Federal Aviation Administration

Memorandum

Date: FEB 25 2013

To: Nicholas Reyes, Manager, Flight Standards Division, AWP-230

From: Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations, AGC-200

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Subject: Public aircraft operation of helicopter external load operations under contract

Thank you for your memorandum dated October 26, 2012, requesting an interpretation of several regulations and other materials that affect the operation of helicopter external load operations.

By letter to the Honolulu Flight Standards District Office, contained in the package you sent to us, Jack Harter Helicopters of Lihue, HI, questioned the public aircraft operation status of an operation open for bid in Hawaii, and asked whether it would be permissible under the contract to fly a Class D external load using a single-engine helicopter. The author questions whether the proposed contract can be operated as a public aircraft operation when it is not an exclusive use contract for at least 90 days.

In your transmittal to us, you also note that the actual funding for the contract may be from the United States Department of Justice. The contract bid is for a marijuana plant eradication program.

The invitation for bid was prepared by the County of Kauai for the Kauai Police Department. For the purposes of this analysis, we presume that the county and its police department would qualify as the government of a state or a political subdivision to conduct a public aircraft operation under the statutory definition found in 49 USC 40102(a)(41), paragraph (C) or (D). Since the county wants to contract with another entity to provide helicopter services, the applicable statutory definition for qualification is Section 40102(a)(41)(D):

(41) "public aircraft" means any of the following: ...

(D) An aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in section 40125(b).

Accordingly, for the subsequent operation by a contractor to reach the first stage of qualification as a public aircraft operation, the lease must be for exclusive use for a minimum of 90 days. An aircraft leased on occasion or as needed (and otherwise free to operate as a civil aircraft for the contracting entity) does not qualify under this statutory provision. An aircraft operated under such a contract would not qualify as a public aircraft operation regardless of the length of the 'as-needed' contract or the status of the contracting government entity.

The other concern expressed regarding the underlying funding of the contract operations has previously been addressed by this office. In opinions dated October 8, 1998 (letter of Nicholas Garaufis to Carol J. Harrison) and September 28, 2009 (memo from Rebecca MacPherson to Gayle Fuller), aircraft operated by a state entity for drug eradication efforts do not qualify as public aircraft operations when the funding for such operations is the Drug Enforcement Administration. Such operations are considered to have a commercial purpose as described in 49 USC 40125, and are thus civil operations that must be conducted in accordance with the applicable regulations in Title 14 of the Code of Federal Regulations. This opinion has not changed since the first letter was issued in 1998; we have included a copy of these opinions for your convenience.

Therefore, operations performed under this contract would not qualify as public aircraft operations and would need to be conducted under applicable FAA regulations. Additionally, we note that any Class D external load rotorcraft operations performed under the contract would need to be conducted under part 133 rules using a multi-engine helicopter. *See* 14 C.F.R. §§ 133.1, 133.45(e)(1).