Subcontracting

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Recording date of this workshop is
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Some of the rules and procedures discussed in this workshop are subject to change.
Please check university resources before relying exclusively on this recorded presentation.

Overview
• Proposal/Award Cycle
• Definitions
• Subcontracts vs Personal Services Agreements
• Changes from the “Uniform Guidance”
• Roles and Responsibilities
• Risk Assessment
• Sub-recipient Monitoring
• Examples of Audit Results
**Proposal/Award Cycle**

1. **Proposal Development**
2. **Proposal Submission**
3. **Award Administration**
4. **Award Acceptance & Setup**
5. **Closeout**

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**Definitions**

- **What is a subcontract?**
  - "...an award provided by a pass-through entity to a subrecipient to carry out part of a Federal award received by the pass-through entity."

- **What is a subrecipient?**
  - "...a non-Federal entity that receives a subcontract 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."

  Uniform Guidance 2 CFR 200

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**Subcontract/Award vs. Personal Services Agreement — ORSO Guideline 22**

<table>
<thead>
<tr>
<th><strong>Subrecipient</strong></th>
<th><strong>Personal Services Agreement</strong></th>
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<tbody>
<tr>
<td>- Carries out SOW/Co-PI</td>
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<tr>
<td>- Performance measured w/meeting objectives</td>
<td></td>
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<tr>
<td>- Authority for administrative decisions</td>
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<tr>
<td>- Responsible for program compliance</td>
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<td>- F&amp;A for the 1st $25,000</td>
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- **Retainage/FFR**

When making your determination, the **substance of the relationship** is more important than the form of the agreement.

[https://purchasing.wsu.edu/personal-services-contracts/](https://purchasing.wsu.edu/personal-services-contracts/)
Changes Uniform Guidance Changes Effective November 12, 2020

- 2 CFR 200.390 budget period was updated to clarify that recipients are authorized to expend the current funds awarded, including any funds carried forward.
- 2 CFR 200.216 The purpose of this section is public safety and contracting with certain entities is prohibited.
- 2 CFR 200.320 (c) informal protests, small purchases, (d) formal (sealed bids, proposals), and (e) Non-Competitive (sole source).
- 2 CFR 200.313 This change clarifies that pass-through entities (PTE) are responsible for addressing only subrecipients’ audit findings that are specifically related to their subaward.
- 2 CFR 200.414 section expands use of the de minimis rate to all non-federal.

Subcontract requirement

• Any FAR requirements in the Prime
  • The only thing that is not required for Federal Awards but for Federal Contracts is FAR 52.223-99 ENSURING ADEQUATE COVID-19 SAFETY.
  • The Contractor shall comply with all guidance, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force.

Notably, contractors (and subcontractors, as contractors must flow down this clause to subcontractors) must be aware of their obligation to monitor and implement new or amended Task Force Guidance during contract performance.

“I have been awarded, now what?” – Subagreement Initiation Process

1. Check ORSO’s approved subrecipient list.
2. If subrecipient is not on list, perform financial review: audits, financials, financial questionnaire etc.
3. Send completed forms to ORSO
  1. Subagreement Form
  2. Check Workday if the subrecipient is in Workday if not, ORSO needs a W9/W-11
  3. W9 form cannot be older than 2018
  4. Instruction on letterhead
3. SOW
4. Budget
5. Budget justification
6. F&A rate agreement if applicable
7. FOA/OCR form as applicable
8. Letter of Intent
Subagreement Initiation Form

- Minimize back and forth questions
- Provide proper tools for accurate subaward writing
- Increase overall university compliance
- Fillable form with links
- Will be moving towards online submission form, i.e. the Change Request Form

All fields must be filled or the form will be returned to you.

Subaward Change Form
Responsibilities

SPS
Dept.
ORSO

Departmental Responsibilities

1. Approves all expenditure requests
2. Reviews budget statements for consistency w/proposal
3. Ensures that expenditures are Reasonable, Allowable, Consistent, Allocable
4. Certifies effort
5. Certifies cost sharing
6. Initiates & approves subcontract agreements
7. Verifies expenditure postings
8. Reviews invoices

Ensure that subcontract invoice includes:
- Contract #
- Invoice time frame and sequential
- Invoice total & cumulative totals are clear
- Expenses are within period of performance
- Correct Math
- Expenses itemized
- Certification
- Deliverables/reports have been met or submitted
Subcontract Invoice

- We need the following on the invoices in order to pay them in a timely manner. SPS only has 30 days to pay an outstanding invoice.
- Period of performance
- Invoice number (good to have for reference)
- Reference the sub-contract
- Current and Cumulative Expenses such as salaries etc. clearly marked
- Contact information
- Current address
- Amount for period
- Certification Statement
- Sequential order of outstanding invoices
- On foreign invoices SPS needs the wire information

Departmental Responsibilities (continued)

9. Verifies appropriate signatory signs invoices & returns to SPS
10. Reviews technical reports
11. Requests additional documentation on questioned costs
12. Monitors subrecipient compliance w/regulations
13. Ensures subrecipient’s equipment has proper controls
14. Routes property, invention, & cost share reports to SPS

ORSO Responsibilities

 Assist with submitting the Prime Award proposal, award negotiation and drafting/negotiation of a subaward.

1. Receive the subcontract initiation form and backup documents.
2. Enter new Supplier into Workday (needed W9/W8)
3. Contact SPS to create new Supplier as a subrecipient
5. Check for Sam.gov registration, and E-Verify/ARRA/FCO/FFATA/NSF F&A applicability.
6. Check that subaward is within scope of work, within dates of the Prime Award and that funding allocation has been set aside.
7. Risk assessment for pre-award monitoring and upload documents to W9
SPS Responsibilities

After subcontract is signed and received at SPS:

1. Review subcontract and translate into computer systems.
2. Verify the rate agreement, Single Audit response, and completion of all documents.
4. Close out the subcontract according to the Award.
5. Annually review the subcontractor’s most current audit document.
7. Alert all parties if the audit review demonstrates a concern for WSU.

The Certification Statement

- According to the Uniform Guidance all new subcontract invoices need the following certification statement.

  "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

SPS is using Jira to keep track of subcontract invoices.

- Since Spring 2018, SPS is keeping track of subcontract invoices in Jira.
- When SPS receives a subcontract invoice, SPS checks it for the major components, uploads it into Jira and sends it to the dept.
- The department verifies the expenses and approves the invoices.
- According to the UG the invoices need a specific certification statement.
Close Out Procedures

- Ensure all subcontractor's invoices have been received/paid, including a final marked “final”.
- All progress reports/deliverables have been received.
- Ensure close out documents have been received.

Sub-recipient Monitoring

- Under §200.207 WSU can impose additional specific award conditions (for more details see UG §200.207)
  * https://eppac.wa.gov/uci/CGS/CGS-200-207
- For example:
  - Applicant has a history of failure to comply and fails to meet expected performance goals
  Conditions must be removed once the condition has been corrected.

Subcontract Monitoring

- §200.338 “remedies for noncompliance”, allows WSU to take one or more of the following actions for subcontractors who are unwilling or unable to comply with the monitoring requirements:
  * https://eppac.wa.gov/uci/CGS/CGS-200-338
- For example:
  - Temporarily withhold cash payments pending correction.
  - Disallow all or a part of the cost for action not in compliance.
  - Wholly or partly suspend or terminate the Federal award.
  - Initiate suspension or debarment proceedings.
Possible Indicators of High Risk

- A qualified audit report or failure to have a current audit report
- History of non-compliance or non-performance (failure to use funds for authorized purposes)
- New sub-recipient (or new to this type of project)
- Award size relative to sub-recipient’s sponsored research portfolio

Possible Mitigations to High Risk Assessment

- Special Monitoring Plan (PI/Dept./ORSO/SPS)
  - More frequent contact with sub-recipient or
  - More frequent technical reports
- Add more detailed or frequent invoicing requirement.
  - Backup documentation
- Tie receipt of technical progress reports to payments.
- Add more stringent language in subcontract to comply with award requirements.
- Performance of desk audit

Audit Results

June 2020 report
New Mexico Tech
- An auditee is to evaluate the subrecipient of federal pass-through funds and the risk of their non-compliance with federal statues, regulation, and terms and conditions.
- The auditee is to establish a control system to ensure all subrecipient risk assessments performed are documents in accordance with federal regulations.
Audit Results

June 2020 report
University of Illinois

- The University did not comply with university policies and internal controls over procurement card transactions.
- 75 transactions totaling $477,735, including 15 transactions for unusual activity.
- University handles 4,220 active cards and expenditures totaling $33,650,621.
- Routine finding since their 2008 audit.

Audit Results

December 2020 report
Snohomish County Public Utility District

- Incorrectly charged equipment usage hours on FEMA, a federally funded award.
- Personnel timesheets are submitted to note how long the equipment is used, which is an allowable cost on the grant.
- The hours recorded did not match the hours reported on timesheets. Resulting in over and under-harging allowable costs on a cost reimbursable grant.

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