

Subrecipient vs. Contractor

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Overview

Arkansas State University faculty, staff, or students on the premises of the University conduct most of the work on sponsored agreements. However, it may be necessary to collaborate, partner, or outsource portions of the work to other entities, individual consultants, or others outside of the University.

In these cases, a legal agreement outlining the relationship between the parties and the University is required and may take the form of either a subaward or an agreement with a contractor for purchase of services.

The determination between Subrecipient and Contractor should be made early in the proposal preparation stage to ensure compliance with sponsor guidelines and to minimize impacts to the budget, F&A determination, and grant narrative.

Before entering into a relationship with another entity under a sponsored award in which the other entity will provide goods or services of substantive, programmatic work to Arkansas State University as the prime recipient of funding, a determination must be made as to the nature of the legal relationship between A-State and the other entity.

This decision is significant in determining the legal agreement required to establish the relationship, the allocation of responsibilities and influences of the third party, and the application of indirect cost rates.

A-State Responsibility

In the case of a subaward, A-State is responsible, as the prime institution, to ensure that the Subrecipient(s) conduct their portion of the research projects in compliance with all applicable terms and conditions of the externally sponsored agreement, and that the project costs incurred by the Subrecipient(s) are reasonable and allowable.

Agreements with contractors for the purchase of services typically do not bind vendors to the full set of sponsor terms and conditions, and are subject to competitive bidding procurement practices, to assure that funds paid to vendors do not exceed fair market value.

Both agreements should have a clear purpose and cost.

Uniform Guidance

200.331 Subrecipient and Contractor Determinations

200.22 Contractor and 200.92 Subaward

Determination Guidelines

Subrecipient

- Substantive, programmatic work or an important or significant portion of the research program or project is being undertaken by the other entity.
- The research program or project is within the research objectives of the entity.
- The entity retains some element of programmatic control and discretion over how the work is carried out.
- The entity commits to a good faith effort to complete the design and conduct the research.
- The entity participates in a creative way in designing and/or conducting the research.
- The entity makes independent decisions regarding how to implement the requested activities.
- A principal investigator has been identified at the entity and functions as a coinvestigator.
- There is the expectation that the entity will retain ownership rights in potentially patentable or copyrightable technology or products that it produces in the course of fulfilling the scope of work.
- Publications may be created or co-authored at the entity.
- The entity provides cost sharing or matching funds for which it is not reimbursed by A-State. (if applicable)
- The entity regards itself, and/or is regarded by A-State as “engaged in research” involving human subjects under the Common Rule and therefore requires approval for its interactions with human subjects.

Subawards should have a detailed scope of work and a budget that specifies salary, fringe, supplies, equipment, and other direct costs, as well as appropriate F&A costs consistent with the subrecipient’s indirect cost rate. Terms and conditions from the prime agreement are typically imposed on the subrecipient to the same degree that they are imposed on A-State as the prime recipient.

Subrecipient Approval and Negotiation

To establish a subaward with an outside institution, the following must be received by Research and Technology Transfer via the appropriate institutional official at the subrecipient Institution 10 business days before the submission of a proposal:

1. A letter of intent from the collaborating institution from the appropriate institutional official.
2. The signed Subrecipient Questionnaire form (to be issued by A-State to the collaborating Institution).
3. Scope of work
4. Approved budget
5. Approved budget justification
6. Other documents as required by the sponsoring agency

Subawards must be reviewed and negotiated by Research and Technology Transfer.

Contractor

- The entity is providing specified services in support of the research program.
- The entity has not significantly participated in the design of the research itself, but is implementing the research plan of the A-State PI
- The entity is not directly responsible to the sponsor for the research or determining research results.
- The entity markets its services to a range of customers, including those in non-academic fields.
- Little or no independent decision-making is involved in the design and conduct of the research work being completed.
- The agreement only specifies the type of goods/services provided and the associated costs.
- The entity commits to deliverable goods or services, which if not satisfactorily completed will result in nonpayment or requirement to supply
- The entity does not expect to have its employees or executives credited as co-authors on papers that emerge from the research.
- The expectation is that the work will not result in patentable or copyrightable technology or products that would be owned by the entity.
- In the case of an individual vendor of consulting services, the person has no employment relationship with A-State, either academic or administrative in nature, and has not in the previous 12 months.

It is the responsibility of the PI to determine whether the price is competitive and reasonable for agreements with both subrecipients and contractors. In either case, however, the agreed-upon cost is not relevant in determining whether the relationship is that of a Subrecipient or Contractor. It is required by federal grant terms and conditions and by good business practices that competitive bids are sought for goods and services from multiple vendors, whenever possible and when the cost exceeds \$10,000. Sole-source contractor relationships may be prohibited by the conditions of the prime award, and if allowed, are typically subject to specific conditions and procedural requirements. Procurement Services guidelines can be found here:

<https://www.astate.edu/a/procurement/index.dot>

Contractor Agreement Approval

Once it is determined that the nature of the relationship between A-State, as the prime award recipient, and the entity involved in providing goods or services is a true contractor agreement, the relationship should be treated as that of purchaser and contractor. A-State Procurement Services is the sole purchasing authority of the University. Please consult with Procurement Services before entering into any agreement with a Contractor.

The office of Sponsored Programs Accounting ensures compliance with all procurement practices on externally sponsored agreements, and monitors the reasonability, allocability, and allowability of the contractor costs.

Responsibilities

PIs and RTT work together to determine the appropriate determination of Subrecipient or Contractor during the pre-award stage. Should A-State be awarded, the Director of Contracts and Agreements within Research and Technology Transfer will work with General Counsel to draft an agreement with the subrecipient. PIs are not authorized to issue agreements between the University and other entities.

After an agreement has been awarded and handed off from RTT, if modifications are needed, the Office of Sponsored Programs Accounting will aid in the determination of Subrecipient or Contractor, as well as the allowability to establish these relationships in the post-award phase of the agreement.

Definitions

Contractor: an entity that receives a contract. A contract is a legal instrument by which a non-federal entity purchase property or services needed to carry out the project or program under a federal award (UG 200.22, 200.23)

Subrecipient: a non-federal entity that receives a subaward from a pass-through entity to carry out a 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 (UG 200.93)

RTT Proposal Stage Process

1. Once receiving notification from the PI that a subaward/contractor will be utilized in the proposal, the proposal specialist will issue a checklist to the PI r to make an appropriate determination of Subrecipient vs Contractor.
2. Once determination has been made, the proposal specialist will read through the RFP and appropriate Federal and Agency guidelines to determine the allowability of the Subrecipient or Contractor.
3. If it is determined that a contractor will be used, the proposal specialist will request a justification in writing from the PI as to the appropriateness and reasonability of the contractor's services.
4. If it is determined that a Subrecipient relationship will be established, the proposal specialist will request the contact information of the outside entity's sponsored programs office to request/issue the following information:
 1. A letter of intent from the collaborating institution from the appropriate institutional official.
 2. The signed Subrecipient Questionnaire form (to be issued by A-State to the collaborating Institution).
 3. Scope of work
 4. Approved budget
 5. Approved budget justification
 6. Other documents as required by the sponsoring agency

5. All information must be received by the appropriate institutional official and must not be accepted from the collaborating institution's Co-PI to ensure all work has been reviewed and approved by the appropriate officials
 6. Once all documents have been received, the proposal specialist will review the contents for compliance with the RFP, Agency Guidelines, and Federal regulations.
 7. As appropriate, the proposal specialist will submit all approved award documents of the Subrecipient with the prime proposal.
 8. Deviations from these procedures should be approved in writing by the Executive Director for Research or the Vice Provost of Research, Innovation, and Discovery.
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