



Managing State & Local Awards

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Learning Objectives

Pre-Award:

- The differences between an IGA, ISA, and MoU, and when to use each type
- Using Master Agreements
- Procurement grants from the State of Arizona (agreeing to terms and Conditions at proposal time, working with the Arizona Procurement Portal (APP))

Post-Award:

- Best practices for invoicing, reporting, and managing entity requests for detailed transaction backup

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Disclaimer

The content in this presentation is provided for general information purposes only and does not constitute legal or other professional advice of any kind.

Participants in this seminar are advised to seek specific legal advice by contacting members of their research administration office or their institution's legal counsel regarding any specific legal issues.

State Agencies & Departments



Department of Health Services

Department of Economic Security

Department of Agriculture

Department of Forestry & Fire Management

Department of Corrections

Department of Transportation

Game & Fish

Local



Counties

- Pima, Maricopa, Metropolitan Planning Organizations (MPO's) MAG or PAG

Cities

- City of Phoenix, City of Tucson, Town of Marana

School Districts

- Tucson Unified School District

Native Tribes

- Tohono O'odham, Pascua Yaqui, Navajo, Hualapai

Ways to Contract – For Universities



Sponsored Research Agreement (SRA)



Professional/Testing Services Agreement



Student Affiliation/Field Placement Agreement



Sponsored Project Agreement (SPA)



Other

Ways to Contract – For State & Local



Invitation for Bid (IFB)



Invitation for Bid



Request for Proposals (RFP)



Request for Proposals



Sole Source



Sole Source/Direct Select



Interagency Services Agreement (ISA)



Intergovernmental Agreement (IGA)

IFB/RFP – *not ideal*



“Vendor” Contract Template

University is competing with for-profit industry on commercial terms and conditions

Warranty/Guaranty/Penalties for late delivery or non-conforming work

Indemnification

Loss/Transfer of Copyright or Intellectual Property

Procurement Officers unwilling to modify or change terms & conditions for universities (“unfair to other offerors”)

Sole Source/Direct Select – *better...*



May still attempt “Vendor”
Contract Template

Attempt to get Sponsor to
agree to a University template

Intergovernmental Agreement (IGA – A.R.S. § 11-952) or Interagency Services Agreement (ISA – A.R.S. § 35-148)



Now were on the right “turf”: IGA’s and ISA’s are specific public entity to public entity agreements.

Often not through procurement, but be on the look out for vendor terms (warranty, indemnification, penalties)

If for professional services or testing, remain silent on IP or publication (ask the PI!)

For Sponsored Activity, include IP and publication clauses (CYA).

What is the difference between an IGA and ISA?



ISA's can be used between State entities (only!)



IGA's can be used with any "public agency"



Authorized per A.R.S. § 35-148



Authorized by A.R.S. § 11-952



No "template" –statute authorizes transfer of funds between "budget units" of the State.



Statute prescribes minimum t's & c's, must be for a "joint exercise of common powers"

The main difference between an IGA and ISA?

A.R.S. § 11-952 (D):

“Except as provided in subsection E, every agreement or contract involving any public agency or public procurement unit of this state made pursuant to this article, before its execution, shall be submitted to the attorney for each such public agency or public procurement unit, who shall determine whether the agreement is in proper form and is within the powers and authority granted under the laws of this state to such public agency or public procurement unit.”

Attorney Approval:
Pursuant to A.R.S. § 11-952(D) the attorneys for the Parties hereto have determined that the foregoing Agreement is in proper form and is within the powers and authority granted to each respective body under the laws of the State of Arizona.

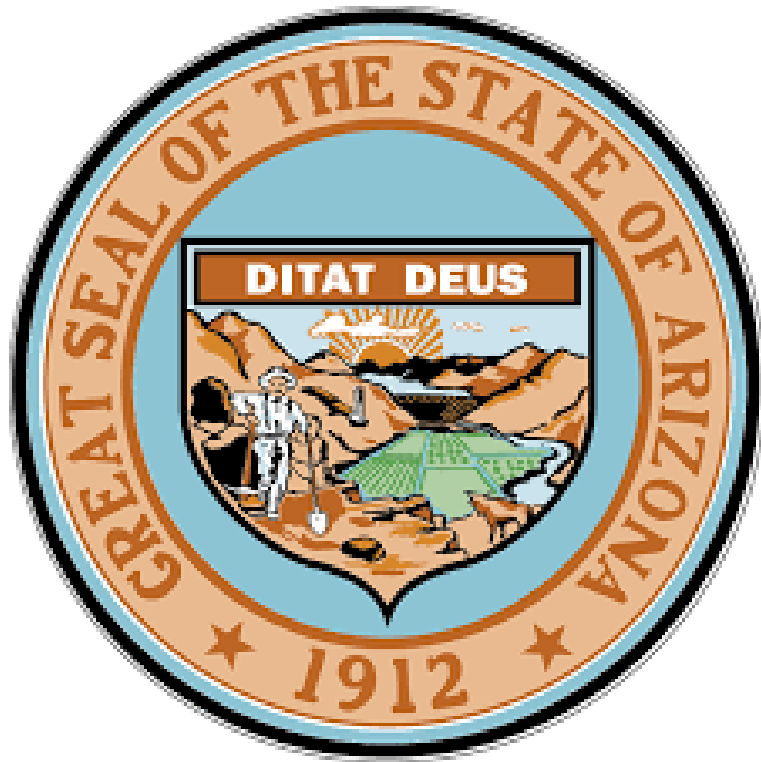
By: [Signature] 2/17/21
University Associate General Counsel Date

By: [Signature] 2-5-2021
The District Legal Counsel Date

Did you notice the original ink signatures?



Just because both entities are public agencies doesn't mean the agreement should always be an IGA



AZ Attorney General Robert K. Corbin Opinions 183-057, 184-135, & 185-050

“...joint exercise of common powers...” NOT “...separate but complimentary powers...”

Do not use an IGA to avoid competitive procurement requirements.

Oh, really?

A.R.S. 11-952 (A):

“If authorized by their legislative or other governing bodies, two or more public agencies or public procurement units by direct contract or agreement may contract for services or jointly exercise any powers common to the contracting parties and may enter into agreements with one another ”



Yes, really...

Attorney General Opinion I79-193:

"The legislative intent in promulgating [A.R.S. § 11-952] was set forth in Laws 1968, Ch. 94 Sec. 1:

"The purpose of this article is to permit public agencies, if authorized by their legislative or governing body, to enter into agreements for the joint exercise of any power common to the contracting parties as to governmental functions necessary to the public health, safety and welfare, and the proprietary functions of such public agencies... (Emphasis added).

"The touchstone, then, for a contract within the purview of A.R.S. § 11-952 is that it involves the joint exercise of a power common to the contracting parties. Thus, when two public agencies contract for services or enter into an agreement for joint action pursuant to § 11-952.A, each agency must have the power to perform the service or action contemplated in the contract pursuant to which they agree to allocate responsibilities between them."


Robert K. Corbin, Attorney General

Yes, really...

Attorney General Opinion I83-057:

"2. We note that the statutory courses of action - contracting for services and joint exercise - are presented as alternatives. However, this disjunctive language must be read in the context of the entire statutory scheme, which presumes the existence of joint powers before agencies may contract for services. See Adams v. Bolin, 77 Ariz. 316, 271 P.2d 472 (1954). In addition to the statement of purpose which refers to only the joint exercise of powers, the legislative intent that there must exist the joint capacity to exercise the powers that are the subject of the contract is reinforced in A.R.S. §§ 11-952.B.3, 11-953 and 11-954, all of which presume the existence of joint authority."

Robert K. Corbin, Attorney General



Are you SURE?

Attorney General Opinion I83-057:

"4. The means by which the common powers may be exercised are numerous, ranging from one party paying and the other party performing services to a division of tasks between the parties."

Robert K. Corbin, Attorney General



What about MOU's? LOU/LOI's? MOA's?



MOU = Memorandum of Understanding (non-binding*)

LOU = Letter of Understanding/Intent (useful between ABOR universities!)

Memorandum of Agreement (preferred by Native Tribes)

When do I use an IGA, ISA, MOU, etc.?

IGA's and ISA's are formal contracts. If there is \$\$\$ involved, use an IGA or ISA

MOU's are (arguably) not formal contracts. If no \$\$\$, use an MOU

LOU/LOI's are great for arrangements between ABOR universities

MOA's are a formal contract with Native Tribes, similar to an IGA



Using Master Agreements

Master Agreements can be entered into when a high volume of awards are expected to be issued.

We agree on the terms and conditions that all awards will be issued under. Task Orders are then issued under the Master Agreement incorporating the agreed upon terms and conditions.

Avoid Master Agreements where they want you to provide set labor categories with rates.

Master Agreements can be for the whole university to use, only a specific department, or for a specific PI. Make sure Task Orders are being used appropriately

Using Master Agreements

UArizona has adopted a “Master IGA” with some local sponsors (City of Phoenix, City of Tucson, Pima County). Municipal department heads and Sponsored Projects directors are authorized in the IGA to sign the task orders

Likewise, just because you have a master agreement with a City or County, doesn't mean you have an arrangement with all departments or divisions – they may view the agreement as specific to one department or division.

Awards through the Arizona Procurement Portal (APP)

Part of the proposal package is an Offer and Acceptance form that must be signed agreeing to all terms and conditions.

Make sure that whoever is preparing the proposal informs your contract group to review the terms and conditions.

The terms and conditions are written for the procurement of commercial items or services and many terms that universities would not usually accept are included.

- Give up ownership of the deliverables.
- Work for hire so all Intellectual Property belongs to sponsor
- Indemnification for infringement of Patent and copyright
- Warranty the deliverables

Awards through the Arizona Procurement Portal (APP)

If you are able to sign a contract, it will be awarded through APP. Contract and all amendments must be “Approved” in APP.

Once the Contract/Amendment is approved in APP, they will issue a Purchase Order for the first budget allotment.

If the contract is federally funded, the first Purchase Order will require signature and return of a FFATA form, redone every 12 months for the term of the contract.

Post-Award Management –

Invoicing and Financial Reporting

Requests for excessive transactional backup

Partnership with your contracting group to negotiate out these requirements

Reasoning that UArizona, ASU, and NAU are low risk entities that have numerous internal controls to satisfy State and Federal rules

Administrative burden coupled with low F&A return

Another avenue of reaching out to the agency audit group or whoever is prompting the request for backup

Post-Award Management –

Requests for Invoice Backup

Timecards

Many University project personnel are salaried FLSA exempt that are not required, nor supposed to keep timecards

Receipts/Transactional Backup

- State, University internal requires we keep our original documents
- Personally identifiable information risks
 - Employee ID's, addresses, email, etc.

Post-Award Management –

Other Invoicing Notes

Payments conditional on deliverables

Many projects have reports or other deliverables that must be submitted by the PI before they can be invoiced

Billing on rates

- Some projects require billing based on an agency rate sheet. Convert actuals to rate. Watch out for actual rates being higher than the rate the agency agreement will cover.

Post-Award Management–

Awareness that most State and Local agencies have short fiscal year end windows (June 30) to close their books.

Payment Collection

Paying attention to deadlines around this time for invoice and deliverable submission

Post-Award Management –

Fixed Price versus Cost Reimbursable

Not uncommon for agency reviewer to try to apply cost reimbursable transactional backup requirements to fixed price agreements, which defeats the purposes and opens up risk

“Coaching Up” to explain the difference, pointing out the specific verbiage

For fixed price agreements - the proposal is the auditable cost basis

Finding out the “why”, careful escalation if necessary

Post-Award Management –

Budgeting and Prior Approvals

Many awards require approvals for budget deviation

Pre-award cost approval, equipment, computers

Unusually prescriptive property inventory requirements

Prior approvals should be prepared by the PI and submitted through the sponsored projects office