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Outgoing Subagreements: Subawards and Subcontracts				

Overview

Sponsored programs may include partnerships with other organizations or institutions whereby a portion of the project is conducted by investigators or collaborators at those sites. In these cases, subagreements are issued to other entities under a sponsored agreement/prime award made to Emory University. The partnering institution(s) will be subcontractors or subawardees under the Emory prime award. Entities with whom Emory partners through a subagreement are also referred to as subrecipients.

If the Emory PI plans to apportion the work in this way, appropriate paperwork is needed at the time the proposal is submitted to confirm the proposed subrecipient's eligibility and willingness to participate. The scope of work for the partner entity (most typically a research university) would, in these cases, be essential to the overall completion of the project and the performance site and intent to collaborate must be documented in the proposal. At the proposal stage Subagreements may be viewed as mini-proposals under the umbrella of the requested prime award. Many materials needed for the prime proposal would also be needed from the subrecipient. Proposals may include work to be done at one or more institutions and appropriate materials would be needed from each participating institution.

Subagreements can be issued under most funding mechanisms including contracts; in such instances the term "subcontract" is used¹. When a subagreement is issued under a grant or cooperative agreement the terms "subgrant" or "subaward" are used. Subcontracts and subawards provide a contractual mechanism through which the University passes on the terms and conditions of the prime award to the research partnering institution. This concept is sometimes referred to as "flow-down."

Although subagreements are typically incorporated as part of the original proposal, upon occasion, the need to add a subaward during the lifetime of the award can arise. In these cases the first step is to see under what circumstances the sponsor needs to approve the subaward. Most sponsors stipulate that their approval be obtained prior to the addition of a new subaward². (For federal contracts, agency prior approval is needed in all cases where the subcontract is not specified explicitly in the prime agreement.) When agency prior approval is needed, PIs are expected to draft a letter to the sponsor outlining the need for the new subcontract. Such requests must be signed by an Authorized University Signatory.

In addition to this letter the following documents will need to be obtained from the subawardee:

- Scope of work,
- CV or bio sketch for the lead PI at the partner institution,
- Line-item budget in the same format with the same level of detail as the prime proposal budget,
- Budget justification,
- Any representation or certification forms requested by the prime, and
- A Statement of Intent and/or a Subcontract Cover Sheet (the NIH refers to subagreements as consortium agreements²). The letter of intent to collaborate must be signed by the Sponsored Programs Office at the other institution

¹ Subagreements issued under federal contracts require additional cost justification. This may be in the form of competitive bid or, if the purchase is for goods or services that can only be made from one source, then documentation of sole source justification must be provided. Similarly other Federal Acquisition Regulation contractual flow down and procurement regulations will apply depending upon the dollar amount of the subcontract. Note: this also applies to procurement contracts for goods and services issued under federal grants and cooperative agreements in accordance with OMB A-110 and OMB Cir. A-133 Subpart C: Procurement Standards Section .41 and Appendix A: Contract Provisions.


² See the FDP Matrix for Prior Approval Requirements at: <http://www.nsf.gov/pubs/fdp/fdpmatrix.xls>. Note for NIH awards, in general, NIH prior approval is not needed unless the addition of a consortium agreement represents a change in the scope of work or is to a foreign institution or organization. It is important to note that if the consortium proposes the incurrence of patient care costs that were not previously approved by NIH, prior approval will be necessary as this would represent a change in scope.



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Once a proposed subaward has been approved, the PI or his/her support staff will need to submit a request to OSP to establish the subaward. Once the request has been received, OSP staff will begin the drafting and negotiation process. To submit a subaward request, follow the steps outline in the document called, "OSP Subaward Request Process."

For additional information on subawards, including detailed information from NIH on their policy, as well as definitions related to subawards, see below.

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NIH Requirements for Consortium Participants

The grantee must enter into a formal written agreement with each consortium participant that addresses the negotiated arrangements for meeting the scientific, administrative, financial, and reporting requirements of the grant, including those necessary to ensure compliance with all applicable Federal regulations and policies and facilitate an efficient collaborative venture. At a minimum, this agreement must include the following:

- Identification of the individual who will serve as the consortium lead investigator and other individuals responsible for the research activity at each consortium participant along with their roles and responsibilities.
- When multiple PD/PIs are involved at different organizations, only the Contact PD/PI is required to have the official relationship with the applicant organization. PD/PIs in the leadership team at other organizations must have a documented relationship with a consortium organization, but need not be employees. Any consortium agreement must address the unique aspects to these individuals holding the PD/PI role.
- Procedures for directing and monitoring the research effort.
- Procedures to be followed in reimbursing each consortium participant for its effort, including dollar ceiling, method and schedule of reimbursement, type of supporting documentation required, procedures for review and approval of expenditures of grant funds at each organization and timing of applicable reporting requirements. This includes provisions for access to core facilities and resources and whether access will be provided as a fee-for-service.
- If different from those of the grantee, a determination of policies to be followed in such areas as travel reimbursement and salaries and fringe benefits (the policies of the consortium participant may be used as long as they meet NIH requirements).
- Terms that establish whether the Financial Conflict of Interest policy of the awardee Institution or that of the subrecipient will apply to the subrecipient's Investigators.

If the subrecipient's Investigators must comply with the subrecipient's Financial Conflict of Interest policy, the subrecipient shall certify as part of the written agreement that its policy complies with the 2011 revised FCOI regulation (42 CFR 50 Subpart F). If the subrecipient cannot provide such certification, the agreement shall state that subrecipient Investigators are subject to the Financial Conflict of Interest policy of the awardee Institution for disclosing Significant Financial Interests that are directly related to the subrecipient's work for the awardee Institution.


If the subrecipient's Investigators must comply with the subrecipient's Financial Conflict of Interest policy, the written agreement shall specify time period(s) for the subrecipient to report all identified Financial Conflicts of Interest to the awardee Institution. Such time period(s) shall be sufficient to enable the awardee Institution to provide timely FCOI reports, as necessary, to the PHS as required by the regulation.

Alternatively, if the subrecipient's Investigators must comply with the awardee Institution's Financial Conflict of Interest policy, the written agreement shall specify time period(s) for the subrecipient to submit all Investigator disclosures of Significant Financial Interests to the awardee Institution. Such time period(s) shall be sufficient to enable the awardee Institution to comply timely with its review, management, and reporting obligations under the 2011 revised FCOI regulation.



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- A provision addressing ownership and disposition of data produced under the consortium agreement. This includes whether cell lines, samples or other resources will be freely available to other investigators in the scientific community or will be provided to particular investigators only.
- A provision making the NIH data sharing and inventions and patent policy, including a requirement to report inventions to the grantee (see Administrative Requirements—Availability of Research Results: Publications, Intellectual Property Rights, and Sharing Research Resources in IIA), applicable to each consortium participant and its employees in order to ensure that the rights of the parties to the consortium agreement are protected and that the grantee can fulfill its responsibilities to NIH.
- Expectations for authorship and co-authorship on publications.
- Provisions regarding property (other than intellectual property), program income, publications, reporting, and audit necessary for the grantee to fulfill its obligations to NIH.
- Incorporation of applicable public policy requirements and provisions indicating the intent of each consortium participant to comply, including submission of applicable assurances and certifications (see Public Policy Requirements, Objectives, and Other Appropriation Mandates in IIA).

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Definition of Terms

Prime Sponsor - Refers to the governmental agency or other organization that makes an award directly to Emory or the entity issuing a subagreement to Emory.

Subagreement-The document issued to establish a paid relationship with an entity outside the University to accomplish a scope of work under a prime award issued to the University. Subagreements may be issued under a grant, cooperative agreement, or contract from a federal, state, foreign or non-federal award of any type. Subagreements are typically identified and incorporated into the proposal at the time it is submitted to the sponsor. Prior approval from the Prime Sponsor is generally required if a decision is made to issue a subagreement after an award is made.

Sponsored Contract - The mutually binding legal document processed by the *Sponsor* and sent to the University specifying the terms under which the acquisition or procurement of sponsored project services will be conducted.

Sponsored Award/ Prime Award - The financial assistance document processed by the *Sponsor* and sent to the University that provides support or stimulation to accomplish a public purpose. Definition from A-110: (e) **Award** means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term 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.

Subcontract - The document that formalizes an acquisition or procurement relationship with a third party to perform substantive sponsored project effort to accomplish the aims based upon a *Sponsored Contractor Sponsored Award* made to the University.

Subaward – The document that formalizes an award of financial assistance to a third-party to perform collaborative sponsored project effort based upon a *Sponsored Award* made to the University. The term does not include technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; and direct payments of any kind to individuals. Definition from A-110: (ff) **Subaward** means an award of financial assistance in the form of money, or property in lieu of money, made under an award 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" in paragraph (e).

Subcontractor - The third party performing substantive sponsored project services under a *Subcontract* or *Subaward*.

Subrecipient: From A-110 (gg) **Subrecipient** means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

Lower-tier subawards/subcontracts – additional subawards issued by a Subrecipient; they are under the authority of, and must be consistent with, the terms of both the subaward and the prime award.

Vendors -are organizations that provide goods and services. They typically provide similar goods and services to



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many different purchasers. Vendors are not subject to many of the administrative requirements of the awarding agency. Usually work with purchasing department to create vendor agreement (purchase order).

Consulting Agreement – If a collaborator operates as a personal consultant outside of the scope of her/his regular appointment with another institution, choose a consulting agreement (personal services agreement). Essentially, consultants are vendors too. You can use a personal services agreement (a consulting agreement) for their contributions to federally-funded work. Consultants can include:

An individual who provides professional advice or services for a fee, but normally not as an employee of the engaging party.

Consultants may also include firms that provide paid professional advice or services.