



Policy: Distinguishing Between Subrecipients and Vendors or Contractors Policy	Policy No: S4.3
Policy Developer(s): Sponsored Research	Original Date: May 18, 2018
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I. **POLICY:** A research project may include relationships with [contractors](#), consultants, and [subrecipients](#). The [pass-through entity](#) holds the responsibility for deciding whether any given arrangement constitutes a [subaward](#) (carrying out an intellectually significant portion of the Federal award, creating a financial assistance agreement) or a [contractor](#) agreement (obtaining goods and services, creating a procurement relationship). John Carroll University (“the University”) researchers must use the Procedures below to determine whether an entity is a [subrecipient](#) or a [contractor](#) for all sponsored projects.

II. **PURPOSE:** The purpose of this policy is to clarify when the University should issue an entity a [subaward](#) to a [subrecipient](#) or a procurement contract to a [contractor](#). [45 CFR 75 Uniform Administrative Requirements, Cost Principles and Audit Requirements for HHS Awards](#) and [2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#) define the relationships for subrecipients and contractors. In order to remain consistent, the University has adopted this guidance to help researchers determine the status of an entity as a [subrecipient](#) or a [contractor](#) for all sponsored projects, regardless of the funding type (federal, non-federal, state, or industry funding).

III. **SCOPE:** This policy pertains to all University faculty and staff involved in the development and submission of proposals for external support.

IV. PROCEDURES:

A. **Overview:** Determining the appropriate relationship at proposal stage is critical to ensure appropriate accounting for costs and compliance requirements. Misclassification may result in delays in [subaward](#) processing, inaccurate calculation of costs (e.g., failure to include or exclude F&A costs), and time to request approval for project changes.

As a reference tool, please see the [FDP Checklist to Determine Subrecipient or Contractor Classification](#) guidance to assist in making this determination.

B. **Subrecipients and Subawards:** Under [45 CFR 75.327](#), *subaward* means an award provided by a [pass-through entity](#) to a [subrecipient](#) for the [subrecipient](#) to carry out research or a substantive effort that is part of a Federal award received by the [pass-through entity](#). It does not include payments to a [contractor](#) or payments to an individual who 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.

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Following are typical characteristics of a [subaward](#). The [subrecipient](#)

- has responsibility for programmatic decision making;
- contributes to the scholarly/scientific conduct of the project as described in the statement of work for the prime award;
- uses the funding to carry out a program for a public purpose specified in the authorizing statute, as compared to providing goods or services for the benefit of the [pass-through entity](#);
- requires considerable discretionary judgment and the unique expertise of the subrecipient in the performance of the work;
- would be considered as a co-author of publications resulting from the work performed under the prime award; and
- performs work that involves human subjects or animal studies.

Prior to selection of a subrecipient, the Excluded Parties List System, within the [System for Award Management \(SAM\)](#), will be checked to ensure the recipient is not prohibited from receiving federal funds.

C. Vendors or Contractors: A *contractor* provides goods or services within normal business operations and operates in a competitive environment providing similar goods and services to a variety of customers.

Following are typical characteristics of a [contractor](#)/fee for service purchase order. The contractor organization

- provides a routine service (e.g., equipment fabrication or repair, data processing, performing routine analytical testing services);
- provides the goods or services as part of its normal business operations;
- operates in a competitive environment (i.e., competes with others who can provide a similar service); and
- provides similar goods or services to many different purchasers.

Prior to selection of a vendor/[contractor](#), the Excluded Parties List System, within the [System for Award Management \(SAM\)](#), will be checked to ensure the recipient is not prohibited from receiving federal funds. See [Procedures](#) below for more details about selection, payment, and post-award procedures.

I. Objective Performance and Unfair Advantage: To ensure objective [contractor](#) performance and eliminate unfair competitive advantage, [contractors](#) that develop or draft grant applications, or contract specifications, requirements, statements of work, invitations for bids and/or requests for proposals, will be excluded from competing for such procurements.

D. Principal Investigator Responsibilities: It is the [Principal Investigator](#)'s (PI) initial responsibility to ensure the appropriate classification of costs at the time a proposal is submitted to the sponsor. In-house capabilities must be evaluated prior to obtaining external assistance through a [subrecipient](#) or vendor/[contractor](#). The PI must ensure that sufficient information about the proposed arrangement is shared with the Office of Sponsored Research (OSR). PIs are strongly encouraged to consult with OSR in advance of a proposal due date if they have questions about the appropriate classification of costs.

E. Selection of Contractors: In a vendor relationship, if the proposed [subcontractor](#) is providing services where the total amount of the contract exceeds \$25,000, the [PI](#) is

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responsible for obtaining evidence of price competition through a request for quotation (RFQ) or a sole source justification. The investigator should contact OSR for assistance with obtaining proof of price competition or completing the sole source justification form. If competitive bidding is required, the [PI](#) should allow three to four weeks for completion of this process.

- F. Post-Award Procedure:** When it is determined that an outside organization or institution is requested to perform part of the research effort under a grant or contract, the PI must prepare a *Statement of Work* and send it to OSR. OSR will assist in preparation of any requests for proposals and prepare the subcontract in accordance with the University's subcontracting policies and procedures. Subcontracts are always awarded to an organization or institution, not to an individual. If a portion of the work is being done by an individual not affiliated with another organization and who is not a University employee, that individual must be paid as a consultant.

[PIs](#) are not authorized to obligate OSR or the University contractually and should not sign any contracts or agreements. [PIs](#) risk incurring personal liability if they authorize a [subcontractor](#) to begin work and guarantee payment in the absence of an executed subcontract and purchase order. Additionally, the subcontractor is not authorized to perform any work prior to the issuance of a valid purchase order and subcontract from the University.

Subcontracting falls under general contract law and requires that both parties mutually agree to the terms and conditions of a contract before performance begins. Therefore, it is necessary to obtain the subcontractor's written offer or bid with terms and conditions acceptable to OSR before a purchase order is issued. The signed offer or bid, the purchase order, and subcontract agreement become the necessary contractual agreements for purchase of a subcontractor's services.

Internal schedules for the establishment of a subcontract should include sufficient lead time for the procurement process, including preparation of the bid solicitation and sufficient time for response, bid evaluation, negotiations, final award, and performance of the subcontracted effort.

- G. Payment to Subcontractors:** In order to receive payment, the [subcontractor](#) must request payment according to the terms specified in the agreement. Generally, the subcontractor requests payment by submitting an itemized invoice. When OSR receives an invoice, it is reviewed according to the following criteria:

- Invoice has a stated period of performance, which is in agreement with the terms of the subcontract.
- Invoice total does not exceed the subcontract amount and contains the cost detail which defines the types or categories of costs claimed.
- Costs are allowable under the contract, the contracting agency and applicable law and regulation.
- Invoices are not duplicates of previous submissions.
- Cost sharing by the University is properly documented or other contractually binding information has been provided in the required format.
- Signatures, if already provided, are from personnel authorized to approve expenditures for the project.

Advance payments are generally not permitted. No payments may be made until a valid purchase order is issued.

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F. Sanctions: Failure to adhere to the principles and procedures in this policy may result in the adjustment of budgets and expenditures or the use of departmental funds to ensure that the appropriate designation is assigned and the appropriate F&A costs are collected.

V. DEFINITIONS: terms used within or relating to this policy.

A. Pass-through entity (PTE): A non-Federal entity (such as the University when acting in that capacity) that provides a subaward to a subrecipient to carry out part of a sponsored program.

B. Subaward: Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a sponsored research 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.

C. Subrecipient: Subrecipient means a non-federal entity that receives a subaward from a pass-through entity to carry out a part of a sponsored research program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

D. Contractor or Vendor: Contractor or Vendor refers to an entity that receives a contract. A contract is a legal instrument by which a non-federal entity such as the University purchases property or services needed to carry out the project or program under a sponsored research award.

E. Principal Investigator (PI): The individual(s) designated by the University to have the appropriate level of authority and responsibility to direct the project or program to be supported by the award. The University may designate multiple individuals as PIs who share the authority and responsibility for leading and directing the project, intellectually and logistically. When multiple PIs are named, each is responsible and accountable to the University, or as appropriate, to a collaborating organization for the proper conduct of the project or program including the submission of all required reports.

VI. CROSS REFERENCES:

A. [University Policies](#), including but not limited to

1. Sponsored Research Policies
2. Bank Account Reconciliation

B. Federal Regulations, Statement, and Mandates

1. [45 CFR 75.327](#)
2. [45 CFR 75.335](#)
3. [2 CFR 200.318](#)
4. [2 CFR 200.326](#)
5. [HHS Grants Policy Statement](#)
6. [HRSA Legislative Mandates in Grants Management for FY 2018](#)
7. [NIH Grants Policy Statement](#)
8. [NSF Proposal and Award Policies and Procedures Guide](#)

This policy will next be reviewed five years from the date of last review.