

MEMORANDUM OF UNDERSTANDING

Unified Response Of the Federal Aviation Administration Airports District Office And the Alabama Department of Transportation Aeronautics Bureau

March 1, 2005

The Federal Aviation Administration's Airports District Office (FAA/ADO) and the Alabama Department of Transportation Aeronautics Bureau distributed a copy of the draft Memorandum of Understanding (MOU) to a total of 69 general aviation airports within the state. Consultants of record for airport owners also received a copy of the draft MOU. Copies of the MOU were mailed out from the Aeronautics Bureau's office on February 23, 2004 and the deadline for receiving comments was set for March 23, 2004. Those desiring to comment on the MOU were requested to submit their written comments to both the Aeronautics Bureau and the FAA/ADO in Jackson, Mississippi. Seven comments were received.

Comments received on the MOU generally fell into six categories listed below. All comments were sanitized to remove names and places and are grouped under those 6 general categories. The FAA and ALDOT have developed the following unified responses to the 6 general areas of concern

We appreciate the comments that were submitted so that we might improve the MOU as much as possible. We also hope that our response to those comments will be beneficial and serve as a source of clarification of the roles of the FAA and ALDOT under the current state channeling authority.

Concern 1: AIP FUNDING DECISIONS

PUBLIC COMMENTS:

- ◆ Prior to the Aeronautics/DOT merger over 3 years ago and prior to the exercise of AL code: 23-1-361, preapplications of FAA AIP funding were directed to the ADO. The FAA ADO directly approved funding on a priority system that was published and well understood by all. Since that process has now been assumed by the ALDOT, perhaps the state would publish how grants are approved so that all would understand by what system and process the ALDOT uses for grant approval to prevent potential delays in funding projects the Bureau does not support. The who, the what, and the grievances of grant approval/disapproval and delays by the ALDOT should be known to all as well
- ◆ The Alabama Aeronautics Commission, rendered impotent with the Aeronautics/DOT merger, previously provided much needed oversight of the Bureau. Without a well known organizational structure with checks and balances, channeling all aspects of FAA grant funding through the state leaves no assurance that grant approvals are relieved from political or other bias. Prior to the merger, when the ADO approved FAA grants, the FAA did not participate in local politics.

- ◆ I disagree with the proposal of channeling of funds through the state. It is a redundant service that the state is not equipped to handle due to lack of funds and personnel and will cost the taxpayers more unnecessary dollars. In the past, our pre-applications for federal assistance were submitted to the FAA directly from our airport. We were free to contact the FAA and explain justification for each project. Then it was up to the FAA to decide priority for each project. Channeling projects through ALDOT, I feel, would open up the possibility of favoritism. I am concerned with getting ALDOT involved in the disbursement of FAA funds. Furthermore, the existing ALDOT budget should be allocated more towards matching funds rather than the bureaucracy and politics within it.

RESPONSE

Section 6(b) of the MOU clearly states that the FAA/ADO makes all final determinations on projects that will receive federal funds. While it is common that some “channeling” states do make the decisions for federal funds, the legislation granting ALDOT “channeling” authority does not include authority to make the Federal funding decisions.

However, the FAA believes local input is important and essential to serving the aviation needs of each state. For that reason, it has been common practice that Federal funding plans for general aviation airports are developed in close coordination with State DOTs. The FAA currently has requests for federal funds in Alabama that exceed 5 times that of the federal funds available. Many hard choices must be made and we try to make those based on the FAA’s national priority system and what is in the best interest of aviation in Alabama.

By its Transportation Director, ALDOT does make decisions about which airports receive state funding assistance for airport improvement projects. It is ALDOT’s policy that a high priority for state funding participation is assigned to airports that receive federal funding assistance. It is ALDOT’s goal to match every federal dollar that is made available for airport improvements. Consequently, ALDOT’s decisions about state funding participation tend to be guided by the FAA’s funding decisions. The departmental review process of applications for state funding assistance establishes a system of “checks and balances” that is equivalent to that once served by the Aeronautics Commission.

The staff of the Aeronautics Bureau is responsible for evaluating applications, monitoring the availability of state funds, and making funding recommendations to the State Transportation Director within the limits of available state funding. To accomplish this task, the Aeronautics Bureau utilizes a priority rating system that is published in its “Alabama Airport Project Sponsor’s Handbook,” and in the future, may be viewed on ALDOT’s website. ALDOT’s priority rating system is an objective tool for evaluating projects and assigning a ranked score to each project for which a funding application has been received. Given the historic funding limitations that have determined how much state funding may be available from one year to the next, the priority rating system provides the Transportation Director with a “cutoff” limit for project funding decisions. This process is essentially the same as that utilized with the former Aeronautics Commission.

The submittal of various documents to the FAA through the Aeronautics Bureau is intended to provide a better level of coordination between the airport owner, the state and the FAA regarding planned airport improvement projects. The information submitted to the Aeronautics Bureau is used to develop accurate estimates or projections of the state’s funding needs for airport improvements. Under ALDOT’s “channeling” procedures, there is absolutely nothing that prevents the airport owner from contacting the FAA directly and the Aeronautics Bureau encourages airports to do so.

FAA also welcomes ALDOT's review of AIP project documents on general aviation airports. In FY03 and FY04, approximately 80 % of the AIP grants issued in Alabama went to general aviation airports, but only 40% of AIP funds. Because of this fact, the FAA spends a greater amount of oversight on the larger projects and welcomes ALDOT taking a closer look at the smaller projects at the general aviation airports. While ALDOT's review is done to meet state funding requirements, the FAA recognizes that their review helps to ensure Federal funds are spent wisely.

Concern 2: Timeliness

PUBLIC COMMENTS:

- ◆ The phrase "in a timely manner" is used in Sections 2-1(a) & (b) to indicate when ALDOT will forward things to FAA/ADO. A time limit should be set for the forwarding of documents to FAA/ADO. Recommend "as soon as possible, not to exceed 2 weeks".
- ◆ The phrase "in a timely manner" cited in Section 8(e) should be similarly defined.
- ◆ The time limit recommended in #_ above should also be applied to the ALDOT review of ALPs in Section 2 and the forwarding of FAA Preapplications to the FAA/ADO by ALDOT in Section 6.
- ◆ After reviewing the proposed MOU, I must say I have serious reservations about its potential detrimental effect on the _____ airport. Specifically, the bureaucracy that appears to be added by this proposed MOU appears to be tremendous. Obviously, funneling the entire process through ALDOT will result in a significant slowdown with attendant requests for staffing increases. Applying for capital improvement projects once a year vice when the requirement arises (emergency or otherwise) doesn't seem realistic. Many other questions arise regarding ALDOT's apparent authority to now determine project selection, selection of professional consultants, and the scope of projects that will be considered and approved. Unfortunately, it seems to me that this "channeling" process will work to the detriment of many airports in Alabama.

RESPONSE.

The main body of the MOU contains the phrase "in a timely manner" to indicate when ALDOT will forward documents to the FAA. This general reference provides flexibility for ALDOT and FAA to work as a team to address issues on a priority basis rather than a "first-come, first serve" basis. However, ALDOT and the FAA have discussed general expectations that most documents will be forwarded from ALDOT to the FAA in less than 2 weeks. In some cases, comments will follow at a later date as priorities allow.

Additionally, ALDOT and FAA are committed to work together to meet the customer service standards established by the FAA Southern Region. Those standards are available on the Internet at <http://www.faa.gov/arp/aso/general/custrespstd.htm>. When reviewing these standards, the response time for review starts when ALDOT receives documents from the airport sponsor and/or consultant. Attachment 2 of the MOU will be modified to reference the FAA's customer service standards and the intention of ALDOT to forward most documents to the FAA within 2 weeks of receipt.

A secondary concern in the comments above was that sponsors could apply for Federal or State Funding Assistance only once per year and this might not allow for funding emergency needs. This is not the case. A sponsor can apply for Federal or State assistance at any time and as many times as they like. However, the FAA typically finalizes its AIP funding plan during the first few months

of the fiscal year. As a service to airport sponsors, ALDOT will make an annual call for preapplications by a deadline to be considered for the current year's funding. If a bona fide emergency occurs after this deadline, FAA and ALDOT will assist the sponsor in pursuing federal and/or state funds in support of the emergency.

Due to increased federal funding levels and other changes in the FAA's Airport Improvement Program (AIP), the Aeronautics Bureau now receives only a very small number of requests each year that do not involve FAA funds. For this reason, primarily, the Aeronautics Bureau has adapted its funding assistance program to be more in "sync" with that of the FAA.

The last comment references other questions regarding ALDOT's apparent authority to influence project decisions. To clarify those concerns:

- FAA determines AIP project selection, not ALDOT.
- Airport sponsors select professional consultants, not ALDOT.
- Both FAA and ALDOT consider the scope of projects.
- FAA approves scope of projects for AIP funding and ALDOT approves scope of projects for state funding.

Concern 3: Administrative Burden for ALDOT

PUBLIC COMMENTS:

- ◆ When an airport sponsor sends an item to FAA/ADO through ALDOT, ALDOT should acknowledge back to the sponsor when it has been forwarded to FAA, such as the wording used in Section 11(b)5: "ALDOT will notify an airport sponsor in writing that its request for a grant amendment has been forwarded to FAA/ADO." This should be used for all items being forwarded by ALDOT to FAA/ADO.
- ◆ Several areas of this agreement state that ALDOT personnel will make a "reasonable effort" to attend: project scope meetings, pre-design meetings, pre-construction meetings, conduct periodic site visits and the final inspection of projects. In addition to licensing inspections, reviewing and commenting on all aspects of "commitments with respect to ALDOT's channeling authority" and reviewing the required audits, how is this possible with the level of Bureau personnel on staff? How is this possible to administer this program efficiently and expeditiously with the state level of airport improvement funding, including the Aeronautics Bureau operations legislatively capped at \$600,000 per year?
- ◆ Basically I do not feel that ALDOT has the funds and personnel to handle the MOU, which will and has already, delayed FAA funds to airports. I do not understand why ALDOT wants to do something that will cost more money when the FAA is already continuing to do an outstanding job.
- ◆ The one concern that was expressed [by the airport board] was for additional staffing to be provided by ALDOT for handling additional work. The _____ has been very pleased with the support that has and is being given by ALDOT and FAA.

RESPONSE.

The staff of the Aeronautics Bureau has been following the procedure of notifying the airport owner when a document has been forwarded to the FAA/ADO office. It is the intent of the MOU to acknowledge that all documents submitted to the Aeronautics Bureau by or on behalf of the airport owner will receive written acknowledgement that its submittals and documents have been forwarded to the FAA/ADO, along with any comments the Aeronautics Bureau may have

regarding the document. Attachment 2 of the MOU will be modified to indicate “ALDOT will notify sponsors when documents are forwarded to the FAA”.

While this MOU may appear to be adding work to the State DOT, we believe it will actually improve the administrative burden associated with administering the AIP program. The policy of routing FAA funding applications through the Aeronautics Bureau was implemented on October 1, 2000 and coincided with the former Aeronautics Department’s move into ALDOT. By formalizing the process, we believe less time will be spent by airport sponsors, consultants, ALDOT, and FAA in faxing documents to each other to ensure we are all on the same sheet of music. As mentioned in the response to timeliness (above), ALDOT and FAA will continue to identify ways to improve the efficiency of processing documents.

The bureau’s participation in meetings with airport owners will be determined on the basis of the relative priority, complexity, and scope of the various projects anticipated for state and/or federal funding. The bureau’s staff may not attend all meetings, but it will make an effort to do so within its limited resources. ALDOT would like to be at as many meetings as possible, but does not intend to hold-up a project if they are given sufficient notice of a planned meeting. Airport sponsors and consultants should inform FAA and ALDOT approximately 2 weeks in advance of project scope meetings, pre-design meetings, pre-construction meetings, and final inspections. The respective Federal and State program managers will advise whether they need to be at the meeting or not.

The Aeronautics Bureau has implemented changes to its airport grant program and the project review process on the basis of two primary objectives: 1] to complement the FAA Airport Improvement Program, and 2] avoid a duplication of effort. The Aeronautics Bureau’s administrative costs have not increased as a result of the additional duties now being performed by its staff.

In the past four years, the Aeronautics Bureau has added only one staff position to its program as a result of the changes in its policies and procedures – Airport Engineer. The Bureau’s Airport Engineer provides technical guidance to airport owners and their consultants regarding airport project design and is responsible for reviewing the plans and specifications of airport construction projects. The Airport Engineer also is available to assist airport owners when problems with construction arise.

Concern 4: Consultant Selection / Independent Cost Estimates

PUBLIC COMMENTS:

- ◆ Section 4(b) states “ALDOT will post "Notice to Consultants" advertisements issued by any of the covered airports on ALDOT's website and upon the request of the airport.” It is recommended that there be a clear distinction on ALDOT’s website between "Notice to Consultants" as referenced in Section 4(b) and the “Notice of Need for Services” which ALDOT posts on the website for ALDOT-selected State contracts via the Consultant Management Section.
- ◆ Section 5(c) specifies that “ALDOT will perform an independent cost analysis on all professional services contracts ...regardless of the anticipated amount of the fees”. This policy should only apply to projects that ALDOT will participate in financially. For projects that have no State funding we recommend that the Advisory Circular AC150/5100-14 (current edition) should be followed.

- ◆ Section 5(c) should be modified to allow a sponsor that possesses adequate expertise to perform their own independent cost analyses of fees as called for in the advisory circular.
- ◆ Page 4, section 5, (c), is well beyond what the FAA requires on independent cost analysis. Requiring that all contracts, regardless of the amount, undergo independent cost analysis will increase cost, potentially cause delays and is overly burdensome for small projects. Perhaps those contracts under \$100,000 could forego independent cost analysis in keeping with the FAA policy when smaller projects are submitted by qualified design engineers, city engineers, or county engineers compared to less qualified state employees.
- ◆ We are opposed to state doing individual cost analysis on all engineering fees because we have someone on our staff qualified to do this.

RESPONSE.

It is ALDOT's long-standing policy that the proposed fees of a consultant will be reviewed and approved as a condition for receiving state funding assistance, regardless of the expected amount of the fees. For that reason, the Aeronautics Bureau performs independent cost analyses of consultant fee proposals on all projects for which state funding is *anticipated*. The Aeronautics Bureau is following a stricter policy than the \$100,000 threshold established by the FAA for airport improvement projects and will continue to do so as a matter of departmental policy.

The Bureau's independent cost analyses are performed according to the procedures outlined in Advisory Circular AC 150/5100-14, and are acceptable to the FAA for all projects, including those under \$100,000. Additionally, the Bureau reviews the scope of services to ensure that the proposed services are appropriate for each project. The results of the Bureau's independent cost analyses will be provided to the FAA/ADO for information purposes and to the airport owner as a tool to negotiate reasonable fees with its consultant.

The Aeronautics Bureau's staff is qualified to competently perform these independent cost analyses and does so at no cost to the airport owner or project. The independent cost analyses are performed by an airport planner with a degree in aviation management and ten years experience and a civil engineer with over ten years experience. The Aeronautics Bureau and FAA/ADO work closely to minimize delays in performing the analyses. We are not aware in any unacceptable delays created during fiscal year 2004 while following this process.

Language will be added to the MOU to clarify that the Aeronautics Bureau will post "Notices to Consultants" for airport projects on the Aeronautics Bureau's website pages.

Concern 5: Exemption to State-made funds disbursements

PUBLIC COMMENTS:

- ◆ Section 11(c)4 requires ALDOT training of personnel authorized to execute the drawdown of FAA AIP funds. Recommend adding "ALDOT may, on a case-by-case basis, exempt from training those sponsors who have handled drawdown of FAA AIP funds prior to channeling" For those for whom training is required, the MOU should specify a time limit for the training to be offered after approval of the request to be exempted.
- ◆ The language in the code of Alabama 1975, Section 23-1-361 regarding ALDOT's channeling authority is a concern and a source of controversy and dispute. However, this MOU does address an

“exemption” for the airport sponsor to directly wire or draw down FAA AIP funds. This written request for “exemption” as stated on page 8, (c), 1. states, “...request must be submitted well in advance of the issuance of a grant offer...” might be more specific to a stated time frame for clarity. Should the airports who are approved to draw down directly from the FAA ADO be required the same burden of duplication in paperwork as those who do not?

RESPONSE

ALDOT’s draw down and payment of federal funds was implemented to provide airport owners with technical assistance in the processing of federal “paperwork,” to provide a “one-stop shop” for the payment of state and federal funds, and to eliminate observed conflicts of interests. This process also allows state and federal payments for the same airport project to be “in sync”. With the exception of ALDOT’s one-page invoice form, the department does not require any additional documentation than is otherwise required to properly and accurately account for the expenditure of federal, state and local funds. By shifting the responsibility of drawing down FAA funds on behalf of the airport to the Aeronautics Bureau, the administrative burden on airport owners has been reduced. Efforts have been made to improve the timeliness of this process and most payments are now mailed out within two weeks of the departmental receipt of the request.

Additionally, this process was implemented to facilitate the payment of state funds to airport owners on a monthly basis. Previously, airports could only receive the payment of state funds after a project was completed. Under the current procedures, airports now receive monthly progress payments from the state. The monthly invoices and payments also serve as progress reports for the state on the status of airport projects.

For those airports that wish to make their own draw downs, the MOU provides for an “exemption”. In response to a comment above, the MOU will be changed to clarify when airport owners must request the exemption. The MOU will read, “...request must be submitted at least 3 months in advance of the issuance of a grant offer...”. This will allow sufficient time for ALDOT to review whether or not the airport owner has had a recent audit completed for state and/or federally funded airport improvement projects. If an audit has not been performed, it will be necessary for ALDOT to schedule one as a condition of being granted the privilege of executing the draw down of federal funds.

Once ALDOT grants this authority to the airport owner, the airport owner’s draw down privileges will be reviewed annually to determine its continued eligibility to execute draw downs of federal funds. Generally speaking, once approved, airport owners may remain eligible to execute the draw down of federal funds as long as no financial or accounting “irregularities” occur with the handling of state and/or federal funds.

To perform the drawdown of FAA funds, federal requirements cause the airport owners to complete and maintain accurate records that document the purpose for which the federal funds are used. The Aeronautics Bureau will require a copy of those documents from any airport owner that is approved to draw down FAA funds. These documents can be sent to the Aeronautics Bureau either at the time of the draw down or upon the submittal of the monthly invoice for the payment of state funds.

The training requirements outlined in the MOU are intended to be flexible and based on the experience of the individual that is designated by the airport owner to execute the draw down of federal funds. Training may be provided on an individual basis at the airport owner’s location by bureau personnel or a short training class can be conducted for small groups. The training will be

structured in a manner that will allow those individuals with experience to receive minimal training while others may require more thorough guidance on the policies and procedures for drawing down FAA funds.

Concern 6: Administration of the MOU

PUBLIC COMMENTS:

- ◆ Section 13: Request that an opportunity for public comment be provided for proposed amendments of this MOU.
- ◆ We are very pleased that the FAA/ADO and the Alabama Department of Transportation have been able to come to mutual understanding and commitments. The _____ is very supportive of those accomplishments. Please let this letter serve as acceptance by the _____ of the draft Memorandum of Understanding.

RESPONSE.

ALDOT and FAA will follow the same procedures for review and comment of amendments to the MOU that have been followed for the original document.

Summary of Changes to MOU

Section 4(b). This section was changed to clarify postings to the ALDOT/Aeronautics Bureau website for “Notices to Consultants.”

Section 6(a). This section has been revised to clarify that ALDOT will accept the “Application for Federal Assistance” form (SF 424) as the state’s preapplication for funding assistance, thus eliminating the need to complete two separate applications by the airport sponsor.

Section 11. This section has been renumbered to add a new provision at Section 11(c) to acknowledge that ALDOT will be responsible for submitting quarterly “Federal Cash Transactions Reports” on behalf of those airports which ALDOT draws down and pays federal funds. Section 11(d) sets a 3-month time period for requesting exemption from ALDOT’s draw down and disbursement procedures. A new Section 11(f) has been added to establish that any airport electing to draw down federal grant funds will be responsible for preparing and submitting the required quarterly “Federal Cash Transactions Reports” to the FAA and ALDOT.

Appendix 2. Language has been added to indicate that ALDOT will submit the listed documents to the FAA in consideration of the FAA’s “Customer Response Standards” and sets the goal of forwarding the specified documents to the FAA within two weeks of their receipt. The appendix also includes a statement that ALDOT will notify the airport sponsors when documents are forwarded to the FAA.