

FDP CONTRACTS TASK FORCE MEETING

January 13, 2005 MINUTES

Online Representations and Certifications Application:

Rosemary Hamill reminded the group that the new On-line Representations and Certifications Application (ORCA) system is now operational. Institutions need to register in ORCA prior to submitting a proposal for federal contracts effective January 1. The *Federal Register* published the final rule about ORCA on December 20, 2004. <http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/pdf/04-27633.pdf>

DHHS Direct Final Rule:

Rosemary also reported that the Department of Health and Human Services (DHHS) Direct Final Rule, published in the January 3, 2005 *Federal Register* <http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/04-27697.pdf> revises the Confidentiality of Information clause at 352.224-70, implementing the changes required by the court decision *Board of Trustees of Leland Stanford Junior Univ. v. Sullivan*. Comments on this direct final rule were due February 2. The rule is effective March 4, 2005.

NIH Property Clause:

One member asked Rosemary if there are any plans to update the 1992 DHHS Property Manual. In particular, he cited the “high risk property” dollar threshold as in need of revision.

Indirect Costs on Subawards under DHHS Prime Awards:

Samuela Evans discussed an on-going issue with DHHS prime awardees not paying the approved federal indirect cost rates of their subrecipients. Both NIH and the CDC Policy Offices have issued statements that prime awardees must recognize the federal facilities and administration (F&A) rates of their subrecipients. The problem occurs more frequently with non-profit and for-profit prime awardees than with educational institutions.

Subawards under NSF Cooperative Agreements:

Samuela also asked the group whether anyone had had problems with the terms and conditions they were receiving in subawards under NSF cooperative agreements. She noted that because some prime recipients may accept terms that subrecipients cannot that the flowdowns in these subawards can be problematic. No one in the group indicated that this issue has come up at their institution.

DOE M&O Laboratory Subcontract:

The attendees were asked for feedback on which Dept. of Energy (DOE) Management and Operating Laboratories are using the new DOE subcontract. Members reported that Sandia and NREL will not use this subcontract model and that some laboratories such as Argonne, will not make changes required by state laws for state institutions such as binding arbitration. There were also some issues with the version used by the Lawrence Livermore and Los Alamos National Laboratories. Two other clauses, FAR 52.242-15, Stop-Work Order (AUG 1989) with Alternate I (APR 1984), and DEAR 970.5232-3, Accounts, Records, and Inspection (DEC 2000), were also brought up as problematic.

As a model boilerplate, the subcontract does not address some of the various requirements of individual subcontractors. The project could be re-opened with DOE to see if it is possible to develop a model subcontract which contains alternative clauses that meet the needs of state institutions and address the other issues discussed.

The documents relating to this subcontract are available at:

[http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/WebAttachments/FLASH2005-05/\\$File/FLASH2005-05.pdf](http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/WebAttachments/FLASH2005-05/$File/FLASH2005-05.pdf)

[http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/WebAttachments/MOmodelsubcontract/\\$File/MOmodelsubcontract.doc](http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/WebAttachments/MOmodelsubcontract/$File/MOmodelsubcontract.doc)

New Issues with DOD and Security Agencies:

Paul Powell did a presentation and update on issues of restrictive clauses regarding publications, use of data and foreign nationals that are appearing in Department of Defense contracts from various divisions. Paul's PowerPoint presentation will be made available on the FDP Contracts website. <http://www.thefdp.org/Contracts.html>

Our next meeting is scheduled for Monday, May 23, 2005 in Washington D. C.