



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

ORDER

DOT 4000.8A

8-17-82

Subject: USE OF CONTRACTS, GRANTS AND COOPERATIVE AGREEMENTS

1. PURPOSE. This Order provides procedures for implementing the Federal Grant and Cooperative Agreement Act of 1977 and Office of Management and Budget (OMB) guidance entitled The Implementation of Federal Grant and Cooperative Agreement Act of 1977 (PUB. L. 95-224). The purpose of the Act and the guidelines, hereinafter referred to as OMB Guidance, is to establish Government-wide criteria for selecting appropriate legal instruments when Federal funds are used to acquire property and services for the direct use of the Federal Government or to assist recipients to accomplish public purposes and to establish reporting requirements necessary to implement certain sections of P.L. 95-224.
2. CANCELLATION. DOT 4000.8, Use of Contracts, Grants and Cooperative Agreements, of 8-23-79.
3. BACKGROUND. The Federal Grant and Cooperative Agreement Act requires Federal agencies to distinguish procurement relationships from assistance relationships. A major objective of the Act is to achieve consistency in the use of legal instruments for procurement and for assistance relationships. In addition, the Act required OMB to conduct a study to determine the feasibility of developing a comprehensive system of guidance for assistance programs.
4. POLICY. The Department of Transportation (DOT) policy is to use the contract, grant, and cooperative agreement instruments in a consistent manner, and to obtain the maximum competition practicable regardless of the instrument used. In implementing this policy, DOT will comply fully with the requirements listed in the OMB Guidance, including the submission of formal requests to OMB where statutory provisions may impede full compliance.
5. APPLICABILITY. The instructions contained in paragraph 6 of this Order are applicable to all DOT elements that award any or all of the legal instruments covered under P.L. 95-224.
6. RESPONSIBILITIES. DOT elements that award contracts, grants or cooperative agreements shall:
 - a. Determine whether the principal purpose of a transaction is to acquire property and services for direct DOT benefit or use or to transfer funds in order to assist recipients in accomplishing public purposes. Where the principal purpose is to make acquisitions for direct DOT use, a procurement contract shall be used. Normally, direct DOT use also includes situations where a DOT element orders property or services which are in turn provided to a third-party. The choice of instrument in this type of transaction depends solely on the purpose of the relationship

Vertical line denotes change.

DISTRIBUTION: All Secretarial Offices
All Operating Administrations

OPI: Office of
Installations
and Logistics

with the recipient of the Federal award. The fact that the product or service produced by the recipient pursuant to the award may flow to and thus benefit another party is irrelevant. What is important is whether the purpose of the transaction is to acquire the recipient's services, which happen to take the form of producing the product or carrying out the service that is then delivered to the third party, or if the Government's purpose is to assist the recipient to do the same thing. If it is the former, procurement is required; if it is the latter, an assistance relationship is appropriate. Where the principal purpose is to transfer funds to assist recipients in acquiring property and services, one of the following two assistance instruments shall be used. A grant shall be used where the principal purpose is to transfer funds for the recipient's benefit, and the recipient is expected to have a high degree of independence from the DOT element in performing the project. A cooperative agreement shall be used where the principal purpose is to transfer funds for the recipient's benefit, and the DOT element expects to have a high degree of involvement during project performance.

- b. Authority to establish procurement or assistance relationships must be based on an agency's authorizing or appropriation legislation. Section 7(a) of the Federal Grant and Cooperative Agreement Act states: "Notwithstanding any other provision of law, each executive agency authorized by law to enter into contracts, grants or cooperative agreements, or similar arrangements is authorized and directed to enter into and use types of contracts, grant agreements or cooperative agreements as required by this Act. The phrase "authorized by law" refers to other laws, i.e., basic program legislation and language contained in appropriation acts. The Federal Grant and Cooperative Agreement Act conveys no assistance authority.
- c. Use a single type of assistance instrument in making all project awards under each assistance program unless there are compelling reasons for selecting different instruments on a case-by-case basis. As examples, DOT elements may use both assistance instruments under one program where projects under the program possess differing levels of complexity or where recipients under the program possess differing management capabilities and these differences support different monitoring techniques. Where more than one type of assistance instrument is used under a single program, recipients shall be informed prior to receiving awards which instrument is to be used.
- d. Normally use procurement contracts for the following purposes:
 - (1) Evaluation (including research of an evaluative character) of the performance of Government programs or projects or grantee activity initiated by the funding agency for its direct benefit or use.
 - (2) Technical assistance rendered on behalf of the Government to any third party, including those receiving grants or cooperative agreements.

Vertical line denotes change.

- (3) Surveys, studies, and research which provide specific information desired by the Government for its direct activities, or for dissemination to the public.
 - (4) Consulting services or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.
 - (5) Training projects where the Government selects the individual or specific groups whose members are to be trained or specifies the content of the curriculum (not applicable to fellowship awards).
 - (6) Planning for Government use.
 - (7) Production of publications or audiovisual materials required primarily for the conduct of the direct operations of the Government.
 - (8) Design or development of items for Government use or pursuant to agency definition or specifications.
 - (9) Conferences conducted on behalf of the Government.
 - (10) The generation of management information or other data for Government use.
- e. Normally use assistance instruments (grants or cooperative agreements) for the following purposes:
- (1) General financial assistance (stimulation or support) to eligible recipients under specific legislation authorizing such assistance.
 - (2) Financial assistance (stimulation or support) to a specific program activity eligible for such assistance under specific legislation authorizing such assistance.
- f. Award and administer each of the three legal instruments in accordance with the appropriate directives. Procurement contracts shall be awarded and administered in accordance with the provisions of the Federal Procurement Regulations, the DOT Procurement Regulations, and other DOT directives covering direct contracting activities. Grants and cooperative agreements with units of state and local government shall be awarded and administered in accordance with OMB Circular A-102, Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments, and with DOT directives covering such transactions. Grants and cooperative agreements with universities and nonprofit institutions shall be awarded in accordance with OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, and DOT directives covering such activities.
- g. Obtain the maximum competition practicable in awarding grants or cooperative agreements whenever discretion is permitted in selecting

recipients. Awards which are based upon a formula or a similar entitlement technique and where there is no discretion in selecting recipients, e.g., Federal-Aid Highway Awards, are not subject to this requirement for competition. Whenever discretion in selecting recipients is permitted in awarding grants or cooperative agreements, records shall be maintained which state the procedures followed in selecting recipients and the value of awards.

- h. Apply the procedures appearing in DOT 4200.10, Sole Source Review and Approval, whenever competition has not been sought or obtained in proposed discretionary grants and cooperative agreements with recipients other than units of state and local government. Prior to awarding a sole source discretionary grant or cooperative agreement which exceeds \$100,000 to a nongovernmental organization, the basis of price in the proposal and the proposed recipient's financial management system shall be audited.
 - i. Award contracts when undertaking research, development and demonstration projects unless the principal purpose of the transaction is clearly to stimulate or support recipient's research efforts. Where the principal purpose does not fall clearly in one or the other category of procurement or assistance, i.e., where the DOT element and the recipient share in the project's benefits, a contract shall be used.
 - j. Apply the instructions appearing in the OMB Guidance and this Order in the administration of programs which provide assistance that supports recipient operating costs and expenses.
 - k. Submit all exceptions as described in Section J of the OMB Guidance, OMB Exception Procedures, to the Assistance Secretary for Administration for approval and submission to OMB.
 - l. Maintain necessary records to provide the answers to the seven questions appearing in Section L of the OMB Guidance, Agency Records.
 - m. Submit to the Assistant Secretary for Administration the information required under Section M of the OMB Guidance, OMB Reporting Requirements, within 30 days of the date of this Order.
7. IMPLEMENTATION. The policy and procedures in this Order are effective immediately. Implementing instructions shall be issued within 45 days following publication of this Order and a copy provided to the Assistant Secretary for Administration.

FOR THE SECRETARY OF TRANSPORTATION:



Robert L. Fairman
Assistant Secretary
for Administration