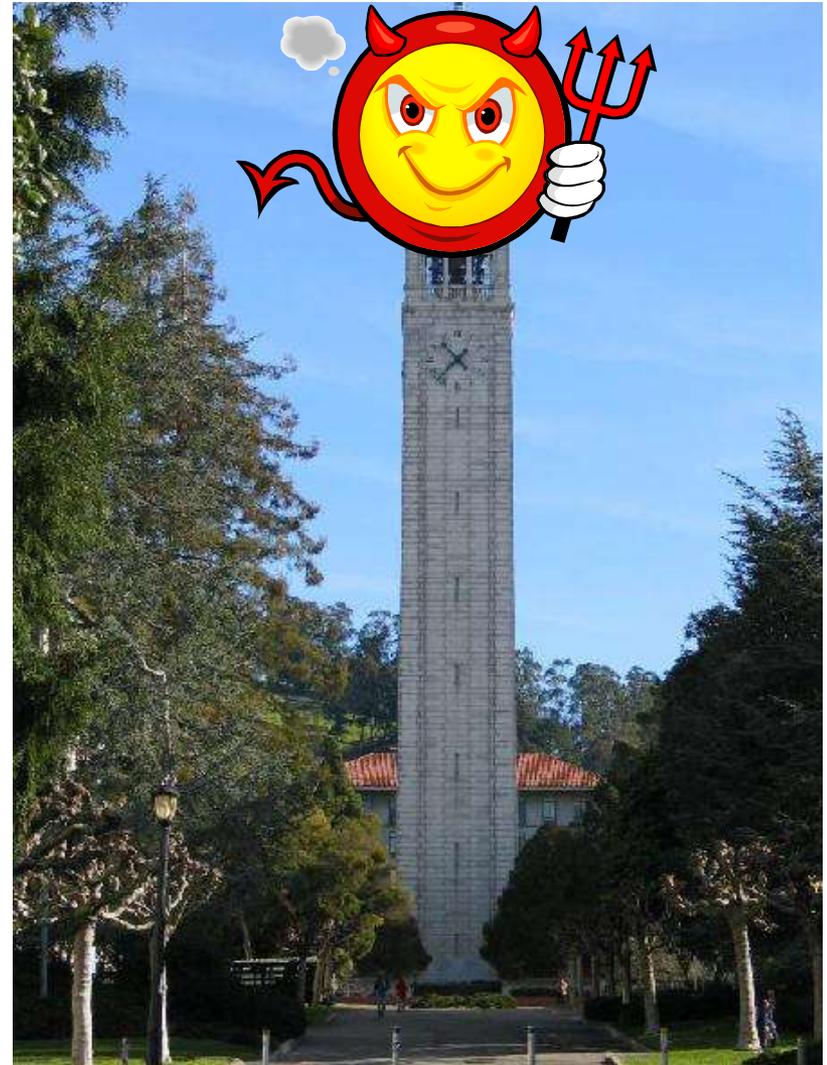


# UC BERKELEY

## The Seven Deadly Sins

Proposal Development

October 16, 2014



# After all...

## What Can Go Wrong?



- X-PI Status
- Cost Sharing
- Administrative Salaries
- F&A
- Sub-awards
- Collaborations
- Problematic Terms

# Topic:

# Exceptional PI Status

## Presenters

Angela Ford

Sponsored Projects Office

Matthew Andrews

Office of the Vice Chancellor for Research

Donna Dahrouge

Campus Shared Services, Team 3, Pre-Award

School of Public Health

# Objectives & Outline

- Objectives
  - Describe exceptional PI status
  - Understand when, why, how to request exceptional PI status
- Outline
  - Definitions
  - Proposal stage processes
  - Award stage

# Why is PI status important

- Proposals for extramural support of research, training or public service projects may be submitted **only by eligible Berkeley campus appointees** who have primary responsibility for design, execution, and management of the project, who will be involved in the project in a significant manner, and who will serve on a research project as Principal Investigator or on a training or public service project as Project Director.

# Which appointment title does not have automatic PI status?

- Associate Nutritionist, Agricultural Experimental Station
- Associate Cooperative Extension Specialist
- Project Scientist
- University Librarian
- Adjunct Assistant Professor

# Eligibility for Submission of Proposals

Eligibility through appointment:

- Members of the Academic Senate, including Emeriti
- Appointees in the Agronomist series, including Emeriti
- Appointees in the Adjunct Professor Series
- Appointees in the Continuing Education series at ranks VII or VIII (for continuing education programs only)
- Cooperative Extension Specialists
- Appointees in the Professional Research Series whose salaries are drawn from central campus funds

## Eligibility (Cont.)

Eligibility through exception approved by the Chancellor or his delegated representative:

- Clinical Professors
- Appointees in the Professional Research series, funded from non-central campus, extra-mural, funds
- Project series
- Other appointees

# What is Exceptional PI Status?

PI status granted to individuals, who are not eligible for PI status through appointment, for proposal submissions and execution of extramurally supported projects.

- Project-specific - PI status limited to a specific project
- Continuing - ongoing PI status, granted in rare cases and remains in effect until revoked by the requesting department or unit

# Proposal Stage Process

- Department Process
  - Division/unit has unique process
  - SPH: Dean approval required before proposal can be submitted to SPO
- VCRO Process
  - Submit required materials (with proper authorizations) through online system
  - Review and decision
- SPO Process
  - Check Phoebe proposal data
    - Special Review Tab and Attachments & Notes Tab

# Phoebe - Special Review Tab

Proposal  

Doc Nbr:	Status:	Approval Pending
Initiator:	Created:	09:55 AM 10/10/2014
Sponsor Name:	NIH	PI:

Proposal | Key Persons | **Special Review** | Questions | Attachments & Notes | Financial | Permissions | Proposal Summary | Proposal Actions

• Document was successfully saved.

[Report AB](#) [Release AB](#)  
\* denotes a required field

If applicable, add information about special reviews required for this project.

Type	Approve Status	Protocol Number	Application Date	Approval Date	Expiration Date	Actions
<input type="text" value="select"/>  <ul style="list-style-type: none"><li>select</li><li>select</li><li>Human Subjects</li><li>Animal Care and Use</li><li>Positive Financial Disclosure</li><li>NEPA National Environmental Policy Act</li><li>Stem Cell Research Oversight</li><li><b>Principal Investigator Exception - Individual</b></li><li>Principal Investigator exception - continuing</li><li>Select agents</li></ul>	<input type="text" value="select"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="button" value="add"/> 

# Phoebe - Attachments and Notes Tab

Proposal  ↓

Doc Nbr:  Status: Approval Pending  
Initiator:  Created: 08:55 AM 10/10/2014  
Sponsor Name: NIH PI:

Proposal | Key Persons | Special Review | Questions | **Attachments & Notes** | Financial | Permissions | Proposal Summary | Proposal Actions

• Document was successfully saved.

Attachments (3)

Posted Timestamp	Uploaded By	Attachment Type	Description	File Name	Actions
10/10/2014 09:09 AM		<input type="text" value="select"/>		<input type="text" value="Choose File"/> No file chosen	<input type="button" value="OK"/>
10/10/2014 09:13 AM		Complete proposal (w/DRAFT technical)			<input type="button" value="view"/> <input type="button" value="refresh"/> <input type="button" value="delete"/> <input type="button" value="download/zip"/>
10/10/2014 09:13 AM		Complete Proposal (w/PINAL technical)			<input type="button" value="view"/> <input type="button" value="refresh"/> <input type="button" value="delete"/> <input type="button" value="download/zip"/>
10/10/2014 09:08 AM		Complete Proposal w/SPO Full Review			<input type="button" value="view"/> <input type="button" value="refresh"/> <input type="button" value="delete"/> <input type="button" value="download/zip"/>
		Correspondence			
		Cost Sharing Commitment			<input type="button" value="view"/> <input type="button" value="refresh"/> <input type="button" value="delete"/> <input type="button" value="download/zip"/>
		<b>Expenditure Approval/Request</b>			
		Internal Budget			
		NASA Access Restrictions Checklist			
		NIH NRSA Fellowship Assurance Certification			
		Non-Standard Facilities & Administration (NSA) Rate Justification			
		PHS FCOI Policy: PE Certification			
		Solicitation/WFP			
		SPO Risk Assessment			
		SPO Triage Review			
		Subrecipient Documents			
		Other (please describe)			

Person Attachments (2)

Notes (0)

←

# Award Stage Process

VCR approval required prior to award set up



SAMPLE - Individual

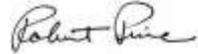
October 9, 2014

DIRECTOR CHARLES MARSHALL  
UC Museum of Paleontology

Dear Director Marshall:

I am pleased to approve Exceptional Principal Investigator Status for Academic Coordinator Dr. XXXXXXXX for the NSF proposal entitled "Collaborative Research: XXXXXXXXXXXX" for the period June 1, 2015 through May 31, 2019.

Sincerely,



Robert Price  
Associate Vice Chancellor  
for Research

cc: Sponsored Projects Office  
Jacqueline Fitzpatrick, Campus Shared Services

**Individual project approval**

**SAMPLE - Continuing**

July 28, 2014

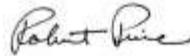
DEAN G. STEVEN MARTIN  
Biological Sciences Division

Dear Dean Martin:

I am pleased to approve Continuing Exceptional Principal Investigator Status for Assistant Researcher and Academic Coordinator Dr. XXXXXX in the [program XXXXX] effective immediately.

In accordance with the Campus Policy on Eligibility for the Submission of Extramural Support Proposals and Procedures for Obtaining Exceptions dated March 20, 2007, continuing status will remain in effect until revoked by the requesting unit.

Sincerely,



Robert Price  
Associate Vice Chancellor  
for Research

**Continuing approval**

cc: Sponsored Projects Office

# Further info:

Principal Investigator Status:

<http://vcresearch.berkeley.edu/research-policies/principal-investigator-status>

# Topic: Cost Sharing

## Presenters

Ruchika Dhussa, Contract and Grant Officer

Sponsored Projects Office

Morgan Darby

Biosciences CSS Research Administrator Team Lead, Team 4

# Cost Sharing

## Goals

1. What does the CSS or Department Research Administrator need from the PI?
2. What does SPO need from RA?

## What **is** cost-sharing?

The contribution of quantifiable resources to a sponsored project beyond the amount funded by the sponsor.

# Types of Cost Share

## 1. Mandatory

- Described in the application guidelines.
- If silent or “encouraged,” then not mandatory.

## 2. Voluntary

- Sponsor does not state that cost sharing is required.
- Applicant describes quantifiable resources it will contribute.

### a. Committed

- Quantified in a submitted proposal to a sponsor.
- May be fiscally or programmatically auditable.

### b. Uncommitted

- Not included in proposal budget or narrative.
- Effort or resources contributed beyond that which is committed to and budgeted for in the sponsored agreement.

# Sources of Cost Share

## 1. From the University

### A. Cash

- Computed value of effort that University-paid personnel expend without reimbursement from sponsor.
- Monies from University funds to pay for direct costs.

### B. F&A

- Contributed F&A is associated with cash contributions.
- Waived F&A is the difference between the full federally negotiated F&A rate and the actual F&A rate.

*Caveat: Not all sponsors allow waived F&A to be counted toward mandatory cost share obligations.*

## 2. From a Third Party

## What does the RA need from the professor?

For voluntary committed cost share in the form of a professor's academic year effort ...

1. Email confirmation from the professor. Chair's approval is given with Phoebe approval.

For other quantified cost share included in the proposal budget or narrative ...

1. A detailed budget, which allows SPO to review and approve any associated F&A being used as cost share.
2. A letter from the appropriate person authorizing the use of University resources (e.g., Dean, VCR, EVCP) or third party resources (e.g., foundation).

## Phoebe: Step 1

If your proposal includes cost sharing, select yes on the Questions tab!

Phoebe

Home

action list doc search Document Id go

Proposal #1046

Proposal Key Persons Special Review Questions Attachments & Notes Financial

Document was successfully reloaded.

General Questions (Incomplete) [hide](#)

Will this project involve any of the following potential compliance issues?

- Travel outside the U.S with scientific or technical equipment
- Shipping of equipment, materials, or software outside the U.S.
- Radioactive isotopes, recombinant DNA, or lasers
- Stem cell research
- Nuclear fuel cycle research
- SCUBA or small boats
- Custom antibodies

Yes  No

Is **cost sharing** included as part of this proposal? If yes, attach supporting documentation in the Attachments panel.

Yes  No

## Phoebe: Step 2

Upload cost sharing documentation on the Attachments page.

The screenshot shows the Phoebe web application interface. At the top, there is a navigation bar with the Phoebe logo and a 'Home' button. Below the navigation bar, there is a search bar with 'action list', 'doc search', and a 'Document Id' field with a 'go' button. The main content area displays 'Proposal #5205' with a help icon. Below this, there is a horizontal menu with tabs: 'Proposal', 'Key Persons', 'Special Review', 'Questions', 'Attachments & Notes', 'Financial', 'Permissions', and 'Pr'. A red arrow points to the 'Attachments & Notes' tab. Below the tabs, there is a message: 'Document was successfully saved.' Below this, there is a section titled 'Attachments (2)' with a 'hide' button. This section contains a table with columns: 'Posted Timestamp', 'Uploaded By', '\* Attachment Type', and 'Description'. The table has two rows of data. Below the table, there are sections for 'Person Attachments (1)' and 'Notes (0)'. A dropdown menu is open for the '\* Attachment Type' column, showing a list of options. A red arrow points to the 'Cost Sharing Commitment' option in this dropdown menu.

Posted Timestamp	Uploaded By	* Attachment Type	Description
9/26/2014 02:46 PM	Shin, Soo H.		
10/9/2014 02:14 PM	Shin, Soo H.		

Person Attachments (1)

Notes (0)

select:

- select:
- Complete proposal (w/DRAFT technical)
- Complete Proposal (w/FINAL technical)
- Complete Proposal w/SPO Full Review
- Correspondence
- Cost Sharing Commitment
- Exceptional PI/PD Status Approval/Request
- Internal Budget
- NASA Access Restrictions Checklist
- NIH NRSA Fellowship Assurance Certification
- Non-Standard Facilities & Administration (F&A) Rate Justification
- Solicitation/RFP
- Subrecipient Documents
- Other (please describe)

## Voluntary Committed Cost Share

Professor C.O. d'Artagnan states in his budget justification:

*No salary is requested for Dr. d'Artagnan, who will devote 10% effort to overseeing the project and directing and training Drs. Athos and Porthos as well as Ms. Aramis.*

RA should:

1. Confirm professor's effort on sponsored projects combined with other University responsibilities will not exceed 1 FTE if project is funded.
2. Select "yes" under cost sharing on the Questions tab in Phoebe!  
In review comments, SPO will provide an explanation of this type of cost share, and request confirmation from the PI on how she or he wishes to proceed.

# Other sources of cost-share

- University “cash” contribution
- Third party or in-kind contribution
- Waived F&A

# Takeaway message:

- Determine the type of cost-share (i.e., review the solicitation to see if it is required)
- Discuss the situation with the PI
- Obtain necessary documentation & include in Phoebe
- Communicate with your SPO CGO for assistance on proposal language or other questions
- Check out the SPO website for more information:  
<http://www.spo.berkeley.edu/procedures/costsharing.html>

# Administrative Salaries

**Presenter:**

Pam Miller, SPO



# Under A-21

Based on guidance from Office of Management and Budget (OMB) Circular A-21, “Cost Principles for Educational Institutions” the University of California, **Berkeley does not charge administrative and clerical salaries** and other administrative costs such as phone, copying, postage, memberships, and office supplies as direct costs to a sponsored project supported with federal funds. These costs are typically considered indirect costs covered by the University’s Facilities and Administrative (F&A) rate agreement.

# Under A-21

One Exception:

Circular A-21 allows administrative/clerical salaries to be charged directly to federal grants, contracts, and other agreements **when the expense is in support of a “major project”**—defined as one that requires extensive administrative or clerical support that is significantly greater than the level of such services routinely provided by the department.

# Under A-81

Uniform Guidance has changed the treatment of certain costs as allowable direct charges to Federal Awards. The changes in the UG have provided more flexibility in charging a number of costs items than previous Federal guidance, but certain items of cost are now more restrictive than current Federal rules.

# Under A-81

## Draft UCOP Policy:

In general, administrative and clerical salaries should still not be direct charged, but the rules governing “major project or activity” exceptions have been dropped and replaced by the following criteria, all of which must be met:

- Administrative or clerical services are **integral** to a project or activity;
- Individuals involved **can be specifically identified** with the project or activity;
- Such costs are explicitly **included in the budget or have the prior written approval** of the Federal awarding agency; and
- The costs are **not also recovered as indirect costs**.

If all of these requirements are met, PIs/departments should add a new justification statement to proposals to facilitate the required agency approval.

# So, What Does This Mean?

*Stay tuned...*



# F&A in 7 (or maybe less) not-so-deadly-minutes

**Presenters:**

Amanda Janish  
Research Administrator  
CSS RA, Team 9

Jennifer Ng  
Contract & Grant Officer  
Sponsored Projects Office

# What is F&A?

## As defined by A-21:

- Facilities and administrative (F&A) costs [...] means costs that are incurred for common or joint objectives and, therefore, cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity.
- "Facilities" is defined as depreciation and use allowances, interest on debt associated with certain buildings, equipment and capital improvements, operation and maintenance expenses, and library expenses.
- "Administration" is defined as general administration and general expenses, departmental administration, sponsored projects administration, student administration and services, and all other types of expenditures not listed specifically under one of the subcategories of Facilities (including cross allocations from other pools).

**Aliases:** F&A, Indirect Costs (IDC), Overhead

# Location of the F&A Rate Agreement:

SPO's website:

<http://spo.berkeley.edu/policy/fa.html>

You can also find facilities and administration rate components on the website, if you are interested.

Space and Capital Resources's website:

<http://scr.berkeley.edu/costingpolicies>

The website has information on past negotiated rates, flowcharts, FAQ's and a lot more relating to F&A and composite fringe benefit rates.

# Items of interest:

## COLLEGES AND UNIVERSITIES RATE AGREEMENT

EIN:

DATE: 08/08/2014

ORGANIZATION:

University of California (UCB)  
Office of President  
111 Franklin St., 10th Floor  
Oakland, CA 94607-5200

FILING REF.: The preceding  
agreement was dated  
08/12/2013

# Items of interest (cont.)

<u>EFFECTIVE PERIOD</u>					
<u>TYPE</u>	<u>FROM</u>	<u>TO</u>	<u>RATE (%)</u>	<u>LOCATION</u>	<u>APPLICABLE TO</u>
PRED.	07/01/2011	06/30/2012	53.50	On-Campus	Org Res (1)
PRED.	07/01/2012	06/30/2013	55.50	On-Campus	Org Res (1)
PRED.	07/01/2013	06/30/2015	56.50	On-Campus	Org Res (1)
PRED.	07/01/2015	06/30/2016	57.00	On-Campus	Org Res (1)
PRED.	07/01/2011	06/30/2016	26.00	Off-Campus	Org Res (1)

- If two rates are in effect during your budget period, you must budget accordingly
  - Example: 4/1/15 to 3/31/16 -- Budget 3 months at 56.5% and 9 months at 57%
- For proposals, use 57% for 07/01/16 and beyond

# Items of interest (Cont.)

## APPLICABLE TO

Org Res (1)

**Org Res** - research

Org Res (1)

**Other Spons Act** - anything non-research

Org Res (1)

Org Res (1)

**SSL** - only used for Space Sciences Laboratory research projects

Org Res (1)

Instruction

Instruction

Instruction

Other Spons Act

**Rarely used:**

Other Spons Act

Instruction

Other Spons Act

Other Spons Act

Other Spons Act

IPAA - Intergovernmental Personnel Act Agreement

SSL (2)

SSL (2)

SSL (2)

SSL (2)

IPAA (3)

# Additional info:

Cognizant Agency: DHHS

Cognizant Federal Audit Agency Contact:

Tom Lin, Audit Manager

HHS Office of Inspector General, Office of Audit Services

90 - 7th Street, Suite 3650

San Francisco, CA 94103

Link: <http://www.spo.berkeley.edu/guide/propinfo.html>

# On/Off campus

## On-Campus

- PI doing research in a lab

## Off-Campus

- Office rent charged to project

# Off Campus in Phoebe

Will this project involve any of the following potential space issues?

- Off-campus project
- new or newly renovated space
- Research on, and/or modification to, existing Berkeley campus grounds or buildings

Yes

Is this an off-campus project? If yes, attach supporting documentation in the Attachments panel.

Yes

Please provide the location.

PI has office space at 1950 Addison Street in Berkeley. Off-campus IDC rate of 26% is used.

# Different types of F&A

Federally Negotiated

Sponsor Policy

Vital Interest

# Federally Negotiated

Federally negotiated rate is used if the sponsor doesn't have an IDC policy in place, even if the sponsor is non-federal.

# Sponsor Policy

Need to provide SPO with Sponsor Policy at time of proposal submission

## Justification

- Published policy (website, RFP, etc.)
- Letter from Sponsor, on letterhead
- Be sure that the IDC base is clearly explained

# Sponsor Policy in Phoebe

- Upload supporting documentation as an Attachment in Phoebe.
- Attachment type - Non-Standard Facilities & Administration (F&A) Rate Justification

Attachments (9) ▼ hide

Posted Timestamp	Uploaded By	Attachment Type	Description	File Name
8/25/2014 04:40 PM	Janish, Amanda Lynn	Non-Standard Facilities & Administration (F&A) Rate Justification	15% total direct costs (max of 5% on prizes, see sponsor budget excel)	 IDC.pdf

# Sponsor Policy in Phoebe (cont.)

**Berkeley Chart of Accounts**

**Budget**

Total amount requested: \$ 768,757

Work for this project will be conducted: On Campus

IDC Rate: Sponsor's rate of 15 %

# Vital Interest

- Situations appropriate for a vital program waiver may include, but are not limited to:
- Small seed grants which may attract future larger awards;
- Cases of hardship for a new investigator;
- Awards which include contributions of equipment or building renovation funds;
- Awards for a community relations interest vital to the campus;
- Supplements for a student services activity which the campus must provide;
- Supplements for library holdings or public exhibits.

Submission of a vital interest requires approval by the AVCR and UCOP. If the vital interest request is not approved, the appropriate rate must be applied to the project.

*Please note: When submitting to a foreign governmental sponsor, only a vital program waiver can be submitted to waive indirect costs. A foreign governmental sponsor's policy will not be accepted.*

# Things to do in Phoebe for Vital Interest

- Upload signed letter in Attachments → Non- standard Facilities & Administration (F&A) rate justification
- Financial Tab → IDC rate “Vital Interest requested” and input the rate

# What's the base?!

Modified Total Direct Cost (MTDC)

Total Direct Cost (TDC)

Total Cost (TC)

# MTDC

Modified total direct costs, consisting of all salaries and wages, fringe benefits, materials, supplies, services, travel and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract).

Exclusions: equipment, capital expenditures, charges for patient care, student tuition remission, rental costs of off-site facilities, scholarships, and fellowships as well as the portion of each subgrant and subcontract in excess of \$25,000

How to calculate indirect costs?

MTDC base = total direct costs – exclusions (as defined above)

Indirect costs = rate \* MTDC base

# TDC

Total direct costs are all direct costs charged on the project.

Exclusions: as defined by the Sponsor.

How to calculate indirect costs?

TDC base = TDC – exclusions (if any)

Indirect costs = TDC base \* rate

# TC

Total direct costs and indirect costs

How to calculate indirect costs?

$$\frac{100 * \text{rate}}{100 - \text{rate}} = x \%$$

$$100 - \text{rate}$$

$$\text{Indirect costs} = \text{TDC} * x\%$$

x is a new percentage used to calculate IDC easier

# TDC vs TC

## Scenario 1: Sponsor policy of 10% TDC

TDC = \$100,000

IDC = \$100,000 \* 10% = \$10,000

Total project costs: \$110,000

## Scenario 2: Sponsor policy of 10% TC

$100 * 10 / (100 - 10) = 1000 / 90 = 11.11\%$  TDC rate

TC = \$110,000

IDC = \$110,000 \* 10% = \$11,000

TDC = \$110,000 - \$11,000 = \$99,000

Check: \$99,000 \* 11.11% = \$11,000

# F&A on Subs

- Non-UC Subrecipients
  - MTDC -- IDC charged on the first \$25,000 for each subaward
  - TDC -- IDC is charged on full subaward amount
  - TC -- IDC is charged on full subaward amount
- Other UC Campuses
  - No IDC charged at UCB, regardless of base
- LBNL
  - treated like Non-UC Subrecipient

# Collaborations of DOOM



## Presenters

Paul S. Martinez

Sponsored Projects Office

Hannah Holloway, Contracts & Grants Team Lead, Campus Shared Services - Service Team 9

# Collaborations: Warm and Fuzzy?



- **Higher Impact Publications**
- **Future**
- **Ability to Bring More Experience**
- **Deeper Research**
- **Criticism**
- **Less Work**
- **Funding Opportunities**

# Collaborations: Evil?



- **Foreign Collaborators**
- **Budget/Costs**
- **Timing/Synchronized Submissions**
- **Commitments/Cost Share**
- **Upfront Contractual Terms**
- **LOIs/MOUs/LOCs**
- **Representations and Certifications**

# Importance of a Collaboration Letter:

Researchers often collaborate on research or share research tools with other scientists or institutions with or without receiving funding. For many collaborations, a written agreement or understanding is beneficial or necessary. Collaboration Letters set out expectations, terms, and requirements to protect the interests of the investigators and the participating organizations. Collaborations may also involve use of university property and space, faculty time, students, protocol for human and animal subjects that must be approved by university officials and compliance committees.

# A Good Commitment Letter :

- Language - English
- Date
- Address - In most cases, the letter can be addressed to the PI
- Proposal Solicitation # and Title (if known)
- Funding Agency
- Intended and Overall Goal(s) of Collaboration
- Key Personnel Involved in Collaboration - (As applicable)
- Anticipated Period of Collaboration
- General Budget (including Overhead)
- Organizational and Individual Commitments to Project
- Authorized Signatory - **MAKE SURE THE LETTER IS SIGNED!**

# Good Luck on a Successful Collaboration



“I’d collaborate with my clones, because I’m a team player who wants all the credit.”

# Topic: Subawards

Presenters:

**Artawood Chitamitara (Art)**

Research Administrator

CSS Team 4

**Joyce So**

Contract and Grant Officer

Sponsored Projects Office

# Working with Subawards at Proposal Stage Department RAs

**Artawood Chitamitara (Art)**

Research Administrator, CSS Team 4

# Working with (to-be) Subawards



- Communicate with your PI
  - Effective communication can get you all the information you need (subaward information (how many, who are they, budget amount))
  - Subaward PI and their RAs contact information (contact them immediately)
- You are the “lead” RA
- Plan ahead and organize
  - Checklist
    - Requirements by sponsor (Biosketches, Resume/CVs, Current & Pending, letters, etc.)
    - Requirements by UCB SPO (SPO’s website: [www.spo.berkeley.edu](http://www.spo.berkeley.edu))
      - Joyce will explain later in details on what SPO needs
  - Timeline (subaward)

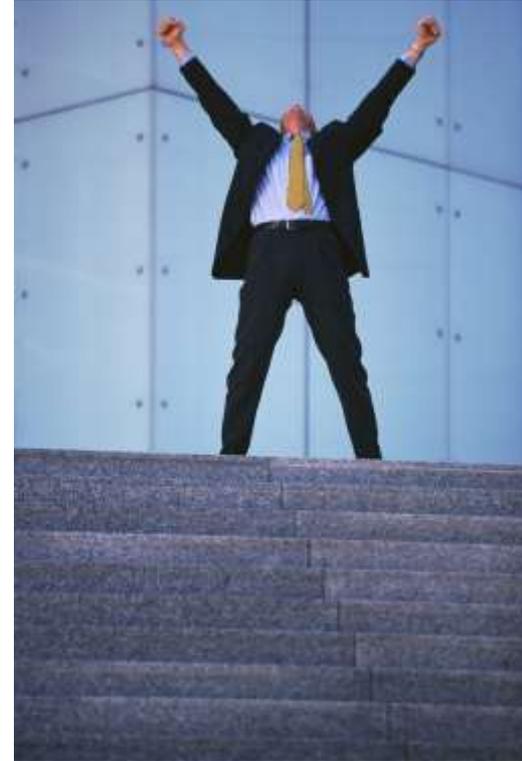
# Challenges



- Communication
  - Lack of response from your PI (and subawardee PI and RAs)
  - Time zone differences
- Time
  - Time management, balancing priorities (RA's Dilemma)
- Understanding subawardee's internal process
  - Many university's SPO have 5 day review policy
  - Most large private companies require their Legal department (attorney) to sign Subrecipient Commitment Form
- Last minute surprises, craziness, time crunch

# 4 Cs to Successful Subaward Submission

- ✓ Calm
- ✓ Control
- ✓ Coordinate
- ✓ Complete



# Subaward Review Process at Proposal Stage

Joyce So

Contract and Grant Officer, SPO

# What does SPO need at the proposal stage when there is a Subaward?

- Subrecipient Commitment Form, Completed and Signed by Subawardee's Authorized Official Representative
- Statement of Work with Clear Description of Work to be Performed
- Budget and Budget Justification
- Fair and Reasonable Cost Analysis and Sole Source Justification: Subawards under Contracts form (if the prime is a contract)
- Other Document as Required by the Sponsor (e.g. F&A Agreement, Special Subaward Cover Page, etc...)

# What does SPO review?



# Is the Organization Eligible to Serve as a Subawardee?

Please answer the following questions **BEFORE** completing the rest of the form.

- Yes  No Is your organization presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any Federal department or Agency?
- Yes  No Is your organization delinquent on repayment of any Federal debt including direct and guaranteed loans and other debt as defined in OMB Circular A-129, "Managing Federal Credit Programs"?

- If either of the two questions above are answered "Yes", then



# Subawards vs. Vendors

- It is very important to determine whether an entity is a subaward or a vendor at the proposal stage, but...how?

Ask yourself the following questions:

- 1) Does the entity commonly provide these goods and/or services as part of their normal business operations?
- 2) Does the entity provide similar goods and/or services to other purchasers?
- 3) Does the entity compete with comparable entities to provide the same goods and/or services?
- 4) Are the goods and services being provided by the entity secondary to the central purpose of the project?
- 5) Is the entity's work carried out according to the Prime's specifications using standard operating procedures?

If any of the above questions is answered “yes”, the entity is a **vendor!**

Subrecipients	Contractors
<p>(a) Subrecipient's PI (named in Section D below) will take a significant role in programmatic decision making and assist the Berkeley PI achieving the project's goals and objectives.</p> <p>(b) Subrecipient will be subject to all of the compliance requirements from the prime award that are pertinent to the subrecipient, e.g., effort reporting on federal awards.</p> <p>(c) Subrecipient will be expected to provide a complete copy of the subrecipient's most recent audit report, or the URL link to a complete copy, before a subagreement can be established.</p>	<p>(a) Provides routine goods and/or services to other customers or clients and/or</p> <p>(b) Provides goods or services developed according to the specifications of the UC Berkeley PI and/or</p> <p>(c) Provides personnel services that are primarily advisory in nature and/or</p> <p>(d) Provides other ancillary services related to the sponsored project per the instructions of the UC Berkeley PI.</p>

- If in doubt, don't wait! Contact your CGO.

# Subaward IDC

1. **Facilities and Administrative Rates** included in this proposal have been calculated based on (check as applicable):

- Our federally negotiated F&A rates for this type of work, or a reduced F&A rate that we hereby agree to accept.  
*(If this box is checked, please attach a copy of your F&A rate agreement or provide a URL link to the agreement below.)*

URL:

- Other rates (please attach a description of the basis on which the rate has been calculated)
- Not applicable—subrecipient is not requesting payment of F&A costs

- If the subaward entity does not have a federally negotiated rate agreement and would like to include indirect costs in its budget, the following language is needed in the subaward budget and budget justification:

“An F&A (indirect costs) rate of \_\_\_\_ is requested. F&A recovery based on this rate will be conditional upon the establishment of an approved negotiated rate agreement with a cognizant U.S. federal agency or UC Berkeley, when applicable, prior to the establishment of the subagreement.”

# Financial Conflict of Interest

- If the proposal is being submitted to PHS sponsor or non-profit sponsors that have adopted the PHS FCOI regulation, the following section must be completed.

PHS (or other sponsors that have adopted the PHS financial disclosure requirements) only (check as applicable):

My organization **does have** a PHS-compliant Financial Conflict of Interest (FCOI) policy and my organization will rely on this policy and associated procedures to comply with PHS Conflict of Interest regulation.

Yes  No We are registered as an organization with a PHS-compliant FCOI policy with the FDP Clearinghouse:  
[http://sites.nationalacademies.org/PGA/fdp/PGA\\_070596](http://sites.nationalacademies.org/PGA/fdp/PGA_070596).

My organization **does NOT have** a PHS-compliant Financial Conflict of Interest (FCOI) policy.

Yes  No My organization agrees to rely on UC Berkeley's FCOI policy and procedures to comply with PHS Conflict of Interest regulations.

Note: Organizations checking this option are required to follow UC Berkeley's COI and FCOI guidance at <http://researchcoi.berkeley.edu/federal.html>.

If the subawardee does not have a PHS-compliant FCOI policy, PHS FCOI form from the subaward PI and anyone who meets the definition of an investigator must be provided prior to proposal submission.

# Useful Resources

- Subrecipient Commitment Form Preparation Guidance:  
[http://www.spo.berkeley.edu/forms/subaward/subrecipient\\_instructions.html](http://www.spo.berkeley.edu/forms/subaward/subrecipient_instructions.html)
- Subaward Guide:  
[http://www.spo.berkeley.edu/guide/subaward\\_guide.html](http://www.spo.berkeley.edu/guide/subaward_guide.html)

# Troublesome Clauses



Takes  
Time!



- Indemnification
- Governing Law
- Publication Restrictions
- Confidentiality
- Citizenship Restrictions
- Binding Arbitration
- Ownership of Inventions
- Warranties and Guarantees
- Termination

& Determination

# Indemnification

- Responsibility falls on UC Berkeley--regardless of who created the problem.
- The “scope” is too broad—not limited to performance under a specific contract.
- The Regents do not allow third party liability.
- This is rarely accepted and only by exception.



# Governing Law

- Establishes which jurisdiction's law will apply in interpreting the contract and resolving disputes.
- We prefer State of CA or to remain silent on this issue.
- Negotiation possible.
- If PI accepts this risk the Department will have to pay additional expenses to travel outside of California to resolve the problem.



# Publication Restrictions

- Contrary to the mission of the University
- Students need data to publish theses and dissertations
- Undermines fundamental research exemption for export control
- Limited review and comment period can be accepted but otherwise a deal killer.



# Confidentiality

- University cannot keep the proposal or award confidential because we are subject to the CA public records act.
  - Exceptions: Trade Secrets and Internal Pricing Data
  - Party claiming a “trade secret” must specifically identify this information.



# Citizenship Restrictions

- Against UC Policy
- Foreign nationals make up a large portion of our faculty and student population.
- Not “fair” and not “feasible”
- Invalidates fundamental research exemption for export control purposes.



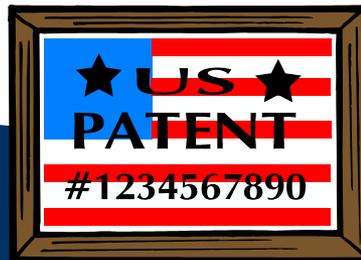
# Binding Arbitration

- Accepting binding arbitration “up front” means we waive any future ability to appeal or bring suit in response to an arbitrator's decision; our right to access courts, judge, jury is waived.
- The acceptance of binding arbitration may have financial consequences, which would be borne by the department.



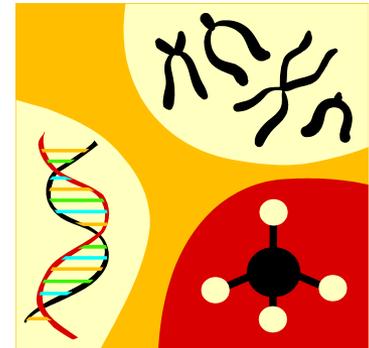
# Ownership of Inventions

- University does not do work for hire under a sponsored agreement.
- University patent policy requires us to retain ownership of any data or information first generated under the agreement.
- Sponsor may own deliverables but University retains right to use data and information associated with production of deliverables for academic and scholarly purposes (right to publish)
- IP should be distributed according to the applicable patent laws



# Warranties and Guarantees

- University works on a “reasonable efforts” basis
- Research outcomes (by definition) cannot be guaranteed or predicted.
- Prefer representation over warranty.



# Termination

A Termination **Clause** should provide for:

- Mutual **termination** for convenience.
- A reasonable advance notice period for **termination** (30 days notice, for example)
- Ability of institution to terminate upon sponsor's failure to pay.
- Which provisions will “survive” **termination** (indemnification, IP, confidentiality, compliance issues, etc.)
- Allow for compensation of expenses incurred up to date of **termination**, as well as reimbursement of non-cancellable commitments.

# Finally: Allow SPO to do its Job.



# We should speak with one voice—SPO's



# UC BERKELEY

The Result of Teamwork:

“Perfect” Proposal Development

October 16, 2014

