

# Demystifying the ORS Contracts Approval Process

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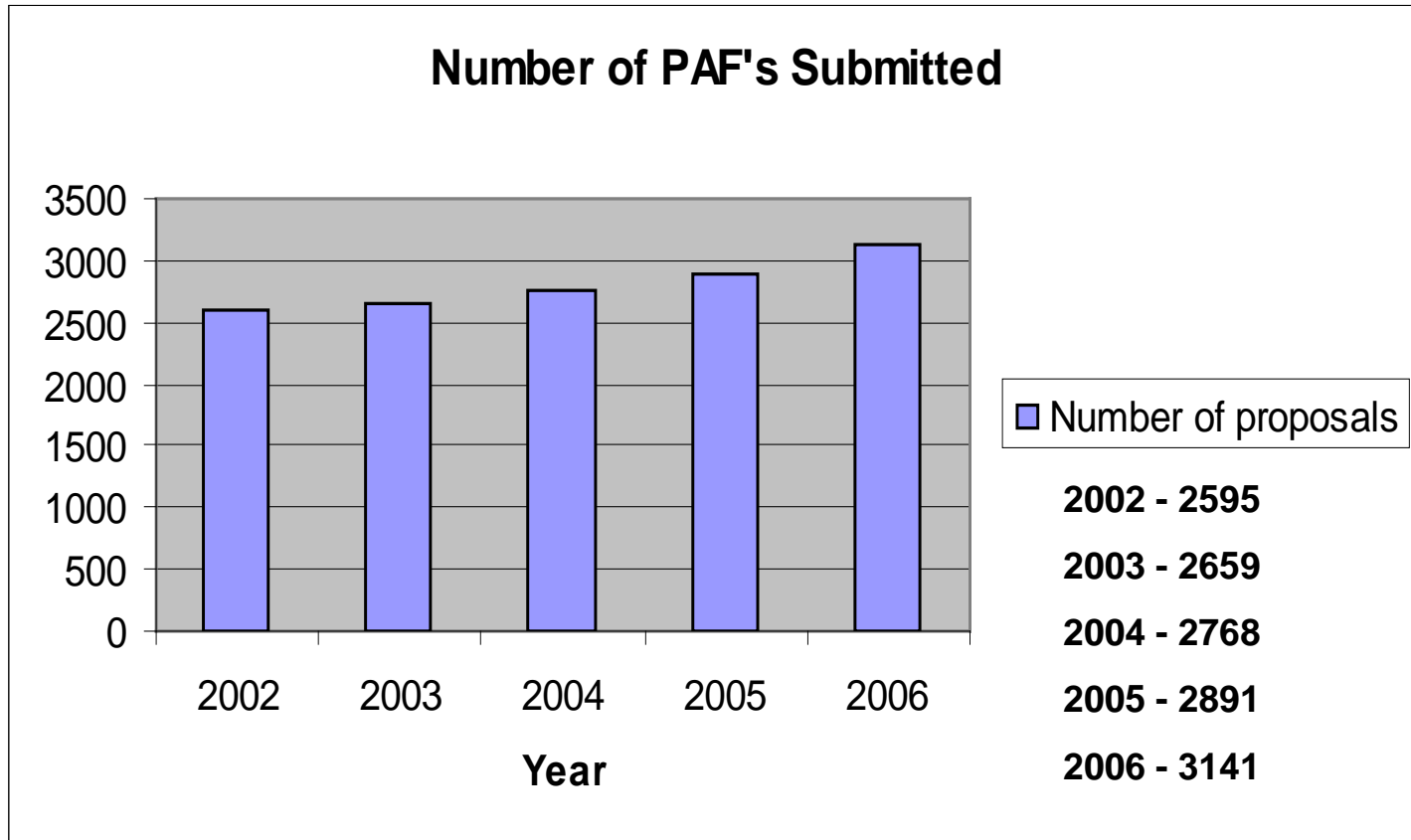
### AGENDA

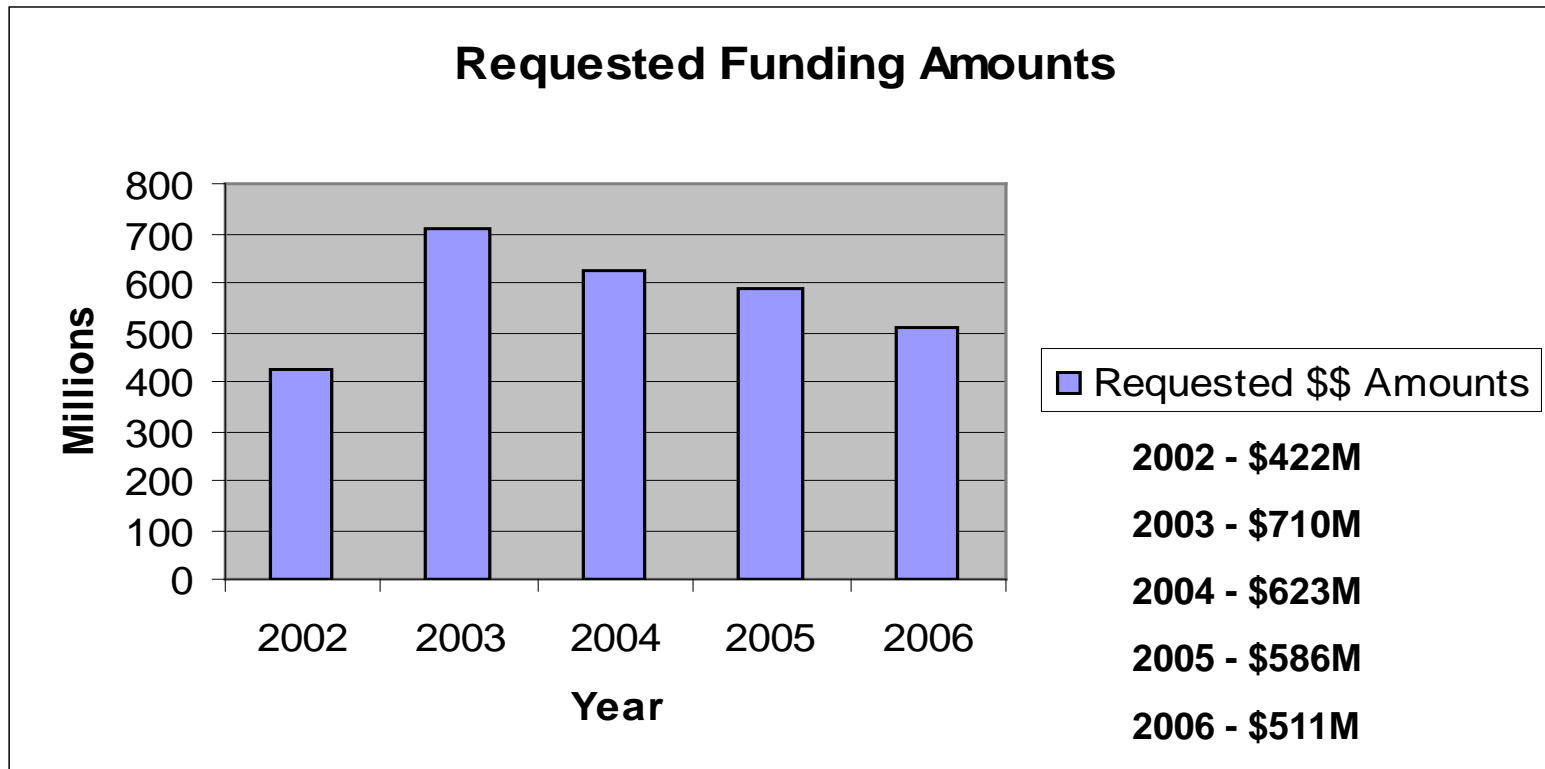
- ORS Overview
- Internal Procedures
- Problem “Promises” in Sponsored Project Activities Contracts
- Housekeeping Details
- Negotiator and Sponsor Reach Agreement
- Conclusions/Recommendations
- Contact Information

## ORS OVERVIEW

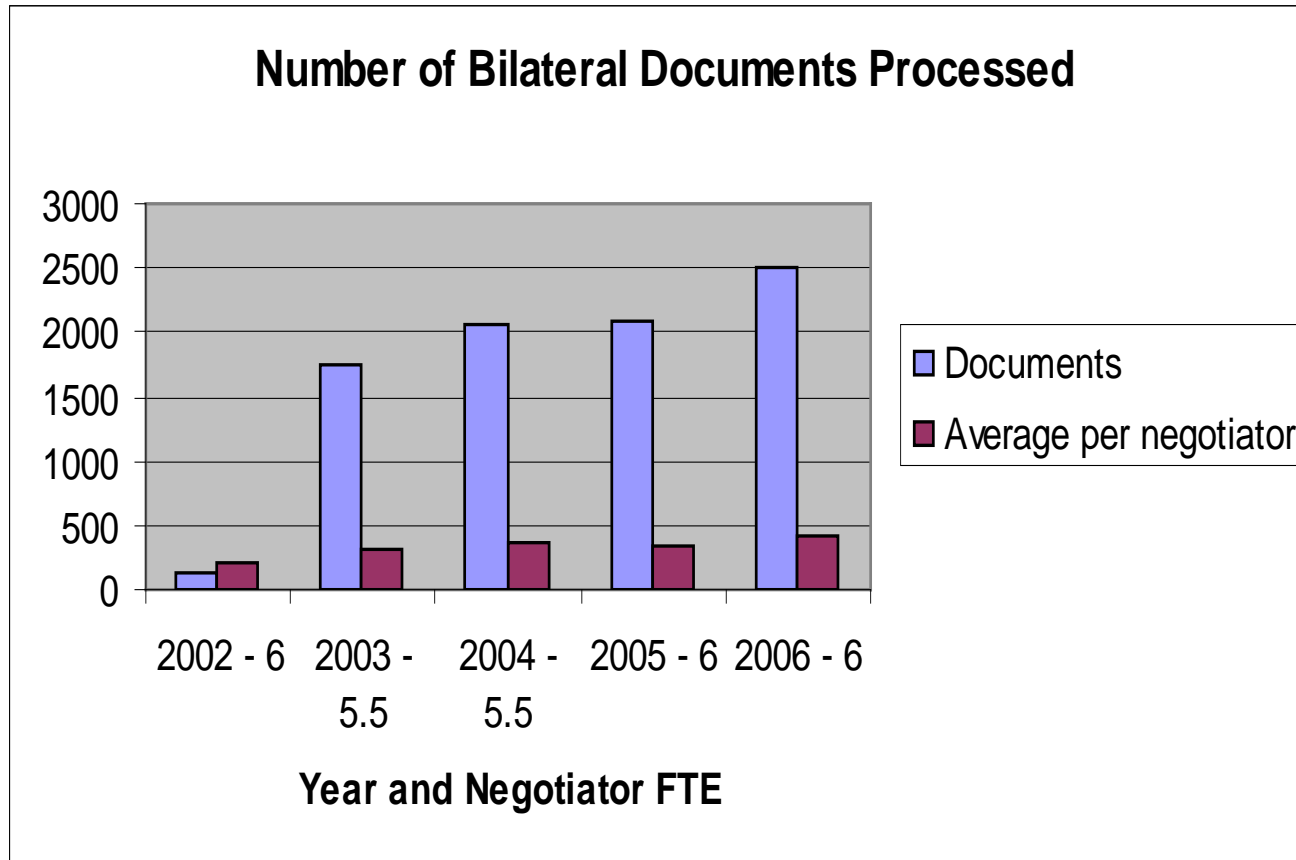
### – ORS is responsible for:

- ALL sponsored project **pre-award** and **non-financial post-award activities**, including:
  - Proposal development assistance (Reps & Certs)
  - Proposal review and endorsement
  - Proposal submission (electronic)
  - Contract negotiation and execution
  - Notice of Awards (NOA) reporting, receipt and processing
  - Sponsor guidelines interpretation
  - Compliance with sponsor and University policies
  - Develop and communicate institution-wide policies specific to sponsored programs





\* 2003 – included the National Center for Biodefense and Emerging Infectious Diseases Proposal for \$200M



**Year - # of docs/avg**

**2002 – 1320/220**

**2003 – 1751/318**

**2004 – 2057/374**

**2005 – 2075/346**

**2006 – 2500/418**

**Total Number of all documents processed in 2006 = 3500**

### What is Sponsored Project Activities (Grants and Contracts)?

#### **Sponsored Project Activities (Grants and Contracts)**

A defined activity undertaken by the University in the areas of research, teaching and service, with support provided by an external entity which expects an outcome that either directly benefits the provider or a public purpose.

### What Sponsored Project Activities **IS NOT**

- Gift
- Endowment
- Revenue-generating contract
- Purchase of services



### INTERNAL PROCEDURES for Sponsored Project Activities Contracts

#### – Remember to involve the ORS EARLY!

- As soon as conversations with a potential sponsor begin, remember to:
  - 1) Secure a Non-Disclosure Agreement (NDA)
  - 2) Provide the UIC Open Letter to identify the contractual constraints specific to UIC
  - 3) Submit a Proposal Approval Form (PAF)
  - 4) Submit an Intellectual Property (IP) and Data Rights Disclosure Form (disclose any previous agreements)

UNIVERSITY OF ILLINOIS AT CHICAGO

OFFICE OF TECHNOLOGY MANAGEMENT

## NON-DISCLOSURE AGREEMENT

This Agreement is effective \_\_\_\_\_, 2005 (“Effective Date”), between The Board of Trustees of the University of Illinois, a body corporate and politic of the State of Illinois (“University”), through its Office of Technology Management, 1737 West Polk Street, Chicago IL 60612, and \_\_\_\_\_, a \_\_\_\_\_ corporation having its offices at \_\_\_\_\_ (“Company”). University may during the period \_\_\_\_\_ [*time period in which disclosures shall take place*] disclose to Company certain Confidential Information (“Information”) for the purpose of enabling the parties to determine whether or not to enter into an agreement and/or business relationship. In consideration of the above, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. “Confidential Information” means any information embodied in written, graphical, digital, oral, biological or other tangible form, which is identified and designated as confidential at the time of disclosure, and disclosed to Company by or on behalf of University relating to the University owned technology, \_\_\_\_\_, and including, but not limited to, inventions, invention disclosures, evaluations and assessments of inventions, patent applications and other filings, legal instruments, biological materials, processes, methods, formulae, prototypes, devices, computer software, copyrighted works, experimental data, the potential intellectual property rights therein, and all business and legal arrangements by or on behalf of University discussed with Company.

UNIVERSITY OF ILLINOIS  
AT CHICAGO

Office of Research Services (MC 672)  
Office of the Vice Chancellor for Research  
304 Administrative Office Building  
1737 West Polk Street  
Chicago, Illinois 60612-7227

**An Open Letter to our Sponsors:**

Re: *[PI, type of agreement, number]*

Thank you for selecting the University of Illinois at Chicago for your project. We have received your contract, and hope to conclude an agreement with you shortly.

UIC, like other public research universities is subject to an increasing number of state and federal regulations that are unique to higher education. As a result, most contracts provided by our sponsors require minor revisions before we can legally sign them.

For your convenience, we have attached a one-page summary of the most common differences between industry and university agreements.

To avoid unnecessary delays, we will soon send you a revised, marked up original of your contract already signed by the University. If the revised version is acceptable, please initial the changes.

## FORM – Proposal Approval (PAF)

Version 2.4

Office of Research Services (ORS)  
1737 West Polk Street (MC 672)  
304 Administrative Office Building  
Chicago, IL 60612  
Phone: 312.996.2862 Fax: 312.996.9005

<b>For Internal Use Only</b>	
Institution Number: _____	Date/Time In: ____ / ____ / 20____ Reviewer Initials: _____
Previous PAF # or Institution #: _____	Mail: ORS / PI / Electronic
<input type="checkbox"/> Full Proposal	Sponsor/UIC Contract included? <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Incomplete Proposal:	Award Enclosed? <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Full Research Plan	Department Copy via email? <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Other: _____	Electronic Submissions ONLY:
	Grants.gov Tracking #: _____
<i>Note: Full Research Proposal required before final set-up of grant/fund account</i>	
	Agency Specific Tracking #: _____

- Sponsor Program Announcement (PA)/ Request for Proposal (RFP) # \_\_\_\_\_
- Is this application in response to a limited submission opportunity?  Yes  No  
If yes, attach copy of authorization received from Research Development Service (RDS@uic.edu).

### I. General Information - [Instructions](#) (Please be sure to type and complete all applicable information)

A. Sponsor Deadline (mm/dd/yy): \_\_\_\_\_ Date of:  Postmark  Receipt

Are you requesting ORS to mail proposal to sponsor?  No  Yes (If yes, be sure to provide the number of copies required by sponsor)

B. Electronic Submission:  Yes  No

If yes, has the proposal been electronically transmitted?  Yes  No

If yes, please specify:  Grants.gov  Fastlane  NIH eSNAP  DOD  Other: \_\_\_\_\_

### II. UIC Project Contact (*business manager, program coordinator*)

Name: \_\_\_\_\_ Mail Code: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_ Fax: \_\_\_\_\_

### III. Principal Investigator

## **CONTRACT – Disclosure of IP and Publication Rights in Research**

Version #1.0

### **Office of Research Services (ORS)**

1737 West Polk Street (MC 672)  
304 Administrative Office Building  
Chicago, IL 60612

Phone: 312.996.2862 Fax: 312.996.9005  
[www.research.uic.edu](http://www.research.uic.edu)

### **I. Introduction**

This information will expedite contract negotiations with your sponsor, protect your rights, and insure compliance with federal law and the Intellectual Property Policy. The University will not be able to sign a contract with your sponsor without your signature on this form.

**Proposal #:**

**Project Title:**

**Sponsor:**

**Publication:**

Do you want to publish or use the research results on other projects?

Yes  No

**Federal Funds:**

Are you receiving, or have you ever received, federal funds for related research?

Yes  No

**Data:**

Are you willing to relinquish ownership of all data resulting from

Go to

**[http://tigger.uic.edu/depts/ovcr/research/  
proposals/forms/](http://tigger.uic.edu/depts/ovcr/research/proposals/forms/)**

to find these forms

### FIRST: What is a CONTRACT?

- Promises made between two parties that are enforceable by the law – reciprocal promises
  - Law provides remedies if a promise is breached
  - Law recognizes the performance of a promise as a duty
  - Arises when a duty does or may come into existence because of a promise made by one of the parties

## Definition of a CONTRACT

- Promises made between two parties that are enforceable by the law – reciprocal promises
  - To be legally binding as a contract:
    - Promise must be exchanged for adequate consideration
    - Adequate consideration is a benefit or detriment which a party receives which reasonably and fairly induces them to make the promise/contract
    - For example, promises that are purely gifts are not considered enforceable because the personal satisfaction the grantor of the promise may receive from the act of giving is normally not considered adequate consideration.



Completed Internal Procedures  
and ORS obtains a Contract  
(either with a PAF or at a later date)

**What happens next?**

### ORS Identifies Award Document as a Contract PROCESS:

- 1) Submitted with a PAF – Contract is separated and immediately forwarded to ORS Staff for assignment
- 2) Contracts are assigned by College/Units
  - Six negotiators for 15 Colleges
  - Two negotiators for Clinical Trials and MTA's

### ORS Identifies Award Document as a Contract PROCESS:

#### 3) Negotiators triage the documents:

- No-cost Extensions (NCE) – 24 hours
- UIC/FDP/UBMTA – 24 hours
- All other documents – First In / First Out

#### 4) Negotiators begin the Review Process

**The charge of ORS is to protect the  
University and the Principal  
Investigator (PI)  
and  
to execute the agreement as  
expeditiously as possible.**

### Perfect Situation

- ORS can accept all terms and conditions/promises as written
- Forward to Grants and Contracts (G&C) for Board of Trustees (BOT) signatures
- IF already signed by the Sponsor, securing BOT signatures makes this a **FULLY EXECUTED** document
- Original document sent to Sponsor and to BOT
- Copies sent to PI and Business Manager
- Copy retained in ORS
- G&C establishes a Banner Account

WHAT if ORS cannot accept terms  
and conditions as written?

**The NEGOTIATION BEGINS!**

What are the most common  
problematic promises?

### Problem Promises in Sponsored Contracts

#### FIRST LOOK TO GUIDELINES:

- Negotiation and agreement to terms and conditions are based on the General Rules of the University
- Illinois State Law as codified in Illinois Compiled Statutes
- Principal Investigator intent/desires

“Promises” (terms and conditions) which impact the timeliness in accepting a contract include:

- Governing Law
- Indemnification by University
- Copyrights, Work Product, Data
- Publication
- Confidential Information
- Invention/Discoveries
- Liability of parties



“Promises” (terms and conditions) which impact the timeliness in accepting a contract include:

- Payment Terms
- Period of Performance
- Royalties
- Arbitration
- Early Termination Protection
- Warranties
- Federal Funds Involvement

### Governing Law

Claims against the University must be brought in the Illinois Court of Claims so we cannot agree to be bound by another state's laws

**However, it is acceptable to make the contract silent on choice of law**

\* Advantage to hear case in Illinois courts (same with other universities)

### Indemnification by the University

- Illinois law does not permit the University to indemnify or hold harmless another party
  - University is:
    - Supported by appropriations from the State of Illinois Treasury
    - Prohibited by the Illinois Constitution from using public funds for other than public purposes (I.e. paying debts and liabilities of a private sponsor)

### Copyrights, Work Product and Data

- University faculty and students need the right to independently publish and use data and other work product for educational purposes
  - This right:
    - Can be provided under license
    - Can be limited by a Sponsor's right of review
    - Can be waived with permission of the faculty member when publication is not likely or appropriate

### Publication

- Conflict between Right to review versus Right to approve
  - Joint publication/authorship
    - May have miscommunication or be misconstrued
    - Qualify as to meet ICMJE (International Council of Medical Journal Editors) position that authorship follows copyright law
    - Substantial contributions important intellectual content

### Confidential Information

- University of Illinois is a public educational institution founded on conventional academic freedoms and a mission of serving the public through:
  - Publications
  - Dissemination of information
  - Teaching
  - Research
- Must limit to PI and/or qualify the information that will be considered “confidential” and include exceptions to protect the PI and the University

### Inventions/Discoveries

- Are the property of the University, to be used for the benefit of the University and the public
  - Sponsor may receive preferential consideration in the disposition of the invention or discovery
  - University can rarely assign or exclusively license intellectual property in advance of its creation
  - These complications results in the University preferring to grant exclusive options for licenses on terms customary to the industry in question

### Inventions/Discoveries

- University intellectual property rights are governed by the Bayh-Dole Act and University policy (federal funds)
  - If intellectual property has any federal funding, the US has non-exclusive rights by law
  - Right of First Refusal (before we grant to 3<sup>rd</sup> party)
    - UIC could negotiate the license with a 3<sup>rd</sup> party and Sponsor could step in and take it on the same terms
    - No 3<sup>rd</sup> party would be interested in a license if they know another company holds the Right of First Refusal



### Liability of Parties

- Seeks protection of the PI's and the University with Indemnification terms

### Payment Terms

- Establish time, place and method of payment  
Contract is fixed price and the budget is cost reimbursable

### Period of Performance

- Ensures payment for all allowable costs incurred

### Royalties

- University non-profit status is jeopardized if we agree to fix royalty rates in advance
  - We can grant exclusive options to license on terms reasonable in the industry, including a good faith negotiation of fair royalties

Only OTM can negotiate royalties.

### Arbitration

- University cannot agree to binding arbitration except as to patent and copyright matters and international agreements
- Can agree to mediation and other non-binding dispute resolution processes
- Bound by Illinois law only

### Early Termination Protection

- Include all non-cancelable commitment made prior to receipt of notice of termination. Project contract employees?

### Warranties

- University cannot give warranties. Alternative promises are acceptable, such as to promise, represent, or agree

### Housekeeping Details

- PI cannot be identified as party to the agreement and cannot sign the agreement
- Legal entity is “The Board of Trustees of the University of Illinois”
- Official address is Urbana, but can use the OBFS address (Marshfield)
- CFDA number is required if there is federal flow-through involved

### Housekeeping Details

- Scope of Work – Identify what is to be delivered
  - Sponsored project activity
    - Creative?
    - Unique?
    - Enhances overall goal?
  - If no to these questions above, could be purely Purchase of Services
- UIC will never agree to pay other parties' "attorneys fees"
- Injunctive Relief
- Notice for UIC (Luis R. Vargas)

### Negotiator and Sponsor Reach Agreement

- In accordance with University General Rules
  - IF contract changes have not been previously approved – must obtain OUC (Office of University Counsel) signature approval
- ORS Legal Coordinator facilitates this approval process
- BOT signatures
- Either have a fully executed agreement or re-send to sponsor for counter initials/signatures

### Negotiator and Sponsor Reach Agreement

#### – Distribute documents

- Original signatures:
  - Sponsor
  - Board of Trustees
- Copies:
  - ORS scanned and uploaded to UIeRA
  - PI and Business Manager (electronic transmission)

**FEAT ACCOMPLISHED!!**



**Now on to the other 2499  
bilateral agreements....**

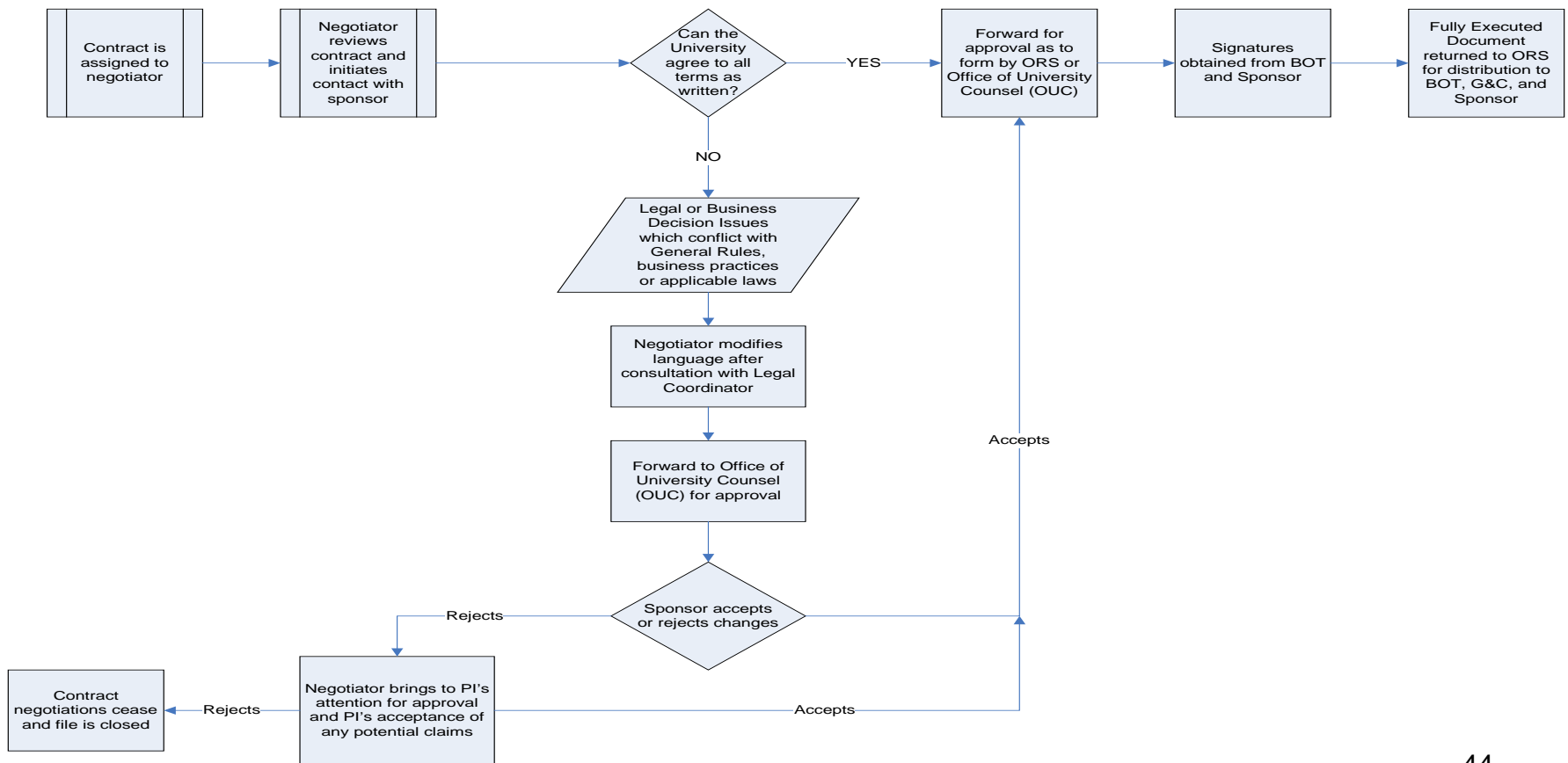
### Standard Operating Procedures

### Communication is KEY!!!

- Apprise Principal Investigator and Business Managers of ALL ACTIONS (Legal Coordinator, Office of University Counsel, Sponsor/Subcontractor)
- Better to communicate problems candidly and immediately

- **Conclusions/Recommendations**
  - Protect PI (NDA)
  - Involve ORS (PAF – Open Letter) –  
LET US HELP YOU!
  - Check UleRA for status (or contact us)
  - Call ORS with any questions
  - Offer suggestions on ORS website
  - We wish UIC faculty every success – Ask us any questions!

## Bilateral Document Process



- **Contact Information**

Office of Research Services

304 AOB (Administrative Office Building)

1737 West Polk Street

Chicago, IL 60612

Phone: 312-996-2862

Fax: 312-996-9005

Email: [awards@uic.edu](mailto:awards@uic.edu)

Website: [www.research.uic.edu](http://www.research.uic.edu)