

HARVARD UNIVERSITY



Subrecipient vs. Contractor Guidance

Vendor vs. Subrecipient: Guidance on Appropriate Classification of Legal Relationships

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Responsible Office: Office for Sponsored Programs

Preamble/Note on Terminology

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 Harvard 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

Reason for this Guidance

Before entering into a relationship with another entity under a sponsored award in which the other entity will provide goods or services or substantive, programmatic work to Harvard as the prime recipient of funding, a determination must be made as to the nature of the legal relationship of Harvard and other entity, which in turn will determine the type of legal agreement required to document the relationship. This is a significant decision because it determines the allocation of responsibilities and influences the appropriate application of indirect cost rates. In the case of a subagreement, it is incumbent upon the prime recipient (Harvard) to ensure that subrecipients conduct their portions of research projects in compliance with all applicable terms and conditions of awards and subawards and that project costs incurred by subrecipients are reasonable and allowable. Agreements with contractors (vendors) for the purchase of services, however, 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.

Section 200.331 Subrecipient and Contractor Determinations, as well as section 200.1 Definitions for Contractor and Subaward of the Uniform Guidance provide guidance on making subrecipient and contractor determinations.

Context for this Guidance

Most of the work on sponsored awards at Harvard is conducted by faculty and staff on the premises of the University. However, it is sometimes determined that a portion of the research or project must be completed by an individual consultant¹ or entity² or 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 subagreement (typically, in the form of a subaward/subcontract) or an agreement with a contractor (vendor) for purchase of services. It is important that the correct agreement determination is made early in the process of preparing a grant application, as overhead treatment and monitoring requirements for these types of agreements vary and will impact the grant budget and, in some cases, the grant narrative. In addition, if specified in the award terms and conditions (as sometimes occurs), sponsor approval may be required prior to executing a subagreement; sponsor pre-approval is rarely, if ever, required for Harvard to enter into a contractor (vendor) agreement for purchase of services. Both forms of agreement should have a clear purpose and cost. &The criteria used for determining the type of relationship are set forth below:

Subrecipient

A **subrecipient** relationship is appropriate when:

- Substantive, programmatic work or an important or significant portion of the research program or project is being undertaken by the other entity.

¹ In order to qualify as an individual vendor of consulting services, a person must not be in any employment relationship with Harvard and must meet the requirements for a consultant (as opposed to an employee) under Harvard's applicable policy. See [the Independent Contractor Policy](#).

² This document offers clarification about the distinction between subrecipient and vendor agreement only. There is a separate policy on OSP's website regarding consulting. Additionally, consulting agreement templates are available on OGC's website.

- The research program or project is within the research objectives of the entity.
- The entity participates in a creative way in designing and/or conducting the research.
- 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 or conduct of 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 “Co-Investigator”.
- 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 its 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 Harvard.
- The entity regards itself, and/or is regarded by Harvard, as “engaged in research” involving human subjects under the [Common Rule](#) and therefore requires approval for its interactions with human subjects.

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

Subrecipient Approval and Negotiation

Harvard grant proposals that include subrecipients should be approved and submitted to Harvard by the appropriate institutional official at the subrecipient institution. Subagreements must be reviewed and

negotiated by the Office for Sponsored Programs or the Sponsored Program Administration (SPA) offices in the Longwood Medical Area.

Contractor (Vendor)

A **contractor** (vendor) relationship (including that of an individual acting as a vendor of consulting services) is appropriate when:

- 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 Harvard investigator.
- The entity is not directly responsible to the sponsor for the research or for 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 redo deliverables.
- 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 Harvard, either academic or administrative in nature.

It is the responsibility of the principal investigator to determine whether the price is competitive and reasonable for agreements with both subrecipients and vendors. In either case; however, the agreed-upon cost is not relevant in determining whether the relationship is that of subrecipient or vendor. 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 \$5,000. Sole source contractor (vendor) relationships may be prohibited by the conditions of the prime award, and if allowed, are typically subject to specific conditions and procedural requirements.

Contractor (Vendor) Agreement Approval

Once it is determined that the nature of the relationship between Harvard, as the prime award recipient, and the entity involved in providing goods or services should be treated as that of purchaser and vendor, the PI and his/her department will be responsible for ensuring the proper execution of any relevant agreement and in doing so, must comply with all school and University-wide vendor policies. This may require approval by a department chair or administrator, depending on the amount of funds to be paid to the vendor. School finance offices and/or the submitting offices (OSP, HMS SPA, HSPH SPA) may be consulted on the appropriate process for memorializing and signing vendor agreements.

Who Must Comply

All principal investigators and administrators at Harvard University schools, including the three sponsored programs submitting offices, local units, and University-wide initiatives must comply with this guidance. The three submitting offices are the Harvard University Office for Sponsored Programs, the Harvard Medical School Sponsored Programs Administration (SPA) office, and the Harvard School of Public Health Sponsored Programs Administration (SPA).

Responsibilities

Principal investigators and **local grant administrators** are responsible for seeking advice when determining whether an entity that will assist with research under a sponsored award represents a subrecipient or a vendor. Advice may be sought from local school officials and OSP.

Submitting Offices (OSP, HMS SPA and HSPH SPA) will review, negotiate and sign subagreements, assuring that appropriate signatures and approvals have been obtained from the other entity. Submitting offices are also available to answer questions and provide consultation on research policies as well as general sponsored practices.

Office of the General Counsel (OGC) – Vendor agreements and subcontracts may be reviewed by the OGC or the SPA offices in the Longwood Medical Area.

Strategic Procurement Office (SPO) – Assistance with bids or other questions regarding vendors can also be provided by the Strategic Procurement Office.

Definitions

Under the Uniform Guidance (2 C.F.R. §200), an organization is considered a subrecipient of a federal award when it:

1. Determines who is eligible to receive what financial assistance;
2. Has its performance measured against whether the objectives of the federal program are met;
3. Has responsibility for programmatic decision-making;
4. Has responsibility for adherence to applicable federal program compliance responsibilities; and
5. Uses the federal funds to carry out a program of the organization as compared to providing goods and services for a program of the pass-through entity.

Under the Uniform Guidance (2 C.F.R. §200), an organization is considered a contractor (vendor) when it:

1. Provides goods and services within normal business operations;
2. Provides similar goods and services to many different purchasers;
3. Operates in a competitive environment;

4. Provides goods or services that are ancillary to the operation of the Federal program; and
5. Is not subject to compliance requirements of the Federal program.

Not all of these characteristics will be present in every case. According to the Uniform Guidance, judgment should be used in each individual case in determining whether an entity is a subrecipient or a vendor. At Harvard, these same definitions are also applicable to non-Federal awards.

Contractor (aka Vendor) – Contractor means an entity that receives a contract. A contract is 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. (Uniform Guidance §200.1 Definitions)

Subaward – Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract (Uniform Guidance §200.1 Definitions)

Subrecipient – Subrecipient means 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 (Uniform Guidance §200.1 Definitions)

Revision History

12/18/2020 – updated to reflect new reference numbers and removal of reference numbers for definitions per revisions to Uniform Guidance dated 11/12/2020