UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Truman Arnold Companies
d/b/a TAC Air

Complainant

v.

CHATTANOOGA METROPOLITAN
AIRPORT AUTHORITY

Respondent

FAA Docket 16-11-08

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the Complaint filed under Title 14 of the Code of Federal Regulations (CFR), Part 16, by Truman Arnold Companies d/b/a TAC Air (Complainant) against the Chattanooga Metropolitan Airport Authority, (CMAA, Respondent, or Sponsor), as owner and sponsor of the Chattanooga Metropolitan Airport (CHA or Airport).

In this Part 16 Complaint, the Complainant alleges the Respondent has administered the Sponsor-owned, privately managed Fixed Base Operator (FBO)[1] contract in a manner that is in violation of Title 49 United States Code (U.S.C.) 47107(a) and 40103(e) and the respective FAA Grant Assurances 22, *Economic Nondiscrimination,* and 23, *Exclusive Rights*. Specifically, the Complainant alleges that the Respondent has implemented unreasonable minimum standards; improperly selected Wilson Air Center (Wilson Air)[2] to operate the Respondent-owned FBO; altered minimum standards; and generally engaged in unfair competition with Complainant.

In the Answer and Rebuttal, the Respondent denies each allegation and requests dismissal of the Complaint. Respondent offers affirmative defenses and states the Complainant failed to provide evidence to support its allegations; made allegations that are no longer relevant; and denies engaging in unjust discrimination against the Complaint. [FAA Exhibit 1, Item 5(A), pgs. 21-22; FAA Exhibit 1, Item 13, pg. 21] Respondent also denies granting an exclusive right to Wilson Air.

[1] An FBO is defined as "A commercial business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc." FAA Advisory Circular 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities,* August 28, 2006, p. 13.
[2] The Wilson Air Center is also referred to by both the Respondent and Complainant as the West Side FBO.

With respect to the allegations in this Complaint and the information obtained in the investigation conducted in accordance with 14 CFR, §16.29, under the specific circumstances as discussed below and based on the documentation submitted to the administrative record in this proceeding, the Director finds the Respondent is not in violation of its Federal obligations at this time. The basis for the Director's decision is set forth herein.

II. PARTIES

A. Airport

The Chattanooga Metropolitan Airport Authority, (CMAA, Respondent, or Sponsor) is located at Lovell Field (CHA or Airport) in Chattanooga, Tennessee. CMAA, a governmental entity organized and existing pursuant to legislation by the State of Tennessee, owns and operates the Airport. The development of the Airport has been financed, in part, with funds provided to the sponsor under the Airport Improvement Program (AIP), authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C., §47101, *et seq*. Since 1982, the Sponsor has accepted $80,647,162 in AIP grants for investments at the Airport. [FAA Exhibit 1, Item 8] As a result, the sponsor is obligated to comply with the FAA sponsor assurances and related Federal law, 49 U.S.C., §47107. CHA is a Primary, Non-Hub airport with commercial service and is served by four airlines. It also serves general aviation users and has 90 based aircraft and over 50,000 operations annually. [FAA Exhibit 1, Item 18]

The Respondent built its own fixed-base operation on the west side of the airfield. On December 20, 2010, the Respondent entered into a management agreement with Wilson Air Center (Wilson Air) to manage and operate the FBO.

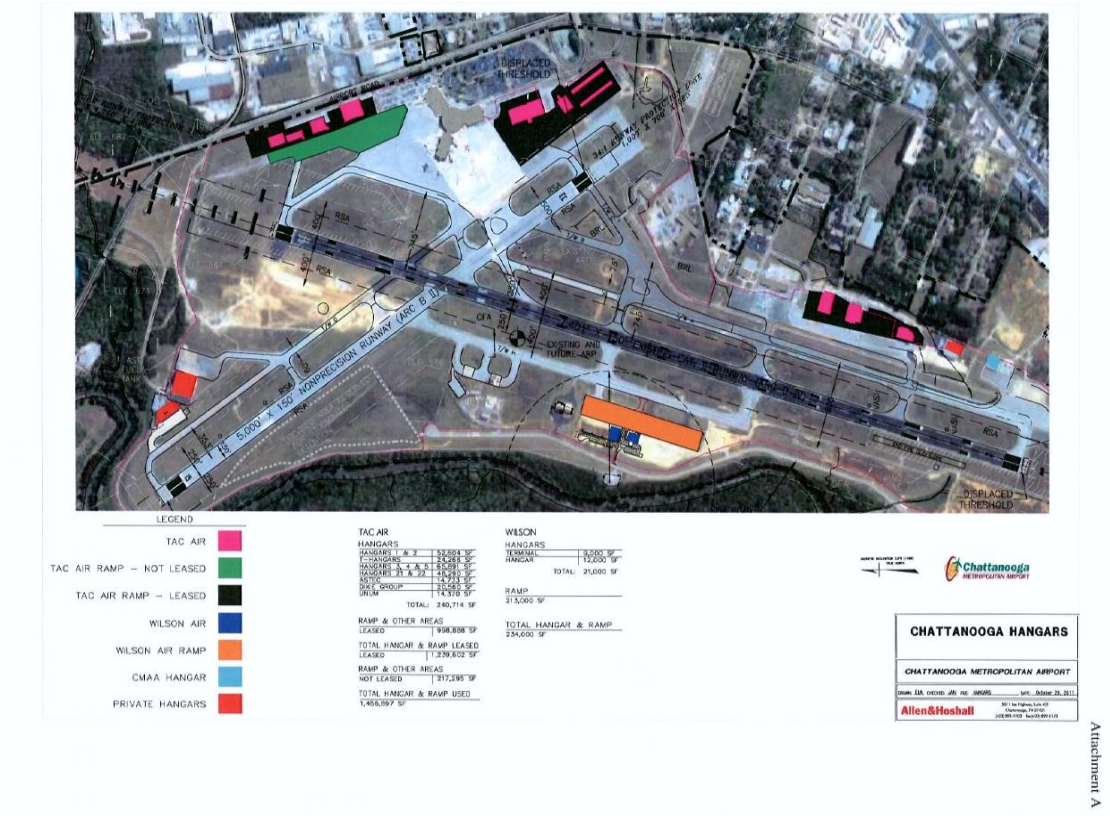
B. Complainant

The Complainant, Truman Arnold Companies d/b/a TAC AIR (Complainant) is a corporation organized and existing under the laws of the State of Texas with its corporate offices in Texarkana, Texas and an office at CHA. Complainant is an operating division of Truman Arnold Companies. [FAA Exhibit 1, Item 1, pg. 1] On September 23, 2002, Complainant took assignment of Krystal Aviation's Fixed Base Operation (FBO) at CHA and its associated three ground leases and became the single FBO at CHA. [FAA Exhibit 1, Item 5(A), Ex. 18] On June 15, 2011, all three leases were extended through September 30, 2016. [FAA Exhibit 1, Item 5(A), Ex. 17, pg.4] TAC Air has three remaining five-year options to extend these leases.

The Complainant does business with the airport and pays fees and rents to the airport; thus, by definition as set forth in the Rules of Practice for Federally-Assisted Airport Enforcement Proceedings, the Complainant is directly and substantially affected by the alleged noncompliance and thereby has standing in accordance with 14 CFR, Part 16.23(a).

C. Airport Map

The following map identifies the facilities operated by the Respondent and the Complainant at their respective FBO facility. The Respondent's FBO is located on the west-side of the airfield (near the bottom of the map). The Complainant FBO consists of three leaseholds on the east-side of the airfield (identified in pink, near the top and right sides of the map): (1) North Facility (top left) – this is the northern most facility operated by TAC Air; (2) South Facility (top middle) – this is located immediately south of the North Facility; and (3) Maintenance Facility (furthest right) – this is the southernmost facility.



Attachment A

[FAA Exhibit 1, Item 5(A), Ex. 2, Attachment A]

III. BACKGROUND AND PROCEDURAL HISTORY

A. Background

The Complainant makes several allegations regarding the revision and implementation of the Airport's minimum standards, the selection of Wilson Air, the setting of fuel prices and a variety of discriminatory actions. Specifically, the Complainant alleges Respondent has taken the following actions [FAA Exhibit 1, Item 1, pg. 7-8]:

- Respondent allegedly implemented unreasonable Minimum Standards when it reduced the mandatory services required of an FBO at the airport.

- Respondent allegedly chose a nonresponsive proposer to manage the Respondent - owned FBO. [3]
- Respondent sets prices for fuel, other goods and deliverables and services at its Respondent-owned FBO without any consideration to the costs that a privately owned and operated FBO must bear.
- Respondent allegedly engaged in unjust discrimination against the Complainant in favor of its own FBO.
- Respondent is attempting to gain the benefits of a proprietary exclusive without having to buy out Complainant's interest, hire its own employees or utilize its own equipment.
- Respondent reduced the required services for an FBO after the RFP was closed and the Management Company was selected.
- Respondent's request for financial assistance to the Tennessee Department of Transportation for design and construction of the West-side General Aviation Development did not meet the Tennessee "Guidelines for State Funding". [4]

In making the above noted allegations, Complainant contends the Respondent violated Grant Assurance 22, *Economic Nondiscrimination,* and Grant Assurance 23, *Exclusive Rights.* Specifically, the Complainant alleges the Respondent[5]:

1. Implemented unreasonable Minimum Standards in violation of Grant Assurance 22.

---

[3] The Complainant's allegations related to the administration of Request for Proposals (RFP) are subject to the requirements of 49 CFR, § 18.36. The Respondent, as the grantee in this case, in accordance with § 18.36 is responsible for the settlement of all contractual and administrative issues arising out of procurements. The Respondent is required to have protest procedures to handle and resolve disputes relating to their procurements, including protests, disputes and claims. The Complainant was obligated to exhaust all administrative remedies with the Respondent before pursuing a protest with the FAA on procurement issues. The Complainant's procurement issues are referred back to the Respondent in accordance with 49 CFR, § 18.36

[4] The Complainant's allegation that the Respondent's request for financial assistance to TDOT did not meet the Tennessee "Guidelines for State Funding" is outside the jurisdiction of the FAA under the Part 16 process. (See 14 CFR 16.1(a)). Therefore, the Director will not address this allegation.

[5] Complainant requests the following relief:

1. Issue an order requiring Respondent to adopt an operating budget similar to a proposed operating budget for the purpose of setting prices [FAA Exhibit 1, Item 1, pg. 27; FAA Exhibit 1, Item 10, pg. 20]
2. Require the adoption of audit program to ensure that the Sponsor Owned FBO pricing is based on the Operating budget and public disclosure in monthly financial reports at Board meetings. [FAA Exhibit 1, Item 1, pg. 28; FAA Exhibit 1, Item 10, pg. 21]
3. Prohibit the Respondent from engaging in any other form of discrimination under Grant Assurance 22, or exercising an exclusive right under Grant Assurance 23, or a proprietary provider, unless it adequately compensates Complainant and uses its own employees and equipment. [FAA Exhibit 1, Item1, pg. 28; FAA Exhibit 1, Item 10, pg. 21]
4. Require the Respondent to offer aircraft maintenance services and de-icing services [FAA Exhibit 1, Item1, pg. 28; FAA Exhibit 1, Item 10, pg. 21]
5. Require Respondent to adjust fees to reflect Respondent is providing FBO services with FAA and State funded facilities. [FAA Exhibit 1, Item 10, pg. 21]
6. Require Respondent to declare its proprietary exclusive rights and buy out the Complainant's FBO contract reflective of its fair market value, terminate Wilson Air contract and manage/operate both FBOs with its own personnel and resources. [FAA Exhibit 1, Item 10, pg. 21]
7. Require Respondent to terminate its Management Contract with Wilson Air, issue RFP for proposers to operate the FAA/State funded FBO on arm's length basis to have privately funded FBO. [FAA Exhibit 1, Item 10, pg. 21]

2. Revised its Minimum Standards in a manner that discriminated against the complainant in violation of Grant Assurance 22.
3. By not adopting substantially the same mechanism to determine pricing as a privately-owned FBO the Sponsor is in violation of Grant Assurance 22(g).
4. Retained control of pricing for its Respondent-owned FBO undercutting the Complainant's fuel prices in violation of anti-trust laws and Grant Assurance 23, *Exclusive Rights.*
5. Unjustly discriminated against the Complainant in favor of its owned FBO in violation of Grant Assurance 22.

In its Answer and Rebuttal, the Respondent claims six defenses to the allegations:

1. "The Complainant has failed to introduce evidence on which it relies, as required by 16.23(b)(2)-(3); 16.239g) and 16.29(b)(1).
2. The Complaint is based on allegations of potential past compliance violations involving matters that are no longer outstanding. The FAA's focus in the Part 16 process is on compliance prospectively rather than "punitive measures for past violations" (*Steere v. County of San Diego,* FAA Docket No. 16-99-15, Final Decision and Order at 25-26 (Dec. 7, 2004)). In particular, the adoption of new Minimum Standards makes allegations in the Complaint regarding the application of the prior minimum standards moot. Likewise, the lifting of parking fees for all airport customers moots Complainant's arguments that it was applied discriminatorily.
3. The Complaint contains allegations of Tennessee law and Tennessee grant money can only be decided, if at all, by courts and adjudicators in the State of Tennessee.
4. Complainant was not unjustly discriminated against by Respondent.
5. Respondent has not granted Wilson Air a proprietary exclusive at the airport."[FAA Exhibit 1, Item 5(A), pgs. 21-22]
6. "Allegations of violations of anti-trust laws are beyond the scope of a Part 16 investigation."

[FAA Exhibit 1, Item13, pg. 21]

Because of the complex nature of the factual background relevant to this complaint, this section is organized by topic, and then chronologically within those topics, rather than straight chronological order.

1. Complainant's Leasehold and Infrastructure

The Complainant has been on the airport since 2002. [FAA Exhibit 1, Item 5(A), Ex. 18] Its predecessors, Krystal Aviation, and Signal Aviation have been on the airport since May 1982. [FAA Exhibit 1, Item 5(A), Ex. 16, pg. 1; FAA Exhibit 1, Item 10(C), par. 1] Combined, the Complainant and its predecessor, Krystal Aviation, have been the sole proprietor of fuel sales at CHA since January 1993. [FAA Exhibit 1, Item 10(A), pg. 7; and FAA Exhibit 1, Item 10(C), par. 8] The Complainant took control of this single FBO operation, including its 3 leaseholds (North Facility; South Facility and Maintenance Facility), by assignment from Krystal Aviation on September 23, 2002. [FAA Exhibit 1, Item 5(A), Ex. 18] The infrastructure for each of the three lease areas was built with a combination of public and private funds. The lease periods, and infrastructure are summarized in the tables below:

Table #1: TAC Air Lease Terms and Options

TAC AIR LEASE TERMS						
	Initial Lease between CMAA and Krystal Aviation	RENEWAL OPTIONS EXERCISED AND TAC AIR ASSIGNMENT				Additional 5 Year Options Remaining
		Option #1 Exercised	TAC Air Took Assignment	Option #2 Exercised	Option #3 Exercised	
North Facilities	11/1/91-9/30/2001[6]	2001[7]	9/23/2002[8]	2006[9]	2011[10]	2016; 2021; 2026 Ending on 9/30/2031
South Facilities	10/1/1991 - 9/30/2001[11]					
Maintenance Facilities	1/1/1993 - 9/30/2001[12]					

[6] FAA Exhibit 5, Item 5(A), Ex 14, Article 2
[7] FAA Exhibit 5, Item 5(A), Ex. 17
[8] FAA Exhibit 5, Item 5(A), Ex. 18
[9] FAA Exhibit 5, Item 5(A), Ex. 17
[10] FAA Exhibit 5, Item 5(A), Ex. 17
[11] FAA Exhibit 5, Item 5(A), Ex. 15, Article 2
[12] FAA Exhibit 5, Item 5(A), Ex. 16, Article 2

Table #2: TAC Air Hangar and Ramp Areas

2A.

	TAC Air Hangars			
			Funding Source	
	Hangar #	Sq. ft.	Private	Public
North Facilities	#3	65,891		City Funds
	#4 & #5		Krystal Aviation	
	#6	14,370	Unum	
South Facilities	#1	52,604		City Funds
	#2		Hangar One	
	#26	14,733	Private Funds	
	T-Hangars	24,266		City Funds
Maintenance Facilities	#21 & #22	48,290	Signal Aviation	
	Hangar #19	20,560	Krystal Aviation	

2B.

	TAC Air Ramp		
	Leased (Y/N)	Sq. ft.	Funding Source
North Facilities	Y	55' Ramp	Private
	N	217,295	Public
South Facilities	Y	458,633[13]	Public
Maintenance Facilities	Y	323,167[14]	Public

2C.

	Total TAC Air Hangar/Ramp Space and Lease Rates	
	sq. ft	Annual Lease Rate
North Facilities	80,261	$48,672.49
	217,295	$0.00
South Facilities	550,236	$90,073.70
Maintenance Facilities	392,017	$64,173.21
TOTALS	**1,239,809**	**$138,746.19**

[FAA Exhibit 1, Item 5(A), Ex. 2]

[13] The aggregate footprint of the South Facilities leasehold is 550,236.28 sq. ft. The total hangar square footage as outlined above in Table 2A equates to 91,603. [FAA Exhibit 1, Item 5(A), Ex. 2, par. 6h] The ramp space here was calculated by subtracting the 91,603 hangar space from the overall foot print of 550,236 sq. ft.

[14] The aggregate footprint of the TAC Air Maintenance Agreement leasehold is 392,017.17 square feet. [FAA Exhibit 1, Item 5(A), Ex. 2, par. 5e] The square footage for the hangars shows 48,290 and 20,560 square feet of hangar space. [FAA Exhibit 1, Item 5(A), Ex.2, Attachment A] The ramp space here was calculated by subtracting the 48,290 and 20,560 hangar space from the overall footprint of 392,017 sq. ft.

In addition, both the North and South Facilities fuel farms were built entirely with public funds. [FAA Exhibit 1, Item 5(A), pg. 4]

All of TAC Air's leases with CMAA are similar and provide the lessor with "the nonexclusive right to operate a 'fixed base operation facility,' as that term is defined in Division 2 of Chapter 8 of Volume I of the Code of the City of Chattanooga" and gives the lessee the "privilege of providing" the services of fueling, sale of aircraft parts, aircraft storage, repair and replacement service to aircraft, flight service training, nonscheduled passenger and charter flights, aircraft leasing, and any service provided by other FBOs on the airport. [FAA Exhibit 1, Item 5(A), Ex. 14, pg. 4; Ex. 15, pgs. 3-4; Ex.16, pgs. 3-4]

In addition, the lease agreement for the North Facilities also includes the following clause:

> **Article 1(b) – Demise, Description, and Use of Premises --** "In consideration of this Lease, Lessor covenants and agrees that it will not lease the land described below, or any part thereof, during the term of this Lease or any renewal hereof without first giving Lessee the option to lease said land at the same rental that is offered to Lessor for said property by any other party making a bona fide offer to rent said property or any part thereof, and to whom Lessor proposes to lease said property or any part thereof[…]The land covered by the option hereby granted to Lessee is described on Exhibit 'B' attached hereto and made a part thereof"

[FAA Exhibit 1, Item 5(a), Ex. 14, pg. 1]

This clause essentially gives the Lessee, TAC Air, the right of first refusal for certain land that is not part of the lease area. If CMAA wishes to lease the land to another party or if CMAA receives an offer from another party to lease the identified land, CMAA must first give TAC Air a right of first refusal.

2. Respondent's Construction of its FBO

On April 23, 2009, Respondent applied to the Tennessee Department of Transportation for $4,230,000 in financial assistance for "*design and construction of Phase 1 of the West-side General Aviation Development."* [FAA Exhibit 1, Item 1, Ex. 6]

On May 19, 2009, the Respondent applied to the FAA for Federal Assistance of $3,578,883 for the "construction of additional ramp on the west side of the airfield. Design and construction of the West-side General Aviation Development" [FAA Exhibit 1, Item 1, Ex. 11]

On June 10, 2009, the FAA entered into Grant Agreement #3-47-00009-047-2009 with CMAA, the Sponsor for the construction of the West-side Apron in the amount of $2,748,235. This was funded under the America Recovery and Reinvestment Act (ARRA) grant. [FAA Exhibit 1, Item 8]

On August 7, 2009, the TDOT approved a grant totaling $3,400,000 for the design and construction of Phase 1 of the West side general aviation development." [FAA Exhibit 1, Item 1, Ex. 8]

This construction was "*across the main runway from TAC Air's extensive leaseholds on the west side of the Airport in an area that previously had been designated on the Airport Master Plan for general aviation expansion."* [FAA Exhibit 1, Item 5(A), pg. 3]

The following table summarizes the infrastructure for the Respondent-owned FBO now operated by Wilson Air.

Table #3: Wilson Air Hangars and Ramp Areas

Wilson Air Hangars & Ramp		
Infrastructure Type	Sq. ft.	Funding Source
Terminal	9,000	$3,400,000 TDOT $377,778[15] CMAA
Hangar	12,000	
Ramp	213,000	FAA ARRA grant $2,748,235[16]
Total Hangar/Ramp	**234,000**	$6,526,013

[FAA Exhibit 1, Item 5(A), Ex. 2, Attachment A]

On January 3, 2011, Mr. James Coyne, President, National Air Transportation Association wrote to then FAA Administrator, Randy Babbitt to express concern about the use of Federal funds to construct the CMAA FBO ramp. [FAA Exhibit 1, Item 5(A), Ex. 3, pgs. 1-2]

On January 14, 2011, Ms. Catherine Lang, then-Acting Associate Administrator for Airports, responded to Mr. James Coyne, President, National Air Transportation Association, stating in part:

> *As you correctly noted, the FAA awarded funds for the new apron construction under the American Recovery and Reinvestment Act of 2009 (ARRA)*[…]*We understand your concern that the airport will use the apron as part of a new FBO. The new FBO will be airport owned but operated by a management company. As we discussed with your staff, this arrangement is consistent with existing law and policy.* […]*Although the FAA provided funds for the apron in question, the airport sponsor built the other FBO facilities with State and local funds. Although the lease includes the apron, it is not for exclusive use if the tenant FBO makes it available for public use. There is no prohibition on an airport leasing an apron to a tenant that creates revenue for the*

[15] FAA Exhibit 1, Item 1, Ex. 7 and 8.
[16] FAA Exhibit 1, Item 8

tenant and the airport (subject to the grant conditions and assurances). Indeed, one of the grant assurances (#24) calls for airports to be as self-sustaining as possible.
[FAA Exhibit 1, Item 5(A), Ex. 3, pg. 3]

3. Respondent's Request for Proposals for an Operator of its FBO and its Subsequent Agreement with Wilson Air Center.

In 2006, the Respondent sought proposals from private entities to develop and operate a new FBO at the Airport, but received no responsive proposals. [FAA Exhibit 1, Item 5(A), pg. 3]

On September 24, 2010, the CMAA put out a Request for Proposals (RFP) to Provide Fixed Base Operator Management Services at the Chattanooga Metropolitan Airport. [FAA Exhibit 1, Item 1, Ex. 4] The RFP required the successful proposer to "*satisfy the Airport's Minimum Standards for Full Service Fixed Base Operators and Specialty Service Operators at Lovell Field to the extent applicable to the FBO Services including, without limiting the generality hereof, obtaining all necessary licenses and certificates required to conduct the FBO Services."* [FAA Exhibit 1, Item 1, Ex. 4, par. 3.7]

FBO Services listed in the RFP did not include the provision of Maintenance and Repair Services outlined in Section 8 of the then current Minimum Standards (e.g., Part 145 Services). [FAA Exhibit 1, Item 1, Ex. 4, par. 2.9]

On December 20, 2010, the CMAA and Wilson Air executed a General Aviation Facilities Management Agreement (Management Agreement) with a commencement date of July 1, 2011. The Management Agreement provided that Wilson Air would manage and operate the general aviation and Fixed Base Operator facilities at the airport for a term of 5 years with an option for CMAA to extend another 5 years. [FAA Exhibit 1, Item 17, par. 2.01 and 2.02] The Agreement provides for a Management and Consultant Fee and an Incentive Fee that is based on the operating surplus produced by Wilson Air [FAA Exhibit 1, Item 17, par. 7.01 and 7.02]. The Management Agreement specifically excluded the provision of aircraft maintenance or avionics from the required services. [FAA Exhibit 1, Item 17 par. 3.03]

On January 6, 2011, the Complainant questioned the Respondent's selection of Wilson Air as Manager and alleged that:

Wilson Air was unresponsive to the RFP with respect to the provision of aircraft maintenance service by a Part 145 Repair Station (whether through a subcontractor or on its own). In fact, Hawthorne Corporation was the only bidder to comply with the RFP with respect to Part 145 maintenance services and should have been selected.
[FAA Exhibit 1, Item 1, pg. 11][17]
On May 10, 2011, the Respondent's Counsel wrote to the Complainant's counsel as part of the parties' on-going attempts to informally resolve their issues. This letter in part stated that Complainant:

[17] As discussed above, the Director will not review the substantive issues related to the administration of the RFP here. Additionally, while the Complainant states a belief that Hawthorne Corporation was the only responsive bidder, the Respondent states that it believed Wilson Air was also responsive. [FAA Exhibit 1, Item 5(A), par. 38 and Item 5(B) pgs 24-27] This is discussed further in Section C.

continue[s] *to imply that TAC Air will be somehow disadvantaged because the Authority owned FBO will not offer in-house aircraft maintenance services. As we explained to you and your client when we met here in Chattanooga on February 23, the Authority owned FBO will rely on maintenance providers currently operating at the Airport for aircraft maintenance services, just as TAC Air has for these past many years and continues to do so today. We fail to see how TAC Air is being treated unfairly since both FBOs will be operating similarly with respect to these aircraft maintenance services.*

[FAA Exhibit 1, Item 1, Ex. 16, pg. 2]

In August 2011 Wilson Air Center opened for business. [FAA Exhibit 1, Item 1, par. 88]. Its contract with the Respondent specifically excluded aircraft maintenance or avionics. [FAA Exhibit 1, Item 17, par. 3.03]

3. History of Minimum Standards at CHA

On March 17, 2008, the Sponsor established its first Minimum Standards for Commercial Services at the Airport which provided in pertinent part:

SECTION 8 MAINTENANCE AND REPAIR SERVICES – *Each FBO is required to provide service and minor repair of aircraft airframes and power plants for small aircraft of 12,500 pounds and under. Each FBO must meet all requirements as specified under FAR Parts 43, 65, and 145 and hold current certificates for the operation of FAA certified repair stations for airframes (minimum of AF-3) and power plants (minimum of PP-1) as set forth in FAA advisory Circular #140-7G*

[…]

SECTION 13. "GRANDFATHER" PROVISION – *These minimum standards shall not apply to Fixed Base Operators who have a lease and are doing business at the Airport on the effective date of this document. However, after the existing agreement with the Airport Authority expires, or the FBO wishes to increase or expand its services, the Operator shall then comply with the provisions of this document."*

[FAA Exhibit 1, Item 1, Ex. 1, pg. 10 and 13]

In 2011, after the Respondent selected Wilson Air to operate its FBO, the Respondent advertised proposed revised Minimum Standards which, if implemented, would move Section 8 from the required services section of the minimum standards to "Section V.B.5 Specialized Aviation Service Operators," and make the Part 145 services optional for FBOs [FAA Exhibit 1, Item 1, Ex. 2, pg. 16]. Comments on the revised minimum standards were due by June 14, 2011. [FAA Exhibit 1, Item 1, Ex. 4, pg. 1]

The Respondent received comments on the change in standards for Part 145 services including comments from TAC Air on June 6, 2011, that were included in the exhibits but not discussed in pleadings. A summary of those comments from TAC Air and CMAA's responses are provided below:

The Complainant stated: *"Currently, repair and maintenance providers on the field are required to be FAR 145 certified with at least a Class III airframe rating. This standard should be maintained, not reduced to ensure users of the airport have access to qualified aircraft maintenance services."*
[FAA Exhibit 1, Item 1, Ex. 14(A), pg. 3]

The Airport responded: *"None of the aircraft maintenance service providers currently doing business at the airport meet the current airport minimum standards. Future applications for aircraft maintenance services will be reviewed on a case by case basis".*
[FAA Exhibit 1, Item 1, Ex. 2(A), pg. 2]

The Complainant stated *"The proposed minimum standards lack a requirement for FBOs to provide aircraft maintenance services."*
[FAA Exhibit 1, Item 1, Ex. 14(A), pg. 2]

The Airport responded: *"The requirements for aircraft maintenance services set forth in the current Minimum Standards have remained unsatisfied over the past several years. Based on the state of the general aviation market throughout the country and at the airport, the CMAA believes that requiring FBOs to provide aircraft maintenance services would have the effect of restricting airport access. The absence of this requirement in the new Minimum Standards does not preclude an FBO from offering aircraft maintenance services."*
[FAA Exhibit 1, Item 1, Ex. 2(A), pg. 2]

On September 26, 2011, CMAA Board of Commissioners approved and adopted the revised minimum standards. [FAA Exhibit 1, Item 5(A), Sec. II. par. 43]

B. Procedural History

On September 13, 2011, the Complainant filed a Part 16 Complaint, alleging that the Respondent violated 49 U.S.C., § 47107(a) (1) and (4) and airport grant assurance 22 and 23. [FAA Exhibit 1, Item 1]

On September 22, 2011, the FAA issued its Notice of Docketing complaint. [FAA Exhibit 1, Item 2]

On October 3, 2011, Respondent filed a Motion for Extension of Time to file its Answer to the Complaint to October 21, 2011. [FAA Exhibit 1, Item 3]

On October 6, 2011, the FAA granted Respondent's request for Extension of Time to file its Answer to October 21, 2011. [FAA Exhibit 1, Item 4]

On October 21, 2011, the Respondent filed its Answer and Motion to Dismiss With Prejudice the entirety of the Complaint [FAA Exhibit 1, Items 5A and 5B], as well as a Motion for Declaratory Statement that *"it is permissible for the CMAA to require TAC Air to lease an*

aircraft apron next to its leasehold on a non-exclusive basis or in the alternative, to cease conducting commercial business on that apron." [FAA Exhibit 1, Items 5C, pg. 5]

On October 26, 2011, the Complainant filed a Motion for Extension of Time to Submit its Reply to Respondents Answer to November 11, 2011. [FAA Exhibit 1, Item 6]

On October 28, 2011, the FAA granted Complainant's request for Extension of Time to file its Reply to November 11, 2011. [FAA Exhibit 1, Item 7]

On November 7, 2011, Respondent filed notice to remove Michael Landguth from the designated service of process and place Mr. Terry Hart, Interim President and CEO of CMAA in his place. [FAA Exhibit 1, Item 9]

On November 14, 2011, the Complainant filed its Reply to Answer and Opposition to Motion to Dismiss and Answer in Opposition to Motion for Declaratory Statement. [FAA Exhibit 1, Item 10A-D and exhibits]

On November 16, 2011, the Respondent filed a Motion for Extension of Time to Submit Rebuttal to December 9, 2011. [FAA Exhibit 1, Item 11]

On November 17, 2011, the FAA granted Respondent's request for Extension of Time to file its Rebuttal to December 9, 2011. [FAA Exhibit 1, Item 12]

On December 9, 2011, the Respondent filed its Rebuttal to Complainants Reply. [FAA Exhibit 1, Item 13, and exhibits 1-9]

On March 28, 2012, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to June 9, 2012. [FAA Exhibit 1, Item 14]

On June 4, 2012, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to August 9, 2012. [FAA Exhibit 1, Item 15]

On June 12, 2012, the FAA issued a Request for Additional Information to obtain an executed copy of the General Aviation Facilities Management Agreement between the CMAA and Wilson Air Center. [FAA Exhibit 1, Item 16]

On June 29, 2012 the Respondent filed an Executed copy of the General Aviation Facilities Management Agreement between CMAA and Wilson Air Center. [FAA Exhibit 1, Item 17]

On July 30, 2012, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to on or about September 28, 2012. [FAA Exhibit 1, Item 19]

On September 27, 2012, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to on or about December 15, 2012. [FAA Exhibit 1, Item 20]

On December 20, 2012, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to on or about February 12, 2013. [FAA Exhibit 1, Item 21]

On February 14, 2013, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to on or about April 3, 2013. [FAA Exhibit 1, Item 22]

On March 20, 2013, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to on or about June 1, 2013. [FAA Exhibit 1, Item 23]

On June 17, 2013, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to July 31, 2013. [FAA Exhibit 1, Item 24]

On July 30, 2013, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to August 15, 2013. [FAA Exhibit 1, Item 25]

On August 30, 2013, the FAA issued a Notice of Extension of Time for issuance of Director's Determination to September 30, 2013. [FAA Exhibit 1, Item 26]

IV. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances, the FAA has determined that the following issues require analysis to provide a complete review of the Respondent's compliance with applicable Federal law and policy:

1. Whether the Respondent violated Grant Assurance 22(g) by entering into a Management Agreement with Wilson Air to manage a "Sponsor Owned" Fixed Base Operation (FBO) but retaining the right to set fuel and other prices.

2. Whether the Respondent gave more favorable terms to Wilson Air and unjustly discriminated against the Complainant in favor of its owned FBO in violation of 49 U.S.C., § 47107(a)(1), and Federal Grant Assurance 22, *Economic Non-Discrimination.*

3. Whether the Respondent's revision and application of its Minimum Standards by the elimination of the Part 145 maintenance requirement was unreasonable and unjustly discriminated against the Complainant in violation of 49 U.S.C, § 47107(a)(1), and Federal Grant Assurance 22, *Economic Non-Discrimination.*

4. Whether the Respondent has limited the Complainant's ability to remain in business by using public funds to build the Respondent-owned FBO and by controlling fuel and goods and services pricing and thereby violated 49 U.S.C, § 47107(a)(4), and Grant Assurance 23, Exclusive Rights.

While the Complainant alleges violations of Grant Assurance 22, *Economic Non-Discrimination* and Grant Assurance 23, *Exclusive Rights,* the Director believes Grant Assurance 24, *Fee and Rental Structure* and Grant Assurance 25 is also at issue.[18]

[18] In accordance with 14 CFR, §16.29(a), "If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA investigates the subject matter of the complaint."

V. APPLICABLE LAW AND POLICY

The Federal role in civil aviation has been augmented by various legislative actions that authorize programs for providing Federal funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public fair and reasonable access to the airport.

The following is a discussion pertaining to AIP, Airport Sponsor Assurances, the FAA Airport Compliance Program, enforcement of Airport Sponsor Assurances, and the complaint and appeal process.

A. The Airport Improvement Program

Title 49 U.S.C., § 47101, *et seq*., provides for Federal airport financial assistance for the development of public-use airports under AIP established by the Airport and Airway Improvement Act (AAIA) of 1982, as amended. Title 49 U.S.C., § 47107, *et seq*., sets forth assurances to which an airport sponsor agrees as a condition of receiving Federal financial assistance. Upon acceptance of an AIP grant, the assurances become a binding contractual obligation between the airport sponsor and the Federal government. The assurances made by airport sponsors in AIP grant agreements are important factors in maintaining a viable national airport system.

B. Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under AIP, 49 U.S.C., § 47107, *et seq.*, the Secretary of Transportation and, by extension, the FAA must receive certain assurances from the airport sponsor. Title 49 U.S.C., § 47107(a) sets forth the statutory sponsorship requirements to which an airport sponsor receiving Federal financial assistance must agree.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances.[19] FAA Order 5190.6B, *FAA Airport Compliance Manual* (Order), issued on September 30, 2009, provides the policies and procedures to be followed by the FAA in carrying out its legislatively mandated functions related to compliance with Federal obligations of airport sponsors. The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities.

Three FAA grant assurances apply to the circumstances set forth in this Complaint:

[19] *See*, *e.g.*, the Federal Aviation Act of 1958, as amended and recodified, Title 49 U.S.C., §§ 40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110; and the Airport and Airway Improvement Act of 1982, as amended and recodified, Title 49 U.S.C., §§ 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122.

(1) Grant Assurance 22, *Economic Nondiscrimination;* (2) Grant Assurance 23, *Exclusive Rights; (3)* Grant Assurance 24, *Fee and Rental Structure.*

(1). Grant Assurance 22, *Economic Nondiscrimination*

Grant Assurance 22 of the prescribed sponsor assurances implements the provisions of 49 U.S.C., §47107(a)(1) through (6) and requires, in pertinent part, that the sponsor of a federally obligated airport assure:

a. *It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.*

b. *In any agreement, contract, lease or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to*

    1. furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

    2. charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchases.

c. *Each fixed-base operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and utilizing the same or similar facilities.*

[…]

f. *It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.*

g. *In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.*

h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

[Grant Assurance 22]

Subsection (h) qualifies subsection (a) and subsection (i) represents an exception to subsection (a) to permit the sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions that would be detrimental to the civil aviation needs of the public.

The owner of an airport developed with Federal assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on reasonable terms, and without unjust discrimination. [*See* FAA Order 5190.6B at Section 9.1.a] Grant Assurance 22, *Economic Nondiscrimination*, deals with both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access.

FAA Order 5190.6B describes the responsibilities under Grant Assurance 22 assumed by the owners or sponsor of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination. [*See* FAA Order 5190.6B Chapter 9]

(2). Grant Assurance, 23 *Exclusive Rights*

Title 49 U.S.C., §40103(e), provides, in relevant part, that "there shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended."

Title 49 U.S.C., §47107(a)(4), similarly provides, in pertinent part, that "there will be no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public."

Grant Assurance 23, *Exclusive Rights*, of the prescribed sponsor assurances implements both statutory provisions requiring, in pertinent part, that the sponsor of a federally obligated airport:

> [...] *will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public* […].

[Grant Assurance 23]

FAA policy on exclusive rights broadly identifies aeronautical activities as subject to the statutory prohibition against exclusive rights. While public use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, we have taken the position that the application of any unreasonable requirement or standard that is applied in an unjustly

discriminatory manner may constitute a constructive grant of an exclusive right. Courts have found the grant of an exclusive right where a significant burden has been placed on one competitor that is not placed on another. [*See* e.g. Pompano Beach v. FAA, 774 F.2d 1529 (11th Cir, 1985)]

FAA Order 5190.6B provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports. [*See* FAA Order 5190.6B, Chapter 8]

(3). Grant Assurance 24, *Fee and Rental Structure*

Grant Assurance 24, *Fee and Rental Structure*, implements the provisions of the AAIA, 49 U.S.C., § 47107(a)(13), and requires, in pertinent part, that the sponsor of a federally obligated airport assure:

> *It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection.*

Grant Assurance 24 addresses fees the owner or sponsor levies on airport users in exchange for the services the airport provides and satisfies the requirements of § 47107(a)(13) by addressing self-sustainability. The intent of the assurance is for the airport operator to charge fees that are sufficient to cover as much of the airport's costs as is feasible while maintaining a fee and rental structure consistent with the sponsors other Federal obligations.

In addition, FAA Order 5190.6B states:

> *To aid in establishing uniform rates and charges applied to aeronautical activities on the airport, the sponsor should establish minimum standards to be met as a condition for the right to conduct an aeronautical activity on the airport.*

[FAA Order 5190.6B Section 9.6.e]

C. The FAA Airport Compliance Program

The FAA discharges its responsibility for ensuring that airport sponsors comply with their Federal obligations through its Airport Compliance Program. Sponsor obligations are the basis for the FAA's airport compliance effort. The airport owner accepts these obligations when receiving Federal grant funds or when accepting the transfer of Federal property for airport purposes. The FAA incorporates these obligations in grant agreements and instruments of conveyance to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The FAA designed the Airport Compliance Program to ensure the availability of a national system of safe and properly maintained public-use airports that airport sponsors operate in a manner consistent with their Federal obligations and the public's investment in civil aviation. The Airport Compliance Program does not control or direct the operation of airports. Rather, it monitors the administration of the valuable rights that airport sponsors pledge to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that airport sponsors serve the public interest.

FAA Order 5190.6B sets forth policies and procedures for the FAA Airport Compliance Program. The Order is not regulatory and is not controlling with regard to airport sponsor conduct. Rather, it establishes the policies and procedures to be followed by FAA personnel in interpreting and administering the various continuing commitments airport owners make to the United States as a condition for receiving Federal funds or Federal property for airport purposes. The Order, *inter alia*, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the application of the assurances in the operation of public-use airports, and facilitates the interpretation of grant assurances by FAA personnel.

The FAA Airport Compliance Program is designed to achieve voluntary compliance with Federal obligations accepted by owners and/or operators of public-use airports developed with FAA-administered assistance. Therefore, in addressing allegations of noncompliance, the FAA will make a determination of whether an airport sponsor currently is in compliance with the applicable Federal obligations. Consequently, the FAA will consider the successful action by the airport to cure any alleged or potential past violation of an applicable Federal obligation to be grounds for dismissal of such allegation. [*See* e.g. Wilson Air Center v. Memphis and Shelby County Airport Authority, FAA Docket 16-99-10 (August 30, 2001) (Final Agency Decision) (Wilson Air FAD); upheld in Wilson Air Center, LLC v. FAA, 372 F.3d 807 (C.A. 6, June 23, 2004)]

FAA Order 5190.6B outlines the standard for compliance, stating:

> *A sponsor meets commitments when: (1) The federal obligations are fully understood; (2) A program (e.g., preventive maintenance, leasing policies, operating regulations, etc.) is in place that the FAA deems adequate to carry out the sponsor's commitments; (3) The sponsor satisfactorily demonstrates that such a program is being carried out; and (4) Past compliance issues have been addressed.*

[FAA Order 5190.6B at Section 2.8.b]

D. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended (FAAct), 49 U.S.C., § 40101, et seq., assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The Federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport owner or sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C., § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their Federal grant assurances.

E. The Complaint and Appeal Process

Pursuant to 14 CFR, § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant(s) shall "provide a concise but complete statement of the facts relied upon to substantiate each allegation" and the complaint(s) shall also describe how the complainant(s) directly and substantially has/have been affected by the things done or omitted by the respondent(s). [*See* 14 CFR, § 16.23(b)(3) – (4)]

"If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA will investigate the subject matter of the Complaint." [14 CFR § 16.29(a)] "In rendering its initial determination, the FAA may rely entirely on the Complaint and the responsive pleadings provided. […] Each party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance." [14 CFR, § 16.29(b)(1)]

The proponent of a motion, request, or order has the burden of proof. A party who has asserted an affirmative defense has the burden of proving the affirmative defense. This standard burden of proof is consistent with the Administrative Procedures Act (APA) and Federal case law. The APA provision [*See* 5 U.S.C., § 556(d)] states, "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof." [*See also* Director, Office Worker's Compensation Programs, Department of Labor v. Greenwich Colleries, 512 US 267, 272 (1994) and Air Canada et al. v. Department of Transportation, 148 F3d 1142, 1155-1156 (DC Cir, 1998)] Title 14 CFR, § 16.229(b) is consistent with 14 CFR § 16.23, which requires the Complainant to submit all documents then available to support his or her complaint. Similarly, 14 CFR, § 16.29(b)(1) states, "Each party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance."

Title 14 CFR, §§ 16.31(b) and (c) provide, "[t]he Director's Determination will set forth a concise explanation of the factual and legal basis for the Director's Determination on each claim made by the complainant. A party adversely affected by the Director's Determination may appeal the initial determination to the Associate Administrator as provided in §16.33." In accordance with 14 CFR, §§ 16.33(b) and (e), upon issuance of a Director's Determination, "a party adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination;" however, "(i)f no appeal is filed within the time period specified in paragraph (b) of this section, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final because there is no administrative appeal is not judicially reviewable."

Title 14 CFR, § 16.247(a) defines procedural recourse for judicial review of the Associate Administrator's final decision and order, as provided in 49 U.S.C., § 46110 or § 519(b)(4) of the Airport and Airway Improvement Act of 1982, as amended, (AAIA), 49 U.S.C., §§ 47106(d) and 47111(d).

VI. ANALYSIS AND DISCUSSION

A. ISSUE 1

Whether the Respondent violated Grant Assurance 22(g) by entering into a Management Agreement with Wilson Air to manage a "Sponsor Owned" Fixed Base Operation (FBO) but retaining the right to set fuel and other prices.

Grant Assurance 22 requires, in pertinent part, that the sponsor of a federally obligated airport assures that:

> *a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.*
>
> […]
>
> *g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.*

The Complainant argues that "*the only way for an Airport Sponsor to operate an FBO or any other service company is to adopt, effectively, substantially the same mechanism to determine pricing as a privately-owned FBO.*" [FAA Exhibit 1, Item 1, par 73]

To support this argument, the Complainant states that they set prices "*based on all of the costs it incurs to fund its business (i.e., the cost of amortizing its purchase of the business, renovations, and all services) plus profit.*" Complainant argues that unless the Respondent's FBO is required to do similar, "*it will have no objective basis to set prices*" and "[w]*ithout the*

typical costs associated with establishing and operating an FBO, the Respondent-owned FBO can set prices for fuel and other goods and services significantly below Complainant and still not suffer any loss." [FAA Exhibit 1, Item 1, par 79]

Complainant goes on to state:

> [w]*ithout a mandate that an Airport Sponsor-owned FBO competing with a privately-owned FBO must take the costs of its infrastructure into its pricing, Grant Assurance 22(g) has no teeth and cannot ensure a competitive playing field. Prices set without regard to the cost of infrastructure are by their very nature unjustly discriminatory.*

[FAA Exhibit 1, Item 1, par 83]

The Complainant also alleges that Respondent will create a proprietary exclusive without actually paying for it by "*using government funds to build an FBO and controlling the fuel prices at the Respondent-owned FBO*," thereby driving Complainant out of business or substantially reducing the value of Complainant's business. [FAA Exhibit 1, Item 1, par. 17]

The Respondent argues that TAC Air is the beneficiary of *"hangars, fuel farms, and large swaths of general aviation aprons that were built by the Airport sponsor with public funds"* for which TAC Air pays only ground rent, and that *"*[…] *the use of public funds to introduce competition where none existed before is not, in and of itself, unreasonable."* [FAA Exhibit 1, Item 5(A), pg. 4]

The Respondent outlined the Complainant's leasehold infrastructure in an Affidavit by Ms. April Cameron, Vice President of Finance and Administration for CMAA. [FAA Exhibit 1, Item 5(A), Ex. 2] Tables #4 through #6 below summarize the infrastructure and funding sources of both FBOs in a side by side comparison.

TAC Air has 1,239,809 square feet of space while Wilson Air has 234,000 square feet of space. Both FBOs have received substantial benefit from public funds. Nearly all of the ramp space for both FBOs and all the fuel farms were constructed using public funds.

Table #4 –Comparison of FBO Hangar Size and Funding Source

	TAC Air Hangars				Wilson Air Hangars		
	Hangar #	Sq. ft.	Funding Source		Hangar #	Sq. ft.	Funding Source
			Private	Public			Public
North Facilities 80,261 sq.ft.	#3	65,891		City Funds	Terminal	9,000	$3,400,000 TDOT $377,778[20] CMAA
	#4; #5		Krystal Aviation		Hangar	12,000	
	#6	14,370	Unum				
South Facilities 91,603 sqft	#1	52,604		City Funds			
	#2		Hangar One				
	#26	14,733	Private Funds				
	T-Hangars	24,266		City Funds			
Maintenance Facilities 68,8650	#21; #22	48,290	Signal Aviation				
	#19	20,560	Krystal Aviation				

[20] FAA Exhibit 1, Item 1, Ex. 7 and 8

Table #5: Comparison of FBO Ramp Space and Funding Source

	TAC Air Ramps					Wilson Air Ramp	
	Leased (Y/N)	Sq. ft.	Funding Source		Comments	Sq. ft.	Funding Source
			Private	Public			Public
North Facilities	Y	55' Ramp	Private			213,000	ARRA grant $2,748,235
	N	217,295		Public Funds			
South Facilities	Y	45,8633 [21]		Public Funds	Included with T-Hangar		
Maintenance Facilities	Y	323,167 [22]		Public Funds			

Table #6: Comparison of FBO Total Ramp and Hangar Space

	TAC Air Total Hangar/Ramp Space		Wilson Air Total Hangar/Ramp Space	
	sq. ft	Lease Rate	sq. ft	Lease Rate
North Facilities	80,261	$48,672.49	234,000	Mgmt Contract
	217,295	$0.00		
South Facilities	550,236	$90,073.70		
Maintenance Facilities	392,017	$64,173.21		
TOTALS	**1,239,809**	**$138,746.19**	**234,000**	

[FAA Exhibit 1, Item 5(A), Ex. 2]

The Respondent also argues that *"TAC Air misinterprets the language of the Grant Assurances."* [FAA Exhibit 1, Item 13, pg. 30] The Respondent discusses the legislative history of Grant Assurance 22(g) [FAA Exhibit 1, Item 13, pp. 30-32][23] and argues that "*the*

[21] The aggregate footprint of the South Facilities leasehold is 550,236.28 sq. ft. and the total hangar square footage as outlined above equates to 91,603. [FAA Exhibit 1, Item 5(A), Ex. 2, par. 6h] The ramp space was calculated by subtracting the 91,603 hangar space from the overall foot print of 550,236 sq. ft.

[22] The aggregate footprint of the TAC Air Maintenance Agreement leasehold is 392,017.17 square feet. [FAA Exhibit 1, Item 5(A), Ex. 2, par. 5e] The square footage for the hangars as provided on Attachment A to Ms. Cameron's affidavit shows 48,209 and 20,560 square feet of hangar space. The ramp space was calculated by subtracting the 48,290 and 20,560 hangar space from the overall footprint of 392,017 sq. ft.

[23] The language in what is now Grant Assurance 22g first appeared as Grant Assurance 20.d in the airport aid program established by the Airport and Airway Development Act of 1970 ("AADA," Pub. L. 91-258, May 21, 1970). That original language stated that "[i]n the event the Sponsor itself exercises any of the rights and privileges *referred to in subsection b,* the services involved will be provided on the same conditions as would apply to the furnishing of such services *by contractors or concessionaires of the Sponsor under the provisions of such subsection b.*" [Revision of Airport Aid Program Requirements, 45 Fed. Reg. 34782, 34799 (May 22,

'conditions' referred to in Grant Assurance 22.g clearly refer to the threshold minimum standards that an airport sponsor may establish and to which all commercial entities desiring to provide aeronautical service at the airport must meet." [FAA Exhibit 1, Item 13, pg. 32] The Respondent additionally states that *"the CMAA retained pricing control at the West-Side FBO because the FAA advised it to do so."* [FAA Exhibit 1, Item 5(A), pg. 5]

Respondent also provides an October 6, 2008, letter from the FAA's Memphis Airports District Office to Mr. John Naylor, Vice President, Planning and Development, CMAA, which stated in pertinent part:

> *"It is understood that you intend to use Tennessee State Equity funds to develop a General Aviation terminal, hangars, apron, fuel farm and automobile parking facilities. It is also understood that you intend to acquire the services of a third party to manage the west side facilities. We have no objections to the conceptual West Side Development nor the proposal to acquire the services of a management company to run it.* […] *It is recommended that the airport retain approval rights for rates and charges."*

[FAA Exhibit 1, Item 5(A), Ex. 29]

The Complainant states in its reply that while this is an issue of first impression in this Complaint, Jimsair Aviation Services, Inc. v San Diego County Regional Airport Authority, FAA Docket No. 16-06-09 (April 12, 2007) should inform the FAA's decision here. [See Jimsair Aviation Services, Inc. v San Diego County Regional Airport Authority, FAA Docket No. 16-06-09 (April 12, 2007) (Director's Determination) (Jimsair DD)] Complainant states that:

> *In that case, the complainant was an FBO that provided under the wing ground handling services. The airport authority allowed other, non-tenant service providers to compete with complainant for under the wing ground handling business. Complainant was required to meet minimum standards and rules/regulations while non-tenant did not." FAA found that '[the] disparity in requirements each must meet places the Complainant at a competitive disadvantage for providing these services" and therefore violated Grant Assurance 22.*

[FAA Exhibit 1, Item 10(A), pg. 5; internal citations omitted]
The Complainant compares itself to the Jimsair complainant in that TAC Air must:

1980), emphasis added. *See also* 14 CFR 152 Appx. D, II 20.d] The reference to 'subsection b' was (and is) a reference to language that is substantially similar to the language of AIP Grant Assurance 22.b. [*Compare* AADA Grant Assurance 20.b (45 Fed. Reg. at 34798 and 14 CFR pt 152, App. D, II, 20.b) *with* Grant Assurance 22.b (requiring that aeronautical service providers furnish services without unjust discrimination and charge reasonable and not unjustly discriminatory prices)] Thus, the original language of this Grant Assurance made express reference to the rights and privileges (to offer aeronautical service to the public) and conditions (without discrimination and charging reasonable, nondiscriminatory prices) established in subparagraph b. The revised language in AIP Grant Assurance 22.g is somewhat broader, stating that a sponsor that "exercises the rights and privileges referred to in this assurance" – i.e., any of the aeronautical services referred to throughout the entirety of Grant Assurance 22, and not just its subparagraph b - must or may be imposed on all aeronautical users by an airport sponsor pursuant to Grant Assurance 22.

> "*take into account the price it paid to purchase Krystal Aviation over the life of its lease when setting prices and consider third party vendor costs* […]*it is inherently unfair to require a private company to compete against a government entity that is not obligated to repay or account for the grants with which it launched its business."*

[FAA Exhibit 1, Item 10(A), pg. 6, internal citations omitted]

The Respondent argues against the applicability of *Jimsair v. San Diego* and believes that TAC Air's reliance on the case is "misplaced," and that the case is "wholly inapplicable." [FAA Exhibit 1, Item 13, pg. 33]

> *In* [Jimsair]*, the airport sponsor was largely held to be in compliance, FAA merely found that the airport could not allow 'non-tenant aeronautical service providers to engage in ground handling and related services in direct competition with the Complainant without requiring those entities to meet comparable minimum standards and rules and regulations for providing services. As discussed at length in these pleadings, the CMAA is applying and has applied the standards set in its current revised Airport Minimum Standards equally to all operators at the Airport; TAC Air does not argue otherwise, basing its arguments entirely around the prior set of Airport Minimum Standards.*

[FAA Exhibit 1, Item 13, pg. 33]

Respondent argues that the Jimsair case "*certainly does not stand for the proposition that the CMAA adopt an artificial cost structure when setting prices for aeronautical goods and services offered at the West-Side FBO.*" [FAA Exhibit 1, Item 13, pg. 33]

Analysis of Issue 1

As both the Complainant and the Respondent point out, the application of Grant Assurance 22(g) to the set of facts presented in this Complaint is one of first impression for the FAA as it relates to a sponsor-owned, third party operated FBO. The FAA does not have historical precedent interpreting the application of Grant Assurance 22(g) to a sponsor-owned, third party-operated FBO. Therefore, the Director looks to the plain language of Grant Assurance 22(g) and its legislative history. Grant Assurance 22(g) states:

> "In the event the sponsor itself exercises any of the rights and privileges *referred to in this assurance*, the services involved will be provided on the *same conditions as would apply to the furnishing of such services by commercial aeronautical service* providers authorized by the sponsor *under these provisions*." [Emphasis added]

The language of Grant Assurance 22(g) explicitly limits its application to "when the sponsor exercises those rights and privileges referred to in this assurance." Grant Assurance 22 focuses on the right and privileges of commercial aeronautical activities offering services to the public (22a); any aeronautical activity furnishing service to the public (22b); and fixed base operator (22c). Both parties agree that CMAA exercised these rights and privileges when it hired a management company to run an FBO on its behalf.

Next, Grant Assurance 22(g) requires that "the *services involved* will be *provided on the same conditions* as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor […]" (emphasis added).

Grant Assurance 22 outlines some of these conditions:

- *furnish said services on a reasonable, and not unjustly discriminatory basis to all users thereof* [22b(1)],
- charge reasonable, and not unjustly discriminatory prices for each unit or service [22b(2)],
- reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport [22h]

In addition, the FAA has encouraged airport sponsors to establish Airport Minimum Standards for commercial aeronautical activities and airport Rules and Regulations. [*See FAA Order 5190.6B, Chapter 10 and* Advisory Circular 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities,* August 28, 2006]

The Complainant asks the FAA to interpret Grant Assurance 22g to require the Respondent to have an operating budget for its FBO operation and to use price setting structures similar to privately owned FBOs. Industry practices normally consider a number of objectives when an FBO sets prices; these can include the need to cover costs, increase sales volume and market share, or attain profit targets. Complainant states Respondent does not have an operating budget and does not have price setting structures similar to privately owned FBOs. Complainant submits no evidence to support its claim.

Furthermore, if the FAA followed the Complainants line of reasoning, it would find discriminatory pricing practices between an FBO that acquired another FBO and an FBO that made no such acquisitions simply because the FBO that made no acquisitions may have a lower pricing structure.

More importantly, the FAA does not regulate the accounting and pricing practices by privately-owned FBOs. The FAA cannot impose a condition for setting prices on sponsor-owned, privately-managed FBOs that it does not impose on privately-owned FBOs. While there are many conditions that may be required for the safe and efficient operation of the airport, compliance with a specific price-setting structure is not one of them. The conditions referred to in Grant Assurance 22g do not extend to how an FBO (private or public) sets its prices. Grant Assurance 22 only requires an FBO to charge reasonable and nondiscriminatory prices for service. There is no evidence that the Respondent is not performing this duty.

In addition, for the FAA to require a sponsor-owned FBO to artificially set prices for the sole purpose of allowing a privately-owned FBO to remain competitive would not only be beyond

the FAA's role in regulating on-airport activity, but may create an anti-competitive atmosphere on the airport to the disadvantage of other airport users.

Throughout the complaint, the Complainant argues that the CMAA is in violation of Grant Assurance 22g by retaining the ability to set fuel prices and other prices. The Complainant provides very limited information as to what it believes constitutes "other prices." However, given the plain language of Grant Assurance 22 as outlined above and the legislative history, the Director does not agree that retaining the ability to set the fuel and "other prices" for its management company violates Grant Assurance 22g. In fact, to the contrary, by retaining the ability to set these prices for its FBO, the CMAA ensures that the airport is and remains as self-sustaining as possible as required under Grant Assurance 24, Fee and Rental Structure. [24]

The Director is also not persuaded that this case is similar to *Jimsair*, and agrees with the Respondent that the Complainant's reliance on that case is misplaced. In *Jimsair*, the nontenant service providers were not regulated by the airport, did not have agreements with the airport, and were not required to meet minimum standards, yet they were allowed to operate on the airport in competition with the existing FBO. (Jimsair Aviation Services, Inc. v. San Diego County Regional Airport Authority, FAA Docket No. 16-06-08 at 41, April 12, 2007*).* The FAA found that this complete lack of regulation of the nontenant service providers created a violation of Grant Assurance 22. In contrast, here both the Complainant and the Sponsor-owned FBO are required to meet the minimum standards and rules and regulations, and have either an agreement or contract to be operating on the airport. Though the Respondent-owned FBO may have different accounting and pricing practices than the Complainant's FBO, the Respondent-owned FBO is still regulated through the airport's minimum standards and rules and regulations, and therefore the conclusion in *Jimsair* is inapplicable here.

Summary of Issue 1:

The Director is not persuaded that the Respondent violated Grant Assurance 22(g), Economic Nondiscrimination, by entering into a Management Agreement with Wilson Air to operate a "Sponsor Owned" Fixed Base Operation (FBO) while retaining the right to set fuel and other prices. The conditions in Grant Assurance 22 include compliance with airport minimum standards and rules and regulations, but they do not extend to details of the operation of an FBO such as price setting.

[24] This allegation is also reviewed in Issue 4.

B. Issue (2)

Determine whether the Respondent gave more favorable terms to Wilson Air and unjustly discriminated against the Complainant in favor of its owned FBO, in violation of 49 U.S.C., Section 47107(a)(1), and Federal Grant Assurance 22, *Economic Non-Discrimination.*

The Complainant argues that the Respondent unjustly discriminated against the Complainant in favor of its owned FBO [FAA Exhibit 1, Item 1, pg. 8] The Complainant lists nine ways in which it has been unjustly discriminated against: (1) Self-Service AvGas, (2) Providing Services at No or Reduced Costs[25], (3) Parking Fee, (4) Signage, (5) Refusal to Permit Capital Improvements, (6) National Guard Facility Fuel Farm, (7) Fuel Co-Op, (8) Parking, and (9) Active Promotion of the Sponsor Owned FBO over the Complainant. [FAA Exhibit 1, Item 10(A), pg. 6].

In order to make a finding of unjust discrimination, Complainant must provide persuasive evidence that a similarly situated user based at the Airport was provided with preferential treatment. The test is two-fold (1) there must be a similarly situated user and (2) the Complainant must have proposed and been denied a similar use. [*See* Gina Michelle Moore, individually and d/b/a Warbird Sky Ventures, Inc. v. Sumner County Regional Airport Authority, FAA Docket No 16-07-16 (February 27, 2009)(Director's Determination), pgs. 35-36, Affirmed by Final Agency Decision, July 13, 2010]

Comparison of TAC AIR and Wilson Air

The TAC Air FBO ground leases and the Wilson Air Management Agreement for FBO services are entirely different in their concept, structure, and lease terms. TAC Air operates under a long term capital lease, while Wilson Air operates under a five year management contract.

TAC Air FBO Leasehold

The complainant and its predecessor, Krystal Aviation, have been on the airport since April 1982 and have been the sole proprietor of fuel sales since January 1993. The Complainant took control of this FBO operation by assignment from Krystal Aviation in September 23, 2002. This FBO operates out of three facilities on the airport – North Facility, South Facility, and Maintenance Facility – totaling 1,239,809 square feet of hangar, terminal and ramp space. Complainant's current leases expire on September 30, 2016. There are 3 remaining options to extend for 5-year terms. If all options are exercised the Complainant has another 19 years remaining at this airport.

This is a commercial FBO operation where the FBO holds a ground lease for the property and provides services at the airport and retains all the profits after its lease payments are made. The lease payment is a combination of a ground lease and a percentage of receipts for fuel

[25] Complainant alleges that the Respondent provides several services at no or reduced costs including power washing the apron and snowplowing.

sales and other sale activities as defined in their contract. TAC Air does not pay a ground lease rate for its use of 217,295 square foot ramp outside its North Facility. The Table below outlines the ground lease rate and the percentage of sales to be paid to the Airport should the FBO perform certain services:

Table #7: TAC Air Rental Rates and Fees

TAC Air Rent/Fees					
	Lease Rate	Fuel Flowage	Flight Activities and Sales	Outside sales repair work	wholesale parts
North Facilities	$48,672.49[26]	$0.05/gallon	2%	2.50%	2%
South Facilities	$90,073.70				
Maintenance Facilities	$64,173.21				

[FAA Exhibit 1, Item 5(A), Ex. 14-16]

The infrastructure on TAC Air's three leaseholds was built with a combination of public and private funding. As reflected in Table #2A above, North Facility hangar #3, South Facility hangar #1 and the T-Hangars were built with public funding while two South Facility hangars and three maintenance facility hangars were built with private funds. In addition, the entire ramp totaling over 999,095 square feet of ramp space was publicly funded, as well as the FBOs two fuel farms. Table #2 above details the hangar and ramp area leasehold.

Wilson Air Management Contract

CMAA and Wilson Air executed a General Aviation Facilities Management Agreement (Management Agreement) on December 20, 2010 which commenced on July 1, 2011 to manage and operate the general aviation and Fixed Base Operator facilities at the airport on behalf of the Sponsor for a term of 5 years, ending on June 30, 2016. [FAA Exhibit 1, Item 17] CMAA has an option to renew for an additional 5 years, ending on June 30, 2021. This FBO operates out of a facility on the west side of the airport with 234,000 square feet of hangar, terminal and ramp space.

The Sponsor owns the FBO facilities and pays Wilson Air, a private company, a set fee plus an incentive fee to manage the FBO. As with most management contracts; Wilson Air does not pay rent for the facilities. The Sponsor pays the operating costs and retains any profits of the FBO operation.

[26] This rate does not include a charge for the 217,295 square foot ramp.

Table #8: Wilson Air Management Contract Fees

Wilson Air Management Contract Fees		
Management Consultant Fee	Incentive Fee	Operating Surplus
Year 1: $100,000	*Operating Surplus* *< $500,00 = 5% Incentive* *$500,000+ = 10% Incentive*	*Goes to CMAA*
Year 2: $150,000		
Year 3-5: $200,000		

[FAA Exhibit 1, Item 17]

The entirety of this FBO's physical infrastructure, totaling 234,000 square feet was funded through Federal, State and local airport funds. In addition, a fuel farm was also built with public funds. Table #3 above details the hangar and ramp area for Wilson Air.

Wilson vs. TAC Air

TAC Air pays a ground lease and a percentage of gross receipts for the privilege of providing FBO services. [See Table 7] It has operated as the sole FBO at the airport since September 23, 2002. [FAA Exhibit 1, Item 5(A), Ex.18] TAC Air has lease options remaining that if exercised will allow it to remain in operation until September 30, 2031. [See Table 1] TAC Air has two publicly funded fuel farms. [FAA Exhibit 1, Item 10(A), par. 83]. TAC Air also has 1,239,809 square feet of ramp and hangar space, [See Table 6] and operates on the east side of the airport.

Wilson Air is a management company that operates the FBO on behalf of the Sponsor for a set fee plus an incentive fee based on operating surpluses, it is new to the airport with a 5 year contract and another 5 year option. [See Table 8] The Sponsor pays the operating costs. [FAA Exhibit 1, Item 17] Wilson Air has one publicly funded fuel farm and 234,000 square feet of ramp and hangar space [See Table 6] and operates on the west side of the airport.

In the TAC Air lease, TAC Air bears the cost and business risk of the operation and receives all of the profits or the losses. In the Wilson Air agreement the Respondent bears the cost of operation and business risk and receives all of the profits or losses. There is no grant assurance or law that prohibits an airport sponsor from making the financial decision to attempt to be self-sustaining through this type of agreement. In fact, grant assurance obligation requires the airport sponsor to operate the airport in a self-sustaining manner as possible.

These two entities are not similarly situated as they differ in their size, level of investment (both public and private investment), business structure, and term of years on the airport. In fact, except for the services they provide to the public there is nothing similar about these two entities. When there are differences in the level of investment and business concept the FAA may find aeronautical users are not similarly situated, even when they propose the same or similar use of the airport. [*See* Skydance Helicopters, Inc. d/b/a Skydance Operations, Inc. v.

Sedona Oak-Creek Airport Authority and Yavapai County, Arizona, FAA Docket No. 16-02-02 (March 7, 2003) (Director's Determination), pgs. 27-28]

The Director, in finding that these two entities are not similarly situated, finds that the Complainant's allegations do not amount to unjust economic discrimination in violation of Grant Assurance 22. However, in an effort to provide as complete an analysis as possible, the Director reviewed and discusses here the evidence relating to the nine allegations. The Director concludes that, even if the two FBOs here were similarly situated, there would be no unjust economic discrimination because the evidence presented by the parties does not show actual discrimination against TAC Air.

(1) *Self-Service AvGas:* The Complainant claims that the Respondent discriminated against it when the Respondent did not permit the Complainant to build a self-service fuel facility. The Respondent denied both the Complainant and Wilson Air the right to provide self-service fueling until the minimum standards were adopted. [FAA Exhibit 1, Item 5(A), Ex. 11 and FAA Exhibit 1, Item 5(A), Ex. 8] The Respondent then instituted a moratorium on self-service fueling to allow the Complainant time to install their facility. [FAA Exhibit 1, Item 5(A), Ex. 12, pg. 1] By taking this action, the CMAA kept the competition on a level basis and delayed its own potential fuel sales

(2) *Providing Services at No or Reduced Costs*: The Complainant states that the Respondent has provided services to Wilson Air at no or reduced cost, but only provides specifics on snow clearing services and pressure washing the apron.

Snow Clearing: The parties both agree that the alleged snow clearing occurred before Wilson Air was open for business. Both parties indicate that this was a period of significant and unusual snow fall. The Respondent followed its established snow plan and indicates that although the Complainant's lease requires them to clear the snow, the Respondent did eventually clear it for them. [FAA Exhibit 1, Item 13, pg. 17; see also Item 13, and Ex. 1, par. 4] A Complainant cannot claim unjust discrimination because it did not receive a service that it is contractually required to provide for itself and that is not being provided to any other similarly situated entity that is operating at that time.

Pressure Washing: The Complainant alleged that the Respondent has "*washed the public ramp in front of the Respondent-owned FBO but did not offer to wash the public ramp in front of the Complainant FBO."* [FAA Exhibit 1, Item 1, par. 50] The Respondent explained that it is customary to wash aircraft movement areas after construction and that there had not been construction on the complainant's leasehold. The Director finds this explanation reasonable. In addition, the Complainant had not requested such service. [FAA Exhibit 1, Item 5(A), Sec. II. par. 50]

(3) *Parking Fee*: The Complainant alleges it was not notified of the Respondent's intent to recommend a resolution to the Authority Board on September 26, 2011 to rescind a controversial parking fee. Respondent actually notified the Complainant's

attorney on May 10, 2011 of their intent to recommend that the fee be terminated. [FAA Exhibit 1, Item 1, Ex. 16, pg. 3]

(4) *Signage: Marketing/Advertising Signs:* The Complainant alleges that the Respondent denied its request for a marketing sign, but installed a scrolling welcome sign on Wilson Air. The Complainant and Wilson Air both requested similar marketing signs in April 2011. [FAA Exhibit 1, Item 5(A), Ex. 19 and 20] The Respondent denied both requests in the ramp area. [FAA Exhibit 1, Item 5(A), Ex. 21 and 22]. The Complainant takes issue with the scrolling welcome sign that is attached to Wilson Air's building, however the Complainant has not requested and been denied a similar sign in a similar location. [FAA Exhibit 1, Item 5(A), Ex. 1, par. 20]

Directional Signage: The Complainant alleges that Wilson Air has placed 6-8 directional yard signs along the shoulders of the road leading to Wilson Air. [FAA Exhibit 1, Item 10(C), par. 34]. The Complainant has signs that are permanent directional road signs leading to its facilities. [FAA Exhibit 1, Item 5(A), Ex. 1, par. 21] Both parties have directional signage; they are simply of different types. Another party having signage that is not exactly the same as the Complainant's signage does not rise to the level of being unjust discrimination.

(5) Refusal to Permit Capital Improvements: Complainant argues that the Respondent refuses to consider renovations of its facilities as capital improvements, which would thereby allow the Complainant to amortize the expense so that the Respondent would have to repay the Complainant if it took back the facilities. [FAA Exhibit 1, Item 1, par. 55]. These issues relate to contract disputes between the parties and are not properly adjudicated in this instant Complaint.

(6) *National Guard Facility Fuel Farm:* The Complainant alleges that it requested and was denied the opportunity to lease the Air National Guard facility next to its FBO to expand its operations. The Complainant also alleges that the Respondent is installing two 10,000 gallon fuel tanks on the site which will directly compete with the Complainant. The property the Complainant requested was under lease to the Air National Guard and not available for leasing by another entity at the time of the request. [FAA Exhibit 1, Item 1, par. 57-58]. [FAA Exhibit 1, Item 5(B), pg. 19] There is no evidence that the Complainant requested and was denied available space to construct a fuel farm. In contrast, the Respondent's fuel tanks are on property near the National Air Guard site that is not currently under lease to another entity. [FAA Exhibit 1, Item 5(A), Ex. 1, par. 23] The Respondent cannot lease property to one party when it is already leased by another. If the Complainant makes a request to lease available property the Respondent should consider this request.

(7) *Fuel Co-Op:* Complainant alleges that there is a fuel cooperative (CO-OP) between entities not a party to this Part 16 complaint that operates on the airport. Complainant alleges that an employee working for one of the co-op members fuels and services all co-op members. Complainant argues that this is an "illegal operation" because FAA Order 5190.6b, states "*An airport sponsor is not required to permit a Co-Op to self-service. If a Sponsor does permit Co-Ops to self-service, the Co-Op will*

have to observe the same minimum standards and rules and regulations applicable to all self-service activities…The Sponsor may also require the Co-Op to document that all personnel involved in fueling operations are adequately trained and that self-fueling is conducted only for that Co-Op business partner for which the employee actually works." [FAA Order 5190.6B, *FAA Airport Compliance Manual*, paragraph 11.9b] Complainant alleges that this results in a loss of up to four fueling customers for the complainant and is another issue of unjust discrimination. [FAA Exhibit 1, Item 1, par. 59] Respondent confirms that there is a fuel co-op, but argues that the co-op is "*properly operating at the Airport pursuant to contractual rights granted it several years ago, and it does not appear to be in violation of the Airport Minimum Standards or the Airport Rules and Regulations."* [FAA Exhibit 1, Item 5(B), pg. 20]

The FAA does not require airport sponsors to permit fueling co-ops, however if they do the FAA cautions airport sponsors that the co-op must meet the same requirements as other self-service activities. The FAA also outlines various actions a sponsor may consider to ensure that the Co-Op is abiding by these requirements.

The Complainant does not provide any documentation supporting its belief that a co-op member employee is fueling other Co-Op member's aircraft. Additionally, the Complainant does not substantiate how it is being denied a right that Wilson Air received.

The Director does not find that there is evidence in the record to indicate that the existing fuel co-op has caused the sponsor to unjustly discriminate against the Complainant.

(8) *Parking:* The Complainant alleges that it requested changes to its north ramp location to improve access for customers and allow an additional 25 automobile parking spaces. However, when Respondent approved the request it cancelled the Complainant's lease of 24 parking spaces. [FAA Exhibit 1, Item 1, par. 53]

At one time the Complainant had 66 parking spaces on the south side of its North Facility for customers. [FAA Exhibit 1, Item 10(c), par. 37] Then on March 17, 2006, CMAA, in accordance with its temporary lease of parking space, provided the Complainant 30 days' notice that it was reclaiming the parking spaces and that the Complainant could negotiate another lease for 18 spaces. [FAA Exhibit 1, Item10(C), par 37 and Item 10(C), Ex. F]

In 2008 the CMAA obtained an AIP grant for a security gate. [FAA Exhibit 1, Item 8] At that time, CMAA suggested to Complainant that the security fence be relocated to allow additional automobile parking in front of Hangar #3 on the north ramp. [FAA Exhibit 1, Item 5(A), Ex. 1, par. 16] The Complainant rejected this suggestion, but approximately 18 months later asked CMAA to relocate the security fence as originally suggested. [FAA Exhibit 1, Item 5(A), Ex. 1, par. 17] This request was in response to customer complaints that use of the facilities was inconvenient, as well as to open up 25 parking spaces. [FAA Exhibit 1, Item 10, Ex. 3, par. 39] The Respondent agreed to the change, however, it required termination of the temporary

parking lease and reclamation of the 24 parking spaces under temporary lease.[27] [FAA Exhibit 1, Item 1, par. 62-65; FAA Exhibit 1, Item 5(A), Sec. II, par. 65] The Respondent indicates that these spaces will return to the airport for employee parking [FAA Exhibit 1, Item 5(B), pg. 14; FAA Exhibit 1, Item 5(A), Ex. 1, par. 17] The termination of the 24 parking spaces reduces the lease payment by $540. [FAA Exhibit 1, Item 1, Exhibit 20]

The Complainant does not argue that it is being treated differently than Wilson Air, but instead takes issue with the Sponsor reclaiming the spaces under a temporary lease for its own employee parking. The Complainant and the Respondent entered into lease agreements that contained language permitting Complainant to use some space for parking. The Complainant then requested a change to the location of a security gate which would free up previously used ramp space for extra parking. In exchange for this change, the Respondent terminated an existing temporary lease with the Complainant for parking. The Complainant cannot now use the Part 16 process to circumvent the contract negotiation. In addition, the issues between the parties regarding parking started prior to the June 29, 2012 Respondent's Management Agreement with Wilson Air, and therefore they cannot reasonably be said to be an act of unjust discrimination against the Complainant in favor of Wilson Air.

(9) *Active Promotion of the Sponsor Owned FBO over the Complainant:* The Complainant claims that the Respondent actively promoted its own FBO over the Complainant's FBO when it directed a user to Wilson Air for ground handling, and when Wilson Air offered Republic Parking, a company with which Wilson Air does business, free office space.

Ground Handling: Both parties agree that the Respondent directed a user on Sept. 17, 2011 to Wilson Air for ground handling services. Both parties also agree that as of Sept. 17, 2011, the Complainant was acquiring the necessary equipment to provide these ground handling services. [FAA Exhibit 1, Item 10(C), pars. 28-29; FAA Exhibit 1, Item 10(C), Ex. 3] However, the Respondent asserts that it did not know that the Complainant had started offering these services. [FAA Exhibit 1, Item 10(C), Ex. 3] There is no evidence that the Complainant informed the Respondent that it had the equipment operable and staff trained and ready to offer the service. Absent evidence the Complainant requested that the Respondent inform users of their ground handling services and that this request was denied a claim of unjust discrimination cannot be sustained. This appears to be a miscommunication between the parties that has since been addressed.

Office Space: The Complainant claims, without supporting documentation, that Wilson Air gave Republic Parking's Chief Pilot free office space in exchange for

[27] Complainant also alleges that the Respondent is requiring the Complainant to reimburse monies paid through the Airport Improvement Program (AIP) for un-depreciated amounts related to the shipping and installation of the gates. Respondent explains in its Answer that "*the CMAA believed that AIP funds used for the turnstile would have to be reimbursed to the Federal Government. Since then, however, the CMAA has learned that no Federal grant reimbursements are required.* [FAA Exhibit 1, Item 5(A), Sec. II, par. 63] The Director will not address this issue of AIP reimbursement as it has been resolved by the parties.

becoming a customer. [FAA Exhibit 1, Item 10(C) par. 26] This was an offer of small space for occasional use that Wilson Air made to an existing customer. [FAA Exhibit 1, Item 13, Ex. 3, par. 4] The Respondent was not involved in the offer and the use was *de minimis*, and therefore the Director finds there is no evidence in the record that this action amounts to unjust discrimination against the Complainant.

Use of Airport Employees: The Complainant states that the Respondent used Airport employees to assist Wilson Air during a Volkswagen "Top Management" meeting in September 2011. [FAA Exhibit 1, Item 10(C), par. 32] The Respondent confirms that it made airport employees available to assist Wilson Air during the Volkswagen meeting, however, it also explains, "*It has long been CMAA's policy – since long before the opening of the West-Side FBO – that airport employees be made available to provide customer service assistance during large events such as football games. TAC Air has often been the beneficiary of such assistance, and the CMAA expects that it will continue to be the beneficiary of such assistance in the future."* [FAA Exhibit 1, Item 13, Ex. 1, par. 5] There is no evidence in the record to indicate that the Complainant requested and was denied this assistance during large events. Absent such evidence, a claim of unjust discrimination cannot be sustained.

The Director dismisses the allegations above because these two entities are not similarly situated and, additionally, the Director has found no evidence of unjust economic discrimination in the above instances.

Summary of Issue 2:

The Director finds that the Respondent-owned FBO and the Complainant are not similarly situated as they differ in their size, level of investment (both public and private investment), business structure, and term of years on the airport. Therefore, the Director is not persuaded by the evidence provided that the Respondent unjustly discriminated against the Complainant in favor of its owned FBO. Respondent has not violated 49 U.S.C Section 47107(a) (1) or Federal Grant Assurance 22, Economic Non-Discrimination.

C. ISSUE (3)

Whether the Respondent's revision and application of its revised Minimum Standards was unreasonable and unjustly discriminated against the Complainant in violation of 49 U.S.C., § 47107(a)(1), and Federal Grant Assurance 22, *Economic Non-Discrimination.*

The Complainant makes two allegations regarding the Respondent's revision and application of its minimum standards: (1) it was unreasonable for the Respondent to make the provision of Part 145 Services optional for FBOs in its minimum standards, and (2) the Respondent discriminated against the Complainant by not requiring Wilson Air to provide Part 145 service as required under the Minimum Standards in effect at the time that they entered their management contract with the Respondent.

(1) **Was it unreasonable for the Respondent to make the provision of Part 145 Services optional for FBOs in its minimum standards?**

The Complainant alleges that it has been required to take steps to ensure that it can provide Part 145 Services at CHA and that this has required certain costs. The Complainant alleges it is discriminatory not to require Wilson Air to provide the same service. [FAA Exhibit 1, Item 1, par. 70]

The Respondent, through the Affidavit of Mr. Michael Landguth, CEO of CMAA, describes the decision to remove the requirements to provide Part 145 services from its Minimum Standards:

> *Earlier on, while we were in the process of exploring operations at different FBOs, it became clear to us that our then-current Airport Minimum Standards would have to be modified in several respects because they did not properly reflect the circumstances at the Airport. For example, we realized that the GA market in general and the GA activity at the Airport in particular, simply would not support a full-service aircraft maintenance shop, as the old Minimum Standards required. At the same time, our consultant explained to us how the existing aircraft maintenance providers (at that point, one sub-tenant of TAC Air and another, a tenant of the CMAA itself) had never been in full compliance with the then-current standards. I accepted the fact that it was time to amend the Airport Minimum Standards to reflect that reality."*

[FAA Exhibit 1, Item 5(A), Ex. 1, par. 12]

The following is a history of the Minimum Standards at CHA:

> On March 17, 2008 the Sponsor established its first Minimum Standards for Commercial Services at the Airport which provided in pertinent part:
>
> - SECTION 8 MAINTENANCE AND REPAIR SERVICES – Each FBO is required to provide service and minor repair of aircraft airframes and power plants for small aircraft of 12,500 pounds and under. Each FBO must meet all requirements as specified under FAR Parts 43, 65, and 145 and hold current certificates for the operation of FAA certified repair stations for airframes (minimum of AF-3) and power plants (minimum of PP-1) as set forth in FAA advisory Circular #140-7G.
> - SECTION 13. GRANDFATHER PROVISION – These minimum standards shall not apply to Fixed Base Operators who have a lease and are doing business at the Airport on the effective date of this document. However, after the existing agreement with the Airport Authority expires, or the FBO wishes to increase or expand its services, the Operator shall then comply with the provisions of this document.

[FAA Exhibit 1, Item 1, Ex. 1, pgs. 10, 13]

> In 2008, the Complainant was the only FBO on the airport, however, under the Grandfather Provision; they were not required to meet the minimum standards.
> In 2011, the Respondent advertised revised Minimum Standards which, if implemented, would move SECTION 8 MAINTENANCE AND REPAIR SERVICES

from the required services section of the minimum standards to Section V.B.5 Specialized Aviation Service Operators, and make the Part 145 services optional for FBOs. [FAA Exhibit 1, Item 1, Ex. 2, pg. 16] Comments on the revised minimum standards were due by June 14, 2011. [FAA Exhibit 1, Item 1, Ex. 4, pg. 1]

During the comment period the Respondent received comments on the change in standards for Part 145 services. [FAA Exhibit 1, Item 1, Ex. 2(A)] On June 6, 2011, TAC Air provided comments on the proposed standards, which are included in the summary provided below:

> The Complainant stated in its comments: *Currently, repair and maintenance providers on the field are required to be FAR 145 certified with at least a Class III airframe rating. This standard should be maintained, not reduced to ensure users of the airport have access to qualified aircraft maintenance services."*

[FAA Exhibit 1, Item 1, Ex. 14(A), pg. 3]

> The Airport Responded: *"None of the aircraft maintenance service providers currently doing business at the airport meet the current airport minimum standards. Future applications for aircraft maintenance services will be reviewed on a case by case basis."*

[FAA Exhibit 1, Item 1, Ex. 2(A), pg. 2]

> The Complainant stated in its comments: *The proposed minimum standards lack a requirement for FBOs to provide aircraft maintenance services.*

[FAA Exhibit 1, Item 1, Ex. 14(A), pg. 2]

> The Airport responded: *The requirements for aircraft maintenance services set forth in the current Minimum Standards have remained unsatisfied over the past several years. Based on the state of the general aviation market throughout the country and at the airport, the CMAA believes that requiring FBOs to provide aircraft maintenance services would have the effect of restricting airport access. The absence of this requirement in the new Minimum Standards does not preclude an FBO from offering aircraft maintenance services."*

[FAA Exhibit 1, Item 1, Ex. 2(A), pg. 2]

On September 26, 2011 CMAA Board of Commissioners approved and adopted the revised minimum standards. [FAA Exhibit 1, Item 5(A), par. 43]

Prior to and during the revision of the Minimum Standards several events related to both FBOs occurred:

- September 4, 2010, CMAA issued a Request for Proposals (RFP) to provide FBO Management Services which did not require the provision of Part 145 services. [FAA Exhibit 1, Item 1, Ex. 4, page 3, *et seq*.]

- December 20, 2010, Respondent entered into a General Aviation Facilities Management Agreement with Wilson Air Center that was to be effective July 1, 2011. In paragraph 3.03 of this Agreement, the provision of aircraft maintenance or avionics was specifically excluded from the required services. [FAA Exhibit 1, Item 17]

- June 15, 2011, TAC Air asserted its option to extend its lease for another 5-year term. [FAA Exhibit 1, Item 5(A), Ex. 17, pg. 4]

- In August 2011, Wilson Air opened for business. [FAA Exhibit 1, Item 1, par. 88]

- On September 26, 2011, CMAA Board of Commissioners approved and adopted the revised minimum standards. [FAA Exhibit 1, Item 5(A), Sec. II, par. 43]

The Complainant claims that "*Had the Respondent not changed its Minimum Standards, it's owned FBO would have had to seek Part 145 status or sought to bring a Part 145 operator onto the Airport. It would naturally have incurred a cost to do so. Complainant has incurred significant costs working with its Part 145 operator to ensure that it is able to maintain its operations."* [FAA Exhibit 1, Item 10(A), pg. 19]

The Complainant explains its difficulty in maintaining a Part 145 Provider: "*In order to remain compliant with its obligations under the Minimum Standards, Complainant has subsidized and continues to subsidize its aircraft maintenance subcontractor. Indeed, Star Avionics owes Complainant more than $90,000 in back rent."* [FAA Exhibit 1, Item 10(A), pg. 19]

The Respondent argues that TAC Air has had the "contractual privilege" of providing repair and replacement service to aircraft, but has not been contractually required to provide maintenance and repair services at the airport. [FAA Exhibit 1, Item 5(A), Sec. II, par. 41; FAA Exhibit 1, Item 5(B), pg. 31]

The Complainant claims that it satisfies the maintenance and repair services requirements by subletting space to Star Avionics. [FAA Exhibit 1, Item 10(C), par. 19] However, it does not provide any documentation of a service agreement or the services performed by Star Avionics.

The following table outlines the service providers' ability to meet the Maintenance and Repair Services originally required by the March 17, 2008 Minimum Standards.

Table #9: Provision of Maintenance and Repair Services on the Airport

Services Required by 03/17/2008 Minimum Standards and Made Optional by the 9/26/2011 Revised Minimum Standards	TAC Air Providing the Service (Y/N)	Star Avionics Providing[28] the Service (Y/N)	Chattanooga Aero Service[29] Providing the Service (Y/N)	Wilson Air Providing the Service (Y/N)
Service and Minor repair of aircraft airframes and powerplants for small aircraft of 12,500 pounds and under	TAC Air Lease gave it the "privilege" to provide "repair and replacement service to aircraft", but did not require specifics. The 03/17/2008 Minimum Standards grandfathered TAC Air's agreement until it renewed the lease which was after Minimum Standard Revision	Neither party provided information or documentation of the services provided by these tenants		N
Meet all requirements under FAR Part 43, 65, and 145 and hold current certificates for operation of FAA certified repair stations for airframes (minimum of AF-3) and powerplants (minimum of PP-1) as set forth in AC 140/7G.		N (limited airframe only)[30]	N (limited powerplant and airframe only)	N
If providing avionics, radio or instrument repair service they must hole all applicable certificates required under 145 and 65.		Class I,2, & 3 Radio	N	N

The FAA encourages airport sponsors to establish minimum standards for the purpose of ensuring a safe, efficient and adequate level of operation and services to the public. Such standards must be reasonable and not unjustly discriminatory. The FAA recommends that such standards be relevant to the proposed aeronautical activity with the goal of protecting the level and quality of service offered to the public. [AC 150/5190-7, par. 1.1] When developing minimum standards, the most critical consideration is the particular nature of the aeronautical activity and operating environment at the airport. Minimum standards should be tailored to the specific aeronautical activity and the airport to which they are to be applied. [*See AC* 150/5190-7, par. 1.2d] In addition, the FAA encourages airport sponsors to periodically amend their minimum standards, but cautions sponsors against "constant juggling of minimum standards." [AC 150/5190-7, par. 1.2.e]

[28] Complainant claims that it satisfies these minimum standards by subletting space to Star Avionics [FAA Exhibit 1, Item 10(C), par. 19]

[29] Respondent states that Chattanooga Aero, a former CMAA tenant, is now a subtenant of TAC Air [FAA Exhibit 1, Item 5(B), pg. 31]

[30] See FAA, Repair Station Search Results, FAA Exhibit 1, Item 5(A), Ex. 26

The Respondent revised its minimum standards after it became apparent that the general aviation market at its airport would not support such services. This observation is confirmed by the documentation that no entity on the airport, including TAC Air, was providing these services, as outlined in Table #9 above.

The Complainant argues that since it was attempting to make FAR Part 145 services available at the airport, which it states was a costly endeavor, the Respondent should continue to require FBOs to provide the service. TAC Air was grandfathered under first minimum standards and the revised minimum standards do not require Part 145 services. TAC Air was therefore never required to provide Part 145 services and to the extent it attempted to do so, it cannot now object to money spent to pursue this effort. In addition, to find that the Respondent must require services solely because it has been costly for another FBO to provide these optional services would be contrary to FAA's guidance that, "Any use of minimum standards to protect the interests of an exclusive business operation may be interpreted as the grant of an exclusive right and a potential violation of the airport sponsor's grant assurances and the FAA's policy on exclusive rights." [AC 150/5190-7, paragraph 1.2.a]

Since not a single entity on the airport was meeting the maintenance and repair requirements of the original minimum standards at the time the RFP was issued, it was appropriate for the Respondent to review the services needed by its tenants and revise the minimum standards accordingly. The Director finds that the Respondent's decision to revise its minimum standards to make the provision of Part 145 services optional for FBOs was reasonable.

(2) **Did the Respondent unjustly discriminate against the Complainant when it did not require Wilson Air to provide Part 145 service as required under the Minimum Standards in effect at the time that they entered their contract with the Sponsor?**

As discussed above, the Complainant alleges that it was required to meet the minimum standards of providing Part 145 service and that it was unjustly discriminatory to allow Wilson Air to not meet this requirement when it began providing FBO Services in August 2011.

The Respondent, however, argues that:

> *until recently, TAC Air had one subtenant, Star Avionics Inc., that subleased space from TAC Air and provided limited aircraft maintenance services to the public. More recently, Chattanooga Aero, the other aircraft maintenance provider on the field, moved from being a direct tenant of the CMAA to being a subtenant of TAC Air. Neither Star Avionics nor Chattanooga Aero has met or meets the requirements of the previous Airport Minimum Standards. Neither Star Avionics nor Chattanooga Aero holds a repair station certificate with a Class 3 airframe rating or a Class 1 powerplant rating. Star Avionics' repair stations certificate has a Class 3 radio rating, Limited accessory, airframe and instrument ratings and no powerplant rating. For its part, Chattanooga Aero's repair station certificate includes only Limited accessory, airframe and powerplant ratings. If anything it is the repair station certificate of Chattanooga Aero, rather than the certificate of TAC Air's subtenant that more closely approached the spirit, if not the letter of the previous Airport*

> *Minimum Standards at the time the RFP was issued. The fact that no FBO or provider of maintenance services at the Airport was fully in compliance with the Minimum Standards was a factor behind the CMAA's decision to amend those standards.*

[FAA Exhibit 1, Item 5(B), pg. 32]

On May 10, 2011, the Respondent's Counsel wrote to the Complainant's counsel as part of the parties' on-going attempts to informally resolve their issues. This letter stated the Respondent's belief that the Complainant:

> *Continue[s] to imply that TAC Air will be somehow disadvantaged because the Authority owned FBO will not offer in-house aircraft maintenance services. As we explained to you and your client when we met here in Chattanooga on February 23, the Authority owned FBO will rely on maintenance providers currently operating at the Airport for aircraft maintenance services, just as TAC Air has for these past many years and continues to do so today. We fail to see how TAC Air is being treated unfairly since both FBOs will be operating similarly with respect to these aircraft maintenance services.*"

[FAA Exhibit 1, Item 1, Ex. 16, pg. 2]

On December 20, 2010, Respondent entered into a General Aviation Facilities Management Agreement with Wilson Air Center that was to be effective July 1, 2011. In paragraph 3.03, this Agreement specifically excluded the provision of aircraft maintenance or avionics from the required services. [FAA Exhibit 1, Item 17]

In August 2011, Wilson Air opened for business. [FAA Exhibit 1, Item 1, par. 88]

On September 26, 2011, CMAA Board of Commissioners approved and adopted the revised minimum standards. [FAA Exhibit 1, Item 5(A), Sec. II, par. 43]

If an Airport Sponsor begins offering FBO services, it must also abide by the Airport's Minimum Standards. In this case, the Sponsor advertised for a management company to run its FBO, but did not require it to meet the Minimum Standards then in effect. In accordance with Grant Assurance 22(g), discussed in Issue #1 above, where a sponsor hires a third party to operate an FBO on its behalf, that third party must meet the same conditions required of commercial aeronautical service providers on the airport. This includes meeting the same minimum standards. The Director is concerned with the Respondent's timing in revising minimum standards AFTER advertising and selecting Wilson Air. To prevent the appearance of discrimination, a Sponsor should ensure that it is holding all FBOs to similar requirements. In the interest in transparency it would have been more appropriate to first revise the minimum standards to meet the current aviation needs at the airport and then advertise for an FBO. However, in this unique situation there was not a single commercial aeronautical service provider on the airport that was meeting the Part 145 requirements. It would not have been appropriate to require an incoming FBO to meet minimum standards that were being revised and were not being met by existing FBOs. Therefore, in this specific case it was not unreasonable for the Respondent to waive the Part 145 requirements for Wilson Air.

By the commencement date of the Respondent's Agreement with Wilson Air, July 1, 2011, both the Complainant and Wilson Air were on notice that the Respondent intended to remove the requirement for Part 145 services from the minimum standards. There is a period of 45 days that the Respondent's FBO did not meet the requirement to provide Part 145 Services before the new minimum standards took effect. However, as noted, during this time, there were no aeronautical service providers that met the Part 145 service requirements.

The Director finds that under these facts, the Sponsor is not in violation of Grant Assurance 22 by not having required the new FBO to meet outgoing minimum standards when the Complainant was also not meeting the existing requirements.

Summary on Issue 3:

The Director is not persuaded that the Respondent has unjustly discriminated against the Complainant in violation of 49 U.S.C., § 47107(a)(1), and Federal Grant Assurance 22, Economic Non-Discrimination in its revision and application of its Minimum Standards.

D. Issue (4)

Whether the Respondent has limited the Complainant's ability to remain in business by using public funds to build the Respondent-owned FBO and by controlling fuel and goods and services pricing, and thereby violated 49 U.S.C., § 47107(a)(4) and Grant Assurance 23, *Exclusive Rights*.

The Complainant argues that the Respondent created an exclusive right when it used public funds (Federal, State and local) to build the Respondent-owned FBO and retained control of pricing for fuel and goods and services in its Management Agreement with Wilson Air. The Complainant presents its arguments regarding pricing in the form of violations of anti-trust laws, specifically the Sherman Act, 15 U.S.C., 2.

Allegations of a violation of anti-trust laws, including the Sherman Act, are outside the scope of the Part 16 process. However, in order to provide as complete a review as possible, the Director will review this allegation of a violation of Grant Assurance 23, *Exclusive Rights*.

The Complainant asserts that

> *By using government funds to build an FBO and controlling the fuel prices at the Respondent-owned FBO, the Respondent may drive Complainant out of business or reduce the value of the Complainant's business at the airport. As a result, the Respondent may end up with the benefit of a proprietary exclusive without actually paying for it*.

[FAA Exhibit 1, Item 1, pg. 5]

The Respondent, in the affidavit of April D. Cameron, Vice President of Finance and Administration for CMAA, outlined the Complainant's publicly funded infrastructure. [FAA Exhibit 1, Item 5(A), Ex. 2][31]

In its reply, Complainant states that, though public funds may have originally been used for some infrastructure now leased by TAC Air, Complainant has not benefitted from those public funds in the same way the Respondent-owned FBO has.

> *Complainant purchased the FBO from Krystal Aviation in October 2002 for an amount Commensurate with the Cost of building a new FBO.* […] *FBOs which are the subject of an acquisition are usually amortized over the remaining term of the existing lease, unless the lease term is abnormally long (more than 30 years), in which case the FBO may choose to limit the amortization period."*

[FAA Exhibit 1, Item 10(A), pg. 3]

In its Rebuttal, Respondent advises that it was not a party to Complainant's acquisition agreement with Krystal Air, but that the price for acquiring the business should not have included the depreciation of business assets that were paid for with public funds.

> *First, the amount of money that TAC Air paid Krystal Aviation for the FBO business at the Airport was based on a private, bilateral agreement between the seller and the purchaser* […] *Second, the acquisition price should not have included depreciation or amortization of the many facilities (hangars, t-hangars, fuel farms, aprons, etc.) that were part of Krystal Aviation's business but had been paid for with public funds."*

[FAA Exhibit 1, Item 13, pg. 2]

The Complainant also discusses its belief that Respondent's pricing structure may amount to predatory pricing: **"**[b]*y charging below cost prices, Respondent may be involved in predatory pricing. Under no recognized standard can this be considered fair competition."* [FAA Exhibit 1, Item 10(A), pg. 11]

The Complainant claims that the Respondent has kept its fuel prices lower than the Complainants and undercut the Complainant's prices, which Complainant argues were consistently competitive with surrounding and comparable airports. [FAA Exhibit 1, Item 10(A), pg. 11]

Complainant provided a comparative report of fuel prices for both FBOs from August 15, 2011 and October 28, 2011 that shows the following:

[31] The Complainant and Respondent FBO infrastructures are outlined in Tables 2 through 6.

Table 10: 8/15/2011 Fuel Prices at CHA

Date	FBO	Jet A	100LL (FS)
8/15/2011	TAC Air	$5.81	$6.09
	Wilson Air Center	$5.85	$6.07
10/28/2011	TAC Air	$5.70	$5.98
	Wilson Air Center	$5.82	$6.08

[FAA Exhibit 1, Item 10(A), Ex. 2]

Complainant also provided historical surveys of TAC Air's fuel prices

Table 11: TAC Air Historical Fuel Prices

Date	Jet A	100LL (FS)
7/19/2011	$6.12	$6.48
3/15/2011	$6.25	$6.18
12/21/2010	$5.48	$5.53
10/19/2010	$5.31	$5.42

[FAA Exhibit 1, Item 10(A), Ex. 3]

Respondent argues that it believes that the competition introduced by the presence of Wilson Air is allowing aeronautical users at the airport to enjoy competitive fuel prices, and that "[at]*the same time, those prices are not unprecedented and are not below those seen at other similar airports where multiple FBOs are operating."* [FAA Exhibit 1, Item 13, pg. 11]

The Respondent provides a letter dated October 6, 2008, from the Memphis ADO of the Federal Aviation Administration regarding the airport's intent to obtain third-party management of the west side FBO facilities, which stated that:

> *We have no objections to the conceptual West Side Development nor the proposal to acquire the services of a management company to run it* […] *As with any project funded through the Airport Improvement Program, the airport must comply with all grant assurances. Two critical components of those assurances are that the airport is self-sustaining* […] *and ensuring there is no economic discrimination* […] *It is recommended that the airport retain approval rights for rates and charges."*

[FAA Exhibit 1, Item 5(A), Ex. 29]

Analysis

The FAA defines an exclusive right as:

> A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.

[AC 150/5190-6, *Exclusive Rights at Federally Obligated Airports,* Appendix 1, para. 1.1.f, (January 4, 2007)]

The Director analyzes here whether (1) using public funds to build the Respondent-owned FBO or (2) retaining control of fuel and goods and services pricing in this case created an exclusive right in violation of Grant Assurance 23. The Director also reviews whether a right of first refusal granted to the Complainant by the Respondent created an exclusive right in violation of Grant Assurance 23.

Using Public Funds to Build Sponsor-Owned Fixed Base Operator

The Respondent, by obtaining the services of Wilson Air to manage its FBO rather than using its own employees, forfeited its right to enjoy an allowable proprietary exclusive-use FBO. When a Respondent does this, it must exhibit extreme caution to ensure that it is not providing its FBO an unacceptable effective exclusive right at the airport by granting its FBO any powers, privileges, or other rights while excluding another FBO from enjoying a similar power, privilege or other right.

It is an acceptable use of AIP funds to build aprons, hangars, and terminals at an airport so long as those areas are open to the public for nonexclusive use. In the case at hand here, both the Respondent-owned FBO and the Complainant have benefited from infrastructure built with public funds. In addition to the public funds used to build infrastructure near the Respondent-owned FBO, Complainant has been on the airport since 2002 and has benefited significantly from infrastructure built with public funds as shown above in Table #2.

While AIP funds can be used to build aprons, hangars, and terminals that are open to the public, sponsors cannot use AIP funds to operate an airport. Therefore, sponsors often look for alternative means to raise operating capital. As discussed in the FAA's Advisory Circular on exclusive rights, providing FBO services is a common means within the industry to accomplish this objective.

> *The owner of a public-use airport (public or private owner) may elect to provide any or all of the aeronautical services needed by the public at the airport. The airport sponsor may exercise, but not grant, an exclusive right to provide aeronautical services to the public. If the airport sponsor opts to provide an aeronautical service exclusively, it must use its own employees and resources. Thus, an airport owner or sponsor cannot exercise a proprietary exclusive right through a management contract.*
>
> *As a practical matter, most airport sponsors recognize that aeronautical services are best provided by profit-motivated, private enterprises. However, there may be situations that the airport sponsor believes would support the airport providing aeronautical services. Examples include situations where the revenue potential is insufficient to attract private enterprises and it is necessary for the airport sponsor to provide the aeronautical service, or situations where the revenue potential is so significant that the airport sponsor chooses to perform the aeronautical activity itself in order to become more financially self-sustaining. An example of an airport sponsor choosing to provide an aeronautical service would be aircraft fueling.*

[FAA Advisory Circular 150/5190-6, pgs. 4-5]

While the circumstances in the instant case are not identical to the above referenced policy, the second paragraph above is informative and relevant to this complaint even though the sponsor in this case is not exercising its proprietary exclusive rights.

In the instant case, the airport sponsor is not exercising its proprietary exclusive right to provide FBO services. Instead the sponsor-owned FBO is competing with the FBO owned by TAC Air. Because the sponsor is not exercising its proprietary exclusive right to provide FBO services, the sponsor is not obligated to use its own personnel and equipment in the implementation of its FBO responsibilities. Under such circumstances, an airport sponsor may choose to use a management contract to manage the day-to-day operations of the FBO, as CMAA did in this case, without violating the parameters of Grant Assurance 23.

The above-referenced policy is applicable to the instant complaint in that it acknowledges an airport sponsor's right to provide any or all of the aeronautical services at the airport, including aircraft fueling. The policy also acknowledges that an airport sponsor may choose to provide commercial aeronautical services at the airport in an effort to meet its obligation to be as financially self-sustaining as possible.

There is no grant assurance or law that prevents an airport sponsor from making the business decision to construct FBO facilities on its airport and hire a third party to operate the facility on its behalf. This holds true even if such actions cause the airport sponsor to be in direct competition with a private commercial aeronautical service provider. This type of arrangement is permitted, but is limited by (1) the requirement of Grant Assurance 22(g) that the sponsor-owned FBO must meet the same conditions as privately owned FBOs as discussed in Issue #1 above and (2) that the costs of building and operating the FBO cannot be included in the rate base for aeronautical rates at the airport.

In this case, CMAA made the business decision to develop a second FBO to provide a competitive environment in the provision of aeronautical services. Of the 39 grant assurance obligations governing federally obligated airports, not one precludes a sponsor from owning and/or operating an FBO. As noted above, a sponsor is not acting contrary to its Federal obligations when it decides to own and/or operate an FBO. However, as also noted above, when the sponsor owns an FBO and hires a third party to operate its FBO, the FBO must "provide the same level of service" required of other FBOs, as required by Grant Assurance 22(g).[32] In addition, if a sponsor-owned FBO is competing with a private FBO and fails to be profitable, the sponsor is prohibited from recovering the costs associated with its FBO through its airfield rate base. Costs that are permitted in the rate base include (1) Operating Costs: "[a]ll operating and maintenance expenses directly and indirectly associated with providing airfield aeronautical facilities and services" and (2) Capital costs: "[c]osts to service debt and debt coverage for the airfield direct and indirect capital costs including reserve and contingency funds." [FAA Order 5190.6B, par. 18.9] "Aprons and ramps that are the subject of a preferential or exclusive lease or use agreement" are excluded from this definition. [FAA Policy Regarding Airport Rates and Charges, 61 Fed. Reg. 31994 at 31999

[32] This is discussed further under Issue #1 above.

(June 21, 1996)] A sponsor-owned FBO that is operated by a third party would be subject to a lease or use agreement that excludes it from the definition of operating and capital costs. Thus, any profits realized by a sponsor-owned FBO are, in turn, realized by all airport users, including competitors, when the sponsor improves and develops the airport.

Additionally, while there are restrictions on an airport sponsor applying losses to the rate base, airport sponsors "should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under 49 U.S.C., § 47107(b)(1), including reasonable reserves and other funds to facilitate financing and to cover contingencies." [*Policy and Procedures Concerning the Use of Airport Revenues,* 64 Fed. Reg. 7696 at 7721, (February 16, 1999) (Revenue Use Policy)]

Because of these circumstances surrounding profits and losses, an airport sponsor is differentiated from a private commercial service provider. As such, an airport sponsor is not obligated to impose an identical fee and rental structure upon itself.

Moreover, any commercial activity carries the possibility of profit or loss, and the Director recognizes that airport sponsors are not immune to the risks associated with commercial activities. Just like private commercial operators, airport sponsors must also weigh the risks and rewards of such commercial ventures and make business decisions that represent their best interests as airport proprietors. The fact that an airport sponsor-owned FBO fails to make a profit, in itself, does not constitute a violation of the sponsor's Federal obligations. [33]

In review of this matter the Director notes the past precedent established in FAA Docket No 16-08-12, Keyes and Ferrell v McMinn County, wherein the Director stated that "[w]hen *evaluating if a sponsor is in compliance with its grant assurances, the Director considers the reasonableness of a sponsor's actions and its obligation to exercise due diligence in assessing its compliant status and posture.*" [William H. Keyes and Dewitt T (Jack) Ferrell, Jr. v. McMinn County, Tennessee, (December 12, 2009) (Director's Determination), pg. 31]

In the instant complaint, the record shows that the sponsor's rationale for developing a second FBO was to promote competition in an effort to improve FBO services and reduce fuel prices at the airport. Such actions are consistent with an airport sponsor's obligations and well within the realm of reasonableness. Since 1938, Congress has prohibited the granting of exclusive rights on federally-funded landing areas. The intent of this restriction is to promote aeronautical activity and protect fair competition at federally-obligated airports. The Complainant enjoyed a competition-free environment on the airport for years. There is nothing wrong with the sponsor choosing to promote fair competition on the airport by setting up a competing FBO.

The record shows that the sponsor evaluated the viability of a West-Side FBO through consultation with various airports and FBO managers about their operations. This included research into different FBO business models. [FAA Exhibit 1, Item 5(A), Ex. 1, par.6-9]

[33] Should a Sponsor's losses from such an FBO operation begin to impact its ability to meet Grant Assurance 19, *Operation and Maintenance*, the airport may be found in violation of its obligations for that reason. However, there is no allegation in this complaint or evidence in the Record that CMAA has failed to operate and maintain the airport in compliance with Grant Assurance 19.

Accordingly, the sponsor made a business decision to pursue the development of its own FBO based on the results of its evaluation.

The record further shows that CMAA sought and obtained Federal, State, and local funding to construct its FBO infrastructure and facilities while also ensuring that funds for the FBO's start-up costs were taken from unencumbered accumulated Airport surplus funds that were originally generated from nonaeronautical activities [FAA Exhibit 1, Item 13, Ex. 2] There is no indication or allegation that CMAA, in its role as airport proprietor, has adjusted its rate base to cover operating or capital costs of its FBO. CMAA's actions to find public funding sources helped defray the infrastructure costs to ensure the airport is as self-sustaining as possible. The fact that such funding sources and/or favorable financial terms are available to airport sponsors and not private operators does not constitute a violation of the sponsor's Federal obligations. Private operators also seek the most advantageous funding sources and financial terms available to them. It is reasonable to expect the same from airport sponsors.

In conclusion, the Respondents actions meet the standards of reasonableness and due diligence. The Director cannot equate the sponsor's business decision to construct its own FBO with a violation of its Federal obligations. Past precedent upholds the premise that the FAA will not interject its opinion about an airport sponsor's business decisions where such decisions are consistent with its Federal obligations. [See Jet 1 Center, Inc. v. Naples Airport Authority, FAA Docket No. 16-04-03, (January 4, 2005) (Director's Determination)]

Fuel and Goods and Services Pricing

Wilson Air was selected to manage the FBO on behalf of the Respondent in exchange for a flat management fee and an incentive fee. All of the sponsor-owned FBO's profits go to the Respondent and the Respondent also shoulders any losses incurred. Under paragraph 6.01 of the Management Agreement, the Respondent purchases all aviation fuels and lubricants used by Wilson Air. [FAA Exhibit 1, Item 17, Article VI, par. 6.01] It is therefore appropriate that the Respondent also retain authority to set the price for the sale of the aviation fuels and lubricants.

There is no evidence that Wilson Air's fuel prices would be any higher than the current rates set by the Respondent if Wilson Air had authority to set fuel prices for the FBO. In fact, Wilson Air would have further incentive to undercut the Complainant in an effort to obtain all of the fuel sales and increase its incentive fee. By removing Wilson Air's ability to control fuel prices, the Respondent has potentially avoided a situation where Wilson Air, as the management company of the FBO, institutes extremely low fuel prices to undercut the Complainant in order to obtain a larger share of the market and increase its incentive fee payment. In such a scenario the Respondent would then lose both fuel sale profits and fuel flowage fees from the Complainant, which in turn could impact the Respondent's ability to be self-sustaining.

The Director reviewed the fuel price comparisons provided by both the Complainant and Respondent. [See Table 10] Each of these comparisons shows two competitive FBOs maintaining fuel prices within a few cents of each other. In fact, in all but one instance, it is the Complainant whose fuel prices are lower than the Respondents. The Director also

reviewed fuel prices on June 7, 2012 at commercial service airports near CHA and found the following:

Table 12: Fuel Prices at Commercial Service Airports near CHA on June 7, 2012

Airport	Operations	FBO	100LL	Jet A
CHA	55,246	TAC Air	$ 6.51	$ 5.85
CHA		Wilson Air Center	$ 6.52	$ 5.86
TYS	101,779	TAC Air	$ 6.48	$ 6.46
TRI	52,413	Tri City Aviation	$ 6.58	$ 6.53
AVL	67,882	Landmark Aviation	$ 7.21	$ 7.13
HSV	80,726	Signature	$ 6.64	$ 7.51
HSV		Executive Flight Center	$ 5.73	$ 5.81
GSP	48,721	Stevens Aviation	$ 6.03	$ 5.73
BNA	174,750	Signature	$ 8.16	$ 7.79
BNA		Atlantic Aviation	$ 8.17	$ 7.73
ATL	957,243	Landmark Aviation	$ 8.49	$ 7.91
BHM	109,876	Atlantic Aviation	$ 7.09	$ 6.55

The rates reflected above indicate that fuel prices at CHA have increased significantly since August and October of 2011 when the Complainant submitted its Reply. This does not support the Complainant's claim that the Respondent is charging below cost prices and undercutting the Complainant's prices. In addition, these rates show that, although the rates at CHA are low, they are not the lowest among commercial service airports in the area.

The Director is not persuaded that the Respondent's use of public funds and retention of control over the sponsor-owned FBO's fuel, goods, and services pricing violates Grant Assurance 23. Respondent's use of public funds was done within the bounds of its Federal obligations. Furthermore, while the Complainant asserts that there is unfairness in the fact that the Respondent reserved the right to set fuel prices, it appears from the analysis above that the Complainant has actually benefited from higher fuel prices. Finally, retaining pricing control as suggested by the FAA, the Respondent has ensured that it can avoid a situation in which it could be found in violation of Grant Assurance 24, Fee and Rental Structure.

Right of First Refusal

In reviewing the lease agreements, the Director noted the Respondent has granted the Complainant a right of first refusal on land at the airport. Article 1(b) of the lease for the North facilities states:

> *In consideration of this Lease, Lessor covenants and agrees that it will not lease the land described below, or any part thereof, during the term of this Lease or any renewal hereof without first giving Lessee the option to lease said land at the same rental that is offered to Lessor for said property by any other party making a bona fide offer to rent said property or any part thereof, and to whom Lessor proposes to lease said property or any part thereof.*

[FAA Exhibit 1, Item 5(A), Ex. 14]

FAA policy states that "[g]ranting options or preferences on future airport lease sites to a single service provider may be construed as intent to grant an exclusive right." [FAA Order 5190.6B, par. 8.7.b(1)] For this reason, "the use of leases with options or future preferences, such as rights of first refusal," should generally be avoided. [FAA Order 5190.6B, par. 8.7.b(1)] The actual exercise of a right of first refusal could allow an existing tenant to hold a claim on airport land at little or no cost. Then, when faced with the prospect of competition, that leaseholder could exercise its option to inhibit access by others and limit or prevent competition. [FAA Order 5190.6B, par. 8.7.b(1)]

Though there is no evidence in the Record to show this right has actually been exercised by the Complainant, the Director strongly recommends the Respondent take action to remove this Article from its lease with the Complainant to prevent potential allegations of exclusive rights violations by potential lessees of the identified property.

Summary on Issue 4:

The Director is not persuaded that the Respondent's use of public funds and retention of control over the sponsor-owned FBO's fuel, goods, and services pricing violates Grant Assurance 23. Respondent's use of public funds was done within the bounds of its Federal obligations. Furthermore, while the Complainant asserts that there is unfairness in the fact that the Respondent reserved the right to set fuel prices, it appears from the analysis above that the Complainant has actually benefited from this arrangement. Finally, retaining pricing control as suggested by the FAA, the Respondent has ensured that it can avoid a situation in which it could be found in violation of Grant Assurance 24, Fee and Rental Structure.

The Director strongly recommends that the Respondent make necessary amendments to its lease with the Complainant to remove the right of first refusal in Article 1(b). However, because the Director does not have evidence in the record that the Complainant has actually exercised this right of first refusal, and because the FAA reviews current compliance [*See* Wilson Air FAD], the Director does not find the Respondent currently in violation of Grant Assurance 23, *Exclusive Rights*.

VII. FINDINGS AND CONCLUSION

Upon consideration of the submissions by the parties, the administrative record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office Airport Compliance and Management Analysis finds and concludes:

- The Respondent did not violate Grant Assurance 22(g) when it entered into a Management Agreement with Wilson Air to manage a "Sponsor-Owned" Fixed Base Operation (FBO) and retained the right to set fuel and other prices.

- The Respondent has not unjustly discriminated against the Complainant in favor of its owned FBO, in violation of violated 49 U.S.C., § 47107(a)(1), and Federal Grant Assurance 22, *Economic Non-Discrimination*.

- The Respondent has not violated 49 U.S.C., § 47107(a)(1), and Federal Grant Assurance 22, *Economic Non-Discrimination* by revising its Minimum Standards to make the provision of Part 145 Services optional and by not requiring its newly opened FBO to provide the Part 145 Services for the 45-days it was open prior to the adoption of the revised minimum standards.

- The Respondent has not violated Grant Assurance 23, *Exclusive Rights,* by maintaining control of pricing for fuel and goods and services provided by its Management Company, Wilson Air Center. However, the Director recommends that the Respondent make necessary amendments to its lease with the Complainant to remove the right of first refusal in Article 1(b) as, if exercised, this clause may constitute the grant of an exclusive right in violation of Grant Assurance 23.

ACCORDINGLY, the Director finds that the Chattanooga Metropolitan Airport Authority is not in violation of Federal law and the Federal grant obligations. The Complaint is dismissed.

All Motions not expressly granted in this Determination are denied.

RIGHT OF APPEAL

This Director's Determination is an initial Agency determination and does not constitute final Agency action and order subject to judicial review. [14 CFR, § 16.247(b) (2)] A party to this Complaint adversely affected by the Director's Determination may appeal the initial determination to the FAA Associate Administrator for Airports pursuant to 14 CFR, 16.33(b) within thirty (30) days after service of the Director's Determination.

File Copy — Oct. 04, 2013

_____ — _____

Randall S. Fiertz — Date
Director, Office of Airport Compliance
and Management Analysis

Index of Administrative Record
FAA Exhibit 1
Truman Arnold Companies d/b/a TAC Air
v.
Chattanooga Metropolitan Airport Authority

Docket No. 16- 11-08

Item 1 – Part 16 Complaint, alleging that the Respondent violated 49 U.S.C., § 47107(a) (1) and (4) and airport Grant Assurance 22 and 23, dated September 13, 2011. Item 1 includes exhibits 1-22.

Item 2 – Notice of Docketing, dated September 22, 2011.

Item 3 – Motion for Extension of Time to File an Answer, dated October 3, 2011.

Item 4 – Extension of Time to file Answer, dated October 6, 2011.

Item 5 – Answer, Motion to Dismiss, and Motion for Declaratory Statement filed October 21, 2011. Item 5 includes:

(A) Answer from the Chattanooga Metropolitan Airport Authority. Includes exhibits 1-42
(B) Motion to Dismiss with Prejudice the Entirety of the Complaint.
(C) Motion for Declaratory Statement that "it is permissible for the CMAA to require TAC Air to lease an aircraft apron next to its leasehold on a nonexclusive basis or in the alternative, to cease conducting commercial business on that apron."

Item 6 – Complainant's Motion for Extension of Time to file its Reply to Respondents Answer, dated October 26, 2011.

Item 7 – Extension of Time to file Reply to November 11, 2011, dated October 28, 2011.

Item 8 – Airport Grant History Report, dated November 2, 2011.

Item 9 – Respondent's Notice to Remove Michael Landguth from the designated service of process and place Mr. Terry Hart, Interim President and CEO of CMAA in his place, dated November 7, 2011.

Item 10 – Reply to Answer and Opposition to Motion to Dismiss and Answer to Motion for Declaratory Statement, dated November 14, 2011. Item 10 includes:

A. Reply to Answer and Opposition to Motion to Dismiss. Includes exhibits 1-7
B. Affidavit of Jay Whitney – Certified Public Accountant dated November 2, 2011
C. Affidavit of Pamela McAllister – General Manager of TAC Air at the Chattanooga Metropolitan Airport – dated November 10, 2011. Includes exhibits 1-7
D. Answer in Opposition to Motion for Declaratory Statement.

Item 11 – Respondent's Motion for Extension of Time to Submit Rebuttal, dated November 16, 2011.

Item 12 – Extension of Time to file Rebuttal to December 9, 2011, dated November 17, 2011.

Item 13 – Respondent's Rebuttal, dated December 9, 2011. Item 13 includes exhibits 1-9.

Item 14 – Notice of Extension of Time for Issuance of Director's Determination to June 9, 2012, dated March 28, 2012.

Item 15 – Notice of Extension of Time for Issuance of Director's Determination to August 9, 2012, dated June 4, 2012.

Item 16 – FAA Request for Additional Information to obtain an executed copy of the General Aviation Facilities Management Agreement between the CMAA and Wilson Air Center, dated June 12, 2012.

Item 17 – Executed copy of the General Aviation Facilities Management Agreement between CMAA and Wilson Air Center, entered June 29, 2012.

Item 18 – CMAA's 5010.

Item 19 – Notice of Extension of Time for Issuance of Director's Determination to September 28, 2012, dated July 30, 2012.

Item 20 – Notice of Extension of Time for Issuance of Director's Determination to December 15, 2012 dated September 27, 2012.

Item 21 – Notice of Extension of Time for Issuance of Director's Determination to February 12, 2013 dated December 20, 2012.

Item 22 – Notice of Extension of Time for Issuance of Director's Determination to April 3, 2013 dated February 14, 2013.

Item 23 – Notice of Extension of Time for Issuance of Director's Determination to June 1, 2013 dated March 20, 2013.

Item 24 – Notice of Extension of Time for Issuance of Director's Determination to July 31, 2013 dated June 17, 2013.

Item 25 – Notice of Extension of Time for Issuance of Director's Determination to August 15, 2013 dated July 30, 2013.

Item 26 – Notice of Extension of Time for Issuance of Director's Determination to September 30, 2013 dated August 30, 2013.