



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

Memorandum

Subject: **ACTION:** Program Guidance Letter 14-01
Cold Weather Construction Projects

Date: December 9, 2013

From: Manager, Airports Financial Assistance Division,
APP-500

Reply to Nancy S. Williams
Attn. of: 202-267-8822

To: PGL Distribution List

This Program Guidance Letter (PGL) addresses the limited availability of discretionary funding for projects that were started before an Airport Improvement Program (AIP) grant is issued. Section 138(a) of the FAA Modernization and Reform Act of 2012 (FMRA) (Pub. L. No. 112-95) provides a very narrow provision to allow an airport to request discretionary funding for a project that was started before the grant was issued because climate-related conditions shorten the construction season. This exception is codified in 49 United States Code (USC) § 47110(b)(2)(D).

The Sponsor Assumes All Risk: Because the FAA cannot guarantee the availability of any types of AIP funding on the project, the sponsor must be prepared to complete the project using other sources of funds *even if* the sponsor meets all of the requirements for discretionary reimbursement. There are no circumstances under which the sponsor can infer that the project will be funded with discretionary funds.

Statutory Requirements

- 1) Per 49 USC § 47110(b)(2)(D), costs of the project must have been incurred in the same fiscal year as execution of the grant agreement. A construction project for which costs were incurred in a prior fiscal year cannot be reimbursed with discretionary funding.
- 2) Per 49 USC § 47110(b)(2)(D)(i), the costs had to have been incurred by the airport because the airport is in an area that experiences a shortened construction season due to climatic conditions. The FAA has determined that only cold weather causes a *shortened construction season*. Other seasonal and weather variations cause only temporary disruptions to construction, but the construction is not shut down for an extended period. To make this determination, the FAA reviewed reports from the American Association of State Highway and Transportation Officials (AASHTO) and the Federal Highway Administration on construction impacts due to weather and found that shortened construction season was understood in industry to be related to work such as earthwork, which is shut down or suspended during the winter cold weather.

- 3) Per 49 USC § 47110(b)(2)(D)(ii), all other applicable AIP requirements have been met.
- 4) Per 49 USC § 47110(b)(2)(D)(iii), the sponsor must notify the Airports District Office or Regional Office (ADO/RO) in advance of starting the work of the sponsor's intent to request discretionary funding for this project. Per FAA policy, the sponsor must complete the attached Request for FAA Acknowledgement of Requirement to Issue Notice to Proceed prior to Grant Award for a Cold Weather Construction Project form and include it with the request, and a grant application, at least 30 calendar days prior to issuing a Notice to Proceed. The ADO/RO must forward the sponsor's request to APP-500 for processing.
- 5) Per 49 USC § 47110(b)(2)(D)(iv), the sponsor must have an alternative funding source available to fund the project. Because the sponsor has agreed to fully fund the complete project if AIP discretionary funding is not provided, the sponsor's alternative funding plan may include AIP future year entitlement funding or Passenger Facility Charge funding. If the sponsor's alternative funding plan does include future AIP entitlement funding which then impacts other future project requests, the sponsor will need to consider other options of funding those future projects.
- 6) Per 49 USC § 47110(b)(2)(D)(v), the sponsor's decision to proceed with the project in advance of execution of the grant agreement does not affect the priority assigned to the project by the FAA.
- 7) Per 49 USC § 47120, the FAA will give lower priority to discretionary project requests if the sponsor is using its entitlement funds for projects that have a lower priority than the projects for which discretionary funds are being requested. Therefore, this cold weather provision cannot be requested in a year when the sponsor is using its entitlement funds on a lower priority project.

Implementation Requirements

- 1) Short-term disruptions that prevent construction from occurring, including but not limited to rain, wind, tropical weather, fog, snowfall, ice, or high temperatures do not satisfy the requirement of a shortened construction season due to climatic conditions. This is because construction project specifications, including the FAA standard specifications, include provisions for inclement weather and temporary shutdowns.
- 2) Operational or coordination considerations, such as the desire to reopen before winter, to allow planned construction sequencing, or to meet a particular aeronautical chart publication date do not satisfy the requirement of a shortened construction season due to climatic conditions.
- 3) Paving projects or pavement rehabilitation projects are those that are most likely to be impacted by cold weather. Because the FAA has determined that cold weather causes the shortened construction season, when the FAA reviews the requests, it will consider the type of construction included in the project, the duration of the construction activities that may be impacted by a shortened construction season, and the date by when the sponsor indicates that construction must begin to avoid impacts of a shortened construction season.

- 4) Generally, the FAA will consider issuing an acknowledgement if there is at least one month in a calendar year with an average high temperature below 40 degrees Fahrenheit and specific construction activities required for the project would be impacted by the cold temperatures.

Alternative Funding Requirements

- 1) The sponsor may include future year entitlements in the alternative funding plan. However, if the sponsor's Capital Improvement Program (CIP) previously identified projects that the sponsor planned to fund with those entitlements, the sponsor must revise their CIP accordingly.
- 2) For projects that include future year entitlement funding as the alternative funding plan: If the future year's entitlements are being used to fund the cold weather project, that fact may impact the sponsor's ability to compete for discretionary funds for other projects depending on the priority of the projects.
- 3) If the sponsor has started construction and discretionary funding is not provided in the year in which the construction started, the project is ineligible for discretionary funding in this, or future years.
- 4) For phased projects, the requirements of this PGL must be applied individually to each phase or grant request. Funding of one phase of a phased project under this PGL does not establish eligibility for funding either prior or subsequent phases.

Process for a Sponsor to Request an APP-500 Determination

- 1) A sponsor who wishes to request consideration under this provision must submit the written request to the ADO/RO before contract award and before issuing Notice to Proceed to the selected contractor.
- 2) The sponsor must allow at least 30 calendar days following the submittal of a complete and accurate submittal to the ADO/RO to receive a determination from APP-500.
- 3) Upon receipt of a sponsor's request for consideration, the ADO/RO must review the request for completeness. If the request is incomplete, the ADO/RO must return the request to the sponsor for correction. If the request is complete, the ADO/RO must forward the request to APP-500. The ADO/RO must submit the completed sponsor request, with ADO/RO Staff Recommendation to APP-500 within nine (9) business days of receiving the sponsor request.

ADO/RO Notification to Sponsor of APP-500 Determination

- 1) After APP-500 notifies the ADO/RO whether or not the proposed project can be considered under this limited statutory exception, the ADO/RO must advise the sponsor of the determination. The ADO/RO notification to the sponsor may be in writing or by e-mail. The determination is *solely* a determination as to whether the sponsor has met the necessary requirements for the FAA to be able to consider AIP discretionary funding subsequent to contract award or NTP, and does not in any way represent an actual commitment of discretionary funds.
- 2) APP-500 will attempt to respond to a sponsor's request within 30 days after receipt of the request. However, only actual receipt by a sponsor of an APP-500 determination

that the project will be acknowledged by the FAA as having been requested for consideration for discretionary funding for a Cold Weather Construction Project constitutes FAA acknowledgement. The sponsor cannot consider lack of a response within 30 days is the equivalent of APP-500 acknowledgement.

Cancelled

Request for FAA Acknowledgement of Requirement to Issue Notice to Proceed prior to Grant Award for a Cold Weather Construction Project

AIRPORT INFORMATION

Airport Sponsor [Insert legal name of sponsor]

Airport Name and Location [Insert airport name, city and state]

Official Representative [Insert name]

This form may be prepared by a consultant or other representative, but it must be signed by a duly authorized official of the airport sponsor. Sponsors may not delegate either the signature or certifications to a consultant or contractor.

PROJECT INFORMATION - If this is a phased project, all required information applies to only the phase being requested

Project Title [Insert short reference—e.g., "Runway 18/36 Rehabilitation"]

Project Description [Insert—e.g., "Mill and overlay 66,000 square yards of asphalt runway surface, including the intersection with Runway 9/27 and three adjoining taxiways (Alpha, Kilo and Sierra)."]
[If this is a phased project, please specify and quantify the exact work to be accomplished under this request.]

Total Project Cost [Insert total amount, including all funding sources]

Proposed Funding Plan [Identify all amounts including all categories of AIP funding requested as well as PFCs, state funding, local funds, etc.]

Alternative Funding Plan [Insert alternative funding source if AIP Discretionary funds are not awarded. If future year AIP funding is the source of alternative funding, provide what the source of interim funding is until entitlement funds are available. Only future year passenger, cargo or Nonprimary entitlements are allowable sources of AIP funding.]

Original Discretionary Funding Request [Insert date of sponsor's capital improvement plan, or other document, containing the sponsor's original discretionary request to the FAA for this project]

Date Bids Received [Insert date when bids were (or will be) received]

Bid Tabulation and Recommendation to Award must be attached if the project has been bid. If the project will be bid after this request for FAA Acknowledgement is being submitted, the bid tabulations and the recommendation for award must be submitted to the FAA prior to Notice to Proceed is issued.

CONSTRUCTION INFORMATION (for phased projects, provide information for only the phase being requested)

Estimated NTP [Insert date (for phased projects, insert the date for the phase being requested)]

Estimated Start of Construction [Insert date (for phased projects, insert the date for the phase being requested)]

CONSTRUCTION INFORMATION (for phased projects, provide information for only the phase being requested)

Estimated Completion	[Insert date (for phased projects, insert the date for the phase being requested)]
Latest NTP	[Insert latest date construction can begin to avoid climatic conditions impact to construction schedule]
Describe Impacted Construction Activities	[Describe specific construction activities that would be impacted or interrupted by cold-weather construction, including the nature of the impacts. Include a clear comparison of the proposed construction with and without early start, and a month-by-month summary of project impacts.]
Estimated Cost Impacts	[Describe specific construction cost impacts if project is not started or completed according to the desired schedule. Include only physical construction cost impacts, excluding impacts related to construction administration.]
Other Impacts	[Describe any other impacts that may result from schedule delays due to cold-weather climatic conditions]
Cold-Weather Calculations	For each month of the calendar year, provide the average high and low air temperature at the airport (in degrees Fahrenheit):
	January [insert]/ [insert] July [insert]/ [insert]
	February [insert]/ [insert] August [insert]/ [insert]
	March [insert]/ [insert] September [insert]/ [insert]
	April [insert]/ [insert] October [insert]/ [insert]
	May [insert]/ [insert] November [insert]/ [insert]
	June [insert]/ [insert] December [insert]/ [insert]
Public Data Source	[Identify the publicly-published source for the above data, including a URL for online resources]

REQUIRED SPONSOR CERTIFICATIONS

Sponsor's Official Representative Must Initial Each Certification:	_____	The sponsor understands that there is no guarantee of federal funding and no commitment on the part of the FAA to provide a future grant agreement for the above project. The sponsor has an alternate funding source to complete the project should federal funding not be available.
	_____	The sponsor understands that the FAA can only consider a grant containing discretionary funding in the same fiscal year as construction has started and the cost is incurred on the project.
	_____	The sponsor's written request includes all necessary information required by the FAA to process the grant application.
	_____	The sponsor's decision to move forward with the project, even with FAA acknowledgement, does not raise the priority of the project, nor increase the likelihood of receiving federal funding.
	_____	The sponsor will complete the project in accordance with all applicable FAA standards regardless of whether AIP discretionary funding is provided.

REQUIRED SPONSOR CERTIFICATIONS

OFFICIAL SPONSOR REQUEST: I hereby request FAA acknowledgement to issue Notice to Proceed prior to grant award. As a duly authorized official with the airport sponsor, I understand and accept all legal and financial risks (on behalf of the sponsor) associated with this request. All documentation provided in support of this request is true and complete to the best of my knowledge:

Sponsor's Signature:

Printed Name

Title

Date

FAA acknowledgement does not in any way signal intent of the FAA to award AIP Discretionary funds at a particular level or time. It is only acknowledgement that the sponsor has taken the necessary steps, submitted the required documentation and accepted all of the risks should the sponsor choose to issue NTP prior to receiving a grant.

FAA USE ONLY BELOW THIS LINE

Date Request Received Date Due to Sponsor (30 calendar days after receipt)

- ADO Staff Recommendation**
- Issue FAA acknowledgement
 - Do not issue FAA acknowledgement for reasons checked below
 - Form and/or supporting documentation incomplete
 - Grant application not received
 - Construction not impacted by cold-weather conditions
 - Discretionary funding for this project was not included in the sponsor's CIP
 - Insufficient alternative funding plan
 - Other issues involving project eligibility or justification
 - Other issues involving construction procurement
 - Other

Name

Title

ADO Staff Signature:

Date

Reviewed by ADO Manager
(before forwarding to Regional Office)

Name [insert]

Title [insert]

Signature:

Date [insert]

Date Forwarded to RO

Reviewed by RO Manager
(before forwarding to APP-500)

Name [insert]

Title [insert]

Signature:

Date Signed [insert]

Date Forwarded to APP-500

Other Comments:

Review by APP-500

Name [insert]

Title [insert]

APP-500 Determination:

Date [insert]

ADO Manager or Regional Airports Division Manager Notification to Sponsor

Name [insert]

Title [insert]

Date [insert]