

Contract Review

Tools & Tips for Comprehensive Fiscal Sponsors

From the Impact Commons Toolkit



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Today's Goals

- >> **Definition of a Contract**
- >> **Field Trends**
- >> **Equitable Contracting Fundamentals**
- >> **Overview of Contract Review Considerations**

What is a Contract?



What is a Contract?

Valid and legally enforceable contracts require the following elements:

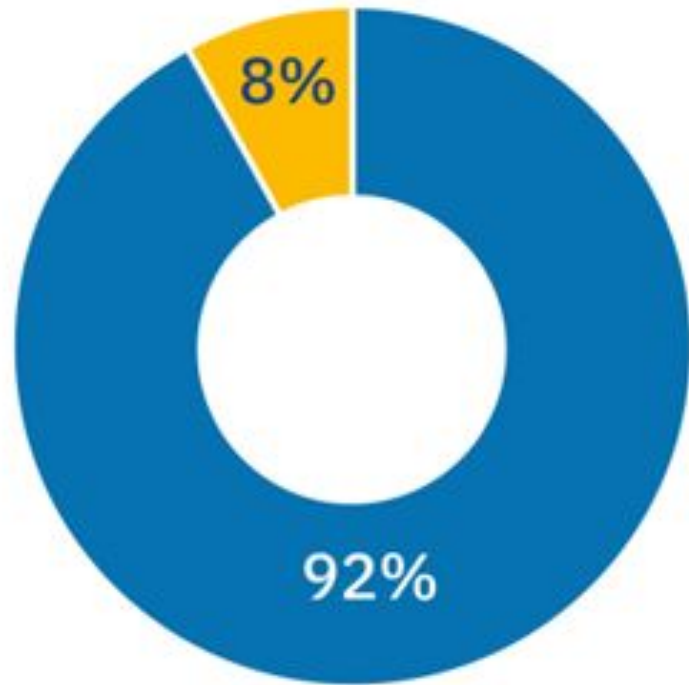
- Mutual assent expressed by a valid offer and acceptance - the parties, by their own free will, agree to be bound by the terms of the contract;
- Adequate consideration - one party promises to do something or refrain from doing something in exchange for something else;
- Capacity - parties are of legal age and of sound mind to enter into the contract; and
- Legality - the purposes for which the parties are entering into the agreement are legal.

Types of Contracts

- Fiscal sponsorship agreement/MOUs
- Subcontract
- Fee for service contract
- Grant awards (usually)
- Asset transfer agreements
- Co-employment
- Nondisclosure agreements
- Utility/vendor agreements
- Loan Agreement
- Volunteer waivers
- Employment agreements
- Severance agreements
- Leases
- Purchase & Sale
- IP license
- Teaming agreement
- Binding term sheets
- End user license agreement
- Many more!

Field Scan Findings

Most fiscal sponsors (92% of respondents) use a form of Fiscal Sponsorship Agreement (FSA) with all of their projects, with only 8% using FSAs some of the time. This is roughly in keeping with 2006 Field Scan responses that 90% (n=111) of sponsors used FSAs with all of their projects.

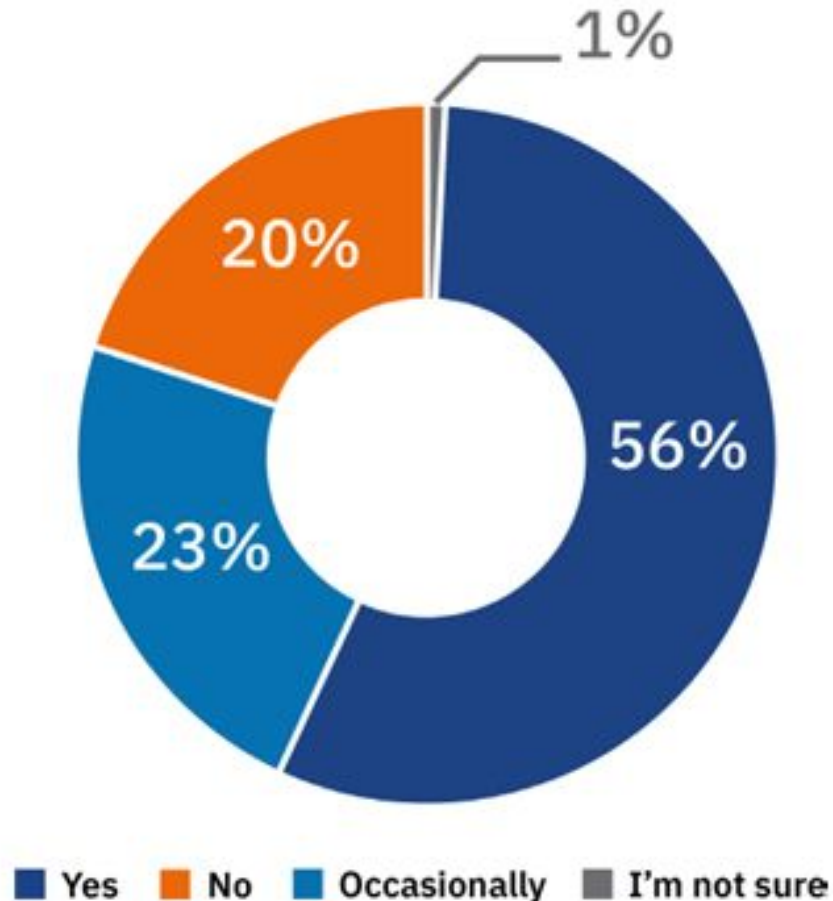


(a) Do you use a standard Fiscal Sponsorship Agreement (FSA) or MOU form for your sponsored projects? n=86

- We use a standard FSA for all of our projects
- We use a standard FSA for some of our projects

Field Scan Findings

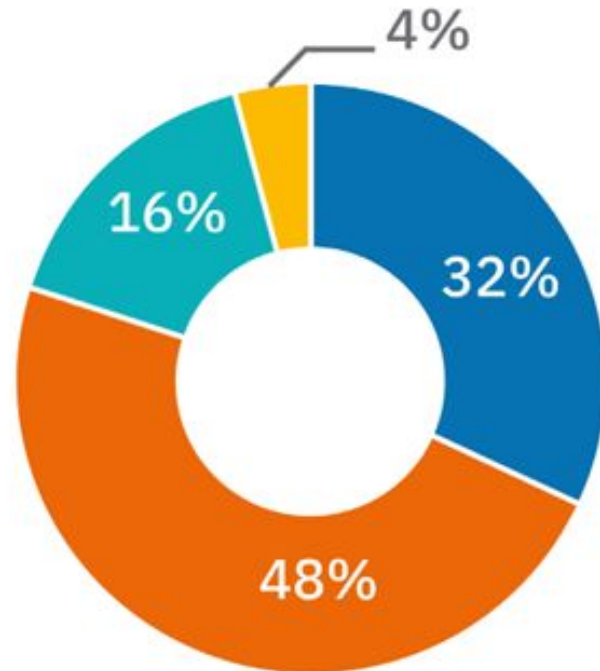
Likewise, most fiscal sponsors responding (56%) provide other standard contract templates to their projects (e.g., Independent Contractor Agreement, Nondisclosure Agreement, Licensing Agreement, etc.).



(b) Do you provide other standard contract templates to your projects (e.g., Independent Contractor Agreement, Nondisclosure Agreement, Licensing Agreement, etc.)?
n=86

Field Scan Findings

The largest number of responding fiscal sponsors (48%) reported that the process of ensuring compliance with contracts related to their fiscal sponsorship work was distributed among several staff members, with 32% others confirmed that they have dedicated staff to manage contract compliance.



(c) How do you maintain contract compliance? n=86

- We have dedicated grants/contracts compliance staff person(s)
- Oversight for contract compliance is distributed among several staff members
- We do not have any dedicated contract compliance staff or systems
- We outsource this function to consultant resources

Principles of Equitable Contracting

1. Table setting
2. Well organized
3. Use definitions
4. Fair terms
5. Gender neutral
6. Plain language
7. Risk appropriate complexity
8. Clarity on amending and termination
9. Practical compliance
10. Values aligned subcontracting

Contract Review - General Considerations

- ❑ Accuracy of names of parties/signatories & background information
- ❑ Understanding of all terms
- ❑ Sufficient Description of work
- ❑ Capacity to perform on reasonable timeline
- ❑ Intellectual property rights
- ❑ Confidentiality
- ❑ Indemnification/liability
- ❑ Dispute resolution
- ❑ Governing law
- ❑ Termination/amendments

Contract Review - Financial Considerations

- ❑ Funds available
- ❑ Permissible expenditures per funding sources
- ❑ Conformance with procurement policy
- ❑ Monetary exchange is clear and reasonable
- ❑ Invoicing language clear and reasonable

Contract Review - Compliance Considerations

- ❑ For expense agreements with individuals/sole member LLCs - independent contractor determination
- ❑ Conflicts of Interest
- ❑ Context-specific compliance e.g. lobbying, work with youth, IRB, fundraising
- ❑ Insurance requirements
- ❑ Record retention
- ❑ Survival clauses
- ❑ Upper-tier funder compliance
 - ❑ Government (Uniform Guidance)
 - ❑ Competitive bidding
 - ❑ Pass through terms
 - ❑ Audit

Beyond standard review

The role of the Fiscal Sponsor in reviewing contacts for its Projects can (and should!) go beyond simply confirming acceptance to the contract terms and include:

- Clear workflows and use of contract management system to aid administration and provide transparency to projects
- Use of templates designed with equitable principles in mind
- Educating Projects on the importance of contacts and the implications of particular terms (e.g. IP, payment timing).
- Supporting the Projects in negotiating language that will best position them to accomplish their objectives and protect them.
- Know when to use an attorney!



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