

AIRPORT CONTRACTS: FEDERAL COMPLIANCE



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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?



GOAL OF THIS SESSION

- The definitive guide to contracting?
- Awareness
- Know who your go-to person is in your organization
- Real-life examples



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



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)



THAT'S A LOT OF STUFF - DO I HAVE TO READ IT ALL?

- FAA “guidance” document to help!



AIP – CONTRACT REQUIREMENTS

The screenshot shows the FAA website's 'Airports' section. The main heading is 'Procurement and Contracting Under AIP Federal Contract Provisions'. The page features a navigation menu with options like 'Aircraft', 'Airports', 'Air Traffic', 'Data & Research', 'Licenses & Certificates', 'Regulations & Policies', and 'Training & Testing'. A search bar is located at the top right. The main content area includes a 'Contents' section with a list of links: 'Main', 'Micro-Purchase', 'General Procurement', 'Small Purchase Procurement', 'Equipment Procurement', 'Professional (A/E) Services Procurement', 'Federal Contract Provisions', and 'Related Resources'. A 'Top Tasks' sidebar on the right lists tasks such as 'View airport program statistics', 'Search airport data', 'Find an airport AC', 'Read best practices for runway safety', and 'Learn about the Airport Improvement Program'. A large orange arrow points to the '3. Professional Services (A/E) Contracting' item in the table of contents.

AIP – CONTRACT REQUIREMENTS, CONT.

Table 1 – Applicability of Provisions

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
Access to Records and Reports	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
Affirmative Action Requirement	\$10,000	REQD	Limited	REQD	Limited	Limited	n/a
Breach of Contract	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
Buy American Preferences	\$ 0	REF	Limited	REQD	REQD	Limited	n/a
(1) Buy American Statement	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(2) BA – Total Facility	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
(3) B.A. – Manufactured Product	\$ 0	NIS	Limited	REQD	REQD	Limited	n/a
Civil Rights – General	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
Civil Rights - Title VI Assurances	\$ 0	REF	REQD	REQD	REQD	REQD	REQD
(1) Notice - Solicitation	\$ 0	REQD	REQD	REQD	REQD	REQD	REQD
(2) Clause - Contracts	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
(3) Clause – Transfer of U.S. Property	\$ 0	NIS	n/a	n/a	n/a	Limited	REQD
(4) Clause – Transfer of Real Property	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(5) Clause - Construct/Use/Access to Real Property	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(6) List – Pertinent Authorities	\$0	NIS	REQD	REQD	REQD	REQD	REQD
Clean Air/Water Pollution Control	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
Contract Work Hours and Safety Standards	\$100,000	NIS	Limited	REQD	Limited	Limited	n/a
Copeland Anti-Kickback	\$ 2,000	NIS	Limited	REQD	Limited	Limited	n/a
Davis Bacon Requirements	\$ 2,000	REF	Limited	REQD	Limited	Limited	n/a

IMPORTANT NOTES

- Bid documents are also subject to federal rules!
 - Some incorporated by reference, others verbatim
 - Check the chart *and* read the relevant sections!
- Non-AIP contracts are implicated too!
 - Concessions
 - Services contracts
 - Theoretically, anything



A TASTE OF CONTRACT CLAUSES

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



A TASTE OF CONTRACT CLAUSES

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



A TASTE OF CONTRACT CLAUSES

- 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



A TASTE OF CONTRACT CLAUSES

22. Contract Work Hours and Safety Standards

23. Lobbying Federal Employees

24. Breach of Contract

25. Clean Air/Water Pollution Control



A DEEPER DIVE ON TITLE VI

Unlawful Discrimination

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or disability in public services and employment opportunities. Allegations of discrimination should be promptly reported to the Airport Manager or:

Federal Aviation Administration
Office of Civil Rights, ACR-1
800 Independence Avenue, S.W.
Washington, D.C. 20591

Federal regulations on unlawful discrimination are available for review in the Airport Manager's Office.

Coordinator:
Phone:
Address:

Discriminacion Ilegal

Se prohíbe a los operadores de aeropuertos y a sus arrendatarios, inquilinos, concesionarios y contratistas discriminar contra cualquier persona por motivo de raza, color, nacionalidad de origen, sexo, creencias religiosas, impedimento físico o discapacidad en lo que respecta a servicios públicos y oportunidades de empleo. Las alegaciones de discriminación deberán ser dirigidas inmediatamente al Administrador del Aeropuerto o a:

Federal Aviation Administration
Office of Civil Rights, ACR-1
800 Independence Avenue, S.W.
Washington, D.C. 20591

Los reglamentos sobre discriminación ilegal están a la disposición de los interesados para su examen en la oficina del Administrador del Aeropuerto.

Coordinador:
Teléfono:
Dirección:



U.S. Department of Transportation
Federal Aviation Administration

FD-1070 (8)

COMMONLY CONFUSED: MULTIPLE TITLE VI CONTRACT PROVISIONS

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
<u>Civil Rights - Title VI Assurances</u>	\$ 0	REF	REQD	REQD	REQD	REQD	REQD
(1) <u>Notice - Solicitation</u>	\$ 0	REQD	REQD	REQD	REQD	REQD	REQD
(2) <u>Clause - Contracts</u>	\$ 0	NIS	REQD	REQD	REQD	REQD	REQD
(3) <u>Clause – Transfer of U.S. Property</u>	\$ 0	NIS	n/a	n/a	n/a	Limited	REQD
(4) <u>Clause – Transfer of Real Property</u>	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(5) <u>Clause - Construct/Use/Access to Real Property</u>	\$ 0	NIS	n/a	n/a	n/a	REQD	REQD
(6) <u>List – Pertinent Authorities</u>	\$0	NIS	REQD	REQD	REQD	REQD	REQD

TITLE VI EXPLAINED

- (1) Notice – Solicitation
 - *All contracts?*
 - In practice, FAA has not objected to including this language only in solicitations
- (2) Clause – Contracts
 - Include in *all contracts*
- (3) Clause – Transfer of U.S. Property
 - Says “REQD,” but...
 - “This is a rare occurrence and it will be the responsibility of the United States government to include the clause in the contract.”

TITLE VI EXPLAINED

- (4) Clause – Transfer of Real Property
 - Purportedly applies to *all* sales or leases of airport property
- (5) Clause – Construction/Use/Access to Real Property
 - *Also* purportedly applies to leases
 - *Definitely* applies to access agreements, licenses, permits, etc.
- (6) List – Pertinent Authorities
 - FAA’s “laundry list”
 - Always, always include!

GUIDING QUESTIONS...

- What is the function of the contract?
- Is it a combination of two or more categories (*e.g.*, construction and property lease)?

GRANT ASSURANCE ISSUES

- Many of the entries in the chart reflect Grant Assurance obligations
 - Grant Assurance 14 – Minimum Wage and Davis-Bacon
 - Grant Assurance 15 – Veteran’s Preference
 - Grant Assurance 30 – Civil Rights, Title VI
- But, watch out for other pitfalls, particularly in non-aeronautical contracts
 - Grant Assurance 5 ostensibly limits the length of NA leases
 - Grant Assurances 24 and 25 demand that the sponsor receive fair market value for NA leases

PIT'S EXPERIENCE



**PITTSBURGH
INTERNATIONAL AIRPORT**

ANOTHER EXAMPLE

Table 1 – Applicability of Provisions

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
J. Access to Records and Reports	\$ 0	NIS	REQD	REQD	REQD	REQD	n/a
P. Affirmative Action Requirement	\$10,000	REQD	Limited	REQD	Limited	Limited	n/a
25. Breach of Contract	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
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Contract Work Hours and Safety Standards	\$100,000	NIS	Limited	REQD	Limited	Limited	n/a
Copeland Anti-Kickback	\$ 2,000	NIS	Limited	REQD	Limited	Limited	n/a
Davis Bacon Requirements	\$ 2,000	REF	Limited	REQD	Limited	Limited	n/a
Debarment and Suspension	\$25,000	REF	REQD	REQD	REQD	Limited	n/a

BOTTOM LINE: ERR ON THE SIDE OF INCLUSION

- But, be prepared for concessionaires and contractors to push back on overbroad or marginally applicable provisions
- May need to consult with FAA if a dispute arises

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 CONTRACTING 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.

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.

QUESTIONS?

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