



DEPARTMENT OF THE NAVY
 OFFICE OF NAVAL RESEARCH
 875 NORTH RANDOLPH STREET
 SUITE 1425
 ARLINGTON, VA 22203-1995

IN REPLY REFER TO:
Agreement Date: July 9, 2009

NEGOTIATION AGREEMENT

INSTITUTION: UTAH STATE UNIVERSITY
 LOGAN, UTAH 84322-1445

The Facilities and Administrative (F&A) indirect cost rates contained herein are for use on all grants and/or contracts issued or awarded to Utah State University by all Federal agencies of the United States of America in accordance with the cost principles mandated by 2 CFR 220 (formerly Office of Management and Budget Circular A-21). These rates shall be used for forward pricing and billing purposes for Utah State University's Fiscal Year 2010 until amended. This rate agreement supersedes all previous rate agreements/determinations for Fiscal Year 2010.

SECTION I: RATES - TYPE: PROVISIONAL (PROV)

Type	From	To	On Campus	Off Campus	Base	Applicable To
PROV	7/1/09	Until Amended	40.00%	11.60%	(a)	Organized Research (1)
PROV	7/1/09	Until Amended	40.00%	13.20%	(a)	Organized Research (2)
PROV	7/1/09	Until Amended	48.60%	26.00%	(a)	Instruction
PROV	7/1/09	Until Amended	15.20%	24.70%	(a)	Other Sponsored Activities

DISTRIBUTION BASE

- (a) Modified Total Direct Cost (MTDC), as defined in OMB Circular A-21, consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care and tuition remission, rental costs (for facilities), scholarships, and fellowships as well as the portion of each subgrant and subcontract in excess of \$25,000 shall be excluded from modified total direct costs.

APPLICABLE TO

- (1) Applies to all Non-DOD instruments, all DOD grants, and all DOD contracts awarded before November 30, 1993 (See Section II, paragraph F.1). (Capped)

(2) Applies only to DOD contracts awarded on or after November 30, 1993 in accordance with and under the authority of DFARS 231.303 (1) (See Section II, paragraph F.2). (Uncapped)

SECTION II - GENERAL TERMS AND CONDITIONS

A. LIMITATIONS: Use of the rates set forth under Section I of this agreement is expressly subject to any statutory or administrative limitations and is applicable to a given grant, contract, or other agreement only to the extent that funds are available and consistent with any and all limitations of cost clauses or provisions, if any, contained therein. Acceptance of any or all of the rates agreed to herein is predicated upon all the following conditions: (1) that no costs other than those incurred by the grantee/contractor were included in its indirect cost pool as finally accepted and that all such costs are legal obligations of the grantee/contractor and allowable under the governing and applicable cost principles; (2) that the same costs that have been treated as indirect costs are not claimed as direct costs; (3) that similar types of costs have been accorded consistent accounting treatment; and (4) that the information provided by the contractor/grantee, which was used as the basis for the acceptance of the rate(s) agreed to herein and expressly relied upon by the Government in negotiating and accepting the said rates, is not subsequently found to be materially incomplete or inaccurate.

B. ACCOUNTING CHANGES: The rates contained in Section I of this agreement are based on the accounting system in effect at the time this agreement was negotiated. Changes to the method(s) of accounting for costs which affects the amount of reimbursement resulting from the use of these rates requires the express and written approval of the authorized representative of the cognizant negotiating agency for the Government prior to implementation of any such changes. Such changes include but are not limited to changes in the charging of a particular type of cost from indirect to direct. Failure on the part of the grantee/contractor to obtain the required approval may result in subsequent cost disallowances.

C. PROVISIONAL RATES: The provisional rates contained in this agreement are subject to unilateral amendment by the Government or bilateral amendment by the contracting parties at any time.

D. OFF-CAMPUS: A project is considered off-campus if the activity is conducted at locations other than in university owned or supported facilities and indirect costs associated with physical plant and/or library are not considered applicable to the project.

E. USE BY OTHER FEDERAL AGENCIES: The rates set forth in Section I hereof were negotiated in accordance with and under the authority set forth in 2 CFR 220. Accordingly, such rates shall be applied, to the extent provided in such circular, to grants and contracts to which 2 CFR 220 is applicable, subject to any limitations in part A of this section. Copies of this document may be provided by either party to other Federal agencies which have or intend to issue or award grants and/or contracts to Utah State University to use the stated rates or to otherwise provide such agencies with documentary notice of this agreement and its terms and conditions.

**F. APPLICATION OF INDIRECT COST RATES TO DOD CONTRACTS /
SUBCONTRACTS:**

(1) Signature of this agreement by the authorized representative of Utah State University and the Government acknowledges and affirms the University's request to waive the prohibition contained in DFARS 231.303(1) except for the Organized Research rate and the Government's exercise of its discretion contained in DFARS 231.303(2) to waive the prohibition in DFARS 231.303(1). The waiver request by Utah State University is made to simplify the University's overall management of DOD cost reimbursements under DOD contracts.

(2) In accordance with DFARS 231.303, no limitation (unless waived by the institution) may be placed on the reimbursement of otherwise allowable indirect costs incurred by an institution of higher education under a DOD contract awarded on or after November 30, 1993, unless the same limitation is applied uniformly to all other organizations performing similar work. It has been determined by the Department of Defense that such limitation is not being uniformly applied. Accordingly, the rates cited (2) of Section I, as explained under the title "APPLICABLE TO" do not reflect the application of the 26% limitation on administrative indirect costs imposed by 2 CFR 220, whereas (1) does so.

Accepted:

FOR UTAH STATE UNIVERSITY:

By: 

David T. Cowley
Associate Vice President for Business &
Finance

Date: 7/9/09

FOR THE U.S. GOVERNMENT:

By: 

Deborah K. Rafi
Contracting Officer

Date: 7/9/09

For information concerning this agreement contact:

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