

# Chapter 10. PROJECT FORMULATION, REQUESTS FOR AID, AND LETTERS OF INTENT

## Section 1. PROJECT FORMULATION

### 1000. GENERAL.

The project formulation stage begins with the sponsor's identification of planning and development needs for an airport. Needs may be identified as a result of a master planning study, systems planning study, Part 150 study, Part 139 inspection, master record inspection, runway safety action team recommendations, security recommendation, planning conference, an FAA Facilities and Equipment project, or the implementation of a new approach procedure. Project formulation continues through the development of a concept; preparation of technical and cost information, including benefit/cost analyses (BCA) if appropriate; development of a financial plan; accomplishment of engineering and design; and the review by the FAA of the project description, justification, and other supporting documentation. It may also include the required environmental actions, coordination processes, airspace analysis, and an overall project development schedule. Consideration may be given to multi-year funding at this stage (See Paragraph 1102). Project formulation is normally conducted through the preparation of a Capital Improvement Program (CIP). The CIP, which represents the five-year plan of development of an airport, is prepared in close cooperation with the applicable FAA field office. The formulation stage is completed when the project application is prepared and submitted to the FAA. Timing of CIP development and transmission to the FAA is noted in FAA Order 5100.39.

### 1001. PROJECT FILE.

A project file is a collection of files and records on a particular project that is kept by the Regional office or by the various field offices, as decided by the Airports Division. The Division is left to its own discretion as to what type of information, the format the information is to be provided in, and what is to be included in the project file except for that information required by this Chapter or other Orders. However, there should be enough information to be able to track a project from project formulation to closeout and audit or, for disapproved projects, a narrative statement supporting the disapproval.

### 1002. PROJECT ENGINEERING.

a. The sponsor is responsible for providing all project engineering including the preparation of plans and specifications, construction supervision, and the conducting of inspections and testing needed for project control. Proposals for engineering services will normally be submitted to the FAA for approval unless a certification has been submitted in accordance with Chapter 10, Section 3. Engineering services may be provided through contract with a qualified engineer or engineering firm or by the sponsor's own personnel (force account).

b. Separate funding for the preparation of plans and specifications may be provided in accordance with Paragraphs 300 and 310d.

### 1003. CONTRACT ENGINEERING SERVICES.

If the sponsor engages the services of a qualified engineer or an engineering firm, the engineering agreement becomes the basis for FAA determination of adequate engineering services and reasonable costs. Chapter 9 of this Order and AC 150/5100-14, Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects, provides guidance for selection, review, and approval for engineering services. If deemed necessary by the FAA, a draft of the agreement will be submitted to ensure that:

a. The scope of the engineering is described completely;

- b. The fees or reimbursements are reasonable and eligible as shown by a cost/price analysis;
- c. The type of contract is appropriate; and
- d. The engineering/consultant firm and the proposed contract terms are acceptable.

Section 47105(d) of the Act authorizes the Secretary to require certifications from sponsors that they will comply with statutory and administrative requirements. Use of sponsor certifications for selection of engineering, architectural, professional services, and planning consultants is encouraged. A copy of the certification form is contained in Appendix 25. Acceptance by the FAA of the sponsor's certification does not limit the FAA's ability to request and review documentation to ensure the accuracy of the certification.

#### **1004. FORCE ACCOUNT ENGINEERING SERVICES.**

Proposals to accomplish airport engineering with the sponsor's own personnel or by its agent must be approved by the FAA. Proposals shall be submitted in writing and subjected to a review similar to that for engineering contracts. The guidelines and procedures for force account engineering services are the same as for force account construction work discussed in Chapter 12. It should be noted that most of the factors considered in the selection of a consultant would be applicable to approval of services to be done by force account. Field offices should exercise diligence in reviewing force account engineering costs. The sponsor's proposal to use force account rather than contract-engineering services must be fully documented and should contain as a minimum:

- a. Justification for doing the work by force account rather than by contract;
- b. Estimate of costs, including detailed data on estimated work hours, hourly rates, non salary expenses, and indirect costs;
- c. Names and engineering qualifications of personnel that will be accomplishing specific tasks;
- d. Statements concerning the capability of the Sponsor to perform the various tasks of design, supervision, inspections, testing, etc., as applicable to the project with arguments to support the decision to use force account;
- e. Summary of Sponsor's experience with airport engineering pertaining to projects with similar design scopes; and
- f. Statement by the Sponsor on the ability of its personnel to integrate the project into their workload, with a schedule of accomplishment of tasks, date by which the work will be complete, or dates within which it will take place.

#### **1005. COORDINATION AND APPROVAL OF PLANS AND SPECIFICATIONS.**

All AIP construction projects shall be coordinated with other FAA operating offices and Government agencies, as appropriate. Examples of such coordination include obtaining recommendations from the appropriate operating divisions with respect to designation of instrument runways, adequacy of approach lights, airport marking, air traffic notification procedures, security requirements, and the location of underground facilities in the work area. In addition, projects must comply with local ordinances and other applicable requirements. Generally, FAA Airports personnel shall be responsible for coordination within FAA while the sponsor maintains the responsibility for all other coordination.

- a. **Approval of Plans and Specifications.** Sponsors may submit certification of plans and specifications consistent with the requirements in Chapter 10. If certifications are not received, the FAA must review the plans and specifications to assure that they are in accordance with applicable standards and, if acceptable, approve them for use. If a sponsor submits plans and specifications, which contain

proprietary items, the FAA Airports Office must review the sponsor's justification for sole source procurement to determine if the project warrants such authority.

**b. Sponsor's Engineer's Report.** A sponsor's engineer's report, setting forth the general analysis and explanation of reasons for design choices by the engineer, must be submitted with the plans and specifications unless deemed inappropriate by the field office. The report should, at a minimum, provide the following information:

**(1) Design Computations.** The report should include a summary of the design computations used in the design of major development items. Use of FAA Form 5100-1 for the design pavement thickness is required. A summary of computations and a description of the method used to conduct the drainage design must be presented. The engineer is not required to submit earthwork cross-sections or mathematical calculations for designs but should have them available for review by FAA representatives if requested.

**(2) Reasons for Selections of Design Materials and Equipment and Modifications to Standards.** The engineer's choices and recommended modifications will, in most cases, be influenced by service records for comparable construction and by cost comparisons. The report should include concise statements and cost comparisons that justify selections made and modifications to standards proposed in the project. See Order 5300.1, Approval Level for Modification of Agency Airport Design and Construction Standards for additional information on modifications to design and construction standards.

**(3) Other Elements.** The engineer must outline related project work elements to be done without AIP assistance, including details on how the work is to be accomplished, and how it relates to the AIP work. Work to be done by utility companies must be described in sufficient detail to verify adequate funding for the work.

**(4) Support Data.** The report should also include supporting data and itemized project cost estimates with source information. Any unique circumstances that may influence adjustments of existing project cost estimates should be explained.

**c. Conditional Approval.** If the certification of plans and specifications is not received from the sponsor, the FAA may conditionally approve plans and specifications to permit initial advertising of bids, even though the plans and specifications may require minor revisions. The FAA Airports Office should use the conditional approval procedure only when the revisions are non-controversial and do not significantly affect the design and engineer's estimate. The FAA Airports Office should, with the signature giving conditional approval, make a note of reference to the letter that discusses the conditions. Removal of the conditions after acceptable revisions will require a subsequent notation canceling the condition. Receipt of revisions and cancellation of the conditions should occur prior to issuance of the grant offer. (See Appendix 9, Paragraph 14 for special condition on preliminary plans and specifications.)

#### **1006. INTERGOVERNMENTAL PROJECT REVIEW.**

**a. State and Local Review of Grants.** Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, as supplemented, establishes procedures that replace the procedure in OMB Circular A-95. E.O. 12372 allows States, in consultation with local elected officials, to establish their own process for reviewing and commenting on Federal programs and activities. It requires Federal agencies to accept State and local views or explain why the views are not accepted.

**(1)** Regulations implementing E.O. 12372 are contained in Title 49 CFR, Part 17, Intergovernmental Review of Department of Transportation (DOT) Programs and Activities. Additional guidance is contained in FAA Order 1200.21, Intergovernmental Review of FAA Programs and Activities. APP-520 can provide information on documenting a State's intergovernmental project review process or single points of contact.

(2) The intergovernmental review process is supplemented by provisions of 49 USC 47106(c)(1)(A). It requires that, upon request, a large or medium hub must provide airport layout plan amendments (and an associated master plan) to the relevant Metropolitan Planning Organization (MPO) for airport development projects if the work involves location of an airport, runway or major runway extension. Certification by the airport that the requirement was met may be satisfied in grant agreement or other appropriate documents.

**b. FAA Responsibilities.**

(1) **Sponsor Notification.** The FAA is responsible for informing potential sponsors of AIP grants of the required intergovernmental project review process. This process normally allows 60 days for State and local agencies to complete the review. Sponsors should be notified of the name and address for single points of contact or other entities to be contacted prior to grant application submittal. The planning projects or other channels of information may be used to inform potential sponsors.

(2) **Treatment of Comments.** When the intergovernmental project review process results in comments, the FAA should pursue one of the following options:

(a) **Accept the Comments.** That is, do as the State or local agency recommends;

(b) **Reach a Mutually Agreeable Solution with the State or Local Agency.** This solution may differ from the original State or local agency position on the matter; or

(c) **Reject the Comments.** While the FAA is not required to accept comments or discuss another solution, a written explanation of the final decision should be provided as a courtesy to the single point of contact. The explanation should be provided at a minimum of 15 days before beginning work on a project. If no single point of contact exists, the explanation should be sent to other parties that initially provided comments. Where 49 USC 47106(c)(1)(A) is involved, the MPO should receive the explanation. An informational copy of the explanations should be sent to the DOT Assistant Secretary for Administration.

(3) **Early Project Review.** Sponsors regularly engage environmental consultants to prepare environmental assessments as part of the FAA's National Environmental Policy Act (NEPA) process. State agencies reviewing the assessments, capital improvement programs, or other planning studies use the State's review and comment process.

(a) The intergovernmental project review should be accomplished as early as feasible. The early project review in Order 1200.21 is incorporated into Order 5050.4 and other NEPA guidance.

(b) When the reviews are accomplished as described in subparagraph b(3)(a), intergovernmental project review does not need to be repeated during the implementation stage unless the scope of work changed, substantial new information has become available, or significant time lapsed.

(4) **Exempt Projects.** Projects that do not significantly affect State or local governments beyond airport boundaries are exempt from intergovernmental review, unless coordination is requested under a State's review and comment process or 49 USC 47106(c)(1)(A).

(5) **Process Changes.** Formal changes in a State's intergovernmental project review process shall be forwarded to the DOT Assistant Secretary for Administration and implemented within 90 days of receipt from the State.

**1007. PUBLIC HEARING.**

a. **General.** Any airport development project involving airport location, a new runway, or a major extension of an existing runway cannot be approved unless the opportunity for a public hearing has

been offered, in accordance with Section 47106(c) of the Act. In addition, there may be other occasions when either the opportunity for a public hearing or a public hearing itself may be appropriate. Section 1506.6 of the CEQ Regulations established procedures for public involvement in projects affecting the environment. Appendix 6 of FAA Order 1050.1 and FAA Order 5050.4 prescribe environmental requirements in detail. These orders are controlling and should be consulted regarding public hearing requirements. In cases where the opportunity for a public hearing was accomplished during advanced planning, it does not need to be repeated at the implementation stage unless the scope of work has changed, substantial new information became available, or significant time elapsed.

**b. Form of Notice.** The notice of opportunity for public hearing must include a concise statement of the proposed development and be published in a newspaper of general circulation in the communities in or near the proposed development. The notice must specify that the hearing is for the purpose of considering the economic, environmental, and social effects of the airport location or development and its consistency with the goals and objectives of such urban planning as has been carried out by the community. The notice must provide a minimum of 30 days from the date of the first required publication in accordance with local law, for submission of requests for a hearing by persons having an interest in the project, and state the manner in which a hearing may be requested. The notice must further state that a copy of the sponsor's environmental documentation will be available at the sponsor's place of business for examination by the public for a minimum of 30 days, from the date of the notice. This 30-day minimum should commence from the date the notice is first required to be published, if published more than once.

**c. Request for Hearing.** A public hearing must be provided if requested. When a public hearing is to be held pursuant to receipt of a request, the sponsor must publish a notice of that fact in the same newspaper in which the notice of opportunity for a hearing was published. The last notice required by local law must be published at least 15 days before the date set for the hearing. The notice must specify the date, time, place of the hearing, a concise description of the proposed project, and indicate where and at what times more detailed information may be obtained.

**d. Report of Hearing.** If a public hearing is held, the sponsor must provide the FAA with a summary of the issues raised, the alternatives considered, the conclusion reached, and the reasons for that conclusion. The sponsor must also keep a recording or other records covering the hearing and, upon FAA request, prepare a verbatim transcript of such hearing.

**e. Lack of Interest.** A hearing need not be held if, after adequate public notice of opportunity for a public hearing, no person or group having an interest in the project's economic, social, and environmental effects requests a hearing. In such a case, the sponsor must submit written statement that adequate notice of opportunity for a hearing had been provided, and that no request for a public hearing was received. Upon request, proof of publication of the notice must be submitted.

#### **1008. ALP REVIEW.**

During the project formulation, the sponsor and the FAA should review the approved ALP to ensure that it is current and contains the proposed project as required in Section 47107(a)(16) of the Act.

#### **1009. VALUE ENGINEERING (VE).**

VE is the systematic application of recognized techniques that identify the function of a project or service and provide the best function reliably at the lowest overall cost. Cost-benefit studies, present worth analysis, the study of alternatives, tactical planning, or other forms of technical evaluation may substitute for VE in most airport grant projects.

**a. Required VE:** VE will be required at some point in project formulation for new primary airports. Use of a formal VE task team during planning, project formulation, or construction design may also be required by the region for the following work:

- (1) Substantially changed airfield configurations at a hub airport that annually enplanes 0.25 percent or more of U.S. passengers (medium and large hubs);
- (2) Modifications of design standards proposed by an airport that would result in significantly increased cost;
- (3) The preparation of State-wide system standards proposed to be approved by the FAA and used for development at nonprimary airports;
- (4) Multi-year projects; and
- (5) Similar projects exceeding \$10 million Federal share, unless this work is part of a larger unit such as a new airport where the VE was already considered or completed.

**b. VE Procedures:** Specific concurrence on the scope of work by the region is required prior to the use of VE by local or State agencies in AIP projects. The cost of work performed on VE will not be allowed unless incurred after the date of the FAA concurrence on the scope. VE guidance is contained in Advisory Circular 150/5300-15.

## Section 2. REQUESTS FOR AID

### 1010. GENERAL.

**a. Capital Improvement Program (CIP):** A sponsor's five-year program of development is included in its CIP. The CIP is prepared on an annual basis and it identifies the airport, its proposed development, funding requirements, source of funding, fiscal year, project description, and justification. The CIP submission may also include information on environmental, Exhibit "A" land and ALP status, and sketches. The CIP is developed in close coordination between the sponsor and the FAA Airports Office, with participation by state aviation officials and metropolitan planning organizations, as appropriate. For further information on CIP development and the ACIP process, including a discussion of the National Priority System (NPS), submission and approval dates, and notification of sponsors, refer to FAA Order 5100.39.

**b. Preliminary Notice of Interest.** The CIP also serves as a preliminary notice of the sponsor's interest and intent without actually obligating the sponsor to perform any work or expend any funds. Acceptance of the CIP by the FAA does not imply that the proposed project will be programmed under the AIP. When a project need is identified subsequent to the annual ACIP process, the sponsor may submit an updated CIP.

**c. Form Preparation.** An application for Federal assistance, Standard Form (SF) 424, together with FAA Form 5100-100 (Appendices 3 and 4), must be submitted for any of the projects programmed under AIP to the appropriate FAA Airports Office before issuance of a grant. The original and two copies of the SF 424 must be completed in accordance with the instructions on the reverse side of the form and submitted to the FAA with all supporting documentation, sponsor assurances, and certifications. The appropriate FAA Airports Office is responsible for furnishing guidance about the proper completion of the form and the required supplemental supporting documentation, sponsor assurances, and certification.

### 1011. SUPPORTING DOCUMENTS.

The completed SF 424 must be accompanied by the supporting documents listed below, as appropriate. The FAA may request on a case-by-case basis additional supplemental information to support other Federal and local requirements.

**a. Program Narrative and Cost Estimates.** A narrative summary statement of each project must be provided. The summary shall include a description and justification for each of the projects to be

accomplished. Additionally, estimates showing the basis for the project budget must be furnished in sufficient detail to determine whether the project costs appear to be reasonable.

**b. Sketch.** A sketch, at least 8 ½" x 11", must be provided, that depicts and identifies the limits of the proposed project, and distinguishes other airport development from the development proposed in the grant. For land acquisition projects, the sketch should show the boundaries of currently owned land and the boundaries and proposed property rights of each parcel of land or easement to be acquired.

**c. Identification of Environmental Requirements.** All AIP projects must be either categorically excluded or accompanied by an environmental assessment that resulted in a finding of no significant impact (FONSI) or an environmental impact statement prepared in accordance with the current version of FAA Order 5050.4.

**d. Public Hearing.** For projects that are subject to public hearing requirements, if a public hearing has been held, a summary of the issues raised, alternatives considered, and conclusions reached must be provided. In cases where a hearing has not been held, a certification that no request for public hearing had been received must be provided. (See Paragraph 1007d. and e.)

#### **1012. TIMING OF SUBMISSION.**

The FAA may accept sponsors' applications at any time. Special directions are published annually in the Federal Register that provide a deadline for submission of applications under the AIP. This announcement is for the upcoming fiscal year and covers only sponsor entitlement and cargo funds. Sponsors should be advised, as appropriate, to comply with the schedule in the Federal Register. However, regions may request sponsors' submissions at an earlier date to meet regional needs.

#### **1013. - 1019. RESERVED.**

### **Section 3. SPONSOR CERTIFICATION**

#### **1020. GENERAL CERTIFICATION REQUIREMENTS.**

Title 49 U.S.C., Section 47105(d) authorizes the Secretary to require certification from sponsors that they will comply with statutory and administrative requirements in carrying out a project. The standard airport sponsor assurances described within Paragraph 1010c contain "Sponsor Certification" in item C as a significant aspect of this.

#### **1021. RELATION OF ASSURANCES AND CERTIFICATION.**

A primary means of legally binding the sponsor to statutes, regulations, and policies is the standard assurances. The part of the assurances titled "Sponsor Certification" is also the subject of a focused process outlined in this section to ensure sponsors make adequate certifications.

**a. Standard Assurances.** The sponsor certification process within this section in no way replaces, abrogates, or diminishes the sponsor's legal obligations to carry out all of the requirements contained in the grant agreement, including the standard assurances. The grant agreement and standard assurances adequately represent legal requirements without the need for supplementary obligations from the sponsor certification process.

**b. Sponsor's Certification Process.** The sponsor's certification process is a means of focusing sponsor attention on requirements to make them more knowledgeable and diligent in assuring their grant obligations will be satisfied. Paragraph 1025 identifies forms that are used as education tools to clarify "Sponsor Certification" within the assurances in the context of AIP procedures.

**c. Sponsor Certification Policy.** Regions will obtain and rely on sponsor certification forms consistent with program goals or the need to protect the Federal investment in airports.

**1022. REQUIRED SPONSOR CERTIFICATION FORMS.**

The completion of sponsor certification forms using procedures below will be required unless in the judgment of the region the sponsor has become knowledgeable and diligent in assuring their grant obligations.

**a. Sponsor Responsibility.** Airport planning and development projects are administered based on the philosophy that responsibility for assuring compliance with program requirements rests primarily with the sponsor.

(1) The signing by a sponsor of an AIP project application and the grant agreement by a sponsor establishes the sponsor's obligation to comply with all grant terms and conditions.

(2) The sponsor is responsible for the preparation, adequacy, and correctness of required project documents.

(3) The sponsor is responsible for carrying out the project.

**b. Mandatory Sponsor Certification Procedures.** To use resources effectively in administration of the AIP, reliance for satisfying grant assurances will be placed on sponsors through mandatory sponsor certification procedures.

(1) All new sponsors, changes in the sponsor's administrator, or infrequent grantees will normally be required to submit the necessary certification forms. At the discretion of the FAA Airports Office, based on the FAA's opinion as to the sponsor's understanding and ability to carry out the actions required by the certifications, any sponsor may be required to complete any and all actions satisfied by certifications. Block grant states are not required to use the sponsor certification procedures for their individual airport projects.

(2) Acceptance of the certification forms by the FAA is not appropriate in cases where an inadequate or incomplete form has been submitted. See Paragraph 1027.

**c. FAA Responsibility.** The FAA is responsible for providing guidance and leadership in matters concerning airport planning or development projects and for instructing the sponsor on project requirements. Use of sponsor certification procedures does not relieve FAA personnel from their responsibility to maintain a broad overview of AIP projects and be reasonably assured that the sponsor is meeting all of its obligations.

**d. Appropriate FAA Oversight.** Acceptance of sponsor certifications does not inhibit or limit FAA's ability to request and review appropriate documentation to ensure the accuracy of a certification form. These certifications should be questioned when information becomes available indicating the sponsor may be in noncompliance with requirements or lacks the knowledge and capability to complete an accurate certification. Under these circumstances, a more detailed oversight review by FAA together with an increased emphasis on educational activities is appropriate and should be performed.

**e. Required FAA Actions.** Regions retain responsibility for aviation safety issues and the coordination of project plans, safety phasing plans, and other required coordination with organizational elements within FAA. A construction safety/phasing plan covering all aspects of safety during construction must be provided by the sponsor to the FAA. The FAA cannot accept the certification of project safety/phasing plans. All safety phasing plans must be received, reviewed, coordinated with other FAA operating administrations, airspaced (if necessary), and approved for use prior to the start of all construction projects. Early submission of safety/phasing plans will permit the timely start of construction projects. See Paragraph 1026.

**f. Supplemental Certification Forms.** Regions may use judgment to rely on the original certification or require re-certification as described in Paragraph 1024. Regions may supplement these



standard certification procedures to reflect special conditions or assurances in the grant. In addition, regions may use their checklists, forms, or certification procedures for areas other than those described in this section.

### **1023. TIMING OF SPONSOR CERTIFICATION PROCESS.**

The sponsor certification process should begin in the early steps of project formulation by making the standard forms available to sponsors and consultants so that they are aware of specific Federal requirements that must be met. However, execution of the certification forms can be required by the region at selected points in the grant process to best suit regional procedures. When practicable, certification forms should be timed to require that sponsors certify actions and conditions the sponsor has already completed or met.

### **1024. SPONSOR CERTIFICATION FORMS AND PROCEDURES.**

Paragraph 1025 describes standard sponsor certification forms for which the procedures below apply.

**a. Sponsor Completion of Forms.** Each standard certification form contains a basic certifying statement, a checklist to be attested in meeting the requirements, and a signature line to be completed by the sponsor. It also contains reference to the statute, regulation, or advisory circular that describes the requirements.

(1) The sponsor should read the requirements and determine actions needed to comply with the grant agreement.

(2) Each checklist item must be reviewed by the sponsor and completed.

(3) An explanation or additional information shall accompany any question with “no” checked. This added information becomes part of the certification.

(4) The sponsor should provide the forms and attachments to the FAA together or separately in accordance with the timing required by the region. See Paragraph 1023.

(5) If the sponsor has been requested by the FAA to provide full project documentation, it should be submitted with the forms.

**b. FAA Review of Forms.** The appropriate FAA Airports Office should review the sponsor, airport, project number, work description, checklist items, authorized representative, typed name, as well as attachments to ensure they are correct and complete.

(1) Incomplete forms shall be returned for further action.

(2) The FAA Airports Office should review any checklist item marked “not applicable” to confirm non-applicability for the project.

**c. Re-Certification.** If the sponsor has been found to be inaccurate in making certifications, regions should require the sponsor to routinely submit full documentation in support of the forms. FAA review of this documentation and monitoring of the project implementation will need to be more comprehensive than relying on certification forms for any such sponsor. See Paragraph 1027.

**d. Project Files.** The executed certification forms and attachments shall be included in the project files. Any checklist items not meeting full compliance should be clarified with the sponsor and documented in the file.

**e. Acceptance of Forms.** When the sponsor has properly executed a certification form, no further routine or detailed conformance reviews of that area on the project will be necessary by regions unless exceptional circumstances arise. Acceptance by the FAA is considered complete when the forms are filed.

#### **1025. AREAS WITH STANDARD FORMS.**

Appendix 25 contains standard sponsor certification forms for the following areas:

- a. Selection of consultants;
- b. Project plans and specifications;
- c. Construction or equipment project contracts;
- d. Real property acquisition;
- e. Construction project final acceptance; and
- f. Drug-free work place.

#### **1026. AREAS EXCLUDED FROM ROUTINE CERTIFICATION FORMS.**

The following are examples of areas involving Federal responsibilities under the law that would normally be inappropriate for the routine sponsor certification procedures described in Paragraph 1024 since they require more complete FAA review:

- a. Content of the National Airspace System Architecture and National Plan of Integrated Airport Systems;
- b. Matters directly involving Part 139, commissioning or decommissioning of airfield facilities, and other safety considerations;
- c. Determinations of project eligibility or justification under the AIP;
- d. Coordination with the Facilities and Equipment program;
- e. Modification of design standards for airport location, layout, site preparation, paving, lighting, and safety of approaches;
- f. Procedures for handling airspace determinations and the designation of instrument runways;
- g. Matters involving Part 150 and environmental impact determinations;
- h. Determinations on the reasonableness and necessity of project cost in the expenditure of AIP funds as well as costs incurred subsequent to the execution of the grant agreement, where required; and
- i. Disadvantaged Business Enterprise compliance.

#### **1027. FALSE AND INACCURATE CERTIFICATIONS.**

The region may rescind the acceptance of sponsor certification forms at any time. Where fraud or criminal action and intent is suspected, the U.S. Justice Department shall be immediately notified through regional counsel.

**a. Sponsor Notice.** Sponsors shall be immediately notified in writing when certifications submitted are discovered to be false, inaccurate, or incomplete. The notification should state the nature of the

problem, remind the sponsor of its responsibilities in submitting accurate certifications, and specify actions necessary to remedy the situation.

**b. Sponsor Education.** Most inaccuracies discovered in certifications will probably occur as a result of the sponsor or its consultant's lack of knowledge with respect to requirements rather than being deliberately incomplete or making false statements. In such cases, the emphasis should be placed on correcting the deficiencies and educating the sponsor as to the responsibilities incurred with the signing of the assurances and certifications rather than invoking penalties. The most current assurances and certifications should be provided to a sponsor with a recommendation that the sponsor's revised submission address the deficiencies.

**c. Other Corrective Actions.** Negotiations with the sponsor may be necessary where inaccurate certifications are discovered in on-going or finished projects. Such negotiations shall address corrective actions and may involve action to suspend the grant as described in Chapter 11, Section 6, or withhold/readjust Federal funds in accordance with Chapter 13.

**1028. - 1029. RESERVED.**

## **Section 4. CIP AND APPLICATION REVIEW AND EVALUATION**

**1030. GENERAL.**

The initial review is an important phase in the development of an AIP project. This is the time to verify the justification, eligibility, and reasonableness of the project, to determine the reasonableness of project timing, to assign priorities, to identify information deficiencies, to select candidate projects for discretionary funding, and to approve, disapprove, or defer projects. Proposals that would require special adaptation of standards and problem areas that may later require the use of special conditions in the grant agreement should be carefully evaluated. To avoid project delays, every effort should be made to resolve programming and technical problems prior to recommending a project for approval.

**1031. PROJECT EVALUATION REPORT AND DEVELOPMENT ANALYSIS.**

A Project Evaluation Report and Development Analysis (PERADA) Checklist, FAA Form 5100-109 (7-01), (Appendix 8) must be prepared, by the FAA Airports Office, for each project intended to be programmed. FAA Form 5100-109 (7-01) should not be confused with similar forms previously distributed, including FAA Form 5100-109 (10-89), which may omit or incorrectly identify the minimum statutory, regulatory, and policy requirements for a project contained in this paragraph. The PERADA report should be completed during sponsor and FAA Airports Office development of each annual CIP element. This report must support the recommendations made with respect to the programming action. The report shall be prepared on FAA Form 5100-109 and shall concentrate on a concise discussion of problem areas. The data to be included in each section is described below:

**a. HEADING.** Self-explanatory.

**b. Part I - Checklist.** The checklist must be completed for each item. Items on the checklist, which do not obviously pertain to the project, should be marked "N/A." All other items should be checked in either the "Meets Requirements" column or the "See Part III" column. A "Meets Requirements" reply is the FAA Airports Office's affirmation that the item has been scrutinized and determined to require no further action. Each item checked under the "See Part III" column will require a short narrative, which will be included in that part and documented in the project file, as appropriate. The following is a brief discussion of each item:

**(1) ACIP Project Evaluation Checklist.** Problems foreseen for project approval upon completing Airports Capital Improvement Plan Project Evaluation Checklist must be explained. (See FAA Order 5100.39.)

**(2) Sponsor Eligibility.** Give status of the sponsor's legal ability to carry out its obligations. State whether a tentative determination has been made on sponsor eligibility when a written opinion of regional counsel is pending. (See Chapter 2.)

**(3) Consistent with Local Plans.** The airport project must be consistent with the plans (existing at the time the project is approved) of public agencies authorized by the State in which the airport is located to plan for the development of the area surrounding the airport. (See Title 49 U.S.C., Section 47106(a)(1).)

**(4) Designation of Instrument Runway for the Airport.** An explanation is necessary only if the project is not on the approved ALP or an instrument runway improved by the project requires further coordination for work required to establish an approach procedure. (See Paragraphs 300c, 428d, 500b, 554, and FAA Order 7400.2.)

**(5) Status of Prior Grant(s).** If there are any projects over three years old or that have had no draw down for the proceeding 18 months and have not been closed out, give reasons for delays and schedules established for closing the projects. The maximum time for an AIP project, from date of grant acceptance to financial completion, is four years. In the case of a multi-year project, the maximum time for completion is four years from the date of the final multi-year amendment.

**(6) Runway Marking.** If airfield marking is not contained within the project and existing markings will be obliterated, an explanation should be made. (See Paragraph 500e.)

**(7) Runway Safety Areas, Protection Zones, and Approaches.** Explanation should be added where the work is related to a runway safety area, runway protection zone, or airport approach that is non-standard and not improved by the project. See Paragraphs 513 and 581 as well as Advisory Circular 5300-13.

**(8) Runway Lighting.** If the airport has inadequate lighting, an explanation should be added. See Paragraph 500c.

**(9) Navigation Aid Requirements.** If the requirements for landing aids are not included in the project, an explanation should be made. Any problems caused by the sponsor's lack of action in providing these facilities at the airport will be described with possible solutions. See Chapter 5, Section 6.

**(10) Good Title and Property Inventory Map (Exhibit A).** If the airport does not hold good title, an explanation should be added. See Paragraph 500a and Title 49 U.S.C., Section 47106(b)(1). A property inventory map (Exhibit A) in accordance with Order 5190.6 on the airport compliance requirements should be approved if it is not part of the airport layout plan.

**(11) Donations.** All donations will be identified with information on the manner in which the value has been established for programming purposes. (See Chapter 3, Section 4.)

**(12) Force Account.** Identify work proposed for force account. Comments will also include the method used in establishing costs for program purposes. (See Chapter 12, Section 3.)

**(13) Unreasonable Cost.** Identify any unusual or unreasonable cost shown in the grant application. (See Paragraphs 310 and 311.)

**(14) Runway Surface Treatment.** For all airports having turbojet operations, provide a detailed statement on the circumstances involved if surface treatment requirements have not been met. (See Paragraph 520d.)

**(15) Intergovernmental Review.** Explain any problem areas associated with coordination through the appropriate state single point of contact. (See Paragraph 1006.)

**(16) Compatible Land Use.** Identify any known non-compatible land use problems relating to the use of property adjoining the airport and the sponsor's actions to assure compatible land use. Include enactment date(s) of local ordinances and/or zoning restrictions. (See Paragraph 1005 and Title 49 U.S.C., Section 47107(a)(10).)

**(17) Public Hearing.** State whether the public hearing requirements have been satisfied. Provide the date(s) of public hearings. (See Paragraph 1007 and Title 49 U.S.C., Section 47106(c).)

**(18) Useable Unit of Work.** Identify problems if a useable unit of work will not result from the project. (See Paragraph 500d.)

**(19) Information on Specific Opposition.** Identify any opposition or controversy received regarding the project and the disposition of such opposition. Controversial aspects other than specific opposition should be discussed in sufficient detail to insure that programming actions are appropriate.

**(20) Flood Insurance.** Identify whether the sponsor has adequately satisfied this condition. (See AC 150/5100-16, AIP Grant Assurance 1 - General Federal Requirements.)

**(21) Consultation with Airport Users.** Identify when and what type of consultation took place with the airport users and identify any unresolved issues raised by airport users. (See Title 49 U.S.C., Section 47105(a)(2).)

**(22) Uniform Acquisition and Relocation Requirements (Uniform Act).** Identify any controversial aspects or failure to meet the requirements of the Uniform Act or Order 5100.37.

**(23) Terminal Development/Bond Retirement.** Identify any requirements for this type of project and whether the sponsor has satisfied them. (See Paragraph 614.)

**(24) Noise Compatibility Projects.** Provide the date of approval of a Part 150 program for any project in an approved Part 150. If any project is not contained in an approved Part 150 program, an explanation/justification for the project is required.

**(25) Pavement Reconstruction.** For any projects to replace or reconstruct pavement, describe the sponsor's pavement maintenance management program. See Paragraph 520a.

**(26) Sponsor Certifications.** If the sponsor certification process has not been followed, explanation is needed. See Section 3 of this chapter.

**(27) Washington Approval Required.** See Paragraph 31 for a list of projects requiring Washington approval. In addition, any coordination with Washington headquarters to determine eligibility as required within this directive should be described.

**c. Part II, Description and Justification of Work Items.** Include a clear description of each work item and a brief statement of justification for each item recommended for programming. The statement of justification shall include a concise discussion of the aeronautical justification with respect to necessity and timing and shall not include detailed design information unless pertinent to the programming decision. See Paragraphs 402b and 505. The priority assigned to each development item shall be included. For development not recommended for programming, the report should contain a brief description of the analysis leading to that conclusion.

**d. Part III, Explanation.** Explain any item from the Part I, Checklist, marked "See Part III."

1032. - 1039. RESERVED.

## **Section 5. PROJECT APPROVAL/DISAPPROVAL AND ALLOCATION**

### **1040. PROJECT APPROVAL.**

This paragraph outlines procedures for processing AIP projects.

a. Projects submitted to the FAA will be evaluated as they are received. Each project file will contain the following documents:

(1) Project Evaluation Report and Development Analysis (PERADA), FAA Form 5100-109 (Appendix 8);

(2) Application for Federal Assistance, SF 424 (Appendix 3);

(3) Current FAA-Airport Master Record, FAA Form 5010-1;

(4) Program narrative consisting of a list of the projects, justification for the projects, and a detailed cost estimate of the projects.

(5) A sketch, preferably 8 ½" x 11", drawn to scale and identifying projects requested and recommended. Number items requested by the sponsor to match items in the grant application. Larger sketches should be fastened to the folder in a manner that will readily permit unfolding;

(6) For projects requiring an environmental impact statement, the public record of decision required by CEQ Regulations, Section 1505.2 (43 F.R. 55978) shall also be included;

(7) Airport Improvement Program Action, FAA Form 5100-107 (See Appendix 28).

b. A decision on a project must be made at the field level in a timely manner. Should a sponsor fail to respond to FAA Airports Office requests for information necessary for project consideration, the application should be returned to the sponsor with no action taken.

### **1041. NOTICE OF DISAPPROVAL OR DEFERRAL.**

When a project contained in a CIP is not approved or is deferred for inclusion in the program, the sponsor shall be advised of such action and the reasons therefore. A copy of such notice shall be sent to the appropriate state agency. (See Paragraph 1150.) If disapproval is based on the violation by the sponsor of an assurance or other requirement of the grant program and the project is to be funded from passenger or cargo entitlement (or special Alaska entitlement) funds, the procedures in 14 CFR Part 16 should be followed.

### **1042. WASHINGTON COORDINATION.**

a. APP-520 will review regional recommendations and approvals to assure consistency in application of policies, programming criteria, guidelines, and national uniformity in the application of priorities. The regional programs will be monitored to determine at what priority level discretionary funds are being used. The Regional Airports Division, Planning/Programming Branch will be alerted of any obvious problems or deficiencies disclosed in this review and may be requested to provide additional information. (See Paragraph 31.)

b. Upon receipt of notification of the approval of an AIP allocation, including increases in excess of \$1,000,000 to an existing allocation by the Regional Airports Division Manager or the Administrator, as appropriate, APP-520 will provide the Office of Government and Industry Affairs (AGI) with the Notification of Allocation for Airport Development for delivery to the Office of the Secretary of Transportation (OST) Office of Congressional Affairs.

- c. OST will notify the congressional delegation and advise APP-520 when the project is cleared for release to the sponsor.
- d. APP-520 enters the project release information into the AIP system daily. The following day the system updates the web based reports.
- e. The regions can obtain computerized OST Congressional release information from the AIP system the day the release is entered into the system or the next day from the FAA web site at: <http://www.faa.gov/arp/arphome.htm>.
- f. The FAA Airports Office will notify sponsors in accordance with the provisions of Paragraphs 1043 and 1044 of the action taken on their proposal.

#### **1043. NOTICE OF ALLOCATION.**

When a project has been approved, the appropriate FAA Airports Office shall notify the sponsor following receipt of notice of congressional release. Copies of such notice will be sent to the appropriate state aviation agency or as agreed upon between the sponsor and its state aviation agency. Each notice should include the following:

- a. The amount of the allocation;
- b. A list of programmed projects. Any deletions or reductions from the sponsor's proposal must be explained;
- c. A statement that the allocation may be used only for the programmed items; and
- d. A statement explaining that the allocation is the first step leading to the issuance of a grant offer, and is made within the amounts authorized under the terms of the Act and that the issuance of a grant offer is contingent upon all applicable Federal requirements being met, including:
  - (1) Approval of the project as finally formulated; and
  - (2) The limits of obligating authority for the current fiscal year;
- e. A statement that the allocation is in consideration of the sponsor's representations shown on the application and that the FAA Airports Office will discuss these matters with the sponsor.
- f. A statement that failure to establish an acceptable schedule or delay in conforming to the schedule will result in prompt withdrawal of the allocation.
- g. A statement that copies of the AC's on labor, civil rights, and relocation assistance, as applicable are available from the U.S. Government Printing Office or, if there is no charge, the U.S. Department of Transportation, General Services Section, M-443.2, Washington, D.C. 20590.

#### **1044. SCHEDULE FOR SPONSOR DEVELOPMENT OF THE PROJECT.**

##### **a. Establishment of Schedule.**

(1) Immediately after an allocation is made, a meeting should, if deemed necessary, be arranged with the sponsor to establish a schedule for the development of the project. This meeting should include all representatives of the sponsor who will participate in the project, including, where/when appropriate, any state officials, sponsor's engineers, and the sponsor's attorney. The FAA Airports Office representative will provide the sponsor with an estimated date for tendering the grant offer. This date will take into consideration any limitation on obligational authority for the current fiscal year. The schedule will prescribe a definite date for each step of the project and will identify the

individual responsible for each step. Emphasis will be placed on the fact that the allocation will be withdrawn unless the sponsor develops the project in accordance with the schedule.

(2) Where appropriate, realistic deadline dates for each of the following steps, if applicable, of the project development should be set:

- (a) Submission of Certification of Plans and Specifications;
- (b) Designation of sponsor's engineer;
- (c) Submission of preliminary plans;
- (d) Request for state air and water quality standards compliance assurances;
- (e) Submission of final plans and specifications and engineer's report;
- (f) Completion of necessary land acquisition and Relocation of displaced persons;
- (g) Adoption of a zoning ordinance or other compatible land use measures;
- (h) Submission of title evidence;
- (i) Coordination with planning agencies;
- (j) Receipt of current wage rates;
- (k) Advertising for bids;
- (l) Award of contract;
- (m) Pre-construction conference;
- (n) Submission of Application for Federal Assistance (SF-424 and FAA Form 5100-100);
- (o) Issuance of grant offer; and
- (p) Acceptance of grant offer;

(3) The schedule will be realistic from the standpoint of both the sponsor and the FAA in anticipating problems and causes for delays. Scheduling of actions required to develop the application, including engineering work and acquisition of property interests, should permit the issuance of a grant offer with a minimum of special conditions.

(4) Regardless of project priority, every effort should be made to schedule projects for grant agreement during the same fiscal year for which an allocation is made unless advance-programming action is involved. The agreed scheduled dates shall be considered deadline dates, and the sponsor will be advised that failure to meet them may result in action to withdraw the allocation. This procedure is considered necessary to insure that sponsors will complete all preparatory work for entering into a grant agreement and will be prepared to proceed immediately with project development, as funds are made available.

**b. Monitoring Conformance to the Schedule.** The Federal Airports Office should monitor programs in accordance with the agreed upon schedule and take appropriate action when delays occur. Sponsors should be queried on projects that have not begun within 6 months of grant award to



determine reasons for the delay and appropriate follow-up action. Appropriate documentation will be placed in the project file to support later decisions to extend or withdraw the allocation.

**1045. - 1049. RESERVED.**

## **Section 6. APPLICATION REVIEW AND APPROVAL**

**1050. GENERAL.**

The application and supporting documents should be reviewed for accuracy and completeness and the sponsor requested to furnish any supplemental information. Upon completion of the review, the appropriate field office should forward the application along with necessary documentation to the approving official for action. The issuance of a grant offer by the FAA constitutes approval of the application. The field office may adjust the depth and intensity of the review of various supporting material in Section 1 above in accordance with the complexity of the project, the amount of the grant, the size of the sponsor, and past experience with that sponsor.

**1051. PROJECT SUMMARY.**

Preparing a detailed report of the project and a recommended action for use by the approving official is no longer mandatory, but the regional Airports Divisions may continue to do so.

**1052. DETERMINATION OF REASONABLENESS OF COSTS.**

To be allowable, a cost must be reasonable. Where a project cost appears excessive, close attention should be paid to the plans and specifications to determine whether the excessive cost is due to over design. Projects for which there are no FAA specifications may require redesign so that the project benefits will justify the costs. FAA field personnel should determine during the review of the application that the amount of funds requested by the sponsor is reasonable. Issuance of a grant offer effectively constitutes a determination that the costs on which the grant offer is based are reasonable. The determination should be made in accordance with one of the following guidelines:

**a. Application amounts based upon estimated costs:**

(1) Requested amounts should be compared to the costs of similar type work included in other recently awarded grants, taking into account such factors as inflation and geographical differences;

(2) Estimated cost of land acquisition should be based on appraisals of the parcels to be acquired as well as appropriate relocation assistance and administrative costs.

**b. Application amounts based upon competitive bids:**

(1) The sponsor is required to submit an itemized abstract of bids and a copy of the engineer's estimate, both to be included in the project file. The low bid should be compared to the engineer's estimate, as well as costs for similar type work in other projects. If there are several bids, it may not be necessary to compare the low bids to costs in other projects since experience has shown that the greater the number of bidders, the lower the price;

(2) If only one bid is received, the FAA should encourage the sponsor to negotiate with the sole bidder to obtain lower prices if such negotiation is permitted by state or local law;

(3) If there are less than five bidders and the low bid exceeds the engineer's estimate by 10%, the grant should not be issued unless the FAA satisfies itself that the costs are reasonable.

**1053. REVIEW FOR BID IMPROPRIETIES.**

a. In reviewing the abstract of bids to determine the reasonableness of costs, field offices should be alert to possibilities of improprieties in the procurement process such as bid rigging and collusion. Field offices should notify the Office of Inspector General (OIG) Regional Special Agent-in-Charge of Investigations when:

(1) There are five or fewer bidders on a construction project and the low bid is 95% or more of the engineer's estimate and the bid is \$500,000 or more;

(4) There is only a single bidder on a construction contract and the bid is \$250,000 or more;

(5) Any bid package that FAA field personnel feel contains any unusual or suspicious bid patterns or activities.

b. The bid package shall not be submitted to the OIG unless requested, and the grant award should not be delayed unless the Special Agent-in-Charge indicates otherwise.

**1054. - 1059. RESERVED.****Section 7. MODIFICATION OF APPROVED PROGRAMS****1060. PROGRAM CHANGES.**

Program changes are major changes to the scope of a project by deletion, revision or additions of work items or adjusting allocations for which notices of allocation have been issued. Program changes may be made by the FAA anytime after the tentative allocation and prior to grant acceptance by the sponsor. Field offices may make program changes involving work items so long as the new project is at least the same priority as the one being replaced. All proposed projects receiving a lower priority rating must be submitted to APP-520 for review and approval. After approval, any grant offers must reflect the corrected description. Such program changes should not be used indiscriminately or as a substitute for careful planning and estimating for initial programming.

**1061. PROCEDURES.**

a. **Timing.** A sponsor should request a program change as soon as the need becomes evident.

b. **Sponsor Submission.**

(1) **Deletions or Reductions in Projects.** Deletion or reduction of development items from approved projects may affect the operational capability of the airport involved or prevent the construction of a safe, useful, and usable project. Consequently, such action should be undertaken with caution to assure that the operating capability of the airport or unit of development is not adversely affected.

(2) **Increase in Funds or Additions to Programmed Development Items.** The sponsor must submit a request with the same type of information and documentation required within this chapter. This must, in all cases, include a revised project estimate and assurance of availability of sponsor funds if a request for the modification of funds has been submitted after application. Changes in development items will normally require a revised project sketch.

(3) **Decrease in Allocation.** Where the change involves only a reduction in the amount of the allocation, a revised project estimate is sufficient basis for decreasing the allocation.

c. **Regional Determination.** Regions will approve or deny requests for program changes except for those projects approved at the headquarters level.

**d. Headquarters Determination.** For any changes that cannot be approved in the region, the region will submit the request to APP-520. Documentation may be requested by APP-520 for an evaluation of the request. (See Paragraph 31.)

#### **1062. ANNOUNCEMENT OF CHANGES TO APPROVED PROGRAM.**

Changes made under Regional authority should be announced to congressional offices in accordance with procedures in Order 5100.20, Program Control and Reporting Procedures.

#### **1063. - 1069. RESERVED.**

### **Section 8. LETTERS OF INTENT**

#### **1070. GENERAL.**

The FAA is authorized to issue a letter of intent (LOI) for certain airport development projects when current obligating authority is not timely or adequate to meet a sponsor's desired timing for a project. Under this provision, a sponsor may notify the FAA of an intention to carry out a project without Federal funds and request that the FAA issue an LOI. The FAA evaluates the proposal and, if approved, issues a letter stating that reimbursement will be made according to a given schedule, as funds become available. A sponsor who has received an LOI may proceed with a project without waiting for an AIP grant. The Sponsor is assured that all allowable costs related to the approved project remain eligible for reimbursement.

#### **1071. ELIGIBILITY.**

**a. Airport.** LOIs may be issued to cover work only at primary and reliever airports.

**b. Airfield Project.** The project must enhance airfield capacity or be supporting development directly related to the primary project to be eligible for a letter of intent. Any development directly related to the primary project, to be included in the LOI, is also subject to the review factors and conditions of the primary project of the LOI. An example of a directly related project includes an extension of a taxiway to match a runway extension. An example of a project that is not directly related would be the construction of a public roadway serving a terminal building in an LOI for a new runway or extension.

**c. Payment of Interest.** The payment of interest from bonds or other forms of indebtedness under an LOI is not allowable. Accordingly, in submitting an LOI application, interest costs may not be included in project costs and will not be covered as part of an approved LOI. Additionally, the FAA will not recognize the cost of interest as an allowable expense in processing a request for payment of grant funds under a grant agreement executed pursuant to an LOI.

However, once allowable expenses have been incurred by the sponsor for approved LOI project capital costs, amounts paid to the sponsor by the FAA under the LOI constitute reimbursements. The FAA does not generally track or monitor airport sponsors' uses of payments under grant agreements after receipt of those payments by the sponsor. Therefore, the FAA has no objection to the use of reimbursement payments, upon receipt by the sponsor, for any lawful airport purpose, including the payment of interest on airport obligations.

#### **1072. FACTORS IN CONSIDERING LOIS:**

The FAA will consider these factors in reviewing requests for LOIs:

**a.** For projects at large and medium hub airports, the project's effect on the overall national air transportation system capacity. The FAA will determine the current annual hours of flight delay for and reduced annual aircraft and passenger delays at current and future airport activity levels. Data required for FAA analysis includes: the approved Airport Layout Plan, fleet mix, type of operation, peak hour airfield mix by class, runway occupancy times, taxiway exit percentages, noise, obstructions, terrain,

aircraft departure and arrival constraints, minimum vectoring altitudes, aircraft separations, length of and approach speeds on typical approach by aircraft type, weather conditions, runway dependencies, and the different runway use configurations in the various wind and weather conditions. Also, required for analysis is the enplanement forecast for the period of construction and the growth rate of enplanements for out years beyond construction.

**b. A Positive Benefit/Cost Ratio:** A project Benefit/Cost Analysis (BCA) will involve a detailed review of future benefits and costs for each year of the project's expected life, discounted to present value at an appropriate discount rate. The FAA will consider benefits in terms of annual cost savings attributable to reduced delays, and the monetary value of saved passenger time. In addition, the net value to the airlines, the airport, and the public from additional airline service made possible by the project will be considered. Total costs attributed to the project include, but are not limited to, land acquisition, site preparation, environmental and noise mitigation, engineering, and construction. The FAA recommends all benefit/cost analysis be conducted in accordance with the guidance issued on December 15, 1999. The guidance may be downloaded from the FAA Airports web site at <http://www.faa.gov/arp/bca.htm>.

**c. Sponsor Financial Commitment, (LOI Finance Template).** The FAA will determine the sponsor's financial commitment in the analysis of an airport's financial plan. The FAA has established a Finance Template (See Appendix 29) for the purpose of standardizing the submittal of an airport's financial plans. Historically, FAA has requested supplemental or modified financial data from airports during the LOI review process. By standardizing the financial plan submittals, the LOI review process will permit FAA personnel to efficiently and effectively perform the financial analysis.

In addition to the LOI finance template, the sponsor should provide the entire capital improvement plan that covers the life of the LOI request. This list of projects, both within the LOI and outside the LOI, should contain the total project costs, and a cost breakdown by source of funds. The FAA will utilize this supplemental information to consider other sponsor commitments that may impact the sponsor's ability to pledge specific sources of funds. Also, this information may highlight a sponsor's use of entitlement funds to other higher priority projects. Finally, FAA will consider the sponsor's contribution from non-federal funding sources, airport revenue diversion, grand-fathered payments to other governmental offices, and whether or not the sponsor plans to proceed with the project in accordance with all applicable statutory and administrative requirements, with the LOI payments to be used as reimbursement for advance expenditures. The FAA will not consider an LOI payment schedule that directly matches an airport's capital drawdown schedule.

### 1073. ISSUANCE OF LOI.

FAA will issue the LOI to the sponsor when the congressional notification is complete. The same official who normally signs a grant offer for the FAA will be the official who signs the LOI. The LOI should include the following:

- a. LOI number and airport name (the number should be based on the region's three letter code, the fiscal year of issuance, and a sequential number, e.g., AGL-88-02, the second LOI issued by AGL in FY 1988);
- b. A brief, but complete, project description;
- c. The maximum amount of Federal funds which will be made available for the project;
- d. A schedule of reimbursements by fiscal year and type of funds, (apportionment and/or discretionary);
- e. A statement that the sponsor must comply with all statutory and administrative requirements;

f. A statement that the LOI is not considered to be an obligation of the United States, shall not be deemed an administrative commitment for funding, but shall be regarded as an intention to obligate from future budget authority as such funds become available; and

g. A statement that the LOI, with sufficient justification, may be amended to adjust the maximum Federal obligation, the payment schedule, or both. When entitlement funds (includes cargo and primary) are more than the amount scheduled in a year, the discretionary funds in the same year may be reduced by an amount equal to the increase in entitlement funds over the amount scheduled in the LOI. In this case, no adjustments have to be made to the future funding years in the original LOI allocation project. Conversely, however, if entitlement funds are less than that projected, discretionary funds will not be increased to compensate for the lower entitlement funds. The accurate projection of entitlement funds is very important to both parties.

#### **1074. PROCEDURES.**

A principal goal in establishing the LOI procedures is that projects to be funded in this way be treated as much like conventionally funded grant projects as possible. In order to ensure that all statutory and administrative requirements attendant to the normal grant process are satisfied, the FAA will evaluate sponsor CIP's, grant applications, and review proposed projects as is done for a normally funded AIP project. At the point where an Federal Airports Office would issue a notice of allocation to the sponsor, subject to APP-500 review, that office will instead issue a LOI. Grant applications and offers will follow as set forth in the LOI payment schedule, subject to the availability of funds. Actions should occur as outlined below:

**a. Early FAA/Sponsor Coordination.** An airport sponsor may initiate consideration of an LOI for a large capacity-enhancing project. The sponsor should be briefed early on the general features of LOI provisions and on actions that the sponsor should take to obtain an LOI. The FAA Airports Office will be the primary contact for the sponsor regarding an LOI. It may be desirable, from the sponsor's point of view, as well as the FAA's, to hold a joint meeting so that all parties understand the purpose and scope of the project, FAA authority and policy, and sponsor financial needs, schedules, and responsibilities. Since all LOIs require a BCA, and given the length of time required to review the BCA, the review of the BCA should be started upon receipt of the BCA not after LOI submittal. As a minimum, the FAA and the sponsor should meet to discuss the following points:

(1) A sponsor must notify the FAA of their intention to proceed with a project without federal funds through a request for a letter of intent. LOI applications must be submitted to the FAA no later than **March 1** of the fiscal year in which the LOI approval is being requested. Applications received after March 1 will be considered for the following fiscal year. The application should include all relevant support material such as the status of the federal environmental finding, ALP approval, BCA, and requested LOI payment schedule. The applicant should also note the source(s) and amount(s) of other financing for the project. If the sponsor receives an LOI and then proceeds without the aid of Federal funds, the sponsor may later be reimbursed under the terms of the LOI. The sponsor notice to proceed with a project without federal funds and request a letter of intent should be submitted during project formulation or with the CIP and should specify the forecast dates for implementing the project or stages of the project and the estimated costs associated with each stage of the project.

(2) A project under an LOI must satisfy all statutory and administrative programming requirements for an AIP project. Sponsors should be advised to proceed as though they had received Federal funds and should fulfill all environmental, civil rights, bidding, procurement, and contracting requirements associated with an AIP grant, even though no Federal funds have been received at the time the project was initiated.

(3) All documents normally submitted with a grant application should be submitted in support of a request for an LOI.

(4) The sponsor should agree to commit all, except to the extent that the FAA agrees funds may go to other projects of equal or greater priority, entitlements over the life of the LOI to the project. An exception may be made if entitlement funds are already committed for other urgent needs. In such a case, the payment schedule in the LOI may have no funds or reduced entitlements under the apportionment heading.

(5) An LOI may be issued with payments scheduled beyond the statutory expiration of the AIP, as authorized by the FY 1989 Department of Transportation and Related Agencies Appropriations Act (Public Law 100-457).

(6) The total of discretionary funds in all LOIs subject to future obligation is limited to approximately 50 percent of the forecast discretionary funds available for that purpose.

(7) Issuance of an LOI is considered a Federal action subject to the requirements of the National Environmental Policy Act. Consequently, all environmental actions must be complete before issuance of a letter of intent.

(8) An LOI may be amended in future years to adjust the total maximum Federal obligation, the schedule of payments, or both. Considerations that may lead to an amendment include, but are not limited to, a change in project cost, change in project timing or scope, or changes in future obligating authority.

(9) Alternative funding levels and schedules should be discussed. The FAA position is to use the LOI provision to encourage the maximum number of capacity-enhancing projects. Consequently, the FAA should ensure that sponsor resources are used to the maximum extent reasonable, and that Federal financial support should be the minimum amount needed to allow the project to proceed.

(10) Costs incurred prior to the issuance of an LOI, except project formulation costs, will not be reimbursed.

(11) Sponsors shall complete a BCA for LOI projects. The cost of preparing BCAs can be reimbursed as a project formulation cost when and if the project is approved for an AIP grant. The preparation of the BCA may also be part of a master plan project if such master plan effort is timely to the planned LOI project.

(12) LOIs are an important innovative financing tool. As such, an airport seeking an LOI must submit a financial plan that demonstrates how the LOI will leverage increased financial commitment from non-Federal sources and/or will cause the project to be accelerated. Financially superior LOI requests will be those that seek a greater percentage of the AIP funds later in the financial plan, divide the Federal participation over a longer time frame, and seek realistic overall Federal participation. Airports seeking earlier and larger AIP allocations should be encouraged to consider competing for funds through annual discretionary grants rather than LOIs.

**b. FAA Actions to Approve the Project.** Regions should notify APP-500 promptly when a sponsor expresses interest in obtaining a letter of intent. Preliminary information provided to APP-500 should include a general description of the project, the estimated cost, the proposed schedules for construction and reimbursement, and an indication of whether the project is a good candidate for an LOI.

All normal pre-application review and evaluation actions should be completed as if the project were being programmed for a grant. Similarly, the sponsor should be briefed on the importance of complying with all Federal procedures on bidding, civil rights, and contract award.

FAA has established a committee to review LOI proposals to insure all statutory requirements have been met and advise the Associate Administrator for Airports (ARP-1) on the selection of LOI proposals. The committee is composed of representatives from the Office of System Capacity (ASC), Office of

Aviation Policy and Plans (APO), and from the Associate Administrator for Airports (ARP). The committee is chaired by APP-500 and includes ARP representatives from APP-510, APP-520, and an airports regional division manager with no LOI candidate. This committee will review substantially complete LOI requests submitted by the March 1 deadline. The committee reviews the LOI proposal, system benefits, BCAs, and the financing package.

After ARP-1 selects the sponsors that will receive LOIs, APP-500 will complete the headquarters actions necessary to complete the approval process and initiate the OST/Congressional notification process. The Congressional notification will state the FAA's intention to grant funds, not to exceed the estimated total Federal share of allowable project costs, and any amounts that are approved for allocation in the current year.

#### **1075. LOI FUNDS ALLOCATION.**

At the beginning of each fiscal year, the FAA, in its administration of the AIP, sets aside the amount of discretionary funds to cover the LOI payment schedules. The sources of discretionary funds for existing and new LOIs are as follows:

- a. Large and Medium Hub Primary Airports-up to 50 percent of the Capacity/Safety/Security/Noise set aside.
- b. Small Hub Primary Airports-up to 50 percent of the "small hub" set-asides.
- c. Nonhub Primary Airports-up to 50 percent of the nonhub portion of the small airport fund.
- d. Air 21, Section 104(f), amended Title 49 U.S.C., Section 47117(e)(1), to establish a new reliever airport set-aside when the total annual amount made available for the AIP is \$3.2 billion or more. The amount of the new reliever set-aside is 0.66 percent of discretionary funds.
- e. Up to 50 percent of the undesignated discretionary (remaining discretionary) will be available for LOIs. Primary airports of all sizes and relievers may compete for these limited funds.

APP will ensure that, in any given fiscal year, FAA does not approve LOI payment schedules which would in future fiscal years exceed the 50 percent level in any category. It is important to stress to airport sponsors applying for LOIs that their requested payment schedules will have a significant impact on the review process and any unreasonable payment schedules may be cause for rejection of the application without further consideration of other factors.

Each fiscal year APP-500 will issue an analysis of existing LOIs and the impact of these LOIs on projected funding, including an estimate of projected availability of funding of new LOIs.

#### **1076. POST-LOI ACTIONS.**

All actions that would normally follow the notification of allocation, except those related to grant offer, acceptance and payments, must be completed as if a grant had been issued. If a sponsor proceeds without satisfying all of the "statutory and administrative requirements" associated with an actual grant, the commitment to reimburse the sponsor under the LOI may be voided. Sponsors should fully understand that failure to comply with all Federal requirements could jeopardize later reimbursements.

#### **1077. LOI GRANT APPLICATION AND OFFER.**

When the authority to obligate funds for a project under an LOI is received, the sponsor should be notified to submit a grant application and all additional documentation needed at that time. The SF-424 must provide the LOI project description. Additional documentation may include periodic construction progress reports, inspection reports, or other evidence of satisfactory progress. The grant application may be for costs already incurred or for prospective costs. If the application includes costs not yet

incurred however, the FAA should ensure that the costs are imminent, rather than anticipated at some unspecified date in the future.

Any grant issued for the same work as identified in an LOI will be considered in the LOI rather than as a separate action. This does not preclude the issuance of a separate grant for distinct work outside the scope of the LOI. No separate grants for projects covered within an LOI will be considered.

#### **1078. ADMINISTRATION OF LETTERS OF INTENT.**

There will be an ongoing need to maintain up-to-date records of outstanding commitments under the LOI provisions. In addition, projects constructed under LOIs are more likely to be complex and to require longer completion times than those initiated with current year allocations and grants. Consequently, there may be a need to periodically review the amount of funds originally agreed to in a letter of intent and adjust the estimate for funding needed in the out years. In any case, APP-500 must approve any changes in the amounts or status of such future funding agreements.

#### **1079. AMENDMENTS TO LETTERS OF INTENT.**

Because these projects will be administered in the same way as conventionally funded projects, there will be ongoing FAA field involvement as each project phase is completed, as subsequent phases come to bid, and as successive grants are issued under the LOI. In cases where significant changes in project scope or costs are apparent, the Federal Airports Office administering the project is authorized to issue an amended LOI, after APP-500 approval, revising the project description, increasing or decreasing the Government's maximum obligation, or revising the payment schedule. See Appendix 24 for a sample LOI amendment.

Substantial revision or abandonment of a project initiated under an LOI is not anticipated. In such an event, however, consult APP-500 to determine the appropriate course of action. Although the limitation on grant amendments (currently 15 percent) does not apply to LOIs, caution should be exercised in considering project changes that would substantially increase the cost.

#### **1080. ADDITIONAL LETTER OF INTENT.**

Should a sponsor seek to obtain another LOI for projects not covered by the first LOI, the sponsor's new proposal should be evaluated in the same way as the original.

#### **1081. - 1089. RESERVED**

### **Section 9. BLOCK GRANT PROCEDURES**

#### **1090. GENERAL.**

This program consolidates funding to states for individual airport projects at selected locations and enhances State airport improvement responsibilities.

**a. Authorization.** Statutory authority exists for ten states to administer block grants on other than the primary airport projects.

**b. Traditionally Federal Functions That States Will Perform.** Block grant States perform some AIP administrative functions traditionally accomplished by the FAA, such as preparation of airport grant information for sponsors, reviewing of the sponsor's requests, and accounting for program expenditures. While various States have widely varying involvement in airport development, a State participating with block grants must accept the specific responsibilities of the program when it accepts the grant offer in writing. For purposes of the block grant program, states only assume functions related to the grant agreement.



**c. State Channeling and Sponsorship of Airport Projects.** State channeling of Federal airport grants occurs in various forms within numerous states. This is based on State enabling legislation rather than Federal law. Regions should administer the AIP to accommodate the State requirements. In addition, State sponsorship of airport projects also occurs with regularity based on provisions in Paragraph 209. The main difference between State sponsorship of airport projects and the block grant program (which is limited to nonprimary airports) is that in the latter states select each project rather than the FAA. State channeling and sponsorship of airport projects may be viewed as transitions to a block grant should the program allow new States, although they are not mutually exclusive provisions.

**d. State Aviation Agency Application.** If a State aviation agency is interested in the block grant program, only the State's initial application needs to be considered for participation. However, regions should request new applications from all current participants whenever the State, airport, or noise project sponsor assurances are changed. See Paragraph 1010. The selected State organizations must be capable of effectively administering a block grant. For the application forms, see Appendices 3 and 26 and block grant assurances.

**e. Application Schedules.** An application may be provided to regions from a State when notice has been given by APP-500 that the FAA will consider new applications. There is no set schedule for considering applications by states not currently participating in the program. Any schedule for new applications currently depends upon authorization for an expanded number of States or discontinuation by a current participant.

**f. Airport/State Relationship.** The relationship between airports and the State would be a factor in FAA oversight of the block grant program as well as selection of any additional states for it.

#### **1091. CALCULATING AMOUNTS FOR GRANT AGREEMENTS.**

A worksheet on the calculation of amounts in the block grants should be made available to states when the grant is offered. The funding categories should be specified in this worksheet, e.g. State apportionment or discretionary funds. Where nonprimary airport projects are to be administered by the FAA due to unusual circumstances in a block grant State for any fiscal year, the description of such a project and amount of funds should also be identified on the worksheet or separately. FAA is not involved in project selection under block grants. However, the FAA may reduce a participating State's funding and administer certain nonprimary airport projects the region selects outside of the State block grant. Title 49 U.S.C., Section 47116(c), specifically allows an airport in block grant states to receive grants with small airport funds as if the State were not within the program. (See Paragraph 1095.)

**a. Annual Grant Agreement using State Apportionment.** Normally, a single block grant for each fiscal year is issued to the State. However, it may be desirable to issue portions of the total, such as the State apportionment funds, for any fiscal year before the discretionary amount is known. In these cases, separate grants may be offered if the later increase would be greater than 15 percent of the initial block grant. An amendment may be made where the increase is 15 percent or less. All of the State apportionment should normally be included in block grants, and Condition 1 of the grant agreement in Appendix 27 limits use of these funds. If it is necessary for the FAA to administer all or part of the airport projects to benefit from such apportionment outside of a block grant, early consultation with the State is desirable.

**b. Passenger and Cargo Entitlements.** Where an amount of cargo funds is included in the block grant, the State distribution may be made without regard to this proportion. Use of any transferred passenger entitlements would be subject to the specific terms of the agreement of transfer in Appendix 16, which should be incorporated as a special condition of the block grant.

**c. Discretionary and Returned Entitlement Funds.** When amounts of discretionary or small airport funds are included in the block grant, the State distribution may be made without regard to these proportions. FAA may review the State's use of entitlement funds for any fiscal year in making determinations about additional discretionary funding for that fiscal year based on the Airport Capital

Improvement Plan. Where the FAA intends that the discretionary funds be used at a particular airport the block grant agreement should expressly provide for this use. States have flexibility to change the original projects. Documentation should be requested of states on how the specified discretionary amounts were used when such changes occur. See Paragraph 1094h.

**d. Nonprimary Entitlements.** When entitlements are permitted, current and future block grant states will be responsible for administering the individual nonprimary airport entitlement. These airports must be itemized within the block grant offer ensuring the State uses the specified funds at entitled locations. Lists of the associated city, airport, and amount of Federal share should be added in a new condition 9 with the preface: "Entitlements for nonprimary airports must be utilized as follows: ...". Regions shall request states to report on how the specified entitlement amounts were used at the end of three years after such a block grant has been issued. See Paragraph 1094h.

#### **1092. MAXIMUM STATE FLEXIBILITY.**

Regions should administer the block grants to encourage State innovation as well as allow maximum flexibility for them to carry out the program effectively and efficiently. States may use either FAA forms and procedures or their own as they choose, except for those procedures that are mandatory as noted in Paragraph 1095.

**a. Pre-Project State Planning Process.** State participants have considerable flexibility in using their pre-project planning process to determine airport development requirements. States are responsible for approval of airport layout plans (ALPs). Complete ALPs should be submitted to the region. Block grant funds may be used for airport master planning. In addition, States must undertake airport system planning determined as satisfactory to the FAA. That planning process must provide for meeting the critical safety and security needs of the national airport system. AIP grants administered by the FAA may be used for system planning.

**b. Programming Process.** States have substantial flexibility and may use their own airport project programming process, although the State must use a programming process that has been determined to be acceptable to the FAA. The State programming process must provide for critical safety and security requirements and ensure the needs of the national airport system will be addressed in deciding which projects will receive AIP funds. AIP grants administered by the FAA may be used for preparing State capital improvement programs through a system-planning project.

**c. State Priority System for Entitlements.** States have complete flexibility to use their priority system in selecting projects for any fiscal year using State apportionment funds as well as entitlements. See Paragraphs 1091c and 1092d for priority system requirements applicable to the use of discretionary and small airport funds.

**d. State Priority System for Discretionary Funds.** The priority system of the State may be used to select projects for any fiscal year using discretionary funds or returned entitlements provided the FAA has previously determined that the State's system is not inconsistent with the national priority system. While none of the States has been approved at the present time to use their priority system for discretionary or small airport funds, the FAA considers State priorities when applying the national priority system. State coordination and adoption of the priority system would be necessary before achieving the FAA determination allowing use of its priorities for discretionary and small airport funds. In an effort to treat each State the same (whether in the block grant program or not), states that wish to be considered for this option must forward a description of their priority system and any coordination of such with the FAA Airports Office through the region to APP-520. Regions should allow three months before any fiscal year in which the priority system is to be used for the necessary review and coordination. No guidelines have been established on amounts of funds that would be made available for this purpose.

**e. State/Local Matching Share.** States have the flexibility to fund individual airport projects using any United States Government share of allowable project costs that is not greater than 90 percent in accordance with Title 49 U.S.C., Section 47109 (a)(2). The United States share for the total block grant

work accomplished during each fiscal year shall be that amount or the higher amounts provided within states for public lands under Title 49 U.S.C., Section 47109(b). The potential for a reduced Federal share, from that allowed within states without block grants, requires the State or airports contribute a higher percentage of project costs. This leverages Federal funds to allow more work and may contribute to better project monitoring on the part of the airports. State block grant matching shares may vary from year to year depending upon their identification of individual airport project contributions.

**f. Environmental Requirements.** Environmental impact assessment responsibilities, except as described in Paragraph 1096, have been passed to States receiving block grant funds. Block grant funds may be used for airport studies including environmental assessments and environmental impact statements. Since the block grant States are responsible for selecting the individual airport projects within block grants, environmental analysis and the definition of the alternatives are the responsibility of the State. Block grant States are allowed to follow their own environmental requirements if comparable to the National Environmental Policy Act as defined in the U.S. Council on Environmental Quality (CEQ) regulation. States that have no such requirements shall follow the CEQ regulation. CEQ may ask to review the State agreement or procedures on these requirements. Contact APP-600 if there are questions on these or related airport environmental issues identified in Order 5050.4.

**g. Form of Agreements.** Block grant States have wide latitude in the form of agreements used for the program. States will have standard AIP block grant agreements with the FAA. In addition, the State may decide to enter into FAA regional agreements due to variations in State law or procedures. The form of the regional agreement should be determined between the region and State. States must also have individual airport agreements for projects, and the form of these is left to the State, provided it is acceptable to the FAA. See Paragraph 1095.

**h. Examples of State Flexibility.** To illustrate other allowable variations, several examples have been documented of the flexibility States may use that FAA cannot in administering AIP grants:

(1) One State has allowed a contingency amount of 2 percent of the construction cost for calculating airport grants that may cover unforeseen work without issuing amendments.

(2) Several of the States have used AIP funds for program administration costs under an exemption from the provisions of FAR Part 156 that prohibit use of AIP funds to supplement State aviation agency resources for management of the program.

**i. State Activities Unrelated to Block Grants.** States have flexibility to incorporate various activities unrelated to block grants into their State aviation program. These activities need to be considered separately from grant requirements, especially where the authority is other than for the AIP within Title 49 U.S.C., Sections 47101 to 47137. Block grant programs should exclude any elements other than those directly related to the AIP if questions arise about the adequacy of such activities. For instance, certain portions of coordination on obstruction evaluation and airport airspace analysis may be delegated to the states by mutual agreement between the FAA and the State. Any such evaluation or analysis is unrelated to block grants, and Order 7400.2 does not provide for the State to make the final determination. States that have been delegated airspace duties except final determinations by the regional Airports division manager should contact AAS-100 for assistance with access to databases.

**j. Conflicting Policies.** State aviation agencies may have views or policies that conflict with those of the FAA on various subjects. However, every effort should be made by regions to ensure that airport sponsors receive consistent AIP information and guidance from FAA/State sources. If significantly different positions have been taken that may cause an airport problem, contact APP-520 for assistance in resolving or accommodating the conflicts.

### **1093. AIRPORT ELIGIBILITY AND ALLOWABLE COST.**

AIP requirements for airport project eligibility and allowable cost are the same for States receiving a block grant as they would be if the FAA were administering the project.

**a. National Plan of Integrated Airport Systems.** Regions must ensure that airports benefiting from block grant projects are included in the NPIAS. States have system plans and may provide NPIAS information. However, the States do not have authority to change airports in the NPIAS.

**b. Eligible Airport Projects.** Regions must ensure the participating block grant States use AIP funds for eligible airport planning and development projects or to carry out an FAA-approved noise compatibility program. States must use the block grant funds to accomplish projects that are eligible under the statute as interpreted by the FAA.

**c. Ineligible Airport Projects.** Regions should identify ineligible projects contained in the Block Grant State's program using the AIP eligibility criteria. Where the region may be uncertain about eligibility, contact APP-520.

**d. AIP Project Costs.** Regions must ensure that States not use AIP block grant funds for project costs that would be ineligible under a grant administered by the FAA. Project costs must be necessary and reasonable to be allowable. Except for the land acquisition, project formulation, and certain costs with prior FAA approval, all other items must be incurred after the date of the airport agreement.

**e. Project Administration Costs.** Project administration costs that would otherwise be eligible for a grant should be allowed under the same terms as other AIP projects.

**f. Program Administration Costs.** State program administration costs are ineligible under FAR Part 156, although some states have been given a limited exemption from this requirement. These are costs that would be incurred by the region if the FAA were administering the airport project.

#### **1094. ACCOMPLISHMENT OF AIRPORT PROJECTS.**

States are allowed to use many of their own programs and procedures for accomplishing airport projects. However, the minimum of uniformity described below within each Block Grant State is required to achieve AIP program objectives.

**a. General.** In any case, where the region is unsure about allowing any aspect of the State's administration of the airport planning or development process, contact APP-520.

**b. National Airspace System Requirements.** Block grant construction and equipment projects must be consistent with the NAS Architecture as described in Paragraph 502.

**c. Project Changes Due to Satellite Navigation.** Changes in airports and airport activity levels may result from the transition to satellite navigation. Regions and states need to question the applicability of obsolete project items, airport design, standards, or equipment, as well as the suitability of new technology. See Paragraphs 503 and 504.

**d. Project Standards.** With the exception to the use of State highway specifications for airfield pavement at nonprimary airports with runways of 5,000 feet or shorter serving aircraft that do not exceed 60,000 pounds gross weight, the application of State standards to block grant projects requires approval of the FAA. The use of State highway specifications will prohibit the sponsor from seeking AIP grant funds for the rehabilitation or reconstruction of any such airfield pavement for a period of 10 years after construction is completed unless the Secretary determines that the rehabilitation or reconstruction is required for safety reasons. The requirements of Paragraph 506 apply to block grants.

**e. Disadvantaged Business Enterprises (DBE).** The block grant program recipients are covered by DBE requirements in Paragraph 1422 regardless of the amounts made available to individual airport projects. States may submit a single overall goal for contracts funded by the block grant during a fiscal year or it may propose separate goals covering one or more projects. States should submit their goal or goals to the regional Civil Rights offices.

**f. Grant Payments and Closeout.** Normally payments to block grant states will be by letter of credit. After a period of three years within this program, block grant closeouts should be accomplished at approximately the same rate as the FAA closes individual airport projects. Starting with block grants issued during FY 2002, regions should forward the State's airport project information to APP-500 as described within Paragraph 1097a.

**g. Commissioning and Decommissioning Airport Facilities.** Regions should ensure that commissioning and decommissioning of the block grant airfield facilities will be accomplished to achieve a comparable level of safety as provided in Paragraph 507.

**h. Recoveries.** For the funds states do not obligate in airport projects before block grant close out, the FAA must recover that amount. For the funds that were obligated and later recovered by the State from an airport project, the block grant policy allows either the FAA to recover the amount (and include it in succeeding block grants) or the State's re-obligation of it for new airport projects on a continuing basis. (The FAA has not usually limited State recovery of airport project funds beginning in FY 1993.) This practice includes discretionary funds. The adjustments are based on actual airport project payments except as described in Paragraph 1095i. Regions should oversee State recoveries from airport projects to ensure the funds are used for nonprimary airports eligible under the AIP, although it is unnecessary to track such after completion of an initial airport project benefiting from recovered funds. When nonprimary entitlements are granted, if use of AIP funds for the location after four years does not meet the entitlement, regions should ensure states provide entitled airports with amounts identified within block grants or return the funds to FAA. (See Paragraph 1091d.)

**i. Expired Carryovers.** At the end of each fiscal year, regions should coordinate with the states and report to APP-520 the amount of unused entitlement funds not obligated by a State for an airport project to be recovered by the FAA and converted into discretionary projects at airports, if any. APP-520 will then provide instructions on transferring these expired carryovers. See Paragraph 1097 and Order 5100.20.

**j. Accounting and Audits.** Regions should ensure states have an accounting system that accurately reflects expenditures of block grants. Block grants and airport projects under them are subject to the same audit requirements as any other AIP grant.

#### **1095. STANDARD ASSURANCES AND REGIONAL AGREEMENTS.**

The standard block grant agreement in Appendix 27 will be used for FAA grant offers.

**a. Mandatory Program Features.** The mandatory block grant program features are identified in the standard block grant assurances. These Federal requirements are not waived by Title 49 U.S.C., Section 47128. The FAA does not have authority to exempt the States from compliance with these requirements. However, there may be a means for States to comply in a manner different from FAA's procedures. States are not required to follow FAA directives. Refer to standard airport sponsor and noise project sponsor assurances (Section C.1, General Federal Requirements) for the list of laws and regulations States must follow, which are incorporated by reference in block grant agreements.

**b. Regional Agreements.** Regions are encouraged to enter into written agreements with participating states to supplement the block grant agreement on the issues below that may need to be tailored for a State or region. If any nonprimary airport within the State will receive a grant administered by the FAA, the regional agreement (or a separate letter to the State) should identify those airports and the terms of this funding arrangement for such locations. (See Paragraph 1091.)

Environmental impact assessment may differ in each State due to the application of local laws or requirements. Some of the issues that need to be addressed in the regional agreement may not be related to the National Environmental Policy Act, but are covered in Order 5050.4, such as historic preservation.

Monitoring airport compliance requirements from grant assurances is described in Order 5190.6. The U.S. Departments of Labor, Transportation, or FAA regions may participate in investigations.

Airport layout plans under block grants are to be coordinated with all interested parties in accordance with existing procedures established within the region. Since the states have different system plans, coordination of master planning may also vary with each State.

The form for project monitoring and reporting information may be somewhat different within each State. Requirements are described in Paragraph 1097. Reports may also include project justification, eligibility, priority, allowable costs, programming, airport agreements, layout plans, modification of standards, coordination, environmental status, procurement, land or relocation topics, labor requirements, civil rights, safety during construction, compliance problems, administrative costs, and other issues.

Other topics directly related to the AIP may be in regional agreements. However, care should be exercised to ensure the agreements are limited to AIP considerations and do not address unrelated issues of a State. Any existing regional agreement that contains issues unrelated to AIP grant agreements should be revised to delete inappropriate considerations, such as surplus Federal property responsibilities. See Paragraph 1092i.

**c. Obligation to Standard Assurances.** Regions must ensure that participating states obligate, if appropriate, each person or entity to which it distributes funds to any terms that the State block grant agreement requires be imposed on a recipient for airport projects funded under the program. Standard sponsor assurances in Appendix 1 may pass-through the State to the airport. The sponsor assurances must be the responsibility of the State, the airport, and/or both. An agreement between the State and the airport shall address any transfer and delegation of these obligations. The agreements between the State and airports are not necessarily required to be in the form of a sub-grant.

**d. Standard Federal Requirements.** States must agree to comply with United States Government standard requirements for administering the block grant. Where questions arise about the interpretation of standard Federal requirements applicable to block grants, contact APP-520.

**e. Post-Project Compliance with Legislated Requirements.** While regions ultimately have authority and responsibility to enforce airport sponsor assurances, the participating states are a first line of defense against non-compliance. Regions must ensure that the State does not delegate or relinquish its authority, rights, or power in a way that would interfere with the State's ability to comply with the terms of a block grant agreement.

#### **1096. AUTHORITIES RETAINED BY FAA.**

The flexibility afforded states in Paragraph 1092 are limited by various authorities or responsibilities retained by the FAA.

**a. General.** FAA approval will continue to be required for certain functions. For instance, airport sponsor compliance with Part 139 requirements is the responsibility of FAA where applicable.

**b. System Planning and Airport Layout Plans.** Regions retain responsibility for preparation of the NPIAS and administration of airport system planning grants for the block grant States or other eligible planning agencies. The FAA will provide an advisory opinion about the approved ALP submitted by block grant states. This advisory opinion will address the safety, utility, and efficiency of the ALP. Likewise, the runway safety area program is described in Order 5200.8, which identifies determinations to be made by the FAA. Block grant states should be given an advisory opinion about how to meet standards based on this directive. Advisory Circular 150/5100-13 identifies limitations on development of State standards for nonprimary airports.

**c. FAR Part 150.** Responsibility for approval of Part 150 studies, noise exposure maps, and noise compatibility plans have not been passed to states in the same way as other environmental responsibilities.

**d. Examples of State Constraints.** To illustrate other non-allowable variations, several examples of the constraints on State block grants have been documented.

Several block grant states have become involved with procedures for handling airspace matters that are not associated with a specific AIP airport planning or development project. Order 7400.2 does not provide for these states making the final FAA airspace determination, and nothing in the block grant agreement supercedes that directive. Likewise, the designation of instrument runways under that order should be accomplished primarily by the FAA.

Several of the States have delayed making payments to airports with block grant funds made available to the State. Timely project accomplishment and closeout should be comparable to that of the FAA.

One State has programmed the instrument landing system more liberally than the FAA. Due to the airport's statutory option allowing the Federal Government to take over ILS projects under the AIP and the magnitude of potential costs, states shall use the same criteria as FAA in approving such projects.

**e. Enforcement.** The FAA may take action in accordance with Order 5190.6 and 14 CFR Part 16 to enforce the terms of a State block grant agreement including any terms imposed upon subsequent recipients of block grant funds. The states may be successful in enforcing airport compliance obligations. However, in instances where a State is unsuccessful, the FAA cannot entirely delegate airport sponsor compliance enforcement actions to states.

#### **1097. REPORTING AND FAA REGULATORY OVERSIGHT.**

Except as noted below, reporting of the State should be determined by each region based on its requirements and need for oversight of the block grant program.

**a. State Program Reports.** States must agree to provide the airports and region with program information the region requires. Regions may require a quarterly report on each airport project. If the FAA needs information on a location for any reason, states shall provide the project approval status, work description, funding levels, standards, and procedures to obtain further State funding commitments for phased projects. Starting with block grants issued during FY 2002, regions should forward the reports on the State's airport projects, including projects with State-only funds if desired, in formats provided by APP-500. The data may be included as an appendix for the State in the annual AIP report of accomplishments.

**b. Program Review by FAA.** The FAA is responsible for continuous oversight of the block grant program, especially for issues involving airport safety and security as well as potential waste, fraud, or abuse of AIP funds.

**c. Evaluation of Funds Utilized.** Regions should track the utilization rate of AIP funds where it is suspected that State actions are not occurring in a timely manner. Sub-grants issued, or agreements with sponsors for airport projects, are adequate measures of performance for any State that is new to the program. After a period of three years, States should also be making payments to airports at approximately the same rate as the FAA.

**d. FAR Part 156 and FAA's Advisory Role.** FAR Part 156 identifies specific regulations applicable to the block grant states. Regions should be prepared to provide advice or furnish any additional documents requested by the State. FAA orders may be provided to a State to indicate how regions administer the grant program, although these internal directives, including Program Guidance Letters, are not binding on states.

**e. Program Administrative Cost Petitions.** The FAA has previously reviewed certain limited petitions for exemption from the requirements of FAR Part 156 prohibiting AIP funds from being used for program administrative costs. Contact APP-520 prior to the State sending any such petition.

**f. Consultation with Headquarters.** If the region has questions about the reporting or oversight relationship between the State and FAA, contact APP-500.

#### **1098. SUSPENSION OF BLOCK GRANT.**

Block grant suspension may be necessary where the State fails to comply with mandatory requirements. The criteria for the findings and determinations about suspension are the same as those used in selection of states to participate in the block grant program under 49 USC 47128(b)-(c). Regions should consider block grant conditions, regional agreements, and any comments from airports or other interested parties prior to issuing a notice suspending a block grant.

Regions should enforce airport compliance requirements involving AIP funds that were administered by the State under a block grant. Prior to suspension, regions should obtain copies of the State/airport agreements under block grants for funded airport projects whether closed out or incomplete. Corrective actions by the State/airport must be taken at the earliest practical time or on a schedule as otherwise may be agreed by the region and State. (See Paragraphs 1150-1151.)

#### **1099. TERMINATION OF STATE BLOCK GRANT OR PROGRAM.**

States may voluntarily terminate a block grant or the program. In addition, failure of states to comply with block grant conditions or regional agreements may ultimately result in FAA termination of the State's grant(s) or program. The suspension criteria and procedures within Paragraph 1098 should be used when terminating a block grant or program. (See Paragraphs 1152-56.)

**a. Contacts on Block Grant or Program Termination.** The concurrence of APP-500 is needed prior to discussing with the State final arrangements terminating the grant(s) or transferring block grant program responsibilities.

**b. Negotiations on Extent and Duration of State Participation.** If a State block grant or program is to be terminated, the extent and duration of the State's participation may be the subject of negotiations. When it is known that the State will no longer participate with grants or its program, regions should notify APP-520. The regions and states might agree to phase out participation in a program starting with selected categories of airports or projects. Region should encourage such states to continue administering its open airport projects. However, the State will be subject to the limitations on airport project closeout after four years, which would discontinue its block grant program participation at the end of that period.

**c. Regional Agreements and Termination.** The regional agreements with a State for block grants described in Paragraph 1095b should be amended or voided to transfer program responsibilities. Regions should clarify immediate and long-term obligations of the State to the United States in writing establishing mutual agreement on grant or program termination as described in subparagraphs 1099d-g. The clarification may become part of the existing regional agreements.

**d. Obligations for Closed Out Airport Projects.** Regions should identify requirements for each airport project that has been closed out in the grant or the program. At minimum, project lists should itemize documents that specify State and airport obligations as described in Appendix 30, Obligations in Block Grant Suspension or Termination. The lists may be summarized by categories of the airports or projects if appropriate. This is a summary to facilitate communicating the compliance information. It does not add legal requirements. The concurrence of AAS-400 is needed prior to providing the State with an approved summary of obligations in the block grant agreements and airport project agreements.



**e. Obligations for Incomplete Airport Projects.** Regions should identify requirements for each incomplete airport project within a grant or the program in accordance with this subparagraph. At minimum, project lists should reflect State and region views of block grant work as described in Appendix 30. This is a summary to facilitate recognition of airport project obligations. It does not add legal requirements. APP-500 concurrence is necessary prior to providing the State with an approved summation of the required actions or obligations in the block grant agreements and airport project agreements ensuring adequate transition of projects not closed out.

States should provide a status report on construction or equipment projects underway, processes requiring FAA action, and airport project safety. The region may annotate the report to identify nonstandard conditions.

States should provide a status report on land acquisition or relocation projects underway and processes requiring FAA action. FAA may annotate the report.

States should provide a status report on planning or environmental projects, processes that may require FAA action, and public opposition affected by proposed termination. The region may annotate the report to identify FAA positions on known problems.

States and regions should jointly decide outstanding eligibility questions and agree upon the documents that specify State or airport obligations for each project. If joint decisions cannot be reached, FAA should provide documentation and/or enforce terms of agreements.

States and regions should jointly agree upon procurement, audit, and the allowable Federal share of project cost requirements for each project. If joint agreement cannot be reached, FAA should identify requirements and/or enforce terms of agreements.

Regions should determine the impact of terminating a grant or program on the airports, airport agreements, the State, and overall AIP accomplishments.

**f. Continuing Responsibilities of State.** States have continuing obligations for closed out and incomplete projects. The obligations may be altered in accordance with this section. State responsibilities for providing airports with AIP information may continue at the discretion of the region. The states having a terminated block grant or program will not have control over selection of the affected airport projects. States must provide at the request of FAA such block grant program information and status reports as requested.

**g. Responsibilities Assumed by FAA.** Regions should exercise care to oversee matters related to closed out airport projects in terminated block grant agreements that may require action. Regions should assume responsibilities for incomplete airport projects in terminated block grant agreements that were a State's responsibility where the State is no longer involved with the work. If the State funded unusable units of work in closed out or incomplete projects, the region should evaluate the situation and determine the best use of the project on a case-by-case basis.

**h. Unilateral Termination.** When the FAA might unilaterally terminate the block grant(s) or the program, the region should notify APP-1/500 at the earliest possible time. A copy of obligations on airport projects as listed in Appendix 30 should be forwarded to APP-520.

**i. Conditions for State to Reapply.** At such time as a terminated State program is no longer administering incomplete AIP funded airport projects and it is discontinued, that State's option to reapply is based on the same conditions as other states.

# Chapter 11. GRANT OFFER, AGREEMENT, AND AMENDMENT

## Section 1. GRANT OFFER

### 1100. GENERAL.

A grant offer is a legal document prepared and signed by the FAA and delivered to the sponsor for acceptance in which the FAA formally makes an offer to pay a portion of the allowable costs of an AIP project for which a project application has been determined eligible. The signature of the sponsor accepting the grant offer constitutes a grant agreement which is a binding agreement obligating the sponsor and the United States in accordance with the terms and conditions of the grant document. Part I of the Grant Agreement, FAA Form 5100-37 (Appendix 8) is the standard form to be used in preparing the grant offer.

**a. Project Grant.** No changes or modifications shall be made to the standard terms and provisions of the grant agreement unless approved by FAA headquarters. Part 1-Offer of the grant agreement must be consistent with the approved project application. The grant agreement should be dated and signed by the FAA official authorized to approve the project and sent to the sponsor. At the option of the FAA Airports Office this may be the standard grant offer or the modified one page grant offer, see Section 2 and Appendices 6, 14 and 27.

**b. Block Grant.** In addition to the requirements of Paragraph 1100(a), for State block grant agreements, see Paragraph 961 and Appendix 27.

### 1101. PROJECT DESCRIPTION.

The project must be carefully described in Part 1-Offer of the grant agreement in sufficient detail to identify each item of the project. Runways being developed or improved under the project should be identified by direction or number and by the length and width. Taxiways or aprons being constructed or improved should be specifically identified. A general term such as "construction of taxiway" should not be used. Runway protection zone acquisition and improvements such as approach clearing should be described in connection with the particular runway end being protected and/or the objects to be removed or lowered. All construction work must be shown in detail in the approved project plans. It is also essential that a grant offer for the acquisition of land be specific as to areas, tracts, or parcels of land. All work eligible under Title 49 U.S.C., Section 47501, formerly known as the Aviation Safety and Noise Abatement (ASNA) Act, should be clearly identified. The project description should be in sufficient detail to allow calculation of the possible differing Federal shares of individual work item(s), as applicable.

### 1102. MULTI-YEAR GRANTS.

Under this type of grant, the FAA agrees with the sponsor to commit the sponsor's future years entitlement funds to a project. However, the FAA cannot commit to a multi-year project that extends beyond the current program authorization. The initial grant offer contains a current year obligation as well as the total U.S. share of the estimated cost of completion of the project. The initial year of a multi-year grant must include entitlement funds and may include discretionary funds. Each year of the project, the grant must be amended to include additional obligations. This can be achieved through a formal grant amendment or through a letter of amendment sent to the sponsor to obligate the new entitlement funds. Each procedure has its own special condition format in the initial grant agreement.

**a. Applicability.** This type of grant may be issued for a project that meets the following conditions:

(1) The project is funded with the entitlement funds under Sections 47114(c) and 47114(d)(3)(A) of the Act (except as noted above);

- (1) The project will not be completed in one fiscal year. See Section 47108(a) of the Act; and
- (2) The commitment does not exceed the current program authorization.

**b. Grant Agreement Format.**

(1) The following clause should be inserted after the words "Project Application" at the bottom of page 1 of FAA Form 5100-37: "Whereas this project will not be completed during fiscal year 20XX, and the total U.S. share of the estimated cost of completion will be \$XXX,XXX."

(2) See Appendix 7 for the Special Condition that should be added on page 4 of FAA Form 5100-37.

**c. Establishment of U.S. Share.**

(1) The cost of the eligible work in the total project may be estimated. However, it is generally preferred that the U.S. share for construction projects be based on actual bids. If possible, sponsors should be encouraged to obtain signed purchase agreements for land to be acquired in the project. The U.S. share is calculated using the applicable participation rates for the type of work.

(2) The amount calculated in c(1) may not exceed the sum of the sponsor's current entitlement funds, the entitlement funds expected to be received through the duration of the project, and the amount of discretionary funds that can be committed to the project in the initial year.

(3) If the amount calculated within c(1) exceeds the amount estimated to be available in c(2), then the scope of the project should be reduced until the two amounts are equal.

**d. Initial Year.** The U.S. share established in subparagraph c above is stated in the grant agreement (see b(1) above) and represents the total U.S. share of the cost of the project. The initial grant also specifies a current year obligation consisting of the sponsor's current entitlement funds and available discretionary funds, if any.

**e. Follow-On Years.** The grant may be formally amended each fiscal year (see Section 4 of this chapter) or continued through a letter of amendment (Appendix 17) through the duration of the project to include additional obligations for the new fiscal year with the sponsor's entitlement funds. However, the sum of the yearly obligations under the multi-year grant may not exceed the total U.S. share of the estimated cost of completion established in subparagraph c above.

**f. Increasing the Total U.S. Share of the Estimated Cost of Completion.** Once established in the initial grant agreement, the total U.S. share of the estimated cost of completion may be increased in accordance with Section 5 of this chapter.

**g. Change in Participation Rate.** If in subsequent years following the award of a multi-year grant the sponsor's participation rate changes, the Federal share is at their current year rate and not the rate of the initial multi-year grant. For instance, airports may change from a medium hub to a small hub and the rate changes from 75 percent to 95 percent. A grant amendment increase limit of 15 percent (for grants executed after September 30, 1987) will still apply.

**1103. STANDARD CONDITIONS.**

The standard conditions are listed on the grant agreement (FAA Form 5100-37 (Appendix 8)) and apply to all grants. They are self-explanatory, except for the following:

**a. Condition #1.** Since the Act provides that the maximum obligation of the United States may be increased by 15 percent except for planning, it is necessary to identify, as part of the grant agreement, the amount included in the agreement for planning.

**b. Condition #6.** This condition provides for the insertion of a stipulated number of days within which the sponsor must accept the offer. Ordinarily, a 60-day period is sufficient for acceptance of the offer and in any case, when the stipulated time will exceed 90 days, then APP-500 shall be consulted. In some instances, a period less than 60 days for acceptance may be necessary. Since all grant offers must be accepted in the fiscal year in which they are made, the period of acceptance should be adjusted for all offers made after August 1.

#### **1104. FINAL CLEARANCE OF GRANT OFFER.**

The grant offer may not be issued unless the approving FAA official is satisfied to the best of his/her knowledge the project application and supporting documents meet all the requirements of the Act and the FAA regulations and are in accordance with current national policies.

#### **1105. LETTER OF INTENT.**

See Section 8 of chapter 10.

#### **1106. - 1109. RESERVED.**

### **Section 2. VARIATIONS AND TRANSITION TO ELECTRONIC GRANTS**

#### **1110. GENERAL.**

**a.** The FAA Airports Office may elect to use variations in lieu of procedures described in Section 1 of this Chapter. The region will submit alternative grant agreement formats, standard conditions, and related procedures to APP-500 for approval. See Paragraph 31.

**b.** The standard assurances, certifications, conditions, and grant offer forms are currently undergoing revision in anticipation of electronic grant making. Therefore, we do not expect the Washington review of alternative grant offers would require more than 30 days for any region.

#### **1111. - 1119. RESERVED.**

### **Section 3. SPECIAL CONDITIONS**

#### **1120. GENERAL.**

**a.** Special conditions are used to accommodate particular circumstances needed in a grant agreement, which are not satisfied by the standard conditions. Special conditions may be unique to a sponsor or required for a certain type of project (e.g., a project with a proration of Federal share of building and utility costs).

**b.** Failure to meet any special condition, which incorporates a deadline date, can be grounds for withholding grant payment. Therefore, any special condition requiring a deadline date should contain that specific deadline.

#### **1121. SPECIAL CONDITIONS TO BE INCLUDED IN GRANT AGREEMENTS.**

Special conditions to be used, as required, in grant agreements can be found in Appendix 7. Special conditions for Instrument Landing System (ILS) grants awarded under the current precision instrument system policy can also be found in Appendix 7. Special conditions for projects on privately owned public use airports can be found in Appendix 7 and are referenced in the appropriate paragraphs in this Order.

#### **1122. OTHER SUBJECTS WHICH MAY REQUIRE SPECIAL CONDITIONS.**

In addition to special conditions in Appendix 9, other special conditions may be required to meet statutory requirements or to comply with circumstances unique to the project. Examples of subjects covered are:

- a. State channeling and/or agency agreement;
- b. Correction of deficiencies in property identification or title representations;
- c. Identification of specific land acquisition;
- d. Airport zoning;
- e. Identification of development excluded from Federal participation;
- f. Environmental impact mitigation commitments; and
- g. Other Federal Funds. Where other Federal funds are used to supplement AIP funds, the grant offer should include a special condition, which shows clearly.

(1) The amount available from each Federal grant program;

(2) Conditions pertaining to the use of such funds, including the applicable methodology of determining the share of each grantor agency in case of changing project costs; and

(3) For those Federal grant programs permitted by law to be used as matching funds, an acknowledgement of the program and funds should be inserted as a special condition.

**1123. - 1129. RESERVED.**

#### **Section 4. ACCEPTANCE OF GRANT OFFER**

##### **1130. GENERAL.**

After signature by the FAA approving official, sufficient copies of the grant offer to satisfy regional requirements shall be sent to the sponsor for execution. If in agreement with the grant offer, the sponsor will sign Part II of the grant agreement. The sponsor's attorney must certify that the sponsor's acceptance complies with local and state law and constitutes a legal and binding obligation of the sponsor. The sponsor will return the executed documents to the appropriate FAA Airports Office.

##### **1131. TIME LIMIT FOR ACCEPTANCE OF OFFER.**

Normally, as stated in Paragraph 1103(b), a 60-day period is sufficient time for the sponsor to accept or reject the grant offer.

##### **1132. DISTRIBUTION AND NOTIFICATION OF GRANT AGREEMENT.**

a. The FAA Airports Office immediately upon receipt of the grant agreement from the sponsor will enter a Phase 5 (Grant Agreement Acceptance) into the AIP automation system.

b. Distribution of copies of the executed grant agreement shall be in accordance with regional practice.

##### **1133. REVISION OF GRANT OFFER.**

Occasionally, the sponsor or the FAA may wish to modify the offer before it is accepted. Generally, such revisions are limited to a change in the scope, description, maximum obligation for the project, or an extension of the time for acceptance by the sponsor. All grant offers must be returned unsigned to the FAA for any changes. The Sponsor may not alter or change the grant offer documents. Also, the FAA, at its discretion, may withdraw the grant offer at any time before the sponsor accepts it.

**a. Change in Scope of Project.** Where such action is in the interest of the United States, the scope of the project may be changed.

**b. Reducing Maximum Obligation.** It is current FAA policy to issue all grants based on bids to the greatest extent possible. However, if it appears from the receipt of bids or other causes, that the amount of the offer is in excess of the amount required to pay the United States share of the latest estimated cost of the project, the maximum amount stated in the offer should be reduced accordingly. If the sponsor has already accepted the grant, the grant must be amended utilizing the amendment process in Section 5 of this chapter.

**c. Increasing Maximum Obligation.**

**(1) Request for Increase.** If the sponsor determines that the maximum obligation of the United States under the offer is insufficient, it may request an increase. This determination may come from various sources including a recheck of the project estimate or, more conclusively, the receipt of bids indicating the need for a higher maximum amount.

**(2) Justification for Increase.** The sponsor must give complete justification for the request, setting forth the amount of the increase requested, together with a statement of the facts surrounding the unforeseen contingency or circumstances necessitating the increase. The FAA shall review the justification and may issue a revised grant offer if the justification is deemed adequate.

**d. Withdrawal of Offer.** If it appears that Federal funds are insufficient to permit participation in the increased amounts requested, the project cannot be completed at a reasonable cost, or other circumstances warrant, the FAA may withdraw the offer at any time before the offer is accepted.

**1134. - 1139. RESERVED.**

## **Section 5. GRANT AMENDMENTS**

**1140. GENERAL.**

Subject to the conditions in the following paragraphs, a grant agreement may be amended after its execution.

**1141. AMENDMENTS INVOLVING A CHANGE IN THE WORK DESCRIPTION.**

FAA Airports Offices are authorized to amend AIP grant agreements to change the work description. This may involve adding work items, deleting work items, or a combination of both. However, new work should not be added to an existing grant for the sole purpose of using excess grant funds. New development items that are added to an existing grant should be closely related to the existing project. Issuance of a new grant for a new project or unrelated work items will permit the closeout of the original grant at the earliest possible date.

**a. Adding Work Items.** Before amending a grant to add an item of work, regional offices must ensure that:

**(1)** It is advantageous to the Government to accomplish the new development items under an amendment to an existing grant agreement rather than by issuance of a new grant agreement.

**(2)** Funds are available within the existing grant to cover the cost of the new work item.

**(a)** If funds in the existing grant are insufficient to cover the cost of the new work, funds may be added in accordance with Paragraph 1142(b) and Paragraph 1142(c).

(b) Items of work shall not be added to a grant solely because funds are available. The need for additional work items must be closely related to work contained in the grant description to be amended, fully justified, and documented.

(3) Costs incurred for work undertaken on a new development item prior to execution of the amendment are ineligible for reimbursement (except for costs allowed under Paragraph 310(a)(4)).

(4) All other statutory and regulatory requirements (airspace, ALP, and etc.) that may apply to the project or work item to be added to the grant agreement that were not satisfied by the original grant agreement have been or will be complied with at the appropriate time (e.g., environmental or labor).

**b. Deleting Work Items.** Grant agreements may be amended to delete items of work. The amendment shall be supported by documents indicating the purpose, nature, and effect of the amendment, the resulting advantages to the United States, and a finding that the amendment does not prejudice the interests of the United States. In deleting items from the grant, the conditions below must be observed:

(1) Normally, the maximum obligation of the United States should be reduced by the U.S. share of the deleted item as calculated from the application amount. If the funds are not reduced, the project file shall be fully documented to explain why the action is not prejudicial to the interests of the United States. The project file must identify which work items increased and the justification for the increase in project costs. If a change in the scope of the grant agreement is approved (project deleted), and the funds are not reduced (it is in the best interest of the U.S. not to reduce the U.S. share), the Regional Airports Division Manager must be contacted for approval of the amendment. See Paragraph 31 for limitations on regional authority.

(2) In grants that contain land acquisition, land parcels for which costs have been incurred during the grant period may be deleted but cannot be reprogrammed in another grant. If costs have not been incurred for the land during the grant period, it may be deleted and then later reprogrammed.

**c. Substitution of Work Items.** In some cases, it is in the best interest of the United States and the sponsor to delete items of work and replace them with new items. If the substituted items are not of equal value to the deleted items, then the obligation of the United States should be adjusted accordingly. As a minimum, the project file shall be documented to include:

(1) An explanation as to why the originally programmed items are no longer justified at this time. The deletion must be shown to be in the best interest of the Government. The amount for the deleted items included in the grant must also be indicated;

(2) An explanation as to why substituted work elements or projects are justified at this time and their estimated costs. It must be shown that programming the new items is in the best interest of the Government. Items may not be added solely because there will be excess funds in the grant as a result of deleting items.

#### **1142. AMENDMENTS INVOLVING A CHANGE IN THE U.S. OBLIGATION.**

FAA Airports Offices may amend a grant agreement to change the maximum obligation of the United States as follows:

**a. Decreases in the Maximum U.S. Obligation.** The maximum obligation should be decreased when there are excess funds in the grant unless additional work items are to be included in accordance with Paragraph 1141. Excess funds may result from the deletion of work items (decrease in the obligation should be made simultaneously with the amendment to delete) or actual bids being less than estimates when the grant amount is based upon estimates. Either the sponsor or the FAA Airports Office may initiate a decrease in the U.S. obligation. The FAA Airports Office may initiate a grant

amendment any time after the excess is identified, otherwise the adjustment may be made at grant closeout.

**b. Increases in the Maximum U.S. Obligation for Grants Executed prior to October 1, 1987.** If total actual allowable project costs exceed the total maximum obligation specified in the grant agreement, the maximum obligation of the U.S. specified in the grant agreement may be increased using only amounts the Government recovers from other grants as follows:

(1) Airport Development or Noise Implementation Programs. If the increase in total project costs is attributable solely to an increase in airport development or noise implementation program costs other than land acquisition, then the maximum obligation may be increased by the applicable U.S. share of the total allowable excess project costs, not to exceed 10 percent of the maximum obligation.

(2) Land Acquisition. If the increase in total project costs is attributable solely to the increase in land acquisition costs, the maximum U.S. obligation may be increased by 50 percent of the total allowable excess project costs.

(3) Combination of Airport Development, Noise Implementation programs and Land Acquisition. If the increase in total project costs is attributable to both (1) and (2) above, then the maximum obligation of the United States may be increased by the total of:

(a) The U.S. share of the increased airport development and/or noise implementation costs (other than land acquisition costs) not to exceed 10 percent of the maximum obligation of the grant (minus the land costs); and

(b) 50 percent of the difference between the total actual allowable land acquisition costs and the sum of the land cost base and the sponsor's share applicable to such base. The land cost base is the figure shown in the original grant agreement under Condition 1 for Land Acquisition (See Paragraph 1103 and Appendix 13).

(4) For grants executed prior to October 1, 1987, the amendment will not exceed the 60 percent/\$200,000 limitation when the increase involves terminal work (See Paragraph 551);

(5) A determination is made that the amendment is advantageous to the Government. The basis for the amendment shall be documented in the project folder. A general statement that the increase is for cost overruns is not acceptable. Instead, the documentation should contain specific justification such as:

(a) Increases necessitated by work under Change Orders (specific change);

(b) Increase due to actual excavation quantities being greater than original estimate;

(c) Increase due to increased land acquisition costs for parcels (identify specific parcel or parcels) over original estimate; and/or

(d) Grant issue based on estimates; increase to cover actual construction bid that was higher than estimate.

**c. Increases in the Maximum U.S. Obligation for Grants Approved after September 30, 1987.** If total actual allowable project costs for airport development or noise implementation projects or land acquisition exceed the total estimated project costs upon which the maximum obligation is based, the maximum obligation of the U.S. specified in the grant agreement may be increased by 15 percent.

**d. Increases in the Maximum U.S. Obligation for Grants Approved after September 30, 1992.** Grants to acquire an interest in land for an airport (except a primary airport), may be increased by not



more than the greater of the following, based on current creditable appraisals or a court award in a condemnation proceeding:

(1) 15 percent; or

(1) 25 percent of the total increase in allowable project costs attributable to acquiring an interest in land.

**e. Planning Items.** If the increase in project costs is attributable to planning items, the maximum U.S. obligation may not be increased. Supplemental planning grants may be issued after determining that requirements for a new project have been met.

**f. Multi-Year Project.** A multi-year grant may be amended each fiscal year through the duration of the project to increase the actual U.S. obligation provided that the total project cost does not exceed the U.S. obligational commitment stated in the grant plus any increase allowed in this paragraph. (See Paragraph 1102.)

**g. Request for Amendment.**

(1) Any amendment involving an increase in the maximum U.S. obligation must be requested by the sponsor in writing.

(2) The request must state the purpose, justification, and amount of the amendment and be supported by whatever documentation (e.g. plans and specifications, cost information, etc.) that the FAA project manager considers necessary.

(3) The foregoing request and documentation is not necessary if the project is a multi-year grant and the amount of the amendment will not make the U.S. obligation exceed the maximum obligational commitment.

**h. Approval of Increases to the Maximum U.S. Obligation.** For approval of increases, the FAA Airports Offices shall review the sponsor's request and supporting documentation and may approve increases to the maximum U.S. obligation if:

(1) The funds are available;

(2) The increased costs appear to be allowable; and

(3) The amendment will result in a change to the maximum U.S. Obligation that is otherwise consistent with this paragraph.

**1143. ACCEPTANCE OF AMENDMENT.**

In accepting an amendment to the grant agreement, the sponsor will follow the same procedure for grant acceptance. Distribution of the amendment shall be the same as for the original agreement. It is imperative that a copy be furnished the Accounting Office to comply with fund control procedures. (See Appendix 18.)

**1144. NUMBERING AMENDMENTS.**

Each amendment to a grant agreement shall be numbered in consecutive order. The number will be placed in the heading of the document as follows: "Amendment No. 1 to Grant Agreement for Project No. 3-36-0009-01."

**1145. INFORMAL LETTER AMENDMENTS.**

At grant closeout, regions are encouraged to determine whether a letter request from the sponsor will suffice for changing the grant final closeout amount. Any project scope change is not a candidate for an informal letter amendment and will require a formal amendment. In cases where only the final grant amount is to be amended, a letter signed by the sponsor's representative identifying the final project closeout amount is required. Approval of any requested change(s) may be accomplished by the FAA project managers concurrence in pen and ink on the face of the letter, which shall be retained in the project files. The sponsor shall be notified of FAA acceptance of the requested amendment. Before an informal letter amendment request can be considered the following conditions must be met:

- a. The special condition permitting the use of the informal letter amendment must be in the original grant agreement (See Appendix 7);
- b. The sponsor's officially designated representative must sign all letters requesting the informal amendment;
- c. All amendments to cover cost overruns in the grant must be within the statutory allowable limit (currently 15%); and
- d. Planning project increased costs cannot be included in the amendment.

**1146. - 1149. RESERVED.****Section 6. SUSPENSION AND TERMINATION OF THE GRANT****1150. GENERAL.**

Failure to comply with grant conditions, other than civil rights, may result in suspension or termination of the grant. FAR Part 16, *FAA Rules of Practice for Federally-Assisted Airport Proceedings*<sup>3</sup>, 14 CFR Part 16 (Part 16 or Rules of Practice) provides detailed procedures for investigating and adjudicating exclusively airport-related complaints under the applicable Federal statutes and the obligations imposed on the FAA-Airport Sponsor relationship by those statutes. There are three civil rights statutory provisions that contain their own enforcement procedures and do not use 14 CFR Part 16. They are Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; and Title 49 U.S.C., Section 47123. Part 16 provides the only available vehicle for obtaining a final FAA decision in airport-related compliance matters except for the three civil rights statutory provisions noted above. (See Paragraph 1305 for withholding of payment.)

**1151. SUSPENSION OF THE GRANT.**

If the sponsor fails to comply with conditions of the grant, the FAA Airports Office may, by written notice to the sponsor, suspend the grant in whole or in part. Additional obligations incurred during the period of suspension after receipt of the notice will not be eligible, unless specifically authorized in writing by the FAA. However, the FAA may allow costs, which are otherwise allowable and could not be avoided during the period of suspension. The notice of suspension shall contain the following:

- a. The reasons for the suspension and the corrective action necessary to lift the suspension;
- b. A date by which the corrective action must be taken; and
- c. Notification that consideration will be given to terminating the grant after that date.

---

<sup>3</sup> FAA Rules of Practice for Federally-Assisted Airport Proceedings, 61 FR 53998-54012, effective December 16, 1996.

**1152. TERMINATION FOR CAUSE.**

If the sponsor fails to comply with the conditions of the grant, the FAA Airports Office may, by written notice to the sponsor, unilaterally terminate the grant for cause. In all correspondence, which may lead to termination for cause, care should be taken to use only factual and objective language. FAA Airports Offices shall use the following procedures:

- a. The grant shall first be suspended in accordance with Paragraph 1151;
- b. APP-1 shall be notified, at the earliest possible opportunity and also in writing, of the proposed termination. A copy of the notice of suspension and the FAA Airports Office assessment of the action taken by the sponsor to remedy the situation shall also be forwarded to APP-500;
- c. Upon receipt, APP-500 will acknowledge the proposed termination via telephone or e-mail. Within 30 days of APP-500's acknowledgement, the FAA Airports Office will be notified, in writing, of the procedures to be followed;
- d. The sponsor shall be notified, in writing, of the termination. The notice shall include the reasons for the termination. Payments to be made to the sponsor or recoveries of payment by the FAA under the grant shall be in accordance with the legal rights and liabilities of the parties; and
- e. Termination for cause may require further action in accordance with Order 5190.6 and 14 CFR Part 16 on airport compliance requirements.

**1153. TERMINATION FOR CONVENIENCE.**

When the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds, the grant may be terminated, in whole or in part, upon mutual agreement of the regional Airports Division Manager and the sponsor. Agreement will be made upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. In such cases, the sponsor may not incur new obligations for the terminated portion after the effective date and shall cancel as many obligations relating to the terminated portion as possible. The sponsor will, however, be allowed full credit for the Federal share of those obligations that cannot be canceled which were properly incurred by the sponsor prior to the effective termination date.

**1154. REQUEST FOR RECONSIDERATION.**

Subject to the provisions of 14 CFR Part 16, if applicable, in any case of suspension or termination, the sponsor may request the Associate Administrator (ARP-1) to reconsider the suspension or termination. Such request for reconsideration shall be made within 45 days after receipt of the notice of suspension or termination. All notices of suspension or termination must inform the sponsor of this appeal process.

**1155. FUNDS RECOVERY.**

Immediately following the 45-day appeal period a Phase 9 shall be put into the AIP system and a Form 1413 forwarded to the region to deobligate and recover the funds.

**1156. DISTRIBUTION.**

Copies of suspension and termination documents shall be distributed in the same manner as the distribution of the original agreement and any amendments.

Suggested (minimum) Distribution:

APP-520

APP-500

**June 28, 2005**

**Order 5100.38C**

APP-1

ARP-1

**1157. - 1199. RESERVED.**

This page left intentionally blank.

## Chapter 12. PROJECT ACCOMPLISHMENT

### Section 1. PRE-CONSTRUCTION ACTIVITIES

#### 1200. GENERAL.

It is the FAA Airports Financial Assistance Division policy to accept certification of plans and specifications for AIP projects. However, if a first-time sponsor or if unusual circumstances exist and certifications of compliance are not requested, and the proposed contract to be awarded under the procurement procedures outlined in Chapter 9 has not been reviewed with the bid tabulation before the grant offer, it should be reviewed to insure compliance with all requirements after the grant agreement. Since certifications are normally received from sponsors, they are briefly addressed in this chapter, as there has already been a more comprehensive discussion in Chapter 10. For block grants, requirements on accomplishment of airport projects are described in Chapter 10, Section 8.

#### 1201. SPONSOR CERTIFICATION.

Title 49 U.S.C., Section 47105(d), authorizes the Secretary to require certifications from sponsors that they will comply with statutory and administrative requirements. Use of sponsor certifications is permitted in the following areas; "Project Plans and Specifications", "Equipment and Construction Contracts", "Real Property Acquisition", "Construction Project Final Acceptance" and "Drug-Free Workplace Act of 1988". Copies of the certification forms are contained in Appendix 25. Acceptance by the FAA of a sponsor certification does not limit the FAA's ability to request and review documentation to ensure the accuracy of a certification. (See Chapter 10, Section 3.)

#### 1202. ASSURANCES AND CERTIFICATIONS.

Sponsor certification, as authorized by Title 49 U.S.C., Section 47105(d), allows the FAA Airports Office to obtain adequate assurance that an airport sponsor has complied with the statutory and administrative requirements imposed through grant agreements. Equipment and construction contracts are considered appropriate for obtaining sponsor certifications and a standard format for the certification has been developed (See Appendix 25). However, the use of sponsor certifications does not relieve the FAA Airports personnel from their responsibility to maintain a broad overview of AIP projects and be reasonably assured that the sponsor is meeting all of its obligations. (See Chapter 10, Section 3) In addition, FAA Airports personnel retain responsibility for coordination of the proposed development with the appropriate organizational elements within the FAA.

#### 1203. LAND TITLE REQUIREMENT.

Authorization for the sponsor to issue a notice to proceed with construction work generally must not be given until it has been determined that the required property interests have been acquired in the land on which construction is to be performed. In some cases, the deferral of a notice to proceed until this determination is made may unduly delay project construction and result in increased project costs. In cases where the FAA Airports Office is satisfied that good title will be forthcoming and where the sponsor has obtained a right to enter upon the land to commence construction and certifies that it will acquire adequate title, a notice to proceed may be authorized.

#### 1204. AUTHORIZATION OF NOTICE TO PROCEED.

Where plans and specifications conform to the general scope and design concepts agreed upon, project costs are considered reasonable, and the appropriate engineering and construction standards will be complied with, the FAA Airports Office, when satisfied all of the pre-construction requirements have been met, may authorize the sponsor to issue a notice to proceed to the contractor.

**1205. DELAY IN CONSTRUCTION START.**

If construction is delayed beyond the approved schedule, appropriate action must be taken. (See Chapter 11, Section 6.)

**1206. PRE-CONSTRUCTION CONFERENCE.**

a. Purpose for pre-construction conference. Where appropriate, the FAA Airports Office should request that the sponsor hold a pre-construction conference to familiarize all interested parties with the various requirements of the project. One major advantage of the conference is that, through a discussion of each requirement, the responsibility of parties may be determined. For airport grant projects AC 150/5300-9, "Pre-design, Pre-bid, and Pre-construction Conferences," provides additional guidance on conducting pre-construction conferences.

b. Participation.

The participants will vary with the nature of airport activities and work to be performed and may include:

- (1) The sponsor's engineer and testing personnel;
  - (2) The airport manager;
  - (3) Other sponsor representatives as selected by the sponsor;
  - (4) The state agency representative, if applicable;
  - (5) The contractor and subcontractors;
  - (6) Fixed-base operators;
  - (7) A representative of the FAA Airports Office;
  - (8) Other FAA representatives, as appropriate;
    - (a) The Air Traffic Manager at towered airports; and
    - (b) The local Airway Facilities Representative;
- c. Local managers for airlines;
- d. Representatives of military organizations;
- e. Air Transport Association and/or Regional Airline Association representatives; and
- f. Others, as appropriate.

The FAA Airports Office should assure that all appropriate Federal Airports Offices, military installations, and Federal agencies that may have an interest in the project are notified so that they may have the opportunity to be represented at the conference.

**1207. SCOPE AND AGENDA.**

The scope and agenda of a pre-construction conference should be designed to address the requirements and special concerns of a particular project and participants. Safety during construction, grant assurances, and special conditions should be included at appropriate points throughout the

meeting. Advisory Circular, AC 150/5300-9, provides guidance on items to be considered in developing an agenda.

#### **1208. LABOR AND CIVIL RIGHTS REQUIREMENTS.**

If in attendance, the FAA representative should be prepared to discuss labor and civil rights requirements, as outlined in AC 150/5100-6, Labor Requirements for the Airport Improvement Program, and AC 150/5100-15, Civil Rights Requirements Under the Airport Improvement Program.

#### **1209. - 1219. RESERVED.**

## **Section 2. CONSTRUCTION PROCEDURES**

#### **1220. FAA RESPONSIBILITIES.**

The FAA Airports Office has the responsibility to coordinate all grant construction activities with the other FAA operating offices. In addition, the FAA has a responsibility to ensure that the terms and conditions of the grant agreement are met and to maintain a broad overview of AIP construction projects. This can be achieved by:

**a. Periodic Inspections.** Periodic inspections may be scheduled by the FAA at a frequency that is dependent on the proposed construction schedule, the complexity of the project, the relative capability of the sponsor's engineer and inspection personnel, the availability of FAA personnel, and other considerations as appropriate. For paving projects with a cost greater than \$250,000, one such inspection should be made during the early stages of construction. If an inspection cannot be made, the sponsor will be required to submit a summary of interim test results. During periodic inspections and at other times as appropriate, the FAA will inspect daily construction records to review past project activities and to evaluate the adequacy of sponsor's inspection activities. The FAA will also review the sponsor's construction management program, required by the special condition on Pavement Quality Control, to ensure elements such as contract administration, testing laboratories with quality control responsibilities, qualifications of inspection personnel, and testing procedures and results are properly addressed. In no case shall FAA personnel place themselves in the role of providing resident inspection services or issuing construction directions to the sponsor's contractors.

**b. Requiring Construction Progress Reports.** The FAA Airports Office may require a sponsor to submit FAA Form 5370-1, Construction Progress and Inspection Report, on a periodic basis. Requirement and frequency shall be determined based on the region's need for monitoring and control of the individual project.

**c. Labor Provision Reviews and Investigations.** Compliance with and enforcement of Federal labor provisions shall be in accordance with the procedures outlined in the Department of Labor regulations (29 CFR Part 5). (See Chapter 14.)

**d. Civil Rights Review.** FAA Airports Office personnel shall coordinate with regional civil rights personnel to carry out compliance with and enforcement of civil rights requirements in accordance with regional policy and Chapter 14.

**e. Contact with the Sponsor and other Federal Airports Offices.** FAA Airports Offices should ensure through periodic contact with the sponsor they are properly supervising the project. Coordination should be undertaken with other Federal Airports Offices or inter-division working groups whenever there is a concern that Federal requirements may be overlooked.

**f. Final Inspections.** Final inspections should be conducted in the presence of the sponsor and contractor representatives, and the results recorded on FAA Form 5100-17, AIP Final Inspection Report, (Appendix 10). The region may waive final inspection if there is full assurance that the work has been completed totally and satisfactorily. The rationale supporting such a waiver shall be fully documented.



**g. Enforcement.** Where an inspection, report, or other source reveals the sponsor is not providing satisfactory supervision and inspection of the construction, the sponsor will be immediately advised that adequate supervision is required under the terms of the grant agreement. Further, when any other discrepancy in civil rights, labor requirements, technical or engineering specification becomes evident, the region shall notify the sponsor and take follow-up action as necessary. If these actions fail to obtain satisfactory results, the sponsor will be advised that project payments will be suspended or other appropriate action taken until adequate supervision and inspection is provided to assure construction in accordance with approved plans and specifications. (See Paragraph 1305.)

#### **1221. SPONSOR'S RESPONSIBILITIES.**

FAA Airports Offices should advise the sponsor of the sponsor's direct responsibility for monitoring project accomplishment. The sponsor must ensure that the work is carried out in accordance with the plans and specifications; that time schedules are observed; that Federal labor and civil rights provisions are followed; and that all other terms and conditions in the contract documents and grant agreement are implemented. The following are also specific responsibilities during construction of which the sponsor must be advised:

**a. Supervision and Inspection.** The sponsor is required to provide adequate, competent, and qualified engineering supervision and construction inspection during all stages of the work. If so desired or deemed necessary, the FAA may require a sponsor to furnish a signed statement that it has reviewed the qualifications of personnel who will be performing engineering supervision and conducting inspections and is satisfied that they are qualified and competent to do so.

**b. Construction Records.** The FAA should advise the sponsor that the resident engineer must keep daily construction records. Some of the data that should be a part of these records include:

- (1) Daily weather conditions and temperatures;
- (2) Work in process and general location;
- (3) Equipment in use;
- (4) Adequacy and size of work force including supervision;
- (5) Hours worked per day for contractor, subcontractor, testing laboratory and resident engineers;
- (6) Quality and quantity of materials delivered;
- (7) Tests performed and locations;
- (8) Test results;
- (9) Instructions to the contractor, such as minor changes to grade, work schedule, gradation of material or mix design, and alignment;
- (10) Unsafe or unexpected hazardous conditions encountered;
- (11) As-built drawings; and
- (12) Documentation of each pay item quantity measurement.

**c. Sponsor Quarterly Performance Report.**

(1) The sponsor must be advised of the need to submit to the FAA Airports Office a performance report, on a quarterly basis, which includes:

(a) A comparison of actual accomplishments to the goals established for the period. When applicable, a comparison will be made on a quantitative basis related to cost data for computation of unit costs;

(b) Reasons for slippage in those cases where established goals are not met;

(c) Relationship, if any, to AIP projects not covered within this grant;

(d) Impact on PFC, F&E or other projects; and

(e) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(2) If any performance review conducted by the sponsor discloses a need for a grant amendment, the sponsor should be required to submit a request for an amendment on FAA Form 5100-100, Section B. The sponsor makes such a request whenever:

(a) The revision results from changes in the scope or objective of the project; or

(b) The revision increases or decreases the amount of Federal funds needed to complete the project.

**d. Construction Progress and Inspection Report.** The sponsor may be required by the FAA Airports Office to submit FAA Form 5370-1, Construction Progress and Inspection Report, (Appendix 13) periodically, but no less than quarterly, on a case-by-case basis.

**e. Special Reports.** Regardless of the performance-reporting schedule, sponsors are to be advised to notify FAA immediately whenever problems, events, or deficiencies occur that will require a major change in the scope of the project, or significantly affect the construction schedule or increase the total funds needed to complete the project by an amount that the FAA Airports Office considers significant. The sponsor will be notified by the FAA Airports Office of the amount that will trigger the special report.

**1222. CHANGE ORDERS AND SUPPLEMENTAL AGREEMENTS.**

See Chapter 9, Section 4.

**1223. - 1229. RESERVED.****Section 3. SPONSOR'S FORCE ACCOUNT****1230. GENERAL.**

**a. Force Account.** Force account construction work is construction that is accomplished through the use of material, equipment, labor, and supervision provided by the sponsor or by another public agency pursuant to an agreement with the sponsor.

**b. Force Account Standards.** A project, or any part of a project, accomplished by force account must meet the same engineering and construction standards that are required for contract construction (See Paragraph 904). The FAA will apply the same requirements in review of plans and specifications as in conducting construction inspections. Construction reporting standards in Paragraph 1221 shall

also apply, as appropriate. The sponsor of force account construction must keep records on costs of materials, hourly operation of equipment, payrolls, and all other costs to avoid disallowance of costs that cannot be verified in an audit.

### 1231. JUSTIFICATION AND APPROVAL.

Generally, construction should be accomplished through the competitive bidding process. Therefore, a sponsor anticipating construction using force account must submit a written justification for approval by the FAA Airports Office early in the grant process, preferably before grant application. The FAA Airports Office may wish to withhold approval of force account construction until after review of the final plans and specifications. The sponsor's proposal to use force account rather than contract construction must be fully documented and should contain as a minimum:

- a. Justification for doing the work by force account rather than by contract;
- b. Estimate of costs with details as to wage rates, non-salary expenses, indirect costs, and comparison of costs between the sponsor's force account construction and contract construction;
- c. Information on sponsor's resources (labor, material, equipment, and financing) and workload as they affect capacity to do the work, date by which the work will be complete, or dates within which the work will take place;
- d. Adequate plans and specifications showing the nature and extent of the work to be performed using force account; and
- e. The sponsor must clearly show that the benefits, including benefits to the Federal Government, of using force account override the Federal policy of competitive bidding.

### 1232. SPONSOR FUNDS.

Enough funds must be available to the sponsor to carry payrolls and any necessary purchases of materials and rental equipment for the first portion of construction or until the first partial grant payment is received. The total amount of the sponsor's share may also consist of rental value of equipment, cost of materials in stock, and the value of labor that will be used on the project, as well as cash.

### 1233. COST ALLOWABILITY.

**a. Records.** To ensure the allowability of cost, the sponsor must keep accurate records of the hours sponsor equipment and personnel are employed on the project. Such records should include time sheets reflecting a job or account number chargeable to the project and payroll records certified by a supervisor.

**b. Equipment.** Equipment rental rates applicable to the construction on force account development vary widely. Therefore, to facilitate a uniform method for evaluating these rates, the regions may use the District Offices of the United States Army Corps of Engineers "Construction Equipment Ownership and Operating Expense Schedule" (EP-1110-1-8) or the Associated General Contractors of America (AGCA) "Contractors Equipment Cost Guide," to evaluate the sponsor's rate. The Army Corps of Engineers "Construction Equipment Ownership and Operating Expense Schedule" can be found on the world wide web at: <http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/cecw.htm>. The purchase price of equipment bought by the sponsor for use on a force account project is not allowable except to the extent that its amortization is included in the calculation of rental and operating rates.

**c. Supplies and Materials.** Any procurement of supplies and materials carried out for the purposes of the force account project must be in accordance with the procurement standards in chapter 8 to the extent possible.

- d. **Personnel.** Cost of labor and supervision shall be in accordance with state and local standards.

**1234. PERFORMANCE OF CONSTRUCTION.**

a. **Insurance.** Sponsors are not required to carry any type of insurance unless mandated by local or state law. Sponsors should be advised that it is their responsibility to comply with state and local insurance requirements. (See Paragraph 311(I)). Where sponsors routinely include requirements for minimum liability insurance coverage in all public works projects of comparable scope, they may be considered as reasonable and necessary overhead costs and will be allowable under the AIP.

b. **Project Changes.** The sponsor must get prior FAA approval for any changes, which will result in a grant amendment. Where a change in construction is contemplated which is substantial in scope or design, or is a change in either the plans or specifications, the equivalent of a "change order" shall be issued. This will be in the form of written instructions from the sponsor or its authorized representative to the engineer in charge of supervision and inspection of construction.

c. **FAA Inspections.** The procedures for FAA periodic and final inspections of the construction work done by sponsor's force account are similar to those procedures in Paragraph 1220 for construction by contract.

**1235. - 1299. RESERVED.**

This page left intentionally blank.

## Chapter 13. PROJECT PAYMENT, CLOSEOUT, AND AUDIT

### Section 1. PROJECT PAYMENT

#### 1300. GENERAL.

The AIP program has drawn criticism that AIP funds under grant are idle while critical projects are not funded because of a shortage of funds. One measurement that a project is progressing acceptably is the regularity that grant payments are being made or drawn down to reimburse for project accomplishments. When grant funds are drawn down regularly, this would prove that the funds are not idle. To facilitate reaching this stage, the FAA Airports Office requests that each AIP grantee request or initiate a draw down grant payment for project accomplishments every 30 days during the course of the project life. This 30-day requirement can be waived when the accomplishments are not significant enough to warrant a grant payment, i.e., less than \$10,000. However, a request for or a draw down of a grant payment will be required within 30 days after the end of each federal fiscal year to cover all accrued grant costs from the prior fiscal year that have not been reimbursed. This would give an accounting of the year-end status of each project.

Grant payment may be made to sponsors by letter of credit, electronic funds transfer, or Treasury check. The letter of credit as used in this program does not conform to the standard definition as used in the financial or banking communities. The letter of credit as used here is a draw down of funds against the grant obligation and is used to conform to the terminology on the approved Standard Form 272 and Order 2700.33. The letter of credit will be used unless the sponsor is ineligible or specifically requests payment by Treasury check or electronic funds transfer. Payments totaling not more than 90 percent of the United States Government's share of the project's estimated allowable costs may be made before the project is completed if the sponsor certifies to the FAA Airports Office that the total amount expended from the payments at any time will not be more than the cost of the airport development work completed on the project at that time (See 49 USC Section 47111). Payments cannot be made in advance of grant work being completed. The FAA Airports Office may require documentation from the sponsor to support any costs claimed. FAA Airports Offices should encourage sponsors to use the letter of credit to reduce paperwork.

#### 1301. LETTER OF CREDIT.

Payment by letter of credit is currently the subject of a working draft replacement for this paragraph within Program Guidance Letter 05-2 dated April 29, 2005, pending revision of related directives and reorganization of the Regional Accounting Offices.

#### 1302. PAYMENT BY TREASURY CHECK OR ELECTRONIC FUNDS TRANSFER - GENERAL.

Payment by Treasury check or electronic funds transfer is the method to be used when the sponsor does not meet the letter of credit requirements. Payment of costs claimed by electronic funds transfer is processed the same as a payment by Treasury check, except that the sponsor receives the funds by a fund transfer to its bank rather than by receiving a paper check. Payments should be made on a reimbursable basis for actual work completed, material delivered to site, or land acquired. These requests for reimbursement should not be more frequently than monthly. A sponsor shall not be reimbursed for amounts that are to be withheld from contractors to ensure satisfactory completion of the work. These amounts will be paid when the sponsor releases these funds to the contractor.

#### 1303. PAYMENT BY TREASURY CHECK OR ELECTRONIC FUNDS TRANSFER - FORMS.

a. **Request for Advance or Reimbursement, SF-270.** Form SF-270 is prepared by the sponsor and submitted to the FAA Airports Office to request progress or final payment for non-construction

projects. It may be used for construction programs if the region believes that the form provides sufficient information.

**b. The Outlay Report and Request for Reimbursement, SF-271.** Form SF-271 is prepared by the sponsor to request progress or final payment for construction projects or any other project for which the region feels a need for more detailed information than provided on SF-270.

**c. Distribution of Forms.** The sponsor shall submit the original plus two copies of the necessary forms. After approval by the FAA Airports Office, the original and a copy shall be forwarded to the Regional Accounting Office.

#### **1304. PAYMENT BY TREASURY CHECK OR ELECTRONIC FUNDS TRANSFER - APPROVAL.**

**a.** Before approving a payment request, the FAA Airports Office should establish that:

- (1)** The cost is reasonable and allowable;
- (2)** The payment request does not exceed the outstanding balance in the grant;
- (3)** The work covered by the payment is in line with the project schedule; and

**(4)** In cases involving land, the sponsor has submitted evidence satisfactory to the FAA the sponsor has received good title to land acquired or to be acquired.

**b.** Where the FAA Airports Office determines that the amount requested is not justified, a lesser amount should be approved and the sponsor notified of the adjustment and the reason for the adjustment. The FAA Airports Office may not withhold payment for proper charges for more than 180 days unless the sponsor has failed to comply with grant conditions and has been notified and given an opportunity for a hearing. Also, payment may be withheld if a sponsor is indebted to the U.S. Government and collection of the indebtedness will not significantly impair accomplishment of the objectives of the grant program. All such action will be coordinated with the Regional Accounting Office.

**c.** FAA Airports Office will indicate approval of the payment request by affixing and signing the following on the payment request form:

"I find \$ \_\_\_\_\_ of the amount requested for reimbursement to be an allowable project cost based on the representations and certifications of the sponsor as contained in the payment request. I further find this cost has not previously been reimbursed, and hereby approve payment of such amount."

Name \_\_\_\_\_ Date: \_\_\_\_\_

**d.** Before forwarding the request for payment to the regional accounting office, the FAA Airports Office should ensure the sponsor's name, project number, partial payment request number, and the DOT contract number are included on the form.

**e.** If the request is for final payment associated with project closeout, see Section 2 of this chapter.

#### **1305. WITHHOLDING PAYMENT.**

Payment may be withheld by the FAA Airports Office pending the determination of reasonableness, allowability, and necessity of the claimed costs or for noncompliance with a grant condition. Title 49 U.S.C., Section 47111(d) contains certain requirements that must be followed when withholding payments for noncompliance with grant conditions. Thus, if any determination of noncompliance is to be made that requires withholding of payment, contact the FAA Airports Office of Compliance, AAS-400, for specific procedures. If it is also necessary to suspend the letter of credit, see Order 2700.33, Letter of Credit - Treasury Financial Communications system (TFSC), Paragraph 19. If the grant is suspended or

terminated, see Paragraph 1150. Where there is a dispute between the sponsor and the contractor, see Paragraph 1314.

**1306. - 1309. RESERVED.**

## **Section 2. GRANT CLOSEOUT PROCEDURES**

### **1310. GENERAL.**

The closeout of a grant is the process by which the FAA Airports Office and the sponsor perform the necessary final administrative actions to complete all requirements of the grant agreement. It is important that all parties involved fulfill these requirements promptly so that unnecessary delays in closing a grant can be avoided. The closeout process will usually require an examination of three areas - project work completion, administrative requirements, and financial requirements - to ensure that the required steps have been taken or conditions met.

### **1311. AUDIT RELATIONSHIP TO CLOSEOUT.**

The single audit required by OMB Circular A-133-Revised June 24, 1997, will not usually coincide with the project accomplishment period; nor is a single audit likely to contain sufficient information on the project to show all grant requirements have been met. If the project manager believes it necessary to audit the project more closely, see Paragraph 1320. Otherwise, FAA Airports Offices may close out projects before the audit cycle is completed. The project may be reopened later to resolve subsequent audit findings.

### **1312. WORK COMPLETION REQUIREMENTS FOR CLOSEOUT.**

Conditions to be met before work completion can be determined will vary according to the type of work in the grant, i.e. planning, land acquisition, equipment acquisition, or construction.

**a. Planning.** The conditions are met when the sponsor has completed the work elements identified in the program narrative and the FAA has reviewed and accepted the final report. Acceptance does not require that the FAA agree with the conclusions or recommendations in the plan. It should be kept in mind that the plan has been developed in part for the purpose of providing local and state governments with a planning tool to assist them in making airport development decisions. When significant differences of opinion exist, a letter should be sent to the sponsor, which outlines the FAA position. See Paragraph 428.

**b. Land Acquisition.** Conditions are met when the sponsor obtains satisfactory property interest in all parcels included in the grant description, has submitted adequate title evidence or appropriate certification for all the parcels, and the FAA Airports Office has accepted such evidence. In addition, the FAA Airports Office is satisfied that the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, requirements have been met. See Paragraph 713.

**c. Equipment Acquisition.** Conditions are met when the equipment is delivered, installed, and tested in accordance with approved plans and specifications. At the option of the FAA Airports Office, the FAA or the sponsor may make final inspection.

**d. Construction.** Conditions are met when all work items in the grant description have been completed in accordance with the approved or certified plans and specifications and the final inspection completed as stated in Paragraph 1220(f). Correction of noted discrepancies (punch list items) should be completed, or the FAA Airports Office should have assurance that arrangements are made for their completion. Sponsor certification may be accepted or required for both work items and punch list completion.



e. **Combination of the above.** Regions may close out portions of projects that involve combinations of the preceding four categories when each specific portion meets its requirements for closeout.

### 1313. ADMINISTRATIVE REQUIREMENTS FOR CLOSEOUT.

Sponsors shall be required to submit the following items as part of the administrative closeout of the project:

a. **As-Built Plans.** "As-built" plans for airport development projects involving construction must be submitted. At the FAA Airports Office's discretion, certification from the sponsor that as-built plans have been received and will be retained for future use may be accepted. Another option, at the discretion of the FAA Airports Office, is to accept an electronic version of the as-built plans;

b. **Exhibit A, Property Map.** Revised "Exhibit A" if any changes were made from the one submitted with the project application;

c. **Property Accountability.** A sponsor rarely acquires equipment expressly to carry out a grant. However, if a sponsor does, an inventory of all equipment with a current per unit fair market value in excess of \$5,000, acquired with Federal funds and used to carry out the grant, must be submitted as part of the closeout package. Equipment no longer needed for airport purposes may be sold or retained by the sponsor. The Federal share of the current fair market value shall be deducted from the grant amount or reimbursed to FAA.

d. **Block Grants.** Forward information to the region on airport projects as described in Paragraph 1097a.

### 1314. FINANCIAL REQUIREMENTS FOR CLOSEOUT.

a. **Final Financial Report.** The sponsor shall be required to submit a final financial report to the FAA in accordance with Title 49 CFR, Parts 18.41 and 18.50. This report is required even if the sponsor has already received payments equal to the maximum obligation of the United States stated in the grant agreement. For construction and non-construction projects, the final report shall be made on the form the sponsor normally uses to request payment (SF-270 or SF-271) in cases of reimbursement by Treasury check, or on SF-272 if the letter of credit has been used. The final financial report may also serve as the request for final payment when 100% progress payment has not been made or when an adjustment to the 100% progress payment is required.

b. **Form Preparation.** On the appropriate line of these forms or in the "Remarks" section, if the line does not exist, the following information must be included, if applicable:

(1) **Identification of any Interest Earned on Federal Funds.** Except for sponsors that are state agencies, all such interest must be returned to the Federal Government;

(2) **Identification of Credit for Non-expendable Personal Property** (See Paragraph 1313(c));  
and

(3) **Identification of Any Disputed Costs.** Where there is a dispute between the contractor and the sponsor as to the amount of compensation due the contractor, which may have to be settled by litigation, the contractor should furnish the sponsor an estimate of the total amount allegedly due from the sponsor. The sponsor should only recognize the undisputed portion of the contractor's claim and include that amount in the final financial report. However, in the "Remarks" section, the sponsor should point out that there is a certain disputed amount that the contractor claims and which may be the subject of litigation. Following review of the Sponsor's closeout documentation the region may choose to continue with the project closeout or leave the grant open until all litigation is completed.

**c. Excess Payments.** If the final financial report indicates that payments have been made which exceed the Federal share of the estimated allowable costs or the sponsor has received interest on Federal funds to which it is not entitled, this amount constitutes a debt to the Federal Government. The accounting office should be informed of the amount and asked to send a notice to the sponsor that the debt should be paid within 30 days or a charge for interest and penalties in accordance with the Federal Claims Collection Standards will be assessed. See Paragraph 1304(b) for guidance regarding offset against another grant.

**d. Fiscal Adjustments.** It may be necessary to make upward or downward adjustments as a result of an audit, grant amendments, or resolution of disputed costs.

#### **1315. FINAL PROJECT REPORT.**

**a. Preparation.** After the requirements of Paragraphs 1312, 1313, and 1314 have been met, a final project review shall be made resulting in a final project report. The report shall contain information deemed necessary for any subsequent examination or evaluation of the project.

**b. Approval of Final Project Report.** The report will normally be prepared by the FAA project manager and be reviewed and approved by the Airports Division Manager. This authority may be delegated but must remain at one level higher than the project manager in the chain of command. This constitutes a routine element of program checks and balances as required by OMB Circular A-123.

#### **1316. FINANCIAL SETTLEMENT.**

Upon approval of the final project report, payment for the allowable costs up to the maximum obligation of the United States may be made. Financial settlement may also involve recovering any overpayments or interest (See Paragraph 1314(c)). The sponsor shall be notified in writing with a copy to the project file when the final financial settlement is being made that the grant is considered closed out. Any differences in the amount of funds requested by the sponsor and the amounts paid out should be explained. If the amount requested in the sponsor's final financial report exceeds the balance of the maximum U.S. obligation remaining in the grant, either the excess must be denied or a grant amendment made in accordance with Chapter 11, Section 5.

#### **1317. REPORTS TO FAA HEADQUARTERS.**

One copy of the Airports Division final project report is required by APP-520 when Economic Development Act or Appalachian Regional Commission funds are included in the project, or on an "as requested basis" for other projects.

#### **1318. RECLAIM FOR SUSPENDED COSTS AFTER FINAL SETTLEMENT.**

There will be instances where final payment will be made to the sponsor with certain project costs being suspended for lack of substantiating evidence or for other reasons. The sponsor may reclaim such costs after final payment provided the sponsor has submitted evidence that is satisfactory to justify a determination that the costs are reasonable and necessary to the project. However, if the sponsor does not file for such reclaim within 90 days after final payment, the project may be closed out.

#### **1319. RESERVED.**

### **Section 3. AUDITS**

#### **1320. GENERAL.**

OMB Circular A-133-Revised June 24, 1997, Audits of States, Local Governments, and Non-Profit Organizations implements the Single Audit Act of 1984, P.L. 98-502 and Single Audit Act Amendments of 1996, P.L. 104-156, and establishes audit requirements for States, local governments, and non-profit organizations expending Federal awards. It requires that any States, local governments, and non-profit organizations that expend \$300,000 or more a year in Federal funds shall have an audit made in

accordance with OMB Circular A-133-Revised June 24, 1997. Operating Administrations (OAs) and Secretarial Offices (SOs) are also responsible for ensuring appropriate audit coverage for other types of assistance recipients not covered by the A-133 circular. Where DOT has been designated to serve as the cognizant agency, the responsibilities shall be divided between the OA's and SOs, and the Office of the Inspector General (OIG). The audit shall be made by an independent auditor and cover the entire financial and compliance operations of that government body. Audits will be conducted annually unless State or local law requires biennial audits. When the OA's, SOs, or the OIG determine that additional audits are necessary, such audits shall build on the results of independent auditors if the audits meet the criteria contained in OMB Circular A-133. Recipients that expend less than \$300,000 a year in Federal assistance funds are exempt from single audit requirements; however, they must retain appropriate records to document their compliance with the requirements of their Federal assistance awards. The single audit concept was established to:

- a. Ensure that all Federal agencies rely on a single audit;
- b. Provide consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards; and
- c. Improve the financial management of Federal assistance programs.

Since most sponsors receive grants from more than one Federal agency, cognizant agencies are assigned based on the Federal agency that provides the predominate amount of direct funding in accordance with Section 400 of OMB Circular A-133.

#### **1321. AUDIT RESPONSIBILITIES - GENERAL.**

There are four parties involved with the A-133 process - the FAA Airports Office, the public sponsor, the sponsor's auditor, and the DOT OIG (if a modal administration in DOT is the cognizant agency). Paragraph 1325 contains guidelines for private sponsor audits.

#### **1322. AUDIT RESPONSIBILITY - FAA AIRPORTS OFFICE.**

a. If DOT is the cognizant agency for a sponsor, and the FAA provides the most DOT funding, FAA would have administrative cognizance responsibility.

b. If FAA is assigned as cognizant agency, the FAA Airports Office shall:

(1) Ensure that audits are made and reports are issued and distributed in a timely manner in accordance with this section and that sponsors take corrective actions when audit reports are found by the OIG not to be in compliance with the requirements of Circular A-133-Revised June 24, 1997;

(2) Sponsors shall be instructed to submit an appropriate number of copies of audit reports directly to the Bureau of Census Federal Audit Clearinghouse;

(3) Establish and enforce appropriate audit coverage for recipients not covered under OMB Circular A-133. Audit requirements for these recipients shall be established and performed for the program in a manner that ensures the Federal interest is adequately protected;

(4) Refer deficient findings that relate to a single Federal agency to that agency for resolution. Negotiate with recipients to correct system deficiencies and resolve questioned costs for findings that affect two or more Operating Administrations (OA's)/Secretarial Offices (SOs). If agreed to by the cognizant agency and OA's/SOs, specific DOT-related deficiencies or questioned costs may be resolved by the affected OA/SO;

(5) Be responsible for approving sponsor cost allocation plans and negotiating and executing indirect cost rate agreements, if required, with respect to all assistance programs;

(6) Issue management decisions on audit findings within 6 months, and ensure that recipients take prompt corrective action. Copies shall be submitted to the OIG and other appropriate officials; and

(7) Consider auditor requests for extensions of report submission due date, with the advice and assistance of the OIG.

c. If FAA is not the cognizant agency, the FAA Airports Office responsibility is limited to responding to the audit findings and recommendations and to cooperating with the cognizant agency.

**1323. AUDIT RESPONSIBILITY - PUBLIC SPONSOR.**

The public sponsor (Auditee) is responsible for:

a. Ensuring it has a cognizant agency;

b. Selection of an auditor. This can be a private firm selected in accordance with the provisions of Title 49 CFR, Part 18.36 or an in-house auditor approved by the OIG;

c. Ensuring the audit is carried out in accordance with A-133;

d. Responding to audit findings and cooperation with the FAA in resolving any problems;

e. Keeping audit reports on file for three years from the date of their issuance;

f. Submitting copies of the audit report within 30 days after issuance to a central clearinghouse located at the Census Bureau, Department of Commerce. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports. Audit reports should be sent to Bureau of the Census, Data Preparation Division, 1201 E. 10<sup>th</sup> Street, Jeffersonville, IN 47132, Attn: Single Audit Clearinghouse; and

g. Submitting a cost allocation plan and an indirect cost rate proposal, if required.

**1324. AUDIT RESPONSIBILITY - OIG.**

The OIG's responsibility is to:

a. Ensure that audits are in accordance with the requirements of OMB Circular A-133, and advise the recipient of audits that are deficient in meeting requirements. The OIG shall also notify the cognizant OA or SO of audits not meeting these requirements for follow-up action;

b. Provide technical advice and liaison to State and local governments and independent auditors;

c. Obtain or make quality control reviews of selected audits made by non-Federal auditors to ensure that audits are performed in compliance with OMB Circular A-133, generally accepted auditing standards and "Government Auditing Standards." Results will be provided to the OA or SO whose program or activities are subject to audit by the entities. When appropriate, results should be provided to other interested organizations;

d. Inform other affected Federal organizations and appropriate Federal law enforcement officials of any reported illegal acts or irregularities;

- e. Advise the sponsor of audits that have been found not to meet the requirements of OMB Circular A-133. The OIG shall also notify the cognizant operating administration of sponsor audit reports that do not meet the requirements of OMB Circular A-133;
- f. Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits required by OMB Circular A-133, so that the additional audits build upon such audits;
- g. Provide audits to support approval of cost allocation plans and indirect cost rates. These audits should be completed by the OIG within 30 days of the receipt of the audit request;
- h. Perform or arrange for special or supplemental audits at the request of the Federal Airports Office;
- i. Coordinate audit work performed by or for Federal/non-Federal organizations that are in addition to the audits required by OMB Circular A-133 so that additional audits build upon such audits to achieve the most efficient and cost effective results;
- j. Consider auditee requests to qualify as a low-risk audit; and
- k. Coordinate the management decisions for audit findings that affect the programs of more than one agency.

**1325. PRIVATE SPONSOR AUDIT.**

Since A-133 applies only to public sponsors and non-profit organizations, the FAA will require, if appropriate, that in a grant agreement with a private sponsor a project audit will be conducted and submitted to the FAA Airports Office. See Appendix 7 for the special condition on private sponsor audits, which is to be included in appropriate grants. These audits should be sent to the OIG. Where the FAA Airports Office determines that project transactions are so basic that a full audit is unnecessary (e.g. purchase of equipment, a small lump sum contract on a third party planning contract, etc.) a cost review without audit may be made in lieu of the audit.

**1326. GRANTS LESS THAN \$300,000.**

Where the total funds for all Federal grants to a single public sponsor are less than \$300,000 a year, the audit requirements shall be those prescribed by the State or local law or regulation.

**1327. SUPPLEMENTAL AUDITS.**

The FAA Airports Office may require audits in addition to the single audit where they feel a need exists, e.g. where there is evidence of discrepancy, where there is an unusual financial situation, or any other reason the project manager believes is needed. The OIG should be requested to arrange for these audits.

**1328. AUDIT COSTS.**

The cost of audits is allowable as either a direct cost or an allocated indirect cost, in accordance with Paragraph 35 of this Order. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds represent of total funds expended during the fiscal year. Higher actual costs must be documented.

**1329. RELEASE OF AUDIT REPORTS.**

The release to the public of any audit report prepared by the OIG shall be coordinated with the Regional Counsel to insure that it will be in accordance with the Trade Secrets Act (18 USC 1905) and the Freedom of Information Act (5 USC 552).

June 28, 2005

Order 5100.38C

1330. - 1399. RESERVED.

This page left intentionally blank.

## Chapter 14. ENFORCEMENT OF LABOR AND CIVIL RIGHTS REQUIREMENTS

### Section 1. ENFORCEMENT OF LABOR REQUIREMENTS

#### 1400. GENERAL.

A more detailed treatment of the labor requirements with which sponsors, contractors, and subcontractors must comply are contained in AC 150/5100-6 and are summarized below. The clauses required by these acts to be included in contracts and subcontracts are found in the appropriate appendices of the AC. Therefore, the AC should be used as a companion document in this area.

**a. Davis-Bacon Act (DBA).** All construction contracts and subcontracts awarded by the sponsor and contractor in excess of \$2,000 shall include a provision for compliance with the applicable provisions of the Davis-Bacon Act (40 U.S.C. 3141 et seq.) and applicable provisions of the Department of Labor implementing regulations (29 CFR Part 5), as well as a provision to pay to mechanics and laborers wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The sponsor shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation, and the award of a contract shall be conditioned upon the acceptance of the wage determination. The sponsor shall report all suspected or reported violations to the FAA.

**b. Contract Work Hours and Safety Standards Act (CWHSSA).** Where applicable, all contracts awarded by sponsors and contractors in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.) as supplemented by the Department of Labor Regulations (29 CFR Part 5). Under the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate not less than one and one-half times their basic rate of pay for all hours worked in excess of 40 hours in the workweek. The Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation.

**c. Copeland "Anti-Kickback" Act.** This Act applies to construction contracts over \$2,000 and declares it a criminal offense for any person to make unauthorized deductions, to exact rebates from wages paid to any person employed by any contractor or subcontractor engaged in the construction, prosecution, completion or repair financed in full or in part by loans or grants from a Federal agency. Contractors and subcontractors are required to submit weekly certifications of compliance. Some exceptions are made to the Act's requirements as detailed by the Secretary of Labor's regulations. Appropriate clauses are to be included in all contracts subject to the requirements of 29 CFR Parts 3 and 5.

**d. Fair Labor Standards Act.** Basically, the Fair Labor Standards Act (FLSA) requires payment of the Federal minimum wage to all employees engaged in interstate commerce or the production of goods for interstate commerce and includes most employees in the construction industry. While the DBA applies to prevailing wages paid to laborers and mechanics, and the CWHSSA to laborers, mechanics, watchmen, and guards, the FLSA covers almost all other employees in AIP construction, other than those exempted under Section 213 of the FLSA and certain State and local public employees.



**e. Occupational Safety and Health Act of 1970.** This Act is often referred to as the Williams-Steiger Act. It applies to all contracts funded in part by Federal grants and requires contractors to observe health and safety standards developed by the Department of Labor (See 29 CFR 1910).

#### **1401. ENFORCEMENT RESPONSIBILITY.**

**a. General.** The FAA is responsible for the administration and enforcement of the labor requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act. The DOL is also responsible for the enforcement of the CWHSSA, the FLSA, and the Occupational Safety and Health Act. Apparent violations of any of these acts should be brought to the attention of the FAA and the DOL, as appropriate.

**b. Continuing FAA Responsibilities.** The DOL Memorandum #76 dated May 31, 1968, sets forth procedures for coordinating investigation activities of Federal agencies relating to the enforcement of labor provisions. Construction contracts subject to these provisions are also subject to other laws for which the DOL has basic enforcement responsibility. The FAA is still responsible for the administration and enforcement of labor standards required under AIP. An investigation by DOL does not relieve FAA of this responsibility.

**c. Contract Termination Report.** When a contract is terminated by reason of violations of the labor standards provisions for which FAA is responsible, regions shall submit a report to the Secretary of Labor and the Comptroller General, giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, the name of the contractor or subcontractor, if any, who is to complete the work, the amount and number of its contract and the description of the work it is to perform.

#### **1402. FAA EXAMINATIONS AND INVESTIGATIONS.**

Where there is evidence there may be compliance problems with labor requirements, FAA Airports Offices should examine payrolls and statements and conduct interviews as may be necessary to ensure compliance with the labor standards clauses. The DOL and the sponsor should be invited to participate. The results of the preliminary FAA interviews must be provided to the DOL for further action. The FAA Airports Office should then follow any recommendations made by the DOL concerning the alleged violation(s).

#### **1403. INVESTIGATION REPORT.**

Upon completion of the investigation, DOL will provide a copy of its report to the FAA Airports Office and the sponsor.

#### **1404. REVIEW AND SPONSOR NOTIFICATION.**

The FAA Airports Office shall review the DOL investigation report and its findings shall be affirmed or modified as appropriate.

#### **1405. SPONSOR CORRECTIVE ACTION.**

The sponsor shall be requested to have the contractor make restitution or furnish evidence to rebut the investigation findings. In addition, the contractor shall be required to furnish a signed statement or letter giving the reasons for the violations and evidence of restitution made such as hard copies, front and back, of canceled checks or employee receipts.

#### **1406. WITHHOLDING GRANT PAYMENTS.**

In the event the sponsor, the contractor, or the subcontractor do not take prompt action to correct any labor violations, the sponsor shall be informed that the amount of the underpayments will be withheld from the next partial payment, and all further payments may be suspended pending satisfactory correction of the violations. There may be instances where the violation is not discovered or the amount

of underpayment determined until after the construction work on the project has been completed. The project may be reopened and payment made in the amount of the restitution from whatever funds are then available. If any payment is to be withheld for more than 180 days, see chapter 13.

#### **1407. ACTION ON INVESTIGATION REPORTS.**

Final reports shall include a definite determination as to whether the violations were willful or nonwillful. If the violation was willful, a recommendation should be made whether the contractor or subcontractor should be placed on the list of ineligible contractors as contemplated by 29 CFR Part 5.

**a.** Where underpayments total less than \$1000 and are nonwillful and satisfactory correction has been effected, no report need be made either to the U.S. Department of Labor or the FAA headquarters, except where the investigation was made at the request of the U.S. Department of Labor. In the latter case, the appropriate FAA Airports Office should write a letter to the U.S. Department of Labor summarizing the violations found, the number of employees involved, the amount of any restitution paid, the liquidated damages assessed, the reason why the violations are deemed to be nonwillful and recommending that the file be closed.

**b.** Where underpayments total less than \$1000 and are nonwillful and where satisfactory restitution has not been made because of inability of the contractor to locate the employees involved after a reasonable effort, a letter shall be written to the U.S. Department of Labor with a recommendation that the file be closed. In addition, the letter should state the efforts made by the contractor, the sponsor, and the FAA to locate the employees involved.

**c.** Where underpayments total \$1000 or more, or are willful, a copy of the investigation report, together with other information and data on which the determination that the violations are willful is based shall be furnished the U.S. Department of Labor except in those cases where a recommendation is made to place the contractor or subcontractor on the debarred bidders list. In the latter case, the recommendation to place the contractor or subcontractor on the list of ineligible contractors shall be sent to APP-500 for concurrence.

#### **1408. DEPARTMENT OF LABOR INVESTIGATIONS.**

The United States Department of Labor has the authority to make investigations as deemed desirable to obtain compliance with the Labor provisions. FAA personnel, contractors, and sponsors should cooperate in such investigations.

**a. Department of Labor Request for Investigations.** Because of an understanding between the FAA and DOL, complaints may be forwarded directly from DOL to the FAA regional office for investigation and corrective action.

**b. Joint Investigations.** When desirable, due to unusual or complex circumstances, the FAA regional office may participate in a joint investigation with the DOL.

#### **1409. LIQUIDATED DAMAGES UNDER THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.**

**a. Liquidated Damages.** The CWHSSA provides that the governmental agency to which the financial assistance for the work is provided may withhold or cause to be withheld from any monies payable on account of work performed by a (sub) contractor. Such sums may be determined administratively to be necessary to satisfy any liabilities of such (sub) contractor for unpaid wages and liquidated damages. Since the act uses the word "may", the FAA has the option of determining whether or not Federal funds will be withheld from the sponsor for unpaid wages and liquidated damages. For example, if there is an unintentional violation and the contractor, upon notice, corrects the action, it will not be necessary for the FAA to withhold such funds and report the violation. If, on the other hand, the contractor intentionally fails to correct the violation or disputes the same, then the FAA should withhold an amount representing unpaid wages and liquidated damages in order that the Comptroller General will

have a fund to pay wages due the contractor's laborers and mechanics in the event it is determined they are due these funds. If funds are to be withheld for more than 180 days, see Chapter 13.

**b. Enforcement Procedures.** The CWHSSA provides that Reorganization Plan Number 14 of 1950, as amended, shall be applicable with respect to the provisions of this Act. This Plan authorizes the Secretary of Labor to prescribe appropriate standards, regulations and procedures to be observed by the Federal agencies administering the labor standards provisions of various designated Acts, including the CWHSSA, as amended. The plan also authorizes the Secretary of Labor to cause such investigations to be made by DOL with respect to compliance with and enforcement of such standards, as he deems desirable. 29 CFR Part 5 covers the enforcement procedures applicable to the provisions of the Act. These enforcement procedures are summarized as follows:

**(1) Findings and Recommendations of the FAA.** Whenever the FAA finds that the sum of the liquidated damages administratively determined to be due under the CWHSSA is incorrect or that the contractor or subcontractor inadvertently violated the provisions of the CWHSSA, notwithstanding the exercise of due care:

**(a) In Excess of \$500.** If the amount of the liquidated damages is in excess of \$500, a recommendation may be made to the Secretary of Labor that an appropriate adjustment in liquidated damages will be made or that the contractors or subcontractors will be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages necessarily include findings with respect to any wage underpayments for which liquidated damages are determined.

**(b) \$500 or Less.** If the amount of liquidated damages is \$500 or less, an appropriate adjustment may be made or the (sub) contractor may be relieved of the liability of such damages without submitting recommendations or a report to the Department of Labor.

**(2) Findings by the Department of Labor.** The recommendations of the FAA, submitted to the Department of Labor under Subparagraph (1) above, are reviewed initially by the appropriate office of DOL. Whenever DOL concurs in the findings and recommendations of the FAA, an order will be issued to that effect. If, however, DOL does not concur with the findings and recommendations of the FAA, the matter is transmitted to the second review level in DOL. The decision and order of the second level review with respect to the issues involved is their final action.

**c. Limitations, Variances, and Tolerances.** Upon the request of any Federal agency or upon his/her own initiative, the Secretary of Labor may provide, under the CWHSSA, reasonable limitations and allow variations, tolerances and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing and shall set forth the reasons for which the request is made.

**1410. - 1419. RESERVED.**

## **Section 2. ENFORCEMENT OF CIVIL RIGHTS REQUIREMENTS**

**1420. GENERAL.**

**1421. THE CIVIL RIGHTS REQUIREMENTS WITH WHICH SPONSORS, CONTRACTORS, AND SUBCONTRACTORS MUST COMPLY.**

The requirements are described in various documents issued by the FAA, the Office of the Secretary, or the President as set out in the following paragraphs of this section. The clauses required by various laws and regulations to be included in contracts, subcontracts, leases, etc., are found in the documents listed in the following paragraphs of this section and appropriate appendices of the AC. Therefore, the documents cited in the following paragraphs of this section should be used as a

companion documents in this area. It is the responsibility of the FAA Airports Offices to ensure the appropriate clauses are inserted into the grants and with respect to Executive Order 11246 (Equal Employment Opportunity), into contracts. The FAA Airports Offices are responsible for reporting to the Assistant Administrator for Civil Rights Staff any information indicating a possible failure to comply with Title II of the ADA or Section 504 of the Rehabilitation Act of 1973. The Regional Civil Rights Staffs are responsible for ensuring that appropriate clauses are inserted into contracts for all other authorities listed below. The headquarters Office of Civil Rights (ACR) and the Regional Civil Rights Staffs are responsible for conducting investigations of discrimination complaints and for conducting periodic compliance reviews. The Department of Labor is responsible for enforcing the requirements under Executive Order 11246, as amended, discussed in Paragraph 1424. In all enforcement procedures, FAA's action is with respect to the sponsor, who may be required to take action against an activity in order to enforce a DOT finding. Title VI of the Civil Rights Act of 1964.

Title VI states that "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." These requirements are primarily concerned with discrimination in service to the public. To implement the requirements of Title VI, the Department of Transportation (DOT) issued Title 49 CFR, Part 21, Nondiscrimination in Federally assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964.

**a. Standard DOT Title VI Assurance.** Beginning in October 1984, the first grant issued to a sponsor to construct a facility (including runways, taxiways, aprons, etc.) or to purchase land must include the DOT Title VI Assurance, which includes clauses for contracts and subcontracts and requirements for deeds, licenses, leases, permits, or similar instruments. All grants must have the Standard DOT Title VI Assurances attached to the grant agreement. Acceptance of the grant agreement constitutes acceptance of the Title VI Assurances and a signature on the assurances themselves is not required.

**(1) Duration.** This assurance obligates the sponsor for the period during which the financial assistance is extended to the program, except where personal or real property is involved. In that case, a sponsor is obligated for the longer of:

**(a)** The period the property is used for the purpose for which the financial assistance was extended, or for another similar purpose; or

**(b)** For as long as the sponsor retains ownership or possession of the property.

**(2) Property Acquisition or Improvement.** When real property is acquired or improved with Federal funds, the sponsor must agree to include Title VI covenants in any subsequent deed, license, lease, permit, or other agreement pertaining to the property.

**(3) Reverter Clauses.** The appropriate clauses of Attachment 2 in Appendix 11 need to be inserted as a covenant running with the land, in any future deeds, leases, permits, and similar agreements entered into by the recipient with other parties for the subsequent transfer of real property acquired or improved under a Federal financial assistance program of the FAA and for the construction or use of or access to space on, over or under real property acquired or improved under the Federal financial assistance program of the FAA. A reverter clause gives the sponsor the right to reclaim property titled to a third party if the party fails to comply with conditions, assurances, and covenants in the agreement established under Title VI. When real property is acquired or improved with Federal funds, the FAA must make a determination whether the sponsor will be required to use reverter clauses in subsequent transfers or other agreements pertaining to the property. In the case where land is acquired in a noise mitigation program that contains Federal funds and subsequently sold for a compatible land use, a reverter clause would not normally be required. If however, the sponsor chooses to lease the land for a compatible land use, and the lessee provides a service to the general public, a

clause terminating the lease for non-compliance with the Title VI assurances, covenants and conditions should be inserted into the lease. This would allow the sponsor to recover the property where violations of the Title VI assurances by the leaseholder are committed. The FAA will require use of these clauses on a case-by-case basis considering the past civil rights record of the sponsor. Insertion of the reverter clauses in a grant agreement binds the sponsor to use the clauses in all-future deeds, leases, licenses, permits, and similar agreements in which the land was originally acquired with or improved under a financial assistance program of the FAA. (See Appendix 15.)

**b. Enforcement of Title VI.** Regional Civil Rights Offices are responsible for conducting compliance reviews and investigating complaints of violations. Any complaint received alleging discrimination under Title VI should be referred to the Regional Civil Rights Office for processing. (See Draft Order 1400.11 for further guidance). FAA Airports Offices should cooperate fully in the agency's attempt at informal resolution. If informal resolution is not successful, the FAA Airports Office may be told to suspend, terminate, or refuse to grant in accordance with Title 49 CFR, Part 21.

#### **1422. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PROGRAM.**

All sponsors are required, as a condition of project approval, to assume certain DBE obligations as set forth in Title 49 CFR, Parts 23 and 26. Complaints alleging discrimination under the DBE program should be referred to the Regional Civil Rights offices. Further technical assistance with respect to the DBE contracting program is available on DOT's website at:

<http://osdbuweb.dot.gov/business/dbe/index.html>

**a.** Department of Transportation (DOT) regulation Title 49 CFR, Part 26 requires sponsors anticipating awarding more than \$250,000 in prime contracts in Federal funds during a Federal fiscal year to implement a DBE program (Section 26.21(a)(3)). Prime contracts are those for construction, professional services, and equipment. Contracts solely for the purchase of land, however, are not "DOT-assisted contracts" under the definition of Section 26.5 and thus, are excluded. Although a land purchase is not a "DOT-assisted contract", all other contracts let under land acquisition projects, including those for real estate survey or appraisal, are covered by the definition.

**b. Multiple Contracts in a Single Fiscal Year.** Include all covered contracts in the Federal fiscal year, regardless of the date of the grant agreement funding them. Under the AIP, a sponsor may award prime contracts during a fiscal year from grants executed in a previous year, the current year, and a future year. Also, certain project formulation costs incurred prior to grant agreement that may qualify for reimbursement must be included in the Federal fiscal year contracts.

**c. Sponsors that Own or Operate more than One Airport.** For these sponsors obligations are determined on the basis of the total funds placed under contract at all locations in a Federal fiscal year.

**d. Multi-Year Grants.** In a multi-year grant, the FAA agrees to commit the sponsor's future year entitlement funds to the project. The initial grant offer contains a current year obligation as well as the total Federal share of the estimated project cost. The total estimated project cost rather than the current year obligation is used in determining obligations under Title 49 CFR, Part 26.

**e. State Block Grant Program.** States participating in this program receive block grants for airport master planning and development projects at eligible nonprimary airports in the state.

**(1)** The states are considered "primary recipients" (sponsors) as defined in Title 49 CFR, Part 26. If the State anticipates that the total value of all prime contract awards made during a Federal fiscal year by all nonprimary airports will exceed \$250,000 in Federal funds, all such awards are covered by the DBE program requirement, regardless of the awards made available to individual sub recipients (sub sponsors).

(2) Under the “lead agency concept,” a sponsor receiving funds from more than one DOT operating administration (OA) submits its revised program to only one OA. This OA, known as the “lead agency”, coordinates its review with the other OA’s involved. The lead agency for state departments of transportation is generally the Federal Highway Administration (FHWA) since it generally provides more funds to these recipients (sponsors) than does FAA or the Federal Transit Administration (FTA). Thus, a state block sponsor will generally submit its DBE program to the responsible FHWA official.

(3) However, the state should submit its goal(s) for projects funded by the block grant to the responsible FAA Regional Civil Rights Officer. In accordance with Section 26.45(e)(2), the state may submit a single overall goal for contracts funded by the grant (and any other FAA grants) during the forthcoming fiscal year or, subject to FAA approval; it may submit separate overall goals covering one or more projects. If a single goal is used, the supporting methodology must reflect any variations in the availability of DBE’s by project location.

(4) If a nonprimary airport recipient under the state block grant program also receives funding directly from the FAA, the sponsor must submit a DBE program (or updated goal, if a program has previously been implemented) to FAA for review when it anticipates awarding more than \$250,000 in prime contracts in Federal funds during a Federal fiscal year. The DBE program, including the overall goal, should address only the funds received directly from FAA, not the funds received from the state under the block grant program.

**f. State Departments of Transportation as Contracting Agents.** In some cases, the state department of transportation serves as the contracting agent for individual airports. The airport, as sponsor, is responsible for satisfying all requirements levied pursuant to Title 49 CFR, Part 26. If the state is not the sponsor, the airport is responsible for ensuring that the state provides FAA with required programs and goals and implements other required steps.

**g. Scope of Requirements.** Contracts awarded by a sponsor which are not funded by an AIP grant are not subject to the provisions of Title 49 CFR, Part 26.3(d).

**h. Contracts not Covered by DBE Program Requirements.** A contract that is not subject to the DBE program requirements must comply with other provisions. These include title 49 CFR, Part 26.7(a) and certain provisions of Title 49 CFR, Part 26.13.

**i. Force Account.** A DBE program is required only when the sponsor will award contracts from the covered grant.

(1) A sponsor that will accomplish all work under a project with its own personnel or the personnel of another public agency, rather than by contracting, is not required to implement a DBE program. Procedures and requirements for accomplishing work by this means (known as “force account”) are outlined in Chapter 10.

(2) A related situation occurs when DOT-assisted contracts will be let from a grant requiring a DBE program, but a portion of the project will be accomplished by force account. In this case, the overall goal is based only on the contracts to be awarded, while the funds expended in force account are excluded from the goal-setting process.

#### **1423. SECTION 47123 OF THE ACT.**

**a. Section 47123.** Section 47123 of the Act concerns nondiscrimination and affirmative action. The DBE requirements for AIP were implemented through the departmental regulation, Title 49 CFR, Part 26. The concession requirements are contained in Title 49 CFR, Part 23. Benefits and public service requirements are handled through the Title VI and 14 CFR Part 21 regulations. Additional guidance may be found in Draft Order 1400.11, issued by the FAA Civil Rights office.

**b. Enforcement of Section 47123.** Any complaint alleging discrimination in employment practices under Section 47123 is to be directed to the regional Civil Rights office. From there, the complaint will be transferred to the Departmental Office of Civil Rights and on to the Equal Employment Opportunity Commission (EEOC). If it involves a class complaint, the complaint will be investigated by DOT/FAA Civil Rights office, as appropriate.

#### **1424. EXECUTIVE ORDER (E.O.) 11246.**

**a. Purpose of E.O. 11246.** The purpose of E.O. 11246 is to promote and ensure equal opportunity for all persons, without regard to race, color, religion, sex or national origin, employed or seeking employment with contractors performing under Federally assisted construction contracts in excess of \$10,000. This Order, which authorizes the Secretary of Labor to adopt such rules and regulations as necessary to achieve the purpose of the Executive Order, was amended by Executive Orders 11375 and 12086. E.O. 11375 provides for equal opportunity on the basis of merit without discrimination because of sex. E.O. 12086 transfers the compliance functions to the Secretary of Labor. The rules and regulations adopted by DOL to implement this E.O. can be found in 41 CFR Part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

**b. Responsibility of FAA.** The FAA is responsible for ensuring the necessary clauses required by 41 CFR Part 60 are included in appropriate grants, appropriate bid specifications, and construction contracts in excess of \$10,000. (See AC 150/5100-15, Section 3.)

**c. Enforcement of E.O. 11246.** Enforcement of the requirements of E.O. 11246 is the responsibility of the Department of Labor (See 41 CFR Part 60-1, Subpart B, for General Enforcement, and 41 CFR Part 60-30 for Administrative Procedures Requirements).

**(1) Complaints.** Complaints may be filed with the Office of Federal Contract Compliance Programs (OFCCP), 200 Constitution Ave., NW, Washington, D.C. 20210, or with any regional OFCCP office. (See 41 CFR 60-1.23 for contents of complaints.)

**(2) Sanctions/Penalties.** A sponsor must carry out such sanctions and penalties for violation of the Equal Employment Opportunity clause as may be imposed on contractors and subcontractors by the Department of Labor based on Part II, Subpart D of the Executive Order. If the sponsor fails or refuses to comply, the FAA may terminate, or suspend in whole or in part, any contractual arrangement it may have with the sponsor. The FAA may also, refrain from extending any further assistance under any of its programs subject to the executive order until satisfactory assurance of future compliance has been received from the sponsor, or may refer the case to the Department of Justice for legal proceedings.

**d. Other Areas of Discrimination.**

**e. Employee Selection.** Guidelines on employee selection are contained in 41 CFR Part 60-3.

**f. Sex Discrimination.** Complete details on nondiscrimination requirements are contained in 41 CFR Part 60-20.

**g. Discrimination Because of Religion or National Origin.** Guidelines are found in 41 CFR Part 60-50.

#### **1425. REHABILITATION ACT OF 1973 (P.L. 93.112).**

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against any qualified individual with a disability solely by reason of his/her disability in any program or activity receiving Federal financial assistance or under any federally conducted program or activity. Sponsors subject to 49 CFR part 27 must also comply with the applicable provisions of the ADA. Compliance with 49 CFR part 27 does not relieve them of that responsibility.

**a. DOT Regulation Title 49 CFR, Part 27.** This regulation implements Section 504 and sets out detailed requirements for grantees under Federal financial assistance programs. The rule prohibits employment discrimination and requires sponsors to make reasonable accommodations to the disabilities of otherwise qualified employees. In addition, sponsors are required to make their existing and future facilities and programs accessible to disabled persons by providing specific equipment to accommodate them. Sponsors are not required to make structural changes to their facilities constructed prior to July 26, 1992, unless other methods are not effective. Other methods may include redesign of equipment, reassignment of services to accessible buildings, delivery of services at accessible facilities, or any other methods that result in accessibility. Sponsors must give priority to the method that provides the most integrated setting appropriate for persons with disabilities (title 28 CFR, Part 35.130(d)). In addition, public airports must make reasonable modifications to its policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the airport can demonstrate that the modifications would fundamentally alter the nature of the service, program, or activity (title 28 CFR, Part 35.130(b)(7)). A sponsor is not required to take any action that will result in a fundamental alteration in the nature of a service, program, or activity or would result in undue financial and administrative burdens. Specific equipment that is not part of the real property (telephones, teletypewriters, etc.) is not eligible under present legislation. The design and construction of new buildings and the alterations and the necessary structural modifications to existing buildings must comply with accessibility standards under Title II and Section 504.

**b. Responsibility of FAA.** Transition plans are the airport's specific plans to make structural modifications to existing buildings where necessary to meet accessibility standards. All airports under Section 504 were required to submit a transition to the FAA for approval "where extensive structural changes" were necessary. All the remaining airport sponsors who had not previously submitted a plan to the FAA were to have done so by March 3, 1997, (Title 49 CFR, Part 27.71(g)). The regional civil rights staff is responsible for reviewing plans and specifications for compliance with Section 504 accessibility. The regional Civil Rights staff is also responsible for conducting investigation of complaints filed under Section 504 and conducting compliance reviews.

**c. Enforcement of Title 49 CFR, Part 27.** If informal resolution is not successful, the FAA Airports Office may be told to suspend, terminate, or refuse to grant in accordance with Title 49 CFR, Part 27. See 49 CFR 27.125 and Chapter 11, Section 6.

#### **1426. AIRCRAFT AND AIR CARRIER FACILITY ACCESSIBILITY.**

Although OST, rather than FAA, enforces the Air Carrier Access Act (ACAA), Section 504 does place some responsibility for access to small aircraft on the airport sponsor. If that airport sponsor's personnel are involved in providing boarding assistance, the sponsor must ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers (Title 49 CFR, Part 27.72(e)).

At an airport having 10,000 or more annual enplanements, a sponsor, in cooperation with carriers serving the airport, must provide to individuals with disabilities boarding assistance using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs (Title 49 CFR, Part 27.72(b)). These sponsors must also negotiate in good faith with each carrier serving the airport concerning the acquisition and use of such boarding assistance devices. The Sponsor must sign a written agreement with each carrier serving the airport for certain aircraft that have a capacity from 19 to 30 seats. The agreement must address respective responsibilities for providing boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs. The agreement must have been signed by September 2, 1997 (Title 49 CFR, Part 27.72(c)).



**1427. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990.**

The ADA protects individuals from discrimination based on disability regardless of whether they are seeking employment or access to services from a public or private entity or from an agency that receives federal financial assistance. The ADA has five separate titles. This discussion briefly covers the FAA's responsibilities to enforce Title II. A more detailed treatment of the ADA requirements with which sponsors must comply are contained in AC 150/5360-14, Access to Airports by Individuals with Disabilities. Also, AC 150/5220-21, Guide Specification for Devices used to Board Airline Passengers with Mobility Impairments, and Order 1400.9, Americans with Disabilities Act and Rehabilitation Act Operating Procedures, may provide additional guidance.

Title II prohibits discrimination on the basis of disability by public entities and applies to all services, programs, or activities made available by a public entity, regardless of whether it receives federal financial assistance. The DOT and FAA have jurisdiction over public airports, including those, which do not receive federal grant funds. The DOT has delegated authority to the modal administrations to conduct compliance reviews and other enforcement activities.

**1428. - 1499. RESERVED.**



# Appendices

This page left intentionally blank.

## **Appendix 1. NON-ALLOWABLE ITEMS (1 PAGE)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 2. RESERVED (1 PAGE)**

***See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.***

This page left intentionally blank.



**Appendix 3. STANDARD FORM 424 (2 PAGES)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 4. PART II – PROJECT APPROVAL  
INFORMATION (FAA FORM 5100-100)  
(DEVELOPMENT PROJECTS) (10 PAGES)**

***See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.***

This page left intentionally blank.

**Appendix 5. PROJECT APPROVAL INFORMATION  
(FAA FORM 5100-101) (PLANNING PROJECTS) (8 PAGES)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 6. GRANT AGREEMENT  
(FAA FORM 5100-37) (3 PAGES)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.



**Appendix 7. GRANT SPECIAL CONDITIONS (6 PAGES)**

*See 5100-38C Appendices Document.*

*Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 8. PROJECT EVALUATION REVIEW AND  
DEVELOPMENT ANALYSIS CHECKLIST  
(FAA FORM 5100-109) (1 PAGE)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 9. CONSTRUCTION PROGRESS AND  
INSPECTION REPORT (FAA FORM 5370-1) (2 PAGES)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 10. AIP FINAL INSPECTION REPORT  
(FAA FORM 5100-17) (1 PAGE)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.



**Appendix 11. TITLE VI REVERTER CLAUSES (1 PAGE)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 12. LABOR STANDARDS INTERVIEW AND  
SUMMARY OF LABOR STANDARDS INVESTIGATION  
REPORTS  
(FORMS DOT F 4220.5 AND 4220.6) (2 PAGES)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 13. EXAMPLES OF INCREASING MAXIMUM  
OBLIGATION (4 PAGES)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 14. GRANT AMENDMENT  
(FAA FORM 5100-38) (2 PAGES)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.



**Appendix 15. INFORMAL LETTER AMENDMENT (2 PAGES)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 16. ENTITLEMENT TRANSFER AGREEMENT  
(FAA FORM 5100-110) (1 PAGE)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 17. MULTI-YEAR LETTER AMENDMENT  
(SUGGESTED TEXT) (1 PAGE)**

***See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.***

This page left intentionally blank.

**Appendix 18. FEDERAL CASH TRANSACTIONS REPORT  
(SF 272) (3 PAGES)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.



**Appendix 19. REQUEST FOR ADVANCE OR  
REIMBURSEMENT (SF 270) (2 PAGES)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 20. OUTLAY REPORT AND REQUEST FOR  
REIMBURSEMENT FOR CONSTRUCTION PROGRAMS  
(SF 271) (2 PAGES)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 21. LETTER OF INTENT AND AMENDMENT**  
**(3 PAGES)**

***See 5100-38C Appendices Document.***  
***Appendices were separated from this document to limit the size of the files.***

This page left intentionally blank.

**Appendix 22. AGREEMENT ON STATE SPONSORSHIP  
AND AIRPORT SPONSOR OBLIGATIONS (2 PAGES)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.



**Appendix 23. ADJUSTMENTS OF FEDERAL SHARES AT  
CERTAIN AIRPORTS (1 PAGE)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 24. RESERVED (1 PAGE)**

***See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.***

This page left intentionally blank.

**Appendix 25. STANDARD SPONSOR CERTIFICATION  
FORMS (12 PAGES)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 26. BLOCK GRANT APPLICATION (1 PAGE)**

*See 5100-38C Appendices Document.*

*Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.



**Appendix 27. BLOCK GRANT AGREEMENT (4 PAGES)**

*See 5100-38C Appendices Document.*

*Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.

**Appendix 28. AIP GRANT STATUS REPORT  
(FAA FORM 5100-107 - ELECTRONIC VERSION) (1 PAGE)**

***See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.***

This page left intentionally blank.

**Appendix 29. FINANCE TEMPLATE FOR LOI  
APPLICANTS (1 PAGE)**

***See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.***

This page left intentionally blank.

**Appendix 30. OBLIGATIONS IN BLOCK GRANT  
SUSPENSION OR TERMINATION (1 PAGE)**

*See 5100-38C Appendices Document.  
Appendices were separated from this document to limit the size of the files.*

This page left intentionally blank.