



U.S. Department
of Transportation
Federal Aviation
Administration

Memorandum

Subject: Program Guidance Letter 89-5

Date: 21 JUL 1989

From: Manager, Grants-in-Aid Division, APP-500

Reply to
Attn. of:

To: PGL Distribution List

89-5.1 Delayed Construction Grants - Dick Angle (267-8825)

A recent OIG report concluded that a number of AIP projects have incurred increased costs because the sponsor is not commencing construction without undue delay. Except under unusual circumstances, grants should be awarded as close to the construction start date as practicable but no earlier than six months before. Paragraph 934 of FAA Handbook 5100.38 requires a realistic schedule to be developed during the application/preapplication stage with the intent that sponsors will complete all work preparatory to entering into a grant agreement and will be prepared to proceed immediately with project development as funds are made available. The OIG found a number of projects which had still not begun construction work several years after the grant was awarded. Although there are a variety of reasons for these delays, a contributing factor may be not having sponsors submit final project plans and specifications prior to grant award. Project grant awards based on preliminary plans and specifications should be held to a minimum and only made on an exception basis. As a general practice, sponsors should be queried on projects which have not begun within 6 months of grant award to determine reasons for the delay and appropriate follow-up action taken. When an unusual condition exists justifying a grant to be executed more than six months prior to expected construction start, a special condition should be included in the grant specifying a start date and field offices should monitor the project to assure that the delayed start date is met.

89-5.2 AIP Financial Integrity - Dick Angle (267-8825).

Concern about lack of control over grant funds recently found at HUD and the limited grant management information afforded by the Single Agency Audit Act audits have led us to conclude that a representative sample of AIP projects should be subjected to project audits. The following ground rules should be applied

to this initiative in each region:

1. Regions should select 5% of their grants to be audited, with emphasis on large dollar grants and grants involving land purchase;
2. Each region should contact the local OIG to determine if the OIG would be willing to conduct project audits;
3. If the OIG declines, either current grants may be amended or new grants selected to require sponsors to perform a project audit. A special condition would be the appropriate means of requiring the audit;
4. The sponsor should select an independent auditor different from the single agency auditor;
5. Audit costs are allowable costs under the grant;
6. After taking any necessary action to resolve the project audit findings, audits should be retained in the project file for later review and analysis.
7. Any common problems noted by the regions should be brought to the attention of APP-510.

89-5.3 Procurement Procedures - Ben Castellano (267-8822).

On November 29, 1983, this office issued a memo dealing with procurement (see attached). This addressed many problems we were experiencing then. Lately, however, there have been several protests in the procurement process which indicate the need to again review the procurement procedure.

A. MEETING STANDARDS AND SPECIFICATIONS. As mentioned in the Nov. 29 memo, the FAA is authorized to establish or approve standards for airport development which is to be accomplished with AIP funds. FAA has done this in many cases, such as with snow removal equipment, airport lighting, etc. In some cases, it has also published approved lists of items meeting the FAA plans and specifications. However, the fact that a piece of equipment is not on an approved list, in and of itself, does not make the equipment ineligible or not acceptable. For such equipment, the sponsor will have to establish to FAA's satisfaction that the equipment does, in fact, meet the standards and specifications. If the equipment does not meet the standards and specifications, it is not eligible for Federal aid. If the sponsor elects to install equipment, which has not been approved by the FAA and cannot meet standards at the time of commissioning, then the sponsor must take whatever steps necessary to replace the equipment or the appropriate costs will be disallowed.

When FAA has published specifications for specific items, the

specifications should be used with no modification, unless the sponsor can justify to FAA such modification. One of the major problems in this area occurs with airfield lighting. A sponsor's solicitation should contain only the FAA specification and related designation (e.g. AC 150/5345-46 L-850-A, runway centerline fixture) and not include limiting factors which have the effect of restricting competition. While we can appreciate the sponsor's desire to have uniformity of equipment, both for maintenance as well as aesthetic purposes, Federal regulations regarding the bidding process require open and free competition. This is not to imply that there may not be reasons for specifying a certain type of equipment. If such is the case, the sponsor must submit a justification for such restriction to the FAA for consideration. An example of such justification might be that the equipment quantities to be acquired represent an insignificant number (for example, less than 5% of the equipment in use) of the overall equipment in use and, therefore, do not justify the creation of duplicate inventory. In some cases a sponsor may request equipment to "match existing" equipment. If the effect of such request is, de facto, the establishment of sole source procurement because of the lack of interchangeability of parts or equipment, then this type of wording should not be allowed in the solicitation. Open and free competition is to be the norm and not the exception.

B. PROTESTS.

1. DEFECTS IN SOLICITATIONS. Unless a sponsor has a valid and justifiable reason to shorten the time, bid opening dates should be at least 30 and preferably 45 days after the public issuance of the bid solicitation (including the issuance of plan sets). This would normally allow a prospective bidder to review the plans and specifications and to confer with the sponsor in order to clarify any area which may be vague or misunderstood. Such informal discussion may be in order because of unintentional inclusions of proprietary items by the sponsor or its engineer in the plans and specifications. This would allow the sponsor to issue addenda, as necessary. Such action may well prevent the filing of a formal protest.

If a prospective bidder formally protests the procurement on the grounds that the bid solicitation is defective, it is the responsibility of the bidder to notify the sponsor in writing and before the bids are open, what aspects of the solicitation the bidder is protesting. The sponsor shall send a copy of the protest (or have the bidder do so) to the ADO or regional office. The bid opening is to be delayed, if necessary, until the protest is satisfied (including rejection) or to allow time for the sponsor to issue an addendum, as appropriate. The FAA project manager should review the solicitation, especially if

the sponsor has certified that the plans and specifications meet FAA standards, are nonproprietary, and are in accord with 49 CFR 18, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments, section 36, Procurement. Because of the complexity of some of the equipment being used by sponsors today, it may be necessary to seek the advice of headquarters personnel, such as found in AAS-100 and 200, on technical or design issues. If the sponsor insists on opening the bids when there is a protest outstanding, it should be advised that FAA will not approve awarding of a contract and that Federal funds may not be used.

If a protest of this nature is made after bid opening (and assuming that the bid package has been available for more than 10 working days) and if local procurement regulations allow, the sponsor may have the option of rejecting the protest without action, even if, in fact, the protest is valid. This is based on a GAO principle that a bidder normally has sufficient time to protest a defective solicitation prior to bid opening and not after.

There are times when it is not practical to have a 30 or 45 day solicitation period for all bids. Sometimes a sponsor may be able to justify a shorter period of time. If the sponsor allows 10 days or less for bid proposals, then the prospective bidders should be allowed to protest a defective specification up to contract award.

2. IMPROPER BID EVALUATION. While protests pertaining to defective solicitations are made prior to bid opening, there is another type of protest which occurs after bid opening. This involves an improper bid evaluation. A bidder may be improperly disqualified or the sponsor may fail to disqualify the apparent low bidder for a defective bid. These protests must be filed in writing with a copy to the ADO or regional office. Here, the most common question deals with bid responsiveness and the responsibility of the bidder.

a. By responsiveness, we mean "does the bidder comply with all the material terms and conditions of the solicitation or is any deviation from the requirements substantial - i.e. affects the performance or operational capability of the project or equipment being bid." This is probably the hardest area for the FAA project engineer to evaluate. It is the sponsor's responsibility to determine if the exceptions taken by a bidder to the solicitation are substantial or not and the extent of deviation it is willing to accept. The project engineer should normally not use his/her judgement in place of the sponsor's unless there are compelling reasons to do so or unless the sponsor is not in compliance with local procurement regulations.

b. Bidders must also be responsible. 49 CFR 18.36(b)(8) reads that "grantees...will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources." Any bids rejected on this basis must be fully documented.

C. SPECIFIC SITUATIONS

Because procurement regulations vary from locale to locale, it can be extremely difficult for the FAA project manager to keep track of all the procurements in progress. Below we have outlined several scenarios which are not uncommon and provide appropriate guidance:

1. A CONTRACTOR USES QUOTE FROM SUPPLIER "A" AND IS APPARENT LOW BIDDER. AFTER AWARDED THE CONTRACT, THE CONTRACTOR OBTAINS THE EQUIPMENT FROM SUPPLIER "B."

Unless there is a contract between the contractor and the supplier, the contractor may switch suppliers as long as there is no change in the bid. This is also true in the case of using subcontractors. While this is probably not a good business practice, FAA has no control over this situation. The assumption here is that there has been no influence, either overtly or covertly, from the sponsor.

However, when a protest is filed and to ensure the sponsor has not been exerting pressure, the project manager may request that the sponsor supply the names of the suppliers/manufacturers from the prospective bidders. The FAA field office should review such submittals to confirm that all the contractors are not using the same suppliers and distributors.

2. A CONTRACTOR USES QUOTE FROM SUPPLIER "A" AND IS APPARENT LOW BIDDER. AFTER AWARDED THE CONTRACT, THE SPONSOR'S ENGINEER REFUSES TO ACCEPT THE MATERIAL FROM SUPPLIER "A" AND MAKES ARRANGEMENTS FOR THE CONTRACTOR TO OBTAIN THE MATERIAL FROM SUPPLIER "B" AT SAME PRICE.

This type of action is not acceptable and would be in violation of the regulation, 49 CFR Part 18. The sponsor is interfering with the open and competitive market. As long as the material from supplier "A" meets the standards and specifications, the sponsor may not specify with whom the contractor shall do business.

3. A CONTRACTOR USES QUOTE FROM SUPPLIER "A" AND IS APPARENT LOW BIDDER. AFTER AWARDED THE CONTRACT, THE CONTRACTOR IS

TOLD BY THE SPONSOR TO FURNISH MATERIAL FROM ANOTHER SUPPLIER AT A HIGHER COST. THE SPONSOR WILL PAY THE ADDITIONAL FROM ITS OWN FUNDS.

There has been a long standing policy by OMB that this is not acceptable. This is an obvious attempt to circumvent the procurement regulations and is not to be allowed.

There have been several situations where, because of the particular nature of the equipment, FAA has allowed a sponsor to opt to bid a specific item, rather than use the FAA generic specification. The sponsor could then use its own funds above the limit set by the FAA; e.g. the procurement of friction measuring devices. However, the sponsor must specifically state in the bid solicitation that it is seeking to procure a specific type of equipment (e.g. self-contained vehicle vs. a towed vehicle). This procedure is limited in use and has been coordinated with OMB.

4. SPONSOR PLANS TO PROCURE EQUIPMENT UNDER THE GRANT PROGRAM. CAN HE OR SHOULD HE BREAK UP THE ORDER TO ACCOMMODATE SEVERAL SUPPLIERS/MANUFACTURERS OR SHOULD HE PURCHASE AS A COMPLETE USABLE UNIT, E.G. LIGHTING FIXTURES AND CANS.

This practice is left up to the discretion of the sponsor. By breaking up the order, the sponsor may be able to more easily meet its overall Disadvantaged Business Enterprise goals. However, there may be inherent problems using this techniques, such as delivery dates, compatibility of equipment, having to deal with more than one vendor or contractor, etc. Normally, the project manager should not get involved in this type of decision unless there are extenuating circumstances.

89-5.4 Structures Located on Land to be Acquired for Airport Purposes - Ben Castellano (267-8822)

The cost of a structure on land which is to be acquired for airport purposes is allowable if:

1. the structure is to be demolished. Any salvage value realized will be deducted from the project costs in determining the Federal share. If the structure is to be removed at a later date (for example, 5 years), the sponsor may use the structure for any incidental purposes it deems desirable (provided it does not interfere with the primary purpose of the airport). Any revenue (at fair rental value) received during the period between acquisition and demolition of the structure constitutes airport revenue and is to be used according to the Assurance dealing with revenue. If a decision is made not to demolish the structure, then the sponsor will be responsible for reimbursing the grant program the Federal government's share of the cost of acquisition of the structure.

2. the structure is to be used by the sponsor as a grant eligible facility, e.g. an aircraft rescue and firefighting facility or a storage facility for snow removal equipment.

The cost of a structure on land which is to be acquired for airport purposes is not allowable if the structure is to remain on the land or is to be relocated and will be used by the sponsor for a purpose which would not be eligible for grant funds. For example, if a hangar exists on the property to be acquired and the sponsor wishes to retain the hangar, then the appraised cost of the hangar would not be allowed as an eligible item. However, if the structure is to be relocated because its present location constitutes an airport hazard or impedes eligible airport development, then such relocation would be eligible up to the estimated costs to demolish and remove.

89-5.5 Software Eligibility Under Planning Grants - Mark Beisse (267-8826)

Paragraphs 402.a.(14) and 402.b.(16) of Order 5100.38 are being revised to reflect a new description of computer software eligibility. Software acquisition and development can become very expensive and sometimes have limited usefulness. Regions should exercise careful judgement in reviewing proposals and should be very prudent in approving significant costs in planning grants for software acquisition or development. The following guidelines should be applied:

a. Eligible activities will include acquisition, licensing and use of commercially available software dedicated to a system or master planning project only when warranted to accomplish an approved purpose.

b. Customizing of commercially available software is eligible if reasonable in terms of the overall product needed.

c. Any software development (including customizing) paid for in part with grant funds shall be in the public domain and shall be made available to any user without cost beyond nominal handling costs, disc costs, printing, etc.

d. Computer software development and automated data processing should not be approved unless clearly shown to be necessary and the least cost method.

e. The purchase of computer equipment is not eligible, nor is the cost of ongoing, day-to-day operations for airport management purposes.

89-5.6 Criteria for Residential Noise Insulation Projects - Ellis Ohnstad (267-8824).

FAA Order 5100.38, paragraph 711b, sets forth the programming criteria for residential noise insulation projects. The FAA report, Eligibility of Noise Abatement Proposals for Grants-in-aid under the Airport Improvement Program (January 1989), concluded that these criteria should be revised in two ways: first, noise level reduction (NLR) measured in A-weighted decibels (dB(A)), rather than the interior day-night sound level (Ldn), should be used to describe the design objective; and second, the 5 decibel "penalty factor" should be eliminated when evaluating the eligibility of individual structures.

The following may be used as interim guidance to assist in timely programming of such projects pending publication of a formal change to Order 5100.38.

(1) For residences located in areas where exterior noise exposure measured in day-night sound level is 65 decibels (65 Ldn), the requisite noise level reduction (NLR) provided by the structure should be at least 20 dB(A) in major habitable rooms. The requisite NLR should be increased commensurate with any increase in exterior noise level above 65 Ldn.

(2) The design objective in a residential noise insulation project should be to achieve the requisite NLR when the project is completed. (This is mathematically equivalent to achieving 45 Ldn in all habitable rooms.) The project design should be based on exterior Ldn and the existing NLR in the structure.

(3) Since it takes a change of at least 5 dB(A) improvement in NLR to be perceptible to the average person, any residential noise attenuation project will be designed to provide at least that increase in NLR.

(4) Examples.

(a) A residence located in an area where the noise exposure level is 73 Ldn has existing NLR of 26 dB(A). The requisite NLR in that area is 28 dB(A) (73 - 45). However, to meet the requirement for increasing the NLR by not less than 5 dB(A), a noise attenuation project for that residence should result in NLR of 31 dB(A).

(b) A residence located in an area where the noise exposure level is 67 Ldn has existing NLR of 16 dB(A). The requisite NLR in that area is 22 dB(A) (67 - 45). Therefore, the noise attenuation project should be designed to increase the NLR by 6 dB(A).

89-5.7 Grandfather has Expired - Ellis Ohnstad (267-8824).

Section 301(d)(4) of the Airport and Airway Safety and Capacity Expansion Act of 1987 extended the eligibility of noise compatibility projects under section 104(c)(2) (the "Grandfather Provision") of the ASNA Act through June 30, 1989. Unless there is further action by the Congress, no additional noise compatibility projects may be programmed under this provision. Multi-year grants entered into before this date and reimbursement for land acquired prior to this date remain eligible. *R*I*P*


4 Lowell H. Johnson

Attachments

Canceled



U.S. Department
of Transportation
Federal Aviation
Administration

Memorandum

Subject: INFORMATION: Procurement of Equipment
Under the AIP

Date: 29 NOV 1983

From: *Jim*
William F. Shea
Associate Administrator for Airports, ARP-1

Reply to
Attn. of: DAVID:426-3857

To: All Regions
Attention: Manager, Airports Division

There have been several questions regarding the standards to be used for the acquisition of equipment under the Airport Improvement Program. These questions usually surface during the procurement process and relate to the role of the sponsor and the FAA in specifying the standards to be used. Questions have also arisen on the use of life cycle costs in the procurement process.

In order to ensure uniform practices in this area, the following guidance is being issued. This material will be incorporated, as appropriate, in the AIP Handbook when it is finalized and in other FAA orders.

Authority of FAA to Require Specifications

Under Section 509(a)(1) of the Airport and Airway Improvement Act of 1982, the FAA is authorized to establish or approve standards for airport development which will be accomplished with AIP funds.

In establishing standards, the FAA's usual practice is to develop a proposed standard which is extensively coordinated with members of the aviation community. Comments received during the coordination process are considered in finalizing the standard. The FAA's objective is to establish a standard that will provide acceptable levels of safety, economy, durability, and workmanship. The standards established for equipment satisfy the preceding objective and are consciously tailored so as not to favor any particular manufacturer.

Application of CFR and Snow Removal Equipment Standards

Sponsors in the past generally have been required to accept the lowest bid for crash, fire, rescue (CFR), and snow removal equipment meeting the requirements contained in the FAA specification. In many instances, the specifications are written with "either/or" clauses (e.g., "the truck will be powered by either a diesel or gasoline engine"). Some sponsors have complained that this allows the manufacturer to select the component (e.g., the type of engine) rather than the sponsor and that the resulting equipment may not fulfill their needs.

In reviewing this issue, we have concluded that sponsors should be allowed more flexibility in the application of the specifications. We will now permit airport sponsors to select and specify in their bidding documents those equipment features and characteristics when the FAA standard specifications for CFR and snow removal equipment allow a choice. However, in selecting features or characteristics within the specification the sponsor must assure the FAA that at least two manufacturers will be able to meet the selected specification. In cases where sponsor selections are likely to result in only one qualified manufacturer, field personnel must secure from the sponsor sufficient justification for those selected features that create the exclusivity since the resulting procurement would be noncompetitive. When appropriate, advice from Washington headquarters should be sought.

Field offices may also approve the purchasing of equipment containing additional features not contained in the FAA specification. Unless the additional features represent state-of-the-art development, Federal financial participation shall be limited to those features incorporated in the specification and some basis must be established for determining the cost of the nonessential items. State-of-the-art features may be eligible for participation if approved by AAS and justified by the airport sponsor. In no case can these added features (other than state-of-the-art ones) result in the elimination of competitive bidding by specifying a design limited exclusively to one manufacturer.

These changes are effective immediately.

Formal Advertising Procurements

In order for formal advertising to be feasible, Attachment 0 to OMB Circular A-102 lists three minimal conditions which must be present:

- (a) A complete, adequate and realistic specification or purchase description is available.
- (b) Two or more responsible suppliers are willing and able to compete effectively for the grantee's business.
- (c) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

Since procurements under the Airport Improvement Program for equipment meet these three criteria, formal advertising is appropriate. Sponsors should be advised to consult with the FAA to assure that grant requirements will be met when a sponsor desires to use a procurement method other than formal advertising for equipment acquisition (e.g., noncompetitive negotiation). The consultation should take place before beginning the procurement process.

As previously stated in Lowell Johnson's letter of June 15, 1982, when formal advertising is used, a sponsor must award to the responsible bidder whose bid, conforming to the invitation for bids, is lowest. The low bid is usually determined by the initial acquisition plus, if applicable, installation costs. However, other cost factors, such as discounts, transportation costs, and life cycle costs, may be considered in determining the low bid, if they are specified in the invitation for bids.

Use of Life Cycle Costs in Formal Advertising

The concept of life cycle costs recognizes that although an item may have the lowest initial cost, it may actually be more expensive than some other item, when other costs such as those associated with operation and maintenance are considered. Under the life cycle cost concept, any costs expected to be incurred for the item over its useful life (i.e., acquisition, installation, operation, and maintenance) are considered. In formal advertising, life cycle costs may, at the sponsor's option, be used to determine the low bid if the following three conditions are met:

1. The invitation for bids states that life cycle costs will be used in determining the low bidder.
2. The factors to be considered must be specified and the costs associated with the factors must be quantifiable.

Specified means that the invitation for bids must specifically state the factors that will be included in the life cycle cost computation. Examples of factors that could be specified include annual fuel consumption for a motor vehicle, electrical consumption and lamp replacement for lighting equipment, recurring inspection, and maintenance. Sponsors should attempt to specify in the bidding invitation all factors that have quantifiable costs.

Quantifiable means that there must be sufficient information available so that costs associated with these factors can be readily calculated. Calculation of energy consumption costs is fairly straightforward and should be based upon some objective standard or independent testing. For lighting equipment, electricity consumption and lamp replacement shall be based upon the rating assigned by the manufactureres of the components rather than the equipment manufacturer. Calculation of costs associated with recurring inspections and maintenance is much more difficult. Generally, costs associated with maintenance should only be included in the life cycle costs computation if a fair and accurate calculation of such costs can be made. Maintenance costs, if used, should be independently validated.

3. The invitation for bids explains how the costs for each of the specified factors will be calculated.

The costs associated with a factor can vary substantially depending upon how it is calculated. For this reason, the sponsor should include in the bidding document any assumptions that it will use in making the calculation. For example, if the fuel consumption of a vehicle will be considered, the invitation should state the expected number of annual miles and the price of fuel that will be included in the calculation. The period of time over which the life cycle costs will be calculated should also be stated.

When the preceding conditions are met, the item that meets the bidding specification and has the lowest life cycle cost is the successful bid. Sponsors desiring to use the life cycle cost concept should be advised to consult with FAA offices before issuing an invitation for bids to assure that their procurement procedure will meet grant requirements.

Additional Information

The following AAS personnel should be contacted for additional information on the following types of equipment:

CFR Equipment - Bert Ruggles - 426-3444
Snow Removal Equipment - Les Vipond - 426-3061
Lighting Equipment - Bob Bates - 426-3824

Questions on procurement procedures and requirements should be directed to APP's Robert David (426-3857).