

U.S. Department
of Transportation

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: G-LGL
Phone: 202-267-1553
FAX: 202-267-4287

COMDTINST 5216.18
November 9, 1998

COMMANDANT INSTRUCTION 5216.18

Subj: MEMORANDA OF UNDERSTANDING/AGREEMENT

- Ref:
- (a) Reimbursable Agreements, DOT Order 2300.1C
 - (b) Transportation Acquisition Manual (TAM), Subchapter 1217.5
 - (c) Coast Guard Acquisition Procedures (CGAP), COMDTINST M4200.19 (series), Subchapter 1217.5
 - (d) Cooperative Research and Development Agreements (CRADAS), COMDTINST 5700.1
 - (e) Use of Contracts, Grants, and Cooperative Agreements, DOT Order 4000.8A
 - (f) Coast Guard Use of the Volpe National Transportation Systems Center (VNTSC), COMDTINST 4330.1

1. PURPOSE. This instruction clarifies the difference between a Memorandum of Understanding (MOU) and Memorandum of Agreement (MOA), indicates the limiting characteristics of a MOU/MOA, provides a standard MOU/MOA format, and distinguishes the MOU/MOA from other commonly used agreements.
2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of headquarters units, assistant commandants for directorates, Chief Counsel, chiefs of special staff offices at Headquarters, and all Coast Guard personnel drafting or signing an MOU or MOA will comply with this instruction.
3. DIRECTIVES AFFECTED. None

4. DEFINITIONS. A MOU is a document that describes very broad concepts of mutual understanding, goals and plans shared by the parties. In contrast, a MOA is a document describing in detail the specific responsibilities of, and actions to be taken by, each of the parties so that their goals may be accomplished. A MOA may also indicate the goals of the parties, to help explain their actions and responsibilities. The parties to a MOU/MOA covered by this instruction are the United States Coast Guard and one or more governmental or private entities.

5. MOU/MOA LIMITATIONS. Every Coast Guard MOU and MOA must be consistent with the Coast Guard mission and be authorized by federal law, regulations and funding constraints. Additionally, the existence of a MOU or MOA does not eliminate or diminish the need for additional contracts, documents, or agreements to execute the activities contemplated by the parties. Neither this Instruction nor any MOU/MOA can be used as the **sole** authority or means to acquire or procure goods or services, exchange funds or property, or transfer or assign personnel. Although the MOU/MOA can address those issues and indicate the goals and intent of the parties, all Coast Guard personnel must comply fully with pertinent contracting and procurement regulations and references (a) through (c). Additionally, although a MOU/MOA can address the following special situations, it cannot be used as the **sole** means to effect the following agreements or actions:
 - a. Cooperative Research and Development Agreement (CRADA). An agreement between a federal laboratory (including the Coast Guard laboratory) and a non-federal party in which property in exchange for certain consideration from the other party. Reference (d) applies.
 - b. Grants and General Cooperative Agreement. An agreement to transfer funds, property, or services from a federal entity to a non-federal entity to carry out a public purpose authorized by federal law where joint involvement is anticipated. Office of Management and Budget (OMB) rules and reference (e) apply.
 - c. Volpe National Transportation Systems Center (VNTSC) Agreements. Preparation of annual General Working Agreements, Planned Project Agreements and associated Work Plan Budgets for the acquisition of VNTSC obtained goods and services must comply with reference (f).

6. AUTHORITY. As indicated above, the MOU/MOA, by itself, is no authority for the parties to engage in the contemplated activity. The following are just some of the federal statutes commonly used as the underlying general authority for a Coast Guard MOU/MOA and its contemplated activity:
 - a. 14 U.S.C. SS 82. Authorizes the Coast Guard to cooperate with the Federal Aviation Authority.
 - b. 14 U.S.C. SS 93(d). Authorizes the Coast Guard to cooperate with federal and private agencies
 - c. 14 U.S.C. SS 141. Authorizes the Coast Guard to provide certain assistance to federal, state and local entities.

- d. 14 U.S.C. SS 147. Authorizes the Coast Guard to cooperate with the Department of Commerce.
 - e. 14 U.S.C. SS 148. Authorizes the Coast Guard to provide certain maritime instruction.
7. PROHIBITED INDEMNIFICATION AGREEMENTS OR CLAUSES. An agreement to indemnify is an agreement to assume financial, legal, or other liabilities on behalf of that other party. **Neither the Coast Guard nor any person in the Coast Guard may agree to indemnify any other party absent specific federal statutory authorization.** Federal law, 31 U.S.C. SS 1341(a)(1)(A) and 1341(a)(1)(B), commonly referred to as the Anti-Deficiency Act, prohibits all officers and employees of the United States from making or authorizing expenditures or obligations exceeding appropriated funding and from obligating payment of money before it is appropriated. A typical indemnification clause violates both provisions of that Act because it potentially obligates the federal government (or Coast Guard) to pay an unspecified, unlimited, and unappropriated amount of money should someone else's property be lost, damaged or destroyed, some person be injured or killed, or other parties to the MOU/MOA incur legal liabilities or expenses. Should any prospective party to a MOU/MOA request or demand that the Coast Guard agree to an indemnification clause, contact the Chief Counsel's office (G-LGL) for assistance.
8. FORMAT. Enclosure (1) is the format for a two-party MOU/MOA used when the MOU/MOA originates with the Coast Guard. The wording of the agreement may be appropriately changed to reflect multiple parties. Enclosure (1) may also be tailored to accommodate the subject matter of the agreement and needs of the parties, or to conform to an applicable law, regulation or directive. If a party other than the Coast Guard originates the MOU/MOA, the format may differ from enclosure (1). However, every MOU/MOA in which the Coast Guard is a party should include the following basic information:
- a. Parties. The parties to be bound by the agreement must be identified.
 - b. Authority. The legal authority for the agreement must be cited. Federal law, applicable DOT Orders, Commandant Instructions or other directives are referenced.
 - c. Purpose. The purpose or reason for entering the agreement must be stated.
 - d. Responsibilities. A description of the duties and responsibilities of the parties must be provided. The description should be as specific and detailed as necessary. Extreme details may be provided in an appendix rather than the body of the MOU/MOA.
 - e. Reporting and Documentation. The MOU/MOA must specify whether follow-up reports or documentation of actions taken are required and state how often and to whom they are to be submitted.
 - f. Points of Contact. Points of Contact for all parties are provided, including names, office symbols, addresses and phone numbers. Fax numbers, e-mail and Internet addresses should

also be provided if available.

- g. Modification. A provision stating how to modify or amend the agreement is included. Modifications can be formal (written) or informal (oral). They can be approved by the Points of Contact, by the signatories, or other appropriate individuals. While it is often appropriate for those at the working level to make modifications, either orally or in writing, modifications that change central provisions of the agreement should normally be made in writing and agreed to by the individuals who originally approved the MOU/MOA or their successors.
 - h. Effective Date. The date the MOU/MOA becomes effective must be stated. This may be a specified date after the MOU/MOA is signed by all parties or it may be the date the last party signs the agreement.
 - i. Termination. The MOU/MOA must contain several provisions regarding termination. The document will indicate that it will terminate on a certain date, upon the accomplishment of its purpose, or upon agreement of the parties. The MOU/MOA will also contain a provision indicating whether the duration of the agreement may be extended and, if so, the extension mechanism (e.g. by written agreement of the parties). Finally, the agreement will indicate whether a party may terminate the agreement early (usually by written notice to the other parties).
9. APPROVING OFFICIAL. The Coast Guard is a party to the agreement, not the person signing for the Coast Guard. Therefore, that person must have the authority to sign the MOU/MOA and commit the Coast Guard. In determining who that official is, refer to the statute, regulation or directive authorizing Coast Guard participation in the MOU/MOA. Other sources of authority are the Coast Guard Organization Manual, COMDTINST M5400.7 Series, and the instruction on Delegation of Authority, HQINST M5402.3 Series. If the head of another Department or Agency is signing the agreement for another party, the agreement must be coordinated with the Office of the Secretary of Transportation. *See* 49 C.F.R. SS 1.44(i). Even if the authority to sign a MOU/MOA has been delegated to an Assistant Commandant or Director/Chief of Directorate, or an Area, MLC or District Commander, if a Uniformed Service Chief or Agency head is signing for another party, it may be appropriate for the Commandant to sign as a matter of protocol.
10. CLEARANCE. Clearance of a proposed MOU/MOA can be either consecutive or concurrent. Early coordination and communication with interested offices, and the use of e-mail for reviewing and editing a draft MOU/MOA is encouraged. Prior to submitting a MOU/MOA to the approval authority for signature, the originating office shall ensure that the MOU/MOA does not conflict with any preexisting agreements. The originating office shall also ensure that all interested program offices and the servicing legal office have reviewed the MOU/MOA.
11. INTRANET (CGWEB) POSTING. Every unclassified MOU/MOA must be posted on the Intranet. The originating office shall coordinate with G-SII to post the MOU/MOA on the

CGWEB.

J. E. SHKOR
Chief Counsel

Encl: (1) MOU /MOA Format

**MEMORANDUM OF UNDERSTANDING/AGREEMENT BETWEEN
UNITED STATES COAST GUARD AND _____
REGARDING _____**

1. PARTIES. The parties to this Agreement are the United States Coast Guard (USCG) and _____.
2. AUTHORITY. This Agreement is authorized under the provisions of [*list all applicable statutory and regulatory authority*].
3. PURPOSE. The purpose of this Agreement is to set forth terms by which _____ and _____ will provide [*services, personnel, equipment*] in order to [*summarize what the MOU/MOA is intended to accomplish.*]
4. RESPONSIBILITIES:

Coast Guard.

- a.
- b.
- c.

Describe what the Coast Guard will do. Include a paragraph indicating whether the Coast Guard is required to submit status/progress reports, and, if so, how often.

Other Party>. [*Describe the other party's responsibilities as discussed above.*]

5. POINTS OF CONTACT. [*Identify the POCs for the Coast Guard and the other party, including office symbol, address and phone number (fax number and e-mail or internet addresses can also be included).*]
6. OTHER PROVISIONS. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the United States Coast Guard or Department of Transportation or [*other party*]. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this

agreement shall remain in full force and effect.

7. EFFECTIVE DATE. The terms of this agreement will become effective on . . . [*insert the effect date*].
8. MODIFICATION. This agreement may be modified upon the mutual [*written*] consent of the parties.
9. TERMINATION. The terms of this agreement, as modified with the consent of both parties, will remain in effect until [*date, completion of project, or upon agreement of parties.*] The agreement may be extended by mutual written agreement of the parties. Either party upon [*number*] days written notice to the other party may terminate this agreement.

APPROVED BY:

[Give the name and position of the official signing and dating for the Coast Guard. If known, give the name and position of the official signing and dating for the other party.]

(date)

(date)