

## Oklahoma State University Policy and Procedures

### **DISTINGUISHING BETWEEN GIFTS, GRANTS, AND CONTRACTS**

**3-0252  
ADMINISTRATION  
& FINANCE  
August 2005**

#### **POLICY**

1.01 Correct classification and processing of external funds (**gifts, grants, and contracts**) is essential for the accomplishment of fiscal and fiduciary management by Oklahoma State University (OSU), the adherence to State of Oklahoma statutes, and proper accountability and stewardship by the Oklahoma State University Foundation (OSUF). To enhance coordination and to ensure consistent and proper treatment of funds, these policies and procedures have been developed and are intended to be used by all University faculty and administrators seeking external support, both governmental and non-governmental.

1.02 **Gifts, grants and contracts** are the principal forms of awards made by governmental and non-governmental sources. The correct classification and processing of awards is sometimes complex and will require the exercise of informed judgment, particularly in cases where the nature of an award is not immediately clear. Important distinctions must be recognized between how funds are received by the University and the purposes for which the University applies these funds. Rather than focusing on any single characteristic, each award must be considered in its totality.

#### **GENERAL GUIDELINES AND DEFINITIONS**

2.01 For the purposes of this policy, **contract** means those instances in which OSU formally commits its resources to performing a service for, furnishing a product to, or meeting the performance expectations of a sponsor under time and/or fund-use constraints. Each **contract** document should contain a statement of work or a description of the services to be provided. The terms and conditions of a **contract** should be negotiated with great care. A breach of **contract** may occur if the University fails to deliver or to perform the work defined in the statement of work. If any of the following characteristics are included in an award, it shall be considered a **contract**:

- Sponsor requires specific product, including, but not limited to, technical<sup>1</sup> report of research or study or test results, evaluation, technical assistance, and/or training (as opposed to merely requiring a copy of any report which is prepared) .
- Sponsor may cancel the project and require return of unexpended funds, after closeout costs have been covered.
- Award is based upon a formal or informal proposal with specific research intentions encumbering the resources of the University.
- Award designates a sponsor employee (agent) as project technical monitor, as opposed to designating a contact person.
- Award contains provisions regarding intellectual property rights.

- Award restricts use of results or publication (other than sponsor recognition).
- Award contains or is contingent upon nondisclosure of sponsor's or research product's confidential information.
- Award requires mandatory cost share reporting
- Award requires other commitment of University resources (e.g., space, personnel, equipment, etc.).
- Award payments are contingent upon technical reporting or accomplishment of technical milestones.

2.02 A **gift** is defined as a voluntary transfer of money or property made by a donor without expectation or receipt of an economic benefit. It may or may not be given for a specific purpose. The following are characteristics of **gifts**:

- Award, funded from non-governmental monies, which supports an unrestricted or restricted purpose.
- Award does not direct or attempt to direct specific scientific inquiry that could commit University resources of space, personnel, equipment, or other supplies.
- Award contains non-technical<sup>2</sup> requirements generally relating to required donor pledge payments and the University's commitment to effectuate the donor's intent.

2.03 The funds will not be considered a **gift** if ANY of the following conditions exist in the award document:

- Any of the following "terms" are mentioned: **contract**, mandatory cost share reporting, Facility and Administrative cost negotiations return of unused funds to sponsor upon sponsor cancellation of the project after close-out costs have been covered.
- Sponsor is entitled to receive some legal consideration, economic benefit, and/or product such as a technical report of research or study or test results not made available to the public generally.
- Award requires the return of any funds for any reason with the exception that the intentions of the donor, only in the case of restricted gifts, are not met.
- Limitations exist on the use of project data or details relating to patents, copyrights, or sharing of royalties.
- Research is directed to satisfy specific sponsor requirements rather than support a general area of research.

2.04 The OSU designated **gift** receiving organization has no cost basis in the OSU Facilities and Administrative cost (formerly Indirect Cost (IDC)) pool and therefore, any award that specifically identifies Facilities and Administrative costs in the proposal may not be considered a **gift**.

2.05 Government-sponsored programs are normally carried out under **contracts**, cooperative agreements, or **grants**, depending on the agency sponsoring the work and, to some extent, the nature of the program. Although government **grants** and **contracts** are subject to differing statutory requirements and regulations, no significant difference exists between them in terms of OSU policy and administrative procedures. The administration of **grants**, **contracts**, and cooperative agreements from non-governmental organizations is the same as that of governmental.

2.06 **Grants** from non-governmental organizations are usually more broadly defined. Frequently, the only intent of the sponsor or donor is to assist the University's program or to advance the state of the art in a given field. These **grants** are typically philanthropic rather than contractual in nature, but must be evaluated on a case by case basis to determine if they are **gifts** under this policy.

2.07 A **grant** will be considered by the University as either a **gift** or a **contract** depending on its nature and purpose. If an apparent charitable intent exists and it may properly be characterized under the definition of a **gift** above, then it is a **gift**. If, on the other hand, the grantor expects a return as defined in **contract** above, it is a **contract**.

2.08 Proposals reflecting the characteristics contained in sections 2.01, 2.02, 2.04, and all non-gift grants will be processed in accordance with section 1.02 of Oklahoma State University Policy and Procedures letter 1-0305—Routing System—Proposals and Incoming Grants, Contracts, and Agreements.

## **PROCEDURES**

3.01 To the fullest extent permitted by law, Board of Regents policy, donor intent and by any controlling documents, all **gifts** for the benefit of OSU should be made to, managed, invested, reinvested, and distributed by and through the OSUF. University faculty members and/or administrators interested in approaching or who have been approached by any private foundation, corporation, or other private (non-governmental) organization, for external support shall contact their college research office personnel and/or college development officer for clarification of gift status. The college research office should contact Grants and Contracts Financial Administration (GCFA) if a grant or contract does not clearly meet the grant or contract criteria. If the grant appears to be a gift, GCFA will inform the OSUF President and CEO, or designee, of each proposal that meets the standards of gift criteria.

3.02 In the event of a disagreement between the University entity and the OSUF, the position of both parties will be provided to the Vice President of Administration and Finance, or designee, who will make the final decision pertaining to the award categorization.

3.03 All disagreements must be reviewed and decided expeditiously.

3.04 All **contracts** with OSU shall be managed by GCFA. A University faculty member and/or administrator interested in approaching, or who has been approached by an organization, specifically including governmental organizations, for a **contract**, contractual research **grant**, and/or cooperative agreement shall contact their college research office (for non-college personnel, GCFA or Vice President for Research and Technology Transfer, as applicable) for processing of their proposal.

3.05 Any previous institutional policies or documents pertaining to Distinguishing Between Gifts, Grants and Contracts are hereby rescinded.

Effective: August 2005

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<sup>1</sup> As a general rule, a Technical Report contains all of the details of the research and results obtained. Generally this report could not be written by a staff person who manages the budget.

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<sup>2</sup> As a general rule, a Non-technical Report is a report that acknowledges resources have been spent as designated by the donor, and in a timely manner. A non-technical report is a non-specific advisement that could be satisfied through typical OSUF/Donor correspondence.