

FDP CONTRACTS TASK FORCE MEETING
Thursday, January 11, 2001
MINUTES

There were more than 30 individuals in attendance at the Contracts Task Force Meeting. *(Those of you who provided your e-mail address on the attendance sheet have been added to the FDP listserv for this Task Force. If you prefer not to be included on the Contracts Task Force listserv, send a message to: Samuela.Evans@ucop.edu.)*

1. Flow Down Clauses - NIH and ONR

Mary Armstead announced that the listings of flow down clauses developed by NIH and ONR have been updated to incorporate changes resulting from FAC 97-20. Specifically, FAR Clause 52.219-8, Utilization of Small Business Concerns, has been revised and now includes veteran-owned small business concerns and service-disabled veteran-owned small business concerns. Both listings can be accessed from the FDP Web site under the following headings: *What's New* - <http://fdp3.org/new.html> *Resources* - <http://fdp3.org/weblinks.html> ; and *Committees, Contracts Task Force, Documents* - <http://fdp3.org/co.html> .

Subsequent to our meeting, the Department of Health and Human Services published a revision of its acquisition regulation (HHSAR). (*Federal Register* Jan. 17, 2001, 66 FR 4220.) On January 30, Mary forwarded to the Contracts Task Force a further update to the listing developed by NIH, which incorporates the changes resulting from the revision of the HHSAR.

2. Flow Down Clauses – NASA

A listing of flow down clauses developed by NASA had been distributed earlier to the Task Force members, via e-mail. Diane reviewed the revisions that had been made to the listing in response to comments received from some of the Task Force members. The Task Force asked Diane to revisit several clauses that are not applicable to educational institutions. These include: 52.227-13 Patent Rights – Acquisition by the Government; 52.230-2 – Cost Accounting Standards; 52.230-3 - Disclosure and Consistency of Cost Accounting Practices; and 1852.223-74 – Drug and Alcohol-Free Workforce. Paul Powell, Erica Kropp, and Samuela Evans agreed to send Diane further information to support why these clauses should be excluded from the clause listing.

Mary recommended that NASA incorporate a statement into its RFPs that would direct offerors to the NASA (or FDP) Web site and encourage them to use the listing whenever a subcontract is contemplated with an educational institution. Task Force members were invited to provide comments to Diane at the following e-mail address: dthompson@hq.nasa.gov .

3. Involvement of Other FDP Federal Agencies in Clause Flow Down Initiative

Kathy Wetherell, AFOSR, Susan Hill, ARO, and Tish Nelson, AMRMC, were amenable to the idea of adopting the flow down clause listing developed by ONR for their agencies. However, they pointed out that their offices do not have direct responsibility for the award of contracts; this function is carried out by regional or field contracting offices. Because they lack direct supervisory or managerial control over contracting functions, it may be difficult to ensure full implementation of the Initiative.

James Collom pointed out that many Federal and industry contracting officials are members of the National Contract Management Association (NCMA). In this regard, he suggested that, perhaps, the NCMA could provide a venue for broad distribution of information concerning the availability of the ONR clause flow down listing. James offered to follow-up with the NCMA.

4. Master Subcontracting Plan

ONR had previously provided a copy of an approved format for development of a master subcontracting plan. Since this plan included requirements that were unique to DOD, Mary developed a similar format for civilian agencies and presented it to the Task Force for review and comment. During our discussion, members of the Task Force advised that separate formats for civilian and non-civilian agencies would not be necessary, since a master plan negotiated between an agency and a contractor, would be binding on all Federal Agencies for any contracts meeting the threshold that are awarded during the period of the master plan. Subcontracting goals, however, would be negotiated by each agency for each contract exceeding the applicable threshold.

Mary will contact Sheryl Ball to discuss specific changes to the ONR format. These changes were communicated to the Contracts Task Force, via e-mail dated January 6.

(Subsequent to the meeting, NIH consulted with its Small Business Office and found that, in fact, a separate Master Plan will be required for civilian agencies. In those cases where a contractor has established a Master Plan with ONR, the NIH would be willing to accept that master plan for any NIH contracts subsequently awarded that meet the threshold in FAR 19.7. However, where a master plan has not be established with another agency, and the NIH acts as the cognizant agency in establishing such a plan with a contractor, it would prefer to utilize a format that does not include DOD specific requirements. Mary will pursue this issue further with the Task Force via e-mail.)

5. Model FDP Subcontract

Mark Doremus provided a report on a Draft Model Subcontract Between Educational Institutions under a Federally Funded Prime Contract, as well as a proposed Model Subcontract for consideration by the Task Force. Mark reiterated one of the conclusions set forth in the report--that the creation of a single standard model subcontract for the purpose of federally funded subcontracts between educational institutions may prove to be difficult. Agreement can be reached on what topics must at minimum be covered in the general terms and conditions; however, individual institutions will have different requirements. Uniform, comprehensive special terms and conditions are not possible, because they are derived from the terms and conditions of each prime contract. What can be generated is a method and a set of criteria, for generating special terms and conditions on a contract-by-contract basis. In addition, Mark has developed a list of clauses which are generally not acceptable to many educational institutions.

The report suggests that a list of the mandatory FAR flow down clauses be included in any proposed Model Subcontract document. Mark stated that one drawback to this suggestion is that such a list would have to be maintained through updates as changes are made to the FAR. One of the Task Force members suggested that, in lieu of incorporating the clauses in the contract, the URL for the listings of flow down clauses developed by NIH and ONR be set forth in the model document.

Mark pointed out that the model document would also identify objectionable terms/conditions/clauses, but added that he does not yet have a full sense of the specific problems that educational institutions encounter in subcontracting with one another.

Joanne Altieri, University of Kansas; Olga Carr, Columbia University; Debi Galloway, University of Cincinnati; Wayne Kuenstler, University of Texas at Austin; and Paul Powell, Massachusetts Institute of Technology, agreed to work with Mark to continue development of the model. Others that may be interested in providing feedback, or identifying specific issues or ideas for this project, should contact Mark Doremus at: mdoremus@rsp.wisc.edu.

6. DOE M&O Laboratories – Flow-Down Clauses

Samuela Evans advised that Trudy Wood has provided the Task Force access to the DOE M&O Purchasing Council. The Council includes Purchasing Officers from DOE M&O Laboratories. A subgroup of the Council is willing to work with representatives from the FDP Contracts Task Force. Such interaction will permit a variety of administrative issues to be addressed with the Council, including the inclusion of inappropriate clauses in DOE M&O contracts. In addition, some thought has been given to the development of a model contract.

While some members have also pointed out that providing contracts for funding of DOE M&O laboratories is also a problem, this will need to be pursued on a separate track as it involves different laboratory managers.

Paul Powell, Jean Vorhaben, and Jack Kamerer have agreed to work with Samuela on this project. The Task Force was asked to contact Samuela to provide information on specific issues related to this project. Samuela can be reached at the following e-mail address: Samuela.Evans@ucop.edu

7. Other Issues

Mary announced the good news (which is bad news for us) that she has accepted a new position at NIH and will no longer be participating in the FDP. The name of the new NIH Contracts Representative will be provided when that information becomes available. The members all expressed thanks and appreciation to Mary for the work she has done and, in particular, for moving several projects forward to completion.

Mary introduced Lambert McCullough from ONR. Lambert is replacing Ann Stuart, who recently retired.

After the Task Force meeting, we learned that Susan Hill and Tish Nelson would no longer be attending FDP meetings.

8. Future Projects and Next Meeting

There was not sufficient time to discuss of future projects. This topic will be taken up at the next meeting.

The next FDP meeting will be held May 14 in Washington DC.