Agreement Type Guidelines

1. **Purpose**

The purpose of this document is to assist the acquisition team in determining which agreement type is the most suitable for their transaction. Generally, the determination will be based on (1) applicable statutory requirements, (2) the Federal Aviation Administration’s (FAA) purpose in the relationship, and (3) the degree of FAA involvement.

This agreement type guidelines document will cover procurement contracts, grants, cooperative agreements, interagency and intra-agency agreements, international agreements, reimbursable agreements, and Other Transaction Agreements (OTAs). This document does not apply to Airport Improvement Program grants and cooperative research and development agreements, which are governed by other directives, as follows:

1. Airport Improvement (AIP) Grants authorized under 49 U.S.C. 47101 et seq. are covered in FAA Order 5100.38A, AIP Handbook, October 24, 1989.
2. Cooperative Research and Development Agreements (CRDA) authorized under 15 U.S.C. 3710a et seq. are covered under FAA Order 9550.6A "Technology Transfer Program."
3. **Agreement Types**
4. **Procurement Contracts**

AMS defines a procurement contract as a legal instrument used to acquire products and services for the ***direct benefit or use by the FAA*** or when the head of the agency determines, in a specific instance, that the use of a procurement contract is appropriate.[[1]](#footnote-2) A procurement contract is formed through various types of agreements including but not limited to contracts, memorandums of agreement, memorandums of understanding, and purchase orders.

A procurement contract is typically used to purchase supplies or services for the direct benefit of the FAA, e.g, purchase of laptop computers and associated software for FAA staff.

1. **Grants**

A grant is a legal instrument used when the principal purpose of the relationship is to transfer a thing of value to a recipient, either public or private, to carry out a ***public purpose*** of support or stimulation authorized by federal law and substantial involvement is not expected between the FAA and the recipient in carrying out the activity contemplated in the agreement.[[2]](#footnote-3) The distinction between a cooperative agreement and a grant is that the FAA grant administrator usually takes on a purely monitoring role once the grant is awarded.

The FAA is authorized to award grants under the following legislation: Section 9205, Aviation Research Grant Program and FAA Reauthorization Act of 1996, Public Law 104-264.[[3]](#footnote-4) Aviation Research Grants are not addressed in the AMS; however, the requirements for such grants are addressed in FAA Order 9550.7B Aviation Research Grants Program.

Grants issued pursuant to the FAA Aviation Research Grants Program are awarded for the conduct of research for the long-term growth of civil aviation. Research topics may include, but are not limited to, air traffic control automation, aviation applications of artificial intelligence, aviation training technologies and techniques, human factors in highly automated environments, and aircraft safety. The FAA gives consideration to ensure an equitable geographic distribution of grant funds and the inclusion of historically black institutions of higher education and other minority nonprofit research organizations.

1. **Agreements** 
   1. **Cooperative Agreements**

The FAA also has broad authority under 49 U.S.C 106 to enter into cooperative agreements with any Federal and non-Federal entity on such terms and conditions as the Administrator may deem appropriate. A cooperative agreement is a legal instrument used when the principal purpose of the relationship is to transfer a thing of value to a recipient, either public or private, to carry out a ***public purpose*** of support or stimulation authorized by law.

Federal law prohibits the FAA from using cooperative agreements to acquire property or services for the [direct benefit or use](https://www.law.cornell.edu/uscode/text/31/6303) of the FAA. The nature of the agreement is what distinguishes cooperative agreements from “procurement contracts” or “[acquisitions](http://farsite.hill.af.mil/reghtml/regs/far2afmcfars/fardfars/far/02.htm)” bound by the AMS. Cooperative agreements are distinguished from grants by the degree to which the FAA and non-federal entities are expected to cooperate post-award. Under a cooperative agreement, the FAA is substantially involved in the execution of the publicly beneficial activity. Substantial FAA involvement may be necessary when an activity is technically or managerially complex, or requires extensive close coordination with other federally supported work or multiple recipients.

For example, the FAA might enter into a cooperative agreement with a university to provide funding to support research on fire resistant fabrics for aircrafts that do not produce poisonous fumes in aircrafts. The agency's principal purpose is to stimulate the development of fire resistant fabrics to benefit the general public. The benefit to the FAA is indirect - improved safety for aircraft passengers, which also supports the mission of the FAA.

* 1. **Interagency Agreements**

An interagency agreement is a written agreement between FAA and another Federal agency (as defined in Section 551(a) of Title 5 of the United States Code) where the FAA agrees to receive from, or exchange supplies, services, or real property with, the other agency, and FAA funds are obligated. Interagency agreements where the FAA purchases services, supplies, or facilities through another Federal agency’s contract is an interagency procurement, and AMS Guidance T3.8.1.A.4 “Interagency Procurement” must also be followed when placing this type of agreement.

* 1. **Intra-agency Agreements**

An intra-agency agreement is a written agreement between FAA and the Office of the Secretary of Transportation (OST) or another DOT operating administration. The FAA may use an Intra-agency agreement to provide services or supplies to, or receive services or supplies from or through OST or another DOT operating administration.[[4]](#footnote-5)

For further instructions on intra-agency agreements with OST and John A. Volpe Transportation Systems Center (Volpe Center), please review the following:

* DOT Form 2300.1a. for intra-agency agreements with OST
* FAA Acquisition Executive (FAE) Memorandum “Intra-Agency Agreements (IAAs) with Volpe” dated December 8, 2017
  1. **International Agreement**

Agreements with foreign governments or quasi-governmental entities are most commonly used to establish a technical assistance or research and development relationship between FAA and the foreign entity. In such instances, FAA’s interest is in encouraging aviation safety outside the United States pursuant to 49 U.S.C. 40113(e). When a foreign government is a party to the transaction, the agreement is a government-to-government agreement governed by international law. The FAA must obtain Department of State (DOS) clearance on the negotiation and final terms of such agreements.

* 1. **Reimbursable Agreement**

Reimbursable agreements are agreements where the FAA provides services, supplies, or facilities to another Federal agency. ***FAA is essentially an agent of the requesting agency and subject to the terms and conditions of the requesting agency;*** however, the FAA should ensure that the requesting Federal agency’s agreement addresses the content required by T3.8.1A1.c(5), adhere to the requirements of FAA Order 2500.35D, FAA’s Financial Manual, and the FAA Reimbursable Agreement SOP referenced in T3.8.1A1.b(7). Each reimbursable agreement in which FAA is the servicing agency must be supported by a written business case determination that it is in the best interest of the agency to provide the service, supply or facility. The business case must also identify the benefits derived by FAA.

There is no obligation of FAA funds associated with reimbursable agreements. This process does not apply to Small Scale Reimbursable Agreements (SSRAs), which are defined as reimbursable agreements with a total estimated value of less than $30,000.

1. **Other Transaction Agreements**

Pursuant to the FAA Reauthorization Act of 1996, Public Law 104-264, the Administrator has broad authority "to enter into and perform …. other transactions (OTAs) as may be necessary to carry out the functions of the Administrator and the Administration . . .with any Federal agency, or any instrumentality of the United States, any territory, or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate." AMS defines OTs as a transaction that is a legally binding instrument that is not a standard procurement contract, grant, or cooperative agreement. OTAs are typically an agreement between the FAA and a non-Federal entity (either foreign or domestic) where the FAA's purpose is to obtain a direct benefit that advances the agency’s mission while also providing assistance to the general public. [[5]](#footnote-6) OTAs are distinct from procurement contracts, grants, and cooperative agreements as they are not generally subject to AMS policy and regulations.[[6]](#footnote-7) OTAs are subject to AMS requirements only when explicitly stated as so by the FAA’s Other Transaction Guide.

Warranted Contracting Officers and any qualified individuals with delegated OTA procurement authority by the FAA Acquisition Executive may consider using OTAs for the following purposes:

* As a reimbursable agreement with a non-federal entity where FAA is essentially a contractor and subject to the terms and conditions of the non-federal entity.
* To foster new partnerships and practices with non-traditional government contractors to promote innovative research and state of the art prototypes.
* To create diverse and highly variable business structures such as consortiums that harnesses disparate types of organizations to maximize the advantages of each and minimize/mitigate the disadvantages of each in facilitating innovation.[[7]](#footnote-8)
* To structure business arrangements to address specific aviation needs and circumstances, e.g., where a private airport retains title to a MALSR and the FAA is responsible for maintenance of the MALSR equipment, construction of a fence, or the laying of cable that would benefit the airport authority (or the general public) and the FAA facility at the airport.
* To leverage commercial industry investment in technology developments.
* To partner with industry to ensure FAA current and future requirements are incorporated into future technology or products that carry out the mission of the agency.
* To conduct basic, applied, and advanced research projects with commercial partners without burdening commercial partners with FAA regulatory overhead, which would make them non-competitive in the commercial sector.
* To direct research related to unmanned aircraft systems, including at any test range in coordination with the Center of Excellence for Unmanned Aircraft Systems.[[8]](#footnote-9)

1. **Conclusion**

The award types outlined in this document are intended to provide the acquisition team with clarity on which award type is appropriate for a given transaction. The acquisition team should consider using the award types cited herein as a way to enable the FAA to be innovative and creative in carrying out the functions of the Administrator and the Administration. By choosing the appropriate award type for the transaction, the FAA is able to obtain or provide services and supplies when necessary to accomplish the mission of FAA.

1. **Authorities**

A. Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264

B. Federal Aviation Administration Reauthorization Act of 2018

C. AMS Policy 3.1.4 Contracting Authority

D. AMS Procurement Guidance T3.1.4 Delegations

E. AMS Procurement Guidance T3.8.1 Agreements, Cooperative Agreements, Gifts & Bequests

F. AMS Procurement Guidance T3.8.1 Appendices 1-7

G. FAA Order 9550.7B Aviation Research Grants Program

H. FAA Order 9550.6A Technology Transfer Program

I. 49 U.S.C. 106(l) (6) and/or 106(m)

1. **Questions**

Any questions or concerns regarding the appropriate award type to use should be addressed to the Contracting Office or the Office of Acquisition Policy & Oversight.

1. AMS Policy Appendix C: Definitions [↑](#footnote-ref-2)
2. AMS T3.8.1.A.2 Section 106 Cooperative Agreements [↑](#footnote-ref-3)
3. Airport Improvement (AIP) Grants authorized under 49 U.S.C. 47101 et seq. are covered in FAA Order 5100.38A, AIP Handbook, October 24, 1989 & Aviation Research Grants are not address in the AMS, the requirements for such grants are addressed in FAA Order 9550.7B Aviation Research Grants Program. [↑](#footnote-ref-4)
4. AMS Policy sections 3.8.1.2 Use of Agreements and 3.8.1.3 Principles for Agreements, specify that intra-agency agreements are appropriate when FAA receives supplies, services or facilities from the Office of the Secretary of Transportation or another operating administration. [↑](#footnote-ref-5)
5. AMS Procurement Guidance T.3.8.1.4 [↑](#footnote-ref-6)
6. Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264 [↑](#footnote-ref-7)
7. NCMA, Ten Things You Need to Know About Other Transaction Agreements (OTAs), May 9, 2019 [↑](#footnote-ref-8)
8. Federal Aviation Administration Reauthorization Act of 2018 [↑](#footnote-ref-9)