

ATTACHMENT 4

GUIDELINES FOR ACCEPTANCE OF EXTERNAL AWARDS

A. Introduction

The guidelines below have been developed to facilitate understanding with external sponsors in the negotiation process of contract/grant terms and conditions that are acceptable to the UH. These guidelines shall apply uniformly to all externally financed programs and activities, particularly those involving private industries, foundation, and solicited proposals (Request for Proposals) that are submitted to federal agencies which become binding contractual agreements upon acceptance.

B. Guidelines

1. Best Effort and Full Cost Recovery

The UH received no fee or profit from its research/non- research programs to cover potential business risks. Since many research/development and specialized non-research projects are unique and unpredictable in nature, projects accepted by the UH should generally be conducted on a best effort and full cost recovery basis.

For this reason, the UH should generally avoid contracts that are on a fixed price or fee basis which establish rigid deadlines and impose penalties for failure in meeting schedules; and that require performance warranties/guarantees.

2. Financial Stability of Sponsors

Although programs/activities that are sponsored by governmental agencies are usually backed by the financial strength of the State, County, or Federal Government, private industry and nonprofit organizations must rely on their available working capital and financial mainstay to finance sponsored programs that are awarded to the UH. It is therefore critical that programs which are supported by nongovernmental agencies be carefully evaluated to ensure their ability to cover costs of the sponsored program since any defaults on payment(s) is the responsibility of the PI, Department Chairperson and ultimately the Chancellor/Dean/Director.

3. Method of Financing

Advance funding from sponsors is the ideal financing arrangement since

the UH has a very limited amount of working capital to cover cost reimbursable projects. Moreover, the UH cannot borrow funds for these purposes.

Advance payment schedules when possible, should be negotiated with the sponsoring agency based on the magnitude, scope of project, length of project period, and the anticipated needs of actual expenditures. If projected program expenditures are evenly distributed throughout the duration of the program, quarterly payments in advance should be negotiated with the sponsoring agency. Lump sum payment in advance would be desirable for those agreements that are less than \$15,000 in value. If financing must be on a cost-reimbursable basis, then the frequency of reimbursement shall be no less than monthly due to cash flow considerations.

4. Preaward Authorization

When a new contract or grant award has been approved for funding by the sponsoring agency but delays are expected in the processing of formal award which would adversely impact the program or activity due to urgent and critical program requirements, preaward authorization must be negotiated with the sponsor unless otherwise delegated to the UH. Preaward authorization would allow the incurrence of program costs prior to the effective date and receipt of official award from sponsor. Otherwise, costs incurred prior to the effective date of the sponsored agreement, whether or not they would have been allowed if incurred after such date will be disallowed by the sponsoring agency. Negotiation of preaward authorization with the sponsor must be properly justified and supported with a realistic estimate of program funding needs and a definite time period (usually no longer than 90 days prior to the effective date of award). Costs that are incurred beyond the authorized funding limits or time period established by the sponsor would be disallowed.

5. Excessive Financial Reporting Requirements

The UH's financial management system for Federally financed programs/activities operate in accordance with the standards and requirements prescribed under 2 CFR 200.327, OMB's Uniform Guidance (UG), as applicable. Unless otherwise approved by OMB, the Federal awarding agency may solicit only standard OMB approved government wide data elements for collection of financial information. Information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually and no more frequently than quarterly except in unusual circumstances. Excessive reporting requirements should similarly be avoided in the negotiation of contracts and grants that are not subject to the UG requirements.

6. Indemnification and Insurance Requirement

A careful evaluation must be made prior to the acceptance and undertaking of all extramurally financed programs and activities of the UH to determine the extent and possible exposure to risks, potential liabilities and hazards. This evaluation process is necessary to ensure that the UH is adequately protected from exposure to losses that may occur as a result of its participation or performance of work prescribed under research and non-research agreements.

a. Indemnification

The UH Board of Regents (BOR) has authority to approve indemnification in certain situations. This involves a process that includes review by the ORS Director, OGC, CFO, VP for Research and Innovation (VPRI) and President before it goes to the BOR for their decision.

There are 2 other exceptions to state law: Hawaii Revised Statutes allow state agencies to indemnify United States agencies (29-15.5) and the UH can indemnify collaborating institutions in Material Transfer Agreements (handled by the University of Hawaii Office of Technology Transfer and Economic Development (OTTED)) (304A-111).

The UH has approved alternate (responsibility) language that is acceptable when the other party requires the UH to indemnify it. One version is, "UH shall be responsible for damages or injury caused by UH's agents, officers, and its employees in the course of their employment, to the extent that UH's liability for such damage or injury has been determined by a court or otherwise agreed to by UH, and the UH shall pay for such damages and injury to the extent permitted by law."

b. Liability Insurance

As a state institution, the UH is covered by the State of Hawaii's insurance program and the state's self-insurance. Statements of self-insurance are available upon completion of the Risk Management Form. Customarily, an executed award document will be required prior to issuance of a statement of self-insurance. Statements of self-insurance are different from "Certificates of Insurance." The UH does not provide Certificates of Insurance.

Additional insurance may need to be purchased for high- risk projects. The cost of the additional insurance should be included in the budget and paid for by the sponsor. Such insurance should be purchased

through the University of Hawaii Office of Risk Management (ORM).

The UH's standard insurance language is as follows, "The University of Hawaii, as an agency of the State of Hawaii, operates primarily on a self-insured basis. A statement of self-insurance is available upon request."

7. Governing Law

All agreements from sponsors must be administered in accordance with laws of the State of Hawaii.