

Airport Improvement Program (AIP) — Improper Payments

From time to time, questions come up about the rules governing what airport sponsors can and cannot do when drawing upon AIP grant funds.

This is a very important issue, because violation of the rules is a violation of Federal law, with serious consequences for airport sponsors.

What is an “improper payment”?

The White House Office of Management and Budget (OMB) Circular 123 defines an “improper payment” as any payment that:

- Should not have been made; or
- That was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements.

Incorrect amounts can be either overpayments or underpayments, including inappropriate denials of payment or service. An improper payment can also be

- Any payment made to an ineligible recipient, or for an ineligible service;
- Duplicate payments;
- Payments for services not received; or
- Payments that are for the incorrect amount.
- Payments where the sponsor does not have sufficient documentation in their files for an auditor to determine whether a payment was proper.

The term “payment” in this context means any payment that is:

- Derived from Federal funds or other Federal sources;
- Ultimately reimbursed from Federal funds or resources; or

- Made by a Federal agency, a Federal contractor, or any other organization administering a Federal program.

What about construction retainage?

One improper payment issue that has arisen recently (and that needs to be fully understood by all sponsors) is the issue of when sponsors may draw down AIP grant funds for retainage payments to contractors.

Airport sponsors must not draw down AIP grant funding for the full value of a construction invoice unless the airport sponsor has already paid the contractor for the 10% retainage.

We consider an airport sponsor to have paid the contractor the retainage when it either:

- Pays the contractor either the full amount due on the construction invoice; or
- When the airport sponsor pays the contractor 90% of the amount due and pays the 10% retainage into a properly established escrow account.

In the latter case, a third party will disburse the escrow funds to the contractor under the conditions of the escrow—i.e., upon satisfactory completion of work.

If an airport sponsor draws down AIP grant funds for the full amount of a construction invoice without paying the contractor for the construction retainage either in full or by escrow, then the sponsor is in violation of the Federal regulation and their AIP grant assurances, and as a result would be subject to grant compliance action.

Where Can I Learn More?

- FAA Order 5100.38C (“Airport Improvement Program”), Chapter 13 (“Project Payment, Closeout, and Audit”).
- Title 49 Code of Federal Regulations, Part 18 (“Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”), Section 18.20.