FDP Contracts
Subcommittee
Janette Hannam-Hayes, Emory University
Elizabeth Peloso, University of Pennsylvania
Katie Cook, Michigan State State University

FDP Meeting – May 2023
Members
Jenny Chavira, University of California, San Diego
Alexandra Dennis, University of Chicago
Heide Eash, University of Pittsburgh, IT Security Clauses Workgroup Co-Lead
Elizabeth Eason, Georgia Tech University: State Requirements Workgroup Lead
Katherine Kissmann, Texas A&M University
Brian Lowinger, Duke University
Andrea Lupu, University of California, San Diego: Fundamental Research Model Language Memo Workgroup Lead
Collin Rich, University of Alabama
Julie Robinson, University of Illinois, Urbana-Champaign: IT Security Clauses Workgroup Co-Lead
Bill Schoelwer, University of Virginia: Federal Lab Review & Negotiation Techniques Workgroup Lead
Elizabeth Slack, University of Maryland, College Park
Dena-Rose Wilson, University of South Florida

Participants
Gina Hedberg, South Alabama University
Cynthia Hope, Georgia Tech University
Session Goals

Goal: To discuss Workgroup topics and progress. We would like to gauge interest in topics and discuss other membership interests.

Workgroups

• Federal Lab review & negotiation techniques (FFRDC) Workgroup
• IT Security Clauses/CMMC Workgroup
• Troublesome Clauses 2.0 Reporting Requirements Workgroup
• State Requirement Flowdowns Workgroup
• Fundamental Research Memo Workgroup
• Webpage Redesign Workgroup
Committee Recap

Our main objectives include:

• Identify common contract processing practices that can be expedited by uniform procedures within FDP VII
• Design, monitor, and evaluate new procedures and concepts that are in response to the legal requirements of the contracts process
• Study the similarities/differences between the grant and contract processes to see if gains in costs and efficiency can be generated by adapting some of the FDP grant procedures for use with contracts
• Provide a forum for discussion of and possible resolutions for contracting issues as they arise for member institutions and agencies

Examples of previous Contract Subcommittee Outputs:

• Troublesome Clause database (1.0)
• OTA survey
• FAR Guidance Resource Document
• Discussions with FDP membership and sponsor about contract clauses
Committee Activities

- Two recent outputs
  - Contracts Subcommittee Website Updates
  - Fundamental Research Memo

- Many active workgroups- updates coming 😊

- Collaborating with FDP Subawards Committee on three workgroups
  - FFRDC Workgroup
  - State Requirements Flowdowns Workgroup
  - Potential OTA Workgroup

- Actively setting up one new Workgroup

- Working with FDP to get Troublesome Clauses 2.0 back on schedule
FFRDC Review & Negotiation Techniques

Bill Schoelwer, University of Virginia

FDP Meeting – May 2023

Other workgroup members:
Elizabeth Slack, University of Maryland
FFRDC Background

- Government owned-contractor operated (GOCO) that perform R&D on behalf of a federal sponsoring agency
- A mutually beneficial relationship between government and the private sector
- Provide the government with R&D capabilities not met through Government and Private sector interactions alone.
- Long-term stable relationships between government and contractor to focus on agency beneficial topics
- Access to government and supplier data, employees, and facilities
- Expedited response to agency needs
46 labs owned by the federal government and operated by:

- **Universities**: Iowa State, MIT, Princeton
- **Partnerships**: Triad National Security, LLC and Lawrence Livermore National Security, LLC
- **Non-profit entities**: MITRE Corp, Brookhaven Science Associates, LLC, Alliance for Sustainable Energy, LLC

Long term relationship with federal sponsoring agencies

Affiliated with a variety of federal agencies:

- DOE, DoD, NSF, DHS, NRC

10.5% of Government’s $141.5 billion R&D budget goes to FFRDCs

- 23.5% to universities
Agency M&O Prime Contract

- Governed by the Federal Acquisition Regulations (FAR)
  - Far Part 35 dealing with Research and Development Contracting

- Prime Sponsoring Agency Contract – FAR 35.017-1
  - Statement of purpose and mission of the FFRDC
  - Termination, disposition of assets, settlement of liabilities
  - Non-competition with other non-FFRDCs on non-FFRDC solicitations

- M&O Clauses from Sponsoring Agency
  - “an agreement under which the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency.” (FAR § 17.601)
Proposal and Award Process

- Reps/ Certs that contain FAR/ Agency Supplement provisions that proposal submitting offices may not have encountered previously
  - Review SOW with PI for limited rights assertions
  - Ensure any reps/certs align with the type of research performed

- Frequently involve a compressed timeline for contractual review as they require exceptions to their terms and conditions at proposal stage:
  - “Your Proposal should contain your best terms from a cost/price and technical standpoint and include all available discounts and/or government pricing. Triad may conduct negotiations and request a revised proposal, if it is in Triad’s best interest, it may elect to make an award based solely on your initial or subsequent proposal without any discussions.”
Group Charge

• How can we make negotiating contracts with FFRDCs easier for FDP members?
  • Originally focused on a matrix of contracts from all FFRDCs from institutions participating in the working group
  • Gathered information from UVA and UMD
• Shift focus towards a more general Common Clauses Matrix.
HANDLING, PROTECTION, AND RELEASE OF INFORMATION

(a) Subcontract-related information, as used in this clause, means recorded information, regardless of form or the media, and computer software. Examples of subcontract-related information include, but are not limited to:

1. Information identified with any NTESS-applied marking (e.g., Official Use Only (“OUO”), Controlled Unclassified Information (CUI), NTESS Proprietary, or Sandia Proprietary);

2. Information directly related to subcontract and/or lower-tier subcontract administration, such as: program and planning, project management documentation, electronic or hardcopy correspondence, negotiations, financial, administrative, program office, and personnel information;

3. Technical and design information or guidance derived from or embodied in models, diagrams, drawings or translations, analysis models, manufacturing models, and computer-aided engineering and design, related to subcontract performance, regardless of whether the information is marked; and

4. Information obtained directly from NTESS or SNL-owned electronic resources, regardless of whether the information is marked.

5. Computer software, in either executable or source code form, delivered to Subcontractor and related to this subcontract.
• (b) Handling of Information

• Subcontractor shall:

• 1. Ensure any subcontract-related information provided by or accessed through NTESS in performance of this subcontract, whether identified by a NTESS-applied marking or not, is used only for purposes of performing this subcontract, and is not used or distributed for any other purpose;

• 2. Safeguard subcontract-related information from unauthorized access, use, and disclosure;

• 3. Inform employees and lower-tier subcontractors who may require access to subcontract-related information about obligations to use the information only for performance of this subcontract and requirements to safeguard the information from unauthorized use and disclosure;

• 4. Require that each employee with access to the information complies with the obligations included in this clause;

• 5. Maintain any restrictive markings on information from NTESS and on any subsequent copies.
(d) Release of Information

1. Disclosure of subcontract-related information or other NTESS information to persons or entities outside of Subcontractor’s organization or authorized lower-tier subcontractors is prohibited without advance written approval from NTESS. Disclosure requests may be sought by writing to the SP on this subcontract.

2. Publication proposals related to work performed or data obtained under this subcontract shall be coordinated with the SP prior to submission to any scientific, academic, technical, professional, or other publication.
   i. Subcontractor shall provide NTESS an opportunity to review publication proposals related in whole or in part to work connected to this subcontract at least forty-five (45) calendar days prior to submission;
   ii. NTESS will review the proposed publication and provide a response within forty-five (45) calendar days;
   iii. Subcontractor may assume NTESS has no comments after the response period has elapsed.
   iv. Subcontractor agrees to address any issues or concerns identified by NTESS before submitting publication proposals.

3. NTESS critical information shall not be released outside of the security boundary (virtual or physical) and is considered to have passed the security boundary once it is no longer under direct or exclusive control of the Subcontractor’s or NTESS’s personnel or infrastructure. NTESS critical information is identified and recorded at the program or operational level and provision of such material will be disclosed by NTESS. For assistance regarding NTESS critical information, please contact opsec@sandia.gov.
   i. Critical information is defined as specific facts about friendly (e.g., U.S., DOE, Sandia) intentions, capabilities, or activities that are vitally needed by adversaries for them to plan and act effectively in their attempts to guarantee failure of, or unacceptable consequences to, friendly objectives.

4. Subcontractor shall ensure its employees and lower-tier subcontractors comply with this clause.

5. In no event shall the interest of NTESS or the DOE or the government in this subcontract be indicated in any advertising or publicity without advance written approval of the SP.
Next Steps

• Continue gathering data – volunteers welcome

• Summarize results in a common issues matrix that is not as FFRDC specific but tracks common issues and give examples and suggested solutions
Contact Us

- Bill Schoelwer – University of Virginia
  - wjs3q@virginia.edu
- Elizabeth Slack – University of Maryland
  - eslack@umd.edu
NEW Working Group!

• Established 2023
  • Initial meeting held to establish objectives

• Workgroup members:
  • Katie Cook, Michigan State University
  • Janette Hannam-Hayes, Emory University
  • Collin Rich, The University of Alabama
  • Dena-Rose Wilson, University of South Florida
  • Lynette Arias, University of Washington
Charge and Objectives

• Review, summarize, create tools for IT security language in awards
  • To include focus areas based on current needs (CUI, NSPM-33, CMMC)

• Possible focus areas:
  • Resource guide
  • Term sheet
  • Proposal stage through life cycle best practices
Next Steps

• Continue brainstorming ideas

• Share ideas with contracts subcommittee

• Start generation of tools for FDP member use
Contact Us

Julie Robinson – University of Illinois
jrobnsm@illinois.edu

Heide Eash – University of Pittsburgh
eashhj@pitt.edu
Potential OTA Workgroup

Katherine Kissmann, Texas A&M University
FDP Meeting – May 2023
New OTA Workgroup

- What is an Other Transaction Agreement/Authority (OTA)?
  - Other Transactions (OT) are contractual instruments (used by the federal government) other than standard contracts, grants, or cooperative agreements. This instrument is intended to be a more flexible option than traditional government acquisition process allows.
  - https://aaf.dau.edu/aaf/contracting-cone/ot/

- Current anticipated structure:
  - Collaboration with Subawards Committee
  - Have Contracts Co-Lead and Subawards Co-Lead
  - Each Subcommittee workgroup will have their own specific focus

- Volunteers?

- Working Group Charge Discussion
Workgroup charge ideas (for Contracts Subcommittee Lead):

- Best Practices on OTA negotiating
- Strategies by Agency and Comparisons
- Top 10 OTA Terms (keywords) that are problematic
- IP Issues
- Why is OT the chosen mechanism?
- Cheat sheet on Institutions by Agency--- who would be willing to be a contact for an agency that has experience?
- Understanding OTA and the principles sheet
- Get OTA reps for future Sept Meeting (NIH, DOD)

Event App:

“Please select/vote for two objectives that you believe are the most important for the OTA working group to handle.”

Please vote!
Troublesome Clauses 2.0

• **Functional requirements have been developed**
  • Access permissions
  • Clause addition requirements
  • Search functionality
  • Reporting capabilities

• **Awaiting IT support/Developer resources**
Subcommittee developed a selection of templates for FDP member institutions to use when requesting a fundamental research determination on a federal subcontract under various scenarios:
- Request incorporated into proposal cover letter (can be easily modified for prime contract request)
- Request sent separately from cover letter, but at proposal stage
- Request sent upon notification of award containing or expected to contain restrictive terms

Templates are available on the Contracts Subcommittee website

Workgroup welcomes feedback and new members! (Andrea Lupu/alupu@ucsd.edu)
Webpage Updates

Workgroup members: Katie Cook, Janette Hannam-Hayes, Heidi Eash

- Thanks so much for the feedback!
- [Contracts Subcommittee webpage](#) has been updated
- New resources are being added!

Contracts

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The State Requirements Flowdown Workgroup would like your feedback. The charge of the working group is to review the State laws or requirements that are flowed down to others outside of that State that are problematic.

We need your input to help guide the specific objectives of this Workgroup. Specifically, in the ThoughtExchange linked below, we would like to know: “What is the most difficult issue you encounter repeatedly in dealing with state law issues in a subcontract?”

Please use the following link to access the ThoughtExchange: https://tejoin.com/scroll/366979310
Questions & Discussion
• Janette Hannam Hayes
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  • Jhannam@emory.edu

• Katherine (Katie) Cook
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• Elizabeth (Missy) Peloso
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