

# anSRS4u

ANSWERS FOR YOU

## Contracting with Industry on Sponsored Projects

---

The initiation, standard operating procedures, and negotiations of industry sponsored projects

---

*Presented by* **Sponsored Research Services**



TEXAS A&M UNIVERSITY  
Division of Research

# Contract Negotiator Role – Overview



The role of contract negotiators is to protect the interests of the Texas A&M University System (TAMUS) while considering the risk or impact of proposed agreement terms on the researcher, students, System Member, and sub-recipients. Contract negotiators:

- Review and negotiate the terms and conditions of agreements to ensure compliance with applicable A&M System policies and processes, as well as 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, various compliance offices, 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 high risk/non-standard terms
- Track agreements through to full execution



# Processing of Sponsored Projects Industry vs. Non-Industry

## Two Buckets

### **SRS negotiates agreements for System Members with:**

- Federal
- State
- Non-Profits
- Industry for:
  - TAMU, TAMU HSC, TAMU Galveston,  
Texas A&M Transportation Institute,  
Prairie View A&M University.
- Non-sponsored for:
  - TAMU, TAMU HSC, TAMU Galveston

### **Member Contracting Offices (TEES, AgriLife, TTI, Etc.) negotiate Member specific agreements with:**

- Industry
- Commodity (AgriLife)
- Non-sponsored
  - Material Transfer Agreements (MTA)
  - Non-Disclosure Agreements (NDAs)
  - Memorandums of  
Understanding/Agreement (MOU or  
MOA)
  - Teaming Agreements

# Working with Industry Partners

Why would A&M want to work with Industry?

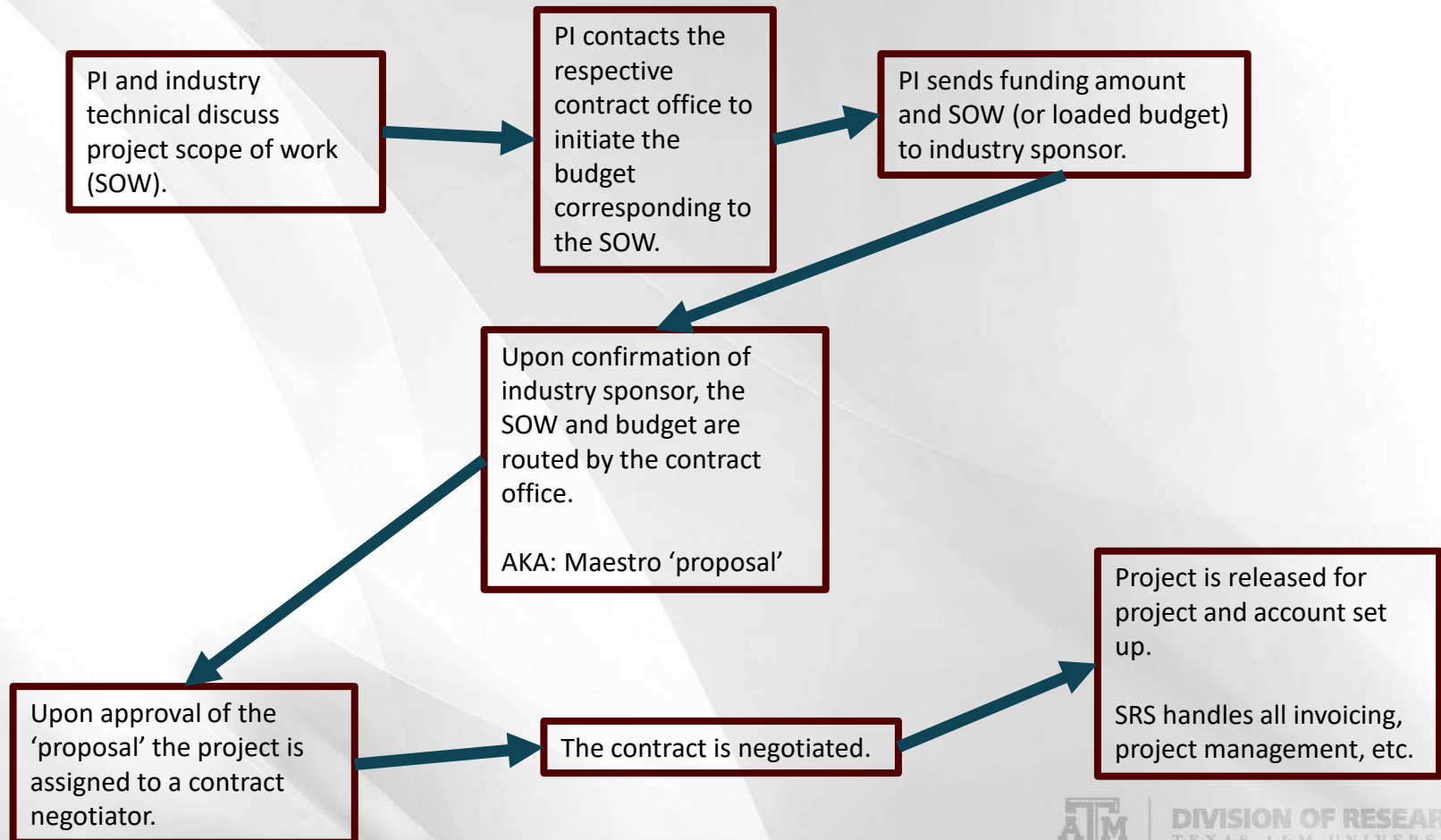
- Federal funding is increasingly competitive.
- Industry funding provides additional sources for revenue
- Industry research also provides a link for students to potential future employers.



Why would Industry want to work with A&M :

- Access to cutting-edge research, university investigators,
- To solve a problem with a product, process, or issue
- To gain knowledge that will help the company make money
- Pipeline for potential employees

# Industry Sponsored Projects Initiation Overview (Ideally!)



# Initiation of Industry vs. Non-Industry Sponsored Projects

- Non-Industry
  - Most often, non-industry sponsors such as federal and state governmental agencies provide requests for proposals (RFP's) or similar calls for competitive proposals
  - Competitive proposals require a formal submission and are handled by SRS
- Industry
  - >90% of the time there is no request for proposal so non-competitive
  - Initiated through industry approaching a PI or vice versa
  - Agreements initiated immediately after submission of 'proposal'



# Initial Things to Consider for Industry – Proposal stage

- Scope of Work
  - Who, what, when, where, why, how
  - Can someone off of the street understand the scope of work?
  - Need a detailed SOW
- Budget
  - PI and personnel effort
  - Travel/Materials and Supplies
  - IDC – **building IDC into your costs and not a separate line item**
- Deliverables/Timeline
  - Could impact payment terms
- Proprietary Information or Materials Exchanged
  - Will you be sharing confidential information or sending/receiving materials with industry sponsor



# Unfunded Agreements with Industry

Unfunded Agreements are most often utilized in the initial phases of a collaboration with an industry partner.

Typical of Unfunded Agreements Types:

- Non-disclosure/Confidentiality Agreements (NDA/CDA)
- Teaming Agreements
- Memorandums of Understanding/Agreement (MOU/MOA)





# Unfunded Agreements Types

Nondisclosure Agreements (NDAs) should only be used for initial discussions with industry partners.

Common Industry NDA Concerns:

- Industry partners often expects extended or unlimited confidentiality terms;
- Industry partners often expect results will be considered confidential information;
- Industry partners may request the terms of the agreement be confidential; and
- May include terms best suited for subsequent research agreement (e.g. intellectual property terms).



# Unfunded Agreements Types Cont.

## Teaming Agreements Are:

- Used to engage with a company or institution in order to secure a collaboration regarding a specific project or proposal.
- Put in place when a Member is submitting a proposal to a Federal or state agency (e.g. SBIR/STTR) along side an industry collaborator (I.e. in most cases the Member would be a sub-awardee on the resultant Federal award).

## Common Teaming Agreement Concerns:

- Industry partners expecting Member exclusivity;
- Industry partners expecting the Member to pledge commitments ahead of receiving an award (e.g. work product or intellectual property rights).



# Unfunded Agreements Types Cont.

Memorandums of Understanding (MOU), simply put MOUs are an agreement to agree. MOUs are meant to be used at the very initial stages of a cooperation and are generally not legally binding.

## Common Industry MOU Concerns:

- Industry partners may attempt to include terms more suited for subsequent research documents including:
  - Payment terms,
  - Intellectual property terms, or
  - List of deliverables.

# Common Elements in Sponsored Research Contracts

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



# Industry Contract Negotiation Red Flags

Most of the contentious issues revolve around:

- Ownership of IP
- Publications
- Confidentiality
- Satisfactory completion of work
- Assumption of risk/Liability
- Exclusivity
- Payment Terms
- IDC



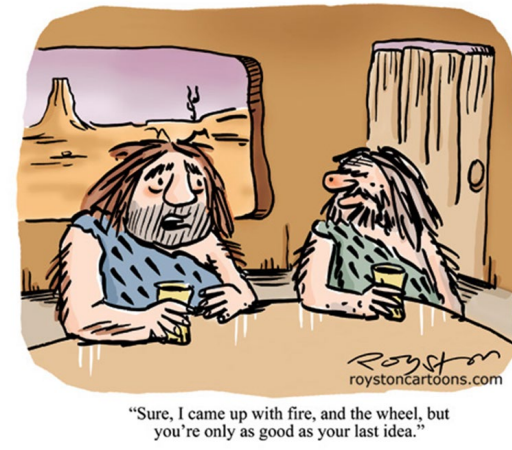
# Intellectual Property

Industry wants:

- To own everything created under an award
- Exclusive license so only they can use
- To receive a significant percentage of the royalties generated

Reality:

- Industry sponsors do not ascribe to Bayh-Dole
- University owns IP created by university employees
- Faculty rely on many sources for funding of research
- Ability to use IP developed for educational or research purposes



# Publications

## Industry wants:

- NO publications or presentations on research is allowed
  - This includes know-how, techniques, methodologies, ideas or tools developed by the university under the project
- If allowed, we must receive their approval prior to publication/dissemination (even at conferences)

## Reality:

- University is obligated to publish the work generated (our mission)
- Promotion and tenure of faculty; student dissertations/thesis are all contingent on their ability to publish/disseminate research
- Cannot withhold publication if results are not favorable
- Eliminates our Fundamental Research exemption under the Export Control laws



# Confidentiality

## Industry wants:

- Anything and everything is confidential, whether marked or not
- Period of confidentiality lasts forever

## Reality:

- University must follow Texas Public Information Act (TPIA), FERPA and HIPPA regulations
- 3-5 year confidentiality restriction from termination or disclosure
- TAMUS is obligated to publish the work generated (our mission)





# Payment Terms

## Industry wants:

- NO IDC
- Pay the least amount to conduct the most research
- Pay 100% once the work is completed and all deliverables submitted
- Pay upon satisfactory completion or approval of the work

## Reality:

- University cannot waive indirect costs for industry projects
  - Jeopardizes all Federal funding the entire TAMUS receives
- Best to build IDC into the actual cost categories and not list it as a separate line item
- Cost-reimbursable or fixed-price payments are acceptable
  - Fixed-price we will request at least 25-50% upfront and only agree to a small amount being contingent on final deliverables
- University cannot subsidize industry projects
- University cannot reperform the work for free until the sponsor is happy with the results



# Risk/Liability

## Industry wants:

- University to assume all risks related to the project
- Limitation on what they are liable for
- Immediate termination by industry at any time
- Repayment of the amount paid to date if the agreement is terminated early by university

## Reality:

- Require 30 days' advance written notice if the project will be terminated so we can wind down costs on the project, such as salaries
- Liability is limited based on Texas Tort laws
- University cannot create a debt against the State by agreeing to an open-ended liability clause



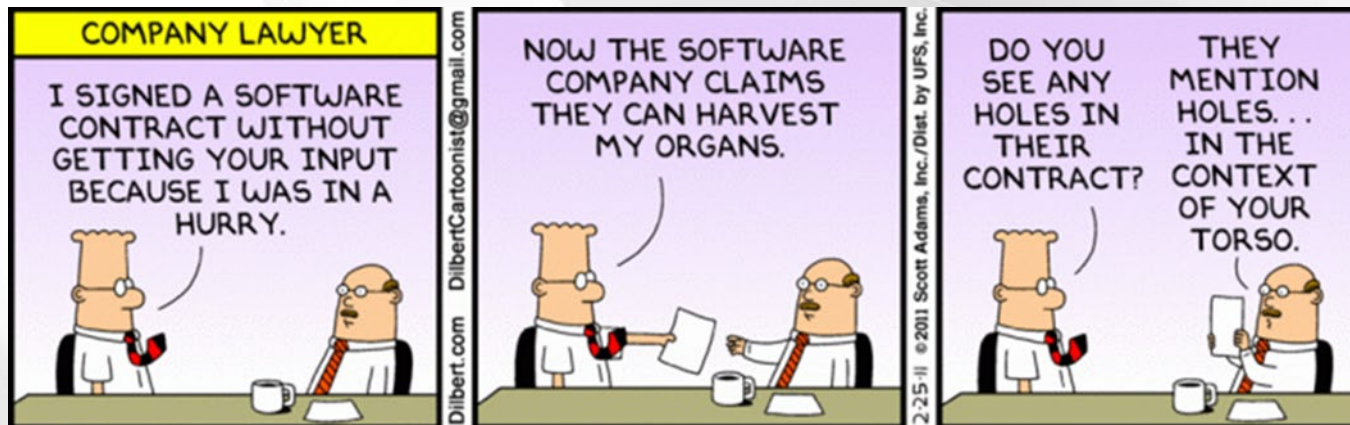
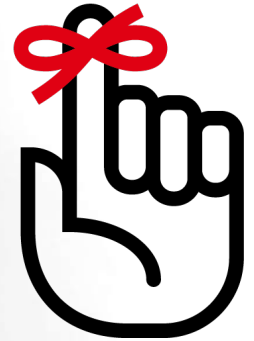
# Working with Contract Negotiators

- Good communication between the investigator, department, and SRS or the respective member office provides the best outcome when working with both industry and non-industry partners.
- Presenting a united front between the investigator and SRS/the member to the sponsor helps prevent renegotiation and unnecessary delays.



# Final Things for Investigators to Remember

- Proposals have to be 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.



anSRS4u

ANSWERS FOR YOU

THANK YOU

*Presented by* **Sponsored Research Services**



TEXAS A&M UNIVERSITY  
Division of Research