Welcome!

Today’s session will begin shortly. There will be no audio sound until the session begins.
• Zoom technical support at 1-888-799-9666, option 2

• Audio can be connected through your computer or through a call-in number

• Submit questions at any time in the Chat box at the bottom of your screen

• Zoom recording, slides, and session summaries posted shortly after the event at thefdp.org
FDP Contracts SubCommittee

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

FDP Meeting – September 2022
Heidi Eash, University of Pittsburgh
Elizabeth Eason, Georgia Tech University: State Requirements Workgroup Lead
Gina Hedberg, South Alabama University
Melissa Hodge-Penn, University of Mississippi
Cynthia Hope, Georgia Tech University
Katherine Kissman, Texas A&M University
Brian Lowinger, Duke University
Andrea Lupu, University of California, San Diego: Fundamental Research Model Language Memo Workgroup Lead
Roxana Malene, University of Chicago: TC 2.0 Workgroup co-Lead
Rebecca Musselman, Iowa State University: Federal Lab Review & Negotiation Techniques Workgroup co-Lead
Collin Rich, University of Alabama
Julie Robinson, University of Illinois, Urban-Champaign
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
Session Goals

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

Workgroups

- IT Security Clauses/CMMC Workgroup
- Contracts Subcommittee Webpage Redesign Workgroup
- Troublesome Clauses 2.0 Reporting Requirements Workgroup
- Fundamental Research Model Language Memo Workgroup
- State Requirement Flowdowns Workgroup
- Federal Lab review & negotiation techniques (FFRDC) Workgroup
Question:

Do you believe the OTA demonstration should be continued?

A. Yes
B. No
C. Unsure
Webpage Redesign Workgroup

Workgroup members: Katie Cook, Janette Hannam-Hayes

**Goals of Workgroup**
- Modernization of the User interface/ User experience
- Utilization of the new FDP template
- Removal of all outdated information and materials
- Engage the community at all levels regarding the utility of the website specifically identification of pre-existing tools that might be interesting, or development of new tools through the contract subcommittee for the membership community.

Thought Exchange Reminder!
Troublesome Clauses 2.0

Workgroup

Elizabeth Peloso
Associate Vice President/Associate Vice Provost Research Services at University of Pennsylvania

Roxana Malene
Senior Contract Officer at The University of Chicago

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**Purpose:** Replace existing database with searchable dynamic database that readily adapts to emerging issues

**Work to Date:**
- Use cases (non-members and members)
- Basic workflow and data collection (will include data definitions within system)
  - Funding Agency
  - Instrument Type
  - Specific Clause
  - Area of Concern
  - Reason of Concern
  - Negotiation Strategy
  - Outcome
  - Time for Entire Process
Troublesome Clauses 2.0

**Progress:** Cleaned previous documents and finalized open items

- **Planned reporting capabilities**
  - By prime sponsor (e.g. federal agency, PTE)
  - By Pass Through Entity (PTE)
  - OTAs
  - By My Institution
  - Type of file format for downloading
  - All reports to contain date of clause issuance and use in contractual instrument

- **Sorting options**
  - Funding mechanism (e.g. Grant / OTA / SBIR)
  - Number of incidents reported
  - Reason for reporting
  - Negotiation outcome
  - PTE / flow through sponsor type (e.g. industry, start up, academia)
  - Partial imposition and / or copy and paste
  - Number of incidents
  - Number of clauses
Next Steps

• Work with developer to refine action plan

All feedback, comments, questions or to volunteer, contact

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Fundamental Research Model Language Memo Workgroup

Andrea Lupu, University of California San Diego
FDP Meeting – September 2022

Other workgroup members:
Collin Rich, University of Alabama
Bill Schoelwer, University of Virginia
Institutions conducting fundamental research ideally will have their ability to freely conduct and publish research explicitly stated in their contracts/subcontracts/OTAs.

Goal is to communicate this aim clearly to the sponsor at the most appropriate time for that particular project.

Not all sponsors understand what this request is or why it’s important to us – templates can provide consistent formatting and language to make this process easier and faster.
Depending on the agency, type of project, and funding instrument, the institution might have different preferences on format and timing of the request.

Three memo template options:

1. Option 1: Request incorporated into proposal cover letter
2. Option 2: Request sent separately from proposal cover letter, but at proposal stage
3. Option 3: Request sent to pass-through entity upon notification of award likely containing restrictions
Next Steps

1) Continue to refine templates

2) Share with Contracts Subcommittee members for input

3) Pilot of templates, timing and scope TBD
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State Requirement
Flowdowns Workgroup

Elizabeth H. Eason, Georgia Institute of Technology
Office of Sponsored Programs
FDP Meeting – September 2022

Other workgroup members:
Dena-Rose Wilson, University of South Florida
Polling Question

• Polling Question:

Has your Institution had to walk away from a contract or subaward due to State laws you were not able to accept?

A. Yes
B. No
C. Unsure
Workgroup Plan

• Evaluate identified State laws that can be problematic
• Review and discuss negotiation strategies
• Coordinate with Troublesome Clauses 2.0 Reporting Requirements Workgroup
Contact Info

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FFRDC Review & Negotiation Techniques

Bill Schoelwer, University of Virginia
FDP Meeting – September 2022

Other workgroup members:
Roxana Malene, The University of Chicago
Becky Musselman & Marva Ruther, Iowa State University
Elizabeth Slack, University of Maryland
Background and Objectives

• Unique contract negotiation challenges with Federally Funded R&D Centers (FFRDCs)
  • Compressed contracting time frames
  • Pre-canned terms and conditions
  • Multiple layers between FFRDC sub-contracting representative and personnel authorized to accept edits
  • Previous acceptance of terms as precedence

• Goals:
  • Provide member institutions with better understanding of the process and framework
  • Highlight instances where terms and conditions are problematic
  • Document key wins where edits have been accepted to facilitate future negotiations
Data Gathering

• Focus has been on 16 DOE funded FFRDCs

• Review latest contracts at working group institutions to look for variety of problematic terms in pre-defined areas
  • Foreign National Participation Issues
  • FAR/DEARS applicability and flowdowns
  • Export Control/ CUI prior notice language
  • Publication/ Fundamental Research
  • State law related issues
  • Other issues member institutions found problematic
Examples

- Fermi and LANL accepted a revision to narrow a publication clause from language requiring subcontractor to address “any concerns or issues identified by the Contractor” to a limited review for proprietary information/patentable subject matter.
- Thomas Jefferson National Accelerator Facility accepted silence on federal court jurisdiction.
- Sandia accepted a prior notice requirement for export control issues beyond EAR99.
- Argonne accepted improved “self-deletion” language regarding FAR clause applicability.
Next Steps

• Continue gathering data

• Summarize results to contracts subcommittee and gather feedback

• Provide a high-level report on general contracting issues and a detail level analysis of key successes

• Collaborate with Subawards Subcommittee to look at topics of interest for outgoing funds to FFRDCs
Contact Us

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Questions & Discussion
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