Managing Risk…
Managing Expectations…
Managing International Projects

NCURA
Research Administrators Discussion Group (RADG)
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Jennifer Donais
Director of Research Compliance
University of Massachusetts Amherst
jadonais@research.umass.edu

Constance Galanis
Consultant
(Formerly Harvard University)
connieg9433#@charter.net

Norm Hebert
Director International Research Administration
Brown University
Norman_herbert@brown.edu

Objectives and Take-Aways

- A general risk management approach for evaluating opportunities and liabilities.

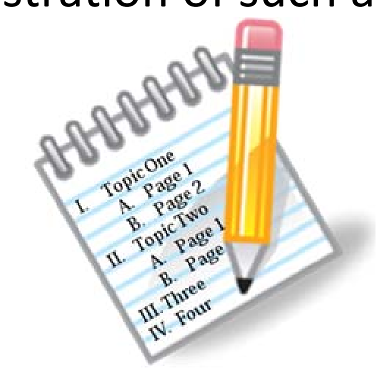
- Provide a framework for assessing specific types of risks and liabilities:

  -Institutional /Academic -in Country Footprint - International Collaborators

  -Sponsor Requirements -Environmental

- Provide techniques and resources that promote compliance and bolster confidence and comfort level in the administration of such activities

Bottomline: You are not alone.



Overarching Institutional Risks In International Projects

- Safety of individuals
- Protection of name, identity, and reputation
- Deviation from the Institution's mission
- Compliance with laws, regulations and customs of foreign jurisdictions
- Management of operational logistics
- Adherence to standards of accountability
- Other?

Bottomline: This is risky business!

Key Challenges Posed by Infrastructure

How does our institutional make-up --- universities and academic medical centers --- and our structures affect our level of risk?

- Absence of top-down leadership and the importance of academic freedom inhibit controls
- Decentralized infrastructure and decision-making
- Inexperience in setting up and conducting foreign business operations
- Misconceptions about export control regulations & their applicability to universities, medical schools and research



Build a Team to Manage Risk

- Focus leadership and coordinate resources
  - Create task forces and committees
  - Create Offices and/or dedicate staff
  - Develop a website
  - Tap into external expertise
  - Appropriate team may depend upon project or activity type

Bottomline: Office names/titles may vary
but the functions and responsibilities should be similar

Many institutions have specific plans to broadly internationalize its programs

Infrastructure should be consolidated to facilitate implementation and mitigate future risk

For example.....

Brown: Diffused, but centralized, compliance and international services - Provost / OVPR, EVP, General Counsel

Internationalization at Brown:

Phase II of the Plan for Academic Enrichment accepted by the Corporation in 2006 includes significant thrust for global research and internationalization:

- New Vice President for International Affairs "to ensure that new initiatives serve to enhance Brown's global standing and research mission"
  - International Coordinating Council
  - Director International Research Administration
  - (in planning) International Resource Center
  - Currently, this is the Year of China at Brown

Not a one size fits all paradigm.....

Various Types of International Projects & Activities

- Student programs / Instructional activities (study abroad, international degree programs, degree-sharing programs, etc)
- Research Projects
- Distance and online learning
- Collaboration with foreign universities, non-profits, companies, and foreign governments (funded or unfunded)
- Establishing foreign campuses and permanent establishments (PEs)

Bottomline: One size may not fit all

Identifying the Risks by Project

Common elements:

- human resources, currency exchange/fluctuation, cash management, governing law, procurement, travel alerts/requirements, time zones, dispute resolution, insurance

Unique challenges:

- language, local laws, government structure, security & safety, special compliance requirements (export/OFAC, human, animals, RCR, ethics, COI, etc.)

Bottomline: Filter risks and liabilities through this "common vs. unique" lens

Capture the Big Picture

– Scope and duration
– Sponsor, collaborators, consultants?
– Who is going? Or coming? Students, faculty, staff, others?
– Resources appropriate to activity and participants (ie, students)
– Foreign bank accounts, payroll services, etc
– Export control licensing or license exceptions for people, equipment or technical data

Bottomline: Knowing the big picture will help with the details & setting appropriate expectations throughout the project

Employ "Due Diligence"

- **"The Basics" (virtually free)**
  - Excluded Parties/Denied/Debarred Parties screen – subs, collaborators & sponsors
  - Google them – review their web presence
  - Ask for business references (and check them!)
  - Require representations, assurances & certifications
  - Ask your colleagues (RESADM listserv, etc)
  - Detailed questionnaire (some great examples available)

- **Other methods (likely to cost)**
  - Expert review of financial statements and audit reports
  - Desk or on-site audit to review specific matters (internal or external auditors)
  - Hire in-country legal counsel
  - Check in-country registration, legal status, etc.

Bottomline: Know your partners!

Manage Expectations*

*So they don't manage you!

- Faculty and staff
- Sponsors, stakeholders, beneficiaries
- Collaborators & subcontractors

Bottom line: The expectation is that "suitable" resources will be available to conduct the research

Manage Expectations

Throughout the process:

- Understand and balance institutional and sponsor goals and objectives
- Exercise judgment; Escalate policy issues and liability flashpoints
- Understand and apply regulatory and compliance requirements – seek help & counsel “stateside” and “in country” as appropriate
- Be aware of any prior performance issues that are reasonably available
- Exercise sensitivity regarding contract literacy, customs, and cultural differences.
- Consider time zone challenges and language barriers
- Poll peer institutions for best practices
- Develop tools and strategies to address expectations of all stakeholders; transfer knowledge and expertise, as appropriate

Bottom line: Communicate early and often with all stakeholders

Financial Planning: Basic Costs

The Building Blocks of a Budget template :

- Personnel
- Fringe
- Students
- Subawardees, Contractors(vendors) and Consultants-knowing the difference
- Transportation (reminder: US Flag Carrier Rule for federal funds)
- Items of equipment and supplies
- Participant Costs (Conferences and Training)
- Medical/Evacuation
- Direct costs in lieu of overhead
- Facilities and Administrative (Indirect) costs

Financial Planning: Other Direct Costs

- Legal and filing fees, registrations, permits
- Tax issues
- Performance Bonds, (EU guarantee fund)
- Transaction fees and the cost of monetary exchanges
- Lease for in-country space (office, housing)
- Automobiles, Drivers
- Payroll administration,
- Insurance and emergency costs
- Severance payments (in accordance with local laws)
- Field office resources and site visit or other project review costs
- IRB/IACUC
- Annual statutory filings
- Audit costs
- Closeout costs

Bottomline: Expect the unexpected!

Managing Risk: Subcontractors/Collaborators

- Perform “due diligence” (EPLS, debarred screening; local resources, etc.)
- Develop and Issue the subcontract based on prior risk determinations
- Negotiate subcontract – “meeting of the minds” may be particularly important for compliance and regulatory requirements .
- Monitoring the subcontract – identify processes to minimize risks and establish procedures to gauge effectiveness and progress. Use University internal/external audit staff, require annual independent audit, etc.
- Financial process, billing, and reporting should be clear – the risks understood so any adverse happenings may be easily identified

Managing Risk: Example of Subaward Monitoring

Quarterly, Harvard's University–wide Committee* reviews all **active** subawards in light of many RISK factors. Excerpts follow:

- Subawardee location, for-profit status, or remoteness from Harvard (All foreign entities are considered high risk)
- Maturity of the organization. (Start ups with little or no fiscal controls are considered high risk)
- Harvard's prior experience with the subawardee, (e.g. new, inexperienced, or have a history of non-compliance are high risk)
- Compliance (Human/Animal Subjects, DNA, stem cells

Top 10 Indicators of a successful collaboration

10. Collaborator's generator works for more than a couple hours a day

9. You ask for the names of the collaborator's Board Chairman, Director, Controller, HR rep etc. and your contact doesn't provide you with the same name for each position.

8. Your collaborator doesn't ask for all the money upfront in a panic

Top 10 continued

7. *The first and last invoice that you review is not a copy of the budget*

6. *Your collaborator not only knows what a record retention policy is, they actually have one!*

5. *You don't have to help them create an IRB*

4. *Your collaborator knows what Current and Pending Support is*

Top 10 Continued

3. *Your collaborator monitors its financial position more than you do AND they will pay for their own audits*

2. You don't have to find a translator at 9 PM EST to translate this: "¿Cuándo nos pagan?" !

1. You don't bolt upright in bed during the middle of the night wondering if yesterday's transaction is what the Foreign Corrupt Practices Act is all about!

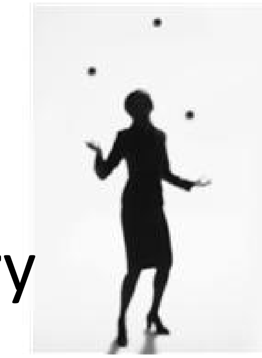
In-Country vs. U.S.-based work

- Key differences-When working here? When working abroad?
- What are the US and host country regulations that apply? (eg, Foreign Corrupt Practices, Anti-boycott restrictions, etc)
- Is in-country registration required?
- Are there tax or withholding issues?
- Are personnel appropriately designated as either employees or contractors? (consistent with local laws, create a tax or reporting obligation?)

In-Country Footprint

- Types of in-country arrangements:
  - Short-term in-country work by ex-patriots
  - University liaison/branch office or in-country campus
  - Agreement with local institution, agency or government office
- Do you need local legal counsel, liability/insurance experts?
- Permanent Establishment (PE) analysis:
  - Leasing space
  - Employees in-country
  - Signing agreements or buying goods/services locally
  - Conducting banking activities
  - Ongoing business activities
- Disputes

Post Award Risks



- What are the compliance and other regulatory requirements?
  - Will there be human or animal subjects?
  - Do your international collaborators have an appropriate institutional Conflict of Interest policy?
  - Will equipment, materials or technical data be exported to a foreign destination? Is there a licensing requirement under export control regulations?
  - What are the training requirements for all compliance needs and are they addressed by the subcontract institution?
  - Responsible conduct of research, ethical practices, etc. – differences in social and cultural norms may impact
  - Are appropriate funds and required institutional resources available?

Post Award Risks:
Pre-Award Certs & Reps, so easy to sign….

- Foreign Corrupt Practices Act
- Trafficking in Persons
- Anti-terrorist Financing
- Anti-boycott and other "in country" laws and requirements
- Buy America, Fly America, etc
- Export controls (EAR, ITAR, **OFAC)**
- Clery Act (crime statistics reporting)

…..and so risky to implement!

Objectives and Take-Aways (How'd we do?)

- A general risk management approach for evaluating opportunities and liabilities.

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- Provide techniques and resources that promote compliance and bolster confidence and comfort level in the administration of such activities

Bottomline: International projects are not for the faint of heart

Questions?

References, resources, and tools

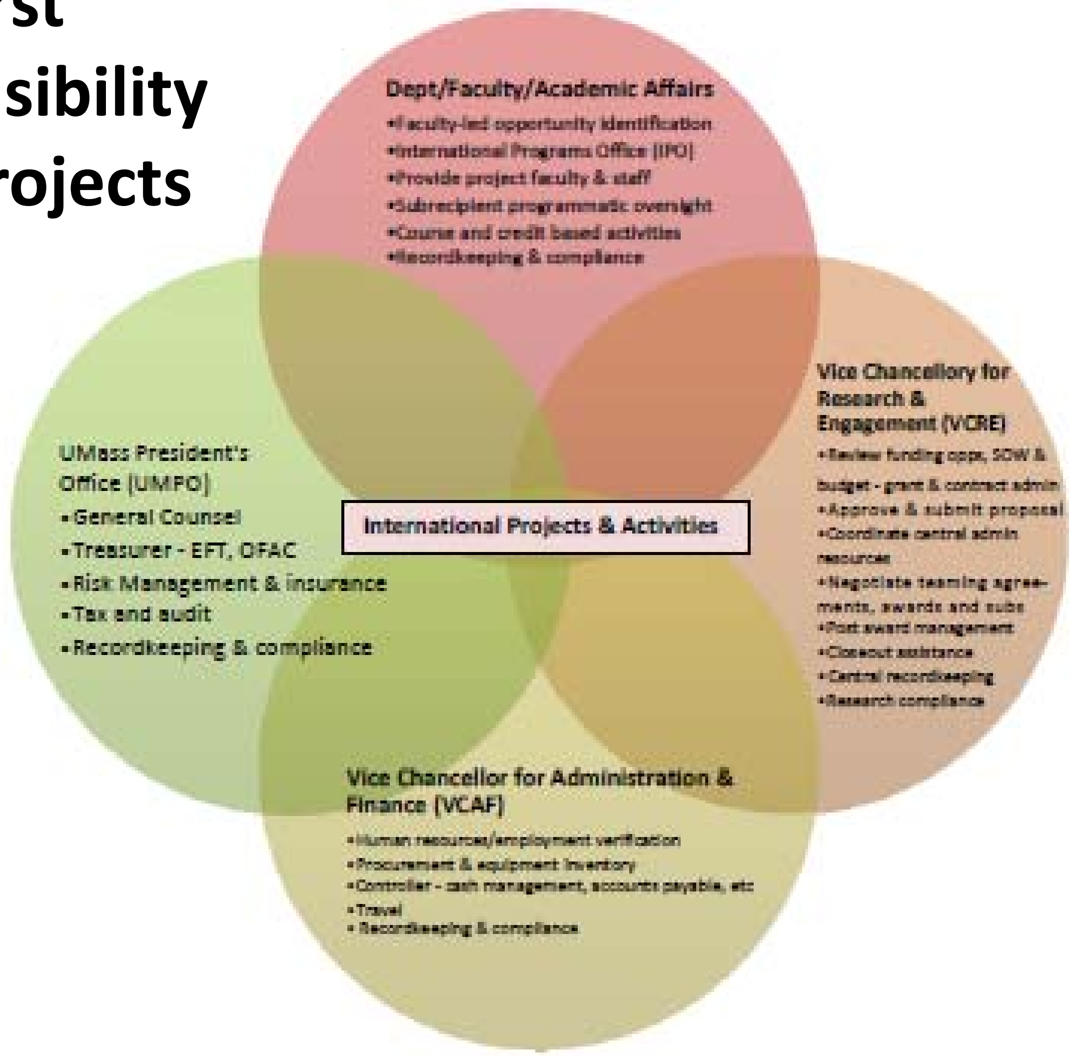
- NACUBO: http://irc.nacubo.org/Pages/default.aspx
- COGR "Managing Externally Funded Research Programs: A Guide to Effective Management Practices" 7/09: http://www.cogr.edu/Pubs_EffectiveManagement.cfm
- NIH Fogarty International Center: http://www.fic.nih.gov/Pages/Default.aspx
- NSF Office of International Science and Engineering: http://www.nsf.gov/div/index.jsp?div=OISE
- European Commission CORDIS site: http://cordis.europa.eu/guidance/helpdesk/faq_en.html

Addenda

Institutional Infrastructure for International Projects: UMass Amherst

- <u>Office of Grant & Contract Administration</u> - Review funding opportunity, proposed scope of work & budget; negotiate terms; post-award management
- <u>Controller</u> - Financial management and accounting support for projects stateside; policy & procedure for in-country financial management; due diligence of subcontractors; audit and financial statement review
- <u>General Counsel</u> - legal advice, registration matters, selecting & coordinating in-country counsel
- <u>Treasurer</u> - Electronic funds transfer; OFAC compliance
- <u>International Programs Office (IPO)</u> – Support and coordination for student-centered international activities
- <u>Risk</u> Management/Insurance - Coverage as needed for human capital, in-country liabilities, etc
- <u>Human Resources</u> - Employment contracts, benefits, in-country policies, etc
- <u>Research or Institutional Compliance</u> -Export controls, human or animal subjects, biohazardous/radioactive materials, etc
- Department/College/Center - Staff the project, do the work!

UMass Amherst
Division of Responsibility in International Projects



Institutional Groups Supporting International Activities

Campus Enterprise-wide Risk Management Committee (CERM)
International Risk Management subcommittee
Oversight Committee for Export Control Compliance (OCECC)
Implementation Subcommittee for Export Control Compliance

Finding Tools & Templates

Checklists, Templates & Tools

Cash Management:

- University of Washington - Money Matters Abroad Checklist
- OFAC Process Document
- Sample Petty Cash Document

Foreign Operations:

- Capacity Review & Risk Assessment Template
- Foreign Subrecipient Questionnaire
- Sample Property Log

Sample Capacity Review Form

Capacity Review and Risk Assessment Tool for Foreign Sub-Recipients

Sub-recipient's Name		**Amount of Award**	
Sponsor		**Date Completed**	
Award No.		**Reviewed By**	

Risk Assessment Values					
Low	0-30	Moderate	31-60	High	61-100

Evaluation Criteria	0	5	10	Points	Comments
Award amount - Amount of award as % of Sub recipient's total annual budget	< 15%	15-45%	46-99%		
Past performance - Number of prior grants/awards completed with satisfaction	1-5	6 or more	none		
Annual audited financial statements - available - unqualified opinions	Yes		no		
A-133 Audit	With no significant findings	With limited findings	With significant findings/No A-133 audits		
Sub-recipient's Financial Health Assessment	Consistent profits, adequate reserves, adequate working capital	Some losses, adequate reserves, adequate working capital	Pattern of losses for 3 yrs., insufficient working capital, low reserves, etc.		
Sub-recipient's location-Country	Developed countries	Moderate Developing countries	Underdeveloped countries		
Prior knowledge of USAID/donor rules and regulations	Yes		no		
Prior US government funding	Yes		no		
Financial management systems in place (pre-award assessment)	Yes		no		
Sub-recipient's Financial staffing capacity	adequate staff		Inadequate staff		
Total Score					

Subrecipient Monitoring Framework

Monitoring Procedures for Foreign Sub recipients

The university's monitoring procedures for foreign sub-recipients involve a 3 step process: risk-rating each foreign sub-recipient at the inception of the relationship by requesting pertinent information regarding financial, internal control and prior experience with U.S. government donors or private foundations; documenting proof of performance during the relationship at regular intervals or more often as needed; and ongoing monitoring activities as needed, including requesting for copies of annual A-133 audits or conducting A-133 equivalent program specific audits, internal control reviews through agreed upon procedures, or site visits to the sub-recipients' offices or service delivery sites.

Once the risk-rating for a foreign sub-recipient has been completed and a particular risk category has been assigned, a monitoring plan for the sub-recipient should be developed by ____________________ and reviewed by the ______________________. The monitoring plan should consider both the sub-recipient's risk category and the amount of the sub-grant.

Certain donors (US government) require additional monitoring and/or reporting of foreign sub-recipients. These donors may also require the implementation of special conditions to comply with the terms of their awards. In these cases, the monitoring plan must be adjusted to meet the compliance requirements of donors. In addition, for some sub-recipients, special conditions may be imposed.

Minimum Recommended Monitoring Procedures

Risk Category	Low Risk	Moderate Risk	High Risk
Minimum Recommended Monitoring Procedures	1. Specific contract terms and conditions for all foreign sub recipients. 2. Pay invoices based on actual proof of performance or certified financial reports. 3. Program officer must certify that the work was performed and that the invoice is within the stated budget. 4. Finance must review for reasonableness and release payment. 5. Site visits by Principal Investigator or Program Officer at least once per year	1. Specific contract terms and conditions for all foreign sub recipients 2. Pay invoices based on actual proof of performance. 3. Program officer must certify that the work was performed and that the invoice is within the stated budget 4. Separate bank account for university-remitted funds. 5. Site visits by Principal Investigator or Program Officer at least twice per year. 6. Other off-site monitoring procedures.	1. Specific contract terms and conditions for all foreign sub recipients. 2. Request for detail on certain expenditures Assign a program officer to the sub-recipient who will monitor performance. 3. Sub-recipient must send their monthly indicators; 4. Sub-recipient must send technical/progress report timely and reviewed in Baltimore. 5. Site visits on a quarterly basis by the PI and more often by the program officer as needed. 6. Annual audit or university site visit 7. Audit at project completion (university or outsourced to an audit firm) 8. Other off-site monitoring procedures.

Sample Legal Counsel Questionnaire

Local Counsel Questionnaire

1. What constitutes "doing business" in ________________?

2. Which of the following activities listed below requires a foreign entity to legally register? What is the duration of time that triggers this event?

   - Starting a study abroad program in your country (taking U.S. students for summer or semester long programs in your country)
   - Opening a local bank account
   - Executing a contract for goods, services, or commercial lease
   - Employing local residents or retaining independent contractors

3. What is the most common form of registration used by foreign non-profit companies to conduct business in your jurisdiction? In relation to this registration, please provide details on:

   - Registration formalities (including timing and costs).
   - Management structure and any restrictions on foreign managers.
   - Directors' liability.
   - Parent company liability.
   - Reporting requirements (including filing of accounts) and cost of compliance.

4. In relation to registering business entities, what constitutes tax residency in your jurisdiction? Are non-profit entities exempted from having to pay tax in your jurisdiction? What taxes are they exempt from and what taxes (including rates) are they not exempt from (for example, corporate income tax, VAT, salary taxes and contributions, or various local taxes such as building, or vehicle taxes)?

5. Is there a "national" registration? That is, will one registration in one specific province/state allow the university to use that same registration in other parts of the country? Can more than one department within the university use the same registration in the country?

6. What other local and or national agencies (e.g., tax revenue authority, etc.) does the university need to register with prior to doing business in your country?

7. What are the requirements to obtain a corporate tax or VAT exemption for the university?

8. Can the university open a bank account, hire staff, lease office space and/or carry out program activities while the in-country registration process is ongoing?

9. Does a non-profit entity have to take additional steps to obtain a tax-exempt status? What are those steps and what is the cost for such process?