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Interpreting Award Documents

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Goal: Gain familiarity with key award terms and mechanics of award documents in order to:

- Effectively administer awards
- Assist PIs and guide them regarding their rights and responsibilities



Agenda

- Review structure of award documents
- Review relevant terms of award documents

(Reference materials will be provided)



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STRUCTURE OF AWARD DOCUMENTS



Structure of Award Documents

- General contracting concepts:
 - Incorporation by Reference (pg. 7)
 - Applies terms from external documents without including them in the award document itself
 - Order of Precedence (pgs. 5, 9, and 14)
 - Establishes which terms are used in the event of a conflict between terms in different documents
 - Merger/“Entirety of Agreement”/Integration (pg. 6)
 - States that any oral or written agreements not included in the award document (or other incorporated documents) are not legally-binding



Structure of Award Documents

- Award documents come in many forms:
 - “Short-form” with minimal terms stated in the award document and many terms incorporated by reference
 - Many federal grants use this form
 - May be used for task orders under Master Agreements
 - “Long-form” with all (or almost all) applicable terms included in award document and exhibits
 - Many contracts use this form



Structure of Award Documents

- Award documents come in many forms:
 - Any combination of explicitly-stated terms and incorporated documents
 - Non-RTC subawards often include many terms and also incorporate the prime agreement
 - Some awards incorporate proposal and/or RFP (pg. 12)



Structure of Award Documents

- Examples of “Long-Form” of Agreement:
Contract with a Corporation and NYS Master Contract for Grants
 - Extensive verbiage drafted by lawyers
 - Relevant documents (budget, SOW, etc.) usually included as exhibits/attachments



Structure of Award Documents

- Example of Other Form of Agreement:
Subaward from University
 - If RTC prime award from federal sponsor, minimal terms will be layered onto prime award terms
 - If not federal sponsor or prime award is not RTC, University may draft subaward with extensive terms
 - Will usually incorporate prime award as exhibit
 - May incorporate other documents by reference



Structure of Award Documents

- Terms that may be incorporated into Award Documents include:
 - RTCs and RTC Agency-Specific Requirements (sometimes as CFR reference to agency's "implementing regulations")
 - General/Standard Agency Terms and Conditions (e.g., DoEd, EPA)
 - Code of Federal Regulations (CFR), including the "Uniform Guidance"
 - DoDGARs (Department of Defense General Acquisition Regulations)
 - FARs, DFARs, DEARs, etc.
 - "Handbooks," "Policy Guides," and other sponsor-specific documents
 - Proposal
 - Solicitation/RFP
 - Funding acts, regulations, laws
 - Others



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SELECTED TERMS OF AWARD DOCUMENTS



Terms of Award Documents

- Basic Information
 - Period of Performance
 - Initial Period of Performance does not always cover anticipated project Period of Performance
 - Extension of Time/ No-Cost Extension (NCE)
 - Some agencies allow a first NCE to be “grantee-approved” with notification
 - » Notification MUST be submitted on time or right to initiate “grantee-approved” NCE will be lost
 - Other agencies require prior-approval for any NCE



Terms of Award Documents

- Basic Information
 - Structure of funding
 - Lump sum up front
 - Increments
 - Options
 - Cost-Reimbursable vs. Fixed Price



Terms of Award Documents

- Funds on Hold
 - Award document may provide funds but also put them on hold until some requirement is met
 - USDA, EPA, DOJ, others
 - Sometimes term withholding funds is far away from terms providing funding (pg. 18)



Terms of Award Documents

- Rebudgeting (pg. 11 and 13-15)
 - Award may provide specific restrictions, for example:
 - Prior approval for budget changes that:
 - Transfer 10% or more of award total between cost categories
 - Transfer 10% or more of cost category between cost categories
 - Transfer funds between indirect and direct cost categories
 - Transfer funds from participant support
 - Make ANY change to the budget (!!!)



Terms of Award Documents

- Travel (pg. 10 and 16)
 - Sponsor may allow any travel (assuming allowable in accordance with cost principles)
 - Sponsor may allow any travel included in proposal and require pre-approval for other
 - Sponsor may require post-travel report (ARO)
 - Sponsor may require all travel be pre-approved
 - Sponsor may require all foreign travel be pre-approved



Terms of Award Documents

- Cost Sharing
 - Must be tracked and reported
 - Might not be explicitly stated in award if only included in proposal
 - Must review proposal to see if cost sharing included
 - Uniform Guidance and Cornell Policy limit cost sharing to that included in the budget and budget justification of proposal or in the award
 - Commitments only made in project narrative no longer count as cost sharing



Terms of Award Documents

- e-Verify (FAR 52.222-54)
 - Requires employment eligibility to be verified through federal database. Any new university hires must be verified within 3 days of starting work and "transfers" within 30 days.
 - Only in federal contracts
 - Memo describing E-Verify requirements will accompany distributed award



Terms of Award Documents

- Confidential Information (pgs. 3-4, 17, and 24)
 - Defined information provided to Cornell and/or designated (e.g., labeled) as confidential by disclosing party
 - Definition of “Confidential Information” is critical for administering publication rights



Terms of Award Documents

- Publication (pgs. 4 & 12, 17 and 21)
 - Cornell does not allow publication prohibition or undue restrictions/delays
 - Does allow review and comment for IP and confidential/proprietary information
 - Sponsor can require removal of confidential/proprietary information
 - Sponsor may require reasonable delay (pre-negotiated amount of time) in order to effect IP protection



Terms of Award Documents

- Publication (pgs. 4 & 12, 17 and 21)
 - Some sponsors have no review requirements
 - Usually specify acknowledgment language
 - Usually require copies of publications to be provided or uploaded
 - Some sponsors have elaborate review and comment schemes and timelines
 - Sponsor may never require its “approval” for Cornell to publish
 - **PIs must be aware of restrictions and acknowledgment requirements**



Terms of Award Documents

- **Publicity (pg. 5, 12, 17, and 21)**
 - Some sponsors have no prohibition on publicity or use of their name
 - Usually specify acknowledgment language
 - Other sponsors are very restrictive
 - Cornell negotiates right to release basic information about award, including sponsor name, in periodic reports regarding funded research
 - Any other reference to sponsor must be pre-approved
 - **PIs must be aware of restrictions and acknowledgment requirements**



Terms of Award Documents

- Intellectual Property
 - Standard is for Cornell to retain ownership of inventions
 - Researchers sign assignment agreement with Cornell that allocates IP rights
 - Authors personally hold copyrights
 - Some contracts alter standard ownership approach



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Questions?

GCOs are always available to help you interpret award terms.

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