Subrecipient or Contractor?

Pam Miller, Director
Noam Pines, Associate Director
Sponsored Projects
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What’s in a Name?

• From the Uniform Guidance:

  • 200.74, Pass-through entity - non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

  • 200.93, Subrecipient - a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program.

  • 200.23, Contractor (replaces term “vendor” (used in A-133)) – means an entity that receives a contract.
Role of the PTE at Proposal Stage

- Must make a case-by-case determination whether each agreement casts the party as a subrecipient or contractor.
- It does not matter what the agreement is called.
  - Grant agreement
  - Cooperative agreement
  - Contract
- Look at the nature of the relationship.
### Characteristics of Each

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What we look for:

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What Can Go Wrong?

• Treating a Contractor as a Subrecipient
  • F&A is applied incorrectly (too little/too late)
  • The Contractor could own IP developed
  • Contractor will have to adhere to federal program requirements: single audit, financial reporting, access to records/financial statements

• Treating a Subrecipient as a Contractor
  • F&A is applied incorrectly (too much)
  • Subrecipient will not own IP if SOW is treated as a work for hire
  • May have to be competitively bid
Evaluating a Subrecipient

- Pass-through must evaluate each subrecipient’s risk of non compliance for purposes of determining appropriate monitoring
- Timing: **before** applicant receives funding
- Risk Factors, **may** include consideration of:
  1. Subrecipient’s prior experience with the grant program
  2. Results of previous audits
  3. New personnel or substantially changed systems
  4. Results of federal monitoring
High and Low Risk Criteria

- Foreign (International) Recipient
- Start-up
- For-profit
- Contract
- Awarded >50% of funds
- No negotiated federal F&A rate/s
- No Audit/Negative Audit Findings

- Domestic (U.S.) Recipient
- Mature
- University-Non-profit
- Grant/Cooperative Agreement
- Awarded < 50% of funds
- Negotiated federal F&A rate/s
- Audited within the last two years and has no negative findings
Higher Risk Subrecipients

Pass-through must consider imposing additional federal award conditions, if appropriate, such as:

- Require reimbursement;
- Withhold funds until evidence of acceptable performance;
- More detailed reporting;
- Additional monitoring;
- Require grantee to obtain technical or management assistance; or
- Establish additional prior approvals.
Special Problems

- TBD Subrecipients (May require sponsor approval at the award stage)
- LLC Subrecipients (Mini-audit Questionnaire issues)
- Subrecipients without Necessary Infrastructure
- Subrecipients without Working Capital
- International Subrecipients
- Subrecipients Connected to the PI (FCOI)
Questions?