

## 1200 - Equipment Projects

Sponsors desiring to acquire equipment under the Airport Improvement Program (AIP) program must comply with applicable AIP technical standards and federal procurement regulations. Failure to comply with such standards and provisions can result in the FAA declaring the acquisition ineligible for AIP reimbursement.

Equipment procurements must follow the same AIP requirements as construction, planning and land grants. These procurement standards require inclusion of specific federal provisions, bonding and insurance requirements, competitive environments, etc. These requirements are further detailed in sponsor guide section 400.

### AIP Eligibility

49 USC 47102(3) lists the specific pieces of equipment eligible under AIP. The AIP handbook (FAA Order 5100.38D) paragraph 3-6, Appendix C-3 and Appendix L detail equipment related AIP regulations.

Sponsors are strongly encouraged to consult with their FAA planner one year in advance of the desired acquisition date. Such coordination will address issues related to justification, eligibility and funding availability and limit misdirected efforts.

### Non-Allowable Costs

Equipment used for normal airport operations and maintenance are generally not eligible for AIP participation. This includes mowers, pavement marking equipment, joint sealing equipment, trucks and maintenance vehicles/equipment.

Any cost associated with equipment or equipment components that exceed AIP requirements is not eligible.

### FAA Technical Standards

The FAA publishes several Advisory Circulars, which establish standards for specific equipment. In order for a procurement action to remain eligible for AIP reimbursement, the equipment acquired by the sponsor must meet the requirements established within the appropriate FAA standard. Note that some of the guide specifications allow for permissible options and alterations that as sponsor may apply for purposes of customizing their specific equipment purchase.

### Sponsor Initiated Modifications

We caution sponsors that equipment options desired by the sponsor but not identified within the appropriate FAA standard specification **may not** be eligible for AIP participation. If a sponsor desires to incorporate a nonstandard modification, the sponsor must first seek FAA review and approval in order to remain eligible under the AIP.

When submitting procurement specifications to the FAA for review and approval, the sponsor must separately identify all additions and deletions from the FAA standard guide specification. The Sponsor must provide a written justification for each modification. The FAA will not approve AIP participation in any modifications the FAA deems proprietary, exclusionary or unnecessary.

### ARFF and SRE Specifications

For procurements involving snow removal equipment (SRE) and aircraft rescue and firefighting (ARFF) equipment, the respective Advisory Circulars are intended to aid the sponsor in preparing a compete procurement bid package. The content of these guide specifications have been coordinated with the appropriate industry and thus **should not** require significant modification by the sponsor.

Use of these guidelines is **mandatory** for ARFF vehicles funded under the federal grant assistance programs (both AIP and PFC) and for airports certified under CFR Part 139. While we understand the desire of local ARFF departments to customize their equipment, the incorporation of non-standard requirement in an AIP funded equipment acquisition increases the risk of a bid protest.

### Industry Standards

In the event that a FAA standard does not exist for AIP eligible equipment procurement, the sponsor shall

rely on accepted industry standards as the basis for specifying the equipment. The performance characteristics of the specified equipment must be necessary and reasonable to remain eligible for AIP participation. Sponsors shall identify the industry standard when submitting the procurement specification to the FAA for review and concurrence.

For ARFF equipment, the following industry standards must be met:

- [National Fire Protection Association Standard \(NFPA\) 414](#) - Standard for Aircraft Rescue and Fire-Fighting Vehicles
- [National Fire Protection Association Standard \(NFPA\) 1901](#) - Standard for Automotive Fire Apparatus.

**Buy America Preferences:** (Title 49 U.S.C. Chapter 501)

AIP Sponsors are required as a condition of grant assurances to comply with Buy American Preferences established under Title 49 U.S.C. Section 50101. Unless otherwise formally approved by the Federal Aviation Administration, all acquired steel and manufactured products installed under the AIP assisted project must be produced in the United States. We caution Sponsors that the North American Free Trade Agreement (NAFTA) **does not** apply to the AIP.

As a condition of bid responsiveness, the bidder must certify how it intends to comply with Buy American requirements. The bidder shall certify to one of the following:

1. The bidder certifies that it will comply with Title 49 U.S.C Section 50101(a) by only installing steel and manufactured products produced in the United States of America.
2. The bidder hereby certifies that it cannot fully comply with the Buy America preferences of Title 49 U.S.C Section 50101(a); the bidder therefore requests a waiver per Title 49 U.S.C Section 50101(b).

If the bidder with the apparent low bid requests a waiver request, the low bidder must prepare and submit a formal waiver request along with documentation that supports their request. This will likely involve the apparent low bidder preparing a component cost calculation that demonstrates at least 60% of the equipment and its major components were manufactured in the United States. The apparent low bidder must submit this information to the owner prior to execution of any contract.

While the FAA does have the authority to waive the Buy American provisions if specific conditions exist, the Sponsor shall not assume such a waiver is valid until the FAA provides written approval of the waiver. Installation of equipment/material that meets the 60% Buy American criteria but does not have a formal FAA waiver exists is not eligible for AIP participation.

**Competition in Procurement Actions**

Federal Regulation requires that Grantees conduct all procurement transactions in a manner providing full and open competition. Sponsors that fail to conduct procurement actions in a fair and open manner increase the risks of a bid protest and jeopardize AIP participation.

Sponsors may not:

- Place unreasonable requirements on firms in order to qualify as an acceptable bidder
- Require unnecessary experience or excessive bonding
- Promote or advocate noncompetitive pricing practices between firms or between affiliated companies
- Award a contract when organizational conflict of interest exists
- Incorporate proprietary specifications as the basis for selection
- Utilize arbitrary actions in the procurement action.

A minimum of two suppliers/manufacturers must be capable of providing a specified item.

**Non-permissible Practices**

Listed below are some practices that jeopardize AIP participation in the associated costs:

Sole Source: As a rule, Sponsor must conduct all procurements in a fair and open manner. Sponsors may not arbitrarily exclude vendors by applying "sole source" requirements. In rare instances, the FAA may permit "sole source" procurement if inadequate competition exists or if there is a justifiable operational requirement. The Sponsor **must always** consult with the FAA prior to preparing sole source procurement specifications.

Uniformity of Equipment: While sponsors may desire to maintain uniformity in equipment when procuring additional similar equipment, the FAA considers the practice of specifying a manufacturer's product for this sole purpose an exclusionary practice and thus jeopardizes AIP eligibility.

Requiring Local Geographical Preferences: The practice of requiring a local or State geographical preference is strictly prohibited under 29 CFR Part 97. This restriction also applies to unreasonable response times. For example, requiring the bidders to comply with a same-day maintenance response requirement is equivalent to specifying a local geographical preference.

Adding Non-Standard Features and Requirements: AIP participation is limited to equipment meeting AIP standards. Incorporating additional features and requirements can have the effect of excluding vendors that otherwise meet the minimum AIP standards. This practice increases the likelihood of a bid protest. The FAA thus deems this practice as exclusionary.

Piggyback Equipment Acquisition under a Development Project: The costs associated with a development grant must be necessary and reasonable. While the cost associated with the temporary use of non-expendable equipment is eligible under the AIP, the acquisition of such equipment under a development grant is not eligible. The practice of requiring a project contractor to transfer ownership of temporary non-expendable equipment to the owner at the end of the AIP project is an impermissible procurement action.

For example, it is reasonable to require the contractor to furnish hand-held radios during the duration of the project. It is not allowable under AIP to require the contractor to transfer ownership of these radios to the airport owner at the conclusion of the project. AIP may not participate in costs associated with acquiring equipment for day-to-day airport operations. This includes direct and indirect acquisitions.

Listed below is typical non-expendable equipment that a sponsor may require for temporary use on their project but **not acquire** at the conclusion of the AIP funded development project. Note this list is not an all-inclusive listing.

- Hand held radios
- Vehicle beacons
- Pavement marking machines
- Joint sealing machines
- Ohm meters
- Sweeper brooms
- Commercial barricades
- Lighted Runway Closure Markers
- Construction Vehicles/Trucks
- Inspection Vehicles/Trucks
- Construction office trailer/building

### **Use of "Brand Names" in Technical Specifications**

When it is difficult for a Sponsor to provide a clear and accurate description of a desired item, Sponsors may incorporate a "brand name or equal" statement within the specification. The identification of a brand name should be in addition to the establishment of the desired salient characteristics.

The Sponsor must base acceptance on the identified salient characteristics of the item and not solely the provision of the brand name product. The specification shall clearly state all desired feature(s) and characteristics of the brand product. Such features must not be exclusionary in nature. More than one supplier must be capable of supplying the specified item.

Sponsors are cautioned that failing to identify a desired salient characteristic of a product may result in that feature being excluded from the acceptance criteria.

## **Bid Protests**

Sponsors must have established bid protest procedures related to their procurement activities. A Sponsor remains solely responsible for settlement of all contractual and administrative issues, including bid protests that arise from a procurement activity.

Prospective bidders that have a dispute with a technical requirement of the specifications must generally submit their protest **prior to bid** opening. Sponsors may deny protests involving claimed specification defects that a prospective bidder makes after a bid opening. Sponsors may address protests involving the bid evaluation after the bid opening has taken place. However, the sponsor shall address such protests prior to actual award of contract.

We caution sponsors that the FAA will not get involved in the evaluation of a bid protest until the protestors exhaust all administrative remedies of the sponsor. At that point, the FAA may only address 1) matters of federal law and regulation and 2) violations of the sponsor's written protest procedures.

## **FAA Review and Approval**

Following sponsor review and selection of an apparent low bidder, the sponsor shall prepare and submit a written recommendation of award. The sponsor should attach the following documents to their written recommendation:

- Summary of the bids tabulation
- Executed Sponsor Certification for Award of Contract.
- Buy American Certification
- Buy American Waiver Documentation (if applicable)

Sponsors shall note that the FAA will not evaluate the bid results for a sponsor. The sponsor is responsible for accomplishing such evaluations.

## **Contract versus Purchase Order**

The primary intent of utilizing a sealed bid method of procurement is to establish a firm fixed contract agreement with the contractor, supplier or manufacturer. The agreement must contain the three essential elements of a contract, 1) offer, 2) acceptance and 3) consideration.

For a typical construction contract, the contractor makes the offer while the sponsor evaluates whether the offer is acceptable for the stated consideration. This method is also acceptable for use on equipment procurements.

Sponsors may also consider the use of a purchase order method as opposed to the written contract. In this approach, the Sponsor makes the offer through the issuance of a purchase order. The Contractor's acceptance of the terms of the purchase order constitutes the agreement.

The sponsor must clearly state the consideration and the conditions within purchase order they issue. As a condition of acceptance, attach a copy of the equipment specifications along with the required federal clauses to the purchase order.

## **RESOURCES**

### **Regulation Policy**

- [29 CFR Part 97](#) – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

### **Advisory Circulars**

- [150/5220-10](#) – Guide Specification For Aircraft Rescue And Firefighting Vehicles
- [150/5220-20](#) – Airport Snow and Ice Control Equipment
- [150/5220-21](#) - Guide Specification for Devices Used to Board Airline Passengers With Mobility Impairments
- [150/5345 Series](#) - Lighting Equipment