



RAMP

Research Administrators Management Program



Tim Linker - Award Negotiation

Objectives

- Guiding Principles
- Negotiation Partners/Sponsors
- Award Terms (Good, Bad, & Ugly)
- Review for Problematic Terms
- Award Acceptance



Guiding Principles

1. Facilitate the research enterprise
2. Protect the Interests of the University, individual faculty and students
3. Abide by University policy, state and federal regulations and laws
4. Keep all parties informed of status (RADAR Progress Journal)



Sponsor Categories

- Federal Government
 - Like: National Institutes of Health
- Quasi Governmental Entities
 - Like: Oak Ridge National Laboratory
- State Government
 - Like: NC Department of Transportation
- Private
 - Companies like DuPont, CREE Research, or Battelle
 - Foundations like Morris Animal Foundation



Federal Government Award Types

(Direct Sponsorship or Flow-through)

Assistance Awards = Public Purpose
(fundamental research)

-Grants

-Cooperative Agreements

Operational Requirements =
Government Purpose (study effects of
sonar on marine mammals)

-Contracts

-Purchase Orders

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Non-Federal Award Types

- NCSU Agreement Templates
 - (SPA, MOA, TSA, PSD/WO)
- Private Industry – Contracts & POs
 - (Industry funded, Federal Flow-through)
- Non-profit Foundations –
 - (Contracts or hopefully NCSU Templates)



Award Terms (Good!)

- OMB Circulars Applicable to Grants to Educational Institutions
 - OMB Circular A-21 Cost Principles
 - OMB Circular A-110 Uniform Administrative Requirements for Grants and Other Agreements
 - OMB Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations



Award Terms (Bad~)

- Federal Contracts and Purchase Orders
 - Acquisition of goods or services for government's benefit
 - Govt. exercises direction and control
 - Governed by Federal Acquisition Regulations (FAR)



Award Terms (Ugly?)

- Private Industry & Federal Flow-through Funding from Industry
 - Industry interests are **PROFIT** based
 - General Rules
 1. Negotiating contracts with industry sponsors is more complex and takes more time than federal grants or contracts
 2. There are no rules



Award Review Process

- Award document reviewed in detail
- Identify terms that are problematic
- Risk Assessment (prioritize high/low risk)
- Prepare a letter of exception or “~~red-line~~” Sponsor’s agreement
- Record status in the RADAR Progress Journal



Pre-Proposal Review

- Does a Proposal need a SPARCS Review? A PINS record is critical!
 - Some Solicitations include terms and conditions (T&C)
 - Must be reviewed by SPARCS prior to proposal submission
 - If no exceptions are given, the Sponsor assumes its T&Cs are acceptable
- *SPARCS Needs Your Help!*



Award T&C

- Terms and Conditions
 - Define business relationship between Sponsor and University
 - Time of performance and consideration
 - Clarify each party's obligations & rights
 - How to handle changes and unexpected situations
 - Assign risk or liability to parties



Problematic T&C

- Governing law
 - Can only accept North Carolina law
- Arbitration
 - No binding arbitration
- Export Control
 - Prefer no export license



Problematic T&C

- Indemnification
 - Unable to indemnify or hold harmless
 - State has “Sovereign Immunity”
 - except “to extent permitted under the NC Tort Claims Act”



Problematic T&C

- Publication
 - Retain right to publish and disseminate results
 - Acceptable alternative
 - Sponsor's prior "review & comment" rather than "review and consent"



Problematic T&C

- Intellectual Property (IP)
 - Patents, copyrights, trademarks, trade secrets
 - Must retain ownership to any IP developed under sponsored project
 - No “work-for-hire” agreements because results of research owned by Sponsor



Want More Information?

- A more detailed explanation on Key Terms in Industry-Sponsored Research Agreements can be found on the Legal Affairs website at:

http://www.ncsu.edu/legal/legal_topics/key-terms_research.php



Award Negotiation Math

$$\begin{array}{ccccc} \text{Sponsor} & \times & \text{Number of} & \times & \text{Complexity} \\ \text{Response} & & \text{Problems} & & \text{of Issues} \\ & & & & \\ & & = & & \\ & & \text{Negotiation Length} & & \end{array}$$

**Individual Results May Vary!*

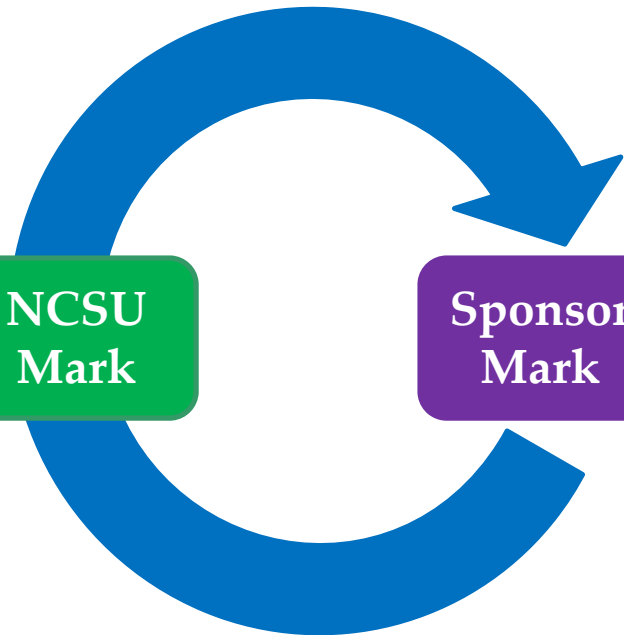


The Negotiator's Merry-Go-Round



Receive
Agmt.

NCSU
Mark



Sponsor
Mark

Final
Agmt.

Award Acceptance

- Award ready for signature when both parties agree on mutually acceptable terms
- Award must be executed by an authorized official of the University
 - Partially executed
 - Fully executed



Award Acceptance

Once award is fully executed

- Processed in RADAR
- Award documents uploaded into RADAR
- Hard copies of proposal and award printed
- Award package reviewed for quality assurance
- Award sent to C&G for account set up and post-award financial management



Questions?

Check the SPARCS Website or
RADAR Progress Journal

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