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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

# Memorandum

MIAMI-DADE COUNTY

**Date:** October 5, 2010

**To:** Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

Agenda Item No. 8(A)(1)(A)

**From:** George M. Burgess
County Manager

Resolution No. R-969-10

**Subject:** Ratification of Acceptance and Execution of Federal Aviation Administration (FAA) Supplemental Agreement No. 2 to Other Transaction Agreement (OTA) for the transfer of additional federal funds for the construction of and equipment for the new Airport Traffic Control Tower (ATCT) at Opa-locka Executive Airport

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## RECOMMENDATION

It is recommended that, pursuant to the Expedite Ordinance in Section 2-285(6) of the Code of Miami-Dade County, the Board adopt the attached resolution ratifying the acceptance and execution by the Mayor's designee of Supplemental Agreement No. 2 to the Other Transaction Agreement (OTA) between Miami-Dade County and the Federal Aviation Administration (FAA) for the transfer of additional federal funds for the construction of and equipment for the new Air Traffic Control Tower (ATCT) at Opa-locka Executive Airport (OPF), in the amount of $1,121,366.86.

## SCOPE

This project is located within Commissioner Barbara J. Jordan's District One; however, the impact is countywide in nature as Opa-locka Executive Airport is a regional asset.

## FISCAL IMPACT

This item approves additional federal funds toward a project already approved by the Board, thereby reducing the County's portion of funding for this project. The construction cost of the ATCT is $10,598,333. Supplemental Agreement No. 2 provides additional congressionally designated funding of $1,000,000 toward the construction and equipping of the tower and releases $121,366.86 previously held in reserve.

Supplement No. 2 increases the total federal funding for the project to $7,671,366.86.The remaining non-federal balance of $2,926,966.00 is being funded by the Miami-Dade Aviation Department (MDAD) and the Florida Department of Transportation (FDOT), with FDOT providing grant funds covering 50 percent of the non-federal amount, and MDAD providing the remaining 50 percent through its Improvement Fund.

Future costs associated with the new ATCT, such as utilities, maintenance, landscaping, and janitorial services, are estimated at $42,000 per year. These costs will be allocated from the current Operations and Maintenance (O&M) budget, and will be absorbed through MDAD Maintenance operations and existing contracts.

## TRACK RECORD/PROJECT MONITOR

The OTA is being managed by MDAD Chief of Planning Jose A. Ramos. The grant will be managed by MDAD Chief of Grants Norma Mata.

**BACKGROUND**

OPF is a general aviation airport and serves as a reliever for Miami International Airport (MIA). As a reliever airport, its primary mission is to accommodate the operations and services related to general aviation and commercial aircraft in need of maintenance and services that MIA is unable to provide. OPF is a vital component of Miami-Dade County's Aviation System and is an essential facility based on the number and type of operations, intermix of aircraft traffic, and U.S. Coast Guard operations.

On May 9, 2006, pursuant to Resolution No. R-496-06, the Board of County Commissioners (BCC) entered into an OTA with the FAA for the construction and equipping of a new ATCT at OPF to replace its outdated structure. (An "OTA" is the FAA's reference to an agreement with a party other than a federal agency.) The ATCT will be owned and operated by the County through MDAD.

Under the original OTA, the FAA transferred $2.35 million of its share of the $2.5 million appropriated for this project ($1.0 million of which was congressionally designated) for construction costs. The FAA reserved the $150,000 balance for its anticipated costs associated with the purchase and installation of telecommunications circuits, lines and equipment and related work, and other FAA-provided equipment, as required.

On November 6, 2007, pursuant to Resolution No. R-1205-07, the BCC approved Amendment No. 1 to the OTA for an increase to the previous congressionally designated funding of $4.2 million.

The FAA has now approached MDAD with additional congressionally-designated funding for the project. The attached Amendment No. 2 to the OTA serves to release funds held in reserve in the amount of $121,366.86 and adds $1,000,000 for a new total federal not-to-exceed funding amount of $7,671,366.86.

It is therefore recommended that the Board ratify the actions of the Mayor's designee in accepting and executing this Supplement No. 2 of the OTA in the amount of $1,121,366.86.

Assistant County Manager

# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

**DATE:** October 5, 2010

**FROM:** R. A. Cuevas, Jr. County Attorney

**SUBJECT:** Agenda Item No. 8(A)(1)(A)

**Please note any items checked.**

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____ ) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)(A)
10-5-10

RESOLUTION NO. R-969-10

RESOLUTION RELATING TO OPA-LOCKA EXECUTIVE AIRPORT; RATIFYING EXECUTION BY THE MAYOR'S DESIGNEE OF SUPPLEMENTAL AGREEMENT NO. 2 TO OTHER TRANSACTION AGREEMENT WITH THE FEDERAL AVIATION ADMINISTRATION TO INCREASE FEDERAL FUNDING OF THE CONSTRUCTION AND EQUIPPING OF THE AIR TRAFFIC CONTROL TOWER AT THE AIRPORT IN THE AMOUNT OF $1,121,366.86

**WHEREAS,** this Board desires to accomplish the purposes outlined in the accompanying memorandum and document, copies of which are incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA,** that this Board ratifies, confirms, and approves the execution by the Mayor's designee of Supplemental Agreement No. 2 to the Other Transaction Agreement with the Federal Aviation Administration to increase federal funding of the construction and equipping of the air traffic control tower at Opa-Locka Executive Airport in the amount of $1,121,366.86.

The foregoing resolution was offered by Commissioner Sally A. Heyman, who moved its adoption. The motion was seconded by Commissioner Rebeca Sosa and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman aye
Jose "Pepe" Diaz, Vice-Chairman aye

| | | | |
|---|---|---|---|
| Bruno A. Barreiro | aye | Audrey M. Edmonson | aye |
| Carlos A. Gimenez | aye | Sally A. Heyman | aye |
| Barbara J. Jordan | aye | Joe A. Martinez | aye |
| Dorrin D. Rolle | aye | Natacha Seijas | aye |
| Katy Sorenson | aye | Rebeca Sosa | aye |
| Sen. Javier D. Souto | aye | | |

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The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of October, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

David M. Murray

**SUPPLEMENTAL AGREEMENT NO. 2**
**TO THE**
**OTHER TRANSACTION AGREEMENT (OTA)**
**BETWEEN THE**
**FEDERAL AVIATION ADMINISTRATION (FAA)**
**AND**
**MIAMI-DADE COUNTY ("MDC," OR "SPONSOR"), BY AND THROUGH ITS AVIATION DEPARTMENT ("MDAD")**

The parties desire in this Supplemental Agreement No. 2 to amend the OTA to reflect additional funding through the American Recovery and Reinvestment Act of 2009 (ARRA), as such amendment is permitted by Article 13 of the OTA;

The parties agree to the following amendments to the OTA:

**ARTICLE 2. SCOPE, is hereby modified and appended as follows:**

a. The original OTA provision is hereby modified to delete the statements regarding the Sponsor's use of funding to repair and remediate the existing (former) ATCT site and facilities.
p. The purpose of this Supplemental Agreement is to provide additional funding for necessary FAA Telecommunications Infrastructure (FTI) lines including recurring costs, FAA equipment, resolution of ATCT cab visibility obstructions, and disposal of the temporary (current) ATCT including environmental studies.
q. Additional funding includes funds provided under the American Recovery and Reinvestment Act of 2009 (ARRA).
r. The Sponsor will enter into a Tower Operating Agreement, to be developed in collaboration with the FAA and mutually agreed upon and signed prior to commissioning the new ATCT.
s. Sponsor and FAA shall ensure limitations to visibility are resolved to comply with the visibility criteria as defined in the current version of FAA Order 6480.4 including mitigations in accordance with the Safety Risk Management Document.
t. Sponsor will enter into a no cost lease for space and access for areas in the ATCT occupied by FAA equipment and FAA contract air traffic control personnel.
u. It is mutually agreed that controllers will not be placed at the ATCT until risks associated with visibility are mitigated, the ATCT passes an inspection per FAA Contract Tower Program guidelines, meets requirements in order to receive FAA Security Accreditation, and the FAA is in receipt of the building Certificate of Occupancy.
v. In the event that the terms and conditions of the original OTA and previous Supplement contradict this Supplemental Agreement, this Supplemental Agreement shall take precedence.

**ARTICLE 4. SCHEDULE, is hereby amended to replace paragraph (c) with the following:**

c. The Sponsor agrees to have the ATCT ready for installation of FAA equipment and for operations in accordance with the dates agreed upon as follows:

| | |
|---|---|
| Beneficial Occupancy Date (BOD) | March 2011 |
| Commissioning | April 2011 |

**ARTICLE 5. REPORTING REQUIREMENTS, is hereby replaced in its entirety as follows:**

a. The Sponsor will provide the FAA with a written progress report every month regarding (1) the expenditures of the funds allocated by FAA for the ATCT, (2) status of the construction and environmental efforts, (3) the Airport Sponsor's efforts in training personnel for maintenance of the tower, (5) the status of federal funds received, spent and remaining, and (6) the status of the Airport Sponsor's reporting action taken under the American Recovery and Reinvestment Act of 2009.

b. In addition, the Sponsor will comply with reporting requirements as stated on the following websites:

https://www.federalreporting.gov/federalreporting/home.do
https://www.federalreporting.gov/federalreporting/faq.do#faq6010

**ARTICLE 7. POINTS OF CONTACT is hereby amended as follows:**

**For the Federal Aviation Administration** (*regarding this Agreement*):

Name: Mr. Robert Valdes
Contracting Officer

Address: Federal Aviation Administration
ATO-A, 4th Floor
600 Independence Avenue, S.W.
Washington, DC 20591
Phone: 202-385-6157
Fax: 202-493-4717
Email: Robert.Valdes@faa.gov

Name: David L. Reynolds
Contract Specialist

Address: Federal Aviation Administration
ATO-A, 4th Floor
600 Independence Avenue, S.W.
Washington, DC 20591
Phone: 202-385-8658
Fax: 202-493-4717
Email: David.L.Reynolds@faa.gov

**For the Federal Aviation Administration** (*regarding Washington HQ overall project lead*):

Name: Ms. Valerie Thompson
Terminal Planning Account Manager

Address: Federal Aviation Administration
ATO/Terminal Services/Terminal Planning
1701 Columbia Ave.
College Park, Ga. 30337
Phone: 404-305-6239
E-mail: Valerie.Thompson@faa.gov

**For the Federal Aviation Administration** (*regarding overall technical and project implementation*):

Name: Andreese Davis
Program Implementation Manager, FCT Program

Address: Federal Aviation Administration
ATO/Eastern Service Center/Planning and Requirements
1701 Columbia Ave.
College Park, Ga. 30337
Phone: 404-389-8206
E-mail: Andreese.Davis@faa.gov

**ARTICLE 8. FUNDING AND PAYMENT, is amended with the following changes:**

a. **The original total not to exceed (NTE) cost of this agreement was $2,350,000. Supplemental Agreement #1 to the OTA served to add $4,200,000 for a NTE cost of $6,550,000.00. Supplemental Agreement #2 to the OTA serves to release funds held in reserve in the amount of $121,366.86 and add $1,000,000 for a new NTE cost of $7,671,366.86**. The Sponsor will enter into a separate reimbursable agreement with the FAA to purchase and install telecommunications circuits, lines, related work, and for other FAA-provided equipment. The Authority will reserve funds in the estimated amount of $470,000.00 to be used for these activities. FAA reserves the right to modify this amount after requirements are fully defined. The supplemental funds of $1,000,000 are provided pursuant to the ARRA of 2009, disbursement shall be made within 60 days. The FAA-reserved amount of $121,366.86 will be disbursed after BOD is declared.

**Replace this statement a new paragraph 8e.**

e. If determined to be appropriate by the FAA and the Sponsor, a final payment in an amount to be agreed to by the FAA and the Sponsor under this Agreement may be made to the Sponsor to cover construction cost shortfalls or for closing out contract actions if determined necessary by the parties. Any payment is subject to the total NTE and should not obligate the FAA to pay any amount in excess of $7,671,366.86 unless the FAA identifies additional funds and supplemental agreement to this agreement is executed.

**Add paragraph 8l.**

l. It is understood by the parties that the funds supplied by the FAA through the OTA and stimulus funds will cover the full cost of the project.

**ARTICLE 9. LIMITATION OF FUNDS, is hereby replaced in its entirety with the following:**

The Government's liability to make payments to the Authority is limited to $7,671,366.86 and includes stimulus funds pursuant to the ARRA Act of 2009 as set forth in ARTICLE 8, including written modifications to this Agreement. The Government's total share in this project including the stimulus funds is limited to $7,671,366.86.

**ARTICLE 12. AUDITS, is hereby replaced in its entirety with the following:**

The Federal Government has the right to examine and/or audit relevant financial records relating to this agreement and the design and construction of the ATCT for a period not to exceed three years, after expiration of the term of this Agreement. The Authority and contractors/subcontractors must maintain an accounting system that complies with acceptable accounting standards.

Authority of the Inspector General and Comptroller General Relating to Contracts Using American Recovery and Reinvestment Act Funding (Clause 3.17-2, April 2009) is hereby incorporated.

In addition to any other existing authority the Department of Transportation Inspector General or the Comptroller General has, the Inspector General and Comptroller General are further authorized—(a) to examine any records of the Authority or any of its contractors that pertain to, and involve transactions relating to, the contract or subcontract; and (b) to interview any officer or employee of the Authority or contractor.

**ARTICLE 16. DISPUTES, is hereby replaced in its entirety with the following:**

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 will be resolved by alternative dispute resolution using a method to be agreed upon by the parties. The outcome of the alternative dispute resolution will be final unless it is timely appealed to the Administrator, whose decision is not subject to further administrative review and, to the extent permitted by law, is final and binding (see 49 USC 46110).

**ARTICLE 19. LOWER TIER AGREEMENTS, is hereby replaced in its entirety with the following:**

The Authority hereby certifies to the FAA that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines and requirements, and the Government of American Samoa and local ordinances and regulations as they relate to the application, acceptance and use of Federal funds for this project. In addition to the General Requirements cited in this Article above, the following specific Federal statutes and guidelines will be complied with by the Authority:

- Davis-Bacon Act – 40 U.S.C. 276(a), et. Seq.
- Drug Free Workplace Act of 1988 - 41 U.S.C. 702 through 706
- Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et. seq. It should be noted that "Airport Traffic Control Towers need not be accessible as specified in the provisions of Chapter 11." The upper portion of the ATCT does not need to meet ADA requirements due to the physical requirements necessary to meet Air Traffic Controller qualifications.

- Whistleblower Protections Under the American Recovery and Investment Act (see Attachment I)
- Buy American Act Clauses 3.6.4-3 and 3.6.4-5 (see Attachment II)

Further, on July 23, 2004, the "ADA - ABA Accessibility Guidelines for Buildings and Facilities" was published in the Federal Register at www.access-board.gov/ada-aba.htm. This document contains scoping and technical requirements for accessibility to sites, facilities, buildings, and elements by individuals with disabilities. The requirements are to be applied during the design, construction ... of facilities ... to the extent required by regulations issued by Federal agencies under the Americans with Disabilities Act of 1990 (ADA). Agencies decide when the new July 23, 2004 Guidelines take effect (see ADA - ABA Bulletin of August 2005 at www.access-board.gov/ada-aba/standards-update.htm). The July 23, 2004 Guidelines contain an exemption under PART II ABA APPLICATION AND SCOPING, Chapter 2 Scoping Requirements, sub-chapter 206 Accessibility Routes, 206.2.3, Multi-Story Building and Facilities, Exception 6, and also in sub-paragraph 206.2.6, as follows: "In air traffic control towers, an accessible route will not be required to serve the cab and the floor immediately below the cab".

## ARTICLE 24. OTHER TERMS AND CONDITIONS

All other terms and conditions remain unchanged and in full force and effect.

**AGREED:**

| **Miami-Dade Aviation Department (MDAD)** | **Federal Aviation Administration (FAA)** |
|---|---|
| **By:** _____ | **By:** _____ |
| **Jose Abreu** | **Robert Valdes** |
| _____ | **Contracting Officer** |
| **Aviation Director** | |
| 8-9-10 | |
| **Date** | **Date** |

**Approved as to form and legal sufficiency**

_____
**Assistant County Attorney**

## ATTACHMENT I: Whistleblower Protections under the American Recovery and Investment Act (Added 4/2009)

a. This implements Section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), and applies to all contracts funded in whole or in part by that Act.

b. *Definitions.*

"Board" means the Recovery Accountability and Transparency Board established by Section 1521 of ARRA.

"Covered information" means information that the employee reasonably believes is evidence of gross mismanagement of the contract or subcontract related to covered funds, gross waste of covered funds, a substantial and specific danger to public health or safety related to the implementation or use of covered funds, an abuse of authority related to the implementation or use of covered funds, or a violation of law, rule, or regulation related to an agency contract (including the competition for a negotiation of a contract) awarded or issued relating to covered funds.

"Covered funds" means funds appropriated by or otherwise made available by the ARRA.

"Inspector General" means the Department of Transportation Inspector General appointed under the Inspector General Act of 1978, as amended.

"Non-Federal employer," as used in this section, means any employer that receives ARRA funds, including a contractor, subcontractor, or other recipient of funds pursuant to a contract or other agreement awarded and administered in accordance with the Federal Aviation Administration Acquisition Management System.

c. General.

(1) Non-Federal employers are prohibited from discharging, demoting or otherwise discriminating against an employee as a reprisal for disclosing covered information to any of the following entities:

(a) The Board.
(b) An Inspector General.
(c) The Comptroller General.
(d) A member of Congress.
(e) A State or Federal regulatory or law enforcement agency.
(f) A person with supervisory authority over the employee or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct.
(g) A court or grand jury.
(h) The head of a Federal agency, or its representatives.

(2) A contracting officer who receives a complaint of reprisal of the type described in paragraph (1) must forward it to legal counsel or to the appropriate party in accordance with agency procedures.

d. *Procedures for filing complaints.*

(1) An employee who believes that he or she has been subject to reprisal prohibited by ARRA Section 1553 should submit a complaint regarding the reprisal to the Inspector General of the agency that awarded the contract.

(2) The complaint must be signed and must contain—

(a) The name of the contractor;
(b) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;
(c) The covered information giving rise to the disclosure;
(d) The nature of the disclosure giving rise to the discriminatory act; and
(e) The specific nature and date of the reprisal.

e. *Procedures for investigating complaints.*

(1) Except as provided under T3.17.A.6.d.(1), unless the Inspector General determines that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has previously been invoked to resolve such complaint, the Inspector General will investigate the complaint, and upon completion of the investigation submit a report of the findings to—

(a) The employee and any person acting on the employee's behalf;
(b) The employee's employer;
(c) The head of the appropriate agency: and,
(d) The Board.

(2) Except as provided at Section T3.17.A.6.e. (1)(c), the Inspector General will, not later than 180 days after receiving a complaint under T3.17.A.6.e. (1):

(a) Make a determination that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has been previously invoked to resolve such complaint; or

(b) Submit a report under T3.17.A.6.e.

(c) If the Inspector General is unable to complete an investigation under this section in time to submit a report within 180 days after receiving the complaint—

(i) If the employee submitting the complaint agrees to the extension of time, the Inspector General will submit a report under T3.17.A.6.e. within such additional period of time as must be agreed upon between the Inspector General and the employee submitting the complaint.

(ii) The Inspector General should extend the period for not more than 180 days without obtaining the agreement of the person submitting the complaint to such extension, provided that the Inspector General provides a written explanation for the decision which will be provided to both the employee submitting the complaint and the non-Federal employer.

(d) (i) The Inspector General should decide not to conduct or continue an investigation upon providing to the employee submitting the complaint and the employee's employer a written explanation.

(ii) Upon receipt of the Inspector General's decision not to conduct or continue an investigation, the employee must immediately assume the right to a civil remedy under ARRA Section 1553 (c) (3).

f. *Access to Investigative File of Inspector General.*

(1) The non-Federal employee alleging reprisal under this section must have access to the investigation file of the Inspector General, in accordance with the Privacy Act, 5 U.S.C. § 552a. The investigation of the Inspector General must be deemed closed for the purposes of disclosure under such section when an employee files an appeal to the agency head or a court of competent jurisdiction.

(2) In the event the employee alleging reprisal brings a civil action under T3.17.A.6.g. the person alleging the reprisal and the non-Federal employer must have access to the investigative file of the Inspector General in accordance with the Privacy Act.

(3) The inspection should exclude from disclosures made under T3.17.A.1.f.—

(a) Information protected from disclosure by a provision of law; and

(b) Any additional information the Inspector General determines disclosure of which would impede a continuing investigation, provided that such information is disclosed once such disclosure would no longer impede such investigation, unless the inspector general determines that the disclosure of law enforcement techniques, procedures, or information could reasonably be expected to risk circumvention of the law or disclose the identity of a confidential source.

(4) An Inspector General investigating an alleged reprisal under this section should not respond to any inquiry or disclose any information from or about any person alleging such reprisal, except in accordance with the 5 U.S.C. 552a.

g. *Remedies and enforcement authority.*

(1) *Burden of Proof.*

(a) *Disclosure as contributing factor in reprisal.*

(i) An employee alleging a reprisal under this section must be deemed to have affirmatively established the occurrence of the reprisal if the person demonstrates that a disclosure described in T3.17.A.6.c. was a contributing factor in the reprisal.

(ii) A disclosure should be demonstrated as a contributing factor in a reprisal for purposes of this paragraph by circumstantial evidence, including-- (A) Evidence that the official undertaking the reprisal knew of the disclosure; or (B) Evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal.

(2) *Opportunity for rebuttal.*

(a) The Administrator should not find the occurrence of a reprisal with respect to a reprisal that is affirmatively established under T3.17.A.6.c. if the non-Federal employer demonstrates by clear and convincing evidence that the non-Federal employer would have taken the action constituting the reprisal in the absence of the disclosure.

(b) No later than 30 days after receiving an Inspector General report under T3.17.A.6.d., the Administrator concerned must determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the complainant to a reprisal prohibited by T3.17.A.6.g.(1) and must either issue an order denying relief in whole or in part or must take one or more of the following actions:

(i) Order the employer to take affirmative action to abate the reprisal.

(ii) Order the employer to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay),compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(iii) Order the employer to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

(c) (i) The complainant must be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant should bring a de novo action at law or equity against the employer to seek compensatory damages and other relief available under this section in the appropriate district court of United States, which must have jurisdiction over such an action without regard to the amount in controversy if (A) The Administrator—

(a) Issues an order denying relief in whole or in part under paragraph (a) of this section;

(b) Has not issued an order within 210 days after the submission of a complaint under section 3.17.A.6.c, or in the case of an extension of time section 3.17.A.6.c, within 30 days after the expiration of the extension of time; or

(c) Decides under 3.17.A.6.c(i) not to investigate or to discontinue an investigation; and (B) There is no showing that such delay or decision is due to the bad faith of the complainant.

(ii) Such an action must, at the request of either party to the action, be tried by the court with a jury.

(d) Whenever an employer fails to comply with an order, the Administrator must request the Department of Justice to file an action for enforcement of such order in the district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court should grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney's fees and costs.

(e) Any person adversely affected or aggrieved by an order issued under this section should obtain review of the order's conformance with the law, and this section, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review should be filed more than 60 days after issuance of the order by the Administrator.

## ATTACHMENT II: Buy American Act - Construction Materials (July 1996)

(a) The Buy American Act (41 U.S.C. 10) and Executive Order No. 10582, dated December 17, 1954, as amended, provide that the Government give preference to domestic construction material. The restrictions of the Buy American Act do not apply when the FAA determines use of a particular domestic construction material: (i) would unreasonably increase the cost; (ii) would be impracticable; or (iii) is not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality.

(b) Definitions:

(1) "Components," as used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

(2) "Construction material," as used in this clause, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

(3) "Domestic construction material," as used in this clause, means

(i) an unmanufactured construction material mined or produced in the United States, or

(ii) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable shall be treated as domestic.

(c) The Authority agrees that only domestic construction material will be used by the Authority, the Contractor, subcontractors, material men, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in this contract.

**3.6.4-5 Buy American - Steel and Manufactured Products** (July 1996)

(a) Section 9129 of the Aviation Safety and Capacity Expansion Act of 1990 (Subtitle B of Title IX of Pub. L. 101-508, the Omnibus Budget Reconciliation Act of 1990) requires the use of steel and manufactured products produced in the United States when a project such as that covered by this contract receives funding.

(b) The Contractor shall deliver only steel and manufactured products produced in the United States. This requirement shall not apply where the Secretary or his or her designee has found--

(1) That its application would be inconsistent with the public interest;
(2) That such materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
(3) In the case of the procurement of facilities and equipment under the Airport and Airway Improvement Act of 1982, (i) the cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components to be delivered under this contract, and (ii) final assembly of the facility or equipment to be delivered under this contract has taken place in the United States; or
(4) That inclusion of domestic material will increase the cost of the overall contract by more than 25 percent.

(c) In calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

(d) This clause takes precedence over the provisions of clause "Buy American Act--Supplies" and clause "Buy American Act--Construction Materials" in respect to their applicability to steel and manufactured products.

(e) The offeror warrants that steel and manufactured products to be used in the project are produced in the United States, and that components of unknown origin are considered to have been produced or manufactured outside the United States. Should any end product be of foreign origin, the Contractor shall identify, in writing, such products and country of origin to the Contracting Officer prior to contract award. Such information is required in implementation of Section 9129 of the Aviation Safety and Capacity Expansion Act of 1990, (Subtitle B of Title IX of P. L. 101-508, the Omnibus Budget Reconciliation Act of 1990).

### 3.6.4-18 **Certification Regarding Steel and Manufactured Products** (April 2009)

In accordance with 49 USC Section 50101, the offeror/contractor certifies that:

[Check one]

__ The steel and manufactured goods, including components and subcomponents provided in accordance with this contract are entirely produced in United States (or deemed United States produced pursuant to International Agreement)

__ The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment and final assembly of the facility or equipment has occurred in the United States

## ATTACHMENT III: American Recovery and Reinvestment Act-Reporting Requirements (July 2010)

(a) Definitions. For definitions related to this clause (e.g., agreement, contract, total compensation etc.) see the Frequently Asked Questions (FAQs) available at http://www.whitehouse.gov/omb/recovery_faqs_contractors. These FAQs are also linked under http://www.FederalReporting.gov.
(b) This agreement requires products and services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires the Authority and each contractor to report on its use of Recovery Act funds under this agreement.
(c) Reports from the Authority for all work funded, in whole or in part, by the Recovery Act, are due no later than the 10th day following the end of each calendar quarter. The Authority must review the Frequently Asked Questions (FAQs) for Federal Contractors before each reporting cycle and prior to submitting each quarterly report as the FAQs may be updated from time-to-time. The first report is due no later than the 10th day after the end of the calendar quarter in which the Authority and the FAA contracting officer signed the agreement. Thereafter, reports must be submitted no later than the 10th day after the end of each calendar quarter. For information on when the Authority must submit its final report, see ttp://www.whitehouse.gov/omb/recovery_faqs_contractors.
NOTE: In addition to the quarterly FederalReporting.gov reporting requirements in (c) above, the Authorityy must compile monthly jobs data to the FAA in MS Excel format and must send via email to: 9-AJF-CWP-StimulusTracking@faa.gov. Forms and form instructions will be provided by the FAA Capital Program Formulation Group (AJF-25).
(d) The Authority must report the following information, using the online reporting tool available at www.FederalReporting.gov.
(1) The Federal Government agreement number.
(2) the amount of recovery funds requested by the Authority, cumulative since the beginning of the agreement;
(3) a detailed list of all services performed or supplies delivered under the agreement, including -
(i) project title, if any;
(ii) a description of the overall purpose and expected outcomes or results of the agreement
(iii) an assessment of the Authority's progress towards the completion of the overall purpose and expected outcomes or results of the agreement (i.e., not started, less than 50% completed, completed 50% or more, or fully completed). This covers the agreement (or portion thereof) funded by the Recovery Act.
(iv) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the Authority's and contractor's workforce for all first-tier subcontracts valued at $25,000 or more. At a minimum, the Authority must provide¿
(A) A brief description of the types of jobs created and jobs retained in the United States and outlying areas. This description may rely on job titles, broader labor categories, or the Authority's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
(B) An estimate of the number of jobs created and jobs retained by the Authority and all first-tier contracts valued at $25,000 or more, in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at http://www.whitehouse.gov/omb/recovery_faqs_contractors.
(4) For any first-tier contract funded in whole or in part under the Recovery Act, that is valued at $25,000, the Authority must require the contractor to provide the information described in paragraphs (d)(1)(i), (ix), (x), (xi), and (xii) of this section to the Contractor for the purposes of the quarterly report. The Authority must advise the contractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The Authority must provide detailed information on these first-tier contracts as follows:
(i) Unique identifier (DUNS Number) for the contractor receiving the award and of the contractor's parent company, if any.
(ii) Name of the contractor.

(iii) Amount of the contract award.
(iv) Date of the contract award.
(v) The applicable North American Industry Classification System code.
(vi) Funding agency.
(vii) A description of the product or service to be provided under the contract, including the overall purpose and expected outcomes or results of the contract.
(viii) Contract number (the contract number assigned by the Authority).
(ix) Contractor physical address including street address, city, state and nine-digit zip code and congressional district if in the United States.
(x) Contract primary performance location including street address, city, state and nine-digit zip code and congressional district if in the United States.
(xi) Names and total compensation of each of the five most highly compensated officers for the calendar year in which the contract is awarded if -
(A) in the contractor's preceding fiscal year, the contractor received -
(1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
(2) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
(B) the public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
(xii) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the contractor's workforce. At a minimum, the contractor must provide¿
(A) A brief description of the types of jobs createdand jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
(B) An estimate of the number of jobs created and jobs retained by the contractor in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at
http://www.whitehouse.gov/omb/recovery_faqs_contractors.