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Aviation Law Made Simple

BY JASON DICKSTEIN
AEA GENERAL COUNSEL

Maintenance Contracting: Can I Subcontract to My Own Employee?

Your customer has a list of tasks for you. Most of them are routine, but one is troubling you because you are not sure it falls within your ratings. A quick conversation with your PAI convinces you the function falls outside your ratings. What can you do?

This sort of scenario occurs more often than we might expect. A seemingly simple avionics installation might require work on the airframe, such as puncturing a pressurized hull to install the antenna, then installing appropriate doublers. Many AEA members overcome the limitations of their ratings by contracting out work to a third party who is authorized to do the work. They might subcontract the work to another repair station or to an A&P mechanic.

Since the 1988 amendments to Part 145, repair stations have been permitted to subcontract work to both certificated and non-certificated entities. The confirmation of the right to subcontract work to non-certificated entities has further complicated the maintenance function subcontracting landscape.

Completing the Paperwork

How do you structure a contracting-out relationship? Let's assume the manuals have the appropriate procedures for contracting maintenance functions. First, you need to make

certain the functions you intend to contract out are listed on your FAA-approved list of subcontracted functions. This "functions" list is required under 145.217(a)(1).

As a practical matter, it is best to identify all functions that might be contracted out and to seek FAA approval for those functions at the earliest possible time. Waiting for FAA approval of your contract maintenance list can impede your ability to contract out a function you want accomplished.

Second, you need to identify to whom you will contract out the work. The list of parties to whom you subcontract maintenance tasks must include the following data:

- Name of the subcontractor.
- Certificate(s) held by the subcontractor.
- Rating(s) held by the subcontractor.
- A list of the maintenance functions subcontracted to that subcontractor.

Unlike the list of maintenance functions, the list of maintenance subcontractors is *not* subject to FAA approval. Sometimes, a repair station will include language in its manual specifying that they will seek approval of the contractor before subcontracting work to that party. Such language should be removed from a repair station's manual.

Coordinating these decisions with your local FSDO or principal inspec-

tor is a wise idea, but imposing on your business a requirement to do so, where there is no regulatory requirement to do so, imposes an unnecessary burden on your business in those times when speedy identification of a subcontractor is necessary to meet the needs of your business and the needs of your customer. Remember, if you impose an unnecessary burden on your business through your manual, failure to comply with that unnecessary burden may represent a regulatory violation for failure to follow your own manual.

Each time you contract out work to a subcontractor, it is important to check that:

- the function you want to subcontract is on the FAA-approved list;
- the party to whom you intend to subcontract is capable of handling the work assigned; and
- the appropriate information is listed on the contracted maintenance parties list.

It is important to go through the exercise of checking each element with each new subcontract because it is easy to continue subcontracting, believing the functions are listed and the other information lines up. After months or even years of a relationship, it is possible to look back and see the nature of the subcontracted maintenance has changed over time. That change could bring the functions

outside the scope of what is authorized. By checking the functions and the parties every time there is a subcontracted function, you will ensure your paperwork always remains clean (and give yourself a chance to clean up your paperwork and comply with the regulations before you inadvertently violate the regulations).

What does “the party to whom you subcontract the work must be capable” mean? Obviously, the subcontractor needs the appropriate experience, tooling, facilities, data and more. The subcontractor needs to have the appropriate legal capabilities as well.

If you are subcontracting to a certificated entity, that entity must have the right certificates, ratings and operations specifications to perform the work in question. If you are subcontracting work to a non-certificated entity, your own facility must be able to verify the work was done correctly and be able to test/inspect it before you approve it for return to service.

So, how do you handle subcontracts to your own employee? From the FAA paperwork standpoint, you first need to make certain the functions are listed in the FAA-approved functions list. Then, you need to add your mechanic’s name, certificate, ratings (such as airframe and powerplant) and the functions (from the FAA-approved list) the mechanic will be performing.

In the process, you should be confirming that:

- the function is something the mechanic has legal authority to perform (appropriate certification, ratings and operations specifications), and
- the function is something the mechanic has the practical ability to perform (appropriate tooling, housing, data).

The Contract Relationship

Once the initial paperwork is com-

plete, the actual contracting functions can commence.

If you are contracting with a non-certificated entity, you must have a contract under which the non-certificated entity agrees to permit the FAA to perform inspections of the facilities of the non-certificated entity. You also need to make certain the non-certificated entity has a quality-control system equivalent to the system followed by the repair station.

If you are contracting maintenance work to a machine shop, for example, the machine shop must have a quality-control system equivalent to yours. It is not enough to simply provide your quality manual to the contractor; you must provide adequate surveillance to ensure the quality-control procedures are followed. Your procedures for performing this oversight should be a part of your quality manual.

The regulations specifically require the repair station remain directly in charge of work subcontracted to a non-certificated entity. A person directly in charge doesn’t need to physically observe and direct each worker constantly, but must be available for consultation on matters requiring instruction or decisions. The repair station must verify the work has been completed correctly and must verify airworthiness of the work before signing off on the article.

In the case of subcontracted work to a certificated entity, such as an A&P mechanic, the repair station should make certain the mechanics signs off for the work he or she performs. Then, the repair station completes a separate approval for return to service reflecting the work it performs, which may include incorporating or connecting to the work performed by the mechanic.

Recording the Work

It is important to make the relation-

ship between you and your subcontractor clear. If your certificated employee is going to perform subcontracted work under his or her own certificate, he or she should sign off on the work on his or her own form — *not* the repair station’s standard approval for return to service document.

If the work will be recorded on an 8130-3 tag, the subcontractor’s own name and certificate number should appear on the 8130-3. If the work will be approved through a logbook entry, the certificated employee’s name and certificate number should appear in the logbook entry.

Remember, the reason you are subcontracting to an A&P mechanic is because the work falls outside the scope of your repair station’s ratings. Don’t make the mistake of signing off under the repair station’s certificate number for the work performed under another certificate. You can, of course, sign for the other aspects of the work your repair station did accomplish.

Conclusion

Contracting out maintenance functions can be a useful procedure, but it is important to make certain the transactions are approved, formed and documented in accordance with the regulations. At the same time, do not make extra work for yourself by writing manual provisions that require steps falling outside the scope of the regulations.

Don’t forget to investigate other legal issues that might arise from your maintenance contracting arrangements, such as contract law, labor law and tax law implications, depending on how you structure the arrangement.

Do not seek labor law and tax law advice from your principle avionics inspector; consult appropriate counsel to get the full compliance story. □