

Chapter 7

Contract Funding Rules and Regulations

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SEC. 7-1. PURPOSE.

- (a) Under the provisions of section 103(n)(7) of the Internal Revenue Code of 1954, as amended (the "Code"), and section 1.103(n)-2T of the Temporary Regulations (the "Temporary Regulations"), it is possible that the Joint Revenue Bonds of the Board may be required to be included with the State Private Activity Bond Volume Limitations provided by the Code, as interpreted by the Temporary Regulations. Such determination is or may be influenced by the source and use of funding of construction contracts at the Airport, some of which funding is provided by the Board through the issuance of Joint Revenue Bonds or Special Facility Revenue Bonds.
- (b) While the Board can and intends to continue to control the purposes for which it issues Joint Revenue Bonds and Special Facility Bonds and to control the expenditures of funds from those sources, it has no control over the funding of a tenant's share of any contract payments obtained from other sources.
- (c) It is the purpose of these Rules and Regulations to establish rules upon the basis of which the Board will let contracts and will permit construction at the Airport by contractors not under contract directly with the Board, and to provide procedures by which contracts, funded by sources outside the Board's control, will be permitted, all for the purpose of making certain the Board's Joint Revenue Bonds remain outside the State Private Activity Bond Volume Limitations provided by the Code and the Temporary Regulations.

SEC. 7-2. EFFECTIVE DATE AND DURATION.

The effective date of these rules and regulations is December 3, 1985, the date of their adoption, and they shall remain in effect until modified or rescinded by the Board. The Board expresses its intent to modify or rescind these rules and regulations at such time as it has determined that relevant provisions of section 103(n)(7) of the Code, as interpreted by the Temporary Regulations, has been changed, altered, interpreted or applied in a manner that will permit the use of funds obtained by tenants from tax exempt sources in the payment of contracts for Airport improvements without causing the Joint Revenue Bonds of the Board to be included within the State Private Activity Bond Volume Limitations provided by section 103(n)(7) of the Code.

SEC. 7-3. SCOPE.

These Rules and Regulations are in addition to and not in lieu of any other rule, regulation, policy, law or contract provision relating to procurement activities of the Board.

SEC. 7-4. ADMINISTRATION OF RULES AND REGULATIONS.

These Rules and Regulations shall be administered, under the direction of the Executive Director, by all employees of the Board. The Executive Director, with the advice of the Board's Legal Counsel and the Board's Bond Counsel for Joint Revenue Bond financing, is authorized to develop policies, procedures and practices consistent herewith. Such policies, procedures and practices shall be binding upon all employees, tenants and contractors doing business at or on the Airport.

SEC. 7-5. CONTRACTS FUNDED ENTIRELY FROM OPERATING REVENUES.

Any Board contract for improvements or additions to the Airport may be let by the Board in accordance with established procurement requirements without further inquiry as to the source of funding, and may relate to the improvement or extension of any properties comprising a part of the Airport.

SEC. 7-6. CONTRACTS FUNDED ENTIRELY FROM THE PROCEEDS OF JOINT REVENUE BONDS.

- (a) Subject to the limitation contained in subsection (b) of this section, any Board contract for improvements or additions to the Airport which is to be funded from the proceeds of Joint Revenue Bonds may be let in accordance with established procurement requirements without further inquiry as to the source of funding.
- (b) A Board contract to be funded entirely from the proceeds of Joint Revenue Bonds may not be let for the purpose of improving or adding to any part of any Airport facility which was provided with the proceeds of obligations, the interest on which was exempt from federal income taxes, other than Joint Revenue Bonds, issued before October 5, 1984, unless:
 - (1) the facility being improved, expanded or extended, in the opinion of General Counsel, can be disregarded under one of the three exceptions to the Airport bond "contamination rules" contained in Section 1.103(n)-2T-Q9-A9 of the Temporary Regulations; or

- (2) the user of the facilities being improved, expanded or extended, has made or makes a timely and effective election not to take an investment tax credit or depreciation with respect to the prior facilities and the facilities being financed with the proceeds of the Joint Revenue Bonds, in a form and substance approved by the Board's Legal Counsel.

SEC. 7-7. CONTRACTS FUNDED PARTLY WITH JOINT REVENUE BONDS OR OPERATING FUNDS AND PARTLY WITH FUNDS OF A TENANT.

- (a) Board contracts otherwise acceptable under established Board procurement procedures and to be funded in part by the proceeds of the Joint Revenue Bonds or Airport operating funds and in part with funds provided by a tenant may be let upon the conditions contained in this section.
- (b) Prior to the letting of a contract or executing a change order with respect to such contract, the tenant must file an affidavit describing the source of funding of its share of contract costs. Such affidavit, to be in form and substance satisfactory to the Board's Legal Counsel, shall specifically contain, disclose, verify and warrant the accuracy of the following information:
 - (1) the precise source from which the tenant obtained or expects to obtain its share of funds, such as, tenant's operating revenues, bank loans, stock offerings, sale of debt securities or other sources; and
 - (2) a listing of all issues of tax-exempt private activity bonds to which it is a party and the proceeds of which are subject to its direction or influence, and the location where the proceeds, if any, are on deposit, along with the name and principal officer of the custodian or trustee holding such funds. Based upon the information contained in such affidavit, the Board's Legal Counsel may, but shall not be required to, request and obtain additional information.
 - (3) A contract shall not be presented for approval by the Executive Director or the Board, as appropriate until such additional information has been supplied. Additionally, the Board's Legal Counsel may, but is not obligated to, require the tenant to provide the following:
 - (a) the third-party verification, such as by a trustee or custodian holding funds derived from tax-exempt financing, or a bank or banker or other party or source providing the tenant's funding, which confirms that, as appropriate, the funds designated for use in paying the tenant's share of contract payments are derived from the source state, or that the third party will not permit the withdrawal of funds held in its custody for the purpose of making improvements at the Airport or will make such payments directly to the Board and will not permit a reimbursement of the tenant from the funds held by it for a purpose not permitted by these Rules and Regulations as specified to it by the Board's Legal Counsel; and
 - (b) in the appropriate case, an election of the type described in SEC. 7-6(b)(2) has been made.

- (4) prior to the issuance of any order to proceed on any contract funded by the combined sources described in this Rule, the tenant and the Executive Director shall have executed and delivered a Special Depository Agreement, substantially in the form attached hereto (with such modifications as may be approved by the Board's Legal Counsel), and the tenant shall have complied with the requirements thereof.

SEC. 7-8. BOARD CONTRACT FUNDED ENTIRELY BY TENANT.

- (a) Contracts otherwise acceptable under established Board procurement procedures and to be funded entirely by or on behalf of a tenant may be let by the Board if the procedures prescribed in SEC. 7-7(b) are also followed.
- (b) Prior to issuing an order to proceed under the contract, the Board and the tenant shall execute a Special Depository Contract substantially in the form attached hereto and the tenant shall have complied therewith.

SEC. 7-9. TENANT CONTRACTORS.

- (a) No Airport tenant may authorize or direct another, on its behalf, to commence work on the Airport for any improvement or addition to the Airport without first giving the Board's Legal Counsel the information and, if reasonably deemed necessary by the Board's Legal Counsel to protect the tax-free status of Airport Bonds, the verification and/or the election required in SEC. 7-6(b)(2) hereof.
- (b) No Airport tenant and no agent or contractor of an Airport tenant may commence work on the Airport on any improvement or addition to the Airport without first obtaining a permit from the Executive Director.
- (c) The permit required in subsection (b) shall be issued only if the tenant performing, contracting for or authorizing the on-Airport work has given the Board's Legal Counsel the information and, if reasonably deemed necessary by the Board's Legal Counsel to protect the tax-free status of Airport Bonds, the verification and/or election required in SEC. 7-7(b) hereof.