

AB20 Model Agreement Update ***AOA 2012 Annual Conference***

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SUE DEROSA, CSU CHANCELLOR'S OFFICE

MIKE RONDELLI, SDSU RESEARCH FOUNDATION

ANDREW BOULTER, UC OFFICE OF THE PRESIDENT

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AB20: Negotiation Status

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- **AB20 Model Agreement Terms – Exhibit C UTC-XXXX** – Negotiation with DGS/State, UC and CSU representatives complete – *June 2011 (awaiting final approval of State agencies and DGS Director)*
- **State and University Proposal and Administration Manual (SUPAM)** – Manual drafted to provide State and University systems with guidance on proposal, award and administrative processes – *Oct 2011 (in draft)*
- **Implementation of UTC-XXXX, Exhibit C** – *Feb 29, 2012??*

AB20: Outstanding Issues

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- **Implementing MOU** – *not yet negotiated with DGS; possible issues include:*
 - Agreement on alternate patent language and process
 - Applicability of AB20 Model agreement –
University interpretation is that it applies to ALL contracts;
DGS interpretation that competitively bid projects may be excluded
- **Finalizing UTC-XXXX, Exhibit C**
 - Invoicing and payment is still an issue
- **Indirect Cost** – *Still pending* –
 - Working on counter proposal to the latest response from State agencies (Merry Christmas to us) – ***NEED YOUR HELP!***
- **Finalize SUPAM** – *feedback welcome!*

AB20: A new relationship ...

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- Use of the model agreement is predicated on a different working relationship with the State
 - Campuses will provide complete proposals to the State prior to award
 - Proposals will be reviewed in advance by university sponsored projects offices
 - Proposal will contain more detail upfront, allowing for less detail to be required later, for example, with each invoice

AB20: Implementing MOU...

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- The implementing MOU is drafted to outline the applicability of the AB20 model agreement – and more...
 - Applies to all agreements between state agencies and UC/CSU campuses (*CSU definition includes auxiliaries responsible for administration of sponsored projects*)
 - Identifies how DGS, CSU and UC will continue to work together to update/maintain the model agreement
 - Provides process and language for one alternate provision (Patents)

AB20: A new structure ...

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- As a result of this new philosophy, the model agreement is contemplated (if not yet finalized) to be comprised of three documents acting in concert:
 - The University Terms & Conditions (Exhibit C, UTC-XXXX)
 - The standard agreement format (STD 213 & Exhibits)
 - The State & University Proposal & Administrative Manual (SUPAM), including the budget workbook

AB20: The SUPAM

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- The SUPAM is divided into three major sections
 - Pre-award
 - ✦ Proposal preparation and submission
 - ✦ Level of detail in proposal
 - ✦ Endorsement by sponsored projects office
 - Award
 - ✦ Structure of the basic award
 - ✦ Proper use of the optional exhibits
 - ✦ Use of mutually negotiated terms
 - Post-award
 - ✦ Prior approval/rebudeting
 - ✦ Invoicing
 - ✦ Close out

AB20: SUPAM Pre-award

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- Before any award is issued by a State agency, a formal proposal (*endorsed by the authorized official at the campus*) is submitted to the funding State agency
- A proposal will include at a minimum, a complete scope of work (Exhibits A-A6), and a budget (Exhibits B-B3)
- A proposal is not official without the concurrence of the sponsored projects office
 - To assist our State colleagues in identifying when a proposal has been endorsed, we are proposing the use of a Proposal Cover Sheet

AB20: SUPAM Proposal Elements

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- **Scope of Work**
 - *Exhibit A – Abstract and Scope of Work*
 - ✦ A complete description of the work to be done by the campus
 - *Exhibit A1 – Deliverables*
 - ✦ A description of all items that are to be delivered to the funding State agency
 - ✦ Include all reports, draft reports, software (including source code, if necessary) and data sets (if requested by the State)
 - ✦ Be aware that the State will receive a NERF to every item listed as a Deliverable

AB20: SUPAM Proposal Elements

(continued)

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- **Exhibit A2 – *Key Personnel***
 - Defined as individuals who contribute to the scientific development or execution of the project in a substantive, measurable way, whether or not salaries are requested.
 - PI and Proposing campus determine who is key within the project
- **Exhibit A3 – *Contract personnel/Notices***
 - Contact information for the authorized representatives
 - *Note that this follows the FDP subaward model*

AB20: SUPAM Proposal Elements

(continued)

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- Exhibit A4 – *Use of Preexisting Data, Copyrighted Works and Deliverables*
 - ✦ If the State’s use of any Deliverable is restricted or is anticipated to contain preexisting data or copyrightable works with any restricted use, it will be clearly identified in Exhibit A4 along with the nature of the restriction
- Exhibit A5 – *CVs*
- Exhibit A6 – *Current & Pending Support*
 - ✦ This exhibit ties to item #5 *Conflict of Interest* in the UTC
 - ✦ It’s included to allow State agencies to assess if a given investigator has an inherent conflict between the funding State agency and a regulatory agency
 - ✦ Subsequent updates to Exhibit A6 are **only** at the agency’s request

AB20: SUPAM Proposal Elements

(continued)

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- Exhibit A7 (optional) – *Third Party Confidential Information Requirement*
 - ✦ If the scope of work requires the provision of third party confidential information to either the State or the Universities, then that information will be defined in Exhibit A-7 along with any requirement of the third party in the use and disposition of the confidential information.
 - ✦ The third party may require a separate Confidential Nondisclosure Agreement (CNDA) as a requirement to use the confidential information. Any such CNDA will also be added to Exhibit A-7

AB20: SUPAM Proposal Elements

(continued)

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- **Budget & budget workbook**

- **Exhibit B – *Budget***

- ✦ The budget is divided into a composite for all years and a year-by-year, budget category breakdown
- ✦ The itemized budget contains more detail than usually seen in State proposals, but similar in format to some federal proposals
- ✦ Only the composite budget will be included in the subsequent award (as Exhibit B). The budget worksheets for the individual years would be documentation for the proposal only

- **Exhibit B1 – *Justification***

- ✦ The justification will contain a narrative explanation of all the estimated costs in the budget
- ✦ Pay particular attention to explaining unusual items of cost and the need for them

AB20: SUPAM Proposal Elements

(continued)

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- Exhibit B2 – *Budget Estimates Pertaining to Subcontractors*
 - ✦ A new requirement, but intended to secure approval for subs at proposal stage
- Exhibit B3 – *Invoice Elements* –
 - ✦ Good news – no more photocopying backup documentation!
 - ✦ Required elements: Summary that shows approved budget, cumulative and current (invoice) period expenditures and balance available – by approved budget category
 - Part 2 – Detailed transaction ledger that contains elements like account/object code, transaction date, description, reference and amount (*including effort/time worked for payroll expenditures*)*

* *May be a separate payroll ledger, if not included in detailed transaction ledger*

AB20: SUPAM Award

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- Model agreement terms will be used for all new agreements executed on or after the implementation date.
 - New agreement is defined as the award of funds, not previously budgeted or appropriated, by a funding State agency to the UC or CSU.
- A State agency funding an application submitted under the requirements of the SUPAM will use the model agreement format.

AB20: SUPAM Award Format

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- The model agreement has the following required forms and exhibits
 - Standard Form (STD) 213
 - ✦ Contains all of the usual and required information for State agreements, including the name of the funding State agency, the contractor's name (the UC or CSU campus) the amount and period of the award, etc.
 - ✦ Upon execution, it will bear the signatures of the Authorized Officials of the State agency and the UC or CSU campus as well as the endorsement of DGS, if necessary.
 - Exhibits A-A5
 - ✦ These exhibits will be included in the agreement as transmitted in the proposal to the State.
 - ✦ Any changes to Exhibits A-A5 will need to be coordinated and endorsed by the Authorized Official of the UC or CSU campus.

AB20: SUPAM Award Format (continued)

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○ Exhibits B-B2

- ✦ The composite budget, budget justification and subrecipient budget(s), when applicable and as transmitted in the proposal to the State will be duplicated in the resulting Agreement.
- ✦ Any changes to Exhibits B-B2 will need to be coordinated and endorsed by the Authorized Official of the UC or CSU campus.
- ✦ Exhibit B3, invoice elements, will be incorporated into the Agreement, but will not be transmitted with the proposal package.

○ Reversion of Funds

- ✦ The State shall provide University with fund reversion dates for each fiscal year identified on the Exhibit B
 - *Note – Project completion date must be at least 90 days before funds reversion date. If the end date of the Agreement is less than 90 days from the funds reversion date, the project period may need to be renegotiated prior to Agreement execution to ensure payment of final invoice.*

AB20: SUPAM Award Format (continued)

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- Exhibit C, UTC–XXXX
 - ✦ The model agreement terms and conditions will be maintained on the DGS Office of Legal Services, Standard Language website and will be included in the agreement by reference in Exhibit C. the language in the University Terms and Conditions (UTC) should not be altered in Exhibit C.
 - ✦ Any mutually negotiated changes to the UTC should be rare and included in Exhibit H *Negotiated Alternate UTC Terms*

AB20: SUPAM Award Format (continued)

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- **Optional Exhibits**

- *Exhibit A7 – Third Party Confidential Information Requirement*

- ✦ As noted earlier, if the scope of work requires the provision of third party confidential information to either the State or the Universities, then that information will be defined in Exhibit A-7 along with any requirement of the third party in the use and disposition of the confidential information including any nondisclosure

- *Exhibit D – Additional Requirements Associated with Funding Sources*

- ✦ If the Agreement is subject to any additional requirements imposed on the funding State agency by applicable law (including, but not limited to, bond, proposition and federal funding), then these additional requirements will be set forth here
 - If the University is a subrecipient, as defined in OMB Circular A-133, and the prime funding entity is the federal government, the name of the funding federal agency, the prime award number (if available), and the Catalog of Federal Domestic Assistance (CFDA) program number will also be listed

AB20: SUPAM Award Format (continued)

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- Exhibit E – *Special Conditions for Security of Confidential Information*
 - ✦ If a given scope of work or project results in additional legal and regulatory requirements regarding security of Confidential Information, those requirements regarding the use and disposition of the information, will be provided by the funding State agency
- Exhibit F – *Access to State Facilities and Computing Resources*
 - ✦ If a given scope of work or project requires that the Universities have access to State agency facilities or computing systems and a separate agreement between the individual accessing the facility or system and the State agency is necessary, then the requirement for the agreement and the agreement itself will be listed in Exhibit F.

AB20: SUPAM Award Format (continued)

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○ Exhibit G – *State Confirmatory License*

- ✦ Should the funding State agency request it, the standard State Confirmatory License can be included in the Agreement as Exhibit G
 - **Note:** *if Exhibit G is not incorporated, and the University discloses an invention under this Agreement and prosecutes a patent application, a State Confirmatory License will be executed by the University to provide said license to any such invention, within 90 days after filing of patent application.*

○ Exhibit H – *Negotiated Alternate UTC Terms*

- ✦ AB20 allows for the terms of the UTC to be changed, but only through the mutual agreement and negotiation of the State agency and the University campus.
- ✦ If a given term in the UTC is to be changed, the change should **not** be noted in Exhibit C, but rather noted separately in Exhibit H

AB20: SUPAM Award Format (continued)

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- Exhibit H – (continued)
 - The model agreement contemplates only one standard alternate term, “#19. *Patents – State Alternate.*”
 - This term may be used only when an Agency determines that its statutory mission is better served by Agency ownership of inventions potentially created in the performance of a specific project
 - To use #19. *Patents – State Alternate*, the funding State agency must provide notice to the campus PI and Authorized Official of the UC or CSU of its intent to include the term and the supporting determination for inclusion of the term
 - This notice and supporting determination must be provided **after** a proposal has been submitted to the funding State agency and **before** the formal agreement is issued

AB20: SUPAM Post-award

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- **Invoicing and Payment**

- The process for invoicing and payment is designed to follow the proposed/approved budget, providing sufficient detail to the state to approve payment – but no copies of supporting documents
 - ✦ Invoices submitted in arrears no less frequently than 90 days, no more frequently than 30 days
 - ✦ Invoices will provide budget/actual expense information, a standard detail transaction report and a detailed payroll expense report (if details are not included in transaction rep)
 - ✦ The invoice, ledger report and payroll expense report will need to be endorsed as valid by the PI
 - ✦ If the funding State agency questions a given cost, the unquestioned costs will be paid while the university responds

AB20: SUPAM Post-award (continued)

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- **Budget Flexibility**

- Budget revisions between identified budget categories in cost reimbursement agreements that are within the total contract amount, comply with the prior approval requirements, above and do not change the Scope of Work or substitute Key Personnel are allowed as follows:
 - ✦ Up to 10% of each annual budget amount or \$10,000, whichever is less, is allowed with approval (could be after-the-fact) of the State's Contract Manager, or as otherwise agreed to by the Parties and documented on Exhibit B.
 - ✦ Exceeding 10% or \$10,000, whichever is less, of the last approved budget require the State's Contract Manager prior approval and may require a formal amendment to this Agreement
 - The University will submit a revised budget to the State for approval.

AB20: SUPAM Post-award (continued)

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- **Close Out**

- At the termination of the agreement, the end date of the project period as listed on the STD 213, the following shall be provided to the funding State agency
 - ✦ In the event that a given agreement terminates early, the procedures outlined in section 7 of the UTC will be followed
- *Final Invoice*
 - ✦ The University shall submit the final invoice to the State, no later than 90 calendar days after the agreement completion date
- *Final Report/Deliverables*
 - ✦ Any undelivered item listed on Exhibit A1 *Deliverables*, will be submitted to the funding State agency at the termination of the agreement

AB20: SUPAM Post-award (continued)

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- Close Out (continued)
 - *Final Invention Disclosure*
(see section 19 *Patent Rights of the UTC*)
 - ✦ If in the performance of the Scope of Work, an invention is made (conceived and reduced to practice), then the University will provide a disclosure of that invention to the funding State agency
 - *Confirmatory License* (if applicable)
 - ✦ A State Confirmatory License will be executed by the University and provided to the funding State agency for any such invention made during the performance of the Scope of Work within 90 days after the University files the patent application

AB20: HELP WANTED - Budget

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- Sample Proposal Budgets
 - Using SUPAM as guide, prepare a sample budget w/budget justification – using state-funded projects, if possible to include...
 - ✦ Project with subrecipients and consultants
 - ✦ Project with off-campus rent/lease expense
 - ✦ Project with none of the above – but with equipment (if available)

AB20: HELP WANTED – F&A/IDC

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- Indirect Cost Scenarios
 - On the sample budgets - apply different methodologies and rates – federal methodologies and rate compared to proposed state base and rates...
 - ✦ Apply Federally negotiated F&A rate on federal MTDC base
 - ✦ CSU/UC counter proposal rates of 45%, 40%, 35% 30% on:
 - Federal MTDC Base
 - State MTDC Base (same as Fed, but exclude consultants)
 - ✦ Calculate indirect cost on TDC at: 30%; 25% and 20%
 - ✦ Illustrate off-campus example with facility rental/lease
 - Including other typical off-campus costs, like utilities, maintenance, etc. Use the 26% off-campus rate.