



**Research &
Economic Development**

**Subawards, Consultants, and Contractors
&
Environmental Health & Safety**

**Monthly Research Administration Meeting
July 2022**

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Agenda

- Difference between subcontracts, consulting, and contractor agreements
- Determining when you need each type of agreement
- Discuss how to process each type of agreement
- Discuss processing invoices on subcontracts/consulting agreements
- Briefly discuss Contractor/Professional Services Process

Subrecipient and Contractor Determination

2 CFR 200.330 (a-c)

- ***Subrecipient:***

- Has performance measured against the objectives of the Federal program
- Has responsibility for making programmatic decisions
- Has responsibility for adherence to Federal program compliance requirements
- Uses Federal funds to carry out a program of the organization, not to provide goods or services for a program of the pass-through entity
- Determines who is eligible to receive Federal financial assistance

- ***Contractor:***

- Provides the goods or services within normal business operations
- Provides similar goods or services to many different purchasers
- Operates in a competitive environment
- Provides goods or services that are ancillary to the operation of the Federal program
- Is not subject to compliance requirements of the Federal program

Checklist to Determine Subrecipient or Contractor Involvement

OBJECTIVE: Generally, the determination of the relationship with an entity is verified through the institutional review of the proposal narrative, budget justification, and other related proposal documents, as well as through discussions with key personnel prior to proposal submission. When the relationship remains unclear, this form may provide assistance in making an accurate determination.

INSTRUCTIONS: Complete sections one and two of the checklist by marking all characteristics that apply to the outside entity. The section with the greatest number of marked characteristics indicates the likely type of relationship the entity will have with the University. On occasion there may be exceptions to the type of relationship indicated by the completed checklist. In these situations, the substance of the relationship should be given greater consideration than the form of agreement between the University and the outside entity. Section 3 should be used to provide documentation on the use of judgement in determining the proper relationship classification.

NAME OF OUTSIDE ENTITY: _____

SECTION 1 - SUBRECIPIENT

Description: A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- 1. Determines who is eligible to receive what Federal assistance;
- 2. Has its performance measured in relation to whether objectives of a Federal program were met;
- 3. Has responsibility for programmatic decision making;
- 4. In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

Entities that include these characteristics are responsible for adherence to applicable Federal program requirements specified in the Federal award.

SECTION 2 - CONTRACTOR

Description: A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

- 1. Provides the goods and services within normal business operations;
- 2. Provides similar goods or services to many different purchasers;
- 3. Normally operates in a competitive environment;
- 4. Provides goods or services that are ancillary to the operation of the Federal program.

Entities that include these characteristics are not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

SECTION 3 - USE OF JUDGEMENT

Description: In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

Explanation of Use of Judgement Determination:

FINAL DETERMINATION:

SUBRECIPIENT

CONTRACTOR

Authorized Signature: _____

Date: _____

DEFINITIONS FROM Uniform Guidance (2 CFR, Part 200)

Subrecipient (§200.93):

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Contractor (§200.23):

Contractor means an entity that receives a contract as defined in §200.22 Contract.

§200.22 Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award.

Subcontracts & Consulting Agreements

- If an entity or person outside of FIU is going to perform part of the programmatic/technical work on a sponsored project, a subaward or consulting agreement respectively would be required.
- If the contract is with an entity, it is referred to as a subaward or subcontract, depending on the funding mechanism.
- If the contract is with an individual, it is a consulting agreement.

Subcontractors

- If proposal includes work by a named entity a subawardee commitment form must be included in the proposal package to ORED detailing subawardee's
 - scope of work
 - budget
 - cost share pledged by collaborator (if any)
 - NICRA
 - Subawardee Commitment Form signed by collaborator's authorized organizational representative, for any entity not part of the FDP Expanded Clearinghouse
- ORED policy: Commitment Form from Third Parties Required for Sponsored Project Proposals #2320.010: <https://policies.fiu.edu/files/247.pdf>

Potential Issues with the Subawarded Portion of Proposal

- If the Proposal Services Team determines that proposal contains a disproportionately large portion of the project or the proposed budget to be subawarded to another entity or person, the proposal may be subject to further review by the AVP or designee in consultation with the Pls' Dean, to determine if:
 - Work sought to be subawarded may be done at University
 - Work which is proposed to be done by University personnel in relation to work to be subawarded warrants approval of the proposal
- ORED Policy: Prior Approval of Sponsored Project Proposals #2320.070:
<https://policies.fiu.edu/files/526.pdf>

Requirements for Pass Through Entities

- Subrecipient and Contractor Determination
- Risk Assessment and Analysis
- Financial and Performance Monitoring
- Enforcement

Subcontract and Consulting Agreement Preparation

- At a minimum, the following documents must be sent to oredagremnts@fiu.edu for assignment:
 - Completed and signed Subaward/Consulting request form
 - If not collected at proposal stage, Subaward/Consultant Commitment Forms
 - Detailed Scope of Work with deliverables and due dates
 - Itemized budget

ORED forms can be found at: <http://research.fiu.edu/forms/>

- The representative assigned to the Subaward will do a risk analysis on the entity in order to determine the Subawardee's fiscal soundness before a subaward is prepared. If ORED determines that the Subawardee is not fiscally sound, the PI will need to select a new Subawardee.

Subcontract and Consulting Agreement Preparation Cont'd.

- Award Services Team will use the information on the Request Form to prepare the Subaward/Consulting Agreement using pre-approved contract forms.
- Award Services Team sends the draft agreement to the PI for review. Once the PI approves, Award Services Team forwards the agreement to the Subawardee or Consultant for review and execution.
- If negotiation is required on the agreement terms, Award Services Team will undertake the negotiations, and include the General Counsel's Office and the PI, as necessary.
- Subawards and Consulting Agreements are signed on behalf of FIU by an authorized ORED representative and by an authorized official of the Subawardee or the Consultant, as applicable; Agreements and modifications may not be executed by the PI.

Subcontract and Consulting Agreement Preparation cont'd.

There are three main components to all subawards:

1. Statement of Work (SOW) –

- A poorly prepared SOW can lead to disputes between collaborating institutions
- Cannot just reference the approved proposal for the overall award or the budget justification in place of a detailed SOW
- Tangible Deliverables and due dates

Subcontract and Consulting Agreement Preparation cont'd.

2. Budget

- Should be at least as detailed as required by prime sponsor
- Cost-reimbursable
 - Costs reimbursed against actual expenditures up to a not-to-exceed amount.
- Fixed price
 - Based on project performance or completion of milestones
 - Paid based on fixed price amount, regardless of actual costs

Per Research Subject

*Clinical Trials

Subcontract and Consulting Agreement Preparation cont'd.

3. Terms and Conditions

- ORED will determine the best template and terms and conditions to use.
- PI should notify ORED of any special conditions and/or reporting requirements
- Contain basic flow down terms from sponsors

Other considerations when issuing the subaward

- Different payments terms
- IRB & IACUC approvals
- Additional costs
- Risk Assessment
- RPS

Subcontract and Consulting Agreement Preparation cont'd.

- Once fully executed, a copy is sent via e-mail to the Subawardee or Consultant, PI, department administrator, and Post-Award Coordinator.
- Once PI and/or department receives the fully executed agreement, he/she must process a requisition for it through Panthersoft in order for Purchasing to issue a PO allowing payment to subcontractor or consultant.
- For a requisition to be processed, sufficient funds must exist in the Project ID budget in the “subcontract” or “consultant” category. If not, PI must request a budget modification to move funds into the appropriate budget category.

Subcontract and Consulting Agreement Invoices

- Depending on the results of the Risk Assessment, Subawardee invoices are sent to the FIU PI directly or to ORED for initial review. The Subaward will specify to whom the subcontractor is to send invoices.
- Invoices sent to PI directly:
 - If subcontractor/consultant has performed appropriately, PI/department receives the invoice in PantherSoft and forwards the invoice to the FIU Accounts Payable Department, with the FIU PO/receipt number written on the invoice and PI's approval.
 - If subcontractor/consultant has NOT performed as required, PI should NOT approve invoice for payment; instead contact the Award Services Team so that appropriate steps may be taken, to demand the subcontractor/consultant's compliance.
 - Scope of work in subcontracts and consulting agreements should be as detailed as possible so that basis for non-performance is clear.

Subcontract and Consulting Agreement Invoices

- Invoices sent to ORED:
 - Subawardees who are not subject to an annual Single Audit, 2 CFR 200-501 (e.g., private companies and international organizations) will send their invoices to ORED, subinv@fiu.edu for compliance check.
 - If ORED approves the invoice, the invoice will be sent electronically, with an Invoice Approval Form to the PI for review as to whether the subcontractor has performed the technical tasks as required by the subcontract.
 - For each invoice received from ORED, the PI must: (1) thoroughly review the invoice; (2) complete the Invoice Approval Form. If the PI approves the invoice for payment, the PI/department should receive the invoice in Panthersoft to evidence that it may be paid by FIU. Then the invoice and approval needs to be emailed to invoices@fiu.edu for processing by Accounts Payable.

Subcontract and Consulting Agreement Invoices con't.

- If the PI approves the invoice for payment, the PI/department should receive the invoice in Panthersoft to evidence that it may be paid by FIU. Then the invoice and approval needs to be emailed to invoices@fiu.edu for processing by Accounts Payable.
- If the PI does not approve the invoice, the PI should return the invoice to ORED together with the Invoice Approval Form describing the reason why it is being denied.
- If the invoice is not approved by both ORED and the PI, the invoice will not be paid. Subsequently ORED will take appropriate steps, to demand the subcontractor's compliance with the subcontract or to terminate the subcontract, as necessary.
- The invoice review/payment procedures for non-Single Audit subcontractors may be modified if, in the discretion of the Assistant Vice President for Research, an alternate process is required for the particular project involved. For example, when a project involves work performed outside the US and involves a greater degree of invoice back-up documentation review, a different invoice payment process may be approved.

Consultants

- A consultant is an **individual** NOT employed by FIU who renders services needed for the project
- The **Consultant Commitment Form** must be completed at proposal stage if Consultant information is known
- FIU employees cannot be paid as consultants;

Consultants Continued...

All of the following conditions must be met to hire consultants:

- the Consultant must be involved in carrying out programmatic tasks and involved in making programmatic decisions in consultation with the PI.
- the Consultant must have assisted in developing the scope of work for the proposal
- the Consultant must be able to meet the required flow down requirements of the prime award to FIU
- the Consultant has the requisite expertise related to the programmatic work proposed to be carried out on the sponsored project;
- the skills or expertise of the Consultant are not available within the university;
- the Consultant has a written contract that states clearly the nature of services to be provided (the contract will be processed by ORED);
- the services are in direct support of work to be performed under the sponsored agreement; and
- the amount paid to the Consultant is reasonable in relation to the services provided.

Consultants Continued...

No cost of a Consultant may be charged directly to a sponsored agreement if the services provided by the Consultant:

- are for marketing, proposal development, business development, or any other activity whose purpose is to obtain outside funding;
- consist of general management support or advice; or
- consist of administrative support that would not be directly chargeable to the sponsored agreement if provided by an employee of the university.
- ORED policy – Consulting Agreements on Sponsored Projects #2320.018a

<https://policies.fiu.edu/files/351.pdf>

Contractor/Professional Services Process

With regards to company/entity being budgeted as professional fee. Please find below the steps to assist you with the process:

1. The entity will need to be registered as vendor at FIU. Please see following link for how to get them registered:
http://finance.fiu.edu/purchasing/2supplier_reg_portal.html.

2. The Independent Contractor Agreement will need to be completed which is found at the following link:
<https://generalcounsel.fiu.edu/wp-content/uploads/sites/26/2014/07/Independent-Contractor-Agreement-for-professional-services-1.pdf>.

* Complete the agreement

* A budget and scope of work would need to be prepared and attached with the agreement.

3. Once the vendor is registered with FIU, the Independent Contractor Agreement will need to be uploaded to the Total Contract Manager portal (TCM) for approval and e-signature. Your designated department administrator should have access to TCM as a Contract Manager to upload the agreement. You may also request access to TCM via the following link: <https://imagenowweb.fiu.edu/imagenowforms/fs?form=TCMForm>. A thorough overview and training guide on TCM can be found at the following link:

http://finance.fiu.edu/controller/Docs/Training_Manuals/TCM%20Manual%20for%20Procurement%20Contracts.pdf

4. Once the Independent Contractor Agreement is fully executed via e-signature, your department administrator will need to create a requisition for a purchase order in PantherSoft Financials. Once the purchase order is approved and dispatched to the vendor, the vendor can commence the work.

5. Invoicing will be based on the terms of the agreement ,and entity/person would send invoice to the respective Department Administrator or PI. After PI approval invoices will need to be submitted Accounts Payable and processed against the purchase order.

FIU

**Operations
and Safety**

Environmental Health & Safety

The Department of Environmental Health & Safety protects the university community and its environment by ensuring our operations comply with all applicable regulations and best practices.

General Safety

Environmental Compliance

Industrial Safety

Fire Prevention & Protection

Laboratory Safety

Biological Safety

Chemical Safety

Controlled Substances Safety

Laser Safety

Radiation Safety

Chemical Safety



Environmental Health & Safety

Laboratory Safety

The EH&S Laboratory Safety program helps researchers, lab managers, and supporting lab staff establish a safe work environment and maintain compliance with all local, state and federal regulations.

The program is managed by a team of skilled professionals that provide guidance and oversight to research staff in the following areas:

- Purchase, Use, storage, and disposal of hazardous materials
- Research proposal safety reviews
- Hazard assessments
- Lab equipment certifications
- New lab walkthroughs/consultations
- Special hazard materials/equipment approvals

Chemical Inventory Management



Environmental Health & Safety

- Maintaining an accurate chemical inventory is both a regulatory requirement for the safe use of chemicals and an effective way to manage hazards in the laboratory.
- Safer Storage Practices
- Effective hazard communication
- Compliance with hazard materials limits.
- Effective Emergency Response (Management)
- Efficient ordering
- Continue Excellent Chemical Hygiene Practices
- Helps maintain a “Green” Lab

Barcoding



Environmental Health & Safety

FIU and EH&S has contracted Fisher Scientific to facilitate the barcoding of hazardous chemicals arriving at FIU sites. Tracking of hazardous chemicals at FIU is an internal requirement and is necessary for government reporting.

Barcoding Process: • Upon arrival at FIU sites, hazardous chemicals will be identified and staged to barcode. This includes all hazardous chemicals, even those not ordered through Fisher. • specific chemical information into FIU's EHS Assistant system

A yellow Barcode will be placed on each item before being delivered to the lab.

Notify EH&S



Environmental Health & Safety

If your chemicals arrive without a Yellow barcode, please contact EH&S immediately

When placing product orders with hazardous chemicals, order information must include the following: PI name; building; room; contact information • Hazardous chemicals can only be shipped/delivered to the assigned barcoding areas at:

MMC CP 193 Receiving Dock

BBC S01 Central Receiving Dock

EC EC 2854

CTS 121 and 238

Largo 1 st Floor Receiving Office



Chemical policies



FIU policies state that no hazardous chemicals purchased on a P card unless you are going through Fisher Scientific

All Chemicals at any FIU Location must be entered into the EH&S inventory system.

Must be stored properly (Check the SDS)

Contact LSO for Laser purchases



Environmental Health & Safety

Laser Safety

The laser safety program ensures that lasers are used responsibly and safely in academic, research, and clinical settings. The acquisition and use of laser devices requires EH&S approval, specific training, experience, and proper personnel protective equipment and containment.

Contact RSO for Rad materials purchase



Environmental Health & Safety

Radiation Safety

The Radiation Safety program provides guidance on the safe use of radioactive materials, radiation-producing machines, and nano materials in a variety of settings.

The program oversees:

- Authorization
- Purchase
- Safe use
- Disposal

Contact EH&S for chemical disposals



Environmental Health & Safety

Environmental Compliance

Environmental Compliance keeps our environment – and ourselves – safe from a variety of pollutants, toxins and hazardous waste commonly found in labs, classrooms and even our homes.

The Environmental Compliance program oversees:

- Hazardous Waste
- Universal Waste
- Stormwater management
- And more!