



Federal Aviation Administration

Memorandum

Date: JUL 29 2019

To: Office of Airports Regional Directors, AXX-600s
Regional Airport Planning & Programming Branch Managers, AXX-610s
Regional Airport Safety & Standards Branch Managers, AXX-620s
Airports District Office Managers, AXX-ADOs

From: Jesse Carriger, Acting Director, Office of Airport Planning and Programming,
(APP-1) 

Copy: Kevin C. Willis, Director, Office of Airport Compliance and Management Analysis
(ACO-1)

Subject: Program Guidance Letter (PGL) 19-03: Grants for Predevelopment Costs for
Airport Investment Partnership Program

This Program Guidance Letter (PGL) 19-03 explains and implements provisions in the FAA Reauthorization Act of 2018 (the 2018 Act) (P.L. 115-254). Section 165 amended Title 49 United States Code (USC) § 47102 by adding a new item to the definition of “airport development,” which establishes eligibility for Airport Improvement Program (AIP) grant funding:

“(R) predevelopment planning, including financial, legal, or procurement consulting services, related to an application or proposed application for an exemption under section 47134.”

Section 47134 is the Airport Investment Partnership Program, previously known as the Airport Pilot Privatization Program. The 2018 Reauthorization made a number of other changes to that section as well.¹

Under the new § 47102(3)(R), the FAA may now consider a grant to an airport sponsor that is considering submitting an application for airport privatization under § 47134. Pursuant to Section 160 of the 2018 FAA Reauthorization, there is a limit of \$750,000 per application.

¹ Additional information on the AIPP and other sections of the 2018 Act will be included in subsequent Reauthorization Program Guidance Letters.

Because such grants are a form of planning grant, they cannot be amended (i.e., increased).

This Program Guidance Letter (PGL) is directed to FAA staff who review grant applications for funding under 49 USC § 47102(3)(R). This PGL does not constitute a regulation, and is not legally binding in its own right. It will not be relied upon as a separate basis by the FAA for affirmative enforcement action or other administrative penalty. Nonconformity will not affect rights and obligations under existing statutes and regulations, except for the projects funded under Federal grant assistance programs, including the Airport Improvement Program (AIP).

Funding

There is no dedicated AIP funding set aside for these grants. The FAA may allow an airport sponsor to use its entitlement funds, or may consider discretionary funds if requested. However, before awarding discretionary funds, the FAA must consider all of the established prioritization factors and the airport's overall funding needs, based on the current version of the Airport Capital Improvement Plan (ACIP) Order.

Eligible Scope

The purpose of such grants is to enable the airport sponsor to secure an examination of the legal and financial benefits and risks of potential privatization, and to develop an associated procurement strategy.

Grant funds for predevelopment planning, including financial, legal, or procurement consulting services may include:

- Development of financial pro forma analyses
 - These analyses should help quantify financial results of potential privatization scenarios, including partial privatization, under a reasonable range of scenarios and assumptions, including capital and operating expenses, aeronautical and nonaeronautical revenues, and alternative debt structures over the timeframe of the proposed privatization;²
- Analysis of governance structures
 - This analysis may consider existing and a reasonable range of potential governance and oversight structures, and should identify benefits and risks associated with each approach;
- Development of a procurement strategy
 - This could include due consideration of the specific governance and legal requirements associated with the jurisdiction governing the existing airport sponsor;³ and
- Review of existing documentation of environmental conditions.

² This may include development of a reasonable range of assumptions related to capital infrastructure reinvestment. However, if the proposed privatization depends upon significant capital expansion, then the associated facility planning and financial planning may not be included in the scope of work of this grant.

³ Please see next section for recommendations regarding real or perceived conflicts of interest.

- This could include a review of the airport's existing records regarding any soil and groundwater contamination, potentially responsible parties, etc., and identification of any specific testing or analysis that may be required. Please see the next section, however, regarding actual testing or cleanup.

The FAA may consider allowing other types of legal or financial consulting services, subject to approval by the Director of the Office of Airport Compliance and Management Analysis (ACO-1) and the Director of the Office of Airport Planning and Programming (APP-1).

Elements not eligible for AIP funding under this provision

Section 165 specifically referred to "predevelopment planning, including financial, legal, or procurement consulting services, related to an application or proposed application for an exemption under section 47134." Such grants should not be provided to pay the costs of actual preparation of an application for an exemption under section 47134.

Moreover, grant funds may not be used to help fund the actual procurement, or to pay a stipend or reimbursement to potential bidders in an airport privatization procurement. Grant funds may not be used to prepare or conduct a public referendum or other types of decision-making, public relations, communications, or community relations strategies. The sole purpose is to support the independent, professional advice and counsel necessary to support subsequent decision-making by duly elected or appointed officials.

Likewise, grant funds under this provision may not be used for other types of airport planning or development. There are other categories of AIP grant eligibility that can enable airport sponsors to retain the services of qualified consultants to assist with airport master planning, financial planning, environmental review of proposed development, and actual airport development or improvement projects.

Like other AIP funds, these funds may not be used for actual environmental condition analysis or environmental remediation (e.g., cleanup of soil and groundwater contamination).

Federally obligated airports are already required to maintain an up-to-date and accurate Airport Layout Plan (ALP) at all times, using funds from the grants provided for planning and development projects. Therefore, new AIP grant funds cannot be provided to update the ALP Exhibit A Property Map, or to conduct title searches or similar research.

Funds may not be granted under this program to a prospective private owner or operator since this program is limited to existing public sponsors interested in exploring potential privatization.

Process, Documentation and Requirements

Before any airport sponsor begins to explore any type of change in governance or management structure, the FAA encourages the sponsor to ensure that its Exhibit A Property Map is not only up to date and accurate, but also that all deeds, restrictions, and obligations are fully understood and properly documented.

If at that point an airport sponsor wants to request a grant under this section, it is

recommended that the sponsor take the following steps:

1. Submit a written request. The FAA may only consider a written request signed by the duly authorized representative of the existing airport sponsor. The FAA cannot provide an AIP grant to an entity that is not already a recognized sponsor.
2. Submit a proposed scope of work that focuses on legal, financial and procurement-related matters.
 - a. The scope of work should clearly delineate the scope of the analysis to help a sponsor fully examine and understand the benefits and risks associated with airport privatization.
3. Submit a proposed approach to selecting the consultant(s) who would conduct the work.
4. The grant must clearly identify all deliverables and establish a schedule for progress payments related to those deliverables. The FAA must review all final documents prepared by the airport sponsor's consultant(s) as deliverables under the grant prior to authorizing payments. The FAA will inspect the documents for conformity to the scope of the grant agreement, but will not generally review the documents at a substantive level or approve the results, conclusions or recommendations. The FAA's award of a grant for predevelopment planning does not reflect a determination on a privatization application filed under 49 U.S.C. 47134.s.
5. The actual grant agreement, the agreement(s) between the airport sponsor and its consultant(s) and the official deliverables under the agreement is a public document. However, the sponsor may ask to designate certain sections of specific documents as "Proprietary and Confidential," accompanied by an explanation. The FAA reserves the right to make its own such determination. Nothing about this provision addresses the confidentiality of documents that the airport sponsor may generate or receive outside the scope of this agreement. Airport sponsors will be bound by the relevant laws and ordinances on public disclosure in their respective jurisdictions.

Real or Perceived Conflicts of Interest

The FAA recommends that the consultant(s) selected to conduct the work under such grants not have a vested financial interest in the outcome of the analysis.

2 CFR 200.319(a) governs the selection of consultants for any grants awarded pursuant to this provision. However, 2 CFR 200.319(a) does not govern an actual privatization initiative because privatization transactions cannot be funded with AIP grants. Even so, the FAA recommends that selected consultant(s) not subsequently be part of a team that is bidding on an actual privatization initiative. It is up to the airport sponsor to decide whether to include such a restriction, and if so then the FAA recommends that the agreement(s) between the airport sponsor and the consultant(s) engaged in this work should make such restrictions explicitly clear. Regardless, the airport sponsor should submit complete executed copies of the agreement(s) to the FAA.

Likewise, the FAA recommends procuring these services through a process that will prevent any real or perceived conflicts of interest with potential subsequent proceedings.

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For questions about this PGL, please contact the Airports Financial Assistance Division at (202) 267-3831.

For questions about the Airline Investment Partnership Program, please contact the Airport Compliance Division at (202) 267-3085.