



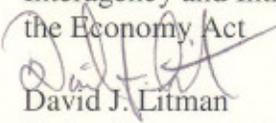
**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

# Memorandum

Subject: ACTION: Class Deviation from TAM 1217.5-70,  
Interagency and Intra-agency Acquisitions Under  
the Economy Act

Date: December 28, 2006

From:   
David J. Litman  
Senior Procurement Executive

Reply to  
Attn. of:

To: Procurement Management Council Members

In accordance with the Transportation Acquisition Manual (TAM) 1201.404, I authorize a class deviation to TAM 1217.5-70. This deviation was necessitated by changes to Section 9 of the Financial Management Policies Governing Funded Interagency and Intra-agency Agreements issued October 24, 2006, by the Department of Transportation's (DOT) Financial Management Office (B-30). This policy is effective October 1, 2007, but earlier implementation is encouraged. In essence, this new policy removes the requirement for the contracting officer's signature on interagency and intra-agency agreements unless otherwise specified. This deviation:

1. Combines interagency and intra-agency policies and procedures under 1217.5-70 and renames the subchapter to "Interagency and Intra-agency Acquisitions."
2. Specifies two methods for issuing interagency and intra-agency agreements (see 1217.570).
  - a. If using Section 9, a DOT Form 2300.1a, Interagency/Intra-agency Agreement, shall be used for intra-agency agreements. For interagency agreements, the DOT Form 2300.1a also should be used unless another mutually-agreed upon form is used in accordance with Section 9, paragraph 9.7.2; or
  - b. If using the current TAM procedure, which is effective until September 30, 2007, a DOT Form 4200.1, Procurement Request, shall continue to be used.

Your Chief Financial Officer should be contacted to determine which method is used within your OA.

3. Allows the Head of the Contracting Activity (HCA) to determine the extent of contracting officer involvement in the review/approval of interagency and intra-agency agreements regardless of the method for issuing agreements discussed in paragraph 2 above. The requirement for the contracting officer's signature on agreements or modifications has been deleted to allow for HCA flexibility in determining the extent to which their contracting officer's will be involved. This does not alleviate the requirement for contracting officer approval of Economy Act Determination and Findings in accordance with FAR 17.503.
4. Removes appropriation policy which is now considered unnecessary.
5. Specifies the continued use of DOT Order 2300.7, Financing Activities at TSC, dated 2-23-81 when support is provided by the John A. Volpe National Transportation Systems Center. DOT Order 2300.7 is currently being revised to implement Section 9 of the Financial Management Policies.

Because of the urgency of this requirement, the TAR/TAM comment process was not used. However, your comments pertaining to this class deviation are solicited and are to be provided to Denise Wright at (202) 366-4272 by January 18, 2007, for formulating a TAM change. This class deviation is effective upon the date of this memorandum and remains in effect until issuance of a TAM change.

Attachments

## CLASS DEVIATION (DEC 2006)

### SUBCHAPTER 1217.5-70--INTERAGENCY AND INTRA-AGENCY ACQUISITIONS

#### 1217.500 Scope of subchapter.

(a) This subchapter establishes DOT policy and procedures that will ensure the appropriate and consistent use of interagency and intra-agency acquisitions including those made under the Economy Act (31 U.S.C. 1535) as prescribed by (FAR) 48 C.F.R. 17.5.

(b) The provisions of this subchapter do not apply to:

- (1) Supplies and services acquired from or through Government sources, as described in (FAR) 48 C.F.R. Part 8;
- (2) Contracts with the Small Business Administration based upon Section 8(a) of the Small Business Act;
- (3) Cooperative agreements, as described in DOT Order 4600.17A, Financial Assistance Management Requirements;
- (4) Acquisitions using Government-wide acquisition contracts; and,
- (5) The Federal Aviation Administration (FAA) when it is the requesting agency.

#### 1217.501 Definitions.

"Interagency Acquisition" means a procedure by which an OA obtains needed supplies or services from, or through, another Federal agency in exchange for payment from available appropriated funds.

"Intra-agency Acquisition" means a procedure by which an OA obtains needed supplies or services from, or through, another OA in exchange for payment from available appropriated funds.

"Interagency Agreement" means a legal instrument by which an OA obtains or provides needed supplies or services from, to, or through, another Federal agency in exchange for payment from available appropriated funds.

"Intra-agency Agreement" means a legal instrument by which an OA obtains or provides needed supplies or services from, to, or through, another OA in exchange for payment from available appropriated funds.

"Requesting Agency," also known as "Buying Agency," means the Federal agency that requires the supplies or services and obligates the funds to pay for the cost of performance.

"Servicing Agency," also known as "Selling Agency," means the Federal agency that provides the supplies or performs the services, directly or indirectly, and will receive funds as payment for the cost of performance.

#### **1217.502 General.**

##### *(a) Policy.*

(1) Except as provided in (FAR) 48 C.F.R. 7.3, it is the policy of DOT not to place Federal agencies in direct competition with commercial sources.

(2) DOT policy requires that interagency and intra-agency agreements be written to ensure that the obligation of fiscal year funds is valid, that the servicing agency is authorized to provide the stated goods or services, that the stated requirements are consistent with DOT's mission responsibilities, and that each agreement complies with applicable laws and regulations.

*(b) Statutory authorities.* An agreement cannot be entered into unless authorized by statute.

(1) *Economy Act.* The Economy Act (31 U.S.C. 1535) authorizes interagency and intra-agency acquisitions, and provides for payment in advance, as well as payment to the appropriation account to which the performance costs have been charged. The Economy Act further authorizes the servicing agency, as an alternative to fulfilling the requirement through internal resources, to obtain the needed supplies or services by contract. An Economy Act acquisition shall not be used to circumvent the competition requirements prescribed in (FAR) 48 C.F.R. Part 6.

(2) *Separate statutory authority.* Interagency and intra-agency agreements may also be authorized by separate statutory authority.

(i) The John A. Volpe National Transportation Systems Center (Volpe Center), pursuant to 49 U.S.C. 328, has separate statutory authority that specifically authorizes agreements between the Volpe Center and other DOT operating administrations (OAs) and with other Federal agencies, State and local governments, public authorities, private organizations, and foreign countries.

(ii) Other statutory authorities are available for entering into interagency and intra-agency agreements including the FAA's Franchise Fund and the DOT Administrative Working Capital Fund. Each OA is responsible for identifying that authority, as well as determining whether the servicing agency may use contractors to fulfill the requiring agency's needs.

"Requesting Agency," also known as "Buying Agency," means the Federal agency that requires the supplies or services and obligates the funds to pay for the cost of performance.

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(iii) Interagency or intra-agency acquisitions permitted by separate statutory authority may not use the Economy Act. Interagency or intra-agency acquisitions under separate statutory authority must be executed according to the requirements and restrictions of the applicable statute. Further, interagency or intra-agency acquisitions permitted by separate statutory authority:

(A) Shall not use the advance payment provision of the Economy Act. Advance payment is allowable only if the statute cited as the authority for the agreement specifically permits an advance payment; otherwise, payment is tendered upon acceptance of goods and services.

(B) Shall not use the provision of the Economy Act that permits the servicing agency to obtain the needed supplies or services by contract. The statute cited as the authority must allow the servicing agency to acquire goods or services by contract. Also, the statute must not specifically prohibit the servicing agency from fulfilling the requirement by contract. If such a prohibition exists, the servicing agency may only use internal resources to fulfill the requirement.

(C) Shall not use the de-obligation provisions required by the Economy Act. In this situation, the obligation will remain available for payment, regardless of when performance occurs, in the same manner as a contract obligation or as allowed or required by the statutory authority used for the transaction.

#### **1217.503 Determinations and findings requirements.**

(a) When an acquisition will be made under the Economy Act and regardless of the procedures used in 1217.570, a determination and findings (D&F) is required and shall be prepared in substantially the same format as shown in Appendix A. The D&F shall be signed by the contracting officer in accordance with FAR 17.503. Modifications to interagency or intra-agency agreements may result in a new acquisition outside the original scope of work. In these cases, a new D&F is required.

(b) When the Economy Act is to be used as the authority for an interagency or intra-agency acquisition, the requiring/requesting office shall submit the appropriate form (see 1217.570) to the requesting office's contracting officer with documentation supporting the conclusion that it is more convenient or economical to obtain the required supplies or services through the proposed interagency or intra-agency agreement, rather than by direct contract with a commercial concern. Current market prices or recent procurement prices may be used in this process.

**1217.570 Procedures.** DOT offices are in transition to the Financial Management Policies (Section 9), issued October 24, 2006. Until complete implementation, DOT shall use one of the two processes in paragraph (a) or (b) and follow paragraph (c) when requesting support from the Volpe Center.

(a) The Financial Management Policies (Section 9) located at [http://communities.dot.gov/summary-template\\_vignette.asp?dataID=1024CXR26431](http://communities.dot.gov/summary-template_vignette.asp?dataID=1024CXR26431) are encouraged to be used as soon as possible but no later than October 1, 2007.

(1) *Forms.* For intra-agency agreements, requiring offices shall use DOT Form 2300.1a to execute all agreements. For inter-agency agreements, DOT Form 2300.1a should be used unless another mutually-agreeable document is available. Any document used instead of the DOT Form 2300.1a must include the required agreement elements in Section 9, paragraph 9.5.3. This form is used in lieu of a procurement request.

(2) *Modifications.* See Section 9, paragraph 9.5.4.

(b) Until September 30, 2007, OAs may use the following process:

(1) *Forms.* DOT interagency and intra-agency agreement processing requests shall be submitted on a DOT Form 4200.1, Procurement Request. Whenever an OA is the servicing agency, they shall request documentation from the requesting agency that evidences compliance with the Economy Act.

(2) *Modifications.* Modifications to existing interagency agreements and intra-agency agreements may be accomplished through the use of a SF 30, Amendment of Solicitation/Modification of Contract, or through any other format acceptable to the parties.

(c) Until DOT Order 2300.7, Financing Activities at TSC, is revised but no later than September 30, 2007, OAs shall use DOT Order 2300.7 dated February 23, 1981, when requesting support from the Volpe Center.

**1217.571 Contracting officer involvement.** Section 9 of the Financial Management Policies does not require contracting officer review or approval of interagency or intra-agency agreements. However, HCAs, in consultation with their Chief Financial Officer, may determine what role, if any, the contracting officer will have in formulating, reviewing or signing these documents.

#### **1217.572 Legal Review for Agreements using the Economy Act.**

Legal counsel review is strongly recommended for interagency and intra-agency agreements and modifications to such agreements that are over \$250,000 (especially complex agreements) and the authority of the Economy Act will be used. This review is to be completed before execution of the agreement. Legal counsel review is also recommended for those interagency and intra-agency agreements for lesser amounts that may present legal questions.

(a) Office of the General Counsel (C-10) will review applicable agreements for the Office of the Secretary.

(b) OA Chief Counsel's office will review applicable agreements for OAs other than the Office of the Secretary.

**Appendix A -- Determination and Findings for Use of Interagency Acquisitions.**

Revised 8/2006

**DEPARTMENT OF TRANSPORTATION**

*Name of Operating Administration*

**DETERMINATION AND FINDINGS**

**Findings**

1. The proposed (*enter Interagency Agreement or Intra-agency Agreement*) with (*name of agency*) is to obtain (*description and purpose of supplies or services required*).
2. It is more economical or convenient to obtain the required supplies or services through the proposed Agreement rather than by direct contract with a commercial concern because (*state rationale*).
3. Legal authority for the acquisition otherwise exists.
4. The action does not conflict with any other agency's authority or responsibility.
5. The acquisition involves the use of a commercial or industrial activity operated by the servicing agency, and conforms to the requirements of (FAR) 48 CFR Subpart 7.3. (*Include only if applicable: This finding is applicable if the servicing agency operates a commercial or industrial activity using Government personnel. In order to conform to the requirements of (FAR) 48 CFR Subpart 7.3, the servicing agency must operate the activity as the result of an A-76 review process, or the activity must be scheduled for A-76 review.*)

**Determination**

Based upon these findings, I hereby determine that it is in the Government's interest to obtain the required supplies/services from another (*enter Federal agency or DOT agency*), as authorized by the Economy Act (31 U.S.C. 1535).

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contracting Officer