

To our BC faculty colleagues,

From time to time, the Office of the Vice Provost for research will issue a memo to the BC research community on a topic of major concern to Principal Investigators and the University. The attached memo on “Negotiating Terms and Conditions of Sponsored Research Projects” will be of interest to all who conduct research at Boston College.

If you have questions or comments, we would be pleased to receive them.

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Negotiating Terms and Conditions of Sponsored Research Projects

Summary

“Terms and conditions” refer to sponsored project provisions under which Boston College accepts sponsored project funding. Any deviation from standard University policies on, for example, publishing or intellectual property rights must be negotiated with funders by the Office for Sponsored Programs (OSP). While Principal Investigators (PI’s) are and should be involved in all aspects of a research project, where the terms and conditions of a grant are involved, the University conducts the negotiations while keeping the PI informed of progress. Importantly, the terms and conditions of an award are not executed until the PI approves them.

This cooperative distinction between the responsibilities of the researcher and the University’s designated agent – the Office for Sponsored Programs – is key to the successful development of a sponsored agreement that meets University standards, protects the rights and interests of faculty members and their research associates, and takes account as far as possible of the interests of the sponsoring agency.

The PI’s Role

In most every instance, the Principal Investigator, or PI, has extensive interaction with a sponsor. This is necessary to accomplish all of the following:

- To determine the initial interest of the funding agency;
- To identify specific approaches or inflections of special interest or concern to the funder;
- To clarify application guidelines presented on websites or in written materials;
- To explore with program officers in person or by phone detailed aspects of the proposed research; and,
- To obtain feedback on concept papers or draft applications.

OSP’s Role

It may well feel unnatural that the PI’s involvement can come up to, but not include negotiation of a project’s terms and conditions. An enumeration and discussion of some major concerns the University may negotiate in its review of sponsor terms and conditions may help PI’s understand the need for what we are terming a cooperative distinction.

These aspects of a sponsored project agreement fall into the category of terms and conditions that the University would negotiate with the funder on behalf of the PI:

- Restrictions on publishing;

- Restrictions on copyrights and patents;
- Unreasonable or unduly onerous reporting or technical requirements;
- Unusual payment and financial reporting terms;
- Burdensome restrictions on rebudgeting;
- Mandatory prior approvals; and,
- Unrealistic warranties, insurance requirements, representations, or certifications.

OSP, in collaboration with the PI, determines the appropriateness of the terms and conditions and arrives at alternatives to be negotiated with the sponsor.

The following document more fully elaborates and explains the why's and wherefore's of negotiating terms and conditions of sponsored research projects.

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- To obtain feedback on concept papers or draft applications.

In the pre-proposal stage, the PI should provide OSP advance notice of the possibility of a sponsored project application. Looking ahead some, given all the many sponsored projects OSP has successfully submitted for funding, this notice helps the Office not only to anticipate workload generally but to gauge in a more specific way the amount of time and effort that might be required to successfully negotiate terms and conditions of a forthcoming application.

The PI should, as early as possible, provide OSP with:

- Informational drafts on the topic of the proposed application, its funding level and duration, potential sponsors, and an estimated project budget;
- An estimate of the probable timeline for submission; and,
- A first take on any anticipated special requirements, e.g., for space and buyouts.

OSP's Role

We take note and deeply appreciate that as conversation and exchange continues between the PI and the funder, there is a natural tendency for the PI to become involved in all aspects of the project's development, including the finer points of negotiating a successful agreement between the sponsor and the University. It may well feel unnatural that the PI's involvement can come up to, but not include negotiation of a project's terms and conditions. An enumeration and discussion of some major concerns the University may negotiate in its review of sponsor terms and conditions may help PI's understand the need for what we are terming a cooperative distinction.

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Restrictions on publishing. Our University Research and Projects Policy states:

"...investigators (shall) have full freedom to conduct their inquiries and arrive at and publish their finding in accordance with their professional judgment. The University shall accept no sponsored agreement that prohibits, delays more than a minimal amount of time, or in any way diminishes an investigator's right to publish, disseminate, or otherwise disclose the results of his or her work."

<http://www.bc.edu/research/osp/policies/principles.html>

In consonance with this policy, all BC faculty must have the right and freedom to publish their sponsored scholarly work. The University will not accept any terms or conditions that compromise this bedrock policy. PI's cannot and must not negotiate publication right to externally sponsored research findings and (see below) products.

Ownership of Copyrights and Patents. In all instances of both copyrights and patents, the University retains ownership. This guarantees to the PI full and free use of all intellectual property, including copyrighted scholarly work done with grant funding and patented inventions developed with outside funds. The University will reject any terms or conditions that infringe on its ownership of copyrights and patents resulting from

externally funded projects. PI's must not and cannot engage in negotiations since these may compromise or possibly eliminate University ownership rights which, as noted, protect the PI alongside the University.

Onerous Administrative Requirements. In every case, the University will insist on reasonable reporting and technical requirements; on appropriate or acceptable payment terms that meet good business practices; on re-budgeting arrangements that take account of the needs of the investigator for reasonable flexibility to manage a research project; on limited prior approval requirement in several areas, including the nature and extent of mandatory prior approvals, award extensions, warranties, representations, and certifications.

In all, the University will not accept terms and conditions that unreasonably hinder the PI's ability to carry out a funded project or put unmanageable administrative burdens on the University to steward funds and meet applicable 501(c)3 requirements.

The PI cannot and must not negotiate unacceptable administrative and other terms and conditions including, but not limited to, those appearing just above. Only an authorized signatory can accept variations of standard University policies and practices. These variances must be stated in writing and approved in writing by an authorized signatory. In the end, the University will not honor any verbal terms and conditions – oral or written -- that PI's have entered into directly with sponsors.

The authorized signatory for sponsored program agreements is the Director of the Office for Sponsored Programs, or, as may be required from time to time, an alternative officer listed on the University signatory authority letter.

Best Practices

In best practices, the PI and OSP stay in close touch from the conceptual start of a project through the successful completion of the negotiation of terms and conditions of a sponsored project to the close out of the project itself. At the start, the PI informs OSP or initial or preliminary contact with a potential sponsor. It is OSP's responsibility to maintain open and clear communication with PI's during the Office's negotiation of terms and conditions on behalf of the University and the PI. Moreover, while for most grants there will be little or no negotiation (negotiations are more frequent with private funding than with public funding), wherever this is a need for negotiation of terms and conditions, only OSP can carry out those exchanges.

In passing, we note that where sponsorship takes the form of a gift, it is the responsibility of Advancement to negotiate any terms or conditions as they may apply to University letters of acceptance that may be of tax value or benefit to the donor. OSP and Advancement maintain regular communication on these transactions.

Where the relationships among the parties – PI, sponsor, and OSP – are thoughtfully and appropriately arrayed, a number of positive outcomes are better assured:

- The PI's intellectual and academic rights are fully recognized and fully protected;
- The Sponsor's needs are as fully reflected as possible in an agreement that recognizes the intellectual and academic needs and rights of the PI and the policy and procedural requirements of the University; and,
- The University Research and Project Policy – a core policy that has been fully vetted with General Counsel, Council of Deans, University Research Council, Provost, and President – is fully respected and honored for itself and for its outlook on and protections for faculty.

We welcome your thoughts and comments.

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