

VI. Sources of Governing Regulations Applicable to Sponsored Projects

Sponsored project funds awarded to and administered by the university are to conform to both sponsor and university policies and guidelines. Projects in which the university is a subrecipient are subject to applicable policies of the sponsor providing the funding, as well as additional terms and conditions specified by the prime instrument.

A. Federal

When the sponsor provides federal funding for a project, either directly or indirectly as pass-through funds, there are specific compliance requirements.

Statutory Requirements are created when laws are enacted, and these requirements **take precedent over all other policies and regulations related to sponsored projects**. A summary of statutory requirements is maintained by the Federal Demonstration Partnership (FDP) in the National Science Foundation (NSF) document entitled, "FDP Operating Procedures," Appendix B.

The Code of Federal Regulations Title 2: Grants and Agreements Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards provides the guidelines for the management of federally funded awards and includes the following subparts:

a. Subpart D – Post Federal Award Requirements

This section of the UG (Section 200.300) provides guidance in areas such as property standards, procurement standards, performance and financial monitoring and reporting, subrecipient monitoring and management, record retention and access and closeout requirements. (Note that federal contracts are subject to FARs rather than the Uniform Guidance.)

b. Subpart E – Cost Principles

This section of the UG (Section 200.400) provides the principles for determining costs applicable to federal sponsored agreements. The application of the cost principles outlined under this section should require no significant changes in the internal accounting policies and practices of the non-federal entity. However, the accounting practices of the non-Federal entity must be consistent with the outlined cost principles and support the accumulation of costs as required by the principles and must provide for adequate documentation to support costs charged to the federal award.

c. Subpart F- Audit Requirements

This section of the UG (Section 200.500) provides uniform requirements for audits of federal awards. The institute is audited annually to ensure compliance with laws and regulations and maintenance of adequate internal controls. Audit reports for recipients subject to these requirements are available for public review through the Federal Audit Clearinghouse.

d. Cost Accounting Standards (CAS)

Universities receiving aggregate federal awards totaling \$50 million or more are subject to the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502 9905.505 and 9905.506. Collectively these standards set forth the broad policies governing sponsored project financial administration. The purpose of the cost accounting standards is to establish a set of standards designed to achieve uniformity and consistency in cost accounting practices used by various defense contract providers.

The four CAS that universities are subject to are as follows:

CAS 9905.501 Consistency in Estimating, Accumulating, and Reporting Costs by Educational Institutions

Fundamental requirement: An educational institution's practices used in estimating costs to develop a proposal budget shall be consistent with the educational institution's cost accounting practices in accumulating and reporting costs.

Guidelines detailed in the following documents will assist in complying with this standard:

Budgeting, Pricing and Charging Sponsored Agreements document
F&A Rate Preparation Process

CAS 9905.502 Consistency in Allocating Costs Incurred for the Same Purpose by Educational Institutions

Fundamental requirement: All costs incurred for the same purpose, in like circumstances, are either direct costs only, or F&A costs only, with respect to final cost objectives.

Refer to the two guidelines referenced under CAS 9905.501.

CAS 9905.505 Accounting for Unallowable Costs - Educational Institutions

Fundamental requirement: Costs expressly unallowable or mutually agreed to be unallowable shall be identified and excluded from any billing, claim, application, or proposal applicable to a Sponsored Agreement.

Guidelines detailed in the following document will assist in complying with this standard:

Reviewing for Federally defined Allowable and Unallowable Costs

CAS 9905.506 Consistency in Using the Same Accounting Period for Purposes of Estimating,

Fundamental requirement: Educational institutions shall use their fiscal year as their cost accounting period.

New Mexico Tech uses the period from July 1 - June 30 to capture financial data.

1. Disclosure Statement

Due to CAS application to NMIMT, a Cost Accounting Standards Board Disclosure

Statement (DS-2) was initially filed and approved by the Office for Naval Research on January 9, 2007.

This document describes NMIMT's accounting practices for the assignment of direct and indirect costs to federally sponsored projects.

The disclosure statement must be amended if there are changes in cost allocation policies. NMIMT is subject to periodic audits to determine if it is consistently applying its policies.

For this reason, individuals responsible for the assignment of costs must be fully aware of the applicable policies and must diligently conform to them.

Noncompliance with NMIMT's established policies may lead to cost disallowances, refunds with interest and penalties, and increased audit surveillance by federal audit agencies and the Inspector General's Office.

Policy manuals, handbooks, the general grant conditions document, and other federal agency grant-policy documents are found on the sponsors' websites.

Federal Acquisition Regulations (FAR) are the primary regulations used by federal sponsors to govern contracts for supplies and services, including research services. Federal Acquisition Regulations invoke the usage of the Uniform Guidance for the purpose of defining allowable costs incurred by Universities. However, the Federal Acquisition Regulations are not applicable to grants and cooperative agreements, which are governed by the Uniform Guidance and agency grant regulations.

B. State/Private

Projects sponsored by the State of New Mexico and other non-federal sponsors must comply with applicable sponsor policies and the terms of individual sponsored agreements.

C. All Sponsors

Deviations from either university or sponsor policy must be explicitly negotiated and approved by authorized officials of the university and the sponsor.

VII. Responsibility for Compliance

According to the Uniform Guidance, the recipient institution is responsible for ensuring that costs charged to a sponsored agreement are allowable, allocable, and reasonable. This section establishes the university's responsibility for compliance with these and other cost regulations.

The Principal Investigator (PI) and department are responsible for compliance with the applicable sponsor requirements for sponsored projects and for prudently managing all expenditures and actions affecting an award. Documentation for each expenditure or action affecting an award must reflect appropriate organizational reviews or approvals, which should be made in advance of the action. Organizational reviews are intended to help ensure that expenditures are allowable, necessary and reasonable for the conduct of the project, and that the proposed action:

- Is consistent with award terms and conditions,
- Is consistent with sponsor and university policies,
- Represents effective utilization of resources, and
- Does not constitute a significant project change.

PIs and their departments are responsible for ensuring that costs assigned to federal projects are compliant with sponsor requirements. Restricted cost categories and other inappropriate charges can be readily detected in audits, and resulting disallowances must be reimbursed to the federal government. In most cases, this will be the financial responsibility of the department. Final technical reports, where required, are the responsibility of the PI. Payments withheld because of delinquent technical reports become the responsibility of the PI.

VIII. Procedure for Proposal Development and Submission

All proposals for sponsored projects, regardless of whether funds will be awarded to NMIMT, must follow these proposal approval guidelines.

A. Personnel Authorized to Submit Proposals

Subject to the approvals described below, faculty members or administrators (in the case of research centers such as EMRTC, the Bureau of Geology, or PRRC) may submit proposals as Principal Investigators or Project Directors (PDs). Other individuals at Tech with an appointment of some sort, such as a visiting faculty, adjunct faculty, or post docs may be allowed to serve as PI or Co-PI on research projects provided there is a full time NMIMT faculty member serving as PI or Co-PI on the project and Vice Presidential approval has been obtained.

B. Approvals Required for All Proposals

Before submission of a proposal to sponsors for consideration, all proposals must have approval from the following departments:

a. Campus Department

This approval confirms that the project can be integrated with the department's regular educational, research, or service functions. The department approves the proposed budget, confirms its commitment to make all personnel and facilities described in the proposal available for the project should it be awarded, and administers the award in conformance with the applicable terms and conditions.

b. Sponsored Projects Office

This approval confirms that the proposal budget has been prepared in conformance with university and sponsor policy, that any proposed cost share and/or subawards are reflected properly, and that the F&A (indirect cost) rate has been properly applied.

c. Research & Economic Development (R&ED)/ Academic Affairs

This approval confirms that consideration has been given to those compliance items listed on the Proposal Transmittal Form, including, but not limited to, policies for conflicts of interest and the use of human subjects and animals, and that the campus' interest would be served by the proposed activity. Further, it confirms that all commitments of resources by campus units other than the proposing unit have been formally documented.

Final approval is provided by the Vice President of Administration and Finance and the university President. Proposals with certain special characteristics also require additional approvals, as described below.

A fully approved proposal constitutes the formal offer of the university to carry out the project. The institutional approvals are obtained by having the appropriate official either provide a letter confirming approval or by the signature on the Proposal Routing Form.

C. Additional Approvals Required for Proposals with Particular Characteristics

Before submission to the Sponsored Projects Office, the following types of proposals require approvals in addition to those listed above. These approvals are as follows:

- Proposals involving resources from other units or departments must be approved either through a letter of support or a signature on the Proposal Transmittal Form by the unit(s) providing these resources. Such resources may be in the form of funding, personnel, space, facilities, or other resources under control of that unit.
- Proposals that include a commitment of university funds must be approved by the Vice President of Administration and Finance or the Vice President of Research and Economic Development.
- Proposals that seek funds for summer salary or a new research or public service program that would require the approval of the New Mexico Higher Education Department must be approved by the Vice President of Academic Affairs.
- Proposals that require the acquisition, renovation, or allocation of space beyond that which the department or university can provide must be approved by the Vice President of Administration and Finance or the Vice President of Academic Affairs.
- Proposals that require construction of a new building must be approved by both the university President and the Vice President of Administration and Finance.
- In those instances where the sponsor requires an authorized representative's signature, the transmittal will be signed by the university President's or the Vice President of Administration and Finance.
- If responding to an RFP that does not allow F&A costs to be charged to the project, a copy of the requirement should be attached to the proposal package and a waiver approved by the Vice President of Administration & Finance.

The Sponsored Projects Office will consult with various administrative offices (e.g., the Affirmative Action Office, Hazardous Waste Office, etc.) and/or the university legal counsel for advice on proposed terms and conditions that may be of questionable legality or inconsistent with university policies, practices, or interests.

D. Sponsor Limitations on the Number of Submissions from an Institution

Those intending to submit proposals under programs where sponsors limit the number of proposals a campus may submit must inform Research and Economic Development (R&ED) at least 30 days prior to the submission deadline. The R&ED Office seeks guidance from various campus officials about the process for deciding which proposal(s) will be submitted.

E. Requests for Proposals (RFPs) and Program Announcements

Requests for proposals are solicited proposal packages that normally include representations and certifications to be completed and executed by the university, and may include proposed contract terms and conditions. Most of these types of proposals have firm deadlines applicable to their receipt by the sponsor. If warranted, a copy of the entire proposal solicitation instruction package should be forwarded to the Sponsored Projects Office when it is received by the PI or department, along with an indication of who intends to submit a proposal under the RFP, so that appropriate internal reviews and approvals may be accomplished before specified submission deadlines.

If warranted, program announcements should also accompany proposals when they are forwarded to the Sponsored Projects Office, except for those programs that are governed by standard and well-known sponsor requirements.

XII. Invoice Process

The Sponsored Projects Office is responsible for preparing and submitting the invoices and financial reports for sponsored projects. Departmental assistance may be required in cases where the sponsor requires documentation that is extensive or unavailable to the Sponsored Projects Office. The basic sources of information used to prepare these reports are the official university accounting records and the cost sharing commitments (refer to the university's [Cost Share Policy for more information](#)).

Invoices are usually required on a monthly basis for cost reimbursement projects, unless the terms of the award provide otherwise. Other projects may require billings based on a fixed schedule or technical progress. It is important that PIs or departments provide the Sponsored Projects Office with any milestone or other progress information necessary to trigger an invoice or financial report. This practice is necessary to avoid any possible lapse of funds.

The Sponsored Projects office is responsible for submitting financial status reports such as the SF425. The sponsor may require such status reports at the end of a specified reporting period, quarterly, annually and/or at project termination. Reports are normally due no later than 90 days after the end of the reporting period. Refer to the award for specific requirements.

The Sponsored Projects Office is responsible for obtaining and processing payments from all sponsors and for following up on delinquent payments. If warranted, the PI and/or department may be requested to assist in collections.

There can be many reasons for failure to pay, including the following:

- Lack of cash flow
- Questionable or disallowed costs
- Difficulty in preparing an acceptable billing
- Dissatisfaction with the work being performed

The PI, the department, and the Sponsored Projects Office must work together to resolve problems. PIs or departments are responsible for all expenditures that are not reimbursed by the sponsor.

If an issue arises about the sponsor's ability to satisfy obligations under the award, PIs may be directed to withhold technical reports and other deliverables. This withholding can be performed only with the approval or at the direction of the Sponsored Projects Office and Vice President of Administration and Finance.

A. Cost Reimbursement

With a cost reimbursement award, Tech is reimbursed for actual, allowable expenditures that do not exceed the award amount. Invoices are prepared in accordance with the terms of the agreement by the Senior Accounting Technician within the Sponsored Projects Office using NMIMT's standard invoice format.

Normally, a complete invoice package consists of an invoice and expenditure detail report which is obtained from the General Ledger as soon as the month-end process has been completed by General Accounting. The Contract Administrator then reviews and approves the amount being requested, and compares outlays with budgeted amounts for each award. The invoice is mailed or electronically submitted by the Senior Accounting Technician in accordance with the terms of the award.

Cost reimbursement awards may be invoiced monthly, quarterly, or, rarely, on completion. It is also possible for the entire award amount to be paid in advance with any unused funds returned to the sponsor at the conclusion of the project. In accordance with Uniform Guidance Section 200.305(8), recipients of advance funding shall maintain advances of federal funds in an interest-bearing account unless certain exemptions apply.

B. Fixed Price

Under a firm, fixed-price arrangement, predetermined payments may be provided upon completion of tasks. The university may also seek interim or advance payments. Final payment is normally based on submission of the final work product and final billing.

Invoicing/payment requirements should be arranged with the sponsoring agency and be detailed in the award using the following guidelines:

An FFP invoice may be sent to the sponsoring agency at the start of an award so that the entire award amount may be paid in advance. See 2 CFR 200.305 for additional guidance when the funding is from Federal sources.

An FFP invoice may be issued monthly for a predetermined amount over the life of an award. This type of invoicing should not be confused with “monthly” invoicing on a cost reimbursement award. The payment schedule for this type of FFP invoicing should be detailed in the award, i.e. “10 equal monthly payments of \$5,000 each”, or “23 equal monthly payments of \$2,793 and 1 final payment of \$1,761 for a total contract amount of \$66,000”.

An FFP invoice may be issued at the completion of each task or milestone on an award. In this case, it is the sole responsibility of the PI and department to notify the Sponsored Projects office that a task has been completed and that an invoice for a specific amount is required.

An FFP invoice may be issued for the full amount of the award upon completion of the award. For FFP awards designated “Bill on Completion”, the Sponsored Projects office

will send the invoice promptly after the termination date unless notified by the department that the invoice should be held because (1) the work has not been completed or (2) the award is being extended.

If there is a conflict between proposed invoicing arrangements and the invoicing terms stated in the resulting agreement, those terms stated in the agreement will be honored. If no invoicing terms are stated in the agreement, please ask the agency to confirm via e-mail. To avoid delay in processing invoices, be sure that the award provides a "BILL TO" name, address, e-mail or other contact information for the agency that will allow the invoice to reach the appropriate recipient.

C. Advance Funding

Advance funding may be approved by the funding agency if it is determined that the recipient of the award lacks sufficient working capital. In the unlikely event an advance payment methodology is used, the university may submit a request prior to disbursing funds for project expenditures. However, the university must make the disbursements as soon as administratively feasible, but no later than three business days following the date the university receives those funds.

The university must substantiate each drawdown request and maintain the documentation in the project file.

XIII. Subrecipient Processing

A subrecipient is a third-party organization performing a portion of the scope of work proposed to a funding agency by NMIMT. However, NMIMT is still responsible for the management of project funds and meeting performance goals as specified in sponsored agreement. A subaward is the instrument used to outline the subrecipient's scope of work, reporting, and financial compliance requirements.

Sponsored Projects Office administrators work with the PI and/or department to process subawards to external organizations that are to perform a distinct scope of work for a project. The following is an overview. Please see Subrecipient Policy for Sponsored Agreements for detailed instructions concerning the issuance and administration of subawards.

A. Preliminary Assessment

The first step in subrecipient processing is a preliminary assessment that:

Determines whether or not the subrecipient(s) must be selected competitively, and if sponsor approval must be obtained, based on the following:

- **Subrecipient identified.** In those cases where (1) the university and the subrecipient have proposed jointly to the sponsor; (2) the proposed subrecipient has been included in NMIMT' proposal; and/or (3) the subrecipient has been approved by the sponsor as a condition of award, the subaward documentation process can be initiated without further sponsor approval or competitive selection.
- **Subrecipient not identified.** NMIMT must first ensure that subaward activity constitutes scope of work, rather than procurement of goods or routine services. The university must then competitively select a subrecipient subject to the terms and conditions of the prime award **and** the relevant university procurement regulations.
- Establishes that the prime award has sufficient funding available for the subaward
- Establishes that all necessary approvals have been obtained.

B. Preparation of Subaward

Responsibilities of the pass-through entity/NMIMT (2 CFR 200.331) include:

1. Identifying federal awards made by informing each subrecipient of the Catalog of Federal Domestic Assistance (CFDA) title and number, the award name and number, the award year, whether the award is Research and Development (R&D), and the name of federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the federal award. 2 CFR 200.331(a)(1)

2. Advising subrecipients of requirements imposed on them by federal laws, regulations, provisions of contracts or grant agreements, as well as any supplemental requirements imposed by the pass-through entity. 2 CFR 200.331(a)(2-3)
3. Ensuring that an approved federally recognized indirect cost rate has been negotiated between the subrecipient and the Federal government or, if no such rate exists that either a rate negotiated between the pass-through entity and the subrecipient or a de minimis indirect cost rate is used. 2 CFR 200.331(a)(4)
4. Monitoring the activities of the subrecipients as necessary to ensure that federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved. 2 CFR 200.331(b)(4)(d)
5. Ensuring that subrecipients expending \$750,000 or more in federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year. 2 CFR 200.331(f)
6. Issuing a management decision on audit findings within six months after receipt of the subrecipient's audit report and assurance that the subrecipient takes appropriate and timely corrective action. 2 CFR 200.331(d)(3) and 2 CFR 200.521(d)
7. Considering whether subrecipient audits necessitate adjustment of the pass-through entity's own records. 2 CFR 200.331(g)
8. Requiring each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with these guidelines. 2 CFR 200.331(a)(5)

The preparation of subaward documents includes the following steps:

1. Identify prime award instrument number in subaward
2. Identify key personnel for the subaward.
3. Document the basis for subrecipient selection (this is the PI's responsibility).
4. Choose the appropriate procurement instrument.
5. Choose the appropriate payment terms, usually parallel to the payment terms of the prime award.
6. Verify subrecipient qualifications:
 - Utilize NMIMT's Subrecipient [Risk Analysis Matrix](#) to perform, any analysis necessary to reasonably ensure the subrecipient has the necessary systems in place to perform the work.
 - Have the subrecipient complete NMIMT's "Vendor" Registration Form to document claimed tax status .
 - Verify compliance with UG audit requirements, if subrecipient is a domestic, non-profit organization.
 - Review subrecipient's budget and negotiated F&A rates.

7. Utilize the university's approved standard subaward template to incorporate the following items:

- Applicable terms and conditions of the prime award, including applicable general provisions,
- Any special provisions, including but not limited to (1) Truth in Negotiations (Public Law 87-653), and/or (2) a Small Business Subcontracting Plan by the subrecipient,
- Any required certifications and representations and The subrecipient's Federal Employment Identification Number (FEIN).

C. Subaward Approval

The subaward must be approved bilaterally by the authorized representatives of the university and the subrecipient. It must also be approved by additional university representatives; however, it is not mandatory that these representatives actually sign the subaward document. The university normally requires the approvals of the following entities:

- PI/PD
- Sponsored Projects Office
- Legal Counsel (for subawards involving provisions not previously utilized)

If the prime sponsor requires a copy of the fully-executed subaward document, the administrator should provide it.

D. Subaward Budgeting and Accounting

Subrecipient costs are tracked separately in the general ledger by usage of the BANNER FUND code and account codes 710412 -710421 and 710425-710439. A new subcontract agreement must be issued for each new statement of work (SOW). The university is entitled to collect overhead (OH) on the first \$25,000, with the balance of the award OH exempt per UG Appendix III to Part 200 (C)(2).

Note: BANNER tracks \$25,000 threshold by grant versus FUND. This means you need to assign a unique account code for each unique subaward within a grant, regardless of FUND in order for the system to automatically calculate overhead on the first \$25,000 of activity.

E. Monitoring of Subrecipients

Responsibility for monitoring subrecipients is divided between the PI, the departmental administrator, and the Sponsored Projects Office.

The PI is responsible for identifying the subrecipient, and for determining whether the proposed scope of work meets the needs of the project and if the proposed costs are reasonable in relation to the work to be performed. The PI is also responsible for approving subrecipient invoices after determining that the progress is satisfactory and that the cost is reasonable in relation to the work performed. If the PI has concerns about either the performance of or amount requested by the subrecipient, they should be brought immediately to the attention of the Sponsored Projects Office, so that the issue can be resolved.

If a subrecipient is not performing satisfactorily, or if any issues of compliance with the terms and conditions of the award arise, the Sponsored Projects Office will work with the department and PI to devise a strategy to correct the problem, including the possibility of withholding payments from the subrecipient.

In a case where a subrecipient institution fails to comply with relevant audit requirements, the Sponsored Projects Office may withhold the granting of new subawards to that institution and suspend payments under current subawards until the requirements are met.

XIV. Business Identification Information

Address:	New Mexico Institute of Mining & Technology 801 Leroy Place Socorro, NM 87801-4796
Business Numbers:	Available Upon Request Includes Federal Wide Assurance (FWA) identifier, which is available through R&ED
Type of Business Organization:	New Mexico Educational Nonprofit Corporation Established 1947 Prequalified for federal, state and municipal work No union affiliation For IRS purposes NMIMT falls under IRC Section501(c)(3)
Major products or service lines:	Nonprofit Educational Institution Research & Development Testing & Evaluation
Invoice Address:	New Mexico Institute of Mining & Technology Restricted Funds Department 801 Leroy Place Socorro, New Mexico 87801
NM Congressional District:	2
Cost Accounting Standards Disclosure (DS-2) Statement:	Submitted 9/19/06 Approved by ONR on 1/9/07
Cognizant ACO:	Office of Naval Research San Diego Regional Office Attn: Veronica Lacey 140 Sylvester Road, Rm 218 San Diego, CA 92106-3521 (619) 221-5490 (main number) (619) 221-5600 (Veronica's) (619) 221-5615 or 5617 fax email: Veronica.lacey@navy.mil
Cognizant Security Agency	Defense Security Service James Dixon, Field Office Chief Industrial Security Field Office (S41PX)

	10851 N. Black Canyon Hwy., Phoenix, AZ 85029-4755 (606) 674-9066 Email: james.dixon@dss.mil
Defense Security Service Industrial Security Representative Assigned to NM Tech	Patricia (Trish) Bourgoyne, ISS Defense Security Service 6301 Indian School Rd. NE Suite 300 Albuquerque, NM 87110 (505) 888-2460 x 103 (505) 238-4073 patricia.bourgoyne@dss.mil
NMIMT Facility Security Officer	NMIMT/EMRTC Security Manager 801 Leroy Place Socorro, NM 87801 (575) 835-5161 (575) 835-5630 FAX
Auditor Contacts:	Defense Contract Audit Agency Attn: Ms. Bonnie Fiquet Supervisory Auditor P.O. Box 1861 Albuquerque, NM 87103-1861 (505) 248-5000 Ext 233 (505) 248-5007 (fax) <i>FedEx/UPS Address</i> 500 Gold Ave SW Suite 12100 Albuquerque, NM 87102
DCAA Voucher Payment:	Vouchers are processed at: Defense Contract Audit Agency Salt Lake Valley Branch Office 1270 West 2320 South, Suite F West Valley City, UT 84119 FAX: (801) 975-3599 E-mail: mary.mellor@dcaa.mil Contacts: Heidi Burleigh 901-975-3555 ext. 223 or Mary Mellor 801-975-3555 ext. 221

XV. Cost Sharing and Leveraged Resources

A. Cost Sharing

Cost sharing or matching is defined as the portion of project or program costs not borne by the sponsoring agency, but incurred during the period of performance. Cost sharing can be mandatory if required by a sponsor as a condition of the award, or it can be voluntarily offered by NMIMT as an inducement for award consideration. Generally, cost sharing is not permitted on agreements unless there is a measurable economic benefit to NMIMT and only to the extent required by the prospective funding agency. **Cost sharing to for-profit entities is prohibited by state law.**

Agreements requiring cost share, as required either by statute or within the award agreement or as a condition of funding, must comply with NMIMT's [Cost Share Policy](#). Cost sharing is governed under the Uniform Guidance Section 200.

Cost-shared expenses are not recorded in the sponsor's FUND, and can only be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:

- Are verifiable from the recipient's records,
- Were incurred during the period of performance of the award,
- Are not included as contributions for any other federally assisted project or program,
- Are necessary and reasonable for proper and efficient accomplishment of the program or its objectives,
- Are allowable under the applicable cost principles,
- Were not paid by the federal government under another award, except where authorized by federal statute to be used for cost sharing or matching,
- Were provided for in the approved budget when required by the federal awarding agency, and
- Were consistent with federal cost allocation principles (for example, costs recovered through facilities and administrative cost pools cannot be included).

In addition to the above requirements, unrecovered overhead costs may be included as part of cost sharing or matching **only with the prior approval** of the federal awarding agency. Also, cost sharing in the form of volunteer effort or contributions from third parties must be accounted for in terms of the "market value" of the effort or contribution and must be verifiable in third party records. In accepting an award where the proposal indicates university cost sharing, NMIMT is contractually committed to formally document whether the cost sharing was satisfied. If the award level is significantly lower than the funding requested, then a corresponding reduction in cost sharing should be negotiated.

B. Leveraged Resources

The term leveraged resources is not defined in regulation or in any related administrative requirements. However, most federal agencies use the term.

For projects issued through the Department of Labor's Employment and Training Administration; the term has been defined to mean, "All resources used by the recipient to support grant activity and outcomes, whether or not those resources meet the standards required for matching."

XVI. Truth in Negotiations Act/Defective Pricing

A. Truth in Negotiations Act/Defective Pricing

NMIMT's government funding agencies expect current, complete and accurate pricing information in contract negotiations involving contract amounts greater than \$700,000.¹ The government is to pay fair and reasonable prices for goods and services. However, sometimes the government has no choice but to purchase goods or services from a single supplier. When other competitors are not bidding, the government must ensure it is paying a fair and reasonable price.

The Truth in Negotiations Act (Public Law 87-653, codified by 10 USC 2306a, originally enacted in 1962) was designed to address this issue by requiring contractors to disclose all relevant information about its costs and pricing to the government in such situations. Contractors may sometimes attempt to inflate their costs and expenses because they have no competitor bidding for the contract.

The Truth in Negotiations Act is generally known by its acronym TINA. This law requires, under certain situations, government contractors to submit cost and pricing data and to certify that such data are current, accurate and complete on the date of final agreement on price.

Violations of TINA are typically referred to as "defective pricing." In the case of submittal of cost and pricing data that are not current, accurate and complete, that is, "defective pricing," the government is entitled to a reduction in the price of the contract along with the payment of penalties and interest, given that it demonstrates that the defective data affected the contract price. Compliance with this law requires precise attention to detail. If a contract is defectively priced, each invoice submitted under that contract can be considered a civil or criminal false claim subjecting NMIMT to additional liability. Government contractors have been charged with defective pricing violations in instances where proposed costs have been overstated significantly.

Beyond defective pricing, if data are knowingly concealed or submitted when known to be false, the university may be criminally charged with fraud for submitting false claims or making false statements. Penalties can include fines, suspensions, debarment from future government business and even imprisonment.

TINA is applicable to all negotiated U.S. Government contracts or contract modifications over \$700,000, where the U.S. Government required cost or pricing data per FAR 15.403-4.

¹ This amount is higher than the statutory threshold. The threshold set by regulation should be checked from time to time.

TINA can be invoked by written reference or incorporation of one of the following FAR clauses into the contract:

- 52.215-10 Price Reduction for Defective Cost or Pricing Data
- 52-215-11 Price Reduction for Defective Cost or Pricing Data—Modifications
- 52.215-12 Subcontractor Cost or Pricing Data or
- 52.215.13 Subcontractor Cost or Pricing Data Modifications.

However, the absence of such clauses does not necessarily mean that TINA does not apply.

The exceptions to the requirement to submit cost and pricing data include the following

- Adequate price competition exists
- The price is set by law or regulation
- The contract acquisition is for a commercial item*
- TINA waiver for an exceptional case.

Somewhat detailed regulations provide guidance on the requirements for utilizing these exceptions.

* Per FAR 2.101, “Commercial item” means in part --

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and--

- (i) Has been sold, leased, or licensed to the general public; or,
- (ii) Has been offered for sale, lease, or license to the general public.

Concerns regarding the applicability of TINA and possible TINA violations should be discussed with the V.P. of Administration and Finance; and, possibly, deferred to the university’s legal counsel.

B. Unrelated Business Taxable Income

If the University receives monies for work that is regularly undertaken for the benefit of a sponsor and that is not consistent with the research, education or public service missions of the University as a non-profit institution, these funds may be treated as unrelated trade or business income under the Internal Revenue Code and therefore, subject to unrelated business income tax (UBIT).

Whether UBIT would apply depends whether the activity is, according to the regulations, “regularly carried on,” “substantially related” to the University’s purpose and primarily for the

convenience of the University's students, officers or employees. SPA should consult with Budget & Analysis Office and possibly University legal counsel regarding any agreements or surpluses with UBIT potential.

XVII. Negotiation of Research Awards

Sponsors indicate the scope of work they wish the university to perform, the amount they wish to award, and the terms and conditions under which they wish the project to be conducted. The university determines whether it is willing to accept awards. Negotiation between the university and the sponsor may be required in order to arrive at an award and terms that are acceptable to both parties.

Formal negotiations are conducted by various parties at the university, depending on the issue to be negotiated. Normally, the Sponsored Projects Office initiates negotiations with prospective research sponsors.

A. Bridge Funding

In the event the PI wishes to commence work prior to the award being finalized, he or she must secure bridge funding from R&ED or V.P. of Administration and Finance. The purpose of bridge funding is to maintain productivity when external funding is temporarily disrupted. Note that there is an element of risk if the agency does not retroactively date the award nor allows pre- award costs to be reimbursed. A memo indicating a monetary cap and approval should be maintained in the award file.

B. Amount of Award/Scope of Work

If the amount awarded is less than the amount proposed, or if the sponsor adds tasks or responsibilities to those proposed, the PI/PD or the proposing department may enter into informal negotiations with the sponsor. The proposing PI or department is responsible for determining whether it will accept an award that differs from that proposed.

Note: When the award is substantially less than the amount requested and the proposal included university cost sharing, the PI/PD, the department, or the Sponsored Projects Office should attempt to negotiate a commensurate reduction in the university's contribution.

C. Terms and Conditions

a. Terms and conditions that directly affect the conduct of the project

When the sponsor proposes terms and conditions for the project that directly impact the way the project is to be conducted, the PIs or department must determine whether it wishes to accept these terms and conditions. These conditions include such elements as exceptions to the intellectual property policy, restricted access to information, confidentiality, and unusual reporting requirements. Publication restrictions or restrictions on the participation of foreign

nationals may represent a soft trigger indicating that there is a need to review for export concerns. When the sponsor proposes such terms, the assistance and approval of the V.P. of Administration and Finance, the Sponsored Projects Office, and the responsible department head must be sought. In unusual situations, the advice of university legal counsel may be solicited.

In the case of awards containing terms and conditions that directly affect the conduct of the project, the Sponsored Projects Office must obtain the explicit acceptance of the department and/or the PI/PD.

b. Terms and conditions that affect the administration of the project

Conditions such as payment terms, financial reporting, property management, and intellectual property reporting are typically negotiated by the Sponsored Projects Office, with cooperation from the proposing PI or department and other campus departments as necessary. One such condition is the sponsor's need for more than standard documentation routinely provided with invoices.

Another is the university's need to obtain payments in advance to the extent possible, particularly from sponsors whose credit worthiness is difficult to determine. Electronic payments are preferred whenever possible. The Sponsored Projects Office also negotiates any other award provision that may not be in the best interest of the university.

D. Federal Acquisition Regulations (FAR) Clauses

The Sponsored Projects Office negotiators work with sponsors (or pass-through entities, in the case of subawards to the university) to ensure that only the appropriate FAR clauses are included in federal contracts.

E. Terms and Conditions Concerning University Organization and Procedure

a. Publications

The university undertakes research with the intention of making the results freely and fully available to the research community and ultimately the public. The university has the exclusive right to publish, at its discretion, the results of scientific investigation and research, unless provided otherwise in contracts with agencies of the U.S. Government, and agreed to by NMIMT.

b. Record Retention Requirements

Records retention requirements are outlined under the Uniform Guidance Section 200.333 and Federal awarding agencies and pass-through entities may not impose any other record retention requirements upon non-Federal entities.

According to the first paragraph under Section 200.333 all financial records, supporting documents, statistical records and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report

or for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report. Electronic or copied paper versions of records may be used in place of the original records. Refer to Section 200.335.

Record retention for other non-Federal sponsors is as specified in the award or in agency guidelines.

If litigation commences within three years of the end of the project or project period, records must be retained until the litigation reaches its final outcome.

c. Access to Records

The Federal awarding agency, Inspectors General, the Comptroller General of the United States and the pass-through entity, or any of their authorized representatives must have the right of access to any documents, papers or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents.

When responding to a federal Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that was used by the federal government in developing an agency action that has the force and effect of law, the university must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA.

d. Rights to Audit

The Auditor General of the State of New Mexico employs a public accounting firm to annually audit federally funded sponsored project expenditures. This audit is conducted in accordance with the provisions of the Uniform Guidance Section 200.500. In addition, ONR, the university's administrative cognizant federal agency, may engage federal auditors to assist with oversight responsibilities. At the request of ONR, these auditors conduct audits of the facilities and administrative cost studies, the CAS Disclosure Statement, the procurement system, the property accounting system, and potentially any aspect of internal controls of expenditures charged to federal funds.

Moreover, federal and non-federal sponsors, if permitted by the terms of their awards to the university, may conduct, or have conducted on their behalf, audits or reviews of expenditures and/or compliance issues related to their awards.

e. Intellectual Property (IP)

The results of scientific research conducted by the university, including inventions and discoveries, are the property of the university. The sponsor may receive preferential consideration.

If an award is issued pursuant to a federal agreement, appropriate clause is to include in the contract is *37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."* If not, use standard verbiage pertaining to data, patents and copyrights as contained in the [subagreement template](#).

The university agrees to waive its established policies only when that action is clearly in the public interest. Such waivers receive appropriate approvals and are included in the accepted award documentation.

Core IP areas include patent, copyright, and trademark laws, which define the property rights of owners of intangible assets, which are products of the human mind. Types of these assets include patents for inventions, trademarks (used for brands), and copyrights (used for creative works, such as software).

f. Acceptances

Any formal acceptance of awards (or award-related documents) required by the sponsor may be made by an authorized representative of the university which may include the university President and Vice President of Administration and Finance.

XVIII. Export Control Laws and Regulations

Export control laws restrict certain types of information, technologies and commodities that can be transmitted overseas to individuals, including U.S. citizens, or made available to foreign nationals on U.S. soil.

The export of certain items, technologies, software and services is regulated for reasons of national security, foreign policy, prevention of the spread of weapons of mass destruction and for competitive trade reasons. Although many of the University's activities are exempt from export control laws, some activities may be restricted. These laws can apply to classified defense information or controlled unclassified information if defined as such in International Traffic in Arms Regulations (ITAR) regulations.

Publication restrictions or restrictions on a foreign national to participate in a project may be a soft trigger that there is a need to review for export concerns.

When export control terms cannot be negotiated out of the agreement, contact R&ED's Director of Import/Export Compliance Program for main campus awards; or EMRTC Facility Security Manager for EMRTC awards, in order to implement a briefing and technology control plan (TCP). The TCP must then be signed by the PI. The procedures contained in the briefing and technology control plan apply to all units of NMIMT.

It is important to understand that the law applies to individuals, and the responsibility to comply with the law rests upon each individual.

A. Background

Certain export transactions require a license, technology control plan, or other written approval from the U.S. government prior to export. Some transactions are prohibited due to the end-use, end-user, or country involved. These requirements are in place for national security, nuclear non-proliferation, regional stability, prevention of chemical and biological weapon proliferation, and other foreign policy reasons. These export control laws have been in existence since the 1940s but have impacted universities to a greater extent since September 11, 2001.

Research universities have become a focal point for U.S. government export control compliance post 9/11 due to the following reasons:

- There is a growing intersection between cutting-edge science, technology, and engineering research and national security, foreign policy, and homeland security.
- The role of the research university is evolving to be global in scope and multidisciplinary.
- United States export controls can create significant tensions with university policies of non-discrimination based on nationality and a free and open campus.

The three main sets of export control regulations that implement these laws are as follows:

- 1) The Export Administration Regulations (EAR) as administered by the U.S. Department of Commerce's Bureau of Industry and Security
- 2) The International Traffic in Arms Regulations (ITAR) as administered by the U.S. Department of State's Directorate of Defense Trade Controls
- 3) United States trade embargoes, sanctions, and other restrictions as administered by the U.S. Department of Treasury's Office of Financial Asset Control (OFAC) Department of Treasury's Office of Financial Asset Control (OFAC)

Note: Export controls present a special challenge to research institutions because they demand that national security, and the necessary safeguards it mandates, be reconciled with the traditional concept of unrestricted academic freedom, which includes the right to publish freely research findings within an unfettered global academic community.

B. Fundamental Research Exclusion

Academic research normally falls under the Fundamental Research Exclusion as discussed under *NSDD-189*, "National Policy on the Transfer of Scientific, Technical and Engineering Information." Fundamental research is defined as follows:

Basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

Fundamental Research Exclusion **applies only to the dissemination of research data and information, not to the transmission of material goods.** While academic research normally is conducted openly, and most research activities are not subject to export control regulations, there are certain conditions under which the export of that technology which includes certain technical and scientific data either is prohibited or requires a license.

The Fundamental Research Exclusion is **destroyed** if the university accepts any contract clause that:

- 1) Forbids the participation of foreign persons
- 2) Gives the sponsor a right to approve publications resulting from the research
 - a) The Export Administration Regulations fundamental research exemption allows institutions to provide sponsors the right to prepublication review for the following two purposes:

- (1) To ensure that the publication would not inadvertently divulge proprietary information of the sponsor (15 CFR 734.8.(b).(2)).
- (2) To ensure that publication would not compromise patent rights... so long as the review causes no more than a temporary delay in publication (15 CFR 734.8(b).(3)).
- 3) Otherwise operates to restrict participation in research and/or access to and disclosure of research results.

Furthermore, results on awards that invoke Export Controls must be handled carefully to prevent export and should be distributed directly to the funding agency for further distribution (if deemed appropriate by the sponsor).

To protect the NMIMT Fundamental Research Exemption, negotiate out any publication restriction or restrictions on foreign national participation on a project or FAR clauses that invoke export controls. The inclusion of these clauses may be acceptable under limited circumstances. However, compliance issues are not trivial. Consequently, awards with these provisions must be brought to the attention of and specifically approved by the V.P. of Administration and Finance.

XIX. Federal Demonstration Project

The Federal Demonstration Partnership (FDP) is currently a cooperative initiative among ten federal agencies and 120 university recipients of federal funds, the purpose of which is to reduce the administrative burdens associated with research grants and contracts. The FDP was established in 1986 as a unique forum for individuals from universities and nonprofit organizations to work collaboratively with federal agency officials to improve the national research enterprise. Five phases are planned to expand participation not only to various universities but also to include federal auditors and costing officials in various task forces and committees working to reduce administrative burdens.

One of the outcomes of the FDP has been to issue a Subaward Template that can be used when funding is coming from one of the following federal sponsors: the Air Force Office of Scientific Research (AFOSR), the Army Research Office (ARO), the Department of Energy (DOE), the Environmental Protection Agency (EPA), NASA, the National Institutes of Health (NIH), the National Science Foundation (NSF), ONR and the U.S. Department of Agriculture (USDA). While these templates may be used by any university regardless of whether the institution is an FDP member or not, the FDP makes no representations or warranties regarding the suitability of these forms for use on any federal or non-federal sponsored projects. Consequently, all users utilize these forms at their own risk.

XX. Guidelines for Problematic Clauses

Clauses that are in conflict with NMIMT's [costing policies](#) and/or business procedures must be struck and replaced. To avoid any disputes regarding the allowance of items, costs must be incurred in accordance with established institute policies (Uniform Guidance Section 200.404 (e)).

The institute's cost accounting system and practices are designed to comply with the principles outlined in the Uniform Guidance, and the accounting system has been approved based on compliance with these regulations. Contract instruments should reference FAR 31.3, which also incorporates the cost principles of the Uniform Guidance.

Note: The following disclaimer should appear on proposals when hours are proposed by a group and/or individuals not subject to time cards: "Hours proposed are for estimation purposes only. NMIMT maintains level-of-effort records in compliance with federal requirements and as approved by NMIMT's federal audit agency."

A. Allowable Costs

The university is subject to the Uniform Guidance, "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" Consequently, allowance of costs will be in accordance with this document. The document is also invoked under FAR 52-216-7 Subpart 31.3, "Contracts with Educational Institutions."

B. Travel and Per Diem Costs

Strike sponsor's verbiage and replace it with, "NMIMT will follow its established travel policy for reimbursement purposes."

C. Insurance

Sponsor's verbiage may be acceptable within limits—check with Human Resources to obtain a current copy of the Certificate of Insurance. Alternately, delete the sponsor's proposed verbiage and replace it with, "NMIMT is insured through the State of New Mexico Risk Management Pool, which carries insurance on all state agencies sufficient to cover maximum claims against a state agency." If the sponsor requires special and/or additional coverage, it should come from a project's direct cost budget.

D. Invoice Requirements

Timely payments are always required. Clauses that make payment contingent upon the sponsor receiving funds are not acceptable and should be struck. Clauses that require financial source documents should be struck. Supporting documentation, if required, includes expenditure detail. Financial transaction source documents are not routinely provided unless the funding agency specifically questions an expenditure or the requirement is a condition of the award. Recommend payment terms of n/30. Deviations to be approved by V.P. Administration and Finance.

E. Cost Accounting Standards

The institute is subject to CAS as it pertains to educational institutions and has exceeded the monetary exemption for disclosure. The Disclosure Statement (DS-2) was initially approved by ONR on January 9, 2007.

F. Liability Clause

Following clause should be used in award instrument:

Each party will be solely responsible for its liability for bodily injury, including death, or damage to property under the common law or statutory law of New Mexico, and for only its own attorney fees and costs arising from the act or failure to act of such party or of its regents, directors, members, shareholders, officers, agents and employees pursuant to this Agreement; provided however, the foregoing obligation is a statement of responsibility pursuant to common and statutory law only and does not constitute an agreement to indemnify. The liability and responsibility of New Mexico Institute of Mining and Technology shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4- through 41-4-27, and of any amendments thereto, and shall be construed and applied in accordance with the laws of the State of New Mexico, irrespective of the conflict of law and choice of law principles of New Mexico or any other jurisdiction.

G. Contract for Professional Services

This contract is different from a subcontract in that the subcontractor provides goods and/or services, but does not participate within the scope of the work itself. This is a procurement arrangement handled by Purchasing.

H. Applicable Law

The best wording choice is one expressly providing that New Mexico law will govern. If this is not acceptable to the sponsor, the second-best option is one in which the agreement should be silent or, third best, a provision stating the document shall be governed under "the appropriate local jurisdiction." The final option is to include the following disclaimer: "The parties recognize and acknowledge that the New Mexico Institute of Mining and Technology is a public educational institution of the State of New Mexico (the "State") and it and this agreement are subject to the Constitution of the State and all lawful and applicable law, rules, regulations, policies and procedures of the State, including but not limited to the Regents of the Institute."

In the event subaward is to be issued to a foreign entity the following verbiage should be used.

This contract is made under and the respective rights and obligations of the parties (including but not limited to their respective rights and obligations relating to the validity, construction and performance hereof, to procedure and to remedies) shall be governed by the law of the State of New Mexico applicable to contracts made and to be performed wholly within New Mexico, without regard to conflict of law principles.

Any cause of action, suit or claim arising out of or relating in any way to this contract shall be filed and thereafter conducted only in the Seventh Judicial District Court in Socorro, New Mexico. Each party hereby consents to exclusive jurisdiction and venue in such court.

I. Debarment and Suspension

Certify whether the offeror or applicant, or any of its principals, is currently debarred, suspended, proposed for debarment, or declared ineligible to receive federal awards; whether within the past three years the offeror or applicant, or any of its principals, has been convicted of or had a civil judgment rendered against it for, or been indicted for, commission of fraud or certain criminal offenses; and whether the offeror or applicant has had any federal award terminated for cause or default in the past three years (FAR 52.209-5). Require similar certifications in subcontracts over \$25,000.

J. Conflict of Interest

Applicants for federal financial assistance from certain agencies (e.g., NSF) must certify that the institution has a written and enforced Conflict of Interest Policy; that if potential conflicts exist, then they will be reduced or eliminated; and that the institution will make pertinent information available upon request of the awarding agency. Research & Economic Development administers the institution's conflict of interest policy.

K. Research Policies

The university's research integrity policy, and other research policies, can be obtained from R&ED's website. The Research Integrity Policy addresses required internal policy on Misconduct of Science.

L. Advance Funding for Large Projects

When applicable, suggest advance funding for large projects. The following argument may be used or modified for these requests:

“The New Mexico Institute of Mining and Technology requests advance funding for [Project Name] in accordance with Uniform Guidance Section 200.305 (b)(1). The institute does not receive state appropriations for its research and other sponsored activity functions. In essence, NMIMT funds these expenditures from its quasi-endowment fund, and then is reimbursed by the funding agency. However, in light of the significant increase in expenditures NMIMT will experience with the addition of [Project Name], advance funding is the preferred payment method.”

M. Davis-Bacon Act as amended 40 U.S.C. 276 a–a-7

As a general rule, it is unlikely that the Davis-Bacon Act, which among other things requires payment of prevailing wages on projects for the construction of public works, would apply to financial assistance awards. However, the presence of certain factors (e.g., requirement of particular program statues or a title to a construction facility resting in the government) might necessitate a closer analysis of the award to determine if the Davis-Bacon Act would apply in the particular factual situation presented. Additional information is available in: Federal Register Part III, Department of Energy 10 CFR Part 600, Financial Assistance Regulations; Final Rule Appendix B to Subpart D to Part 600- Contract Provisions.

Ask the funding agency to make the determination. This public policy may be invoked by specific reference under terms and conditions (T&C's) of a federal award. Construction effort qualifies as a vendor relationship; consequently, the procurement should go through the Purchasing Department. However, periodically a subrecipient will have a hybrid statement of work. For example, part research and part construction so additional monitoring requirements may be required.

Speak with the Purchasing Department regarding additional monitoring requirements involved. For example, payroll certifications must be received by the vendor performing construction effort and reviewed to determine that they are paying prevailing wages.

XXI. Other Clauses

A. Certificate of Current Cost or Pricing Data

In some proposals for federal contracts over \$650,000, the authorized official signing for NMIMT must certify that the budget information is accurate, complete, and current as of the date of submission (FAR 15.403-4). When NMIMT must submit the certification as the prime contractor, then similar certifications must be obtained from subcontractors when the amount of the proposed subcontract will exceed \$650,000.

B. Points of Contact

Points of contact normally include the names, addresses, and telephone numbers of the technical and administrative contacts.

C. Classified or Export-Controlled Material

Look for verbiage within the contract that invokes the protection of such material. If present, notify the PI/PM of their responsibilities.

When export control terms cannot be negotiated out of the agreement contact Facility Security Manager at EMRTC to implement a briefing and technology control plan that must be signed by the PI.

Refer to Article XVIII, "Export Control Laws and Regulations," of this document for a complete discussion.

D. Audits and Inspections

Contractors should be made aware of the fact that NMIMT's independent public accountants annually conduct a single federal compliance audit as required by the provisions of the Uniform Guidance Section 200.500, "Audit Requirements." Refer to [sample letter](#).

E. Property

FAR 52.245-1 Alt. II should be negotiated in every federal cost-reimbursement contract to retain all property valued under \$5,000. Prior approval must be requested and granted before purchase of equipment in order to retain title.

F. Rights-in-Data/Publications

Restrictions on NMIMT's right to publish project results should not be absolute. If required by the sponsor, an alternate option may involve a 90-day review before releasing results or technologies to the general public.

G. Contractor Status

NMIMT is a non-profit educational institution.

H. Termination of Award

Termination for Cause or Termination for Convenience clauses requires special attention. 90–120 days' notice, or more, may be required to phase out a project and to ensure that all expenses have been booked prior to submission of the final invoice. Reimbursement for non-cancelable commitments incurred before receipt of the notice must be included within this clause.

I. Catalog of Federal Domestic Assistance

Federal awards must identify the project's CFDA title and number. Catalog of Federal Domestic Assistance identification numbers are unique to grants and cooperative agreements not applicable to contract agreements.

J. Statement of Work/Technical Deliverables

The PI should conduct a review to determine whether the written contract reflects the verbal understanding of both parties.

K. Pre-award Costs

Pre-award costs should be negotiated where time delays are expected. For federal contracts include *FAR 52.216-26*, "Payments of Allowable Costs Before Definitization" in order for pre-award costs to be sufficiently covered.

L. Certifications Regarding Property, Purchasing, Affirmative Action, Toxic Waste Management

These certifications should be discussed with the respective directors, if the response is not self-evident. For example, both the Property and Purchasing Departments are subject to federal audit scrutiny so their systems must be certified. Contact the head of these departments to find out when they last received federal certification.

M. Default Provision

Any one or more of the following events shall constitute an Event of Default which shall entitle NMIMT (i) to terminate this Agreement upon written notice to Sponsor so long as such Event of Default continues and/or (ii) to pursue any and all other remedies to which NMIMT is entitled under this Agreement, at law or in equity:

If Sponsor shall fail to observe, perform or comply with any material term, covenant, agreement or condition of or in this Agreement and such failure shall continue uncured for ten (10) days after NMIMT gives Sponsor written notice of Sponsor's failure to make a monetary payment when due and for thirty (30) days after contract administrator provides written notice of any other failure specifying the nature of the failure; provided, that if such a non-monetary failure cannot in good faith and by the exercise of due diligence be cured within such thirty (30) day period, the failure shall not constitute an Event of Default if Sponsor commences appropriate curative action within such thirty (30) day period and thereafter cures the failure in good faith and with due diligence; or

If Sponsor intentionally commits fraud, makes a material misrepresentation or by action or inaction commits gross negligence or willful misconduct relating to the Agreement.

XXII. Burden Rates**A. Indirect Cost (IDC) Rate**

A negotiated, predetermined IDC rate is established through an audit process conducted by Defense Contract Audit Agency (DCAA) on behalf of ONR. Expenses allocated in this manner represent general operating costs of the university.

B. The Energetic Materials Research and Testing Center Facility Support

The Energetic Materials Research and Testing Center (EMRTC) charges its users, including sponsored agreements, directly for the cost of its range operations provided via a facility support rate in accordance with UG Section 200.468, "Specialized Service Facility." The facility support rate is a percent of the total direct costs based upon historical data. The rate is negotiated with ONR and audited by DCAA annually.

EMRTC is a specialized service facility of NMIMT and accumulates its range operating expenses in subsets (accounts) and allocates these costs based on total direct costs. These subsets are designed to aid management in the monitoring and control of EMRTC's cost of operations.

C. Fixed-Fee Management Allowance

The New Mexico Institute of Mining and Technology is a non-profit educational institution that is entitled to make a reasonable amount of profit. In accordance with DFARS 215.404-72 "Modified weighted guidelines method for nonprofit organizations other than FFRDCs," the modified weighted guidelines method is used to calculate the allowable profit.

Note: DFAR 215.404-72 is applicable to DOD contracts.

Fixed-fee management allowance with DOE is governed under DOE 915.404-4-70.(d), "Educational Institutions," which states, "It is DOE policy not to pay fees under contracts with educational institutions."

In addition, DOE 915.404-4-70-6, "Contracts with educational institutions," states, "In certain situations the DOE may contract with a university to manage or operate Government-owned laboratories. These efforts are generally apart from, and not in conjunction with, their other activities, and the complexity and magnitude of the work are not normally found in standard university research or study contracts. Such operating contracts are subject to the applicable provisions set forth in 48 CFR Part 970."

The purpose of these two methods is to provide a uniform and consistent manner for rewarding risk, motivating efficient and quality performance, and stimulating capital investment in the defense industry base. The university reinvests these monies in order to maintain and improve its facilities.

Fixed fee is calculated using DD Form 1547 and is negotiable, but normally established at a rate of 8.75 percent of direct and indirect costs.

XXIII. Representations/Certifications

Agencies may ask that certain assurances, representations, or certifications be completed and returned with the university's proposal package. Proposals are considered incomplete by the prospective funding agency if required endorsement signatures are omitted or if required certifications are not provided.

Certifications are signed by an authorized representative of the university when the proposal package is routed thru the proper channels.

Examples of various federal certifications are discussed below.

A. Federal Requirements on Lobbying Activities

The Lobbying Disclosure Act of 1995 forbids using federal funds to lobby the federal government. This certification must be submitted along with any proposal requesting \$100,000 or more.

The Act defines lobbying activities as "lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts and coordination with the lobbying activities of others." Lobbying contacts encompasses any communication to executive or legislative branch officials covered by the Act and made on behalf of a client with regard to legislation (including legislative proposals); rules, regulations, executive orders, or any other program, policy, or position of the United States Government, the administration or execution of a federal program or policy (including the awarding of federal contracts and grants); or the nomination or confirmation of a person for a position subject to confirmation by the Senate.

Anybody contacting a federal official in a way that may be covered by the Act should disclose the activity in order that it be properly reported in the Lobbying Certification Form.

The 1995 Act specifies that the following contacts made by university personnel are not considered lobbying contacts:

- Communications made in speeches, articles, or through any medium of mass communication.
- Routine requests for meetings or for the status of an action as long as there is no attempt to influence covered executive or legislative branch officials.
- Communications made in the course of participation in an advisory committee, testimony given before a congressional committee or submitted for the public record of a congressional hearing.
- Information provided in writing at the request of a covered legislative or executive branch official, so long as it is provided to the federal official who made the request.

- Communications required by subpoena, investigation or otherwise compelled by law or congressional or agency action.
- Communication made in response to a notice in the Federal Register, Commerce Business Daily, or other similar publication soliciting public communications.
- Communications made on behalf of an individual concerning his or her own benefits, employment or other personal matters involving only that individual.

B. Debarment and Suspension

Federal funds cannot be used to support an individual or organization if that agency has been debarred, suspended, or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in a federal activity. This means that any type of reimbursement (travel, honorarium, consulting, etc.) to such a party is an unallowable charge to a federal project.

A debarment certification must be a part of the agreement signed by each subrecipient or consultant when a third party performs a portion of the scope of work. For procurement contracts (purchase orders) for goods or services, the certification is required for transactions in excess of the federal Simplified Acquisition Threshold, currently \$100,000.

C. Drug-free Workplace

In order to receive state or federal grants or contracts, the university must agree to provide a drug-free workplace by establishing drug abuse policies and programs. When an employee engaged in the performance of a state or federal grant or contract is convicted of a criminal drug statute for a violation occurring in the workplace, they must inform the university no later than five days after such conviction, and the university must then notify the sponsor within ten days of the notification by the employee. The university must either sanction the employee or require the employee to enroll in a drug abuse assistance or rehabilitation program. Most federal agencies require a drug-free workplace certification at the time the proposal is submitted, in the format prescribed by the sponsor. State agencies also require a certification at the time they award a contract or grant of \$5,000 or more.

D. Certificate of Current Cost or Pricing Data

The threshold for submitting cost or pricing data and certification with a proposal is \$650,000, for a contract or sub-contract of any tier.

E. Abbreviated Sections of Often-used Contract Representations and Certifications

FAR 52.203-2 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

....(B)..(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a) (1) through (a) (3) above.

_____, **Vice President for Administration & Finance**

(insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization);

.....

FAR 52.203-4 CONTINGENT FEE REPRESENTATION AND AGREEMENT

a. Representation. The offeror represents that, except for full-time bona fide employees working solely for the offeror, the offeror - -

1. () has, **(X) has not** employed or retained any person or company to solicit or obtain this contract; and

2. () has, **(X) has not** paid or agreed to pay any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

a. Agreement...

FAR 52.203-8 REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY

(b) Certifications. As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification. The certification in paragraph

(b) (2) of this provision is not required for a procurement of commercial items.

Certificate of Procurement Integrity

(1) I, (Name of certifier), am the officer or employee responsible for the preparation of this offer and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d) or (f) of the Office of Federal Procurement Policy Act, as amended * (41 U.S.C.423), (hereafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement (solicitation number).

(2) As required by subsection 27(e) (1) (B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of **N. M. Institute of Mining & Technology** (Name of Offeror) who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in FAR, and will report immediately to me any information concerning a violation or possible violation of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violation or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet). (ENTER NONE IF NONE EXIST)

None

(4) I agree that, if awarded a contract under this solicitation, the certifications required by subsection 27(e) (1) (B) of the Act shall be maintained in accordance with paragraph (f) of this provision.

(Signature of the officer or employee responsible for the offer and date)

V.P. Administration & Finance

(Typed name of the officer or employee responsible for the offer)

FAR 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED

DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that - -

(1) The Offeror and/or any of its Principals - -

(A) Are () **are not (X)** presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have () **have not (X)** within a three-year period preceding this offer, been convicted of or had civil judgment rendered against them for.....; and

(C) Are () **are not (X)** presently indicted for, or otherwise criminally or civilly charged by a governmental entity with ...;

(ii) The Offeror has () **has not (X)**, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency. ...

52.215-4 TYPE OF BUSINESS ORGANIZATION

The offeror or respondent, by checking the applicable box, represents that - -

(a) It operates as () an individual, () a partnership, **(X) a nonprofit organization**, () a joint venture, or **(X) a corporation incorporated under the laws of the State of New Mexico.** ...

52.215-6

PLACE OF PERFORMANCE

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation, () intends, **(X) does not intend** (check applicable box) to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information. ...

FAR 52.215-11 AUTHORIZED NEGOTIATORS

The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations:

- Vice President of Administration & Finance, (505) 835-5606
- Director of Sponsored Projects (505) 835-5915
- Sponsored Projects Financial Administrators (505) 835-5800
- Associate V.P. Research & Economic Development (505) 835-5646
- EMRTC Associate Director of Finance & Contracts (505) 835-5810
- EMRTC Contracts & Grants Manager (505) 835-5496

FAR 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS

... (b) Representations.

8. The offeror represents and certifies as part of its offer that it () is, **(X) is not a small business concern**.
9. (Complete only if offeror represents itself as a small business concern in block (b)(1) of this provision. The offeror represents as part of its offer that it () is, () is not a small disadvantaged business concern.
10. (Complete only if offeror represented itself as a small business concern in block (b)(1) of this provision.) The offeror represents as part of its offer that it () is, () is not a women-owned small business concern.

FAR 52.219-21 SMALL BUSINESS SIZE REPRESENTATION....

Not applicable

FAR 52.222-19 WALSH-HEALY PUBLIC CONTRACTS ACT REPRESENTATION

The offeror represents as part of this offer that the offeror **is (X)** or is not () a regular dealer in, or **is (X)** or is not () a manufacturer of, the supplies offered.

FAR 52.222-21 CERTIFICATION OF NON-SEGREGATED FACILITIES

"Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(X) The company certifies that it does not and will not maintain or provide for its employees any segregated facilities...

FAR 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

The offeror represents that - -

(a) It **(X) has**, () has not participated in a previous contract subject to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114;

(b) It **(X) has**, () has not, filed all required compliance reports; and

Representations...

FAR 52.222-25 AFFIRMATIVE ACTION COMPLIANCE

The offeror represents that (a) it **(X) has** developed and has on file, () has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it () has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

FAR 52.223-1 CLEAN AIR AND WATER CERTIFICATION

The Offeror certifies that - -

(a) Any facility to be used in the performance of this proposed contract is (), **is not (X)** listed on the EPA List of Violating Facilities; ...

FAR 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING

(Applicable only if FAR 52.223.14 is included in the solicitation)

(a) The Offeror certifies that --

1. () As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

2. (X) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: [Check each block that is applicable.]

i. () The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

ii. () The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

iii. (X) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

iv. (X) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33;

or

v. () The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

FAR 52.230-1 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION

* (2) Certificate of Previously Submitted Disclosure Statement. The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____November 29, 2006 (certified)_____Name and
Address of Cognizant ACO or Federal Official Where Filed:

Department of the Navy

Office of Naval Research

Ms. Linda Shipp, Contracting Officer

875 North Randolph Street

Suite 1425

Arlington, VA 22203-1995

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

DFARS 252.219-7000 SMALL DISADVANTAGED BUSINESS CONCERN REPRESENTATION

..... (c) Certifications. Complete the following - -

(1) The offeror is (), **is not (X)**, a small disadvantaged business concern.

DFARS 252.247-7022 REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA

..... (b) Representation. The offeror represents that it - -

() Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(X) Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

IRS TAX STATUS REPRESENTATION

Offeror represents that it **(X) is** (is not) An organization of the type described in section 501 (c)(3) of the Internal Revenue Code, 26 USC 501(c), and exempt from taxation under section 01(a) of the Internal Revenue Code, 26 (USC) 501 (a).

XXIV. Signature Authority

Legal instruments must be signed by an authorized representative of the university in order to be binding.

This authority was granted to the following by Regents Resolution, "...the President and Vice President for Administration and Finance are hereby authorized, either jointly or severally, to enter into contracts and lease agreements for such sums and upon such terms as may seem advisable to such officer or officers...."

XXV. References

Code of Federal Regulations Title 2: Grants and Agreements Part 200 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards

National Council of University Research Administrators (NCURA) Sponsored Research Administration. *A Guide to Effective Strategies and Recommended Practices*.

Federal Acquisition Regulation (FAR), Part 16, United States Code (Title 31, Subtitle V, Chapter 63).