

**Report to Senator James M. Inhofe**

Chairman, Committee on Environment  
and Public Works

on

*The Office of Inspector General's investigation  
of the management and operations  
of the Tulsa Airport Authority*



**U.S. Department of  
Transportation**  
Office of the Secretary  
of Transportation

The Inspector General

Office of Inspector General  
Washington, D.C. 20590

May 6, 2004

The Honorable James Inhofe  
Chairman, Committee on  
Environment and Public Works  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

This responds to your request, signed jointly with Tulsa Mayor Bill LaFortune, asking that we review certain issues concerning the Tulsa Airport Authority. Your request stemmed from numerous employee and citizen concerns about the management and operations of the airport, many of which were raised during a City-wide performance review conducted by Mayor LaFortune's office in 2002.

Based on our discussions with your staff and representatives of Mayor LaFortune's office, we reviewed the following areas of concern:

- A financial support agreement for Great Plains Airlines.
- Contracts receiving Department of Transportation (DOT) Airport Improvement Program (AIP) grant funding.
- FAA oversight of AIP grants.
- Alleged conflicts of interest involving Authority employees.
- A specific governmental affairs liaison contract.
- Parking and landing fees.

A team of investigators and auditors from our office, as well as auditors from the Defense Contract Audit Agency (DCAA), reviewed these issues. This report presents our key findings and identifies areas which we are continuing to investigate<sup>1</sup>.

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<sup>1</sup> At our request, DCAA assisted in reviewing contracts related to airport improvement projects receiving direct funding from DOT.

## **Background and Methodology**

There are four distinct public entities involved in our review of the operations and management of the Tulsa Airport Authority. The entities are:

- The City of Tulsa (hereafter referred to as the City).
- The Tulsa International Airport and the Richard Lloyd Jones, Jr. Airport (the Airports), including the land and improvements, are owned by the City.
- The Tulsa Airports Improvement Trust (the Trust) leases the Airports from the City for the primary purpose of improving the buildings, structures and facilities<sup>2</sup>. The Trust is comprised of the Mayor and four trustees. The trustees are appointed by the Mayor and confirmed by the City Council.
- The Tulsa Airport Authority (the Authority) is an agency of the City. It is staffed by City employees who provide the daily management and operation of the Airports on behalf of the Trust. The Authority is managed by an Executive Director.

The Trust receives AIP grants from DOT's Federal Aviation Administration (FAA) and thus is subject to FAA regulations and policy for its award and administration of AIP-funded contracts<sup>3</sup>. Where contracts awarded by the Trust do not involve AIP funding, separate State of Oklahoma procurement criteria apply. Procurement policies relevant to our review are summarized at Appendix A.

We reviewed information concerning the potential misuse of Airport funds associated with the Trust's agreement to purchase property used as collateral for a loan to Great Plains Airlines. In conjunction with this letter, we have issued our findings in this specific matter to FAA in a formal audit report, a copy of which is attached at Appendix B.

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<sup>2</sup> The Tulsa Airports Improvement Trust is a public Trust created under the provisions of the Public Trust Act of Oklahoma, Title 60, Oklahoma Statutes, Section 176 et. seq. The City of Tulsa is designated as the sole beneficiary of the Trust. The Trust is recognized as the "Public Agency Airport Sponsor" by the Federal Aviation Administration (FAA) and thus is the recipient of both AIP grant funding and passenger facility charges (PFCs).

<sup>3</sup> On average, FAA annually provides airport sponsors across the country over \$3 billion in AIP grants. Annually, over the past five years, the Trust has received approximately \$9.2 million in AIP grants for airport improvement projects. Another major revenue source for the Airports that is regulated by FAA are Passenger Facility Charges (PFCs). Nationwide, airport sponsors receive almost \$2 billion per annum in PFCs and the Tulsa Airports have collected an annual average of \$4.5 million in PFCs. Projects funded under these programs include important airport and passenger safety and security improvements such as runway improvements, the acquisition of security and communications equipment, and environmental studies.

Our review also included an examination of 26 AIP-funded professional services contracts and 19 AIP-funded construction contracts that the Trust awarded between Fiscal Years (FY) 1999 thru 2003<sup>4</sup>. The Trust received approximately \$35 million in AIP grant money from FAA for projects associated with these contracts during that period. We also reviewed 13 non-AIP funded Airport professional services contracts, totaling over \$2.8 million. In addition to documentary examination, our investigation included interviews of numerous Authority and FAA officials.

### **Applicable Rules for Airport Contracting**

There is no single set of procurement standards governing the contracting practices of airports across the country. In our review, we found three different sets of procurement standards applicable to contracting for the Airports. The procurement standards included:

- FAA regulations and policy must be followed for Trust contracts involving AIP grants.
- State of Oklahoma laws and rules apply to Trust contracts **not** involving AIP grants.
- City policies apply to Authority contracts **not** involving AIP grants.

The City policy concerning the selection of architectural and engineering services does not apply to professional services procurements involving AIP funds because the policy is not equivalent to the standards set forth in FAA's Advisory Circular 150/5100-14C. We were told by Authority officials they applied the City policy to professional services contracts involving AIP funds. Consequently, we found that the Trust did not meet FAA procurement requirements for five of the contracts we examined.

A significant factor affecting Trust contracts not involving Federal funds is that Oklahoma state laws governing public Trusts prescribe no requirements for the procurement of professional services<sup>5</sup>. Further, Oklahoma state courts have held that competitive bidding procedures are not required for contracts for professional services (e.g., engineers and architects), because these types of services are not

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<sup>4</sup> Professional services involve consultation or rendering advice or assistance that are based on the consultant's expertise in a given area, e.g., engineering, architecture, planning.

<sup>5</sup> Oklahoma State Statute Title 60, Section 176 et. seq.

subject to uniform specifications<sup>6</sup>. Consequently, we found that the Trust has considerable discretion in awarding contracts not involving Federal funds.

### **Summary of Findings**

In brief, we have concerns that the Trust's involvement in a convoluted transaction that facilitated a \$30 million loan to Great Plains Airlines could result in misuse of Airport funds. We brought this matter to the attention of FAA, which agreed that the potential exists for inappropriate use of Airport funds in connection with this transaction. FAA agreed to implement our recommendations. Based on our audit, we identified circumstances and issues related to this transaction and the Trust's subsequent application to FAA for the collection of Passenger Facility Charges (PFCs) that warrant additional investigation, which we are pursuing.

Additionally, we found instances where Authority AIP-funded procurements of professional services—above \$25,000 each—did not adhere to competitive selection procedures as required by FAA criteria. We also found conflicts of interest on the part of former Authority officials responsible for procurements and poor recordkeeping practices by the Authority. Compounding these findings is, in our view, a lack of sufficient oversight on the part of FAA; specifically, we found an over-reliance by FAA on self-certifications the Authority submitted, attesting to compliance with FAA competitive selection requirements.

Further, we found that for a prior non-AIP funded governmental affairs liaison contract awarded by the Trust, the contractor was not required to follow contract specifications requiring itemized invoices, monthly reports, or documented expenses. The Trust expended \$571,000 on this contract over a three-year period. Moreover, the Trust is not requiring the new governmental affairs liaison contractor to submit itemized invoices as specified in the contract.

Our review of landing fees at Tulsa International Airport found that the fees were not unreasonably high, nor would they drive airlines from serving Tulsa. Additionally, the Oklahoma State Supreme Court ruled that parking fees at the Airport did not create an anti-competitive marketplace, and in March 2003, the Airport voted to raise its basic garage parking fee at the Airport from \$5.00 to \$6.95 per day beginning in July 2003.

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<sup>6</sup> McCaster Construction, Inc. v. Board of Regents of Oklahoma Colleges, Okla. 934 P2d 335 (1997)

More specifically, we found the following:

- **Financial support agreement for Great Plains Airlines**

We reviewed loan transactions involving the Trust, the Tulsa Industrial Authority, and Great Plains Airlines. We found that the Trust entered into an agreement with the Industrial Authority that may require the Trust to purchase property used as collateral in a loan to Great Plains. We found the Trust entered into this agreement without regard to whether there was a valid need to purchase the property and without an appraisal. The only documented reference to the value of the property we identified was an October 2002 memorandum prepared by a Great Plains Airline representative suggesting that its value “may be in the \$3 million range.” Authority and City officials with whom we spoke told us that they did not obtain an appraisal to determine the value of the property prior to entering into the loan agreement. Consequently, we have concerns that airport funds are at risk for misuse if the Trust is required to fulfill its obligations under the agreement in the event Great Plains Airlines defaults on the loan.

By becoming a party to the real estate transaction to help finance the start-up of the airline and agreeing to pay off any outstanding loan balance, the Trust incurred a contingent liability that will remain until the airline pays the loan in full. Further, FAA policies and procedures prohibit airports from providing direct subsidies to airlines. In a legal analysis prepared at the request of Airport management concerning FAA’s revenue diversion policy it was noted that:

In light of the current law, regulations and regulatory pronouncements concerning airport requirements for self-sufficiency, the avoidance of revenue diversion, and prohibition against direct subsidy of air carrier operation or service, we are lead [sic] to the conclusion that to avoid regulatory scrutiny, TAIT’s support of the Tulsa Industrial Authority - Bank of Oklahoma [BOK] financing for Great Plains Holding Company et al. must be in the nature of a real estate transaction. Even with the transaction structured in that nature, we are not in a position to opine that in the event of a trigger event which would require TAIT action under the Support Agreement, the use of airport revenues to purchase all or a portion of Air Force Plant No. 3 would not be subject to regulatory scrutiny or audit. However, we believe that to the extent the real estate transaction can be narrowed by the size, nature or character of property and/or facilities encumbered by the TIA-BOK transaction, that would dramatically lessen our concern of regulatory review and/or audit of the “support” transaction.

In the event that Great Plains Airlines defaults, FAA should take steps to ensure that the Authority does not divert revenues intended for legitimate airport purposes to pay off the loan. In addition, FAA should evaluate the appropriateness of the Great Plains loan transaction and establish policies that prevent airport sponsors from entering into agreements that could result in the misuse of airport funds.

The current balance of the loan is estimated at \$7 million. Great Plains Airlines filed for Chapter 11 bankruptcy on January 23, 2004. As of April 22, 2004, the loan had not been declared in default. We are concerned that the Trust prepared documentation—including an application submitted in September 2003 requesting FAA approval to collect additional PFCs—that suggest the Trust's projected cost to acquire the land used as collateral had been inflated after concern grew that Great Plains Airlines may be susceptible to default on its loan. These circumstances are the subject of continuing investigation by our office.

Based on our findings, we issued an audit report to FAA, a copy of which is attached at Appendix B. Our audit report recommended that (a) FAA require the Trust to support any requests to fund property acquisition costs for the subject land with a valid appraisal of the property; (b) validate a legitimate need to acquire the property to extend the runway and taxiway; (c) ensure that Airport funds are not inappropriately disbursed to cover the costs of Great Plains' loan; and (d) evaluate the appropriateness of the Great Plains loan transaction and establish policies that will preclude airport sponsors from entering into agreements (similar to the one used to support the Great Plains loan) that create contingent liabilities and place airport funds at risk of being used for purposes not permitted under Federal law.

As part of the audit process, we will track implementation of the recommendations. FAA concurred with our assessment that the potential exists for inappropriate use of Airport funds in connection with this transaction. FAA is monitoring this situation and agreed to implement our recommendations. Further, we are continuing to investigate the circumstances of this transaction.

- **Contracts for Airport projects receiving AIP grants**

We found a marked distinction between AIP-funded construction contracts and professional services contracts awarded by the Trust. For the 19 construction contracts we reviewed, we determined that the Trust consistently followed Federal procurement requirements. However, for the professional services

contracts we reviewed, we found that Authority officials (acting on behalf of the Trust) could not consistently demonstrate compliance with FAA's policy requiring competitive selection<sup>7</sup>.

For example, we found three specific instances where the Trust awarded professional services contracts for important security projects (e.g., explosives blast effects analysis)—totaling in excess of \$120,000—without using competitive selection procedures required by FAA policy. Additionally, many of the Authority's files for professional services contracts were incomplete; and as such, we were unable to determine whether other professional services contracts on AIP-funded projects were competitively awarded as required by FAA.

- **FAA oversight of AIP-funded contracts**

We found that FAA's oversight of the selection of professional services contractors is presently limited to receiving and filing certifications of conformance submitted by the Authority (on behalf of the Trust), without independently verifying the accuracy of the certifications. Our findings demonstrate that this is not an effective means of ensuring grantee compliance with FAA's AIP procurement requirements. For example, we found two instances where Authority officials certified that FAA competitive procurement requirements had been met, yet neither the Authority's files nor our interviews gave any indication that the Authority followed required competitive procedures.

Accordingly, we are recommending to FAA that it strengthen its oversight program to include, at a minimum, periodic site visits entailing file reviews to ensure grantees comply with FAA procurement standards, particularly those governing professional services contracts. In our view, such an approach, considerably more hands-on in nature than the status quo, would enable FAA to carry out its oversight and stewardship responsibilities in a more robust manner.

One issue that arose in our review was confusion among FAA officials at the local and headquarters levels about FAA's rule for when grantees may use

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<sup>7</sup> These AIP-funded contracts are required to comply with FAA Advisory Circular 150/5100-14C, which provides guidance for airport sponsors to follow in the selection and employment of architectural, engineering, and planning consultants paid for with AIP funds.



informal procedures for professional services contracting. When using informal selection procedures, a grantee should call at least three firms, discuss their qualifications to perform the work, and negotiate with the best qualified to arrive at cost.

In speaking with FAA's program manager for the Airports and officials at FAA headquarters, they expressed differences of opinion concerning competitive selection requirements of the Airport Improvement Program (AIP). FAA's program manager, based in Oklahoma City, asserted that the competitive selection threshold for professional services contracts was \$25,000, while a headquarters manager maintained that the threshold was \$100,000. Yet another official, a senior manager in headquarters, advised that the threshold was \$25,000. Based on this, we are further recommending to FAA that it ensure grantees are provided with clear, consistent criteria for AIP-funded contracts.

- **Alleged conflicts of interest by Authority officials**

We found instances in which two former Authority officials, who were responsible for professional services contracting, engaged in activities which gave the appearance of conflicts of interest with individuals from firms whose services they had procured. Specifically, we found that these officials accepted paid golf outings from contractors. In addition, the spouse of one of the officials was employed by a contractor doing business with the Trust and was involved in the administration of a contract her firm held with the Trust. The other official used a City credit card to pay for the hotel and airfare of a woman with whom he was romantically involved in order for her to accompany him on a business trip. The official was responsible for recommending and procuring services from the firm where the woman worked.

Both individuals ended their employment with the Authority in late 2002, just prior to the completion of the City-wide performance review and the subsequent initiation of our review.

- **Governmental affairs liaison contract**

Due to the importance of governmental affairs for the Airports, we were asked to review the Trust's governmental affairs liaison contract. We found that the Trust expended more than \$571,000 for this contract over a three-year period, from June 2000 thru May 2003. The contract did not involve Federal funding and was non-competitively awarded by the Trust, a practice permitted under

State procurement standards. When the contract expired in December 2002, the Trust continued to pay for this consultant's services on a month-to-month basis, without benefit of a contract. Subsequently, a new governmental affairs contract, which was competitively awarded in July 2003, cost nearly 50 percent less. Further, we note that while the former and present contracts specified that the consultants were to submit itemized invoices for services rendered, the Authority has permitted them to submit summary invoices with no description of services provided. Thus, there has been, and currently is, no documentation for the Authority specifically identifying what services have been rendered. We consider the contract requirement for itemized invoices to be a sound business practice. Accordingly, the Trust has the opportunity to require consultant conformance to this contract provision.

## **Details**

Additional details from our review of the Tulsa Airports are presented as follows:

### ***Airport Improvement Projects receiving DOT grant funds***

We found that the Trust followed procurement rules for the 19 AIP-funded construction contracts we reviewed. However, for the professional services contracts awarded during the five-year period covered by our review, we found that for five of the 26 AIP-funded contracts—nearly 20 percent—the Trust did not employ competitive procedures required by FAA policy for procurements over \$25,000.

FAA policy provides specific guidance to airport sponsors concerning professional services contractors selected and employed under airport grant programs<sup>8</sup>. Policy requirements key to our review were:

- The consultant selection process should satisfy requirements for open and free competition.
- Public announcements for all projects should be advertised to obtain experience and qualification data from potential consultants<sup>9</sup>.

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<sup>8</sup> AC 150/1500-14C Architectural, Engineering, and Planning Consultants Services for Airport Grant Projects.

<sup>9</sup> Advertisements should be placed in local newspapers with a wide circulation and national trade journals and magazines.

- A selection board should review the project criteria, the experience and qualification data of consultants, and rank them in order of preference.
- A report should be prepared with sufficient detail to indicate the extent of the review and considerations used to select the consultant.

Specifically, we found the following:

- The Trust had no record of the selection process used to award three professional services contracts for the purpose of complying with important FAA airport security directives issued subsequent to the September 11<sup>th</sup> terrorist attacks<sup>10</sup>. An Authority official told us the selection may have been based on a memo provided by FAA, or the Transportation Security Administration (TSA), which listed consulting firms qualified to complete the security work. TSA's local security director told us they did not issue such a memo, and while we found FAA provided a list of qualified firms to the Authority, we also found the consultant selected was not on the list.
- On another professional services contract, we found a note in a project file that indicated the consultant selection process used by the Authority consisted of two engineers "deciding" to use a certain consultant. When we interviewed one of the engineers associated with this decision he told us the selection decision was likely based on his agreement with his co-worker to use the chosen firm. Yet, we found the Trust submitted a consultant selection certification to FAA indicating the Trust used a competitive selection process.

The contract associated with this certification was originally valued at \$43,690 and with the addition of two amendments for construction management services the final value of the contract exceeded \$120,000. Although the construction management amendments were deemed necessary, the Authority (on behalf of the Trust) did not meet the competitive procurement requirement when it originally awarded the contract, and, by subsequently awarding more work to the contractor without using a competitive selection process, fostered a view of apparent contractor favoritism held by your constituents.

- We found a negotiation log related to a consultant selection certification submitted by the Trust for a geotechnical exploration and quality assurance materials testing contract which indicated to us that the Trust did not employ appropriate competitive procedures to select the consultant. The log indicated

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<sup>10</sup> All three contracts were awarded to the same firm and had an aggregate value exceeding \$126,000.

three engineers selected the consultant based on previously submitted qualifications, however, the Authority could not demonstrate to us what the previous qualifications referenced in the log were.

The original value of this contract was \$50,000 and due to unanticipated decontamination work on the project the consultant requested the total budget for the project be increased to \$75,000. As of March 2003, only \$65,000 had been expended on the contract, but we found that the Trust erroneously amended the contract an additional \$75,000 which increased the total value to \$125,000.

Further, FAA's program manager did not question the manner in which the consultant was selected because he was not certain that this type of professional services contract, i.e., materials testing, fell within the meaning of FAA's advisory circular. But, when we reviewed the contract with FAA headquarters personnel they opined the services fell within the meaning of the advisory circular and were therefore subject to all its provisions including the requirement for a competitive selection process.

- We found FAA's oversight of the consultant selection process has been limited to receiving self-certifications submitted by the Trust. Consequently, FAA was not aware of the Trust's non-compliance with the competitive selection requirements for the professional services contracts we identified.

We are recommending to FAA that it (a) increase oversight in this area, program-wide, beyond its current practices, and (b) determine whether fiscal adjustments to its grants to the Trust are warranted based on our finding of non-compliance with FAA competitive selection requirements<sup>11</sup>.

### ***FAA oversight of AIP grants***

We concluded that FAA does not carry out sufficient activities to determine whether the Airports meet AIP procurement standards, instead relying heavily on airport self-certifications that AIP requirements have been met. FAA officials with whom we spoke maintained that the "Single Audit" is the proper vehicle for ensuring grantee compliance with AIP program requirements<sup>12</sup>. The Single Audit is

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<sup>11</sup> FAA Order 5100.38B, Section 1314(d) permits such adjustments.

<sup>12</sup> The Single Audit Act of 1984 established requirements for audits of States, local governments, and non-profit organizations expending Federal awards. The AIP grants received by the Trust are subject to audit under the Act.

a risk-based assessment that includes evaluation of the expenditures, financial statements, and internal controls of a recipient of Federal awards, including all Federal transportation funding received by a locality. The audits typically test a number of transactions or procedures to provide the auditor with sufficient evidence to support an opinion on the locality's compliance with Federal accounting standards.

Because the Single Audit does not provide a full, comprehensive review of a grant recipient, we disagree with FAA's position. The Single Audit Act does not preclude FAA from carrying out its own regulatory compliance review activities. We note that FAA's AIP Handbook states, in part, the following:

“The single audit...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...”<sup>13</sup>

Accordingly, we are recommending to FAA that it develop a methodology for targeting and carrying out enhanced oversight activities, such as periodic on-site file reviews, contractor interviews, and early examination of contractor selection procedures at airports. Such oversight activities would better assure grantee compliance with program requirements, thereby increasing the effectiveness of FAA's stewardship of the AIP program.

Further, we found a difference of opinion within FAA regarding interpretation of FAA regulations and rules for AIP-funded projects. For instance, while FAA's field program manager in Oklahoma cited a headquarters directive requiring competitive procedures for any professional services contract exceeding \$25,000, a headquarters manager asserted that this directive did not apply, and told us that the threshold is \$100,000. Yet a third official, located at FAA headquarters, advised that the \$25,000 limit still applies. Given this confusion, we are recommending to FAA that it issue clear updated guidance to grantees in this important area. Based on our observations during this review, we consider \$25,000 to be an appropriate threshold for competitive procedures to be required.

### ***Conflicts of interest***

We found that two former Airport Authority officials, having substantial involvement in contracting, engaged in apparent conflicts of interest with individuals whose services they procured, fueling perceptions of favoritism and

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<sup>13</sup> FAA Order 5100.38B, Section 1311.

abuse of professional services contracting. In particular, we found that the former Deputy Director of Engineering and Facilities, along with the Senior Engineer, accepted paid golf outings from an Airport contractor, and the Deputy Director went on annual group hunting trips that included the Airport contractor.

Significantly, we found:

- The Deputy Director failed to recuse himself from involvement in a professional services contract after he began dating (and later married) a contractor employee who was rendering key information technology services to the Authority.
- The Deputy Director used a City credit card to pay for this individual's airfare and hotel so that she could accompany him to Florida while he attended a conference.
- Prior to contracting with the firm which employed someone with whom he was romantically involved, the Deputy Director ignored a warning from the Airport's Director of Information and Communication Services that a portion of the procurement would duplicate the capabilities of existing software. (The Deputy Director was responsible for procuring over \$100,000 of services from this contractor between March 2001 and May 2002.)
- The Senior Engineer's spouse was employed by a contractor that held professional services contracts with the Trust. He and his spouse both had responsibilities for administering the same contract. The Senior Engineer also served as the project manager for contracts awarded to his wife's firm.

(Note: The Deputy Director retired in December 2002. The Senior Engineer resigned from the Authority in November 2002.)

These findings underscore that professional services contracts are considerably more susceptible to fraud, waste, and abuse based on the lesser standards under which they are awarded. FAA regulations and policy, along with City policies, prohibit Authority employees from participating in the administration of contracts if a real or apparent conflict of interest exists such as accepting anything of monetary value from a contractor<sup>14</sup>. Although these policies prohibit such relationships, we found the Authority does not have an ethics training and awareness program in place, nor does it require statements of independence from personnel involved in

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<sup>14</sup> 49 CFR 18.36, AC 150/5100-14C, and City of Tulsa Personnel Policies and Procedures Section 419.

procurements certifying that they have no conflicts of interest. Accordingly, we are recommending to the Authority that it institute these mechanisms.

### ***Governmental Affairs Liaison Contract***

In May 2000, the Trust non-competitively awarded a professional services contract for a governmental affairs liaison<sup>15</sup>. The contract was valued at \$107,500 for the remaining portion of that year and included two, one-year option periods which were originally valued at \$185,000 annually. Included in the cost of the contract was a \$5,000 annual allowance for expenses, which was later increased to \$10,000 without any explanation or further justification noted in the contract file<sup>16</sup>. According to the Authority's Director, this increase was simply the cost of doing business. The contract specified that expenses were to be documented, invoices were to itemize services rendered, and monthly reports addressed the progress of the project were to be furnished<sup>17</sup>. We found the Authority, in practice, did not require the consultant to furnish these records as specified by the contract.

In November 2002, the Trust approved a new contract for the incumbent governmental affairs consultant, at a cost of \$190,000 per year. The Mayor did not approve the contract on behalf of the City and it was returned to the Trust unsigned. When the original contract expired on December 31, 2002, the Trust continued to retain the consultant's services without a legally binding contract in effect. This resulted in the payment of an additional \$70,000 worth of invoices by the Trust from January to May 2003.

In July 2003, the Trust published a request for proposals seeking to retain a governmental affairs liaison to provide expert advice on Federal governmental and administrative processes. The Trust received 12 responses and the consultant selected is providing essentially the same types of services specified in the previous contract at almost 50 percent less cost. This cost savings that resulted from the free and open competition for this contract is a good example for the Airport of benefits that can be derived from using a competitive selection process.

One area requiring further strengthening concerns the invoicing for this contract.

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<sup>15</sup> The contract did not involve Federal funds, and State procurement rules therefore applied. The State rules provide that professional services contracts are not subject to competitive bidding requirements.

<sup>16</sup> Authorized expenses included business entertainment, travel, long-distance telephone, postage, document reproduction, and other *documented* expenses.

<sup>17</sup> Reports were to be furnished a form acceptable to the Trust.

The Authority is still permitting the current consultant to submit invoices that do not itemize and describe services rendered as required by the contract. The Authority should require adherence with this contract provision. There are many legal and business reasons for insisting on this documentation. One, in particular, is that such documentation will permit the consultant activity to be audited to ensure that the governmental affairs services rendered are Airport-related. Since the consultant is paid with Airport funds, it would be improper for the consultant to render governmental affairs services on issues relating to the City. The Authority's current and past practice provides no sufficient audit trail enabling the Authority to demonstrate that the consultant services were strictly Airport-related.

### ***Landing and Parking Fees***

One concern we reviewed was whether the Tulsa Airports' landing fees were unreasonably high, potentially driving airlines out of Tulsa.

A 1999-2000 study on Airport Rates and Charges sponsored by the American Association of Airport Executives disclosed that the average landing fee for medium hub airports was \$1.96 per 1,000 pounds of gross landing weight. Tulsa International Airport's rate during this time period was \$1.86. In Fiscal Year 2001/02, Tulsa International Airport increased its landing fee to \$2.10<sup>18</sup> but has since lowered its rate to \$1.92 as follows:

Fiscal Year	Rate
2002/03	\$1.96
2003/04	\$1.92

It should be noted that airport fees, including landing fees, are set by the Trust after negotiation and input from signatory airlines and other users of the airport. There are 15 airlines that operate at the Tulsa Airport and 13 of these airlines (signatory) are party to the airport's agreement that establishes the airport fees<sup>19</sup>. We also contacted a representative of a major airline who indicated the airline had no problem with the amount the airport charged for landing fees.

Additionally, when we began our review there were concerns that vehicle parking fees at Tulsa International Airport were set low in order to drive competitors out of

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<sup>18</sup> Effective January 1, 2002.

<sup>19</sup> Airlines that are not party to the agreement (non-signatory airlines) pay a higher landing fee. This is a common practice at all airports.



business, thus creating an anti-competitive marketplace. This issue primarily stemmed from the concerns of a private business owner operating a parking facility adjacent to the airport. The business owner's concerns about an anti-competitive environment were addressed in a March 2003 Oklahoma State Supreme Court decision, ruling that because the Airport is an Oklahoma public entity, the Airport may set parking rates it deems necessary, as long as the public interest is served. In March 2003, the Airport voted to raise its basic garage parking fee at the Tulsa International Airport from \$5.00 to \$6.95 per day beginning in July 2003. In addition, it should be noted that the owner of the private parking facility is still in operation.

### *Other Issues*

There were two other issues we examined as part of our review: (a) the ability of the Trust to extend contracts beyond the terms of original procurements; and (b) an allegation that Authority employees destroyed documents in advance of our review.

- We found that standard language in Trust contracts (administered by the Authority) allows for the addition of work beyond the terms of the original procurement, thus affording the Authority considerable discretion in extending existing contracts. For example, one non-AIP funded contract we reviewed, for engineering design work, was non-competitively awarded to a consultant by the Authority (on behalf of the Trust) for \$49,648, just below the City's \$50,000 threshold requiring formal competition. With the addition of two contract amendments, the total value of the contract ultimately exceeded \$125,000.

Such procurement latitude, along with the silence of State trust laws on requirements for professional services procurements, places Trust contracting at risk for abuse and fosters the appearance of preferential treatment toward certain contractors.

- Early in our review, allegations were raised that Airport staff members had been directed to destroy documents or clean-up files in advance of our review. In response, we contacted the Authority's Director and Trust's Legal Counsel and advised them that no documents were to be destroyed. We also interviewed four Authority staff members about the alleged shredding. Based on our discussions and interviews, we determined that some document shredding had occurred at the Authority, but it was not in response to any order to destroy records and we were unable to determine what had been shredded.

## **Recommendations**

To ensure that the Airport does not inappropriately use PFC or other Airport funds to purchase the property used as collateral in the Great Plains Airlines loan, we are recommending FAA require the Airport to:

1. Support any requests for property acquisition with a valid appraisal of the property and require that the appraisal appropriately considers the affect of any leases on the fair market value of the property.
2. Validate that there is a legitimate need to acquire the property to extend the runway and taxiway or to obtain additional hangar space.

In addition, FAA should:

3. Ensure Airport funds are not inappropriately disbursed to cover the cost of Great Plains' loan.
4. Evaluate the appropriateness of the Great Plains loan transaction and establish policies that will preclude airport sponsors from entering into agreements (similar to the one used to support the Great Plains loan) that create contingent liabilities and place airport funds at risk of being used for purposes not permitted under Federal law.

Further, we are making the following recommendations to FAA and the Authority:

5. The AIP program compliance issues we addressed during our review are not unique to the Trust and the Authority. We have encountered a variety of issues related to AIP, as well as PFC, program compliance at other airports across the country (e.g., most recently, New Orleans). As such, we are recommending to FAA that it form a national working group to study trends and issues related to known or identifiable instances of non-compliance in the AIP and PFC programs and implement changes to policies or procedures that will correct AIP and PFC compliance deficiencies identified by the group.
6. Based on the contracting issues we identified, we recommend FAA determine whether any fiscal adjustments to its grants provided to the Trust are warranted based on our specific findings of non-compliance with competitive selection

requirements. Further, based on our finding of confusion within FAA as to the threshold for formal competitive procedures in AIP-funded contracting for professional services, we recommend that FAA issue clear updated guidance to grantees.

7. By copy of this report we are recommending to FAA that it develop and implement a methodology for targeting and carrying out enhanced oversight activities, such as periodic on-site file reviews, contractor interviews, and early examination of contractor selection procedures at airports. Such an approach to oversight would better assure grantee compliance with program requirements, thereby increasing the effectiveness of FAA's stewardship of the AIP program.
8. Finally, we are recommending to the Authority that it institute a robust ethics training and awareness program, as well as require statements of independence from personnel involved in contracting certifying that they do not have conflicts of interest.

If I can answer any questions or be of further assistance in this or any other matter, please feel free to contact me at 202-366-1959, or my Deputy, Todd J. Zinser, at 202-366-6767.

Sincerely,



Kenneth M. Mead  
Inspector General

## **APPENDIX A**

### **Background on Airport Funding Sources and Procurement Policies**

## **Background on Airport Funding Sources and Procurement Policies**

A major funding source for capital improvements at commercial service airports is the FAA's Airport Improvement Program<sup>20</sup> (AIP) which is designed to provide grants to public agencies for the planning and development of public-use airports in the National Plan of Integrated Airport Systems<sup>21</sup>. These airports are entitled to specific amounts of AIP funds with each annual appropriation based on airport passenger boarding data. Airports also compete for funds from a pool of discretionary funds earmarked for airport improvements<sup>22</sup>. For Fiscal Years 1999-2003 the Tulsa Airports have received approximately \$46,000,000 in AIP grants from the FAA.

Procurements made under the AIP must adhere to the provisions of 49 CFR Part 18.36. Key requirements specified in this regulation include: procurement transactions will be conducted in a manner providing full and open competition; requests for proposals will be publicized; grantees will maintain records sufficient to detail the significant history of a procurement; and no employee, officer or agent of the grantee shall participate in the selection, award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent would be involved.

In an effort to assist airport sponsors in complying with 49 CFR 18.36, the FAA issued Advisory Circular No. 150/5100-14C (AC 150/5100-14C) which recommends procedures for airport sponsors to follow when selecting and employing architectural, engineering, and planning consultants. The recommendations contained in AC 150/5100-14C are included in the list of grant assurances and upon acceptance of a grant they shall be complied with by the airport sponsor.

The circular defines types of consultant services covered, specifies procedures for the selection of consultants, and addresses contract format, methods and costs<sup>23</sup>. The circular allows for informal selection procedures to be used for procurements where the cost is estimated to be under \$25,000<sup>24</sup>. Otherwise, the circular recommends that the selection of consultants utilize a process offering free and

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<sup>20</sup> 49 USC Chapter 481.

<sup>21</sup> The Airports are included in the NPIAS list.

<sup>22</sup> Recipients of discretionary funds are selected based on a needs based assessment and the availability of funds.

<sup>23</sup> Architectural, Engineering and Planning consultants.

<sup>24</sup> A sponsor should call at least three firms, discuss their qualifications, and consult with the best qualified firm to arrive at cost.

open competition, projects be publicly announced in newspapers, trade journals and magazines, and that a comparative analysis of professional qualifications be used to select the best qualified consultant.

Another major funding source for airport capital improvements is provided for in Title 49 United States Code Sec 40117 which permits the Secretary of Transportation to authorize an eligible agency to impose a passenger facility charge (PFC) on each paying passenger boarding an aircraft at an airport controlled by the agency. The Code and related federal regulations (14 CFR 158) require fees collected under this program to be used for airport related improvement projects that have been approved by the FAA<sup>25</sup>. The Trust has been approved to collect this fee in connection with several improvement projects approved by the FAA<sup>26</sup>. Currently, the Airport imposes a \$3.00 PFC for passengers enplaned at the Trust and has collected approximately \$20,758,341 in fees for the period Calendar Years 1999 through 2003<sup>27</sup>.

The Airports derive funding from the revenues generated by their operations. Sources of revenue include fuel sales fees, airport rental lease agreements, parking and landing fees, and other similar sources of operating revenues. Federal law requires all airport sponsors receiving federal assistance to use the airport revenues for the capital or operating cost of the airport<sup>28</sup>. Any other use of airport revenue is considered a revenue diversion. For the fiscal year ending June 30, 2002<sup>29</sup>, the Airport generated operating revenues in excess of \$25 million<sup>30</sup>.

The Trust uses airport revenues to procure services needed to operate the Airports. In contrast to the federal procurement requirements, the State laws governing trusts, such as the Tulsa Airport Improvements Trust, are silent on the issue of the procurement requirements for obtaining professional services<sup>31</sup>. The only specific procurement guidance found in the statute is related to construction, labor, equipment, materials, or repair contracts. Further, Oklahoma public competitive bidding laws specify that contracts for professional services are not subject to competitive bidding statutes<sup>32</sup>.

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<sup>25</sup> Projects eligible for PFC collections include air safety or security improvements, reducing aviation noise surrounding an airport, increasing competition among air carriers, and other similarly approved projects.

<sup>26</sup> The funds are being used to finance improvement projects such as taxiway extensions and reconstruction, procurement of emergency communication equipment, and rescue and firefighting equipment replacement.

<sup>27</sup> This figure does not include the last quarter of calendar year 2003.

<sup>28</sup> 49 USC 40117.

<sup>29</sup> The Airport's Fiscal Year is July 1 to June 30.

<sup>30</sup> For the same period the year prior, operating revenues were \$26 million.

<sup>31</sup> Examples include emergency environmental response services and governmental affairs liaison services.

<sup>32</sup> Oklahoma State Statute Title 61, Section 103.

**APPENDIX B**

**The Office of Inspector General**  
**Report Number: AV-2004-058**

**LOAN DEFAULT COULD RESULT IN  
MISUSE OF FUNDS AT TULSA  
INTERNATIONAL AIRPORT**

*Federal Aviation Administration*

*Report Number: AV-2004-058*

*Date Issued: May 6, 2004*






# Memorandum

U.S. Department of  
Transportation

Office of the Secretary  
of Transportation  
Office of Inspector General

Subject: **ACTION:** Loan Default Could Result in Misuse  
of Airport Funds at Tulsa International Airport  
AV-2004-058

Date: May 6, 2004

From: Alexis M. Stefani   
Principal Assistant Inspector General  
for Auditing and Evaluation

Reply to  
Attn. of: JA-10:x60500

To: Federal Aviation Administrator

This report presents the results of our review of potential misuse of airport funds at Tulsa International Airport (Airport). Our objective was to determine whether the Airport's agreement to purchase property used as collateral in a loan to Great Plains Airlines (Great Plains) could result in the misuse of airport funds.

## RESULTS IN BRIEF

In responding to a request from Senator James M. Inhofe, we reviewed loan transactions involving the Tulsa International Airport.<sup>1</sup> Specifically, the Airport entered into an agreement with the Tulsa Industrial Authority (TIA)<sup>2</sup> that may require the Airport to purchase property used as collateral in a loan to Great Plains. This agreement appears to have been made without regard to the fair market value of the property or whether the Airport had a valid need to purchase the property to make airport improvements.

The Airport planned to use \$9.1 million generated from Passenger Facility Charges (PFC) to purchase 30 acres of property for a runway and taxiway extension. The property the Airport planned to purchase was used as collateral for a \$30 million loan to Great Plains as part of an agreement between the Airport,

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<sup>1</sup> The Tulsa International Airport is leased to Tulsa Airports Improvement Trust (TAIT). TAIT is a trust sponsored by the City of Tulsa for improving the buildings, structures, and facilities of Tulsa area airports. TAIT is the entity that the Federal Aviation Administration recognizes for purposes of Airport Improvement Program grants and Passenger Facility Charges project approvals. All references to the Airport in this memorandum are synonymous with TAIT.

<sup>2</sup> The Tulsa Industrial Authority is an agency created to promote the general economic welfare of Tulsa area citizens. The City of Tulsa directly benefits from activities of the Authority.

TIA, and the Bank of Oklahoma. Under this agreement, if the airline defaults on the loan, the Airport would purchase the property at an amount equal to the outstanding debt owed by the airline.

While use of PFC funds to purchase property for airport projects can be appropriate to enhance capacity or safety,<sup>3</sup> this potential property transaction raises serious questions because (1) the fair market value of the 30 acres the Airport planned to purchase appears to be significantly lower than the amount of PFC funds the Airport requested to collect, and (2) prior project descriptions in the Airport's capital improvement plans did not identify a need for this property. Further, the Airport did not provide support in its PFC application to show that the property was needed to extend the runway and taxiway.

In a September 2003 application, the Airport requested approval to collect and use approximately \$10.2 million in PFC funds to finance a runway and taxiway extension project, including the acquisition of 30 acres of land. Because the Airport did not provide sufficient details to clarify its need for the land, the Federal Aviation Administration (FAA) requested that the Airport provide supplemental information to support its request, including documentation of the amount budgeted for the land acquisition. In response, the Airport indicated that approximately \$9.1 million was needed to acquire 30 acres of land. The Airport did not provide any documentation to indicate the fair market value of the land. In December 2003, FAA advised the Airport that it would not approve the land acquisition portion of the project, indicating that it did not have sufficient information to determine if the land acquisition was an eligible PFC project.

On January 23, 2004, Great Plains filed for Chapter 11 bankruptcy. Although it received a 90-day extension to repay the loan (originally due in December 2003), the extension expired on March 21, 2004. Great Plains still owes about \$7 million of the loan amount. If the Bank declares Great Plains in default, the terms of the support agreement require the Airport to purchase the property for the outstanding balance of the loan. According to documentation provided to us by an Airport official, the Airport has until December 2005 to obtain the funds to meet its obligation to purchase the property.

FAA policies and procedures prohibit airports from providing direct subsidies to airlines.<sup>4</sup> In a legal analysis prepared at the request of Airport management on FAA's revenue diversion policy, it was noted that:

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<sup>3</sup> 49 U.S.C. Section 40117; Passenger Facility Charge, FAA Order 5500.1, (August 9, 2001).

<sup>4</sup> FAA Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, 7709-10, (February 16, 1999).

In light of the current law, regulations and regulatory pronouncements concerning airport requirements for self-sufficiency, the avoidance of revenue diversion, and prohibition against direct subsidy of air carrier operation or service, we are lead [sic] to the conclusion that to avoid regulatory scrutiny, TAIT's support of the Tulsa Industrial Authority - Bank of Oklahoma [BOK] financing for Great Plains Holding Company et al. must be in the nature of a real estate transaction. Even with the transaction structured in that nature, we are not in a position to opine that in the event of a trigger event which would require TAIT action under the Support Agreement, the use of airport revenues to purchase all or a portion of Air Force Plant No. 3 would not be subject to regulatory scrutiny or audit. However, we believe that to the extent the real estate transaction can be narrowed by the size, nature or character of property and/or facilities encumbered by the TIA-BOK transaction, that would dramatically lessen our concern of regulatory review and/or audit of the "support" transaction.

By becoming a party to the real estate transaction to help finance the start-up of the airline and agreeing to pay off any outstanding loan balance, the Airport incurred a contingent liability that will remain until the airline pays the loan in full. However, should the loan be declared in default and the Airport be required to pay off the outstanding loan balance, this action would constitute a direct subsidy to the airline in violation of FAA policy. Further, should the Airport use Airport funds to pay off the loan, it would result in either a diversion of Airport revenue, inappropriate use of PFC funds, or both.

In the event that Great Plains defaults, FAA should take steps to ensure that the Airport does not divert revenues intended for legitimate Airport purposes to pay off the loan. In addition, FAA should evaluate the appropriateness of the Great Plains loan transaction and establish policies that prevent airport sponsors from entering into agreements that could result in the misuse of airport funds.

## **Recommendations**

To ensure that the Airport does not inappropriately use PFC or other Airport funds to purchase the property, we are recommending that FAA require the Airport to:

- Support any future requests to fund property acquisition costs for the 30 acres of land with a valid appraisal of the property, and
- Validate that there is a legitimate need to acquire the property to extend the runway and taxiway.

In addition, FAA should:

- Ensure that Airport funds are not inappropriately disbursed to cover the cost of the Great Plains loan, and
- Evaluate the appropriateness of the Great Plains loan transaction and establish policies that will preclude airport sponsors from entering into agreements (similar to the one used to support the Great Plains loan) that create contingent liabilities and place airport funds at risk of being used for purposes not permitted under Federal law.

## **BACKGROUND**

Early in 2000, a Tulsa economic development group recommended that the City of Tulsa support a loan to Great Plains. Great Plains would provide direct air service from Tulsa to U.S. east and west coast locations. City officials believed that helping Great Plains would fuel economic development in the Tulsa area. The City of Tulsa transferred 344 acres of land adjacent to the Airport to the TIA so that TIA could use the land as collateral for the loan to Great Plains. On December 21, 2000, the Bank of Oklahoma (Bank) and TIA entered into a loan agreement to issue two revenue notes of \$15 million each. TIA then provided a loan totaling \$30 million to Great Plains.

Also on December 21, 2000, the Bank, TIA, and Tulsa Airports Improvement Trust signed a separate “support agreement” in which the Airport agreed that if Great Plains defaulted on its loan, the Airport would purchase the property for an amount equal to the outstanding debt owed by Great Plains plus any other unpaid amounts due under the loan agreement (i.e., interest and collection costs, which include attorney fees of a minimum of 15 percent of all sums payable).

In 2001, Great Plains paid back one of the \$15 million revenue notes using state-issued tax credits. Since the agreements were signed, the Bank has disbursed \$8.25 million to Great Plains from the second \$15 million note. The remaining \$6.75 million was held in an escrow account to protect the Bank’s interest in the loan.

Under the terms of the note, Great Plains was required to make monthly payments until December 21, 2003, at which time it was to have paid the outstanding loan amount in full. In January 2004, we were informed by an Airport official that the Bank granted Great Plains a 90-day extension to repay the loan. According to the City official, Great Plains still owes the Bank approximately \$7 million.

## SCOPE AND METHODOLOGY

The audit was conducted between March 2003 and April 2004. Our review included interviewing officials from the Airport, the City of Tulsa, and FAA; reviewing Airport documents related to the loan transaction with Great Plains; reviewing correspondence related to the Airport's request for PFC funds; and reviewing FAA policy and procedures related to the use of PFC and Airport Improvement Program funds. The audit was conducted in accordance with Government Auditing Standards prescribed by the Comptroller General of the United States and included such tests as we considered necessary to provide reasonable assurance of detecting abuse or illegal acts.

## FINDING AND RECOMMENDATIONS

In our opinion, there is a significant risk of the misuse of Airport funds if Great Plains defaults on the loan and the Airport is required to buy the property used as collateral.<sup>5</sup> The Airport requested approval to use PFC funds to purchase 30 acres of the property to extend a taxiway and runway.<sup>6</sup> The airport could not provide, nor could we find, a property appraisal that would substantiate the value of the 344 acres used as collateral. However, a Great Plains document indicated that the value of the collateral may be only \$3 million, which is substantially lower than the \$9 million the Airport requested to collect in PFC funds to purchase 30 of the 344 acres. Also, we question whether the Airport has a valid need for the 30 acres because the need to purchase the land to extend the taxiway and runway was not identified in the Airport's description of the runway/taxiway extension project until 2003, after the risk of a potential default became apparent. Key documents and our analyses are summarized below.

- In an August 2000 memorandum, Airport management noted that if Great Plains defaulted, the Airport could use the following sources or a combination of these sources to pay off the loan: "Discretionary funds of the Airport Trust...; Imposition of a Passenger Facility Charge; Facility funding under the Airline Use and Lease Agreements...; FAA entitlements and/or discretionary grants; [or] Special Facility Revenue Bond Financing...."
- In December 2000, the Bank, TIA, and Airport entered into a support agreement that obligated the Airport to purchase the property if Great Plains

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<sup>5</sup> According to loan and support agreement documentation, 344 acres of land adjacent to the Airport was initially provided as collateral for the loan to Great Plains. However, once the airline received its operating certificate or within 15 months of the loan, TIA was to transfer all but 25 acres of the land back to the City of Tulsa. Therefore, the Airport would be required to purchase the remaining 25 acres at an amount equal to the outstanding loan balance.

<sup>6</sup> Our review of land maps included in the PFC application and loan documents determined that the 30 acres the Airport wanted to purchase is part of the 344 acres of land originally used as collateral for the loan.

defaulted on its loan. Based on our review, the Airport recognized that FAA regulations prohibited it from providing a direct subsidy to an airline; therefore, the Airport made a decision to construct the agreement as a real estate transaction.

- The amount the Airport agreed to pay for the property if Great Plains defaulted was not supported by an appraisal performed in conjunction with the loan. Airport and City officials told us that they did not obtain an appraisal to determine the value of the property prior to entering into the loan agreement. A Great Plains representative indicated in an October 2002 memo that the collateral (i.e., property) might be valued in the \$3 million range. Further, because over 300 acres of the property is leased for another 5 to 20 years, the cost of breaking the leases to use the property for Airport improvements may reduce the fair market value of the property below \$3 million.
- Airport documents show that in February 2002, Great Plains requested an extension to pay its January, February, and March 2002 loan payments. Later, in September 2002, Great Plains, the Airport, and TIA requested that the Bank delay any decision to declare Great Plains in default of its loan. A November 2002 review commissioned by the mayor of Tulsa concluded that Great Plains was at risk of defaulting. Because Great Plains continued to be unable to make its monthly payments, in March 2003 the Bank began using the \$6.75 million escrow account to make the payments. However, the Bank did not declare Great Plains in default.
- On January 23, 2004, Great Plains filed for Chapter 11 bankruptcy. Although it received a 90-day extension to repay the loan, the extension expired on March 21, 2004. Nevertheless, Great Plains still owes about \$7 million of the loan amount (as estimated by City officials), and the Airport is still liable if Great Plains is declared in default of its loan agreement.
- Information presented in three Airport planning documents suggests that the cost of the land acquisition project was inflated after it became apparent that Great Plains might default, given that Great Plains was unable to make its monthly payments in 2002.
  - The Airport’s Five-Year Capital Improvement Plan (CIP) for fiscal years (FYs) 2004 through 2008, approved by the Airport in April 2003, states that the Airport would need to purchase “land adjacent to the airfield which will be needed for the extension of Runway 8/26, Taxiway Charlie, Taxiway Echo and additional Hangar space.” The CIP disclosed that the total estimated cost of the project was \$16.8 million but did not indicate how much land was needed or the acquisition cost of the land.

- A draft version of the CIP that Airport officials provided to us in March 2003 did not mention land acquisition in the narrative description, even though the total cost was also \$16.8 million.
- Finally, a third document, a prior year capital improvement project summary listing for FYs 2002 through 2009, included the project but did not indicate there was a need to acquire land. Also, the cost for the project in this plan was \$10.6 million less than the amount approved in the April 2003 CIP, as is shown in the following table.

**Table. Changes in Cost Estimates for the Runway/Taxiway Extension Project**

Type of Funds	Project Summary FYs 2002-2009	April 2003 Five-Year CIP FYs 2004-2008	Increase in Costs
Airport Improvement Program (Entitlement)	\$4,200,000	\$ 5,580,000	\$ 1,380,000
Airport Improvement Program (Discretionary)	\$ 0	\$ 3,900,000	\$ 3,900,000
Passenger Facility Charges	\$2,000,000	\$ 7,357,000	\$ 5,357,000
<b>Total</b>	<b>\$6,200,000</b>	<b>\$16,837,000</b>	<b>\$10,637,000</b>
<b>Percentage Increase</b>			<b>172%</b>

Therefore, it appears to us that the CIP costs were increased to justify the collection of PFC funds to purchase the land and to offset the cost of the loan after it became apparent that Great Plains might default. Further, given that correspondence from Great Plains indicated that the collateral (344 acres) might be worth about \$3 million, we question whether the \$9.1 million of PFC funds the Airport requested to pay for the 30 acres represents its fair market value.

- In September 2003, the Airport submitted an application to the FAA to collect and use approximately \$10.2 million in PFC funds to finance the runway and taxiway extension project.<sup>7</sup> The application included the acquisition of 30 acres of land but did not show the amount budgeted for the land, nor the

<sup>7</sup> The Airport also anticipated using \$9.5 million of Airport Improvement Program funds for this project.

transactions that had occurred or would need to occur for the Airport to obtain the land. FAA requested that the Airport provide supplemental information to justify this request, including documentation of the amount budgeted for the land acquisition.

- In November 2003, the Airport responded to FAA's request for supplemental information. The Airport indicated that it needed to collect \$9.1 million of its request from PFC funds for the land acquisition. This amount was needed to provide funding to repay \$6.3 million in "Bond Capital" and \$2.8 million in "Interest Expense." (The Airport planned to sell bonds to the public to finance the initial acquisition cost of the land and use PFC funds to repay the bonds and related interest expense when due. This is a normal airport practice and allowable under FAA's PFC procedures.) However, no documentation was attached to indicate the fair market value of the land.
- In December 2003, FAA advised the Airport that it would not approve the land acquisition portion of the project, indicating that "[g]iven the complexity of the land issues," FAA did not have sufficient information to determine if the land acquisition was an eligible PFC project.

As of April 22, 2004, the Bank had not declared Great Plains in default of its loan. Nevertheless, the terms of the support agreement require the Airport to purchase the property for the outstanding balance of the loan. The loan payoff and related fees (estimated by City officials to total about \$7 million) may be significantly higher than the fair market value of the property. We could not determine the true value of the property because, in the records of the transactions we reviewed, we found no appraisal. Airport and City of Tulsa officials advised us that an appraisal was not performed to determine the value of property used as collateral prior to entering into the loan agreement. The only reference to the value of the property was an October 2002, memorandum prepared by a Great Plains Airlines representative indicating that its value "may be in the \$3 million range." According to documentation provided to us by an Airport official, the Airport has until December 2005 to obtain the funds to meet its obligation to purchase the property.

As indicated above, your office has already taken initial steps to require that the Airport properly support requests to use PFC funds. To ensure that the Airport does not inappropriately use PFC funds or any other Airport funds to purchase the property in the future, we recommend that FAA consider the results of this review in any actions it takes in reviewing runway and taxiway expansion projects at the Airport or any future requests by the Airport to acquire all or portions of the 344 acres.



FAA policies and procedures prohibit airports from providing direct subsidies to airlines. In a legal analysis prepared at the request of Airport management on FAA's revenue diversion policy it was noted that:

In light of the current law, regulations and regulatory pronouncements concerning airport requirements for self-sufficiency, the avoidance of revenue diversion, and prohibition against direct subsidy of air carrier operation or service, we are lead [sic] to the conclusion that to avoid regulatory scrutiny, TAIT's support of the Tulsa Industrial Authority - Bank of Oklahoma [BOK] financing for Great Plains Holding Company et al. must be in the nature of a real estate transaction. Even with the transaction structured in that nature, we are not in a position to opine that in the event of a trigger event which would require TAIT action under the Support Agreement, the use of airport revenues to purchase all or a portion of Air Force Plant No. 3 would not be subject to regulatory scrutiny or audit. However, we believe that to the extent the real estate transaction can be narrowed by the size, nature or character of property and/or facilities encumbered by the TIA-BOK transaction, that would dramatically lessen our concern of regulatory review and/or audit of the "support" transaction.

By becoming a party to the real estate transaction to help finance the start-up of the airline and agreeing to pay off any outstanding loan balance, the Airport incurred a contingent liability that will remain until the airline pays the loan in full. However, should the loan be declared in default and the Airport be required to pay off the outstanding loan balance, this action would constitute a direct subsidy to the airline in violation of FAA policy. Further, should the Airport use Airport funds to pay off the loan, it would result in either a diversion of Airport revenue, inappropriate use of PFC funds, or both.

In the event that Great Plains defaults, FAA should take steps to ensure that the Airport does not divert revenues intended for legitimate Airport purposes to pay off the loan. In addition, FAA should evaluate the appropriateness of the Great Plains loan transaction and establish policies that prevent airport sponsors from entering into agreements that could result in the misuse of airport funds.

## **RECOMMENDATIONS**

To ensure that the Airport does not inappropriately use PFC or other Airport funds to purchase the property, we are recommending that FAA require the Airport to:

1. Support any requests for property acquisition with a valid appraisal of the property and require that the appraisal appropriately considers the affect of any leases on the fair market value of the property.
2. Validate that there is a legitimate need to acquire the property to extend the runway and taxiway or to obtain additional hangar space.

In addition, FAA should:

3. Ensure that Airport funds are not inappropriately disbursed to cover the cost of the Great Plains loan.
4. Evaluate the appropriateness of the Great Plains loan transaction and establish policies that will preclude airport sponsors from entering into agreements (similar to the one used to support the Great Plains loan) that create contingent liabilities and place airport funds at risk of being used for purposes not permitted under Federal law.

## **MANAGEMENT RESPONSE AND ACTION REQUIRED**

We briefed Agency officials in June 2003 on the need to closely scrutinize any Airport requests to use Airport funds for purchasing the land used as collateral in TIA's loan to Great Plains. We also provided a discussion draft to FAA in March 2004. FAA management advised us that they have not had an opportunity to review the underlying transactions or documents pertaining to the Great Plains loan; therefore, they could not comment on the appropriateness of the Airport's involvement in the loan transaction. As a result, we have modified our recommendation to address their concerns. FAA agreed with our recommendations to ensure the Airport does not inappropriately use PFCs, or other Airport funds, to purchase the property and our conclusion that Airport funds should not be used to pay off the Great Plains loan. They also agreed to take steps to advise other airports not to enter into agreements, such as the Great Plains loan, that would place airport funds at risk of being used for purposes not permitted by Federal law.

In accordance with Department of Transportation Order 8000.1C, we would appreciate receiving your written comments on this report within 30 calendar days. Please indicate the specific action taken or planned for each recommendation and the target date for completion. You may provide alternative courses of action that you believe would resolve the issues presented in this report.

We appreciate the cooperation and assistance provided by your staff during our review. If you have any questions concerning this report, please call me at

(202) 366-1992 or Mr. David Dobbs, Assistant Inspector General for Aviation Audits, at (202) 366-0500.

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