

Grant Assurances Workshop

⊕ Non-Discrimination (DOT)

- ⊕ DOT Order 1050.2A
- ⊕ 49 CFR part 21

⊕ Non-Discrimination (FAA)

- ⊕ 49 U.S.C. § 47123
- ⊕ FAA Order 1400.11
- ⊕ Grant Assurances (No. 30)

⊕ AIP Contract Provisions

Presented To: 7th Annual FAA National
Civil Rights Training Conference

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Nancy S. Williams, APP
Mike A. Rottinghaus, APP

Date: September 9 2016



Federal Aviation
Administration

Civil Rights Act of 1964

Title VI

Title VI (42 U.S.C. § 2000d, et seq.)

Airport sponsors may not discriminate on the grounds of race, color, or national origin:

- Deny any individual service, financial aid, or benefit under the program
- Provide any service, financial aid, or benefit that is different from that provided to others
- Subject an individual to segregation or separate treatment



Civil Rights Act of 1964

Title VI

Examples of Title VI coverage

- AIP contracts
- PFC contracts
- Local contracts



Southwest Georgia Regional



Atlanta Hartsfield



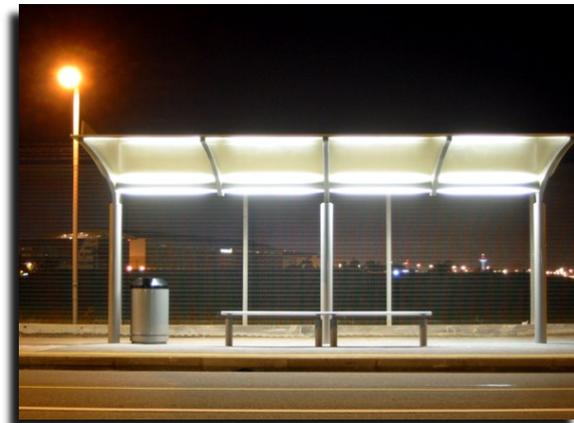
Civil Rights Act of 1964

Title VI

Examples of Title VI coverage

Services:

- Concessions
- Parking
- Surface transportation

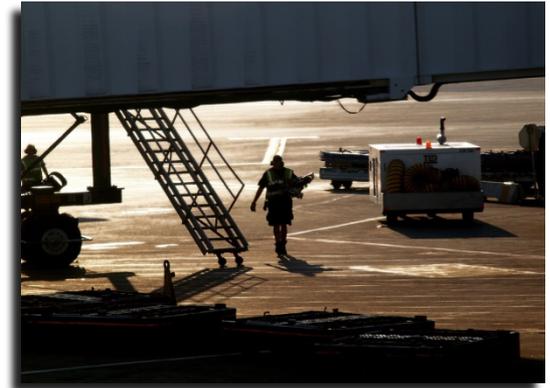


Civil Rights Act of 1964

Title VI

Examples of Title VI coverage

- Airport Employment
- Job Advertisements
- FBO Operations



Non-Discrimination

DOT Order 1050.2A

Establishes Standard DOT Title VI Assurance for operating administrations.

- Title VI of the Civil Rights Act of 1964
- 49 CFR part 21



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

DOT 1050.2A

SUBJECT: DOT STANDARD TITLE VI ASSURANCES AND NON-DISCRIMINATION PROVISIONS

1. **PURPOSE.** This order updates DOT 1050.2, Standard DOT Title VI Assurances.
2. **SCOPE.** This order applies to the Office of the Secretary and the operating administrations with regard to any program for which Federal financial assistance is authorized under a law administered by the U.S. Department of Transportation.
3. **BACKGROUND.** Section 21.7(a) of Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, requires that all applications for Federal financial assistance from the Department of Transportation must contain Title VI Assurances. This order requires the Office of the Secretary and each operating administration to secure from applicants and recipients receiving Federal financial assistance the attached Standard DOT Title VI Assurances. The reverter clause in Appendices B and C of the assurances should be used only when it is determined that such a clause is necessary in order to make clear the purposes of Title VI. The assurances may be supplemented by additional paragraphs by the Office of the Secretary and operating administrations desiring to expand the assurances in order to make them more applicable to a particular program. All such changes or expansions shall be coordinated with the Departmental Office of Civil Rights.
4. **RESPONSIBILITIES.**
 - a. **The Departmental Director of Civil Rights** will monitor compliance with this order, including review of any expansion or addenda to the Standard DOT Title VI Assurances and Non-Discrimination Provisions by the Assistant Secretary for Administration or an operating administration.
 - b. **The Assistant Secretary for Administration**, with respect to programs for which Federal financial assistance is requested from the Office of the Secretary, shall assure that all applications include the attached Standard DOT Title VI Assurances and Non-Discrimination Provisions.
 - c. **The Head of Each Operating Administration**, with respect to programs for which Federal financial assistance is requested from the operating administrations, shall assure that all applications include the attached Standard DOT Order 1050.2, Standard Title VI Assurances and Non-Discrimination Provisions.

Ray LaHood
Secretary of Transportation

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Non-Discrimination

DOT Order 1050.2A

Recipients must insert the following notification in all solicitations for bids, Requests-for-Proposals, and all proposals for negotiated agreements regardless of funding source:

The (Name of Sponsor), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.



Non-Discrimination

DOT Order 1050.2A

The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract:

- A. Contractor Contractual Requirements
- B. Clauses for Deeds Transferring United States Property
- C. Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility or Program
- D. Clauses for Construction/Use/Access to Real Property Acquired under the Activity, Facility or Program
- E. Listing of Pertinent Non-Discrimination Authorities



Non-Discrimination

49 U.S.C. Chapter 471

§ 47123. Nondiscrimination

The Secretary of Transportation shall take affirmative action to ensure that an individual is not excluded because of race, creed, color, national origin, or sex from participating in an activity carried out with money received under a grant under this subchapter. The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall be similar to those in effect under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). This section is in addition to title VI of the Act.



Non-Discrimination

FAA Order 1400.11

Prescribes FAA operating procedures and responsibilities for:

- Title VI of Civil Rights Act
- 49 U.S.C. § 47123
- Age Discrimination Act of 1975



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

National Policy

ORDER
1400.11

Effective Date
08/27/13

SUBJ: Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration (FAA)

Title VI of the Civil Rights Act of 1964, as amended, (Title VI) prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance. Title 49 United States Code (U.S.C.) § 47123 provides similar protections to individuals that participate in an activity carried out with money received from an Airport Improvement Program (AIP) grant. It also extends protection on the basis of sex and creed. The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in Federally-assisted programs.

FAA's policy is to comply fully with these non-discrimination requirements in all FAA-assisted programs. This Order sets forth the operating procedures for the implementation and enforcement of Title VI and other non-discrimination laws.

All FAA lines of business and offices with responsibilities for FAA-assisted programs will be expected to actively enforce FAA's policy on non-discrimination.


Michael P. Huerta
Administrator



Federal Aviation
Administration

AIP Grant Assurances

AIP Grant Assurances are *obligations* that airports agree to when accepting an AIP grant.

The assurances define what is required:

- For FAA to approve a grant application (such as the sponsor must own an airport, having the local share)
- For the sponsor to build the project (Davis Bacon Wages, water and air quality)
- For the sponsor to operate and maintain the airport (such as keeping the runway safe)



AIP Grant Assurances

Last update published
on April 3, 2014.



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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2014-0210]

Airport Improvement Program (AIP) Grant Assurances

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of modification of
Airport Improvement Program (AIP)
grant assurances.

modifications through
future notice in the l

ADDRESSES: You may
[identified by Docket
2014-XXXX] using e
methods:

- Government-wide
site: Go to <http://www.faa.gov>
and follow the instructions
your comments electronically.

- Mail: Docket Operations
Department of Transportation
Building, Ground Floor

All assurances are online:

http://www.faa.gov/airports/aip/grant_assurances/



AIP Grant Assurances

No. 30 - Civil Rights

General Assurance from DOT 1050.2a

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant...



AIP Grant Assurances

No. 30 - Civil Rights

Duration- Sponsor is obligated to assurance for:

- Period during which Federal financial assistance is extended to the program
- Personnel and Real Property - the longer of the following
 - So long as the airport is used as an airport,
 - So long as the sponsor retains ownership/ possession of the property.



Federal Contract Clauses

Obligated Sponsors

Requirement

- An Obligated Sponsor must include specific clauses in their solicitations and contracts
- Clause requirements originate from varying statutes (e.g. AIP) and regulations (i.e. 2 CFR part 200)
- Sponsors must incorporate applicable clauses in all AIP funded procurement actions
- Select clauses (e.g. Title VI) will also apply to the obligated sponsor's non-federally funded contracts.



Federal Contract Clauses

FAA Guidelines for AIP Contract Provisions

Purpose

- Consolidated resource for all applicable provisions
- Identifies source of requirement
- Includes applicability matrix per project type and size
- Identifies when language is mandatory
- Provides model language whenever mandatory language is not prescribed

Table 1 – Applicability of Provisions

Provision	Dollar Threshold	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
a. Access to Records and Reports	\$ 0	REQD	REQD	REQD	REQD	n/a
b. Buy American Preferences	\$ 0	Limited	REQD	REQD	Limited	n/a
(1) Buy American Statement	\$ 0	Limited	REQD	REQD	Limited	n/a
(2) Buy American – Total Facility	\$ 0	Limited	REQD	REQD	Limited	n/a
(3) Buy American – Manufactured Product	\$ 0	Limited	REQD	REQD	Limited	n/a
c. Civil Rights – General	\$ 0	REQD	REQD	REQD	REQD	REQD
d. Civil Rights - Title VI Assurances	\$ 0	REQD	REQD	REQD	REQD	REQD
(1) Notice - Solicitation	\$ 0	REQD	REQD	REQD	REQD	REQD
(2) Clause - Contracts	\$ 0	REQD	REQD	REQD	REQD	REQD
(3) Clause – Transfer of U.S. Property	\$ 0	n/a	n/a	n/a	REQD	REQD
(4) Clause – Transfer of Real Property	\$ 0	n/a	n/a	n/a	REQD	REQD
(5) Clause - Construct/Use/Access to Real Property	\$ 0	n/a	n/a	n/a	REQD	REQD
(6) List – Pertinent Authorities	\$0	REQD	REQD	REQD	REQD	REQD
e. Disadvantaged Business Enterprise	\$ 0	REQD	REQD	REQD	REQD	n/a
f. Energy Conservation Requirements	\$ 0	REQD	REQD	REQD	REQD	n/a
g. Federal Fair Labor Standards Act	\$ 0	REQD	REQD	REQD	REQD	REQD
h. Occupational Safety and Health Act	\$ 0	REQD	REQD	REQD	REQD	REQD
i. Rights to Inventions	\$ 0	Limited	Limited	Limited	n/a	n/a
j. Trade Restriction Certification	\$ 0	REQD	REQD	REQD	REQD	n/a
k. Veteran's Preference	\$ 0	REQD	REQD	REQD	REQD	n/a
l. Seismic Safety	\$ 0	Limited	Limited	n/a	n/a	n/a
m. Copeland Anti-Kickback	\$ 2,000	Limited	REQD	Limited	Limited	n/a
n. Davis Bacon Requirements	\$ 2,000	Limited	REQD	Limited	Limited	n/a
o. Distracted Driving	\$3,000	REQD	REQD	REQD	REQD	n/a
p. Affirmative Action Requirement	\$10,000	Limited	REQD	Limited	Limited	n/a
q. Equal Employment Opportunity	\$10,000	Limited	REQD	Limited	Limited	n/a
(1) EEO Contract Clause	\$10,000	Limited	REQD	Limited	Limited	n/a



Federal Contract Clauses

Areas of Concern

General

- Missing AIP clauses
- Use of obsolete clauses (e.g. ADAP provisions)
- Modifications made to mandatory language
- Failure to insert required information in spaces requiring Sponsor input (e.g. name of sponsor)
- State/Local clauses conflict with AIP clauses
- Extraneous clauses (i.e. inserting the entire federal clause package)
- Requirements don't flow-down to sub-tier contracts



Federal Contract Clauses

Areas of Concern

DBE

- Project goal vs Program goal (\$ 250,000 threshold)
- Non-compliant prompt payment provisions
- Non-compliant retainage requirements

Non-discrimination Requirements

- Failure to incorporate both Title VI and AIP statutory language (§ 47123)



Federal Contract Clauses

Areas of Concern

Affirmative Action

Failure to identify EEO participation goals for minorities and females

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION to ENSURE EQUAL EMPLOYMENT OPPORTUNITY

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade: *[sponsor must insert established goal]*

Goals for female participation in each trade: 6.9%

Washington DC:

020 Washington DC:

SMSA Counties

8840 Washington, DC-MD-VA 28.0

DC District of Columbia; MD Charles; Montgomery; MD Prince Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince William; VA Alexandria; VA Fairfax City; VA Falls Church.

Non-SMSA Counties 25.2

MD Calvert; MD Frederick; MD St. Marys; MD Washington; VA Clarke; VA Culpepper; VA Fauquier; VA Frederick; VA King George; VA Page; VA Rappahannock; VA Shenandoah; VA Spottsylvania; VA Stafford; VA Warren; VA Westmoreland; VA Fredericksburg; VA Winchester; WV Berkeley; WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan.

