



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

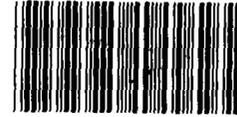
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COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

NOVEMBER 3, 1980

B-197746

The Honorable David L. Boren
United States Senate



113690

Dear Senator Boren:

Subject: [Federal Aviation Administration's
Management of Two Grants to the
Tulsa International Airport]
(CED-81-8)

In a November 9, 1979, letter, you requested that we review how the Federal Aviation Administration (FAA) managed two grants for taxiway improvements at the Tulsa International Airport. Specifically, you asked us to determine if proper guidelines were followed and if sufficient guidelines have since been implemented to deter occurrences of this nature.

The original grant in 1972 was for \$2 million and was used to upgrade, with a concrete overlay, four main taxiways. Before the work was completed the overlay began to crack. The cracking posed a threat to flight safety, and in 1978 the airport received a second grant which included \$2.1 million to reconstruct and overlay. This work was completed in 1979. (See enc. I.)

In December 1979, before we began work, the city of Tulsa sued the consulting engineer who designed the first overlay. The suit alleges that the consulting engineer did not adequately design the overlay for the taxiways and did not fulfill all the terms of his contract. The suit asks for over \$5 million in damages.

It is our policy not to offer opinions or decide matters where the material issues involved are before a court. Because the grantee is suing its consulting engineer for professional negligence 5 years after the faulty work was detected, we focused our inquiry on two grant administration questions:

--What role should FAA play in the grantee's selection of a consulting engineer?

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--What actions can or should FAA consider in working with its grantee to overcome failure?

Our work included inquiries at FAA's headquarters; the Southwest Regional Office, Fort Worth, Texas; and the Airports District Office, Oklahoma City, Oklahoma. We contacted Office of Inspector General, Department of Transportation, officials at the headquarters and region levels and Office of Federal Procurement Policy, Office of Management and Budget (OMB), officials. We also worked at Tulsa International Airport.

We found that FAA generally followed its procedures in administering the two grants at the Tulsa airport. However, our evaluation of the role FAA field offices played in grantees' selection of an engineer, showed that FAA's Southwest Region allowed the grantees to decide what selection process to use. This practice does not support OMB standards and FAA regulations which, since 1974, have advocated selecting consulting engineers competitively on the basis of competence and qualifications. After we completed our fieldwork, FAA issued instructions emphasizing that grantees must select consulting engineers competitively.

Further, FAA had not issued any guidance to its field offices delineating their responsibilities when projects encounter design or construction problems requiring work to be redone. FAA depends on the field to identify the causes for rework and improvements needed in areas such as currency of FAA's design standards and adequacy of its review of the grantee's project plans and specifications. Better communication between FAA and its field offices would also permit early coordination of FAA's potential involvement in grantee litigation and determination as to the need for FAA to include requirements in follow-on grants to better assure a timely and equitable resolution of the grantee's construction problems.

FAA NEEDS TO CLARIFY THE REQUIREMENT
FOR COMPETITIVE SELECTION

FAA and its grantees can, and are required to, reduce the probability of serious problems occurring in construction projects. Selecting a competent engineer to design the project is very important. FAA officials consider the consulting engineer to be the key individual in the success or failure of a construction project.

FAA relies on the engineer to resolve design matters. For example, the engineer evaluated the existing pavement at Tulsa and determined the required thickness of the overlay. FAA reviews and approves all design plans and specifications. However, it claims the approval means only that minimum standards have been met and does not relieve the engineer of the responsibility for the design plans and specifications.

The Airport Development Aid Program, under which FAA provides assistance to airports, is a grant program and must conform to OMB guidance. OMB's basic guidance to grantor agencies is contained in Circular A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. Attachment "O" to that circular provides the standards which govern State and local grantee procurement. Beginning in 1974, these standards required that procurement of professional services, such as consulting engineers, be as competitive as practicable. FAA reissued the OMB standards as regulations without any supplemental guidance regarding contracting for professional services. Thus, the field offices interpret and implement the regulations on their own.

The Southwest Region did not require its grantees to procure services through a competitive process but left final responsibility for choosing the method of procuring engineer services to the discretion of the grantee. ^{1/} According to the Chief, Safety/Standards Branch, Airports Division, Southwest Region, FAA informally promotes and provides assistance on establishing a competitive selection process if the grantee has not already selected an engineer. This official also claims that most grantees have already selected their consulting engineer when they apply for a grant. A common practice is for grantees, including the Tulsa International Airport, to have consulting engineers on retainer contracts.

^{1/}A 1972 FAA advisory circular describes one approach to a competitive process. The grantee should contact at least three engineers who appear to be qualified and request that they appear for separate personal interviews. The experience and past performance of each engineer should be evaluated and verified and the one selected as best qualified should be asked to negotiate compensation.

When FAA approves construction projects, the grantees then engage their retained engineer. This arrangement often makes competition at the time of grant award impractical.

Southwest Region officials believed their informal assistance efforts to encourage competitive selection complied with the intent of the 1974 attachment "O" and the FAA advisory circular on procuring engineering services.

In August 1979, OMB published a revised attachment "O" to Circular A-102, which was effective October 1, 1979. While the overall Federal policy is to place greater reliance on State and local government systems and managerial abilities and minimize the burden of excessive Federal regulations, the revised standards specifically require grantees to procure architect and engineering services competitively. Both OMB and FAA headquarters officials confirmed this with us in early April 1980. FAA advised its field offices in September 1979 not to implement the revised attachment "O" until instructions to do so were received from the Department of Transportation. Those instructions were received in March 1980, but FAA had not yet issued any guidance to its regional offices clarifying the requirement that grantees procure architect and engineering services competitively.

CONCLUSIONS AND AGENCY ACTIONS

Because FAA did not provide specific guidance to its field offices to implement OMB Circular A-102 Attachment "O," FAA's Southwest Region followed a practice of informally promoting and providing assistance to grantees on how to set up a competitive selection process but did not necessarily require its grantees to use such a process when choosing their consulting engineer.

In a May 12, 1980, memorandum, FAA advised its regional offices that attachment "O" required some basic changes in how FAA had been administering the Airport Development Aid Program. One of the changes cited was that grantees may no longer award engineering or professional services contracts without competition. While selecting engineering services competitively does not guarantee a problem-free design or adequate supervision of construction, we believe such a process is an important initial step towards assuring a successful project.

NEED FOR CONTINGENCY PLANNING
FOR PROJECT FAILURES

At the time of our review, FAA had not given guidance to regional and district officials on what they should do when faulty construction occurs and FAA funds the rework. No plan existed to identify those actions that the regions should consider and the circumstances under which these matters should be brought to headquarters for advice or policy evaluation. Any guidance or assistance that headquarters gives might include the need for:

- An FAA requirement of prerequisites, such as an independent investigation of cause and a commitment to obtain financial restitution, if warranted, before approving a follow-on grant.
- Coordination with FAA's legal staff to insure administrative actions do not harm or waive FAA's rights of remedial action against the grantee and to identify potential Federal liability.
- Specific and expeditious schedules with milestones for compliance by the grantee to preclude a protracted period of fault-finding and resolution.
- Government participation in the cost of investigating the failure and obtaining financial restitution.
- An FAA review of the investigative report to evaluate the adequacy of its own minimum standards and the adequacy of its engineering review of the original plans and specifications.
- Documented agreements on how any legal settlement might be distributed and applied between the grantee and FAA.

Grant administration problems arising out of project failures need to be brought to headquarters' attention to assure that the problems are not widespread and that field managers are on top of the situation. However, the field offices do not necessarily notify headquarters that a project has failed nor involve headquarters in the decisions on handling the failure. At present the district office decides what actions to take when projects fail and the regional office approves the decision.

According to FAA officials, design and/or construction problems which cannot be resolved through the normal grant administration process occur infrequently. However, FAA does not routinely document the number of serious problems and we cannot say whether such problems are widespread. However, in 1978 and 1979 the Southwest Region awarded three grants to two airports--Tulsa and New Orleans--to redo work which had failed.

The Acting Chief, Grants-in-Aid Division, at headquarters and the Chief, Program/Planning Branch, Southwest Region stated that even though FAA took different actions regarding the failures at Tulsa and New Orleans, the Federal investment has been protected because the airports have determined responsibility for the failures and have taken legal action. According to these officials, FAA should not interfere until the airports have tried to resolve the matters.

The following relates the circumstances and events of each case and the different action taken by FAA in each case.

The Tulsa case

FAA relies on the grantee to determine what happened, who is at fault, and who, if warranted, should make financial restitution when projects need to be redone. In 1976, the Tulsa airport contracted for a study to determine what caused the failed taxiways and who was at fault. Upon receiving the study in 1977, the airport's attorney concluded that the consulting engineer was liable for over \$4 million in damages and recommended suing the consulting engineer for poor design. In July 1979, the airport's attorney again recommended a suit. However, a suit was not filed until December 1979.

In March 1978, FAA awarded a new grant to the Tulsa airport of which \$2.1 million was to redo the major portion of the taxiways. The new grant had no special conditions dealing with what FAA expected the airport to do about identifying responsibility for the taxiways and obtaining financial reimbursement if warranted.

The Chief, Airports District Office, stated that when the second grant was awarded, he had a verbal understanding with the airport authority that the airport would determine responsibility for the taxiways and would diligently pursue financial reimbursement if warranted. We could not find

written guidance or instructions to the airport from FAA on these matters. Also, we found no evidence that FAA required the airport to provide progress reports 1/ on the actions it was taking. According to the Chief, Airports District Office, he met with airport officials several times between early 1977 and late 1979 and telephoned them periodically. However, the official kept no records of these meetings and telephone conversations. FAA and the airport finalized an agreement in January 1980 on how any funds ultimately received would be divided.

FAA district and regional program officials believed it was not necessary to discuss the situation at Tulsa with either their headquarters' program staff or their regional or headquarters' attorneys. Before the legal action, neither FAA's legal representatives nor headquarters' program personnel were aware of the actions taken by the district and region in monitoring the situation at Tulsa.

Regional officials reviewed the investigative report on the causes of the failure at Tulsa and generally concurred with the findings. In a February 1977 intra-regional memorandum, the Assistant Chief, Airports Division, noted that FAA's construction standards had changed since the project was designed in 1972. By FAA's 1977 standards, a key element of the design would not have been permitted. The memorandum did not discuss any other FAA standards applicable to the overlay design or the adequacy of FAA's district and region reviews of the original design plans and specifications.

The New Orleans case

The two failures at the New Orleans International Airport--rapid and unexpected deterioration of asphalt overlays on both the north/south and east/west runways--required grants of about \$968,000 and \$2.2 million, respectively, for rework. The Chief, Program/Planning Branch, Airports Division, Southwest Region, said the region basically followed the same procedures as with the Tulsa case, but, while not solicited, FAA headquarters became involved in this case because of the publicity it was receiving. Another difference was that many of the contacts between the airport and the district and the region were documented and the airport was requested to submit written progress reports.

1/FAA has since told us that it is now receiving progress reports.

The official further said that FAA headquarters required special conditions in each of the follow-on grants to redo the work. These special conditions required the airport to determine fault and recover funds through legal action, if warranted, and spelled out how recovered funds would be split between FAA and the grantee.

FAA's legal staff was involved in preparing the special grant conditions. An FAA official told us that the staff is representing FAA in litigation in which the contractor has named FAA a third party defendant in a countersuit against the sponsor who is suing the contractor for breach of contract. Also, an FAA official told us that criminal indictments have been returned by a grand jury against the contractor in connection with the runway construction.

Guidelines did not exist for the regional directors in cases where projects failed and FAA funded the rework. The FAA actions varied in these two cases and, in the Tulsa case, did not assure protection of the Federal investment. We believe guidance from headquarters is needed in these matters.

RECOMMENDATIONS

We recommend that the Administrator, FAA, develop guidelines for regional directors to follow when a funded project has design or construction problems which require work to be redone. The Administrator should also require the regional directors to closely monitor grantees' actions in these cases and to periodically report their status to headquarters.

AGENCY COMMENTS

In commenting on the recommendations in our report, FAA agreed that some national guidance is needed for uniform program administration. The agency advised us it plans to incorporate appropriate procedures in the next amendment to the Airport Development Aid Program handbook. This guidance would require FAA regions to (1) confer with headquarters in cases where a failure has occurred, (2) require grantees to recover damages, and (3) require grantees to periodically report their progress on recovering damages.

B-197746

Our report was revised to better acknowledge the Southwest Region's efforts to informally work with grantees to promote competitive selection of engineers even though these practices stop short of requiring the grantee to use such a process as a condition for grant approval. No further action is necessary since FAA issued clarifying instructions in May 1980 to require competitive selection of engineers. Enclosure II contains the full text of the agency's comments and our disposition of them.

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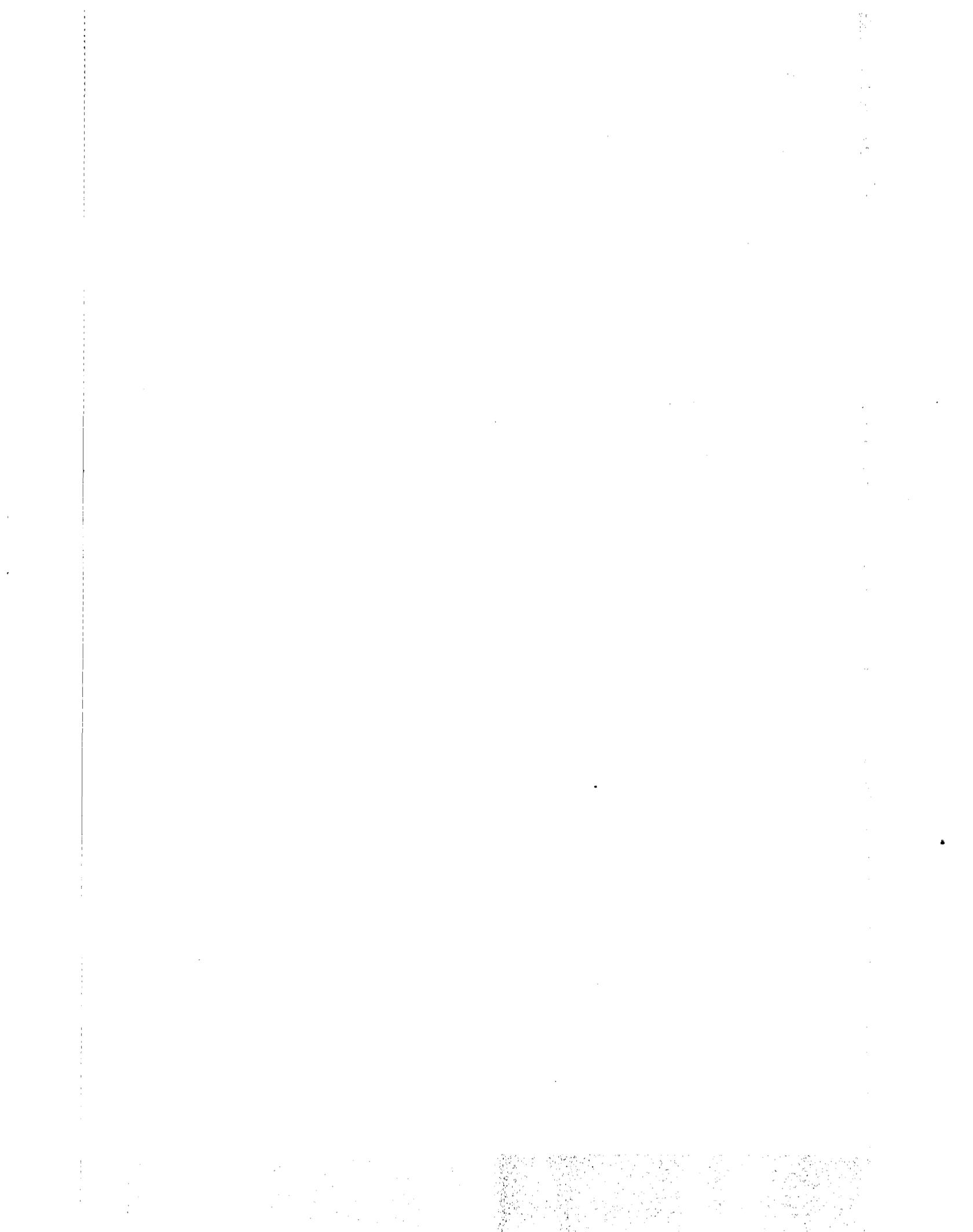
As arranged with your Tulsa office, we will send copies of this report to the Department of Transportation and the Office of Management and Budget 3 days after the issue date.

Sincerely yours,



Henry Eschwege
Director

Enclosures - 2



CHRONOLOGY OF EVENTS AND MANAGEMENT
ACTIONS AT TULSA INTERNATIONAL AIRPORT

CHRONOLOGY OF EVENTS FOR
THE PROJECTS AT TULSA

In June 1972, FAA awarded a 50-percent matching grant (Project No. 8-40-0099-03) to Tulsa International Airport. The Federal Government's share was not to exceed \$1,890,646. The primary purpose of the project was to strengthen and widen the primary air carrier taxiways and to pave the taxiways' shoulders. The taxiways were to be widened from 75 feet to 100 feet. The primary air carrier taxiways were Alpha, Bravo, Charlie, and Delta. The project included minor work, such as installing security fencing and demolition of the old control tower.

The consulting engineer's plans and specifications for the taxiways were approved by FAA in March 1973 after complying with a lengthy September 1972 review by FAA. In April 1973, the contractors' bids were opened and all were above the engineer's estimate of \$4 million. The four bids ranged from \$4.5 million to \$6.2 million. Later the project's scope was reduced; for example, the taxiways were to remain 75 feet wide.

In November 1973, contractors' bids were opened for the reduced scope. Bids ranged from \$4.2 million to \$4.5 million. FAA concurred in awarding the contract to the lowest bidder and the contractor was instructed to proceed as of February 1, 1974.

Seventy-five percent of the construction was performed in 1974. The remainder was completed during the 1975 construction season. Limited flight operations on the completed portion started in mid-1975. Before completion, the overlay began to crack in all directions. Costly maintenance activities consisted of sweeping the debris and patching the concrete. The possibility that a jet engine might ingest concrete debris and suffer foreign object damage posed a threat to flight safety.

The final inspection, performed in March 1977, noted that construction had not been satisfactorily completed. The final audit of the grant was completed in March 1978 and no substantial discrepancies were found. FAA had amended the grant agreement to provide a 10-percent increase in the Federal share, not to exceed a maximum grant amount of \$2,079,710. The total cost for the taxiways was about \$4.5 million. In July 1978, FAA made the final payment of \$207,971 to the airport. No funds were withheld from the airport and of the total Federal share, about \$2.036 million was related to the taxiway work.

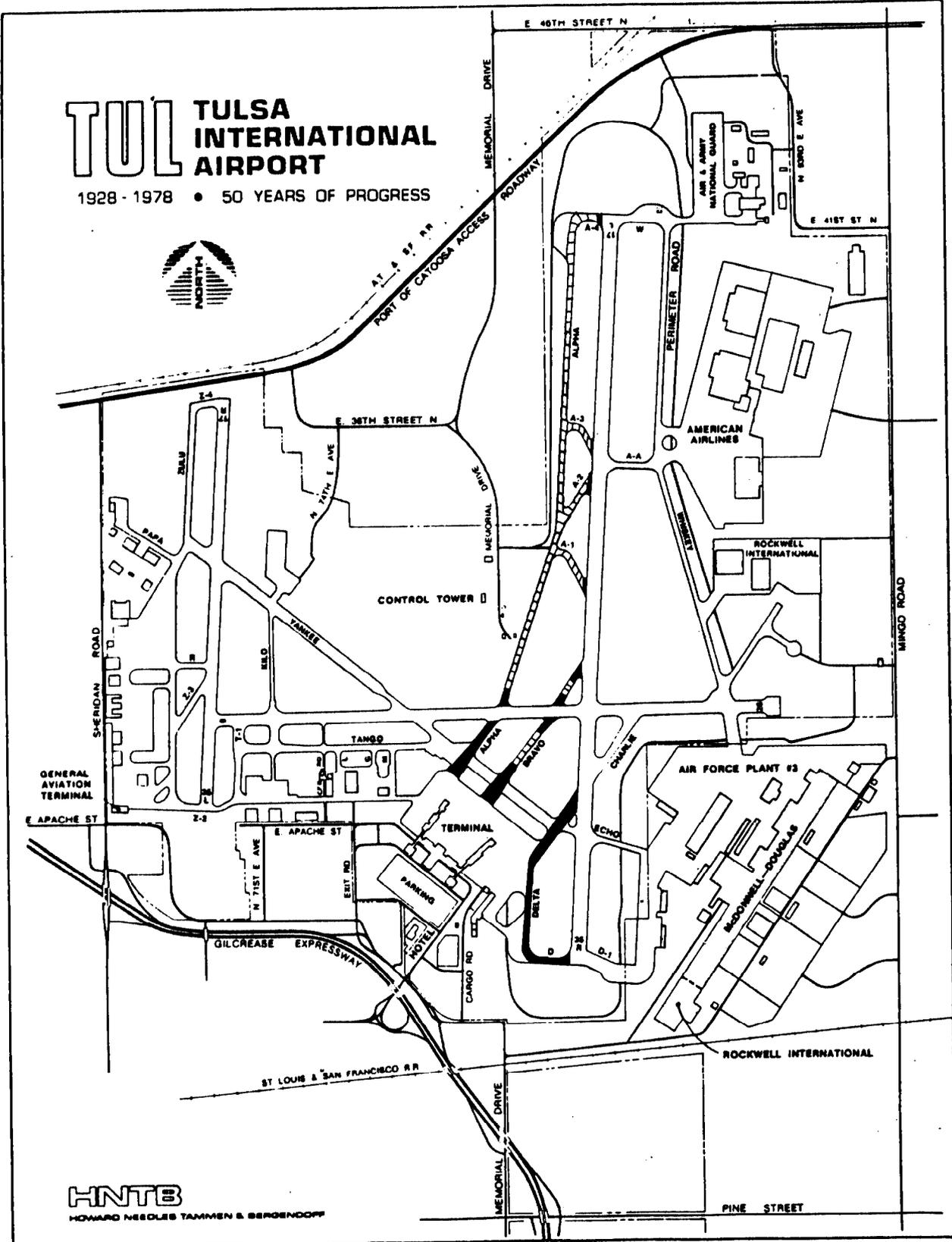
As the deterioration of taxiway Alpha's overlay progressed, FAA awarded another grant (Project No. 6-40-0099-14) in March 1978. The Federal amount of \$3,249,333 was to be 75 percent of a total estimated project cost of \$4.3 million. Much of this project was to rework a major portion of Project No. 8-40-0099-03 which had been completed 3 years earlier. However, not all of the work performed under the earlier grant had failed sufficiently to require immediate rework: the two smaller, infrequently used taxiways, Charlie and Delta, did not fail because these overlays had not been subjected to as much stress as had the overlay on taxiway Alpha. These two smaller taxiways, however, are cracking and will eventually reach the same deterioration level as Alpha.

The contractor was instructed to proceed on Project No. 6-40-0099-14 in June 1978. In September the contractor defaulted, but the bonding company continued the construction and completed it in May 1979. Of the \$4.3 million project costs, about \$2.8 million was to rework the prior grant. The Federal share was \$2.1 million and Tulsa's share was \$0.7 million.

Referring to the airport map on page 3, the solid black plus the cross-hatched areas represent all the taxiway work performed under Project No. 8-40-0099-03. The cross-hatched areas represent sections of the taxiways which have had to be redone because of overlay problems. Taxiway Alpha was redone under Project No. 6-40-0099-14 and taxiway Bravo was redone under a change order to the project in which the east/

TULSA INTERNATIONAL AIRPORT

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west runway was repaired and graded to a higher elevation. 1/

MANAGEMENT IMPROVEMENTS
AT TULSA AIRPORT

During the past 5 years, the Tulsa airport management has taken certain actions which should help to reduce the probability of serious problems occurring on construction projects. The actions include:

1. When the airport decided to hire a new consulting engineer in 1976, it used a competitive selection process in which 17 engineering firms presented their qualifications. Members of the airport staff evaluated the qualifications and identified the most qualified on the basis of predetermined criteria. The airport authority made the final selection from the two designated as most qualified.

The former consulting engineer, a local firm, had been selected in 1970 by the governing airport authority without assistance from the airport staff. When selected the engineer had no previous experience in designing airport construction projects. We were unable to document the procedures or criteria used in that selection process.

2. In 1979 the airport began requiring its consulting engineer to have professional liability insurance. Professional liability insurance provides some financial protection to the grantee for errors and omissions made by the consulting

1/The additional work increased the grant by about \$95,000 and included about 520 feet of taxiway. Because of the relatively minor amount of rework involved, we did not include this grant in our review.

engineer in developing design plans and specifications.

3. In 1978, the airport began retaining a percentage of the consulting engineer's fee until the engineer complies with all the terms of the contract. In the past, the airport had no leverage short of legal action to force consulting engineers to comply with all conditions of the contract.
4. In addition to the above actions, the airport has hired three individuals to provide in-house engineering expertise. At the time of the first grant, the airport relied solely on the consultant.



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

Assistant Secretary
for Administration

400 Seventh Street, S.W.
Washington, D.C. 20590

July 23, 1980

Mr. Henry Eschwege
Director
Community and Economic
Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

We have enclosed two copies of the Department of Transportation's (DOT) reply to the General Accounting Office (GAO) draft report, "Federal Aviation Administration's Management Of Two Grants To Tulsa International Airport," dated June 12, 1980.

GAO found that Federal Aviation Administration (FAA) generally followed its procedures in administering the two grants at the Tulsa airport. They state, however, that FAA's Southwest Region left the selection of consulting engineers to the discretion of its grantees and that this practice did not support Office of Management and Budget (OMB) standards and FAA regulations which, since 1974, have advocated competitive selection based upon competence and qualifications. GAO recommends that the FAA Administrator (1) develop guidelines for regional directors to follow in case of poorly designed or constructed projects and require them to closely monitor grantees' actions, and (2) require the regional directors to periodically report to headquarters the status of such projects.

We agree with the basic thrust of the GAO report that the consulting engineer selected for design of projects must be a firm with a high degree of professional qualifications and technical competence. With respect to the two GAO recommendations, we agree that some national guidance is needed

for uniform program administration and we plan to incorporate appropriate procedures in the next amendment to the Airport Development Aid Program (ADAP) handbook. This guidance would require FAA regions to (1) confer with headquarters in cases where a failure has occurred, (2) require sponsors to recover damages, and (3) require sponsors to periodically report their progress on recovering damages.

Please let us know if we can be of further assistance.

Sincerely,


Edward W. Scott, Jr.

Enclosures

DEPARTMENT OF TRANSPORTATION REPLY
TO
GAO DRAFT LETTER REPORT OF JUNE 12, 1980
ON
FEDERAL AVIATION ADMINISTRATION'S MANAGEMENT OF TWO GRANTS TO
TULSA INTERNATIONAL AIRPORT

SUMMARY OF GAO FINDINGS AND RECOMMENDATIONS

The General Accounting Office (GAO), at the request of Senator David L. Boren, State of Oklahoma, reviewed the Federal Aviation Administration's (FAA) management of two grants for taxiway improvements at Tulsa International Airport. Under the first grant the main air carrier taxiways were upgraded with a concrete overlay which began cracking in 1974 even before project completion. Poor design work by the consulting engineer was cited as a cause. The consulting engineer was selected by the City of Tulsa (the sponsor/grantee) without competition.

In March 1978, a second grant was awarded. Most of this project was to rework a major portion of the earlier project. Because the sponsor was suing its consulting engineer for professional negligence, GAO focused its inquiry on (1) what role should FAA play in the grantee's selection of a consulting engineer, and (2) what actions can or should FAA consider in working with its grantees to overcome failures.

GAO found that FAA generally followed its procedures in administering the two grants at the Tulsa airport. They state, however, that FAA's Southwest Region left the selection of consulting engineers to the discretion of its grantees and that this practice did not support Office of Management and Budget (OMB) standards and FAA regulations which, since 1974, have advocated competitive selection based upon competence and qualifications. GAO believes that FAA headquarters needs to (1) clarify the field offices' roles in dealing with grantees who need to procure engineering service, and (2) provide guidance on what action field officials need to take when faulty construction occurs and FAA must fund the rework. They further believe that FAA has not adequately monitored the actions taken by the City of Tulsa to ensure that the Federal investment has been protected.

GAO recommends that the FAA Administrator (1) develop guidelines for regional directors to follow in case of poorly designed or constructed projects and require them to closely monitor grantees' actions, and (2) require the regional directors to periodically report to headquarters the status of such projects.

POSITION STATEMENT

We agree with the basic thrust of the GAO report that the consulting engineer selected for design of projects must be a firm with a high degree of professional qualifications and technical competence. We also agree that generally this can best be achieved through a free and competitive process that allows the qualifications and competence of each competing firm to be considered. It does not necessarily follow, as the report seems to imply, that competition will always lead to selection of the most competent consulting engineer or one that would be different than if a noncompetitive selection process were used.

[GAO Comment: Report was revised to note that competitive selection does not guarantee a problem-free design. See page 4.]

The GAO report makes no recommendation with respect to its first question on the role FAA should play in the grantee's selection of a consulting engineer. We concur that no changes are needed in our current role since the consultant selection process used by the regions is in accordance with the requirements of OMB Circular A-102 as well as the stated Federal policy to place greater reliance on grantees to properly manage their programs.

[GAO Comment: FAA infers that the regions have always complied with the requirements of the OMB circular. This is incorrect. In issuing its revised instructions in May 1980 FAA acknowledged that sponsors may no longer award engineering or professional service contracts without competition.]

GAO believes it would be useful for FAA to expand its guidance to advise the regions how it expects them to adapt this regulation to airport construction practices, such as the use of retained engineers.]

It has been a long-standing policy of FAA that the consulting engineer selected for design of airport projects should be a firm with a high degree of professional qualifications and technical competence. Guidance has been available to FAA field offices and grantees since July 1972 through Advisory Circular 150/5100-9, Engineering Services Under the Airport Development Aid Program (ADAP).

[GAO Comment: Availability of guidance does not necessarily ensure compliance.]

The GAO report is incorrect in its statement that FAA's Southwest Region allowed grantees to choose their consulting engineers regardless of the selection process employed because FAA headquarters did not provide specific guidance to implement A-102, Attachment O. At the time the original grant was given in 1972, Attachment O did not exist. The statement is also in error regarding the 1976 Tulsa selection because the Oklahoma City Airports District Office insisted that Tulsa follow procedures essentially the same as those required by the August 1979 revision to Attachment O. The present Attachment O requires evaluation of competing firms' qualifications and the selection of the best qualified firm for subsequent fee negotiation. This is exactly what the district office required Tulsa to do in 1976.

[GAO Comment: During discussion of agency comments with the Southwest Region officials who prepared the comments, the statements of error by GAO were retracted by FAA. But we did revise the report to better acknowledge the region's efforts to informally work with grantees to promote competitive selection of engineers. See pages 3 and 9.]

The second GAO question on what actions can or should FAA consider in working with its grantees to overcome failures is one which has been considered by FAA in the past. It is FAA's policy to have its field offices monitor ADAP projects but not perform detailed inspections. The objective has been to increase the role of the sponsor in supervising the design and construction of airport improvements. Airport grants include funding for engineering design and construction management and FAA's guidance requires that sponsors provide for adequate inspections to ensure quality construction. If failure does occur, we expect the sponsor to determine the cause and to recover damages. Likewise, we have relied on the sponsor to develop new designs to correct the problem. We do not believe it is necessary or productive to formalize a new detailed series of key actions to deal with the problem due to the relative limited number of failures, and to the unique nature of the problems themselves, both on a technical and procedural basis.

[GAO Comment: We did not mean to suggest that an exhaustive set of key actions be identified to cover each and every technical or procedural problem. We believe guidance is needed, however, to bring about, on a more consistent basis, identification of key actions that the regions should consider and the circumstances under which problems should be brought to headquarters for advice or policy evaluation. As stated in the following comments, FAA agreed to require the field to open up communications with headquarters when projects failed.]

With respect to the two GAO recommendations, we agree that some national guidance is needed for uniform program administration and we plan to incorporate appropriate procedures in the next amendment to the ADAP handbook. This guidance would require FAA regions to (1) confer with headquarters in cases where a failure has occurred, (2) require sponsors to recover damages, and (3) require sponsors to periodically report their progress on recovering damages.

We are completely satisfied that the Federal interest has been, and will continue to be, fully protected at both Tulsa and New Orleans.

We are enclosing additional comments and clarifications for your consideration.

[GAO Comment: FAA's proposed action should (1) better assure two-way communication between district, region, and headquarters elements when faulty construction occurs and (2) improve grant administration when the need to recover damages is warranted. The agency comments are included on page 8.]

ADDITIONAL COMMENTS TO THE GENERAL ACCOUNTING OFFICE
PROPOSED DRAFT REPORT TO SENATOR DAVID L. BOREN
ON
FEDERAL AVIATION ADMINISTRATION'S MANAGEMENT OF TWO
GRANTS TO TULSA INTERNATIONAL AIRPORT

The following additional comments are recommended changes/clarifications to the draft report.

Page 1, last two lines and first nine lines on Page 2

The report suggests that there may be a relationship between the timing of the planned GAO investigation and the lawsuit against the consulting engineer. The decision to bring suit was the culmination of a process that had occupied the time and efforts of many over a four- to five-year period. This process involved the efforts of the entire Tulsa airport staff, the consultant and his inspectors, contractor's office, and others to negotiate repair of the pavement during earlier stages of failure. Following failure of these lengthy negotiations, the City of Tulsa discharged their consultant and began the lengthy process which eventually led to the hiring of a different consulting engineer. The new consulting engineer soon brought in another firm which specializes in pavement design and pavement problems. After extensive studies and laboratory testing, the specialist issued a report which concluded that the contractor could not be held accountable for the failure. After acceptance of the report, the decision was made to bring suit against the original consulting engineer. The attorneys for Tulsa airport, after conducting their own investigations, were finally able to bring suit at approximately the same point in time that the GAO investigators were to begin their work.

[GAO Comment: There is no intention to infer a relationship exists between the timing of the planned GAO investigation and the lawsuit.]

Page 2, last four lines and first eight lines on Page 3

Even though implementing instructions had not been given, FAA's Oklahoma City Airports District Office took the initiative to promulgate the requirements of A-102, Attachment 0 at the time it was issued in 1974. Further, at the time the original grant was given in 1972, Attachment 0 to Circular A-102 did not exist.

[GAO Comment: We did not claim Circular A-102 existed in 1972. With regards to the Tulsa project specifically, the Chief, Oklahoma City Airports District Office, channeled his efforts to assuring the Tulsa

airport management brought in a new engineering firm to resolve the problems. As stated previously, we revised our report to acknowledge regional efforts to promote competitive selection.]

Page 3, last seven lines

In the case of New Orleans, the FAA regional office did involve FAA headquarters in the decision to include provisions in the follow-on grant for reimbursement of a portion of any settlement the city received through litigation. The same safeguard was included in the follow-on grant at Tulsa but without the provision being written into the second grant agreement. We can only conclude that the GAO, after looking into our handling of New Orleans, then raised the question as to why Tulsa was handled differently. The safeguards are equally effective; however, the decision was made to include a special condition in the New Orleans grant in a more formal manner subsequent to the Tulsa reprogramming decision.

The ultimate resolution of "grantees construction problems" can be expected to include litigation. Efforts to assure a timely resolution of these "problems" will always be frustrated by delays in due process, investigations, and other time-consuming legal processes.

[GAO Comment: FAA has agreed to issue national guidance which would require FAA regions to require sponsors to recover damages. We believe a provision in the grant agreement to set forth sharing arrangements on any settlements is the more effective safeguard.]

Page 5, last nine lines

The report states that FAA's Southwest Region did not require its grantees to procure services through a competitive process but rather left the procurement of engineering services to the discretion of the grantee. This is spoken to previously, but it must be added that sponsors are almost compelled to obtain the services of an engineer to prepare their preapplication for a grant.

Because of funding limitations, we frequently find it necessary to phase or stage major development at an airport over two or more years. This is accommodated by multiple year grants or a series of phased construction grants over two or more successive program years. Attachment O recognizes the fact that there may be instances where it would not be desirable to obtain consulting engineers competitively. It provides for noncompetitive negotiation "when the award of a contract is infeasible under ... competitive negotiation procedures" provided that

"the Federal grantor agency authorizes noncompetitive negotiation." For continuity and accountability it is critical that the engineering design and inspection be the responsibility of a single consulting engineer firm. This does not, however, preclude competitive negotiation for the consultant's selection at the start of design for the multi-year projects.

[GAO Comment: See our comments on page 9 of enclosure II. We also revised our report on pages 3 and 4 to acknowledge FAA's claim that replacing a retained engineer after preapplication may not always be practical.]

Page 7, lines 12 - 20

The statement is made that Southwest Region officials had a copy of the revised Attachment 0 but did not understand it as requiring competitive selection. This is in error. The region had copies of the revised Attachment 0 and also had instructions from FAA headquarters to take no steps to implement its policies and procedures until further advice was received from them. Such advice was received by letter dated May 12, 1980.

[GAO Comment: The report was revised to eliminate this misunderstanding. See page 4.]

Pages 8 and 9

The several suggested actions that might be included in the way of guidance demonstrate a lack of understanding of ADAP. The FAA is not a party to the construction contract and, therefore, the involvement of FAA's legal staff is inappropriate. The setting of expeditious schedules and milestones for compliance is unrealistic because the sponsor cannot control the progress of legal due process or the courts. For years there has been an on-going review of all FAA minimum standards by FAA headquarters and regional Airports Divisions. The adequacy of the FAA field engineering review is under continuous scrutiny by different regional and headquarters technical specialists. While the original agreement with Tulsa concerning reimbursement to the Government of any award received through negotiation or through the court was not documented, it has since been confirmed in writing.

[GAO Comment: Even though FAA is not a party to the construction contract, involvement of its legal staff is appropriate because the Federal Government has an investment in the grants.

Our concern with field engineering review is not the routine review process at the time the grant was approved but the lack of evidence that a critical re-evaluation was made by FAA to address the faulty design raised by outside engineering experts.

We stated on page 7 of the report that a reimbursement agreement was finalized in January 1980.]

Page 9, lines 16 - 18

FAA is a highly decentralized organization designed to offer the best service and the most effective use of its resources. The Southwest Region's policy is not to routinely involve FAA headquarters but always to keep them informed of controversies. This is accomplished through several available means. In the case of Tulsa, and as a result of this system, an FAA paving specialist from the FAA headquarters' staff has been offered to give expert testimony when the case goes to trial.

[GAO Comment: The paving specialist became involved after litigation was filed.]

Page 11, line 3

The Tulsa follow-on grant did not have the special condition we required for the New Orleans grant. If we ever have another project fail, we would propose to include such a condition even though we would already have the grantee's agreement covering the same point.

[GAO Comment: Good, an up-front grant condition focuses on the responsibility of the grantee to pursue legal action in a timely manner.]

Page 11, lines 15 and 16

We are presently receiving progress reports from New Orleans as well as from Tulsa.

[GAO Comment: Acknowledged on page 7 of the report.]

Page 11, lines 21 - 23

The agreement was not finalized in January 1980; it was merely reduced to writing. The reason this was accomplished is that a key person in the Tulsa Airport Authority organization was retiring and the final court settlement is expected to be at some unknown time in the future. To assure that there would be no question, the agreement was recorded.

[GAO Comment: We choose not to recount the various reimbursement schemes that the airport management and FAA discussed. The term "finalized" was used to convey reduced to writing.]

Page 13, last full paragraph

The last full paragraph discusses FAA headquarters legal staff involvement in the New Orleans construction failures. We recommend that the report indicate that: (a) the New Orleans construction failures are now in litigation; (b) the sponsor is suing the contractor for breach of contract; (c) the contractor has made the FAA a Third Party Defendant in the suit; and (d) FAA headquarters legal staff is representing the FAA in this litigation. We would also point out that criminal indictments have been returned by a grand jury against the contractor, its president, and other employees of the contractor for conspiracy to defraud the United States in connection with the runway construction funded by ADAP grants.

[GAO Comment: We incorporated the gist of these comments on page 8 of the report.]

