

Airport Transfer Analysis

Summary of FAA's Review of Airport transfer for compliance with Grant Assurances.

FAA must make a determination on the eligibility of the sponsor. This review requires that the sponsor is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants and other obligations required of sponsors, which are contained in the AIP project application and grant agreements forms. The sponsor must also show that they have the authority to act as a sponsor. An opinion of the sponsor's attorney as to its legal authority to act as a sponsor and carry out its responsibilities under the grant agreement is required. Reference Order 5100.38D, Section 2-7, Sponsor Qualification Criteria.

Pertinent Grant Assurances

- The airport owner will give assurance satisfactory to the Secretary that good title will be acquired. **(Assurance 4. Good Title).**
- The review is intended to ensure that the new airport owner does not surrender by contract its capability to sufficiently control the airport in order to carry out its commitments to the Federal government. FAA is looking to identify any terms and conditions of the arrangement which could prevent the realization of the full benefits for which the airport was constructed, or which could develop into a restriction on the new owner's ability to meet its obligations to the Federal government. **(Assurance 5. Preserving Rights and Powers).**
- Any lease or agreement granting the right to serve the public on the premise of an airport so obligated should be subordinate to the authority of the owner to establish sufficient control over the operation to guarantee that patrons will be treated fairly. **(Assurance 5. Preserving Rights and Powers)**
- The airport owner is obligated to the Federal Government to ensure that the facilities of the airport are made available to the public on fair and reasonable terms without unjust discrimination. **(Assurance 22. Economic Discrimination).**
- The previous airport owner has not granted an exclusive right for the use of the airport. **Assurance 23. Exclusive Rights).**
- The review looks to ensure that the airport owner maintains a fee and rental structure for facilities and services that will make the airport as self sustaining as possible, in accordance with 49 U.S.C. Section 47107. **(Assurance 24. Fee and Rental Structure).**
- Disposition of airport revenue conforms to Federal policy **Assurance 25 Airport Revenue).** Use of Airport Revenue Policy 64 FR 7696, February 16, 1999.

A. Dechubc

Documents required to be submitted to FAA for review and approval:

- Public Agency's enabling legislation or act that gives it the authority to operate and own the airport(s). Documentation should also include what happens if the public agency dissolves.
- If operation and management of airport is conducted by another party, submit a copy of the executed or draft Operation and Management Agreement for the specific airport.
- Proof of Good Title including copy of executed deed and tract information.
- If new sponsor purchased/received the airport from a previous FAA Sponsor an executed copy of the Assumption agreement including list of transferred grants.
- Applicant's attorney legal certification that the applicant meets the legal requirements to carry out the certifications, representations, warranties, assurances, covenants and other obligations required of sponsors which are contained in the AIP project applicant and grant agreement forms. Reference FAA Order 5100.38D, Section 2-7
- Applicant's, or the current sponsor's, audited financial statements for the most recent fiscal year end (prefer the past four years if available). Reference FAA Order 5100.38D, Section 2-7
- Exhibit A map, Airport Layout Plan and Land Inventory map identifying grant acquired land.
- Approval of other government agencies if applicable. As a general rule, the name of the approving agency and date of approval will be sufficient. However, when a state law requires channeling through a state aeronautics commission, the approval of that commission must be indicated by endorsement or by other means, which the commission may want to use. Per FAA Order 5100.38D, Section 2-7
- Part 139 Application for Certificate, amendments to Airport Certification Manual (ACM)/Airport Certification Specifications (ACS) if applicable.
- Submission of compatible land use plan including zoning laws that restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft.
- Airport Business Plan prepared by new sponsor. (optional)
- Any documentation required pursuant to the *National Environmental Policy Act of 1970* (42 U.S.C. 4321-4347) (NEPA), the Council of Environmental Quality Regulations for the implementation of NEPA (40 CFR 1500-1508), and applicable Department of Transportation and Federal Aviation Administration Orders implementing NEPA. Must be signed document by the ADO.
- Private airport transfers
 - Succession plan
 - Bankruptcy protection
 - Grants agreements recorded as liens on the property
 - Title search

C

Beaver Bay-Informational Meeting, December 4, 2018

FAA Order 5100.38D-This is one of the main guidance documents for the FAA Office of Airports. An electronic copy can be found at: https://www.faa.gov/airports/aip/aip_handbook/ Since this document is 544 pages long I have highlighted a couple notable sections for the meeting.

Sponsor Qualification Criteria

For an ADO to issue a grant, the FAA must first determine that the sponsor is able to assume the responsibilities defined in the grant. Details of this requirement are outlined in 49 USC § 47105, § 47106 and § 47107. The general sponsorship criteria are different for public agencies and private entities. The criteria for public agencies are listed in Table 2-8 and for private entities are listed in Table 2-9. Additional criteria, requirements, and considerations that apply to specific sponsorship situations are listed in Table 2-10. These requirements do not apply to federal agency sponsors of an FAA designated safety critical airport eligible under 49 USC § 47118(h).

Table 2-8 Legal and Financial Requirements for Public Agencies

| |
|---|
| The criteria are... |
| a. Per 49 USC § 47105(b)(2), a sponsor must be proposing a project for a public-use airport included in the current National Plan of Integrated Airport Systems (NPIAS). |
| b. Per 49 USC § 47106(a)(3), a sponsor must be financially able to assume and carry out the sponsor's duties in the AIP project application and grant agreements. This includes being able to finance the sponsor share of grants. Per FAA policy, if a public sponsor has an open grant from a federal agency that requires compliance with OMB Circulars A-87, Cost Principles for State, Local, and Indian Tribal Governments (2 CFR 200 Subpart E, Cost Principles), and A-102, Grants and Cooperative Agreements with State and Local Governments(2 CFR § 200.416 and §200.417), this requirement is met. Otherwise, the ADO must work with ACO-100 to make this determination. |
| c. Per 49 USC § 47106(b)(1), the sponsor, another public agency, or the federal government must have good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft. Per FAA policy, if the good title requirement is not met prior to the grant being issued, the acquisition of good title must be in process. Also per FAA policy, the sponsor can meet this good title requirement by leasing from another public agency that holds good title, provided that the duration of the lease is at least as long as the useful life of the project. (A lease from a private entity does not provide good title.) |
| d. Per 49 USC § 47106(a)(5), a sponsor must legally have the authority to act as a sponsor. The sponsor must not be encumbered by any existing agreements that would prevent it from acting as a sponsor. Legal authority to be a public sponsor comes from its state authorizing legislation, also called state enabling legislation. The authorizing legislation must clearly provide the sponsor the authority to carry out the obligations and responsibilities of sponsorship. Per FAA policy, the sponsor must provide a copy of the state authorizing legislation to the ADO prior to the sponsor applying for its first grant. Per FAA policy, the ADO has the option to require an opinion from the sponsor's attorney regarding whether the sponsor has the legal authority to act as a sponsor. |
| e. Per 49 USC § 47106(d), if a sponsor has previously received a grant, the sponsor must be in compliance with its current grant obligations. ACO-100 maintains a list of the sponsors that are not in compliance. |
| f. Per 49 USC § 47107(d), the sponsor must be able to maintain and operate the airport as a public-use airport to FAA standards. |

C

Table 2-8 Legal and Financial Requirements for Public Agencies

| |
|---|
| The criteria are... |
| g. Per 2 CFR part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), a sponsor must not be suspended or debarred by the federal government. |

Transfer of a Sponsorship

In order for an existing sponsor to transfer the sponsorship of an obligated airport to another entity, sponsor must obtain pre-approval from the FAA. Per the current version of FAA Order 5190.6, FAA Airport Compliance Manual, the existing sponsor must first obtain ARP-1 pre-approval to release the entire airport. Then and the FAA must make a sponsorship determination for the new entity as discussed in this chapter. If ARP-1 does not approve the release or the FAA does not make a positive sponsorship determination for the new sponsor, the sponsorship cannot be transferred unless ARP-1 approves the release and the FAA makes a positive sponsorship determination for the new sponsor.

Useful Life for Federally funded work

Table 3-8 Minimum Useful Life

| Project Type | Useful Life |
|--|-------------|
| a. All construction projects (unless listed separately below) | 20 years |
| b. All equipment and vehicles (unless listed separately below) | 10 years |
| c. Pavement rehabilitation (not reconstruction, which is 20 years) | 10 years |
| d. Asphalt seal coat, slurry seal, and joint sealing | 3 years |
| e. Concrete joint replacement | 7 years |
| f. Airfield lighting and signage | 10 years |
| g. ARFF vehicles | 15 years |
| h. ARFF structural gear (firefighting suits), which has less heat insulation than proximity gear (per the National Fire Protection Association 1971 Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting) | 7 years |
| i. ARFF proximity gear (firefighting suits), which is also referred to as slicks, bunker, or turn out gear (per the National Fire Protection Association 1971 Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting) | 5 years |
| j. NAVAIDS | 15 years |
| k. Buildings | 40 years |
| l. Land | Unlimited |
| m. Loading Bridges | 20 years |