

## FAA Contract Opportunities

**Title:** Slot Lease Auction - Newark  
**Name:** Rodney Magee  
**Organization:** AJA-482  
**Region:** HQ - FAA Headquarters (Washington, DC)  
**Phone Number:** 202-267-7699  
**E-Mail:** [rodney.magee@faa.gov](mailto:rodney.magee@faa.gov)  
**Date:** August 6, 2008  
**Archiving date:** August 31, 2008  
**Posting ID:** 6996  
**Phase:** Complex Noncommercial  
**Procurement Method:** Request for Offer- SIR

**Posting (brief abstract):** Slot Lease Auction - Newark

This notice solicits bids for the auction of slot leases at Newark Liberty International Airport in accordance with all of the terms and conditions in the attachment.

### Procedures of the Newark Slot Lease Auction

To be eligible to submit a bid:

An air carrier must be either: 1) a U.S. operator that holds a Certificate issued under Part 119 of the Federal Aviation Regulations (FAR), 14 CFR part 119, and conducts operations under either Part 121 or Part 135 of the FAR, 14 CFR parts 121 or 135; or 2) a foreign air carrier that either holds a foreign air carrier permit issued by the U.S. Department of Transportation under 49 USC Section 41302 or has exemption authority pursuant to 49 USC 40109.

To submit a bid:

No later than 2:00 pm Eastern Time on September 3, 2008, a potential lessee must submit its single bid price for the lease of the slots described in Attachment A (they are only being leased as a package) and a pdf containing a signed copy of the lease agreement with the blanks for the name of the bidder filled in and a pdf of its Certificate or Permit or exemption.

Submit bids by electronic mail (email) to the Contracting Officer: [Timothy.Spencer@faa.gov](mailto:Timothy.Spencer@faa.gov). Bidders assume all liability for ensuring email bids are timely received. Bids received after 2:00 pm, local time, September 3,

2008 will be late and will not be considered for award. The SOLE method for determining timeliness of bids will be the FAA's email system time stamp of receipt.

Except for clear and convincing evidence of FAA equipment/processing failure with no contributory negligence by the air carrier, a late bid or a late withdrawal of a bid will be rejected.

Lease award:

The lease will be awarded to the eligible carrier who submits the highest bid. The amount paid by the winning lessee will be its bid amount. In the event of equal bids, the bidder who submitted the bid received first will be the winner.

The FAA anticipates posting the name of the winning lessee and the amount paid on the FAA's contracting opportunities website no later than 5:00 pm on September 3, 2008.

Comments/questions:

Interested parties may submit comments or questions on these procedures and the accompanying Lease to the Contracting Officer at the e-mail address until August 18, 2008

**Attachments:**  [Slot Lease Auction - Newark](#) ( 72.00 kB)

**[CO's Vendor List](#):** If you would like to be included in the Contracting Officer's list of interested parties for this announcement, please click on the link to the left and complete the form.



800 Independence Avenue, S.W.  
Room 408  
Washington, DC 20591  
Phone: (202) 267-9845

b. Technical Representative

FEDERAL AVIATION ADMINISTRATION  
Attn: Jeffrey C. Wharff.  
800 Independence Avenue, S.W.  
Washington, DC. 20591  
Phone: 202-267-3274

c. Leasee

[BIDDER TO FILL IN NAME AND CONTACT INFORMATION]

**ARTICLE 5 COTR RESPONSIBILITIES**

The COTR is responsible for the technical administration of the contract and the technical liaison with the Leasee. The COTR is not authorized to change the terms of the lease, to make any commitments or otherwise obligate the Government or authorize any changes which affect the terms and conditions of the lease.

The COTR may be contacted regarding questions or problems of a technical nature. In no event, however, will any understanding or agreement, modification, change order, or other matter deviating from the terms of the contract between the Leasee and any person other than the Contracting Officer be effective or binding upon the Government, unless a contract modification or letter of direction is executed by the Contracting Officer prior to completion of this lease.

On all matters that pertain to contract terms, the Leasee shall contact the Contracting Officer.

**ARTICLE 6. CONDITIONS OF THE LEASE**

The Lease shall not exceed five years in duration. The Lease may be revoked by the FAA as required for reasons of national security or the discharge of other sovereign responsibilities. Nothing shall prohibit lessee from selling or subleasing the Lease in secondary markets or using the Lease as collateral; provided, however, that the FAA receives notice (including consideration paid) of the sale, sublease, or use as collateral; and provided further, that the buyer or sub-lessee is also a FAR part 121 or 135 carrier or a foreign air carrier that holds economic authority issued by the U.S. Department of Transportation under 49 U.S.C Section 41302 or an exemption. The slots are not subject to a "use or lose" provision.

**ARTICLE 7. PAYMENT**

A certified check (or other means acceptable to the Contracting Officer) from the winning lessee valued at 10% of the bid amount must be received by the Contracting Officer no later than 2:00pm on September 5, 2008 with the remaining balance due no later than 2:00pm on October 3, 2008. Failure to provide either the 10% deposit or the remaining balance by the times specified may result in a termination of this lease for default. In the event the winning lessee provides the deposit, but fails to provide the balance on time, the lessee will forfeit the deposit.

If prior to the expiration of the Lease, limits on slots are no longer in force at Newark Liberty International Airport, the lessee shall be entitled to a refund prorated for the remaining term of the lease; provided, however, that an increase in the number of slots allowed does not indicate that limits on slots are no longer in force.

In the event of termination or expiration of this Lease prior to the five years, other than a termination for the default of the lessee, the lessee shall be entitled to a refund pro rated for the remaining term of the lease.

**ARTICLE 8. PROTECTION OF INFORMATION**

The parties agree that they shall take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into their possession as a result of this Agreement.

**ARTICLE 9. LEASE DISPUTES**

(a) All Lease disputes arising under or related to this Lease shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of

Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A leasee may seek review of a final FAA decision only after its administrative remedies have been exhausted.

(b) The filing of a Lease dispute with the ODRA may be accomplished by mail, overnight delivery, hand delivery, or by facsimile. A Lease dispute is considered to be filed on the date it is received by the ODRA.

(c) Lease disputes are to be in writing and shall contain:

(1) The leasee's name, address, telephone and fax numbers and the name, address, telephone and fax numbers of the leasee's legal representative(s) (if any) for the Lease dispute;

(2) The Lease number and the name of the Contracting Officer;

(3) A detailed chronological statement of the facts and of the legal grounds for the leasee's positions regarding each element or count of the Lease dispute (i.e., broken down by individual claim item), citing to relevant Lease provisions and documents and attaching copies of those provisions and documents;

(4) All information establishing that the Lease dispute was timely filed;

(5) A request for a specific remedy, and if a monetary remedy is requested, a sum certain must be specified and pertinent cost information and documentation (e.g., invoices and cancelled checks) attached, broken down by individual claim item and summarized; and

(6) The signature of a duly authorized representative of the initiating party.

(d) Lease disputes shall be filed at the following address:

(1) Office of Dispute Resolution for Acquisition, AGC-70,  
Federal Aviation Administration,  
800 Independence Ave, S.W., Room 323,  
Washington, DC 20591,

Telephone: (202) 267-3290,  
Facsimile: (202) 267-3720; or

(2) other address as specified in 14 CFR Part 17.

(e) A Lease dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the Lease claim involved. A Lease dispute by the FAA against a

leasee (excluding Lease disputes alleging fraud or a violation of antitrust laws) likewise shall be filed within two (2) years after the accrual of the Lease claim. If an underlying Lease entered into prior to the effective date of this part provides for time limitations for filing of Lease disputes with the ODRA which differ from the aforesaid two (2) year period, the limitation periods in the Lease shall control over the limitation period of this section.

(f) A party shall serve a copy of the Lease dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is to be received by the ODRA.

(g) After filing the Lease dispute, the leasee should seek informal resolution with the Contracting Officer.

(h) The FAA and lessee will continue the Lease, in accordance with the provisions of the Lease, after a dispute has been filed pending a final FAA decision.

(i) If the adjudicator determines that an amount is due and unpaid, the party owing the amount due will pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the Lease dispute, or (2) the date payment otherwise would be due, if that date is later, until the date of payment. If interest is owed, it must be calculated as simple interest to be paid at the rate fixed by the Secretary of the Treasury that is applicable on the date the Contracting Officer receives the Lease dispute and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary until payment is made.

(j) Additional information and guidance about the ODRA dispute resolution process for Lease disputes can be found on the ODRA Website at <http://www.faa.gov>.

#### **ARTICLE 10 PROTEST AFTER AWARD**

Upon receipt of a notice that a protest has been filed with the FAA Office of Dispute Resolution, or a determination that a protest is likely, the Administrator or his designee may instruct the Contracting Officer to prohibit the lessee from using the leased slots. If the lessee is prohibited from using the leased slots based on this clause, the Government will consider requests for equitable adjustments related to the delay in obtaining a useful interest.

#### **ARTICLE 11 PROTEST**

**AS A CONDITION OF SUBMITTING A BID FOR A LEASE, THE LESSEE OR POTENTIAL LESSEE AGREES TO BE BOUND BY THE FOLLOWING PROVISIONS RELATING TO PROTESTS:**

(a) Protests concerning leases, including without limitation protests concerning the proposed procedures for award of the leases, the award decision, proposed terms of the lease or the authority to conduct the auction shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute

Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A protestor may seek review of a final FAA decision only after its administrative remedies have been exhausted.

(b) Offerors initially should attempt to resolve any issues concerning potential protests with the Contracting Officer. The Contracting Officer should make reasonable efforts to answer questions promptly and completely, and, where possible, to resolve concerns or controversies. The protest time limitations, however, will not be extended by attempts to resolve a potential protest with the Contracting Officer.

(c) The filing of a protest with the ODRA may be accomplished by mail, overnight delivery, hand delivery, or by facsimile. A protest is considered to be filed on the date it is received by the ODRA.

(d) Only an interested party may file a protest. An interested party is one whose direct economic interest has been or would be affected by the award or failure to award a FAA lease. Any air carriers who are not eligible to submit a bid (pre-proposal submission protests) or any air carriers who did not submit a bid (post proposal submission protests) are not "interested parties" within this definition.

(e) A written protest must be filed with the ODRA within the times set forth below, or the protest shall be dismissed as untimely:

(1) Protests based upon alleged improprieties in the anticipated lease or procedures to award the lease that are apparent prior to the time set for receipt of bids shall be filed prior to the time set for the receipt of bids.

(2) In procurements where proposals are requested, alleged improprieties that do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested not later than the next closing time for receipt of bids or proposals following the incorporation.

(3) For protests other than those related to alleged lease improprieties or improprieties in the proposed lease procedures, the protest must be filed on the later of the following two dates:

(i) Not later than seven (7) business days after the date the protester knew or should have known of the grounds for the protest; or

(ii) If the protester has requested a post-award debriefing from the FAA Contracting Officer, not later than five (5) business days after the date on which the Contracting Officer holds that debriefing.

(f) Protests shall be filed at:

- (1) Office of Dispute Resolution for Acquisition, AGC-70,  
Federal Aviation Administration,  
800 Independence Ave., S.W.,  
Room 323,  
Washington, DC 20591,

Telephone: (202) 267-3290,  
Facsimile: (202) 267-3720; or

- (2) other address as specified in 14 CFR Part 17.

(g) At the same time as filing the protest with the ODRA, the protester shall serve a copy of the protest on the Contracting Officer and any other official designated in the SIR for receipt of protests by means reasonably calculated to be received by the Contracting Officer on the same day as it is to be received by the ODRA. The protest shall include a signed statement from the protester, certifying to the ODRA the manner of service, date, and time when a copy of the protest was served on the Contracting Officer and other designated official(s).

(h) Additional information and guidance about the ODRA dispute resolution process for protests can be found on the ODRA Website at <http://www.faa.gov>.

## **ARTICLE 12 Novation and Change-of-Name Agreements**

(a) In the event the Lessee wishes the Government to recognize a successor in interest to the Lease due to a transfer of assets or an applicable merger, the Lessee must submit a written request to the Contracting Officer with the required documentation. This is required in order to obtain the Government's consent for the successor Lessee to assume the lease.

(b) For a change of Lessee name the lessee agrees to provide the necessary documentation to establish that a legal name change has been made, including any revision to payment addresses/accounts.

(c) The Lessee agrees to follow the procedures and provide the documents, as requested by the cognizant Contracting Officer, described in AMS Procurement Guidance T3.10.1, "Novation and Change-of-Name Agreements."

(d) When it is in the Government's interest not to concur in the transfer of the Lease from one company to another, the Lessee remains subject to all Lease terms and conditions including termination for default should the Lessee be shown to be engaged in anticompetitive behavior concerning the Lease.

## **ARTICLE 13 Termination for Convenience of the Government (Fixed Price)**

(a) The Government may terminate this lease in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Lessee a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, the lessee shall proceed in accordance with the direction in the letter.

(d) After termination, the Lessee shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Lessee shall submit the proposal promptly, but no later than 1-year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Lessee within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Lessee fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Lessee because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) above, the Lessee and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for a prorated share of the lease term paid for, but unused. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total Lease price. The Lease shall be amended, and the Lessee refunded the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Lessee and the Contracting Officer fail to agree on the whole amount to be refunded because of the termination of the lease, the Contracting Officer shall pay the Lessee the amount determined by the Contracting Officer.

(g) If the termination is partial, the Lessee may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) paid for the remainder of the lease.

(h) Unless otherwise provided in this Lease or by statute, the Lessee shall maintain all records and documents relating to the terminated portion of this Lease for 3 years after final settlement. The Lessee shall make these records and documents available to the Government, at the Lessee's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

**ARTICLE 14 Default (Fixed-Price Supply and Service)**

(a) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Lessee, terminate this Lease in whole or in part if the Lessee fails to perform any provisions of this Lease.

(b) Prior to terminating a Lease for default, the Government will issue a show cause notice permitting the Leasee to present any defenses it may have to the default termination.

(c) If the Government terminates this Lease in whole or in part, it may retire or sell the slots remaining under the lease. Whether the slots are retired or auctioned, the Leasee will receive no compensation.

(d) If, after termination, it is determined that the Leasee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(e) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this Lease.

**ARTICLE 15 Bankruptcy**

In the event the Leasee enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Leasee agrees to furnish, by certified mail or electronic commerce method authorized by the Lease, written notification of the bankruptcy to the Contracting Officer responsible for administering the Lease. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this Lease.

**AGREED:**

\_\_\_\_\_

Federal Aviation Administration

(Name of Airline)

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Attachment A****SLOT TIMES**

The identified times below, are all in local time (i.e., standard or daylight saving).

<b>Day of Week</b>	<b>Arrival Times</b>		<b>Departure Times</b>
	<b>12:00pm-12:29pm</b>	<b>5:00pm-5:29pm</b>	<b>7:30pm-7:59pm</b>
<b>Sunday</b>		<b>X</b>	<b>X</b>
<b>Monday</b>	<b>X</b>		<b>X</b>
<b>Tuesday</b>		<b>X</b>	<b>X</b>
<b>Wednesday</b>		<b>X</b>	<b>X</b>
<b>Thursday</b>		<b>X</b>	<b>X</b>
<b>Friday</b>		<b>X</b>	<b>X</b>
<b>Saturday</b>	<b>X</b>		<b>X</b>