



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

Memorandum

Subject: ACTION: Program Guidance Letter 93-2

Date: NOV 17 1992

From: Manager, Airports Financial Assistance
Division, APP-500

Reply to
Attn. of:

To: PGL Distribution List

The Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 has been given the designation of Public Law 102-581 and will be referred to as such in this and future PGL's.

93-2.1 Interactive Training Systems (Jim Borsari (202) 267-8822).

P.L. 102-581 amended the Airport and Airway Improvement Act of 1982 (AAIA) to make interactive training systems eligible under the Airport Improvement Program (AIP).

The Report of the Senate Committee on Commerce, Science and Transportation on the Senate Bill S. 2642 contains background information concerning the intent of this provision. Even though that report did not accompany P.L. 102-581, we have used it as a reference to determine the extent of these systems' eligibility.

The committee report states:

"Under this section, interactive training systems are explicitly eligible for AIP funds. The Committee intends that these systems are to be used to comply with federally mandated safety and security requirements, including, but not limited to, the ADA; the Clean Air Act; and Parts 107 (airport security) and 139 (airport certification) of the Federal Aviation Regulations. This provision is not intended to apply to administrative or personnel costs. It would include only equipment and the acquisition of training software."

We are in the process of developing performance specifications for procurement purposes for this equipment. To this end, and in consultation with AAS-100, we have asked the computer-based instruction specialists at AAC to assist in this development.

We will provide these standards to field offices in a future PGL. Sponsors expressing interest in these systems should be advised that standards are being developed and are planned to be available by mid to late December. Sponsors should be encouraged to delay any procurement actions in the interim. The competition requirements of 49 CFR Part 18 and FAA Order 5100.38A will apply to these procurements. In addition, lease of training equipment and software is not eligible under the AIP.

93-2.2 Block Grants (Mark Beisse (202) 267-8826).

The schedule of events under the State block grant pilot program for fiscal year 1993 (Attachment A) was inadvertently omitted from Attachment C of PGL 93-1. The grant calculation sheet, which was included in PGL 93-1, Attachment C, should be sent to States with grant offers, rather than when inviting State aviation officials to apply for the program. Grant applications and offers from all airport sponsors (other than existing block grant states) should be handled as in the past until such time as the new states are selected.

93-2.3 Eligibility of Surface Parking Lots, Fuel Farms and Utilities under Military Airport Program (Leslie Haener (202) 267-5879).

Section 107(c) of P.L. 102-581 amends Section 508(f) of the AAIA to make eligible the construction, improvement, or repair of airport surface parking lots, fuel farms, and utilities for current or former military airports designated by the Secretary to receive funds under the Military Airport Program (MAP). Funding of these items may not exceed an aggregate amount of \$4,000,000 per airport over fiscal years 1993, 1994, and 1995. The Federal share will be the same as for other airport development projects at the MAP location.

Eligibility of these items at these select locations will facilitate the transition of military facilities to functional civil airports. It is likely that the military departments have already made substantial investments in the type of development normally funded under the AIP. At these airports, however, the greatest obstacle to growth in civil use may be the inadequacy of facilities such as parking lots, fuel farms, and utilities which ordinarily are not eligible under the AIP.

Parking Lots - Eligibility is limited to parking facilities to serve passenger terminals. Allowable size is limited to that area needed to support the forecast parking needs of the air carrier passengers and other terminal users, as specified

in the airport master plan. Reference FAA Advisory Circulars 150/5360-9, Planning and Design of Airport Terminal Facilities at Nonhub Locations, and 150/5360-13, Planning and Design Guidelines for Airport Terminal Facilities, to determine the scope of the parking development as based on forecasts.

Fuel Farms - Eligibility includes new construction of fuel farms (based on forecasted needs) and rehabilitation of existing fuel farms to bring them up to operating standards established by the EPA or local permitting agencies. FAA participation is limited to those fuel farms which will be operated by the airport sponsor or leased to or managed by a fixed base operator for the non-exclusive use by the flying public. The branch of the military which operated or currently operates the military airport will continue to be responsible for any cleanup necessary to bring the fuel farm up to required environmental conditions. Clean-up of contamination which has occurred under civil ownership or operation is ineligible.

Utilities - Currently, FAA participation in utilities is allowable subject to proration in accordance with Paragraph 568 of the Airport Improvement Program Handbook. The eligibility of utilities at MAP locations is expanded to allow the rehabilitation of existing utility systems to support the aeronautical use portions of the designated airports. Projects on the non-aeronautical, revenue producing portions of an airport are ineligible under this provision.

We anticipate that these development items will carry a priority for discretionary funding less than work that is needed for the reasons of safety and security. These three development items have been combined together under one work code, P02. Additional guidance will be provided on tracking this work so as not to exceed the \$4 million limit over the three-year time period.

93-2.4 Suspension of the Davis-Bacon Act for Parts of Florida, Louisiana, and Hawaii (Jim Borsari (202) 267-8822).

On October 14, the President signed Proclamation 6491 to suspend the Davis-Bacon Act and related acts (Section 515 of the AAIA) until otherwise provided for a number of counties in Florida, parishes in Louisiana, and islands of Hawaii. This proclamation was based upon a "national emergency" due to Hurricane Andrew and Hurricane Iniki. We will provide further guidance in the near future to the affected regions if available from the Department of Labor. Attachment B is a copy of the proclamation.

93-2.5 Open Bidding on Federal and Federally Funded
Constructions Projects (Jim Borsari (202) 267-8822).

On October 23, the President issued Executive Order 12818, Open Bidding on Federal and Federally Funded Construction Projects, a copy of which is Attachment C. Under this Executive Order, sponsors may not include in bid specifications, project agreements or any other controlling documents, any provisions which would require bidders and contractors to enter into union agreements or to discriminate against companies who refuse to become or remain signatories to agreements with labor organizations.

Sponsors should be notified that the special condition in Attachment D will be added to any grants involving construction issued after November 23, 1992.

Stan Low

for Lowell H. Johnson

Attachments

Attachment A

State Block Grant Pilot Program
Fiscal Year 1993 Schedule of Events

This schedule outlines events under Section 534 of the Airport and Airway Improvement Act of 1982, as amended, for States other than Illinois, Missouri, and North Carolina:

December 30, 1992	Applications from States
February 15, 1993	Selection of four additional States
March 1, 1993	Initial meetings with selected States
March 1 - September 30, 1993	Ongoing review
March 30, 1993	Issue first year block grants and begin airport projects

Presidential Documents

Executive Order 12818 of October 23, 1992

Open Bidding on Federal and Federally Funded Construction Projects

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 471 *et seq.*, in order to (1) promote and ensure open bidding on Federal and federally funded construction projects; (2) increase competition in Federal construction contracts and contracts under Federal grants or cooperative agreements; (3) reduce construction costs; (4) expand job opportunities, especially for small businesses; and (5) uphold the associational rights of workers freely to select, or refrain from selecting, bargaining representatives and to decide whether or not to be union members, so as to provide access to employment opportunities on Federal and federally funded construction projects for all workers; thereby promoting the economical and efficient administration and completion of Federal and federally funded construction projects, it is hereby ordered as follows:

Section 1. (a) To the extent permitted by law, before any executive agency may award any construction contract after the effective date of this order, or obligate funds pursuant to such contract, it shall ensure that neither the agency's bid specifications, project agreements, nor other controlling documents, nor those of any contractor or construction manager, shall:

- (1) Require bidders, offerors, contractors or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s), or
- (2) Otherwise discriminate against bidders, offerors, contractors or subcontractors for refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other related construction project(s), or
- (3) Require any bidder, offeror, contractor or subcontractor to enter into, adhere to, or enforce any agreement that requires its employees, as a condition of employment, to:
 - (i) become members of or affiliated with a labor organization; or
 - (ii) pay dues or fees to a labor organization, over an employee's objection, in excess of the employee's share of labor organization costs relating to collective bargaining, contract administration, or grievance adjustment.

(b) No contractor, and no subcontractor under a Federal contract, shall require, as a condition of any subcontract relating to a Government construction contract, that the party with which it contracts impose or enforce any of the elements specified in section 1(a)(1)-(3) above in performing its subcontract. This section does not prohibit a contractor or subcontractor from voluntarily entering into an otherwise lawful agreement with a labor organization regarding its own employees.

(c) Contracts awarded before the effective date of this order, and subcontracts awarded pursuant to such contracts, whenever awarded, shall not be governed by this order.

Sec. 2. (a) The heads of executive agencies shall, within 30 days of the date of issuance of this order, review all statutes under their jurisdiction that provide authority to issue grants or enter into cooperative agreements for construction projects and identify any statute that provides authority to condition a grant

award or cooperative agreement on the recipient's or party's agreement that neither bid specifications, project agreements, nor other controlling documents pertaining to the grant or cooperative agreement contain any of the elements specified in section 1(a)(1)-(3), above.

(b) The heads of executive agencies shall exercise any authority identified pursuant to section 2(a), to the extent consistent with law, so as to preclude the grant recipient or party to a cooperative agreement from imposing any of the elements specified in section 1(a)(1)-(3) above in connection with any such grant or cooperative agreement, awarded or entered into after the date of such exercise.

Sec. 3. (a) In the event that a Federal contractor or construction manager does not perform in accordance with section 1 above, the executive agency shall take such action as may be appropriate, as determined by the agency, consistent with law or regulation, including, but not limited to, debarment, suspension, termination for default, or withholding of payments.

(b) In the event that a recipient of a Federal grant or party to a cooperative agreement does not perform in accordance with section 2(b) above, the executive agency that awarded the grant shall take such action, as determined by the agency, consistent with law or regulation, as may be appropriate.

Sec. 4. (a) The head of an executive agency may exempt a particular project, contract, subcontract, grant, or cooperative agreement from the requirements of any or all of the provisions of sections 1 and 2 of this order, if the agency head finds that special circumstances require an exemption in order to avert an imminent threat to public health or safety or to serve the national security.

(b) A finding of "special circumstances" under section 4(a) may not be based on the possibility of, or an actual labor dispute concerning the use of:

- (1) contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or
- (2) employees on the project who are not members of or affiliated with a labor organization.

Sec. 5. (a) "Construction contract" as used in this order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

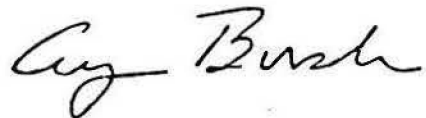
(b) "Executive agency" as used in this order shall have the same meaning it has in 5 U.S.C. 105.

(c) "Labor organization" as used in this order shall have the same meaning it has in 42 U.S.C. 2000e(d).

Sec. 6. Within 30 days of the issuance of this order, the Federal Acquisition Regulatory Council shall take whatever action is required to amend the Federal Acquisition Regulation in order to implement the provisions of this order.

Sec. 7. This order is not intended to create any right or benefit, substantive or procedural, enforceable by a nonfederal party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 8. This order shall become effective 30 days after the date of this order.



THE WHITE HOUSE,
October 23, 1992.

Presidential Documents

Title 3—

Proclamation 6491 of October 14, 1992

The President

To Suspend the Davis-Bacon Act of March 3, 1931, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricanes Andrew and Iniki

By the President of the United States of America

A Proclamation

1. Section 1 of the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494, as amended, 40 U.S.C. 276a(a)), provides:

... every contract in excess of \$2,000 to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there.

2. Under various other related acts, the payment of wages is made dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act.

3. Section 6 of the Davis-Bacon Act, 40 U.S.C. 276a-5, provides that "In the event of a national emergency the President is authorized to suspend the provisions of sections 276a to 276a-5 of this title."

4. Within less than the period of a month, three vital areas of the Nation have been devastated by hurricanes. In late August, South Florida and sections of Louisiana experienced the full force of Hurricane Andrew, one of the severest hurricanes ever to strike the United States. The devastation that ensued resulted in the largest amount of property damage from a natural disaster in the history of the Nation. Tens of thousands of homes were destroyed, thousands of business establishments were badly damaged, and the public infrastructure of much of Dade County was severely damaged. On September 12, an equally ferocious hurricane struck the Hawaiian Islands. As a result of Hurricane Iniki, hundreds of homes were destroyed, the tourist industry on the island of Kauai was devastated, and much of the island's infrastructure was severely damaged. The combined impact of these hurricanes has resulted in an unprecedented level of devastation.

The economic effects of the hurricanes have been equally devastating. Many businesses have been either destroyed or significantly damaged. Thousands of individuals have lost their jobs and livelihood. In addition, a record amount of Federal assistance will be needed to restore the communities that have been ravaged by these hurricanes. Accordingly, I find the conditions caused by Hurricanes Andrew and Iniki to constitute a "national emergency" within the meaning of section 6 of the Davis-Bacon Act.

(a) The devastation caused by both hurricanes has resulted in more than \$20 billion in property damage.

(b) The Federal Government has provided over \$10 billion in budgetary resources for disaster and related assistance to the people and the communities that were victimized by these hurricanes.

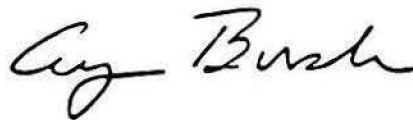
(c) The wage rates imposed by the Davis-Bacon Act increase the cost to the Federal Government of providing Federal assistance to these areas.

(d) Suspension of the Davis-Bacon Act, and the operation of related acts to the extent they depend upon the Secretary of Labor's determinations under the Davis-Bacon Act, will result in greater assistance to these devastated communities and will permit the employment of thousands of additional individuals.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do by this proclamation suspend, ~~as to all contracts entered into on or after the date of this proclamation and until otherwise provided,~~ the provisions of the Davis-Bacon Act of March 3, 1931, as amended, and the provisions of all other acts providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act, as they apply to contracts to be performed in the following jurisdictions: the counties of Broward, Collier, Dade, and Monroe in the State of Florida; the parishes of Terrebonne, Lafourche, St. Martin, Assumption, Iberia, St. John the Baptist, Iberville, St. Mary, Ascension, East Baton Rouge, Lafayette, St. Charles, St. Tammany, West Baton Rouge, West Feliciana, East Feliciana, Point Coupee, Jefferson, Acadia, Avoyelles, Cameron, Jefferson Davis, Orleans, Plaquemines, St. James, St. Bernard, Vermillion, Allen, Calcasieu, Evangeline, Livingston, Rapides, St. Helena, St. Landry, Tangipahoa, and Washington in the State of Louisiana; and the islands of Oahu, Maui, Hawaii, Kauai, Lanai, and Kahoolawe in the State of Hawaii;

And, as to such contracts to be performed in such jurisdictions, I do hereby suspend, until otherwise provided, the provisions of any Executive order, proclamation, rule, regulation, or other directive providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act;

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of October, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventh.



Attachment D

"OPEN BIDDING. The sponsor agrees not to include in any bid specification, project agreement, or other controlling documents to perform construction activities under this grant, any provisions which would:

- a. Require bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s), or
- b. Otherwise discriminate against bidders, offerors, contractors or subcontractors for refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other related construction project(s), or
- c. Require any bidder, offeror, contractor or subcontractor to enter into, adhere to, or enforce any agreement that requires its employees, as a condition of employment, to:
 1. become members of or affiliated with a labor organization; or
 2. pay dues or fees to a labor organization, over an employee's objection, in excess of the employee's share of labor organization costs relating to collective bargaining, contract administration, or grievance adjustment.

The sponsor further agrees to require any contractor or subcontractor to agree to not include any similar provision which would violate paragraphs a. through c. above in their contracts or subcontracts pertaining to the projects under this grant.