

Procedures for the Administration of Subcontracts (1/1/05)

The purpose of this document is to assist Rensselaer faculty and staff in the preparation and administration of subawards and subcontracts issued under sponsored programs.

Sponsored agreements are usually conducted within the physical boundaries of Rensselaer. On occasion, one or more other entities (third parties) are made responsible for a discrete portion of the work effort. When the portion of effort being performed by a third party constitutes a substantive component of the sponsored program, the third party is required to provide the resources and personnel necessary to conduct that portion of the work as an independent contractor. Costs normally associated with third party effort could include any or all of the following: labor, associated employee benefits, materials and supplies, travel, equipment, subawards and subcontracts, consultants, other direct costs, and facilities and administrative costs (indirect costs). In the profit sector, it is common to include costs such as labor overhead, material overhead, general and administrative expense, and a profit or fee.

Relationships and Definitions

The term prime sponsor or sponsor refers to the entity that makes an award directly to Rensselaer. The award document is the agreement processed by the sponsor and accepted by Rensselaer which specifies the terms and conditions under which the project will be conducted.

The document that RA&F generates to formalize a third party relationship with another organization to perform substantive work based upon an award made to Rensselaer is a subaward or a subcontract. A subaward is issued under an assistance (grant) prime. A subcontract is issued under a procurement (contract) prime. The third party performing the effort under a subaward or a subcontract is the subrecipient (also called subcontractor).

Procedures

Sponsor or Peer Reviewed

If the subrecipient is specified in the proposal and the collaboration is funded, it is not necessary to comply with the procurement requirements for competitive bidding or sole source justification since the sponsor or peer review process approved the selection and the costs are determined reasonable to perform the statement of work. If this is not the case, the following procedures for selection must be met.

Non-Sponsor or Non-Peer Reviewed

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When selecting a subrecipient, it is the responsibility of the Rensselaer Principal Investigator (PI), along with RA&F, to comply with standard procurement requirements. Competitive bidding and sole source procurement are the two methods of selection. Competitive bidding is used as the normal method. This method requires RA&F, in conjunction with the PI, to solicit proposals from a number of sources and make a final selection of a subrecipient from those responding. This selection is based on technical merit and cost objectives. Normally the lowest price from a technically qualified respondent is the chosen subrecipient.

When the procurement requires performance from a sole entity because services or expertise are not available from other sources, the PI is required to provide sole source justification identifying the need for the services along with the reason why the selected subrecipient is the only source available for the scope of work. Ongoing collaboration between scientists is not a justification for sole source selection. The collaboration must be further justified with reasons for the unavailability of the services or expertise from other sources.

When contracting under a Federal prime procurement (contract) award that is greater than \$500,000, the documentation on the selection of the subrecipient must indicate the following:

- (A) Whether small business concerns were solicited and if not, why not;
- (B) Whether veteran-owned small business concerns were solicited and, if not, why not;
- (C) Whether HUBZone small business concerns were solicited and, if not, why not;
- (D) Whether small disadvantaged business concerns were solicited and, if not, why not;
- (E) Whether women-owned small business concerns were solicited and, if not, why not;
- (F) If applicable, the reason award was not made to a small business concern.

Subaward/Subcontract Proposal

Regardless of the method used in selecting a subrecipient, there must be adequate time provided between the receipt of a subrecipient's proposal and the Sponsor's proposal due date to allow Rensselaer's PI sufficient time to discuss and negotiate the statement of work. If the proposed subaward or subcontract involves human subjects or animal experimentation, appropriate subaward or subcontractor compliance to their procedures and federal policies must be included with the proposal.

A budget, including any proposed cost share, itemized by major budget category, such as salaries and wages, employee benefits, supplies, equipment, travel, consultants, subawards or subcontracts and other direct costs is submitted by the subcontractor as part of its proposal. Greater itemization or justification of categories may be needed if required by the prime

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sponsor. Facilities and administrative costs (F&A) should be included and should be calculated using the subrecipient's current rate(s). The F&A rate(s) and the base to which it is applied (e.g., Modified Total Direct Costs) must be reflected. In addition, employee benefit rates, if used to assess employee benefit costs, must also be reflected.

The subrecipient's proposal must be signed by a designated official who is authorized to commit the subrecipient's resources and to certify compliance assurances.

Incorporating Subrecipient's Proposal into Rensselaer's Proposal

The subrecipient's costs are included in Rensselaer's budget as a direct cost. When calculating Rensselaer's F&A costs, the amount which exceeds \$25,000 of each subaward or subcontract should be excluded from the calculation in accordance with the Office of Management and Budget (OMB) Circular A-21. F&A on the first \$25,000 is calculated using the on campus rate.

Preparing the Subaward or Subcontract

When RA&F receives a fully executed award from the prime sponsor, an email is sent to the PI and Financial Manager advising them that the fully executed award has been received and that the "Request to Issue a Subaward/Subcontract" form (Exhibit A and A-1) must be submitted. This information is necessary for RA&F to ensure that the proper steps and determinations have been made prior to issuance of the subaward or subcontract. Exhibit A-1 is only required when the subrecipient was not specified in the proposal and resulting award.

Prior to writing the subaward or subcontract, RA&F needs to check to see if the subrecipient is listed on the Federal Government's List of Parties Excluded from Federal Procurement and Nonprocurement Programs and a subrecipient profile needs to be established. The List of Parties Excluded from Federal Procurement and Nonprocurement Programs can be found at <http://epls.arnet.gov>. The profile (Exhibit B) verifies that the subrecipient has the appropriate control systems in place to monitor and account for the receipt of funds and establishes the subrecipient's business classification. A subrecipient profile is required for each subrecipient, not each individual subaward or subcontract. The profiles are maintained centrally.

In order to meet the procurement requirements as stated in OMB Circular A-110 and the Federal Acquisition Regulations, when issuing a subcontract (not subaward) under a prime procurement (not assistance) award (see ONR clarification letter, Exhibit C-1), a subcontract cost analysis must be completed (Exhibit C). A cost analysis is a line item by line item

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examination of the budget to determine reasonableness, allowability, allocability and necessity of the proposed budget.

In preparing the subaward or subcontract, it is important to adhere to the prime agreement terms and conditions and to flow down the appropriate clauses. Rensselaer utilizes the OMB/OSTP recommended Federal Demonstration Partnership standard subaward shell which incorporates all federal grant flow down terms and conditions.

When contracting under a Federal prime procurement (contract) award, additional steps need to be taken. The Federal Acquisition Regulations require the completion of a Negotiation Memorandum (attached), and depending upon the dollar amount of the subcontract, the following may also be required:

- Debarment and Suspension Certification
- Lobbying Certification
- Procurement Integrity Certification (attached)
- Cost and Pricing Analysis (attached)
- Small Business Plan
- Certification of Current Cost and Pricing (attached)

Sponsor approval as cited in the prime terms and conditions, may be necessary prior to issuance of the subaward or subcontract, even if the subrecipient was proposed in the original proposal. In some very rare instances, it may be necessary for the sponsor to review and approve the proposed agreement prior to Rensselaer's release to the subrecipient.

Once the subaward or subcontract is prepared, it is sent to the subrecipient for review. The subrecipient may want to negotiate changes or request clarification of the terms and conditions. RA&F negotiates and coordinates those requested changes with legal counsel, department personnel and the PI, where appropriate. Once negotiations are complete and the subaward or subcontract is fully executed, RA&F makes the proper distributions.

Special Consideration for Small Businesses

The following applies when subcontracting with a small business (under 50 employees):

1. A small business does not need to obtain an audited facilities and administrative costs rate from the government until it has reached \$10,000,000 in government sales.

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2. A small business must submit its facilities and administrative costs rate with its cost proposal. If the small business does not know how to estimate a rate they should be referred to Section H of OMB Circular A-21, entitled "Simplified Method for Small Institutions".
3. It is Rensselaer's responsibility to make the determination that the proposed rate is fair and reasonable. The file must be documented to show that we have (or have not) found this to be a reasonable rate.

Advance Payments to Subrecipient

Advance payments are generally not allowed since:

1. Sponsor guidelines normally state that subrecipients are reimbursed for expenses incurred for performing the work.
2. Rensselaer does not usually receive advance funding from its sponsors, therefore, it is not prudent to advance funds to a subrecipient.

Requests for advance payments for subrecipients will be considered only in very unusual circumstances and on a case by case basis. All advance payments, if approved by RA&F will be issued by RA&F and only after a fully executed subaward or subcontract is in place, unless extenuating circumstances prevail and only with the approval of the Director of RA&F. Requests to incorporate an advance payment clause must be submitted to RA&F with appropriate justification. The liquidation method of advance payments will clearly be written in the subaward or subcontract. Additionally, fund numbers will not be established unless a fully executed subaward or subcontract is in place.

Post Award Management

Pending Subawards and Subcontracts

Once a month a report containing all pending subawards or subcontracts will be run and distributed. RA&F will follow up on the status of all pending actions and document the file.

Technical Reports

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Rensselaer is responsible to see that the subrecipient's work is conducted and completed in a timely and satisfactory manner. Technical progress reports and/or other technical deliverables are received and reviewed by the Rensselaer PI.

Financial Reports and Invoices

RA&F receives and reviews all subrecipient invoices and forwards onto the PI and departmental Financial Managers. Departmental review includes verification that direct costs were expended in accordance with the approved budget and any corresponding subrecipient rebudgeting authorities. The invoice is checked to determine that the invoice number is correct, costs are properly allocated and allowable, the amount invoiced is within the obligated cost of the subaward or subcontract and cost sharing obligations are properly documented. The subrecipient must certify to all reimbursable and cost shared amounts. The invoice is approved by the PI or designee to denote verification that all deliverables to date have been met.

No invoice that exceeds the obligated cost of the subaward or subcontract, even if approved by the PI, will be processed for payment. RA&F if necessary, will return the invoice to the subrecipient with an explanation. NOTE: The subrecipient may resubmit the invoice at a level up to the obligated cost of the subaward or subcontract.

RA&F reviews to ensure that cumulative costs reflected on the final invoice are accurate. RA&F will also determine that all direct costs and cost share contributions are consistent with the agreement and agreement budget both in total and, as appropriate, by cost category.

All final invoices must be held until RA&F verifies that all non-financial deliverables have been met, signs the final invoice and forwards to the Financial Manager for processing.

Other Deliverables

In accordance with the terms of the agreement, the subrecipient may be required to submit to RA&F one or more of the following reports on an interim and /or final basis:

- inventory of property (RA&F will forward as appropriate)
- statement of inventions (RA&F will forward to OTC as appropriate)
- small and small disadvantaged business reports
- A133 certifications

Amendment to Subcontracts

During the term of a subaward or subcontract, it may be necessary to change or modify one or more of the terms and conditions. Requests for changes should be submitted by the

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subrecipient's authorized official and have the approval of the Rensselaer PI. Some changes, such as scope of work or key personnel, may require sponsor approval before an amendment can be issued. If the amendment modifies an Exhibit, a new Exhibit must be incorporated. The amendment is the vehicle that clearly states the changes and provides for the signature approvals of both parties. All amendments are written and executed by Research Administration and Finance.

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