International Sub-award Selection, Contracting, Monitoring & Financial Management

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Choosing a Partner

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Overview

- Why choose a partner?
- What to look for in a partner?
- Important issues
- Warning signs

Why Choose a Partner

- Minimizes risk to Faculty, other campus personnel and the campus/system including invested capital
- Assists in minimizing some challenges
  - Conflict between U.S. and host country regulations
  - Infrastructure issues
  - Cultural understanding
  - Compounded compliance issues
  - Banking issues/Currency exchange
  - Hiring personnel or independent contractors

Triggers for Legal Status/Permanent Establishment (PE) Concerns

- Building/facility needs – owning property
- Currency management & opening bank accounts
- Donations & fundraising activities
- Hiring in country personnel/independent contractors
- Funding strategy – main operating revenue streams
- Governance Issues
- Host country education & research regulations

Note – never assume that the need for PE is eliminated by working with a partner – consult with legal counsel

Compliance Challenges

If it isn't legal for you to do in the U.S., it isn't legal for you to do in another country.

- Difficult to determine:
  - What the regulations are
  - Whether they apply to our work (which may be unique)
  - Countries' enforcement priorities

Partners can assist with all of these things and more.

What to look for in a partner

- An organization in good standing in country
- Typically an in-country University can be particularly helpful
- Other non-profits who have a PE in country
- Other research entities who are established in country
- Previous relationship with the partner can be helpful
  - Relationship already established
  - Provides a position to start from
  - Some communication issues have already been addressed
- A partner who will work through all issues (including administrative) seriously and not too casually
- Office of Foreign Assets Control (OFAC) – no business transactions with sanctioned entities

Important Issues

- Clarity on deliverables (especially difficult with multi-party agreements)
  - Scope & accountability
  - Timelines/deadlines
- Agreement on a reasonable budget
  - Local hire quotas
  - Other in country regulations (employment laws, etc.)
  - Exchange rate standards
- Capital acquisitions – process, ownership
- Perform due diligence on your chosen partner – financial, reputation, legal
- Address intellectual property
- Review export/import law issues

And more issues….

- Safety & security
  - Safeguards & protections for faculty & students
  - Proper insurance
  - Currency management
- PI relationship with partner
  - Many have established relationships with partners
  - Work with/educate PI to assist University in negotiations when needed
- Understanding of decision making
- Agree on dispute resolution process
- Understand your exit strategy

Warning Signs

- Partner taking University concerns too casually
- Appearances of conflict of interest
- Lack of transparency
- Negotiating parties changing multiple times – lack of consistency
- Undue pressure to complete agreement from the school, department, faculty, others
- Foreign Corrupt Practices Act (FCPA)
  - No payments to foreign government officials to assist in obtaining or retaining business – no bribes or gifts that could be construed to be bribes
- Know where the money is coming from…. Who's paying whom?

Contracting Issues in International Subawards

Mark Wilson, Senior Counsel, Business Transactions, UCOP
Office of the General Counsel

Dispute Resolution

Courts vs. Arbitration

- If jurisdiction by U.S. courts is agreeable to the other party, dispute resolution in a court is usually preferable.
- If the other party will not agree to the jurisdiction of U.S. courts, arbitration is usually preferable.
- Location of arbitration is subject to agreement – frequently chosen locations are London, Paris, Singapore, Hong Kong, New York, Los Angeles, San Francisco.

Dispute Resolution

Sample Arbitration Clause

- **Dispute Resolution.** In the event of any dispute, controversy or claim arising out of or relating to this Agreement, the Parties will consult and negotiate with each other (including involving senior managers from each Party) and, recognizing their mutual interests, will attempt to reach a solution satisfactory to both Parties. If they do not reach settlement within a period of 60 days, any unresolved Dispute will be settled by binding arbitration in accordance with the UNCITRAL Arbitration Rules. The appointing authority will be the International Chamber of Commerce. The number of arbitrators will be three, unless the parties agree otherwise. The place of arbitration will be London, England. The language to be used in the arbitral proceedings will be English. The arbitration panel will not be authorized to make a ruling or other decision which would result in the violation, inability to meet obligations under or non-compliance by any Party with applicable local and international law or the laws of the jurisdiction under which a Party is organized.

Governing Law

- U.S. law is preferable if the other party is agreeable.
- Silence as to governing law is risky – the court or arbitration panel will decide what law to apply when the dispute is before them.
- Why it matters:
  - A legal system operates as a filter when applied to a contract
  - Some provisions may be unenforceable
  - Some provisions may require “magic words” to be enforceable
  - Some jurisdictions have mandatory statutory provisions that will be added to contracts – in some cases these can be removed with express language
  - Some legal concepts in a U.S. agreement may have no analog in the applicable jurisdiction
- Local counsel – May be able to provide guidance as to business climate, reputation of potential partners and contracting norms. Not using local counsel is risky.

Data Privacy

- Different jurisdictions have data privacy laws that may be more extensive than in the U.S.
- Helpful to address these with specificity in the contract
  - For example, the European Union publishes standard data privacy contract clauses (http://ec.europa.eu/justice/data-protection/international-transfers/transfer/index_en.htm)
  - Recommend consulting counsel and/or recent prior UC experience for other jurisdictions

Data Access

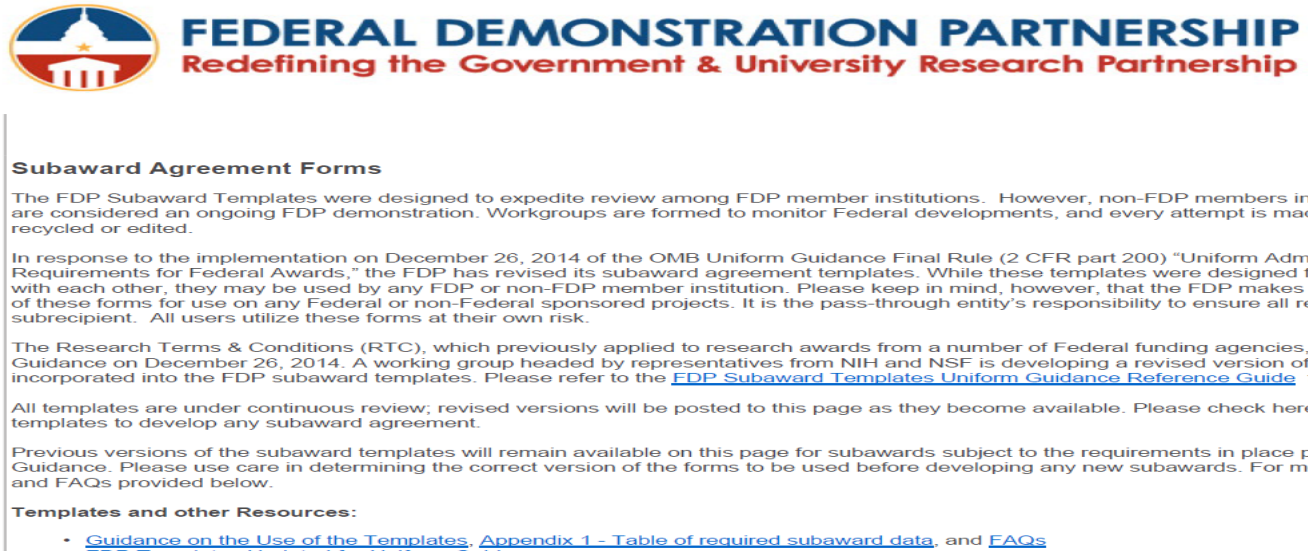
- Obtain and understand all applicable research data access requirements of the other party and the non-U.S. jurisdiction
- Address these requirements expressly in the contract
- Analyze the cost of compliance

Resources

Useful websites/information for international sub-award contracting

National Academies Website – Subaward Agreement Forms – **use with caution in the international context – customization highly advisable**:

http://sites.nationalacademies.org/PGA/fdp/PGA_063626



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37

Subaward Agreement Forms

The FDP Subaward Templates were designed to expedite review among FDP member institutions. However, non-FDP members institutions may also use the templates. The templates are considered an ongoing FDP demonstration. Workgroups are formed to monitor Federal developments, and every attempt is made to keep the forms current. They are not meant to be recycled or edited.

In response to the implementation on December 26, 2014 of the OMB Uniform Guidance Final Rule (2 CFR part 200) "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," the FDP has revised its subaward agreement templates. While these templates were designed for use by FDP member organizations in collaborating with each other, they may be used by any FDP or non-FDP member institution. Please keep in mind, however, that the FDP makes no representation or warranties regarding the suitability of these forms for use on any Federal or non-Federal sponsored projects. It is the pass-through entity's responsibility to ensure all required terms and conditions flow down to a subrecipient. All users utilize these forms at their own risk.

The Research Terms & Conditions (RTC), which previously applied to research awards from a number of Federal funding agencies, expired with the implementation of the Uniform Guidance on December 26, 2014. A working group headed by representatives from NIH and NSF is developing a revised version of the RTC. When available, the revised RTC will be incorporated into the FDP subaward templates. Please refer to the FDP Subaward Templates Uniform Guidance Reference Guide for additional assistance.

All templates are under continuous review; revised versions will be posted to this page as they become available. Please check here for the most recent versions before using the templates to develop any subaward agreement.

Previous versions of the subaward templates will remain available on this page for subawards subject to the requirements in place prior to the implementation of the OMB Uniform Guidance. Please use care in determining the correct version of the forms to be used before developing any new subawards. For more information, please review the guidance documents and FAQs provided below.

Templates and other Resources:

- Guidance on the Use of the Templates, Appendix 1 - Table of required subaward data, and FAQs

Thank you to Bill Ferreira of Hogan Lovells for his guidance and advice on the contracting issues portion of this presentation.

Monitoring and Financial Management of International Subawards

Jane Drake, Director of Operations, Global Strategic Information, UCSF Global Health Sciences

Georgina Lopez, Director of Finance & Administration, UCSF, AIDS Research Institute, Department of Epidemiology & Biostatistics, and Global Health Sciences

UCSF

International sub-award monitoring activities

Risk assessment considerations

- Develop a sub-recipient monitoring plan that:
  - Ensures funding is used only for authorized purposes
  - Is in compliance with applicable statutes, regulations, policies
  - Achieves performance goals
- Risk considerations
  - Prior/past experience with sub-recipient
  - Previous audit results (if available)
  - Evaluation of infrastructure and available personnel and/or systems
  - Extent and results of any federal award agency monitoring (if available)

International sub-award monitoring activities (cont.)

Monitoring plan

- Activities should include:
  - Review of financial and programmatic reports
  - Monthly review of invoices (prior to payment) - reconcile sub-recipient's budgeted expenditures to actual
  - Request back-up documentation (general ledger and/or receipts)
  - For larger subawards budget and plan for the following:
    - On-site visit to subrecipient to review financial and programmatic records and observe operations
    - External audit

International sub-award financial oversight

- Provide sub-recipient with invoice templates with clear instructions
  - Include a check list to ensure you have the information you need for review (a sample checklist on the next slide)
- Establish clear, regular communications with appropriate sub-recipient personnel responsible for financial oversight
  - If you're working with a new partner, start with a planning meeting to establish guidelines, expectations, points of contact, training needs, etc. Remember this is a shared responsibility and a partnership
  - If you're working with an established partner, be consistent. It bears repeating – this is a shared responsibility and a partnership
- Work with your faculty and program staff to build a culture of shared fiscal responsibility

Sample checklist (GHS uses)

Monthly Subaward Invoice Checklist

☐ 1) **Invoice** with the following information:
- Name of organization and headquarters site (main office)
- Wire transfer payment instructions
- Subagreement number (See face page of the UCSF subagreement document)
- Date of report
- Period covered in the report (month, year)
- Expenditures for the month (listed by approved budget line items)
- Cumulative expenditures to date (listed by approved budget line items)
- Budget balance

☐ 2) **General Ledger:**
- The **line-item general ledger** should provide details of all expenses over the past month. The line items should be in agreement with the subagreement budget categories.

☐ 3) **Time and Effort Reports**

☐ 4) **Copy of Bank Statement with proof of currency conversion rate used**
- The subawardee is required to calculate the Weighted Average exchange rate based upon transfer transactions of US Dollars to local currency – See Appendix 1.

☐ 5) **Scans of receipts or proof of payment for all expenses**

☐ 6) **Price quotations** if applicable:
- **Price quotations** obtained if equipment was purchased and/or if payments were made to cover large costs including venues and services for costs over $2,500

☐ 7) **VAT tracking log** if applicable

International Subaward Monitoring Challenges

- Subaward advance payment tracking
- Currency conversion calculation and documentation
- Timesheets and effort reporting
- HR, Finance and Procurement policies
- VAT reporting for federally-funded projects

International subaward financial oversight for large subawards

- On-site monitoring
  - Plan annual site visit that includes financial and programmatic review
    - Use a compliance review that includes financial and program activities (two samples follow); share this with your partner before you go
    - Include research administration capacity building activities
  - If you have on-the ground presence, include financial monitoring as part of the program personnel activities
- External audit
  - Plan and include annual audits as a direct cost in your budget
  - Vet and solicit bids from local accounting firms with international audit experience

Sample compliance review forms (GHS uses)

Subcontractee Name:			
Time Period covered in Review:			
Date:			
Name of UCSF Reviewer(s):			

OBJECTIVE	REVIEW	FINDINGS	
		Yes/No N/A	
1. Purchases			
To obtain satisfaction that purchases were done in accordance with the subcontractee, funder and UCSF policies and procedures	Select a sample and check		
	1. Competitive bidding, evaluation of bids was done		
	2. Necessary prior approvals (from UCSF, funders etc.), when required, were		
	3. Matching of Order, Invoice, Delivery Note		
2. Financial Reporting			
To confirm that reports are submitted on time	Select a sample of reports and verify that each has been submitted by the XX day of the month (for monthly reports) or XX day of the reporting cycle (for quarterly reports)		
To confirm authenticity of the financial reports	Select a sample of items from each report and verify that they are properly supported and accurately recorded in the report		
3. Check Register (use items that are applicable)			
Controlling blank checks and voided checks	Check whether all blank checks are locked up at all times		
	Obtain a sample of voided checks and ensure that they have been properly		
To ensure that all checks are properly accounted for	Inspect the checkbook currently in use and check that signatories have not pre-		
To ensure all disbursements are valid	Obtain a sample of payments and check that the necessary documentation - invoices, purchase orders, list of participants for training etc – accompany the checks to be signed and they have		

6. Filing: *Organized? Are documents readily available?*		
7. Effort Reporting: *Done monthly? Accurate?*		
8. Procurement: *is the procurement policy compliant with UCSF policies and transparent? Review sample of procurement process for compliance.*		
9. Property Log/Fixed Assets Register: *Exists? Up-to-date? Assets have tags?*		
10. Property Insurance & Usage: *Controls & safeguards eg. Program Vehicle Log book exists? Abuse?*		

PROGRAM		
Compliance Areas	**Findings/Comments**	**Action Plan & Deadlines**
1. Reports: *Done monthly and on file?*		
2. Activities: *Are they being done in accordance with the agreed work plan?*		
2.1. Is there any activity behind schedule? Reasons?		
2.2. Was any activity abandoned? Reasons?		
2.3. Was any activity implemented with UCSF		

International sub-award oversight – other considerations

- Be sure you are considering the changes in laws and regulations of the countries you are working in – these can have a significant impact on your activities
- Partner with your central campus services (controller, risk management, legal, etc.), sister campuses and UCOP for support
- Partner with your funder – they can surprise you (there is an increased awareness and need to build capacity in research administration in resource constrained settings)
- If you aren't already doing this, budget for monitoring and financial oversight of your international subawards

Resources

Useful websites/information for international sub-recipient monitoring and financial management

http://ucgo.org/

UC GO UNIVERSITY OF CALIFORNIA GLOBAL OPERATIONS

Home | Resources for... | About Us | International Collaboration | Travel 101 | Project Funding | Tools & Templates

RESOURCES FOR RESEARCHERS

- General Tips
- Planning International Research
- Funding International Research
- Regulatory Guidance
- International Travel
- Tools & Templates

RESOURCES FOR LEARNERS

- General Tips
- Planning Your Trip
- Managing on the Ground
- Returning from Abroad
- Tools & Templates

RESOURCES FOR PROGRAM STAFF

- Managing International Projects

Welcome

UCGO provides information and resources in support of global health research across the UC system

Researchers

Learners, Trainees, & Graduate Students

Program Staff

International Collaborators

The University of California is a growing force in the area of global health research. To continue on this trajectory of innovation and implementation, efficiencies across all of the university campuses are necessary, not only focusing on research agendas but also on global operation practices. This website is designed as a constant 'work in progress' where new materials and guidelines that are general to all UCs are available for use by researchers, administrators, program staff, and students. Building and sharing tools across all ten campusus is a streamlined, cost-effective approach to support global health research.

If you have any questions or would like to participate in this project, please

contact us

We are surveying users for ease of use and content.

SURVEY

RESOURCES FOR INTERNATIONAL COLLABORATORS

- Budgeting & Expenses
- Funding International Research
- International Agreements
- Resources for Collaborators

REGULATORY LINKS

- Working with International Entities
- Clinical Trials.Gov
- NIAID ClinRegs
- Export Controls
- Materials Management

TRAINING

- Global Research Forum
- Human Subjects
- UCOP export training

UCSF

https://www.niaid.nih.gov/researchfunding/int/pages/fos.aspx

National Institute of Allergy and Infectious Diseases/NIH Foreign Organization System (FOS) Review

1. Grantee Organization:
   Address:
   Telephone:

Table of Contents

UCSF