Research Administration Forum

Contracts
Learning Objectives

- To understand the changes from the new Uniform Guide.
- To understand what services are provided by Research Support Services in the area of contracts.
- To understand the difference between a subrecipient and a contractor.
- To understand the process for issuing either a subaward or a contract.
Research Support Services

- Sponsored Program Agreements/Contracts (incoming)
  - For contracts where the University will be the recipient of the funds, initiate the agreement by submitting:
    - an intent to submit to researchsupportservices@memphis.edu
    - Internal budget
    - Proposal summary form
    - Scope of work
  - Basically, the same process as initiating a grant proposal.

- Subawards (outgoing)
  - For contracts where the University is the prime awardee and will be issuing a subaward to a third party entity.
Uniform Guide

- The new Uniform Guide has replaced the term vendor with contractor to remove ambiguity between the different OMB Circulars.

- §200.22 Contract
- §200.92 Subaward
- §200.330 Subrecipient and contractor determinations
Consistency

The University has adopted this guidance to determine the status of a subrecipient versus a contractor for all sponsored projects, no matter the funding type (federal, state, or industry funding).
Subrecipients

A subaward is for the purpose of carrying out a portion of an award in which the prime recipient creates a relationship with the subrecipient.
Subrecipient Characteristics

Under UG §200.330, Subrecipient and contractor determinations, an organization is considered to be a subrecipient of an award when the prime recipient:

- determines who is eligible to receive what Federal financial assistance;
- has its performance measured against whether the objectives of the program are met;
- has responsibility for programmatic decision making;
- has responsibility for adherence to applicable program compliance requirements; and
- uses the funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.
Other Subrecipient Characteristics

- The organization is contributing to the scholarly/scientific conduct of the project as described in the statement of work for the organization (programmatic involvement);
- The conduct of the organization’s portion of the project requires use of the discretion and unique expertise of the organization.
- The subrecipient’s principal investigator may be a co-author on publications or may seek patent protections for inventions.
- Title to intellectual property created by subrecipient is normally retained by the subrecipient.
Contractors

A contract is for the purpose of obtaining goods and services for the entity’s own use and creates a procurement relationship with the contractor.
Contractor Characteristics

- Under UG §200.330, Subrecipient and contractor determinations, an organization is considered to be a contractor of an award when the entity receiving the funds:
  - provides goods and services within normal business operations;
  - provides similar goods and services to many different purchasers;
  - normally operates in a competitive environment;
  - provides goods and services that are ancillary (contribute) to the operation of the program; and
  - is not subject to compliance requirements of the program.
Consultant

- A ‘consultant’ is an expert advisor who is paid for his/her time at a fixed rate of compensation (hourly or daily and includes travel, out-of-pocket expenses, and overhead) specified in the consultant agreement.
- A consultant may be an individual or a company.
- A consultant must use their own equipment and materials.
- Individuals who work full time and consult on the side may not use the equipment or facilities at their full time employer for consulting purposes.
Uniform Guide §200.330

- UG §200.330, Subrecipient and contractor determinations, states that there may be unusual circumstances or exceptions to the listed characteristics.

- In making the determination of whether a subrecipient or contractor relationship exists, the substance of the relationship is more important than the form of the agreement.

- It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or contractor.
The Subaward Process

Step I: Initiate the Subaward Process

- The Office of Research Support Services (RSS) receives an award notice from the sponsor.
- RSS will initiate the subaward agreement with the identified subrecipient, based upon:
  - Approval of Subaward by the Prime Sponsor
  - Detailed Budget
  - Budget Justification
  - Statement of Work
  - Subaward Principal Investigator (PI) Identification
  - Subaward Contact Information
The Subaward Process

Step 2: Draft of the Subaward Agreement

- RSS will draft the subaward agreement to incorporate/address:
  - Required terms and conditions of:
    - The State of Tennessee
    - The prime
  - Subrecipient’s statement of work, budget and budget justification
  - Required certifications and representations
  - Intellectual Property ownership
The Subaward Process

Step 3: Negotiation of Terms and Conditions of the Subaward Agreement

- Upon completion of the initial draft, RSS will submit the subaward agreement to the subrecipient.
- Subrecipient will review subaward agreement.
- Negotiation between subrecipient and RSS will occur, until all terms and conditions of the agreement are acceptable by both parties.
The Subaward Process

Step 4: Execution of the Subaward

- Upon acceptance and completion of the final draft, the subaward document is signed by the authorized representatives of:
  - The University
  - The Subrecipient

- When both parties have signed the agreement, it is considered fully executed and legally binding.
The Subaward Process

Step 5: Procurement of Subaward

- Upon execution of the agreement:
  - RSS notifies applicable PI and department that subaward agreement has been executed.
  - RSS requests applicable PI and department to:
    - Initiate a requisition in TigerBuy
    - Complete and submit to Procurement and copy to RSS the following forms:
      1. Executed Agreement
      2. Sole Source Justification Form
      3. Contract Routing Form
  - The Procurement Office issues the Purchase Order (PO)
  - Notify RSS of issued PO number
The Subaward Process

Step 6: Subaward Invoicing Process
- Invoices received from the subrecipient are reviewed, approved and submitted for payment by the PI.

Step 7: Subaward PO Closeout
- Procurement Office institutes Subaward PO Closeout based on expiration of PO project period.
Contract Procurement Process

This includes agreements for personal, professional, and consultant services.

The contract procurement process follows the University contract services process found at:

http://bf.memphis.edu/procurement/contractservices.php
Dual Service Agreements

- Faculty or staff receiving compensation from another state agency or TBR for work performed outside normal duties (extra compensation) must have a dual service agreement with the procuring entity.
- This is not applicable to work performed within normal duties (buy-out of effort); in which case, a services or consulting agreement is executed.
- It is the responsibility of the Faculty or Staff performing work on a dual service to secure approval from their department Chair prior to accepting the assignment.
- Effective immediately, RSS will require a proposal summary form (PSF), signed by the Chair and Dean for all dual service agreements.
Questions?