ENGINEERING CONTRACT NEGOTIATIONS

It has recently come to our attention that some sponsors may not be conducting their engineering selection procedures in accordance with the requirements as outlined in Advisory Circular (AC) 150/5100-14C, Architectural, Engineering and Planning Consultant Services for Airport Grant Projects, specifically in the area of fee negotiations. All current Federal airport development aid grants require the sponsors to provide certifications of compliance with the standards of 49 CFR 18 and AC 150/5100-14. The sponsor certification procedures in no way replace, abrogate, or diminish the sponsor's legal obligation to carry out all the requirements contained in the grant agreement.

Paragraph 2-13 d., states that if a mutually satisfactory contract cannot be negotiated with the first-ranked consultant, the negotiations should be terminated and the consultant should be notified. Negotiations should then be initiated with the consultant given second preference by the selection board. Consequently, the negotiation process is part of the formal selection process, as further alluded to in paragraph 2-6, Policy for Selection.

Paragraph 2-12 b. indicates that independent engineering, architecture, and planning firms can be retained to develop the scope of work and/or cost estimates for professional services. Additionally, Paragraph 2-12 c. and d. state that the sponsor must have a detailed cost estimate to evaluate the cost of professional services and that **if an independent cost estimate is used it must be signed and dated prior to fee negotiations**.

Paragraph 2-13 a. states that: If **an independent firm** has been retained by the sponsor for the purpose of preparing a cost estimate, they may be consulted by the sponsor during negotiations, to clarify problem areas, but **shall not review the consultants cost proposal or attend any negotiating sessions**.

Paragraph 2-13 c. states that negotiations should be based upon the data submitted by the consultant and an **evaluation of the specific work-hours required for each task**. The sponsor should **subject the consultant's data to a technical engineering analysis**. Based on the analysis, the sponsor should identify differences in the work-hour estimates. Significant differences, either positive or negative, between the estimate submitted by the consultant and the estimate developed by the sponsor should be resolved, and revisions should be made to the work-hours or scope of work as required. **Only after this technical work-hour review has been completed should the cost be evaluated**, taking into consideration the experience level required by the engineer **working on each task**.

In some recent reviews, it appears that some sponsors have either shared the independents cost estimates with the consultant or the consultant's contract with the independent estimators. Actions such as these are contrary to the guidance as detailed in Paragraph 2-

13, Negotiations. Further, paragraph 2-13 e. requires a record of negotiations be prepared **by the sponsor** and included in a contract file. In at least one incidence we know of, it appears as though the selected consultant may have actually developed the sponsor's report of negotiations. This report is intended to document an unbiased detailed review of the negotiation and determination of reasonableness of fee proposals. Additionally, the Record of Negotiations **must be signed by the sponsor**, which means only those individuals who have legal authority to sign and accept federal grants can sign this record. Paragraph 2-13 h. requires that the record of negotiations and all attachments shall be submitted to the FAA for a reasonableness of cost determination.

Acceptance of a sponsor certification does not inhibit or limit the FAA's ability to request and review documentation to ensure the accuracy of a certification. FAA policy specifically excludes sponsor certifications in areas involving FAA responsibilities and determinations in the area of reasonableness and necessity of costs in the expenditure of federal funds. This policy requires us to question certifications when information becomes available indicating the sponsor may be in noncompliance with the requirements or may lack the knowledge and capability to complete an accurate certification. This policy further requires that we immediately notify a sponsor in writing when certifications submitted are discovered to be false, inaccurate, or incomplete. This notification will state the nature of the problem, remind the sponsor of its responsibilities in submitting accurate certifications, and specify actions necessary to remedy the situation.

Further, negotiations with the sponsor may be necessary where inaccurate certifications are discovered in on going or finished projects. Such negotiations shall address possible corrective actions and may involve action to withhold or readjust Federal funds in accordance with FAA Order 5100.38 where project costs are affected.

The purpose of this message is to remind all sponsors of their legal responsibilities and to avoid any possible need to take corrective actions that might affect Federal eligibility of project costs.