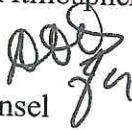


SEP 30 2009



UNITED STATES DEPARTMENT OF COMMERCE  
Office of the General Counsel  
Washington, D.C. 20230

MEMORANDUM FOR: Kelly L. Quickle  
Director  
Office of Decision Coordination and Executive Secretariat  
National Oceanic and Atmospheric Administration

FROM: Barbara S. Fredericks   
Assistant General Counsel  
for Administration

SUBJECT: Revised Agreement between NOAA/NMAO and DOI for  
Aviation Management Services  
(Folder ID 24251)

This provides clearance on the attached agreement between the Department of the Interior (DOI) and the National Oceanic and Atmospheric Administration (NOAA) for assisted acquisition services, under which DOI will provide aviation management and support for commercial aviation flight services. DOI will provide the services through the DOI National Business Center (NBC), Aviation Management Directorate (AMD) to support the NOAA Office of Marine and Aviation Operations (NMAO). The agreement is an umbrella agreement which will be in effect through September 30, 2014. The agreement provides for services during fiscal year (FY) 2010 up to the amount of \$1,104,869.00.<sup>1</sup> The attached agreement replaces an existing agreement which will expire on September 30, 2009.

The attached agreement is authorized under the Economy Act, 31 U.S.C. §1535, and includes a Determination and Finding statement (D&F), as required under the Federal Acquisition Regulation, 48 CFR § 17.503. NOAA must ensure the D&F is properly signed prior to execution of the attached agreement. DOI/NBC/AMD has authority to provide acquisition services on a reimbursable basis under the DOI Working Capital Fund authority, 43 U.S.C. §§ 1467, 1468, under which DOI may utilize funds in the account without limitation as to fiscal year and receive reimbursement for various services, at rates which will result in full cost recovery.

To the extent NOAA uses FY2009, two-year appropriations for the attached agreement, NOAA has programmatic authority for the requested services under the Department's Appropriations Act, 2009, under the heading for Operations, Research, and Facilities (ORF), P.L. No. 111-8, which provides funds for necessary expenses of NOAA activities authorized by law, including "maintenance, operation, and hire of aircraft and vessels."<sup>2</sup> NOAA may not use FY 2010 funds for the attached agreement unless NOAA's FY2010 Appropriations Act, or any Continuing

<sup>1</sup> This estimate includes DOI's service fee of approximately \$168,255.

<sup>2</sup> Under 31 U.S.C. 1343(d), an appropriation is not available to buy, maintain, or operate aircraft unless the appropriation provides specific authorization.

Resolution for FY2010, includes (or incorporates) such specific authority. This condition applies each fiscal year for the use of all future NOAA appropriations for the hire of aircraft services under the attached agreement.

Funding beyond FY2010 will be pursuant to an amendment to the agreement, and each amendment must be accompanied by a signed D&F. NOAA should provide each amendment for clearance through the established clearance process.

The attached agreement does not obligate NOAA funds. NOAA will obligate funds upon placing orders for intermittent use of aircraft and other aviation services with specific vendors from a list to be provided by DOI. The attached agreement consists of a Service Level Agreement (SLA) and a corresponding Inter/Intra Agency Agreement (IAA) (Form NBD-IA-01). The SLA references the IAA, and identifies the service and support to be provided by DOI and establishes service levels and metrics, and organizational responsibilities. The IAA attaches the SLA, and will be signed by the parties. The IAA provides a description of the purpose of the agreement, the period of performance, and funding amount. The IAA provides that form OF-347, Order for Supplies and Services, will serve as the obligating document for each order for aircraft services. NOAA will provide a copy of a completed OF-347 to DOI prior to execution of each flight. The agreement incorporates an Addendum which further clarifies the use of the OF-347 as the obligating document and includes information required for assisted acquisitions under guidance issued by the Office of Management and Budget, Office of Federal Procurement Policy (OFPP).<sup>3</sup>

The attached agreement has been revised to update the IAA's period of performance, amount, and purpose, and to add the Addendum document. We cleared the existing agreement in 2005 (NOAA Folder ID 9331).

We are available to advise NMAO further concerning any review of, or changes to, NMAO's process or program guidance which NMAO may pursue in order to ensure compliance with appropriations laws and OMB/OFPP guidance. If you have any questions concerning this matter, please contact Andrea Torczon of my staff at (202) 482-8028.

Attachment

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<sup>3</sup> See Memorandum dated June 6, 2008 for Chief Acquisition Officers and Senior Procurement Executives on the subject of "Improving the Management and Use of Interagency Acquisitions."