

(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.

(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)).

[56 FR 36416, July 31, 1991, as amended at 69 FR 63328, Nov. 1, 2004]

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

235.017-1

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 operated by Carnegie Mellon) 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, as amended at 69 FR 65092, Nov. 10, 2004]

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.

(b) Clearly define the specific unusually hazardous risks to be indemnified. Submit this definition for approval with the request for authorization to

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grant indemnification. Include the approved definition in the contract.

[56 FR 36416, July 31, 1991, as amended at 64 FR 51076, Sept. 21, 1999]

235.070-2 Indemnification under contracts involving both research and development and other work.

These contracts may provide for indemnification under the authority of both 10 U.S.C. 2354 and Public Law 85-804. Public Law 85-804 will apply only to work to which 10 U.S.C. 2354 does not apply. Actions under Public Law 85-804 must also comply with FAR 50.104-3.

[56 FR 36416, July 31, 1991, as amended at 78 FR 21850, Apr. 12, 2013]

235.070-3 Contract clauses.

When the contractor is to be indemnified in accordance with 235.070-1, use either—

(a) The clause at 252.235-7000, Indemnification Under 10 U.S.C. 2354—Fixed Price; or

(b) The clause at 252.235-7001, Indemnification Under 10 U.S.C. 2354—Cost-Reimbursement, as appropriate.

235.071 Export-controlled items.

For requirements regarding access to export-controlled items, see 225.7901.

[73 FR 42278, July 21, 2008, as amended at 78 FR 36111, June 17, 2013]

235.072 Additional contract clauses.

(a) Use the clause at 252.235-7002, Animal Welfare, or one substantially the same, in solicitations and contracts awarded in the United States or its outlying areas involving research on live vertebrate animals.

(b) Use the basic or the alternate of the clause at 252.235-7003, Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

(1) Use the basic clause if agency procedures do not authorize the use of DD Form 1494, Application for Equipment Frequency Allocation, to obtain radio frequency authorization.

(2) Use the alternate I clause if agency procedures authorize the use of DD Form 1494, Application for Equipment