



Financial and Administrative Terms and Conditions (FATCs) for the Management and Operation of the National Radio Astronomy Observatory – Fiscal Years 2010 to 2015 – NSF Cooperative Agreement AST-0836064 – Award Specific FACTCs Continued

1.2.14 Subaward Requirements.

Article 49 of the SFATC-FFRDC is hereby deleted and replaced with the following:

- a. The Awardee is responsible for compliance with the procurement standards identified in 2 CFR Part 215 Subparts 215.40 through 215.48 (Sections .40 through .48 of OMB Circular A-110). All subaward actions shall be in accordance with the Awardee's procurement policies and procedures and must be consistent with any special conditions included in this Agreement.
- b. Definition. As used in this agreement, the term 'subaward' includes contracts, cooperative agreements, purchase orders, orders issued under blanket purchase agreements or similar devices, awards made to sub-recipients or vendors regardless of form, and modifications to all the aforementioned to be issued by the Awardee under this agreement.
- c. Approval Requirement Threshold. The Awardee shall obtain the written approval of the NSF Program Officer and Contracting and Agreements Officer prior to placing any new subaward that was not included in the approved budget for services and equipment exceeding \$250,000. The Awardee shall not artificially segregate its procurements to lesser dollar amounts for the purpose of circumventing this requirement.
- d. Request for Subaward Approval.
 - i. The Awardee will submit electronically to NSF a request for prior approval at least 30 calendar days in advance of the anticipated start date of the subaward, unless otherwise determined by the NSF Contracting and Agreements Officer. Incomplete or insufficient requests will be returned without approval, for proper completion by the Awardee. Upon receipt of a complete and sufficient request, NSF will review and provide a determination within 30 calendar days. All requests shall be submitted, as directed, for review by the Program Officer and the Contracting and Agreements Officer. The documentation shall include the selection procedures and price/cost justification, including items, as appropriate, below:

- a. A description of the supplies or services required.
 - b. Identification of the type of subaward to be issued.
 - c. Identification of the proposed subawardee, an explanation of why and how the proposed subawardee was selected, and the degree of competition obtained.
 - d. The proposed subaward price, together with the Awardee's cost or price analysis thereof.
- ii. The memorandum of selection shall be in sufficient detail to reflect the most significant considerations controlling the establishment of initial or revised prices. The memorandum shall include the basis of award, and cost or price analysis in accordance with 2 CFR 215.45. The memorandum shall include a determination of price reasonableness, whether based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation, or some other method. Where the total price differs significantly from the Awardee's total price objective, the memorandum shall explain this difference.
- iii. Where the award will be made without competition, the memorandum shall include a detailed justification.
- iv. Upon satisfactory review, the NSF Contracting and Agreements Officer will provide written approval to the Awardee. Approval of the Contracting and Agreements Officer shall not be construed to constitute a determination of the allowability of any cost under this agreement, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.
- e. Award and Administration
- i. The Awardee shall make all consultant agreements, subawards, or other commitments in its own name and shall not bind or purport to bind the Government or NSF; and hereby agrees to administer/monitor all subawards/subcontracts it enters into and supports with NSF funds in accordance with the applicable federal cost principles and the applicable federal administrative requirements.
 - ii. Incorporation of Applicable Terms and Conditions. All contractual arrangements shall contain appropriate provisions consistent with the applicable FATC and SFATC-FFRDC supplement, and any applicable special conditions included in this Agreement.
 - iii. The Awardee shall insert a clause in all subawards reserving its right to assign the subaward to any third party with the subawardee's concurrence, should a successor awardee be selected by the NSF.
- f. Prompt Notification of Claims.

The Awardee shall give the Contracting and Agreements Officer immediate notice in writing of any legal action or suit filed, and prompt notice of any claim made against the Awardee by any subawardee or vendor which in the opinion of the Awardee may result in litigation, related in any way to this agreement, with respect to which the Awardee may be entitled to reimbursement from the Government.

1.2.15 Non-Binding for Third Party Agreements.

a. The Awardee shall make all commitments in its own name and shall not bind or purport to bind the Government. Except as noted below, the following language shall be included in all agreements with third parties:

"This Agreement does not bind or purport to bind the U.S. Government or the National Science Foundation (NSF), an independent agency of the U.S. Government. Consequently, any claims or disputes arising from or in performance of this Agreement shall solely be between the Parties of this Agreement and no others."

b. This language shall not be required for any agreements that incorporate liability clauses from the Federal Acquisition Regulation (FAR).

c. This language shall not be required for any agreements that do not contain funding, or for which the funding originates from a federal source.

d. The Awardee may submit a request to waive this requirement to the Contracting and Agreements Officer on a case-by-case basis. NSF will respond to Awardee within 30 days of Awardee's submission of a request to waive this provision.

1.2.16 Liability

Article 39 of the SFATC-FFRDC is hereby revised by deleting paragraph a. in its entirety and replacing it, and revising paragraph d. by adding the word "certain" to the third line of the paragraph as follows:

"a. The Awardee organization is advised to take such steps as may be deemed necessary to insure or protect itself, its employees and its property."

"d. The Awardee shall be reimbursed (1) for the portion allocable to this Agreement of the reasonable cost of insurance as required or approved pursuant to the provisions of this Article, and (2) for certain liabilities to third persons for loss or damage to property or for death or bodily injury..."

1.2.17 Non-Renewal of the Cooperative Agreement

Article 51 "Non-Renewal of the Cooperative Agreement", paragraph 2 is deleted in its entirety and replaced as follows.

“2. Upon non-renewal, the Awardee may submit to NSF those costs related to the Agreement termination or non-renewal that have been documented and verified by an audit performed by an independent certified public accountant (hereafter referred to as audit). These costs may include medical insurance, including retiree medical insurance, severance pay, accrued vacation pay, pension costs, or other costs for Awardee employees under this Agreement. The Awardee also may submit costs related to the Awardee nonrenewal of subcontracts related to work supported by this Agreement.”

1.2.18 Information Security

In accordance with Article 54 of the SFATC-FFRDC, the Awardee shall submit a written summary of its IT Security program. The summary shall be provided to the NSF Program Officer within six months of the effective date of this CA.

1.2.19 Intellectual Property and Data Acquired with Telescopes

Unless otherwise restricted by terms of a contract or subaward, data acquired through use of the telescopes, whether by project staff or visiting scientists, shall become publicly available within a reasonable time limit. Awardee shall determine and impose appropriate conditions on users of the facility to assure public availability of all data.

1.2.20 Records and Document Management

The Awardee will develop and maintain a records and document management system that is web based with secure access. This system will contain those documents and records that are accessible to the NSF Program Officer and the Contracting and Agreements Official. The format and content of the system will be mutually agreed among AUI, NRAO, the NSF Program Officer, and the NSF Contracting and Agreements Officer.

1.2.21 Applicability of Chilean Labor Laws

No provision of this CA is intended to negate the duty of the Awardee to comply with Chilean laws applicable to personnel working on NRAO programs in Chile.

1.2.22 News Releases

The Awardee shall notify the NSF Program Officer or designee prior to issuing news releases concerning NSF-supported activities.

1.2.23 Awardee Policy Manuals

a. Electronic Access. The Awardee shall provide electronic access to copies of all management, personnel, and operation policies and procedures to the NSF Program Officer and NSF Contracting and Agreements Officer.

b. Changes. The NSF Program Officer will be notified in advance of substantive changes to the Awardee's policies and procedures. Any substantive changes to the Awardee's policies in the areas of: (a) personnel matters, such as employment and recruitment, salaries and benefits, outside employment, and travel; (b) use of NRAO facilities and services; (c) intellectual property; and (d) other policies related to scientific programs and staff shall be forwarded, with a statement of the reasons for the proposed changes and prospective implementation date, to the NSF Program Officer for comment. Unless notified within 30 days after receipt by NSF, the awardee will assume that NSF has no comments. The NSF Program Officer will be notified electronically when the policy is issued in its final form.

1.2.24 Notice to the Government of Labor Disputes

a. If the Awardee has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this agreement, the Awardee shall immediately give notice, including all relevant information, to the Contracting and Agreements Officer.

b. The Awardee agrees to insert the substance of this clause, including this, in any subcontract to which a labor dispute may delay the timely performance of this agreement; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Awardee, as the case may be, of all relevant information concerning the dispute.

1.2.25 Health, Safety and Security

a. The Awardee shall take all reasonable precautions in the performance of the work under this CA to protect the health and safety of employees and of members of the public from all hazards and to minimize danger to life and property, and shall comply with all applicable health, safety, and fire protection laws, regulations, and requirements.

b. The Awardee shall maintain an accurate record of all cases of death, occupational disease or injury arising out of, or in the course of, employment incident to performance of the work under this CA. In addition, the Awardee shall promptly furnish the Contracting and Agreements Officer with the details of any deaths, serious occupational diseases, injuries resulting in permanent handicaps, and major accidents occurring in connection with this CA.

c. The Awardee shall maintain an accurate record of all security incidents. In addition, the Awardee shall promptly furnish the Contracting and Agreements Officer with the details of any major security incidents that involve facilities or personnel.

1.2.26 Use of Foreign-Flag Air Carriers

In addition to Article 10 of FATC, the following provisions apply to the use of foreign flag carriers:

a. Airline "Open Skies" Agreements: A foreign flag air carrier may be used if the transportation is provided under an air transportation agreement between the United States and a foreign government, which the Department of Transportation has determined meets the requirements of the Fly America Act. For example, in 2008, the U.S. entered into an "Open Skies" Agreement with the European Union. This Agreement gives European Community airlines (airlines of Member States) the right to transport passengers and cargo on flights funded by the U.S. government, when the transportation is between a point in the United States and any point in a Member State or between any two points outside the United States. In accordance with the Agreement, however, a U.S.-flag air carrier must be used if: (a) transportation is between points for which there is a city-pair contract fare in effect for air passenger transportation services; or (b) transportation is obtained or funded by the Secretary of Defense or the Secretary of a Military Department. The conditions for use of a Member State airline apply to non-Federal employees as well (e.g., grantees). So, even though grantees are ineligible for city-pair contract fares, they must still use a U.S.-flag air carrier if a city-pair contract fare exists. For information on other "open skies" agreements in which the United States has entered, please refer to GSA's website:

http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=24833&noc=T (Airline Open Skies Agreements)

b. Involuntary Rerouting: Travel on a foreign-flag carrier is permitted if a U.S.-flag air carrier involuntarily reroutes the traveler via a foreign-flag air carrier, notwithstanding the availability of alternative U.S.-flag air carrier service.

End of Award Specific FATCs for NSF Cooperative Agreement AST-0836064.