparable responsibilities. The proposed manager's qualifications (resume) will be subject to the approval of the Contracting Officer. No one other than the person approved by the Contracting Officer will be assigned to manage the vending facility. These provisions also apply to any replacement of the manager.

h. The Operator' s manager will be delegated the authority essential to the day-to-day effective operation of the cafeteria for personnel supervision and training, menu planning, purchasing, cost control, sanitation, etc. The Operator's manager will be replaced on 30 days notice upon request of the Contracting Officer if he determines there are operational deficiencies resulting from inferior management.

i. The Operator will at all times provide an adequate staff of food service employees to perform the varied and essential duties, inherent in a successful food service operation. Except as otherwise provided in this contract, staffing will be provided as submitted in the Operator's proposal and any changes are subject to approval of the Contracting Officer.

j. The Operator will pay all employees not less frequently than once every tow weeks, without deduction or rebate on any account, except as provided or allowed by law.

k. The Operator will provide adequate, trained relief personnel to substitute for its regular employees when they are absent so that a high quality concession service will be maintained at all time.

l. The Operator will require its employees to comply with such instructions pertaining to conduct and building regulations as are in effect for the control of persons in the building or as may be issued for that purpose by Government representatives.

m. The Operator will schedule an employee-training program that will continue for the duration of this contract and any extensions thereof to insure that its employees perform their jobs with highest standards of efficiency and sanitation

n. All articles found by the Operator, its agents or employees or found by patrons and given to the Operator, will be turned in to the Government as lost-and-found items.

o. Violations of the foregoing responsibilities may result in termination of the Contract

20. PAYMENT TO THE GOVERNMENT.

a. Payment of $ ________ to the Government will be made monthly, in accordance with the provisions of the contract. Payments will be made not later than the day of each calendar month.

b. All payments will be mailed to the Chief, Accounting Division, located at ______________.

Checks will be made payable to the Federal Aviation Administration and will reference the contract number, period of time covered, and facility served.

21. EQUIPMENT.

a. Equipment to be provided by the Government. The Government will proved and the Operator may cause the equipment listed herein. The Government will also:

> (1) furnish and install replacement equipment when it determines that the original equipment is worn out or beyond economical repair; and
>
> (2) furnish and install such additional equipment of a similar type which it may deem necessary in connection with an expansion of these services, should any expansion be required.

b. Title to all Government furnished equipment will remain in the Government. No Government furnished equipment will be removed from the premises for any purposes except by the Government or with the prior approval of the COR. The Operator will acknowledge receipt of all Government-owned equipment in writing.

c. Minor repairs to Government Furnished Equipment. Throughout the contract period or any extension thereof the Operator will maintain, adjust, and repair the Government furnished equipment provided for his use in a manner satisfactory to the COR; provided, that the responsibility of the Operator for repairs to Government furnished cafeteria equipment will be limited to repairs made at one time which cost less then 10% of the original cost of equipment. The Operator will also repair or replace any Government furnished equipment that may be damaged as a result of his own or his employees fault or negligence, regardless of cost: The Operator will:

(1) Service the dishwasher and care for it in accordance with the instructions of the manufacturer.

(2) Keep the deep fat fryer and toaster clean and in serviceable condition.

(3) Keep the canopy free form grease and thoroughly clean.

(4) Clean air filters daily and grease traps for the dishwasher and sink when required.

d. Replacement or Major Repairs to Government Furnished Equipment. If the cost of repairing a piece of Government furnished equipment will exceed the limitations specified in paragraph b. above or the equipment has become obsolete or no longer useful for its original purpose, the Operator will notify the Contracting Officer so that arrangements may be made for appropriate repairs of replacements. The decision of the Contracting Officer as to whether a piece of equipment is to be repaired or replaced will be final.

e. Equipment to be provided by the Operator. The Operator will provide all required equipment not provided by the Government. The Operator will repair, replace and supplement such equipment as necessary to insure sanitary, efficient and satisfactory operation of the vending facility.

f. Final Disposition of Equipment. At the end of the contract period or extension thereof, all equipment will be disposed of as provided in the contract.

22. SURRENDER OF POSSESSION.

a. As of the date this contract expires or is terminated as provided for elsewhere in this contract, the Operator will immediately and peaceably yield up to the Government the premises in good repair in all respects, reasonable wear and tear excepted, and the Government may without further notice take possession of the premises.

b. Upon prior written notice to the Contracting Office the Operator will have the right at any time during the term of this contract to remove any operating facilities it may erect or install or use in the premises, and any or all fixtures and equipment and other property installed or placed by it at its expense in or about the leased premises; subject, however, to any valid lien which the Government may have thereon for unpaid charges and fees; and provided that, upon removal of any such operating facilities, the Operator will restore the premises to a condition satisfactory to the Contracting Officer.

c. The Operator will be deemed to have abandoned to the Government any operating facilities and other facilities, equipment and property of the Operator which it has failed to remove from the premises or from the possession of the Government within fifteen (15) calendar days after the end of the period of this contract, or effective date of termination thereof, unless the Contracting Officer grant additional time for this purpose in writing; provided, however, that the Government may, prior to the expiration of said fifteen (15) day period, remove same and restore the premises to a satisfactory condition and hold the Operator liable for all costs incident thereto. In the event it is necessary for the Government to remove such facilities, equipment or property, the Government will not be subject to any liability by reason of the removal or the custodial care of same.

23. ESTABLISHMENT OF OPERATING FACILITIES.

a. The Operator will provide and install at its own costs and expense, all operating facilities and furnish all supplies and materials required for the proper and adequate operation of the vending facility under this contract.

b. All such installations will be subject to the Contracting Officer's approval for conformity with safety standards and similar criteria and with regulations established for the facility and for compatibility of design, quality, conditions, or color arrangement with the architectural and general character of the vending facility area and the facility. In addition, all installations will conform to applicable state and Federal building, plumbing, electrical, or similar codes or ordinances. The Operator will provide all necessary maintenance for the operating facilities.

24. ACCOUNTING RECORDS OF THE OPERATOR.

a. In the event this contract provides for payment of revenue to the Government which is computed in any manner upon the gross receipts or net receipts of the Operator derived from its operations, the Operator will maintain accounting records, in accordance with accepted accounting practices, of all its transactions that are connected with operations under this contract. These records should be kept current during the contract period at the business address of the current operator during the contract period and be retained at that location for a period extending 3 years from the date of termination or expiration of this contract, unless a longer period of time specifically is started elsewhere in this contract.

b. The Operator will permit any verification, examination or audit of these accounting records deemed advisable by the Government. In addition, any verification, examination or audit of the accounting records of any proprietary or affiliate concern during the term of this contract, and for 3 years afterwards, during regular business hours will be allowed.

c. The Operator also will permit inspection by the officers, employees, or representatives of the Government of any accounting, bookkeeping, or similar equipment used by the Operator in the development and maintenance of these accounting records.

25. ACCOUNTING DATA.

The Operator will submit a copy of its quarterly incomes statement to the Contracting Officer through the Contracting Officer's Representative.

Section Revised T3.8.6 - Strategic Sourcing

Procurement Guidance - (7/2021)

T3.8.6 Strategic Sourcing Added 1/2007

A Strategic Sourcing Added 1/2007

1 General Revised 1/2012

a. Strategic sourcing is implemented through the Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES) program, and other FAA-wide initiatives, such as the National Wireless Program and Software Enterprise License Agreements.

b. Any organization creating a strategic sourcing vehicle must establish and publish procedures for use including procedures for exceptions, waivers, and integration with existing strategic sourcing contracts.

2 Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES) Program Revised 1/2016

a. SAVES contracts provide the FAA with a simplified process for obtaining commonly used products and services at prices associated with volume buying, while maintaining or improving the quality of purchases and vendors' service levels. These products include non- NAS information technology (IT) hardware (enterprise servers and peripherals), commercial- off-the-shelf (COTS) software, video teleconferencing equipment and support, general office supplies, office equipment (printers, copiers and multifunctional devices), courier services (overnight mail), and express and ground delivery services. In addition, this process helps agencies optimize performance, minimize price, increase achievement of socio-economic acquisition goals, evaluate total life cycle management cost, improve vendor access to business opportunities, and otherwise increase the value of each dollar spent.

b. Under SAVES, FAA entered into indefinite delivery contracts or blanket purchase agreements (BPAs) with commercial vendors providing products and services at pre- negotiated pricing or discounts. The SAVES contracts and agreements are continuously being monitored to ensure that FAA is obtaining quality products and services at competitive prices. Notify the SAVES Program Office if you encounter any performance issues. Quarterly reviews will be conducted and, if necessary, the contract terms will be renegotiated before an option year is exercised on an existing contract. Ordering offices place orders directly with SAVES contractors using their Government purchase card or through a CO using a purchase order.

c. Purchases of products or services available through a SAVES contract from other sources must only be considered if there would be a significant adverse impact to air traffic control operations or in the case of a bonafide emergency. If an item available through SAVES is purchased from another source due to an adverse impact to air traffic control operations or a bona fide emergency, the basis must be recorded with the order and/or purchase card documentation.

d. Unless a purchase meets one of the two conditions discussed in subparagraph 2.(c), purchases must not be made outside of the SAVES contracts unless the purchasing organization submits and receives approval of a waiver from the SAVES Program Office using the SAVES Waiver Request Form. The waiver justification for the purchase of products and services, which are available through the SAVES contract, must include rationale in addition to pricing, (e.g., availability, quality of product or service, etc.)

e. *SAVES Waiver Threshold*. Waivers with a total value of $50 or less do not require approval from the SAVES Program Offices, but must be documented in the purchase file.

f. Use of SAVES Office Supply and Office Equipment contracts by organizations and facilities located outside the continental United States, including Alaska, Hawaii, U.S. Territories, and foreign countries is optional. Product availability and shipping costs to these locations often make the purchase of these items locally a better value for the FAA.

3 SAVES Website Added 1/2007

Information about the SAVES Program and links to the SAVES contract information, purchasing processes and instructions, pricing, contact information, vendor web portal instructions, etc. for each SAVES contract is located on the FAA employee website (FAA only).

4 SAVES Ordering for Office Supplies, Office Equipment, and IT Hardware Revised ~~7/2021~~9/2021

a. SAVES contracts have been competed, comply with laws prescribing mandatory sources (such as AbilityOne vendors) for certain products, conform to environmentally friendly and energy efficient purchasing, and include prices determined to be fair and reasonable.

b. As requirements become known, ordering offices may place orders against existing SAVES contracts. Ordering offices do not need separate justification to use a SAVES contract, nor should they publicly announce or compete a planned order. Ordering details for each SAVES contract are located on the FAA employee website.

c. The terms and conditions of a SAVES basic contract governs individual orders. Additional terms and conditions are not required and should not be included in individual orders.

d. *Brand Name-Mandatory Products.*

(1) *Orders by 1102 Series Contracting Officers*. For brand name-mandatory acquisitions with a total value of $150,000 or less procured through the use of SAVES, a rational basis for the brand-name mandatory determination must be documented by the service organization using the Brand Name Mandatory or ~~Brand Name or~~ Equal ~~Rational Basis~~ Template or the Single Source Justification for Products, Services, and Construction Template. The rational basis must be approved by the Service Organization Official and the

Contracting Officer must concur that it is in the best interest of the FAA. For brand name-mandatory acquisitions with a total value over $150,000 procured through the use of SAVES, a rational basis for the brand-name mandatory determination must be documented by the service organization using the Brand Name Mandatory~~/Brand Name~~ or Equal ~~Rational Basis~~ Template or the Single Source Justification for Products, Services, and Construction Template. The rational basis must be endorsed by the Service Organization Official and the SAVES Contracting Officer's Representative (COR), and reviewed by Legal for sufficiency, and the CO or Purchase Cardholder must concur that it is in the best interest of the FAA (See AMS Procurement Guidance T3.2.2.8A.5 for more information on Brand Name and AMS T3.2.2.4 for Single Source).

(2) Orders by Purchase *Cardholders* For brand-name mandatory acquisitions, with a total value of $10,000 or more, a rational basis for the brand-name mandatory determination must be documented by the service organization using the Brand Name Mandatory~~/Brand Name~~ or Equal ~~Rational Basis~~ Template or the Single Source Justification for Products, Services, and Construction Template~~ located on the FAST website~~. The rational basis must be endorsed by the Service Organization Official and the SAVES Contracting Officer's Representative (COR) and reviewed by Legal for sufficiency, and the CO or Purchase Cardholder must concur that it is in the best interest of the FAA. (See AMS Procurement Guidance T3.2.2.8A.5 for more information on Brand Name and AMS T3.2.2.4 for Single Source).

e. Ordering offices may order on-line, by telephone or fax. Payment must be made with either Government purchase card or purchase order. Purchase orders must be signed by a CO. Purchasing from the SAVES contracts does not change the existing policy and guidance for purchase card or purchase order purchasing processes. All purchasing provisions and restrictions in the purchase card and purchase order policies are applicable when purchasing from the SAVES contracts. Purchases through the SAVES contracts do not change existing policy and guidance to the FAA personal property order.

f. SAVES contractors are to deliver products as expeditiously as possible. Acceptable levels of service delivery are specified in SAVES contracts. FAA users can order standard delivery or one of several expedited delivery alternatives. Products or services delivered faster than the standard delivery will incur increased delivery charges, as specified in SAVES contracts.

B Clauses **Added 1/2007**

view contract clauses

C Procurement Forms ~~**Added 1/2007**~~**Revised 9/2021**

~~view procurement forms~~

~~**Document Name**~~

-

D Procurement Samples Added 9/2021

Document Name
-

E Procurement Templates Added 9/2021

Document Name
Brand Name Mandatory or Equal Template
SAVES Waiver Request Form
Single Source Justification for Products, Services, and Construction Template

F Procurement Tools and Resources Added 9/2021

Document Name
-

Section Revised T3.8.7 - Construction Contracting

Procurement Guidance - (7/2021)

T3.8.7 Construction Contracting Revised 8/2009

A Construction Contracting Added 7/2007

1 General Added 7/2007

a. Guidance in this section applies to construction contracts, contracts for dismantling, demolition, or removal of improvements, and to the construction portion of contracts for products or services. In the event that the portions of multipurpose contracts are so commingled that priced deliverables for construction, service, or supply cannot be segregated, AMS guidance applicable to the predominant purpose of the contract applies.

b. "Construction" means construction, alteration, or repair of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include but are not limited to improvements of all types, such as maintenance facilities, duct banks, air traffic control facilities, communication towers, radar facilities, office facilities, airport facilities, and navigational aids.

c. When performing construction, alteration, or repair work in FAA-leased space, the Contracting Officer (CO) must consult with his or her local Real Estate Contracting Officer (RECO) to determine FAA's alteration rights and responsibilities.

2 Dismantling, Demolition and Removal of Improvements Revised 10/2020

a. If a contract is solely for dismantling, demolition, or removal of improvements and will exceed $10,000, the Service Contract Labor Standards applies unless further work is contemplated that will result in the construction, alteration or repair of a public building or public work at that location is contemplated. If further construction work is intended, even though by separate contract, then the Davis-Bacon Act applies to the contract for dismantling, demolition, or removal.

3 Salvageable Property Added 7/2007

a. The procurement team (CO, program official, legal counsel, and other support staff) should consider the usefulness to FAA of all salvageable property. Any of the property having a salvage value that is less than its usefulness to FAA should be expressly designated in the contract for retention by FAA. The contract may provide that:

(1) The FAA pays the contractor for the reasonable costs of the dismantling or demolition of the structure(s);

(2) The contractor pays FAA for the right to salvage and remove the materials resulting from the dismantling or demolition operation; or

(3) A combination of both. Both the FAA and contractor must ensure compliance with environmental laws and regulations, including handling of hazardous waste**.**

b. The procurement team should determine the fair market value of any property not to be retained by FAA, because the contractor may receive title to this property. Its value will therefore be important in determining what payment, if any, should be made to the contractor, and whether additional compensation will be made if the contract is terminated. Personal Property Managers, in conjunction with the procurement team, must approve the disposition of Government property to be transferred to contractors under dismantling, demolition or removal of improvements contracts.

4 Laws, Regulations and Standards Revised 4/2017

a. *Davis-Bacon Act.* The Davis-Bacon Act applies to construction contracts greater than $10,000.

b. State Regulation of Federal Construction Projects.

(1) FAA contractors may encounter requests from State and local governments for the FAA's contractors to obtain building permits, zoning approval, sanitation approval, etc. Based on the "Supremacy" clause of Article 6 of the United States Constitution, construction contractors are not required to obtain most permits or approvals for work done on Federal construction projects. The States do have enforcement authority for safety and environmental protection as specified by the Occupational Safety and Health Administration (OSHA), the Comprehensive Environmental Response, compensation and Liability (Superfund) Act (CERCLA), and the Resource Conservation and Recovery Act (RCRA).

(2) Contractors who encounter attempts by State or local government entities to assess various types of fees against a FAA construction project should be advised to inform the CO immediately if the assessing entity attempts in any way to prevent or hinder the contractor at the job site. The CO should seek legal advice from either Regional Counsel or AGC-500.

c. *Local Employment in Construction Contracts.* Occasionally, efforts are made by State or local governments to have FAA limit employment on construction projects to local residents or firms. Such a restriction has been held to be improper, and should not be used in FAA contracts (reference Washington State Supreme Court case Laborers Local Union No. 374 v. Felton Construction Co., Nov. 24, 1982, and 42 Comp. Gen. 1, B-198952, 81-1 CPD 467). FAA recognizes that Tribal Employment Rights Ordinances (TERO) which affects projects on or near certain Indian reservations may have an effect on contractor labor. FAA should inform offerors of the existence of a TERO in the screening information request (SIR).

d. *Domestic Materials*. The Buy American Act applies to construction, alteration, and repair contracts performed in the United States. It requires contractors to use domestic materials, except under specific circumstances. Also, the Buy American provisions of the Aviation Safety and Capacity Expansion Act of 1990 require FAA to use domestic steel and manufactured products, unless an exception applies. (See AMS Procurement Guidance T3.6.4).

5 Design-Build Revised 1/2016

a. *General.* Design-build is a contracting technique that allows a single procurement for both design and construction of a project. Design-build allows the contractor flexibility, to the extent allowable or reasonable, for innovation in design, materials, and construction methods utilized in a construction project.

b. Considerations for Using Design-Build.

(1) When planning a design-build, the procurement team (Contracting Officer (CO), program official, legal counsel and others supporting a project) should consider the following factors:

(a) Extent to which requirements are defined;

(b) Time constraints;

(c) The potential for delays, modifications, and scope changes;

(d) Potential regulatory or environmental issues;

(e) Construction issues, including differing site conditions and schedules;

(f) Risks to FAA, including potential liabilities and meeting stipulated performance standards;

(g) Availability and type of funding, including funding issues that may arise from a large design-build project that covers multiple fiscal years; and

(h) Availability of qualified design-build contractors.

(2) When considering design-build, the procurement team must judge who is in the best position, FAA or a contractor, to manage and control potential issues or risks for a particular project. Under a design-build, the contractor assumes the greater responsibility and risk. Claims for design errors or delays are not allowed and the potential for other types of claims are greatly reduced.

c. Design-Build Source Selection.

(1) *Two-Phase SIR.* While a CO may choose to award a contract based on one SIR requiring a single offer (that includes an offeror's technical and pricing information), the CO may instead issue a two-phase SIR that allows the CO to screen technical proposals

and down-select offerors prior to requesting a price proposal.

(a) Phase one involves the request for and evaluation of technical proposals from offerors, and no pricing is involved. The goal is to determine the acceptability of the technical proposals prior to the submission of pricing. Technical information that may be requested from offerors includes, but is not limited to:

(i) Technical capabilities;

(ii) Experience/past performance (such as experience in a given field or industry or on-airport experience);

(iii) Engineering approach;

(iv) Special manufacturing processes; and

(v) Joint experience of design and construction management teams.

(b) Phase two involves the submission of pricing proposals by only those offerors determined to be technically acceptable in step one. Trade-offs in phase 2 are allowable.

(c) Factors the CO should consider for using a two-phase SIR include:

(i) Specifications or descriptions are not definite or complete;

(ii) Definite criteria exist for the evaluation of technical proposals, experience, or past performance;

(iii) Two or more sources are expected; and

(iv) FAA personnel (i.e. CO, engineers, etc.) are available to evaluate/manage a two-phase SIR.

(2) *Cost-Reimbursement Contract.* When a design-build project involves numerous uncertainties or the project has yet to be fully developed, a cost-reimbursement, rather than a fixed-price, contract may be appropriate. Rare situations that may warrant a cost-reimbursement design-build contract are:

(a) Highly technical or next generation projects that do not have an effective design benchmark; and

(b) Projects with multiple uncertainties, for example:

(i) Site conditions or locations that create unique and unplanned impacts to the project;

(ii) New technology that may create integration issues when introduced to current systems; and

(iii) Hazardous waste remediation where the scope of the clean-up cannot be completely defined.

(3) *Design Competition*. Design-build may include "design competition" as a basis for selecting a vendor for the project. FAA provides general design requirements or constraints and offerors prepare a preliminary design or specification for FAA evaluation. Depending on the scope of the project and availability of funding, FAA may authorize a fixed payment to compensate offerors for work done during the design competition.

6 Reserved **Revised 10/2014**

7 Planning and Pre-Solicitation **Revised ~~7/2020~~9/2021**

a. *Type of Contract and Pricing.* Generally, construction should be acquired on a firm-fixed price basis. Pricing may be on a lump sum basis (when a lump sum is paid for the total work or defined parts of the work), on a unit price basis (when a unit price is paid for a specified quantity of work units), or using a combination of the two.

b. *Options.* If in FAA's best interest, COs may include options in construction contracts. Solicitations must state whether options will or will not be evaluated for purposes of award. Appropriate use of options in construction contracts includes:

(1) Additional work is anticipated but sufficient funds are not anticipated or available prior to the time of award, and it would not be in FAA's best interest to award a separate contract or have another contractor work on the site; and

(2) If fixed building equipment is installed under the contract and it would be in FAA's best interest to have the installer maintain and service the equipment during the warranty period.

c. *Property.* Before issuing the solicitation, the CO must document if materials for the project will be Government Furnished Property (GFP) or furnished by the contractor. The requiring organization prepares the GFP list, and the list must be included in the solicitation to ensure that any proposals received account for the source of project material.

d. *Insurance.* If in the best interest of FAA, the CO may require the contractor to carry insurance, especially if the work is to be done on an FAA facility or FAA property is involved. The CO must ensure the contractor submits all required insurance documents and the documents are acceptable before issuing the notice to proceed (NTP). An original copy of the proof of insurance must be retained in the contract file.

e. *Bonds.* Per the Miller Act (40 U.S.C.A Section 3131), performance and payment bonds are required for all construction contracts that exceed $150,000. The amount of the bonds should reflect the minimum amount required to protect FAA interests. An original copy of any bond must be retained in the contract file. The CO will not issue the NTP until required bonds have been received.

f. *Source Evaluation Plan.* The CO's method of selection and evaluation criteria must be documented in the ~~contract file.~~Source Evaluation Plan template located in Procurement Templates. This may be done by establishing ~~an~~a source evaluation plan as described under ~~Complex and Noncommercial~~ Source Selection (See AMS 3.2.2.3).

g. *Basis for Award.* Award may be based on the lowest price, technically acceptable offer when best value is expected to result from a technically acceptable proposal with the lowest price.

(1) All evaluation factors (non-cost) that will be used to determine if an offeror is technically acceptable will be set forth in the solicitation.

(2) The solicitation must specify that award will be made to the lowest priced offer meeting or exceeding the acceptability standards for non-cost factors.

(3) Tradeoffs are not permitted.

(4) Non-cost factors are used to evaluate acceptability and not to rank proposals.

(5) Discussions regarding proposals may occur.

h. *Differing Site Conditions.* The purpose of the "Differing Site Conditions" clause is to encourage offerors to limit inclusion of contingency costs in their offers for conditions that are not reasonably foreseeable. The clause will also assist FAA and the contractor in complying with the Archaeological Resources Protection Act of 1979 (36 CFR 1214).

i. *Construction Moratoriums.* When in the planning stages of a construction project, the procurement team must consider any impacts construction moratoriums may have upon the project and its related schedule.

j. *Disclosure of the Size of Construction Projects.* When the estimated price of the proposed construction project is $150,000 or more, public announcement (if required) and SIRs should state the size of the requirements in terms of a physical description of the project and the estimated price. The estimated price may be described in a price range as determined by the procurement team or in terms of one of the following price ranges:

(1) Between $50,000 and $100,000; (2)

Between $100,000 and $250,000; (3)

Between $250,000 and $500,000; (4)

Between $500,000 and $1,000,000;

(5) Between $1,000,000 and $5,000,000;

(6) Between $5,000,000 and $10,000,000; or (7)

More than $10,000,000

k. *Environment and Conservation.*

(1) If a CO becomes aware of contractor noncompliance with environmental standards (to include clean air and water standards), the CO is to notify FAA officials and the Environmental Protection Agency (EPA).

(2) The CO has a responsibility to help coordinate and ensure that any hazardous materials present or introduced during the performance of a contract are appropriately managed and tracked.

(3) Products used for a project must adhere to agency goals established in FAA's Green Procurement Plan (GPP), and each contract must include GPP compliance provisions to ensure the contractor understands applicable FAA energy conservation and recovered material, or recycled content product, standards.

(4) Refer to AMS Procurement Guidance T3.6.3 for additional guidance on the protection of the environment and proper conservation during construction contracts, and ~~AMS Real Estate Guidance 2.4.16.3~~ for information regarding the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings.

l. *Subcontracting Plan.* When a project is expected to exceed $1.5 million is not an 8(a), SDVOSB, or small business set-aside, and subcontracting opportunities exist, the CO should include provisions for a small business subcontracting plan in the solicitation.

m. *Patent and Data Rights.* The CO should ensure appropriate patent and data rights clauses are included in the solicitation when the project is for other than standard types of construction and may involve unique products, materials, or processes.

n. *Value Engineering*. Value engineering provisions in the solicitation may be appropriate to allow the contractor to initiate changes in design, specifications, or other requirements and share in any savings that may result.

8 Pre-Award Revised 7/2021

a. *Public Announcement.* All procurements, including construction, over $150,000 must be publicly announced on the Internet or through other means. For example, the announcement could be placed on the Contract Opportunities page on SAM.gov.

b. Inspection of Site and Examination of Data.

(1) The procurement team should make appropriate arrangements for prospective offerors to inspect the work site prior to submission of offers. The procurement team should also allow prospective offerors the opportunity to examine data in the possession of FAA that may provide information concerning the performance of the work, such as boring samples, original boring logs, geology reports, and record and plans of previous construction. The SIR should notify offerors of the time(s) and place(s) for the site inspection and data examination, as well as the name and telephone number of the contact point at the facility. The procurement team should keep a record of the identity and affiliation of all offeror representatives who inspect the site or examine FAA site information.

(2) Significant site information should be made available to all offerors, including information regarding any utilities to be furnished during construction. FAA personnel must not provide information that conflicts with the provisions of the SIR.

(3) The CO must notify all potential offerors of any clarification or correction to the SIR package.

c. *Past Performance.* Past performance can aid in selecting the contractor who is most likely to perform satisfactorily. Key to the successful use of past performance in the screening process is establishing a clear relationship between the statement of work (SOW), the instructions to offerors, and the evaluation criteria. Past performance information that is not important to the current acquisition should not be included.

d. *Pre-Award Survey.* COs may use pre-award surveys to aid in gathering past performance information. The pre-award survey can give the CO a sense of how the contractor will perform, especially if concentrating on projects that are similar in type and scope to the one being solicited. The scope of the pre-award survey is at the discretion of the CO as it may be affected by the size and complexity of the solicitation and project.

9 Post-Award Revised ~~10/2018~~9/2021

a. Assignment of Inspection and Contract Administration.

(1) Due to the locations and complexity of most construction projects, COs often accomplish their administrative and inspection functions through utilization of Contracting Officer's Representatives (COR). These personnel are normally present at the

job site each day, and are in the best position to observe day-to-day activities and performance. CORs on site perform such delegated duties as daily performance inspections, Department of Labor wage rate interviews with contractor personnel, provide minor clarifications of specifications and drawings, and insure contractor compliance with all safety and labor requirements on site. The CO must use the COR Delegation Letter located in Procurement Templates to clearly annotate the duties of these individuals and must ~~be clearly annotated by the CO in~~provide a ~~COR Delegation Form. A~~ copy of ~~the~~this COR Delegation ~~Form is provided~~Letter to the COR and the contractor~~. See AMS Procurement Forms for the COR Delegation Form~~.

(2) Only the CO, or person delegated specific authority to execute contract modifications, may authorize a change to the original contract.

b. *Notice to Proceed (NTP).* The NTP is issued to give notice to the contractor when on-site work can be started, when the project is to be completed based upon the performance time in the contract, and any other information deemed pertinent by the CO. Prior to its issuance, the CO must ensure all required submittals have been delivered to and approved by the FAA, that all required insurance and bonding documents have been submitted and are acceptable, and other coordination or applicable documentation has been completed. A Notice To Proceed sample can be found in Procurement Samples.

c. *P~~reconstruction~~Pre-construction Conference.* The CO may conduct a ~~preconstruction~~pre-construction conference (to discuss matters such as applicable labor standards, the authority of various personnel, safety, and environmental considerations) prior to the start of a construction or demolition contract. Pre-~~-~~construction conferences are not a requirement for each project. When deciding on a conference, the CO should weigh the administrative costs, time, and possible travel expenses for all parties involved, against the complexity of the requirement, the impact of the requirement on entities involved with the site, and the past performance and technical knowledge of the contractor. ~~For~~If the CO determines a ~~preconstruction~~pre-construction conference ~~agenda and checklist, see AMS~~is appropriate, the CO shall use the Pre-Construction Conference Notice located in Procurement ~~Forms~~Templates to notify all applicable parties.

d. *Use and Possession Prior to Completion.* Beneficial occupancy occurs when the Government takes possession of, or puts to use, a completed or partially completed part of the work. It does not constitute acceptance of the facility as constructed. The clause "Use and Possession Prior to Completion" addresses some of the issues associated with beneficial occupancy. If it is foreseen prior to contract inception that beneficial occupancy will become an issue, or if it becomes an issue during contract performance, the CO should consider negotiating contract terms which cover relevant issues for that contract, e.g., date of warranty, builder's risk coverage, coordination with the contractor, etc. Legal counsel should be consulted on the legal ramifications of beneficial occupancy. Phased (partial) acceptance can be used as an alternative to beneficial occupancy, if the need can be identified sufficiently in advance to structure the contract accordingly, and it is determined in the best interests of the parties.

e. *Airport Coordination.* Local airport authorities and/or other Federal agencies may have requirements and regulations outside of those imposed by the FAA that a contractor is required to adhere to when completing a construction project on an airport. These additional requirements may include additional security, insurance, and safety requirements. It is the responsibility of the contractor to coordinate with other authorities or agencies prior to performance to ensure they satisfy any applicable local regulations.

f. *Property Protection.* The FAA must ensure that the contractor understands that throughout the performance of the contract, care must be taken by the contractor to protect FAA and/or other property that may be affected during construction.

g. *Prime Contractor Performance.* The use of subcontractors by a prime contractor during the performance of a construction contract is inevitable and at times presents a savings to the FAA through the contract. For example, the prime contractor may lack the internal capability to provide specific trades required to meet all the terms and conditions of the contract. The CO should assure adequate interest in and supervision of work involved in projects. The contractor shall be required to perform a significant part of the contract with its own work force and express this requirement in terms of a percentage of the total work, for example:

(1) The prime contractor must perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees on site.

(2) Construction by special trade contractors: The prime contractor must perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees on site.

h. *Contractor's Daily Log.* For any construction contract greater than $10,000, the contractor is required to submit to the CO a "Daily Log" of activity on the site. The logs must include the workers used by classification, construction equipment moved on and off the site, materials and equipment delivered to the site, inspections and tests performed, and total cumulative hours worked.

i. *Suspension of Work*. The COR should notify the CO when a suspension order is necessary to prevent the contractor from proceeding with work that will have to be removed or changed. Only the CO can order a suspension of work; when possible, the CO should use partial, rather than, total suspension orders.

j. *Warranties*. The CO should obtain information about any warranties from the contractor. This information should include effective dates and names, addresses, and contacts. A list of warranty or guarantee expiration dates is made and retained, and copies are provided to the user.

k. *Asbestos NESHAP Compliance*. The contractor must comply with all federal, state, and local requirements regarding building demolition and/or the removal of any asbestos in accordance with the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP). AMS clause 3.6.3-24 "Asbestos NESHAP Compliance" applies in such situations.

10 Contract Acceptance Inspection (CAI) Revised 4/2012

a. *Definitions*:

(1) *Contract Acceptance Inspection (CAI)*: Formal inspection by the Project Implementer of a constructed facility when work under the contract is considered to be substantially complete. The CAI is typically requested by the prime contractor and coordinated with the Project Implementer.

(2) *Joint Acceptance Inspection (JAI)*: The JAI is an activity to gain consensus of all involved groups that projects for facility, system, or equipment establishment, improvement, or relocation are completed in accordance with national criteria and that the facility is capable of performing its advertised functions.

(3) *Project Implementer (PI)*: The PI is the FAA organization implementing the project, although funding may be provided by other organizations. In most cases this will be ATO Technical Operations (ATO-W) Engineering Services.

b. *Contract Acceptance Inspection (CAI)*. The Project Implementer, usually a Contracting Officer's Representative (COR) appointed in ATO-W Engineering Services and delegated by the Contracting Officer (CO), is responsible for formally inspecting a constructed facility from the construction or equipment installation contractor and recommending acceptance or non- acceptance to the CO. This inspection is typically conducted before the beginning of JAI.

c. The CO's responsibility is to formally accept the constructed facility. The CO must notify the contractor when a CAI has been completed and work under a contract has been either accepted or rejected. This should be done through the CAI letter (see Procurement Forms) that describes:

(1) What is being accepted from the contractor (item and description);

(2) The acceptance date of the item; and

(3) Any outstanding commitments the contractor has for the item (e.g. punch list items, warranties, etc.).

d. All CAI letters and associated information should be filed in the official contract file. This documentation is used to support completion of the contract, and to provide data to properly capitalized items.

11 Contract Completion/Closeout Revised 8/2009

a. A construction or installation project must be considered physically and financially complete and funds deobligated, when necessary, within one year after the final acceptance and inspection (e.g., CAI) has been completed.

b. Prior to final payment, the CO must ensure:

(1) Receipt of all required warranty documentation;

(2) Return of issued ID media (Badges, etc.);

(3) Receipt of any state tax exemption certificates or completion statements as required from the contractor;

(4) Certification that all government property has either been utilized in the performance of the contract or returned to the FAA;

(5) Confirmation from the requiring organization that the job has been completed as contracted;

(6) Receipt of any other applicable items required from the contractor that are unique to the procurement; and

(7) Receipt of a final release of claims on file signed by the contractor for the final amount of the contract.

B Clauses **Added 7/2007**

view contract clauses

C Procurement Forms Revised 9/2021

~~view procurement forms~~

Document Name
Abstract of Offers (SF-1409)
Abstract of Offers Continuation (SF-1410)
Affidavit of Individual Surety (SF-28)
Architect - Engineer Contract (SF-252)
Architect - Engineer Qualifications (SF-330)
Bid Bond (SF-24)
Bid Bond – Annual (SF-34)
Consent of Surety (SF-1414)
Information Supporting Construction of Agency-Owned Improvement on Leased Property
Payment Bond (SF-25A)
Performance Bond Annual (SF-25)
Performance Evaluation (Architect Engineer) (SF-1421)
Reinsurance Agreement for a Miller Act Payment Bond (SF-274)
Reinsurance Agreement for a Miller Act Performance Bond (SF-273)

D Procurement Samples Added 9/2021

Document Name
Notice to Proceed

E Procurement Templates Added 9/2021

Document Name
COR Delegation Letter

Pre-Construction Conference Notice

F Procurement Tools and Resources Added 9/2021

Document Name
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