

1 ORDER: 8300.10

APPENDIX: 3

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BULLETIN TITLE: Air Carrier and Maintenance Provider Contracts

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1. PURPOSE. This HBAW serves as an additional tool for principal inspectors (PI) to evaluate contractual relationships between air carriers and maintenance providers to determine whether certificate holders are in compliance with applicable regulations. It was developed to supplement existing guidance, such as FAA Order 8300.10, Airworthiness Inspector's Handbook; volume 2, chapter 69, Evaluate FAR Part 121/135 Maintenance Contractual Arrangement; chapter 84, FAR Part 121/135 Operations Specifications; including D77, D78, and D79 Operations Specifications; and HBAW 96-05B, Air Carrier Operations Specifications Authorization to Make Arrangements with Other Organization to Perform Substantial Maintenance.

NOTE: Members of the air carrier industry, including air carriers and trade associations, are currently developing a model contract specification. This specification will be another tool for the aviation industry and Federal Aviation Administration (FAA) personnel to use when evaluating contractual relationships.

2. BACKGROUND. On June 18, 1996, the FAA Administrator announced that the Deputy Administrator would head a task force to conduct a 90-day safety review, examining areas of immediate concern to the agency, especially with respect to safety inspections. A key objective of the review was to develop near-term recommendations consistent with the Challenge 2000 report and other long-term initiatives of the FAA.

A. The task force issued a final 90-day safety review report on September 16, 1996. Issues were categorized into six general areas:

- 1) Certification Policy and Process;
- 2) Resource Targeting to Address Safety Risks;
- 3) Newly Certificated Air Carrier Operations and Growth;
- 4) Outsourcing and Varied Fleet Mix;

- 5) Inspector and Air Carrier Guidance Material; and
- 6) Inspector Resources.

B. Six recommendations were made within category 4. Recommendation 4C encourages the air carrier industry to develop a model contract for outsourcing. It also encourages inspectors to routinely evaluate outsourcing contracts, as required by existing guidance, and to use the model contract as an additional evaluation tool. Also, it was recommended that the model contract address issues of concern, such as:

- (1) oversight, audit systems, and programs that conform to regulations;
- (2) access by the FAA to a contractor's facility (although the FAA already has the right to inspect these facilities, the contract clause will decrease the need to gain the access by issuing subpoenas or by pursuing litigation);
- (3) adequacy of staffing levels and sufficiency of the facilities and equipment to support a varied fleet mix; and
- (4) adequacy of recordkeeping and exchange of information with the contractor.

3. DISCUSSION. Throughout the process of evaluating contracts, it is important to remember that the air carrier is primarily responsible for the airworthiness of its aircraft, including airframes, aircraft engines, propellers, appliances, and parts thereof (see 14 CFR part 121, 121.363(a)(1)). Compliance with this general requirement is ensured by each air carrier having a program covering inspections and all other maintenance, preventive maintenance, and alterations performed by it, or by other persons on its behalf, that requires such work be performed in accordance with the certificate holder's manual (see 121.367(a)).

A. Additionally, the air carrier certificate holder must provide a SYSTEM for continuing analysis and surveillance of its entire maintenance program, including work performed by another person. This system must provide for timely corrective action of discrepancies identified and also provide for a continuous audit of the total system to ensure all parties are in compliance with the certificate holder's manual and regulations (see 121.373 and Advisory Circular (AC) 120-16C, Continuous Airworthiness Maintenance Programs).

B. Some issues that may be affected by contractual relationships are those specifically covered by the regulations. It is important for inspectors to differentiate between the

certificate holder's compliance with the CFR and the operator's compliance with the other legal requirements of a contract, such as price, delivery, or taxes. FAA inspectors must only evaluate a contract insofar as it covers conditions required for the operator and maintenance provider to comply with specific sections of the regulations. Therefore, the inspector should carefully analyze whether the certificate holder's program, as identified in their manuals, require certain items to be specifically covered by a contractual relationship.

C. The regulatory requirements for an air carrier's maintenance, preventive maintenance, and alteration program are set forth in part 121, subpart L. In addition, 14 CFR parts 43, 91 and 119 set forth requirements for the creation and transfer of certain maintenance, alteration and product records. 14 CFR part 145 certificate holders must comply with specific sections of part 121, subpart L as set forth in part 145, 145.2 of the regulations.

4. POLICY. Aviation safety inspectors (ASI) with surveillance responsibilities for air carriers should review the carrier's manual(s) to determine whether the certificate holder can only ensure compliance with regulations by including issues in a contract with its maintenance providers. If the carrier's maintenance program covers all aspects of regulatory compliance, without needing contractual assurances from a maintenance provider, the inspector will have no regulatory basis for reviewing the carrier's contractual requirements or relationships. However, if the air carrier indicates the issue is covered by a contractual clause or relationship, or the carrier's program is administered in such a way as to require specific assurances in a contract, the carrier must be ready to show the contract covers the regulatory requirement.

A. For example, an air carrier is required to keep specific maintenance records for a specified period of time. If the maintenance provider is the source of such records and/or those records are kept by the maintenance provider, the air carrier should have a contract clause which provides assurances that the records will meet their regulatory requirements and be readily available to the air carrier and/or the FAA upon request.

B. The following is a review of the regulatory requirements that may be covered in an air carrier/maintenance provider contract. These subjects may be covered by one or more general clauses in a contract. General clauses would require the maintenance provider ensure compliance with all applicable laws and regulations, or the contract may require compliance with particular sections of the regulations. A general clause would require the maintenance provider to allow an audit of the facilities, equipment, personnel, and records pertaining to the services provided to the air carrier, at any reasonable time. Such clauses would be one method of the air carrier showing compliance with their regulatory requirements. The clauses would

allow the air carrier to ensure compliance with its program requirements and to subsequently show the results of such compliance to the FAA.

C. To ensure compliance with specific sections of 14 CFR, contractual clauses focused on those areas may be contained in the contract(s) between the air carrier and maintenance provider(s). These specific areas may include:

(1) Adequate Organization. Under 121.365, the air carrier must ensure the person with whom it arranges to perform maintenance, has an organization capable of handling the work to be performed. Further, if required inspection items will be maintained or altered by the maintenance provider, the inspection functions must be separated within the organization. If the carrier's maintenance program or procedures require specific compliance aspects, the carrier must be able to show the maintenance provider is equally capable of following the manual and procedures. This may be shown through auditing programs or contractual obligations.

(2) Maintenance Program. Under 121.367, the air carrier must ensure the maintenance provider will perform work in accordance with the carrier's maintenance program. That means the information necessary to ensure compliance with the program is made available to the maintenance provider and, the maintenance provider follows the information provided. Further, the air carrier must be able to show the maintenance provider has competent personnel and adequate equipment and facilities. By showing these requirements are covered, the carrier is able to ensure the aircraft are properly released to service in an airworthy condition under the carrier's specific maintenance program.

(3) Manual Requirements. Under 121.369, the air carrier must provide a manual covering the administration of its maintenance program. The manual(s) often include specific methods for complying with the enumerated paragraphs of this regulatory section. If these requirements must be known to a maintenance provider, the air carrier must ensure that the information is provided. The air carrier may ensure compliance with the information provided through contract, or through its auditing program, or otherwise allowed by the carrier's maintenance manual(s) procedures.

(4) Required Inspection Personnel. Under 121.371, the air carrier must ensure its specified required inspection items are known to the maintenance provider covering the work. The carrier must also ensure the maintenance provider personnel are trained in accordance with its manual and the carrier's procedures. The list of authorized personnel may be kept by the maintenance provider, if allowed under the air carrier manual and procedures. The list must be up-to-date and maintained in accordance with the air carrier's

procedures. Assurance that these provisions are met may be shown by contract and/or auditing procedures.

(5) Continuing Analysis. Under 121.373, the air carrier must continually survey its maintenance program and all persons acting under that program to ensure continuous compliance with the program and the regulations. The carrier must ensure corrective action is taken on any deficiencies or inadequacies found in their maintenance program. This generally requires the air carrier to perform audits of all its maintenance providers.

(a) The regulatory authority used to gain access to all maintenance providers, including those that are providing maintenance services under contract to other maintenance providers is 14 CFR 119.59(a), (c), and (d). The contract should contain provisions to ensure the FAA has that level of access provided in 119.59 to any person providing maintenance services to an air carrier, whether that service is provided directly or indirectly.

(b) The inspector should review the carrier's manual(s) and surveillance procedures to determine whether specific access is required and if so, the contract should ensure the carrier can comply with its own manual and procedures.

(6) Training Programs. Under 121.375, the air carrier must ensure the maintenance provider's personnel are trained in a manner equivalent to the requirements of the carrier's manual. This may require the maintenance provider's personnel attend specific courses or maintain specific levels of proficiency. If the air carrier's manual requires specific training, the contract should cover the maintenance provider in order to ensure compliance with the regulation.

(7) Duty Time. Under 121.377, the air carrier must ensure the duty time requirements are followed by its maintenance providers. If the air carrier's maintenance manual and procedures indicates specific assurances be provided by the maintenance provider, those assurances may be provided by the contract.

(8) Certificate Requirements. Under 121.378, the air carrier must ensure only certificated persons are directly in charge of maintenance and/or perform required inspections. If assurance the air carrier is in compliance with this section is covered by a contract, the inspector should review the language to ensure it is adequate.

(9) Authority to Perform. Under 121.379, the air carrier is authorized to perform or arrange for the performance of maintenance on its own aircraft as set forth

in the maintenance program and manual(s). The center of the relationship between air carriers and maintenance providers is the procedures and assurances set forth in the carrier's manual. The inspector should continually ensure the carrier is able to establish compliance with its own procedures, either through direct supervision, surveillance, and/or auditing, or through appropriate controls such as contractual relationships.

(a) If regulatory requirements are ensured by contractual relationships, the contract should clearly establish the scope and nature of each party's duties and obligations under the regulations.

(b) Although specific language cannot and should not be dictated by the FAA or its inspectors, the contract sections associated with regulatory compliance should enable the carrier to ensure the work is performed and recorded as set forth in the carrier's manual and procedures.

(10) Records. Under 43.9, 43.11, 91.417 and 121.380, specific records must be maintained by aircraft owner and operators. In order to ensure the availability of required records, the contract between the carrier and the maintenance provider may cover specific requirements for documenting and maintenance records of the work performed. If the carrier's maintenance manual(s) and/or procedure(s) indicate the responsibility of making regulatory records available is delegated to maintenance providers, the contract should clearly delineate the records required to be maintained, the length of time the records should be maintained and the form and manner of maintaining such records.

(11) Additional Considerations. If adherence to the carrier's maintenance manual(s) and procedure(s) make clear that regulatory requirements are assured through the business relationships with maintenance providers, the contract should reflect that obligation. Therefore the contract may be used to show compliance with general as well as specific areas. For example:

(a) Scope of Work. The description of work to be performed will dictate the depth of supervision, information exchange, and auditing needed to ensure compliance with the air carrier's maintenance and inspection program. The more extensive the work, the more training, information, and oversight will be needed by the carrier.

(b) Information Exchange. The need for information exchange will be dictated by the technical requirements of the work to be performed. The carrier should ensure

information, from the maintenance provider, is obtained when needed for the carrier's reliability program. Whether the information needed must be covered by contract will depend upon the carrier's manual(s) and procedure(s). If the manual(s) or procedure(s) require such information be specified in the contract, the inspector should request the carrier provide the relevant contract clauses for appropriate review.

(c) Since competent personnel and adequate facilities are required to be provided by the maintenance provider, consideration may be given to including a clause to notify the air carrier of changes in staffing, facilities, and ownership.

(d) Traceability of components and parts information may be included in the contract. This could include everything from new parts to the scrapping and/or returning parts to the air carrier. Consideration should include parts exchanged being in the same configuration, including service bulletin and airworthiness directive compliance.

5. INQUIRIES. This HBAW was developed by the Flight Standards Maintenance Division, AFS-300, with much support from the aviation industry, aviation trade associations, and other FAA personnel. Direct questions regarding this HBAW to Richard Berg, AFS-330, telephone 202.267.3786, facsimile 202.267.5115, Internet Richard.Berg@faa.dot.gov.

6. LOCATION. The material covered by this Bulletin will be incorporated into FAA Order 8300.10, "Airworthiness Inspector's Handbook." Until the material is incorporated, inspectors should make written reference to this bulletin in the margin of the affected handbook chapters.

/s/ Ava L. Mims,
Manager, Aircraft Maintenance Division