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

ORDER 2500.35D

Effective Date:
8/30/07

SUBJ: Reimbursable Agreements Covering Goods and Services Provided by the FAA

1. Purpose of This Order. This order sets policy related to the preparation, approval, and management of reimbursable agreements in which the FAA provides goods or services and where the recipient or project sponsor pays the associated costs. The standard operating procedures related to the reimbursable agreements can be found in the FAA Financial Manual – Volume 4: Accounting, Chapter 6: Reimbursable Agreements:
https://employees.faa.gov/org/staffoffices/aba/financial_manual/vol_4/

2. Audience. This order is for all FAA headquarters, regions, centers, service areas, and field office personnel.

3. Where Can I Find This Order. FAA Orders and Notices website: https://employees.faa.gov/tools_resources/orders_notices/

4. What This Order Cancels. This order cancels Order 2500.35C, Order 2500.28S, and all region, center, and office reimbursable agreement orders, such as but not limited to WP2500.25 and Order AL2500.7F, Notice 2500.81, and the Interim Policy – Financial Services Policy Affecting Reimbursable Agreements.

5. Definition. A reimbursable agreement is a legally binding contract where the FAA provides goods and services to a non-FAA party, the associated costs of which are paid by the recipient or project sponsor.

6. Scope. This order covers reimbursable agreements in which FAA provides goods and services to a non-FAA party and the recipient pays the costs. The order does not cover:

a. Agreements in which the FAA is the customer,

b. Agreements that do not directly involve the transfer of funds, or

c. Service level agreements between FAA organizations.

7. Authority and Approval. The FAA Administrator has the authority to enter into and perform reimbursable agreements based on the following laws:

a. *Title 49 U.S.C. 106(l)(6).* The Administrator is authorized to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration. The Administrator may enter into such contracts, leases, cooperative agreements, and other transactions with any Federal agency (as such term is defined in section 551 (1) of Title 5) or any instrumentality of the United States, any State, territory, or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate.

b. *Title 49 U.S.C. 106(m).* With the consent of appropriate officials, the Administrator may, with or without reimbursement, use or accept the services, equipment, personnel, and facilities of any other Federal agency (as such term is defined in section 551 (1) of Title 5) and any other public or private entity. The Administrator may also cooperate with appropriate officials of other public and private agencies and instrumentalities concerning the use of services, equipment, personnel, and facilities. The head of each Federal agency shall cooperate with the Administrator in making the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. The head of a Federal agency is authorized, notwithstanding any other provision of law, to transfer to or to receive from the Administration, without reimbursement, supplies, personnel, services, and equipment other than administrative supplies or equipment.

c. *Title 49 U.S.C. Sections 40108, 40113(e), and 47303.* Authorizes the Administrator to negotiate and sign reimbursable agreements with foreign or international entities. The Administrator has delegated this authority to the Assistant Administrator for International Aviation.

In addition, reimbursable agreements within the FAA must comply with the following laws and policies:

d. Principles of Federal Appropriations Law

e. FAA Acquisition Management System

f. OMB Circular No. A-11, Budget Execution, Section 20

g. DOT Financial Management Policies Governing Funded Interagency and Intra-agency Agreements

Finally, reimbursable agreements within the FAA may be subject to one or more of the following:

h. The Economy Act (31 U.S.C. 1535)

i. Intergovernmental Cooperation Act (31 U.S.C. 6505)

j. The Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Chap. 68)

k. Public Law 104-205 (110 Stat. 2957)

l. Title 31 U.S.C. Section 1301

m. Cooperative Agreements (49 U.S.C. 44505(d))

8. Oversight. The FAA Administrator has assigned responsibility for oversight of reimbursable agreements to the FAA Chief Financial Officer (CFO). In the office of the CFO, the Reimbursable Oversight Division (ABU-500) carries out this responsibility.

9. Policy. Within statutory and administrative authority, it is agency policy to negotiate and enter into written reimbursable agreements prior to providing goods and services when FAA satisfies all the following conditions:

a. The program enhances the broad purpose and policies of the FAA.

b. Performing the program will not inhibit the conduct of FAA programs.

c. The nature of the program is under the FAA legislative and appropriation authority.

d. Accomplishment of the program is within FAA employment ceilings or within ceilings provided by the Office of the Secretary of Transportation (OST) or the Office of Management and Budget (OMB).

10. General Guidelines. The following guidelines apply to all reimbursable agreements. Lines of Business (LOB) must comply with these guidelines and can be more restrictive, if necessary.

a. **Project Sponsors.** Project sponsors include:

(1) Federal Sponsors – Federal Agencies of the U.S. Government

(2) Non-Federal Sponsors such as:

(a) States, counties, cities, or other public authorities

(b) International organizations or foreign governments

(c) Private organizations, airports, or persons

b. **Agreement Formats.** All FAA personnel must use standard templates provided by the Office of Budget (ABU) when creating a Reimbursable Agreement. For international agreements, FAA requires specific templates as a condition of the FAA's C-175 authority. The U.S. State Department delegates C-175 authority and provides the FAA the ability to negotiate international agreements.

c. **Advances and Payments.**

(1) **Federal Sponsors.** Federal customers make payment after FAA delivers goods and services, unless circumstances warrant advance payment, such as an insufficiency in FAA's Working Capital Fund. FAA receives payment from Federal entities by the Intra-Governmental Payment and Collection (IPAC) System.

(2) **Non-Federal Sponsors.** FAA must receive advances from Non-Federal customers

prior to incurring an obligation.

(a) **Advances for agreements with periods of performance of 12 months or less.** The advance must be for the full amount of the estimated agreement. The FAA will collect the advance after the agreement is signed. The agency will not obligate any funds until the advance is collected.

(b) **Advances for multiyear agreements.** For agreements that span multiple years, if a full advance is not initially received, FAA requires, at a minimum, an annual advance covering 100 percent of each year's anticipated obligations plus associated indirect cost before beginning or continuing work.

(c) **Exceptions to Advance Payments.** All existing agreements, signed by the non-Federal party prior to October 1, 2004, are exempt from advance payment requirements set forth in this policy. However, the FAA may consider renegotiating payment terms to eliminate any future budgetary resource shortfalls.

(d) **Waivers of Advance Payment Requirement.** The FAA's CFO has the authority to waive the advance payment requirement. See the Financial Manual (Volume 4, Chapter 6) for the advance payment waiver request process and requirements.

d. **Period of Performance.** Agreements must include a specific period of performance not to exceed five years.

e. **Existing Reimbursable Agreements.** FAA grandfathers "as is" agreements and waivers executed prior to October 1, 2006, except: Any open-ended agreement (indefinite period of performance) must be renegotiated with terms consistent with the procedures outlined in the FAA Financial Manual.

f. **Agreement Execution and Authorization.** Congress gave the Administrator authority to enter reimbursable agreements in Title 49 U.S.C. 106(l) (6).

(1) **Domestic Agreements.** The Administrator has delegated the authority to enter or execute a reimbursable agreement to the FAA Acquisition Executive (FAE). The FAE has subsequently delegated this authority to the Chiefs of the Contracting Offices (COCO) for headquarters, regions, and centers. FAA authorizes Contracting Officers with delegated written authority to execute an agreement (provided the estimated dollar value of the agreement does not exceed the individual's delegated authority). Individuals, as well as their immediate unauthorized commitments, are subject to possible disciplinary actions.

(2) **Foreign or International Agreements.** Under the Memorandum of Agreement dated November 8, 2006, the Administrator gave the Assistant Administrator for International Aviation (API) the sole authority to negotiate and:

(a) Sign reimbursable agreements with foreign or international entities for the FAA. API is responsible for negotiating, executing, and administering all amendments and related elements to agreements with foreign or international entities.

(b) Sign agreements with Federal or state agencies and foreign or multilateral financial institutions if the ultimate beneficiary is a foreign or international entity.

(c) Approve reimbursable agreements with Federal agencies for goods and services provided to, and for the benefit of, FAA employees in foreign locations.

g. **Approval Requirements.** FAA will not execute reimbursable agreements (signed) unless approved by the Office of Budget and the Office of Chief Counsel. Before approving the agreement, the Office of Budget will ensure that required coordination and review by the LOB headquarters finance office has occurred.

h. **Coordination and Review.** FAA will coordinate all reimbursable agreements internally within the LOB prior to final approval and execution. Additionally, for agreements that require resources that cross LOBs, the agreement coordinator must coordinate with the affected LOBs.

i. **Funding Limitations and Restrictions.**

(1) Reimbursable agreements are subject to the same fiscal programming, authorized positions and end-of-year ceilings, apportionment, and allotment procedures that apply to FAA direct appropriations.

(2) A reimbursable program does not change authorities or statutory limitations applicable to any appropriation. Reimbursable Agreements, funded by Federal sources, must be within the scope and duration of the customer's funding source. (Appropriations)

(3) Federal law prohibits making or authorizing an obligation under any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law. (31 USC 1341 (a)(1)(A))

(4) FAA prohibits incurring reimbursable obligations against FAA direct appropriation since this could lead to an anti-deficiency violation.

(a) **Exceptions.**

1. For extenuating circumstances, the CFO has the authority to approve the use of direct monies for reimbursable agreements.

2. The agreement coordinator must obtain this approval prior to incurring any reimbursable obligations against FAA direct appropriations.

j. **Cost Recovery.** For reimbursable agreements, FAA requires that organizations recover all costs to the agency including both direct and indirect costs. The Office of Financial Management calculates and updates general and administrative (G&A) overhead and indirect cost for each LOB using data from the FAA's Cost Accounting System. The agreement coordinator must include that G&A overhead and indirect cost in calculating the cost or price of the reimbursable agreement. Please refer to the FAA Financial Manual for the official indirect rates for each LOB.

(1) **Waivers and Exceptions.**

(a) The FAA CFO has the authority to waive some or all indirect cost recovery, allowing performance of a reimbursable agreement without recovering all costs to the agency. See the FAA Financial Manual for the cost recovery waiver process.

(b) For International Agreements, the Assistant Administrator for International Aviation can approve a cost recovery waiver.

k. **Agreement Implementation.** FAA will not implement or perform work under a reimbursable agreement until the following criteria is met:

(1) The accepting LOB office receives an annual reimbursable allotment from the Office of Budget for the agreement.

(2) FAA executes a reimbursable agreement (signed by all parties).

(3) FAA records reimbursable agreement and associated projects in the FAA accounting system.

(4) FAA receives advance payment from a non-Federal entity.

l. **Emergency Circumstances.** During a natural disaster, declared state of emergency, or a catastrophic event within the National Airspace System (NAS), FAA may:

(1) Begin work on a reimbursable program without a signed agreement.

(2) Coordinate in advance with the Office of Budget and FAA allotment holder to establish funding sources and obligation restrictions.

(3) Negotiate a written agreement with the least possible delay.

This will result in the use of direct appropriation/allotment. Organizations may not incur obligations that exceed the available direct appropriation/allotment. A reclassification of funds will be necessary once the agreement and reimbursement have been established. See the FAA Financial Manual for emergency procedures.

m. **Agreement Close-out**. On complete financial and physical completion of the agreement, FAA must officially close the reimbursable agreements in the FAA accounting system. See the FAA Financial Manual for close-out processes and procedures.

11. Permanent Exceptions. The CFO has the authority to approve permanent exceptions to this policy. Permanent exceptions will be provided only if they affect a large number of future agreements. The CFO may determine when a permanent exception is suitable. For reference purposes, the Office of Budget will post approved permanent exceptions to the FAA Financial Manual and will distribute them to all LOBs.

12. Distribution. This order is distributed to all FAA headquarters, regions, centers, service areas, and field office personnel.

Ramesh K. Punwani
Assistant Administrator for Financial Services/CFO