

Crafting contracts for international projects

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Abstract (Summary)

A guide is presented for use by project directors and administrators preparing proposals and negotiating awards. Because working in western Europe is less complex, issues related to projects in newly industrializing and less developed countries are emphasized. In general, focus is placed on the terms of award that relate either to sensitive topics for international sponsors or to significant legal or financial risk to an institution. These observations are meant to be an overview of some of the terms and conditions of international contracts, which may differ significantly from those of domestic sponsors. The following points warrant attention when developing and negotiating competitive proposals, awards, and contracts for international projects: 1. title, 2. parties, 3. work statement, 4. principals and scientific or programmatic direction, 5. contract employees and independent contractors, 6. subcontractors, 7. term, and 8. costs.

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Full Text (8384 words)

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ABSTRACT

This article is the first of two dealing with international sponsored projects. The second article will appear in the Spring, 1994 issue of the Journal of the Society of Research Administrators (vol. 25, no. 4). Both articles are intended to serve as guides for use by project directors and administrators preparing proposals and negotiating awards. Because working in western Europe is less complex, the articles emphasize issues related to projects in newly industrializing and less developed countries. In general, this article focuses on the terms of award that relate either to sensitive topic for international sponsors or to significant legal or financial risk to an institution. These observations, are meant to be an overview of some of the terms and conditions of international contracts, which may differ significantly from those of domestic sponsors.

INTRODUCTION

A short discussion of the use of terms is necessary. These articles are appearing in a journal for an association of research administrators, most of whom work in research-or education-oriented nonprofit organizations. The term university will be used throughout with the understanding that the concerns of universities and the conditions under which they operate resemble those of other, similar organizations. Second, the terms sponsored project, grant, and contract will be used interchangeably throughout these articles, and grantee will be used to describe all award recipients, including contractors. Finally, there are several common terms for nonprofit organizations in the international sphere. Nonprofit organizations are called nongovernmental organizations (NGOs) in the international community. The U.S. international development assistance legislation terms the same type of organizations private and voluntary organizations (VOs).

Most universities and nonprofit organizations that have international sponsored projects receive their funds from one of four different types of organizations: bilateral assistance agencies; international organizations; multinational organizations; and nonprofit organizations (Padron, 1987). Many sponsored projects administrators were introduced to the international arena through agreements with the U.S. government's primary international sponsor, the Agency for International Development (referenced as AID for its Washington offices and USAID for its in-country missions). Since the early 1960s, AID has provided virtually all of the funds for sponsored projects for international activities undertaken by universities and nongovernmental organizations. The universities were included in United States government programs through the land grant

system. The private and voluntary organizations were engaged with the United States government during the 1936 Spanish Civil War (AID, 1989, p. 2).

Lately, however, university administrators must deal with an increasing diversity in sources of international funds. There are at least four reasons for this shift. First, more faculty are entering the international field as universities attempt to "internationalize." Second, more faculty are diversifying their funding as new customers seek western expertise. Third, faculty are beginning to work in countries to which they have family ties. And fourth, foreign governments and corporations are approaching faculty directly to work on problems specific to their development needs.

A checklist of international contract concerns is included as Appendix A. Appendix B is a list of suggested readings for international projects. The readings are not limited to the topics of contracts or research administration.

INTERNATIONAL SPONSORS

Bilateral Assistance Agencies

One result of the bipolar competition of the Cold War was the proliferation of government-related assistance agencies. Since the end of World War II, developing countries have been supported by bilateral assistance organizations. Interacting with those organizations has given recipients a global view. Most managers know the assistance agencies by their acronyms: AID, CIDA and IDRC (both in Canada), and their Northern European counterparts GTZ (Germany), ODA (United Kingdom), NORAD (Norway), FINNIDA (Finland)--and the list goes on.

These are governmental agencies that countries in the Northern Hemisphere established to assist countries in the Southern Hemisphere with social and economic development, and emergency relief. Generally these agencies support development-oriented research and training projects in which universities and nonprofit organizations participate. All of these assistance programs are operated under the legal cover of bilateral treaties between the donor and recipient nations.

The first U.S. foreign assistance was allocated to rebuild Europe after World War II. Development assistance to Greece and Turkey under the Truman Doctrine came next, followed immediately by the Philippines, Jordan, Ethiopia and Egypt between 1947 and 1952 (Rondinelli, 1987). Initially, assistance was given for the triple purposes of providing humanitarian assistance to defeated former enemies and Third World allies of World War II; fighting communism; and infusing dollars into an international economy devoid of hard currencies (except the U.S. dollar). Simply propping up national economies, however, has long since become unnecessary as the yen, deutsche mark, and other currencies have grown in strength.

Using monetary assistance to further Cold War foreign policy was tied tightly to bilateral social and economic development plans, and to influences from domestic political constituencies. For example, Israel, also among the first to benefit from federal assistance, receives \$8 billion annually with no restrictions or requirements to provide a plan for its expenditures or to maintain auditable records. Liberia received funds irrespective of program progress. Egypt enjoys a generous donation for the Camp David Accords (Banks, Corlip, Oversheet, & Linden, 1982).

International Organizations

Three additional groups of organizations have played an increasingly important role in the economic development of nonindustrialized countries: philanthropic, humanitarian assistance, and multilateral organizations. The international philanthropic organizations, mainly foundations funded by wealthy individuals, operate and/or support development activities. Although separate from the U.S. government, they enjoy quasi-diplomatic status under a protocol that specifies the terms under which the "agency" can do business. The Ford Foundation, Rockefeller Foundation, and Aga Khan Foundation, each of which emerged as a private donor during the early stages of the international economic and social development efforts of the 1950s, are examples of these nonprofit organizations.

Recent changes in U.S. international assistance laws will result in a growing source of nongovernmental funds for international projects. These changes channeled millions of funds to PVOs through what must be characterized as a first-rate lobbying coup that caught many university government relations officers napping. The nonprofit organizations receive hundreds of millions of dollars to perform activities that are routinely performed at many universities and act much like the international organizations described earlier except that the nonprofits entered the field for purposes identified by their organizers. Some began with religious affiliations, although most of them that do not carry a church name in their title have become interdenominational, if not simply humanitarian (Fox, 1987). Organizations that can be covered under this rather broad umbrella include CARE, Save the Children, Experiment in International Living (renamed as World Vision), InterAction, International Orthodox Christian Charities, Catholic Relief Services, the Friends, Mormons, Lutherans, Muslims, Methodists and others. (Note that not all of those listed have had a church affiliation.)

Nongovernmental organizations that continue to win increasing numbers of prime contracts from AID via the PVO set-aside authorizations will become a growing source of subcontracts for universities. As subcontractors, universities will be faced with very different contracting requirements. Sponsored projects will be regulated by the policies of the host international government rather than by the traditional U.S. government AID regulations.

Multilateral Organizations

Multilateral organizations were developed to provide loans and grants as investments in the infrastructure of countries in need of reconstruction or economic development. Organizations such as the World Bank Group and the regional corollary InterAmerican Development Bank and its counterparts in Africa and Asia are funded from multilateral sources.

The World Bank was founded in 1946. It made relatively few loans to help middle-income developing countries build economic infrastructures such as school systems, dorms or power generation plants (Baum, 1989). It is common for the international lending agencies to share the financing of large projects, pooling their assets with bilateral agencies and specialized funds such as the European Development Fund or use of several Arab funds (Baum). They mix their activities by including lending programs for large infrastructure development projects (bricks, mortar and systems for schools, ports, airports, ground transport systems, etc.) with grant programs. The terms of the loans span a continuum. On one extreme are loans with essentially commercial terms, the other extreme extending to loans with interest rates and repayment schedules that are grantlike in nature.

Included in this group are the United Nations organizations such as the UN Development Program (UNDP), World Health Organization (WHO), International Labor Organization (ILO), UN High Commission on Refugees (UNHCR), Food and Agriculture Organization (FAO), UN University, and others. The United States initiated innovative programs through the United Nations Relief and Rehabilitation Administration (UNRRA), a multilateral organization, and continues to use UN-related agencies for relief and development work

(Rondinelli). The list extends to organizations formed for specific purposes (such as research or training and development) or in a geographic region (such as Central America or sub-Saharan Africa). These organizations also operate under a protocol specific to the government of the host country.

The World Bank and Inter-American Bank may enter directly into a contract with a contractor but have the performance of the in-country work managed and evaluated by either the borrower or the UNDP (World Bank, 1988).

FACULTY PARTICIPATION IN INTERNATIONAL PROJECTS

The work of faculty in U.S. universities is becoming increasingly well known abroad as communication systems develop and improve, and data are available on shared databases. Until recently, the percentage of faculty participating in internationally funded research was small relative to the total number of faculty with externally funded projects. Those faculty with lengthy experience tended to be specialists in the professions, social sciences or humanities. The professional disciplines of medicine, public health and engineering and the multidisciplinary animal and agricultural sciences have been involved in international projects for 40 years. Social scientists and humanists have tended to do their fieldwork on smaller, less complex grants; however, that is changing as cultures and economies are restructured in newly independent states. These researchers and their administrative support staff have had years of experience with their sponsors and the conditions of the country. They tended to make relatively few demands on the central university administration, certainly not more than the average investigator. This too has changed.

One day, a faculty member may present his/her first international award from any one of these organizations. After the customary faculty-administrator exchange, a strategy must be developed to steer the faculty member away from trouble while protecting the institution from financial and other risks. The next two sections suggest policies that should be reviewed when administrators provide assistance in contract negotiation for international sponsored projects.

INSTITUTIONAL POLICIES

Many sponsors will defer to existing institutional policies. For the average university with limited experience in administering international projects, additional policies and procedures will probably need to be developed. It will be useful to implement policies that differentiate between the treatment of employees on an international project and those working in the States. For example, the sponsor may allow reimbursement for annual home leave travel if the institutional policies so specify; the same sponsor may deny reimbursement for these costs for contractors without home leave policies. It may be very advantageous for a university to promulgate policies on a range of items to be eligible for reimbursement for costs associated with certain categories of activities or benefits.

Institutions should review their policies on the following issues:

1. The use of independent contractors
2. Ownership and disposition of equipment purchased on international project funds
3. Ownership and disposition of intellectual property resulting from a sponsored project
4. Publication of results derived from a sponsored project

5. Required medical examinations and vaccinations for personnel working abroad
6. Allowability of costs generally permitted by the sponsor if the institution's policy allows the costs. These might include policies on:
 - a. Shipment of household effects and automobiles
 - b. Homeleave
 - c. Rest and recuperation leave
 - d. Domestic security personnel
 - e. Insurance requirements
 - f. Orientation programs

CONTRACT TERMS

In addition to establishing the required policies, staff supporting faculty who participate in international projects must develop, approve, negotiate and adhere to the terms and conditions of the contract. The following points warrant attention when developing and negotiating competitive proposals, awards, and contracts for international projects.

A. Title

The title of an agreement will usually be "contract" or "agreement," as is the case for domestic awards.

B. Parties

The parties section is more complex. Issues include:

1. National sovereignty. A foreign governmental organization operates under laws and regulations that have no higher civil authority. Depending upon the lawmaking mechanisms of the sponsor, changing even the simplest phrase may be extremely difficult. To use a domestic situation as an example, requiring a "standard" affirmative action clause may violate the foreign government's constitutional provisions about doing business with countries or acknowledging groups that their constitution forbids. Insistence on negotiation about the issue may be interpreted as interfering in their internal affairs; under some governmental systems, distinctions blur divisions between research interests and national security interests. Moreover, insistence may make them suspect the U.S. university of being an instrument of either the U.S. State Department or the Defense Department, or a front for the people/nation about whom they have xenophobic attitudes.
2. Intragovernmental or Interministerial Jurisdiction. Many governments are formed as coalitions in which different parts of government are controlled by rival parties. Additionally, ministerial positions may be held by members of a party different from those of the civil servants who have operating control of the machinery. Getting an agreement on a project or on a change to a project may invoke interparty negotiations or awaken the rivalries and become a "chip" used as currency in a larger game.

3. Power-Sharing Relationships Among Tribal, Regional, Ethnic or Other Groups and Divisions. As a variation on a theme, intergovernmental conflict and rivalries may be kindled when different parts of governments are "owned" or controlled by different regional or ethnic groups. The result is similar to the situation described in B.2 above, but the distinctions may be less obvious on the surface. It would not be uncommon for the discussion of tribal or ethnic divisions to be an illegal topic of conversation even though the government is divided among the families of the ruling tribe(s).

4. Other Relationships. Contracts for projects to develop the social and economic systems of less developed countries may involve complex legal and interpersonal relationships. Funds given to a university by a sponsor to do work for the benefit of a third party assume some of the attributes of a third-party beneficiary contract (Black, 1968). These arrangements always involve at least three parties: the host country, the sponsor, and the contractor. With the World Bank and Inter-American Banks, additional parties may be involved as in-country monitors, managers, or evaluators. Even for contracts directly from the banks, those organizations frequently have in-country work monitored by both their own staff and the borrowers and/or the UNDP (World Bank, 1988). By policy, the World Bank encourages the use of developing-country consultants. By introducing yet another party to the agreement, this policy may further complicate the agreement and the management of the project.

Grantees should conduct research to determine the power-sharing relationships. Talk to the sponsor and explore the political culture of the host country to identify the stakeholders and decision makers. Find out who wins and who loses.

C. Work Statement

The work statement for most agreements requires special review. World Bank staff and consultants would have completed an extensive appraisal to assess the technical, institutional, and economic feasibility and cost-benefit ratio of any World Bank-funded project (Baum, 1988). The appraisal document is usually helpful in planning. What may seem to be reasonable time and resource requirements may, in fact, be considerably underbudgeted in terms of both time and money. For instance, a work site may be inaccessible during inclement weather. Holidays are another consideration. North American countries have from 11 to 15 annual holidays that reduce the work time; that may be a worrisome issue on a tight schedule. In other regions, holidays are viewed differently. It is not uncommon for national holidays to run for several days or a week. Additionally, the funeral or wedding of a relative may require that local employees return to their hometown for a week or two to attend a multiday event. International managers can profit by adding *The World Business Advisory and Calendar* to the office library. It lists all major holidays, business hours, banking hours, and so on, for most countries.

D. Principals and Scientific or Programmatic Direction

The direction of the work may carry underlying issues of national pride and/or anti-imperialist symbolism. In some instances, there may be concerns about national security if data are to be gathered on topics considered to be in the host country's national interest. Any or all of these factors may be at play in a sponsor's insistence that leadership be divided.

E. Contract Employees and Independent Contractors

Concepts of contract employees and independent contractors may not be presented in the form used frequently in the United States, but the problems associated with them are similar. The labor laws of other nations tend to include tenure. The laws tend to favor employees but may also include mechanisms to avoid hiring someone for life through the use of employment contracts or consulting agreements. Frequently, international consultancies

are more flexible than in the United States, where they may be checked against IRS definitions. In either eventuality, the sponsor will appreciate the need to separate employees from contractors.

F. Subcontractors

A subcontractor is significantly different from an independent contractor in that a subcontractor, although performing independently, acts more like a partner with the university in meeting the requirements of the work statement. Generally, a subcontractor is recognized for particular expertise in the field, is essential to the successful completion of the project, and is often the only entity sufficiently skilled to conduct the work assigned to it by the university. The World Bank and some other multilateral sponsors favor the use of local or regional consultants and contractors. The university would be encouraged or required to use local or regional experts (World Bank, 1988).

If a part of the work will be subcontracted to another entity, the following information should be obtained from that organization: a description of its personnel and facilities; a detailed scope of work; and the budget required to complete the work proposed. Some sponsors may require the use of special forms, as with AID's biographical form (AID, 1987).

In the event that the project is funded, the university should prepare a separate agreement with the subcontractor including the following terms at minimum: the statement of work, the subcontractor's key personnel, the period of performance, the approved budget for the subcontractor, reporting requirements, disposition of intellectual property developed, publication rights, ownership of property, rebudgeting provisions, and audit requirements. This last provision, audit requirements, is discussed in greater detail in section K. Accounting and Auditing, below.

Because the subcontractor most likely will be stationed in the host country, the subcontractor may experience some of the same difficulties the university experiences (as described in this article) when completing its assigned scope of work. For example, the subcontractor's ability to perform may be equally affected by the inability to obtain needed equipment or spare parts due to local conditions. In negotiating the agreement with the subcontractor, a manager will need to be sensitive to these concerns from the perspectives of both the university and the subcontractor:

G. Term

The term of a contract may differ from the period of performance of the agreement. The period over which grant or contract funds may be spent can differ from the work period. Although the work schedule may require a certain completion date, funds might continue to be available past that date. Wherever possible, the work should be completed on a reasonable production schedule, but the contract should remain in effect as long as there is authorization to spend the funds. This will keep future options open. It may be very difficult to renegotiate an agreement, but it is a simple administrative maneuver to agree to a modification in the completion dates. When the parties decide the period of agreement, specific dates are preferred over the use of a triggering event, such as the sponsor's signature.

H. Costs

The costs and payment terms resemble nothing that is commonly seen in a university. Assurances must be obtained that payment will be made and that costs incurred (observing the normal customs of the country) are characterized in terms that will be acceptable to even the most inexperienced financial person. Among the most sensitive items are:

1. Fees for Extraordinary Service. What some countries term bribes, other cultures consider charges for extra service. If most transinternational shipments take six months to clear customs (during which spoilage and "loss" take their toll), a request for clearance in one month is surely extraordinary. A payment for timely customs clearance could be considered extraordinary or a necessity.

2. Settling-In Costs. Settling-in costs are provided by the sponsor's regulations, but in all cases they should be requested. They generally comprise the standard complement of consumable household item (e.g., temporary linen, cookware, window coverings). These costs are usually related to long-term or residential assignments.

3. Make-Ready Costs. Again, the costs to make renovations needed to bring a dwelling and/or offices up to an expatriate's living and working standards should be requested. The costs for some of these items can be astonishingly high. This category of expenses frequently includes electrical wiring and/or plumbing for appliances such as air conditioners, clothes washers and dryers, overhead fans, gasoline--or diesel-fired power generators, security measures, and telephone installation--to name some of the most common items. These costs are usually related to long-term or residential assignments.

4. Sunday Pay. In some regions, the weekend holiday is on Thursday and Friday; Sunday is a normal working day. Some sponsors will pay 3% to 5% of the project personnel's annual salary if the local convention requires working on Sunday (World Business Advisory, 1993). These costs are usually related to long-term or residential assignments.

5. Hardship Payments. As an incentive to attract first-rate professionals to work for extended periods in particularly difficult situations, some locations are classified as "hardship posts" warranting monetary and/or other incentives to attract staff and dependents. The sponsor will have a list identifying the locations and the respective incentives available. These payments typically include pay premiums, bonus(es), or periodic travel to an attractive location.

6. Cost-of-Living Adjustments (COLAs). For expatriate employees, COLAs are treated like their domestic counterparts. They are frequently used as a political device to calm concern about currency devaluation or other economic structural adjustments for host or third-country nationals employed by the project. COLAs can have considerable impact on costs of indigenous and international employees, if they are mandated by the host government on all employees. The source of funds for nationally mandated COLAs should be agreed upon.

7. Dependent Travel. The travel regulations of the sponsor should be consulted to determine when, how much and what permissions and approvals are needed, and the class of travel permitted.

8. Educational Allowances (Tuition and Travel). Sponsor regulations vary widely on this topic. Separations are usually drawn between primary education, secondary education, and higher education. If adequate schools are available in the country, the tuition costs may be paid by the grantee either directly to the school or as a reimbursement to the individual. The costs of boarding schools in another location may also be reimbursable up to a specified amount. These costs are usually related to a long-term or residential assignment.

The costs of a specific number of trips for dependent students traveling between their parents' residence and campus boarding schools or colleges are usually reimbursable.

9. Medical Evacuation. After serious illness or accident, inadequate emergency or critical medical care can be a secondary threat to life. Provisions can be made for the transportation of medical professionals and their equipment to the scene, or for evacuation of injured or critically ill employees or dependents to adequate

facilities. If the services are not provided by the sponsor's operations in the field, insurance and a contract for transportation services are available from a tested and reputable company.

10. Evacuation During Civil Disturbances. Large organizations make financial and other provisions for the emergency evacuation of their employees and their dependents. Smaller organizations tend to negotiate provisions for full recovery of any and all costs for evacuation. There is no absolute standard for the circumstances under which evacuation is a reasonable response, but a small organization might look to the behavior of U.S. multinational corporations: "When they go, we go." The local U.S. embassy's behavior may not be a reasonable standard in determining when or how to evacuate, because evacuation of embassy staff has diplomatic implications and therefore is considered in the total context of bilateral and multilateral relations.

11. Insurance. Some sponsors require specific insurance coverage and some are silent on the topic. Defense Base Act (DBA) insurance is required by AID for AID-supported personnel (AID, 1984).

I. Payment

Payment provisions vary widely. Negotiating payment terms may present difficulties or may be easily completed with favorable terms. Asserting a need for procedures that afford adequate protection may send a message that can be interpreted as being insulting to the representative of the foreign government. The terms should be negotiated, using diplomacy. Items that afford some measure of protection include:

1. Letter of Credit (L/C). As with a U.S. government L/C, letters of credit can ease concerns about late withholding payments. A bank with international "branches" or correspondent relationships will be familiar with L/Cs for commercial exchanges.
2. Certificate of Deposit (CD). Although less common and certainly more difficult to negotiate, as the CD is another form of funding guarantee, the banking arrangements for CDs are not overwhelming for experienced financial institutions.
3. Impressed Fund Account. As with a departmental petty cash account, an impressed fund may be used as a mechanism to guarantee that the cash flow does not become costly. When work is on an advance basis, such a fund can be topped off, triggered by drawdowns, payment schedules, or other relevant indicators that maintain a cash cushion for the project.

As suggested in this summary, there is a distinction between negotiating acceptable payment terms and actually being paid. In recognition of the situation, the World Bank may agree to pay on a payment schedule, allow for contingencies, and pay the contractor directly for borrower-contractor contracts (World Bank, 1988). Securing payments from host governments can be difficult and complicated.

If the bank used by the university on a regular basis does not do much international business, arrangements should be made to work with an international correspondent bank, or another bank should be selected.

Some sponsors will enter into a payment agreement with a contractor on behalf of a host-country government with weak systems or currency. The World Bank, for example, may agree to make direct payments as a mechanism to facilitate the involvement of desirable contractors (IBRD, 1990).

J. Taxes

The protocols and treaties that govern most organizations allow tax-free entry of items imported for the project and for private use by authorized personnel. Some United States regulations strictly prohibit payment of specified foreign taxes, including value-added tax, tariffs, fees, income tax, and other taxes. Taxes are levied on goods produced in the host country by protected industries or on imported luxury and consumer goods, and on goods produced by parastatal companies or monopolies. (Parastatal companies are government-owned companies; they can also be called national industries. Such companies may produce items related to national security, such as refined petroleum or telephone systems. They may also produce consumer goods such as edible oils, shoes, or farm implements.) Items on which host country customs may levy a tax include paper, ink, wood products, and autos (or parts for autos) over a specified age. On a project in Egypt, for example, central processing unit components of personal computers could enter without taxes, but the monitors would be taxed at a rate of 300% of local market value (which includes transoceanic transportation, tax, profit, and so on), because the customs ministry officials classify monitors as televisions.

K. Accounting and Auditing

Most international sponsor accounting requirements will be met by satisfying the normal United States government regulations. Negotiating on this topic is often more time consuming for agreements with international organizations. Not infrequently, the sponsor may take the opening negotiating position asking that all business papers be sent with request for reimbursement. Sponsors frequently will compromise, and it is not unprecedented for them to yield on requiring original documentation, settling instead for certified copies. Managers should persevere on the negotiating position.

International and multilateral organizations that specialize in support of work in less developed countries may be more accommodating. The World Bank (1990), for example, expects that accounting records will be maintained at some "international standard" and that there will be considerable variation among the international accounting standards and practices. In many cases, the borrower will be required to submit financial reports and special financial information, as required, about contracts it lets using World Bank money.

Most international sponsors do not conduct routine audits unless the funds are provided under agreements with terms such as OMB Circular A-133. Few accounting firms outside of the United States, notably those in developing countries, are able to perform an OMB A-133 audit. Some firms do not meet A-133 standards for audit firms, and others lack the capability. Even the local offices of international CPA firms have difficulty in meeting the standards set forth in the audit-related regulations (AID, 1991). Although this is a topic deserving of its own article, meeting off-shore audit requirements should be clear and, in most cases, budgeted as a direct cost. To estimate the costs of the field portion of an A-133 audit, the manager should consult the university's CPA firm. To be assured that the audit will be accepted when completed, AID's inspector general should be contacted for acceptable auditors (AID, 1991).

L. Reports

The format required for report preparation will usually be easily met, but the language of the report should be specified. Translation costs, even into European languages, can exceed \$100 per page for simple text; scientific articles with formulas, graphics, or illustrations can become more expensive. In addition, delivery point and quantity requirements can generate costs that exceed those expected with a domestic project.

Reports also vary in complexity. Reports for World Bank projects are frequently done by staff or consultants through its Operations Evaluation Department. They can be time consuming, however, and usually include an evaluation of the impact, and financial management, and, at minimum, a desk audit (Baum).

M. Warranties

Be specific that nothing is warranted. Liability law, negligence tests, burden of proof requirements, and permissible damage awards are usually different from what may be expected in U.S. agreements. Some agencies, such as the World Bank, may require indemnities and warrants for performance (IBRD). Such provisions can cause state universities considerable difficulty. Additionally, multilateral organizations, such as the World Bank, may require performance bonds, professional liability coverage, and other protections (World Bank, 1988).

N. Termination

The most important consideration in termination clauses is getting the project personnel and equipment out during a contentious or stressful situation. Some countries will not allow the chief of party to leave the country until all accounts and inventory matters are resolved. There are recorded cases of six-to twelve-month enforced vacations for investigators, at company expense, pending the approval and satisfactory resolution of issues involving lost equipment, petty cash accounts that do not balance, and so on.

O. Arbitration and Applicable Law

The concepts of arbitration and applicable law are listed together because the agreement may be with a sovereign government or an organization with international, diplomatic privileges headquartered in another country. A foreign government will resist having issues concerning its internal affairs settled under another country's laws. The grantee's standard institutional position should be taken at the beginning of negotiations, but anticipate the sponsor's sensitivity about sovereignty. Many grantees are successful in securing terms that allow for adjudication in a U.S. state, but it is usually a point of serious negotiation.

Arbitration may be a mutually satisfactory position. The rules of an accepted arbitration association or the rules used by the American Arbitration Association for international disputes may be useful.

P. Property

In many situations, the sponsor wants to empower the people to benefit from their programs and to contribute to the beneficiaries' social and economic development. Especially with UN organizations, it is common to transfer title to the local organization or host government upon completion of the project. As with so many other issues, the grantee should begin negotiations with the preferred institutional position but appreciate that the sponsor may have little flexibility in the regulations; the foreign government may be philosophically opposed to a rich United States institution taking title to an item that residents of a poor country might need badly.

Q. Intellectual Property

Copyrights tend not to be an issue; the grantee institution may get them easily. Patents, on the other hand, may present a problem. The greatest issue may be a sponsor's philosophically based reluctance to risk withholding benefits from poor citizens of the country.

The institution may need to hold a brief tutorial for the sponsor's representative about the private enterprise system, the need for proprietary protection to induce management to take the risk associated with scaling up for production, and the real risks of losing the invention's benefit to the needy unless someone can manufacture the item for a profit. In many situations, the intellectual property that results from research either will not be patentable or will be lower-end technology; the chances of the university generating endowment-enhancing

revenues is remote. In this case, although one should always open negotiations by seeking all rights to intellectual property, a minimally acceptable position would be to have guaranteed unrestricted use of the property. Some medical and agricultural discoveries, however, may be sufficiently remunerative to hold to a position of exclusive ownership.

R. Force Majeure

A clause should be inserted that includes allowances for "acts of God," civil disorders, wars, and anything else likely to cause work to be discontinued.

S. Publication

There are situations in which negotiations will fail to resolve the publication issue. Some governments will not allow freedom to publish without review and approval; they may take a go or no-go position. It might be useful to alert the faculty member in advance that the deal could fall apart on this issue unless the institution is prepared to accept an agreement without the right to publish. The USAID also attempts to negotiate the right of prior review and approval. As always, the U.S. Federal Acquisition Regulation (FAR) should be cited, and if necessary an appeal should be made to a higher authority to win the point.

T. Facilities

Frequently the sponsor will maintain or have access to facilities and services that improve the quality of life of the project personnel who stay in-country for extended periods. Among such facilities are medical clinics; commissaries; duty-free stores or zones where imported goods are available for sale without the customary 150 to 300 duty markup; a scheduled mail pouch that expedites secure mail services through private carriers; and periodic food and commodity shipments. Although these items may not require inclusion in the budget, they do require specific inclusion in the agreement.

U. Budget

The budgeting process is not unlike that for sponsors of domestic programs in the United States; that is, each sponsor has its own forms and formats and will insist that applicants use them. A small number of international organizations have mandatory forms, but many have preferred formats. The format is frequently shown in the instructions or in an example in the application guidelines.

1. Direct Costs. Offshore operations are much more expensive than similar domestic projects. The incremental cost of international travel is among the least of the additional costs, most of which mount from the items mentioned in section H6 above, in the discussion of costs. All of the costs listed below are normally allowable by most sponsors. The exact application and eligibility requirements vary dramatically, however, so research and discussion with the sponsor's representative is important. Costs not mentioned above include:

- * Airfreight of personal items
- * Storage costs of items not shipped
- * Freight forwarder service company fees
- * Expediter costs for clearing shipments and walking forms through government offices

- * Surface shipment of household effects and auto
- * Home leave (annual or biannual, as per the institution's policy)
- * Rest and recuperation leave (quarterly or annually)
- * Temporary residence in-country (on arrival and on departure)
- * Rent of residence (including renovation/repair)
- * Domestic security personnel
- * Maintenance agreements for major appliances
- * Insurance (driving, household effects, liability)
- * Driver (if driving presents unacceptable risks)
- * License and fees (driving, work permit, etc.)
- * Spare parts (vehicles, computers, research equipment) Frequently the only spare parts available are those that the project personnel bring with them. Neither these parts nor the technicians needed to install them and recalibrate the equipment may be available on site.
- * Medical examinations and vaccinations
- * Orientation to the country and its culture
- * Reorientation for reentry into the United States (after prolonged stay abroad)
- * Language training
- * Currency exchange and banking charges
- * Airport and travel taxes or fees

These costs are discussed in the other article in this series.

2. Indirect Costs. With the exception of projects sponsored by AID in the United States, international sponsors are uniformly opposed to paying full indirect costs. They may be willing to pay a token percentage (5% to 15%) at the most (in Europe, the indirect cost rate ranges from 8% to 10%) (Vincent & Campbell, 1989). Frequently, however, they will allow the inclusion of OMB Circular A-122-like costs as direct costs, if it can be demonstrated that those costs are necessary and beneficial to the project. Even if all of these costs cannot be justified completely, the following items may be included simply on the basis of cost per unit:

Cost--Unit

Rent--Square meters per month

Project administration--Percentage full-time equivalent or person months

Secretarial support--Percentage full-time equivalent or person months

Executive contribution--Percentage full-time equivalent or person months

Accounting and purchasing--Percentage full-time equivalent or person month (or cost per transaction)

Service center services--Numbers of tests, hours, animals, or other unit costs

V. Language

Many agreements will be written in two languages--the language of the sponsor and English. English is being used with increasing frequency the European Community integrates it into commerce. When two languages are used, it is important to spend the money to have the other version translated. If there are differences, have them corrected. The U.S. university is in a fairly strong negotiating position to have the English version be the controlling version.

W. Remaining Clauses

Some other clauses common to agreements that support research are listed below. The terms and conditions associated with these items are generally the same as those used in conventional domestic contracts: they do not vary a great deal with an international sponsor:

Severability

Assignment

Notices

Publicity

Confidentiality

Independent contractor

Modifications

Export controls

CONCLUSION

Negotiating terms and conditions with international sponsors is one of the most challenging tasks for a research administrator. The suggestions provided in this article are put forth for consideration. The contract provisions and project budgets are not exhaustive; they are not even common among all sponsors' policies and guidelines. They can, however, serve as a checklist (see Appendix A) against which a manager may review an international project.

APPENDIX A: CHECKLIST FOR INTERNATIONAL CONTRACTS

Prior to approving a contract for an international project, administrators may find it useful to review items listed below. This checklist is provided to assist in the review and approval of contractor for international projects. The suggestions listed are not exhaustive but are intended to serve as the base of all discussions.

1. Policies. Does the institution have policies established to support the terms and conditions of award and the requested costs?
2. Parties. Have you done sufficient research to identify the parties in the relationship? What are the power-sharing relationships? Who holds a stake in the decision? Who wins? Who loses?
3. Work statement. Have you and the faculty member reviewed in detail the time commitments included in the work statement? Are the listed resources sufficient to complete the project, given the local conditions?
4. Principals and scientific/programmatic direction. How is the leadership divided? Are issues of national pride governing the direction? Is national security of the data (or other) a concern?
5. Contract employees and independent contractor. Are both employees and contractors involved in the project? Are they separated in the proposal? Are they separated in the awarded contract? Are the administrative lines clear on the handling of each? Are these anticipated to be local or third-country contractors or employees? What special costs may be incurred?
6. Use of a subcontractor. Will a subcontractor be used on this project? Have you received the following from the subcontractor: (a) scope of work, (b) budget and budget justification, and (3) description of key personnel and facilities? Do you anticipate any problems with the subcontractor's ability to perform the work? Are you satisfied with the reporting requirements of the subcontractor? Will this allow sufficient tracking of performance/nonperformance? Will an A-133 audit be required by the university of the subcontractor? If so, does the budget include reimbursement of these costs? (See additional questions under point 11 of this checklist.) In general, have you incorporated all the costs of the subcontractor, including the subcontractor's indirect costs, into the budget and agreement?
7. Term. What is the term of the agreement? What is the last date that the funds may be spent? If the date of the expenditure of funds is later than the end date of the term of the agreement, a request should be made to change the date of the term of the agreement to the last day that the funds may be spent.
8. Costs. Have you received an assurance that payment will be made? Have you received approval for the manner in which costs will be categorized on the invoice? Are any of the following sensitive items involved? If so, have appropriate costs been requested in the budget?

- * Fees for extraordinary service

- * Settling-in costs

- * Make-ready costs

- * Sunday pay

- * Hardship payments

- * Cost-of-living adjustments: Has the source of funds of nationally mandated COLAs been agreed upon?

* Dependent travel

* Educational allowances: Are tuition costs involved? If so, how will the tuition be paid? By whom? Are travel costs involved? If so, how will they be paid?

* Medical evacuation

* Evacuation during civil disturbances

* Insurance

9. Payment. What is the agreed-upon method of payment (letter of credit, certificates of deposit, imprest fund account or other)? Is the bank identified to handle the transaction experienced in international business? Does your bank have extensive international experience in the country in which the project will be performed? Will use of an international correspondent bank be required?

10. Taxes. Are goods being produced by infant and national industries? Are luxury or consumer goods to be imported at the project's conclusion? Are goods being produced by governmental industries, parastatals, or monopolies? Are any other products involved that might incur a tax (value added, tariff, fee or other)?

11. Accounting and auditing. What records are required under the contract? Is the requirement reasonable? Is there a problem with the sponsor's requirement of original business papers? Are certified copies acceptable? Is a field audit required of a subcontractor? Does your CPA firm have extensive experience and/or an AID-approved affiliate in the country? Is the amount budgeted consistent with your CPA's normal costs for an offshore audit in that country?

12. Reports. What reports are required under the contract? Is the requirement reasonable? Has the format for the report been agreed upon? What is the primary language acceptable for the report? Is translation required? If so, in what languages? Are the appropriate costs included in the budget?

13. Warranties. Is the contract specific that nothing is warranted? If not, language should be added to this effect.

14. Termination. Have provisions been made for the removal of the project personnel upon the project's completion? During a contentious or stressful situation?

15. Arbitration and applicable law. Has a mutually acceptable position been agreed upon, such as the rules of an accepted arbitration association or the rules used by the American Arbitration Association for international disputes?

16. Property. Has it been determined who will hold title to equipment purchased and property produced under the agreement upon the project's completion or termination?

17. Intellectual property. What is the disposition of copyrights? Who holds the copyright of works produced under the agreement? Is the development of intellectual property an expected outcome of the agreement? In the eventuality of its development, even if not expected, who will hold title to the intellectual property? Is the intellectual property likely to be of significant monetary value? What are the expected social or economic benefits of the intellectual property to the host country?

18. Force majeure. Is this clause included in the contract? Does it cover all possible reasons for work to be discontinued?

19. Publication. Is this likely to be a go/no-go decision? Is the government of the host country or the sponsor requiring review and approval of publications? Have you informed the faculty member that this may be a potentially go/no-go decision?

20. Facilities. Does the sponsor have facilities available for the project personnel? Is authorization to use these facilities included in the contract?

21. Budget. Does the sponsor mandate use of its forms? Has the budget been prepared using such forms? Have the following direct costs, if applicable, been included in the budget?

- * Airfreight of personal items
- * Storage costs of items not shipped
- * Freight forwarder service company fees
- * Expediter costs for clearing shipments and walking forms through government offices
- * Surface shipment of household effects and auto
- * Home leave (annual or biannual, per the institution's policy)
- * Rest and recuperation leave (quarterly or annually)
- * Temporary residence in-country (on arrival and on departure)
- * Rent of residence (including renovation/repair)
- * Domestic security personnel
- * Maintenance agreements for major appliances
- * Insurance (driving, household effects, liability)
- * Driver (if driving presents unacceptable risks)
- * License and fee (driving, work permit, etc.)
- * Spare parts (vehicles, computers, research equipment)
- * Medical examinations and vaccinations
- * Orientation to the country and its culture
- * Reorientation for reentry into the United States (after prolonged stay abroad)

- * Language training
- * Currency exchange and banking charges
- * Airport and travel taxes or fees
- * All the costs identified in Point 8 of this checklist
- * Costs associated with the following processes/entities:

- Contract employees
- Independent contractors
- Taxes
- Preparation of accounting records
- Preparation of reports
- Early termination or evacuation costs
- Shipment of property developed back to the grantee

With regard to indirect costs, ask the following:

- * What indirect cost rate has been approved?
- * Is the sponsor opposed to paying full indirect costs or paying indirect costs as a rate? If so, have the following costs been incorporated into the contract as direct costs?

- Rent
- Secretarial support
- Executive contribution
- Accounting and purchasing
- Service center services

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John Richey is director of International Management Advisory for Coopers & Lybrand, Arlington, Virginia.

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