

33rd Annual Basics of Airport Law Workshop and 2017 Legal Update

Session #10

CONTRACTING, LABOR, AND PROCUREMENT

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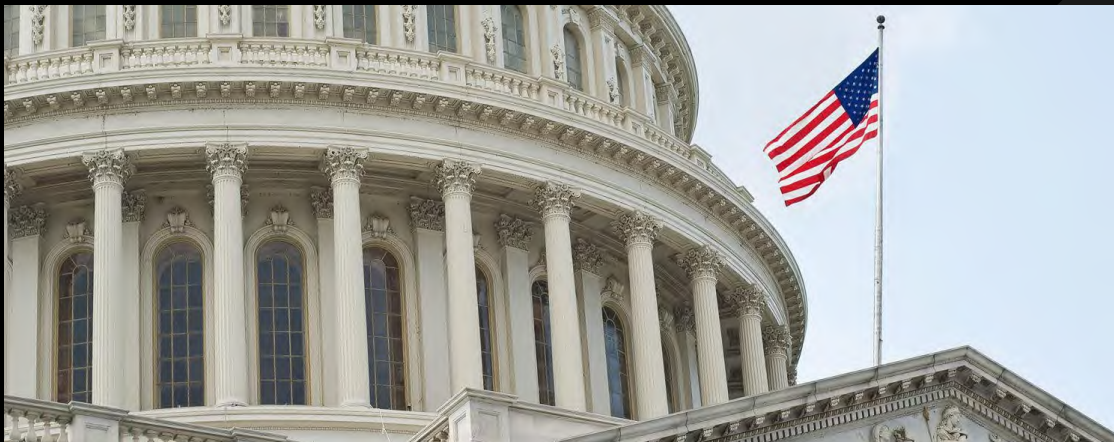
OVERVIEW

- When/why do I need to worry about federal contracting rules?
- What are the key sources of authority ?
- AIP requirements
 - What do I need to do during the procurement process?
 - What do I need to include in my contract?
- What's different for PFC-funded contracts?
- What are some common mistakes to avoid?
- How do labor-related issues often end up becoming contracting issues?



WHEN/WHY DO FEDERAL CONTRACTING RULES APPLY?

- Contract will be funded with AIP funds
- Sponsor is grant-obligated
- Contract will be funded with PFC funds



GOAL OF THIS SESSION

- The definitive guide to contracting?
- 100 not even 101 because . . .
- Awareness
- Know who your go-to person is in your organization



KEY LEGAL AUTHORITIES

- Grant Assurance 1
 - Obligation to comply with general federal requirements
- 49 U.S.C. 47107
- FAA Airport Improvement Handbook (Order 5100.38D)
 - Chapter 3, Section 10
 - Appendix U (Sponsor Procurement Requirements)



KEY LEGAL AUTHORITIES, CONT.

- 2 C.F.R. Part 200
 - Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards
- 2 C.F.R. Part 1200
 - DOT specific

(Supersedes former DOT Common Rule, 49 C.F.R. Part 18)

KEY LEGAL AUTHORITIES, CONT.

- FAA Advisory Circular 150/5100-14E
 - Professional services contracts (80 pages)
 - Planning & Design/Construction/Management of Projects
- FAA Advisory Circular 150/5370-10G
 - Construction contracts (662 Pages)



AIP — PROCUREMENT REQUIREMENTS

- Bid documents are also subject to federal rules!
 - Bidders must be given notice of required contract provisions
 - Certain provisions can be incorporated by reference in the bid documents
 - Others must be provided in their entirety.

See, FAA, Required Contract Provisions for AIP Program and for Obligated Sponsors



AIP — CONTRACT REQUIREMENTS

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Procurement and Contracting Under AIP Federal Contract Provisions

Print Share

Contents

- Main
- Micro-Purchase
- General Procurement
- Small Purchase Procurement
- Equipment Procurement
- Professional (A/E) Services Procurement
- **Federal Contract Provisions**
- Related Resources

The procurements a sponsor makes under the AIP must comply with all applicable federal contract provisions as established by various laws and regulations. The requirements for the provisions will vary depending on the type and size of the procurement action. Typically, procurement actions under the AIP fall within the following categories:

1. Construction Development,
2. Equipment Acquisitions, and
3. Professional Services (A/E) Contracting.

Application of a certain provision also depends on established contract dollar thresholds and whether the contract is for construction or for another purpose.

Top Tasks

- View airport program statistics
- Search airport data
- Find an airport AC
- Read best practices for runway safety
- Learn about the Airport Improvement Program

Procurement and Contracting Under AIP

Program Guidance Letters (PGLs)

State Block Grant Program

Airport Compliance

Airport Cooperative Research Program

Airport Improvement Program (AIP)

- AIP Grant Payments
- AIP Handbook
- Airport Capital Improvement Plan (ACIP)
- Benefit-Cost Analysis
- Buy American Preferences
- Grant Assurances
- Grant Histories
- Grant/ Apportionment Data
- Letter of Intent (LOI) Program
- Military Airport Program
- Overview

Procurement and Contracting Under AIP

Program Guidance Letters (PGLs)

State Block Grant Program

Airport Safety

Engineering, Design, & Construction

AIP – CONTRACT REQUIREMENTS, CONT.

Table 1 – Applicability of Provisions

Provision	Dollar Threshold	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
a. <u>Access to Records and Reports</u>	\$ 0	REQD	REQD	REQD	REQD	n/a
b. <u>Buy American Preferences</u>	\$ 0	Limited	REQD	REQD	Limited	n/a
(1) <u>Buy American Statement</u>	\$ 0	Limited	REQD	REQD	Limited	n/a
(2) <u>Buy American – Total Facility</u>	\$ 0	Limited	REQD	REQD	Limited	n/a
(3) <u>Buy American – Manufactured Product</u>	\$ 0	Limited	REQD	REQD	Limited	n/a
c. <u>Civil Rights – General</u>	\$ 0	REQD	REQD	REQD	REQD	REQD
d. <u>Civil Rights - Title VI Assurances</u>	\$ 0	REQD	REQD	REQD	REQD	REQD
(1) <u>Notice - Solicitation</u>	\$ 0	REQD	REQD	REQD	REQD	REQD
(2) <u>Clause - Contracts</u>	\$ 0	REQD	REQD	REQD	REQD	REQD
(3) <u>Clause – Transfer of U.S. Property</u>	\$ 0	n/a	n/a	n/a	REQD	REQD
(4) <u>Clause – Transfer of Real Property</u>	\$ 0	n/a	n/a	n/a	REQD	REQD
(5) <u>Clause - Construct/Use/Access to Real Property</u>	\$ 0	n/a	n/a	n/a	REQD	REQD
(6) <u>List – Pertinent Authorities</u>	\$ 0	REQD	REQD	REQD	REQD	REQD
e. <u>Disadvantaged Business Enterprise</u>	\$ 0	REQD	REQD	REQD	REQD	n/a
f. <u>Energy Conservation Requirements</u>	\$ 0	REQD	REQD	REQD	REQD	n/a
g. <u>Federal Fair Labor Standards Act</u>	\$ 0	REQD	REQD	REQD	REQD	REQD

AIP – CONTRACT REQUIREMENTS, CONT.

1. Access to records and reports
2. Buy American Preferences
3. Civil Rights – General
4. Civil Rights – Title VI Assurances
5. Disadvantaged Business Enterprise
6. Energy Conservation Requirements
7. Federal Fair Labor Standards Act



AIP – CONTRACT REQUIREMENTS, CONT.

8. Occupational Safety and Health Act
9. Rights to Inventions
10. Trade Restriction Certification
11. Veteran's Preference
12. Seismic Safety
13. Copeland Anti-Kickback
14. Davis Bacon Requirements



AIP – CONTRACT REQUIREMENTS, CONT.

- 15. Distracted Driving
- 16. Affirmative Action Requirement
- 17. Equal Employment Opportunity
- 18. Prohibition of Segregated Facilities
- 19. Recovered Materials
- 20. Termination of Contract
- 21. Debarment and Suspension



AIP — CONTRACT REQUIREMENTS, CONT.

22. Contract Work Hours and Safety Standards

23. Lobbying Federal Employees

24. Breach of Contract

25. Clean Air/Water Pollution Control



PFC-FUNDED CONTRACTS

- PFC-funded projects are not subject to AIP requirements, unless:
 - Project is funded with PFC and AIP funds
 - Project is part of a past, current, or future AIP-funded program or project.
- See generally:
 - FAA Order 5500.1
 - OMB Memorandum A-133
 - 14 C.F.R. Part 158

TIPS FOR AVOIDING COMMON MISTAKES

1. Educate airport and procurement staff about federal contracting requirements.
2. If you do not already have a contracting specialist, consider adding one to your team.
3. Understand and harmonize local and federal requirements.
4. When in doubt, coordinate with your FAA officer.
5. Review and understand contract templates and forms; update as necessary.
6. You can sometimes use local preference as a selection criterion, but it must be carefully crafted.

TIPS, CONT.

6. EIS contracts have very different rules.
7. Don't seek AIP funding for attorney fees unless they are attributable to State or local project issues.
8. Monitor compliance and document that confirmation.
9. Make certain that you have and correctly follow an approved DBE program.
10. Don't offer a bonus payment for early completion of work. That is **prohibited**.
11. Educate your board / approving authority.

LABOR ISSUES

- What the heck are you talking about? No way!
- Buzz Words:
 - “Living Wage”
 - “Labor Peace”
 - “Labor Harmony”
- On Airport Contracts
 - Concessions Agreements
 - Use & Lease Agreements
 - Under Wing Contractors’ License/Permit



LABOR LAW & AIRPORT CONTRACTS

- Buckle Up
- Overview
- Foreign Language
- General Understanding
- Get Help (Information & Counsel)



A BRIEF PRIMER ON LABOR LAW

- Largely a federal animal
- National Labor Relations Act (“NLRA”)
- Union Election Basics
 - “Showing of Interest” 30% Rule
 - Card Signing
 - Practical Approach To Pursuing A Petition For Election
 - Election Standard: 50% + 1
 - Elections
 - Generally 4-6 Weeks
 - Actual Campaigning – Company & Union



LABOR LAW PRIMER

- Considerations In Elections
 - Not Cheap Or Painless For Either Party
 - Size Matters
 - Relevance To Airport Context
- Potential Disputes:
 - “Neutrality” – You mean like, Switzerland?
 - “Card Check” – What is it and how is it relevant to an airport?



LABOR LAW PRIMER

- 1st Contract and Requirements of NLRA
 - What standard may mean to employees/new union
- Why relevant to an airport?
 - External
 - Employees & Service Issues



LABOR LAW PRIMER

- Examples of ways to address labor issues
 - Do nothing...
 - “Labor Peace” agreement
 - Prevailing / living wage legislation or regulation
 - Employment continuity / retention
 - All part of RFP package/requirements
- All part of RFP package/requirements
- Potentially a political minefield



QUESTIONS?

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