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## 400 - Procurement for Construction and Equipment Contracts

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### AIP Requirements

To remain eligible under the Airport Improvement Program (AIP), sponsor procurement actions must conform to the requirements established under Federal Regulation 2 CFR part 200. The sponsor agrees to comply with these requirements by accepting the assurances attached to the FAA's offer of a grant. The policies and procedure contained in 2 CFR part 200 represent requirements sponsors must apply to all of their procurement actions. This includes construction development, equipment purchases, and the selection of professional services (engineering consultants, etc.).

### Why Procurement Rules Matter

Adherence to the AIP procurement rules is a condition of AIP eligibility. If a sponsor fails to meet federal requirements, the costs associated with the procurement action may become ineligible for AIP participation. If the FAA identifies deficiencies in the sponsor's procurement actions after receiving AIP reimbursement, the FAA may deem the reimbursement "improper" thus requiring the sponsor to reimburse the FAA the AIP share of the questioned costs.

### Limitations of this Guidance

This guidance represents a convenient resource for Sponsors that assists with identifying requirements associated with procurements actions made in support of an AIP funded project. Users of this guide shall note the obligation for any required action addressed within this guidance originates within applicable Federal directives such as United States Code (USC), Public Law (PL), Code of Federal Regulations (CFR) and official FAA policies. The supplemental information provided in this guidance does not establish additional requirements for participation in the AIP.

### Sponsor's Role

The sponsor is the contractual authority for establishing and administering procurement actions and the resulting agreements. The FAA is not a party to the contracts a sponsor executes in support of the AIP. Sponsors shall use their own procurement system and procedures provided that it does not conflict with Federal statutes and regulations. The sponsor remains responsible for all contractual matters without recourse to the FAA.

### FAA's Role

The FAA's role is essentially limited to determining the AIP eligibility of a sponsor's procurement action. The FAA project manager carries out this role by a combination of cursory reviews and sponsor certification. We caution sponsors that the FAA cannot act on the behalf of the sponsor in matters concerning procurement and contracting. Sponsors should not construe reviews conducted by the FAA as quality control checks or guarantees that their procurement action is compliant. Reviews conducted by the FAA project manager are primarily for the benefit of the FAA for the purpose of determining whether or not the sponsor's actions fall within the framework of AIP eligibility.



## 410 - Procurement Standards

### Contract Administration System

Sponsors shall use their established procurement system provided it conforms to applicable Federal law and standards. To remain eligible under the Airport Improvement Program, sponsors must maintain a contract administration system that assures the contractor performs in accordance with the terms and conditions of the contract. This system shall include:

- a) Maintaining a written code of conduct that governs the performance of their employees engaged in the award and administration of their contract. No employee or agent of the sponsor may participate in a procurement or contract action if a real or perceived conflict of interest exists. This includes both personal and organizational conflicts of interest such as:
  - Individual or a family member having a financial or other interest in firms under consideration for award of contract.
  - Solicitation or acceptance of gratuities, favors and other items of monetary value by a sponsor's employee or family member.
  - Organizational acceptance of free services from firms with current contracts or from firms that may potentially compete for future contracts.
- b) Reviewing proposed procurement actions to avoid unnecessary or duplicative items.
- c) Making award of contract to responsible contractors that possess the ability to successfully perform the contract in accordance with the terms and conditions of the agreement.
- d) Maintaining sufficient records that detail the significant history of the procurement action. Necessary records include:
  - Sponsor's rationale for the method of procurement
  - Selection of contract type
  - Selection of the successful bidder
  - Basis of contract price.
- e) Limiting application of time and material type contracts unless there are no other suitable procurement methods and the FAA has provided written concurrence.
- f) Applying good administrative practice and sound business judgment in the settlement of all contractual and administrative issues arising out of their procurement actions.
  - This includes bid evaluation, award of contract, dispute resolution, claim resolution, and settlement of all litigation issues.
  - Be advised, the FAA cannot substitute their judgment for that of the sponsor unless the matter is primarily a Federal concern.
- g) Establishing written protest procedures



## 411- Protest Procedures

Sponsors must have established protest procedures that address resolution of all disputes relating to their procurement actions. The sponsor is primarily responsible for resolving all protests. A protester must exhaust all administrative remedies with the sponsor before pursuing a protest with the FAA. The FAA review of any protests is limited to violations of Federal laws and regulations and deviations from the sponsor's formal protest procedures.

### Formal Protest Procedures

Each solicitation should address critical information regarding the process a prospective bidder must follow to initiate a protest. This includes deadlines for submitting a protest. Any prospective bidder who requests a copy of the written procedures must receive the written policy in an expeditious manner.

In order to ensure that protests are received and effectively processed, a sponsor's written procedures should typically address the following:

- Define the criteria for pre-bid protests, pre-award protests and post award protests.
- Specify deadline dates for filing a protest.
- Identify specific information required of a protest (name of protester, solicitation number, justification or grounds for protest).
- Identify location where protest is to be filed.

- Statement that the grantee will respond in detail to each substantive issue raised by the submitted protest.
- Identify the responsible official authorized to make the final determination.
- Statement that the sponsor's determination is final.
- Include a statement that the FAA will only entertain protests that involve violation of Federal laws or regulations and protests that involve allegations that the sponsor's written protest procedures were not followed.
- Allowance for reconsideration if relevant and critical information is discovered after final determination has been made.

### Notifying FAA

Upon receiving a protest, sponsors should promptly notify the FAA program manager of the relevant details. While this is primarily for informational purposes, eligibility issues may be discussed with the sponsor at this time. The sponsor remains responsible for resolving the protest.

### Effect of Protest on Procurement Action

The filing of a protest may impact the project schedule of their procurement action. The decision on whether to proceed with a bid opening or award of contract resides with the sponsor. The sponsor should seek legal counsel to weigh the risks associated with any procurement protest.



## 420 – Competition

Sponsors must conduct all procurement transactions in a manner providing full and open competition.

Sponsors must avoid practices that limit or unduly restrict competition. Restrictive practices that sponsors must avoid include but are not limited to the following:

- Incorporating unreasonable requirements in order to qualify
- Requiring unnecessary experience and bonding
- Non-competitive pricing practices between firms
- Non-competitive awards to consultants that are on retainer contracts.
- Organizational conflicts of interest
- Unnecessary use of "brand name" specifications or use of "brand name" without identifying the salient characteristics.
- Use of arbitrary actions in the procurement process.
- Favoritism and sponsor preference

## 421- Geographic Preferences

Sponsors may not incorporate geographic preferences in their procurement actions. This prohibition includes both statutory and administrative imposed preferences and applies to in-State preferences as well as local geographic preferences. Geographic preferences can take many forms. The following list addresses some common geographical preferences that unduly restrict completion. This list is not all inclusive of such prohibited practices.

- Requiring a percentage of the contract material to be acquired locally or within the State.
- Imposing local or State contract employment goals. (e.g. requiring a percentage of the project labor force to reside in the municipality, county or State).
- Requiring vendors of equipment to be located within an established mile radius or travel time of the project location. (e.g. within 20 miles or 1 hour of the project location).
- Rejecting an apparent low bidder in favor of a higher bid from a local firm.
- Awarding the contract to a local firm that does not submit the apparent low bid but reduces their bid after bid opening to become the low bidder.

The restrictions for geographical preference do not apply to the following situations:

- State licensing requirements
- The selection for architectural/engineering (A.E) services may include geographic location as a selection criteria provided the preference is not absolute and the numeric rating is not unduly disproportionate to other criterion that have more importance with respect to successful completion of the project.

## 422- Description of Work or Services

Sponsors must not prepare technical requirements that unduly restrict competition. Specification requirements must clearly identify the qualitative performance characteristics of the material, equipment or product that are essential for the intended use. Sponsors should avoid proprietary requirements when preparing technical specifications. This includes avoiding detailed specifications that establish requirements not necessary or that are excessive for the intended use. Sponsors should only identify the essential characteristics necessary for the intended purpose that the prospective bidder must fulfill.



### 423 - Maximize Competition

Sponsors should strive to maximize interest for their procurement actions through public solicitations in newspapers, trade magazines and web-based plan rooms.

Sponsor should strive to establish the highest competitive environment for the size and type of project they are undertaking. Such actions provide reasonable assurance that the apparent low bid is fair and reasonable.

### 424 - Brand Name or Equal

When it is impractical to make a clear and accurate description of the technical requirements, the sponsor may apply "Brand Name or equal" to establish the desired requirements, as allowable by local provisions. Sponsors may not use "brand name" to preclude an otherwise eligible bidder from participating.

In order to maintain AIP eligibility, specification writers should note the following concerns when incorporating "Brand Name or equal" provisions.

- Avoid applying "Brand Name or Equal" simply to identify a preferred product or vendor.
- Avoid applying "Brand Name or Equal" without identifying the salient characteristics. These are essential physical, functional, or other performance features that are mandatory requirements a proposed "equal" must have to meet the intended need.
- Simply stating a "Brand Name or Equal" without stating the salient characteristics does not establish the technical requirements for acceptable performance.
- To avoid claims of preferential treatment or competitive advantage, avoid identifying only one known vendor when applying "Brand Name or equal". Strive to identify at least two or more known suppliers/vendors that can meet the salient characteristics.
- Avoid applying "brand name" without "or equal". This practice is a sole source action that likely precludes AIP participation.
- Avoid applying "Brand Name or approved equal". This infers the conditions for meeting the equal status are subjectively made outside of the written

specification. The criteria for meeting "or equal" must be explicitly stated in the technical requirements.

- **Do not** use "Brand Name or Equal" to describe requirements for airfield lighting equipment identified under the FAA's Airport Lighting Equipment Certification Program ([AC 150/5345-53](#)). Under the FAA approved lighting equipment program, the identification of the "L" number along with the associated class, style and mode values represents a clear and accurate description of the technical requirement. There is no justification for applying the "brand name" description in this case. The application of a "brand name or equal" description to an FAA "L" number item gives the brand name a competitive advantage which is contrary to "fair and open" provisions

### 425 - Uniformity of Equipment

Uniformity of equipment is not sufficient justification for sole source procurement under the AIP. A sponsor's cost of maintaining duplicate inventory is also not sufficient justification for limiting competition. For airfield lighting equipment acquisitions, the procurement of new equipment must be open to all vendors listed on the approved lighting equipment list.

A sole source acquisition due to valid compatibility issues with existing equipment requires an acceptable justification and approval action by the FAA. FAA will consider AIP participation in a sole source acquisition if the compatibility issue involves an improvement for which no other cost effective option exists.

Under this situation, the sponsor must provide adequate documentation that validates the incompatibility. For example, if there is a change in airfield signage standards that requires revised sign panels, a sole source may be acceptable for the new sign panels if the existing signs bases have a remaining service life and procuring new sign fixtures would significantly increase the cost of the project as compared to simply procuring new sign panels.

AIP will not participate in a sole source acquisition if the source of the incompatibility is due to features and performance characteristics that are not FAA standard requirements. For example, if an existing piece of equipment has feature capabilities that exceed FAA standards, AIP will not participate in costs to accommodate such non-standard features.

In all cases, the sponsor must obtain FAA approval to apply sole source procurement actions. If approved, the FAA may require the sponsor to separately procure the sole source item rather than have the



successful bidder acquire the item. In this case, the sponsor would furnish the equipment to the contractor as a “sponsor furnished” item for installation by the contractor.

#### **426 - FAA Approved Equipment**

Where the FAA has established an approved equipment list (e.g. addendum to AC 150/5345-53); AIP participation is limited to the certified equipment identified on the current FAA approved list. AIP cannot participate in vendors who claim their equipment meets the FAA standard but is not included on the approved equipment list.

Specifications for FAA approved equipment should only identify the FAA “L” number along with appropriate Type, Class, Style and Mode designations. Since specifying in this format represents the complete requirements for the equipment, sponsors may not apply “Brand Name or Equal” description when specifying equipment addressed covered by FAA’s Airport Lighting Equipment Certification Program.

sponsors **should not** rely solely on vendor statements that they meet the FAA standard. sponsors should instruct their consultant to conduct cross checks of the equipment with the current version of the addendum to AC 150/5345-53 to assure compliance with AIP eligibility. We caution sponsors that if installed equipment is not on the approved list,

the cost associated with the unapproved equipment is ineligible for AIP participation.

#### **427 - Buy America**

By accepting an AIP grant, sponsors are obligated to comply with AIP Buy America preferences as established by Title 49 USC Section 50101.

Sponsors should note that Buy America preferences differ between Federal programs. The Buy American requirements for the AIP are not necessarily the same as that for the Federal Transit Administration, the Federal Highway Administration or even Federal procurements made under the Federal Acquisition Regulation.

To remain AIP eligible, the sponsor must not permit any contractor or subcontractor to acquire any steel or manufactured product produced outside of the United States unless otherwise authorized by the FAA.

The AIP Buy American provision does allow for a possible waiver if 100% U.S. made product cannot be provided. In such cases, the contractor must submit a formal request through the sponsor for subsequent review and approval action by the FAA.

Sponsors shall note that if installed equipment is not in compliance with the Buy America provisions; the associated costs are ineligible for AIP participation. Refer to sponsor guide section [AIP-490](#) for additional guidance.



## 430 – Procurement Methods

Federal Regulations address four types of permissible procurement methods; 1) Small Purchase, 2) Sealed Bid 3) Competitive Proposal and 4) Non-Competitive.

Since the selection of a procurement method is a factor in the FAA offer of an AIP grant, we request Sponsors contact the FAA program manager before selecting a procurement method.

### 431 - Small Purchase

Small purchase procedures provide the Public Agency with an expedient method of procuring equipment and small scale construction projects. Small purchase procedures are relatively simple and informal procurement methods for securing supplies, construction services, etc. that do not cost more than the “simplified acquisition threshold” as established in 41 U.S.C. 134 (formerly § 403 (11)). This value is currently set at \$150,000.

#### Application of Small Purchase Procedures

When the cost of equipment and/or construction contracts are expected to be less than \$150,000, the Public Agency may use small purchase procedures.

#### Competition

Federal regulations require the sponsor to obtain price quotations from an adequate number of qualified sources. Normally, this requires obtaining a minimum of two bid proposals. However, sponsors must not construe the application of the small purchase method as an option to waive fair and open competition. Sponsors may not preclude any interested bidder in participating in the procurement activity.

Under small purchase procedures, the number of sources may be determined by the following:

- Number of available qualified sources
- Time frame involved
- Dollar value of procurement action

#### Form of Solicitation

Verbal solicitations are acceptable for very small procurements. For other than very small purchases, we request the sponsor develop a written solicitation that requires a written proposal by the prospective bidders.

#### Documentation

Sponsors shall fully document all small purchase solicitations and offers. This includes verbal solicitations and offers. The documentation should include vendors/companies that did not express an interest in the procurement.

#### Small Scale Development Projects

Sponsors that propose to use small purchase method for small scale construction work must still develop appropriate contract specifications, safety plans and project plans. The project manual must incorporate all applicable Federal provisions.

### 432 - Competitive Sealed Bids

The sealed bid method is the preferred method for typical development projects and equipment acquisitions (see AIP handbook Appendix U.13.2.i). Under this method, the sponsor publicly solicits for bids ultimately resulting in the award of a firm fixed price contract to the responsible bidder whose bid conforms with all material terms and conditions of the solicitation and is lowest in price. Use of this method does not require prior FAA approval.

#### Conditions for use

The use of the sealed bid method requires the following conditions be met:

- Development of complete, adequate and reasonable specifications that convey the necessary characteristics and performance requirements for the development, equipment or services.
- Two or more responsible bidders are willing and able to effectively compete for the award.
- The selection of the successful bidder can be principally made on the basis of price.



## Additional Requirements

The use of the sealed bid method also requires the following:

- a) The sponsor must publicly advertise the invitation- for-bids to maximize the interest by potential bidders for the purpose of creating a competitive bidding environment.
- b) The sponsor must provide a sufficient amount of time to permit formulation of proposals by prospective bidder.
- c) The invitation for bid shall fully and clearly identify all requirements for the development, equipment or services that allow prospective bidders the ability to formulate their bid.
- d) All submitted bids must be publicly opened at a time and place prescribed in the invitation for bids.
- e) Sponsor will award a firm fixed contract to the bidder that submits the lowest responsive and responsible bid. When specified, the award of contract may be made on the basis of a life cycle cost analysis. The sponsor must make known all pertinent factors and considerations of the life cycle cost analysis as part of the invitation for bids.
- f) Any and all bids may be rejected if there is a sound documented reason.

## 433 - Competitive Proposal

This method is permitted when procurement by competitive sealed bids is not reasonable or appropriate. Projects that include significant variables and alternatives which preclude preparation of definitive specifications in favor of performance specifications are candidates for the competitive proposal method. Under this method, price is not the only factor for the basis of award. The use of competitive proposals requires two or more offerors. The type of contract with the successful firm may be a firm fixed contract or a cost reimbursement type contract. See AIP handbook Appendix Table U-9 for more information.

## Competitive Proposal versus Sealed bids

Unlike sealed bidding, the competitive proposal method permits:

- Consideration of technical factors other than price;
- Discussion with offerors;
- Negotiation of contract price and other contract terms and conditions;
- Revision of proposals before the final contractor selection;
- Withdrawal of an offer at any time up until the point of award.

## Requirements for Use

The following requirements apply if competitive proposals are used:

- a) Sponsor must publicize the request for proposals and identify all evaluation factors and their relative importance.
- b) Sponsor must solicit from an adequate number of qualified sources to maximize interest.
- c) Sponsor must establish a method for conducting technical evaluations prior to receiving proposals.
- d) Sponsor will make award of contract to the responsible firm whose proposal is most advantageous to the program taking into considerations price and other factors.

## FAA Prior Approval

Because the sealed bid method is a preferred method, the use of a competitive proposal method requires concurrence from the FAA project manager. The sponsor shall prepare and submit their justification and rationale for selecting a competitive proposal approach. If a sponsor cannot adequately demonstrate why the sealed bid method is not feasible, the sponsor must use the sealed bid method.





### Selection of A/E Consultant

The selection of an A/E consultant represents a unique competitive proposal where price is not a factor in the selection of the successful firm. In conformance with the Brooks Act, procurement of professional services requires a qualification-based selection. The qualifications of competing firms are evaluated based on pre-established criteria.

Sponsors negotiate price after a selection is made. Refer to AIP sponsor guide section 300 for additional information regarding selection of A/E consultants under the competitive proposal method.

### 434 - Procurement by Noncompetitive Proposals

While as a rule, sponsors must conduct procurement actions in a manner that assures fair and open competition, a non-competitive proposal is permissible under certain conditions.

#### Permissible Use

Sponsors may use a non-competitive procurement method if the award of contractor is infeasible under small purchase procedures, sealed bid or competitive proposals. The following limitations and conditions apply:

- The required item is only available from a single source.
- A public exigency or emergency requires urgent procurement action.
- After solicitation from a number of sources, competition is determined to be inadequate.
- The FAA authorizes noncompetitive negotiations.

#### Single Bid

Sponsor's that receive a single bid must evaluate their procurement action as a **non-competitive** procurement action. The fact that only one bid was received is not by itself adequate justification that establishes inadequate competition exists.

Additionally, the fact that the apparent low bid is less than the engineer's estimate is not necessarily sufficient justification for determining reasonableness of cost.

To justify a single bid as a noncompetitive procurement, the sponsor shall evaluate their procurement action to determine if they unduly restricted completion. This includes taking the following actions:

- Reviewing Project Manual and Technical Specification to determine if the requirements unduly restricted competition (i.e. too prescriptive)
- Contacting those firms who obtained a copy of the bid documents but chose not to submit a proposal to inquire as to why they did not bid. (Please prepare a record of all such discussions)
- Evaluating whether the advertising period for the solicitation limited interest (i.e. too short)
- Evaluating whether the previous method of soliciting broad interest was inadequate.
- Evaluating whether re-bidding the project will result in the required competitive environment

If the sponsor can reasonably establish that competition is inadequate after conducting the above evaluation, the FAA will consider participation in the single bid only if they can establish that the price is fair and reasonable. This involves an evaluation similar to a price/cost analysis. We recommend the sponsor take an analytical approach by comparing the proposed unit prices to other procurement actions with similar bid items. A good source of unit price data are recent AIP projects and State Highway department bid letting tabulations. When using such data, make sure the bid items are equivalent and that the quantities are approximately the same. Please prepare a record of your determination and the basis for your determination.

#### FAA Prior Approval

A sponsor desiring to use a non-competitive procurement must seek prior approval from the FAA. The sponsor must submit to the FAA their justification and rationale for a non-competitive procurement. The one exception to the prior approval requirement is the acquisition of professional services that do not exceed \$10,000. Sponsors typically use this method to secure a firm for preparation of independent estimates, legal sufficiency reviews, or audit services.



## 440 – Small, Minority Firms & Women's Business Enterprises

Sponsors shall implement affirmative steps to assure that small businesses, including minority firms and women's business enterprises are afforded an opportunity to participate in the project.

Affirmative steps include

- 1) Including qualified small businesses, minority businesses and women's business enterprises on solicitation lists.
- 2) When feasible, dividing requirements into smaller tasks or quantities that permit participation by small and minority businesses and women's business enterprises.
- 3) When requirements permit, establishing delivery schedules that encourage participation by small and minority businesses and women's business enterprises.
- 4) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency.
- 5) Encouraging the prime contractor to take affirmative steps to employ small and minority businesses and women's business enterprises.

For more information, see Section 0200 of the sponsor guide

### Resources - Procurement

#### Federal Offices

[Office of Small and Disadvantage Business Utilization](#)



## 450 - Cost and Price Analysis

Federal Regulations require sponsors to perform an analysis of cost or price for **all procurement actions**. This includes contract modifications. The method and degree of analysis is dependent upon the size and complexity of the procurement action.

### 451 - Independent Estimate

As a starting point, the sponsor must prepare an independent estimate **prior to** receiving bids or proposals. The estimate should include itemized elements of costs including profit and overhead. Such estimates should be signed and dated by the preparer and retained in the sponsor's records. The sponsor shall use the estimate as an aid in determining reasonableness and necessity of costs.

### 452 - Cost Analysis

Sponsors must conduct a cost analysis whenever they use a competitive proposal or a noncompetitive proposal procurement method. A cost analysis is also necessary whenever adequate price competition is lacking (e.g. single bid). Note that a change order that establishes new contract items is a non- competitive procurement action.

A cost analysis represents a comparative evaluation of the proposal cost elements with that of the independent estimate for the purpose of determining whether the proposed total cost represents a reasonable price. The costs elements that make up the proposal must be necessary for the fulfillment of the project. The breakout of costs elements must be reasonable and logical. Elements include labor hours, overhead, material costs and etc. Sponsors must negotiate profit as a separate cost element of price

### 453- Price Analysis

Sponsors must conduct a price analysis for all other procurement methods. A price analysis is a comparative analysis whereby there is adequate sufficient competition and related price information. For example, under a sealed bid method where more than one bid is received, the price analysis consists of evaluating the apparent low bid against the engineer's estimate as well as the other submitted bids.

### 454 - Cost Principles

In order to remain eligible, costs must be allowable, allocable and reasonable.

Costs are allowable provided they are necessary and consistent with the federal cost principles and explicitly allowed in the AIP handbook. See AIP handbook section 3-11 (subsection 3-62 through 3-99)

Allocable means the costs is logically assignable in proportion to the benefit to the project. For example, if a necessary cost benefits two or more projects, the cost must be distributed in reasonable proportion to benefit.

Reasonable is broadly defined as a cost that a prudent business person would pay in a competitive environment. See AIP handbook section 3-14 (subsection 3-102 through 104)

### 455 - Cost-Plus-Percentage of Cost

Sponsors may not use the cost-plus-percentage of cost contract method for AIP funded projects.

### 456 - Limitation of FAA Review

AIP sponsors must not construe any review conducted by the FAA as a waiver of the sponsor's responsibility to conduct a cost/price analysis. The FAA project manager will review the sponsor's actions to ascertain whether their cost/price analysis supports a determination of a fair and reasonable price acceptable for AIP participation



## 460 - FAA Review of Procurement Documents

Within the FAA Central region, the FAA project manager bases acceptance of the plans and specifications on a combination of a FAA cursory review and sponsor self-certification. The purpose of this review is to allow the FAA the opportunity to verify a sponsor's conformance to applicable AIP eligibility requirements, including procurement provisions.

### 461 - Self Certification

FAA's reliance on sponsor certification does not preclude the FAA from conducting a review of the procurement documents at any time during the project or prior to grant closure. The acceptance of a sponsor certification does not negate any discrepancies and improper payments discovered after reimbursement by AIP funds. Sponsors may be required to return previously reimbursed AIP funds if the Sponsor cannot correct a procurement defect.

### 462 - Extent of FAA review

For most situations, the extent of review is at the discretion of the FAA project manager. The FAA risk management model may dictate that a sponsor with a moderate to high risk be subject to a higher review.

Within the FAA Central Region, we request all sponsors to submit their procurement package (Front end, technical specifications and project plans) to the FAA project manager prior to advertising for bids.

The project manager will assess the level of review ranging from acceptance of sponsor certification to combination of certification and thorough review.

Early coordination with your FAA project manager will typically facilitate a review.

### 463 - Limitation of FAA Review

AIP sponsors must not construe any review conducted by the FAA as a waiver of the sponsor's responsibility to meet AIP requirements. The primary purpose of the FAA project manager's review is to provide assurance to the FAA that the sponsor is properly applying FAA standards and to verify AIP eligibility. This review is not a quality control measure or guarantee that the sponsor's procurement action is fully compliant.

Our reviews generally include:

- Verification that plans and specifications address development consistent with the approved scope of work,
- Overall determination of AIP eligibility
- Review of critical project elements such as the construction safety plan, pavement details, airfield marking details and airfield signage details.



## 470- Bond Requirements

Federal Regulations and the AIP handbook (Appendix U, section 19) establish bonding requirements for AIP projects. Generally, bonding requirements apply to construction or facility improvement contracts and subcontracts that exceed the simplified acquisition threshold as established in United States Code 41 U.S.C. 403. This value is currently set at \$150,000.

AIP bonding requirements do not apply to equipment projects. This does not however preclude the sponsor from applying their established bonding policy for equipment procurements.

### 471 - Minimum Requirements

Sponsors may apply their established bonding policy provided the FAA program manager makes a determination that the policy adequately protects the FAA's interests. If the FAA has not made such a determination, the minimum requirements are as follows:

**Bid guarantee:** Each bidder must furnish a bid guarantee equivalent to 5% of the bid. This may be in the form of a bond or certified check. A bid guarantee provides assurance to the sponsor that the prospective bidder will honor its submitted bid and will execute a contract if selected as the successful bidder.

**Performance Bond:** The successful bidder (Contractor) must provide a performance bond equal to 100% of the contract price. The sponsor ordinarily should not allow a contractor to execute a performance bond prior to the establishment of a contract agreement. A performance bond provides assurance that the contractor will complete the work in conformance with the terms and conditions of the contract. If the contractor fails to perform, the sponsor may take legal action against the contractor and surety to complete the project. If during the course of the project work, the sponsor adds supplemental work to the project, the penal sum of the performance bond may require an upward adjustment.

**Payment Bond:** The successful bidder must provide a payment bond equal to 100% of the contract price. The sponsor ordinarily should not allow a contractor to execute a payment bond prior to the establishment of a contract. A payment bond provides assurance to the sponsor that subcontractors and material suppliers will be properly paid the monies that they are due even if the contractor defaults.

Sponsors with bonding policy that differ from the minimum requirements must provide justification to the FAA that provides adequate assurance their bonding policy protects the AIP investment.

### 472 - Separate Bonds

FAA requests sponsor establish separate payment and performance bonds. This practice is consistent with the requirements of the Miller Act, which similarly applies to Federal procurement actions.

The practice of combining payment and performance bonds can have an adverse effect given the penal amount of the bond represents the upper liability limit for the surety. Combining bonds may result in a situation where there is insufficient bonding capacity to meet the claims of a project when a major default issues. Separating the bonds benefits the sponsor (and FAA) by ensuring there is sufficient bonding capacity to complete the project even if significant problems arise.



## 480 - Federal Provisions

As a condition of AIP eligibility, sponsors must incorporate applicable Federal provisions into their procurement actions and contracts. Several of these provisions also flow down to the prime's subcontractors. See AIP Handbook appendix U, section 20 for more information.

To assist sponsors ACE has combined all of the latest required federal contract provisions and provided them at the hyperlink below.

["Federal Provisions Attachment for Construction And Equipment Contract"](#) (PDF)

This document may be directly inserted into the procurement documents.

The applicable provisions may also be found on the ["Procurement and Contracting under AIP"](#) webpage.

## 481 - Applicability

Sponsors should note that some of the provisions are not applicable for all procurement actions. Some have monetary thresholds that trigger incorporation, while others are only applicable based on the type of procurement.

For example, Davis-Bacon provisions do not apply to equipment acquisitions.

## 482 - Form of Provision

Sponsors should use caution when making changes to the Federal provisions. Some provisions require the language to be inserted into the contract verbatim, while other provisions leave it up to the sponsor to develop the suitable contract language.

Some required provisions do not have associated text that may be used to create a contract clause. In such cases, the contract should simply incorporate the provisions by providing a reference to the directive.



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## **490 – Buy America Requirements**

Per Section 3-50 of the AIP handbook Buy American Preferences “require that all steel and manufactured goods used in AIP funded projects be produced in the United States”. There are limited situations where a waiver may be allowed. All waiver requests have to be approved by FAA staff. Please work with your program manager on any waiver requests. More detailed sponsor requirements regarding Buy America regulations that impact AIP procurements can be found in Appendix Y of the handbook.

## **491 - Suggested Forms and Sample Calculations**

For the benefit of the sponsor, we have prepared suggested Buy America forms and sample component calculation formats that the sponsor may use as a guide in preparing their own project specific bid package. Sponsors and Consultants must not construe these samples as being complete and whole. The provision of such suggested sample contract documents by the FAA is not a guarantee of legal sufficiency. Sponsors remain solely responsible for their procurement actions.

## **Supplemental Provisions and Waivers**

[Buy American Provision](#)