International Activities

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150 University Hall
3:00pm - 4:30pm

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The Regents of the University of California
Presentation Overview

- Introduction
- The Context
  - University of California as a Global Institution
  - UC Berkeley International Programs
- The Challenges
- The Responses and Lessons Learned
Challenges of Operating Overseas

- Remote Management and Oversight
- Organizational Structure
  - MOU, Agreements, Registrations, Foreign Entities
  - UC Foreign Affiliate/Operations Guidelines
- Risk Management and Evaluation
- Finance, Accounting and Controls
- Tax
- Employment Matters
- Immigration - Visas
- Facilities
- Contracting – Selecting and Managing Contractors
- US Restrictions
  - Foreign Corrupt Practices Act
  - Export Controls
  - Office of Foreign Asset Controls
Authority Over International Activities

The Regents

• Public Corporation established under Article IX, Section 9 of the California Constitution

President

• General Authority delegated to President by Standing Order 100.4 and by Regents Action (July 2002)

Provost or Chancellor

• Guidelines for the Establishment and Operation of Foreign Affiliates or Operations (August 2005)
• Specific Authority: DA 2569 Extramural Grants <$10,000,000
Guidelines - Roles and Responsibilities

**Provost and EVP**
- Initial Program Approval
- Approval of Organizational Documents for Affiliates
- General Fund Transfers
- Acceptance of Gifts - Approval of Use of Gift Funds
- Receipt of Annual Filings and Reports
- Approval of Transactions with Foreign Affiliate, Officer or Staff

**General Counsel**
- Retention of Outside or Local Counsel
- Approval of Organizational Documents for Affiliates
- Receipt of Annual Filings

**Director of Financial Controls and Accounting**
- Establishment of Bank Accounts and Exceptions
- Designation of Persons Authorized to Issue Checks >$10,000
- Receipt of Annual Report on Bank and Financial Accounts

**EVP – University Affairs**
- Acceptance of Gifts
- Approve Gift Solicitation and Acceptance Policies

**Vice President – Budget and Capital Resources**
- Approve Leases, Property Management and Capital Improvement Agreements > $25,000 or longer than one year
Risk Management

- Contact Campus Risk Manager or Risk Services
- Evaluate Risk – Risk Shifting Mechanisms
  - Insurance Coverage, Endorsements
  - Local Requirements
- Register with the **UC Trips** system prior to departure to ensure life, travel, kidnap and ransom, medical, evacuation and other benefits
  
  http://www.uctrips-insurance.org/
- Information and communication through **IJET**
- Pre-departure liability waivers and releases from program participants
- Pre-departure Field Safety or Contingency Planning
International Research Activities at Berkeley

- Research performed for internationals sponsors
- Research performed overseas
- Visiting scholars and researchers
- Large-scale research collaborations
Research for Foreign Sponsors

- Sponsor requirements
- Allowability of costs
- Facilities and administration costs/indirect costs/overhead
- Cost sharing
- Currency fluctuation risk
- Guarantees of performance (vs. cost reimbursement model)
  - Pre-financing deposits
  - Approval rights
  - Payback provisions
Case Study - EU Framework Programme 7 Research Project

- FP7: 54B Euros (US$70B) over 7 years
- Consortium agreements
  - ETH Zurich “coordinator”, UCB was a “beneficiary” (1 of 11)
- Pre-financing amount of 5% set aside to complete work
- Applicable law – Belgium
- EC must approve of reports and deliverables to receive payment or partial payment.
FP7 Case Study

- Payment in Euros (currency fluctuation risk)
- IP disclosures for 2 years after completion
- Guarantee Fund to manage risk of non-performance
- Termination – EC may terminate participation and require reimbursement of funds related to breach and pre-financing
- Audit and review of technical reports for 5 years
FP7 Case Study

• Publication
  – 14 days before publication, party may object
  – Objection is justified if objecting Party’s legitimate academic or commercial interests are compromised
  – Parties must work to “overcome” the objection. Postponement of publication no longer than 3 mos.

• Indemnity
  – Grant Annex – beneficiaries must indemnify the EC
  – Consortium Agt – each party is liable for injuries resulting from its performance or on its behalf.
Research Performed Overseas

• Fiscal support
• Risk management issues
  – Insurance, medical services, extraction services
• Fields Safety Plan
• Compliance Reviews
  – Human or animal subjects, biosafety
• Export control issues
  – Controlled items – laptops, GPS
  – Controlled technical data
  – Embargoes and sanctions
Visiting Scholars and Researchers

- Berkeley International Office
  - Visas
  - Campus resources
- Visitor Exchange Office
  - MOU
- IPIRA
  - Visitor agreements
  - Patent acknowledgements
Conducting Research Overseas – Operational Models

• Existing NGO (services agreement)
• Local partner (subaward)
  – Monitoring overseas work
• Local incorporated entities
• Umbrella US entity for all overseas research
  – Nonprofit Corp. or LLC
Conducting Research Overseas – MOU Issues

• Registration
• MOU – legal status
  – Symbolic agreement? Operational agreement?
  – Binding legal obligations?
  – Most major NGOs have MOUs
    • Quasi-diplomatic status granted? Indemnification?
  – Duties and taxes
Conducting Research Overseas – Managing Foreign Operations

• Federal agency requirements still apply to overseas research conducted by U.S. institutions or on their behalf –
  – Procurement
  – Subrecipient monitoring
  – Effort reporting
  – Human subjects review
Conducting Research Overseas – Federal Requirements

- OFAC economic sanctions
- Commerce and State Dept. export control laws
- Anti-boycott laws
- Foreign Corrupt Practices Act
Case Study in Large-scale Collaborations - BEARS

• Research on building energy efficiency in tropics; future topics – synthetic biology
• Funding provided by National Research Foundation of Singapore (S$94.8M, US$76.4M)
• Model followed by MIT, TUM, ETH Zurich
• Two large research programs to start; potential for more later
• Residency requirement – 6 mos. in one block followed by a remaining 6 mos. over 5 years
BEARS – a Case Study

• Formation of company limited by guarantee in Singapore – 100% owned by UC
• Governing board split between UC and NRF
• 80% of funding stays in Sg; 20% comes to UCB
• Attributes
  – Unique research environment
  – Potential strategic alliances with Sg universities
  – Base of operations for other research activities in the Far East
BEARS – a Case Study

• Formation of corporation
  – Retain local counsel/corporate secretary
  – Retain local tax accountant and auditor
  – Governing board

• Open bank account
  – Board of Directors resolutions

• Employment passes

• Hiring of local staff

• Taxes
Key Compliance Topics

Research

– Intellectual property
– Ethics and privacy
– Contract and Grant requirements/auditing
– Export controls
– Personnel competence
– Dispute resolution
– Choice of Law
– Branding and use of UC Mark
Responses and Lessons Learned

• Early Engagement is Critical
  – Budgeting
  – Identification of Resources
  – Assemble Multidisciplinary Team
  – Clearly Defined Roles, Responsibilities, Milestones and Deliverables

• Development of Operating Plan
  – Objectives
  – Resource Needs
  – Assignments
Questions?