

NEW MEXICO STATE UNIVERSITY SUBWARD POLICY AND PROCEDURES

Introduction

Sponsored programs funded by external awards are usually performed exclusively by the University's own faculty, staff and students, but there are times when Principal Investigators (PI's) may wish to collaborate with other institutions or entities to complete a portion of the funded program. This kind of collaboration between different organizations, which often leads to a more sophisticated end-product, has become a common practice and is commonly implemented by means of Subwards. A Subward is one of several forms of agreement issued by a University receiving a prime external award which delegates a portion of the prime award's funding, and responsibility for a portion of the work to be undertaken under the prime award, to a third-party organization or organizations participating in the sponsored project.

This document provides guidance to University faculty and staff on the preparation, administration, and monitoring of University-issued Subwards. Its purpose is to facilitate compliance with laws, regulations, and the terms and conditions of prime awards, and to ensure that all costs are reasonable and allowable. It provides definitions of key terms, discusses how to determine if a project requires a Subward (in the form of a subgrant or a subcontract), or a procurement action (involving a vendor agreement or a Professional Services Contract), defines the administration of Subwards, and describes the respective responsibilities of New Mexico State University (NMSU) PI's, Colleges, Research Administration Services (RAS), Sponsored Project Accounting (SPA), and Procurement Services for the development, issuance, billing, monitoring, and administration of Subwards.

Definitions

Administrative and Programmatic Requirements – Administrative requirements are those matters common to grants and contracts in general, such as financial management, type/format and frequency of reports, and retention of records. These are distinguished from programmatic requirements, which concern matters that can be treated only on a program-by-program, grant-by-grant, or contract-by-contract basis, such as types of activities that can be supported by grants or contracts under a particular program.

Award – financial assistance that provides support of stimulation to accomplish a public purpose. An award can be a grant or a contract.

Contract – an award from an external agency which usually has a specific statement of work and detailed deliverables.

Cost Sharing or Matching – the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Equipment – tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A Subwardee or subcontractor may use its own definition of equipment and capitalization threshold provided that such definition would at least

include all equipment defined here.

FDP – Federal Demonstration Project; A consortium of federal agencies and institutional recipients of federal awards whose purpose is to reduce the administrative burdens associated with research grants and contracts.

Grant – an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by an external source to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. The grant is usually team oriented, more flexible than a contract, and the only deliverable is usually reports.

Grantee – legal entity to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Prior Approval – documentation evidencing consent prior to incurring specific cost and/or action.

Recipient – the legal entity who receives the award directly from the federal government; the holder of the prime award. Organizations can be recipients; individuals cannot.

Subward – award of financial assistance in the form of money or property in lieu of money, made under a grant or a contract – may be called a subgrant or a subcontract.

Subcontract -- 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 contract made to the Regents of New Mexico State University; an agreement entered into with another institution, private firm or individual for the performance of work that is directly related to the furtherance of the scope of work of a sponsored project awarded to the University. The subcontractor is an independent contractor responsible for completion of the work described in the subcontract.

Subgrant – award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of grant provided above.

Subgrantee – legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided

Subrecipient – The recipient of a Subward; a subgrantee or a subcontractor.

Supplies – all tangible personal property having an acquisition cost of up to and including \$4,999, which is other than equipment as defined above.

Suspension – depending on context, either 1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee/awardee or subgrantee/Subwardee or a decision to terminate the grant, or 2) an action taken by a suspending official in accordance with agency regulations implementing Executive Order 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment

proceedings as may ensue.

Termination – permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee/awardee or subgrantee/subwardee. Termination does not include: 1) withdrawal of funds awarded on the basis of the grantee’s/awardee’s underestimate of the unobligated balance in a prior period; 2) withdrawal of the unobligated balance as of the expiration of a grant; 3) refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or 4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms and Conditions of a Grant or Subgrant/Subward – all requirements of the grant of subgrant/Subward, whether in statute, regulations, or the award document.

Third Party In-kind Contributions – property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee/awardee under the grant agreement.

Subward Administration

A. Categorization of Subwards

When a Subward is issued, a three-way collaboration is created between independent parties acting at arms-length: 1) sponsor; 2) prime award recipient or awardee; and 3) subrecipient or Subwardee. The third party (subrecipient/Subwardee) is required to provide the resources and personnel necessary to conduct its portion of the work as an independent contractor.

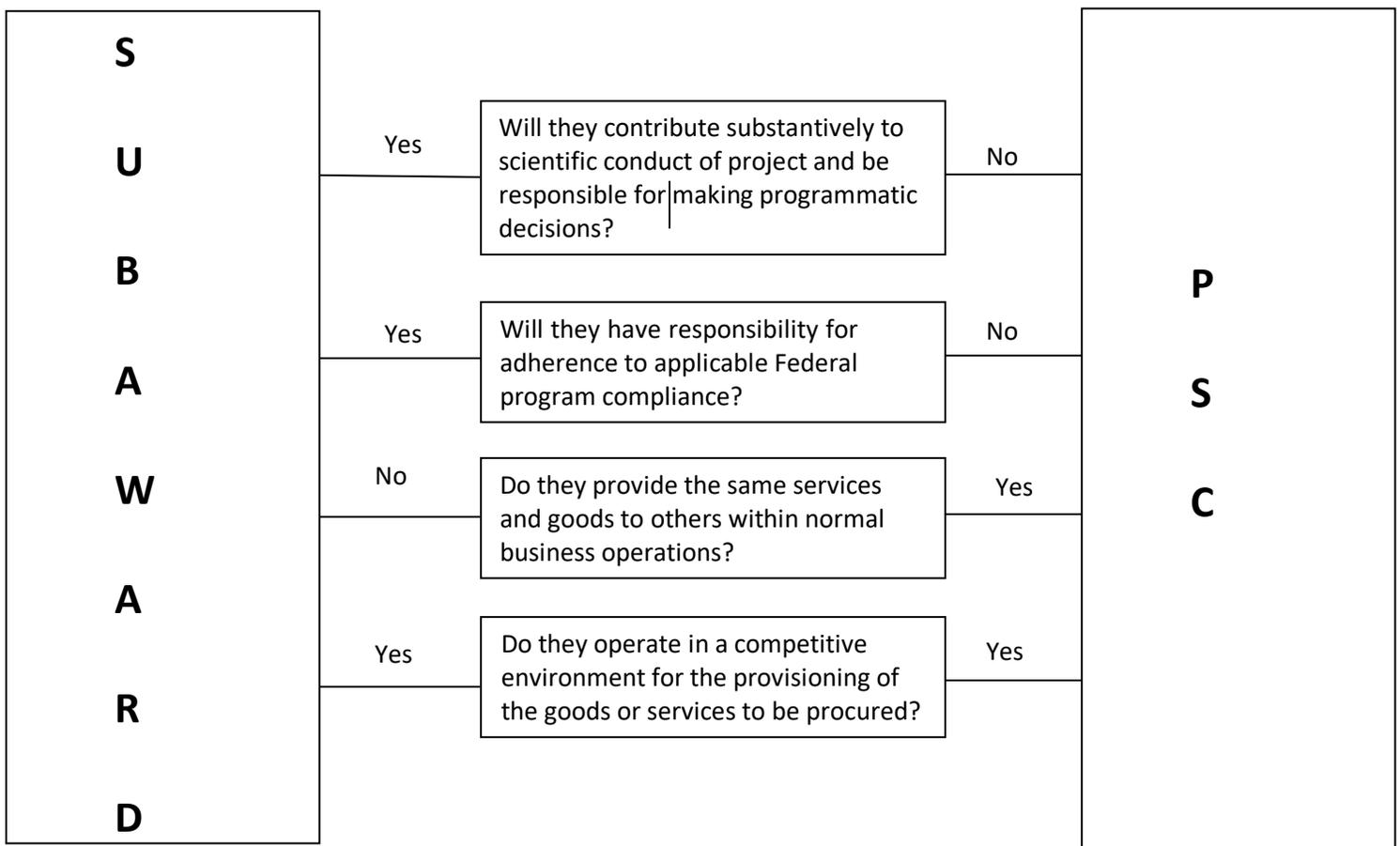
An initial set of determinations must be made to categorize third parties correctly and to provide the correct framework for the work to be undertaken by them. The following determinations are required:

1. Is the third party truly independent? If a portion of the work to be undertaken under a prime award is assigned to another person or entity within the prime recipient’s own organization rather than to an independent third-party organization, a Subward is not created. For example, if work to be undertaken under a prime award issued to NMSU is to be accomplished primarily in one College, with a portion of the work to be done in another College, an “Internal Award” is created rather than a Subward. Similarly, even if a true third- party organization is to be assigned responsibility for a portion of the work, it can only be awarded a Subward or act as a Subwardee if it utilizes its own employees and resources to accomplish its portion of the work. Under no circumstances can a Subwardee employ NMSU employees to perform the work on a Subward.
2. Is the contemplated third-party transaction a “procurement action”? A Subward should not be mistaken for a procurement or vendor agreement. A vendor typically provides goods or services to many different purchasers. Subwards are issued for collaborative work closely associated with and tailored to the programmatic effort to be undertaken under the prime award. In contrast, a procurement action in the form of a Professional Services Contract or vendor agreement is issued for the purchase of services or goods which are available generally and are of more generic applicability.

Specialized services performed by a non-NMSU employee (an individual, medical provider, or licensed professional such as an attorney, accountant, architect, or engineer) require a professional services contract issued by the Central Purchasing office. Under no circumstances can a professional services contract be issued to an NMSU employee.

A Professional Services Contract is used when purchased services involve an organizational entity but do not involve a substantive portion of the work effort of the project. For example, a Professional Services Contract would be appropriate for the performance of repetitive tests or activities requiring little or no discretionary judgment on the part of the provider.

Figure 1 provides guidance on how to determine if the agreement should be a Subward or other procurement action:



Note: There must be an arms-length relationship between NMSU and its Subwardees. Under no circumstances can a Subwardee employ NMSU employees to perform the work on a Subward or subcontract.

Grants and Contracts Administrators in RAS will serve as experts on whether the services needed justify a Subward or a procurement action. The guidelines below illustrate how the determination is made. As stated by the Federal Demonstration Partnership (FDP):

Subwards may be called subcontracts, subagreements, purchase orders, subgrants, etc., and they may also have the appearance of procurement agreements in format and language, but they nonetheless remain forms of “financial assistance” and do not constitute what *2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements* describes as a “procurement action.” Thus their issuance is not subject to the procurement standards specified in 2 CFR 200.

3. Is it a subgrant or a subcontract?

After determining whether the agreement should be a Subward, the next decision to make is whether it is properly characterized as a subgrant or a subcontract -- Subwards consist of both subgrants and subcontracts and distinguishing between the two is important since each is subject in some respects to different rules and administrative procedures. It is a distinction that is not necessarily dependent on how an agreement might be captioned or described in sponsoring agency guidelines since the terms “Subward”, “subgrant” and “subcontract” are loosely applied and frequently used interchangeably. The correct distinction, however, is easily made by looking at the prime award – is the prime award a grant or a contract? If the prime award is a grant, then the Subward will be a subgrant; if the prime award is a contract, then the Subward will be a subcontract.

The subgrant and subcontract designations are important to determine applicability of flow-down requirements and Subward monitoring. This is because subgrants, like grants, are subject to 2 CFR 200 guidelines, while subcontracts and contracts are not. Conversely, contracts issued by federal agencies, and subcontracts issued under federal contracts, are subject to Federal Acquisition Regulations (FARs) and applicable ancillary regulations such as DFARs, while federal grants and subgrants are not.

Inclusion of Subward in Proposal

Subwards will normally be listed and justified in the proposal; if an award is granted to NMSU, we accept this as sole source justification. It is listed and justified in the proposal narrative, and the agency is fully aware of the specific subcontract chosen.

Whenever possible, the intent to Subward a portion of the prime award should be described in the initial proposal to the sponsor, and details of the Subward, including the Subward scope of work and Subward budget, should be included in the proposal to the maximum extent possible; this practice facilitates sponsor approval of the Subward at the time of the award. If an NMSU proposal that includes Subward details is accepted by the sponsor, as submitted, and results in an award to NMSU, we accept the award as evidence of Subward approval, and sufficient sole source and cost justification for the Subward.

When a Subward is to be included in a proposal, sufficient time must be allowed to receive the Subwardee proposal and budget and to discuss and negotiate the scope of work for the Subwardee. The Subwardee must provide a detailed budget showing categories for salaries, fringe benefits,

materials, supplies, equipment, travel and other direct costs that are necessary to accomplish the specific aspects of the project assigned to the Subward. If Facilities and Administration (F&A) costs are included in the Subward budget, such costs must be based on the subrecipient's current rate or a rate mandated by the prime sponsor in the Request for Proposal (RFP).

In order to verify the amount of F&A costs requested and to support costs when requested by the prime award, the Subwardee will include a copy of their current negotiated rate agreement with their budget. If the Subwardee does not have a negotiated rate agreement, a de minimus rate may be applicable. If the Subwardee is a private company and refuses to provide NMSU with a copy of their negotiated rate agreement, NMSU will work through the Defense Contracting Audit Agency (DCAA) to obtain the appropriate rate information.

Subward costs are included in NMSU's budget as a direct cost. When calculating NMSU's F&A costs, the portion of each Subward contained in the proposal that exceeds \$25,000 is excluded, as required by 2 CFR 200.

Note: NMSU uses the Federal Demonstration Partnership (FDP) Subward form when issuing a Subward to another university. A long-form Subward template may be used for more extensive or complex Subwards or for international subrecipients.

Note: NMSU calculates F&A costs only on the first \$25,000 of each separate Subward issued under any single sponsored prime award regardless of the number of budget periods involved during performance.

Subward Development After Award is Issued

In instances where a need for a Subward is determined after the award is made, the following guidelines for Subward development are applicable:

- The new Subward must be approved by the sponsor before it can become effective. 2 CFR 200 provides that: "Unless described in the application and funded in the approved awards, [sponsor prior approval is required for] the Subward, transfer, or contracting out of any work under an award."
- The terms and conditions of the prime award or the regulations covering the award may provide direction and requirements for prior sponsor approval of the new Subward.

When a Subward is not included in the proposal package and therefore not approved in the award, the PI must complete and submit to RAS the Fair and Reasonable Cost Analysis and Sole Source Justification (See Exhibit 1).

Note: From time to time, NMSU may elect to engage in a site visit to a potential subrecipient to verify their programmatic, financial and technical fitness. If a site visit is conducted, all documentation will be kept in the applicable grant/contract file.

Flow of Subward and Office Responsibility

The Research Administration Services (RAS) will work closely with the PI to issue the Subward. For those Subwards that were included in the proposal, RAS will contact the PI at the time the award has been fully executed to ensure the scope of work and budget are the same as proposed. RAS will be

responsible for drafting, issuing, and negotiating the Subward. Items needed for this negotiation include the following:

1. Beginning and end dates of Subaward
2. Amount of funding to be provided
3. Budget for work to be performed by the subrecipient
4. PI and institutional contact information
5. Scope of work for the recipient
6. Definition of and due dates for any technical reports to be submitted to the PI
7. Special requirements, if any, that the PI wants to include in the Subward
8. Fair and Reasonable Cost Analysis and Sole Source Justification (See Exhibit 1), if needed
9. Flow-down requirements from Prime Award.

RAS will also negotiate the financial terms and conditions for the Subward and then submit two original Subward agreements to the subrecipient for signature (or obtain signatures electronically). After signing, the subrecipient will return one original to NMSU for our files.

Office/Individual Responsibilities for Subwards

Several entities at NMSU are involved in ensuring successful Subwards and appropriate Subward monitoring. The breakout below defines the primary responsibilities for each of these entities:

Principal Investigator (PI) Responsibilities

NMSU has designated the Principal Investigator (PI) as the person primarily responsible for monitoring the technical, programmatic, and financial performance of a subrecipient:

1. Certify that there has been a fair and reasonable cost analysis by completing the Fair and Reasonable Cost Analysis and Sole Source Justification (Exhibit 1)
2. Oversee the performance of the subrecipient to ensure that all goals are achieved and completed in a timely manner either by phone calls, emails, site visits, meetings or other regular contact with the subrecipient
3. Conduct periodic review of all progress and technical reports and the monitoring of scientific progress in relation to the scope of work
4. Contact the subrecipient to resolve issues If the scientific progress or technical reports are not prepared in a timely manner or are unacceptable
5. Serve as the primary technical point of contact for the subrecipient during performance of the Subward
6. Develop a viable SOW for subrecipient
7. Ascertain whether the Subward statement of work requires modification to add funding, time or other considerations and notify RAS in a timely manner so a modification can be prepared
8. Review, monitor, and approve invoices received from the subrecipient, including 1) costs are allocable, allowable and reasonable; 2) level of detail on invoice is detailed enough to fully understand the costs; 3) personally approve acceptable Subward invoices for payment and

routine review expenditure statements

College Responsibilities

1. Be familiar with and understand the terms and conditions of the prime award, including those that are flowed down to the subrecipient and any additional terms and conditions imposed by NMSU
2. Verify that the subrecipient is meeting any cost share commitments made in the Subward
3. Ensure that any compliance approvals applicable to the subrecipient's scope of work are kept current throughout the life of the Subward
4. Obtain detailed expense records as needed from Subwardee to substantiate expenses
5. Ensure the subrecipient institution has completed and returned NMSU vendor questionnaires/requests to NMSU's procurement office

Research Administration Services (RAS) Responsibilities

1. Review proposals prior to submission to ensure that Subward arrangements are properly budgeted in the prime award
2. Assist in determination of whether a subrecipient or vendor relation exists
3. Verify and obtain certifications that subrecipient has not been suspended, debarred or otherwise deemed ineligible to participate in federal programs
4. Prepare the appropriate Subward agreement
5. Negotiate subrecipient terms and conditions
6. Acquire agency approval for Subwards not listed in the original proposal
7. Obtain appropriate closeout documents from authorized official of subcontractor

Office of Sponsored Projects Accounting (SPA) Responsibilities

1. Review prime award for allowability of a subcontract and encumber the Subward funds in the financial system
2. Assist the Principal Investigator and departments with monitoring Subwards
3. Process invoices verifying proper PI approval has been obtained
4. Modify Subward encumbrances as needed in the financial system
5. Complete financial closeout documents and financial reports associated with Subward

Accounting Financial Reporting

1. New subcontract information is sent by SPA to AFR. A file for each subcontract/vendor is set up
2. An initial letter is sent to the subcontractor to obtain pertinent information on their fiscal year, amount of federal awards, etc.
3. Each year, on the anniversary of the subcontract, an information request is sent to the vendor to satisfy AFR's responsibility for overall review of the subcontractor's audited financial statements, findings, etc.
4. When the information is returned by the subcontractor, the Financial Manager or her designee reviews financial statements, noting any audit findings and determines if further review is necessary

Procurement Services

1. Issue competitive bid
2. Perform bid analysis
3. Supply pricing tools
4. Develop price agreements

Exhibits