

235.015 Contracts for research with educational institutions and non-profit organizations.

(b) *Basic agreements.*

(3) When using a basic agreement—

(i) Incorporate it by reference in section I of the contract; and

(ii) Incorporate any special clause requirements in section H.

[59 FR 27673, May 27, 1994]

235.015-70 Special use allowances for research facilities acquired by educational institutions.

(a) *Definitions.* As used in this subsection—

(1) *Research facility* means—

(i) Real property, other than land; and

(ii) Includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with departments and agencies of the DoD.

(2) *Special use allowance* means a negotiated direct or indirect allowance—

(i) For construction or acquisition of buildings, structures, and real property, other than land; and

(ii) Where the allowance is computed at an annual rate exceeding the rate which normally would be allowed under FAR subpart 31.3.

(b) *Policy.* (1) Educational institutions are to furnish the facilities necessary to perform Defense contracts. FAR 31.3 governs how much the Government will reimburse the institution for the research programs. However, in extraordinary situations, the Government may give special use allowances to an educational institution when the institution is unable to provide the capital for new laboratories or expanded facilities needed for Defense contracts.

(2) Decisions to provide a special use allowance must be made on a case-by-case basis, using the criteria in paragraph (c) of this subsection.

(c) *Authorization for special use allowance.* The head of a contracting activity may approve special use allowances only when all of the following conditions are met—

(1) The research facility is essential to the performance of DoD contracts;

(2) Existing facilities, either Government or nongovernment, cannot meet

program requirements practically or effectively;

(3) The proposed agreement for special use allowances is a sound business arrangement;

(4) The Government's furnishing of Government-owned facilities is undesirable or impractical; and

(5) The proposed use of the research facility is to conduct essential Government research which requires the new or expanded facilities.

(d) *Application of the special use allowance.* (1) In negotiating a special use allowance—

(i) Compare the needs of DoD and of the institution for the research facility to determine the amount of the special use allowance;

(ii) Consider rental costs for similar space in the area where the research facility is or will be located to establish the annual special use allowance;

(iii) Do not include or allow—

(A) The costs of land; or

(B) Interest charges on capital;

(iv) Do not include maintenance, utilities, or other operational costs;

(v) The period of allowance generally will be—

(A) At least ten years; or

(B) A shorter period if the total amount to be allowed is less than the construction or acquisition cost for the research facility;

(vi) Generally, provide for allocation of the special use allowance equitably among the Government contracts using the research facility;

(vii) Special use allowances apply only in the years in which the Government has contracts in effect with the institution. However, if in any given year there is a reduced level of Government research effort which results in the special use allowance being excessive compared to the Government research funding, a separate special use allowance may be negotiated for that year;

(viii) Special use allowances may be adjusted for the period before construction is complete if the facility is partially occupied and used for Government research during that period.

(2) A special use allowance may be based on either total or partial cost of construction or acquisition of the research facility.

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(i) When based on total cost neither the normal use allowance nor depreciation will apply—

(A) During the special use allowance period; and

(B) After the educational institution has recovered the total construction or acquisition cost from the Government or other users.

(ii) When based on partial cost, normal use allowance and depreciation—

(A) Apply to the balance of costs during the special use allowance period to the extent negotiated in the special use allowance agreement; and

(B) Do not apply after the special use allowance period, except for normal use allowance applied to the balance.

(3) During the special use allowance period, the research facility—

(i) Shall be available for Government research use on a priority basis over nongovernment use; and

(ii) Cannot be put to any significant use other than that which justified the special use allowance, unless the head of the contracting activity, who approved the special use allowance, consents.

(4) The Government will pay only an allocable share of the special use allowance when the institution makes any substantial use of the research facility for parties other than the Government during the period when the special use allowance is in effect.

(5) In no event shall the institution be paid more than the acquisition costs.

[56 FR 36416, July 31, 1991, as amended at 60 FR 29500, June 5, 1995]

235.016 Broad agency announcement.

To help achieve the goals of Section 1207 of Public Law 99-661 (see part 226), contracting officers shall—

(1) Whenever practicable, reserve discrete or severable areas of research interest contained in broad agency announcements for exclusive competition among historically black colleges and universities and minority institutions;

(2) Indicate such reservation—

(i) In the broad agency announcement; and

(ii) In the announcement synopsis (see 205.207(d)(v)).

235.017 Federally Funded Research and Development Centers.

(a) *Policy.*

(2) No DoD fiscal year 1992 or later funds may be obligated or expended to finance activities of a DoD Federally Funded Research and Development Center (FFRDC) if a member of its board of directors or trustees simultaneously serves on the board of directors or trustees of a profit-making company under contract to DoD, unless the FFRDC has a DoD-approved conflict of interest policy for its members (section 8107 of Pub. L. 102-172 and similar sections in subsequent Defense appropriations acts).

[58 FR 28471, May 13, 1993]

235.017-1 Sponsoring agreements.

(c)(4) DoD-sponsoring FFRDCs that function primarily as research laboratories (C3I Laboratory operated by the Institute for Defense Analysis, Lincoln Laboratory operated by Massachusetts Institute of Technology, and Software Engineering Institute) may respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology (Section 217, Public Law 103-337).

[60 FR 61598, Nov. 30, 1995]

235.070 Indemnification against unusually hazardous risks.

235.070-1 Indemnification under research and development contracts.

(a) Under 10 U.S.C. 2354, and if authorized by the Secretary concerned, contracts for research and/or development may provide for indemnification of the contractor or subcontractors for—

(1) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and

(2) Loss of or damage to the contractor's property to the extent that the liability, loss, or damage—

(i) Results from a risk that the contract defines as "unusually hazardous;"

(ii) Arises from the direct performance of the contract; and

(iii) Is not compensated by insurance or other means.