



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

*Ben*  
**Memorandum**

Subject: INFORMATION: Program Guidance Letter #15

Date: 23 JAN 1984

*Lowell H. Johnson*  
From: Lowell H. Johnson  
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Reply to  
Attn. of: DAVID:426-3857

To: All Regions and AAC-960  
Attention: Airports Division Managers

15.1 Increasing the Maximum Grant Obligation - Bob David (426-3857). This program guidance letter contains 2 attachments concerning amendments to AIP grants. This information supercedes the information contained in PGL 8.1. Each attachment is discussed below:

1. Background paper: This attachment explains how the maximum obligation is initially calculated in the grant agreement. The paper discusses the changes between ADAP and AIP for increasing the maximum United States obligation. An example is also included showing how to increase the maximum United States obligation when there is increased land costs.
2. Proposed Order: This attachment explains the procedures and requirements for making amendments to AIP grants. It is written in order format and will be incorporated in the AIP Handbook. (Note: There are references to other paragraphs in the proposed handbook which are not included as part of the attachment.)

The information contained in these attachments should be followed in making amendments to AIP grants. We plan to devote some time to this subject in the upcoming programming conference.

Please send us any comments, coordinated with Regional Counsel, that you may have on the attached portion of the proposed order so that we may consider them before finalizing that section. Comments should be sent to APP-510 by February 22.

Attachments

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**Grant Agreement: Maximum Obligation of United States**

Standard Condition 1 of the grant agreement states the maximum obligation of the United States under the contract. The statement of this maximum obligation is required by Section 512(a) of the Airport and Airway Improvement Act (AAIA) of 1982.

The maximum obligation is calculated by the FAA based upon the summation of the estimates of cost for individual items of development or planning contained in the approved project application. However, there is no basis within the authorizing legislation to conclude that the estimate used for each individual item to arrive at the maximum obligation is in fact the maximum obligation of the United States for that item. Under the terms of the grant agreement, the United States must pay any allowable costs (as determined under Section 513 of the AAIA) incurred by the sponsor up to the total maximum obligation of United States. Consequently, when actual costs for an individual item are less than the original estimate for that item, the difference may be used to pay for items where the actual cost exceeds the original items. (This assumes that the actual costs are determined to be allowable).

**Grant Amendment: Increase to the Maximum Obligation of the United States.**

Section 512(b) of the AAIA provides for increasing the maximum obligation of the United States. The Section 512(b) provisions differ from the corresponding provisions for ADAP. Under ADAP, the provisions allowed the maximum United States obligation to be increased for all items of work in the grant. This proved to be a satisfactory approach with the exception of land acquisition. The great escalation of land values during the seventies often left the sponsor buying parcels of land under the grant agreement with no Federal participation since the maximum United States obligation plus 10 percent had been reached prior to purchase.

Recognizing this problem, Congress elected, under the AAIA, to separate the provisions for increasing the maximum United States obligation for land acquisition from other items of airport development. The Section 512(b) provisions allow:

- (1) In the case of any project for airport development (other than a project for land acquisition), the maximum obligation of the United States may be increased by not more than 10 percent; and
- (2) In the case of any acquisition of land or interests in land, the maximum obligation of the United States may be increased by an amount not to exceed 50 percent of the total increase in allowable project costs attributable to such acquisition in land or interests therein based upon current credible appraisals.

Application of the first provision is straightforward. If the costs associated with airport development (excluding land acquisition) overrun, then the maximum obligation of the United States may be increased up to 10 percent.

However, application of the second provision requires establishing a land cost base, upon which the total increase in land acquisition costs can be calculated. The land cost base is established in Standard Condition 1 of the grant agreement for this purpose. The land cost base is an estimate of the component of the maximum obligation of the United States which can be attributed to land acquisition costs.

For cost increases in land acquisition, the increase to the maximum United States obligation is calculated by taking the land cost base stated in the grant and adding to this amount the applicable sponsor share. Fifty percent of the difference between this sum and the total allowable costs for land acquisition is the amount that the maximum United States obligation may be increased. (See attached example.)

It is important to recognize that the land cost base stated in the grant agreement may differ from the amounts actually disbursed under grant for land. This occurs because cost underruns from some items may be used to cover overruns from other items. There is no requirement to keep track of how much has been disbursed for land acquisition vs. other items of airport development as long as all claimed costs are within the maximum obligation of the United States. It is only important to distinguish between these two cost categories when the sponsor's claims exceed the maximum obligation. However, the land cost base stated in the grant remains the same throughout the entire grant with the following exceptions:

1. In a multi-year grant, the base amount would be increased at the same time the grant is amended to include additional entitlement funds if the additional funds are intended for land acquisition.
2. If an item is deleted from the grant, a corresponding amount of funds should be deleted from the maximum United States obligation. If the deleted item involves land acquisition, the base amount should also be reduced.

The land cost base amount shall not be increased when a new item of land acquisition is added to a grant. New items must be absorbed within the existing land cost base.

Increasing Maximum Obligation for Increases in Land Costs

Example: Project includes paving, lighting, and land acquisition. Total project cost is estimated to be \$1 million with the cost of the land estimated at \$200,000. The maximum U.S. obligation would be \$900,000 and land cost base would be \$180,000. At end of the project actual costs are as follows:

Paving and lighting - \$800,000  
Land - \$260,000

All costs appear to be allowable. How much may the maximum obligation be increased?

Increase is calculated as follows:

Land cost base	- \$180,000
plus: applicable sponsor's share	- <u>20,000</u>
equals: original estimate of land costs	- \$200,000

actual cost -	\$260,000
minus -	<u>200,000</u>
difference -	\$ 60,000
	<u>X .50</u>

amount that maximum obligation may be increased	\$ 30,000
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SECTION 4. GRANT AMENDMENTS, SUSPENSION, AND TERMINATION

1630. GENERAL. Subject to the conditions in the following paragraphs, a grant agreement may be amended, suspended, or terminated after its execution. Such action may require notification of the appropriate state agencies (see paragraphs 1640 and 1641).

1631. AMENDMENTS INVOLVING A CHANGE IN THE WORK DESCRIPTION. Regional offices are authorized to amend AIP grant agreements to change the work description. This may involve adding work items, deleting work items, or a combination of both.

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

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

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

(a) If funds in the existing grant are insufficient to cover the cost of the new work, funds may be added in accordance with paragraph 1632 b.

(b) Items of work shall not be added to a grant solely because funds are available. The need for the additional items must be fully justified and documented. This may be done on FAA Form 5100-107.

(3) Costs incurred for work undertaken on the new development item prior to execution of the amendment are excluded from the amendment (except for costs allowed under paragraph ).

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

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

(1) Normally, the maximum obligation of the United States should be reduced by the U.S. share of the deleted item as calculated from the application amount. If the funds are not reduced, the project file shall be fully documented to explain why the action is not prejudicial to the interests of the United States.

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

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

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

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

1632. AMENDMENTS INVOLVING A CHANGE IN THE U.S. OBLIGATION. Regional offices may amend a grant agreement to change the maximum obligation of the United States as follows:

a. Decreases in the Maximum U.S. Obligation. The maximum obligation should be decreased when there are excess funds in the grant unless additional items can be included in accordance with paragraph 1631. Excess funds may result from the deletion of work items (decrease should be made simultaneously with deletion) or actual bids being less than estimates when the grant amount is based upon estimates. Either the sponsor or the FAA may initiate a decrease in the U.S. obligation.

b. Increases in the Maximum U.S. Obligation.

(1) Types of Increases. The maximum U.S. obligation may be increased to cover the costs of overruns, change orders, or new items in accordance with the following:

(a) Airport Development or Noise Compatibility Programs. If the increase in project costs is attributable to airport development or noise compatibility programs other than land acquisition, then the maximum U.S. obligation may be increased up to 10 percent.

(b) Land Acquisition. If the increase in project costs is attributable to land acquisition, the maximum U.S. obligation may also be increased. The amount of increase is calculated by adding the applicable sponsor's share to the land cost base stated in the grant agreement (see paragraph \_\_\_\_). Fifty percent of the difference between this sum and the total allowable costs for land acquisition is the amount that the maximum U.S. obligation may be increased.

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(c) Planning Items. If the increase in project costs is attributable to planning items, the maximum U.S. obligation may not be increased.

(d) Multi-Year Project. A multi-year grant may be amended each fiscal year through the duration of the project to increase the actual U.S. obligation provided that it does not exceed the maximum U.S. obligational commitment stated in the grant. (See paragraph .)

(2) Request for Amendment.

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

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

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

(3) Approval of Increases to the Maximum U.S. Obligation. Regional offices shall review the sponsor's request and documentation and may approve an increase to the maximum U.S. obligation if:

(a) The funds are available;

(b) The increased costs appear to be allowable;

(c) The amendment will not exceed the 60 percent/\$200,000 limitation when the increase involves terminal work (see paragraph \_\_\_\_);

(d) A determination is made that the amendment is advantageous to the Government. The basis for the amendment shall be stated on FAA Form 5100-107. A general statement that the increase is for cost overruns is not acceptable. Instead, the documentation should contain specific information such as:

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

2 Increase due to actual excavation quantities being greater than original estimate;

3 Increase due to increased land acquisition costs for parcels (specify) over original estimate;

4 Grant issue based on estimates; increase to cover actual construction bid which was higher than estimate.

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1633. ACCEPTANCE OF AMENDMENT. In accepting the amendment to the grant agreement, the sponsor will follow the same procedure for grant acceptance. Distribution of the amendment shall be the same as for the original agreement. It is imperative that a copy be furnished the Accounting Office to comply with fund control procedures. The following certification by the sponsor's attorney shall accompany amendments to grant agreements:

CERTIFICATION OF SPONSOR'S ATTORNEY

I, \_\_\_\_\_ acting as Attorney for

\_\_\_\_\_, do hereby certify:  
(hereinafter called sponsor)

that I have examined the foregoing amendment to the grant agreement and the proceedings taken by said sponsor relating thereto, and find that the execution thereof by said sponsor has been duly authorized and is in all respects due and proper and in accordance with the laws of the State of \_\_\_\_\_, and further that, in my opinion, said amendment to the grant agreement constitutes a legal and binding obligation of the sponsor in accordance with the terms thereof.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of 19 \_\_\_\_.

\_\_\_\_\_  
Title \_\_\_\_\_

1634. NUMBERING AMENDMENTS. Each amendment to a grant agreement shall be numbered in consecutive order. The number will be placed in the heading of the document as follows: "Amendment No. 1 to Grant Agreement for Project No. 3-36-0009-01."

1635. SUSPENSION OR TERMINATION OF A GRANT. Applicable regulations should be reviewed for compliance procedures to follow in the event of violation of the civil rights provisions outlined in Chapter . Failure to comply with grant conditions, other than civil rights, may result in suspension or termination of the grant as follows:

a. Suspension of the Grant. If the sponsor fails to comply with the conditions of the grant, the FAA may, by written notice to the sponsor, suspend the grant in whole or in part. Incurring additional obligations during the period of suspension after receipt of the notice will not be eligible, unless specifically authorized in writing by the FAA. However, the FAA may allow costs which are allowable under paragraph \_\_\_\_\_ and could not be avoided during the period of suspension. The notice of suspension shall contain the following:

(1) The reasons for the suspension and the corrective action necessary to lift the suspension.

36-216  
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(2) A date by which the corrective action must be taken and inform the sponsor that after this date consideration will be given to terminating the grant.

b. Termination for Cause. If the sponsor fails to comply with the conditions of the grant, the FAA may, by written notice to the sponsor, unilaterally terminate the grant for cause. FAA Airports offices shall use the following procedures:

(1) The grant shall be suspended in accordance with subparagraph a.

(2) APP-1 shall be notified, in writing, of the proposed termination. A copy of the notice of suspension and the Regional assessment of the action taken by the sponsor to remedy the situation shall also be forwarded to APP.

(3) Upon receipt, APP-500 will acknowledge the proposed termination via telephone. Within 30 days of APP-500's acknowledgement, the region will be notified, in writing, whether or not the proposed termination will require APP-1's concurrence. If APP-1 requests concurrence, the region will also be notified of the procedures to follow to obtain this concurrence.

(4) The sponsor shall be notified, in writing, of the termination. The notice shall include the reasons for the termination. Payments to be made to the sponsor or recoveries of payment by the FAA under the grant shall be in accordance with the legal rights and liabilities of the parties.

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

d. Request for Reconsideration. In any case of suspension or termination, the sponsor may request the Administrator to reconsider the suspension or termination. Such request for reconsideration shall be made within 45 days after receipt of the notice of suspension or termination. It is recommended that all notices of suspension or termination inform the sponsor of the appeal period.

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

1636.-1639. RESERVED.