



U.S. Department
of Transportation

**Federal Aviation
Administration**

Memorandum

Subject

Program Guidance Letter 91-2

Date

8 FEB 1991

From

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

Reply to
Attn of

To

PGL Distribution List

91-2.1 Vertiport Studies - Mark Beisse (267-8826).

Initial vertiport studies for tilt-rotor aircraft have been undertaken for a variety of market and geographic conditions. These vertiport studies focus on general system analysis for vertiports and have been funded under AIP for the following metropolitan areas and States:

METROPOLITAN AREAS
Boston
Denver
Miami
New York-Newark
Orlando
San Francisco
Southern California
St. Louis
Washington

STATES
Alaska
California
Illinois
Puerto Rico
South Dakota
Texas
Washington

Grants for these studies have been approved based on the recommended work program for initial vertiport plans transmitted to regions in November 1988. We have been continuing to entertain new applications for vertiport system feasibility studies since that time and approved several in fiscal year 1990.

We believe there are now a sufficient number of outstanding studies to evaluate the feasibility of a national vertiport system. Once the projects are completed, the results of these cases will be consolidated by the Office of Airport Planning and Programming and the Vertical Flight Program, and a new policy formulated. To expedite the evaluation, regions should transmit three copies of final vertiport planning reports to APP-400 as soon as they are available.

acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

Residential dwellings make up a high majority of noncompatible noise impacted land uses; therefore, the valuation method usually used is the market approach, otherwise called the direct sales comparison approach. Which market sales to use as comparisons to the subject property can be described numerous ways. One of the better descriptions for the direct sales comparison approach comes from the textbook, APPRAISING REAL PROPERTY, by Boyce and Kinnard, as follows:

1. Identify the pertinent value-determining characteristics of the subject property.
2. Find comparable, competitive properties, with similar characteristics, that have sold recently on the local market.
3. Ascertain the sales price, date of sale, and terms and conditions of sale for each property. All such data must be verified.
4. Compare the comparables with the subject property in terms of the pertinent or salient characteristics of the subject property.
5. Measure the market difference for each characteristic on which the comparable properties differ from the subject property. Adjust the comparable sales to the subject property.
6. Estimate the adjusted sales price for each comparable property. This is the estimated price at which the comparable property would have sold if it had possessed the identical characteristics as the subject property at the time of sale.
7. Reconcile the adjusted sales prices of the comparable properties to an indication of the market value of the subject property via this direct sales comparison approach.

The "increase/decrease principle" provision in Section 301(3) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, generally does not apply to "noise projects" since the noise project itself does not have any direct influence on the market value of the noise impacted properties. Therefore, use of sales as comparables in the direct sales comparison approach must be as similar as possible to the property being appraised as to location, community services, size, time of sale, and the terms



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

Attachment A1


Subject: FAA Policy on Vertiport Studies

Date:

From: Assistant Administrator for Airports

Reply to
Attn. of:

NOV 29 1990

To: The Administrator
Thru: Deputy Administrator 

Since September 1988, we have funded some seventeen vertiport system feasibility studies throughout the country under the Airport Improvement Program, totaling 3.0 million dollars. This represents a considerable portion of the approximately 6.5 million dollars available in the past year for airport system planning.

This activity level results from the policy we established about two years ago to support an accelerated process for incorporating a civil version of the tiltrotor aircraft into the aviation fleet. This initial round of vertiport system feasibility studies has been intended to alert local officials to the role that tiltrotor aircraft may play in their area, to help estimate the number of aircraft operations and type of landing areas that may be warranted, and to ascertain the overall availability of potential landing areas.

Although none of the studies has been completed, we expect completion of most of them by early 1991. When the results of the various vertiport studies are consolidated, they will indicate the scope of national demand for a civil tiltrotor aircraft and the route structure the aircraft will require. We will then have a measure of the potential national and local benefits associated with implementing a civil tiltrotor program.

We have reached a point, however, where it seems appropriate to modify somewhat our policy on vertiport studies and, with your concurrence, I intend to make some adjustments to our policy.

Section H. DEPARTMENT OF TRANSPORTATION

AIRPORT IMPROVEMENT PROGRAM

20.106

I. PROGRAM OBJECTIVES

The objective of the Airport Improvement Program is to assist sponsors, owners, or operators of public-use airports in the develop-

ment of a nationwide system of airports adequate to meet the needs of civil aeronautics.

II. PROGRAM PROCEDURES

States, counties, municipalities, U.S. Territories and possessions, and other public agencies, including Indian tribes or Pueblo are eligible for airport development grants if the airport on which the development is required is listed in the National Plan of Integrated Airport Systems (NPIAS). Applications for grants must be submitted to nearest FAA Airports Field Office. Primary airport sponsors must notify FAA by January 31 or another date specified in the

Federal Register of their intent to apply for funds which they are entitled under Public Law 97-248. A reminder is published annually in the *Federal Register*. Other sponsors are encouraged to submit early in the fiscal year and to contact the appropriate FAA Airports Field Officer for any local deadlines. Sponsors must formally accept grant offers no later than September 30 for grant funds appropriated in that fiscal year.

III. COMPLIANCE REQUIREMENTS AND SUGGESTED AUDIT PROCEDURES

A. Types of Services Allowed or Unallowed

Compliance Requirement

Program guidance is provided in Federal Aviation Administration (FAA) Order 5100.38, *Airport Improvement Program Handbook*, and FAA Advisory Circulars in the 150/5100 series. Grants can be made for planning, constructing, improving, or repairing a public-use airport or portion thereof consisting of (1) development of airport master plans, (2) development of airport systems plans, (3) development and carrying airport noise compatibility programs, (4) land acquisition, (5) site preparation, (6) construction, alteration, and repair of runways, taxiways, aprons, and certain roads within airport boundaries, (7) construction and installation of lighting, utilities, navigational aids, and certain offsite work; (8) safety equipment required for certification of a facility, (9) security equipment

required of the sponsor by the Secretary of Transportation by rule or regulation for the safety and security of persons and property on the airport, (10) snow removal equipment, (11) nonrevenue-producing public-use terminal development, (12) aviation-related weather reporting equipment, or (13) equipment to measure runway surface friction.

In general, Federal funds cannot be expended for:

- Passenger automobile parking facilities, buildings to be used as hangars, and portions of terminals that are revenue-producing or not directly related to the safe movement of passengers and baggage at the airports; and
- Costs incurred before execution of the grant, unless such costs are for land, necessary

Suggested Audit Procedure

Review the policy for using airport revenue and the recording of selected revenue use transactions to ensure that no airport revenue has been improperly used. Identify in the audit report any improperly used revenue.

Compliance Requirement

Eligible terminal building development is limited to nonrevenue-producing public-use areas that are directly related to the movement of passengers and baggage in air carrier and commuter service terminal facilities within the boundaries of the airport. Eligible construction is limited to items of work and for the quantities listed in the grant description and/or special conditions. (FAA Order 5100.38A, par. 551)

Suggested Audit Procedures

- Review the special conditions in the grant agreement and identify any development included in the plans and specifications to be excluded from Federal participation and whether any related engineering and administrative costs should be prorated for ineligible development.
- Review selected Federal-aid claims and determine whether any nonparticipating costs have been included. If so, these costs should be identified as disallowed costs.
- Determine whether engineering and administrative costs were properly prorated for associated nonparticipating construction costs.

Cancelled

OFFICE OF MANAGEMENT AND BUDGET

Governmentwide Guidance for New Restrictions on Lobbying

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice provides further information about OMB's interim final guidance, published December 20, 1989, as called for by Section 319 of Public Law 101-121.

DATE: The effective date of the interim final guidance was December 23, 1989.

FOR FURTHER INFORMATION CONTACT: For grants and loans, contact Barbara F. Kahlow, Financial Management Division, OMB (telephone: 202-395-3053). For contracts, contact Richard C. Loeb, Office of Federal Procurement Policy, OMB (telephone: 202-395-3300).

SUPPLEMENTARY INFORMATION: On October 23, 1989, the President signed into law the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 ("the Act"). Section 319 of the Act amended title 31, United States Code, by adding a new Section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." Section 1352 took effect with respect to Federal contracts, grants, loans, cooperative agreements, loan insurance commitments, and loan guarantee commitments that were entered into or made more than 60 days after the date of the enactment of the Act, i.e., December 23, 1989.

Section 1352 required the Director of the Office of Management and Budget (OMB) to issue governmentwide guidance for agency implementation of, and compliance with, the requirements of this section. Interim final guidance was issued on December 18, 1989 and published on December 20, 1989 (54 FR 52306).

This Notice is to inform the public about certain clarifications which OMB has made since the December 20, 1989 publication. These include replies to two letters addressed to OMB from Members of Congress. Both letters are reproduced herein as well as OMB's replies. In addition, OMB has issued an internal government memorandum which is reproduced herein.

Allan V. Burman,

Administrator for Federal Procurement Policy.

Susan Gaffney,

Acting Assistant Director for Financial Management.

Herein follows the text of the first letter and OMB's reply:

United States House of Representatives

Employment and Housing Subcommittee of the Committee on Government Operations

May 9, 1990.

Richard Darman,

*Director, Office of Management and Budget,
10300 New Executive Office Building,
Washington, D.C. 20503.*

Dear Mr. Darman: As the House sponsor of the The Clean Consultants Act of 1989, for which you are now writing regulations, I would like to encourage you to consider and include clarification in the implementation of this law to state that it does not preclude legitimate functions of local governments which includes contact with Federal agencies.

A priority in the case of cities and counties is the ability to contact Federal agencies for information concerning grants. At present, Federal agencies are not responding because there is either confusion on the part of Federal employees concerning how to deal with direct contact from local governments and their representatives, or there is a policy of no response to requests for information or clarification from local government representatives because of an extremely strict definition of what the new law does and does not allow. OMB should direct all Federal agencies to continue past practices of providing information to local governments and their representatives until final regulations make clear and uniform the appropriate parameters for contacts among local officials, their representatives and Federal employees. I cannot stress enough how important it is for local government to receive timely and accurate information on Federal programs. Providing information is clearly not within the realm of 'influence peddling' or lobbying to which the new law addresses itself.

In relation to drafting of regulations, I urge you to consider comments to clarify potential problems which surfaced in the NPRM. Among my concerns and the concerns of local government are:

1. The unnecessary inclusion of entitlement programs in reporting requirements. Entitlement programs do not fall under the category of programs which could be 'brokered' in the manner of discretionary grant programs. The Clean Consultants Act as its focus, the process of obtaining discretionary grants by the use of undue influence. Entitlements do not go through the same kind of process and therefore I do not understand why recipients would need to follow disclosure regulations as applicants and recipients of discretionary monies would need to follow.
2. Grants management is, for all practical

purposes, a general duty job with most cities and counties. Whether that individual is a direct employee, or holds a long-term bona fide consultant contract, the duties involved in grants management often include the need to monitor the grants program from which the city or county benefits. Seeking information in this role, a grants manager would not appear to be using undue influence to obtain funding—rather, it seems an informed manager serves a function for the best use of funds from the perspective of the Federal government as well as the local government entity. Therefore, contacts with the Federal government by grants managers would seem to be an appropriate action and one not prohibited under the lobbying portions of the new law.

The intent of the law is to either disallow those receiving Federal funds from using employees on that grants to solicit other Federal monies, and to make public those individuals hired with non-Federal funds to obtain a Federal grant. The law makes a clear distinction which singles out the special arrangement or contract individual hired to secure specific program funding. Abuses in this area are the focus and the background of the law. A local government employee or a long-term Washington agent for a local government clearly does not fit into the same abusive pattern.

During the period regulations to make this distinction are being written, and safeguards are put in place to cut abuse, local governments should not be shackled by a loss of opportunity to use informed employees and other legitimate representatives in grants application and management when they seek information on grant opportunities. The current unresponsiveness of many Federal agencies, which appears to be a reaction in advance of final regulations, acts as a veil behind which grant-making agencies decline to provide any information to local officials or their representatives. This seems a needless impediment for appropriate actions by local governments competing for existing programs of Federal assistance.

3. In your writing of regulations, I trust you will define terms to clarify problems which present themselves in the NPRM in the context of current practice. Special project lobbyists and 'influence peddling' as exemplified in the HUD hearings conducted by the Employment and Housing Subcommittee of the House Government Operations Committee, which I chair, define themselves. Specifically, the \$300,000 phone calls to HUD and the contracting of well-connected Washington operatives for specific projects are the target of the new law. Day-to-day grants managers and long-term bona fide general interest consultants perform a service different from those abusive actions which have been uncovered during our HUD hearings. This distinction between individuals and actions should be made clear—which does not appear to be the case in the NPRM.

I appreciate your attention to my comments and hope that you will contact me or have your staff contact Lisa Phillips on my

December 23, 1989 effective date of the restrictions need to contain certifications or statements and disclosures, if required, i.e., awards and commitments made before December 23, 1989, but modified, amended, extended, continued or renewed after that date do not need certifications or statements unless they are modified or amended beyond the scope of the award. An existing Federal grant, loan, or cooperative agreement with such a modification or amendment needs to contain a certification and disclosure form, if required. A bilateral modification to an existing Federal contract which requires justification and approval pursuant to Federal Acquisition Regulation (FAR) section 6.303, citing the authorities in FAR section 6.302, and which exceeds the \$100,000 threshold needs a certification and disclosure form, if required.

Fourth, only Federal transactions over the \$100,000 (contracts, grants, cooperative agreements) or \$150,000 (loans, loan guarantees, loan insurance) thresholds need certifications or statements and disclosures, if required.

Fifth, contracts subject to the FAR are covered by the January 30, 1990 FAR interim final rule (Federal Acquisition Circular 84-55), not the February 28, 1990 common rule. The February 28, 1990 rule applies only to contracts not subject to the FAR (generally nonprocurement contracts) as well as to grants, loans, cooperative agreements, loan guarantee commitments, and loan insurance commitments.

Sixth, nothing contained in Subpart C of the guidance, Activities by Other Than Own Employees, applies to selling activities by independent sales representatives before an agency provided that the selling activities are prior to formal solicitation by an agency. Such selling activities are:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

Note that the activities in (1) and (2) above are specifically limited to the merits of the matter. An independent sales representative who engages in selling activities described above, prior to the issuance of a formal solicitation by an agency, is not deemed to be engaged in influencing with regard to a particular contract and will not need to disclose such activities.

Seventh, under subsections ____205(b) and ____300(c), the examples cited are not intended, in any way, to be all inclusive, to limit the application of the "Professional and technical services" exemption provided in the law, or to limit the exemption to licensed professionals. "Professional and technical services" shall be advise and analysis directly applying any professional or technical expertise. Note that the "Professional and technical services"

exemption is specifically limited to the merits of the matter.

Lastly, the following clarify OMB's interim final guidance:

(1) To the extent a person can demonstrate that the person has sufficient monies, other than Federal appropriated funds, the Federal Government shall assume that these other monies were spent for any influencing activities unallowable with Federal appropriated funds. This assumption applies equally to persons who do and do not submit to the Federal Government cost or pricing data. Where no cost or pricing data are submitted, the Federal Government shall assume that monies spent are a reduction from profits otherwise available.

(2) Profits and fees earned under Federal contracts (see FAR subpart 15.9) are not considered appropriated funds. Profits, and fees that constitute profits, earned under Federal grants, loans, and cooperative agreements are not considered appropriated funds.

(3) Nothing in OMB's interim final guidance requires a person to make any changes to that person's existing accounting systems.

(4) The prohibition on use of Federal appropriated funds does not apply to influencing activities not in connection with a specific covered Federal action. These activities include those related to legislation and regulations for a program versus a specific covered Federal action.

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