U.S. Department of Transportation
Federal Aviation Administration

Great Lakes Region
Illinois, Indiana, Michigan, Minnesota, North Dakota, Ohio, South Dakota, Wisconsin

2300 East Devon Avenue
Des Plaines, Illinois 60018

POLICY AND PROCEDURES MEMORANDUM - AIRPORTS DIVISION

NUMBER : 5100.13B

DATE : October 1, 1990

SUBJECT : Grant Amendment Policies and Change Order Approvals

REFERENCES: Order 5100.38 and PPM 5100.16B

CANCELLATION: PPM 5100.13A dated December 18, 1985, is cancelled.

APPENDICES: Appendix 1. Background and listing of Changes from prior PPM 5320.1C

Appendix 2. Resolution of comments provided when this PPM was coordinated (Internal Use Only)

1. Background. In early 1982, a number of memorandums and opinions were disseminated concerning the subject policies. The concern with amendment policies arose from a May 28, 1980, OST Counsel opinion, which resulted in a prohibition on reprogramming land deleted from a grant when costs associated with that land had been incurred subsequent to grant offer. Since then, the policies have been further refined, and one major change concerning ADAP amendments has occurred. This PPM is intended to set forth all the current policy on amending grants in one document and to communicate the current division philosophy regarding the management of amendments and change orders. It should be noted that the only remaining open ADAP projects on the Great Lakes Region at this time are:

ST	LOCATION	GRANT NO.
IL	CHICAGO O'HARE	-11
IL	DANVILLE	-04
IL	EAST ALTON	-03
IL	EAST ST. LOUIS	-05
IL	SPRINGFIELD	-02
IN	GARY	-04
IN	GARY	-05
IN	INDIANAPOLIS	-14
IN	INDIANAPOLIS	-15
MN	ALEXANDRIA	-01
MN	FAIRMONT	-01
MN	FAIRMONT	-02
MN	GRAND RAPIDS	-02
ND	WAHPETON	-02

Distribution: AGL-600, 601, 610, 620, 602 AGL-610
CHI ADO, DET ADO, MSP ADO, BIS-AFO
State Aviation Directors (Information thru ADO's)

2. Policy - Amendments.

a. ADAP grants can be amended to increase the maximum grant amount by up to 10 percent. The authority to enter into new obligations, including ADAP grant increases, expired on September 30, 1981. However, the authority to make "10 percent amendments" to ADAP grants was re-established by the Airport and Airway Improvement Act of September 1982.

b. Except for rare circumstances that will require special written justification, work shall not be added to ADAP grant scopes, even if there have been cost under-runs and there are remaining, unused funds in the obligated grant amount. Funds resulting from cost under-runs shall be recovered upon project close-out, and used for participation in cost over-runs on other ADAP projects.

c. Work or land may be deleted from a grant, but an equitable adjustment should be made in the grant amount. Work or land should not, as a general practice, be deleted to cover some other portion of the project which has overrun costs. Allowing deletions with no reduction in the grant amount is contrary to the intent of Section 19 of the Airport and Airway Development Act which through September 30, 1981, authorized only 10 percent increases. If the project is jeopardized because of overruns, the project design should be examined to reduce cost without changing the project scope. If it is then determined that funds are still not sufficient to accomplish the project, work or land for which costs have not been incurred may be deleted with the associated grant amount left available for the remainder of the project provided that the project will still result in a safe, useful, and usable unit. This is not a preferred option but, if used, the project file must be fully and thoroughly documented to establish that the action is not prejudicial to the interests of the U.S. Government. The sponsor must also be advised that there is no guarantee that deleted items will be reprogrammed at some future time.

(1) Documentation by the sponsor should explain the basis for the increased costs associated with the remaining project scope. A general statement that the increase is for cost overruns is not acceptable. Instead, the documentation should contain specific information such as:

(a) Increase necessitated by work under Change Orders (cite specific change);

(b) Increase due to actual excavation quantities being greater than original estimate;

(c) Increase due to land acquisition costs for Parcels __ and ___ exceeding original estimate;

(d) Grant issued based upon estimates; increase to cover actual construction bid which was higher than estimate.

d. The work description of an AIP grant may be changed to add new work provided there is not an increase in the maximum dollar amount of the grant. However, the inclusion of new item(s) of work in a grant shall not be solely because there was a cost under-run in the project. The need for the additional items(s) must be fully justified and documented, and shall generally be a logical extension or "add on" to the work in the original project scope.

Amendment to the grant to modify the work description to utilize funds with in the grant (surplus) shall contain a special condition that the grant shall not be modified further (e.g. for 10%-15% overruns).

e. A substitution in the work in a project scope may be allowed if it is established that it is in the best interests of the U.S. Government and no costs have been incurred for items to be deleted. The project file should be documented, as a minimum, to include:

(1) An explanation as to why originally programmed items are no longer needed at this time. The deletion must be shown to be in the best interests of the Government. The amount for the deleted items included in the grant must also be indicated;

(2) An explanation as to why substituted items are needed at this their, there "bid" costs, and why they were not included in the grant. Once again, it must be shown that programming the new items is in the best interest of the Government. Also, reiterating, items should not be added solely because there will be excess funds in the grant as a result of deleting work no longer needed; and a condition will be added to preclude any future amendments.

(3) In addition, no amendments will be issued modifying the description of work absent a condition indicating the firm commitment of the sponsor to accomplish the work within an established schedule. (Including the ADO's ability right to accomplish unilateral closeout and recovery absent sponsor performance with no reservations).

f. Land Costs:

(1) In the case of grant agreements executed on or after May 28, 1980, land costs incurred during the life of the grant may not be deleted without an equitable reduction in the grant amount. Further, even if the grant is reduced, the land deleted shall not be reprogrammed. Thus, the effectiveness of such action would generally be nil; and it will be a rare occurrence.

(2) For grants executed before May 28, 1980, land costs incurred during the life of the grant, either before or after May 28, 1980, may be deleted and reprogrammed in accordance with 2.c. above.

(3) If costs for land have not been incurred during the grant period, regardless when the grant was executed, such land may be deleted and reprogrammed. Again, funding adjustments should be made in accordance with 2.A.c. above, and documentation permitting a determination that the interest of the United States is not prejudiced is essential.

g. The interests of the United States would not be prejudiced if the following three criteria are satisfied:

(1) The land parcel is not an element of an item of airport development where failure to acquire the parcel would negate or make impossible the completion of the airport development project; or failure to acquire the parcel would cause a significant waste or delay in accruing benefits of previously spent airport development funds.

(2) The cost increase is not caused by negligent or dilatory action on the part of the sponsor and is due to:

(a). A court award, or

(b). Inflationary effect or other unexpected circumstance beyond the control of the sponsor.

(3) The purchase price of the parcel to be deleted and reprogrammed was not excessive (Applies only to grant agreements executed prior to May 28, 1980).

h. The practice of including a generalized description of the land to be acquired in the grant (e.g., "Area C as shown on the Exhibit A") rather than specific parcels is and always has been insufficient. Consequently, the significant reconfiguration of an "Area's" boundaries (usually accomplished through the deletion of parcels located within the area) on the Exhibit A through an informal amendment is also unacceptable. (See also Order 5100.38, paragraph 1101.)

3. <u>Policy - Change Orders</u>

a. Order 5100.38, paragraph 1222.c., permits the establishment of a Regional policy to not require FAA prior approval of certain change orders (C.O.). Generally, C.O.'s can create contractual problems, and federal investment project management complications. In some cases the use of C.O.'s can be abused to avoid proper, more formal contract actions. The implementation of the policy set forth herein is mandatory but may be modified based on their judgement, at the discretion of each ADO, of the sponsor involved in the specific project. The following procedures and criteria shall apply:

(1) The ADO is encouraged to issue written advice to the Sponsor in all cases, stating which contract will not require prior approval for C.O.'s.;

(2) No grant amendment will be required as a result of the C.O. (This eliminates the type of C.O. which would add or delete work items in the basic grant scope.);

(3) Reserved

(4) Time extensions, in contracts with liquidated damage provisions, may require prior FAA verbal approval (see PPM 5100.16B).

(5) The Sponsor remains responsible for financial management of the Sponsor's project. Any FAA advice, counsel, approval, audit of the Sponsor's decision on the appropriate action shall include the advice to the sponsor that any action is subject to final federal audit regarding "eligibility", "reasonableness of costs" and "availability of funds."

b. Upon project completion and after preparation of the final project report by the Sponsor an amendment may be processed to increase the grant amount to cover any eligible, cost increasing C.O.'s.

c. See PPM 5100.16B for guidance on approving C.O.'s.

W. Robert Billingsley
Manager Airports Division

Appendix 1. Background and listing of Changes from prior PPM 5320.1C

a. Incorporates current reference to PPM 5100.16B.

b. Clarifies that documentation of increased costs is a SPONSOR responsibility.

c. Adds a requirement that amendments to utilize surplus funds will contain a special condition that there will be NO further modifications. For stewardship and efficiency purposes we should eliminate to the maximum possible extent any extensions of a project.

d. Adds clarity that amendments must be done based on "bid" vs "estimated costs, again for stewardship and efficiency purposes; and to remain consistent with the national policy that project investments should be based on "bids" and NOT "estimates.

e. Adds a requirement that all amendments contain an expeditious accomplishment clause inclusive of enhancing the ADO's ability to "closeout" unilaterally as a remedy without Sponsor recourse. This serves our stewardship responsibilities and makes it easier to close out if the Sponsor cannot perform.

f. Makes mandatory (unless not desired by the Sponsor) the establishment of Great Lakes Regional policy (pursuant to the national order option) that "certain change orders (if no grant amendment is involved) do not require FAA prior approval". This is intended to recognize the Sponsor's ability and responsibility for project management on an overall program basis. Prior policy recognized same on an exception basis only. The discretion of the ADO to modify this mandatory policy is returned; however, it is the intent of this PPM to shift the emphasis toward not requiring prior ADO approval of change orders rather than vice versa.

g. The $2000 limit is deleted. This is consistent with current guidance in 5100.38 in which there is no limit.

h. Recognizes that preparation of a final project report is a SPONSOR responsibility (and an eligible cost).

i. Emphasizes that project costs are subject to review at closeout on an "audit" basis by the ADO for "reasonableness of costs" and "eligibility". Also, that any additional funding requirements are subject to "availability".

Review on an "audit" basis means that it is subject to but may not necessarily be reviewed by the ADO. It is our intention to assume an acceptable degree of risk and review costs at closeout only on an exception basis.