



University of California
Office of the President

Senior Vice President—
Business and Finance

Research Administration Office

Memo

Operating Guidance

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CONTRACT AND GRANT OFFICERS

Subject: Federal Flowdown Clauses for Educational Institution Subcontractors

The Federal Demonstration Partnership (FDP) Contracts Task Force has completed a project which provides lists of the applicable federal contract clauses which for-profit prime contractors should flowdown in their subcontracts with educational institutions. The purpose of this project is to provide guidance to for-profit prime contractors concerning the appropriate federal contract clauses which they should use in their subcontracts with educational institutions. As many federal contract clauses have different versions for for-profit or non-profit contractors, for-profit contractors flowdown their clauses which are not applicable or acceptable to non-profit subcontractors. Without guidance from federal agencies, they have not known that they should select other clauses, not in their federal contracts, which are applicable to their non-profit subcontractors.

Three federal agencies, the Department of Defense, the National Aeronautics and Space Administration (NASA), and the National Institutes of Health (NIH), provide and maintain these lists on their agency websites. The FDP Contracts Task Force website provides links to these lists at:
<http://www.thefdp.org/Contracts/index.html>

DOD Clauses:

The DOD list, *Prime Flow-Down Clauses to University Subcontractors*, is on the Office of Naval Research website at: <http://www.onr.navy.mil/02/flowdown/> The first section, *General Contract Clauses for Cost-Plus-Fixed-Fee R&D Contracts between DoD Agencies (Army, Air Force, Navy, and Army Medical) and Commercial Concerns*, provides a list of clauses which DOD agencies may include in their contracts with commercial entities. The clauses that generally flow down to educational institutions when they are the subcontractors to a commercial prime contractor are marked with an asterisk. Attachment 1, *General Contract Clauses for Flow-Down for Subcontracts between Commercial Concerns (prime) and Educational Institutions under Office of Naval Research Cost-Plus-Fixed-Fee R&D Contracts*, lists primarily the applicable clauses for educational institutions, along with others that don't apply, providing guidance on the use of these clauses.

NASA Clauses:

NASA provides a list entitled, *Clauses for Cost-Plus-Fixed-Fee Contracts for Research and Development*, at <http://ec.msfc.nasa.gov/hq/library/Cost.PDF>. The clauses listed are "suggested for Cost-Plus-Fixed-Fee Research and Development contracts with commercial prime contractors to be flowed down to an educational subcontractor." NASA provides guidance with each clause on its use.

NIH Clauses:

The NIH *Flow Down Contract Clauses for Subcontracts with Educational Institutions Under National Institutes of Health Cost-Type Research and Development Contracts* is available at: <http://ocm.od.nih.gov/contracts/rfps/FDP/FDPclausecover.htm>. NIH provides a list of clauses with instructions on their applicability.

Campuses can refer commercial prime contractors to these lists for guidance from their federal sponsors on appropriate clauses for educational institution subcontractors when there are issues about the correct flowdown clauses in their subcontracts. These flowdown lists include clauses which are not in the University's *Special Terms and Conditions For Federal Government Contracts*, Business and Finance Bulletin 43, Exhibit C, Supplement 5, <http://www.ucop.edu/ucophome/policies/bfb/bus43w.html>, because they have a different scope, originating from a commercial prime sponsor. The clauses in BUS-43, Exhibit C, Supplement 5 are based on the University being the prime contractor.

Our office would appreciate feedback from your use of these flowdown clause lists.

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