Agenda Item: **3F2**

PALM BEACH COUNTY

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: May 1, 2007 **[x] Consent** **[ ] Regular**
[ ] Workshop **[ ] Public Hearing**

Department:

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

(A) Approve a Reimbursable Agreement with the Federal Aviation Administration (FAA) in the amount of $125,994; and

(B) Authorize the Clerk to make an advance payment of $125,994 to the FAA in accordance with the requirements of the Reimbursable Agreement.

Summary: The Palm Beach County Department of Airports is currently planning various airport development projects at Palm Beach International Airport (PBIA). As a result, the FAA's Very High Frequency Omni-directional Range TACAN (VORTAC), the Remote Transmitter (RT) and the Remote Receiver (RR) facilities may be impacted. Therefore, the County has requested that the FAA perform a siting study to determine the impacts, requirements, and costs associated with relocating the VORTAC, the RT and the RR facilities. This agreement provides funds for the FAA to perform a siting study to determine feasible alternative locations for these facilities at PBIA. **Countywide (LMB)**

Background and Justification: This contract is a "sole source" contract that requires the advance payment be made in accordance with Section 28.235, Florida Statutes and Rule 3A-40.120, Florida Administrative Code, because the services are essential to the operation of the Airport and are only available when advance payment is made.

Attachments:

1. Reimbursable Agreement with FAA – 3 Originals
2. FAA Order 2500.42D
3. FAA Memorandum dated October 27, 2006

Recommended By: _______________ 3/29/07
Department Director **Date**

Approved By: _______________ 4/9/07
County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	$125,994				
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	$125,994				
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes X No ____
Budget Account No: Fund 4111 Department 121 Unit A268 Object 6504
Reporting Category ____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Funds are available in the account referenced above.

C. Departmental Fiscal Review: C M Simmer

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

4-3-07
OFMB
4/3/2007
4.3.07

Contract Dev. and Control 4/4/07
4/4/07

This Contract complies with our contract review requirements.

B. Legal Sufficiency:

Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 9/03
ADM FORM 01
(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

AGREEMENT NUMBER
SO-0705-017P

REIMBURSABLE AGREEMENT
BETWEEN
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
AND
PALM BEACH COUNTY
WEST PALM BEACH, FLORIDA

WHEREAS, the Federal Aviation Administration ("FAA") is able to furnish directly or by contract, supplies, equipment, and services which the Palm Beach County ("Project Sponsor") requires, has funds available for, and has determined should be obtained from the FAA.

WHEREAS, it has been determined that competition with the private sector for provision of such supplies, equipment and services is minimal; the proposed activity will advance the FAA's mission; and the FAA has a unique capability that will be of benefit to Project Sponsor while helping to advance the Agency's mission.

WHEREAS, 49 USC Section 106(l) and (m) authorizes agreements and other transactions on such terms and conditions as the Administrator determines necessary.

WHEREAS, the FAA is unable to provide the services provided for herein without advance payment.

WHEREAS, the services provided for herein are essential to the operation of the Project Sponsor.

NOW THEREFORE, the FAA and the Project Sponsor mutually agree as follows:

ARTICLE I - Type of Agreement

This Agreement is an "other transaction" within the meaning of 49 USC 106. It is not intended to be, nor shall it be construed as, a partnership, corporation, or other business organization.

ARTICLE II - Scope of Agreement and Description of Project

A. The Project Sponsor is planning various airport development projects at Palm Beach International Airport. The FAA's Very High Frequency Omnidirectional Range TACAN (VORTAC), the Remote Transmitter (RT) and the Remote Receiver (RR) facilities may be impacted. Therefore, the Project Sponsor requests that FAA perform a siting study to determine the impacts, requirements, and costs associated with relocating the VORTAC, the remote transmitter and the remote receiver facilities. This agreement provides funds for the FAA to perform a siting study to determine feasible alternative locations for the VORTAC, the RT and the RR at Palm Beach International Airport, West Palm Beach, Florida. With this in mind, the project titled "Siting Study to Relocate the VORTAC, Remote Transmitter (RT) and the Remote Receiver (RR), Palm Beach International Airport, West Palm Beach, Florida" is described below. For this project, the FAA shall furnish the following services, supplies, and equipment at the dollar amounts indicated.

B. The FAA will perform the following services, at the Project Sponsor's expense:

1. Perform on-site investigation to search for alternative relocation sites for the VORTAC, the RT and the RR. Siting activities shall include preliminary engineering, panoramic photographs, surveying, mathematical modeling and frequency analysis. The VORTAC study shall also include an evaluation of the Standard Instrument Approach Procedures.
2. Prepare a siting report documenting the site investigation findings and recommendations for alternative locations for each facility. The VORTAC, the RT and the RR siting reports shall include detailed cost estimates for design, construction, electronics installation, flight inspection and other activities required for facility commissioning.
3. Develop a separate reimbursable agreement for FAA to perform any relocation activities as determined by the VORTAC, RT and RR siting reports.

C. The Project Sponsor will:

1. Provide plans/documents showing plans for proposed airport development. Provide topographic maps for locating potential sites.
2. Participate in pre-site investigation meeting with FAA to establish viable search areas.
3. Participate in post site investigation meeting with FAA to discuss findings and develop recommended course of action.

D. The estimated FAA costs associated with this project are as follows:

WBS #	WBS Description	Estimated Cost
	IMPLEMENTATION	
	Remote Transmitter Siting Study (ANI-370)	
WB4010	Program Management	$ 4,650.00
WB4020	Engineering	4,650.00
	Remote Receiver Siting Study (ANI-370)	
WB4010	Program Management	$ 4,650.00
WB4020	Engineering	4,650.00
	VORTAC Siting Study (ANI-380)	
WB4010	Program Management	$ 9,000.00
WB4020	Engineering	72,000.00
	Agreement Subtotal	$ 99,600.00
	26.5% Standard Administrative Overhead	26,394.00
	Total Cost of Agreement	**$ 125,994.00**

E. No services or supplies, other than listed above, will be furnished under this agreement.

F. No equipment will be furnished through the FAA Logistics Center.

G. The FAA will not purchase materials under this agreement.

H. There are no materials storage requirements under this agreement.

I. The FAA will charge the Project Sponsor for administrative overhead at the current rate of 26.5%.

ARTICLE III - Period of Agreement and Effective Date

The agreement is estimated to last 24 months. It will be effective on the date of the last signature below.

ARTICLE IV - Reimbursement, Performance, and Accounting Arrangement

A. The Project Sponsor must pay the FAA in advance when the agency is required to obligate funds to comply with this agreement. The advance payment is the agency's estimated total cost to be reimbursed under this agreement. The Project Sponsor will send a copy of the executed agreement to the office indicated in Section C of this Article with an advance payment in the amount of **$125,994**. Advance payment in the amount of $ 125,994 must be received before the FAA incurs any obligation to implement this agreement. The advance payment will be held as a non-interest bearing deposit.

Any amount due on the final bill will be netted against the advance payment and, as appropriate, a refund or final bill will be sent to the Project Sponsor.

B. In determining the costs to the FAA, there shall be included general administrative overhead cost based on the current rate of 26.5% of the project costs. This overhead represents the cost to the FAA of those indirect expenses that are a part of the cost of overhead agency operations. The overhead rate shall be adjusted automatically to the current rate, as determined by the FAA, without the necessity for formal amendment.

C. The FAA hereby assigns the responsibility for the accomplishment of this agreement to the Southern Region. The Accounting Division is identified by the FAA as the billing office for this agreement. The Project Sponsor will send a copy of the executed agreement and the full advance payment to the Accounting Division shown below. All payments must include the agreement number, agreement name, sponsor name, location and mailing address.

Federal Aviation Administration
Mike Monroney Aeronautical Center
ATTN: AMZ-310
P.O. Box 25082
Oklahoma City, OK 73125
Telephone: (405) 954-4719

D. The Project Sponsor hereby identifies the office to which the FAA will render bills for the project costs incurred as:

Palm Beach County Department of Airports
Attn: Mr. Jerry Allen
846 Palm Beach International Airport
West Palm Beach, Florida 33406
Telephone: (561) 471-7423

E. Billing will be made by FAA on SF-1114. The Reimbursable Bill Support List (a summary of cost by object class) will accompany all bills.

F. Estimates as contained in Article II are expected to be a maximum, but may be adjusted to recover the FAA's actual costs. If during the course of this agreement, actual costs are expected to exceed the estimated costs, the FAA will notify the Project Sponsor immediately and provide a written explanation for the increased costs. The FAA will also provide the Project Sponsor with a modification to the agreement, which includes additional FAA costs plus overhead. The Project Sponsor agrees to prepay the entire estimated cost of the modification, plus the required overhead. The Project Sponsor will send a copy of the executed amended agreement and additional advance payment to the FAA Accounting Division listed above.

G. Payments for billing are due within 30 days of date of invoice with the exception of costs included in any advance payment, which will be netted against the advance payment. Late charges will be assessed on delinquent payments in accordance with United States Treasury Regulations (Treasury Fiscal Requirements Manual, section 6-8020.20). Late charges are computed by multiplying the amount of the overdue payment by the percentage rate prescribed quarterly by the Department of Treasury for each 30-day, or portion thereof, during which payments are overdue.

ARTICLE V - Amendment

Changes and or modifications to this agreement shall be made by written amendment, signed by authorized representatives of each party.

ARTICLE VI - Liability

To the extent permitted by law, the Project Sponsor agrees to hold harmless the FAA, its officers, agents and employees, from all causes of action, suits or claims arising out of the work performed under this agreement. However, to the extent that such claim is alleged to have arisen from the act or omission by an employee of the FAA acting within the scope of his or her employment, this hold harmless obligation shall not apply and the provisions of the Federal Torts Claims Act, 28 U.S. Code, Section 2671, et, seq., shall control. The FAA assumes no liability for any losses arising out of any action or inaction by the Project Sponsor, its employees, or contractors, or any third party acting on its behalf.

ARTICLE VII - Damage to FAA Property

Except for damage to or destruction of FAA property caused by the FAA or any FAA personnel, the Project Sponsor agrees to reimburse the FAA for any damage to or destruction of FAA property arising out of work under this agreement.

ARTICLE IX - Termination

In addition to any other termination rights provided by this agreement, either party may terminate this agreement at any time prior to its expiration date, with or without cause, and without incurring any liability or obligation to the terminated party (other than payment of amounts due and owing and performance of obligations accrued, in each case on or prior to the termination date) by giving at least thirty (30) days prior written notice of termination. Upon receipt of a notice of termination, the receiving party shall take immediate steps to stop accrual of any additional obligations, which might require payment. All funds due to the FAA after termination, if any, will be netted against the advance payment and, as appropriate, a refund or bill will be issued to the Project Sponsor within 90 days of termination.

ARTICLE X - Disputes

Where possible, disputes will be resolved by informal discussion between the parties. In the event the parties are unable to resolve any disagreement through good faith negotiations, the dispute may be resolved by the FAA Administrator, or designee whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding (see e.g. 49 USC 46110).

ARTICLE XI - Funds Availability

The Project Sponsor certifies that arrangements for sufficient funding appropriations have been made for payments of the estimated costs set forth above, plus 10%. The FAA acknowledges the Project Sponsor's monetary obligations in excess of the estimated costs shall be subject to annual appropriations by the Palm Beach County Board of Commissioners.

ARTICLE XII - Construction of the Agreement

This agreement is an "other transaction" issued under 49 USC 106(l) and (m) and is not a procurement contract, grant or cooperative agreement. Nothing in this agreement shall be construed as incorporating by reference or implication any provision of Federal acquisition law or regulation.

Each party acknowledges that all parties hereto participated equally in the negotiation and drafting of this agreement and any amendments thereto, and that, accordingly, this agreement shall not be construed more stringently against one party than against the other.

ARTICLE XIII - Warranties

The FAA makes no express or implied warranties as to any matter arising under this agreement, or as to the ownership, merchantability or fitness for a particular purpose of any property, including any equipment, device or software that may be provided under this agreement.

ARTICLE XIV - Protection of Information

To the extent permitted by law, the parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

ARTICLE XV - Entire Agreement

This document is the entire agreement of the parties, who accept the terms of the agreement as shown by their signatures below. In the event the parties duly execute any amendment to the agreement, the terms of such amendment shall supersede the terms of this agreement to the extent of any inconsistency.

AGREEMENT NUMBER
SO-0705-017P

If not signed and returned by the Project Sponsor within 120 days of the FAA signature, this agreement shall expire.

FEDERAL AVIATION ADMINISTRATION

BY Bill Nelmes

Printed Name

TITLE Contracting Officer

DATE 3/19/07

PALM BEACH COUNTY BY ITS COUNTY BOARD OF COMMISSIONERS

BY ____________________

____
Printed Name

TITLE ____________________

Tax Payer ID No.: ____________________

DATE ____________________

Sharon R. Bock,
Clerk and Comptroller

BY ____________________
Deputy Clerk

Approved as to Form and Legal Sufficiency

BY Laura Beebe
County Attorney

Approved as to Terms and Conditions

BY
Director, Department of Airports

ATTACHMENT NO. 2

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
National Policy

ORDER
2500.42D

Effective Date:
10/01/06

SUBJ: Administrative Funds Control

1. Purpose: This order establishes policy and prescribes a system to restrict obligations and expenditures to the amount available in each appropriation or fund account. It enables the Administrator to determine who is responsible for any obligation or expenditure over the amount available in any fund or account. The order provides procedures for dealing with violations of the Anti-deficiency Act as well as violations of other administrative subdivision of funds.

This order implements the Department of Transportation (DOT) Financial Management Policies Manual, Section 3: Administrative Control of Funds, dated May 2004. It complies with the requirements of the Office of management and Budget (OMB) Circular No. A-11, "Preparation, Submission, and Execution of a Budget."

2. Cancellation: FAA Order 2500.42C, Administrative Control of Funds, dated June 1, 1993, is cancelled as of the effective date of this order.

3. Distribution: This order is distributed to the division level in Washington headquarters, regions, and centers.

4. Explanation of Changes:

a. References to OMB Circular No. A-34, "Instructions on Budget Execution," have been updated to refer to OMB Circular No. A-11, Part 4, as this circular superseded OMB Circular No. A-34.

b. Information regarding the "M" Accounts has been removed.

c. Existing items were revised and new Budget Terms added in accordance with OMB Circular No. A-11, Part 4, as this circular superseded OMB Circular No. A-34.

d. The Office of Accounting (AAA) has been changed to the Office of Financial Management (AFM).

5. Authority:

a. Title 31, United States Code (Money and Finance):

(1) Sections 1341-1342, 1349-1351, 1511-1519 (part of the Anti-deficiency Act, as amended).

(2) Sections 1101, 1104-1108, 3324 (part of the Budget and Accounting Act, 1921, as amended).

(3) Sections 1501-1502 (part of section 1311 of the Supplemental Appropriations Act of 1950).

(4) Sections 1112, 1531, 3511-3512, 3524 (part of the Budget and Accounting Procedures Act of 1950).

b. Title X of Public Law 93-344 (2 U.S.C. 681-688).

c. P.L. 104-205, the Franchise Fund authorizing legislation.

d. Part 4 of OMB Circular No. A-11, "Instructions on Budget Execution," and related OMB guidelines.

6. Offices Affected By This Order: All FAA organizations, appropriations, and funds are subject to the provisions of this order.

7. Roles and Responsibilities:

a. Administrator: The FAA Administrator, acting directly or through the Chief Financial Officer:

(1) Establishes fiscal resource priorities and an environment for effective, efficient, and responsible financial management.

(2) Resolves issues regarding requests for resources and distribution of resources by determining funding priorities. For example, designates which LOB or staff offices should pay for a service.

(3) Resolves issues elevated to the Administrator regarding requests for and distributions of resources and ensures agency-wide equity and balance.

(4) Reports to The Secretary, through the DOT Assistant Secretary for Budget and Programs/Chief Financial Officer that a violation of the Anti-deficiency Act has occurred immediately after it has been identified.

(5) Works with The Secretary to submit notification of violations to the Director of OMB, the President, the Speaker of the House of Representatives, and President of the Senate.

(6) Collaborates with The Secretary to respond to OMB's requests for audit and investigations and Government Accountability Office (GAO) reports regarding possible violations.

b. Deputy Administrator: The FAA Administrator designates the Deputy Administrator as the allotted for each of the FAA's appropriations. The Deputy Administrator:

(1) Oversees FAA's day-to-day operations, capital programs, and modernization efforts.

(2) Designates all allotment holders.

(3) Determines administrative penalties for Anti-deficiency Act violations by allotment holders.

(4) Coordinates with the Assistant Administrator for Financial Services/Chief Financial Officer to research and verify possible violations.

c. Assistant Administrator for Financial Services/Chief Financial Officer (CFO): The Assistant Administrator for Financial Services/CFO:

(1) Oversees the FAA's budget.

(2) Oversees developing and applying agency-wide cost accounting and financial management systems.

(3) Establishes and maintains a system of funds control in accordance with the criteria and policies contained in this order.

(4) Develops and prescribes accounting systems that will provide for prompt and accurate recording in the official accounts of all financial transactions having an effect on apportionments and other subdivisions of funds.

(5) Works with the Administrator in preparing and issuing any communications on possible violations.

(6) Communicates and coordinates with OST counterparts on funds control issues.

d. FAA General Counsel: The FAA General Counsel:

(1) Assists in interpreting the laws governing the expenditure of public funds in order to ensure efficient, effective, and economical operations of the FAA.

(2) Reviews all reports of possible agency violations and documents the type of violation (e.g., over-obligation of an appropriation, apportionment, or an allotment) and primary reason or cause.

(3) Supports the Assistant Administrator for Financial Services/CFO, AFM, and ABU in disputing OMB's and GAO's reports of violations of the Anti-deficiency Act and reports to the President and to the Congress to explain the FAA's position.

(4) Responds to questions pertaining to legality within the context of appropriations law with respect to amount, time, and purpose of obligations.

e. Office of Budget (ABU): This office is defined as the Washington Headquarters Budget Office under the Assistant Administrator for Financial Services/ Chief Financial Officer (CFO):

(1) Prepares apportionment and reapportionment requests to submit to OMB through the OST Office of Budget and Program Performance. Upon receiving the approved requests, allots funds to the allotment holders.

(2) Issues Budgetary Authorizations and Project Authorizations to allotment holders to ensure authorizations are recorded in the Departmental Financial Management System.

(3) Prescribes the process for adjustments to allotments.

(4) Monitors total obligations against the apportionments and allotments, and notifies AFM and ABU management of any possible violations.

(5) Determines whether or not there has been an over-obligation and whether it is an Anti-deficiency Act violation upon receiving notification of a potential over-obligation from the Line of Business (LOBs), Staff Offices (SOs), AFM, OST, OMB, or GAO.

f. Office of Financial Management (AFM): This office is defined as the Washington Headquarters Financial Management Office under the Assistant Administrator for Financial Services/Chief Financial Officer (CFO).

(1) Provides the allotment holders and ABU with access to timely and accurate reports.

(2) Monitors the recording of total obligations in the financial management system against the apportionments and allotments and notifies ABU whenever it appears that the obligational authority contained in any of the budgetary authorizations has been exceeded.

(3) Coordinates with ABU and the Chief Counsel to immediately notify the Assistant Administrator for Financial Services/CFO of an Anti-deficiency Act violation.

(4) Prepares the monthly "Report on Budget Execution and Budgetary Resources" (SF-133) for all FAA accounts and reports this information to Treasury using the FACTS II system on a quarterly basis.

g. Headquarters Lines of Business (LOBs) and Staff Offices (SOs):

(1) Reports through their line of business or staff office any potential or actual Anti-deficiency Act violations and any actual violations to ABU in a timely fashion.

(2) Monitors total obligations against their allotments.

(3) Provides ABU with the status of their funds in a timely fashion.

(4) Establishes Standard Operating Procedures for their Regional and Center Budget Offices and ensures that they comply with the Assistant Administrator for Financial Services/CFO's Standard Operating Procedures.

(5) Monitors obligations and collections for their account, fund, allotment, and any further administrative subdivision of funds.

(6) Works with AFM to correct any errors in the financial management systems.

h. Regional and Center Budget Offices:

(1) Complies with the Standard Operating Procedures as established by ABU, the LOBs, and SOs.

(2) Reports any potential Anti-deficiency Act violations to ABU in a timely fashion.

(3) Requests reapportionments through ABU for changes to anticipated collections and transfers, as necessary.

8. Actions Prohibited:

If you are an FAA employee, you may not:

a. Make or authorize an expenditure from, or create or authorize an obligation against, any appropriation or fund greater than the amount available in the account.

b. Involve the Government in a contract or other obligation to pay money before there is an appropriation for that purpose, unless law authorizes a contract or obligation. If authorized by law, but not financed by an appropriation, the budget authority to cover the transaction is known as contract authority (e.g., Airport Improvement Program). If the contract authority anticipates receipts, then obligations against the contract authority cannot be liquidated unless either the receipts are collected and credited to the account or an appropriation has been enacted. 31 U.S.C. 1341(a).

c. Accept voluntary service for the United States or employed personal services greater than that authorized by law, except in cases of (1) an emergency involving the safety of human life or the protection of property; (2) using student volunteers under agreement between the Department and the school, as provided by OMB regulations; or (3) as permitted specifically by law (31 U.S.C. 1342). One such law is found at 49 U.S.C. 106(1)(5), but only if the voluntary services will not displace Federal employees on a full-time, part-time, or seasonal basis. FAA may also accept volunteer services under other provisions of law when certain conditions are met.

d. Authorize or create an obligation or make expenditures greater than an apportionment or reapportionment. This includes adjustments that cause obligations in expired accounts to exceed the apportionment for the year in which the obligations were incurred. 31 U.S.C. 1517(a).

e. Authorize or create an obligation or make expenditures greater than the amount permitted by the prescribed and approved agency fund control system. 31 U.S.C. 1517(a).

f. Create or authorize a new obligation against an expired account or make a disbursement or obligational adjustment from closed accounts. Unobligated balances of expired budget authority remain available for 5 years to cover legitimate obligation adjustments or for obligations properly incurred during the budget authority's period of availability that the agency failed to record. The period of availability ends on September 30th of the fifth fiscal year after the account expired. All obligated and unobligated balances must be canceled and the expired account must be closed for obligation; however, after an account is canceled, you may pay any legitimate obligations or adjustments chargeable to the canceled account from another unexpired appropriation (meaning a current appropriation of the same type) available for the same purpose as the canceled account. For example, contract claims settled at the contracting officer level are chargeable to appropriations current at the time the basic contract was executed if the claims are made pursuant to a provision in the original contract. If the applicable appropriation account for an earlier year has been canceled under 31 U.S.C. 1552(a), charge the portion chargeable to that year to current appropriations, subject to the one-percent limit of 31 U.S.C. 1553(b).

g. ***Deliberately charge the wrong Treasury account with the expectation of rectifying the situation by a subsequent transfer. This action would violate 31 U.S.C. 1301(a) – the transferred funds would be used for a purpose other than that for which they were originally appropriated.***

9. Penalties:

As a federal employee, if you violate provisions of 31 U.S.C. 1341(a), 1342, or 1517(a), the Anti-deficiency Act, you may be subject to administrative discipline. Administrative discipline may consist of a:

a. Written inquiry of violation;

b. Letter of reprimand or censure for the official personnel record of the officer or employee;

c. Unsatisfactory performance rating;

d. Transfer to another position;

e. Suspension from duty without pay; or

f. Removal from office.

In addition, anyone who knowingly and willfully violate these prohibitions, you will be fined not more than $5,000, imprisoned for not more than two years, or both (31 U.S.C. par 1350, 1519).

10. Reporting Violations:

The individuals identified under Section 6. "Roles and Responsibilities" are accountable for reporting a possible Anti-deficiency Act violation. When you discover a possible violation, you must inform ABU, AFM, the FAA General Counsel, and the allotment holder. No further obligations or expenditures may be made at the funds control level that appears to have been violated. (That direction may be rescinded if further inquiry demonstrates that the control level had not, in fact, been violated.) Each obligation or expenditure transaction that exceeds the amount available must be examined to determine why the excess occurred and to identify the person or persons who were responsible. *Actions that subsequently relieve the violation condition do not negate the fact that a violation occurred, which must be reported. The amount of the violation is not a factor in determining whether a report must be submitted. You must report all violations when you discover them.*

The Director of AFM, with the Director of ABU and FAA General Counsel, must report each violation to the Administrator and the Deputy Administrator through the Assistant Administrator for Financial Services/CFO. Notification must also be made to the organization with the potential violation.

The Administrator must report the violation to the Secretary of Transportation through the DOT Assistant Secretary for Budget and Programs/CFO, who will submit it to the President through the Director of OMB, and to Congress.

a. Report to the President: If it is determined that a violation has occurred, external reports are required. One report must be in the form of a signed letter with three copies (plus the number of copies desired for internal use) to the President. The Office of Budget, FAA General Counsel, and the violating LOB/SO will prepare the report. The Assistant Administrator for Financial Services/CFO and the Administrator will provide the report to the Secretary of Transportation through the DOT Assistant Secretary for Budget and Programs/CFO for signature. The Secretary of Transportation will forward a copy of the signed report to the President through the Director of OMB. At a minimum, one copy will also be sent to the Department's Office of Inspector General.

The opening sentence of the letter should be, "This letter is to report a violation of the Anti-deficiency Act, required by 31 U.S.C. 1341(a), 1342, and 1517(a)." The letter will set forth the following data, preferably in the sequence indicated:

1) The title and Treasury symbol (including the fiscal year) of the appropriation or fund account, the amount involved for each violation, and the date on which the violation occurred.

2) The name and position of the officer or employee responsible for the violation.

3) All the pertinent facts of the violation, including the type of violation, (e.g., over-obligation of an allotment or apportionment of an appropriation, etc.), the primary reason or cause, and any statement from the responsible officer or employee with respect to any circumstances that he or she believes to be extenuating, and any germane report by the Department's Inspector General and/or the General Counsel.

4) A statement of administrative discipline imposed by the Deputy Administrator or the Administrator, and any further steps taken with respect to the officer or employee, or an explanation as to why no disciplinary action is considered necessary.

5) In the case where an officer or employee is suspected of willfully and knowingly violating the Anti-deficiency Act, confirm that all information has been submitted to the Department of Justice for determination of whether further action is needed.

6) A statement regarding the adequacy of the system of administrative control prescribed by the Administrator and approved by OMB, if such approval has been given. If the head of the agency determines a need for changes in the regulations, such proposals will be submitted as provided in section 150.7of OMB Circular No. A-11.

7) A statement of any additional action taken by, or at the direction of, the violating party, Administrator, Deputy Administrator, and Assistant Administrator for Financial Services/CFO, including any new safeguards provided to prevent recurrence of the same type of violation.

8) If another agency is concerned, a statement concerning the steps taken to coordinate the report with the other agency.

9) Identical reports will be submitted to the presiding officer of each House of Congress. If identical to the report to the President, so state.

b. Report to Congress: The second report will be made to Congress as required by law. The Office of Budget, the FAA General Counsel, and the violating LOB or SO will prepare this report, using the same format as submitted to the President. The Assistant Administrator for Financial Services/CFO and the Administrator will provide the report to the Secretary of Transportation through the DOT Assistant Secretary for Budget and Programs/CFO for signature. The Secretary of Transportation will forward a copy of the signed report to the President of the Senate and the Speaker of the House of Representatives. A copy of the signed report to the President will be included with the report made to Congress. If the letters to Congress are identical to the letter to the President, a statement to this effect will be included in the letter to the President. If they are not identical, a copy of the letter to Congress will be submitted to the President.

c. GAO Reported Violations: Reports will also be made on violations not previously reported that are included in findings of the GAO in connection with audits and investigations. In these cases, the report to the President will indicate whether the FAA agrees that a violation has occurred, and if so, it will contain an explanation as to why the violation was not discovered and previously reported. If the FAA does not agree that a violation has occurred, the report to the President and the Congress will explain the FAA's position.

d. OMB Suspected Violation: If OMB determines that a violation of the Anti-deficiency Act may have occurred, OMB may request that an investigation or audit be undertaken or conducted by the FAA. In such cases, a report describing the results of the investigation or audit will be submitted to OMB through the Secretary of Transportation. If the report indicates that no violation of the Anti-deficiency Act has occurred, the Secretary of Transportation will so inform OMB and forward a copy of the report to OMB. If the report indicates that a violation of the Anti-deficiency Act has occurred, the Secretary of Transportation will report it to the President and the Congress as outlined above in the "Report to the President" section of this order. If the FAA does not agree that a violation has occurred, the report to the President and the Congress will explain the FAA's position.

e. Financial Statement Disclosure: Any violations of appropriations or other fund limitations must be disclosed in the notes to the financial statements. Any major restrictions or limitations on the use of funds (such as limitations on amounts that can be spent for certain types of expenditures, e.g., travel) contained in the appropriation acts must also be disclosed, as well as any violations of such restrictions.

11. Accounting Support for Fund Control Systems: The Assistant Administrator for Financial Services/CFO oversees the development and agency-wide application of the financial management system. AFM ensures that the financial management system fully supports FAA fund control systems. The system:

a. Records all financial transactions affecting apportionments, reapportionments, allotments, administrative subdivision of funds, FAA restrictions, financial plans, program operating plans, obligations and expenditures, as well as anticipated, earned, and collected reimbursements.

b. Prepares and reconciles financial reports that display cumulative obligations, and the remaining unobligated balances by appropriation and allotment, and cumulative obligations by budget activity and object class.

c. Ensures the fund control systems have a hard stop capability to prevent the recording of obligations when resources are not available, but does not stop the actual action of incurring an obligation. The implementation of a fully integrated financial management system (e.g., PRISM, Govtrip, etc.) enhances the hard stop process by providing an automated checking of funds availability prior to the completion of most obligation action.

12. Apportionment Procedures:

a. General Apportionments/Reapportionments:

1) OMB must apportion funds prior to the obligation of funds, except when operating under a continuing resolution. The Apportionment and Reapportionment schedules (SF-132s) show by quarter and by fiscal year new budget authority and unobligated balances carried over from the previous year resulting in the amount of funds expected to be obligated during the fiscal year.

2) All general fund appropriations, special, and trust fund accounts, and public enterprise fund accounts that have amounts available for obligation must be apportioned unless specifically exempted by OMB. Amounts to be apportioned must include amounts to be reimbursed to the appropriation or fund. Apportionment of funds may be exempt by OMB, by general regulation, and by specific administrative action.

3) Separate apportionments are required in cases when an appropriation combines one-year and multiple-year funds, and when Treasury establishes separate accounts for each fund. New apportionment action is required for budgetary resources available beyond the end of the fiscal year.

4) Apportionment documents are prepared by ABU, signed by the Budget Director and OST Director of Budget, and approved by OMB.

5) ABU prepares apportionment and reapportionment requests, using the Standard Form 132 (SF-132), "Apportionment and Reapportionment Schedule," for submission to OMB through the DOT's Director of Budget.

6) When the OST Office of Budget and Program Performance receives approved apportionments and reapportionment requests from OMB, they will forward the originals to ABU.

7) ABU will distribute copies of the apportionments and reapportionment requests to AFM. ABU will enter them into the financial management systems at the lowest level of apportionment. Also, ABU will distribute the formal budget and project authorization documents to the allotment holders.

8) ABU will monitor the accounts based on reports provided by AFM, such as the SF-133s. If adjustments are required, the LOBs and SOs will contact ABU for reapportionments.

9) For guaranteed loan programs, the loan level will be apportioned based upon new loan commitments supportable by the subsidy budget or, in the case of a negative subsidy, the amount authorized by the Appropriations Act.

b. Circumstances that Require Reapportionments

1) Supplementals: A supplemental is an appropriation request that is transmitted after completion of action of an annual appropriations bill by the Appropriations Committees of both Houses. They may be transmitted prior to, with, or subsequent to transmittal of the succeeding annual budget document. Supplementals can be used to request additional funding not previously anticipated or changes in appropriations language that do not affect amounts previously appropriated. These requests to OMB must be accompanied by a justification for a deficiency apportionment. The justification should include why additional funds are required, proposed language provisions, and pertinent data concerning the effect on Federal civilian employment. Apportionments that anticipate the need for a deficiency or supplemental appropriation under 31 U.S.C. 1515 will be specifically identified on the apportionment request (SF-132) as discussed in OMB Circular No. A-11, Section 35.1.

2) Rescissions: A rescission is enacted legislation that cancels budget authority previously provided by the Congress before its authorized time for obligation has expired. When the President determines that all or part of approved budget authority is not required to carry out the objective or scope of the program, and when all or part of a budget authority is to be reserved for the entire fiscal year, he may send a message to Congress proposing that Congress rescind an appropriation and return the funds to the Treasury. 2 U.S.C. 683(a). An apportionment request reflecting the reduction of budgetary authority must be sent to OMB for approval within 10 days of the enacted legislation. If Congress does not complete action on the Presidential proposals within 45 calendar days of continuous session, any funds covered by the proposed rescission must be made available for obligation. Congress may also propose rescission of approved budget authority.

3) Reprogramming: Recognizing the fact of life changes that occur during budget execution, Congress affords the agency the ability to reprogram funds within appropriations under certain conditions. Appropriated amounts for agency program, project, or activities (PPA) establish the reprogramming base against which reprogramming flexibility is calculated. Reprogramming flexibility varies by appropriation and is based on either a fixed dollar limit or a percentage of the PPA's appropriated amount. ABU will work with the OST Office of Budget and Program Performance when a need for reprogramming arises.

DOT policy specifies that affected entities notify the Assistant Secretary for Budget and Programs/CFO of all reprogramming proposals. A reprogramming request submitted to Congress must not be implemented until written approval is received from both the House and Senate Appropriations Subcommittees. This policy applies to DOT Operating Administrations, which should follow the FY 2004 Consolidated Appropriations Act.[1]

A formal letter of request will be submitted to the OST Office of Budget and Program Performance who will in turn, submit it to OMB. ABU will send a copy to LOBs and Staff Offices. Reprogramming action of any size must be reported if they deviate from high-priority Appropriations Committee interests and requirements, as reflected in report language and PPA baseline reports submitted after final enactment of appropriations bills.

[1] See Conference Report 108-401, Consolidated Appropriations Act, 2004; Senate Report 108-146, Transportation, Treasury and General Government Appropriations Bill, 2004, House Report 108-243, Department of Transportation and Treasury and Independent Agencies Appropriations Bill, 2004.

c. Thresholds for Reporting to Congress: Appropriations Committees must be notified 15 days in advance of any proposal to reprogram funds. Reprogramming action of any size must be reported if they deviate from high-priority Appropriations Committee interest and requirement, as reflected in report language and program, project, or activity (PPA) baseline reports submitted after final enactment of appropriations bills. In addition, a reprogramming action is required when funds are to be shifted that would:

(a) Create a new program.

(b) Eliminate a program, project, or activity.

(c) Increase funds that have been denied or restricted by the Congress.

(d) Result in funds directed for a specific activity by either the House or Senate Committees on Appropriations to be used for a different purpose.

(e) A transfer that may increase or decrease any a specific percentage and/or dollar amount as described in the enacted appropriation act for each fiscal year. Transfer funding that may increase the budget activity for a specific percentage or dollar amount of a program(s) as described in the enacted appropriation act for each fiscal year.

Justified Purposes:

(a) One time, nonrecurring needs that by its nature could not reasonably have been planned for or handled in the regular budget process.

(b) Items of exceptionally high priority to the agency, or responses to external events, such as implementing new statutes or other changes in workload requirements.

Not Justified:

(a) Items specifically denied by Congress in the appropriations process.

(b) Extensive "fine tuning" of estimates made during budget formulation.

Offset Requirements: Funds to be reprogrammed (offsets) should be from PPAs in which permanent savings are expected (e.g., actual contracts below budgeted levels, recoveries, or deobligations), and from within the same appropriations account.

(a) If above offsets cannot be identified, other sources may be proposed.

(b) Offsets should not come from contract delays or from changes in scope or scheduling of a multi-year project, unless the funds are no longer needed.

(c) Offsets must cover the total appropriations and obligation limitation increase involved in the reprogramming.

(d) Unless specifically provided in law, offsets cannot consist of reimbursable funds or any other sources outside the account.

(e) In no instance will F&E project funds be reprogrammed to Personnel Compensation Benefits & Travel, or vice versa.

Establishment of PPA Baselines:

(a) Establish a base level for each PPA at the beginning of each fiscal year from committee reports, conference reports, and appropriations acts.

(b) PPAs change from year to year depending on committee reports. The base levels should reflect enacted levels.

(c) Agreement on the PPA base is important to ensure a common understanding of the base for future reprogramming action.

Notification Procedures:

(a) ABU submits PPAs to the OST Office of Budget and Program Performance within three weeks of enactment of an appropriations act or as otherwise instructed.

(b) The Assistant Secretary for Budget and Programs/Chief Financial Officer submits the PPAs to OMB and to the Appropriations Committees.

(c) Proposed reprogramming actions that require Congressional notification must be described in a memorandum to the Assistant Secretary for Budget and Program/Chief Financial Officer at least seven weeks prior to proposed implementation. The seven-week schedule presumes that OST/OMB will clear the reprogramming request in three weeks. It allows four weeks for Congressional review.

(d) If funds must be reprogrammed more quickly, e.g., respond to emergencies, an expedited schedule should be discussed with OST Office of Budget and Program Performance.

4) Transfers: A transfer is the reduction of budgetary resources in one account and increase in another by the same amount. A transfer can also be from one Federal agency to another. Depending on the circumstances, the budget may be an expenditure or nonexpenditure transfer.

(a) Authority: You cannot make a transfer unless a law authorizes it. The law may specify a particular transfer or provide general transfer authority within specified limits.

(b) Expenditure transfer or nonexpenditure transfer: A transfer is recorded as either an expenditure transfer (involves an outlay) or a nonexpenditure transfer (does not involve an outlay). The purpose of the transfer determines whether it is an expenditure or nonexpenditure transfer.

13. Policy on Allotments: The development and maintenance of a system for fund control must include the formal allotment of funds as a means for establishing, within appropriation limitations established by the Congress and funds apportioned by OMB, the amounts available for obligation and outlay. The allotment system must be established and maintained in such a manner as to assure compliance with all limitations, including those of the Anti-deficiency Act, as amended.

a. Allotment Procedures: ABU establishes FAA allotments based on provisions set by appropriation language.

1) ABU formalizes allotments by entering them in the financial management systems and by issuing Budgetary and Project Authorization documents to the allotment holders. The allotment holders and the amount of the allotments will be clearly identified in these documents.

2) Once the allotment is issued to the allotment holders, they are authorized to establish a further subdivision of the allotted funds. The further subdivision of the allotted funds by the LOBs or SOs are sub-allotments and must adhere to the following:

3) In preparing their sub-allotments, the LOBs and SOs must ensure that the sub-allotments are within the scope of the appropriation time limitation. (i.e., an Operations allotment is restricted to one year).

b. In some cases, changes in allotments will create the need for reapportionments. After the LOBs and SOs justify the changes, the Office of Budget will process the reapportionments for OST and OMB approval.

c. Restrictions:

1) The sum of allotment amounts issued will not exceed the apportionment.

2) The total of the subdivision of allotted funds will not exceed the allotment.

3) Congressional restrictions contained in appropriation acts will be enforced.

14. Treatment of Anticipated Budgetary Resources Already Enacted into Law:
Apportionments may include estimated amounts of "anticipated" budgetary resources that are the result of laws already enacted. This is done to reduce routine reapportionments of such amounts as they actually become available. These are presented on the SF-132 and SF-133 on the following lines:

a. Line 4B, anticipated increases (+) in budget authority (including anticipated transfers of new budget authority) into the account and anticipated decreases (-) from the account;

b. Line 4D, anticipated transfers of balances of budget authority into the account (+) and out of the account (-);

c. Line 3D3, anticipated for rest of year without an advance and anticipated refunds (+);

d. Line 3D5b, change in receivables from trust fund (+);

e. Line 2B, anticipated recoveries of prior year obligations (+); and

f. Line 6F, anticipated for rest of year (-).

ABU may choose not to allot amounts *anticipated to increase* the total budgetary resources before the increase actually occurs. If he or she chooses this alternative, then the fund control regulations must require that all officials or employees who receive allotments of anticipated increases in budgetary resources should maintain constant and careful oversight to insure that these amounts materialize before they incur obligations or expenditures against this type of allotment. The regulations must also require that if actual amounts are less than anticipated, FAA will make appropriate funding adjustments and take other appropriate actions including requesting a reapportionment.

The *anticipated decreases* (-) under current law do not become part of the amount of total budgetary resources available to be apportioned. Since the OMB apportionment will not include these amounts, these amounts must not be allotted.

15. Deficiency Apportionments:

Apportionments that anticipate the need for a deficiency appropriation or a supplemental under 31 U.S.C. 1515, will be specifically identified on the apportionment request.

a. To qualify as a deficiency apportionment, the request must be required by:

1) Laws enacted subsequent to the transmittal of the annual budget for the year to Congress;

2) Emergencies involving human life, the protection of property, or the immediate welfare of individuals; and

3) Specific authorization by law.

b. When OMB approves a deficiency apportionment and transmits it to Congress, OMB is merely notifying the Congress that funds appropriated to date are being obligated at a more rapid rate than previously anticipated. This notification does not guarantee that the Congress will approve any part of any associated supplemental requests and does not authorize the use of any amounts not yet provided.

16. Certification of Funds Availability:

Funds are considered committed after they are certified as available by an appropriate funds certifying official (FCO). Certification of funds availability is a formal acknowledgement, using an appropriate funding document, that sufficient funding is available in the current LOB and SO allotment to enter into obligations. In addition, the FCO must ensure that the purpose is proper, the amount is available, and the funding is established as reserved and obligated in the proper timeframe. Each LOB and SO is responsible for designating an FCO and implementing a certification of funds availability process within their organization.

17. Legal Authority to Enter into Obligations:

Pursuant to the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264, the Administrator is the final authority for carrying out all functions, powers, and duties of the Administration relating to the acquisition and maintenance of property and equipment of the Administration. The FAA Administrator may establish contracting activities and delegate to the FAA

Acquisition Executive (FAE) broad authority to manage FAA contracting functions. The Acquisition Executive is authorized to appoint a Chief of the Contracting Office (COCO) and redelegate the contracting authority to the COCO. The COCO may redelegate the contracting authority to individuals within their management area such as procurement and real property contracting officers, logistics management specialists, and managers of the purchase card program. All individuals who are delegated contracting authority must have met the training requirements of the AMS and have demonstrated the appropriate knowledge and experience needed to execute this authority on behalf of the Government. Except for the purchase card program manager, these individuals may not redelegate their contracting authority. Refer to the FAA Acquisition Management System (AMS), the Federal Aviation Administration Travel Policy (FAATP), and FAA Order 2500.35C (Reimbursable Agreements) for further information on obligational authority.

18. Related Directives:

- OMB Circular No. A-11, "Preparation, Submission, and Execution of a Budget."
- DOT's Financial Management Policies Manual, Section 3: Administrative Control of Funds.
- GAO "Principles of Federal Appropriations Law."
- Reimbursable Order (Work in Progress).
- ABA Standard Operating Procedures for Budget Execution.

19. Glossary of Terms:

Administrative Division or Subdivision of Funds: Any apportionment or other distribution of an appropriation or fund made pursuant to the Anti-deficiency Act (31 U.S.C. §§ 1511-1519).

Allotment: An Authorization by either the agency head or another authorized employee to his/her subordinates to incur obligations within a specified amount. Each agency makes allotments pursuant to specific procedures it establishes within the general apportionment requirements stated in OMB Circular No. A-11.

Apportionment: The action by which the Office of Management and Budget (OMB) distributes amounts available for obligation, including budgetary reserves established pursuant to law, in an appropriation or fund account.

Reapportionment: A revision of a previous apportionment of budgetary resources for an appropriation or fund account. Agencies usually submit requests for reapportionment to OMB as soon as a change becomes necessary due to changes in amounts available, program requirements, or cost factors.

Allotment Holder: Each individual receiving an allotment of funds is responsible for restricting obligations and/or outlays to the amounts available per allotment.

Appropriation: Budget authority to incur obligations and to make payments from the Treasury for specified purposes. An appropriation act is the most common means of providing appropriations; however, authorizing and other legislation itself may provide appropriations. Appropriations shall be applied only to the purpose (Lines Of Business/Project) for which they were authorized unless otherwise provided by law.

Multiple-Year Authority: Budget authority available for a fixed period of time in excess of 1 fiscal year. This authority generally takes the form of 2-year, 3-year, and so forth, availability but may cover periods that do not coincide with the start or end of a fiscal year. For example, the authority may be available from July 1 of one fiscal year through September 30 of the following fiscal year, a period of 15 months. This latter type of multiple-year authority is sometimes referred to as "forward funding."

No-Year Authority: Budget authority that remains available for obligation for an indefinite period of time. A no-year appropriation is usually identified by language such as "to remain available until expended."

One-Year Authority: Budget authority available for obligation only during a specific fiscal year that expires at the end of that fiscal year. It is also known as "fiscal year" or "annual" budget authority.

Borrowing Authority: Authority granted to a Federal entity to borrow (e.g., through the issuance of promissory notes for monetary credits) and to obligate and expend the borrowed funds

Breach: An amount by which new budget authority or outlays within a category of discretionary appropriations for a fiscal year is above the cap on new budget authority or outlays for that category for that year.

Budget Amendment: A revision to a pending budget request that the President submits to Congress before Congress completes appropriations action.

Budget Authority (BA): The authority provided by law to enter into financial obligations that will result in immediate or future outlays involving federal government funds.

Definite: Budget authority that is stated as specified sum at the time the authority is enacted. This type of authority, whether in an appropriation act or other law, includes authority stated as "not to be exceeded" a specified amount.

Indefinite: Budget authority that, at time of enactment, is for a unspecified amount. Indefinite budget authority may be appropriated as all or part of the amount of proceeds from the sale of financial assets, the amount necessary to cover obligations associated with payments, the receipts from specified sources—the exact amount of which is determinable only at some future date—or it may be appropriated as "such sums as may be necessary" for a given purpose.

Commitment: An administrative reservation of allotted funds or of other funds, in anticipation of their obligation.

Continuing Resolution (CR): An appropriation act that provides budget authority for federal agencies, specific activities, or both to continue in operation when Congress and the President have not completed action on the regular appropriation acts by the beginning of the fiscal year. Enacted in the form of a joint resolution, a continuing resolution is passed by both houses of Congress and signed into law by the President

Contract or Grant Authority: Statutory authorization to enter into contracts or grant obligations in advance of availability of appropriations. It requires a subsequent appropriation to liquidate the obligations incurred. (Funds available for obligation, but not for expenditure.)

Direct Obligational Authority: An amount available to the agency for obligation that consists of all new budget authority plus the unexpired, unobligated balances brought forward from previous years.

Financial Plans: A document that identifies how an organizational unit plans to obligate available funds for specified programs within a prescribed time frame. A financial plan may identify planned obligations by appropriation, budget activity or subactivity, program, object classification and/or sub-object classification, or such other categories as may be required.

Full-time Equivalent (FTE): Reflects the total number of regular straight-time hours (i.e., not including overtime or holiday hours) worked by employees divided by the number of compensable hours applicable to each fiscal year. Annual leave, sick leave, and compensatory time off and other approved leave categories are considered to be "hours worked" for purposes of defining FTE employment.

Obligations: A definite commitment that creates a legal liability of the government for the payment of goods and services ordered or received, or a legal duty on the part of the United States that could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the United States. An agency incurs an obligation, for example, when it places an order, signs a contract, awards a grant, purchases a service, or takes other actions that require the government to make payments to the public or from one government account to another.

Offsetting Collections and Offsetting Receipts: A form of budget authority that permits agencies to obligate and expend the proceeds of offsetting receipts and collections. The Congressional Budget Act of 1974, as amended by the Budget Enforcement Act (BEA) of 1990, defines offsetting receipts and collections as negative budget authority and the reductions to it as positive budget authority.

Outlay: The issuance of checks, disbursement of cash, or electronic transfer of funds made to liquidate a federal obligation. Outlays also occur when interest on the Treasury debt held by the public accrues and when the government issues bond, notes, debentures, monetary credits, or other cash-equivalent instruments in order to liquidate obligations.

Pay-as-You-Go (PAYGO): A budgetary enforcement mechanism originally set forth in the Budget Enforcement Act (BEA), which effectively expired at the end of fiscal year 2002. Under this mechanism, proposed changes in, or new permanent, law were expected to be deficit neutral in the aggregate in the fiscal year of enactment or in a period of years. PAYGO was intended to control growth in direct spending and tax legislation.

Project Authorization (PA): A form of written authorization, which (while not conveying obligation authority) constitutes an administrative restriction of funds to a specified project for a stated amount. It only applies to the F&E Appropriation. Each PA holder is also an allotment holder. Simply put, the PA provides the authority to buy something and the allowance provides the funds to buy it. One document without the other is insufficient to obligate funds for purchase of anything. (No F&E project may be initiated without a project authorization.)

Reappropriation: Legislation permitting an agency to obligate whether for the same or different purposes, all or part of the unobligated portion of budget authority that has expired or would otherwise expire if not reapportioned. In the President's budget, reapportionments of expired balance are counted as new budget authority or balance transfers depending on the year for which the amounts are reappropriated.

Receipts: The collections of money that primarily result from taxes and similar government powers to compel payment. Examples of receipts include income taxes, payroll taxes, excise taxes, and customs duties. They do not include collections from the federal government's business-like activities, such as entrance fees at national parks. Business-like collections are subtracted from total spending to calculate outlays for the year.

Rescission: Legislation enacted by Congress that cancels the availability of budget authority previously enacted before the authority would otherwise expire.

Reimbursable Obligational Authority: Reimbursable obligational authority differs from direct obligational authority because Congress does not directly appropriate reimbursable funds. Resources are derived, instead, from orders and cash advances placed by customers. Customers may be other Federal agencies or non-Federal entities. OMB places limits on the dollar amount of reimbursable work that can be performed in a fiscal year. These limits are explained below:

The reimbursable work apportionment is based on the sum of estimated orders from:

Federal Government accounts that represent valid obligations of the ordering account, whether or not accompanied by an advance (NOTE: An unfilled order, excluding Franchise Fund agreements, remains a valid obligation of the ordering appropriation, against which FAA may incur its obligations only as long as the ordering appropriation is available for obligation).

The public, including State and local governments, to the extent accompanied by an advance payment.

Reprogramming: Shifting funds within an appropriation or fund account to use them for purposes other than those contemplated at the time of appropriation; it is the shifting of funds from one object class to another within an appropriation or from one program activity to another.

Sequestration (Budget Enforcement Act Term): Under Budget Enforcement Act provisions, which expired in 2002, the cancellation of budgetary resources provided by discretionary appropriations or direct spending laws. New budget authority, unobligated balances, direct spending authority, and obligation limitations were "sequestrable" resources; that is, they were subject to reduction or cancellation under a presidential sequester order.

Supplemental Appropriation: An act appropriating funds in addition to those already enacted in an annual appropriation act. Supplemental appropriations provide additional budget authority usually in cases where the need for funds is too urgent to be postponed until enactment of the regular appropriation bill.

Warrant: An official document that the Secretary of the Treasury issues upon enactment of an appropriation that establishes the amount of moneys authorized to be withdrawn from the central accounts that the Department of the Treasury maintains.

Definite Appropriations: Warrants are automatically issued in the full amount as stated in the appropriations acts.

Indefinite Appropriations/Special Instances: Warrants must be requested at the beginning of the period for which the need exists. These warrants require adjustment, as necessary, to agree with actual obligations or disbursements. A special instance may be borrowing from subsequent year's appropriations, when authorized by law.

Ramesh Punwani
Assistant Administrator
for Financial Service/CFO

ATTACHMENT NO. 3

Federal Aviation Administration

Memorandum

Date: OCT 27 2006

To: Management Board
Regional and Center Accounting Managers

From: Ramesh K. Punwani, Assistant Administrator for Financial Services/CFO

Subject: Interim Policy—Financial Services Policy Affecting Reimbursable Agreements

The Office of Financial Services is in the process of issuing an updated policy on reimbursable agreements. This memo is an interim measure to establish the standards for executing and managing reimbursable projects in the new fiscal year. The interim memo is designed to immediately establish policy that is in accordance with Federal financial regulations and guidance (OMB Circular A-11, FAA Funding Authorization, and GAO's appropriation law). The Office of Management and Budget (OMB) and OST have clearly sent a message that FAA must strengthen its financial controls. FAA's reimbursable agreement program is an area that requires updated policies and procedures to accomplish that goal. The key principles impacting FAA's reimbursable programs are:

1. FAA project managers must ensure that they have proper Budget or Project authorization prior to incurring obligations.
2. Overhead rates must be included in all new and modified agreements.
3. FAA must have an advance payment from non Federal customers prior to incurring an obligation and the advance must be for the full amount of that obligation.
4. Agreements must include a specific period of performance not to exceed five years and cannot be for an indefinite timeframe.
5. Reimbursable agreements are binding procurement actions and must be subject to the same ratification procedures.
6. Review of draft agreements by ABA & AGC.

The full detailed policy changes are attached. This policy memo affects all FAA personnel and FAA contractors who prepare, approve, manage or perform work under reimbursable agreements. This policy supersedes FAA Order 2500.35c and FAA Notice 2500.81.

Additionally, the overhead rates that are applicable to reimbursable work are attached. These rates are effective as of October 31, 2006.

Attachments

Attachment

Policy Changes

1. Agreements with Federal entities:

   a. may be paid after services are rendered, except when circumstances warrant advance payment, such as an insufficiency in working capital; and
   b. are limited to the lesser of the term of the requesting agency's funding source or five years.

2. Agreements with non-Federal entities:

   a. must be paid with advance payments before services are rendered; and
   b. are limited to a term of five years.

3. All Reimbursable agreements:

   a. may only be entered into by those individuals who have received written delegated authority from the Administrator or designee;
   b. must be within the mission of the organization;
   c. must include a project schedule;
   d. must include an obligation schedule supported by a payment schedule;
   e. must establish that work is subject to availability of reimbursable authority, apportionment and allotment;
   f. must comply with the FAA Acquisition Management System (AMS) rules covering other transactions;
   g. must provide for the full recovery of costs which consist of direct and indirect costs to include general and administrative overhead;
   h. must be reviewed by the Office of General Counsel prior to signature;
   i. must be reviewed by the Office of Budget prior to signature; and
   j. permit options to renew subject to a maximum agreement term of five years.

4. Modifications to reimbursable agreements:

   a. may not extend the life beyond the five years from the original execution date.

5. Exceptions to this policy require concurrence from the Office of Budget:

   a. concurrence will not be granted for draft agreements without adequate schedules—project schedule, obligation schedule, and payment schedule; and
   b. concurrence will not be granted for draft agreements that do not establish that work is subject to availability of reimbursable authority, apportionment and allotment.

6. Include a completed Reimbursable Cover Sheet with all requests for reimbursable allotment and project authorization.

Terms:

Reimbursable Agreement - A contractual relationship under which FAA provides products or services, the costs of which are paid by the recipient for the purposes of this interim policy, agreements that do not involve the transfer of funds and agreements in which FAA is the customer (recipient of services) are not covered.

Full Cost - The total expenses in providing a service or product, which is calculated by combining both FAA's direct and indirect costs.

Direct Costs - Costs that can be specifically or readily identified with making a specific product or providing a specific service.

Indirect Costs - Costs that cannot be identified with producing a specific product or providing a specific service. These costs support common or joint objectives. Examples of indirect costs include space rental, utilities, management reviews, and data processing.

Overhead Rate - A predetermined percentage applied to direct costs to approximate the indirect costs associated with reimbursable work. The overhead rate includes:

- FAA general and administrative costs – includes Administrator and Deputy, Civil Rights, Aviation Policy & Plans, General Counsel, Government & Industry Affairs, Human Resource Management, Communications Services, Safety Services, Finance Services, and Assistant Administrator for Regional & Center Operations. It also accounts for the general and administrative overhead within the regions which includes the Regional Administrator & Staff, Accounting & Budget, Resource Management, & Logistics Support.

- Line of Business general and administrative costs – Examples of line of business general and administrative costs include COO & Staff, Communications, Finance, Safety, Planning & Oversight, and System Capacity.

- Sub-organization indirect costs – Examples of sub-organization indirect costs include Program Oversight, Contract Administration, and Project Management.

Attachment

FAA Reimbursable Overhead[1] Rates

Organization	Percentage Rate	80%[2] Rate
ATO	26.5%	11.5%
AVS[3]	21%	16%
ASH[3]	22%	16%
AST	6%	6%
ARP[3]	24%	18%
AOA/ADA	6%	6%
ABA	6%	6%
ACR	6%	6%
AEP	6%	6%
AGC	6%	6%
AGI	6%	6%
AHR	6%	6%
AIO	6%	6%
AOC	6%	6%
API[4]	6%	6%
ARC[3]	6%	6%
Franchise Fund/AMC	various[5]	No Change

[1] Overhead rates include FAA general and administrative costs, organizational general and administrative costs, and sub-organization indirect costs.
[2] 80% rate applies when the intent of the agreement is primarily to purchase equipment and the equipment purchased will be at least 80% of the direct contract cost. Note that operating materials & supplies, labor, freight, evaluations and installation costs are not included in equipment costs.
[3] Supplemental review of rate to occur in second quarter, FY 2007 and is subject to change.
[4] Agreement rates are to be based on indirect costs of performing organizations. When multiple organizations will perform on an International agreement, a blended rate will be established.
[5] Franchise Fund overhead rates were distributed in FY 2006 to Franchise Fund personnel.

Attachment

Reimbursable Agreement Coversheet

Requestor Name and Phone Number	
Agreement Number	
New or Amendment	New ______ Amendment ______
Accounting Code	
Agreement Type – Federal, Non-Federal, FEMA, or International	Federal ______ Non-Federal ______ FEMA ______ International ______
Client's Fund Type (Federal - OPS, F&E, R&D, or AIP)	OPS ____ F&E _____ R&D _____ AIP _____
Overhead Percentage Rate	______%
Overhead Amount	$_________
Obligation Schedule	Year:_FY _____ Obligation Amount:$_________ Year:_FY _____ Obligation Amount:$_________ Year:_FY _____ Obligation Amount:$_________ Year:_FY _____ Obligation Amount:$_________ Year:_FY _____ Obligation Amount:$_________
Payment Schedule	Monthy: ____ Quarterly: ____ Yearly: ____ Payment Amount: $_________
Period of Performance	
Advance Amount	$ Whole_____ Partial _____

The signature below certifies that the above information is correct and is, or will be, included in the ratified agreement.

Requestor's Signature ________________________________ Date ____________

Approval by Reimbursable Oversight Division, ABU-500:

Signature ________________________________ Date ____________