Reset Form

ACQ WE GET IT	# Acquisition Management System Change Request Form
Change Request Number: (To be completed by secretariat)	24-61
Description of the Change:	Updates to Nine (9) AMS Guidance Sections- Change SF No. to FAA Form No.
Select the type of Change Request: *Policy changes require FAE endorsement.	Guidance
Section(s) impacted by CR:	AMS Procurement Policy & Guidance

PART 1: ENDORSEMENTS

Manager, Acquisition Policy Branch Endorsement: AAP-110, Procurement Policy Branch	(•) Approved ( ) Disapproved	Electronic Signature/Date: STEPHEN BRENDAN MANGAN Digitally signed by STEPHEN BRENDAN MANGAN Date: 2024.06.21 07:28:00 -05'00'
Acquisition System Advisory Group (ASAG) Chairperson Endorsement:	(•) Approved ( ) Disapproved	Electronic Signature/Date: MICHELLE G BRUNE Digitally signed by MICHELLE G BRUNE Date: 2024.06.21 09:42:55 -04'00'
Acquisition Policy and Oversight (AAP) Director Endorsement:	( ) Approved ( ) Disapproved	Electronic Signature/Date: MONICA M RHEINHARDT Digitally signed by MONICA M RHEINHARDT Date: 2024.06.21 10:27:15 -04'00'
FAA Acquisition Executive (FAE) Endorsement: *Only required for Policy Changes	( ) Approved ( ) Disapproved	Electronic Signature/Date:

PART 2: GENERAL INFORMATION

Change Request (CR) Number: 24-61	**Date Received:** (To be completed by secretariat) 3/25/24
CR Title: Nine (9) AMS Guidance Sections- Change SF No. to FAA Form No.	
Summary and Reason for Change:	This change re-titles Procurement Forms from Standard Form numbers ("SF") to FAA Form numbers ("FA") identified and listed in nine (9) different AMS Guidance Procurement Forms sections T3.2.2.3, T3.2.2.5, T3.2.3, T3.3.1, T3.4.2, T3.8.7, T3.10.6, T3.13.1, and T3.18. This change will ensure the assigned fixed form

Initiator Contact Information:	**Name:** Erica M. Conley	**Phone:** 202-267-7387
	Organization Name: Procurement Policy Branch	**Routing Code:** AAP-110
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Development, Review, and Concurrence: AAP-110	**Target Audience:** FAA Acquisition Workforce
ASAG Briefing: ○ YES ◉ NO (To be completed by secretariat) Date:	**ASAG Responsibilities:** None.
AEB Briefing: ○ YES ◉ NO (To be completed by secretariat) Date:	**AEB Responsibilities:** None.

PART 3: FAST PUBLICATION INFORMATION

Impacted AMS Section: NOTE: Please choose only one. If additional sections are impacted, submit a separate CR form for each.	Guidance

Validation of other impacted FAST locations:

☑ I confirm I have validated all other portions of the website and will submit additional CR's for any other impacted sections as necessary.

Section/Text Location: T3.2.2.3, T3.2.2.5, T3.2.3, T3.3.1, T3.4.2, T3.8.7, T3.10.6, T3.13.1, and T3.18	**Links:** https://fast.faa.gov/docs/procurementGuidance/guidanceT3.2.2.3.pdf https://fast.faa.gov/docs/procurementGuidance/guidanceT3.2.2.5.pdf
Redline Validation: NOTE: The redline version must be a comparison with the current published FAST version.	◉ I confirm I used the latest published version to create this change/redline. OR ○ This is new content.
Attachments: redline and final documents for referenced sections.	**Other Files:** N/A.

T3.2.2.3 - Complex Source Selection Revised 9/2020

A Complex Source Selection Method Added 9/2020

1 General Revised 9/2020

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

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

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

2 Source Selection Team Roles and Responsibilities Revised 9/2021

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

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

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

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

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

(4) Ensure the selection process is conducted properly and according to applicable policies and laws;

(5) Establish the Source Evaluation Team (SET) and ensures the team has the skills, expertise, and experience to perform the evaluation;

(6) Ensure actual or apparent conflicts of interest are avoided; Ensures premature or unauthorized disclosure of source selection information is avoided;

(7) Concur with the CO's decision to release the SIR (if the SSO is other than the CO); and

(8) Make the final source selection decision for an award, and ensures the rationale is documented before contract award.

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

(1) Draft all SIRs;

(2) Formulate the source evaluation plan (See Source Evaluation Plan Templates for Tradeoff and Lowest Price Technically Acceptable in Procurement Templates).;

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

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

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

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

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

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

(9) Participate in all debriefings;

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

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

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

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

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

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

(5) Control all written documentation issued to industry;

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

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

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

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

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

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

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

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

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

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

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

3 Security of Source Selection Information ~~Added 9/2020~~Revised 7/2024

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

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

c. *Handling Source Selection Information.*

(1) SET members must handle proposal and evaluation material in a manner consistent with "For Official Use Only" or, as appropriate, a higher security classification. The SET establishes sufficient safeguards to protect the material whether it is in their possession or it is being disseminated, reproduced, transmitted, or stored. Additionally, procedures are established for proper disposal of the material when it is no longer required. (See AMS ~~Procurement~~ Guidance T3.13.1.A.7~~,~~ Records Retention~~,~~ and FAA Order 1350.~~15C~~14B Records ~~Organization, Transfer and Destruction Standards~~Management).

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

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

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

4 Source Evaluation Plan Revised 9/2021

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

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

5 Best Value Selection Methodology Revised 9/2021

The FAA may obtain best value by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. Depending on the circumstances, it may be in the FAA's best interest to utilize a tradeoff process or it may be in the FAA's best interest to utilize the lowest-priced, technically acceptable (LPTA) process. Both methodologies are examples of best value and each is described below.

(1) *Tradeoff Process*. The tradeoff process is appropriate when the requirement is less definitive, more development is required, there is greater performance risk, or technical or past performance considerations play a dominant role in source selection. Under this method, both cost/price and non-cost/price factors are assessed based on the evaluation criteria, and the SSO selects the offeror who proposes a combination of factors representing the best value to FAA. The SSO considers non-cost strengths and weaknesses, risks, and cost/price for each offeror and applies business judgment to select the offeror representing the best value.

(2) *LPTA Process*. LPTA is the appropriate source selection process to apply when the product or service to be acquired has well-defined requirements, minimal risk of unsuccessful contract performance, or when price plays a dominant role in source selection and there is no value, need or interest to pay for higher performance. In other words, it is appropriate when the best value to the FAA would not realize any increased value from a proposal exceeding minimum technical requirements.

6 Screening Information Request (SIR) Added 9/2020

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

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

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

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

- Paperwork Reduction Act number on the cover page;
- A statement identifying the purpose of the SIR (request for information, request for offer/solicitation for offer, establishment of a QVL or screening);
- A definition or statement of need or requirements;
- A request for specific information (with specific page and time limitations, if applicable);

- A closing date stating when submittals must be received in order to be considered or evaluated;
- Evaluation criteria (and relative importance, if applicable);
- A statement informing offerors how communications with them will be conducted during the screening; and
- An evaluation/procurement schedule (including revisions, as required).

d. *Categories of SIRs.*

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

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

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

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

f. *Common Problems.*

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

(2) *Inconsistency within the SIR.* Avoiding inconsistencies between the description of FAA’s requirements, instructions on how to prepare a proposal, and information related to the evaluation factors is important. These inconsistencies may be caused by different groups of people developing the

different SIR sections without proper coordination. Such inconsistencies can result in less advantageous offers, necessitate changes/amendments to the SIR, cause delays, lead to offerors losing confidence in the process, or result in litigation.

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

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

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

7 Communications with Offerors **Added 9/2020**

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

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

8 Evaluation Factors **Added 9/2020**

a. *Evaluation Factors and Subfactors.*

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

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

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

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

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

(5) *Evaluation Weights.* Assign relative importance to each evaluation factor and subfactor. Tailor the relative importance to specific requirements. Use

priority statements to express the relative importance of the evaluation factors and subfactors. Priority statements relate one evaluation factor (or subfactor) to each of the other evaluation factors (or subfactors). For example:

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

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

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

9 Evaluation Revised 4/2021

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

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

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

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

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

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

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

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

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

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

e. *Cost/Price Evaluations.* For competitive fixed-priced or time and material contracts, the evaluation could be as simple as performing price analysis to determine reasonableness. Price realism may also be used for price proposal analysis on competitive fixed-priced or time and material contracts. For competitive cost-reimbursement contracts, the offerors' estimated costs are analyzed for both cost realism and reasonableness. The cost realism analysis enables evaluators to determine each offeror's most probable cost of performance. This precludes an award decision based on an overly optimistic cost estimate. Even when cost realism analysis is performed to evaluate individual cost elements of a contractor's proposal, some form of price analysis is needed to ensure that the proposed price is reasonable. (See AMS Procurement Guidance T3.2.3 for guidance on cost and price evaluation methods.)

10 Selection and Award Revised 4/2022

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

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

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

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

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

11 Debriefing of Offerors Revised 1/2023

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

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

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

- Gives the offeror an opportunity to provide feedback about the SIR process, communications, and the source selection; and
- Reduces misunderstandings and reduces the risk of protests.

A debriefing is not any of the following:

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

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

If there are indicators a protest is likely, the CO must inform FAA's legal counsel. The CO must not deny a debriefing because a protest is threatened or has already been filed.

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

(1) The evaluation rating; ; strengths and weaknesses; and deficiencies of the debriefed offeror's proposal;

(2) The debriefed offeror's total evaluated price/cost;

(3) Awardee's total evaluated price/cost; and

(4) A general summary of the rationale for the award decision.

d. *Debriefing Methods*

(1) The CO debriefs one offeror at a time. Debriefings of offerors may be done orally, in writing or by any other method acceptable to the CO.

(2) If the CO elects to conduct a debriefing in a method other than in writing, the CO will select the medium or location of the debriefing. The debriefing may be face-to-face, by telephone, conference or other electronic means, and must conform to the following procedures:

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

(2) *Attendees.* The CO selects FAA attendees, and chairs and controls the debriefing. The CO asks an offeror to identify all individuals by name and position who will attend the debriefing. Normally, the CO does not restrict the

number of personnel the debriefed offeror may bring unless there are space limitations. Ensuring appropriate FAA personnel attend the debriefing to be meaningful is important. The CO may rely on SET members (e.g. technical experts, pricing/cost analyst) to address specialized areas of the offerors' proposals. Legal counsel participates in preparation and review of the debriefing materials. If the offeror's legal counsel will attend the debriefing, FAA legal also attends.

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

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

12 Oral Presentations Added 9/2020

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

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

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

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

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

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

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

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

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

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

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

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

B Other Source Selection Considerations Added 9/2020

1 Public Announcement and Announcement of Competing Offerors Revised 7/2023

Unless otherwise excepted in AMS Policy 3.2.1.3.11.1, all procurements exceeding the AMS risk threshold must be publicly announced on the Internet or through other means. If the Internet is used, as a minimum the announcement should be placed on the Contract Opportunities page on SAM.gov. For actions equal to or less than the AMS risk threshold, a public announcement is optional.

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

2 Past Performance Revised 9/2021

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

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

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

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

(3) Past Performance as a Separate Non-Cost/Price Factor. Including past performance as a stand-alone evaluation factor is better than integrating it with other non-cost/price evaluation factors. The source and type of past performance information to be included in the evaluation and the relative importance of past

performance compared to price or cost and any other evaluation factors is at the broad discretion of the procurement team (CO, legal counsel, program official and other supporting staff).

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

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

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

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

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

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

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

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

(12) Inclusion of Past Performance Questionnaire (PPQ). The PPQ does not need to

be included as an attachment in the SIR. If the PPQ is included in the SIR, note the past performance questions are not limited to those on the questionnaire.

(13) Sample SIR Provisions. Each SIR must contain instructions and evaluation information that best reflects the individual acquisition.

c. Evaluating Past Performance.

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

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

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

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

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

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

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

(2) Other Sources. Dun & Bradstreet can obtain information on past performance on specific contractors for the FAA (Dun & Bradstreet charges for this information). In lieu of FAA paying for the report, the SIR may require offerors to provide a copy of a

recent past performance report prepared by Dun & Bradstreet. Quality certifications and awards can also serve as a useful source of past performance information.

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

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

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

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

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

(8) Conducting Interviews. Evaluators look for patterns of either favorable or unfavorable overall performance, rather than focusing on individual successes or failures. It is important to look for actions that demonstrate high performance and not just unfavorable performance. This will help to get away from the old responsibility determination mode of just looking at performance problems. There appears to be a

tendency for references to give an upward bias to ratings. The interviewer should ask enough questions to discriminate between "good" and "excellent." Evaluators request copies of any existing documentation in support of excellent or negative findings (i.e., correspondence, modifications, determinations, etc.). Investigating negative findings in- depth prior to presenting them to offerors, in discussions if held, will alleviate unnecessary delays. Prior to concluding the interview, the evaluator asks the reference for a summary opinion, e.g., how would the interviewee rate the contractor's overall performance and would the interviewee like to do business with the contractor again?

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

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

3 Cancelling a Screening Information Request Added 9/2020

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

4 Reserved Revised 4/2023

5 Spare Parts ~~Added 9/2020~~Revised 7/2024

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

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

(1) *Requirements.* The contracting officer includes coverage for spare parts in the

screening information request and subsequent contract that facilitates availability, accessibility and tracking of spare parts.

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

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

6 Supplier Process Capability Evaluation and Appraisal Added 9/2020

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

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

c. *Expected Benefits.*

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

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

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

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

the mission;

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

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

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

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

(6) The product or service is especially complex.

If process capability will be used as an evaluation factor, or as an adjustment to risk at either the area or factor level, the SIR must include request for information on current status and commitment to process improvement, including evidence indicating process capability. The SIR must also identify particular aspects of the suppliers' performance capabilities that are considered critical to success of the contract, such as architecture and design, safety, security, human factors, integration, risk management, or quality assurance.
Process capability appraisals can be used after award to validate and confirm the successful offeror's proposal and/or to identify risks associated with process deficiencies to be addressed during contract performance. In order for a post-award appraisal to occur, the SIR must indicate that a post-award appraisal will be performed on the successful offeror's processes that are identified as critical or potentially risky.

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

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

(1) Risk mitigation plans to remove deficiencies noted during pre-award;

(2) Performing scoped post-award and follow-up appraisal(s);

(3) Risk mitigation plans to remove deficiencies noted in post-award appraisal;

(4) Government "surveillance" for specific areas (weaknesses) to be addressed;

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

(6) Consideration for creating additional process strengths; and

(7) Improvement in performing process improvement activities.

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

7 Tiered Evaluation Revised 1/2021

a. *General.*

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

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

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

b. *Utilizing Tiered Evaluations.*

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

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

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

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

(c) Women-Owned Small Business (WOSB);

(d) Historically Underutilized Business Zone (HUBZone) small business;

(e) Small business (SB); and

(f) Other than small business.

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

8 Qualified Vendors List Revised 9/2021

A Qualified Vendors List (QVL) is a list of service or product providers who have had their products or services examined, tested or evaluated and who have satisfied all applicable qualification requirements. QVLs are intended as a mechanism to establish a pool of qualified vendors, any of which FAA would be satisfied with the products delivered or services performed. Pre-screening vendors allows only those most qualified contractors to perform a particular service or provide a particular product during a specific period. QVLs are most appropriate when the contracting office can reasonably anticipate recurring or repetitive requirements for the same or similar supplies or services. For detailed guidelines on establishing a qualified vendors list, the procurement team should refer to Appendix 2 Guide for Establishing a Qualified Vendors List (QVL).

9 Two-phase Source Selection Revised 1/2024

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

(b) *Phase One.*

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

a) Notification that the procurement will be conducted using the specific procedures identified under this Section.
b) A general notice of the scope or purpose of the procurement that provides sufficient information for sources to make informed business decisions regarding whether to participate in the procurement.
c) A description of the basis on which potential sources are to be selected to submit offers in the second phase. (For real property acquisitions, the CO may use a market survey as a means to identify sources that would submit offers in the second phase.)

d) A description of the information that is to be required to be submitted if the request for information is made separate from the notice.
e) Any other information that the CO deems is appropriate.

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

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

(c) *Phase Two.*

(1) The contracting officer must conduct the second phase of the source selection consistent with T3.2.2.3.A.

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

10 Cost or Price Exception for Multiple Award Contracts Revised 1/2024

(a) The CO may choose not to include cost or price as an evaluation factor for award when the SIR:

(1) Has a TEPV exceeding the AMS risk threshold;

(2) Will result in multiple-award contracts that are for the same or similar services;

(3) States that the FAA intends to make an award to all qualifying offerors; and

(4) States that price or cost will be considered as an evaluation factor for each order placed under the contract.

(b) For purposes of this section, "qualifying offeror" means an offeror that is determined to be a responsible source, submits a technically acceptable proposal that conforms to the requirements of the solicitation, and the contracting officer has no reason to believe would be likely to offer other than fair and reasonable pricing.

(c) For all non-competitive orders, T3.2.2.4 "Single Source" procedures must be followed.

(d) The CO must obtain written approval from the appropriate AAQ Division Manager to use the exception in (a).

C Clauses Revised 9/2020

view contract clauses

D Procurement Forms Revised ~~9/2021~~7/2024

Document Name
FAA 4400-38 Award / Contract ~~SF-26~~
DOT-4220.41 Contract Award Notification ~~DOT-4220.41~~
FAA 4400-83 Solicitation / Contract ~~SF-1447~~
FAA 4400-81 Solicitation, Offer, and Award ~~SF-33~~
FAA 4400-82 Solicitation, Offer, and Award (Construction, Alteration, & Repair) ~~SF-1442~~
FAA 4400-84 Statement and Acknowledgment ~~SF-1413~~

E Procurement Samples Added 9/2021

Document Name
Extension of Offer Acceptance Period
Notice of Intent to Contract With Single Source
Late Offer Notification
Sample Lowest Price Technically Acceptable Source Evaluation Plan
SIR Amendment Announcement
SIR Cancellation Announcement
SIR Issuance Announcement
Award Decision Document - LPTA (Janitorial Services)
Award Decision Document - Tradeoff (Professional Services)
Award Letter - Services

Award Letter - Supply
Source Selection Decision Document

F Procurement Templates Added 9/2021

Document Name
Source Evaluation Plan – Tradeoff
Source Evaluation Plan – Lowest Price Technically Acceptable
Award Letter – Construction
Pre-construction Conference Notice
Unsuccessful Offeror Notice

G Procurement Tools and Resources ~~Added 9/2021~~Revised 7/2024

Document Name
Debriefing ~~Agenda~~ Overview Agenda Guide

H Appendix Revised 9/2021

1 Guide for Establishing a Qualified Vendors List (QVL) Revised 4/2023

1 Introduction

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

2 Purpose

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

3 Public Announcement

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

4 Screening and Evaluation

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

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

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

(1) A QVL is being established;

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

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

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

(5) Duration of the QVL;

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

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

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

(9) Method for canceling the QVL; and

(10) Geographical area limitations, if appropriate.

5 Evaluating Prospective Vendors

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

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

6 Notifying Vendors Excluded from a QVL

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

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

7 Competing Requirements Among Vendors on QVL

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

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

8 Updating a QVL

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

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

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

9 Cancelling a QVL

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

10 Availability of Information

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

11 QVL for Products

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

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

A Simplified Purchasing

1 Simplified Purchasing Revised ~~4/2024~~7/2024

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

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

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

d. *Micro-Purchase Threshold.*

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

(2) The micro-purchase thresholds are:

(a) $10,000 for commercial supplies;

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

(c) $10,000 for services.

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

procurement office.

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

(1) Compliance with the Anti-Deficiency Act;

(2) Ensuring sufficient funds are available;

(3) Ensuring awards made subject to the availability of funds include the appropriate AMS ~~Clauses~~clauses (i.e., AMS ~~Clause~~clause 3.3.1-10, Availability of Funds, or AMS ~~Clause~~clause 3.3.1- 11, Availability of Funds for the Next Fiscal Year); and

(4) Ensuring that severable services crossing fiscal years are awarded using appropriate funds, and that the contract period does not exceed one year.

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

(1) *Strategic Sourcing Initiatives*. This includes the following:

(a) Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES). The SAVES program is a mandatory source for some equipment and office supplies (see AMS Procurement Guidance T3.8.6).

(b) Enterprise software licensing agreements such as Oracle.

(2) *Federal Prison Industries, Inc. (FPI) (also known as UNICOR)*. For those products available through FPI, the procedures detailed in AMS Procurement Guidance T3.8.4, Government Sources of Products/Services, must be strictly followed.

(3) *Randolph-Sheppard Act.* FAA must first consider the blind in the operation of vending facilities. (See AMS Procurement Guidance T3.8.4)

(4) *Javits-Wagner-O'Day Act (JWOD).* FAA must first consider items and services available through the AbilityOne Program (formerly JWOD) before going to other sources. (See AMS Procurement Guidance T3.8.4)

(5) *General Services Administration (GSA) Federal Supply Schedules (FSS)*. When procuring items through a GSA FSS, FAA must follow the procedures detailed under AMS Procurement Guidance T3.8.3, Federal Supply Schedules. Note that GSA is not a mandatory source for FAA.

(6) *Section 508 Requirements.* FAA must procure products and services that comply with federal requirements for Section 508 of the Rehabilitation Act. (See AMS Procurement Guidance T3.8.9.A.1)

(7) *Environmental Requirements.* FAA should acquire environmentally preferable, energy and water efficient, and recycled content products and services when

possible. (See AMS Procurement Guidance T3.6.3 for additional information)

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

g. *Set-asides.* Purchases for products or services with the exception of real property related services with an anticipated value between the micro-purchase threshold and the AMS risk threshold, except those conducted using a purchase card, are automatically reserved for competition among Socially and Economically Disadvantaged Business (SEDB) 8(a), Service-Disabled Veteran-Owned Small Business (SDVOSB), Economically Disadvantaged Women-Owned Small Business (EDWOSB), Historically Underutilized Business Zone (HUBZone), Small Disadvantaged Business (SDB), and/or Women-Owned Small Business (WOSB) vendors, unless the purchaser, with review of the cognizant Small and Small Disadvantaged Utilization Specialist, determines there is not a reasonable expectation of obtaining quotes or offers from responsible SEDB 8(a), SDVOSB, EDWOSB, HUBZone, SDB, and/or WOSB concerns that are competitive in terms of market prices, quality, and delivery. More information on set-asides, to include SEDB 8(a) and others, is available in AMS Procurement Guidance T3.6.1.

h. *Competition.*

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

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

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

i. *Solicitation.*

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

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

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

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

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

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

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

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

l. *Price Reasonableness.*

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

(2) *Purchases over the Micro-purchase threshold*. Procurements over the micro-purchase threshold must be supported by a written determination by the purchaser

that the price is fair and reasonable. When possible, this determination is based on competition. When awards are made without competition or when only a single responsive quote or offer is received, the purchaser must use other price analysis techniques to determine if the price is reasonable. Price analysis techniques that the purchaser may consider, along with the independent Government cost estimate, include:

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

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

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

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

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

m. *Documenting the Award Decision.* Purchasers should have a rational basis for purchasing decisions. The extent of documentation substantiating purchase decisions depends on the value and circumstances of the purchase. If the purchase involves an item that is a viable exemption to an applicable prohibition or restriction (See AMS Procurement Guidance T3.2.2.5.A.5, Prohibited and Restricted Purchases), then the award decision must, despite the dollar value of the purchase, document the basis and background for the purchase.

(1) *Purchases at or below the Micro-purchase threshold*. Documentation is not required except for awards that, without documentation, would appear questionable to a "reasonable person" with market knowledge of the products or services being purchased.

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

n. *Rotating Awards for Requirements at or below the micro-purchase threshold*. When possible and economically feasible, purchasers should distribute simplified purchase awards of widely available products and services among vendors.

o. *Requisitioner Role*.

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

(a) Part numbers;

(b) Item descriptions;

(c) Statements of work and specifications;

(d) Packaging and shipment requirements;

(e) Inspection and acceptance requirements;

(f) Funding and any required approvals; and

(g) Suggested vendors.

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

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

p. *Inspection and Acceptance.*

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

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

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

2 FAA Purchase Card Revised 4/2024

a. The FAA purchase card (i.e. SmartPay Card) is an internationally accepted credit card issued through a General Services Administration (GSA) contract. The purchase card is designed to streamline purchases and reduce procurement time and processing costs. Purchase card transactions generally do not include AMS provision or clause requirements except as required by the Purchase Card Management Plan. However, if the vendor provides provisions or clauses, then the Purchase Card Holder must submit them for legal review. Use of the purchase card must comply with all applicable laws, policy, guidance, and the FAA Purchase Card Management Plan.

c. The purchase card is authorized for use in making and/or paying for purchases of supplies, services, or construction. Simplified purchases with a total estimated potential value (TEPV) under the micro-purchase threshold must be performed using the purchase card.

d. The purchase card may be used -

(1) To place a task or delivery order (if authorized in the basic contract, basic ordering agreement, or blanket purchase agreement); or

(2) As a payment vehicle, when the contractor agrees to accept payment by the card. For guidance on using the purchase card as a payment vehicle against a contract, lease, or order reference the FAA Purchase Card Management Plan Section 9.2.

3 Purchase Orders Revised ~~10/2023~~7/2024

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

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

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

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

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

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

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

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

(2) The quantity of supplies or services ordered;

(3) Inspection provisions; origin or destination;

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

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

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

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

(i) Individual/sole proprietorship;

(ii) Corporation;

(iii) Partnership; or

(iv) Other (specify);

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

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

a. ~~Optional form 347,~~FAA 4400-60 Order for Supplies or Services;

b. ~~Optional form 348,~~FAA 4400-60.1 Order for Supplies or Services ~~Schedule~~ Continuation; or

c. Other agency generated or contractor provided forms.

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

(1) *Competitive Awards*.

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

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

(ii) Qualified vendor lists;

(iii) The requiring or program office;

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

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

(b) All procurements exceeding the AMS risk threshold must be publicly announced on SAM.gov Contract Opportunities website or through other means. This requirement does not apply to emergency actions, purchases from an established QVL, exercise of options, or modifications within the scope of a purchase order.

(c) Once a list of potential sources is available, the CO should solicit as many sources as practicable, but must solicit quotations from at least two or more sources. A listing of the vendors to whom the RFQ was distributed, as well as any responses or quotes, must be included in the official file.

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

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

(f) *Price Analysis/Reasonableness*. See AMS Procurement Guidance T3.2.3.A.1.

(2) *Single source awards*.

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

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

(c) Single source procurements exceeding the micro-purchase threshold (excluding emergencies) require market analysis to verify that FAA's technical and business interests are best met through a single source.

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

(e) A single source justification is not required for a site-specific requirement for land or antenna/equipment space, where the location of NAS equipment is (1) necessary to the functionality of the NAS, and (2) of continued criticality to the NAS or mission of the FAA; or for operational facilities that house equipment and/or personnel that provide Air Traffic Control services to aircraft operating in the NAS. The head of the Technical Operations service organization, or designee, will provide an annual determination identifying equipment and facilities subject to this subsection.

(f) When the total estimated value exceeds the AMS risk threshold, the CO must issue a pre- award public announcement (excluding emergencies) summarizing the basis for the single source decision.

(g) Additional information regarding single source awards can be found in AMS Procurement Guidance T3.2.2.4.

f. *Acceptance*.

(1) A quotation resulting from a RFQ is not an offer and cannot be accepted by FAA to form a binding contract. A contract is formed when the supplier accepts the offer, which can be done by:

(a) The supplier accepting the purchase order in writing to FAA. The Contracting Officer should require written acceptance of a purchase order when it is desired to consummate a binding contract before the contractor undertakes performance; or

(b) The supplier furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

g. *Modification*. Each purchase order modification should identify the order it modifies, contain an appropriate modification number, and identify what authority is being used to modify the order. The Contracting Officer determines when it is necessary to obtain a contractor's written acceptance of a purchase order modification. Purchase orders may be modified by using:

(1) ~~Standard Form 30,~~FAA 4400-34 Amendment of Solicitation/Modification of Contract;

(2) An agency-designed form or an automated format; or

(3) A purchase order form.

h. *Termination*. A purchase order may be terminated, and the process to terminate an order depends on whether the order has been accepted.

(1) If the purchase order has been accepted in writing by the contractor, the termination should be processed in accordance with AMS termination clauses.

(2) If the purchase order has not been accepted in writing by the contractor, the CO should notify the contractor in writing that the purchase order has been canceled and request the contractor's acceptance of the cancellation. If the contractor:

(i) Accepts the cancellation and does not claim that costs were incurred, no further action is required.

(ii) Does not accept the cancellation or claims that costs were incurred, the CO should process the termination in accordance with the termination clauses.

(3) Any purchase order with an anticipated value at or above the micro-purchase threshold must include a Purchase Order/GSA/FSS Order File Checklist (see Procurement Checklists) in the official file.

(4) The CO may choose to use the FAA 4400-80 Simplified Purchase Summary ~~(see~~form located on the FAST webpage under Procurement Forms~~)~~ to document actions associated with the award of a purchase order.

4 Blanket Purchase Agreement (BPA) Revised 10/2023

a. A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for products or services by establishing "charge accounts" with qualified vendors. BPAs may be appropriate when other procurement vehicles such as using a purchase card, purchase order, or contract are not appropriate or available. The following are circumstances Contracting Officers (CO) may use to support a rational basis for establishing a BPA:

(1) A wide variety of items in a class of supplies or services are required, but the exact items, quantity, and delivery requirements are not known in advance and vary;

(2) FAA offices in given areas do not have or need purchasing authority, but need a commercial source for supplies or services;

(3) Establishing a BPA would avoid writing numerous purchase orders, and/or;

(4) There is no existing source for the same supply or service that FAA must use; these sources include:

(a) Federal Prison Industries, Inc. (UNICOR);

(b) Randolph-Sheppard Act or Javits-Wagner-O'Day Act (JWOD) programs;

(c) Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES) program;

(d) National Wireless program; and

(e) Active contracts containing the "Requirements" clause.

b. A BPA is not a contract. Instead, it is an understanding between FAA and a vendor that allows FAA to place future orders more quickly by identifying terms and conditions applying to those orders, a description of the supplies or services to be provided, and methods for issuing and pricing each order. The FAA is not obligated to place, nor must a vendor accept, any orders. Either party may cancel a BPA at any time. An enforceable contract exists only when FAA places an order against the BPA and it is accepted by the vendor.

c. *Establishing a BPA.*

(1) A justification for establishing a BPA is required in the contract file. The CO must describe the rational basis for establishing a BPA addressing all applicable areas described in T3.2.2.5A.4a.

(2) After determining a BPA would be advantageous, the CO may concurrently establish BPAs for the same type of items or services with more than one vendor to provide maximum competition for orders.

(3) There is no maximum dollar limitation for a BPA; however, each BPA must have a total ceiling amount. If the anticipated total value of all orders against a BPA will exceed the AMS threshold, then it is subject to public announcement and applicable review requirements, including review by legal counsel for orders exceeding the AMS risk threshold (as well as review by the Chief Financial Officer (CFO) (see AMS Procurement Guidance T3.2.1.4 for applicable standards) and Chief Information Officer (CIO) (See AMS Guidance T3.2.1.A.3) if information technology resources exceeding the AMS risk threshold are involved).

(4) Only a CO can place an individual order exceeding the AMS risk threshold.

(5) Using a BPA does not relieve the CO or authorized users from keeping obligations and expenditures within available funds.

(6) Price reasonableness and competition requirements apply to obtaining needs through BPAs. A BPA with one vendor does not justify purchasing from only one source; the initial BPA and future orders awarded under the BPA are subject to competition requirements. (Refer to AMS Procurement Guidance T3.2.2.4, Single Source).

(7) BPAs may include Federal Supply Schedule (FSS) contractors utilizing the BPA

provision in their FSS contract.

(8) BPAs can be prepared without a Procurement Request (PR), but only after contacting vendors to arrange for maximum discounts, documentation requirements for individual purchases, periodic billings, and other necessary details.

(9) Open market purchases are not affected by an existing BPA. The same class of supplies or services offered through a BPA may be purchased on the open market, and both BPA and non-BPA vendors may be solicited.

d. *Mandatory Terms and Conditions*. A BPA must include:

(1) *Description of Agreement*. A statement that the vendor will furnish products or services, described in general terms, if and when requested by the CO, or the authorized representative, during a specified period and within a stipulated aggregate amount.

(2) *Extent of Obligation*. A statement that the FAA is obligated only to the extent of authorized orders actually placed under the BPA.

(3) *Purchase Limitation*. A statement specifying the dollar limitation for individual orders under the BPA.

(4) *Notice of Individuals Authorized to Purchase under the BPA.* The CO will furnish to the vendor a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual.

(5) *Clauses*. The BPA must include any prescribed clauses applicable to the dollar thresholds of particular orders against the BPA, e.g., Service Contract Labor Standards for orders for services exceeding the micro-purchase threshold.

(6) *Delivery Tickets*. A requirement that all shipments under the BPA, except subscriptions and other charges for newspapers, magazines, or other periodicals, will be accompanied by delivery tickets or sales slips with the following information as a minimum: name of individual who placed the order, name of contractor, BPA number, date of purchase, purchase number, itemized list of products or services furnished, quantity, unit price and extension of each item, and date of delivery or shipment.

(7) *Invoices*. Invoices are to be submitted at least monthly or upon expiration of the BPA for all deliveries made during the billing period. Each invoice must:

(a) Identify the delivery tickets covered in the invoice;

(b) State the total dollar value of each delivery ticket; and

(c) Be supported by receipt copies of each delivery ticket.

e. *Procurement Request (PR)*. A PR is not required for each order. Instead, the BPA can be bulk funded to the ceiling on the first order, and then each subsequent order applied to the BPA until funds are no longer available. Rather than obtaining a PR for each order, bulk funding is a process where the CO receives authorization through a PR to obligate funds against a specified lump sum of funds reserved for a specific purpose for a specified period of time. The amount of bulk funding should represent the anticipated need through the BPA, and not serve as means to avoid fiscal restrictions or appropriation law. The CO, or authorized BPA user, may make purchases based on an oral request or a memorandum from an authorized requisitioner in the program/requisitioning office. The program/requisitioning office should confirm oral requests in writing as a matter of record.

f. *Authorized Users.* Each person authorized to place orders against a BPA should receive written guidance from the CO on the limitations of authority and responsibilities associated with using the BPA. Authorized users must follow ordering procedures to ensure proper delivery, billing, and payment. Purchases that would normally be made as single order should not be split to avoid any user ordering limitations. Program/requisitioning offices should notify the CO whenever an authorized user changes or the need for purchasing against the BPA no longer exists; the CO should modify the BPA to reflect any changes in authorized users.

g. *Placing an Order*.

(1) When placing an order, the authorized user contacts the vendor and provides:

(a) Authorized user's name, phone number, and office.

(b) BPA number and order number assigned by the authorized user.

(c) Description of required supply or service (part number, description, quantity, etc.).

(d) Delivery address and telephone number.

(e) Delivery date.

(f) Reminder that the order is tax exempt.

(2) The authorized user should request any offered discounts and inform the vendor that the BPA number and order number is to appear on the packing slip and invoice/billing statement.

(3) The authorized user should document the order in a log or by other means to record details of the transaction (item description, price, quantity, date, etc.).

h. *Segregation of Duties*. In accordance with Office of Management and Budget (OMB) Circular A-123, the same person may not make the purchase, receive supplies or services, and authorize payment. The same person may perform two of the functions, but not all three.

i. *Review*. The CO should review a sufficient random sample of BPA files at least annually to ensure that authorized users are following procedures.

j. *Unauthorized Commitments*. Only COs or people authorized by the CO may place orders against a BPA. Any purchase made by an unauthorized person, or any purchase placed against a BPA which exceeds the authorized limitation is an unauthorized commitment.

k. *Market Analysis*. The CO must maintain awareness in market conditions, sources of supply, and other factors that may warrant making new arrangements with different vendors or modifying existing arrangements.

l. *Expiration*. A BPA is considered complete when purchases under it equal its total dollar limitation or when the stated time period expires.

5 Prohibited and Restricted Purchases Revised ~~4/2024~~7/2024

a. This guidance is intended to assist FAA personnel in determining whether a particular item or service would be a permissible purchase using appropriated funds. There is no ironclad rule or readily available list that describes in every case whether a particular purchase using appropriated funding is permissible. FAA personnel should use common sense and sound judgment, based on appropriations law and related decisions of the Comptroller General.

b. The Government Accountability Office (GAO) established a "necessary expense" doctrine. This doctrine is described fully in Volume I, Third Edition, of "Principles of Federal Appropriations Law," (GAO Red Book) issued by GAO, Office of the General Counsel. This publication states, in part, that for an expenditure to be justified under the necessary expense theory, it must meet certain tests, including: "The expenditure must bear a logical relationship to the appropriation sought to be charged. In other words, it must make a direct contribution to carrying out either a specific appropriation or an authorized agency function for which more general appropriations are available". (GAO Red Book, Volume I, Chapter 4, Section B.1). The necessary expense doctrine generally does not allow use of appropriated funds to purchase items or services that can be reasonably interpreted to meet personal convenience and are not for a necessary Governmental function. (GAO Red Book, Volume I, Chapter 4, Section C.13). The CO or purchase cardholder, consulting with budget officials and legal counsel, should make determinations with respect to the “necessary expense” doctrine about questioned or questionable items or services. Almost any listing of prohibited items of purchase is subject to exceptions. To quote the GAO Red Book "The Comptroller General has never established a precise formula for determining the application of the necessary expense rule. In view of the vast differences among agencies, any formula would almost certainly be unworkable. Rather, the determination must be made essentially on a case- by-case basis." (GAO Red Book, Volume I, Chapter 4, Section B.1).

c. *Prohibited and Restricted Items*. For FAA, the following are prohibited or restricted items of purchase (this is not a complete list):

(1) **Drinking water**, except when:

(a) A duly constituted public health authority pronounces ordinary drinking water to be unsafe for human consumption at the site;

(b) A viable and safe water source for FAA personnel is not available on or within a reasonable distance of the worksite;

(c) FAA personnel reasonably foresee a disaster or emergency, such as imminent landfall of a hurricane, and all of the following conditions are present:

(i) FAA personnel reasonably anticipate that drinking water at the site will be unsafe for human consumption;

(ii) The drinking water is for FAA personnel responding to or at the emergency or disaster site;

(iii) The amount of drinking water is commensurate with the anticipated response time at the site or the estimated time for the local drinking water to be considered safe for human consumption, whichever is shorter; and

(iv) The drinking water is purchased in a reasonable time-frame in advance of an imminent emergency or disaster, and the time-frame does not exceed the time required to purchase, stage, and properly distribute the drinking water; or

(d) The drinking water is provided in a controlled environment as may be necessary to enable collections for drug use analysis for safety sensitive positions.

(2) **Food or beverage**, except as described in AMS Procurement Guidance T3.2.2.5A.6, FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops.

(3) **Gifts, gift certificates, and prepaid gift cards**.

(4) **Membership fees** for individual employees. The FAA may purchase membership in a society or association in its own name.

(5) **Subscriptions** to print or online publications or magazines not related to official duties.

(6) **Clothing** or personal apparel of any description, except:

(a) Special type clothing required by FAA. The requestor's supervisor must prepare a written justification for special type clothing and coordinate the justification with legal counsel.

(i) Clothing (such as a shirt with FAA logo) for recruitment activities such as job fairs and professional liaison activities with recruitment sources (e.g., schools, colleges and universities, professional associations/organizations, or intergovernmental agency sources) may be authorized if it supports FAA business objectives and there is a bona fide need.

(ii) Clothing for air shows may be authorized if there is a bona fide need for FAA employees to be clearly identifiable.

(b) Clothing and equipment classified as personal protective equipment (PPE). The requestor's supervisor must prepare a written justification for PPE, but coordination with legal counsel is not necessary when the value of the procurement is less than the AMS risk threshold. All PPE must:

(i) Have proper controls established to ensure that PPE is appropriate and accounted for; and

(ii) Be maintained and used according to standards established by the Occupational Safety and Health Administration (OSHA). See the OSHA website for more information.

(c) All clothing or PPE purchased by FAA remains the property of the Government and not the employee.

(7) **Rental of aircraft** by anyone not in an aircraft-related position.

(8) **Fans, air conditioning and cooling equipment, space heaters and heating equipment**, except as properly installed for general use in connection with the maintenance and operations requirements for the site.

(9) **Water coolers, vacuum cleaners, and other household appliances** (i.e. refrigerators, microwaves, etc.), except as requisitioned for general use by, or authorized in writing for purchase by, the authorities responsible for building maintenance and equipment.

(10) **Cellular or communication devices and services** unless covered by the National Wireless Program Office (NWPO). Devices provided through the NWPO include cellular phones, one and two-way pager devices, multi-functional server-based devices (e.g., Blackberries), and satellite phones. (See FAA Orders 1830.9A and 1370.119).

(11) **Personalized stationery**, including paper pads, with the name, position, title, or office of FAA personnel, except when utilized by the Office of the Administrator (AOA-1), Deputy Administrator (ADA-1), and other executive-level personnel within the Agency.

(12) **Tote bags**.

(13) **Coffee mugs**.

(14) **Water bottles**.

(15) **Leather and other natural hide portfolios, binders, or planners**.

(16) **Give-away items**, including portfolio covers, flash drives, pens, and pencils, for

internal or external marketing of products, services, or programs by FAA, with the following exception and conditions:

(a) Purchase of promotional items for recruitment activities, such as for job fairs and professional liaison activities with recruitment sources (e.g., schools, colleges and universities, professional associations/organizations, or intergovernmental agency sources), may be authorized when these items support FAA business objectives and there is a documented bona fide need. Where there is a bona fide need, the items must also meet all of the following criteria:

(1) The items must have a practical use appropriate for the audience, and are business related items, such as pens, rulers, calculators, post-it notes, business card holders, lanyards or note pads;

(2) The items cannot be a personal use item, such as coffee cups, water bottles, umbrellas, candy or food items, or fans;

(3) The items must be economically priced and reasonably portable; and

(4) The items must avoid the perception that taxpayer dollars have been frivolously spent.

(b) Subject to the criteria in the immediately preceding subparagraph (a)(1-4), purchases of give-away promotional items in support of the Scientific, Technology, Engineering and Mathematics (STEM), Aviation and Space Education (AVSED) Program are authorized. There is no separate requirement to document a bona fide need for such items. There is a bona fide need for such items because the STEM AVSED program implements a direct statutory requirement (Public Law No. 115-254) to prepare and inspire students for aviation and aeronautical careers and to mitigate an anticipated shortage of pilots and other aviation professionals. (See FAA Order 1250.2B).

(c) Recruitment items must comply with FAA branding order 1700.~~6C~~6D and display the FAA jobs website (http://www.faa.gov/jobs).

(17) **Coins,** including but not limited to Challenge and Commemorative coins are strictly prohibited, with the exception of coins purchased for Non-Monetary Awards.

(18) **iPAD** and similar equipment and related services, with the following exceptions and conditions:

(a) All purchases of iPAD or similar equipment and related services must be coordinated with the Chief Information Officer's (CIO) Strategy and Performance Service, IT Asset & Purchase Management, via the My IT website (https://myit.faa.gov/).

(b) iPAD and similar equipment and related services for approved purchases may be procured using the FAA purchase card (See T3.2.2.5A.2 and FAA Purchase Card Management Plan) if the costs do not exceed established single and monthly purchase limits.

(c) LOB/SO CIOs are responsible for determining the level of acceptable security risk. As such, each LOB/SO must review the default device settings and modify accordingly to ensure the appropriate level of information assurance.

(d) Each LOB/SO must maintain an inventory of all iPAD or similar equipment.

(19) **Purchases for Non-Monetary Awards**, except:

(a) *Honorary Awards*. An Honorary Award is a non-monetary award given by LOB/SOs to recognize significant individual and/or group contributions. LOB/SOs may purchase plaques, trophies, pins, flags, certificates, coins, or similar symbolic items for these awards to officially recognize employees for these types of actions. The cost to the LOB/SO for non-monetary awards for a single occasion must not exceed $250 per award (including but not limited to engraving, shipping and handling) per LOB/SO, per occasion. Retirement cannot form the basis of an honorary non-monetary award.

(b) *FAA Awards*. HRPM Volume 9 Performance Management: HROI Recognizing Employees outlines the FAA Awards Program. The FAA Awards Program is managed by AHR and awards under this program are not subject to the $250 per award limit but should be reasonably priced and symbolic.

(c) *Federal Career Service Recognition*. Federal Career Service Recognition, issued by AHR, to recognize time in Federal service. These consist of:

(i) Length of Service certificates and pins awarded at specific intervals of federal service (i.e. 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, etc.).

(ii) Certificate of Service (Retirement Certificate) which is automatically coordinated by the Benefits Operations Center (BOC) when an employee notifies them of their impending retirement. The certificate is printed with the employee's name and years and months of federal service and is mailed to their home address.

LOB/SOs may purchase reasonably priced, plain frames (without the FAA logo/insignia) for these certificates.

(d) *Distinguished Career Service Award (Retiring Employees)*. This is a competitive FAA Award coordinated by the Workforce Transformation Division, AHA-300. LOB/SOs may submit a nomination for this award, provided the retiring employee has exhibited exemplary performance and made significant, widely recognized contributions to the Federal service during an entire career. Employees retiring with at least 20 years of Federal service are eligible, provided they have previously received at least two of the following: monetary award, any Department of Transportation or FAA honorary recognition, or FAA nomination for any governmental or external recognition. This award is a specific plaque and although not subject to the $250 per award limit, should be reasonably priced.

(e) To enhance an official awards ceremony, reasonable and nominally priced purchases, such as for decorations and related supplies, are permissible. An official awards ceremony is defined as publicized event that is anticipated to have an audience and the presentation of an award(s) recognizing FAA Federal employee(s). Award ceremonies are usually held at the Administrator or Executive level. Awards presented at official awards ceremonies must comply with HRPM Volume 9, Performance Management: HROI Recognizing Employees.

(f) Awards Programs are a structured process for organizations to recognize employees. All awards must be based on an act, service, accomplishment, contribution or performance that supports the LOB/SO Business Plan and/or FAA strategic priorities. Written justification is required for all awards given. The written justification varies in detail depending on the type and value of the award and must be attached to the purchase card request or Procurement Request in PRISM. For example, the written justification for honorary, non-monetary awards must include: Name of the employee (or employees if it is a group award), Date, Reason for award, Type, and Cost of award. Additional information on awards ceremonies and non-monetary awards can be found in the Awards, Recognition, and Awards Ceremonies SOP. Directions for accessing this SOP on the Standard Operating Procedures webpage of the Financial Services (ABA) website are as follows:

1. Go to https://my.faa.gov/
2. Click on the "Organizations" Tab
3. Click on "Financial Services" under "Finance and Management (AFN)"
4. Click on "Standard Operating Procedures"
5. Click on "Awards, Recognition, and Awards Ceremonies"

(20) **Business Cards**, except:

(a) The FAA may use appropriated funds to purchase business cards for employees, when necessary to conduct business, and approved in advance. Managers will determine who in their organization is authorized to obtain business cards paid for with appropriated funds to conduct FAA business.

(b) Business cards purchased with appropriated funds are Government property. Employees should exercise good judgment and caution when using their cards in situations not directly related to conducting FAA business.

(c) All FAA business cards must comply with branding logo and template requirements in FAA Order 1700.~~6C~~6D. See the FAA website for more information (FAA only)

(d) Purchasers must use one of two printing sources when using appropriated funds to purchase business cards:

(1) FAA Aeronautical Center's Media Solutions Group; or

(2) Lighthouse for the Blind, Inc., Seattle, WA (pursuant to the mandatory source requirements of the Javits-Wagner-O'Day Act). See the Lighthouse for the Blind's website for ordering information.

(21) **Purchasing or Renting Portable Storage Units or Procuring Short-term Storage Services**, with the following exceptions and conditions:

(a) *Applicability*. For purposes of this guidance, storage units or services are limited to portable storage units or containers designed for temporary (less than twelve months) on-site use or temporary storage in a secured centralized storage center owned by the vendor.

(b) *Definitions.*

Portable Storage Unit- refers to a portable, weather-resistant receptacle designed and used for the temporary (less than 12 months) storage or shipment of personal property on-site at an FAA facility. Portable storage units must be classified as personal property and not affixed to or attached by a permanent means to the land (real property) upon which they may be situated for temporary use.

Short-term Storage Services- refers to temporary (less than 12 months) storage in a secured centralized storage center owned by the vendor.

(c) *General.*

(1) When possible, storage requirements for a construction project should be incorporated into the statement of work or specification under the associated construction contract. Storage requirements included in construction contracts may exceed 12 months if required for the duration of the project.

(2) Before purchasing or renting storage units or procuring storage services, a determination must be made by the Program Office in coordination with Aviation Property Management (APM) division that existing storage space is not available from other sources within FAA or elsewhere in Government.

(3) If the portable storage unit or container is to be placed on land owned or leased by FAA, the CO or purchase cardholder must also coordinate with a Real Estate Contracting Officer (RECO) to confirm that FAA has sufficient legal rights to use the land for such purposes and that no real estate or facility factors exist that may affect the procurement, such as applicable real estate regulations, contractual limitations, or unique site requirements for the underlying real property.

(4) *Roles and Responsibilities.*

Program Office- coordinate requirements with Aviation Property Management (APM) division to determine whether existing storage space is available within FAA or elsewhere in Government.

Aviation Property Management Division- determine whether existing storage space is available within FAA or elsewhere in Government.

Contracting Officer/Purchase Card Holder- coordinate with Real Estate CO to confirm that no real estate contract or facility factors exist that may affect the procurement, such as applicable real estate regulations or unique site requirements for the underlying site.

Real Estate Contracting Officer- determine whether FAA has sufficient rights to place a portable storage unit or container on the property for such use.

(22) **Purchasing Printers and Other Printing Devices:**

(a) Purchases of desktop and/or stand-alone imaging devices and related consumables require approved waivers in accordance with FAA Order 1720.37A.

(23) **Certain Telecommunications and Video Surveillance Services or Equipment** are prohibited, as provided in T3.8.9C.1.

6 FAA Sponsored Conferences, Seminars, Ceremonies, and Workshops Revised 4/2024

a. FAA-sponsored conferences, seminars, ceremonies, and workshops are a routine element of FAA operations. FAA personnel must consider certain special requirements when planning and conducting such events. All such conferences must comply with the standard operating procedures (SOPs) specified by the Office of Investment Planning and Analysis. For current forms and guidance, please see the Financial Standard Operating Procedure "Planning Meetings, Conferences, Workshops, Training Events and Award Ceremonies in the FAA" at the Financial Services website https://employees.faa.gov/org/staffoffices/afn/finance/sop/?selected=Planning Meetings, Conferences, Workshops, Training Events, and Award Ceremonies in the FAA.

b. *Securing Conference Space.* The Real Estate Contracting Officers have the authority to secure conference space. Generally, such space can be contracted for utilizing a standard purchase order. If the conference space provider produces their own conference form, it must be reviewed for unacceptable terms/language and when acceptable, signed by a Real Estate Contracting Officer.

c. *Legal Review*. Legal counsel must first review any agreement in excess of the $100,000 (total Government expenditures including room charges for the attendees) between FAA and a conference space provider. Except as provided below, agreements below the $100,000 do not require legal review, but review may be sought at the discretion of the real estate CO or the real estate CO's designate.

(1) Changes to the following AMS clauses require legal review regardless of the dollar value:

(a) 3.9.1-1 Contract Disputes; and

(b) 3.10.6-1 Termination for Convenience of the Government (Fixed Price).

(2) Incorporation of the following clauses requires legal review regardless of the dollar value:

(a) Clauses making any law (including state law) other than Federal law controlling;

(b) Clauses that establish liability beyond what is funded or contingent liability beyond the limits imposed allowed the Federal Tort Claims Act; and

(c) Clauses requiring binding arbitration.

d. *Travel-related Costs*. Employee's travel, hotel, local transportation, and per diem must be paid with the FAA travel card. An employee's travel-related costs cannot be paid for under a contract, purchase order, or FAA purchase card.

e. *Items for Distribution to Conference Attendees*. Generally, personal use items, such as mugs, clothing, or bags, cannot be purchased and given to conference attendees. Conference planners must consult with legal counsel before purchasing any items to be distributed to conference or event attendees.

f. *Food and Beverage*.

(1) The FAA may purchase food and beverage for conference participants under the following narrowly defined circumstances:

(a) *Formal Conferences*.

(i) The term "formal conference" usually denotes topical matters of interest to and participation of multiple agencies and/or non-Governmental participants. Other indicators are registration, published substantive agenda, scheduled speakers and discussion panels.

(ii) The meals, beverages, and refreshments must be incidental to the conference.

(iii) The employees are not free to take meals elsewhere without being absent from the essential business of the meeting.

(iv) The meals, beverages, and refreshments must be part of a formal conference that includes both substantial functions at the time the meals, beverages and refreshments are served and substantial functions separate from when food, beverages, or refreshments are served.

(v) At formal conferences where the above criteria are met, FAA may also pay for the food, beverages, and refreshments of private citizens or Federal employees from other agencies when an administrative determination is made that their attendance is necessary to achieve the program or conference objectives.

(b) *Internal FAA Training Conferences*. The meals, beverages, and refreshments must be:

(i) Incidental to the conference;

(ii) Attendance at the meals must be necessary for full participation in the conference; and

(iii) The employees are not free to take meals elsewhere without being absent from the essential business of the meeting.

(c) *Award Ceremonies*. The FAA may purchase light refreshments for award ceremonies. If not awarded through a contract or purchase order, the FAA purchase card must be used to purchase light refreshments.

(d) *Cultural Awareness Ceremonies*. The FAA may purchase food or beverage if part of a formal program intended to both advance Equal Employment Opportunity objectives and provide cultural or ethnic awareness. Food and beverage must be part of a culture's food and beverage and offered as part of a larger program that serves an educational function.

(e) *Official Receptions*. For official receptions hosted by the Administrator (or designated senior executive) for foreign or non- Federal dignitaries, FAA may purchase light refreshments, meals, snacks, and beverages. The Administrator's official reception and representation funds must be used for these events (see FAA Order 1200.3E). The FAA purchase card may be used to purchase food or beverage for these events.

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

(3) Food and beverage costs must be reasonable, must not include alcoholic drinks, and cannot be purchased for amusement or social events, such as networking sessions, team-building exercises, or hospitality suites (except hospitality functions at the Administrator's official receptions).

(4) The FAA cannot purchase food and beverage for routine meetings to discuss day-to-day issues. Examples of routine meetings include those to discuss day-to- day operations, to develop business plans to accompany FAA goals, or to develop performance targets.

(5) The FAA may pay a facility rental fee that includes the cost of food or beverages provided to FAA employees where the fee is all-inclusive, not negotiable and competitively priced to those that do not include food.

(6) Foods that constitute "light refreshments" are snacks, such as cookies, and beverages. Light refreshments for morning, afternoon or evening breaks are defined to include: coffee, tea, milk, juice, soft drinks, water, donuts, bagels, fruit, pretzels, cookies, chips, muffins or related items of similar value. This is distinguished from a meal such as breakfast, lunch or dinner, or multiple heavy hors d'oeuvres. Meals are not "light refreshments."

g. *Justification for Food and Beverage.* The FAA's policy is to not use, nor create the appearance of use of, Government funds to entertain Federal employees. Before contracting for a conference or event with food and beverage, the Director (or equivalent management level) of the organization sponsoring the event and legal counsel must approve a written justification explaining why food and beverage is necessary. The justification must describe:

(1) Nature and purpose of the event;

(2) Applicability of the event to FAA's programs or activities;

(3) Any statutory, regulatory, or other authority for the event;

(4) Participants;

(5) Dates;

(6) Facility and location;

(7) Estimated cost;

(8) Reason why food and beverage is necessary;

(9) Meal(s) that will need to be offset in attendees' travel vouchers; and Keynote functions which include meals. The description of the function is to include any keynote speakers, the type of presentation(s) being given and how they are integral to the conference.

h. *Travel Vouchers and Per Diem*. Conference attendees must offset in their travel vouchers the cost of meals paid for and provided by the Government. Light refreshments do not need to be offset in travel vouchers. See FAA Travel Policy for rules when meals are furnished by the Government.

i. *Registration Fees.* Registration fees are payments collected by FAA, or a support contractor on behalf of FAA, from private and other public participants attending an FAA-sponsored conference. If FAA wishes to charge a registration fee, it must have statutory authority to do so. Under 31 U.S.C. 3302(b), FAA must deposit registration fees in the U.S. Treasury, unless there is specific statutory authority for FAA to keep and use fees collected.

Under 49 U.S.C. 45303, the FAA currently has statutory authority to credit back to its operations account authorized collections; therefore conference planners should check with legal counsel before depositing authorized registration fees into the General Fund of the United States Treasury Department. FAA may authorize a contractor providing conference services to charge a registration fee to conference participants. In cases where the FAA co-sponsors a conference and the co-sponsor incurs costs of the conference without FAA reimbursement, the co-sponsor is also permitted to collect registration fees. The registration fee amount is subject to the real estate Contracting Officer approval consistent with the contract terms and conditions and may include a reasonable profit for the contractor's efforts.

B Clauses

view contract clauses

C Procurement Forms Revised ~~9/2021~~7/2024

Document Name
FAA 4400-34 Amendment of Solicitation/Modification of Contract ~~- Standard Form 30~~
FAA 4400-60 Order for Supplies or Services ~~- OF 347~~
FAA 4400-60.1 Order for Supplies or Services Continuation ~~- OF 348~~
FAA 4400-75 Request for Quotation ~~- SF-18~~
FAA 4400-80 Simplified Purchase Summary

D Procurement Samples Added 9/2021

Document Name

E Procurement Templates Added 9/2021

Document Name
Procurement Planning for Simplified Acquisitions - Template A

F Procurement Tools and Resources Added 9/2021

Document Name

AMS Procurement Related Thresholds and Review Requirements

T3.2.3 - Cost and Price Methodology **Revised 10/2007**

A Cost and Price Methodology

1 Proposal Analysis **Revised ~~1/2022~~7/2024**

The procurement team is responsible for evaluating proposals using the methods of price and cost analysis appropriate to the procurement. Price and cost analysis are used to determine if prices or costs are reasonable and/or realistic. The CO is responsible for determining whether contract prices are fair and reasonable. The CO may use one or more of the cost and pricing methodologies described in this section based on the complexity and type of acquisition. The CO may request the advice and assistance of other experts to ensure that an appropriate analysis is performed. The complexity and circumstances of each acquisition should determine the level of detailed analysis required. For example, a real property acquisition may only require price analysis while a single source complex major systems acquisition may require certified cost or pricing data, and cost and price analysis.

The data used to perform cost or price analysis should be the most current available data. Use of non-current data should be (i) documented as to why more current data was not used or available, and (ii) adjusted if applicable to reflect the purchasing power of the dollar over time. At a minimum, if the data is two or more years old, explain why the older data (escalated to the current year) is adequate for use in determining fair and reasonable pricing.

a. *Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.*

(1) Definitions.

(a) *Certified Cost or Pricing Data.* This is cost or pricing data where the offeror certifies as to the accuracy, completeness and currency of the data as of a specific date before execution of the contract action. This includes all facts that prudent buyers and sellers would reasonably expect to significantly affect price negotiations. Certified cost or pricing data are factual, not judgmental; and are verifiable. The Government is entitled to a price adjustment, related to the defective data, if certified cost or pricing data is found to be inaccurate, incomplete, or noncurrent as of the date of the action. For real property acquisitions, certified cost or pricing data is not required.

(b) *Data other than certified cost or pricing data.* This is pricing data, cost data, and judgmental information necessary for the CO to determine a fair and reasonable price and/or to determine realism. Such data may include the identical types of data as certified cost or pricing data, but without the certification. The data may also include any information reasonably required to explain the offeror's estimating process, including, but not limited to-

(i) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

(ii) The nature and amount of contingencies included in the proposed price.

(2) *Types of Data and Evaluation Method.* The CO may require information to support proposal analysis in any of the following degrees of detail:

(a) Pricing data only and, no cost data when a price analysis is conducted;

(b) Data other than certified cost or pricing data, when in the CO's opinion it is necessary to determine fair and reasonable price and/or to determine realism, and a price analysis and/or cost analysis is conducted; or

(c) Certified cost or pricing data, when the offeror certifies to the accuracy, completeness and currency of the data and both price and cost analyses are conducted.

(3) *Decision to Require Data and Information*. A CO has the discretion to determine the level of cost or pricing data required to ensure prices are fair and reasonable. Cost or pricing data should be requested *only* when the CO does not have reasonable assurance that costs or prices are fair and reasonable based on price analysis. When deciding the extent to which cost and pricing data may be required, the CO should consider the cost and schedule burden on the contractor to provide the information.

(a) When the CO determines adequate price competition exists, certified cost or pricing data must not be requested in accordance with Policy 3.2.3.1.2. Adequate price competition may exist when:

(i) Two or more responsible offerors competing independently submit priced offers responsive to FAA's expressed requirement;

(ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors competing independently would submit priced offers responsive to the screening information request's expressed requirement, although only one offer is received from a responsible responsive offeror; or

(iii) Price analysis clearly demonstrates that the proposed price is reasonable compared to current or recent prices for the same or similar items purchased in comparable quantities, and under comparable terms and conditions under contracts that resulted from adequate price competition.

(b) If the CO determines that the level of competition does not support the determination of price reasonableness, or the offeror's price cannot be determined to be reasonable from price analysis according to T3.2.3.A.1.b. below, then the CO must obtain certified cost or pricing data or data other than certified cost or pricing data to the extent necessary to support a determination of a fair and reasonable price (Policy 3.2.3.1.2). The level of data required should be based on the specific circumstances of the procurement taking into account the factors described in subparagraph (4) "Factors to Consider" below.

The CO within his or her discretion may, based on price analysis alone, determine that an offeror's price is not fair and reasonable without requesting additional cost data.

(4) *Factors To Consider*.

(a) The CO has the flexibility to determine:

(i) Whether or not to require cost or pricing data;

(ii) To what degree or level of detail data should be requested; and

(iii) Whether or not the data should be certified, except for situations where adequate price competition exists (and the CO must not require certified cost or pricing data).

(b) The CO may consider the following factors to determine the appropriate data requirement:

(i) *Recent Pricing Data.* Availability of information on prices for the same or similar goods or services procured on a competitive basis.

(ii) *Degree of Competition Attained*. Level to which competitive market forces can be expected to influence submission of reasonable prices.

(iii) *Uncertainty of the Market Place*. How volatile market prices or technological changes may impact vendor prices or costs.

(iv) *Availability of Independent Cost Estimate/Data.* The degree of confidence the CO has in the internal estimate or other data which would provide an effective means to objectively evaluate proposed costs or prices.

(v) *Technical Complexity of Procurement.* The degree to which developmental effort or technical complexity is inherent in the requirement.

(vi) *Contract Type*. The degree to which the decision of contract type mitigates the risk to the agency.

(5) *Requirement for Certified Cost or Pricing Data*. For supplies, services, and construction contracts, when certified cost or pricing data are necessary, AMS ~~Clauses~~clauses 3.2.2.3-38, Requirements for Certified Cost or Pricing Data or Data Other Than Certified Cost or Pricing Data, and 3.2.2.3-39, Requirements for Certified Cost or Pricing Data Other Than Certified Cost or Pricing Data – Modifications, must be inserted in the SIR. The clauses require the contractor to submit the information contained in the Appendix G1 "Instructions for Submitting Certified Cost/Price Proposals for Supplies, Services, or Construction."

(6) *Requesting Data and Information*. When requesting data other than certified cost or pricing data, it should be limited to the extent necessary to determine reasonableness and/or realism. The level of detail and format of the data requested will be determined by the CO. Generally this will be a modified version of information requested in subparagraph (5), "Requirement for Certified Cost or Pricing Data" above. In the case of a single-source contract, no one may request any type of cost or price information from the vendor until a single-source justification is fully executed.

(7) *Subcontracts.* Contractors are required to submit certified cost or pricing data or data other than cost or pricing data for proposed subcontracts or subcontract modifications only when necessary to determine the reasonableness of the proposed contract or subcontract price, including negotiated final pricing actions. The contractor is responsible for performing cost or price analysis when determining price reasonableness on subcontract proposals and for submitting the subcontract cost or pricing data if requested by the CO.

b. *Price Analysis.* Price analysis is a process of examining and analyzing a proposed price without analyzing its separate cost elements and proposed profit/fee. Price analysis is the most commonly used method of proposal analysis and must be performed on all offeror proposals (Policy 3.2.3.1.2). Even when cost analysis is performed to evaluate individual cost elements of a contractor's proposal, some form of price analysis is needed to ensure that the proposed price is fair and reasonable. There are several techniques that may be used in performing price analysis:

(1) Comparison of proposed prices received in response to the screening information request (See T3.2.3 A 1 e (5) for price comparability considerations);

(2) Comparison of prior proposed prices and contract prices with current proposed prices for the same or similar end items or services in comparable quantities;

(3) Application of rough yardsticks/parametric estimating methods (such as dollars per pound, per square foot, per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry;

(4) Comparison with competitive published catalogs or lists, published market prices or commodities, similar indexes, and discount or rebate arrangements;

(5) Comparison of proposed prices with independent government cost estimates;

(6) Comparison of comparable real property from multiple listing services actual sales or appraisals; and

(7) Ascertaining that the price is set by law or regulation.

c. *Cost Analysis.*

(1) Cost analysis is the review and evaluation of the separate cost elements and

proposed profit/fee of an offeror's proposal. The CO will determine whether cost analysis is appropriate. Cost analysis is not required to evaluate established catalog or market prices, prices set by law or regulation, real property acquisitions, and commercial items. If there are significant disparities in proposed prices, a limited form of cost analysis may be used to investigate the cause of the disparities. Cost analysis involves examining data submitted by the contractor and the judgmental factors, if applicable, applied in projecting estimated costs. Cost analysis also includes:

(a) Verification that the contractor's cost submissions are according to disclosed cost accounting procedures;

(b) Comparisons with previous costs; and

(c) Forecasts of future costs based on historical cost experience.

(2) Cost analysis is used to determine cost reasonableness when a fair and reasonable price cannot be determined through price analysis alone, and/or the agency needs an understanding of the cost buildup of the proposal to verify cost realism. The data required to perform the cost analysis should be limited to those cost elements that are necessary to ensure a fair and reasonable, and if necessary, a realistic price determination.

(3) Cost analysis involves the following techniques and procedures:

(a) Verification of cost or pricing data and evaluation of cost elements, including:

(b) Evaluation of direct and indirect costs including the application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors. Proposed direct material costs should be examined for necessity, quantity, type, and price;

(c) Evaluation of the effect of the offeror's current practices on future costs to ensure that the effects of inefficient or uneconomical practices, if any, are not projected into the future (e.g. trend analysis of labor and materials, evaluation of learning curves or efficiency factors, if applicable);

(d) Comparison of proposed costs and cost trend projections with actual historical costs, and previous or current cost estimates for the same or similar items, including Independent Government estimates;

(e) Analysis of the contractor's evaluation in determining the reasonableness of the subcontract costs;

(f) Determination of whether any cost or pricing data that is necessary to make the contractor's proposal accurate, complete, and current has been submitted or identified in writing; and

(g) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in T.3.3.2.

(4) *Profit/Fee Analysis.*

(a) When price analysis techniques are sufficient to ensure a fair and reasonable price, analysis of profit/fee is not appropriate.

(b) When cost analysis is required for price negotiation, profit/fee is analyzed.

(c) Profit/fee should be analyzed with the objective of rewarding contractors for:

(i) Financial and other risks they assume;

(ii) Resources they use; and

(iii) Organization, performance, and management capabilities they employ.

(d) Consideration should be given to the:

(i) Ratio of indirect costs to direct costs;

(ii) Extent of subcontracting;

(iii) Complexity of materials requirements; and

(iv) Commitment of capital investments to contract performance.

(e) For the purposes of establishing a negotiation position the CO should use some structured method (e.g. weighted guidelines) for determining the profit/fee appropriate for the work to be performed. For fees not based on cost, the CO is encouraged to establish a structured mechanism under cost reimbursable contracts which relates performance, quality, and/or schedule to fee amounts earned.

d. *Cost and Price Realism*

(1) The purpose of realism analysis is to ensure that proposed prices are not so low such that contract performance is put at risk from either a technical and/or cost perspective. It is separate from analyses performed to determine cost or price reasonableness. Realism analysis determines whether an offeror's proposed costs and/or prices:

(a) Are realistic for the work to be performed;

(b) Reflect a clear understanding of the requirements; and

(c) Are consistent with the various elements of the offeror's technical proposal.

(2) *Cost Realism.*

1. Cost realism analysis is an objective process of identifying the specific elements of a cost estimate or a proposed price and comparing those elements against reliable and independent means of cost measurement. This analysis judges whether or not the estimates under analysis are verifiable, complete, and accurate, and whether or not the offeror's estimating methodology is logical, appropriate, and adequately explained. This verifies that the costs or prices proposed fairly represent the costs likely to be incurred for the proposed services under the offeror's technical and management approach.

2. Cost realism analysis is used for analysis of proposed costs on cost reimbursement contracts, competitive fixed-price incentive contracts, and may also be used on time and material contracts, and, if necessary, on competitive fixed price contracts.

3. Cost realism analysis determines whether proposed costs may be overstated or understated with respect to performing SIR requirements using the contractor's unique and described methods in the cost and technical proposals. The offeror's Most Probable Cost (MPC) is determined by adjusting each offeror's proposed cost, and fee when appropriate, to reflect any cost additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis.

4. The MPC may differ from the proposed cost and should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal. The MPC, not the proposed cost, is used for purposes of evaluation to determine the best value.

5. Cost Realism Evaluation Steps:

(i) Obtain data other than certified cost or pricing data from the offeror, including a detailed proposal breakdowns by cost element and the associated basis of estimates (BOEs) for work to be performed.

(ii) Obtain cost realism analysis support, also known as Qualitative and Quantitative (Q&Q) review. The Procurement Team lead designates a Q&Q Evaluation Team or reviewer from members of the evaluation team. The Q&Q Team should consist of technical evaluators, who do not need to be on the actual Technical. The technical Q&Q team member(s) review the SIR requirements, and each offeror's technical, cost proposal and BOEs, to ensure the cost proposal reflects the resources required to accomplish the work through the unique methods and approaches identified in the offeror's technical proposal. Depending on the nature of the acquisition, the technical Q&Q reviewer must be familiar with the requirement and possess specialized technical knowledge, skills and experience in areas such as engineering, software development or manufacturing in order to perform a technical review of the proposed types and quantities of materials, equipment, labor mix and hours, processes and other associated factors in the offeror's proposals. Based on its results, the Q&Q review should determine which direct labor hours and cost elements should be adjusted to determine MPC.

NOTE: The Technical Q&Q member will only review material quantities, labor hours and mix and does not need to see the prices of the actual proposal.

(iii) The technical Q&Q reviewer provides the analysis to the cost/price analyst. NOTE: The technical cost realism reviewer must not be a member of the technical evaluation team unless the technical evaluation has been completed, reviewed, and signed, or the cost proposal is redacted to remove cost and pricing data prior to the start of the review. This is necessary to avoid any potential bias in the technical evaluation related to information in the cost proposal.

(iv) Obtain information from Government sources related to contractor direct and indirect rates, i.e. Forward Pricing Rate Agreements or Recommendations (FPRA/FPRRs). Revise the offeror's proposed rates to reflect the Government's expectation of final rates, as appropriate.

(v) The cost evaluator applies the results of the Q&Q review and any rate revisions or applicable updates to other cost elements to determine each offeror's MPC. Fee may be adjusted as appropriate to account for changes in estimated costs. The MPC represents the costs most likely to be incurred by an offeror in performance of the effort. The MPC, not the proposed cost, is used for best value analysis.

(3) *Price Realism.*

1. Price Realism analysis is an objective process that focuses on the proposed price and performance risks. Price realism may be used on competitive fixed priced and/or time and material contracts when new requirements may not be fully understood by the offeror, there are quality concerns, or past experience indicates that contractors' proposed prices have resulted in quality or service shortfalls. The results of the analysis may be used in performance risk assessments and responsibility determinations.

2. Unlike in cost realism analysis, the offeror's proposed price is not adjusted for the Most Probable Cost. The focus is on the price and the ability of the offeror to perform the contract requirements for the proposed price, not the individual cost elements.

3. Price Realism Evaluation Steps:

(i) Obtain price information from the offeror, but no cost data is provided.

(ii) Obtain information from Government or industry sources that can be used for price realism determination such as:

a. Independent Government Cost Estimate (IGCE);
b. Published catalog prices;

c. Previous contract prices for similar items in similar quantities procured on a competitive basis;
d. Published fully burdened labor rates with similar qualifications and geographic location to those of the proposed labor categories;
e. Published price indices such as IHS Global Insight for escalation factors; and
f. Other methods of price analysis as described in T.3.2.3.A.1.b.

Note: This step is part of the price analysis step required in all evaluations. The Price Evaluation Team should apply price analysis techniques to support the price realism analysis.

(iii) Obtain the Technical Evaluation Team's final determinations of the offeror's understanding of technical requirements and past performance ratings.

(iv) Obtain the CO's determination of financial capability (part of the responsibility determination).

(v) Document the price realism analysis and its conclusion. If the analysis indicates proposed prices may be unrealistic, the CO may determine that additional analysis, including cost realism, is required. Data other than certified cost or pricing data would be requested to support additional analysis. For realism analyses for fixed-priced or time and material contracts, do not adjust the offeror's proposed fixed price or time and material labor rates.

(4) *Realism Analysis and Risk.* A practical example of the need for realism analysis is the tendency of some contractors to "buy-in" to a contract award. "Buying-in" refers to an offeror submitting an offer below anticipated contract costs. Contractors may "buy-in" for purely business reasons or may expect to recover losses through an increase of the contract price after award or through receiving follow-on contracts at artificially high prices. Buying-in may decrease competition or result in poor contract performance. The CO should minimize the risks associated with buy-ins through the following appropriate actions:

(a) Verify that contract type and price are consistent with the uncertainty and risk to FAA and contractor while at the same time providing the contractor with the greatest incentive for efficient and economical performance;

(b) Ensure the development of a sound government estimate for the products or services to be purchased;

(c) Price contract options for additional quantities together with the firm contract quantity, consistent with program requirements; and

(d) Use cost analysis in evaluating proposals for follow-on contracts and change orders in order to identify if the contractor has proposed artificially high prices to recover losses from the initial contract buy-in.

The foregoing does not mean that the CO should refuse to award a contract when a buy-in is apparent. The CO should evaluate the attendant risks of costs escalating out of control or the contractor not being able to successfully complete performance. For cost-reimbursable contracts, an award based on an unrealistically low cost would represent a significant risk to the agency because the final price paid by the Government is based on incurred costs. For fixed-price contracts, the cost risk is on the contractor, but an unrealistically low price could create performance risks resulting in poor performance or default. FAA reserves the right to make an informed judgment and decide whether to award or not based on downstream consequences emanating from potential change orders, etc.

(5) *Evaluation Criteria and Realism Analysis.* When using realism analysis in *evaluating* offers for contract award, the SIR must state whether cost or price realism will be used as part of the evaluation process and define how the analysis will be considered. The CO may also reserve the right in the SIR to perform price realism on fixed-priced contracts and perform it if necessary, based on proposed prices.

e. *Supplemental Pricing Considerations*

The following supplemental pricing considerations are not applicable to real property transactions:

(1) *Field Pricing Support.*

Field pricing support is independent support intended to give the CO a detailed analysis and report of the contractor's price or cost proposal or other areas related to contract pricing. Field pricing support personnel include, but are not limited to, auditors, price analysts, quality assurance personnel, and engineers. The CO may request field pricing support when necessary.

(2) *Pre- and Post-Award Audits.*

(a) The CO coordinates with Cost/Price Analysis Services (AAP-500) to request all pre-award/post-award audits on all cost reimbursement contracts (including task orders and contracts where reimbursable CLINs total over 15% of the overall contract value) estimated to exceed $100 million (including all options). AAP-500 will initiate any pre-award or post award audit requests with Defense Contract Audit Authority (DCAA) or other audit firms to provide audit support services. The FAA also requests audits on at least 15% of all cost reimbursement contracts under $100 million (Policy 3.2.3.2.2). AAP-500 is responsible for making a determination as to which cost reimbursement contracts under $100 million will require an audit. It is always within the CO's discretion to request an audit of a contract. If AAP-500 determines not to obtain an audit on a cost reimbursement contract, AAP-500 will document their rationale for AAP-500 files. At the discretion of the CO, audits may also be requested on other types of contracts.

(b) Program offices fund required pre- and post-award audits, except incurred cost audits, which are currently funded by AAP-500. Cost/Price Analysis Services

(AAP-500) tracks and manages requested and completed audits. Although DCAA provides audit support for civilian agencies, FAA may also obtain support from other public or private audit organizations as necessary.

(c) The CO should appropriately scope audit requests considering the nature of the procurement, data to be reviewed, recent audits, and the contractor to be audited. Cost/Price Analysis Services (AAP-500) can advise the CO about scoping the request. Audits may cover one or more of the following:

Pre-award

a. Pre-award survey (new contract)
b. Proposal audit (full or selected portions)
c. Forward pricing rates or billing rates
d. Rate verification (direct and indirect)
e. Cost Accounting Standards compliance review
f. Cost accounting system adequacy (labor, indirect and other direct cost systems)
g. Earned value management system audit
h. Contractor purchasing system review
i. Billing system review
j. Estimating system review
k. Information technology system review
l. Material management and accounting system review
m. Basis of estimate
n. Bill of material and long lead items

Post-award

a. Proposal for contact modification
b. Defective pricing
c. Incurred cost
d. Invoice reviews for allowability or improper payment
e. Claims and request for equitable adjustment
f. Final price submission
g. Termination
h. Closeout

(d) The CO should use good business judgment consistent with applicable AMS guidance when deciding whether to obtain audits. Additionally, the CO should compare and consider the cost of the audit and the expected payback. If a pre-award audit is requested and the CO decides not to obtain an audit, the file should be documented with a rational basis as to why the audit was not obtained.

(3) *Defective Pricing.*

(a) Defective certified cost or pricing data is data which was provided to FAA in support of a proposal and which was not current, accurate, or complete. It may only occur when certified cost or pricing data is provided. If the CO learns that any certified cost or pricing data the contractor provided are inaccurate, incomplete, or not current, the CO should notify the contractor immediately and then negotiate using any new data submitted or make adjustments to account for the incorrect data.

(b) If certified cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of agreement, the CO should give the contractor an opportunity to support the accuracy, completeness, and currency of the questioned data. In addition, the CO may obtain an audit to evaluate the accuracy, completeness, and currency of the data. The contractor should reimburse FAA for any payments issued based on defective cost or pricing data during the contract period. The reimbursement should include the amount identified by the CO including profit or fee and interest accrued from the date of the payment. If defective pricing is determined to exist, this fact should be noted in future past performance evaluations.

(c) If a contractor and subcontractor submitted certified cost or pricing data, the CO has the right, under the clause prescribed in the contract to reduce the contract price if it significantly increased due to contractor submitted defective data. This right applies whether the data supported subcontractor cost estimates or firm agreements between subcontractors and contractors. In order to afford an opportunity for corrective action, the CO should give the contractor reasonable advanced notice before determining to reduce the contract price when:

(i) A contractor includes defective subcontract data in arriving at the price but later awards the subcontract to a lower priced subcontractor (or does not subcontract for work). Any adjustment in the contract price due to defective subcontract data is limited to the difference, plus applicable indirect cost and profit/fee, between the subcontract price used for pricing the contract and either the actual subcontract or the actual cost to the contractor.

(ii) Under cost-reimbursement contracts and fixed price incentive contracts, payments to subcontracts that are higher than they would be had there been no defective subcontractor cost or pricing data will be the basis for disallowance or non-recognition of costs.

(4) *Unbalanced Offers.*

Offeror proposals should be analyzed to determine whether they are unbalanced with respect to prices or separately priced line items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated as indicated by the application of cost or price analysis techniques. This is particularly important when evaluating the prices for options in relationship to the prices for the basic requirements. An offer is materially unbalanced if there is a reasonable doubt that award to the offeror submitting the mathematically unbalanced bid will result in the lowest ultimate cost to FAA; or the offer is so grossly unbalanced that its acceptance would be tantamount to allowing an advance payment. Offers that are materially unbalanced may be rejected.

(5) *Comparability Considerations for Price Analysis*

For price analysis, the items being compared must have enough similar characteristics or qualities to make the comparison useful. The more similar the items are, the easier the comparison.

Price analysis should still be a valuable tool for comparison when proposals are addressing the same scope and requirements and the IGCE is based on sound and well supported estimates. However, COs should normally place less reliance on comparisons with other proposed prices and/or with the IGCE when requirements can result in proposals with widely different approaches to performance. This is especially critical when evaluating proposals for major complex programs, which usually involve new technologies and services.

If the comparison analysis discloses significant disparities between offers or with the IGCE, the driver for those differences should be identified and also quantified if possible (e.g., widely different solutions or technical approaches, acquisition of different products, at different times, or in different places) and adjustments made to prices (for evaluation purposes only) before reaching valid conclusions about price reasonableness. Significant differences in prices between offers or with the IGCE may also be an indication that offerors do not understand the requirement or they are offering an unreasonably low price to buy-in.

In these situations, the CO should place more reliance on cost analysis techniques and consider requesting field pricing assistance from technical and engineering experts, including a qualitative and quantitative (Q&Q) review of the offerors approach, proposed resources and technical qualities of the product or service prior to reaching a reasonableness or realism determination. In other words, where the requirements can result in proposals to furnish unlike products, further analysis would be needed beyond a price comparison of competing offers and before deciding that one or another price is reasonable and/or realistic. See steps for conducting Cost or Price Realism in T.3.2.3 1d.

Regardless of contract type and level of competition, cost analysis must performed if a fair and reasonable determination cannot be reached based on price analysis alone and the agency needs an understanding of the cost buildup of proposals, for example, during evaluation of proposals for complex programs and/or for requirements that can result in proposals with unlike approaches.

(6) *Unpriced Options*

Every effort should be made to price contract options for additional quantities or services at the time of initial contract award. However, if the circumstances of the acquisition warrant the use of an unpriced option, the CO should consider using a sound and well supported IGCE as a basis to establish not-to-exceed amounts.

The CO should also consider negotiating as much pricing information on the option(s) as possible at the time of initial award when including unpriced options. For example, for T&M contracts, the CO may either incorporate the labor rates evaluated for the initial award or establish the labor categories most likely to support the requirement and request offerors to propose fully burdened labor rates. If not already evaluated as part of the basic contract, the proposed labor rates for the unpriced option should be evaluated for reasonableness and included as part of the basic contract award. The CO may also include a contract clause that gives the right to the FAA to re-evaluate and adjust these rates at the time the option is exercised. In the case of a cost-type contract, the CO should incorporate elements that can be reasonably determinable from the terms of the basic contract, such as fixed or maximum fee or prices for specific items subject to an economic price adjustment provision. Cost analysis should be performed at the time the cost-type option is exercised.

2 Independent Government Cost Estimate Revised ~~7/2023~~7/2024

a. *Purpose of an IGCE*

(1) An independent Government cost estimate (IGCE) is an internal Government estimate, supported by factual or reasoned data and documentation, describing how much FAA could reasonably expect to pay for needed real property, product or services. It serves as:

(a) The basis for reserving funds for the procurement action;

(b) A method for comparing cost or price proposed by offerors;

(c) An objective basis for determining price reasonableness when only one offer is received in response to a solicitation; and

(d) A means of detecting offeror buy-ins and identifying unbalanced prices.

(2) The CO must ensure, through cost and/or price analysis, that the final price is fair and reasonable for all acquisitions (AMS Policy 3.2.3 Pricing Methodology, Principles and Standards). One of several techniques in performing price analysis is comparison of the proposed prices with an IGCE. Its primary objective is to provide the CO with an unbiased, realistic cost estimate for proposed products, services, and construction.

(3) A well-supported IGCE is a valuable tool for price negotiations, especially in the case of a single source acquisition. Clearly defined and supported cost elements such as labor, overhead, and travel enable FAA to make informed negotiation decisions. A well-reasoned IGCE helps FAA to verify completeness of offeror or contractor's cost proposals.

b. *Applicability.* An IGCE is required for procurement actions exceeding the AMS risk threshold (or for any lower dollar value procurement action when the CO determines it necessary) (AMS Policy 3.2.1.2.4 Independent Government Cost Estimate), except for:

(1) Modifications to exercise priced options;

(2) Incremental funding modifications;

(3) Delivery orders for priced products or services under indefinite delivery contracts;

(4) Acquisition of real property for a site-specific requirement for land or antenna/equipment space, where the location of NAS equipment is (1) necessary to the functionality of the NAS, and (2) of continued criticality to the NAS or mission of the FAA; or for operational facilities that house equipment and/or personnel that provide Air Traffic Control services to aircraft operating in the NAS; or

(5) Supplies or services with prices set by law or regulation.

c. *Responsibility for Preparation.*

(1) The program office is responsible for the IGCE. Non-Government personnel (excluding any personnel of potential offerors) may support a program official in preparing the IGCE. Because the IGCE is procurement sensitive, access to it must be on a need to know basis. The IGCE must be signed and dated by the Government preparer.

(2) The IGCE must not be based on information furnished solely by a potential offer that may be considered for award, or based on an offeror's cost/price proposal after receipt of offers.

d. When to Submit. An IGCE should accompany the procurement request package. The IGCE becomes part of the official contract file documentation.

e. *Proper Marking.* Each IGCE must be designated and marked, "FOR OFFICIAL USE ONLY."

f. *Detailed and Lump Sum Estimates and IGCE Structure.* The complexity of an IGCE depends on the nature and dollar value of the requirement, and an IGCE could be a detailed cost estimate or a lump sum estimate. Detailed estimates encompass an analysis and estimation for individual cost elements (e.g. direct labor, material, other direct costs, indirect costs, and profit). In contrast, the lump sum estimate projects cost or price on a "bottom line" basis. Lump sum estimates do not break down the estimate into various cost elements and may be appropriate for commercial and noncomplex products, services, and real property related services. Lump sum estimates may be useful when the price of an item or service or real property acquisition can be determined without examining individual cost elements, such as when acquiring commercial items or land. The program official determines whether the IGCE should be developed as a lump sum estimate, detailed cost estimate, by contract line item number (CLIN), or by work breakdown structure (WBS). The structure used for the IGCE should track directly to the proposed CLIN structure used in the SIR to allow for valid comparisons in proposal cost and price analyses

g. *Commercial and Simplified Procurement Actions.* Published price lists, catalog prices, historical prices, General Services Administration (GSA) schedule prices, or market survey prices may suffice for an IGCE involving standard commercial materials, products, equipment, real property related services, and noncomplex services readily available in the commercial market. An IGCE for commercial and noncomplex products, services, and real property related services may entail determining the market value of an item, service, or real property related service and using that as the basis for a lump sum estimate, documenting the research, and then furnishing this information to the CO.

h. *Differences Between Proposal Price and IGCE.* When there are differences greater than 15% between the price of the offer proposed for award and the IGCE, the CO should notify the program official. The program official must document the reason for the difference and provide the CO applicable documentation for the contract file. For acquisitions of $15 million or more, if, after receiving the required CFO approval, there is a difference greater than 15% between the potential contract award and the IGCE, the program office should take the actions described in AMS Guidance T3.2.1.~~4.A.~~4A1.l(1~~.k.~~).

i. *Cost Estimates by Work Breakdown Structure (WBS).* Cost estimates by WBS provide detailed cost estimates for each activity in the WBS and may include vendor quotes or catalog prices for materials and engineering labor estimates.

j. *Market Research and Analysis*. Market research and analyses may also be used to collect current cost information.

k. Cost Estimation.

(i) Cost estimation is a field of practice that can be simple to complex, depending on the requirement. Cost estimation methods for major system, facilities, and equipment acquisitions are complex and require defined requirements, extensive market research and expert assistance.

(ii) Different approaches are used to develop cost estimates. The cost estimator decides the appropriate approach and it will vary depending on the requirement, amount of data that the estimator has about the item or service to be estimated and the time frame for completion of the estimate. Five common cost estimating methodologies are: Extrapolation from Actuals, Parametric Cost Estimating, Analogy, Engineering (Bottoms Up) and Expert Opinion. There are many Government and private sector publications, models, and tools available on cost estimation. Listed below are several resources available for estimating costs:

DoD Contract Pricing Reference Guide Volume I

NASA Parametric Cost Estimating Handbook

U.S. Army Cost Analysis Manual

NASA Cost Estimating Handbook

(iii) Detailed information on elements included in a Cost Estimate is available in the IGCE Handbook located under Procurement Tools and Resources and a sample for preparing an IGCE is available in Procurement Samples.

3 Cost Accounting Standards **Revised ~~4/2022~~7/2024**

a. *Applicability.* Full or modified cost accounting standards (CAS) coverage, as appropriate, applies to all cost-type contracts and subcontracts. Categories of contracts and subcontracts exempt from all CAS requirements include:

(1) Negotiated contracts and subcontracts not in excess of $2,000,000. For purposes of this arrangement, an order issued by one segment to another must be treated as a subcontract (Policy 3.2.3.4);

(2) Contracts and subcontracts with small businesses;

(3) Contracts and subcontracts with foreign governments or their agents or instrumentalities or (insofar as the requirements of CAS other than 9904.401 and 9904.402 are concerned) any contract or subcontract awarded to a foreign concern;

(4) Contracts and subcontracts in which the price is set by law or regulation;

(5) Firm fixed price and fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred) contracts and subcontracts, for acquisition of commercial items;

(6) Time-and- materials (the fixed hourly rate portion), and labor-hour contracts and subcontracts;

(7) Contracts or subcontracts of less the $7.5 million, provided that at the time of award the business unit of the contractor or subcontractor is not currently performing any CAS-covered contracts or subcontracts at $7.5 million or greater;

(8) Contracts and subcontracts to be executed and performed outside the United States, its territories, and possessions;

(9) Contracts for real property; and.

(10) Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data.

b. *Contract Requirements*. A CAS-covered contract may be subject to either full or modified CAS coverage.

(i) Modified CAS coverage applies to contractor business units that received less than $50 million in net CAS-covered awards in the immediately preceding cost accounting period. Modified CAS coverage only requires that the business unit comply with the following standards:

a. 401, Consistency in Estimating, Accumulating and Reporting Costs

b. 402, Consistency in Allocating Costs Incurred for the Same Purpose

c. 405, Accounting for Unallowable Costs

d. 406, Cost Accounting Period

(ii) Full CAS coverage requires the business unit (as defined in CAS 410-30(a)(2)) comply with all of the CAS in effect on the contract award date, or if required to submit certified cost or pricing data, on the date of the certification, as well as any CAS (or modifications) which become applicable in the future. Full CAS coverage applies to contractor business units that:

a. Received a single CAS-covered contract award, including option amounts, or $50 million or more; or

b. Received $50 million or more in CAS-covered contract awards during the immediately preceding cost accounting period.

c. *CAS Administration.* The cognizant CO will perform CAS administration for all contracts in a business unit notwithstanding retention of other administration functions by another CO. Within 30 days after the award of any new contract or subcontract subject to CAS, the CO, contractor, or subcontractor making the award should request the cognizant CO to perform administration for CAS matters. This is one of the duties of the Financial Administrative Contracting Officers (FACO) for those contractors who are under the cognizance of the FAA.

d. *Waiver*. In some instances, contractors or subcontractors may refuse to accept all or part of the requirements of AMS ~~Clauses~~clauses 3.2.3-2, Cost Accounting Standards, and 3.2.3-3, Disclosure and Consistency of Cost Accounting Practices. If the CO determines that it is impractical to obtain the materials, supplies, or services from any other source, the CO should prepare a request for waiver.

e. *Responsibilities*.

(1) The CO is responsible for determining when a proposed contract may require CAS coverage and for including the appropriate notice in the screening information request. The CO ensures that the offeror has made the required certifications and that required Disclosure Statements are submitted.

(2) The CO should not award a CAS-covered contract until the FACO has made a written determination that a required Disclosure Statement is adequate unless, in order to protect FAA interest, the CO waives the requirement for an adequacy determination before award. In this event, a determination of adequacy should be required as soon as possible after the award.

(3) The cognizant auditor is responsible for conducting reviews of Disclosure Statements for adequacy and compliance.

(4) The cognizant FACO is responsible for determinations of adequacy and compliance of the Disclosure Statement.

f. *Determinations*.

(1) *Adequacy Determination.* The contract auditor will conduct an initial adequacy review of a Disclosure Statement to ascertain whether it is current, accurate, and complete and will report the results to the cognizant FACO. The FACO will determine whether or not it adequately describes the offeror's cost accounting practices, based on the recommendation of the auditor. If the FACO identifies any areas of inadequacy, the FACO should request a revised Disclosure Statement. If the Disclosure Statement is adequate, the FACO should notify the offeror in writing, with copies to the auditor and FACO. The notice of adequacy should state that a disclosed practice will not, by virtue of such disclosure, be considered an approved practice for pricing proposals or accumulating and reporting contract performance cost data. Generally, the FACO should furnish the contractor notification of adequacy within 30 days after the Disclosure Statement has been received by the FACO.

(2) *Compliance Determination.* After the notification of adequacy, the auditor must conduct a detailed compliance review to determine whether or not the disclosed practices comply with cost principles and the CAS and will advise the CO of the results. The CO should take action regarding noncompliance with CAS. The CO may require a revised Disclosure Statement and adjustment of the prime contract price or cost allowance. Noncompliance with cost principles should be processed separately, in accordance with normal administrative practices.

g. *Subcontractor Disclosure Statements.*

(1) When FAA requires determinations of adequacy, the FACO cognizant of the subcontractor will provide such determination to the FACO cognizant of the prime contractor or next higher tier subcontractor. FACO's cognizant of higher tier subcontractors or prime contractors cannot reverse the determination of the FACO cognizant of the subcontractor.

(2) The agency head may determine that it is not practical to secure the Disclosure Statement, although submission is required, and authorize contract award without obtaining the Statement. The agency head must, within 30 days of having done so, submit a report to the Cost Accounting Standards Board setting forth all material facts. This authority may not be delegated.

h. *Changes to Disclosed or Established Cost Accounting Practices.* Adjustments to contracts and withholding amounts payable for CAS noncompliance, new standards, or voluntary changes are required only if the amounts involved are material. In determining whether amounts of cost are material, the following criteria will be considered by the CO where appropriate; no one criterion is necessarily determinative:

(1) *The absolute dollar amount involved*. The larger the dollar amount, the more likely that it will be material.

(2) *The amount of contract cost compared with the amount under consideration*. The larger the proportion of the amount under consideration to contract cost, the more likely it is to be material.

(3) *The relationship between a cost item and a cost objective*. Direct cost items, since the amounts are themselves part of a base for allocation of indirect costs, will normally have more impact than the same amount of indirect costs.

(4) *The impact of Government participation*. Changes in accounting treatment will have more impact if they influence the distribution of costs between Government and non-Government cost objectives than if all cost objectives are with the Government.

(5) *The cumulative impact of individually immaterial items*. It is appropriate to consider whether such impacts:

(a) Tend to offset one another; or

(b) Tend to be in the same direction and hence to accumulate into a material amount.

(6) The cost of administrative processing of the price adjustment modification should be considered. If the cost to process exceeds the amount to be recovered, it is less likely the amount will be material.

The FACO may forego action to require that a cost impact proposal be submitted or to adjust contracts, if the FACO determines the amount involved is immaterial. However, in the case of noncompliance issues, the FACO should inform the contractor that:

(1) FAA reserves the right to make appropriate contract adjustments if, in the future, the FACO determines that the cost impact has become material; and

(2) The contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved.

i. *Equitable Adjustments for New or Modified Standards.*

(1) *New or Modified Standards*.

(a) AMS clause 3.2.3-1, Cost Accounting Standards Notices and Certification, requires offerors to state whether or not the award of the contemplated contract would require a change to established cost accounting practices affecting existing contracts and subcontracts. The FACO ensures that the contractor's response to the notice is made known to the CO.

(b) Contracts and subcontracts containing AMS clause 3.2.3-2, Cost Accounting Standards, may require equitable adjustments to comply with new or modified CAS. Such adjustments are limited to contracts and subcontracts awarded subject to full CAS coverage before the effective date of each new or modified standard. A new or modified standard becomes applicable prospectively to these contracts and subcontracts when a new contract or subcontract containing AMS clause 3.2.3-2, Cost Accounting Standards. is awarded on or after the effective date of the new or modified standard.

(c) COs should encourage contractors to submit any change in accounting practice in anticipation of complying with a new or modified standard as soon as practical after the new or modified Standard has been promulgated by the Cost Accounting Standards Board. Any changes should be provided to the FACO for adequacy and compliance determinations.

(2) *Accounting Changes*.

(a) AMS clause 3.2.3-5, Administration of Cost Accounting Standards. requires the contractor to submit a description of any change in cost accounting practices required to comply with a new or modified CAS within 60 days (or other mutually agreed to date) after award of a contract requiring the change.

(b) The FACO will request the cognizant auditor to review the proposed change concurrently for adequacy and compliance. If the change meets both tests, the FACO will notify the contractor and may request submission of a cost impact proposal or a report of general dollar magnitude. However, if the practice is not yet being performed, it may not be able to be tested for compliance.

(3) *Contract Price Adjustments.*

(a) The FACO should promptly analyze the cost impact proposal with the assistance of the auditor, determine the impact, and negotiate the contract price adjustment on behalf of all Government agencies. The FACO should invite COs from other agencies to participate in negotiations of adjustments when the price of any of their contracts may be increased or decreased by $10,000 or more. At the conclusion of negotiations, the FACO will:

(i) Inform the COs of affected contracts so the COs may execute supplemental agreements to the contracts;

(ii) Prepare a negotiation memorandum and send copies to cognizant auditors and COs of other agencies having prime contracts affected by the negotiation (those agencies execute supplemental agreements in the amounts negotiated); and

(iii) Furnish copies of the memorandum indicating the effect on costs to the CO of the next higher tier subcontractor or prime contractor, as appropriate, if a subcontract is to be adjusted. This memorandum will serve as the basis for negotiation between the subcontractor and the next higher tier subcontractor or prime contractor and for execution of a supplemental agreement to the subcontract.

(b) If the parties fail to agree on the cost or price adjustment, the FACO may make a unilateral adjustment, subject to contractor appeal.

(4) *Remedies for Contractor Failure to Make Required Submissions.*

(a) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the FACO, with the assistance of the auditor, estimates the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The FACO then informs the COs who may withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS- covered prime contracts, up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(b) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the FACO determines that an adjustment is required, the FACO, with assistance from the CO, should request the contractor to agree to the cost or price adjustment. The contractor should also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the FACO may have the COs make a unilateral adjustment, subject to contractor appeal.

j. *Noncompliance with CAS Requirements.*

(1) *Determination of Noncompliance.*

(a) Within 15 days of the receipt of a report of alleged noncompliance from the auditor, the FACO makes an initial finding of compliance or noncompliance and advise the auditor.

(b) If an initial finding of noncompliance is made, the FACO immediately notifies the contractor in writing of the exact nature of the noncompliance and allow the contractor 60 days within which to agree or to submit reasons why the existing practices are considered to be in compliance.

(c) If the contractor agrees with the initial finding of noncompliance, the FACO reviews the contractor submissions required by paragraph (a) of AMS clause 3.2.3-5, Administration of Cost Accounting Standards.

(d) If the contractor disagrees with the initial noncompliance finding, the FACO reviews the reasons why the contractor considers the existing practices to be in compliance and make a determination of compliance or noncompliance. If the FACO determines that the contractor's practices are in noncompliance, a written explanation is provided as to why the FACO disagrees with the contractor's rationale. The FACO notifies the contractor and the auditor in writing of the determination. If the FACO makes a determination of noncompliance, the procedures in (b) through (d), as appropriate, are followed.

(2) *Accounting Changes.*

(a) AMS ~~Clause~~clause 3.2.3-5, Administration of Cost Accounting Standards, requires the contractor to submit a description of any cost accounting practice change needed to correct a noncompliance.

(b) The FACO reviews the proposed change concurrently for adequacy and compliance. If the description of the change meets both tests, the FACO notifies the contractor and request submission of a cost impact proposal.

(3) *Contract Price Adjustments.*

(a) The FACO requests that the contractor submit a cost impact proposal within the time specified in AMS ~~Clause~~clause 3.2.3-5, Administration of Cost Accounting Standards.

(b) Upon receipt of the cost impact proposal, the FACO follows the procedures in subparagraph (3) (a) under above paragraph j. "Equitable Adjustments for New or Modified Standards". In accordance with the AMS ~~Clause~~clause 3.2.3-2, Cost Accounting Standards, the FACO must include and separately identify, as part of the computation of the contract price adjustment(s), applicable interest on any increased costs paid to the contractor as a result of the noncompliance. Interest must be computed from the date of overpayment to the time the adjustment is affected. If the costs were incurred and paid evenly over the fiscal years during which the noncompliance occurred, then the midpoint of the period in which the noncompliance began may be considered the baseline for the computation of interest. An alternate equitable method should be used if the costs were not incurred and paid evenly over the fiscal years during which the noncompliance occurred. Interest should be computed pursuant to AMS ~~Clause~~clause 3.3.1-9, Interest.

(4) *Remedies for Contractor Failure to Make Required Submissions.*

(a) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the FACO, with the assistance of the auditor, should estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The FACO should inform the COs who may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS- covered prime contracts, up to the estimated general dollar magnitude of the cost impact until the required submission is furnished by the contractor.

(b) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the FACO determines that an adjustment is required, the FACO, with assistance from the CO, should request the contractor to agree to the cost or price adjustment. The contractor should also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the FACO may have the COs make a unilateral adjustment, subject to contractor appeal.

(c) If the FACO determines that there is no material increase in costs as a result of the noncompliance, the FACO notifies the contractor in writing that the contractor is in noncompliance, that corrective action should be taken, and that if such noncompliance subsequently results in materially increased costs to the FAA, the provisions of AMS ~~Clause~~clause 3.2.3-2, Cost Accounting Standards and/or AMS ~~Clause~~clause 3.2.3-3, Disclosure and Consistency of Cost Accounting Practices, will be enforced.

k. *Voluntary Changes.*

(1) *General.*

(a) The contractor may voluntarily change its disclosed or established cost accounting practices.

(b) The contract price may be adjusted for voluntary changes. However, increased costs resulting from a voluntary change may be allowed only if the CO determines that the change is desirable and not detrimental to the interest of FAA.

(2) *Accounting Changes.*

(a) AMS ~~Clause~~clause 3.2.3-5, Administration of Cost Accounting Standards, requires the contractor to notify the FACO and submit a description of any voluntary cost accounting practice change not less than 60 days (or such other date as may be mutually agreed to) before implementation of the voluntary change.

(b) The FACO reviews the proposed change concurrently for adequacy and compliance. If the description of the change meets both tests, the FACO notifies the contractor and requests submission of a cost impact proposal.

(3) *Contract Price Adjustments.*

(a) With the assistance of the auditor, the FACO promptly analyzes the cost impact proposal to determine whether or not the proposed change will result in increased costs being paid by FAA. The FACO considers all of the contractor's affected CAS-covered contracts and subcontracts, but any cost changes to higher- tier subcontracts or contracts of other contractors over and above the cost of the subcontract adjustment are not considered.

(b) The FACO then follows the procedures in above subparagraph j, "Equitable Adjustments for New or Modified Standards."

(4) *Remedies for Contractor Failure to Make Required Submissions.*

(a) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the FACO, with the assistance of the auditor, estimates the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The FACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS- covered prime contracts up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(b) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the FACO determines that an adjustment is appropriate, the FACO, with assistance from the CO, should request the contractor to agree to the cost or price adjustment. The contractor should also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the FACO may have the COs make a unilateral adjustment, subject to contractor appeal.

l. *Subcontract Administration.* When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the FACO cognizant of the subcontractor should make the determination and advise the FACO cognizant of the prime contractor or next higher tier subcontractor of his decision. FACOs cognizant of higher tier subcontractors or prime contractors should not reverse the determination of the FACO cognizant of the subcontractor.

4 Financial Administrative Contracting Officer (FACO) **Revised 9/2020**

a. *Definition*. Financial Administrative Contracting Officers (FACO) are FAA employees who perform financial administration, including system adequacy determination, forward pricing and year-end actual rate administration and negotiation, and cost allowability determination to companies whenever the FAA is the cognizant agency.

b. *Roles and Responsibilities*.

(1) Establish billing rates, make forward pricing rate recommendations, negotiate forward pricing rate agreements, and negotiate final indirect rates for cost-reimbursement contracts with companies over whom FAA has cognizance;

(2) Make final determinations on adequacy of contractor accounting systems;

(3) Determine the contractor's compliance with Cost Accounting Standards (CAS) as applicable;

(4) Determine the allowability of cost suspended or disapproved, direct suspension or disapproval of costs when there is reason to believe they should be suspended or disapproved;

(5) Issue Notices of Intent to disallow or not recognize costs;

(6) Negotiate advance agreements applicable to treatment of certain costs; and

(7) Send letter(s) to contractor, contracting officers and affected external agencies notifying them of FACO actions, recommendations, negotiations as appropriate.

B Clauses

view contract clauses

C Procurement Forms Revised ~~9/2021~~7/2024

Document Name
DOT-4220.34 Contract Facilities Capital and Cost of Money

D Procurement Samples Revised 9/2021

Document Name
Independent Government Cost Estimate v 1
Independent Government Cost Estimate v 2

E Procurement Templates Added 9/2021

Document Name

F Procurement Tools and Resources Added 9/2021

Document Name
IGCE Handbook
Pricing Handbook

G Appendix Revised 9/2021

1 Appendix - Instructions for Submitting Certified Cost/Price Proposals for Products, Services, or Construction Revised ~~9/2021~~7/2024

INSTRUCTIONS FOR SUBMITTING COST/PRICE PROPOSALS WHEN

CERTIFIED COST OR PRICING DATA ARE REQUIRED

Note 1. There is a clear distinction between submitting certified cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of certified cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer (CO) or an authorized representative. As later information comes into the offeror's possession, it should be submitted promptly to the CO in a manner that clearly shows how the information relates to the offeror's price proposal. The requirement for submission of certified cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

Note 2. By submitting the offeror's proposal, the offeror grants the CO or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual information (regardless of form or whether the information is specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

I. GENERAL INSTRUCTIONS

A. The offeror must provide the following information on the first page of the offeror's pricing proposal:

(1) Solicitation, contract, and/or modification number;

(2) Name and address of offeror;

(3) Name and telephone number of point of contact;

(4) Name of contract administration office (if available);

(5) Type of contract action (that is, new contract, change order, price revision/redetermination, letter contract, unpriced order, or other);

(6) Proposed cost; profit or fee; and total;

(7) Whether the offeror will require the use of Government property in the performance of the contract, and, if so, what property;

(8) Whether the offeror's organization is subject to cost accounting standards; whether the offeror's organization has submitted a Cost Accounting Standards Board (CASB) Disclosure Statement, and if it has been determined adequate; whether the offeror have been notified that the offeror are or may be in noncompliance with the offeror's Disclosure Statement or CAS, and, if yes, an explanation; whether any aspect of this proposal is inconsistent with the offeror's disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with the offeror's established estimating and accounting principles and procedures and FAA Cost Principles, and, if not, an explanation;

(9) The following statement:

"This proposal reflects our estimates and/or actual costs as of this date and conforms to the instructions contained in the Appendix G1 to AMS Guidance T3.2.3, 'Cost and Price Methodology." By submitting this proposal, we grant the CO and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price."

(10) Date of submission; and

(11) Name, title and signature of authorized representative.

B. In submitting the offeror's proposal, the offeror must include an index, appropriately referenced, of all the cost or pricing data and information accompanying or identified in the proposal. In addition, the offeror must annotate any future additions and/or revisions, up to the date of agreement on price, or an earlier date agreed upon by the parties, on a supplemental index.

C. As part of the specific information required, the offeror must submit, with the offeror's proposal, certified cost or pricing data (that is, data that are verifiable and factual and otherwise as defined in FAA AMS Policy Appendix C. The offeror must clearly identify on the offeror's cover sheet that certified cost or pricing data are included as part of the proposal. In addition, the offeror must submit with the offeror's proposal any information reasonably required to explain the offeror's estimating process, including

(1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

(2) The nature and amount of any contingencies included in the proposed price.

D. The offeror must show the relationship between contract line item prices and the total contract price. The offeror must attach cost-element breakdowns for each proposed line item, using the appropriate format prescribed in the "Formats for Submission of Line Item Summaries" section of this table. The offeror must furnish supporting breakdowns for each cost element, consistent with the offeror's cost accounting system.

E. When more than one contract line item is proposed, the offeror must also provide summary total amounts covering all line items for each element of cost.

F. Whenever the offeror have incurred costs for work performed before submission of a proposal, the offeror must identify those costs in the offeror's cost/price proposal.

G. If the offeror has reached an agreement with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature.

H. As soon as practicable after final agreement on price or an earlier date agreed to by the parties, but before the award resulting from the proposal the offeror must submit a Certificate of Current Cost or Pricing Data as follows:

(1) Certificate

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to the CO or to the CO's representative in support of [*] are accurate, complete, and current as of [**]. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

[*Offeror insert the following information.*]

Firm ____

Signature ______________________________________

Name ____

Title ____

Date of execution [***_____________________________]

**Offeror identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., SIR No.)*

*** Offeror insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.*

**** Offeror insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.*

(End of certificate)

(2) The certificate does not constitute a representation as to the accuracy of the offeror's judgment on the estimate of future costs or projections. It applies to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the offeror had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the offeror's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(3) The CO and offeror are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. Closing or cutoff dates should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the offeror to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs). Data within the offeror's or a subcontractor's organization on matters significant to offeror management and to FAA will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(4) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the offeror's proposal.

(5) If certified cost or pricing data are requested by FAA and submitted by an offeror, but an exception is later found to apply, the data must not be considered certified cost or pricing data and must not be certified in accordance with this subsection.

II. COST ELEMENTS

Depending on the offeror's system, the offeror must provide breakdowns for the following basic cost elements, as applicable:

A. Materials and services. Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals. Conduct cost analyses for all subcontracts when certified cost or pricing data are submitted by the subcontractor. Include these analyses as part of the offeror's own certified cost or pricing data submissions. Submit the subcontractor certified cost or pricing data as part of the offeror's own certified cost or pricing data as required in subparagraph IIA (2) below. These requirements also apply to all subcontractors if required to submit certified cost or pricing data.

(1) Adequate Price Competition. Provide data showing the degree of competition and the basis for establishing the source and reasonableness of price. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the offeror, explain the pricing method.

(2) All Other. Obtain certified cost or pricing data from prospective sources (i.e., adequate price competition, commercial items, prices set by law or regulation or waiver). Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of the offeror's cost analysis and a copy of certified cost or pricing data submitted by the prospective source in support of each subcontract or purchase order that is the lower of either $10,000,000 or more, or both more than the pertinent certified cost or pricing data threshold and more

than 10 percent of the prime offeror's proposed price. The CO may require the offeror to submit certified cost or pricing data in support of proposals in lower amounts. Subcontractor certified cost or pricing data must be accurate, complete and current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime offeror's Certificate of Current Cost or Pricing Data. The prime offeror is responsible for updating a prospective subcontractor's data. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the cost or pricing data and submit the results of the offeror's analysis of the prospective source's proposal. When submission of a prospective source's certified cost or pricing data is required as described in this paragraph, it must be included along with the offeror's own certified cost or pricing data submission, as part of the offeror's own certified cost or pricing data. The offeror must also submit any other certified cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.

B. Direct Labor. Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.

C. Indirect Costs. Indicate how the offeror have computed and applied the offeror's indirect costs, including cost breakdowns. Show trends and budgetary data to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.

D. Other Costs. List all other costs not otherwise included in the categories described above (e.g., special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and Federal excise tax on finished articles) and provide bases for pricing.

E. Royalties. If royalties exceed $1,500, the offeror must provide the following information on a separate page for each separate royalty or license fee:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers.

(4) Patent application serial numbers, or other basis on which the royalty is payable.

(5) Brief description (including any part or model numbers of each contract item or component on which the royalty is payable).

(6) Percentage or dollar rate of royalty per unit.

(7) Unit price of contract item.

(8) Number of units.

(9) Total dollar amount of royalties.

(10) If specifically requested by the CO, a copy of the current license agreement and identification of applicable claims of specific patents.

F. Facilities Capital Cost of Money. When the offeror elects to claim facilities capital cost of money as an allowable cost, the offeror must submit form ~~"~~DOT-4220.34 Contract Facilities Capital and Cost of Money~~." (see AMS~~, located on the FAST webpage under Procurement Forms~~)~~.. The offeror must show the calculation of the proposed amount.

III. FORMATS FOR SUBMISSION OF LINE ITEM SUMMARIES

A. New Contracts (including letter contracts)

(1) COST ELEMENTS	(2) PROPOSED CONTRACT ESTIMATE-TOTAL COST	(3) PROPOSED CONTRACT ESTIMATE-UNIT COST	(4) REFERENCE

Column Instruction

(1) Enter appropriate cost elements.

(2) Enter those necessary and reasonable costs that, in the offeror's judgment, will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (e.g., under a letter contract), describe them on an attached supporting page. When preproduction or startup costs are significant, or when specifically requested to do so by the CO, provide a full identification and explanation of them.

(3) Optional, unless required by the CO.

(4) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

B. Change Orders, Modifications, and Claims.

(1) COST	(2) ESTIMATED COST OF	(3) COST OF DELETED	(4) NET COST TO	(5) COST OF	(6) NET	(7)

ELEMENTS	ALL WORK COMPLETED	WORK ALREADY PERFORMED	BE DELETED	WORK ADDED	COST OF CHANGE	REFERENCE

<u>Column</u> <u>Instructions</u>

(1) Enter appropriate cost elements.

(2) Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.

(3) Include the incurred cost of deleted work already performed, using actuals incurred if possible, or, if actuals are not available, estimates from the contractor's accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if the contractor desires to retain these items or any portion of them, indicate the amount offered for them.

(4) Enter the net cost to be deleted, which is the estimated cost of all deleted work less the cost of deleted work already performed. Column (2) minus Column (3) equals Column (4).

(5) Enter the contractor's estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the CO, provide a full identification and explanation of them. When any of the costs in this column have already been incurred, describe them on an attached a supporting schedule.

(6) Enter the net cost of change, which is the cost of work added, less the net cost to be deleted. Column (5) minus Column (4) equals Column (6). When this result is negative, place the amount in parentheses.

(7) Identify the attachment in which the information supporting the specific cost element may be found. (A*ttach separate pages as necessary*.)

T3.3.1 - Contract Funding, Financing & Payment **Revised 8/2009**

A Contract Funding, Financing & Payment

1 Contract Funding **Revised ~~7/2013~~7/2024**

a. *Anti-Deficiency Act.* The FAA must comply with the Anti-Deficiency Act (31 U.S.C. 1341) and all other fiscal laws. The Anti-Deficiency Act prohibits FAA from creating or authorizing an obligation in excess of the funds available, or in advance of appropriations, unless otherwise authorized by law. The Act applies to all forms of procurement, including contracts and purchase card transactions.

b. *Funds Availability.* Before executing a contractual instrument that obligates funds, the Contracting Officer (CO) must ensure sufficient funds are available. The CO must obtain written assurance from the program/requisitioning office that funds are available.

c. *Awards Subject to Availability of Funds.* There may be times when a contract will be awarded before funds become available, such as an award for services to begin at the beginning of the next fiscal year. When this occurs, the contractor must be put on notice that the award is subject to the availability of funds; the CO must incorporate AMS ~~Clause~~clause 3.3.1-10, Availability of Funds, or AMS ~~Clause~~clause 3.3.1-11, Availability of Funds for the Next Fiscal Year, into the SIR or contract.

d. *Services Crossing Fiscal Years*. The FAA may enter into contracts for severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

e. *Distribution to Accounting Office.* The CO should provide copies of all contract awards and modifications to the accounting office to ensure that it can properly document and track payments and available funding.

f. *Timely Deobligation of Unused Funds*. The CO and program office are encouraged to periodically review the funding allocated to each contract or order upon the completion of each contract period, option period or upon completion of a contract line item. The review is intended to determine whether contract line items contain unused funds that can be deobligated. Determining whether funds can be deobligated as soon as possible after each contract period or completion of contract line items helps minimize costs associated with contract administration and the contract closeout processes. Timely deobligation of unused funds also allows for the possible use of those funds elsewhere.

2 Continuing Resolution **Revised 10/2007**

a. *Description*. A continuing resolution (CR) is a type of appropriations legislation to temporarily fund Government operations and programs when a formal appropriation bill(s) has not been signed into law before the start of a new fiscal year. A CR funds existing operations and programs at current or reduced levels for a stated period of time. The stated period time could range from several weeks to many months. Generally, a CR funds only on-going operations, and does not fund new initiatives or expanded scope for existing programs.

b. *Subject to the Availability of Funds and CR*. To allow for the solicitation of requirements before funds becoming available, the CO may issue a SIR with clauses that expressly condition FAA's obligation under the contract upon the availability of funds. (See Contract Funding above for more information).

c. *Coordination.* To ensure available funding is not exceeded and to comply with conditions under a CR, the CO should consult with:

(1) Legal Counsel. Legal counsel's review a proposed procurement action will ensure that award complies with CR conditions;

(2) Budget and Finance. To ensure that procurement activity complies with FAA's overall budget allowance during a CR, the CO should consult with the budget or finance office or review any fiscal or CR guidance before award; and

(3) Program Office. Because a CR affects the overall operations and planning of FAA programs, the CO should coordinate with the program office to ensure that an award is within their available budget.

3 Electronic Funds Transfer **Revised ~~1/2021~~7/2024**

a. Electronic Funds Transfer (EFT) applies to all new contract awards and contract modifications executed, unless extenuating circumstances exist as described below.

b. The FAA will protect against improper disclosure of a contractor's EFT information.

c. 31 U.S.C. 3332 requires all payments to be made through EFT. The Manager, ESC Financial Services Division, AMK-300, may determine that submission of EFT information is not required and grant an EFT waiver if a vendor meets one of the exceptions listed below:

(1) Contracts awarded by COs outside the United States and Puerto Rico may provide for payment by other than EFT when EFT payments are not supported by the foreign country. EFT payment may still be used, if the political, financial and communications infrastructure in the foreign country supports payment by EFT or payments in other than U.S. currency may be made safely;

(2) Contracts paid in other than U.S. currency may provide for payment by other than EFT. EFT payment may still be used, if the political, financial and communications infrastructure in the foreign country supports payment by EFT or payments in other than U.S. currency may be made safely;

(3) Classified contracts when EFT payments could compromise the safeguarding of classified information or national security, or where arrangements for appropriate EFT payments would be impractical due to security considerations;

(4) Contracts executed by deployed COs in the course of military operations, including but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) where:

(a) EFT payment is not known to be possible; or (b) EFT payment would not support the objectives of the operation.

(5) Contracts executed by any CO conducting emergency operations, such as responses to natural disasters or national or civil emergencies, may provide for payments by other than EFT where: (a) EFT payment is not known to be possible; or (b) EFT payment would not support the objectives of the operation.

(6) When FAA does not expect to make more than one payment to the same recipient within a one-year period and the payment is non-recurring;

(7) When FAA's need for goods or services is of such unusual and compelling urgency that FAA would be seriously injured unless payment is made by a method other than EFT;

(8) Contracts where the contractor claims that payment by EFT would impose a hardship due to a mental disability or a geographic barrier.

d. *Waiver requests.* The ESC Financial Services Division will review and approve or disapprove all vendor requests for exceptions to the EFT payment requirement. The waiver process for EFT payments is:

(1) The CO provides the applicable EFT clauses as part of the solicitation package.

(2) If the otherwise successful offeror claims an inability to comply with the EFT requirement, the CO requests that vendor complete ~~an~~FAA 4400-52 Electronic Funds Transfer ~~(EFT)~~ Waiver Request ~~Form (see~~form located on the FAST webpage under AMS Procurement Forms~~)~~.. The waiver request includes the contractor's justification for not receiving payment by EFT. The CO forwards the waiver request, together with a recommendation and the completed DELPHI Vendor Entry Worksheet (see the PRISM website (FAA only) to the ESC Financial Services Division, AMK-300.

(3) The ESC Financial Services Division approves or disapproves the waiver in writing and returns the signed determination to the CO. The waiver determination includes recommendations to assist the vendor become capable of receiving EFT payments. The CO retains a copy of the waiver request disposition in the contract file.

(4) If the waiver is disapproved, the CO may consult with the Accounts Payable manager for further guidance.

4 System for Award Management (SAM) Revised ~~1/2023~~7/2024

a. System for Award Management (SAM) applies to all new contract awards, contract modifications, agreements, orders, or leases executed. SAM is the primary Government repository for contractor information required for doing business with the Government. SAM requires a Unique Entity Identifier (UEI) (also referred to as the Unique Entity ID) for registration. The UEI is the 9-digit number assigned by SAM to identify unique business entities. Electronic Fund Transfer (EFT) indicator means a 4-character suffix to the UEI that may be assigned by a business concern. This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative EFT accounts for the same parent concern. Registered in the SAM database means that the contractor has entered all mandatory information, including the UEI or EFT indicator, into the SAM database.

b. Prospective contractors must be registered in the SAM database before award of a contract or agreement, except for:

(1) Purchases made by using a Government purchase card;

(2) Classified contracts when registration in the SAM database, or use of SAM data, could compromise the safeguarding of classified information or national security;

(3) Contracts awarded by:

(a) Deployed COs in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 3015(2); or

(b) COs conducting emergency operations, such as responses to natural or environmental disasters or national or civil emergencies, e.g., Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121);

(4) Contracts to support unusual or compelling needs. A compelling need is where FAA would be seriously injured if the contract is not awarded;

(5) Awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain SAM registration;

(6) One time/single payment contracts or agreements, such as Real Property purchase and sales agreements, where the seller of the property is not in the practice of offering real property to FAA as a commercial practice and does not anticipate acting as a vendor to FAA in the foreseeable future; or

(7) Long term leases and utility contracts where a SAM clause is not currently in effect and it is determined by the CO that forcing compliance is impractical.

c. In contracts or agreements awarded under paragraph (b) (3) or (4) of this section, the CO should modify the contract or agreement to require SAM registration as soon as practical after award is made.

d. *Change of Name in SAM.*

(1) The contractor must provide the responsible CO a minimum of one business day's written notification of its intention to change its business name in the SAM database, comply with the requirements of a novation or change of name agreement in AMS Procurement Guidance, and agree in writing to the timeline and procedures specified by the responsible CO for the change. The contractor must provide the CO documentation to support the legally changed name. This notification is required when the contractor has:

(a) Legally changed its business name;

(b) Changed its "doing business as" name;

(c) Changed its division name; or

(d) Transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in AMS Procurement Guidance.

(2) If the contractor fails to comply with the requirements AMS ~~Clause~~clause 3.3.1-33 (Real Property 6.4.1-1), System for Award Management, and has not provided a properly executed novation or change- of-name agreement, the SAM information that shows the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of AMS ~~Clause~~clause 3.3.1-34 (Real Property 6.4.2-1), Payment by Electronic Funds Transfer/System for Award Management. If the contractor's EFT information in SAM is considered to be incorrect:

(a) FAA need not make payment to the contractor until correct EFT information is entered into the SAM database; and

(b) Any invoice or contract financing request must be deemed not to be a proper invoice for the purpose of prompt payment under the contract.

(3) The contractor may not change the name or address for electronic funds transfer payments (EFT) or manual payments, as appropriate, in the SAM record unless an assignment of claims has been properly executed. (See AMS Procurement Guidance T3.3.1, Assignment of Claims)

(4) Assignees must be separately registered in the SAM database. Information provided to the contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of AMS ~~Clause~~clause 3.3.1-34 (Real Property 6.4.2-1), Payment by Electronic Funds Transfer/System for Award Management.

e. Unless the acquisition is exempt, the CO:

(1) Must verify that the prospective contractor is registered in the SAM database before awarding a contract or agreement;

(2) Should use the UEI to verify registration on the SAM website.

(3) When a CO modifies an existing contract or agreement that does not already include the requirement to be registered in SAM, the CO must then incorporate, as appropriate, AMS ~~Clause~~clause 3.3.1-33, System for Award Management.

(4) Need not verify registration before placing an order or call if the contract or agreement includes the clause at AMS ~~Clause~~clause 3.3.1-33 (Real Property 6.4.1-1).

f. If the CO, when awarding a contract or agreement, determines that a prospective contractor is not registered in SAM and an exception to the registration requirements for the award does not apply, the CO:

(1) Determines if the needs of the requiring activity allow for a delay. If a delay is allowable, the CO advises the apparently successful offeror of the required date to become registered. If the offeror does not become registered by the required date, the CO, after consultation with the program office, proceeds to award to the next otherwise successful registered offeror following the same procedures (i.e., if the next apparently successful offeror is not registered, the CO must advise the offeror of the required date to become registered, etc.); or

(2) Determines if the needs of the requiring activity do not allow for a delay. If the needs do not reasonably allow for a delay, the CO will proceed to award to the next otherwise successful registered offeror. Written approval is required at one level above the CO.

g. The FAA must protect against improper disclosure of contractor SAM information.

h. In accordance with FAA procedures, the CO provides the UEI or, if applicable, the EFT indicator on contractual documents transmitted to the payment office.

5 Types of Payment Revised 9/2020

a. *Types of Payments for Products, Services, and Construction*

(1) Payment provisions should balance protection of FAA's interests against adequately compensating the contractor for products delivered or services performed, including construction.

(2) COs should maintain a payment log for each contact detailing funding and payment information, i.e., a log showing available funding, date and amount of invoices, balance of funding after payments, etc). This log should be filed in the official contract file.

(3) COs should consider the following alternatives when establishing a basis for payment in

award documents:

Type of Payment	Description
Single Payment (Lump Sum)	Where one payment is made to a contractor after completion and acceptance of all work. (Preferred method)
Partial Payment	Payments authorized to be made upon acceptance of one or more complete units (or one or more distinct items of service) called for under a contract.
Progress Payment	Multiple payments made prior to delivery during performance based on a percentage or stage of completion.
Recurring Payment	Payments made on a fixed, periodic basis for the delivery or performance of recurring firm fixed-price products or services.
Provisional Payment	Payments made for the delivery or performance of products or services recurring under a contract.
Advance Payment	Payment made before any performance of work under the contract. Payment should be secured by bond or collateral with expenditures made from a joint account requiring FAA approval. Considered to be contract financing, advance payments are the least preferred and must be authorized sparingly.
Performance-Based Payment	Contract financing payments that are not payments for accepted items.
Financing Payment	Payment to a contractor prior to acceptance of products or services by FAA. Contract financing includes advance payments. FAA may only use the methods for financing of contractor working capital.

b. *Type of Payment for Real Property*

COs should consider the following alternatives when establishing a basis for payment in real property award documents:

Type of Payment	Description
Single Payment (Lump Sum)	Where one payment is made to a contractor after completion and acceptance of all work. (Preferred method)
Recurring Payments (Automatic Payments)	Payments made on a fixed, periodic basis for the delivery or performance of recurring firm fixed-price products or services.

6 Single and Partial Payments Revised 9/2020

a. *Single Payments (Lump Sum).*

(1) Where one payment is made to a contractor after completion and acceptance of all work or delivery of real property interest.

(2) The preferred method as FAA only makes payment after acceptance of all contract work (minimal risk).

b. *Partial Payments.*

(1) Payments authorized to be made upon acceptance of one or more complete units (or one or more distinct items of service) called for under a contract.

(2) Despite partial payments being generally treated as a method of payment rather than a method of contract financing, the use of partial payments can provide the assistance necessary for some contractors to participate in FAA contracts.

(3) Circumstances where partial payments should be prohibited include:

(a) When the additional administrative time required to issue 2 or more payments may not be cost effective.

(b) When partial delivery of individual components does not constitute a usable item on its own.

7 Progress Payments Revised 10/2007

a. *Definition.* Progress payments consist of multiple payments made during performance and prior to delivery based on a percentage or stage of completion. Payments must be secured against materials/equipment purchased until liquidated by deliveries under the contract.

b. *Basis.* FAA will make progress payments on the basis of percentage or stage of completion. Typical progress payment provisions call for payment of part of the contract price only when a completed stage of work (milestone) or a completed component can be said to be of value to FAA in the event the contract were to be terminated at that point; however, progress payment schedules can be established that will allow payment based on an estimated percentage of completion. Generally, the progress payment rate to the prime contractor is 80% of the total costs of performing the contract and 85% for small businesses. The CO should provide for progress payments if the contractor:

(1) Will not be able to bill for the first delivery of products, or other performance milestones, for a substantial time after work is scheduled to begin; and

(2) Will make expenditures for contract performance during the pre-delivery period

that have a significant impact on the contractor's working capital.

c. *Withholding payment.* When there is reason to doubt the amount of a progress payment request, only the doubtful amount should be withheld, subject to later adjustment after review or audit. Any clearly proper and due amounts should be paid without awaiting resolution of the differences. Post payment reviews may be made when considered desirable by the CO to determine the validity of progress payments already made and those expected to be made in the future. The post payment review should include a review of whether or not the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion.

d. *Subcontracts.* The CO should encourage contractors to provide progress payments to subcontractors subject to the bases described in subparagraph (b), "Basis." The CO should consider the following when contractors submit payment requests that include progress payments for subcontractors:

(1) The contractor's request for payment may include the full amount paid to subcontractors as progress payments;

(2) The contractor's inclusion of the substance of clause "Progress Payments" in the prime contract, modified to indicate that:

(a) The contractor, not FAA, awards the subcontract and administers the progress payments;

(b) Title will vest in FAA, not the contractor;

(c) The subcontractor will install the necessary management control systems, including internal audit procedures; and

(d) The subcontractor will allow the CO/FAA access to reports and records.

The CO should, to the extent appropriate, review the subcontract as part of the overall administration of progress payments in the prime contract.

(3) If the contractor makes progress payments to a subcontractor under a cost-reimbursement prime contract, the CO may accept the progress payments as reimbursable costs of the prime contract only under the following conditions:

(a) The payments are made in accordance with this subparagraph (d), "Subcontracts;"

(b) The subcontractor complies with relevant liquidation principles;

(c) The subcontract contains progress payments terms as defined in this section; and

(d) The subcontractor has established a FAA-approved job cost accounting system that is satisfactory for cost reimbursement contracts.

(4) If there is adequate protection to FAA through inclusion of appropriate clauses in subcontracts involving foreign subcontractor.

8 Recurring, Provisional, and Advance Payments Revised 9/2020

a. *Recurring Payments (Automatic Payments).* Payments made on a fixed, periodic basis for the delivery or performance of recurring firm fixed-price products, services, or real property.

(1) COs must annotate on the award that payments are to be setup on the Recurring Invoice Template (auto pay).

(2) The CO must request an annual invoice from the contractor detailing the recurring fixed amount and the total amount. This annual invoice must be certified by the CO and submitted to accounting.

(3) If deductions are required, the CO must notify the accounting office in writing of the deduction to be made the following month, and the contract will be modified to reflect the change in value.

b. *Provisional Payments.* Payments made for the delivery or performance of products or services recurring under a contract. Invoices are necessary, receiving reports are not.

c. *Advance Payments.* Payment made before any performance of work under the contract. Payments should be secured by bond or collateral with expenditures made from a joint account requiring FAA approval. (See Finance under this section for more information)

9 Performance-based Payments Revised 4/2017

a. *General.*

(1) Performance-based payments (PBP) are contract financing payments that are not payments for accepted items. The CO may use PBP in contracts, subject to the guidelines below, when the CO finds them practical and the contractor agrees to their use.

(2) PBP do not apply to the following:

(a) Payments under cost-reimbursement contracts;

(b) Contracts for architect-engineer services or construction, when the contracts provide for progress payments based upon a percentage or stage of completion;

(c) Contracts for research or development; or

(d) Contracts awarded through sealed bid.

(3) PBP are fully recoverable, in the same manner as progress payments, in the event of default. PBP should not be used when other forms of contract financing are provided.

(4) For accounting purposes, PBP should be treated like progress payments based on costs.

(5) Because PBP are contract financing payments they are not subject to the interest- penalty provisions of prompt payment clauses; however, PBP should be made in accordance with FAA's policy for prompt payment of contract financing payments.

b. *Criteria for use.*

(1) PBP should be used only if the following conditions are met:

(a) The CO and offeror are able to agree on the performance-based payment terms;

(b) The contract is a definitized fixed-price type contract; and

(c) The contract does not provide for other methods of contract financing.

c. *Application.* The CO should determine if PBP will be made either on a whole contract or deliverable item basis. Financing payments to be made on a whole contract basis are applicable to the entire contract, and not to specific deliverable items. Financing payments to be made on a deliverable item basis are applicable to a specific individual deliverable item.

A deliverable item for these purposes is a separate item with a distinct unit price. Thus, a contract line item for 10 airplanes, with a unit price of $1,000,000 each, has ten deliverable items (the separate planes). A contract line item for 1 lot of 10 airplanes, with a lot price of $10,000,000, has only one deliverable item (the lot).

d. *Establishing Performance Bases.* PBP may be made on any of the following bases:

(1) Specifically described events (e.g., milestones) or some measurable criterion of performance. Each event or performance criterion that will trigger a finance payment will be an integral and necessary part of contract performance and will be identified in the contract, along with a description of what constitutes successful performance of the event or attainment of the performance criterion. The signing of contracts or modifications, the exercise of options, or other such actions will not be events or criteria for performance-based payments. An event need not be a critical event in order to trigger a payment, but successful performance of each such event or performance criterion will
be readily verifiable.

(2) Events or criteria may be either severable or cumulative. The successful completion of a severable event or criterion is independent of the accomplishment of any other

event or criterion. In contrast, the successful accomplishment of a cumulative event or criterion is dependent upon the previous accomplishment of another event or criterion. A contract may provide for more than one series of severable and/or cumulative performance events or criteria performed in parallel. The following will be included in the contract:

(a) The contract will not permit payment for a cumulative event or criterion until the dependent event or criterion has been successfully completed.

(b) Severable events or criteria will be specifically identified in the contract.

(c) The contract will identify which events or criteria are preconditions for the successful achievement of each cumulative event or criterion.

(d) If payment of performance-based finance amounts is on a deliverable item basis, each event or performance criterion will be part of the performance necessary for that deliverable item and will be identified to a specific contract line item or subline item.

e. *Establishing Performance-based Finance Payment Amounts.*

(1) The CO will establish a complete, fully-defined schedule of events or performance criteria and payment amounts when negotiating contract terms. If a contract action significantly affects the price, or event or performance criterion, the CO responsible for pricing the contract modification will adjust the performance-based payment schedule appropriately.

(2) Total performance-based payments will not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis. The amount of each performance-based payment will be specifically stated either as a dollar amount or as a percentage of a specifically identified price (e.g., contract price, or unit price of the deliverable item). The payment of contract financing has a cost to the Government in terms of interest paid by the Treasury to borrow funds to make the payment. Because the CO has wide discretion as to the timing and amount of the performance-based payments, the CO must ensure that the total contract price is fair and reasonable. This fair and reasonable determination must consider all pertinent factors, including the financing costs to the Treasury of the performance-based payments. Performance-based payment amounts may be established on any rational basis determined by the CO or agency procedures, which may include (but are not limited to):

(a) Engineering estimates of stages of completion;

(b) Engineering estimates of hours or other measures of effort to be expended in performance of an event or achievement of a performance criterion; or

(c) The estimated projected cost of performance of particular events.

(3) When subsequent contract modifications are issued, the performance-based

payment schedule will be adjusted as necessary to reflect the actions required by those contract modifications.

f. *Instructions for Multiple Appropriations.* If there is more than one appropriation account (or subaccount) funding payments on the contract, the CO will provide instructions to the payment office for distribution of financing payments to the respective funds accounts. Distribution instructions must be consistent with the contract's liquidation provisions.

g. *Liquidating Performance-based Finance Payments.* Performance-based amounts will be liquidated by deducting a percentage or a designated dollar amount from the delivery payments. The CO will specify the liquidation rate or designated dollar amount in the contract. The method of liquidation will ensure complete liquidation no later than final payment.

(1) If the performance-based payments are established on a delivery item basis, the liquidation amount for each line item will be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount.

(2) If the performance-based finance payments are on a whole contract basis, liquidation will be by predesignated liquidation amounts or liquidation percentages.

h. *Reviews.* The CO is responsible for determining what reviews are required for protection of FAA interests. The CO should consider the contractor's experience, performance record, reliability, financial strength, and the adequacy of controls established by the contractor for the administration of performance-based payments. Based upon the risk to FAA, post-payment reviews and verifications should normally be arranged as considered appropriate by the CO. If considered necessary by the CO, pre-payment reviews may be required.

i. *Incomplete Performance.* The CO will not approve a performance-based payment until the specified event or performance criterion has been successfully accomplished in accordance with the contract. If an event is cumulative, the CO will not approve the performance-based payment unless all identified preceding events or criteria are accomplished.

j. *Government-caused Delay.* Entitlement to a performance-based payment is solely on the basis of successful performance of the specified events or performance criteria. However, if there is a Government-caused delay, the CO may renegotiate the performance-based payment schedule to facilitate contractor billings for any successfully accomplished portions of the delayed event or criterion.

k. *Suspension or Reduction of Performance-based Payments.*

(1) *Enforcing the Clause.*

(a) The Progress Payments clause provides the CO the right to reduce or suspend progress payments, or to increase the liquidation rate under certain conditions; however, the CO should take these actions only in accordance with the contract terms and never precipitately or arbitrarily. These actions should be taken only after:

(i) Notifying the contractor of the intended action and providing an opportunity for discussion;

(ii) Evaluating the effect of the action on the contractor's operations, based on the contractor's financial condition, projected cash requirements, and the existing or available credit arrangements; and

(iii) Considering the general equities of the particular situation.

(b) The CO should take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance.

(c) In all cases, the CO should:

(i) Act fairly and reasonably;

(ii) Base decisions on substantial evidence; and

(iii) Document the contract file. Findings made under the Progress Payments clause should be in writing.

(2) *Contractor Noncompliance.*

(a) The contractor must comply with all material requirements of the contract. This includes the requirement to maintain an efficient and reliable accounting system and controls, adequate for the proper administration of progress payments. If the system or controls are deemed inadequate, progress payments should be suspended (or the portion of progress payments associated with the unacceptable portion of the contractor's accounting system should be suspended) until the necessary changes have been made.

(b) If the contractor fails to comply with the contract without fault or negligence, the CO will not take action permitted by Progress Payments clause, other than to correct overpayments and collect amounts due from the contractor.

(3) *Unsatisfactory financial condition.*

(a) If the CO finds that contract performance (including full liquidation of progress payments) is endangered by the contractor's financial condition, or by a failure to make progress, the CO should require the contractor to make additional operating or financial arrangements adequate for completing the contract without loss to FAA.

(b) If the CO concludes that further progress payments would increase the probable loss to FAA, the CO should suspend progress payments and all other payments until the unliquidated balance of progress payments is eliminated.

(4) *Delinquency in payment of costs of performance.*

(a) If the contractor is delinquent in paying the costs of contract performance in the ordinary course of business, the CO should evaluate whether the delinquency is caused by an unsatisfactory financial condition and, if so, should apply the guidance in paragraph (c) of this section. If the contractor's financial condition is satisfactory, the CO should not deny progress payments if the contractor agrees to:

(i) Cure the payment delinquencies;

(ii) Avoid further delinquencies; and

(iii) Make additional arrangements adequate for completing the contract without loss to FAA.

(b) If the contractor has, in good faith, disputed amounts claimed by subcontractors, suppliers, or others, the CO should not consider the payments delinquent until the amounts due are established by the parties through litigation or arbitration; however, the amounts should be excluded from costs eligible for progress payments so long as they are disputed.

(c) Determinations of delinquency in making contributions under employee pension, profit sharing, or stock ownership plans, and exclusion of costs for such contributions from progress payment requests should be in accordance with the procedures for progress payments.

l. *Title.*

(1) The CO must ensure that FAA title under the provisions of the Performance-Based Payments clause is not compromised by other encumbrances. Ordinarily, the CO, in the absence of reason to believe otherwise, may rely upon the contractor's certification contained in the payment request.

(2) If the CO becomes aware of any arrangement or condition that would impair FAA's title to the property affected by the Performance-Based Payments clause, the CO should require additional protective provisions.

(3) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the CO may, if necessary, suspend or reduce payments under the terms of the Performance-Based Payments clause covering failure to comply with a material requirement of the contract. In addition, if the contractor fails to disclose an existing encumbrance in the certification, the CO should consult with legal counsel concerning possible violation of 31 U.S.C. 3729, False Claims Act.

m. *Risk of Loss.*

(1) Under the Performance-Based Payments clause, the contractor bears the risk for

loss, theft, destruction, or damage to property, except for normal spoilage, affected by the clause even though title is vested in FAA. The clauses related to performance-based payments, default, and terminations do not constitute an assumption of risk by FAA, unless FAA has expressly assumed this risk.

(2) If a loss occurs in connection with property for which the contractor bears the risk, and the property is needed for performance, the contractor is obligated to repay FAA the performance-based payments related to the property.

(3) The contractor is not obligated to pay for the loss of property for which FAA has assumed the risk of loss; however, a serious loss may impede the satisfactory progress of contract performance, so that the CO may need to act under the Performance-Based Payments clause. In addition, while the contractor is not required to repay previous performance-based payments in the event of a loss for which FAA has assumed the risk, such a loss may prevent the contractor from making the certification required by the Performance-Based Payments clause.

10 Financing Payment Revised 10/2010

a. Prudent contract financing can be a useful working tool in FAA acquisitions. FAA financing may be provided only to the extent actually needed for prompt and efficient performance, considering the availability of private financing. Any undue risk of monetary loss to FAA through the financing must be avoided.

b. "Contract financing" is a contractual authorization for payments to a contractor prior to acceptance of products or services by FAA. Contract financing includes advance payments.

c. Contract financing methods are intended to be self-liquidating through contract performance. FAA may only use the methods for financing of contractor working capital, not for the expansion of contractor-owned facilities or the acquisition of fixed assets.

d. Advance payments are the least preferred method of contract financing and must be authorized sparingly. They should be authorized only if partial payments or progress payments are not feasible and private financing is not reasonably available.

(1) Payments under time-and-material or cost-reimbursement contracts made to small businesses in advance of payment to their vendors or subcontractors are not considered advance payments under this subpart. The items authorized for advance payment below do not require additional review and approval, while all others not identified below require submittal to the Chief of the Contracting Office (COCO) for approval:

(a) Rent (leases, and rental agreements, including meeting and lodging room rentals);

(b) Tuition and conference registration fees;

(c) Insurance premiums;

(d) Extension or connection of public utilities for FAA buildings or installations;

(e) Subscriptions to publications - interpreted to include electronic methods of data recording. Software subscription services are therefore authorized;

(f) Purchases of products or services in foreign countries and the advance payment is required by the laws or regulations of the foreign country concerned;

(g) Advance payments to Federal agencies;

(h) Advance payments that do not exceed $15,000 or an equivalent amount in foreign currency;

(i) Expense of investigations in foreign countries;

(j) Enforcement of the customs or narcotics laws; or

(k) Other types of transactions excluded by agency procedures under statutory authority.

(2) The CO should transmit the following together with a recommendation of approval of a contractor's request for advance payment to the COCO:

(a) A summary of the solicitation or contract requirements;

(b) Comments on the contractor's need for advance payments and potential benefits to FAA from providing advance payments;

(c) CO's proposed actions to minimize FAA's risk of loss including proposed advance payment contract terms; and

(d) Justification of any proposal for waiver of interest charges.

(3) FAA should charge interest on advance payments received in excess of the Contractor's current needs, except for awards made to state governments, or instrumentalities thereof. The interest will be charged at the Department of Treasury current value of funds rate. The COCO may authorize advance payments without interest if in FAA's interest.

(4) Letters of Credit are not authorized at FAA.

(5) Payments will be made by electronic funds transfer whenever possible. The advance financing arrangement may be terminated if the contractor is unwilling or unable to minimize the elapsed time between receipt of the advance and disbursement of the funds. In lieu of termination, the CO will require the contractor to not request FAA funds until the contractor's checks are ready to be forwarded to the payees.

Advance payments may be processed as follows:

(a) 30-Day Advance: The contractor is authorized to request, in writing, FAA funds in amounts needed to cover its own disbursements of cash in the next 30 calendar days for contract performance. The contractor's request typically requires 30 calendar days for processing. The 30-day advance is the preferred method of providing advance funds to a contractor.

(b) 3-Day Advance: The contractor is authorized to request FAA funds in amounts needed to cover its own disbursements of cash in the next 3 working days for contract performance. When this payment method is selected, FAA will deposit funds in the contractor's designated account within 3 working days after receipt of the request by the FAA accounting office. This method of providing advance funds to a contractor is the least preferred method and will be used sparingly.

11 Withholding Payment Added 10/2007

a. The CO should not routinely withhold funds from contractor payments. A withholding should be considered only when:

(1) Satisfactory progress has not been achieved by a contractor during any period for which a payment is to be made; or

(2) The CO expects difficulty in the timely and complete receipt of information required by the contract.

b. Withholding should not be used as a substitute for good contract management, and COs should not withhold funds without cause.

c. Decisions to withhold and the specific amount to be withheld must be made by the CO on a case-by-case basis. Such decisions must be based on the CO's assessment of past performance and the likelihood that such unsatisfactory performance will continue.

d. The CO should notify the contractor in writing when withholding funds. The notice should include:

(1) The amount to be withheld;

(2) The specific cause for the withholding; and

(3) Any remedial actions that can be taken by the contractor in order to receive payment of the funds withheld.

e. Generally, the CO should not withhold an amount greater than 10% of the contract value and may withhold only in those specific instances where the CO has determined, in writing, that it is necessary to protect the interests of FAA.

f. Upon completion of all contract requirements, withheld amounts should be promptly released for payment.

12 Prompt Payment Revised ~~9/2021~~7/2024

a. *Prompt Payment for Products, Services, and Construction.*

(1) *Discount for Prompt Payment*. The CO is encouraged to include meaningful discounts for prompt payment in contracts whenever possible. Decisions to accept or not accept a prompt payment discount are made by the cognizant accounting office based on the value of the discount offered. There is no minimum time period for which discounts will be taken. Any discount will be taken if determined cost effective by the accounting office.

(2) *Due Date for Payment*. For the sole purpose of computing an interest penalty that might be due the contractor, the CO may establish a period for constructive acceptance of products and services that reflects the minimum necessary for inspection or testing. The period should be within seven (7) days after the contractor has delivered products or performed services in accordance with the terms and conditions of the contract. The CO may negotiate a longer period of acceptance, which must be stated in the contract.

(a) The due date for most invoice payments, (e.g. single [lump sum] payments, partial payments, etc.) will be not later than the 30th day after FAA receives a proper invoice as designated in the contract, or not later than the 30th day after products are delivered or services rendered to FAA acceptance point, whichever is later. Longer due dates may be specified for inspection, demonstrations or timed events.

(i) To the extent practicable, all invoices for contracts with small businesses will be paid not later than the 15th day after receipt of a proper invoice, rather than the 30th day as specified above. This accelerated payment to small businesses does not in any way modify the payment due date (30th day) for applying the Prompt Payment late payment interest penalty provisions as specified in paragraph c. "Interest" below.

(ii) For all new awards, the CO must indicate in PRISM whether the contractor is a small business by checking “Y” or “N” in the respective box. If a contractor is a small business, the accelerated payment terms must also be indicated. For existing awards, Accounting and Contracts will be provided a listing of all existing small business awards converted to accelerated payment.

(iii) On a temporary basis, invoice payments for all contracts are being accelerated to the extent practicable using the same methodology as described under b.(1)(a) above to facilitate the payment of small business subcontractors. AMS ~~Clause~~clause 3.3.1-20 "Providing Accelerated Payment to Small Business Subcontractors" is required for all SIRs and contracts. The clause may also be added to existing contracts.

(b) For all progress payments except construction, the due date will be not later than the 30th day after FAA approval of contractor estimates of work or of services accomplished. For the sole purpose of computing interest penalties due the contractor, FAA approval may be deemed to have occurred constructively on the 7th day after the contractor estimates are received with all necessary supporting documentation by FAA.

(c) Progress payments under construction contracts will be due not later than the 14th day after receipt of a proper invoice (including required supporting documentation as designated in the contract). The CO has the discretion to specify a longer period (a period longer than 30 days may not be prescribed) if more time is required to afford FAA a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract.

(d) For payment of any amounts retained by the CO, the due date will be not later than the 30th day after approval by the CO for release to the contractor. There is no provision for constructive acceptance.

(e) Final invoice payments will be due not later than the 30th day after FAA receives a proper invoice in the designated billing office, or not later than the 30th day after FAA acceptance of the work or services, whichever is later. For the contractor’s final invoice where the payment amount is subject to contract settlement actions, acceptance should be deemed to have occurred on the effective date of the contract settlement.

(3) *Interest.*

(a) The contractor is entitled to interest penalties if payments are made after the payment due date. The FAA may automatically pay interest without request from the contractor, when all of the following conditions, if applicable, have been met:

(i) A proper invoice as specified in the contract has been received;

(ii) There is no disagreement over quantity, quality, or contractor compliance with any contract requirement;

(iii) In the case of a final invoice, the payment amount is not subject to further contract settlement actions between FAA and the contractor;

(iv) FAA paid the contractor after the due date;

(v) Interest owed is over $1.00 in value; an

(vi) No off-set action has been filed by an appropriate Federal jurisdiction (such as IRS or DOL).

(b) Interest is not required on payment delays due

to:

(i) Defective invoices

(ii) Disagreement between FAA and contractor over payment amount;

(iii) Issues involving contract compliance; or

(iv) Amounts temporarily withheld or retained in accordance with the terms of the contract.

(c) No interest will be paid to the contractor as a result of delayed contract financing payments.

(d) The interest paid will be at the rate established by the Secretary of the Treasury referred to as the "Renegotiation Board Interest Rate."

(e) Interest will not accrue for more than one year.

(4) *Interim Voucher for Time-and-Material, Labor-Hour, and Cost Reimbursement Services.*

(a) Contractors awarded time-and-material (T&M), labor-hour (LH), or cost reimbursement contracts are generally authorized to seek payment during the course of the contract.

(b) An interim voucher is a contractor's request for payment during the course of performance under a T&M, LH, or cost reimbursement contract, but excluding the final payment. Interim vouchers are considered a form of contract financing; however, interest penalties must be paid on late payments for interim vouchers under T&M, LH, or cost reimbursement service contracts.

(c) For purposes of computing late payment interest penalties for interim vouchers, the due date for payment is the 30th day after FAA receives a proper invoice.

(d) If the invoice is found to be improper, it must be returned within 7 days after the date FAA receives the invoice.

(5) *Acceptance.* For payment purposes, FAA acceptance must be documented in a timely manner as the goods and/or services are received through the PRISM acceptance process.

When COs create awards in PRISM, they will be required to select whether the invoice matching for payment in DELPHI will be Two (2) or Three (3) Way match. Detailed information on invoice matching and acceptance requirements can be found on the PRISM website.

(a) Three (3) Way match: 3-Way match requires the presence of an award, an invoice, and the acceptance of the good(s) and/or services, by line, in PRISM. The acceptance of the good(s) and/or services in PRISM must annotate the date(s) good(s) were delivered or the services were provided as well as the date(s) of acceptance, where applicable. Most awards will be on a 3-Way match basis except those authorized for a 2-Way match as specified under (b)

(b) Two (2) Way match: 2-Way match requires the presence of an award and invoice without the need for manual acceptance in PRISM, and is authorized for the following types of procurements:

(i) Awards that include Fast Payment procedures;

(ii) Awards for services placed on Recurring Payment; and

(iii) Leases and utilities.

b. *Prompt Payment for Real Property*

For real property contracts, the FAA should make payments in arrears or as provided in the contract, without the submission of invoices or vouchers. The CO has discretion in applying late payment interest to payments made within the scope of real property contracting actions.

13 Fast Payment Added 10/2007

a. Fast payment procedures may be included SIRs and contracts when it may not be possible for the receiving location to make timely notice to the payment office that supplies are accepted. In order for fast payment procedures to be authorized by the CO:

(1) The SIR or contract must be firm fixed-price;

(2) Title must vest in the FAA upon shipment or receipt;

(3) The supplier must agree to replace or repair supplies damaged in transit or not conforming to contract requirements; and

(4) Safeguards must be in place to ensure supplies are shipped, received, and acceptable.

b. Invoices will be paid on the basis of the contractor's delivery of supplies to a post office or common carrier for shipment to the specific destination.

c. For supplies delivered by means other than the Postal Service or common carrier, invoices will be paid on the basis of first receipt of the supplies by FAA.

d. The CO has 180 days from the date title to the supplies vests in FAA to instruct the contractor to replace, repair, or correct nonconforming supplies at the contractor's expense.

e. All invoices and shipping containers must be marked "FAST PAY."

14 Invoices Revised 7/2022

(This section applies to contracts **not** subject to AMS T3.3.1A.15 Electronic Payment Requests – Invoices (eInvoicing)

a. *Proper Invoice*.

(1) For FAA to make payment under a contract, a proper invoice must be submitted to FAA by the contractor. If the invoice does not meet the definition of a proper invoice per section (2) below, it must be rejected within seven (7) days of receipt.

(2) A proper invoice contains the following:

(a) Name and address of contractor;

(b) Invoice date;

(c) Contract number (to include applicable order numbers and Contract Line Item Numbers (CLINs);

(d) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed;

(e) Shipping and payment terms, to include, when applicable:

(i) Shipment number and date of shipment,

(ii) Bill of lading number and weight (for government bills of lading), and

(iii) Prompt payment discount terms.

(f) Contractor or bank address where electronic payment is to be sent;

(g) Name, title, phone number, and mailing address of person to be notified of a defective invoice;

(h) Other information required by the contract (i.e. certified payrolls, evidence of shipment, etc); and

(i) Invoice number, account number, and/or any other identifying umber agreed under the contract.

b. *Invoice Routing and Acceptance*.

(1) All contracts must specify the FAA employees (or offices) to whom invoices are to be sent.

(2) Invoices must be date stamped when received by FAA Accounting as specified under (3) (b) below, and this date will serve as the reference point for Prompt Payment standards (see Prompt Payment in this Section).

(3) Varying locations in FAA may have specialized routing of invoices for supplies, services, or construction; however, in all cases, one original of the invoice must be delivered to accounting (AMK-310). The routing and acceptance of a proper invoice should generally follow these steps:

(a) One original of the invoice will be delivered to accounting (AMK-310), while one original will be sent to both the CO and Contracting Officer's Representative (COR). Electronic submission of invoices will be allowed per Agency finance guidelines and prior agreement with the finance office;

(b) Once received by accounting, the invoice will be date stamped unless received electronically and assigned to an Accounts Payable (A/P) technician;

(c) The A/P technician will upload the invoice and supporting documentation into the Delphi workflow. Automatic notification will be sent to the COR via email that they have a pending review action in Delphi. The COR then logs into Delphi and completes the invoice review with comments and submits their review. Upon this submittal, the CO receives automatic notification via email indicating that they have a pending approval action in Delphi. The CO then logs into Delphi and completes the approval or rejection based on the COR review. If approved, the invoice is validated and paid. If rejected, the A/P technician notifies the contractor;

(d) Based on documentation or a receiving report from the COR and the presence of a proper invoice, the COR or CO will perform acceptance in PRISM if necessary for a 3-Way match. If a 2-Way match, the COR or CO will ensure that the supplies and/or services on the invoice have been received. When a COR has not been designated, the CO may designate in writing a FAA Program Office employee to perform acceptance in PRISM. After invoice review and any acceptance, the CO will complete an invoice certification sheet or other payment documentation for the contract file. This CO approval of invoices may be delegated in writing to the receiver where firm-fixed-price commercial supplies or services are being purchased; and

(e) Copies of all payment documentation will be retained in the contract file.

c. *Real Property Invoicing*

(1) *Payment without Invoices*

(a) Payment for real property acquisitions shall be in arrears, without the submission of invoices or vouchers.

(b) Payments are due on the first business day following the end of the payment period and this date may serve as the reference point for Prompt Payment standards (see Prompt Payment for Real Property in this Section).

(c) The payments shall be directly deposited in accordance with the "Payment by Electronic Funds Transfer" clause in the Real Estate contract. Payments shall be considered paid on the day an electronic funds transfer is made.

(2) *Routing and Acceptance*

When COs create awards in PRISM, they will be required to select a Two (2) Way match for processing payment in Delphi. Detailed information on payment matching and acceptance requirements can be found on the PRISM website. 2-Way match requires the presence of an award without the need for manual acceptance in PRISM, and is authorized for the following types of procurements:

(a) Awards for services placed on Recurring Payment; and.

(b) Leases and Utilities placed on Lump Sum or Recurring Payment.

15 Electronic Payment Requests -Invoices (eInvoicing) Revised 1/2021

a. *Requirements.* Contracts will require the electronic submission of payment requests except for

(1) Classified contracts or purchases where the electronic submission and processing of payment requests could compromise classified information or national security; or

(2) For contracts with an approved waiver per AMS Guidance T3.3.1A.15.e for alternate payment procedures. or

(3) For those paid for with a Government purchase card; or

(4) Real Property contracts.

Contracts not requiring the electronic submission of payment requests must be administered consistent with the previous Guidance section “Invoices”. A waiver is not needed for contracts under a (1), (3), or (4).

b. *FAA Electronic Invoicing System.* FAA uses the DOT Delphi eInvoicing web portal to facilitate the electronic submission and approval of contractor invoices Except as provided in paragraph (a) of this section, contracting officers and finance officials will process electronic payment submissions through the Delphi web portal. If the requirement for electronic submission of payment requests is waived under paragraph (e) of this section, the contract or alternate payment authorization, as applicable, will specify the form and method of payment request submission.

c. *Electronic Authentication*. Access to Delphi eInvoicing is granted with electronic authentication of credentials (name & valid email address) utilizing the GSA credentialing platform login.gov. Contractors submitting invoices must submit invoices via the Delphi eInvoicing web portal which is authenticated via login.gov.

d. Contract clauses. Contracting officers must insert AMS clause 3.3.1-40 "Electronic Submission of Payment Requests" and provision 3.3.1-41 "Electronic Invoicing - Representation" in all applicable contracts per paragraphs (a) and (b).

e. *Waivers*. If a contract requires alternate payment procedures other than eInvoicing, a waiver must be approved. If an offeror wishes to request a waiver from eInvoicing requirements per AMS provision 3.3.1-41, then the offeror must provide the documentation required by the provision. If the offeror then receives award, the waiver request will be expeditiously considered as follows:

(1) The Contracting Officer and AAQ Branch Manager must first approve the waiver and document the approval in the contract file;

(2) The waiver request will then be forwarded to FAA ESC Accounts Payable (9-AMC-FAA-iSupplier@faa.gov) who will then submit the waiver request to DOT. ESC Accounts Payable will notify the Contracting Officer whether the waiver is approved.

Waivers will only be granted under unusual circumstances; e.g., the contractor cannot utilize the Delphi eInvoicing web portal or the FAA is unable to receive electronic payment requests or provide acceptance electronically. The FAA decision on a waiver is final and not subject to the " Contract Disputes" clause AMS 3.9.1-1. If a waiver is granted, the contractor will utilize the current invoicing process per AMS Guidance T3.3.1A.14 and applicable contract clauses. The contract may still be converted to eInvoicing at a later date.

16 Debt Collection Revised 9/2021

a. Contract debts arise in various ways. The following are some examples:

(1) Damages or excess costs related to defaults in performance.

(2) Breach of contract obligations concerning progress payments, advance payments, or Government-furnished property or material.

(3) FAA expense of correcting defects.

(4) Overpayments related to errors in quantity or billing or deficiencies in quality.

b. Once an indication of a contract debt surfaces, it should promptly be determined if a debt is due to FAA and in what amount. A demand for payment should be made as soon as the amount of the refund has been calculated. In general, interest will be due on any contract debt that is unpaid after 30 days. For debts under $100,000, excluding interest, if further collection is not practicable, or would cost more than the amount of recovery, FAA may compromise the debt or terminate or suspend further collection action.

c. Local legal counsel must review and approve any debt collection activity.

17Assignment of Claims Revised 9/2021

a. Assignment of contract payments is the transfer by a contractor of its right to be paid by FAA for contract performance to a bank, trust company, or other financing institution. This assignment of contract payments serves as security for a loan to the contractor. An assignment of contract payments extinguishes the right of the transferor (assignor, contractor) to all future payments due under the contract, and establishes that right in the transferee (assignee, financial institution).

b. FAA may permit assignment of contract payments to help contractors obtain independent financing. When the contract provides for advance payments, assignments are not permitted.

c. No payments made by FAA to the assignee under any contract assigned may be recovered because of any liability of the contractor to FAA. This immunity of the assignee is effective whether the contractor's liability arises from, or independently of, the assigned contract.

d. A contractor may assign payments due or to become due under a contract if all the following conditions are met:

(1) The assignment is made to a bank, trust company, or other financing institution, including any Federal lending agency;

(2) The assignment covers all unpaid amounts payable under the contract; and

(3) The contract terms do not expressly prohibit the assignment.

e. The CO processes requests for assignments from the contractor or financial institution. The contractor notifies the CO that an assignment is contemplated, and the assignment becomes effective upon written acknowledgment by the CO. An assignment should adhere to the following:

(1) Assignments for corporations must be:

(a) Executed by an authorized representative, validated by the secretary or the assistant secretary of the corporation, and impressed with the corporate seal; or

(b) Accompanied by a true copy of the authorization from the corporation's board of directors for the signing representative to execute the assignment.

(2) Assignments for partnerships may be signed by one partner, if accompanied by adequate evidence that the signer is a general partner of the partnership and is authorized to execute the assignment on behalf of the partnership.

(3) Assignments by an individual must be signed by that individual in the presence of and acknowledged before a notary public or other person authorized to administer oaths.

(4) The assignee must forward an original and three copies of the notice of assignment (see sample Notice of Assignment in AMS Procurement Samples for reference), together with one true copy of the instrument of assignment, to each of the following:

(a) CO;

(b) Surety on any bond applicable to the contract; and

(c) FAA accounting office designated to make payments.

(5) Before acknowledging the assignment, the CO should ensure that the contract permits assignment, the assignment covers only money due or to become due, and, unless waived, the assignee is registered separately in the Central Contractor Registration.

f. Upon notification of a desire for an assignment, the CO will:

(1) Notify the accounting office designated to make payments of the pending assignment; and

(2) Immediately notify the disbursing officer when assignment is accepted and ensure delivery of the instrument to the disbursing officer.

g. A release of assignment is required whenever the contractor wishes to reestablish its right to receive further payments and a balance remains due under the contract. If the assignee releases the contractor from an assignment of claims under the contract, the contractor must provide the CO, any Surety on any bond, and the FAA accounting office with the following:

(1) Written Notice of Release; and

(2) A true copy of the release instrument.

Each FAA addressee of a Notice of Release of Assignment should acknowledge receipt of the notice.

h. Assignments may be made to banks, trust company or financing institutions only.

18 Automatic Deobligation **Revised 1/2021**

a. *Inactive Obligations.* After 365 days of inactivity and a total line item obligation balance with an absolute value of $250 or less, or after 730 days of inactivity and a total line obligation balance with an absolute value of $750 or less, a system-generated modification to deobligate this line item balance will be created and approved in PRISM. This deobligation modification will be created and approved through an automated process that will be run no less than once a year. The FAA payment office will adjust all financial records to reflect the fact that no undisbursed obligation balance remains on the line item. Any valid invoices received by FAA after this deobligation will be paid out of appropriate available funding. Upon notification from the Contracting Officer, the FAA's Office of Financial Services will promptly coordinate with the appropriate line of business/staff office to submit a procurement request with the necessary funding to pay the valid invoice in accordance with the Prompt Payment Act.

b. *Cancelled Funds.* A system-generated modification to deobligate cancelled funds, of any dollar value, will be automatically created and approved in PRISM. Each system-generated modification will include a description in the modification text that the purpose of the modification is to deobligate cancelled funds and will cite AMS T3.3.1A.17 as the modification authority. The modification to deobligate cancelled funds can occur at any time and the FAA payment office will adjust all financial records to reflect the fact that no undisbursed obligation balance remains on the line item.

19 Incremental Funding for Fixed-Price Contracts **Added 1/2021**

a. A fixed-price contract may be incrementally funded only if—

(1) The contract (excluding any options) or any exercised option—

(a) Is for severable services;

(b) Does not exceed one year in length; and

(c) Is incrementally funded using funds available as of the date the funds are obligated; or

(2) The contract uses funds available from two or more fiscal years and—

(a) Is a major systems acquisition; or

(b) Congress has otherwise authorized incremental funding

b. An incrementally funded fixed-price contract will be fully funded as soon as funds are available.

B Clauses

view contract clauses

C Procurement Forms Revised ~~9/2021~~7/2024

Document Name
FAA 4400-50 Contractor's Request for Progress Payment
FAA 4400-52 Electronic Funds Transfer Waiver Request

D Procurement Samples Revised 9/2021

Document Name
Sample Notice of Assignment

E Procurement Templates Added 9/2021

F Procurement Tools and Resources Added 9/2021

T3.4.2 - Taxes

A Taxes

1 General

a. This section provides general information on a range of taxation issues including:

(1) Using tax clauses in contracts (including foreign contracts);

(2) Asserting immunity or exemption from taxes; or

(3) Obtaining tax refunds.

b. This section does not present the full scope of the tax laws and regulations. Therefore, contracting officers (CO) should work closely with legal counsel when tax questions arise.

c. COs must consult legal counsel before negotiating with any taxing authority for the purpose of:

(1) Determining whether or not a tax is valid or applicable; or

(2) Obtaining an exemption from, or refund of, a tax.

d. When the FAA's constitutional immunity from State or local taxation may be at issue, contractors should be discouraged from negotiating independently with taxing authorities if the contract involved is either:

(1) A cost-reimbursement contract, or

(2) A fixed-price contract containing a tax escalation clause.

e. The CO should consult legal counsel for the following before purchasing goods or services from a foreign source:

(1) Information on foreign tax treaties and agreements in force and on the implementation of any foreign-tax-relief programs and

(2) Resolution of other tax questions affecting the prospective contract.

2 Federal Excise Taxes

a. Federal excise taxes are levied on the sale or use of particular supplies or services. Subtitle D of the Internal Revenue Code of 1954, Miscellaneous Excise Taxes, 26 U.S.C. 4041, et seq., and its implementing regulations, 26 CFR 40 through 299, cover miscellaneous federal excise tax requirements. Questions arising in this area should be directed to legal counsel. The most common excise taxes are--

(1) Manufacturers' excise taxes imposed on certain motor-vehicle articles, tires and inner tubes, gasoline, lubricating oils, coal, fishing equipment, firearms, shells, and cartridges sold by manufacturers, producers, or importers; and

(2) Special-fuels excise taxes imposed at the retail level on diesel fuel and special motor fuels.

b. Sometimes the law exempts the Federal Government from these taxes. COs should solicit prices on a tax-exclusive basis when the Government is exempt from these taxes, and on a tax- inclusive basis when no exemption exists.

c. COs should take maximum advantage of available Federal excise tax exemptions.

3 General Exemptions Revised 10/2018

a. No Federal manufacturers' or special-fuels excise taxes are imposed in many contracting situations as, for example, when the supplies are for any of the following:

(1) The exclusive use of any State or political subdivision, including the District of Columbia (26 U.S.C. 4041 and 4221);

(2) Shipment to a United States possession or Puerto Rico, or for export. Shipment or export must occur within 6 months of the time title passes to the Government. When the exemption is claimed, the words "for export or shipment to a possession" must appear on the contract or purchase document, and the contracting officer must furnish the seller proof of export (see 26 CFR 48.4221-3);

(3) Further manufacture, or resale for further manufacture (this exemption does not include tires and inner tubes) (26 CFR 48.4221-2);

(4) Use as fuel supplies, ships or sea stores, or legitimate equipment on vessels of war, including

(a) Aircraft owned by the United States and constituting a part of the armed forces; and

(b) Guided missiles and pilotless aircraft owned or chartered by the United States. When this exemption is to be claimed, the purchase should be made on a tax-exclusive basis. The CO must furnish the seller an exemption certificate for Supplies for Vessels of War (an example is given in 26 CFR 48.4221-4(d)(2); the IRS will accept one certificate covering all orders under a single contract for a specified period of up to 12 calendar quarters) (26 U.S.C. 4041 and 4221);

(5) A nonprofit educational organization (26 U.S.C. 4041 and 4221); (6) Emergency vehicles (26 U.S.C. 4053 and 4064(b)(1)(c)).

b. *Other Federal Tax Exemptions.*

(1) Pursuant to 26 U.S.C. 4293, the Secretary of the Treasury has exempted the United States from the communications excise tax imposed in 26 U.S.C. 4251, when the supplies and services are for the exclusive use of the United States. (Secretarial Authorization, June 20, 1947, Internal Revenue Cumulative Bulletin, 1947-1, 205.)

(2) Pursuant to 26 U.S.C. 4483(b), the Secretary of the Treasury has exempted the United States from the federal highway vehicle users tax imposed in 26 U.S.C. 4481. The exemption applies whether the vehicle is owned or leased by the United States. (Secretarial Authorization, Internal Revenue Cumulative Bulletin, 1956-2, 1369.)

4 State and Local Taxes **Revised 10/2018**

a. *Definition*."State and local taxes" means taxes levied by the States, the District of Columbia, Puerto Rico, possessions of the United States, or their political subdivisions.

b. *Application of State and Local Taxes to the FAA.*

(1) Generally, purchases and leases made by the Federal Government are immune from State and local taxation. Whether any specific purchase or lease is immune, however, is a legal question requiring advice and assistance of legal counsel.

(2) When it is economically feasible to do so, the FAA should take maximum advantage of all exemptions from State and local taxation that may be available. If appropriate, the CO should provide a Standard Form 1094, U.S. Tax Exemption Form, or other evidence to establish that the purchase is being made by the FAA.

c. *Application of State and Local Taxes to FAA Contractors and Subcontractors*.

(1) Prime contractors and subcontractors must not normally be designated as agents of the Government for the purpose of claiming immunity from State or local sales or use taxes. Before any such determination is made the CO must consult with legal counsel.

(2) When a prime contractor or a subcontractor under a prime contract makes a purchase instead of the FAA, the right to an exemption of the transaction from a sales or use tax may not rest on the Government's immunity from direct taxation by States and localities. It may rest instead on provisions of the particular State or local law involved, or, in some cases, the transaction may not

in fact be expressly exempt from the tax.

(3) Frequently, property (including property acquired under the progress payments clause of fixed-price contracts or the Government property clause of cost-reimbursement contracts) owned by the Government is in the possession of a contractor or subcontractor. Situations may arise in which States or localities assert the right to tax Government property directly or to tax the contractor's or subcontractor's possession of, interest in, or use of that property. In such cases, the CO must seek review and advice from legal counsel on the appropriate course of action.

d. *Matters Requiring Special Consideration.*

(1) The imposition of State and local taxes may result in special contract considerations including the following:

(a) With coordination of legal counsel, a contract may -

(i) State that the contract price includes or excludes a specified tax or

(ii) Require that the contractor take certain actions with regard to payment, nonpayment, refund, protest, or other treatment of a specified tax. Such special treatment may be appropriate when there is doubt as to the applicability or allocability of the tax, or when the applicability of the tax is being litigated.

(b) The applicability of State and local taxes to purchases by the FAA may depend on the place and terms of delivery. When the contract price will be substantial, alternative places and terms of delivery should be considered in light of possible tax consequences.

(c) Indefinite-delivery contracts for equipment rental may require the contractor to furnish equipment in any of the States. Since leased equipment remains the contractor's property, States and local governments impose a wide variety of property, use, or other taxes on equipment leased to the Government. The amount of these taxes can vary considerably from jurisdiction to jurisdiction.

(d) *The North Carolina State and Local Sales and Use Tax.*

(i) The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a

refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired for such counties and incorporated cities and towns in North Carolina. In United States v. Clayton, 250 F. Supp.
827 (1965), it was held that the United States is entitled to the benefit of the refund, but must follow the refund procedure of the Act and the regulations to recover what it is due.

(ii) The Act provides that, to receive the refund, claimants must file, within 6 months after the claimant's fiscal year closes, a written request substantiated by such records, receipts, and information as the Commissioner of Revenue may require. No refund will be made on an application not filed within the time allowed and in such manner as the Commissioner may require. The requirements of the Commissioner are set forth in regulations that provide that, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. In the event the contractor makes several purchases from the same vendor, the certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the sales and use taxes paid. The statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of sales or use tax paid by the contractor. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the claimant. Any local sales or use taxes included in the contractor's statement must be shown separately from the State sales or use taxes.

(iii) The clause prescribed at 3.4.2-9 requires contractors to submit to COs by November 30 of each year a statement disclosing North Carolina State and local sales and use taxes paid during the 12-month period that ended the preceding September 30. The CO should ensure that contractors comply with this requirement and must obtain the annual refund to which the Government may be entitled. The application for refund must be filed each year before March 31 and in the manner and form required by the Commissioner of Revenue. Copies of the form may be obtained from the State of North Carolina Department of Revenue, PO Box 25000, Raleigh, North Carolina 27640.

5 State and Local Tax Exemptions Revised 7/2024

a. Evidence needed to establish exemption from State or local taxes depends on the grounds for the exemption claimed, the parties to the transaction, and the requirements of the taxing jurisdiction. Such evidence may include the following:

(1) A copy of the contract or relevant portion;

(2) Copies of purchase orders, shipping documents, credit-card-imprinted sales slips, paid or acknowledged invoices, or similar documents that identify an agency or instrumentality of the United States as the buyer;

(3) A FAA 4400-86 U.S. Tax Exemption Form ~~(SF 1094);~~;

(4) A State or local form indicating that the supplies or services are for the exclusive use of the United States;

(5) Any other State or locally required document for establishing general or specific exemption;

(6) Shipping documents indicating that shipments are in interstate or foreign commerce.

b. If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption, as follows:

(1) Under a contract containing the clause at AMS 3.4.2-8, Federal, State, and Local Taxes, Competitive Contracts, or at AMS 3.4.2-7, Federal, State, and Local Taxes (Noncompetitive Contract), in accordance with the terms of those clauses;

(2) Under a cost-reimbursement contract, if requested by the contractor and approved by the CO or at the discretion of the CO;

(3) Under a contract or purchase order that contains no tax provision,

if—

(i) Requested by the contractor and approved by the CO or at the discretion of the CO; and

(ii) Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor consents to a reduction in the contract price.

B Clauses

view contract clauses

C Procurement Forms Revised ~~9/2021~~7/2024

Document Name
FAA 4400-86 U.S. Tax Exemption Form ~~(SF 1094)~~

D Procurement Samples Added 9/2021

Document Name

E Procurement Templates Added 9/2021

Document Name
Tax Exemption Letter

F Procurement Tools and Resources Added 9/2021

Document Name

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 ~~4/2024~~7/2024

a. *Davis-Bacon Act.* The Davis-Bacon Act applies to construction contracts greater than $10,000.

b. *Project Labor Agreement Requirements*. In accordance with Executive Order 14063, Use of Project Labor Agreements in Federal Construction Projects, project labor agreements are required for large-scale Federal construction projects with a total estimated cost of $35 million or more, unless an exception applies. Agencies may, at their discretion, require PLAs for Federal construction projects that do not meet the $35 million threshold. (See AMS Guidance T3.6.2A.20 for further information on project labor agreement requirements).

c. *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.

d. *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.*, 98 Wash.2d 121 (Nov. 24, 1982~~, and~~); 42 Comp. Gen. 1~~,~~; and 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).

e. *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 FAA Buy American Preference (49 U.S.C. § 50101) requires FAA to use domestic steel and manufactured goods, unless an exception applies. (See AMS Procurement Guidance T3.6.4A.2).

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 ~~7/2023~~7/2024

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 applicable performance (FAA 4400-73 Reinsurance Agreement for a Miller Act Performance Bond) and payment (FAA 4400-72 Reinsurance Agreement for a Miller Act Payment Bond) bond forms are located on the FAST webpage under Procurement Forms. 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 Source Evaluation Plan template located in Procurement Templates. This may be done by establishing a source evaluation plan as described under Source Selection (See AMS ~~3~~Guidance T3.2.2.3 Complex Source Selection).

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 AMS 3.2.2.3-42 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 TEPV of the proposed construction project is equal to or exceeds the AMS risk threshold, public announcement is 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 Environment and Conservation for additional guidance on the protection of the environment and proper conservation during construction contracts, and 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 7/2023**

a. *Public Announcement.* All procurements, including construction, exceeding the AMS risk threshold, 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 7/2023**

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 provide a copy of this COR Delegation Letter to the COR and the contractor.

(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. *Pre-construction Conference.* The CO may conduct a 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. The COR may participate in pre-construction conferences and address, among other things, Operational Risk Management (ORM), which is particularly important where contractors are working on NAS facilities. For example, the FAA may require that prior to performance, contractor personnel watch the short ORM orientation video the FAA has posted at https://www.youtube.com/watch?v=yyq9ESQ8vds. The video provides an overview on how FAA facilities are interconnected and the criticality of the work performed on NAS facilities, along with some ORM practices. 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. If the CO determines a pre-construction conference is appropriate, the CO shall use the Pre-Construction Conference Notice located in Procurement 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 AMS clause 3.2.2.3-52 "Use and Possession Before the Project is Complete" 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 exceeding the micro-purchase threshold, 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 ~~7/2022~~7/2024

Document Name
FAA 4400-32 Abstract of Offers ~~(SF-1409)~~
FAA 4400-32.1 Abstract of Offers Continuation ~~(SF-1410)~~
FAA 4400-33 Affidavit of Individual Surety ~~(SF-28)~~
FAA 4400-36 Architect - Engineer Contract ~~(SF-252)~~
FAA 4400-37 Architect - Engineer Qualifications ~~(SF-330)~~
FAA 4400-39 Bid Bond ~~(SF-24)~~
FAA 4400-40 Bid Bond – Annual ~~(SF-34)~~
FAA 4400-42 Consent of Surety ~~(SF-1414)~~
FAA 4400-61 Payment Bond ~~(SF-25A)~~

FAA 4400-63 Performance Bond Annual ~~(SF-25)~~
FAA 4400-64 Performance Evaluation (Architect Engineer) ~~(SF-1421)~~
FAA 4400-72 Reinsurance Agreement for a Miller Act Payment Bond ~~(SF-274)~~
FAA 4400-73 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

T3.10.6 Termination of Contracts

A Termination for Products, Services, and Construction Revised 9/2020

1 General Guidance Revised ~~9/2021~~7/2024

a. The FAA termination requirements will:

1. Enable the FAA to establish contract requirements that protect the interests of the FAA;
2. Promote fair and rapid termination settlements;
3. Encourage settlement by agreement rather than by contracting officer's determination.

b. Contracting officer (CO) responsibilities. The CO will:

1. Select and include the appropriate termination clause(s) in contracts to provide the CO authority to terminate contracts for convenience, or for default;
2. Enforce provisions of termination clauses in a manner that is in the best interest of the FAA by terminating in whole or in part, for the convenience of the FAA or for contractor default;
3. Direct the contractor on how to proceed when a contract is terminated;
4. Establish a case file for each termination; retain pertinent documentation in the case file as a record of the activities related to the termination and settlement;
5. Enlist assistance of individuals with special qualifications to assist in the termination in areas such as legal, accounting, distribution, and logistics;
6. Arrange inspection of completed items, as needed;
7. Obtain title to completed end items or termination inventory, as appropriate;
8. Initiate action to obtain, all rights, titles, and interest under any subcontract terminated because of termination of the prime contract if it is in the best interest of the FAA to do so;
9. For construction contracts, direct action for site cleanup, protection of serviceable materials, removal of hazards, and any action necessary to leave a safe site;
10. Examine settlement proposal and subcontract settlement proposals;
11. Recognize the subcontractor's final judgment against the contractor, if any, as a cost of the settlement;
12. Approve subcontract settlement, unless otherwise waived by the contracting officer;
13. Initiate audits on the settlement proposal for prime and subcontractors as deemed necessary to protect the interest of the FAA;
14. Negotiate settlement agreements, when applicable, with prime contractors;
15. Issue a CO determination if a settlement agreement cannot be reached;
16. Reinstate contracts on a bilateral agreement basis when deemed in the best interest of the FAA to do so;
17. Release excess funds as quickly as possible retaining sufficient funds to settle the termination.

c. Contractor responsibilities. The contractor will:

1. Cooperate with the CO in the termination;

2. Comply with the termination clause invoked;
3. Comply with direction of the CO consistent with termination clause;
4. Stop work immediately on the terminated contract, or portion thereof;
5. Terminate all subcontracts related to the terminated portion of the contract;
6. Stop placing subcontracts under the contract or terminated portion;
7. Settle outstanding liabilities and claims arising out of subcontract terminations, with prior approval by the contracting officer;
8. Dispose of termination inventory as instructed or approved by the CO;
9. Take necessary action to protect and preserve property in which the FAA has or may acquire an interest, or, as directed by the contracting officer;
10. Advise the contracting officer of any special circumstances affecting the termination, such as a subcontractor's legal proceedings or other commitments related to the termination;
11. Perform accounting review of subcontractor settlements;
12. Submit subcontractor settlement proposals for CO approval, as requested by the CO, and settle subcontracts without prior consent of the CO;
13. Submit a settlement proposal, supported by accounting data or other data required by the CO to review the proposal;
14. Execute a settlement agreement by negotiation as quickly as possible;
15. Perform continuing portion of the contract, if any;
16. Submit any request for an equitable adjustment of price with respect to the continuing portion.

d. Termination Notices.

The CO may terminate contracts by written notice to the contractor, furnishing copies to any known assignee, guarantor, or surety of the contractor. (See Procurement Samples for sample Termination for Convenience and Termination for Default notices). Termination amendments will also be in written form to the foregoing parties. The CO should transmit the notice in a way to establish the time of receipt by the contractor, such as certified mail with return receipt. The CO will invoke the appropriate termination clause, indicate date of termination, direct the contractor on how to proceed, provide disposition instructions for property in which the FAA has or will have an interest, and otherwise comply with the termination clause.

e. Settlements.

1. General.
   Settlements may be used in both convenience and default terminations. A settlement should compensate the contractor promptly for the work done and, possibly, preparations made for the terminated portion(s) of the contract, including a reasonable allowance for profit, when appropriate. Termination clauses define costs that may be considered. Cost principles should govern assertions, negotiations, or cost determinations relevant to termination settlements under contracts with other than educational institutions, and be a guide in negotiation of settlements under contracts for experimental, developmental or research work with educational institutions. Business judgment is an important element, in addition to accounting principles, in achieving a fair settlement.

2. Termination Settlements.
   When contracts are terminated, the CO should settle all outstanding matters in a fair and prompt manner. Settlements should consider rights and liabilities of the parties such as:
   a. Costs owed the contractor for delivered/accepted supplies or services;
   b. Contractor obligation to reimburse the FAA with interest for overpayments to the contractor;
   c. Materials acquired by the contractor for the contract that may necessitate contractor disposal;
   d. Rights of the parties;
   e. Construction site cleanup;
   f. Some settlement preparation cost.
3. Approaches.
   The contracting officer may use various approaches to settle terminated contracts. Approaches that may be used include:
   a. Negotiation,
   b. CO determination,
   c. Cost out under vouchers in a cost-reimbursement contract;
   d. By combination of methods.
4. Settlement Proposal.
   The CO should provide the contractor explicit direction on the preparation of the settlement proposal. Contractors should prepare and submit to the CO a settlement proposal on the outstanding liabilities and obligations of the parties. The proposal may be the basis for a negotiated settlement agreement. The proposal should cover all cost elements including settlements with subcontractors and any proposed profit. With the consent of the CO, the contractor may file proposals in successive steps covering separate portions of the contractor's costs. Such interim proposals should include all costs of a particular type, except as the CO may otherwise authorize**.**
5. Settlement by Negotiation.
   Settlement by negotiation is the preferred method to arrive at a settlement agreement. The CO should document the settlement negotiation in a memorandum or similar documentation describing the principal elements of the settlement and include this as documentation in the termination file.
6. Settlement by determination.(Revised 06/2001)
   a. The CO should issue a determination to the contractor in instances where the FAA and the contractor cannot agree on a termination settlement, or if a settlement proposal is not submitted within the period required by the termination clause. The determination should state:
      i. That it is the CO’s termination settlement determination, and
      ii. That the amount due the contractor, if any, consistent with the termination clause and any cost principles affecting the contract. The CO should support his/her determination with schedules in sufficient detail to substantiate the basis and rationale for the amount.

   b. The contractor may file a dispute with Office of Dispute Resolution for Acquisition based upon the settlement determination of the Contracting Officer - see termination clauses and Contract Disputes clause at 3.9.1-1.
7. Settlement Agreement.
   The settlement agreement should describe the elements of the settlement so that

the obligations of the parties are clear and do not create any rights for the parties beyond those in existence before execution of the settlement agreement. The settlement agreement will be in the form of a contract modification.

8. No cost settlement.
   The CO may execute a no-cost settlement agreement if (a) the contractor has not incurred costs for the terminated portion of the contract or (b) the contractor is willing to waive the costs incurred and (c) no amounts are due to FAA under the contract.
9. Partial settlements.
   Partial settlements are discouraged. The CO should attempt to settle all rights and liabilities of the parties under the terminated portion of the contract in one agreement. However, when a CO cannot promptly complete settlement under the terminated contract, he/she may enter a partial settlement reserving rights on the unresolved issues to a later time.
10. Settlement Conference.
    The CO may hold a conference with the contractor to develop a definite program for effecting the settlement. When appropriate in the judgment of the CO and after consulting with the contractor, principal subcontractors may be requested to attend. Topics that should be discussed at the conference and documented include-
    a. General principles relating to the settlement of any settlement proposal, including obligations of the contractor under the termination clause of the contract;
    b. Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information that would have been delivered had the contract been completed;
    c. Status of any continuing work;
    d. Obligation of the contractor to terminate subcontracts and general principles to be followed in settling subcontractor settlement proposals;
    e. Names of subcontractors involved and the dates termination notices were issued to them;
    f. Contractor personnel handling review and settlement of subcontractor settlement proposals and the methods being used;
    g. Arrangements for transfer of title and delivery to the FAA of any material required by the FAA;
    h. General principles and procedures to be followed in the protection, preservation, and disposition of the contractor's and subcontractors' termination inventories, including the preparation of termination inventory schedules;
    i. Contractor accounting practices and preparation of ~~SF 1439 (See~~FAA 4400-77 Schedule of Accounting Information located ~~in~~on the FAST webpage under Procurement Forms~~)~~..
    j. Form in which to submit settlement proposals;
    k. Accounting review of settlement proposals;
    l. Any requirement for interim financing in the nature of partial payments;
    m. Tentative time schedule for negotiation of the settlement including submission by the contractor and subcontractors of settlement proposals, termination inventory schedules, and accounting information schedules to minimize impact upon employees affected adversely by the termination.
11. Settlement costs/profit. Settlement costs should be consistent with the termination clause

invoked and the cost principles that may apply.

12. Settlement by determination. If the settlement is by determination and there is no appeal within the allowed time, the contractor should submit a voucher or invoice showing the amount finally determined due, less any portion previously paid; or there is an appeal, the contractor should submit a voucher or invoice showing the amount finally determined due on the appeal, less any portion previously paid. Pending determination of any appeal, the contractor may submit vouchers or invoices for charges that are not directly involved with the portion being appealed, without prejudice to the rights of either party on the appeal.

f. Payments.

1. Partial Payments. The CO may authorize partial payments on settlement proposals before settlement if the contractor requests them and the CO determines that it would not be contrary to the interest of the FAA.
2. Final Payments. After execution of a settlement agreement, the contractor should submit a voucher or invoice showing the amount agreed upon, less any portion previously paid. The CO should attach a copy of the settlement agreement to the voucher or invoice and forward the documents to the CO for payment.
3. Under Construction Contracts. If there are any outstanding labor violations in the case of construction contracts, the CO should withhold an appropriate amount from the final payment pending resolution of the violations.

g. Interest.

The FAA should not pay interest on the amount due under a settlement agreement or a settlement by determination. The FAA may, however, pay interest on a successful contractor appeal from a contracting officer's determination under the Resolution of Protests and Disputes procedures. Interest will be at a rate set by the Secretary of the Treasury under 50 U.S.C. (App) 1215(b)(2).

2 Termination for Convenience of the FAA

The provisions of this section apply to contracts containing Clauses 3.10.6-1 through 3 and Alternates which permit termination for convenience of the FAA.

a. Fixed Price Contracts.

1. Profit. The CO may use any reasonable method to arrive at a fair profit. The CO may allow profit on preparations made and work done by the contractor for the terminated portion of the contract but not on the settlement expenses. Anticipatory profit is not allowed. Profit should not be allowed the contractor for material or services that, as of the effective date of termination, have not been delivered by a subcontractor, regardless of the percentage of completion.
2. Adjustment for Loss. The CO should not allow profit if it appears that the contractor would have incurred a loss had the entire contract been completed. The CO should negotiate or determine the amount of loss and make an adjustment in the amount of settlement based upon the degree of expected loss.

3. The contracting officer should ensure that no portion of an increase in price is included in a termination settlement made or in process.
4. Completed end items. The CO should (a) have completed end items inspected and accepted if they comply with the contract and (b) determine which accepted items should be delivered under the contract. These items should not be included in the settlement proposal. If accepted items are not to be delivered, the contractor may include them in the settlement proposal at the contract price as adjusted to reduce by freight cost or to add disposal costs, etc. Work in place accepted by the Government under a construction contract is not considered a completed item even though that work may have been paid for at the unit prices specified in the contract.
5. Equitable Adjustment After Partial Termination. Under the termination clause, after partial termination, a contractor may request an equitable adjustment in the price or prices of the continued portion of a fixed-price contract.

b. Cost Reimbursement Contracts.

1. Audit. The CO should obtain an audit on the settlement proposal unless only fee is proposed.
2. Final Settlement.
   a. Settlements of cost reimbursable contracts should not provide for recovery of excess repurchase costs.
   b. The settlement should not include costs that were disallowed or unallowed under the terms of the contract.
   c. Settlement does not need to be based on agreement on every element if an overall settlement can be agreed to.
3. Partial Terminations. If the terminated portion is not severable, the settlement in a partial termination should be limited to a fee adjustment and reduction in estimated cost as well as other allowable costs associated with preparing a settlement proposal.
4. Fee. The CO should determine the fee adjustment in accordance with the contract, however, the fee is generally adjusted based upon percentage of completion.

3 Termination for Default **Revised 9/2021**

a. General.

1. Termination for default is the exercise of the FAA's contractual right to completely or partially terminate a contract by reason of the contractor's actual or anticipated failure to perform its contractual obligations. When the contracting officer has the right to terminate a contract for default, the total undelivered contract quantity, whether delinquent or not, may be terminated for default.

2. Procedures for default.

   (a) The Default clause covers situations when the contractor fails to perform some of the other provisions of the contract (such as not furnishing a required performance bond) or so fails to make progress as to endanger performance of the contract. If the termination is predicated upon this type of failure, the contracting officer shall give the contractor written notice specifying the failure and providing a period of 10 days (or longer period as necessary) in which to cure the failure. Upon expiration of the 10 days (or longer period), the contracting officer may issue a notice of termination for default unless it is determined that the failure to perform has been cured. A template for a cure notice is located in FAA FAST under Procurement Templates.

(b) If termination for default appears appropriate, the contracting officer should, if practicable, notify the contractor in writing of the possibility of the termination. This notice shall call the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to show cause why the contract should not be terminated for default. The notice may further state that failure of the contractor to present an explanation may be taken as an admission that no valid explanation exists. When appropriate, the notice may invite the contractor to discuss the matter at a conference. A template for a show cause notice is located in FAA FAST under Procurement Templates.

3. Options in Lieu of Termination for Default. The CO may consider alternatives other than termination for default if in the best interest of the FAA to do so. Prospective alternatives may be to terminate for the convenience of the FAA if the failure to perform was beyond the control of the contractor; consider a surety or guarantor to complete the work; allow the contractor to use a third party to perform. Other reasonable and viable alternatives may also be considered.
4. The FAA may, in appropriate cases, exercise termination or cancellation rights in addition to those in the contract clauses (see, for example Clause 3.10.6-4, Default (Fixed Price Supply and Service)).
5. Damages. If a contract is terminated for default, or if a procedure in lieu of termination for default is followed, the contracting officer may consider FAA's entitlement to damages. Damages are in addition to repurchase costs, when repurchase costs are applicable.
6. Sureties. Prior to terminating fixed price contracts for contractor default, the CO should notify sureties of the impending termination prior to issuing the actual termination notice. In addition, the contracting officer should consider proposals from sureties to complete the work.

b. Fixed-Price Contracts Terminated for Default.

1. FAA Rights and Obligations. Clauses 3.10.6-4 through 6 covering Termination for Default (Fixed Price) provide the FAA the right to terminate all or any part of a contract when the contractor:
    a. Fails to make delivery or perform services according to contract schedule or
    b. Fails to complete any material requirement of the contract within the time specified in the contract or
    c. Fails to make progress to a degree that this failure endangers performance of the contract or
    d. Fails to perform any other contract provision or
    e. Fails to meet contractual obligations.

    The FAA is not liable for the contractor's costs on undelivered work and is entitled to repayment of payments to the contractor for undelivered work. The CO may direct the contractor to transfer title and deliver to the FAA completed supplies and manufacturing materials. The supplies and manufacturing materials transferred from the contractor to the FAA may be used in continuing the terminated contract work or for use under another contract.

2. The FAA should pay the contractor the contract price for any supplies or services completed and delivered, and the amount agreed upon by the contracting officer and the contractor for any manufacturing materials obtained by the contractor.
3. The FAA should be protected from overpayment that might result from failure to provide for the FAA's potential liability to laborers and material suppliers for lien rights outstanding against the completed supplies or materials after the FAA has paid the contractor for them. To accomplish this, before paying for supplies or materials, the contracting officer shall take one or more of the following measures:
    a. (a) Ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' claims or whether it is feasible to obtain similar bonds to cover outstanding liens.
    b. (b) Require the contractor to furnish appropriate statements from laborers and material suppliers disclaiming any lien rights they may have to the supplies and materials.
    c. (c) Obtain appropriate agreement by the FAA, the contractor, and lienors ensuring release of the FAA from any potential liability to the contractor or lienors.
    d. (d) Withhold from the amount due for the supplies or materials any amount the contracting officer determines necessary to protect the FAA's interest, but only if the measures in subparagraphs (d)(1), (2), and (3) above cannot be accomplished or are considered inadequate.
    e. (e) Take other appropriate action considering the circumstances and the degree of the contractor's solvency.
4. Repurchase Against Contractor’s Account. When supplies or services are still required after termination for default, the contracting officer may repurchase the same or similar supplies or services against the contractor’s account as soon as practicable. The repurchase must be at as reasonable a price as possible considering the quality required by the FAA and the time within which the supplies or services are required. Whenever practicable, the contracting officer should make necessary repurchase decisions before issuing the termination notice. If repurchase is made at a price higher than the price of the terminated supplies or services, the contracting officer must--after final payment of the repurchase contract-- make a written demand on the contractor for the excess amount, taking into account any increases or decreases in cost due to transportation charges, discounts, and other factors. The contractor is liable to the FAA for any excess costs incurred in acquiring supplies and services similar to those terminated for default, and any other damages, whether or not repurchase is made.

c. Contract Clause Cost Reimbursement Contracts Terminated for Default

Contract Clause 3.10.6-3 Termination (Cost Reimbursement) and Alternates provides the CO authority to terminate cost reimbursement contracts for default.

4 Delinquency Notices

The formats of the delinquency notices in this section may be used to satisfy the requirements of T3.10.6.A.3. All notices will be sent with proof of delivery requested.

a. *Cure notice.* If a contract is to be terminated for default before the delivery date, a "Cure Notice" is required by the Default clause. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of "cure" remains in the contract delivery schedule or any extension to it. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of 10 days or more, the "Cure Notice" should not be issued. The "Cure Notice" may be in the following format:

You are notified that the Government considers your ____ [*specify the contractor's failure or failures*] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within 10 days after receipt of this notice [*or insert any longer time that the Contracting Officer may consider reasonably necessary*], the Government may terminate for default under the terms and conditions of the _______ [*insert clause title*] clause of this contract.

b. *Show cause notice*. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of 10 days or more, the following "Show Cause Notice" may be used. It should be sent immediately upon expiration of the delivery period.

Since you have failed to ____ [*insert* "perform Contract No. ___ within the time required by its terms," *or* "cure the conditions endangering performance under Contract No _____ as described to you in the Government's letter of _____ (date)"], the Government is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to ____ [*insert the name and complete address of the contracting officer*], within 10 days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the Government and the liabilities that may be invoked if a decision is made to terminate for default.

Any assistance given to you on this contract or any acceptance by the Government of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the Government to condone any delinquency or to waive any rights the Government has under the contract.

5 Definitions

a. 'Claim,' as used in this part, means the same as the language in Resolution of Protests and Disputes.

b. 'Continued portion of the contract,' as used in this part, means the 8ortion of a partially terminated contract that the contractor must continue to perform.

c. 'Effective date of termination' means the date on which the notice of termination requires the contractor to stop performance under the contract. If the termination notice is received by the contractor subsequent to the date fixed for termination, then the effective date of termination means the date the notice is received.

d. 'Other work,' as used in this part, means any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.

e. 'Partial termination' means the termination of a part but not all, of the work that has not been completed and accepted under a contract.

f. 'Settlement agreement,' as used in this part, means a written agreement in the form of an amendment to a contract settling all or a severable portion of a settlement proposal.

g. 'Settlement proposal,' as used in this part, means a proposal for effecting settlement of a contract terminated in whole or in part, submitted by a contractor or subcontractor in the form, and supported by the data, required by this part. A settlement proposal is included within the generic meaning of the word 'claim' under false claims acts (see 18 U.S.C. 287 and 31 U.S.C. 3729).

h. ‘Show cause’ refers to a notice which the CO is required to issue prior to terminating a contract. The purpose of a show cause notice is to permit the contractor to present its defense against termination.

i. 'Terminated portion of the contract' means the portion of a terminated contract that relates to work or end items not completed and accepted before the effective date of termination that the contractor is not to continue to perform. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

j. 'Termination inventory' means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes FAA-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

k. 'Unsettled contract change' means any contract change or contract term for which a definitive modification is required but has not been executed.

B Termination of Real Property Contracts **Added 9/2020**

1 General Guidance **Added 9/2020**

a. The FAA termination requirements will:

1. Enable the FAA to establish contract requirements that protect the interests of the FAA;
2. Promote fair and rapid termination settlements;
3. Encourage settlement by agreement rather than by contracting officer's determination.

b. Contracting officer (CO) responsibilities. The CO will:

1. Select and include the appropriate termination clause(s) in contracts to provide the CO authority to terminate contracts for convenience, or for default;
2. Enforce provisions of termination clauses in a manner that is in the best interest of the FAA by terminating in whole or in part, for the convenience of the FAA or for contractor default;
3. Direct the vendor on how to proceed when a contract is terminated;
4. Ensure proper documentation is added to the official contract file;
5. Enlist assistance of individuals with special qualifications to assist in the termination in areas such as legal, accounting, etc.;
6. Direct action for site cleanup, protection of serviceable materials, removal of hazards, and any action necessary to leave a safe site;
7. Terminate utility contracts associated with leases that are not being renewed;
8. Negotiate agreements (tenant improvement costs, etc.), when applicable, with vendors;
9. Issue a CO determination if an agreement cannot be reached;
10. Reinstate contracts on a bilateral agreement basis when deemed in the best interest of the FAA to do so;
11. Release excess funds as quickly as possible retaining sufficient funds to settle the termination; and
12. Update final termination documentation in the real estate asset management system.

2 Termination by the FAA **Revised 9/2021**

a. The CO may terminate contracts, at any time, in whole or in part, if the CO determines that termination is in the Government's best interest.

b. Written notice of the termination must be provided to the vendor indicating the date of the termination, directing the vendor on how to proceed, and providing disposition instructions for property in which the FAA has or will have an interest.

c. The appropriate "Termination" clause(s) must be cited in all real estate contracts.

d. In the event the Government terminates a contract, the vendor may recover the balance of any tenant improvement costs or an unamortized balance of the tenant improvement allowance from the Government, whichever amount is less, over the term of the contract. The Government will make a one-time, lump sum payment to the vendor to settle any tenant improvement costs in their entirety if the entire lease is terminated, or prorate, if any portion thereof is cancelled.

e. In the event a contract with a firm term is terminated prior to the end of the firm term, the FAA is contractually committed to make rental payments for the remainder of the firm term. (See T3.8.8.B.3 Firm Term Leases).

3 Default **Revised 9/2021**

Each of the following will constitute a default by the Lessor:

a. Failure to perform the work required to deliver the leased premises, ready for occupancy by the Government, within the time required by the contract;

b. Failure to maintain, repair, operate or service the premises as specified, or failure to perform any other requirement of this contract as required, provided such failure remains uncured for a period of time as specified by the CO, following Vendor's receipt of written notice from the CO; or

c. Repeated failure to comply with one or more requirements constitutes a default notwithstanding that one or all failures have been timely cured.

If default occurs, the CO may, by written notice, terminate the contract in whole or in part. The CO must include AMS Clause 6.2.5-1 "Termination by Default" in the contract.

C Clauses Revised 9/2020

view contract clauses

D Procurement Forms Revised ~~9/2021~~7/2024

Document Name
FAA 4400-77 Schedule of Accounting Information ~~(SF 1439)~~

E Procurement Samples Added 9/2021

Document Name
Termination for Default
Termination for Convenience

F Procurement Templates Added 9/2021

Document Name
Cure Notice
Show Cause Notice

G Procurement Tools and Resources Added 9/2021

Document Name

T3.13.1 Other Administrative Procedures Revised 1/2009

A Administrative Matters

1 Numbering System for Procurement Instruments Revised 10/2023

a. A uniform numbering system allows FAA to identify, control, and track each procurement action, from procurement request through award and close-out. This numbering system is applied through FAA's automated procurement system. Use of the FAA's procurement numbering system is required for all procurement requests and procurement instruments, including written screening information requests, purchase orders, delivery orders, task orders, agreements, leases, contracts, and all forms of awards, regardless of monetary consideration.

b. The Procurement Instrument Identifier (PIID) must consist of 14 alphanumeric characters:

(1) *Positions One and Two.* A two-digit numeric code identifying the procuring agency. This code must always be "69" which is the identifier for the Department of Transportation.

(2) *Positions Three, Four, Five and Six*. A four-digit alphanumeric code identifying the Activity Address Code (AAC) as the unique identifier for Federal Aviation Administration contracting offices.as follows:

Acquisition		Real Estate	
Office	AAC	Office	AAC
AAQ-200	3KA7	AAQ-900 (ES)	435Z
AAQ-300	3KA8	AAQ- 900 (CS)	7DCM
AAQ-400	3KA9	AAQ-900 (WS)	0EG4
AAQ-500	7DCK		
AAQ-600	2M15		
AAQ-700	73GH		

***NOTE**: Starting for all FY 2018 awards. DT (Dept. of Transportation), WA (Headquarters), AC (Aeronautical Center) and CT (Technical Center) are changed to the new unique Activity Area Codes (AAC) above.

(3) *Positions Seven and Eight.* A two-digit numeric code that is the last two digits of the fiscal year in which the PIID is assigned.

(4) *Position Nine.* A one-digit alphabetic code identifying the type of procurement instrument (i.e., agreement, contract, etc.) as follows:

A – *Blanket Purchase Agreement (BPA)*. Use for Blanket Purchasing Agreement (BPA).

C - *Contract.* Use for all contracts, including letter contracts. Does not apply to real property transactions.

D - *Indefinite-Delivery Contract*. Use for indefinite quantity, definite quantity, and requirements contracts.

F – *Delivery/Task Order, Blanket Purchase Agreement (BPA) Call and Blanket Ordering Agreement (BOA) Orders*. Use when placing orders directly against DOT or FAA contracts and against contracts administered by another agency, i.e., Federal Supply Schedules, Government-Wide Action Contracts (GWACS). Does not apply to real property transactions.

G – *Blanket Ordering Agreement (BOA)*. Use for Blanket Ordering Agreement (BOA).

H - *Agreement*. Excludes Blanket Purchase Agreements, Basic Ordering Agreements and Leases. Does not apply to real property transactions.

K - *Land Purchase and Condemnation*. Use for acquisition of permanent real estate interests (fee simple) by purchase or condemnation. Does not include leasehold interests (land or space) or easements in real property.

L - *Lease Agreement*. Use for leasing real and personal property, and products or equipment. Also, includes instruments for both land and space where the Government obtains real estate rights, and all easements including aerial easements for a limited period of time, and may or may not be monetary in consideration. Does NOT include Interagency Agreements. This PIID will also be used for Multiple Payees.

M - *Utilities.* Use for contracts for electric, telephone, water, natural gas, and other utilities, including delivery/task orders against external contracts. Includes FAA delivery orders against GSA area-wide and GSA commodity contracts for utilities.

N – *Inter-agency Agreement and Intra-agency*. Use when obtaining products or services from or through another Federal agency when that servicing agency may be in a position or equipped to supply, render, or obtain by contract. Does not apply to real property transactions.

N - *Reimbursable Agreement*. Use when FAA enters into an agreement to *provide* products or services and receives payment for the products or services rendered and not covered otherwise.

P - *Purchase Order*. Use for all Commercial-Off-The-Shelf (C O T S) purchase orders and NIB/UNICOR. Also, appraisals, surveys, title, closing, and other work related to leasing or acquiring real estate rights.

Q - *Request for Quote*. Use when soliciting contracts by request for quote.

R - *Request for Offer*. Use when soliciting contracts by screening information request (SIR) for qualifications, information, or offer.

S - *Sales Contract (Account Receivable)*. Use for sales and other disposal of real and personal property.

T – *Other Transaction Agreement (OTA)*. Use when placing all other types of agreements.

The letters not listed above are reserved. The reserved letters may not be used to identify an FAA procurement instrument in lieu of the above designated codes assigned to the type of instrument.

(5) *Positions Ten through Fourteen.* At the discretion of the Chief of the Contracting Office, these characters may be numeric or alphanumeric. A separate set of serial numbers may be used for any type of procurement instrument.

c. *Illustration of the PIID.* An example of a PIID is as follows: 6973GH-18-R-00001 identifies an RFO issued by the Department of Transportation, Federal Aviation Administration, Aeronautical Center, Oklahoma City, OK in fiscal year 18.

d. *Supplementary PIIDs.* A supplementary number must be used with the basic PIID to identify the following:

(1) *Amendments to Screening Information Request (SIR).* Amendments must be assigned a four position numeric serial number, sequentially beginning with 0001. A sample amendment number would be 69DCK-18-R-00001-0001.

(2) *Modifications to Contracts, Agreements, and Orders.* Modifications to contracts, agreements, and orders must be numbered sequentially with a six-position alphanumeric serial number beginning with P00001.

e. *Contract Line Item Number (CLIN).* CLINs are numbered consecutively beginning with 001, according to the functionality of the procurement system.

f. *Procurement Request (PR) Requisition Number.* Requisitioning Office PRs will continue to be numbered according to the following convention, beginning with the FAA Identifier code for the requisitioning office two character designator (see below), followed by the last two digits of the budget year for which the obligation is intended (corresponding with the budget year in the project and accounting codes of the request), then a five digit sequential number assigned by the procurement system, and finally a two or three character suffix, if required.

Identifier Codes:

WA – FAA Headquarters	ES - Eastern Service Area	CS - Central Service Area
AC - Aeronautical Center	ES – Real Estate CO Eastern Service Area	WS - Western Service Area
CT - Technical Center	CS – Real Estate CO Central Service Area	WS – Real Estate CO Western Service Area
WA – RECO FAA Headquarters	TPC – Purchase Card (all areas)	

Examples of requisition numbering are: CS-18-00001, indicates a standard PR issued by the Central Service Area intended for award in FY17. A PR with the number WS-18-00001RE indicates that it originated in the Western Service Area, intended for award in FY18, and is specially designated for Real Estate.

2 Contract Format for Products, Services, and Construction Revised 9/2020

Each request for offer or contract should be tailored to include only those elements required, at an appropriate level of detail, to make the contract a binding and enforceable document. For uniformity, the format of each request for offer or contract may be structured according to the following outline:

Part I - The Schedule.

Section A - Contract

Section B - Supplies or Services and Prices/Costs

Section C - Description/Specifications/Work Statement

Section D - Packaging and Marking

Section E - Inspection and Acceptance

Section F - Deliveries or Performance

Section G - Contract Administration Data

Section H - Special Contract Requirements

Part II - Contract Clauses.

Section I - Contract Clauses

Part III - List of Documents, Exhibits, and Attachments.

Section J - List of Documents, Exhibits, and Attachments

Part IV - Representations and Instructions.

Section K - Representations, Certifications, and Other Statements of Offerors

Section L - Instructions, Conditions, and Notices to Offerors

Section M - Evaluation Factors for Award

3 Congressional Affairs Notification Revised 10/2023

a. The following require official notification to Congress *before* releasing an award and distributing the contractual instrument:

(1) *New Awards*. Congress must be notified at least 48 hours, excluding Federal holidays and weekends, before awarding any contract or other agreement of $4.5 million or more (total value including all options or ceilings), excluding interagency agreements. The DOT Assistant Secretary for Government Affairs (I-1) or designee notifies Congress, and advises the Contracting Officer (CO) that the contract or agreement may be released. The CO may sign the contract or agreement, but information about the award must not be released outside of DOT until completing the Congressional notification procedures in this section.

(2) *Modifications and Delivery/Task Orders*. Notification is not required for modifications and delivery/task orders of $4.5 million or more if Congress was notified about the initial award; otherwise, Congressional notification is required.

b. Notification must be made via FAA Form 4400-35, "Contract Award Notification." The Congressional Affairs Notification template, which contains language to use in the notification email sent to the DOT Assistant Secretary for Government Affairs (I-1), can be found on the FAST under Procurement Templates. FAA Form 4400-35 is to be sent to the DOT Assistant Secretary for Government Affairs (I-1), with concurrent courtesy copies to:

(1) FAA Office of Government and Industry Affairs (AGI-1);

(2) FAA Acquisition Executive (ACQ-1);

(3) Chief Operating Officer (if ATO is the requiring organization) or Associate/Assistant Administrator (if other than ATO is the requiring organization), through the CO’s management; and

(4) The Office of Communications (AOC-1).

c. The CO must complete all blocks of FAA Form 4400-35 and send it to the Assistant Secretary for Government Affairs (I-1), via email or fax at (202) 366-7346. Block 9 of the form may be revised to show an applicable AMS procurement method. The CO is responsible for documenting the date I-1 received the form; to confirm receipt, the CO may call (202) 366-4573.

d. Unless I-1 or designee requests the CO or other designated official not to proceed with award, awards may be announced on the **third** working day following I-1's receipt of FAA Form 4400-35.

e. The official contract file must include a copy of FAA Form 4400-35 and documentation of I-1's receipt of the form.

f. Real property awards do not require Congressional notification, unless Member(s) of Congress specifically request notification of award, in which case, the CO must provide award notifications.

4 Press Release and Public Announcement of Award Revised 7/2021

a. Congressional notification procedures, if applicable, must be completed before the CO or other designated official issues a press release or public announcement.

b. *Press Release*. A press release may be appropriate for awards of interest to the general public. The determination of what is or is not newsworthy must consider factors such as dollar amount of the action, uniqueness, or public interest associated with the requirement. The CO should contact the Office of Public Affairs (AOC-300) for advice, and help with preparing a press release; Service Area, Region and Center personnel should coordinate a press release with their local public affairs office. The CO should request a press release approximately four weeks before planned award.

c. *Public Announcement*. Although AMS policy does not require public announcement for all awards, the CO should consider announcing an award involving large funding amounts, subcontracting opportunities, or high public visibility. Award information should be announced promptly and via Contract Opportunities located at https://SAM.gov, the Internet, trade magazines, or local newspapers. Award announcements are for informational purposes only and should include:

(1) Contract number;

(2) Contractor name and address;

(3) Brief description of the requirement;

(4) Total value;

(5) Award date; and

(6) Contracting Officer's name, email, and telephone.

5 Federal Procurement Data System (FPDS) and FPDS Data Quality Revised 9/2020

a. *Use for Data.* The FAA uses the Federal Procurement Data System (FPDS) module within the procurement system as the means for collecting, maintaining, and reporting procurement award data to Congress, the Executive Branch, FAA management, audit and evaluation organizations, and the private sector. These groups use the data to measure and assess the impact of FAA procurement on the U.S. economy, the extent to which small business and small disadvantaged business firms share in FAA awards, the impact of competition on the procurement process, and for other policy and management purposes.

b. *FPDS User Guide*. The procurement system FPDS User Guide provides full instructions and a complete list and description of the data reporting fields and options within fields, and when to appropriately use the options. The FPDS User Guide (FAA only) is on the National procurement system website under Training.

c. *Public Access*. The Federal Funding Accountability Transparency Act requires FAA to make procurement award data publicly available. Government-wide award data is sent through FPDS- NG to the public website USASpending.gov. The FAA submits its award data to FPDS-NG by using the General Services Administration's Business Services. This process allows FAA to automatically send daily batch files to FPDS-NG, bypassing FPDS-NG's front-end edit checks, once an award passes the FAA's own edit checks.

d. *System for Award Management*. The CO must ensure that the awardee is registered in the System for Award Management (SAM) System before award is made.

e. *Annual Certification*. After the close of each fiscal year, the FAA Acquisition Executive certifies to the percentage of FPDS data that is accurate, timely, and complete. To support of this annual certification, the CO must enter all FPDS data for awards when the award is approved in procurement system. The CO must enter complete and accurate information for each data field in FPDS. The PRISM FPDS User Guide provides an explanation of each data element to be entered.

f. *File Documentation*. The procurement system FPDS User Guide requires the CO to print and place a copy of the completed FPDS form in the contract file. If subsequent FPDS award exception reports require corrections to FPDS entries, the CO must correct the entries and print another form with changes and place it in the contract file.

g. *Reviewing Exception Reports*. At least quarterly, the CO's branch manager or team lead must review the procurement system award exception report to ensure all procurement actions have been entered and the data is accurate and complete. The branch manager or team lead must ensure that corrections are made within 30 days of the date of the report.

6 Record Requirements Revised 10/2023

a. The Procurement System Federal Procurement Data System (FPDS) module includes the index of unclassified records of all procurements exceeding the micro-purchase threshold.

b. For procurements under AMS, FAA will be able to access, as a minimum, the following information:

(1) The date of contract award.

(2) Information identifying the source to which the contract was awarded.

(3) The property or services obtained by the Government under the procurement.

(4) The total cost of the procurement.

(5) Single source procurements.

(6) The identity of the organization or activity that conducted the procurement.

(7) Awards to small disadvantaged businesses using either set-asides or unrestricted competition.

(8) Awards to business concerns owned and controlled by women.

(9) The number of offers received in response to a screening information request.

(10) Task or delivery order contracts.

7 Records Retention Revised 7/2021

The Federal Records Act (44 U.S.C. 31) and other statutes require all federal agencies to create records that document Agency activities, file records for safe storage and efficient retrieval, and dispose of records according to Agency schedules. The FAA Records Management program is responsible for implementing and enforcing all applicable Federal, DOT, and FAA laws, directives, and policies regarding the disposition of official government records. FAA Order 1350.14B prescribes the requirements and responsibilities for conducting the agency's Records Management Program and covers all records, regardless of physical form or characteristics, made or received by FAA under Federal law.
For Financial Management and Report records maintained by the FAA, the following record disposition instructions apply:

(a) All records pertaining to procuring goods and services, paying bills, collecting debts, and accounting shall be disposed 6 years after final payment or cancellation, but longer retention is authorized if required for business use.

(b) All records necessary for documenting the existence, acquisition, ownership, cost, valuation, depreciation, and/or classification of fixed assets such as real property, capitalized personal property, internal use software, equipment, and other assets and liabilities reported on an Agency's annual financial statements shall be destroyed 2 years after asset is disposed of and/or removed from the Agency's financial statement, but longer retention is authorized if required for business use.

For more information on the disposition of records created by the FAA in carrying out the work of financial management please refer to the National Archives and Records Administration (NARA) General Records Schedule 1.1: Financial Management and Reporting Records located at https://www.archives.gov/files/records-mgmt/grs/grs01-1.pdf.

8 Annual Procurement Forecast Revised 7/2021

a. In order to provide the small business community with reasonable procurement opportunities and to comply with the President's desire to expand procurement opportunities for small businesses, it is the policy of the FAA to make its Annual Procurement Forecast available to interested business owners. The forecast is for informational and marketing purposes only and does not constitute a specific offer or commitment by the FAA to fund any of the procurements listed.

b. Whether on the Internet or in hard copy, this document must be provided to the public and to the FAA Small Business Program (AAP-20), not later than October 1, of each fiscal year.

c. Information should include as a minimum:

(1) All planned new procurement actions scheduled for award during the current fiscal year excluding interagency agreements, federal supply schedules and credit card purchases;

(2) A brief description of the anticipated procurement;

(3) The estimated dollar amount of the procurement in a range, e.g. \$500,000-\$1,000,000;

(4) A name and phone number of a person knowledgeable about the procurement;

(5) The anticipated fiscal year quarter of the screening information request release and contract award;

(6) The method of procurement (i.e. set-aside, single source unrestricted).

9 Reports Revised ~~10/2023~~7/2024

a. *Requirements.* The FAA remains subject to certain statutory, regulatory, and policy requirements and must continue to report the following:

(1) *Report of Proposed Federal Construction.* Construction programs estimated to exceed \$500,000 are subject to Davis-Bacon Act regulations at 29 CFR 1.4. This CFR section requires the FAA to furnish the Department of Labor a

general outline of its proposed construction programs for the upcoming fiscal year. The report must identify the estimated number of projects that will require wage determinations, the anticipated types of construction, and the locations of construction. Due Annually; March 20.

~~(2) *Resource Conservation and Recovery Act Report (RCRA) and Executive Order(EO) 12873 Annual Report*. Section 6002 of RCRA requires Office of the Federal Procurement Policy (OFPP) to report to Congress on the actions taken by agencies to implement this statute. EO 12873 reinforces affirmative procurement, waste minimization, and recycling efforts and requires Federal agencies to report on their efforts to the Office of the Federal Environmental Executive (OFEE). To simplify the reporting process and reduce the reporting burden placed on agencies, the OFPP and the OFEE have merged the reporting requirements of section 6002 of RCRA, and EO 12873 into a single annual report. The report is divided into the Agency Summary Report and the Supply Center Summary Report. The report covers commercial purchases of items contained in the Comprehensive Procurement Guidelines, as well as affirmative procurement, waste minimization and recycling efforts. Due Annually; February 26 (see AMS Procurement Forms).~~

(~~3~~2) *Semiannual Labor Compliance Report.* Davis-Bacon Act regulations at 29 CFR 5.7 require data on compliance with and enforcement of the construction labor standards requirements of the Davis-Bacon Act and Contract Work Hours and Safety Standards Act. The report will identify enforcement actions taken by the contracting offices. Due Semi-Annually; October 20 & April 20 (see AMS Procurement Forms).

(~~4~~3) *Lobbying Disclosure Report.* Public Law 101-121 requires contractors to disclose any lobbying activities. The Lobbying Disclosure Act of 1995 eliminated the requirement to forward a copy of each disclosure form, SF LLL to Congress semiannually. Therefore, this report is no longer required. The original SF LLL should continue to be retained in the contract file.

(~~5~~4) *Major Procurement Program Goals (MPPG).* Pursuant to Executive Order 12928 of 9/16/94, the FAA Administrator will report to the Administrator of the Small Business Administration through the Secretary of the Department of Transportation on the extent of achievements against the MPPG established. Three reports that include the number and dollar obligation of all procurements for each MPPG, excluding interagency agreements, are required by AAP-20.

b. *Responsibilities.*

(1) The Chief of the Contracting Office (COCO) must collect, compile and submit for their respective organizations the reports outlined below. Reports must be received by Acquisitions Oversight and Reporting Branch (AAP-400), or other designated recipient, prior to the stated due dates. The COCO must also provide negative responses when there is no data to report for a particular report during the reporting period.

(2) AAP-400 will consolidate the reports that are required to be submitted to AAP-400 into a single agency-wide report for submission to the various requesters prior to their prescribed due dates. All other reports will be submitted by the Logistics Service Areas, Centers, and Headquarters, directly to the requester.

c. Specifics about each report are as follows:

Title of Report	Format	Reporting Period	Due Date to AAP-400
Report of Proposed Federal Construction	FAA Form 4474-5	Annually; prospective activity for the next fiscal year.	March 20
Resource Conservation and Recovery Act Report	OFPP and OFEE prescribed format. Negative responses required.	Annually; for the prior calendar year.	February 26
Semiannual Labor Compliance Report	No prescribed format; an original and one copy is required.	Semi-annually; for the prior 6 month period.	October 20; April 20
Lobbying Disclosure Report	No longer required.	Not applicable.	Not applicable.
Major Procurement Program Goals (Projection)	Format prescribed by AAP-20; Report directly to AAP-20 by Memorandum from the ATO Vice Presidents, FAA Associate and Assistant Administrators, Regional Administrators and Center Directors. (See Appendix 2)	Annual, prior to October 1 of each fiscal year. (See AMS Section 3.6.1.3)	N/A
Pre-AMS Major Procurement Program Goals (Actuals)	Format prescribed by AAP-20; Report directly to AAP-20 in writing from the FAA Headquarters Director of Acquisition and Contracting, Regional	Quarterly, by the 15th of the month following the reporting period. (See AMS Section 3.6.1.2)	N/A

	Administrators and Center Directors. (See Appendix 3)		
Post AMS Major Procurement Program Goals (Actuals)	Format prescribed by AAP-20; Report directly to AAP-20 in writing from the FAA Headquarters Director of Acquisition and Contracting, Regional Administrators and Center Directors. (See Appendix 4)	Quarterly, by the 15th of the month following the reporting period. (See AMS Section 3.6.1.2)	N/A

10 Contractor Attendance at FAA-Sponsored and Other Government Training Revised ~~9/2021~~7/2024

a. *FAA Sponsored Training.*

(1) *General*. Prior to attending classroom FAA-sponsored training, all support contractors are required to submit ~~the "~~FAA 4400-85 Support Contractor ~~Attendance at FAA Sponsored and Other Government Training~~ Authorization ~~Form " (see Procurement Forms)~~(FAA 4400-85) form to the appropriate Contracting Officer~~.~~ located on the FAST webpage under Procurement Forms. Support contractors are not required to submit the ~~"Support Contractor Attendance at FAA Sponsored and Other Government Training Authorization Form"~~FAA 4400-85 form when taking online FAA-sponsored training; unless the support contractor will take the online FAA-sponsored training on contractual billable hours. The Contracting Officers may authorize support contractors to participate in FAA-sponsored training, if training is authorized in the support contract and the training hours may be billed as direct hours to the contract. When training is NOT specifically authorized in the provisions of the contract FAA will NOT pay direct hourly charges associated with the number of hours spent in training. The following conditions apply when training is not specifically authorized in the provisions of the FAA contract.

(a) *Unique Content.* Support contractors may be allowed to attend FAA sponsored training related to Agency-unique subject areas (such as the AMS), on a space-available basis. However, FAA will only pay direct hourly charges associated with the training if the conditions listed in a. (1) are met.

(b) *Non-unique Content.* In principle, when training is NOT covered under the support contract there is a presumption that the contractor is obligated to provide contractor personnel with the requisite expertise and training. Therefore, if the FAA provides training in an area that is not Agency-unique, the contract price should be reduced accordingly.

(c) *Unauthorized Actions.* If training is authorized by anyone other than the Contracting Officer, and the contract provisions do not provide for the training, the action is unauthorized and must be processed as an unauthorized commitment. (See T3.1.4 Delegations)

(d) *Contractor Required Training*. Courses identified as mandatory at the FAA, and placed in the eLMS Contractor Course catalog may be taken at will by FAA contractors and the training hours may be billed as direct hours to the contract. Courses may only be entered into the catalog with the approval of the manager of AAP-100.

(2) Responsibilities.

(a) *Contracting Officer.* The Contracting Officer may include language in contracts regarding the inclusion of contractors in FAA sponsored training and make the final determination whether or not a course is FAA-unique. The Contracting Officer is the only person with authority to approve Government training for a contractor, since it involves the expenditure of government funds. The Contracting Officer should provide a copy of the signed authorization to the Course Manager and retain the original in the contract file.

(b) *Contractors.* Prior to attending FAA-sponsored training, a support contractor must submit a ~~*"Support Contractor Authorization"*~~FAA 4400-85 form to the appropriate Contracting Officer. The form should be approved by both the requestor's Contracting Officer's Representative and the Contracting Officer and provided to the Course Manager on or before the first day of class.

(c) *Course Instructor.* The Course Instructor is not authorized to admit support contractor employees to a course without the Contracting Officer's authorization on the approval form. Any issues regarding attendance of support contractors are to be referred to the Course Manager.

(d) *FAA Course Manager.* The Course Manager should provide guidance to support contractors regarding the requirement for ~~"Support Contractor Authorization"~~the FAA 4400-85 form and manage any issues referred by the Course Instructor pertaining to the support contractor's authorization to attend the training. Additionally, the Course Manager should retain copies of signed forms with the training roster and ensure that a signed authorization is on file for all support contractors attending FAA sponsored training. The class roster should indicate the support contractor's company name and include the following legend: *"Failure to correctly indicate that you are an employee of a support contractor will be a material misrepresentation under the terms of the contract."*

b. *Other Government Training.*

FAA contractors may be eligible to take free-of-charge training through other Government sources such as the Federal Acquisition Institute (FAI) or Defense Acquisition University

(DAU). Contractor eligibility to take a course will be determined by the Government entity sponsoring the training. Contractors must follow the Government sponsor's eligibility, registration and approval procedures.

If required by the other Government entity, FAA approval of the training will be provided by the FAA Contracting Officer or the Contracting Officer's designee. The contractor must request FAA approval using the support contractor training authorization form in the FAST. FAA will consider whether the training is necessary for the contractor's performance under the contractor's FAA contract, or whether the training would be beneficial to the FAA.

11 Plain Language Revised 10/2023

When the statement of work for a contract requires the contractor to deliver any document that will be published, either electronically or in hard copy, for dissemination outside the FAA, or for broad dissemination within the FAA, the document must comply with FAA Order 1000.36A, "FAA Writing Standards." Typical documents covered by this requirement include scientific reports, study or survey results, newsletters, regulations, advisory circulars, orders, manuals, ATO Leaders Report, Reports to Congress, and FAA Today. This requirement does not apply to technical documents arising from contract administration, such as earned value management system reports, design review data packages, test plans, or integrated logistics support plans.

There is an equivalent contract clause implementing the above requirement.

12 Reserved Revised 7/2020

13 Procurement System Record Cancellation Added 7/2021

The Procurement System will automatically discard all approved records that have been cancelled by the procurement system administrator or Contracting Officer after a period of 180 days. The record will officially be marked as "cancelled" and the system will discard of the record. Examples of approved records that qualify for cancellation in the procurement system are as follows:

(a) No funds have been obligated against the system generated record;

(b) No performance or services have been executed against the system generated record; and

(c) No acceptance of goods or services have been applied against the system generated record.

Once the record is cancelled by the procurement systems administrator or Contracting Officer, the record is non-recoverable. Any cancelled records can be re-created within the Procurement System at the discretion of the CO.

B Clauses

view contract clauses

C Procurement Forms Revised ~~10/2023~~7/2024

Document Name
FAA 4400-35 Contract Award Notification ~~(FAA Form 4400-35)~~
~~Resource Conservation and Recovery Act Report~~
FAA 4400-78 Semiannual Labor Compliance Report
FAA 4400-85 Support Contractor ~~Attendance at FAA Sponsored and Other Government Training~~ Authorization ~~Form~~

D Procurement Samples Added 9/2021

Document Name

E Procurement Templates Added 9/2021

Congressional Affairs Notification Template

F Procurement Tools and Resources Added 9/2021

G Appendix Added 9/2021

APPENDIX 1 – Annual Procurement Forecast Added 9/2020

ANNUAL PROCUREMENT FORECAST FORMAT

Program Office & Point of Contact	Description of Procurement Planning Procurement Information	Incumbent Contractor & Current Contract Number (if available)
(Include Office Title, Release Routing Symbol, Method Telephone Number whether with Area Code)	(Include Brief Description, SIC Code Estimated Value, Performance Location indicating City & State)	(Include Estimated SIR Date, Estimated Award Date, of Procurement, indicate Set- Aside or not)

* Do Not Include Modifications to Existing Procurements

Method of Procurement: (i.e., set-aside, single Source unrestricted)

APPENDIX 2 – Major Procurement Program Goals (MPPG) Added 9/2020

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

MAJOR PROCUREMENT PRORAM GOALS (PROJECTION) FISCAL YEAR

(DOLLARS IN MILLIONS)

REPORTING OFFICE: ____________________

Fiscal Year % of No. of

$ Goal Goal Actions

(1) Total Procurements…………………………….............. _____ N/A___ ______

(2) Awards to Small Businesses……………………................______ _____% (% of 1) _____

(3) Awards to SEDB (8(a))……………………….............______ ______% (% of 1) ____

(4) Awards to Small Disadvantaged Businesses…................. ______ _______ % (% of 1) ___

(5) Awards to Small Businesses Owned and Controlled by Women…......._____ _______ % (%

of 1) _

(6) Total Subcontracts Awarded by Prime Contractors…........._______ N/A____ ________

(7) Subcontracts Awarded to Small Businesses........._______ _______% (% of 6) __

(8) Subcontracts Awarded to Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals……......_______ _______% (% of 6) _____

(9) Subcontracts Awarded to Small Businesses

Owned and Controlled by Women.........._______ ______% (% of 6) _____

APPENDIX 3 – Pre-AMS MPPG (Actuals) Report Added 9/2020

PRE-ACQUISITION MANAGEMENT SYSTEM (AMS)

MAJOR PROCUREMENT PROGRAM GOALS (ACTUALS) REPORT (MPPGR) DATA ITEM DESCRIPTIONS (2/98)

Pre-AMS reports are to be generated containing the following data elements:

Pre-AMS Procurement Obligations, as used in the MPPGR, is the sum of all procurement obligations that are **not** awarded pursuant to the AMS (excludes interagency agreements).

Total Awards (Item 1) are all pre-AMS procurement obligations awarded to large and small businesses excluding all interagency agreements. Item 1 must be equal to or greater than the sum of Items 2 - 5.

Awards to Small Business Concerns (Item 2) are all pre-AMS procurement obligations awarded to small business concerns (i.e. 8(a) businesses, small business concerns owned and controlled by socially and economically disadvantaged individuals, small businesses owned and controlled by women and all other small businesses). Item 2 must be equal to the sum of Items 3 - 5.

Awards to 8(a) Concerns (Item 3) are all pre-AMS procurement obligations awarded to 8(a) firms via FSS, 8(a) competitive set-asides and/or 8(a) non-competitive set-asides only. Do not count in Item 3 if counted in Items 4 or 5.

Awards to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged (SDB) Individuals (Item 4) are all pre-AMS procurement obligations awarded to SDBs excluding awards to 8(a) firms via 8(a) competitive set-asides and/or 8(a) non- competitive set-asides. Do not count these awards in Item 4 if counted in Items 3 or 5.

Awards to Small Business Concerns Owned and Controlled by Women (WOB) (Item 5)

are all pre-AMS procurement obligations awarded to WOBs excluding awards to 8(a) firms via 8(a) competitive set-asides and/or 8(a) non-competitive set-asides. Do not count these awards in Item 5 if counted in Items 3 or 4.

Total Subcontracts Awarded by Prime Contractors (Item 6) are all pre-AMS subcontract obligations awarded to large and small businesses. Item 6 must be equal to or greater than the sum of Items 7 - 9.

Subcontracts Awarded to Small Business Concerns (Item 7) are all pre-AMS subcontract obligations awarded to small businesses. Item 7 must be equal to or greater than the sum of Items 8 and 9.

Subcontracts Awarded to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (Item 8) are all pre-AMS subcontract obligations awarded to SDBs. Do not count these awards in Item 8 if counted in Item 9.

Subcontracts Awarded to Small Business Concerns Owned and Controlled by Women (Item 9) are all pre-AMS subcontract obligations awarded to WOBs. Do not count these awards in Item 9 if counted in Item 8.

Actual This Period (Column 3) are all pre-AMS procurement obligations awarded during the current reporting period.

Cumulative Actual to Date (Column 4) are all pre-AMS procurement obligations awarded from October 1 of the current fiscal year through end of the current reporting period.

Number of Actions (Column 5) are the number of pre-AMS procurement actions that correlate to the "Actual This Period" procurement obligations (Column 3) or the "Cumulative Actual to Date" (Column 4).

SAMPLE 3 –
(cont'd.)

FEDERAL AVIATION ADMINISTRATION PRE-ACQUISITION MANAGEMENT SYSTEM

MAJOR PROCUREMENT PROGRAM GOALS (ACTUAL) REPORT*

REPORTING OFFICE/DATE OF REPORT __________________

FISCAL YEAR _______

(Dollars in)

Column 1	Column 2	Column 3	Column 4	Column 5

		Actual This Period	**Cumulative Actual to Date**	**Number of Actions**
1.	Total Awards	$	$	
2.	Awards to small Business Concerns (Include Items 3, 4, and 5 below)	$	$	
3.	Awards to 8(a) Concerns	$	$	
4.	Awards to Small Business Concerns owned and Controlled by Socially and Economically Disadvantaged Individuals (Exclude Item 3)	$	$	
5.	Awards to Small business Concerns Owned and Controlled by Women (Exclude Item 3)	$	$	
6.	Total Subcontracts Awarded by Prime Contractors	$	$	
7.	Subcontracts Awarded to Small Business Concerns	$	$	
8.	Subcontracts Awarded to Small business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals	$	$	
9.	Subcontracts Awarded to Small Business Concerns Owned and Controlled by Women	$	$	

* INCLUDE ALL PRE-AMS PROCUREMENT ACTIONS ON THIS REPORT EXCEPT INTERAGENCY AGREEMENTS.

APPENDIX 4 – Post AMS MPPG (Actuals) Report **Added 9/2020**

POST-ACQUISITION MANAGEMENT SYSTEM
(AMS)

MAJOR PROCUREMENT PROGRAM GOALS (ACTUALS) REPORT (MPPGR) DATA ITEM DESCRIPTIONS (2/98)

Post-AMS reports are to be generated containing the following data elements:

Post-AMS Procurement Obligations, as used in the MPPGR, are all procurement obligations that are awarded pursuant to the AMS only (excludes interagency agreements).

Total Awards (Item 1) are all post-AMS procurement obligations awarded to large and small businesses excluding all interagency agreements. Item 1 must be equal to or greater than the sum of Items 2 - 5.

Awards to Small Business Concerns (Item 2) are all post-AMS procurement obligations awarded to small business concerns (i.e. very small businesses, 8(a) businesses, small business concerns owned and controlled by socially and economically disadvantaged individuals, small businesses owned and controlled by women and all other small businesses). Item 2 must be equal to the sum of Items 2.1 - 5.

Very Small Business Set-Asides (Item 2.1) are all post-AMS procurement obligations awarded to very small businesses via FSS and/or very small business set-asides only. Do not include awards to very small businesses if the award was not made as a result of a FSS and/or very small business set-aside. Do not count very small business set-aside awards in Items 3, 4, or 5. Do not count in Item 2.1 if counted in Items 3, 4, or 5.

SEDB Set-Asides (8(a) (Item 3)) are all post-AMS procurement obligations awarded to 8(a) firms via FSS and/or SEDB set-asides only. Do not include awards to 8(a) firms if the award was not made as a result of a FSS and/or SEDB set-aside (8(a)). Do not count in Item 3 if counted in Items 2.1, 4, or 5.

Awards to Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged (SDB) Individuals (Item 4) are all post-AMS procurement obligations awarded to SDBs excluding awards to 8(a) firms via SEDB 8(a) set-asides (Item 3). Do not count these awards in Item 4 if counted in Items 2.1, 3, or 5.

Awards to Small Business Concerns Owned and Controlled by Women (WOB) (Item 5) are all post-AMS procurement obligations awarded to WOBs excluding awards to 8(a) firms via SEDB 8(a) set-asides. Do not count these awards in Item 5 if counted in Items 2.1, 3, or 4.

Total Subcontracts Awarded by Prime Contractors (Item 6) are all post-AMS subcontract obligations awarded to large and small businesses. Item 6 must be equal to or greater than the sum of Items 7 - 9.

Subcontracts Awarded to Small Business Concerns (Item 7) are all post-AMS subcontract obligations awarded to small businesses. Item 7 must be equal to or greater than the sum of Items 8 and 9.

Subcontracts Awarded to Small Business Concerns Owned and Controlled by Socially

and Economically Disadvantaged Individuals (Item 8) are all post-AMS subcontract obligations awarded to SDBs. Do not count these awards in Item 8 if counted in Item 9.

Subcontracts Awarded to Small Business Concerns Owned and Controlled by Women (Item 9) are all post-AMS subcontract obligations awarded to WOBs. Do not count these awards in Item 9 if counted in Item 8.

Fiscal Year Goal (Column 3) are the agency-wide fiscal year goals established for each post- AMS MPPGR category (Column 2).

Actual This Period (Column 4) are all post-AMS procurement obligations awarded during the current reporting period.

Cumulative Actual to Date (Column 5) are all post-AMS procurement obligations awarded from October 1 of the current fiscal year through the end of the current reporting period.

Number of Actions (Column 6) are the number of post-AMS procurement actions that correlate to the "Actual This Period" procurement obligations (Column 3) or the "Cumulative Actual to Date" (Column 4).

SAMPLE 4 –
(cont'd.)

FEDERAL AVIATION ADMINISTRATION POST-ACQUISITION MANAGEMENT SYSTEM

MAJOR PROCUREMENT PROGRAM GOALS (ACTUAL) REPORT*

REPORTING OFFICE/DATE OF REPORT ___________________

FISCAL YEAR _______

(Dollars in)

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
		Fiscal Year $ Goal	**Actual This Period**	**Cumulative Actual to Date**	**Number of Actions**

1.	Total Awards	$	$		
2.	Awards to small Business Concerns (Includes Items 2.1, 3, 4, and 5 below)	$	$		
2.1	Very Small Business Set-Asides				
3.	SEDB (8(a)) Set-Asides	$	$		
4.	Awards to Small Business Concerns owned and Controlled by Socially and Economically Disadvantaged Individuals (Exclude Item 3)	$	$		
5.	Awards to Small business Concerns Owned and Controlled by Women (Exclude Item 3)	$	$		
6.	Total Subcontracts Awarded by Prime Contractors	$	$		
7.	Subcontracts Awarded to Small Business Concerns	$	$		
8.	Subcontracts Awarded to Small business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals	$	$		
9.	Subcontracts Awarded to Small Business Concerns Owned and Controlled by Women	$	$		

*EXCLUDE INTERAGENCY AGREEMENTS AND AWARDS NOT MADE UNDER THE ACQUISITION MANAGEMENT SYSTEM ONLY.

(NOTE: PROVIDE THE DETAIL FOR ITEMS 2, 3, 4, AND 5 ON A SEPARATE SHEET.

DETAIL THE INDIVIDUAL AWARDS (EXCEPT FOR SIMPLIFIED PURCHASES) THAT EQUATE TO THE TOTAL "ACTUAL THIS PERIOD" REPORTED. INCLUDE NAME OF CONTRACTOR, AWARD AMOUNT, APPLICABLE STANDARD INDUSTRIAL CLASSIFICATION AND ETHNIC GROUP.)

T3.18 Bipartisan Infrastructure Law Added 7/2022

A Implementation of the Bipartisan Infrastructure Law Added 7/2022

1 General Requirements ~~Added 7/2022~~Revised 7/2024

a. The Infrastructure Investment and Jobs Act, Public Law 117-58, commonly referred to as the “Bipartisan Infrastructure Law” (BIL), authorizes Facilities and Equipment (F&E) funding for

(1) replacing terminal and en route air traffic control facilities;

(2) improving air route traffic control center and combined control facility buildings;

(3) improving air traffic control en route radar facilities;

(4) improving air traffic control tower and terminal radar approach control facilities;

(5) national airspace system facilities OSHA and environmental standards compliance;

(6) landing and navigational aids;

(7) fuel storage tank replacement and management;

(8) unstaffed infrastructure sustainment;

(9) real property disposition;

(10) electrical power system sustain and support;

(11) energy maintenance and compliance;

(12) hazardous materials management and environmental cleanup;

(13) facility security risk management;

(14) mobile asset management program; and

(15) administrative expenses, including salaries and expenses, administration, and oversight.

Special contracting requirements described in this guidance section apply only to procurements funded in whole or in part, by the BIL.

b. This section applies to all BIL-funded acquisitions with exception to procurements made using purchase cards.

c. BIL does not provide authority to waive any documentation or approval required for procurement planning, solicitation, evaluation, and award. The Contracting Officer (CO) must comply with existing AMS policy and guidance for any project funded through BIL.

d. BIL requires special reporting. For any contract funded, in whole or in part, by BIL, contractors must submit quarterly and at the completion of the contract, a FAA 4400-93 Uniform Bipartisan Infrastructure Law (BIL) Data Report as described at AMS Guidance T3.18.A.4~~,~~ BIL Data Reporting.

2 Public Announcements Added 7/2022

For BIL procurements, the following special formatting is required for public announcements:

(1) All presolicitation and solicitation notices must include the phrase "BIL-funded" as the beginning text in the title field preceding the actual title in the announcement.

(2) Although it is not required, the CO should consider making public announcements for all awards that use BIL funds. To facilitate transparency and ensure consistency in tracking award announcements for BIL-funded contracts, if making a public announcement, the CO must insert the phrase "BIL-funded" as the beginning text in the title field preceding the remaining title on the Contracting Opportunities page on SAM.gov.

3 Solicitation and Award Added 7/2022

a. *Competition and Fixed Price Awards.* To the extent practicable, BIL-funded awards should be competitive and fixed priced. The CO must properly document the rationale when competition or a fixed priced arrangement is not appropriate for BIL-funded awards.

b. *Separate Tracking of BIL Funds.* To maximize transparency of the spending of BIL-funds, the CO must structure contract awards to allow for separate tracking of BIL funds and projects. For example, the CO should consider awarding dedicated separate contracts when using BIL funds or establishing CLIN structures so that BIL funds are not co-mingled with other funds. In the event the CO receives BIL funds comingled with other funds on a single CLIN, the CO must in include in the obligating action a billing structure that sets forth the percentage of each invoice to be allocated between BIL-funds versus non-BIL funds. In addition, the CO must annotate on the face of the obligating action the BIL funds as a percentage of total funds on the action.

c. *Contractor Reporting Clause*. The CO must insert AMS clause 3.18-1 "Bipartisan Infrastructure Law – Reporting Requirements" in all solicitations, contracts, orders, and modifications funded in whole or in part with BIL funds. The Uniform BIL Data Report must be used in conjunction with this clause. COs must not use BIL funds on new or existing contracts and orders if this clause is not incorporated.

4 BIL Data Reporting Added 7/2022

a. *Contractor Reporting on Use of Funds*. COs must provide contractors with the Uniform Bipartisan Infrastructure Law (BIL) Data Report. Contractors must complete and submit the data report quarterly and at the completion of the contract to the email address indicated on the Uniform BIL Data Report.

b. *Failure to Report*. The CO must make the contractor's failure to comply with the reporting requirements a part of the contractor's past performance information. As with other contract deliverables, the CO may use remedies such as withholding payment or seeking other consideration for a contractor's failure to deliver contractually specified reports within required timeframes.

5 Applicability of Buy American Laws Added 7/2022

Buy American Act. Any project using BIL funds is subject to the provisions of the Buy American Act (41 U.S.C. §§8301-8305) (BAA) including its associated exceptions. (See AMS Procurement Guidance T3.6.4.A.2 and T3.6.4.A.3).

6 Noncompetitive Small Business Awards Added 7/2022

For information on the interim AMS Policy changes that increases noncompetitive small business thresholds for BIL funded projects, including projects that contain both BIL and non-BIL funded requirements, see the FAE Memo dated March 23, 2022, titled "INTERIM CHANGES TO AMS – Raise Thresholds for Noncompetitive Small Business Awards in AMS Policy for Bipartisan Infrastructure Law (BIL) Funded Acquisitions."

B Clauses Added 7/2022

view contract clauses

C Procurement Forms ~~Added 7/2022~~Revised 7/2024

Document Name
FAA 4400-93 Uniform Bipartisan Infrastructure Law (BIL) Data Report

D Procurement Samples Added 7/2022

Document Name

E Procurement Templates Added 7/2022

Document Name

F Procurement Tools and Resources Added 7/2022

Document Name