



# Session III:

# How to Formalize the Relationship

Guest Presenter:

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K-State Presenters:

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**KANSAS STATE**  
UNIVERSITY | Institute of Commercialization

**KANSAS STATE**  
UNIVERSITY | Office of Research  
Sponsored Programs

**KANSAS STATE**  
UNIVERSITY | Office of Corporate Engagement

**KANSAS STATE UNIVERSITY**  
**FOUNDATION**

# Agenda



## Budgets, Contracts & Statements of Work – Oh My!

- Differences in Culture (University & Industry)
- Glossary of Terms
- Various Contract Vehicles
- Typical Sticking Points
- Demystifying Facilities & Administrative Costs (F&A) & Budget Strategies
- Intellectual Property
- Conflicts of Interest & Perceptions of Bias
- Statements of Work & How to Avoid Scope Creep

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# Differences in Culture (University & Industry)

## Differences in Institutional Missions

-  Non-Profit
-  Open Environment
-  Freedom to Publish
-  Benefit the Public
-  Teaching / Research / Outreach
-  Public Funding

-  For Profit
-  Protect Competitive Advantage
-  Need for Confidentiality
-  Maintain Freedom to Operate
-  Maximize Shareholder Value
-  Must Generate Economic Benefit

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# Glossary of Terms

- **PreAward Services or “PAS”:**

- Provides a full range of assistance to faculty, staff and administrators in obtaining and administering funding from non-university sources to support K-State’s creative and scholarly activities
- [www.k-state.edu/research/preaward](http://www.k-state.edu/research/preaward)

**KANSAS STATE UNIVERSITY**

Search web, people, directories  
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K-State home » Vice President for Research » ORSP » PreAward Services

**Office of Research & Sponsored Projects**

ORSP Home	<b>PreAward Services</b>	<b>Forms/Agreement Templates</b>
Funding Opportunities	About	PreAward Forms - standard proposal preparation forms
<b>PreAward Services</b>	<b>Proposal Preparation</b> addresses, account numbers, and other important proposal information.	PreAward Agreement Templates - standard sponsored project agreement templates
Events	<b>Federal Regulations</b> links to sites dealing with various regulations.	Sponsor Forms - links to sponsor forms including NIH, AHA, etc.
Policies	<b>Responsible Conduct of Research Policies</b>	Research Compliance Forms - required forms for IBC, IACUC and IRB research
For Industry	<b>Other Policies &amp; Procedures</b>	<b>Frequently Used</b>
Research Compliance	<b>Export Controls Training</b> If you have questions about the Export Controls Training process, and/or if you need to check to see if you have completed the training, please contact the University Research Compliance Office at 785-532-3224 or <a href="mailto:comply@ksu.edu">comply@ksu.edu</a> .	Transmittal Sheet (PDF) or (Word)
Research Expertise PIVOT (COS)		OPAS Requests (PDF) or (Word)
Research Awards		Authorized Signature Form (PDF)
Responsible Conduct of Research		

# Glossary of Terms

- **Sponsor:**
  - Non-university entity which may fund or “sponsor” a project to be completed in accordance with the Proposal and any subsequent Award
- **Proposal:**
  - Proposed statement of work and budget (and any other documents required by the Sponsor’s guidelines) for Sponsor’s consideration of funding
- **Award:**
  - Grant, contract or other binding instrument generally issued by the Sponsor to fund the work proposed under the Proposal at a specified funding amount
  - Normally follows the submission of a Proposal

# Glossary of Terms

- **Types of Awards:**

Grant	Contract or Agreement
For the public good	For the benefit of the Sponsor
Scope may be somewhat flexible	Scope may not be altered
Terms and conditions are generally limited in nature and are not typically restrictive	Terms and conditions typically specific and restrictive
Re-Budgeting and Timeframe usually flexible	Budget and Timeframe correspond with specific project deliverables and generally may not be altered



# Glossary of Terms



- **Memorandum of Agreement (MOA):**
  - K-State’s template “contract” or “Agreement”
  - Written agreement for public service, outreach, and research and development activities performed by K-State faculty, staff and students
- **Confidentiality Agreement (CDA):**
  - Written agreement that governs the timeframe in which confidential information disclosed between K-State and a potential research sponsor can be restricted, so as not to be shared with any third party
  - Also called “Nondisclosure Agreement” or “NDA”, Confidential Disclosure Agreement and the like
- **Material Transfer Agreement (MTA):**
  - Written agreement for the exchange of research materials

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# Various Contract Vehicles



K-State

- PreAward Services Agreement Templates
- [www.k-state.edu/research/preaward/agreements](http://www.k-state.edu/research/preaward/agreements)

Company

- Company Agreement Templates
- Instead of using a K-State template, PreAward Services can review a Sponsor-initiated contract

# Various Contract Vehicles

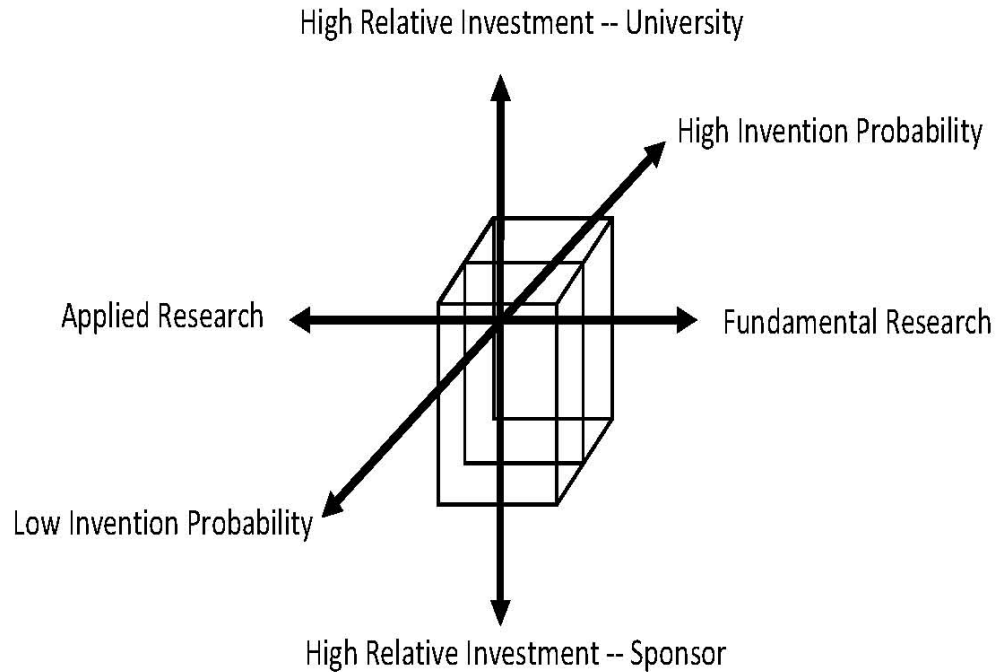


A contract dictates how the results of the project are treated by both parties



The appropriate contract vehicle depends on the project scope of work

# Project Mapping Diagram



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# Typical Sticking Points



True,  
False,  
OR  
Maybe?

Faculty cannot publish all of the results from company-sponsored research activities

# Typical Sticking Points



**Sort of True  
and  
Sort of False**

**Companies and universities usually agree to language stating that the companies will have prior review of any publication of results for protection of company-owned Confidential Information and/or patentable subject matter**



# Typical Sticking Points



True,  
False,  
OR  
Maybe?

**Companies want faculty to disclose any inventions they create to the university**

# Typical Sticking Points

True

**Companies want faculty to disclose inventions to the university because it enables the university to fulfill its contractual obligations to the company in regard to intellectual property**

# Typical Sticking Points



True,  
False,  
OR  
Maybe?

**Company-sponsored research is confidential**

# Typical Sticking Points



Sort of True  
and  
Sort of False

Company-sponsored research generally has confidentiality obligations, however, generally the entire project isn't confidential and results can be published with the company's prior review

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# Demystifying F&A



A University's  
Cost of Doing  
Business Includes:

Direct Costs

Facilities and  
Administrative  
Costs

# Demystifying F&A



- **Direct Costs:**
  - Costs that can be attributed directly and accurately to a particular sponsored project (e.g., salaries, benefits, equipment, supplies, lab fees, travel, etc.)
- **Facilities and Administrative Costs (F&A):**
  - Also known as indirect costs or overhead
  - Pooled expenses that cannot be directly attributed to a particular project (e.g. labs, classrooms, offices, libraries, office supplies, departmental administrative staff, utilities, maintenance, and research administration staff and offices, central services, such as email, computing, etc.)

# Demystifying F&A

- Every organization incurs costs doing business, irrespective of industry, sector or activity.
- The budgeting, expenditure and recovery of the real costs of industry-sponsored research directly impacts our institution's ability to innovate and compete for industry funding, now and in the future.
- F&A has received a bum wrap, mainly due to the confusion and frustration associated with how universities have historically presented these costs to industry, while also failing to adequately educate its own community regarding how these costs relate to a university's overall cost of doing business.



# Demystifying F&A



Most companies do not understand governmental accounting principles.

Companies do understand the concept of the “cost of doing business”.

F&A costs are quantifiable costs associated with a university’s overall cost of performing its activities.

# Demystifying F&A

Most companies do not understand that a university's concept of "full cost recovery", merely means that a university is attempting to comply with State and governing Board requirements that mandate that universities must "break-even", without realizing a profit. To not accomplish this objective means that a university must take away from other income streams to cover these real costs.

# Demystifying F&A

- K-State must follow federal regulations that requires the university to ensure that the federal government gets the “best deal”. The “best deal” is the same deal that all K-State partners receive. We cannot discriminate against federally-supported activities. Each sponsor is required to pay their share of the allocable cost. Our corporate sponsors similarly do not want to pay their competitors share of the cost.
- This simply means “divide-it-up-fairly”. So, if one sponsor is allowed to pay lower than their fair share of costs, that means someone else is picking up the tab.
- K-State values its industry partners and allows its industry partners access to its federally negotiated discounted F&A rate. Some universities have higher “industry rates”.

# Mechanics Behind the F&A Rate – Rate Calculation

THIS IS A  
MAGIC BUTTON.



ANY TIME YOU ASK  
FOR COST ESTIMATES,  
I PUSH THE BUTTON  
AND IT GUIDES ME.



PULL THE  
NUMBERS  
OUT OF  
YOUR...

IT ONLY  
SAYS THE  
ONE THING.



Dilbert.com DilbertCartoonist@gmail.com

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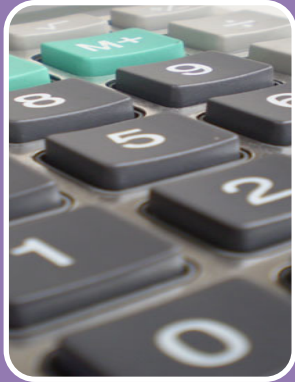
# Mechanics Behind the F&A Rate – Rate Calculation

The F&A rate is defined as F&A “cost pools” as the numerator and the Direct research base as the denominator.

$$\frac{\textit{Allocated F\&A Costs}}{\textit{Direct Cost Base}}$$

The prescribed OMB Circular A-21 approach results in rates that often are misconstrued (i.e., what does 50% mean?)

# Mechanics Behind the F&A Rate – Rate Calculation



F&A Costs Allocable to  
Research = \$50,000,000  
Organized Research  
Base = \$100,000,000

= 50%

# Mechanics Behind the F&A Rate – Rate Calculation

- **Modified Total Direct Costs (MTDC):**
  - Consists of all salaries and wages, fringe benefits, materials and supplies, services, travel and up to \$25,000 of each subgrant.
  - Equipment, capital expenditures, charges for patient care, tuition, rental costs of off-site facilities, scholarships and fellowships, as well as the portion of each subgrant and subcontracts in excess of \$25,000 are excluded from the MTDC base.

# 50% Rate does not mean 50% goes to F&A

## Proposal Budget:

Salaries and Fringes	\$100,000 *
Tuition- Grad Students	\$ 10,000
Equipment	\$ 20,000
Other & Supplies	\$ 20,000 *
* (F&A = \$100,000 + \$20,000 X 50%)	\$ 60,000 (not \$75,000)
TOTAL	\$ 210,000 (not \$225,000)



# In Fact...

Nation-wide university survey data shows that on average only approximately 27% of project costs are expended on F&A. K-State's effective F&A recovery is currently around 23%.

For every \$1 spent:

- ✓ Salaries, Supplies, etc. = \$0.56
- ✓ Equip, Tuition, Subs = \$0.17
- ✓ Lab Space/Facilities = \$0.13
- ✓ Compliance/Admin = \$0.14

F&A Costs are Real Costs that enable K-State to establish and sustain a viable research infrastructure.

# In Fact...

- The federal government analyzes K-State's cost of doing business by looking at the costs associated with the numerator and denominator illustrated in the earlier slide.
- K-State actual F&A cost to perform is around 70.05%
- K-State will never fully recover this rate due to government caps only applied to universities, not industry, (i.e. can't charge it on tuition, equipment, subs over \$25,000, etc.).
- K-State's actual rate is capped to 57.33%. Due to federal ad hoc discounting during the F&A "negotiations", this rate has been further lowered to 50%.

# Current K-State F&A Rates

K-State's F&A Rate Table and Calculation Guidance can be found at:

[www.k-state.edu/research/preaward/indirect.html](http://www.k-state.edu/research/preaward/indirect.html)

	Research	Instruction	Public Service/ Extension	Branch Station	Ag (funded by USDA)
On-Campus	50% MTDC	50% MTDC	35% MTDC	36% MTDC	43% MTDC
Off-Campus	26% MTDC	26% MDTC	26% MTDC	26% MTDC	26% MTDC

*See Brochure entitled "A Guide to Facilities and Administrative Costs"*

# Budget Strategies

- **Fully Burdened Costs:**

- Include all direct and F&A costs as these costs were previously defined

- **Fixed Price:**

- Means contract funding terms that include fully burdened costs specified as a single sum total of the anticipated costs or stated on a cost per hour rate that is fixed for the term of the contract
- Fixed price contracts involve set or “fixed” rates for a predetermined set of deliverables. Exercise due care to ensure that all costs have been identified and are included in the rate quote.

# Budget Strategies

Fully-Burdened Hourly Rate: Total fully-burdened cost divided by # of hours  
Fixed Priced “Bottom-Line” Quotations of Cost involve a simple stating of the total fully-burdened cost of performance without further reducing the quote to a certain measurable unit of costs.

Deploy this strategy when you are certain of the cost of performance. Inform the sponsor that these are the fully-burdened costs for salaries, wages, material and supplies, equipment, travel, lab fees and other applicable project expenses.

In all cases, prepare an internal budget to ensure that you have captured all of the necessary costs. Submit budgets through PreAward Services for budget review before submitting to sponsor.

# Quotes from Industry Sponsors

“I understand overhead, I just don’t want to see it itemized in a budget.”

“I am willing to pay my fair share, including overhead, but I am not interested in my competitor approaching you and bullying you all into not requiring them to pay the full overhead.”

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# Glossary of Intellectual Property Terms

- **Intellectual Property:**
  - Often referred to by the acronym “IP”
  - Legal rights relating to inventions (including Subject Inventions as defined in 37 CFR 401), patent applications, patents, copyrights, trademarks, mask works, trade secrets and any other legally protectable information, including computer software
- **Background Intellectual Property:**
  - Or, “existing” intellectual property
  - IP the various parties already own or control and bring to the project, or intellectual property developed independently by either party
- **Foreground Intellectual Property:**
  - Or, “Project Intellectual Property”
  - IP first made or generated during the performance of the project



# Intellectual Property



- **UIDP Quote:**
  - “The ability of academia and industry to negotiate and manage IP terms both parties consider fair is contingent upon their ability to understand each other’s motivations and objectives. Awareness of other perspectives doesn’t imply agreement, but it can help parties find common ground on many issues.”
- **Link to K-State’s IP Policy**
  - [www.k-state.edu/academicpersonnel/fhbook/fhxs-1.html](http://www.k-state.edu/academicpersonnel/fhbook/fhxs-1.html)
- **“Public Policy Mandates” Brochure**
  - Available in your notebook and [www.k-state.edu/corporate/toolbox](http://www.k-state.edu/corporate/toolbox)
- **Prepare for the Question:**
  - What is your IP Policy?
- **“Role of IP” Brochure discussion**
  - Available in your notebook and [www.k-state.edu/corporate/toolbox](http://www.k-state.edu/corporate/toolbox)

# Intellectual Property



## Public Policy/Tax Issue Relating to IP: Definition of Qualified Research

**“Qualified Basic Research Agreement”** means any Research Agreement that (1) involves only “basic research” and (2) meets the “qualified license requirement.” A Research Agreement involves “basic research” if the research conducted pursuant to the Research Agreement is an investigation for the advancement of scientific knowledge and the subject of the Research Agreement has no specific commercial objective. The “qualified license requirement” is met either (1) where any license granted to use any product developed as a result of the research is only on the same terms as the Issuer would permit that use by any unrelated, non-sponsoring party (i.e. the sponsor must pay a competitive price for its use) and the price paid by the licensee for use of any license or other product derived from the Research Agreement is determined at the time the invention or other resulting technology is available for use or (2) the Issuer determines the research to be performed and the manner in which it is to be performed under the Research Agreement, title to any patent or other product incidentally resulting from the Research Agreement lies exclusively with the Issuer and any sponsor or sponsors of the research are entitled to no more than a nonexclusive, royalty-free license to use any product developed as a result of work done pursuant to the Research Agreement. For purposes of the foregoing, a “license” includes rights granted to the United States under the Bayh-Dole Act (35 U.S.C. § 200 *et seq*) and the “qualified license requirement” is met with respect to such a license so long as the Issuer determines the research to be performed and the manner in which it is to be performed under the Research Agreement.

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# Conflicts of Interest & Perceptions of Bias

## Excerpt from K-State's Conflict of Interest (COI) Policy...

“A conflict of interest occurs when there is a divergence between an individual's private, personal relationships or interests and his or her professional obligations to the university such that an independent observer might reasonably question whether the individual's professional actions or decisions are determined or substantially influenced by considerations of personal benefit, gain or advantage”.

“Whether a conflict of interest or the appearance of one exists depends on the situation, not on the character or actions of the individual, and must be determined objectively on a case by case basis. The appearance of a conflict of interest can be as damaging or detrimental as an actual conflict and thus, for purposes of this policy, apparent conflicts are treated the same as actual conflicts”.

# Conflicts of Interest & Perceptions of Bias

## Public Concern

Situations in which researchers hold private consulting contracts with the Sponsors who also fund their research program creates the perception of a potential bias. Need management plans.

## Industry Concern

Researchers who have consulting contracts with competitors that include overbroad statements of services coupled with “work-for-hire” type IP assignment terms in favor of that competitor may create “reach-through” contract obligations that might preclude or bar a researcher’s employer from granting another research sponsor the IP rights normally granted/expected under a research agreement.

## University Perspective

The goal of a university COI review and management system is to ensure that the personal interests of an individual do not unduly influence their primary obligations to science (public purpose), Sponsors, University, colleagues, or students.

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# What is a Statement of Work (SOW)?

- A document that defines a project's scope, deliverables, timeline, and other responsibilities as applicable.
- Answers— “Who, What, When, Why, and How the project/research will be carried out”.
- Can be thought of as a project's “Action Plan”.
- Can be a helpful management tool if developed properly.

# Mission Differences Impacting SOWs

## Industry Perspective

- Research is driven by business needs
- Focused on solving a problem or meeting an objective
- Research project is often one component of a larger program at the company
- Gain access to expertise, equipment or facilities
- Have content, timeline and budget needs that fit within the objectives and constraints of a company's larger research and business objectives



# Mission Differences Impacting SOWs

## University Perspective:

- Research is curiosity driven and open-ended
- Focused on creating knowledge
- Used to a grant-funded environment
- Have considerable freedom to pursue own scientific interests
- Control over direction, progress, conduct, timing and dissemination of results

# Differences Between a Grant Proposal & an SOW

## Grants

- Funder plays only a small role in influencing the content of the proposal
- IP ownership not an issue
- Researcher free to set project direction, timeline, milestones, and deliverables
- Timelines, milestones, deliverables often described in general terms and are flexible
- Easy to get a “no-cost” extension

# Differences Between a Grant Proposal & an SOW

## SOWs

- Sponsor usually makes a significant contribution to content
- Need to be careful of including background and unrelated IP
- Content, timeline, deliverables and budget must fit into company's objectives and constraints
- Timelines, milestones, and deliverables should be well defined
- “No-cost” extensions are harder to obtain

# Statement of Work Contents

- **Introductory Paragraph**---Short background and problem statement—Why are you doing this research?
- **Goals and Objectives**---What are you going to do?
- **Approach/Scope**—How are you going to do it?
  - Specific and task oriented
  - No preliminary studies or literature review
- **Roles and responsibilities**—Who is going to do it?
- **Timeline and milestones**---When are you going to do it?
- **Deliverables**—What are you going to produce and when?

# Statement of Work Contents

- Some advice:
  - Keep it simple—just the facts
  - Avoid contract language
  - Work closely with PreAward Services
  - Work closely with your sponsor
  - Be realistic with your deliverable schedule and budget
  - Under promise and over deliver!

# Statements of Work as Management Tools

- Should have regular and frequent contact between parties
- SOW serves as point of reference and guide to what is expected
- Particularly important if there is an industry personnel change
- SOW and budget should be developed with idea that changes may occur

# Scope Creep



- Process by which a project grows beyond its originally conceived scope (size, timeline, \$\$\$)
- Can be prevented by:
  - A well written SOW with a clearly defined scope of work, deliverables and timeline
  - Revisiting the SOW as the project progresses to make sure what you are doing matches your scope, timeline, and anticipated deliverables

# Scope Creep



## Remedy:

- Recognize it when it happens
- Either:
  - Modify your SOW to reflect current scope, timeline, deliverables, \$\$\$, or
  - Pull project back to original scope
- Modifications are important because they
  - Protect you and help keep the relationship amicable
  - Provide continuity if your sponsor PI changes



# Questions?



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