NCURATV 2007 Satellite Broadcast Workshop Series
Sub-awards: A Survivor's Guide of Key Concepts and Principles
September 11, 2007
11:30 am – 3:30 pm EST

Moderator
David J. Mayo, Associate Director of Sponsored Research, California Institute of Technology

Panelists
Nancy Dancau, Associate Director of Research Administration Training and Institutional Liaison, Office of the Senior Vice Provost for Research, New York University
Steve Erickson, Director, Office for Research Compliance and Intellectual Property Management, Boston College;
Ruth Farrell, Associate Vice President for Research Administration, University of Vermont

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<th>Time EST</th>
<th>Segment Time</th>
<th>Main Topic</th>
<th>Key Issues</th>
<th>Supplemental Information</th>
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<td>11:30</td>
<td>00:05</td>
<td>Welcome</td>
<td>Kathleen Larmett</td>
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<td>11:35</td>
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<td>Introduction</td>
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<td>11:45</td>
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<td>What are subawards all about?</td>
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<td>• Third party agreements</td>
<td>FDP Statement on Subawards <a href="http://thefdp.org/SA_FDPState-Sep2000.pdf">http://thefdp.org/SA_FDPState-Sep2000.pdf</a></td>
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<td>• Federal awards: financial assistance, not procurement</td>
<td>Circular A-110, Subpart A.2 (ff) <a href="http://www.whitehouse.gov/omb/circulars/a110/a110.html">http://www.whitehouse.gov/omb/circulars/a110/a110.html</a></td>
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<td>• Terminology: subawards vs. subcontract vs. subagreement, etc.</td>
<td>Circular A-133, Subpart B, 210 <a href="http://www.whitehouse.gov/omb/circulars/a133/a133.html">http://www.whitehouse.gov/omb/circulars/a133/a133.html</a></td>
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<td>• Collaboration between researchers/institutions</td>
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<td>• Substantive Programmatic effort not vendor agreement (examples of grey areas in making this distinction)</td>
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<td>• Agencies encouraging collaborative projects to: stretch funding; reduce transactions; simplify management (for them).</td>
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<td>12:05</td>
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<td>How do subawards happen (pre-award)?</td>
<td>NIH Roadmap, Research Terms of the Future <a href="http://nihroadmap.nih.gov/researchteams/index.asp">http://nihroadmap.nih.gov/researchteams/index.asp</a></td>
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<td>- Part of initial proposal</td>
<td>Sponsored Research Administration: A Guide to Effective Strategies and Recommended Practices</td>
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<td>- Subaward proposal elements based upon requirements of prime awardee;</td>
<td>Chapter 3705.4, Subawards <a href="http://www.aiseducation.com/ira_subawards.pdf">http://www.aiseducation.com/ira_subawards.pdf</a></td>
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<td>- Subawardee authorized rep sign-off.</td>
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<td>- Revised budgets</td>
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<td>12:25</td>
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<td>How do I know what terms to flow down?</td>
<td>Flow-Down Matrix: Cost Principles, Administrative and Audit Requirements</td>
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<td>- Prime award constructs sub around requirements of prime;</td>
<td><a href="http://www.ncura.edu/content/docs/SubawardApplicableRegs.ppt">http://www.ncura.edu/content/docs/SubawardApplicableRegs.ppt</a></td>
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<td>- Flow-down terms</td>
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<td>- Required clauses</td>
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<td>- Useful clauses</td>
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<td>- Custom clauses (include PI with SOW, budget, and deliverables)</td>
<td>NIH Flow-Down Matrix, Exhibit 2, Public Policy Requirements and Objectives</td>
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<td>Federal Demonstration Partnership Subaward Task Force Web site</td>
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<td>What if I have to negotiate my subaward?</td>
<td>Writing and Negotiating Subawards Under Federal Prime Award – NCURA Micrograph</td>
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<td>- Win-win</td>
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<td>1:35</td>
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<td>Welcome Back</td>
<td>Kathleen Larmett</td>
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<td>1:40</td>
<td>00:15</td>
<td>What are my responsibilities once a subaward is in place?</td>
<td>OMB Circular A-133, Subrecipient Monitoring</td>
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<td>- As sub, manage like any federal award – according to terms of subaward.</td>
<td><a href="http://www.whitehouse.gov/omb/fedreg/rev_a133.html#d">http://www.whitehouse.gov/omb/fedreg/rev_a133.html#d</a></td>
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<td>What are the general federal regulations that apply to subawards?</td>
<td>- Cost Principles</td>
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<td>- Administrative Requirements</td>
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<td>OMB Circular A-21, Section 37</td>
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<td>2:10</td>
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<td>Are there any helpful tools</td>
<td>- FDP Subaward templates</td>
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<td>- OMB letter</td>
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<td>FDP Subawards Project Site</td>
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<td>2:20</td>
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<td>Is there anything in particular I should watch out for?</td>
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<td>- Cost-Sharing</td>
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<td>- Prime terms incorporated by reference</td>
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<td>- Remember reps and Certs</td>
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<td>- Subawardee has findings relevant to subaward.</td>
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<td>- Certain agencies restrict various aspects of subawards: foreign subawardees (NASA), fee for for-profits (DOD), indirect costs of foreign subs (NSF and NIH)</td>
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<td>2:40</td>
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<td>Welcome Back</td>
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<td>2:50</td>
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<td>Kathleen Larmett</td>
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<td>2:55</td>
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<td>Can my subaward be audited?</td>
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<td>- A-133/agency-specific; reach through in both directions</td>
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<td>- Relationship to written institutional policy</td>
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<td>- Institutions with findings</td>
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For more information, check the following resources:
- FDP Subaward Templates Site [http://www.thefd.org/Subawards_Forms.html](http://www.thefd.org/Subawards_Forms.html)
- OMB/OSTP letter endorsing FDP templates as appropriate for general use under Assistance Awards [http://www.thefd.org/Model_Agreement.pdf](http://www.thefd.org/Model_Agreement.pdf)
- OMB Circular A-133, Subpart D [http://www.whitehouse.gov/omb/circulars/a133/a133.html#d](http://www.whitehouse.gov/omb/circulars/a133/a133.html#d)
- ONR’s Research Grant Terms and Conditions, Article 29 Profit or Fee [http://www.onr.navy.mil/02/docs/basicgrant_01.pdf](http://www.onr.navy.mil/02/docs/basicgrant_01.pdf)
- OMB Circular A-133, Section 210 [http://www.whitehouse.gov/omb/circulars/a133/a133.html#b](http://www.whitehouse.gov/omb/circulars/a133/a133.html#b)
- NIH Audit Reports [http://oig.hhs.gov/oas/oas/nih.html](http://oig.hhs.gov/oas/oas/nih.html)
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<tr>
<td>3:05</td>
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<td>How do subawards end?</td>
<td>- Closeout</td>
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<td>Sponsored Research Administration: A Guide to Effective Strategies and</td>
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<td>Recommended Practices, Chapter 3705.8 Subawards</td>
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|       |          |                             | [http://www.aiseducation.com/ira
g_subawards.pdf](http://www.aiseducation.com/ira
g_subawards.pdf) |
| 3:15  | 00:10    | Summary and Conclusions     |                                                                         |
| 3:25  | 00:05    | Broadcast wrap up           | Kathleen Larmett                                                        |
| 3:30  |          |                             |                                                                         |
FDP STATEMENT ON SUBAWARDS

Subawards Task Force
Federal Demonstration Partnership
Revised September 18, 2000

This is the understanding of the Federal Demonstration Partnership in regard to the issuance of subawards under OMB Circular A-110.

THE DEFINITION AND CHARACTER OF A SUBAWARD

A subaward is defined as follows by A-110:

"Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award\(^1\) by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of 'award'." (A.2(f)) [See Exclusion 1, below].

Subawards may be called subcontracts, subagreements, purchase orders, subgrants, etc., and they may also have the appearance of procurement agreements in format and language, but they nonetheless remain forms of "financial assistance" and do not constitute what A-110 describes as a "procurement action." Thus their issuance is not subject to the procurement standards specified in Sections 40-48 of A-110.

Typical subaward situations include arrangements in which two (or more) qualifying legal entities/institutions are working collaboratively on a sponsored project. Each institution has its own principal investigator/project director; however, one of the collaborating institutions takes on the role of prime awardee with the sponsoring federal agency.

The language of OMB Circular A-133 regarding subawardees (which A-133 calls "subrecipients") gives further support to the concept that the above example constitutes a subaward situation. The relevant provisions (\(\_\_210(b)(2-5)\)), describe a subrecipient as one that:

- "Has its performance measured against whether the objectives of the Federal program are met." [A collaborating institution is responsible for meeting its scope of work.]

\(^1\) As defined in OMB A-110 Subpart A2(e), an award includes "grants and other agreements."
"Has responsibility for programmatic decision making." [The PI at the collaborating institution is responsible for directing his/her segment.]

"Has responsibility for adherence to applicable Federal program compliance requirements." [The collaborating institution is responsible for compliance with A-21, A-110, and A-133 requirements, or those circulars applicable to not-for-profit entities.]

"Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity." [A collaborating institution is conducting its own scope of work and is not providing goods or services, such as simply executing lab tests or constructing experimental instrumentation. In a subaward situation, the principal investigator/project director of the subrecipient may be a co-author on publications or the subrecipient may seek patent protection for inventions and otherwise function in much the same manner as if the award came directly from a federal sponsor.]

Exclusions:

1. A subaward does not include:

"...technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations." (A-110 Subpart A.2(e), definition of "award.").

2. A subaward does not include the provision of goods and services. A-133 makes clear the kind of entity that provides goods and services (.210(c)):

   (1) Provides the goods and services within normal business operations;
   (2) Provides similar goods or services to many different purchasers;
   (3) Operates in a competitive environment;
   (4) Provides goods or services that are ancillary to the operation of the Federal program; and
   (5) Is not subject to compliance requirements of the Federal program.

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2 As August 25, 2000 letter from Joseph L. Kall, Deputy Controller of the Office of Management and Budget, to Charles R. Paoletti of the Office of Naval Research points out: "While the definition of subawards provided... is consistent with the provisions of Circular A-110, it is inconsistent as it relates to audit requirements in accordance with OMB Circular A-133... Specifically, Circular A-110 defines subawards to exclude 'other assistance in the form of loans, loan guarantees, interest subsidies, or insurance' because they are pass-thru money. Circular A-133 audit requirements, however, extend to these four items." This footnote is inserted to make that clarification. It should be noted that in terms of issuing subawards, institutions must comply with the A-110 definition and subsequent requirements, while in terms of audits the A-133 definition must be followed.
3. A subaward may not be issued at any level where the higher-tier agreement is a contract. "Contract" in this context is as defined in A-110:

"Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract." (A.2(h))

DOCUMENTATION AND MONITORING REQUIREMENTS

Whether an institution issues an agreement as a subaward or as a procurement contract, the arrangement must be made in the form of a legally binding agreement. This agreement may be bilateral or unilateral, but must contain all the clauses or other provisions and requirements appropriate to either a subaward or a procurement contract.

The level of documentation concerning the issuance and performance of a procurement contract should be consistent with the procurement standards requirements of OMB Circular A-110.

Absent specific additional award requirements, the level of documentation concerning issuance of subawards, should be consistent with good management practices. These good practices normally include obtaining the following information from the subawardee at the time of proposal or award:

- A scope of work to be completed by the subawardee.
- A budget that meets the requirements of the federal sponsor and the awarding institution.
- An institutional signature indicating commitment to perform the scope of work proposed, assuring the accuracy and reasonableness of the budget, and agreeing to enter into a subaward if the proposal is funded.
- All required representations, certifications, and assurances (e.g., human subjects assurance).

The awarding institution is responsible for providing an appropriate level of its review of the subawardee's scope of work and budget. The normal proposal review process of the institution fulfills this requirement.

The awarding institution is responsible for maintaining a system for monitoring the activities of subrecipients to ensure that they are complying with the terms of the subaward agreement. Responsibilities include general compliance (A-133 section 400(d)(3)) and subrecipient audit compliance (A-133 section 400(d)(4)).
Subrecipient Type

- The type of subrecipient (e.g., education, for-profit, non-profit, etc.) will determine which cost-principles, administrative requirements, and audit requirements will apply to the subaward. For example:

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<th>Higher Ed</th>
<th>Other Non-Profit</th>
<th>For-Profit</th>
<th>State Government</th>
<th>Hospital</th>
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<tr>
<td>Cost Principles</td>
<td>A-21</td>
<td>A-122</td>
<td>FAR</td>
<td>A-87</td>
<td>45 CFR 74, Appendix E</td>
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<td>Administrative</td>
<td>A-110</td>
<td>A-110</td>
<td>FAR</td>
<td>A-102</td>
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<td>Requirements</td>
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<td>Audit Requirements</td>
<td>A-133</td>
<td>A-133</td>
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- Educational institutions are usually self-evident by their name. However, it is sometimes difficult to determine for- or non-profit status by name alone. For example, some non-profits utilize the word “corporation” in their name. If unsure, always ask the proposed subrecipient to identify their tax-status.

- The type of subrecipient may also influence whether or not a cost-reimbursement or fixed-price subward is used.
Cost-Reimbursement or Fixed-Price

- Cost-Reimbursement
  - Generally for non-commercial items which cannot be based on reasonably definite functional or detailed specifications (i.e., R&D).
  - Subrecipient works until funds are exhausted – no requirement to complete SOW. There is no incentive for subrecipient to control costs, thus administrative controls are greater (e.g., audit and prior approval).
  - Payment is usually tied to expenditures
  - If subaward ends prior to full expenditure of estimated subaward cost, unexpended funds must be returned.
  - If prime is cost-reimbursement, generally use this type for subawards, unless greater control over subrecipient is desired.
  - Although not prohibited, it is inadvisable to issue a cost-reimbursement subaward under a fixed-price prime – it can place a great financial burden on the prime recipient. For example, if the prime recipient is receiving scheduled payments under a fixed-price award, but is required to reimburse the subrecipient based on expenditures incurred, its very possible that the prime recipient could be required to pay out to the subrecipient more funds than have been made available by the federal sponsor.

- Fixed-Price
  - Generally for procurement of commercial supplies or services on the basis of reasonably definite functional or detailed specifications.
  - Subrecipient must complete all deliverables within subaward price - imposes maximum incentive to control costs, but with minimum administrative burden.
  - Payment is usually tied to acceptable deliverables.
  - If subrecipient meets all subaward requirements below subaward price, keeps unused portion.
  - Use a fixed-price subaward, under a cost-reimbursement prime, when greater control over subrecipient is needed. Examples include: a subrecipient with a poor history of performance; subrecipients without adequate financial or administrative controls; and foreign subrecipients, especially those in unstable political or financial environments.
  - Recommended for use when subrecipient does not have minimum financial and administrative controls.
SUBAWARD PROCEDURE

I. To determine if a subaward is appropriate for your project.

   A. Go to Frequently Asked Questions on the RGS website to determine the type of service required – subaward, vendor or consultant.
      http://www.udel.edu/research/preparing/faq.html#sub
   1. Subaward
      a. Performs substantive programmatic work under a grant or contract.
      b. Bears responsibility for programmatic decision making and measurable performance requirements.
      c. Must adhere to Federal compliance requirements if the source is Federal funds.
   2. Vendor (Purchase Order)
      a. The procurement of goods or services from an organization that provides goods and services to many different purchasers as part of its normal business operations within a competitive environment.
   3. Consultant
      a. Not an employee of the University.
      b. Provides proven professional or technical expertise.
      c. Is not controlled with regard to the manner of performance or result of the service.
      d. Is considered a work for hire and does not retain any rights to the end product.

II. Proposal Submission
   A. Include the following with your proposal at time of proposal submission:
      1. Letter of intent, signed by Authorized Representative (see handout for example)
      2. Statement of work
      3. Sub awardee’s budget
      4. Budget justification
      5. Sub awardee’s indirect cost rate agreement
      6. Provider Category Determination Worksheet (see handout for example)
      7. Any forms required for the Sub awardee as per the RFP or sponsor guidelines.
      8. On the Resources tab of Peoplesoft proposal input, include sub awardee information and budget. Enter the total amount of the budget and each individual amount by budget category. RGS will be providing a query in the near future where this information will assist you in monitoring the sub awardee’s invoices. Note: If sub awardee’s name does not appear in drop down list, complete the form available on the procurement website at http://www.udel.edu/procurement/forms/vendoradd.html.
III. Award Received – New Subaward Initiated
   A. RGS notifies department that the new purpose code includes a subaward and that a purchase requisition must be initiated by the department.
   B. Department initiates purchase order
      1. Use Procurement’s Purchase Requisition web form.
      3. Establish a separate file for the subaward within the main award file to aid in tracking the activity of the subaward.
   C. Contract and Grant Administrator initiates subaward documents
      1. C&G Admin forwards draft to subawardee for review and possible negotiation of terms and conditions (cc to the PI/Dept. Admin.).
      2. After subawardee’s review, documents forwarded to P.I. for review and signature.
      3. Subaward documents (2 originals) sent to subawardee for signature.
      4. Subaward documents (2 originals) returned to RGS for final signature and addition of Subaward no., if not previously provided.
      5. RGS signs and sends one fully-executed subaward agreement to subawardee. SUBAWARDEE MAY NOW BEGIN SPENDING AND SUBMITTING INVOICES FOR REIMBURSEMENT OF THEIR EXPENSES.

IV. Invoice Procedure
   A. C&G Administrator’s responsibilities:
      1. Receives and reviews invoice for accuracy to include subaward number, invoice number, period covered, current and cumulative expenses, current and cumulative cost share (if applicable) and certification by subawardee’s representative.
      2. C&G Administrator updates Peoplesoft with invoice data so that information can be queried via GMQ_SUB_INVOICE_ACTIONS.
      3. Attaches cover sheet and forwards to Departmental Administrator.
      4. If final invoice, ensures that closeout release forms have been received prior to payment.

   B. Departmental Administrator’s responsibilities:
      1. Reviews invoice for accuracy to include the pre-mentioned criteria in addition to correct project number and account category (153200/153300) from which invoice should be paid.
      2. Keeps an accounting of invoices paid against the outstanding purchase order.
      3. Forwards to P.I. for review and approval; if final invoice ensures that all work has been completed and final report has been received.
      4. Returns all paperwork to C&G Administrator.
C. Invoice Sent to Procurement
   1. C&G Administrator signs cover sheet and forwards invoice to Procurement for payment to subawardee.
   2. C&G Administrator updates Peoplesoft with invoice data so that information can be queried via GMQ_SUB_INVOICE_ACTIONS.

V. Monitoring Subawards
   A. The UD principal investigator supervises the work of the subawardee and has final approval on programmatic and financial decisions.
   B. The Departmental Administrator has responsibility for monitoring the spending against the subawardee’s originally submitted budget.
   C. If the subaward is incrementally funded for future years or granted an extension, the P.I. will be required to approve and sign a subaward amendment.

VI. Closeout of Subaward
   A. Subrecipient can incur expenses up to end date of subaward agreement.
   B. The final invoice should be clearly marked “Final”.
   C. All forms related to the closing of the subaward must be submitted to RGS by the subawardee prior to closeout and prior to payment of final invoice. These forms include:
      1. Subawardee’s Assignment of Refunds, Rebates and Credits
      2. Subawardee’s Release
      3. Final Report of Inventions and Subawards

The above described subaward procedure is used in cases where the University of Delaware has been granted an award from a prime sponsor and a portion of that award is being “subcontracted” out to another entity who will participate substantially in the project.

In those cases where the University of Delaware is the subawardee – meaning that another organization is giving us funding from a prime award that they received – the process is as follows:

1. The principal investigator should compose a Letter of Intent (see handout for example) to the awarding agency. The letter requires the signature of both the P.I. and RGS.

2. A statement of work, budget, and budget justification are submitted to RGS.

3. Peoplesoft proposal input and web form with appropriate approvals are submitted to RGS no later than 72 hours before the sponsor’s due date for the proposal.
Provider Category Determination Worksheet
Required by OMB Circular A-110

Principal Investigator:
Prime Sponsor:
Prime Award Number (if any):
Proposal Number:

Proposed Subcontractor or Vendor:

1. Why was this entity selected to perform the work?

2. Will this entity perform substantive programmatic work under the grant or contract?

Subcontractor performs substantive programmatic work under a grant or contract.

Definition of “substantive programmatic work”
1. A subcontract is an appropriate procurement mechanism when the collaboration is substantive programmatic work which is beyond mere analytical work-for-hire normally conducted by a routine service provider.
2. The collaboration is substantial enough that the collaborating individual or organization will participate in preparation of results, publication, presentation or other collaborative participation beyond routine analytical work.
3. The collaborator will maintain control of the work to be performed under the subcontract.

3. Will this entity bear responsibility for programmatic decision making and measurable performance requirements?

Subcontractor bears responsibility for programmatic decision making and measurable performance requirements.

Definition of “programmatic decision making”
Does the subrecipient have responsibility for programmatic decision making?
Example – If UD provides funds to an entity to conduct an independent research project, the agreement would be characteristic of a subaward, because the subrecipient would be responsible for designing the research and determining how to carry out that research. The subrecipient’s research areas must be consistent with the scope of work that the prime sponsor approved for UD.
4. Does the entity expect to retain intellectual property rights in the proposed work?

5. Will the entity provide goods or services to the University of Delaware that it also provides to other customers as part of its normal business operations?

Vendor (PO) - The procurement of goods or services from an organization which provides the goods and services to many different purchasers as part of its normal business operations within a competitive environment Not subject to the same compliance requirements as a subcontractor (if the source is a Federal award).

6. Is this entity owned or controlled by an employee, an affiliate of an employee or a close relation to an employee of the University of Delaware?

7. Does this entity possess a proven professional or technical competence that will be provided to the University of Delaware?

8. Is this entity considered an independent work for hire without any rights to the end product?

Consultant is considered a work for hire and does not retain any rights to the end product.

9. Were competitive bids, quotes or proposals solicited by the University of Delaware Procurement Service department?

10. Please attach itemized budget justification or copies of bids, quotes or proposals solicited by the University of Delaware Procurement Services department to reflect rationale for the price to be paid under this proposal.

Subcontracts are charged overhead on the first $25,000 budgeted. The vendor or consultants are charged overhead for all expenses related to the work. It is helpful to get this distinction in your budgets at the time of proposal so that your budget need not be revised due to a change. These changes may require approval from the sponsor.
MASSACHUSETTS INSTITUTE OF TECHNOLOGY

ADDITIONAL INFORMATION ON

SUBAWARDEE AND VENDOR RELATIONSHIPS

Subaward (subrecipient agreement, subcontract, subgrant)

“Subaward means an award of financial assistance in the form of money made under an award (i.e.: grants and other agreements) by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance (grants or cooperative agreements) and procurements (contracts) when provided by any legal agreement whether it is called a contract or a purchase order, but does not include procurement of goods and services.”

In general, subawards are used when the intent is to have another organization help carry out a portion of the scope of work described in the proposal and assigned under the subsequent award. It does not matter what the agreement is called (subcontract, subaward, subgrant, etc.), but it is directed as cooperatively working with another entity to carry out the program for which funding has been granted.

A subaward is a complex form of procurement which (1) is generally issued under a WBS element, (2) provides for the acquisition of experimental, developmental or research work, and (3) is generally issued on a cost reimbursement basis.

Subawards may be called subcontracts, subagreements, subrecipient agreements, purchase orders, subgrants, etc., and they may also have the appearance of procurement agreements in format and language. Nevertheless they remain forms of financial acquisition and do not constitute a procurement of goods and services.

Typical subaward situations include arrangements in which two or more qualifying institutions work collaboratively on a sponsored project. Each institution has its own principal investigator; however, one of the collaborating institutions functions as the prime awardee and is the legal contact with the sponsor.

Terms for subawards generally mirror the terms in the prime award to MIT. For example:

- The Subawardee has its performance measured against its portion of the scope of work of MIT’s program. [A collaborating organization is responsible for meeting its scope of work.]
- The Subawardee has responsibility for programmatic decision-making. [The PI at the collaborating organization is responsible for directing its segment.]
- The Subawardee has responsibility for adherence to applicable program compliance requirements. [As specified in the Subaward document.]
The Subawardee uses the funds to carry out a portion of the scope of work of MIT’s program as compared to providing goods or services for MIT’s program. [A collaborating organization is conducting its own scope of work and is not providing goods or services, such as simply executing lab tests or constructing experimental instrumentation.]

The Subawardee’s principal investigator/project director may be a co-author on publications or may seek patent protection for inventions.

A key distinction with respect to a subaward is that of intellectual property. Title to intellectual property created by subawardee is normally retained by the subawardee when it is a small business or another institution of higher education. This complies with requirements of the Bayh-Dole Act which controls the ownership and management of intellectual property on federally funded projects.

MIT Implementation

Object Code/General Ledger Account
500/420600: Subaward Agreement: Facilities and Administrative costs on the 1st $25,000
502/420620: Subaward Agreement: no Facilities and Administrative costs

Procurement (vendor relationship)

Vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization’s (MIT’s) own use or for the use of beneficiaries of the Federal Program.

Characteristics indicative of a payment for goods and services are when an entity:

- Provides the goods and services within normal business operations;
- Provides similar goods and services to many different purchasers;
- Operates in competitive environment;
- Provides goods and services that are ancillary to the operation of the federal program; and
- Is not subject to monitoring or reporting requirements of the prime award.

The consultant purchase order is restricted for use to obtain non-employee type services which are clearly consultative in nature. Consultant orders are issued to either a company or to an individual who is clearly a bona fide consultant (expert advisor) who pursues this line of business for him/herself. If issued to an individual who is being compensated either under a tax ID# or SS#, the individual is considered an Independent Contractor and Form 4.15A entitled “MIT Independent Contractor Information” must be completed.
Per MIT Purchasing Policies and Procedures Section 2.12:

Consultant:

(a) Under a consultant purchase order the consultant is paid for his/her time at the fixed daily (or hourly) rate of compensation specified in the purchase order.

(b) The rate of compensation proposed by the consultant may be negotiated or accepted as fixed on the basis of (i) the present market value of his/her services or of others possessing like capabilities, (ii) the present market value of the services of other individuals possessing different capabilities, but who, in their fields of specialty, hold similar positions in the scientific or business communities, (iii) the Institute's needs, or (iv) the limits imposed by sponsoring agencies under Institute contracts and grants.

(c) The purchase order may provide for payment of the cost of travel performed by the individual in connection with the performance of work under the purchase order following the Institutes Travel Policy or where applicable Government Travel Policy.

(d) Payment under a consultant purchase order is based on invoices or vouchers submitted by the consultant, generally on a monthly basis. The purchase order must require that invoices itemize the calendar days during which service was provided, and the invoices must conform. Charges for travel must be backed up with appropriate detail evidencing the actual expenses incurred.

As contrasted to the regulations in subrecipient agreements, a consultant is considered "work for hire" and therefore all intellectual property and copyrightable information is assigned to MIT.

MIT Implementation

Object Code/General Ledger Account: 437/420710 Consultant