Contracting: What every department needs to know!

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Agenda

• Differences between grants and contracts
• Types of contracts
• Life of a contract
• Subrecipient key facts
• A department’s role
• “War stories”
What is a contract?

• An agreement creating obligations enforceable by law. Basic elements are:
  – Consideration – I give you something, you give me something in return
  – Mutual assent – both parties must agree
  – Capacity – both parties must be able to agree, understand, and be able to fulfill the terms
  – Legality – can’t be for illegal activity

<table>
<thead>
<tr>
<th></th>
<th>Grant</th>
<th>Cooperative Agreement</th>
<th>Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Purpose</td>
<td>Provides assistance</td>
<td>Provides assistance with substantial sponsor involvement</td>
<td>Purchases tangible goods, services, or research - acquisition</td>
</tr>
<tr>
<td>Solicitation Method</td>
<td>Program Announcement (PA); Request for Application (RFA)</td>
<td>Request for Application (RFA)</td>
<td>Request for Proposal (RFP); Request for Quote (RFQ); Broad Agency Announcement (BAA)</td>
</tr>
<tr>
<td>Governed By</td>
<td>Terms of the grant; OMB Circulars A-21 and A-110</td>
<td>Terms of the agreement; OMB Circulars A-21 and A-110</td>
<td>The FAR – Federal Acquisition Regulation &amp; agency supplements</td>
</tr>
<tr>
<td>Government Involvement</td>
<td>Minor</td>
<td>Substantial</td>
<td>May be extensive</td>
</tr>
<tr>
<td>Work to be Performed</td>
<td>Flexible; no definite tasks</td>
<td>Flexible; no definite tasks</td>
<td>Definite tasks, milestones, &amp; deliverables</td>
</tr>
</tbody>
</table>
### Contract, Grant, or Cooperative Agreement?

<table>
<thead>
<tr>
<th>Research Requirement for Direct Use &amp; Benefit of the Gov't</th>
<th>Contract</th>
<th>Co-op Agreement</th>
<th>Grant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Acquisition of Goods, Services, or Research</td>
<td>Co-op Agreement</td>
<td>Principally for Public Support or Stimulation</td>
</tr>
<tr>
<td>No</td>
<td>Procurement</td>
<td>Substantial Relationship?</td>
<td>Idea for the project is initiated by the investigator</td>
</tr>
<tr>
<td>Assistance</td>
<td>Yes</td>
<td>No</td>
<td>No substantial involvement between the Gov't and grantee</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>Gov't has no expectation of a specified service or end product</td>
<td></td>
</tr>
</tbody>
</table>

3 P's - Patron (Grant) Partner (Co-op Agreement) Purchaser (Contract)

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<table>
<thead>
<tr>
<th>Reporting Requirements</th>
<th>Grant</th>
<th>Cooperative Agreement</th>
<th>Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Report</td>
<td>Specified in Cooperative Agreement</td>
<td>Specified in Contract; usually monthly reports &amp; annual reports, plus compliance reporting</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>How University Receives the Funds</th>
<th>Drawdown based on expenses</th>
<th>Drawdown/Invoice</th>
<th>Invoice</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Publication Restrictions</th>
<th>May ask to be informed</th>
<th>May ask to be informed</th>
<th>Universities generally do not accept;</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Rebudgeting</th>
<th>Flexible</th>
<th>Usually flexible</th>
<th>Varies by agency</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Equipment Title</th>
<th>Vests in Grantee</th>
<th>Varies</th>
<th>Varies depending on type of contract and dollar value</th>
</tr>
</thead>
</table>
Types of contracts we see most!

- Cost reimbursable
- Fixed price
- Site agreements (capitation)
- Vendor agreements (e.g. OSA’s)
- Material Transfer Agreements, Non-Disclosure Agreement, etc.
- Other various contracts

Legal Entity/Signature Authority

- Duke University is the official legal entity entering into any contract that you may be involved in.
- Signature authority is granted by the Secretary of University, under the authority of the Board of Governors. Only those positions listed in the delegation letter are authorized to bind Duke University.
- A contracting officer (federal contract) or an authorized official (other agreements) are the only positions that can bind the other party.
Life of a Contract

Prior Approvals

- Federal Contracts
  - Don’t have expanded authority
  - Requires prior approval request to the sponsor PRIOR TO ENGAGING IN THE ACTION
  - Look in Section B: Advance Understandings in the contract for “Items Unallowable Unless Otherwise Provided”

- Incoming subcontracts
  - Bound by the terms of the prime sponsor and Duke sponsor
  - Duke sponsor requirements may be more restrictive than prime sponsor
  - Prior approval request goes to Duke sponsor, not prime sponsor
Prior Approvals – Cont’d

• Outgoing subagreements
  – Seek sponsor approval if required (i.e. foreign subs)

Rebudgeting

• Federal contracts have little, if any, rebudgeting authority.
• Incoming subagreements must follow the terms of the Duke sponsor and/or prime sponsor
• Outgoing subagreements typically follow the sponsor terms and conditions
Extensions

• Typically contracts contain clauses that require changes to be done in writing and signed by both parties. Email extensions are usually not sufficient.
At the Time of Proposal

1. Obtain the sponsor required documents from the Subrecipient PI.

2. Review the sub application packet for compliance.

3. Submit to your central office Administrator for review and approval.

The Financial Conflict of Interest (FCOI)

“The Public Trust”
## Agencies Using the PHS FCOI Regulations

### Public Health Services (PHS) Agencies
1. Office of Global Affairs (OG)
2. Office of the Assistant Secretary for Health (OASH)
3. Office of the Assistant Secretary for Preparedness and Response (ASPR)
4. Agency for Health Care Research & Quality (AHRQ)
5. Agency for Toxic Substances and Disease Registry (ATSDR)
6. Centers for Disease Control and Prevention (CDC)
7. Food and Drug Administration (FDA)
8. Health Resources and Services Administration (HRSA)
9. Indian Health Service (IHS)
10. National Institute of Health (NIH)
11. Substance Abuse and Mental Health services Administration (SAMSHA)

### Non-PHS Agencies
1. Administration for Children and Families (ACF)
2. Alliance for Lupus Research (ALR)
3. American Cancer Society (ACS)
4. American Heart Association (AHA)
5. American Lung Association (ALA)
6. Arthritis Foundation (AF)
7. California Breast Cancer Research Program (CBCRP)
8. California HIV/AIDS Research Program (CHRP)
9. CurePSP
10. Juvenile Diabetes Research Foundation (JDRF)
11. Lupus Foundation of America (LFA)
12. Susan G. Komen for the Cure

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## Subrecipient FCOI Disclosure

**DUKE UNIVERSITY**
Office of Research Administration

**SUBRECIPIENT FCOI DISCLOSURE FORM - AWARD**

The United States Public Health Service (PHS) Financial Conflict of Interest (FCOI) policy (effective August 24, 2012) mandates that the Duke University determine if a subrecipient has a PHS-compliant FCOI policy, and also requires the subrecipient to disclose certain information should a FCOI be present. Duke University will collect this information prior to issuing a subaward, and then annually at the time of renewal.

### Subrecipient Information

- **Subrecipient Legal Name:**
- **PI name:**
- **PI email address:**
- **PI phone number:**
- **Institutional Financial Conflict of Interest Information**

**My organization DOES HAVE a PHS-compliant Financial Conflict of Interest (FCOI) policy and my organization will adhere to this policy and coordinate with the PI and Duke University.**

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**Duke University**
Symposium for Research Administrators
The Subrecipient Application Packet

Which subpacket should I use?

For Federal:
- PHS 398
- PS 2590
- SF 424
- PHS 2013 (SBIR & STTR)
- DOD
- NIH 2043 (contract)

For Non-Federal:
- Sponsor provided application package
- Consortium Letter(with programmatic assurances) with SOW, detail budget, justification, checklist
- PHS 398
Things to know:

- If the sub has indicated that they will have human subject and animal involvement at their site, the department/PI is responsible for submitting the sub’s protocols to Duke’s IRB and IACUC offices for review and concordance.

- The F & A rate the sub charges Duke should be from their APPROVED rate agreement.

- The subs budget should comply with sponsor allowed expenses.

Statement/Scope of Work

- Should be detailed and specific to each subrecipient

- Each year should be specific to budget period. May need to submit revised Statement of Work each year to maintain accuracy of progress reporting

- NOT the same as generalized abstract or budget justification submitted at proposal time

- Should answer “Who is doing what, when, where and how much?”
COMPLIANCE FOR SUBRECIPIENT

Assurance Key Facts

- IACUC = IACUC review and concordance with Duke’s IACUC office.
- Valid and active:
  - DUNS #
  - FWA# (if human subjects are involved)
  - EIN or TIN
Already have a DUNS #?

• Make sure it is active

RESOURCES FOR DUNS ASSISTANCE

• Federal Help Desk:
  Monday – Friday, 8 AM to 8 PM ET
  U.S. Calls: 866-606-8220
  International Calls: 334-206-7828

• DUNS Help Desk Number (domestic):
  Monday – Friday from
  8 AM to 6 PM Local Time
  U.S. Calls: 800-234-3867
  International Calls: refer to customer service centers on website
Federal Acquisition Regulations (FAR)

• The **Federal Acquisition Regulation** (FAR) is the principal set of rules in the Federal Acquisition Regulation System. This system consists of sets of regulations issued by federal agencies to govern what is called the "acquisition process."

• The FAR is codified in Title 48 of the Code of Federal Regulations. Part 52 is the largest single part and it contains standard contract clauses and "solicitation provisions." Solicitation provisions are certifications, notices, and instructions for firms that plan to compete for a specific contract. Though, many other agencies have their own versions of the basic clauses, including DoD, USAID, NASA, Dept. of Energy, etc.

FAR – Troublesome Clauses

• Here is a small list of clauses that can create issues in the contracting process.
  - 252.204-7000 – Disclosure of Information
  - 9.5 – Organizational Conflicts of Interest
  - 52.212-4 - Contract Terms and Conditions -- Commercial Items
  - 52.227-13 - Patent Rights Acquisition by the Gov't
  - 52.227-14 – Rights in Data
  - 52.246-20 – Warranty of Services
  - 52.249-1, -2, & -4 – Termination for Convenience
FAR - reminder

• FAR 52.232-20 requires the department to notify the sponsor when spending hits a certain percentage of the obligation.
• This allows the sponsor to react if more funding is needed.
• If you do not notify the sponsor and exceed the obligation, your invoice will likely be denied.

Department Responsibilities

• Read the contract!
• Ask questions if there are any terms that need clarification
• Notify ORA/ORS if there is a problem immediately
• Submit all contract requirements timely (progress reports, deliverables, etc.)