AIRPORT CONTRACTS: FEDERAL COMPLIANCE

Nicholas M. Clabbers, Kaplan Kirsch & Rockwell LLP
John Serpa, Allegheny County Airport Authority – Pittsburgh International Airport
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)
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
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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
# Commonly Confused: Multiple Title VI Contract Provisions

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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.”
(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)?
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
## Table 1 – Applicability of Provisions

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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?

Nicholas M. Clabbers  
Kaplan Kirsch & Rockwell LLP  
nclabbers@kaplankirsch.com  
303-825-6388

John Serpa  
Allegheny County Airport Authority  
jserpa@flypittsburgh.com  
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