FDP CONTRACTS TASK FORCE MEETING
May 20, 2004 Minutes

The meeting was co-chaired by Samuela Evans, University of California, and Paul Powell, MIT. Attendance was not taken.

Dept. of Energy (DOE) M&O Laboratory Standard Subcontract for Educational Institutions and Non-profit Organizations: Trudy Wood

Trudy reminder members of the availability of this DOE standard subcontract which DOE M&O laboratories should now be using to contract with educational institutions and non-profit organizations. Members can contact her with any issues that arise from the use of this standard subcontract.

DOE M&O Laboratories - Work for Others: Trudy Wood
Trudy reported that DOE is interested in developing a standard boilerplate contract for educational institutions to use when subcontracting to DOE M&O labs. As part of the federal "Research Business Model" project, DOE wants to provide the Government-University-Industry Research Roundtable (GUIRR) Committee on Science with a model funds-in agreement in June. The two current "funds-in" contracts which laboratories use are CRADAs or Work-for-Others Agreements. Trudy asked the members to submit comments on these current procedures and issues that they are found in trying to contract to M&O labs.

David Mayo noted that the terms of the CRADA or Work-for-Others agreement are not the only problems which educational institutions find when trying to contract with an M&O lab. He said that the process before the CRADA is written is also a problem. The university is required to asked the lab if it can give the lab money. They must state why they need to contract with a lab and why they can't contract with a commercial entity for the proposed project. Then the lab has internal procedures to approve the acceptance of the work from university before the CRADA or Work-for-Others agreement can be established.

Joint COGR/AAU Report on Restrictions on Research Awards: Troublesome Clauses
Paul Powell
Members were advised that this final report was included in the meeting binder.

DOD Updates: Paul Powell

Paul provided background materials and a slide presentation on several Department of Defense agency clauses that contain publication or foreign national restrictions. He presented some alternative language for clauses where MIT has been able to negotiate changes. One specific example was DFARS 252.204-7000, Disclosure of Information. With regard to the DARPA, Foreign Access to Technology clause, DARPA has stated that this clause is not intended to create a publication restriction.

NIH Issues: Samuela Evans

There is no update from NIH on their plans to implement the NIH Information Technology clause which requires a research protocol to be rated according to a described set of security requirements which call for National Agency Checks and other background checks on researchers and IT personnel. One member noted that the federal agencies are so back-logged in their personnel security clearances that NIH could have difficulties implementing these requirements in a timely manner.

There is also no news from NIH regarding university proposed modifications to the Intellectual Property Option to Collaborator which, among other things, requires all data to be provided exclusively to NIH and the Collaborator.

While Rosemary Hamill, the NIH FDP Agency Representative, was unable to attend this meeting, she indicated that the Human Subjects clause regarding use of material developed under the contract is negotiable. In addition, she said that she would have NIH review the wording of the Animal Welfare clause.

With regard to HHSAR 352.224-70, Confidentiality of Information, Rosemary had indicated that this clause is negotiable and that NIH is working on modifying it.

The members were also advised to review new NIH RFPs for Special Condition Attachments that can include data rights restrictions, the Confidentiality of Information clause noted above, and a Determination of Exceptional Circumstances (DEC) for patents. Rosemary advised that offerors are invited to provide comments on a proposed DEC prior to, or along with the proposal.