

Subrecipient or Contractor (Vendor) Guidance

How to distinguish between a Subaward and a Contract for Services

Under the OMB Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, which went into effect on 12/16/2014, the term "vendor" was replaced with "contractor." The terms vendor and contractor substantially have the same meaning and may be used interchangeably in other guidance. For consistency purposes, when UCD provides funds from a federal award to a non-federal entity, the non-federal entity receiving these funds is classified as a subrecipient or a contractor based on the nature of the agreement and the criteria in 2 CFR §200.331. At UCD, these same definitions are also applicable to non-Federal awards.

An agreement expected to be issued under an award the University has received is not or is very unlikely to be a Subaward, if any of the following are true:

- The proposed agreement is expected to be issued to an individual or sole proprietor. An individual cannot be a Subrecipient because:
 - Individuals are not legal entities
 - The federal government grants funds to an organization; it does not fund individuals
 - The knowledge of an individual is considered personal.
- The proposed recipient of the agreement does not have a PI.
- The contract is for off-the-shelf services or specialized services where the contractor/vendor customarily provides such services on a commercial basis, usually at a fixed price or rate.
- The proposed contractor/vendor provides similar kinds of goods and services within its normal business operations or too many purchasers.
- The proposed contractor/vendor operates in a competitive environment.
- The proposed contractor/vendor is a university and it customarily handles such transactions internally with "recharge rates" or externally through "service agreements" or "other sponsored activity" agreements.
- The goods and services to be purchased are ancillary to UCD's sponsored project.
- The services proposed contractor/vendor is providing are not subject to the compliance requirements of UCD's sponsor.
- The proposed contractor's/vendor's SOW does not reflect a specific, clearly defined, intellectually-significant part of the scope of work of the sponsor's award

to UCD.

- The proposed contractor/vendor is a professional consultant or is not significantly using its own computers and equipment for simply providing advice to the UCD personnel working on the project.
- The proposed contractor/vendor is a member of another school who is acting as a "consultant" in that school's view (and that school will not accept a subcontract for the work its member is proposed to perform.)
- The proposed contractor/vendor does not have "programmatic decision-making" responsibility.
- The proposed contractor/vendor is providing equipment, fabrication of equipment, or components of fabricated equipment. However, a subaward SOW may include fabrication of specialized equipment to be used for the UCD SOW as a project-related asset or as a deliverable to the sponsor. It depends in part on the purpose of the sponsor's award, UCD's SOW, and whether the subrecipient is providing intellectually significant contributions to the development of the equipment.
- The proposed contractor/vendor is conducting a survey using de-identified data, and annual IRB approval is not required.
- The proposed contractor/vendor performs a test on data we provide to them and give us the results to analyze and/or provides routine professional services in analyzing the results (e.g, a radiologist reading an X-RAY). NOTE: if the entity provides professional expertise to contribute to generalizable knowledge in new ways, the entity could be a subaward.
- The services are routine in nature and follow established or previously invented/discovered procedures.

A subaward is likely appropriate if none of the above is the case, AND you can answer "YES" to any of the following questions:

1. Does the entity's SOW represent an intellectually significant and clearly separable portion of the programmatic effort of the overall project? For example, is the proposed subawardee's work a specific aim in UCD's Scope of Work?
2. Does the entity have responsibility for programmatic decision making?
3. Could the entity's work result in intellectual property being developed or publishable results (including co-authorship)?
4. Is the entity engaged in research involving human subject under the Common Rule and therefore requires approval for its interactions with human subjects?

Unusual Circumstances

There may be unusual circumstances or exceptions to the typical characteristics listed above. In making the determination of whether a subaward or a contract for services should be issued, the substance of the relationship is more important than the form of the agreement. It is not expected that all of these characteristics will be present. The Uniform Guidance provides for the use of good judgment in determining whether a subaward or contract for services should be used. Sponsored Programs issues subawards; Contracting Services issues independent contractor agreements, consulting agreements, and services agreements.

Non-research awards and atypical research projects: Example – UCD receives a grant for "promoting democracy in [XXX] country" and UCD needs to contract with a company in that country to monitor elections. There are a great list of factors that might be considered if relevant, but 2 basic guidelines might help:

- First, an analysis of what UCD's work is in relationship to the vendor's work will be conducted. Does the subrecipient have significant, programmatic responsibility for a significant part of the overall project? The subrecipient's SOW must be a clearly separable but significant portion of the project SOW.
- What does UCD's prime award document state or imply about the work of the company? Sometimes it is hard to determine a subaward versus a contracted service until the award terms and conditions are received. Is it written with terms and conditions clearly applicable to the vendor? Some factors from above apply here too, such as the requirement that subawards not be issued to individuals.

In the event you are considering treating a sub-agreement as a subaward under this type of award, first contact Office of Research, Sponsored Programs for a determination as to how the transaction will be treated by UCD.

For questions, contact subawards@ucdavis.edu.