

MoU USA – Norway

Contract issues

General issues to be aware regarding cooperative projects, Norwegian experiences

1. Finding partners who are interested in doing complementary research may be a challenge and take time (this should be easier with the “matchmaking” webpage)
2. Once a potential partner has been identified and there is agreement to cooperate, the following must be kept in mind:
 - a. Finding financial support mechanisms within own home-country may take time, particularly as funding opportunity announcement (FOAs) will have different timing
 - b. Need to demonstrate the usefulness of cooperation. Both sides should be present during preliminary meetings with national funding agencies.
 - c. A difference between the countries is that demo projects in Norway have no or very flexible deadlines, whereas in the US response to specific calls seems to be the case. NOTE: National laboratories may be an exception.
 - d. Since both sides (US and Norway) rely on co-fund from the other side, a hen-egg situation might come up that might delay the process. Contracts or agreements between organizations will require that both sides obtain their funds from national funding agencies.
 - e. Ready-made contracts, or forms, would be helpful to get these agreements in place. Such agreements need to state the amount of funds given to the different partners. Openness is required, in particular on the budget side (probably not a problem, but should be mentioned).
3. Writing proposals on the US side takes a lot of time and also the follow-up of projects requires time on administration. This should not be forgotten when entering into US-Norway projects, regardless of how they are funded.
4. The process of signing the contract may take a long time, particularly regarding requirements from the US side on underlying documentation.
5. In Norwegian-funded projects with US in-kind contribution consisting of a DOE-funded project in the US there may be challenges.

Contract specific issues, Norwegian experiences.

- Contracts:
 - When money will be transferred from USA to Norway, Norwegian instates/companies will have to fill in W-8BEN forms or W-8EXP form (all searchable with google...). Difficult to know when to use either.
- Contract differences:
 - Be aware that contract wise USA and Norway may be two different worlds
 - Most Norwegian research institutes and Norwegian companies, can not go into contracts that require other laws than Norwegian and arbitration in Norway (or Brussels)
 - Important to involve Norwegian lawyers from the very beginning
 - Contracts should be between equal partners – avoid standard sub-contractor agreements
 - Avoid involvement in R&D partner’s contract with national funding agency

- Acquire knowledge on the playing field in the other country – liability is often unlimited in USA
- Intellectual property Rights (IPR)
 - Issues have been resolved without significant problems but must be aware potential challenges.
 - Parties funded partly or fully by external sources must be aware that the funder may have owner rights to the product. A research partner cooperating with an industrial partner in the other nation may need to pay particular attention.
 - Open dialogue and clarification of issues from the start are important
 - Patent issues need clear definitions of what is brought into project by partners
 - Building trust from day 1 also important
 - Agreement and clause in contract on publication and communication on project, and in particular project results, is needed
- Budgeting:
 - Norwegians need to know quite a bit on how
 - overhead rates are calculated
 - to make budgets with respect to base salary, calculations of months of salary, requested salary, fringe benefits, funds requested, applications of indirect cost rate to compute the indirect costs (in this case overhead).
- Financial:
 - Important to be aware that contracts between US and Norwegian institutes/companies may require
 - that the contract is in US\$
 - a fixed exchange rate US\$/NOK and that the Norwegian partner will generally have to take the risk of fluctuating rates
 - Important to be aware of liquidity and credit rating issues, assets and liability
 - Rules for payment – tied to milestones
 - Rules for payment in case of early termination
- Invoicing:
 - Agreement on invoicing frequency, frequent invoicing may be important
 - Precise invoicing with explaining what was delivered, broken down by person and hours (may be a challenge for universities).
- Deliverables
 - Clear definitions
 - Clear plan and time line
 - Must be approved for payment and/or continuation to next stage
- Governance
 - Parties to have equal number of votes in steering committee
 - Rules for decisions in cases of equal votes
- Travels and meetings
 - Important to meet physically, particularly in early (negotiation) phases and if un-acquainted with each other up front
 - Meeting and travel costs must be in budget from day 1
 - Justification of physical meeting should be made clear in project proposal
 - Develop a meeting schedule (try to put meetings back-to-back with other events)