Pre-Award Negotiation Job Aid

January 24, 2025

Purpose: Contracting Services within Knowledge Enterprise maintains responsibility for negotiation and execution of agreements with external sponsors and ASU subrecipients. This Job Aid provides overall guidance and action items to be performed during contract and subaward negotiations. Note, some items may not apply to each agreement type being negotiated, refer to WI-SN-70 for the Job Aid's developed specifically for the various agreement types.

Agreement and Subaward Verification

1. GCO will refer to WI-SN-70 for ERA actions

2. GCO will review agreement and validate the following general information values:

   - PI(s) name
   - ASU's full legal name occurs at least once in the agreement
   - ASU's points of contact (including PI's email)
   - ASU addresses
   - ASU's financial information (i.e. bank info, etc.)
   - Amount of funding and compensation/invoicing language included
   - Purpose of agreement is clearly stated
   - Sponsor/funding source identified
   - Contract type (Fixed Price, Cost Reimbursable, Other) identified and if Fixed Price that a payment schedule with milestones/deliverables is included in Agreement
   - Period of Performance stated
   - All exhibits and attachments are included with Agreement from Sponsor. If there are any web links open and capture the referenced documents.

   For Subawards, Subawards GCO reviews the activation and proposal workspace in ERA Grants against the Subawards Checklist in WI-MS-30. When one or more of the required documents are missing, the Subawards GCO will email the Research Administrator (RA) for the documents.

   For all Incoming agreements with foreign parties, GCO verifies foreign party using Visual Compliance "Restricted Party Screening". Verify as follows:

   1) "Fuzzy Level 1" is selected.

   2) Do two (2) VC searches-- 1) on foreign company name, and 2) on foreign party PI's name.

   If no alerts, save copy of VC results in pdf and file in ERA Agreements task Negotiation Information item 8.0.

   If VC alerts are present on company name and/or PI name, rerun search(es) with any additional information you may have (e.g. company or PI address). If VC alerts are still present, send inquiry to export.control@asu.edu to advise prior to moving agreement forward.

3. GCO will **search for previously negotiated agreements** with sponsor to compare against current agreement and any prior issues/exceptions noted. Search ERA Agreements View ERA – How to Search for tips.

Agreement and New Subaward Negotiation

1. GCO will refer to WI-SN-70 for ERA actions.
2. **During negotiations**, GCO will:

- ☐ Determine what **internal parties** need to be contacted during negotiation of terms based on internal guidance.
  - Update *"ASU groups contacted during negotiations"* in the ERA Negotiation Information smart form to reflect all parties contacted. Note these groups will also receive a copy of the fully executed agreement when distributed.
  - If agreement has ASUF as the Grantee, **ALWAYS** check with ASUF to confirm that ASU will manage the agreement and change the grantee to ASU. If the agreement is to be managed by ASUF then forward the agreement to ASUF and cancel the task.
- ☐ GCO will **provide task status** every 5 business days, or more frequently depending on request, to PI and RA and any others PI designated to be on communication.
- ☐ Update Agreement/Subaward Tasks including but not limited to *"Brief Task Status"* and *"Internal Review/Negotiation Comments"* field to reflect status, open issues and correspondence to allow others to continue working on task in assigned GCO's absence.
- ☐ Store most recent document being worked on under *"Most current version of agreement being negotiated"* in the ERA Negotiation Information smart form, and store other documentation in ERA, as appropriate or required.
- ☐ Use the email function in ERA whenever practical to send correspondences to ASU internal parties, sponsor, and subrecipient personnel. A record of emails sent from ERA remain in the history. Items that should be sent using the email function are: project related correspondence with ASU and sponsor or subrecipient personnel, PI approval requests, distributing fully executed agreements and purchasing correspondence. Save copy of PI approval in ERA as appropriate or required.
- ☐ When contacting ORIA via ERA Agreements email, mark the appropriate areas of concern for ORIA's review. i.e. Conflict of Interest; IACUC= Institutional Animal Care and Use Committee; IBC = Institutional Biosafety Committee; IRB = Human

Subjects Institutional Review Board; Material Transfer; Native American Cultural Review; Security for data access.

- Add in Email Message, area of concern matching the location of clauses in the agreement and statement of work description of project.

- ☐ In addition to the above, Subawards GCO will determine the appropriate subagreement type to be used by referring to Types of Subaward Agreements and Amendments in WI-MS-30. Once agreement type has been determined, the Subawards GCO will select the appropriate subaward agreement template from the ERA TEM tasks to create the subaward agreement document. For some older ASU awards, Subawards GCOs can use the Generate Agreement activity in ERA to generate subaward modification documents. In these instances, ERA will pull the information from the task and will input it into the generated agreement.
  Subawards GCO needs to review the generated information for accuracy and to make sure everything is formatted correctly.

  - Once the agreement has been drafted, and the information is correct and formatted correctly, send the agreement to the PI for approval using the email function in ERA. For all Subawards, save a copy of the PI approval under "PI approval email" on the Finalize Subawards Task Request smart form.

  - If subrecipient takes exception to subaward terms and conditions, the Subawards GCO will negotiate any changes as needed by utilizing the guidance included in this Job Aid and seeking further assistance from fellow GCOs, Team Leads, and leadership as needed.

- ☐ Refer to "Execute & Distribute" work instruction (WI-SN-75) for actions related to obtaining final agreement/subaward signatures, and for Agreement/Subaward Finalization and Distribution.

3. GCO reviews agreement **terms and conditions**

   - ☐ **Private Use**. If the agreement falls under an IRS safe harbor as identified in *"Safe Harbors or Qualified Users"* on the ERA Negotiation Information smart form, the GCO shall check which safe harbor choice applies.

     - If IP terms are not "IP Allocation" (i.e. follows inventorship/silent), no safe harbor applies and/or the agreement sponsor is not a "qualified user", check "Private Use Concerns Exist" "Yes" and send an email to the RA requesting the space requirements (building and room number) for the project. Input the space information in "Private Use Concerns Exist" as required.

   - ☐ **Publication or Export Control restriction** Refer to Contract Negotiation Guidance under Export Control or Publication Restriction for specific guidance.

If the GCO is unable to negotiate out the restrictive terms the GCO will:

- Create Publication Waiver Export Control Approval email to PI with copy to RA and Export Control Group export.control@asu.edu and attach to that email the Publication Waiver Request Form for PI to complete, sign, and return to the Export Control Group for approval. If agreement contains Export Control terms, GCO to notify the Export Control Group through ERA ("Send Email" in the My Current Actions section) to export.control@asu.edu with the Principal Investigator (PI) & Research Administrator (RA) copied and the Scope of Work, Contract and Budget attached.
  - GCO should continue to negotiate the export requirements out of the agreement or otherwise ASU acceptable language.
  - Update ERA *"Brief Task Status"* to indicate restrictions and waiting for Export Control Group approval. The final agreement shall not be signed by ASU until the GCO receives a copy of the approved Publication Waiver.

☐ **Native American** entities:

- Contact ORIA via ERA Agreements email (mark "Native American Cultural Review") and send copy of the draft award document for Cultural Review. Update Agreement Task, Negotiation Information, to identify – *Native American Entity Involved*? to "Yes". Send final copy of award to ORIA.

☐ **Intellectual property** developed by the University, regardless of the source of funding, is the property of the University and managed by Skysong Innovations ("SI"). GCO will:

- Refer to Contract Negotiation Guidance under Intellectual Property.
- If ASU's language is not accepted then the GCO should discuss the IP language with their Lead. If there are issues that need SI input, Lead will request SI assistance. Contact PI and copy RA to complete template and attach agreement with Intellectual Property language highlighted along with comments when sending to SI using ERA email when appropriate.

☐ **Human subject data confidentiality**

- Send email to ORIA via ERA Agreements with copy of agreement with language highlighted for review and approval.
- Update Agreement Task – Internal Review/Negotiation Comments indicating sent email and waiting for ORIA Approval. Save all approval emails in ERA Agreements "Negotiation Justification file documenting all Non-Standard Negotiation and Business Decisions" folder

☐ If agreement involves **international entities** and includes items such as compensation in **other than US dollars (USD)** or Value-Added Tax (VAT) (under Miscellaneous Negotiation Guidance) or **other unique**

foreign requirements, please consult Team Lead or Contracts Manager for guidance.

Unless already stated in the agreement, **all agreements involving international entities** shall have the following language included:

> **Service Marks and Trademarks.** Neither Party shall use any service marks, trademarks, logos or other marks of the other Party without the express written approval of the other Party. The use of any marks must comply with the owner's requirements, including using the "circle R" indication of a registered trademark.

ALL incoming agreements **only** with **for profit international universities** (including for profit universities from U.S. territories) require KE SVP approval prior to execution. Contact the Contracts Manager to obtain this approval prior to their execution of the agreement.

- **Information security or IT requirements**. If the agreement includes IT security or other specific IT requirements, notify RTS and your Team Lead. The email sent to rtshelp@asu.edu should have a title indicating IT security or requirements review needed. The body of the email needs to include a brief explanation of the project, the clause where the requirement is located, date response needed and a copy of the agreement. Assistance may include contacting the PI and the department's IT representative directly to discuss the specifics. If the agreement contains requirements related to **classified information** then they should be negotiated out of the agreement. If they are applicable then the award should be forwarded to ASURE to manage the classified work. Update ERA Negotiation Information "Non-standard Negotiated Terms", by checking box o. Security Requirements

- If Sponsor requires **Certification of Current Cost and Pricing Data** forward the request to the Proposal Functional Group (PFG) member for Post-Submission action. The Request for Execution of Current Cost and Pricing Data Certification Process can be found in WI-SN-70 under Related Content and includes the criteria for when a Certificate is required. After the PI and RA execute the Request for Execution of Current Cost and Pricing Data Certificate Template Form and send it to Pre-Award, the AD will execute the Certificate to be sent to the Sponsor.

- **Business Decisions,** follow WI-SN-70 **.**