

September 1, 1999

## **Terms and Conditions of Accepting Airport Improvement Program Grants (Planning Agency Sponsors)**

This document contains the terms and conditions of accepting Airport Improvement Program (AIP) grants from the Federal Aviation Administration (FAA) for the purpose of carrying out the provisions of Title 49, United States Code. These terms and conditions become applicable when the sponsor accepts a Grant Offer from the FAA that references this document. The terms and conditions may be unilaterally amended by the FAA, by notification in writing, and such amendment will only apply to grants accepted after notification.

### **I. DEFINITIONS**

- A. Sponsor - An agency that is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants and other obligations required in this document and in the accepted Grant Agreement.
- B. Project - Work as identified in the Grant Agreement.

### **II. CERTIFICATIONS**

Section 47105(d), Title 49 of the United States Code authorizes the Secretary to require certification from sponsors that they will comply with statutory and administrative requirements. The following list of certified items includes major requirements for this aspect of project implementation. However, the list is not comprehensive, nor does it relieve sponsors from fully complying with all applicable statutory and administrative standards. In accepting a grant, the Sponsor certifies that each of the following items will be complied with in the performance of grant agreements. If a certification cannot be met for a specific project, the Sponsor must fully explain in an attachment to the project application.

General procurement standards for consultant services within Federal grant programs are described in 49 CFR 18.36. Sponsors may use other qualifications-based procedures provided they are equivalent to specific standards in 49 CFR 18 and Advisory Circular 150/5100-14.

- A. All advertisements will be placed to ensure fair and open competition from a wide area of interest.
- B. For any and all contracts over \$25,000, consultants will be selected using competitive procedures based on qualifications, experience, and disadvantaged business enterprise requirements with the fee determined through negotiation.
- C. An independent cost analysis will be performed, and a record of negotiations will be prepared reflecting the considerations involved in the establishment of fees for all contracts in excess of \$100,000.
- D. If any services are to be performed by sponsor force account personnel prior approval must be obtained from FAA.
- E. All consultant services contracts will clearly establish the scope of work and delineate the division of responsibilities between all parties engaged in carrying out elements of the project.

- F. All costs associated with work ineligible for AIP funding will be clearly identified and separated from eligible items.
- G. All mandatory contract provisions for grant-assisted contracts will be included in all consultant services contracts.
- H. If any contract is awarded without competition, pre-award review and approval will be obtained from FAA.
- I. Cost-plus-percentage-of-cost methods of contracting prohibited under Federal standards will not be used.
- J. If services being procured cover more than a single grant project the scope of work will be specifically described in the advertisement, and future work will not be initiated beyond three years.

### **III. GENERAL CONDITIONS**

- A. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration under the Title 49 U.S.C.
- B. Payment of the United States' share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary shall prescribe. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs, and settlement will be made for any upward or downward adjustments to the Federal share of costs.
- C. The Sponsor shall carry out and complete the Project without undue delays and in accordance with the terms hereof, and such regulations and procedures as the Secretary shall prescribe.
- D. The FAA reserves the right to amend or withdraw a grant offer at any time prior to its acceptance by the Sponsor.
- E. A grant offer will expire, and the United States shall not be obligated to pay any part of the costs of the project unless the grant offer has been accepted by the Sponsor on or before 30 days after the grant offer but no later than September 30 of the federal fiscal year the grant offer was made, or such subsequent date as may be prescribed in writing by the FAA.
- F. The Sponsor shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or disbursed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. It shall obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. It shall return the recovered Federal share, including funds recovered by settlement, order or judgment, to the Secretary. It shall furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the Secretary.

- G. The United States shall not be responsible or liable for damage to property or injury to persons that may arise from, or be incident to, compliance with a grant agreement.
- H. It is mutually understood and agreed that if, during the life of the project, the FAA determines that the grant amount exceeds the expected needs of the Sponsor by \$5,000 or five percent (5%), whichever is greater, the grant amount can be unilaterally reduced by letter from FAA advising of the budget change.
- I. If requested by the Sponsor and authorized by the FAA, the letter of credit method of payment may be used. It is understood and agreed that the sponsor agrees to request cash withdrawals on the letter of credit only when actually needed for its disbursements and to timely reporting of such disbursements as required. It is understood that failure to adhere to this provision may cause the letter of credit to be revoked.

#### **IV. ASSURANCES**

##### **A. General**

- 1. These assurances shall be complied with in the performance of grant agreements for integrated airport system planning grants to planning agencies.
- 2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. A sponsor is a planning agency designated by the Secretary of Transportation which is authorized by the State or States or political subdivisions concerned to engage in area wide planning.
- 3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

**B. Duration.** The terms, conditions and assurances of the grant agreement shall remain in full force and effect during the life of the project.

**C. Sponsor Certification.** The sponsor assures and certifies, in respect to this grant, that:

- 1. **General Federal Requirements.** It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

##### **Federal Legislation**

- a. Title 49 U.S.C., subtitle VII, as amended.
- b. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- c. Hatch Act - 5 U.S.C. 1501, et seq.
- d. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- e. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
- f. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- g. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.
- h. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

##### **Executive Orders**

Executive Order 12372- Intergovernmental Review of Federal Programs

**Federal Regulations**

- a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
- b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- c. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.
- d. 49 CFR Part 20 - New restrictions on lobbying.
- e. 49 CFR Part 21 - Nondiscrimination in federally assisted program of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- f. 49 CFR Part 26 – Participation By Disadvantage Business Enterprise in Department of Transportation Programs.
- g. 49 CFR Part 29 - Government-wide debarment and suspension (non-procurement) and government-wide requirements for drug-free workplace (grants).
- h. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S.

**Office of Management and Budget Circulars**

- a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
- b. A-133 - Audits of States, Local Governments, and Non-Profit Organizations Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated in reference in the grant agreement.

2. **Responsibility and Authority of the Sponsor.** It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
3. **Sponsor Fund Availability.** It has sufficient funds available for that portion of the project costs that are not to be paid by the United States.
4. **Preserving Rights and Powers.** It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary.
5. **Consistency with Local Plans.** The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies in the planning area.
6. **Accounting System, Audit, and Recordkeeping Requirement**

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with The Single Audit Act of 1984.
- b. It shall make available to the Secretary and Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by the recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

**7. Planning Projects.** In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the Sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not mean constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

**8. Reports and Inspections.** It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request.

- 9. Civil Rights.** It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program.
- 10. Engineering and Design Services.** It will award each contract, or sub-contract for planning studies, feasibility studies, or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor.
- 11. Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.
- 12. Policies, Standards, and Specifications.** It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary.
- 13. Disadvantaged Business Enterprises.** The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided under Part 26, and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801)