Elective: Contracts and Other Agreements
Session Overview

This session will cover:

- Understanding the impact of a contract versus a grant or cooperative agreement on the pre-award process
- An overview of terms and conditions of grants and cooperative agreements;
- An overview of nonfederal contract clauses in general including typical provisions MSU cannot accept
- A discussion of other transactions such as master agreements and memoranda of understanding
Definition of a Grant

- A grant is a financial assistance mechanism providing money, property, or both to an eligible entity to carry out an approved project or activity for a public purpose.
- The sponsor is not substantially involved programmatically with the grantee during performance of the funded activities.
- The terms and conditions of most grants are covered by July 2008 Research Terms and Conditions developed by the Federal Demonstration Partnership.
Federal Demonstration Partnership

The Federal Demonstration Partnership (FDP) is an association of federal agencies and institutional recipients of federal funds with administrative, faculty and technical representation, and research policy organizations that work to streamline the administration of federally sponsored research.
Federal Demonstration Partnership

- FDP Federal agencies implemented Federal-wide Standard Terms and Conditions for Research Grants in 2008. This is the origin of “expanded authorities.” Stay tuned to see if this will be changed by implementation of the Uniform Guidance.

See Appendix 1: Research Terms and Conditions Prior Approval and Other Requirements Matrix

- NSF is the official host of FDP documents which can be found on the NSF website.

http://www.nsf.gov/awards/managing/rtc.jsp
Definition of a Cooperative Agreement

- The principal purpose of a cooperative agreement is to carry out a public purpose of support or stimulation with the expectation of substantial involvement between the government and the awardee.
Cooperative Agreements, Terms and Conditions and Administrative Requirements

The terms and conditions of cooperative agreements vary by agency.

- NIH – The Grants Policy Statement applies to both grants and cooperative agreements, but the NIH may apply terms and conditions that differ depending on the nature of the NIH’s involvement in the cooperative agreement.

- NSF – Separate terms and conditions for cooperative agreements.

2 CFR 200 Uniform Administrative Requirements (Uniform Guidance, UG) provides the administrative requirements for cooperative agreements.

The FAR only applies to contracts.

Always review the terms and conditions of the award document, because this is ultimately what will apply.
Definition of a Contract

A contract is an award instrument that establishes a binding legal procurement relationship between the sponsor and the recipient obligating the latter to furnish a product or service defined in detail by the sponsor and binding the sponsor to pay for it.
## Grant vs. Contract

<table>
<thead>
<tr>
<th>Grant</th>
<th>Contract</th>
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</thead>
<tbody>
<tr>
<td>• PI prepares scope of work that may be investigator initiated or in response to a specific solicitation</td>
<td>• Sponsor typically prepares the scope of work</td>
</tr>
<tr>
<td>• Award is primarily based on science</td>
<td>• Award is largely based on best value for the government</td>
</tr>
<tr>
<td>• Expanded authorities from the Federal Demonstration Partnership often apply</td>
<td>• Each contract is unique and terms vary</td>
</tr>
<tr>
<td>• A grant can be turned down, or revised with agency approval</td>
<td>• Once a contract proposal is submitted, if the government accepts it, it is enforceable and not subject to change</td>
</tr>
<tr>
<td>• There is time to address regulatory issues prior to award</td>
<td>• Contract terms and regulatory issues need to be addressed at the front end since government acceptance seals the contract</td>
</tr>
</tbody>
</table>
Grant or Contract? Why Does it Matter?
Contract Applicants Beware

Read the solicitation.
An award can be made without discussions or prior contact concerning the proposal submitted.
This information will be in the solicitation.
Contracts Without Discussions

Contracts without discussions may be issued if:

- The solicitation provides that the Government intends to make an award “without discussions,”

  and

- Award without discussions will provide the best value to the Government
Contract Applicant Considerations

- Institutional approval on the proposal represents acceptance of all terms and conditions in the solicitation and proposal package.

- If the government accepts the proposal, then the institution is legally bound to perform. However, negotiation may be possible.
Prepare Contract Proposals Early

- Notify OSP of the intent to apply as soon as possible. OSP will need to review and may need to negotiate contract language prior to the submission deadline.
- There may be export control issues that need to be reviewed.
- If OSP needs to send a letter taking exception to some conditions due to insufficient time to negotiate terms, the proposal could be deemed nonresponsive.
Export Administration Regulations (EAR)  
International Traffic in Arms Regulations (ITAR)

- When a project is being planned that could potentially involve items from the Commerce Control List, or from the US Munitions List, the MSU Office of Export Control and Trade Sanctions (EC&TS) should be contacted to determine if a review of export control issues is warranted.

- There is an electronic export control worksheet processing system at the following link:  
  https://forms.exportcontrols.msu.edu/
Export Administration Regulations: Fundamental Research

- Fundamental Research is basic or applied research in science or engineering at an accredited institution of higher learning in the U.S. where the resulting information is not restricted in the form or content of its release to the public and is ordinarily published and shared broadly in the scientific community.

- Fundamental research is exempted from licensing requirements (with the exception of some encryption technology).
Export Administration Regulations: Fundamental Research Exemption

- Contract language restricting publication or dissemination of research results will adversely affect the Fundamental Research Exemption which could require MSU to obtain an export control license (which has never been done to date), or alternatively, to sequester the project if foreign nationals are involved and the project involves an item on the munitions list.
International Traffic and Arms Regulations (ITAR) and Office of Foreign Assets Control (OFAC)

- The United States forbids exports and imports of defense articles and services to certain countries.
- The US Department of State maintains a munitions list designating articles, services, and related technical data as defense articles and defense services.
- An export license is required for items that are included on the munitions list unless fundamental research can be claimed or the project can be sequestered.
Other Transactions

- “Other Transactions” is a term used by federal agencies to enter into transactions other than contracts, grants and cooperative agreements to appeal to entities that do not traditionally do business with the Federal Government, or to leverage private sector funding.
Other Transactions (continued)

Some agencies have authority to enter into Other Transactions, such as the US Department of Defense, which has used this mechanism for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the US DOD.
Other transactions are generally not subject to the Federal laws and regulations that apply to contracts, grants, and cooperative agreements. They are typically not governed by the Federal Acquisition Regulation (FAR) and its supplements (48 CFR).
Fixed-Price and Cost-Reimbursable Contracts
Fixed-Price Contracts

- A fixed-price contract is ordinarily used for acquiring commercial items or for acquiring supplies or services, and when the contracting officer for federal contracts can establish fair and reasonable prices at the outset.
- There are several types of fixed-price federal contracts available, and it is the contracting officer’s responsibility to choose the most appropriate type for the project. The types of contracts are covered in the FARs.
- Performance milestones and deliverables must be met regardless of budget shortfalls.
Fixed-Price Contracts

- The PI’s department accepts the risk of price fluctuations and overages in fixed-price contracts.
- For all fixed-price contracts over $25,000, the PI and relevant department chair should sign a separate memo acknowledging the risk and designating an alternate PI who is able to complete the work if necessary.
- For fixed-price contracts over $100,000, the relevant college dean will also need to sign the memo acknowledging the risk.
- The PI/institution may retain any excess funds at the completion of the project if funds remain.
- The PI’s department must retain records of the costing of the project for audit purposes.
Cost-Reimbursable Contracts

- Cost-reimbursable contracts provide for payment of allowable incurred costs, to the extent provided in the contract. These contracts establish an estimate of total costs for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed without approval of the sponsor or contracting officer.

- There is not a risk of absorbing cost fluctuations as there is with a fixed-price contract.
Nonfederal Contract Overview
Key Ingredients of a Nonfederal Contract

A binding agreement can be present in a number of different formats.

The key ingredients are:

- An offer to do something
- Acceptance of the offer
- Mutuality of agreement, or a meeting of the minds
- Consideration, payment in the form of money, goods, or agreement to modify action
- Authority and capacity to contract
Foundational Nonfederal Contract Clauses

- **Who** - Introductory section with party names, locations, and statement of intent to enter an agreement
- **When** - Period of performance
- **What** - Scope of work
- **How much** - Payment terms
Nonfederal contracts come in all shapes and sizes.
This contract began the career of who would become the highest paid soccer player in the world. It was on a napkin!
Lionel Messi’s new contract is a little more complicated.
Typical Additional Nonfederal Contract Clauses

- Intellectual property clauses
- Confidentiality provisions
- Reporting language
- Termination clause
- Indemnification
- Jurisdiction
- Merger clause – the agreement represents the complete understanding between the parties. No understandings reached outside of the agreement count.
Clauses to Scrutinize:

- **Publication restrictions** – Requiring sponsor review and approval of written material prior to publication.
- **Intellectual property** – OSP, or MSU Business Connect if the sponsor is industry, will refer this language to MSU Technologies if the language is questionable.
- **Indemnification** – MSU is not able to indemnify or hold a third party harmless because MSU is an instrumentality of the state and this would violate the Michigan Constitution. Credit of the state cannot be extended to third parties.
- **Jurisdiction** – A jurisdiction clause states which laws will apply to the agreement. If the agreement does not provide for Michigan law, then the agreement should be silent on this issue, i.e., “This agreement shall be subject to the laws of a competent jurisdiction.” This is a constitutional issue - An instrumentality of the state may not subject itself to the laws of another jurisdiction.
Confidentiality Clauses and Exceptions

Confidentiality Clauses – confidentiality clauses can be acceptable, but they should not limit the right to publish. There should also be exceptions for the following:

- Something already in the possession of the recipient
- Something that becomes public knowledge by no fault of the recipient
- Something that is obtained legitimately from a third party without confidentiality obligations
- Something developed independently without access to the confidential information, and can be proven by written records
- Written permission to disclose information is given by the provider
- Information required to be disclosed by law or court order
Additional Types of Agreements
Master Agreements

- A master agreement may be used to establish the general terms and conditions of research or service projects over a period of time. A sponsor may then fund multiple projects without the need to negotiate the terms of the agreement each time.

- An exhibit or addendum is typically appended to the master agreement for each project. The scope of work and budget for each project are detailed in the exhibit or addendum, which is typically numbered.
Amendments

A contract establishes the rules under which a project is to be performed. When the rules change, amendments are often needed to avoid confusion and to protect the interests of both parties.
Purpose of Amendments

An amendment may be used to update or add to specific terms of an agreement or contract without revising or redoing the original terms that are still acceptable to both parties.

Amendments are often used for the following purposes:

- Establish a no-cost extension
- Revise the scope of work
- Change key personnel
- Change the budget
- Change any other terms in the agreement or contract that both parties agree need to be updated
Memoranda of Understanding (MOU)

An MOU reduces to writing an understanding between two or more parties. The MOU is less formal than a legal contract in that all of the elements of an enforceable contract do not need to be present, including authorized signatures. If all elements of a contract are not present, then the MOU is not enforceable.
Questions?
TOPIC 2

ERA Elective – June 9, 2015
Contracts and Other Agreements
TOPICS

• Who we are
• Agreement Process Steps
• Commonly Asked Questions
where MSU meets Industry
Collaborative and sponsored research with industry - $11 Million in grants last year

Patents MSU technologies and licenses commercial rights to industry - $4.2 million in royalty revenue last year

New entity, 2012 – start-up companies based on MSU technologies
MSU INNOVATION CENTER

Business CONNECT

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Guangming He
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Charlene Fortin
Contract and Grant Sponsored Accountant
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517-884-2363

Contract Appropriateness

Information Capture

Budget Appropriateness

Tina Ramos, MPA, J.D.
Contract &
Grant/Sponsored Prgms
Administrator
ramostin@msu.edu
517-884-2365
Agreement Process Steps
Step 0-2

0) Project idea is formed
   - Can be MSU or Company Idea
   - Source is often Publications, Patents, Seminar, Business Connect Introduction.

1) Company and Professor Start non-confidential dialog about potential Project

2) If confidential information is necessary, MSUT will help with a Non-Disclosure Agreement / Confidential Disclosure Agreement (NDA/CDA)
Step 3 – Internal Strategy Meeting
What we want to know in the beginning

- Whose idea was this – company or faculty?
- What type of work?
- Do we have Background Intellectual Property?
- What is the likelihood of new IP?
- Who would do the work?
  - Grad, postdoc, undergrad?
- Where will the work be done?
- Who is the company?
  - Have we worked with them before?
- Would it be Testing or Research?
### Step 3 – Strategy What type of Agreement?

**RESEARCH**
- Contribution of MIND
- Innovation
- Provides Solutions
- New protocol
- Relationship Established
- Generally >$50K/year
- Scholarship and P&T
- Publications
- 53.5%

**Fee for Service (TESTING)**
- Contribution of HANDS
- Performance
- Provide measurements
- Company protocol
- Building Relationship
- Generally <$50K/year
- Routine work
- Not generally Publishable
- 26%
Step 4 and 6 - BUDGET What BC Account Review is Looking at

- Should reflect anticipated actual costs
- Faculty time appropriately included
- Needs to be fully burdened
- Fixed Price vs. Reimbursable
- No F&A calculations presented
  - just build it in
- No Salary Information
- Simple Line Items

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<th>Dr. X, Budget for Company Y</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
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<tbody>
<tr>
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<tr>
<td>Dr. X</td>
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<td>$81,745</td>
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</table>

$237,363
Step 5 and 8 - Transmittals

• Electronic Approval mechanism
  – Method for Schools and Colleges to be informed of what faculty members are working on.
  – Approval is necessary before agreement can be signed.
• Addresses important issues upfront
  – Compliance Questions - Animal / Human Use
  – Project Type - Testing / Research
• Has Budget and Scope of Work (SOW) Attached
  – These can change depending on contract negotiations
  – Finalized in Step 8
• Additional Compliance Issue – ECCORW
  - Approval is necessary before agreement can be signed.
Step 7 and 9 – Contract Negotiation

• Prefer to start with MSU template
  • but not a requirement
• Every clause in our template has the potential of being unacceptable to a company
• The three frequently reoccurring ones:
  Publication / Confidentiality / Intellectual Property
Step 7- If a Company wants a Formal Proposal

- Companies are different than Granting Agencies
- Proposals are rarely a formal submission
- Occasionally will be issued to circumvent Contract Negotiations
- If a company requests a formal proposal
  - Work with Business Connect before submitting
  - Need completed transmittal and Export Control Form (if required)
  - Share any RFP (request for proposal) documentation early so it can be evaluated
  - Representations of zero overhead are important
    - College will have to supply the IDC or obtain waiver
  - Representations of Intellectual Property restrictions are important.
    - Business Connect can help judge, decision is MSUT’s
Step 9-11 – Contract Implementation

- Upon signature by both Parties, Business Connect will forward agreement to faculty member and CGA.
- Account set-up can be done in advance in certain situations with CGA assistance.
- Account number assignment – CGA
- Invoicing – CGA
- Faculty can bill against an account before we receive a check from Sponsor.
Thanks for your attention!

• Any Questions?
Commonly Asked Questions

• Can we send out BC Templates?
  – We try to discuss agreements in terms of a term sheet before drafting the Agreement. This allows quicker completion and also identification early on which specific agreement should be used. This is the preferred method since we are not promising anything that we will later have to renegotiate.
Commonly Asked Questions

• What are the details of Consortium Agreements?
  – Consortium agreements are used when multiple companies are working on the same project with MSU. This should only be done when there is a collection of corporate interests in precompetitive work that is of interest to the faculty member that cannot or will not be funded by one company individually.
MSU’s place for connecting to the private sector
- come visit any time

325 E Grand River, 3rd floor
TOPIC 3

Contracts & Other Agreements Solicitation (Contract) Review

Gladys Raymond
Manager
Office of Sponsored Programs
Michigan State University
raymondg@osp.msu.edu
June 9, 2015
Federal Acquisition Regulations (FAR) Based Contracts - The Beginning

- Funding Opportunity released by Government:
  - Broad Agency Announcement (BAA)
  - Request for Proposal (RFP)
  - Solicitation

- Faculty select a funding opportunity to respond

Solicitation Review
Solicitation Review – Time is Short!

15 days – summary of proposed contract action in Federal Business Opportunity (www.fedfbizopps.gov)

Solicitation Issued/RFP Released

30 to 45 days to respond=submit proposal
Solicitation Review

- Time is Short!

SOLICITATION, OFFER AND AWARD

<table>
<thead>
<tr>
<th>2. CONTRACT NUMBER</th>
<th>3. SOLICITATION NUMBER</th>
<th>4. TYPE OF SOLICITATION</th>
<th>5. DATE ISSUED</th>
<th>6. REQUISITION/PURCHASE NO.</th>
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<td>X NEGOTIATED (RFP)</td>
<td>March 7, 2014</td>
<td>41-20-14004</td>
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7. ISSUED BY
Federal Highway Administration
Office of Acquisition Management
1200 New Jersey Ave. S.E. Rm E 65-101
Washington, DC 20590

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

9. Sealed offers in Section L for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried, in the depository located in 1200 New Jersey Avenue, S.E., E65-101, until April 7, 2014, local time 12:30 p.m., or see Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation. THIS PROCUREMENT IS BEING ISSUED AS FULL AND OPEN COMPETITION.

10. FOR INFORMATION CALL:
A. NAME
Primary Contact: Dana Ivey
Secondary Contact: Robin Hobbs

B. TELEPHONE
(No Collect Calls)

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<tr>
<td>202</td>
<td>366-4004</td>
<td></td>
</tr>
</tbody>
</table>

C. E-MAIL ADDRESS
Dana.W.Ivey@dot.gov
Robin.Hobbs@dot.gov
Solicitation Review—Time is Short!

- **Shorter time** to review Solicitation and **ASK** questions
  - Technical Questions
  - Budget Requirements
  - Solicitation Requirements

Where to find the Information?

- **Section L-Instructions, Conditions, and Notices** to Offerors
L.5 INQUIRIES

Please direct all questions pertaining to this RFP by e-mail only to Mr. Dana W. Ivey at Dana.W.Ivey@dot.gov and to Ms. Robin Hobbs at Robin.Hobbs@dot.gov. No telephonic questions will be accepted. All questions must be received within the timeframes specified for questions to receive a response.

Questions related to this solicitation must be received before 12:30 P.M. EST on March 17, 2014.

The questions and responses will be made available to the public via an amendment to this solicitation. Duplicate questions may only be responded to once.
Solicitation Review—Asking Questions

➤ Contracting Officer

NOTE:
Contact with anyone else from the agency after the solicitation is released, such as the Program Officer, may result in Proposal being disqualified!

➤ Why?
Solicitation Review—Asking Questions

- Full and Open Competition
- Unfair competitive advantage
- Nonresponsive

Solicitation Review—Parties
Solicitation Review—Parties

- **Principal investigator(s)**
  - Tailor Offer (Response/Proposal) to Solicitation Requirements

- **Department and/or college administrators**
  - Complete required forms
  - Prepare the budget
Solicitation Review—Parties

- OSP Proposal Team
  - Review for compliance with Sponsor and MSU policies and procedures
  - Assist with questions
  - Budget review and Proposal submission

- Central Offices
  - Publication or participation restrictions
  - Other—IRB, MSU Technologies, Legal, etc.
Solicitation Review—Where are the Instructions for Submission?

- **First Page of Solicitation**
  - Section A-Solicitation/Contract Form

- **Section L-Instructions, Conditions and Notices to Offerors or Respondents**

- **All Other Sections**

  **Uniform Contract Format**
Solicitation Review—What to Look For?

- Submission Deadline?*
- Deadline for asking questions?*
- Budget restrictions?*
- Subcontracting Plan required?*
- Method of proposal submission? If electronic, are we registered?*

*Faculty, Department and/or College administrators, OSP Proposal Team
Solicitation Review—What to Look For?

- Contract Type—Fixed Price, Cost Reimbursement, Other?

- Award will be made without discussions?
  
  - Are all award terms included in the Solicitation?
  
  - Exception letter needed?
Solicitation Review—What to Look For?

(3) Signature Authority – The person signing the Proposal Form must have the authority to commit the offeror to all of the provisions of the proposal, fully recognizing that the Government has the right, by terms of the Solicitation, to make an award without discussion if it so elects.

If the offeror finds it necessary to take exception to any of the requirements specified in this solicitation, the offeror must clearly indicate each such exception with a complete explanation of why the exception was taken and what benefit accrues to the Government by the exception. All substantive exceptions to the solicitation requirements (Sections A through M) and supporting rationale shall be identified as such and be consolidated into an overview section of the proposal. An overview section is only required if the offeror takes exception to any requirement in the solicitation.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.
Solicitation Review—What to Look For?

- Publication or Participation restrictions?*
- Problematic export language?*
  - Export Control and Open Research Review Worksheet (ECORRW) required at proposal?*
- Review by other Central Offices?
  - V.P. for Research & Graduate Studies
  - Export Control and Trade Sanctions
  - MSU Technology
  - MSU Legal
Solicitation Review—What to Look For?

- Additional forms required such as Representations & Certifications or Intellectual Property (IP) forms?*
- Teaming Agreements?*
- Intellectual Property Agreements?*
- Non-Disclosure Agreements?*
Solicitation Review—What to Look For?

- Review by Faculty-PI Assurance letter?*
  - Statement of Work—What are the deliverables?
  - Where will project be performed?
  - Anticipated Rights to the Government in the deliverables or Intellectual Property (IP)?
  - Contract Clauses
  - Any other Department/College approvals needed?
Solicitation Review—What to look for?

- Budget requires a breakdown of hours worked by individual vs. percentages of effort. (Section L)

  ✔ Request permission to budget based on percentages of effort in lieu of hours. Or,
  ✔ Proposal (offer) **must** include a breakdown of hours in the budget.

**Why?**

- MSU could be considered nonresponsive and be disqualified.
Solicitation Review—What to look for?

- Solicitation indicates award will include publication or other dissemination restrictions.

  ✓ Request restrictions be excluded from award? Or,
  ✓ Reserve the right to negotiate this language prior to signing of the award?

Why?

- The University **should retain** for its scholars the **right of first publication**.
Solicitation Review-Missed Deadline to Ask Questions...What to do?

- Review all questions and answers posted in solicitation website.
- Discuss with OSP Proposal Team.
- Publication/Dissemination Restriction—OSP will confirm with the V.P. for Research and Graduate Studies (VPRGS) that proposal can be submitted and/or accepted to the University Research Organization (URO).

What is the URO?
University Research Organization (URO)

- June 22, 2012
- To allow unclassified projects to be accepted at MSU that are subject to:
  - External publication approval
  - Participant citizenship restrictions
  - Other forms of control affecting project access or the dissemination of project results.
When is a Project Likely a URO Candidate?

- When the prime sponsor is DoD, DHS, DOJ or an intelligence agency, AND
- The purpose of the project is the development and delivery of a working prototype; or,
- Project involves encryption research, regardless of the funding agency.
When is a Project a Likely URO Candidate?

✓ When normal **negotiating efforts** do **not** result in the timely removal of all applicable dissemination and participant citizenship restrictions.

✓ Funding agency is **not** the Federal government and participant citizenship restrictions are based on verifiable Federal **national security** or **law enforcement** interests.
“Can my Project go into the URO?”

- All project Faculty and their respective departments, schools and/or colleges **must agree** to the URO housing the project. In addition, the URO leadership must believe that the proposed funding, available personnel, space and equipment are all sufficient to complete the project at the current off-campus facility.
Recap

➢ The sooner the better!

✓ Send solicitation to OSP Proposal Team as soon as you are aware faculty anticipates submitting proposal.

✓ An Offer (Proposal) submitted may result in a contract without further negotiation.

✓ Clarifications from the Contracting Officer prior to offer submission may result in a successful award!!!

✓ Does the URO allow MSU to accept all restricted awards? Not always.
Solicitation Review

➢ Questions?

Thank You!
ERA ELECTIVE
CONTRACTS & OTHER AGREEMENTS

TOPIC 4:
DOD PROPOSALS VS OTHER AGENCIES

Maria Skinner
Office of Sponsored Programs
Proposal Team 1 Manager
egrproposals@osp.msu.edu
(517) 884-7431
ABBREVIATIONS

- AFOSR – Air Force Office of Scientific Research
- ARO – Army Research Office
- BAA – Broad Agency Announcement
- DARPA – Defense Advanced Research Project Agency
- DLA – Defense Logistics Agency
- DOD – Dept. of Defense (includes Army, Air Force, Navy, DARPA, Defense Logistics, DTRA
- DTRA – Defense Threat Reduction Agency
- ONR – Office of Naval Research
- T-FIMS – DARPA’s electronic submission system
TYPICAL DOD PROPOSAL
TECHNICAL AND COST PROPOSALS

- Two Volumes are often submitted as the Proposal
  - Volume 1 – Technical, with page limits
  - Volume 2 – Cost, usually no page limits
TECHNICAL & COST PROPOSAL OVERLAP

- Technical Tasks must correlate with Budget Tasks
- Base Period and Options for subsequent years are common
- Technical Proposal often contains some basic cost/budget tables and information that must fit within page limits
  - Cost per task or milestone
  - Man-hours per task per category (Faculty, Staff, Student)
Typical Components of Technical Proposal

- Cover Page
- Official transmittal letter (signed by OSP)
- PowerPoint summary slide with their format
- Innovative Claims
- Project ‘Roadmap’
- Technical Approach
- Statement of Work (written by MSU or Feds)
- Experience/Past Performance
Typical Components of Technical Proposal (continued)

- Qualifications of Investigators and Effort Commitments
- Project Management Plan
- Intellectual Property Plan [technical or software data rights]
- Timeline with Milestones/Tasks and Deliverables
- Organization Conflict of Interest (signed by COI office, etc.)
- Human, Animal issues
- Facilities/Equipment
Tasks

- Tasks are frequently required
  - Milestones – may be go/no-go decision points
  - Budget and technical must coincide by tasks
  - Check on whether sub-tasks are required

- Work with PI to establish simplest task structure for budgeting purposes, if possible
  - i.e. Every 6 months, 12 months, keep overlaps to a minimum, minimize the number of tasks and subtasks, inclusion of all personnel in all tasks, government fiscal year, etc.
  - Register for the ERA Advanced Budgeting elective on 9/8/15 to learn more about setting up task budgets.
**Typical Components of Cost Proposal**

- Cover Page
- Cost Summary by Phase/Task by month and major subcontractor
- Detailed Cost Breakdown
- Budget Justification
  - Must include supplies and specific travel details, and equipment quotes
- IT purchases may require separate letter
- Indirect Rate Cost Agreement
- Subcontractors may need to provide similar breakdowns
Typical DOD Proposal

- Sometimes grants.gov used for DARPA proposals
- Often use the Defense-specific electronic system where PI/Dept does the submission [T-FIMS]
- If TFIMS, requires completing a registration form
- If TFIMS, proposals are often 256K encrypted, zipped and password protected
- For other Defense systems (DTRA), often submission is done by the PI using the OSP password, and then it’s changed
“The Government reserves the right to select for negotiation all, some, one, or none of the proposals received in response to this solicitation, and to make awards without discussions with proposers. The Government also reserves the right to conduct discussions if it is later determined to be necessary. If warranted, portions of resulting awards may be segregated into pre-priced options. Additionally, DARPA reserves the right to accept proposals in their entirety or to select only portions of proposals for award. In the event that DARPA desires to award only portions of a proposal, negotiations may be opened with that proposer.”
Task and Subtasks identified in Technical portion need to coordinate with budgets in Cost Proposal

Government Fiscal Years – Begin Oct 1, End Sep 30

Frequently require hourly rates and # hours per task per employment group

Base and Options or Phase 1, 2, 3 are often spelled out in the RFP

Monthly spending plans usually required of prime and subs

Provide budget template for subs to simplify the combining of budgets and tables
TYPICAL DOD BUDGETS

Examples of DARPA budget by tasks, monthly spending plan

- Government Fiscal Year (Oct 1-Sep 30)
- Hourly Rates often required (see footnote)
- Base Budget + Options for outlying years
- Monthly Spending Plan – may need to adjust summer salary, equipment and travel to specific months
# Partial Budget Sample By Phase

## Project By Phase

**P($)s:**

**PROJECT DATES:**

**GRANTOR:** DARPA  
**DUE DATE:**

**TITLE:**

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# Direct Labor Summary with Hours

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**TOTAL PROGRAM**

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**Notes:**
- The hourly rates reflected above are being provided for comparison purposes only. MSU does not maintain documentation of hours worked for its faculty and staff, with the exception of undergraduate students, but rather maintains documentation to support time expended on federal projects based on percentages of effort worked. This documentation is maintained in accordance with Uniform Guidance at 2 CFR 200.
# Travel with Trip Details

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# PHASE BY MONTH

## MAJOR PROGRAM TASKS BY MONTH

### PHASE 1 - 12 Months (Date)

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<td>F&amp;A</td>
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<td>24</td>
<td>TOTAL</td>
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</thead>
</table>
SMALL BUSINESS SUBCONTRACTING PLAN

- Required if contract budget is more than $650,000
- Usually not required until time of award, but best to get quotes and details of what and where things will be purchased prior to submission so the budget doesn’t need revision at time of award
- Will need to identify if small business, and if so:
  - Women, disadvantaged, veteran, veteran-disabled, etc.
- MSU Purchasing signs off on the Plan and can assist
Michigan State University Supplier Information Form [Substitute W-9]

- **Company Name:** EC Government Services
- **Contact Person:** Keith Mahosky
- **Address:** 4490 Old William Penn Highway
- **City, State and Zip:** Murrysville, PA 15668
- **Phone No:** 724-777-1431 **Fax No:** 724-325-6383 **E-mail:** kmahosky@ecgsgroup.com, kmahosky@enercon.com – Please use both
- **Web site:** ECGSgroup.com

---

**Company Profile:**

- 51% CONTROLLED & OPERATED: (check all applicable lines)
  - Small Business (S)
  - Minority Owned (If Minority Owned, enter % of ownership): African/Black American Owned (B); Hispanic American Owned (H); Asian Indian American Owned (A); X Native American Owned (N); Asian-Pacific American Owned (P)
  - Handicapper Owned (Z)
  - Veteran Owned
  - Disabled Veteran Owned
  - Woman Owned (W)
**INFO NEEDED FOR SMALL BUSINESS PLAN**

**INSERT A TAB INTO YOUR BUDGET SPREADSHEET**

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Other than Small Business (i.e. large business)</th>
<th>Small Business</th>
<th>Women Owned*</th>
<th>Disadvantaged**</th>
<th>Balance Small Business</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supplies/Services (SS)</td>
<td>$ 291,788</td>
<td>$ 122,166</td>
<td>$ 169,622</td>
<td>$ 46,737</td>
<td>$ 45,000</td>
<td>$ 77,885</td>
</tr>
<tr>
<td>Equipment (E)</td>
<td>$ 770,952</td>
<td>$ 600,120</td>
<td>$ 170,832</td>
<td>$ -</td>
<td>$ -</td>
<td>$ 170,832</td>
</tr>
<tr>
<td>TOTAL SS &amp; E</td>
<td>$ 1,062,740</td>
<td>$ 722,286</td>
<td>$ 340,454</td>
<td>$ 46,737</td>
<td>$ 45,000</td>
<td>$ 248,717</td>
</tr>
</tbody>
</table>

**Percentage Calculations**

<table>
<thead>
<tr>
<th></th>
<th>Supplies/Services (SS)</th>
<th>Equipment (E)</th>
<th>TOTAL SS &amp; E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supplies/Services (SS)</td>
<td>41.9%</td>
<td>58.1%</td>
<td>68.0%</td>
</tr>
<tr>
<td>Equipment (E)</td>
<td>77.8%</td>
<td>22.2%</td>
<td>32.0%</td>
</tr>
<tr>
<td>TOTAL SS &amp; E</td>
<td>68.0%</td>
<td>32.0%</td>
<td>4.4%</td>
</tr>
</tbody>
</table>

* Women-owned Companies

Working Bugs
DOT Scientific

** Disadvantaged

Enerco/EC Govt Services
LESSONS LEARNED
(I.E. HOW TO LESSEN THE PAIN!)

- Meet with PI early – determine who’s doing what
- Decide on # of tasks, start/end of tasks and any subtasks

Subcontractors
- Determine # of subs
- Send them budget template for task and monthly breakdowns
- Send list of requirements (SOW, budgets, signed letter of commitment, reps & certs, organizational conflict of interest, bios, C & P, etc.)
- Create spreadsheet of need items from whom & when, and check off as you receive them
- Be sure to review subcontractor forms for compliance
FLOW CHART FOR PROCESSING CONTRACTS/DOD PROPOSALS

- PI Identifies Solicitation
- E-mail Intent to Submit, website, & Due Date to OSP Group
- ALL - Begin to Review Solicitation for Specifics (budget requirements, due date, additional materials needed, contract or other)

DEPT/COLLEGE OFFICE
- Review Solicitation
- Work on Budget Forms & Request Subcontractor Docs/Budget
- Email Budget to PI/OSP to Review
- Prepare E-Transmittal
- Work on Cost Proposal
- Assemble Tech. Proposal Components (biosketches, CP, Cover Page, Subcontracts, etc)
- Assemble Tech. Proposal & Appendices, Letter of Exception, Make Copies/CD, PDF, etc

OSP
- Review Solicitation
- Ask Questions/Request Clarifications Prior to Proposal Submission
- Review Draft Budget
- Draft PI Acceptance Letter
- Draft Letter of Exception
- Review/Approve Final Cost Proposal
- Have cover page or Other Docs Signed
- Approve E-Transmittal

PI/CO-PI
- Review Solicitation
- Write Proposal
- Review/Sign PI Acceptance Letter (as required) (e.g., for awards w/out discussion)
- Complete Export Form (as required) (e.g., for awards w/out discussion)
- Finalize Tech. Proposal

REVIEW FINAL PACKAGE
- Submit to Agency (if required)
- Receive Award Notice & Contract/Grant Doc
- Review Terms, Draft Award PI Acceptance Letter (if new/additional terms to review)
- Negotiate Contract, Sign Export Form & Forward to ECTS
- Sign Award Doc
- Complete Award Review Set Up Page
- Pass to CGA to Assign Account #, CGA to Monitor Post Award Activities (new modifications, amendments, NCE’s go to OSP Contracts)

COMPLETE EXPORT FORM, ANIMAL/HUMAN SUBJECTS (IF NOT COMPLETED PREVIOUSLY)
- Review Award
- Review/Sign PI Acceptance Letter
SUMMARY

- Review Solicitation EARLY!!!
- Review Solicitation CAREFULLY!!!
- Plan Tasks/Budget with PI and Subs early
- Create List
- Contact someone with experience for assistance!
Federal Acquisition Regulations (FARs)
Overview of Contract Clauses

Gladys Raymond
Manager
Office of Sponsored Programs
Michigan State University
raymondg@osp.msu.edu
June 9, 2015
Buyer vs. Seller

- When the Government (Buyer) needs to procure (or buy) a good or service for the direct benefit of the Government, a contract is issued.

- The Seller (Offeror/Contractor) represents the person or institution providing the goods or services.
## Buyer vs. Seller

- Differences between the Buyer (the Government) and the Seller (Offeror).

<table>
<thead>
<tr>
<th>Buyer (Government) Responsibilities</th>
<th>Seller (Offeror)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Represents the interests of its stakeholders, e.g., taxpayers.</td>
<td>Represents the interests of our stakeholders, e.g. faculty, staff and students</td>
</tr>
<tr>
<td>Prepares the Scope of Work describing the work to be done under the contract.</td>
<td>Prepares proposal responding specifically to SOW and other solicitation requirements.</td>
</tr>
<tr>
<td>Issues the contract, specifying the terms and conditions.</td>
<td>Negotiates acceptable contract terms or accepts Buyer’s terms unchanged.</td>
</tr>
<tr>
<td>Monitors progress to ensure compliance with terms and conditions.</td>
<td>Implements the project according to the terms and conditions of the contract</td>
</tr>
<tr>
<td>Accepts or rejects the project deliverables.</td>
<td>Provides the promised deliverables, i.e., goods and services.</td>
</tr>
</tbody>
</table>
Where to find the FARs?
Code of Federal Regulations

- Federal contracts are subject to the FARs and agency acquisition supplements, such as the TARs (Department of Transportation), or the DFARs (Department of Defense), or others. These regulations (clauses) are found in Title 48 of the Code of Federal Regulations (CFR).

- Federal grants and cooperative agreements are subject to the new Uniform Guide at 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.
Favorite FAR and DFAR Sites

Useful sites for accessing the FARs and agencies supplements:


Air Force DFARS Site:  http://farsite.hill.af.mil/VFDFARA.HTM


The FARS are found in 48 CFR Chapter 1 and the other agency supplements are found in Chapters 2 through 99 of Title 48.

It’s important to note the dates of the FARs and DFARS included in our contracts. The version of the FAR included in the contract is applicable.
The FAR numbering system provides for the specific identification of each FAR clause. Any clause contained in a contract can be easily found. FAR clauses are numbered as follows:

- FAR
- DFARS
- AFARS
- AFFARS
- AFMC MP/IG
- AFCA MP
- DARS
- DLAD
- NMCARS
- MAPS
- USSOCOM
- USTRANSCOM
- AGAR
- AIDAR
- CAR
- DEARS
- DIARS
- DOLAR
- DOSAR
- DTAR
- EDAR
- EPAAR
- FEHBAR
- GSAM
- HHSAR
- HSAR
- HUDAR
- IAAR
- JAR
- LIFAR
- NFS
- NRCAR
- TAB
- VAAR
A quick reference of the FAR Parts:

Current to Fac 2005-74,
Effective 30 May 2014

[FAR obtained from AFLCMC HIBB]

View FAR with No Frames

Looking for Older Version of Regulations Check ArchivedRegs
Visit GSA to see FAR in PDF format

Electronic Forms--Library #1(AF) / Library #2(OSD) / Library #3(GSA)
FAC DAC DL AFAC AFMCAC IPL

AFARS | AFTARS | AGAR | AMDAR | CAR | DARS | DED | DFARS | DIAR | DLAB | DOLAR
DOAR | DTAR | EDAR | EPAAR | FAR | FEEBAR | GSAM | HESAR | HSAR | HUDAR | IAAR
JAR | LIFAR | MAPS | NMCARS | NIS | NRCAR | SOFARS | TAR | TRANSFARS | VAAR

Webpage POC: Webmaster
Last Update: 02 Jun 2014

Goto: FARSite | FARSsearch | Clause Logic | Forum
## Sample Clauses

<table>
<thead>
<tr>
<th>FAR/DFARS Clauses</th>
<th>Date of Clause</th>
<th>Description</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>52.204-2</td>
<td>Aug-96</td>
<td>Security Requirements with Alternate I</td>
<td>This clause should be incorporated in contracts when the contract may require access to classified information. MSU does not accept classified material or participate in classified research. <strong>IF THE AGENCY WILL NOT AGREE TO DELETE THIS CLAUSE, ALTERNATE I MUST BE ADDED.</strong> Alternate I allows for the contract, or portions of the contract, to be terminated for convenience at Contractor’s request.</td>
</tr>
</tbody>
</table>
## Sample Clauses

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</thead>
<tbody>
<tr>
<td>52.215-2</td>
<td>Apr-98</td>
<td>Audit and Records -- Negotiation, with Alternate II</td>
<td>Allows Government the right to examine and audit all records, both financial and programmatic, relating to a sponsored project and to <strong>interview any current employees regarding such records</strong>. Records must be retained until three years after final payment, or longer in certain circumstances, such as when there is litigation involving the records.</td>
</tr>
<tr>
<td>52.216-7</td>
<td>Jun-13</td>
<td>Allowable Cost and Payment, with Alternate II</td>
<td>For Cost Reimbursement Contracts--Alternate II changes the reference to “Subpart 31.2” in paragraph (a)(1) to &quot;Subpart 31.3.&quot; to FAR 31.3 incorporating OMB Circular A-21.</td>
</tr>
</tbody>
</table>
Sample Clauses

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</tr>
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<tbody>
<tr>
<td>52.219-9</td>
<td>Jul-13</td>
<td>Small Business Subcontracting Plan, with Alternate II</td>
<td>Requires the contractor to submit a Subcontracting Plan including goals for subcontracting (which includes purchases of supplies, travel, etc.) with small businesses, small disadvantaged businesses, women-owned small businesses, veteran-owned small businesses and others. If good-faith efforts are not documented, we may be subject to penalties in accordance with FAR 52.219-16, Liquidated Damages - Subcontracting Plan. FAR 52.219-9 also requires us to report our usage of small businesses on line. <strong>Departmental administrators and/or PIs, with the assistance of Purchasing, are responsible for meeting the requirements of this clause and reporting as required.</strong></td>
</tr>
</tbody>
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117
<table>
<thead>
<tr>
<th>FAR/DFARS Clauses</th>
<th>Date of Clause</th>
<th>Description</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>52.222-54</td>
<td>Aug-13</td>
<td>Employment Eligibility Verification</td>
<td>Appointment paperwork for all existing employees assigned to work under a Federal contract must be submitted to Human Resources to initiate E-verification within 90 calendar days from the contract award date or 30 calendar days after assignment to the contract, whichever is later. Appointment paperwork for all new employees assigned to work on the contract must be submitted to Human Resources no later than 3 business days from the hiring date.</td>
</tr>
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</table>
### Sample Clauses

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</tr>
</thead>
<tbody>
<tr>
<td>52.244-2</td>
<td>Oct-10</td>
<td>Subcontracts</td>
<td>This clause requires Government Contracting Officer's consent to issue a subcontract under our contract depending on the dollar value of the subcontract. (Subcontracts include purchase orders for supplies, equipment, etc.) If the Contracting Officer evaluates and consents to a proposed subcontractor included in our budget, this clause will be revised to add the approved subcontractor to paragraph (j) of the clause, which will be noted in the contract.</td>
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</table>
### Sample Clauses

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</tr>
</thead>
<tbody>
<tr>
<td>52.245-1</td>
<td>Apr-12</td>
<td>Government Property, with Alternate II</td>
<td>The Contractor must use Government property, either furnished or purchased under its contract, only for performing this contract, unless approved by the Contracting Officer. Alternate II to this clause indicates that title to property (and other tangible personal property) purchased with funds available for research and having an acquisition cost of less than $5,000 shall vest in the Contractor upon acquisition or as soon thereafter as feasible; <em>provided</em> that the Contractor obtained the Contracting Officer's approval before each acquisition. Title to property purchased with funds available for research and having a unit acquisition cost of $5,000 or more shall vest as set forth in the contract.</td>
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<tbody>
<tr>
<td>252.204-7000</td>
<td>Dec-91</td>
<td>Disclosure of Information</td>
<td>This clause is generally NOT acceptable for projects conducted on campus since it requires that the Government Contracting Officer approve publications or other dissemination of information under the contract. Need VPRGS review and approval of clause and project.</td>
</tr>
<tr>
<td></td>
<td>Aug-13</td>
<td>Disclosure of Information</td>
<td>Generally NOT acceptable for projects conducted on campus since it requires that Government Contracting Officer determination that the project is fundamental research. Need VPRGS review and approval of clause and project.</td>
</tr>
</tbody>
</table>
## Sample Clauses

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<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1252.242-72</td>
<td>Oct-94</td>
<td>Dissemination of Contract Information</td>
<td>This clause is generally NOT acceptable since it requires that the Government Contracting Officer approve publications or other dissemination of information under the contract. Need VPRGS review and approval of clause and project.</td>
</tr>
</tbody>
</table>
THANK YOU FOR ATTENDING!

Materials posted on the SPROUT website: https://sprout.vprgs.msu.edu/training/electives/