



November 8, 2006

Request for Proposals/Reissued: ACRP 11-01, Study Topic 1-02, Theory and Law of Airport Revenue Diversion

Dear Attorney:

The Technical Activities Division of the Transportation Research Board (TRB), as part of its work with the Airport Cooperative Research Program (TCRP), plans to award a contract for a study and report. The research Problem Statement is enclosed for your consideration.

TRB anticipates an estimated 310-360 hour level of effort, and compensation in the \$23,250.00 to \$36,000.00 range for this study topic.

Research reports sponsored by this project are published in TRB's Legal Research Digests (LRD) series. LRDs are distributed to some libraries and to approximately 4000 transportation lawyers and officials through the TRB distribution network.

After reviewing the enclosed statement, if you are interested in being considered as the researcher and author, you should reply by mail, FAX or email on or before December 1, 2006 to:

James B. McDaniel
Counsel for Legal Research Projects
Transportation Research Board
500 5th Street, NW
4th Floor
Washington, DC 20001
Tel: (202) 334-3209, Fax: (202) 334-2003
Email: jmcdaniel@nas.edu

Your reply should include: a statement of interest; a resume; a list of your prior publications (you may enclose one or two publications); a statement of resources you will allocate to this project; any additions, deletions, or changes you may wish to suggest for undertaking the work; and your requested compensation.

Offerors are evaluated by Project Panel members and TCRP staff consisting of individuals collectively knowledgeable in the problem area. Evaluations are based upon the offerors': 1) experience in the subject area; 2) understanding of the work (demonstrated by the commitment of resources); 3) prior relevant publications (including briefs); 4) schedule for completing the work; and 5) price.

Feel free to call me at (202) 334-3209 if you have any questions.

Sincerely,
James B. McDaniel
Counsel for Legal Research Projects

Enclosure
JBM/jlc



Airport Cooperative Research Legal Project
Project 11-01, Airport Legal Studies
Study Topic 1-02 Theory and Law of Airport Revenue Diversion
Problem Statement

Airports receiving Federal Assistance must restrict their use of airport revenue for strictly prescribed airport purposes (see generally the Airport and Airway Improvement Act, 49 USC §§41707(b), 47133). When airport revenue of a federally assisted airport is used for other than airport capital costs and operations, with few exceptions, it is generally considered an unlawful airport revenue diversion. Limited information on this subject can be found in DOT Inspector General Reports and Congressional Hearings held prior to Congressional enactment of stricter provisions governing airport revenue diversion. See the Federal Aviation Administrations Authorization Act of 1994 (Public Law 103-105 (August 23, 1994)), and the Airport Revenue Protection Act of 1996, Title VIII of the Federal Aviation Administration Reauthorization Act of 1996 (Public Law 104-264 110 Stat.).

The Federal Aviation Administration (FAA) issued a policy statement on this issue, which went into effect February 16, 1999 (Fed. Reg. 7695 (Feb. 16, 1999)). According to the policy, any airport that receives Federal Assistant must sign assurances, as part of the Grant Agreement, that the revenue generated by the operator will be used only for purposes related to the airport. The assurance also prohibits the diversion of airport revenue to non airport use. Many provisions in the policy codified policies and practices already in existence at the Federal Aviation Administration (FAA). The policy statement tends to offer general guidance, with only limited discussion of the application of the airport revenue-use restriction to specific situations.

The FAA relies upon several means for monitoring compliance with its revenue use requirements and interpreting those requirements:

1. The sponsor's annual auditing report on revenue use required by statute.
2. Single audit reports as authorized.
3. Investigations prompted by third-party complaints pursuant to 14 CFR, Part 16.
4. Department of Transportation, Office of Inspector General Audits
5. Publicly available FAA Chief Counsel and DOT General Counsel Opinions.
6. Guidance letters issued by Airport Division Staff based on specific fact situations presented by operators.

Information on the application of the airport revenue-use requirements to specific situation is developed through these monitoring activities. Thus, information pertaining to revenue diversion cannot be found at a central location, but is contained in all of the above sources.

This project would synthesize the available legal theory, statutes, policy guidance, analysis, and case decisions pertaining to airport revenue diversions into a single report. This report should provide examples of the types and actual experiences of revenue diversion. The goal is to produce a comprehensible Legal Research Digest Report of approximately 100-125 typewritten double-spaced pages with relevant precedent and guidance concentrated in one source.

RESEARCH IMPLEMENTATION

This research will be conducted in 4 tasks pursuant to a firm fixed price agreement. The tasks will be as follows

Task 1. Research Plan and Detailed Report Outline. Consultant will conduct background research and collect material from the sources identified above. Based on the initial but complete review of the source material, consultant will propose a detailed report outline. The outline should be about 10-15 pages, and contain sufficient detail to inform the

committee of what a 100-125 page report will contain. This outline should also contain the estimated pagination for each proposed section and/or subsection. This material will be submitted to the Principal Investigator for committee consideration and approval.

Estimated Length of time: 60-90 days
Estimated work effort: 120 hours

Task 2. After TRB approval of the Detailed Outline, Consultant should conduct additional research, case and statutory/regulatory analysis, and collect additional primary data to the extent necessary.

Estimated Length of time: 30-45 days
Estimated work effort: 40 -60 hours

Task 3. Draft report in accordance with the approved outline (including modifications required by TRB).

Estimated Length of Time: 60-90 days
Estimated work effort: 120 hours

Task 4. Revise report as necessary. Consultant should estimate that 2 revisions will be necessary. One revision may be required after review by the Principal Investigator and members of a select subcommittee. Additional, revisions may be required after the report has been reviewed by the full committee.

Estimated Length of time: 30 days
Estimated work effort: 40-60 hours

Estimated Length of time: 180-255 days
Estimated work effort: 310-360 hours
Estimated Compensation: \$23,250-\$36,000.00.

If an offeror's estimation of length of time and estimated work effort differs from those above, the offeror should use his/her estimates.

An important factor in rating offers will be the offeror's commitment to promptly undertake and complete this study.

Submit statements of Interest on or before December 1, 2006 by mail, FAX, or email to:

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Transportation Research Board
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