Award Negotiation, Award Approval and Set-Up (Module 6.00)

In this module

Awards
- Why is the Award So Important?
- Academic Freedom
- Approvals
- How Awards are Made
- Award Acceptance
- Award Monitoring

Records
- Award Set-Up
- Gift Awards
- Pre-Awards
- Billing and Payment
- Residual Balances
- Payments
**The Proposal Award**

**Awards:** Provides funds from a sponsor for support of a sponsored project.

- This term is used for the original award, and subsequent supplements or modifications.
  
  *(Could also be referred to as an agreement.)*

- The award sets out the **obligations of the parties**.
  
  - A written, legally enforceable document between an institution and sponsor.
  - Involves the **expectation of an economic benefit** and the generation of:
    - Tangible product
    - Report
    - Service
    - Other consideration to the sponsor
  
  - The **benefits to the sponsor** might include:
    - Receipt of technical reports
    - Evaluation, testing or evaluation of proprietary products, 
    - Development or construction of equipment
    - Access to data, patents, copyrights, or consulting services.

*Agreements can take many forms including grants, cooperative agreements, contracts, sponsored research agreements, or any other agreement that is used to fund a sponsored project.*
Awards from...

Grant Applications

Once the proposal has been sent to the sponsor

➢ A waiting process before the PI or the institution is informed by the sponsor that an award will or will not be granted.

Contract Proposals

Many times once the draft contract is received by OGC

➢ There may be a delay finalizing the contract while terms and conditions are negotiated.
Why is the Award so Important?

The award document defines how the project can be carried out.

Awards may:

- Set limitations on the amount of freedom the PI and staff have to carry out the work.
- Establish the number and complexity of financial and technical reports to be completed.
- Limit how funds can be spent and restrict re-budgeting without prior approvals.

The potential that the award document may restrict the PI and/or the institution, requires that the award be read, understood, and if necessary negotiated before it is accepted by the institution.
Why is the Award so Important?

The terms and conditions of the award are typically included in the award document and/or may point the reader to the source of such terms and conditions.

For example, on federally funded awards there are standard regulations that apply and/or typically referenced rather than given in full text.

- Office of Management and Budget (OMB) Circulars A-21 and A-133 are applicable to all federal awards, including both grants and contracts.
- OMB Circular A-110 is applicable only to federal assistance awards. (grants; cooperative agreements)
- Federal Acquisition Regulations (FAR) are applicable to federal contracts.

- Federal awards are governed by standardized rules and regulations (OMB Circulars and FARs), although each may also have unique terms.
- Non-federal awards do not have standardized rules and regulations, but usually have sponsor specific terms and conditions.
Why is the Award so Important?

Some awards require negotiation of terms and conditions before the award is acceptable.

These terms and conditions may include:

- The designation of confidential information
- Publication rights
- Intellectual property ownership
- Indemnification *(liability and risk)*
- Terms and termination of the agreement
- Choice of law
- Confidential information
- Use of the University’s name
- Compensation and payment
- Expenditure of funds
- Ownership of equipment acquired under the agreement
Why is the Award so Important?

For the award to be acceptable, it must:
- Be in compliance with UCD|AMC, State of Colorado, and Federal policies and procedures.

Terms and conditions must:
- Be reasonable under the circumstances and acceptable to the PI.

For example, publishing rights are governed at the University by the concept of academic freedom and the Classified Research Policy.

Administrative Policy Statement on Restricted, Proprietary and Classified Research

The University functions on the premise of academic freedom and the University continually works to achieve an atmosphere of free inquiry and discussion.
A fundamental concept and defined as

- The freedom to inquire, discover, publish and teach truth as the faculty member sees it.
- Subject to no control or authority and save the control and authority of the rational methods by which truth is established.

**Academic freedom becomes an important issue when paired with sponsored research since:**

- Sponsors of extramurally funded research often want to impose some restrictions on the PI and those working on the project.

**One of the reasons UCD|AMC reviews awards prior to acceptance is to**

- Ensure that academic freedom is protected.
- This includes the requirement that faculty have complete freedom to study, learn, do research, and communicate the results of these pursuits to others.
- Academic freedom includes students who must be able to freely study and discuss issues.
Academic Freedom

This freedom will be restricted if the award offered by the sponsor:

• Limits the ability to publish
• Too broadly defines confidential information
• Too broadly defines a sponsor’s ownership rights to intellectual property, including data and copyrights
The University of Colorado has an established policy on the acceptance of classified research.

- **Classified research is either:**
  - Federally funded research with a designated security classification, or
  - Industrially funded research in which the sponsor requires a delay in publication in the open literature in excess of six months from the date of submission of the final project report by the PI to the sponsor.
  
    *The policy excludes “routine testing services” and personal consulting by faculty members.*

- **If the award document is in conflict with the policy on academic freedom or classified research:**
  - OGC will pursue negotiation with the sponsor to reach agreement on acceptable language.
Prior to UCD|AMC’s acceptance of an award, the PI may be responsible for obtaining any required approvals not already obtained in the routing process:

Approvals might include:
- Human subjects
- Lab animals
- Hazardous materials
- Bio-safety agents

The PI is also responsible for
- Answering project-specific questions of the sponsor
- Working with OGC to resolve any award issues that may need to be negotiated with the sponsor.

*OGC acts as primary institutional contact point for all Federal and non-federal sponsoring agencies.*
How Are Awards Made?

OGC considers an award to be made when the award document is received by OGC and properly executed.

Awards from Grant Applications

- The PI and/or OGC normally receive written notification of the sponsor's decision regarding award of a grant application or the denial of funding.
- Awards received must be reviewed by OGC, the PI, and/or designee to determine the terms and conditions that must be adhered to.

Awards from Contract Proposals

- Awards made by contractual agreements are usually more complicated than awards made with grants. Contracts take longer to review, negotiate and approve than grant awards; be prepared for the inherent delays.
- Initial discussions between sponsor representatives and UCD|AMC faculty or staff are encouraged as necessary to confirm mutual interest.
Before any commitment is made, the following need to be submitted and approved through regular internal review procedures:

• A routing form
• An agreement *(including a budget)* must be submitted and approved through regular internal review procedures
• Approved by an OGC authorized institutional official.

**Typical types of contracts include:**

- Clinical trials
- Corporate sponsored agreements
- Federal contracts
- State agreements
OGC is responsible to negotiate contracts with industry, agencies or state and the Federal government, local municipalities and non-profit organizations before the award is approved.

**OGC will review:**

- The terms and conditions of the award before obtaining an authorized signature *(when a UCD|AMC signature is required for award acceptance).*
- Agreements and award documents for
  - **Comprehensiveness**
  - **Appropriate language**
  - **Compliance with guidelines set by the sponsor as well as the UCD|AMC and State requirements.**
- The award notice for special terms and conditions, including prior approval requirements, and cost sharing.
- Negotiate terms and conditions for all UCD|AMC awards as needed.

**Intellectual Property issues** *(e.g., ownership of inventions and confidentiality)*

- Requires the review by the Office of Technology Transfer.
OGC will review the award language to ensure that:

- The terms are clear.
- The essential elements of a contract are included and appropriate based upon the scope of the contract.
- There is a budget providing for compensation of the work performed.
- Terms of payment are clear, appropriate and manageable.
- The sponsor’s invoicing requirements are appropriate and clear, including how the sponsor will be invoiced.
Some contracts have terms and conditions that are likely to cause problems down the road.

**Some examples of real problems include:**

- Contracts with reporting terms that could not be fulfilled by UCD|AMC and thus jeopardized payment by the sponsor.

- Terms that included “payment will be withheld” meant that UCD|AMC was never paid.

- Also consider the financial stability of the company and the ability of the sponsor to meet the obligations of the contract.

- Acceptable agreements are to be signed by the authorized representative of the parties involved.
Award Acceptance

Award documents requiring a signature for acceptance must be signed by an authorized official of UCD|AMC.

• Only those persons specifically authorized by the Regents of the University of Colorado or authorized delegates may legally sign agreements for the Regents, acting for and on behalf of UCD|AMC.

**Gentlemen's Agreements and/or Handshakes ≠ Awards!**

• Awards requiring a signature for acceptance are not considered final until all parties have signed the agreement and one original of the fully executed agreement is received by OGC|AMC.

• Awards not requiring a signature for acceptance by UCD|AMC will be reviewed before the award is accepted internally by OGC.

• When a UCD|AMC signature is required for award acceptance, OGC in consultation with the PI, will review the budget, terms, and conditions of the award before obtaining an authorized signature.
Award Acceptance

Important Points:

- The award is to UCD|AMC
- The award is not the PI’s personal spending money
- Most awards have restrictions
- Most awards require some accountability
Award Monitoring

• UCD\AMC is required to keep separate records of each award that is funded.

• This separation of records is maintained in a paper file in OGC while financial information is maintained in the PeopleSoft financial system.

• In addition to institutional records, it is critical that the PI and department keep records (segregated by award) to keep track of the day-to-day activities of the project.

  – The record should include:
    - Hiring
    - Expenditures
    - Reporting activities
The PI or designee should establish a filing system for award monitoring:

- Each award should be maintained separately, with the complexity of the record retention method being dependent on the type of award, reporting requirements including financial and technical reporting, the term of the award, purchasing and subrecipient arrangements, cost sharing, human, animal or bio-safety documentation, approvals and other requirements.

- All documents related to the preparation, negotiation, award acceptance, expenditure activities including electronic Personnel Effort Reports (ePERs), hiring activities, monthly project or program statements, reports, subrecipient agreements or other services agreement should be maintained.
An awarded proposal will be given a particular designation in the financial system.

- Awards will be set up in the PeopleSoft Financial System based on the type of award.
- The PeopleSoft Financial System is the centralized electronic financial system for the University:
  - Processes on-line purchasing documents
  - Provides financial status updates
  - and Produces monthly accounting reports.
Restricted Funds

**Fund 30 - Federal, State & Private Sponsors**
Records financial activity as a result of grant or contract awards to the UCD|AMC where the sponsor of the activity is a Federal, State, or private sponsor.

**Fund 31 - Local Government Sponsors**
Records financial activity as a result of grant or contract awards to UCD|AMC where the sponsor of the activity is a level of local government, such as a city or county within Colorado.

**Fund 34 - Gift Funds**
Records monies accepted by the CU Foundation as charitable contributions and subsequently transferred to UCD|AMC for use by UCD|AMC exclusively to fulfill its exempt purpose(s). There can be no expectation of economic benefit on the part of the donor; i.e., no deliverable.
PeopleSoft utilizes categories and subcategories for budgeting and spending on a project.

- Subcategories allow the funds to be recorded and monitored in finer detail.  
  *For example: there is an account code to use when charging UCD|AMC projects for UPI physician services called UPI Physician Billing.*

- Correct recording of expenditures is beneficial, helping to reduce accounting and reporting problems later.

- PeopleSoft can work to the advantage of the PI, administrative unit, and UCD|AMC if used correctly.
Account Codes

It is the Office of Grants and Contracts responsibility to:

• Set up the project in the financial system *(PeopleSoft)*

• Establish the appropriate budget for the project, in accordance with the sponsor’s award.
  
  ✓ A project number will be set-up and assigned.
  
  ✓ OGC will contact the designated departmental administrator with the awards’ project number(s) and speed type number(s).

  *These numbers should be used to appropriately charge the financial activity (deposits and expenditures) for the award.*

• Always check the budget in PeopleSoft to ensure it fits with your understanding of the award.

• Clinical trials are not set-up with budgets in PeopleSoft given the nature of the work and the funding.
Gift Funds

The CU Foundation handles gifts, therefore, gift funds should only be deposited with the CU Foundation.

*Handled differently from Grant or Contract funding*

**Gift funds should never be:**
- Directly deposited into a program fund at the campus level
- Deposited in a bank account outside of the University
- Deposited with UPI
- Transferred into a program fund from another project or program (either by crediting a revenue or expenditure account).

See Fiscal Policy 4-14, *Accounting for and Deposit of Gifts*. 
Pre-Awards

The mechanism used to set up a project in the financial system prior to the actual receipt and acceptance of an award document.

What is a Pre-Award? How do I apply for a Pre-Award?

For more information and Guidelines, Read the Fiscal Policy 4-10 “Establishing a Sponsored Program/Project Without an Award Document”
To request a Pre-Award for a proposed project
Submit the following to OGC in accordance with Fiscal Policy 4-10:
- Completed Routing of the Proposal Application with Approvals
- Completed Departmental Guarantee Memorandum Form (Pre-Award Request Form)

If a Pre-Award is granted
- It will result in the assignment of a financial system project number being set up.
- The PI can then charge expenditures to that project number within the restrictions placed on the pre-award.

The department assumes full financial responsibility
- For ALL expenditures incurred on a pre-award basis.

Note! It is inappropriate (and at times even considered fraud) to incur costs on other sponsored projects with the intent to transfer those costs later to another project.

There is a risk!
- If an award is not received, (and a contract goes unexecuted, or a sponsor decides to disallow pre-award costs regardless of the reason) the department must transfer any disallowed or unfunded costs to the unrestricted account designated on the Guarantee Memorandum.
Billing and Payment

Once the award is set-up in PeopleSoft

- There is the expectation by UCD|AMC that funding (in whole or in part) will be received to cover the expenditure activity of the project.

The cash management expectations of awards will vary based on the funding mechanism and sponsor.
Funding Mechanisms

There are several funding mechanisms that may be used when UCD|AMC enters into a sponsored project.

The three primary types of funding mechanisms are:

- Cost Reimbursement
- Fixed-Price
- Fixed-Rate
Cost Reimbursement Funding Mechanism

The cost reimbursement type of payment mechanism is set up so that the sponsor will reimburse UCD|AMC for actual dollars spent on allowable expenditures to carry out a project.

- Also known as “Pay after the fact”
- Agreements are normally performed on a best efforts basis and create the least amount of risk for the University.
- Many federal agencies will provide grant award funds for a specified budget period in advance. These are still considered cost reimbursement.

A common component of federally funded cost reimbursement grant awards is that any monies paid in advance, which are not spent, are to be returned to the sponsor at the end of the budget period (unless indicated otherwise).

- UCD|AMC can only keep funds that have been spent appropriately.
- Any advance payments may also place a requirement on UCD|AMC to pay interest to the sponsor.
Fixed-Price Funding Mechanism

Occurs when UCD|AMC agrees to provide services or deliver a product for a fixed level of compensation.

- If the cost of providing such service or product exceeds the fixed amount of funding, UCD|AMC (and thus the administrative unit) would be required to cover any uncompensated costs.

- A fixed-price funding structure is more complicated if the award is terminated early.
  
  *Termination may require UCD|AMC to negotiate final payment amounts based on actual expenditures.*

- PI’s often view a fixed-price funding structure as more favorable, but this method carries with it additional risk
  
  *For example: Cost Over-runs*

- Fixed-price funding structures are not appropriate for certain types of research.
  
  *For instance: Basic or development research with defined deliverables that specify certain results would not be appropriate.*
The Fixed-Rate funding mechanism structure occurs when:

- Payment is not based on actual costs expended, but on a mutually agreed upon rate per activity performed.

*Fixed-price and fixed-rate agreements may result in large residual balances at the end of a project if expenses are lower than budgeted.*
Residual Balances

Large residual balances raise suspicions that expenditures were charged inappropriately

- A **red flag** for auditors is finding large residual balances (excess funds) at the end of an award.

**Examples of Suspicions raised by red flag items:**
- *Charges were made to another project inappropriately*
- *Patient billing was not handled appropriately*
- *A conflict of interest may be present*

*Keep this in mind when managing fixed price and fixed rate agreements*
Payments

Payments are received by UCD|AMC from a sponsor in one of the following ways:

- **Advance payment** of the entire award amount
- **Scheduled payments** made on receipt of deliverable(s) or at a given time frame
- **Payments made upon receipt of invoice(s) that include actual expenditure information**
- **Mixed payment method**, for example: An advance partial payment and then scheduled payments on receipt of deliverables.

- Many non-federal or federal flow-through agreements require UCD|AMC to invoice the sponsor in order to receive payment.
- OGC will prepare and submit invoices to the sponsor based on expenditures made and recorded appropriately in PeopleSoft. **Non-federal Clinical Trials are normally based on patient information and accordingly are not billed by OGC.**
- OGC also manages accounts receivable for projects. OGC bills and assists in pursuing prompt payment of sponsor commitments. **Final responsibility is with the departments.**
If PI’s signature is required on the invoice

- The signed invoice must be returned to OGC as soon as possible.

If the PI is required to provide additional information to the sponsor for billing purposes

- It is the PI and department’s responsibility to provide necessary documentation on a timely basis to OGC.
In the case of Clinical Trials, it is appropriate for the PI to work directly with the sponsor to receive payment. If the sponsor requires receipt of a deliverable then it is the PI’s responsibility to provide such information in a timely manner.

For Example: A technical report, case report forms, etc.

For clinical activities

• It is the responsibility of the PI to ensure expenditures are charged to the project appropriately.
• This includes ensuring that (if any)
  - Invoicing/financial reporting
  - Billing for patient care charges
  - The project functions on a positive cash basis
  - Hospital/patient care charges
  - Medicare billing is handled appropriately

See Fiscal Policy 4-1, Clinical Trials for details

• Departments with multiple clinical trial awards may want to consider establishing a Service Center for the provision of services to the clinical trials due to the variety of payment methods.

See Internal Service Centers and Core Laboratories policy for more information.
Wire transfers can be set up for receipt of payment from sponsors.

- Contact OGC for wire information and assistance.
Receipt of Payments

When payment is received for a project

- OGC will attempt to determine where the payment should be recorded.
- OGC will contact departments as needed for assistance.

For information about payments received, check PeopleSoft or contact your Post-Award Administrator.