

## Title 14—Aeronautics and Space

## CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 13545; Amtd. No. 13545]

## PART 152—AIRPORT AID PROGRAM

## Revised Requirements for Administration

The purpose of this amendment to Part 152 of the Federal Aviation Regulations is to implement certain revised requirements for administering grants-in-aid to State and local governments under the Airport and Airway Development Act of 1970.

This amendment is based on a notice of proposed rule making (Notice No. 74-7) issued on February 14, 1974 and published in the FEDERAL REGISTER on February 21, 1974 (39 FR 6674). Interested persons have been afforded an opportunity to participate in the making of these amendments, and due consideration has been given to all comments received in response to that notice.

The basis for these revised administrative requirements is Office of Management and Budget (OMB) Circular A-102 dated October 19, 1971 (with supplementing Transmittal Memorandums dated January 25, 1972 and September 8, 1972), and OMB Circular A-87 dated May 9, 1968 (amended by Transmittal Memorandum No. 1 dated June 17, 1970).

OMB Circular A-102 promulgated Attachments A through O containing standards for establishing consistency and uniformity among Federal agencies in the administration of grants to State and local governments. Also included in the Circular are standards to insure the consistent implementation of sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1101).

By memorandum of March 27, 1969, to the Office of Management and Budget, and to ten Federal agencies engaged in domestic grant-in-aid programs, the President ordered a three-year effort to simplify, standardize, decentralize and otherwise modernize the Federal grant machinery. The standards subsequently developed and included in the attachments to OMB Circular A-102 will replace a multitude of varying and sometimes conflicting requirements in the same or similar subject matters which have been burdensome to State and local governments. Inherent in this standardization process is the concept of placing greater reliance on State and local governments. In addition, The Intergovernmental Cooperation Act of 1968 was passed, in part, for the purposes of: (1) Achieving the fullest cooperation and coordination of activities among levels of government; (2) improving the administration of grants-in-aid to the States; and (3) establishing coordinated intergovernmental policy and administration of Federal assistance programs. This Act provided certain basic policies pertaining to administrative requirements to be imposed upon the States as a condition to

receiving Federal grants. The implementing instructions of these policies were initially issued in OMB Circular A-96 dated August 29, 1969. OMB Circular A-102 modifies these instructions in the interest of achieving further consistency in implementing that Act.

OMB Circular A-102 includes 15 attachments, Attachments A through O, each of which prescribes standards for a separate area of grant administration, as follows:

- Attachment A—Cash Depositories
- Attachment B—Bonding and Insurance
- Attachment C—Retention and Custodial Requirements for Records
- Attachment D—Waiver of "Single" State Agency Requirements
- Attachment E—Program Income
- Attachment F—Matching Share
- Attachment G—Standards for Grantee Financial Management Systems
- Attachment H—Financial Reporting Requirements
- Attachment I—Monitoring and Reporting of Program Performance
- Attachment J—Grant Payment Requirements
- Attachment K—Budget Revision Procedures
- Attachment L—Grant Closeout Procedures
- Attachment M—Standard Forms for Applying for Federal Assistance
- Attachment N—Property Management Standards
- Attachment O—Procurement Standards

OMB Circular A-87 promulgates principles and standards for determining costs applicable to grants and contracts with State and local governments. They are designed to provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between grantees and their Federal counterparts.

To the extent that OMB Circulars A-102 and A-87 are directive upon the FAA, those requirements have been, or will be, implemented by internal directive or policy guidance. Standards and requirements applicable to sponsors or grantees are to be implemented by amendments to appropriate sections of Part 152 of the Federal Aviation Regulations, and by including certain of the material as appendices to Part 152. For convenience and clarity, OMB Circular A-87 and Attachments G, N, and O of OMB Circular A-102, have been edited and appear as Appendix J, K, L, and M, respectively, of Part 152. In general, only those portions which are directive upon Federal agencies have been deleted as superfluous for the purposes of Part 152.

This amendment implements a number of significant changes in grant administration. A brief discussion of major changes is set forth below:

Appendix J, which is derived from OMB Circular A-87, prescribes principles and standards for determining costs applicable to grants and contracts with State and local governments, and will allow under the Planning Grant Program certain indirect costs, principally certain administrative costs, and require sponsors to support such costs by means of a cost allocation plan or indirect cost proposal.

Appendix K, which is derived from Attachment G to OMB Circular A-102, prescribes standards for financial management systems required to be established and maintained by sponsors.

Appendix L, which is derived from Attachment N to OMB Circular A-102, prescribes uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds by State and local governments.

Appendix M, which is derived from Attachment O of OMB Circular A-102, provides standards for use by State and local governments in establishing procedures for the procurement of supplies, equipment, construction, and other services with Federal grant funds.

New application and payment forms are implemented by this amendment. The grant agreement form currently in use would continue to be used.

Revised grant payment procedures are provided for. Generally, reimbursement up to the full amount of the grant without audit may be made where allowability of costs can be determined prior to audit, and partial grant payments could be made as advance payments, under certain conditions, up to 90 percent of the estimated United States' share of project costs or the grant amount.

Provisions for withholding of grant payments under certain conditions, and for suspension and termination of grants for cause or convenience, and for requesting reconsideration of suspension or termination actions by the Administrator are included.

Information and data previously required to be submitted in the summary of project costs and in periodic estimates will now be submitted in periodic financial reports (requests for payment) and in program performance reports.

Under the planning grant program, advance payments may be made by letters of credit or by Treasury check, under certain conditions, up to the full amount of the grant agreement.

Real property donated to the sponsor by another public agency, and previously not an allowable project cost, will now be an allowable project cost, subject to the limitations of § 152.45(d) of Part 152.

Copies of OMB Circular A-102 and OMB Circular A-87 may be obtained from FAA Airports District offices and FAA Regional offices.

By Executive Order dated May 9, 1973, the President transferred certain functions of the Office of Management and Budget relating to financial and property management to the Secretary of Commerce and the Administrator of the General Services Administration. Pursuant to that Order (which supersedes Executive Order 11541 of July 1, 1970 to the extent that it is inconsistent therewith) the program administration standards promulgated by OMB Circulars A-87 and A-102 are now administered by the Administrator of the General Services Administration.

In the interest of Government-wide grant-in-aid program uniformity, deviation from the requirements of OMB Circular A-102 and A-87 will be permitted only in exceptional cases and where adequate justification can be presented to the Administrator of the General Services Administration. However, as indicated in Notice 74-7, recommendations for change or amendment will be, and have been, carefully considered, and to the extent that such changes or amendments are permitted by existing law and appear to offer benefits in program administration, recommendations will be made to the Office of the Secretary of Transportation.

A substantial portion of comments received in response to Notice No. 74-7 recommended changes or amendments which would be at variance with the standards and procedures contained in OMB Circulars A-87 and A-102, and are not feasible within the constraint of government-wide grant-in-aid program uniformity. Consideration of these recommendations will be continued in the light of program experience, and with a view to future rulemaking and implementation, where program deficiencies become apparent.

In this connection, and in response to related comments, the FAA is initiating a review of current advance payment procedures in the interest of expediting such payments to sponsors. The feasibility of utilizing letters of credit, in the case of sponsors who qualify under the provisions of Attachment J of OMB Circular A-102, is included in that review.

In response to comments received, and in the interest of clarity and conformance with OMB Circulars A-87 and A-102, a number of minor changes from the amendments proposed have been made, as follows:

Section 152.47(a)(8) has been reworded to make it clear that only "direct" costs are allowable project costs; the word "specifically," proposed to be deleted, is retained.

Section 152.51(a), relating to contracting requirements has been amplified for clarity and to conform with OMB Circular A-102 to include a statement of requirements relating to construction bids.

Sections 152.63(c) and (d), and 152.143(b) have been changed to provide for a more definite date for the commencement of the record retention period.

Sections 152.63(e) and 152.143(c) have been changed to delete the proposed requirement for transfer of custody of certain records with long term retention value, since that requirement appears to be excessive to the requirements of A-102 and local law in some instances may prohibit such transfer of custody.

Sections 152.69(c) and 152.141(c) have been changed to conform with A-102 to make it clear that cash advances will be made as close as administratively possible to actual disbursements by the sponsor.

Section 152.69(d), relating to the withholding of payments, has been changed by deleting the term "program objectives," as vague and redundant.

Section 152.136, relating to contracting requirements for planning grants and preaward review, has been changed to conform with the requirements applicable to development grants specified in § 152.53.

Paragraph E.2.c. of Appendix J has been reworded to make it clear that only those costs incurred specifically for the purpose of the grant are allowable.

Paragraph 3.(c)(6) of Appendix M has been changed to make it clear that procurements may be negotiated in any of the stated circumstances, and that not all conditions must be met. A number of editorial corrections have also been made in Appendix M.

This amendment is made under the authority of sections 11 through 27 of the Airport and Airway Development Act of 1970 (84 Stat. 220-233), and § 1.47(g) of the Regulations of the Office of the Secretary of Transportation (49 CFR § 1.47(g)).

In consideration of the foregoing, Part 152 of the Federal Aviation Regulations is amended, effective July 1, 1974, as set forth below.

Issued in Washington, D.C., on May 24, 1974.

ALEXANDER P. BUTTERFIELD,  
Administrator.

1. By amending § 152.23 as follows:

a. By revising the section heading and amending the introductory portion of paragraph (a), and by inserting a new subparagraph (1), to read as follows:

§ 152.23 Procedures: preapplication for aid; accompanying information.

(a) *Preapplication for aid.* An eligible sponsor that desires to obtain Federal aid for eligible airport development must submit to the appropriate FAA office (Airports District Office having jurisdiction over the area where the sponsor is located, or, where there is no such office, the regional office having that jurisdiction) a preapplication on FAA Form 5100-30, accompanied by the following:

(1) A list of the items of airport development requested for programming, including an itemized estimated cost of such work. A sketch or sketches of the airport layout should be prepared indicating thereon by appropriate legend, the location of each item of work proposed, using the same item numbers as set forth in the itemization listing.

b. By amending subparagraph (4)(i) by changing the reference "FAA Form 5100-3" to "FAA Form 5100-30."

c. By renumbering paragraphs (a)(1), (2), (3), (4), (5), (6), (7), as paragraphs (a)(2), (3), (4), (5), (6), (7), and (8), respectively.

§ 152.25 [Amended]

2. By amending paragraph (a) of § 152.25 by changing the reference "FAA Form 5100-10" to "FAA Form 5100-100."

§ 152.29 [Amended]

3. By amending paragraph (a) of § 152.29 by deleting the word "contains" in the second sentence and by substitut-

ing in lieu thereof the words "must include."

§ 152.47 [Amended]

4. By amending § 152.47 as follows:

a. By amending paragraph (a)(8) by inserting the word "direct" following the word "incidental."

b. By deleting subparagraph (b)(5) and by renumbering subparagraph (b)(6) as subparagraph (b)(5).

c. By adding a new paragraph (c)(6) to read as follows:

(6) Be a direct cost determined in accordance with the cost principles for States and local governments in Appendix J of this part.

5. By amending § 152.51 as follows:

a. By amending the section heading and by inserting a new paragraph (a) to read as follows:

§ 152.51 Contracting requirements: performance of construction work; general requirements.

(a) *Contracting requirements.* Each contract under a project must meet the requirements of local law and the requirements and standards contained in Appendix M of this part. The sponsor shall establish procedures for procurement of supplies, equipment, construction, and other services funded under the project which meet the requirements of Appendix M. All bids for construction or facility improvement in excess of \$100,000 shall be accompanied by a bid guarantee consisting of a firm commitment such as a bid bond, certified check or other negotiable instrument equivalent to five percent of the bid price as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. By deleting paragraph (b) and by redesignating paragraph (a) as paragraph (b).

§ 152.53 [Amended]

6. By amending § 152.53 as follows:

a. By amending paragraph (a) by deleting the figures "\$2,000" that appear in the first sentence and by substituting in lieu thereof the figures "\$2,500."

b. By deleting the words "and that the contract conforms to the sponsor's grant agreement with the United States" which appear at the end of the first sentence in paragraph (e).

c. By amending paragraph (e) by adding the following at the end thereof:

(e) \* \* \* A sponsor's proposed contract must have preaward review and approval of the FAA in any of the following circumstances:

(1) The sponsor has not complied with the standards of Appendix M of this part.

(2) The contract is proposed to be awarded on a sole-source basis and is expected to exceed \$5,000.

(3) The proposed contract is expected to exceed \$500,000.

(4) The sponsor has not previously received a grant from the Department of Transportation.

(5) The FAA requests that the proposed contract be submitted for pre-award review and approval.

7. By revising § 152.63 to read as follows:

**§ 152.63 Financial management systems: accounting and audit of sponsor and contractor records.**

(a) *Financial management system.* Each sponsor shall establish and maintain a financial management system that meets the standards of Appendix K of this Part.

(b) *Accounting records.* Each sponsor shall establish and maintain, for each individual project, an adequate accounting record to allow appropriate personnel of the FAA to determine all funds received (including funds of the sponsor and funds received from the United States or other sources), and to determine the allowability of all incurred costs of the project. The sponsor shall segregate and group project cost so that it can furnish, on due notice, cost information in the following cost classifications:

- (1) Purchase price or value of land.
- (2) Cost of relocation payment and assistance.
- (3) Incidental costs of land acquisition.
- (4) Costs of contract construction.
- (5) Cost of force account construction.
- (6) Engineering costs of plans and designs.
- (7) Engineering costs of supervision and inspection.
- (8) Other administrative costs.

(c) *Documentary evidence.* The sponsor shall obtain and retain, for a period of three (3) years after the date of the submission of the final expenditure report, documentary evidence such as invoices, cost estimates, and payrolls supporting each item of project costs.

(d) *Retention of evidence of payment.* The sponsor shall retain, for a period of three (3) years after the date of the submission of the final expenditure report, evidence of all payments for items of project costs including vouchers, cancelled checks or warrants, and receipts for cash payments.

(e) *Availability of records.* The sponsor shall allow the Administrator and the Comptroller General of the United States, or an authorized representative of either of them, access to any of its books, documents, papers, and records that are pertinent to grants received under the Airport Development Aid Program for the purposes of accounting and audit. Appropriate FAA personnel may make progress audits at any time during the project, upon notice to the sponsor. If audit findings have not been resolved, records shall be retained until such findings have been resolved. Records for non-expendable property which was acquired with Federal funds shall be retained for 3 years after final disposition of the property. Microfilm copy of original records may be substituted for original records with the approval of the FAA. If the FAA determines that certain records have

long-term retention value, the FAA shall request transfer of custody of those records to the FAA.

(f) *Availability of contractor's records.* The sponsor shall include in each contract of the cost-reimbursable type a clause which allows the Administrator and the Comptroller General of the United States, or an authorized representative of either, access to the contractor's records pertinent to the contract for the purposes of accounting and audit.

(g) *Property management standards.* The sponsor shall establish and maintain property management standards for the utilization and disposition of property furnished by the Federal government or acquired in whole or in part with Federal funds by the sponsor in accordance with Appendix L of this part.

8. By adding a new § 152.64 to read as follows:

**§ 152.64 Noncompliance with conditions of grant: suspension or termination of grant.**

(a) *Suspension of grant.* If the sponsor fails to comply with the conditions of the grant, the FAA may, by written notice to the sponsor, suspend the grant and withhold further payments pending corrective action by the sponsor or a decision to terminate the grant. After receipt of notice of suspension, the sponsor may not incur additional obligations of grant funds during the suspension. All necessary and proper costs which the sponsor could not reasonably avoid during the period of suspension will be allowed, if such costs are in accordance with Appendix J of this part.

(b) *Termination for cause.* If the sponsor fails to comply with the conditions of the grant, the FAA may, by written notice to the sponsor, terminate the grant in whole, or in part. The notice of termination will contain the reasons for termination and the effective date of termination. After receipt of the notice of termination the sponsor may not incur additional obligations of grant funds. Payments to be made to the sponsor or recoveries of payments by the FAA under the grant shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* When the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds, the grant may be terminated in whole, or in part, upon mutual agreement of the FAA and the sponsor. Agreement will be made upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. In such case the sponsor shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many obligations, relating to the terminated portion, as possible. The sponsor will be allowed full credit for the Federal share of the noncancellable obligations which were properly incurred by the sponsor prior to the termination.

(d) *Request for reconsideration.* In any case of suspension or termination,

the sponsor may request the Administrator to reconsider the suspension or termination. Such request for reconsideration shall be made within 45 days after receipt of the notice of suspension or termination.

9. By amending § 152.65 by revising the introductory portion of paragraph (a) to read as follows:

**§ 152.65 Grant payments: General.**

(a) *Application.* Except in those instances where the sponsor has secured prior approval by the FAA for the use of FAA Form 5100-61, an application for a grant payment is made on FAA Form 5100-60, accompanied by any supporting information, including appraisals of property interests, that the FAA needs to determine the allowability of any costs for which payment is requested.

10. By adding a new § 152.66 to read as follows:

**§ 152.66 Reporting requirements.**

(a) *Reporting on accrual basis.* Sponsors shall submit all financial reports on an accrual basis. If records are not maintained on an accrual basis, reports may be based on analysis of records or best estimates.

(b) *Report of Federal cash transactions.* When funds are advanced to a sponsor by Treasury check, the sponsor shall submit FAA Form 5100-62 within 15 working days following the end of each quarter.

(c) *Monitoring and reporting of program performance.* The sponsor shall monitor performance under the project to assure that time schedules are being met, projected work units by time periods are being accomplished, and that other performance goals are being achieved. Reviews shall be made for each item of development included in the project and other work to be performed as a condition of the grant agreement. The sponsor shall submit a performance report, on a quarterly basis, which must include—

(1) A comparison of actual accomplishments to the goals established for the period. Where applicable, a comparison will be made on a quantitative basis related to cost data for computation of unit costs;

(2) Reasons for slippage in those cases where established goals are not met; and

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(d) *Notice of delay or acceleration.* The sponsor shall promptly notify the FAA of conditions or events which may delay or accelerate accomplishment of the project. In the event that delay is anticipated, a statement of actions taken or contemplated and Federal assistance required must be included.

(e) *Budget revision.* If any performance review conducted by the sponsor discloses a need for change in the budget estimates, the sponsor shall submit a request for budget revision on FAA Form

5100-100. Such request for prior approval for budget revision shall be made promptly by the sponsor whenever:

(1) The revision results from changes in the scope or objective of the project; or

(2) The revision increases the budgeted amounts of Federal funds needed to complete the project.

(f) The sponsor shall promptly notify the FAA whenever the amount of the grant is expected to exceed the needs of the sponsor by more than \$5,000 or 5 percent of the grant amount, whichever is greater.

11. By revising § 152.69 to read as follows:

**§ 152.69 Partial grant payments.**

(a) *General.* Subject to the final determination of allowable project costs as provided in § 152.71, partial grant payments for project costs may be made to a sponsor upon application. Unless previously agreed otherwise, a sponsor may apply for partial payments on a monthly basis. The payments may be paid, upon application made on FAA Form 5100-60, on the basis of the costs of airport development that is accomplished, or, with the prior approval by FAA for the use of FAA Form 5100-61, on the basis of the estimated costs of airport development expected to be accomplished.

(b) *Reimbursements.* When allowability of costs can be determined, grant payments are made in amounts large enough to bring the aggregate amount of all partial payments to the estimated United States' share of the project costs of the airport development accomplished under the project as of the date of the sponsor's latest application for payment.

(c) *Advance payments.* With prior FAA approval, and if the sponsor applies, partial grant payments may be made as advance payments in an amount large enough to bring the aggregate amount of all partial payments to the estimated project costs of the airport development expected to be accomplished within 30 days after the date of the sponsor's application for advance payment. However, no such advance payment may be made in an amount that would bring the aggregate amount of all partial payments for the project to more than 90 percent of the estimated United States' share of the total estimated cost of all airport development included in the project, but not including contingency items, or 90 percent of the maximum obligation of the United States as stated in the grant agreement, whichever amount is the lower. In determining the amount of a partial grant payment, those project costs that the Administrator considers to be of questionable allowability are deducted both from the amount of a partial grant payment, amount of project costs incurred and from the amount of the estimated total project cost. The timing and amount of cash advances shall be as close as administratively feasible to actual disbursements by the sponsor.

(d) Payment to the sponsor may be withheld at any time during the grant period if the sponsor has failed to com-

ply with grant award conditions or Federal reporting requirements, or the sponsor is indebted to the United States and collection of the indebtedness will not impair accomplishment of any grant program sponsored by the United States.

12. By revising § 152.71 to read as follows:

**§ 152.71 Grant closeout requirements.**

(a) *Program income.* Sponsors that are units of local government shall return all interest earned on advances of grant-in-aid funds to the Federal Government in accordance with a decision of the Comptroller General (42 Comp. Gen. 289). All other program income (gross income) earned by grant-supported activities during the grant period shall be retained by the sponsor and, in accordance with the grant agreement:

(1) Added to funds committed to the project by the FAA and the sponsor and used to further eligible program objectives; or

(2) Deducted from the total project cost for the purpose of determining the net costs on which the Federal share of costs will be based.

(b) *Payment for cost incurred.* When the project is completed in accordance with the grant agreement, the sponsor may apply for payment for incurred costs up to the maximum amount of the grant agreement. When allowability of costs can be determined under § 152.47, payment may be made to the sponsor if—

(1) A final inspection of all work at the airport site has been made jointly by the appropriate FAA office and representatives of the sponsor and the contractor, unless that office agrees to a different procedure for final inspection;

(2) The sponsor has furnished final "as-constructed" plans, unless otherwise agreed to by the Administrator; and

(3) The FAA is satisfied that the project is completed.

(c) *Financial reports.* The sponsor shall furnish within 90 days after the date of completion of a grant all financial, performance, and other reports required as a condition of the grant.

(d) *Property accounting reports.* The sponsor shall account for any property acquired with grant funds, or received from the Government, in accordance with the provisions of Appendix L of this part.

(e) *Final determination of U.S. share.* Based upon the final audit, the Administrator determines the total amount of the allowable project costs and makes settlement for any upward or downward adjustments to the Federal share of costs.

**§ 152.73 [Amended]**

13. By amending paragraph (a) of § 152.73 by changing the reference to "(FAA Form 5100-3)" to "(FAA Form 5100-30)."

14. By revising § 152.75 to read as follows:

**§ 152.75 Forms.**

(a) *General.* The forms used for the purposes of Subparts B and C, are as follows:

(1) *Preapplication for Federal Assistance.* FAA Form 5100-30. This form establishes formal communication between the sponsor and the Federal Aviation Administration. It contains four parts:

(i) *Part I.* For pertinent information regarding the sponsor and type of assistance being requested.

(ii) *Part II.* For pertinent information regarding ancillary statutory and administrative requirements which have to be considered in approval of a project.

(iii) *Part III.* Project Budget. Identification of the source and amounts of funds to be used in accomplishing the project.

(iv) *Part IV.* Program Narrative Statement. For pertinent information describing the need, objectives, method of accomplishment, the geographical location of the project, and the benefits expected to be obtained from the assistance.

(2) *Project Application.* FAA Form 5100-100. A formal application for Federal aid to carry out a project under Subparts B and C. It contains five parts:

(i) *Part I.* For pertinent information regarding the sponsor and type of assistance being requested.

(ii) *Part II.* Project Approval Information. For pertinent information regarding ancillary statutory and administrative requirements which have to be considered in approval of project.

(iii) *Part III.* For pertinent budget information necessary for calculation of the Federal grant.

(iv) *Part IV.* Program narrative required for all new grant programs.

(v) *Part V.* Assurances. The applicant assures and certifies that he will comply with certain regulations, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for the proposed federally assisted project.

(3) *Grant Agreement.* FAA Form 5100-13;

(i) *Part I.* Offer by the United States to pay a specified percentage of the allowable costs of the project, as described therein, on specified terms relating to the undertaking and carrying out of the project, determination of allowability of costs, payment of the United States' share, and operation and maintenance of the airport in accordance with assurances in the project application.

(ii) *Part II.* Acceptance of the offer by the sponsor, execution of the acceptance by the sponsor, and certification by its attorney.

(4) *Application for Grant Payment.* FAA Form 5100-60, FAA Form 5100-61. The Outlay Report and Request for Reimbursement, FAA Form 5100-60, provides a detailed breakout of costs incurred by the sponsor, as well as certification provisions to be executed by the sponsor. Item 12. a. should be executed by a sponsor's representative authorized to make the payment request. Item 12. b. should be executed by a sponsor's representative qualified to make such certification. The Request for Advance or Reimbursement, FAA Form 5100-61, does not provide a detailed breakout of incurred costs; the certification is com-

## RULES AND REGULATIONS

pleted by the sponsor's authorized official. The use of FAA Form 5100-61 requires prior approval of FAA.

(5) *Report of Federal Cash Transactions, FAA Form 5100-62.* When funds are advanced to a sponsor through the use of FAA Form 5100-61 the sponsor submits an original and two copies of the Report of Federal Cash Transactions, FAA Form 5100-62 no later than 15 working days following the end of each quarter.

(b) *Availability of forms.* Copies of the forms listed in paragraph (a) of this section, and assistance in completing them are available from FAA offices.

15. By revising § 152.123 to read as follows:

§ 152.123 Application requirements.

(a) *General.* An eligible sponsor that desires to obtain Federal aid for eligible airport master planning or airport system planning, must submit to the appropriate FAA office a completed Application for Federal Assistance (Non-construction Programs), FAA Form 5100-101, signed by an authorized representative of the sponsor.

(b) *Coordination.* Evidence of coordination with other agencies and the appropriate state and area-wide clearing-houses, as required by OMB Circular No. A-95, must be attached to the application.

(c) *Budget information.* The budget information required with the application must be sub-divided into the following functions or activities, if appropriate, and the basis for computation of these costs must be included in the submission:

- (1) Third party contracts;
- (2) Sponsor force account costs; and
- (3) Administrative costs.

(d) *Program narrative.* The program narrative submitted with the application must contain at least the following items:

(1) *Objective of study:* a description of the purpose and objectives of the planning study.

(2) *Results and benefits expected:* a summation of the results and benefits anticipated as a result of the study.

(3) *Work Statement:* a detailed description of the proposed project work. This statement must include a description of each work element, a list of organizations, consultants, or other key individuals who will work on the project, and the nature of their contribution, and a proposed schedule of work accomplishment.

(4) *Geographic Location:* the location of the airport or the boundaries of the planning area.

(e) *Sponsor force account.* If the sponsor proposes to accomplish the project work with its own forces, or those of another public or planning agency, it must request approval from the appropriate FAA office. In requesting this approval, the sponsor must submit, as part of the program narrative, assurance that adequate competent personnel are available to satisfactorily accomplish the proposed planning.

16. By amending paragraph (b) (1) of § 152.125 to read as follows:

§ 152.125 Sponsor eligibility.

(b) *Eligibility requirements.* \* \* \*

(1) Make the certifications, representations, and warranties required in the Application for Federal Assistance (FAA Form 5100-101).

§ 152.129 [Amended]

17. By amending paragraph (c) (18) of § 152.129 by changing the reference to "Office of Management and Budget Circular No. A-87" to "Appendix J of this part."

§ 152.131 [Amended]

18. By amending paragraph (b) (14) of § 152.131 by changing the reference to "Office of Management and Budget Circular No. A-87" to "Appendix J of this part."

19. By adding a new § 152.136 to read as follows:

§ 152.136 Contracting requirements.

(a) Each contract under a project must meet the requirements of local law and the requirements and standards contained in Appendix M of this Part.

(b) A sponsor's proposed contract must have preaward review and approval of the FAA in any of the following circumstances:

(1) The sponsor has not complied with the standards of Appendix M of this part.

(2) The contract is proposed to be awarded on a sole-source basis and is expected to exceed \$5,000.

(3) The proposed contract is expected to exceed \$500,000.

(4) The sponsor has not previously received a grant from the Department of Transportation.

(5) The FAA requests that the proposed contract be submitted for preaward review and approval.

§ 152.137 [Amended]

20. By amending paragraph (e) of § 152.137 by changing the reference to "Office of Management and Budget Circular No. A-87" to "Appendix J of this part."

21. By adding a new § 152.140 to read as follows:

§ 152.140 Reporting requirements.

(a) *Reporting on accrual basis.* Sponsors shall submit all financial reports on an accrual basis. If records are not maintained on an accrual basis, reports may be based on analysis of records or best estimates.

(b) *Report of Federal cash transactions.* When funds are advanced to a sponsor by letters of credit or Treasury check, the sponsor shall submit FAA Form 5100-62 within 15 working days following the end of each quarter.

(c) *Monitoring and reporting of program performance.* The sponsor shall monitor performance under the project to assure that time schedules are being

met, projected work units by time periods are being accomplished, and other performance goals are being achieved. Reviews shall be made for each work element included in the project and other work to be performed as a condition of the grant agreement. The sponsor shall submit a performance report, on a quarterly basis, which must include—

(1) A comparison of actual accomplishments to the goals established for the period. Where applicable, a comparison will be made on a quantitative basis related to cost data for computation of work element costs;

(2) Reasons for slippage in those cases where established goals are not met; and

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high work element costs.

(d) *Notice of delay or acceleration.* The sponsor shall promptly notify the FAA of conditions or events which may delay or accelerate accomplishment of the project. In the event that delay is anticipated, a statement of actions taken or contemplated and Federal assistance required must be included.

(e) *Financial status report.* The sponsor shall submit a financial status report on FAA Form 5100-63 at the completion of the project. In the case of a project more than one year in duration, the report shall be submitted at the end of the first year after issuance of the grant and annually thereafter, and at completion of the project.

22. By revising § 152.141 to read as follows:

§ 152.141 Grant payments.

(a) *Methods of payment.* Grant payments to sponsors will be made by letter of credit, advance by Treasury check, or reimbursement by Treasury checks.

(b) *Letter of credit funding.* Letter of credit funding may not be used unless:

(1) There is or will be a continuing relationship between a sponsor and the FAA for at least a 12-month period and the total amount of advances to be received within that period is \$250,000 or more;

(2) The sponsor has established or demonstrated to the FAA the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee; and

(3) The sponsor's financial management system meets the standards for fund control and accountability prescribed in Appendix K of this Part.

(c) *Advance by Treasury check.* Advance of funds by Treasury check may be made if the sponsor meets the requirements of paragraph (b) (2) and (3) of this section. The timing and amount of cash advances shall be as close as administratively feasible to actual disbursements by the sponsor.

(d) *Reimbursement by Treasury check.* Reimbursement by Treasury check shall be made if the sponsor does not meet the requirements of paragraph (b) (2) and (3) of this section.

(e) *Request for payment.* Except when grant payment is to be made by letter of credit, requests for payment must be made on FAA Form 5100-61, Request for Advance or Reimbursement.

(f) *Withholding of payments.* Payment to the sponsor may be withheld at any time during the grant period if a sponsor has failed to comply with the program objectives, grant award conditions, or Federal reporting requirements, or the sponsor is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States.

23. By adding a new § 152.142 to read as follows:

§ 152.142 Noncompliance with conditions of grant: suspension or termination of grant.

(a) *Suspension of grant.* If the sponsor fails to comply with the conditions of the grant, the FAA may, by written notice to the sponsor, suspend the grant and withhold further payments pending corrective action by the sponsor or a decision to terminate the grant. After receipt of notice of suspension, the sponsor may not incur additional obligations of grant funds during the suspension. All necessary and proper costs which the sponsor could not reasonably avoid during the period of suspension will be allowed, if such costs are in accordance with Appendix J of this part.

(b) *Termination for cause.* If the sponsor fails to comply with the conditions of the grant, the FAA may, by written notice to the sponsor, terminate the grant in whole, or in part. The notice of termination will contain the reasons for termination and the effective date of termination. After receipt of the notice of termination the sponsor may not incur additional obligations of grant funds. Payments to be made to the sponsor or recoveries of payment by the FAA under the grant shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* When the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds, the grant may be terminated in whole, or in part, upon mutual agreement of the FAA and the sponsor. Agreement will be made upon the termination conditions, including the effective date and, in the case of partial terminations the portion to be terminated. In such case the sponsor shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many obligations, relating to the terminated portion, as possible. The sponsor will be allowed full credit for the Federal share of the noncancellable obligations which were properly incurred by the sponsor prior to the termination.

(d) *Request for reconsideration.* In any case of suspension or termination, the sponsor may request the Administrator to reconsider the suspension or termination. Such request for reconsideration shall be made within 45 days after receipt of the notice of suspension or termination.

24. By amending § 152.143 by revising the section heading and paragraphs (b) and (c), and by adding new paragraphs (e) and (f), to read as follows:

§ 152.143 Financial management system; accounting and audit of sponsor and contractor records.

(b) *Retention of evidence of payments.* The sponsor shall retain in its files, for a period of three years after the date of the submission of the final expenditure report, documentary evidence of—

(1) Invoices, cost estimates, and payrolls, supporting each item of project costs; and

(2) All payments for items of project costs including vouchers, cancelled checks or warrants, and receipts for cash payments.

(c) *Availability of records.* The sponsor shall allow the Administrator and the Comptroller General of the United States, or an authorized representative of either of them, access to any of its books, documents, papers, and records that are pertinent to grants received under the Planning Grant Program for the purposes of accounting and audit. Appropriate FAA personnel may make progress audits at any time during the project, upon notice to the sponsor. If audit findings have not been resolved, records shall be retained until such findings have been resolved. Records for nonexpendable property which was acquired with Federal funds shall be retained for 3 years after final disposition of the property. Microfilm copy of original records may be substituted for original records with the approval of the FAA. If the FAA determines that certain records have long-term retention value, the FAA shall request transfer of custody of those records to the FAA.

(e) *Financial management system.* Each sponsor shall establish and maintain a financial management system that meets the standards of Appendix K of this part.

(f) *Property management standards.* Each sponsor shall establish and maintain property management standards for the utilization and disposition of property furnished by the Federal Government, or acquired in whole or in part with Federal funds by the sponsor, in accordance with Appendix L of this part. The sponsor shall account for any property acquired with grant funds, or received from the Federal Government, in accordance with Appendix L of this part.

25. By adding a new § 152.145 to read as follows:

§ 152.145 Grant closeout requirements.

(a) *Notice of completion.* When a project has been completed and the final project report has been received and accepted by the FAA, a notice of project completion will be furnished to the sponsor by the FAA.

(b) *Reports.* The sponsor shall submit to the FAA within 90 days after

receipt of the notice of completion all financial, performance, and other reports required as a condition of the grant.

(c) *Program income.* Sponsors that are units of local governments shall return all interest earned on advances of grant-in-aid funds to the Federal Government in accordance with a decision of the Comptroller General (42 Comp. Gen. 289).

(d) *Final audit and settlement.* Based upon a final audit, the Administrator determines the total amount of the allowable project costs and makes settlement for any adjustments to the Federal share of costs.

26. By adding new appendices J, K, L, and M as set forth below:

APPENDIX J

There is set forth below principles for determining costs applicable to grants and contracts with State and local governments under the Airport and Airway Development Act of 1970:

PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS AND CONTRACTS WITH STATE AND LOCAL GOVERNMENTS

Part I—General

A. *Purpose and scope—1. Objectives.* This Appendix sets forth principles for determining the allowable costs of programs administered by State and local governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended. Under § 152.47, indirect costs are not allowable costs for Airport Development Projects.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. State and local governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

b. The grantee or contractor assumes the responsibility for seeing that Federally assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles are applicable in determining costs incurred by State and local governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) under the Airport and Airway Development Act of 1970.

B. *Definitions.* 1. Approval or authorization of the grantor Federal agency means documentation evidencing consent prior to incurring specific cost.

2. Cost allocation plan means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. Cost, as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

4. Cost objective means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. Federal agency means the Federal Aviation Administration.

6. Grant means an agreement between the Federal Government and a State or local government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this appendix applicable to grants in general also apply to any Federally sponsored cost reimbursement type of agreement performed by a State or local government, including contracts, subcontracts and subgrants.

7. Grant program means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

8. Grantee means the department or agency of State or local government which is responsible for administration of the grant.

9. Local unit means any political subdivision of government below the State level.

10. Other State or local agencies means departments or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

11. Services, as used herein, means goods and facilities, as well as services.

12. Supporting services means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

**C. Basic guidelines—1. Factors affecting allowability of costs.** To be allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

b. Be authorized or not prohibited under State or local laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both Federally assisted and other activities of the unit of government of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other Federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. **Allocable costs.** a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this Appendix may not be shifted

to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in section J.

3. **Applicable credits.** a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the Federal Government to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. **Composition of cost—1. Total cost.** The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. **Classification of costs.** There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential therefore that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

E. **Direct costs—1. General.** Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

2. **Application.** Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and effort devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment cost and other approved capital expenditures incurred specifically for the purpose of the grant.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G. of these principles.

F. **Indirect costs—1. General.** Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the

grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

2. **Grantee departmental indirect costs.** All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Appendix. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used:

a. **Predetermined fixed rates for indirect costs.** A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect costs.

b. **Negotiated lump sum for overhead.** A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. **Limitation on indirect costs.** a. Federal grants may be subject to laws that limit the amount of indirect cost that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Appendix, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Appendix, the amount not recoverable as indirect costs under a grant may not be shifted to another Federally sponsored grant program or contract.

G. **Cost incurred by agencies other than the grantee—1. General.** The cost of service provided by other agencies may only include allowable direct costs of the service plus a pro rata share of allowable supporting costs (section B.12.) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units or the supplying department or by other agencies.

5-31-74

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F.2.a.

H. *Cost incurred by grantee department for others—1. General.* The principles provided in section G. will also be used in determining the cost of services provided by the grantee department to another agency.

J. *Cost allocation plan—1. General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of Federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the Federally sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Department of Health, Education, and Welfare, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State and local government grantees in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level as well as indirect cost proposals of individual grantee departments.

4. *Negotiation and approval of indirect cost proposals for States.* a. The Department of Health, Education, and Welfare, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval and audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

b. At the grantee department level in a State, a single Federal agency will have responsibility similar to that set forth in a. above for the negotiation, approval and audit of the indirect cost proposal. Cognizant Federal agencies have been designated for this purpose. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education, and Welfare in collaboration with the other interested agencies, and submitted to the Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Health, Education, and Welfare.

c. Questions concerning the cost allocation plans approved under a. and b. above should be directed to the agency responsible for such approvals.

5. *Negotiation and approval of indirect cost proposals for local governments.* a. Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

b. A list of cognizant Federal agencies assigned responsibility for negotiation, approval and audit of central support service cost allocation plans at the local government level is being developed. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education, and Welfare in collaboration with the other interested agencies, and submitted to Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Health, Education, and Welfare.

c. At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

6. *Resolution of problems.* To the extent that problems are encountered among the Federal agencies in connection with 4. and 5. above, the Office of Management and Budget will lend assistance as required.

Part II—Standards for Selected Items of Cost

A. *Purpose and applicability—1. Objective.* This part of Appendix J provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Part I of this Appendix.

B. *Allowable costs—1. Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. Solicitation of bids for the procurement of goods and services required.

c. Disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by State advisory councils or committees established pursuant to Federal requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee agency funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee agency's budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communication costs incurred for telephone calls or service, teletype, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services—*  
a. *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits (section B.13.). The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) is reasonable for the services rendered; (2) follows an appointment made in accordance with State or local government laws and rules and which meets Federal merit system or other requirements, where applicable; and (3) is determined and supported as provided in b. below. Compensation for employees engaged in Federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the Federally assisted activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution of time.* Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the State or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowances.* a. Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing

compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate, property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

14. *Employee morale, health and welfare costs.* The costs of health or first-aid clinics

and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy, are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities—*a. *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) the benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The costs of a service organization which provides automobiles to user grantee agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Cost for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in pro-

viding goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

27. *Transportation.* Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available.

C. *Costs allowable with approval of grantor agency.* 1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the grantor Federal agency as provided under the selected item for capital expenditures.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the grantor Federal agency.

a. *Rental cost.* The rental cost of space in a privately owned building is allowable.

b. *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (section c.3.) are allowable when specifically approved by the grantor agency.

d. *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in section B.11.

e. *Occupancy of space under rental-purchase or lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by the Federal grantor agency.

3. *Capital expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by

the Federal grantor agency. When assets acquired with Federal grant funds are (a) sold, (b) no longer available for use in a federally sponsored program, or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

4. *Insurance and indemnification.* a. Costs of insurance required, or approved and maintained pursuant to the grant agreement, is allowable.

b. Costs of other insurance in connection with the general conduct of activities is allowable subject to the following limitations:

(1) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property is unallowable except to the extent that the grantor agency has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d. above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for on-going programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the grantee department is allowable subject to such prior authorization as may be required by the Federal grantor agency.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

D. *Unallowable costs*—1. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainment.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply with Federal, State and local laws and regulations are unallowable.

6. *Governor's expenses.* The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable.

7. *Interest and other financial costs.* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

8. *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

9. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

APPENDIX K

There is set forth below standards for grantee financial management systems applicable to grants under the Airport and Airway Development Act of 1970.

STANDARDS FOR GRANTEE FINANCIAL MANAGEMENT SYSTEMS

1. This appendix prescribes standards for financial management systems of grant-supported activities of State and local governments under the Airport and Airway Development Act of 1970.

2. Grantee financial management systems shall provide for:

a. Accurate, current, and complete disclosure of the financial results of each grant program in accordance with Federal reporting requirements. When a Federal grantor agency requires reporting on an accrual basis and the grantee's accounting records are not kept on that basis, the grantee should develop such information through an analysis of the documentation on hand or on the basis of best estimates.

b. Records which identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

c. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

d. Comparison of actual with budgeted amounts for each grant. Also, relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required by the grantor agency.

e. Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the U.S. Treasury through his commercial bank as close as possible to the time of making the disbursements.

f. Procedures for determining the allowability and allocability of costs in accord-

ance with the provisions of Appendix J of this part.

g. Accounting records which are supported by source documentation.

h. Audits to be made by the grantee or at his direction to determine, at a minimum, the fiscal integrity of financial transactions and reports, and the compliance with laws, regulations, and administrative requirements. The grantee will schedule such audits with reasonable frequency, usually annually, but not less frequently than once every two years, considering the nature, size, and complexity of the activity.

i. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

3. Grantees shall require subgrantees (recipients of grants which are passed through by the grantee) to adopt all of the standards in paragraph 2 above.

APPENDIX L

There is set forth below property management standards applicable to grants under the Airport and Airway Development Act of 1970.

PROPERTY MANAGEMENT STANDARDS

1. This Appendix prescribes uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds by State and local governments. The grantees shall be authorized to use their own property management standards and procedures as long as the provisions of this Appendix are included.

2. The following definitions apply for the purpose of this Appendix.

a. *Real property.* Real property means land, land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

b. *Personal property.* Personal property means property of any kind, except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

c. *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

d. *Expendable personal property.* Expendable personal property refers to all tangible personal other than nonexpendable property.

e. *Excess property.* Excess property means property under the control of any Federal agency which, as determined by the head thereof, is no longer required for its needs.

3. Each Federal grantor agency shall prescribe requirements for grantees concerning the use of real property funded partly or wholly by the Federal Government. Unless otherwise provided by statute, such requirements, as a minimum, shall contain the following:

a. The grantee shall use the real property for the authorized purpose of the original grant as long as needed.

b. The grantee shall obtain approval by the grantor agency for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

c. When the real property is no longer needed as provided in a. and b., above, the

grantee shall return all real property furnished or purchased wholly with Federal grant funds to the control of the Federal grantor agency. In the case of property purchased in part with Federal grant funds, the grantee may be permitted to take title to the Federal interest therein upon compensating the Federal Government for its fair share of the property. The Federal share of the property shall be the amount computed by applying the percentage of the Federal participation in the total cost of the grant program for which the property was acquired to the current fair market value of the property.

4. Standards and procedures governing ownership, use, and disposition of nonexpendable personal property furnished by the Federal Government or acquired with Federal funds are set forth below:

a. *Nonexpendable personal property acquired with Federal funds.* When nonexpendable personal property is acquired by a grantee wholly or in part with Federal funds, title will not be taken by the Federal Government except as provided in paragraph 4a(4), but shall be vested in the grantee subject to the following restrictions on use and disposition of the property:

(1) The grantee shall retain the property acquired with Federal funds in the grant program as long as there is a need for the property to accomplish the purpose of the grant program whether or not the program continues to be supported by Federal funds. When there is no longer a need for the property to accomplish the purpose of the grant program, the grantee shall use the property in connection with other Federal grants it has received in the following order of priority:

(a) Other grants of the same Federal grantor agency needing the property.

(b) Grants of other Federal agencies needing the property.

(2) When the grantee no longer has need for the property in any of its Federal grant programs, the property may be used for its own official activities in accordance with the following standards:

(a) *Nonexpendable property with an acquisition cost of less than \$500 and used four years or more.* The grantee may use the property for its own official activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(b) *All other nonexpendable property.* The grantee may retain the property for its own use provided that a fair compensation is made to the original grantor agency for the latter's share of the property. The amount of compensation shall be computed by applying the percentage of Federal participation in the grant program to the current fair market value of the property.

(3) If the grantee has no need for the property, disposition of the property shall be made as follows:

(a) *Nonexpendable property with an acquisition cost of \$1,000 or less.* Except for that property which meets the criteria of (2) (a) above, the grantee shall sell the property and reimburse the Federal grantor agency an amount which is computed in accordance with (iii) below.

(b) *Nonexpendable property with an acquisition cost of over \$1,000.* The grantee shall request disposition instructions from the grantor agency. The Federal agency shall determine whether the property can be used to meet the agency's requirement. If no requirement exists within that agency, the availability of the property shall be reported to the General Services Administration (GSA) by the Federal agency to determine whether a requirement for the property exists in other Federal agencies. The Federal grantor agency shall issue instructions to the grantee within 120 days and the following procedures shall govern:

(i) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(ii) If the grantee is instructed to otherwise dispose of the property, he shall be reimbursed by the Federal grantor agency for such costs incurred in its disposition.

(iii) If disposition instructions are not issued within 120 days after reporting, the grantee shall sell the property and reimburse the Federal grantor agency an amount which is computed by applying the percentage of Federal participation in the grant program to the sales proceeds. Further, the grantee shall be permitted to retain \$100 or 10 percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(4) Where the grantor agency determines that property with an acquisition cost of \$1,000 or more and financed solely with Federal funds is unique, difficult, or costly to replace, it may reserve title to such property, subject to the following provisions:

(a) The property shall be appropriately identified in the grant agreement or otherwise made known to the grantee.

(b) The grantor agency shall issue disposition instructions within 120 days after the completion of the need for the property under the Federal grant for which it was acquired. If the grantor agency fails to issue disposition instructions within 120 days, the grantee shall apply the standards of 4a(1), 4a(2) (b), and 4a(3) (b).

b. *Federally-owned nonexpendable personal property.* Unless statutory authority to transfer title has been granted to an agency, title to Federally-owned property (property to which the Federal Government retains title including excess property made available by the Federal grantor agencies to grantees) remains vested by law in the Federal Government. Upon termination of the grant or need for the property, such property shall be reported to the grantor agency for further agency utilization or, if appropriate, for reporting to the General Services Administration for other Federal agency utilization. Appropriate disposition instructions will be issued to the grantee after completion of Federal agency review.

5. The grantees' property management standards for nonexpendable personal property shall also include the following procedural requirements:

a. Property records shall be maintained accurately and provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of Federal funds used in the purchase of property; location, use, and condition of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses the grantor agency for its share.

b. A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

c. A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

d. Adequate maintenance procedures shall be implemented to keep the property in good condition.

e. Proper sales procedures shall be established for unneeded property which would

provide for competition to the extent practicable and result in the highest possible return.

6. When the total inventory value of any unused expendable personal property exceeds \$500 at the expiration of need for any Federal grant purposes, the grantee may retain the property or sell the property as long as he compensates the Federal Government for its share in the cost. The amount of compensation shall be computed in accordance with 4a(2) (b).

7. Specific standards for control of intangible property are provided as follows:

a. If any program produces patents, patent rights, processes, or inventions, in the course of work aided by a Federal grant, such fact shall be promptly and fully reported to the grantor agency. The grantor agency shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued thereon—shall be disposed of and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and Statement of Government Patent Policy as printed in 36 FR 16889).

b. Where the grant results in a book or other copyrightable material, the author or grantee is free to copyright the work, but the Federal grantor agency reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

#### APPENDIX M

There is set forth below procurement standards applicable to grants under the Airport and Airway Development Act of 1970.

#### PROCUREMENT STANDARDS

1. This Appendix provides standards for use by the State and local governments in establishing procedures for the procurement of supplies, equipment, construction, and other services with Federal grant funds. These standards are furnished to insure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and Executive orders.

2. The Standards contained in this Appendix do not relieve the grantee of the contractual responsibilities arising under its contracts. The grantee is the responsible authority, without recourse to the grantor agency regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant. This includes but is not limited to: disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

3. Grantees may use their own procurement regulations which reflect applicable State and local law, rules and regulations provided that procurements made with Federal grant funds adhere to the standards set forth as follows:

a. The grantee shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Federal grant funds. Grantee's officers, employees or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible by State or local law, rules or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by

5-31-74

either the grantee officers, employees, or agents, or by contractors or their agents.

b. All procurement transactions regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

c. The grantee shall establish procurement procedures which provide for, as a minimum, the following procedural requirements:

(1) Proposed procurement actions shall be reviewed by grantee officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(2) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by offerors should be clearly specified.

(3) Positive efforts shall be made by the grantees to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed utilizing Federal grant funds.

(4) The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.), shall be appropriate for the particular procurement and for promoting the best interest of the grant program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (6) below is necessary to accomplish sound procurement. However, procurements of \$2,500 or less need not be so advertised unless otherwise required by State or local law or regulations. Where such advertised bids are obtained the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the grantee, price and other factors considered. (Factors such as discounts, transportation costs, taxes may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the grantee. Any or all bids may be rejected when it is in the grantee's interest to do so, and such rejections are in accordance with applicable State and local law, rules, and regulations.

(6) Procurements may be negotiated if it is impracticable and infeasible to use formal advertising. Generally, procurements may be negotiated by the grantee under any of the following conditions:

(a) The public exigency will not permit the delay incident to advertising;

(b) The material or service to be procured is available from only one person or firm. (All contemplated sole source procurements where the aggregate expenditure is expected to exceed \$5,000 shall be referred to the grantor agency for prior approval.)

(c) The aggregate amount involved does not exceed \$2,500;

(d) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institutions;

(e) The material or services are to be procured and used outside the limits of the United States and its possessions;

(f) No acceptable bids have been received after formal advertising;

(g) The purchases are for highly perishable materials of medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture;

(h) Otherwise authorized by law, rules, or regulations. Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(7) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(8) Procurement records or files for purchases in amounts in excess of \$2,500 shall provide at least the following pertinent information: justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiated.

(9) A system for contract administration shall be maintained to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely followup of all purchases.

4. The grantee shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts and subgrants:

a. Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contracts terms, and provide for such sanctions and penalties as may be appropriate.

b. All contracts, amounts for which are in excess of \$2,500, shall contain suitable provisions for termination by the grantee, including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

c. In all contracts for construction or facility improvement awarded in excess of \$100,000, grantees shall require a performance bond and a payment bond on the part of the contractor, each for 100 percent of the contract price.

d. All contracts and subgrants in excess of \$10,000 shall include provisions for compliance with Executive Order No. 11248, entitled, "Equal Employment Opportunity," as supplemented in Department of Labor Regulations (41 CFR, Part 60). Each contractor or subgrantee shall be required to have an affirmative action plan which declares that it does not discriminate on the basis of race, color, religion, creed, national origin, sex, and age and which specifies goals and target dates to assure the implementation of that plan. The grantee shall establish procedures to assure compliance with this requirement by

contractors or subgrantees and to assure that suspected or reported violations are promptly investigated.

e. All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

f. When required by the Federal grant program legislation, all construction contracts awarded by grantees and subgrantees in excess of \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

g. Where applicable, all contracts awarded by grantees and subgrantees in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

h. Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Federal grantor agency and the grantee. The contractor shall be advised as to the source of additional information regarding these matters.

i. All negotiated contracts (except those of \$2,500 or less) awarded by grantees shall in-

## RULES AND REGULATIONS

clude a provision to the effect that the grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

j. Each contract of an amount in excess of \$2,500 awarded by a grantee or subgrantee shall provide that the recipient will comply with applicable regulations and standards of the Cost of Living Council in establishing wages and prices. The provision shall advise the recipient that submission of a bid or offer or the submittal of an invoice or voucher for property, goods, or services furnished under a

contract or agreement with the grantee shall constitute a certification by him that amounts to be paid do not exceed maximum allowable levels authorized by the Cost of Living Council regulations or standards. Violations shall be reported to the grantor agency and the local Internal Revenue Service field office.

k. Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970. Violations shall be reported to the grantor agency and the Regional Office of the Environmental Protection Agency.

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[Docket No. 13545; Amdt. No. 152-2]

**PART 152—AIRPORT AID PROGRAM**  
**Revised Requirements for Administration**  
*Correction*

In FR Doc. 74-12435 appearing at page 19348 in the issue for Friday, May 31, 1974, the penultimate sentence of § 152.69(c) on page 19351 should read as follows:

“In determining the amount of a partial grant payment, those project costs that the Administrator considers to be of questionable allowability are deducted both from the amount of project costs incurred and from the amount of the estimated total project cost.”

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