



Contract Negotiations

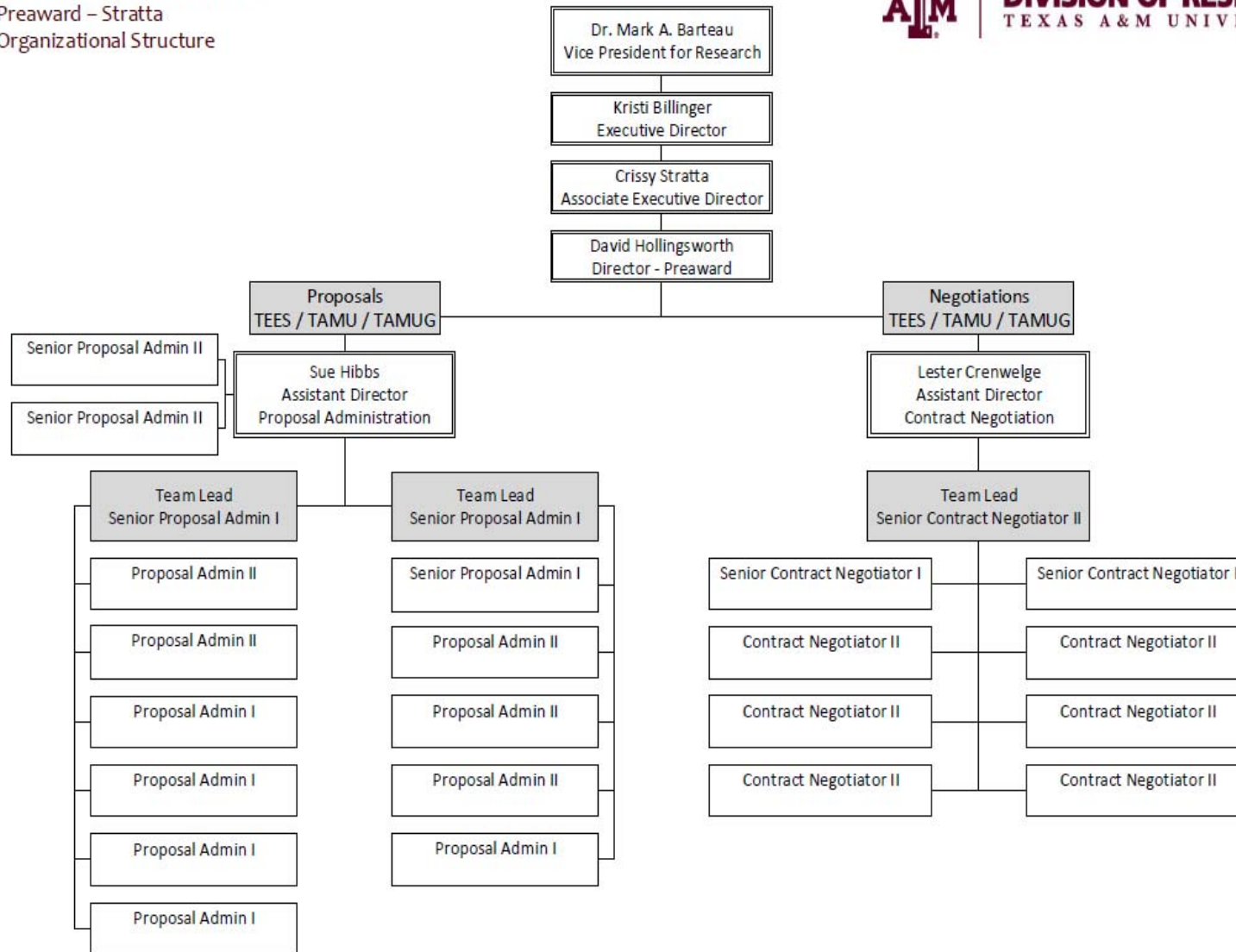
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Assistant Directors for Contract Negotiations

Sponsored Research Services
Preaward – Stratta
Organizational Structure



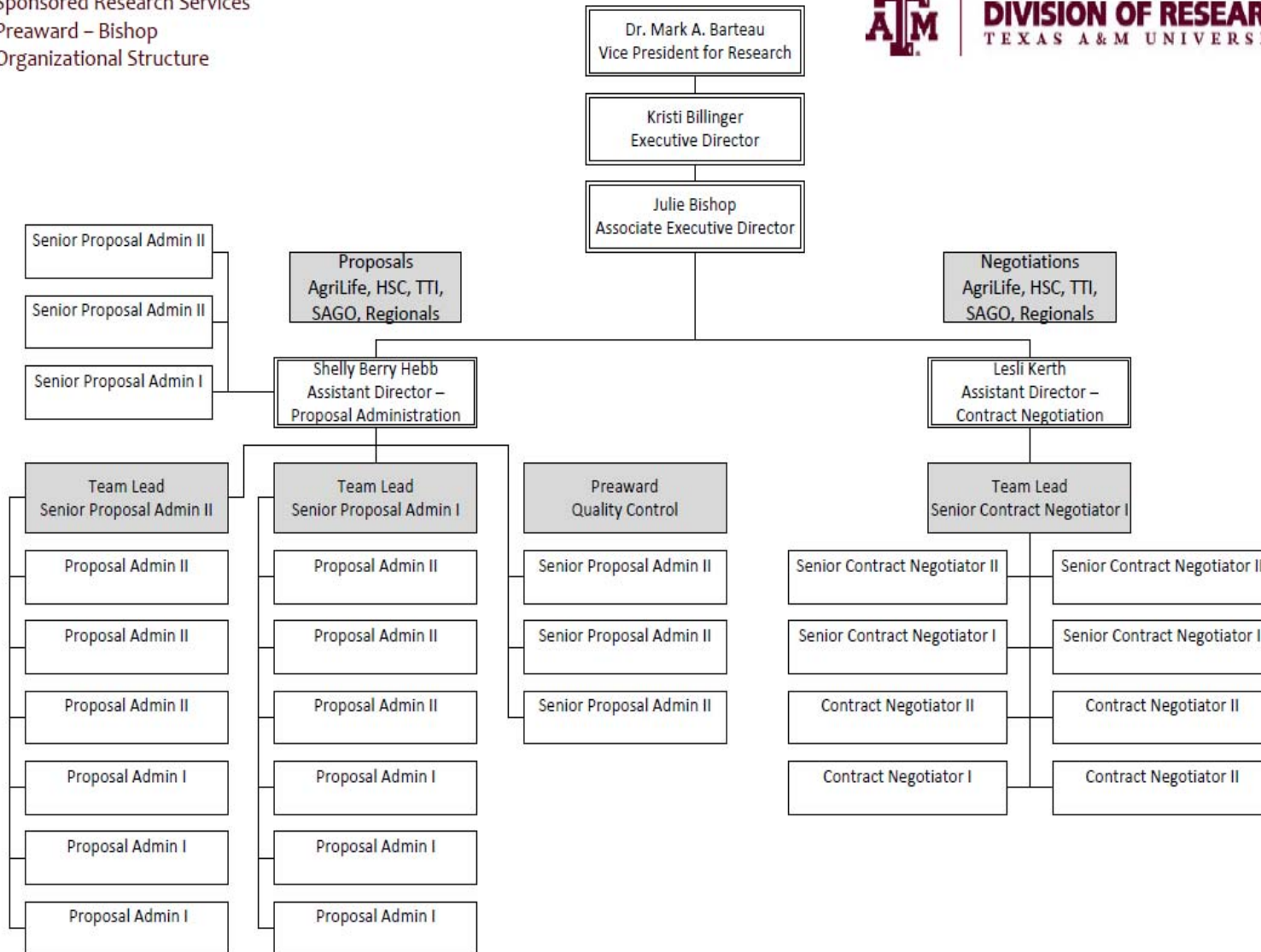
DIVISION OF RESEARCH
TEXAS A & M UNIVERSITY



Sponsored Research Services
Preaward – Bishop
Organizational Structure



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Contract Negotiator Role



- ▶ The role of contract negotiators is to protect the interests of the Texas A&M System (TAMUS) while considering the risk or impact of proposed agreement terms on the researcher, students, AgriLife, and sub-recipients. Contract negotiators:
 - ▶ Review and negotiate the terms and conditions of agreements to ensure compliance with applicable A&M System policies and applicable local, state and federal regulations
 - ▶ Review and address any exceptions included in the Request for Applications at the time of proposal preparation
 - ▶ When necessary, negotiators engage the Office of General Counsel, Texas A&M Technology Commercialization, Risk Management, and System member offices to seek approval on agreement terms to determine optimal agreement terms
 - ▶ Seek System member approval for IP and IDC waivers, cost sharing, project termination/suspension, and non-standard terms
 - ▶ Track agreements through to full execution

You Received Your Award Now What?

- ▶ Contact your SRS negotiator right away and send an email to awards@tamu.edu
- ▶ Was a proposal submitted? If not start routing one.
- ▶ Read your Contract - Pay particular attention to scope of work, budget, and deliverables
- ▶ Start routing compliance items for approval



Types of Sponsors

- ▶ Federal
 - ▶ Agency of the U.S.. CFDA number is provided for federal and federal flow-through assistance funding (not contracts).
- ▶ State/State Agency
 - ▶ State located in the U.S., State Agency, or a State College or University
- ▶ Local Government
 - ▶ County, City, School Districts, Municipality
- ▶ Private-
 - ▶ Non-Profit entities and For-Profit entities
- ▶ Foreign
 - ▶ Entity located outside of the U.S.

Sponsored Funding Agreement

A mutually binding agreement between parties that provides funding for sponsored research or other sponsored activity.



May include:

- ▶ Grants
- ▶ Cooperative Agreements
- ▶ Contracts
- ▶ Research Agreements
- ▶ Intrasystem Agreements
- ▶ Interagency Agreements
- ▶ Master Agreements
- ▶ Task Orders
- ▶ Service Agreements
- ▶ Testing Agreements

Funded Agreement Types

- ▶ Contract - Mutually binding legal instrument/document containing negotiable terms and conditions used to procure a service, product, or end item for the direct benefit of the sponsor.
- ▶ Grants - Financial assistance mechanism that transfers funds from the sponsor to institution to assist the institution in reaching a goal or public purpose. Generally the PI defines the scope of the project to support further knowledge in a field of research.
- ▶ Cooperative Agreements - Award used by sponsor when substantial involvement is expected between the awarding agency and the recipient when carrying out the activity contemplated by the agreement.



Non-Funded Agreement Types

- ▶ Non-Disclosure Agreement - Creates a confidential relationship between the parties to protect any type of confidential and proprietary information for a specific period of time.
- ▶ Material Transfer Agreement - Used for the acquisition of various biological and research materials, and occasionally data, developed by a company or an institution.
- ▶ Memo of Agreement/Understanding - Agreement between the parties to cooperatively work together on an agreed-upon project or meet an agreed-upon objective.
- ▶ Teaming Agreement - Agreement used to partner with a company or an institution in order to collaborate on a project or proposal.

Common Negotiation Items

- ▶ Payment Terms
- ▶ Intellectual Property
- ▶ Publications
- ▶ Reports/Deliverables
- ▶ Title to Equipment
- ▶ Confidentiality
- ▶ Compliance
- ▶ Insurance
- ▶ Governing Law/Disputes



Payment Terms

- ▶ Cost Reimbursable - The sponsor pays the actual/allowable costs incurred in the conduct of the work up to an agreed-upon amount. Remaining balances are returned to sponsor.
- ▶ Fixed Price - The sponsor pays a predetermined price, regardless of actual costs, for services rendered. Remaining funds are kept by investigator.



Indirect Costs

► Paying reduced or eliminating IDC can be problematic because:

- Granting industry lower IDC rates than the Federal Government jeopardizes all federal award funding for the entire university.
- Granting reduced IDC to industry results in TAMU subsidizing private industry, jeopardizing our tax exempt status.
- Reducing IDC also reduces funding available to departments and colleges.



Thanks to compromise they were moving closer.

Intellectual Property (IP)

- ▶ Patents - devices or process (inventions)
- ▶ Copyrights - works of authorship
- ▶ Rights in Data - Raw Data Generated



Basic IP Rights

- ▶ Patent and Trademark Law Amendments Act better known as Bayh/Dole Act
- ▶ U.S. Patent Law and TAMUS Policy - In a Nutshell... We invent it, we own it. You invent it, you own it. You and I invent it together, we both own it.



Other IP Considerations

- ▶ Government March In Rights
- ▶ IP Waiver
- ▶ Background IP Rights
- ▶ First Option to Negotiate a License
 - ▶ Royalties/Revenues



Publication Basics

- ▶ Texas A&M's mission is to the public dissemination of knowledge, so we are obligated to keep publication barrier minimal.
- ▶ Offer limited review period of any publications
 - ▶ 30 days is standard, but can agree to more in certain situations
- ▶ Offer to delete any confidential information they provide to the university
- ▶ Offer additional delay to allow for patent filings if necessary, to a limited extent



Publication Restrictions

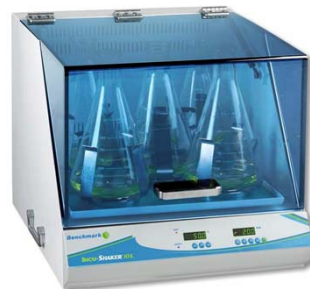
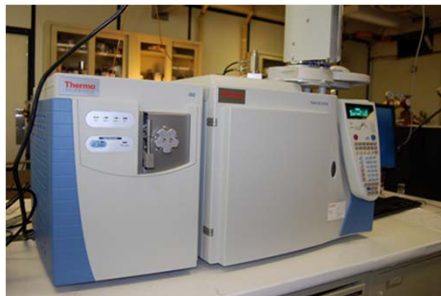
- ▶ Restrictions can keep graduate students from publishing thesis work/dissertations.
- ▶ Restriction can jeopardize our tax exempt status.
- ▶ Restrictions can jeopardize fundamental research exclusion under export control laws.



Title to Equipment

Items to Consider:

- ▶ Where is the title vested? (Ownership)
- ▶ When is ownership determined?
- ▶ What happens at the end of the project?
- ▶ What property reports are required?



Confidentiality

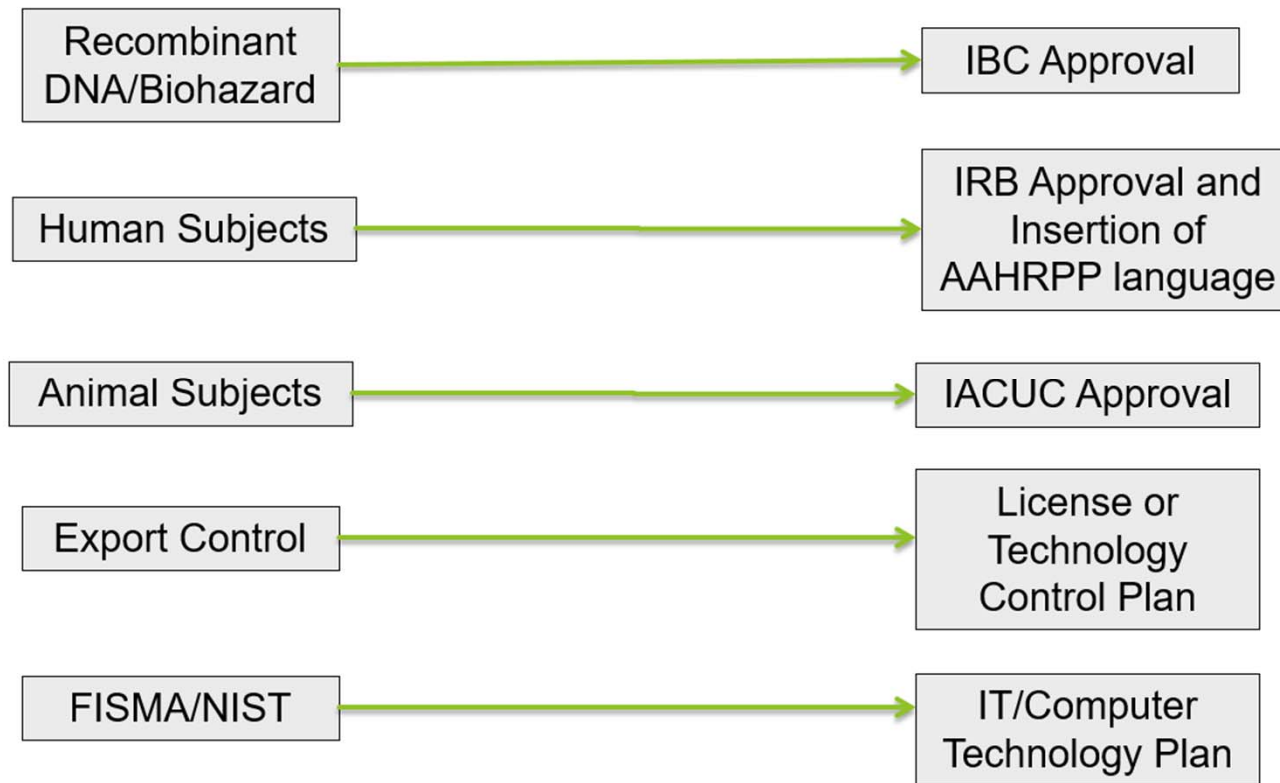
- ▶ Can almost be anything
- ▶ Must be identified at time of disclosure
- ▶ Verbal Communications - Reduce to writing w/in 30days
- ▶ Time Limited - typical 3 years for TAMUS



Insurance

- ▶ Texas A&M is self-insured for Workers Compensation per Chapter 502 of the Texas Labor Code
- ▶ Texas A&M liability is controlled by the Texas Tort Claims Act, V.T.C.A. Civil Practice and Remedies Code, Chapter 101, Section 101.021.
- ▶ Sponsor wants additional coverage you will need to include those costs in your budget, otherwise you will have to pay for it!

Compliance Items



Compliance Items

- ▶ Vendor Hold
- ▶ Visual Compliance / Restricted Party Screening
- ▶ Credit Risk



Outgoing Subawards

What information do we need to start a subaward:

- ▶ Period of Performance
- ▶ Scope of Work
- ▶ Budget
- ▶ Payment Terms – Cost Reimbursable or Fixed Price?
- ▶ Deliverables

Things that Might Delay a Subaward

- ▶ Foreign Entity
- ▶ Insurance
- ▶ Compliance Items
- ▶ Risk Assessment



Working with Negotiations

- ▶ Working together between the investigator, department and SRS provides the best outcome.
- ▶ Presenting a united front between the investigator and SRS to the sponsor helps prevent renegotiation and unnecessary delays.



Items Principal Investigator will have to Verify to Complete Negotiations

- ▶ Verify the scope of work, budget, and deliverables contained in the agreement are correct.
- ▶ Verify your Financial Conflict of Interest (FCOI) investigator list has not changed since the proposal was submitted.
- ▶ Verify that the PI Compliance Statement in Maestro is accurate and that all necessary compliance items have been identified.
- ▶ Review and approve any high risk terms. These will also have to approved by the System member Administration prior to final execution by SRS. (Intellectual Property Waiver and Export Control Determination Form may be required for some System members.)

Things for Investigators to Remember

- ▶ Proposals have to approved before the agreement can be signed.
- ▶ Compliance issues must be resolved before work spending on the project can begin.
- ▶ Do not sign the agreement! Agreements must be signed by an authorized official of the university.



Questions?

