MSU’s Financial Administrator Development Program

Award Process

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Agenda

• Introduction
• Award Funding Types
• Award Process Overview
• Negotiations and Common Contractual Issues
FY14 Award Funding

Awards Administered through Advancement, $102M, 19%

Awards Administered through OSP/BC/CGA, $426M, 81%

Federal Government, $339M, 80%

NOTES: Award dollars are from the June 2014 Board of Trustees Report. The breakdown of Sponsor type is based on Federal Prime or Direct Sponsor. The first pie chart reflects the system of record. The smaller pie chart reflects the breakdown of sponsor type without Various Donors.

OSP=Office of Sponsored Programs, BC=Business-CONNECT, CGA=Contract and Grant Administration
External Funding, 1992 - 2014

![Graph showing external funding data from 1992 to 2014.]
FY11-FY14 Award Funding by Type

NOTES: Award dollars consistent with the June 2014 Board of Trustees Report. Award Type distribution based on large sample.
What Do We Define as Gifts at MSU?

**Gifts are:**

- Voluntary transfer of funds or property
- By a person or organization to MSU without compensation
- May be for a stated purpose, but no contractual requirements are imposed
- Do not include award or income from a governmental entity (i.e. federal, state, local government)

**When giving a gift, a donor will NOT:**

- Exercise control over the funds;
- Specify (more than generally) how the funds may be spent;
- Receive a direct tangible benefit from the gift (deliverable)
Processing Gifts

Gifts are processed by the Office of University Advancement to ensure that:

• They are properly receipted and recorded.
• Each donor receives prompt and appropriate acknowledgment.
• Members of the Board of Trustees and others are kept fully informed.
• A central record is maintained on all gifts.
• Inquiries may be directed to University Advancement.
What If I Receive a Research Gift?*

Gifts for research ≤$1,000
- to University Advancement with required information

Gifts for research >$1,000
- to CGA with appropriate forms

*See MSU’s Manual of Business Procedures (MBP) Section 315, II.E.; threshold expected to be raised to $5,000 with next MBP update.
## Award Funding Types

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### What Is a Sponsored Project?*

**A sponsored project is:**
- Funded by an external entity
- For a specific scope of work and/or purpose
- Generally benefits the public and/or sponsor.

**The funding generally:**
- Results from a proposal submitted by a faculty member and
- May address the specific need/mission of the sponsor

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*Sponsored projects are also called sponsored programs.*
What Is a Sponsored Project? (continued)

A sponsored project may be funded through:

- Grant
- Cooperative agreement
- Contract

All of the above funding mechanisms are binding agreements

The sponsor may:

- Exercise control over the funds
- Specify how the funds may be spent
- Receive a direct, tangible benefit from the project (deliverable)
FY 2014 Sponsored Project Awards by Sponsor

- **Federal, $339M, 80%**
- **Non-Federal, $87M, 20%**

**Federal:**
- NIH/DHHS, $73M, 21%
- NSF, $81M, 24%
- DOE, $95M, 28%
- ED, $9M, 3%

**Non-Federal:**
- State of Michigan, $12M, 14%
- USDA, $35M, 10%
- USAID, $19M, 6%
- Association, $11M, 13%
- DOD, $7M, 2%
- DOE, $95M, 28%
- NIH/DHHS, $73M, 21%

**NOTES:** Award numbers consistent with June Board Report - Break out uses Federal Prime or Direct Sponsor.
Who Funds Sponsored Projects?

• Federal Government (NIH, NSF, USDA, DOE, USAID DOD)*
• State and Local Governments (State of Michigan, Ingham County)
• Foundations (Gates Foundation)
• Non-Profit Organizations (American Cancer Society)
• Industry (Ford Motor Company)
• Foreign Organizations

*National Institutes of Health (NIH), National Science Foundation (NSF), United States Department of Agriculture (USDA), Department of Energy (DOE), U.S. Agency for International Development (USAID), Department of Defense (DOD)
Sponsored Projects - Grants*

• Transfer a thing of value to a recipient to fulfill a public purpose of:
  • support or
  • stimulation

• Substantial involvement of sponsor is not expected.

• Example: NIH Grant to study a virus.

* Federal definition
Gift or Grant?

Gifts – voluntary transfer w/o strings. Donors:
- Individuals
- Corporate Foundations
- Private Foundations

Gifts & Grants
- Research Gifts
- Definitions overlapping for external reporting
- Corporate and other Foundations and other non-profits

Grants – project
- Governmental
- Foundations and other non-profits
- Other
Sponsored Projects - Cooperative Agreements

• Transfer a thing of value to a recipient to fulfill a public purpose of:
  • support or
  • stimulation

• Substantial involvement of Sponsor is expected.

• Example: Department of Energy (DOE) Cooperative Agreement for FRIB.
Sponsored Projects - Contracts

- The **principal purpose** is to acquire property or services.

- **Major involvement** of Sponsor is expected.

- Sponsor directs the project with the terms of the contract.

- Example: Funding from JPL/NASA* to build an instrument to go to Mars.

*Jet Propulsion Lab (JPL), National Aeronautics and Space Administration (NASA)*
When Would a Contract be Considered a “Testing” or “Fee-for-Service” Agreement?*

MSU faculty work with industry partners to test company innovations.

MSU researchers perform testing using sponsor-created protocols.

Testing is pre-defined based on standard methods

- Does not include analysis or interpretation.
- Usually is funded through contracts and/or purchase orders.

Revenue is generally received as testing is performed or when testing is completed.

*Criteria is based on historical practice. It is anticipated that an update to the Manual of Business Procedures (MBP), Section 315: Gifts, Grants, and Contracts will be released in the foreseeable future.
Sponsor Restrictions/Involvement in Project

Sponsor Restrictions/Involvement

More

Less

Gifts

Grants

Cooperative Agreements

Contract

2/3/2015 FADP

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Sponsored Project Award Process Overview

1) eTransmittal approved and proposal submitted

2) Stars Aligned

3) Award notification

4) Determine funding type

5) Award reviewed

6) Negotiation

7) Work with appropriate parties to resolve any award issues

8) All approvals in place including any compliance issues resolved

9) Award accepted/executed by both parties

10) Assign project account number

11) Accepted by Board of Trustees

e-Transmittal discussed in Budgeting session.
Award Process Overview

eTransmittal approved and proposal submitted

Stars Aligned = decision by external entity to fund

Award notification/notice of intent to fund

Determination of funding type & award mechanism
Process varies by type and mechanism
Award Process Overview (continued)

Award reviewed by Office of Sponsored Programs (OSP) or by Business-CONNECT (B-C) if funds are from industry only

Negotiation (or confirmation)

OSP (B-C) works with appropriate parties (at MSU and/or external entity) to resolve any award issues

All approvals in place including any compliance issues resolved

2/3/2015 FADP
Award Process Overview (continued)

Award accepted:
Contracts require authorized signature
Grants may be accepted by expending funds

Transferred to Contract and Grant Administration (CGA) to assign project account number

Accepted by Board of Trustees
Negotiations and Common Contractual Issues
Increasing regulatory requirements

Increasing knowledge of potential risks on both sides

Increasing desire to maximize returns or reduce risk on both sides

Negotiations take time

Differing missions

Decreasing experience levels at MSU & sponsors due to retirements and other turnover
Negotiations Take Teamwork to be Successful
Negotiations Take Teamwork to be Successful (detail)

Office of Sponsored Programs (OSP)* reviews awards and facilitates communications among MSU personnel as necessary, in order to negotiate and accept awards on behalf of MSU. Other advisors, players, and decision-makers in the MSU Team are:

- Office of the Provost
- Dean/Chair
- Principal Investigator (PI)
- Research Administrator (College, Department, or Project level)
- Risk Management and Insurance
- Purchasing
- Controller’s Office
- Contract and Grant Administration (CGA)
- Michigan State University Technologies (MSUT)
- Vice President for Research and Graduate Studies (VPRGS)
- Clinical and Translational Sciences Institute (CTSI)
- Office of Export Controls and Trade Sanctions (ECTS)
- Office of Regulatory Affairs (ORA)
- Office of the General Counsel (OGC)
- Other

*Business-Connect (B-C) serves the role described above for OSP if the negotiation is with industry and no federal funds are involved, e.g., direct award from Pfizer with no Federal funds would be handled by B-C. On the other hand, OSP handles award if U.S. Air Force has a contract with Boeing and Boeing sub-contracts to MSU for a portion of the work.
Contractual Language

Just a few words can have big impacts.

Some award terms are generally prohibited.

Facts and circumstances can have differing impacts.

Intellectual property claim in Stanford v. Roche. Court gave the language “do hereby assign” as taking precedence over “agree to assign”.

Other language may be accepted on a case-by-case basis.

Graduate students versus employees.
Contractual Language and Other Matters that May Extend Negotiations and Delay Signature

- Publication/Dissemination Restrictions
- Intellectual Property Ownership Rights
- Export Controls and Related Restrictions
- Participation Restrictions
- Non-Compete Clauses
- Governing Law
- Payment Terms
- Approval of Deliverables
- Penalties
- Arbitration
- Time and Material or Labor Hour Contracts
- Other

2/3/2015 FADP
Contractual Language that May Extend Negotiations and Delay Signature

Publication/Dissemination Restrictions

• University policy, with limited exceptions, requires that we do not accept publication restrictions.

• MSU policy based on principles of:
  • Academic Freedom
  • Importance of publishing - to gain tenure or graduate - graduate students and non-tenured faculty are particularly impacted.

• Can take a village to negotiate an agreement

*MSU Faculty Handbook, Section VI. Research and Creative Endeavor*
Contractual Language that May Extend Negotiations and Delay Signature

Intellectual Property Ownership Rights

- MSU owns research results developed by MSU employees
- MSU owns any research results developed using MSU resources or facilities (when faculty members are consulting, they are not to use MSU resources and facilities)
- Taking it to court

*MSU Faculty Handbook, Section VI. Research and Creative Endeavor*
Negotiation and Related Activities:
How Much Time Does It Take?

Typical Times
- Processing Time ~ 1 - 3 Weeks
- Processing Time ~ 1 - 4 Weeks
- Processing and Negotiating Time ~ 2 - 6+ Weeks

FY 14 Average and Median Times

- Grants
  - Average Time: 3
  - Median Time: 2
- Cooperative Agreements
  - Average Time: 3
  - Median Time: 3
- Contracts
  - Average Time: 5
  - Median Time: 4
What has OSP Done to Improve Award Processing Time?

- **Restructured OSP in April 2014**
  - Two Proposal Teams – focusing on proposals
  - Two Award Teams – focusing on awards and sub-agreements

- **Award teams are fully-staffed with five members per team**
  - Teams co-located April 2013
  - Two new positions in July 2013

- **The OSP Activity Log was implemented in November 2013**
  - Track progress and status of an award
  - Manage Workload
  - Made log available to MSU community in 2014

- **Negotiation resources developed/developing**
  - Mapped process as part of KC implementation
  - Subaward and FAR resource improvements
  - Contract negotiation guide in development
Reducing Delays in Award Processing Time

- Complete proposals as per *OSP Proposal Preparation Guidelines*
- Forward award documents to OSP (or B-C when industry only) immediately upon receipt
- Ascertain that all required approvals are in place
- Recognize that OSP should negotiate directly with sponsor (unauthorized individuals negotiating deals can create delays)
- Timely communication and collaboration
- Plan for negotiations to take time
Thank you for participating

*Supplemental materials included for reference.*

Questions?

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Reference Materials for FADP Award Process Session

Supplemental information on process, contract language and related information that can delay award is found in the following slides.

Contracting is also covered in Essentials of Research Administration series.
Requirements for Award Account Set-Up

Complete eTransmittal* must have been processed and approved.

The complete cost of the research has been estimated and included in the project budget.

Details of how sponsor required cost sharing obligations will be met must be provided.

Provide required documentation/information for large expenditures, such as equipment and subcontracts.

Statement of Work is determined.

Regulatory approvals are in place, e.g. approval or exemption if animal use or human subjects. Be aware that significant time needed for these approvals.

Fully executed award is received.

*e-Transmittal will be covered in the budgeting session
Proposal and Award Activity FY11-14

NOTES: Proposals based on date OSP accepts eTransmittal. Awards consistent with the June 2014 Board of Trustees Report. Award type distribution based on large sample. Different counting methodology for proposals vs. awards.
Recent Court Case

- Stanford University (Board of Trustees of Leland Stanford Junior University) v. Roche Molecular Systems, Inc.
- U.S. Supreme Court held that title in a patented invention vests first in the inventor, even if the inventor is a researcher at a federally funded lab (or university) subject to the Bayh-Dole Act.
- Bayh-Dole Act: legislation dealing with who owns IP arising from federal government-funded research
- If ownership given away, could end up in non-compliance with Bayh-Dole Act.
Contractual Language that May Extend Negotiations and Delay Signature

• Export Controls and Related Restrictions:
  • Federal regulations that apply: ITAR, EAR, OFAC*
  • If export control laws are violated, criminal sanctions (jail/fines) may result. (See also Reference Material).
  • If research is controlled and there are restrictions on participation or publications, a license may be required.
  • Fundamental research is normally outside export control restrictions. A project’s status as fundamental research is affected if publication restrictions are accepted (see also Reference Material).
  • “Deemed Export” - transfer or disclose information or material that is controlled within the US to anyone who is not a US citizen or permanent resident.
  • The MSU Office of Export Control & Trade Sanctions provides support and guidance in this critical area.

*International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), Office of Foreign Assets Control (OFAC)
Contractual Language that May Extend Negotiations and Delay Signature

• Export Controls and Related Restrictions (continued):

  • Federal export control laws restrict the export of goods, technology, related technical data, and certain services in the interest of protecting the national security and domestic economy. These laws have been in existence for many years, but the events of 9/11 have resulted in heightened concerns about national security and stricter interpretation and enforcement of export control laws and regulations by the federal government.

  • Research activity may be subject to export controls if it involves the actual export or “deemed” export of goods, technology, or related technical data that is: 1) “dual use” (commercial in nature with possible military application), 2) inherently military in nature, 3) proprietary.
Export Controls Supplemental Information

Work in the following areas is more likely to be subject to the controls:

- Engineering
- Space sciences
- Computer Science
- Biomedical research with lasers
- Research with encrypted software
- Research with controlled chemicals, biological agents, and toxins

In addition, any of the following raise export control questions for your project:

- Sponsor restrictions on the participation of foreign nationals in the research
- Sponsor restrictions on the publication or disclosure of the research results
- Indications from the sponsor or others that export-controlled information or technology will be furnished for use in the research
- The physical export of controlled goods or technology is expected
Export Controls Resources

• MSU Office of Export Control & Trade Sanctions
  Phone: (517) 432-4499

• Each October, for the last six years, FBI conference has been held in East Lansing, Michigan and it is anticipated it will continue.
Export Controls Violation Consequences

• Dr. John Reece Roth, a former professor of electrical engineering at the University of Tennessee (UT) in Knoxville.

• Dr. Roth obtained a USAF* contract to do work on military drone aircraft. He allowed two foreign national students to access export controlled data and equipment, and took some of the data with him on a trip to China.

• In January 2012, Dr. Roth began serving a four-year prison sentence for his September 2008 convictions.

*United States Air Force (USAF)
Contractual Language that May Extend Negotiations and Delay Signature

- **Participation Restrictions**
  - Some sponsored agreements may restrict participation or dissemination of information to U.S. nationals.
  - Work then becomes subject to export controls which includes “deemed exports.”
  - Generally MSU doesn’t accept participation restrictions.
  - Participation restrictions may prevent MSU from performing work as proposed, putting MSU at risk for non-compliance. Grant and Cooperative Agreements may be terminated by recipient, but Contracts usually can only be terminated by Sponsor.
Participation Restrictions

Guidance from the Federal government on fundamental research and participation restrictions:

*May 24, 2010 Memorandum from the DOD* Under Secretary of Defense.*

“The performance of contracted fundamental research also should not be managed in a way that it becomes subject to restrictions on the involvement of foreign researchers or publication restrictions.”

*Department of Defense (DOD)*
Contractual Language that May Extend Negotiations and Delay Signature (continued)

• **Non-Compete Clauses**
  • Could restrict participation of other MSU faculty or staff.
  • Can limit the ability of an investigator to work in the field.

• **Governing Law**
  • As a state entity, MSU normally does not accept laws of another state.

• **Payment Terms**
  • Agreeing to payment terms when all payment comes at the end of a project could be problematic.

• **Approval of Deliverables**
  • Project results that are not what the sponsor expected may put MSU out of compliance, impact academic freedom, or result in non-payment for the work performed.
Contractual Language that May Extend Negotiations and Delay Signature (continued)

• Penalties
  • Non-performance penalties can greatly reduce the amount of award and/or cost MSU additional money.

• Arbitration
  • Cannot accept binding arbitration for domestic contracts.

• Time and Material or Labor Hour Contracts
  • Requirement for reporting and providing support for hours.

• Other
  • Example: Termination
Other Issues that May Extend Negotiations and Delay Signature

- Involvement of unauthorized individuals in the negotiating process.

- Subawards to MSU (funding to MSU): receiving funds from an entity (Direct sponsor) that receives funds for the project from another entity (the Prime sponsor).
  - Flow-down clauses not applicable to universities, e.g., receiving costing principles, ownership of data and patents rights clauses or terms applicable to the type of entity of the Direct sponsor.
  - Conflicting terms from the partner that are not included in the prime agreement.
“Fundamental research means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.”


Implication:
If not “fundamental research,” Export Controls and other restrictions apply.