

ORED Seminar Series

Contract Negotiation: The Process

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OSP and Agreements

- Agreements tied to research are reviewed, signed and administered by Office of Sponsored Projects
- Funded or non-financial
- OSP implement agreement so faculty can spend time on technical aspects of research



Agreement Process

- OSP receives award in Portal ticket
- Check that all internal requirements done
- Review agreement
- Consult internally at MSU if necessary
- Send change requests to sponsor
- Negotiate any counter-offered terms
- Sign final agreement and process



OSP Role in Negotiation

- Office of Sponsored Projects is the contractual point of contact
- OSP binds MSU in contract
- PI and departmental staff should direct sponsor to OSP on contractual matters



Negotiation Objectives:

- Negotiate a mutually acceptable agreement in a timely manner
- Negotiate a contract that is consistent with the institution's policies and procedures
- To protect MSU and PI
- Set and maintain a positive tone for the ongoing institution/sponsor relationship



Types of Sponsors/Partners

- Federal/state agencies
- Private profit
- Non-profit
- Each type will be different in negotiations



Federal/State Agencies

- Aware of regulations of public university
- Most accepting of changes needed
- Least likely to need changes
- Longest timeline to implement change



Private Profit

- Private Sponsors
 - Unfriendly University terms
 - Unfamiliar with State Laws
 - Expect expediency more so than state/feds
 - Complicated Terms & Conditions
 - Forms to be completed such as Vendor Forms, Representations and Certification, etc
 - Possible FAR clauses



Non-Profit

- Non-Profit Sponsors (and Foundations)
 - Limit Indirect costs
 - Cost share often required
 - Awards can come in all different forms (check, wire transfer, letter, etc.
 - Unfamiliar with laws MSU obligated to



Contract Examples:

- Agreements with funds:
 - Grant
 - Cooperative Agreement
 - Contract
 - Purchase Order
 - Check

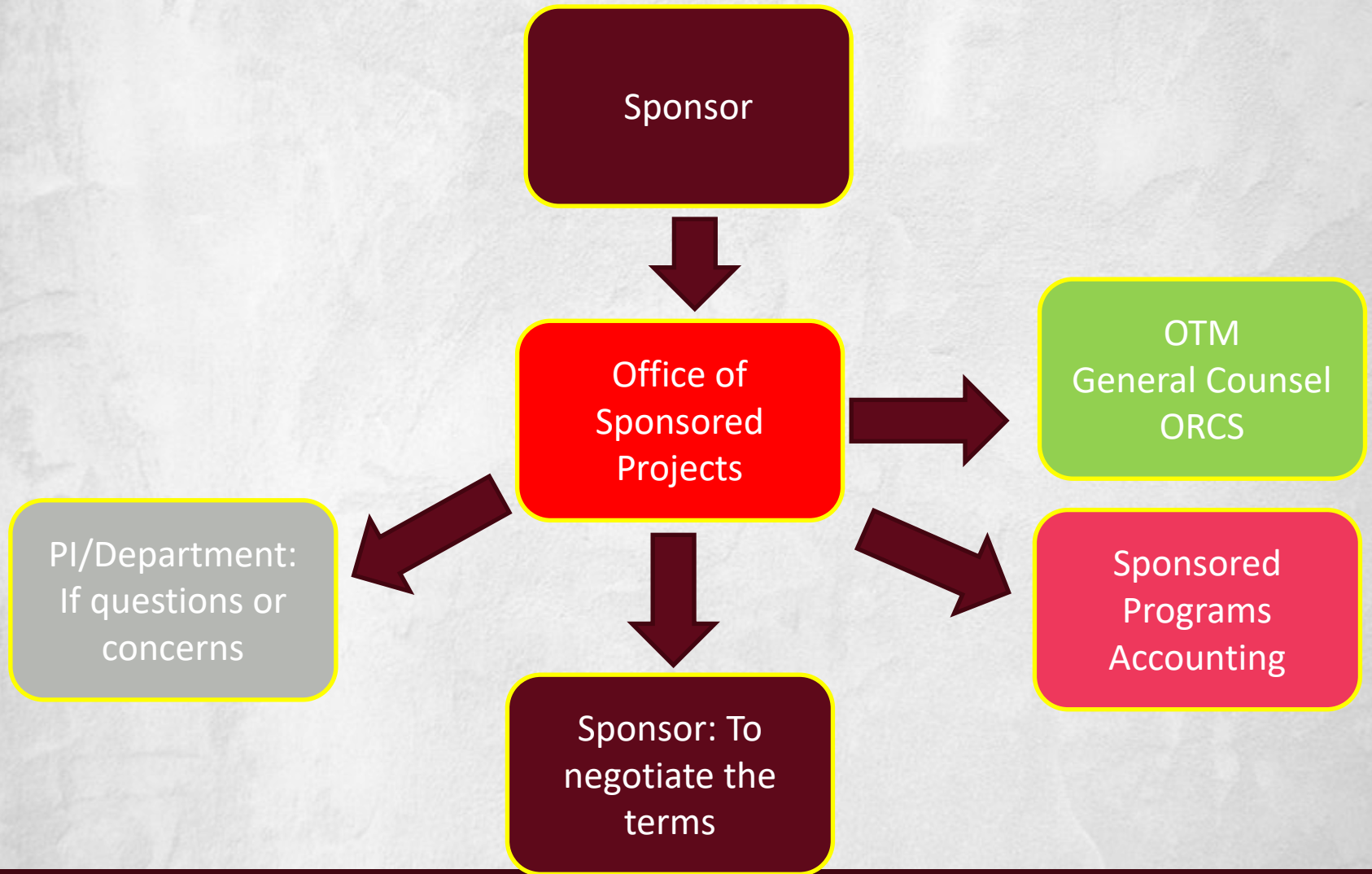


Contract Examples cont:

- Agreements with no funds associated:
 - Master Agreement- Task orders assessed later
 - Teaming Agreement
 - Memorandum of Understanding
 - Material Transfer Agreement
 - Proprietary Information Agreement
 - Non-Disclosure Agreement
 - Data Use Agreement



NEGOTIATION CYCLE



OSP Review

- Dates and amounts match up to proposal
- Budget categories match up
- Given award number for identification
- Type of award/agreement
- Read through terms



OBJECTIVES CONSIDERED DURING CONTRACT NEGOTIATION



FINANCIAL

LEGAL

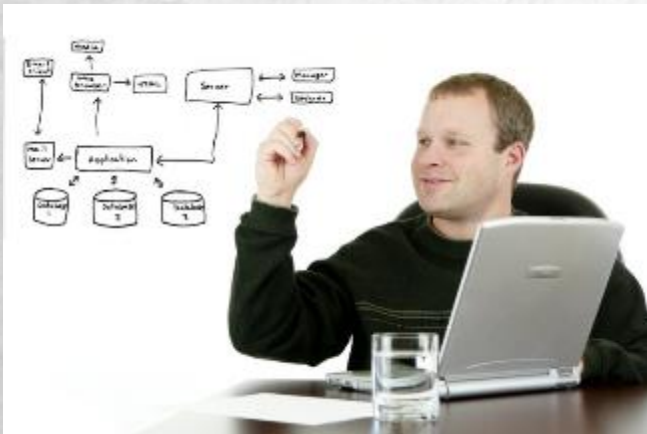
I agree to follow all of the terms

and conditions of the award.



MANAGEMENT

ACADEMIC



FINANCIAL OBJECTIVES

Payment Provisions

- No less than 30 days for invoicing
- May require back up documentation, time sheets, mileage logs, etc depending on the sponsor

Documentation & Reporting

- Reporting Timeline
- PI is aware of what is required to report to Sponsor
- Prefer to avoid excessive reporting

Ownership of Equipment

- MSU prefers to retain title to equipment
- Can be purchasing complications when sponsor retains title

Audit

- We receive an audit annual compliant
- Want to limit the number of sponsor audits, but when required need to be held at MSU

Type of Contract

- Fixed-Price
- Cost-Reimbursable
- Other: Time and Materials, etc.



LEGAL OBJECTIVES

Indemnification/
Insurance

- MSU is prohibited by State law from agreeing to indemnify or hold harmless another party.
- MSU has limited insurance. Primary form is self insurance.

Governing Law

- We cannot agree for the contract to be governed by the laws of another state— same for venue

Arbitration/
Dispute

- Alternative to bringing suit in a courtroom.
- AKA Alternative Dispute Resolution
- Typically unable to agree to any form of arbitration; can agree to non-binding mediation

Termination

- Standard is 30 day written notice
- Typically both parties should have the ability to terminate

Warranties

- MSU cannot warrant that it has done or will do something
- We are a research institution conducting research on a reasonable efforts basis, it would jeopardize academic freedom and integrity to warrant research results



LEGAL OBJECTIVES: CONT.

Liability of legal expenses

- We cannot agree to pay legal fees for another party
- This is effectively viewed as another form of indemnification

Unsatisfactory Work Clause

- We cannot agree that the sponsor has the right to unilaterally make the decision on the work not being satisfactory and MSU is responsible for cost associated with another contractor.

Jurisdiction

- As an Instrumentality of the State of MS we have sovereign immunity granted by the 11th amendment to the US Constitution. We are immune from suit unless we waive our sovereign immunity. MS does waive this, but in limited situations (and it must be brought in MS)



MANAGEMENT OBJECTIVES

Key Personnel/
Approval of Staff

- We want to maintain control over our staff (hirings and firings)
- Sponsor should not have control over our staff

Technical
Direction &
Changes

- Strive for a clear process for SOW changes, budget revisions, and other project changes
- Sponsor should not have authority to unilaterally change the project in these ways

Deliverables:
Inspection &
Acceptance

- Deliverables and deadlines should be clearly defined
- Agency reviews/inspects reports or products , but acceptance should not be completely at their discretion

Manage the
project

- Want to ensure that there are not extra administrative requirements placed on these projects in addition to those regularly accepted



ACADEMIC OBJECTIVES

Publication

- MSU always wants the right to present and publish
- We will provide a copy of the publication to the Sponsor
- Restrictions implicate export control and grad student participation

Confidentiality & Non Disclosure

- Must be stamped Confidential
- Information that is found in the public domain is NOT considered confidential
- Want to ensure that we are limiting as much as possible the scope of the confidentiality

Publicity/ Disclosure of Sponsorship

- MSU is subject to public records and thus is typically unable to keep the existence of a project confidential

Restricted, Proprietary and Classified Research

- Must be marked Classified and must run through facilities security office
- Extensive administrative burden



ACADEMIC OBJECTIVES CONT.

Intellectual Property

- We want to retain ownership of patents, copyrights, etc.
- If agreeing to waive ownership, must be in consult with OTM

Export Control

- If export controlled: limits ability to publish, participation on the project, physical security of the lab space
- A plan will be set up with ORCS to ensure a compliantly run project

Ownership of Documents

- MSU always want to own all notes, documents, drawings, etc it creates

Rights in Data

- We always want to reserve our rights to all Data first reduced and conceived by MSU.
- We also need to be aware of the pre-existing rights we have in items we are delivering to the sponsor



OSP Response

- If changes needed, request to sponsor
- Ideally in Tracked Changes in Word
- If PDF, highlight and comment bubble
- Explain state law requirements if legal
- Follow up weekly if necessary



Outgoing Subawards

- Same process except MSU is sponsor
- More leverage to dictate terms
- Required to follow prime award terms
- Typically faster negotiation with universities



Questions?

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