

Surfing the Waves of Subawards & Subrecipient Monitoring

**2006 NCURA
Region VI/VII Meeting
Kauai, Hawaii**

Contact Us with Questions!

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Agenda

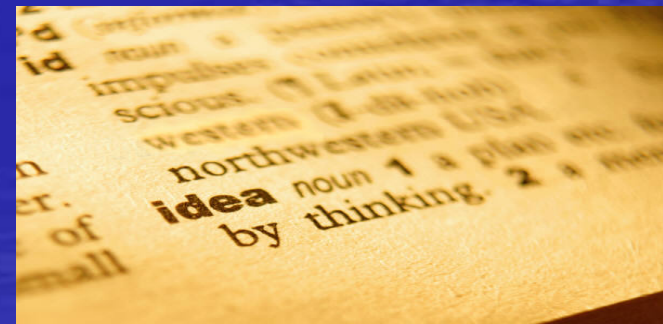
- Definitions and Distinctions
- Federal Requirements
- Subrecipient Monitoring – Proposal Stage
- Subrecipient Monitoring – Setting up a Subaward
 - Audit Oversight
 - Corrective Action Plans
- Key Elements in Subaward Agreements
 - Domestic
 - Foreign
 - For-Profit
- Subrecipient Monitoring – Life of the Subaward
 - Financial Monitoring
 - Technical Monitoring
- Subaward Closeout



Definitions and Distinctions

Subaward Definition

- A formal legal agreement between your institution and another legal entity where
 - A defined portion of the your sponsored project's intellectually significant activity is assigned to another entity ("the subrecipient") to fulfill
 - Work is generally performed by the subrecipient's personnel using their resources, usually at their site



Subaward Definition (cont.)

- The subrecipient takes full responsibility, including intellectual leadership, for the portion of your work statement that they will undertake.
- The award terms and conditions (T&C) you accepted from your funding agency are “flowed down” to the Subrecipient, who must also agree to comply with them.
 - e.g., audit requirements, restrictions on rebudgeting, human and animal subjects approvals, conflict of interest, clean air and water, etc.

Other Purchasing Actions

Usually Handled by a Procurement Department

Procurement of:

- Commercially available supplies and expendable materials
- Expert consulting (consulting firm or independent individual)
- Non-University labor or services
- Equipment or component parts for fabricated equipment or fabricated equipment which will be delivered to and used by the sponsor or other entity designated by the sponsor

Hints on how to tell the difference when it gets fuzzy...

- Entity regularly sells the goods or services as a part of their routine business operations, usually at a fixed price or rate (e.g., pipettes, tanks of hydrogen, etc.) **(PO)**
- Entity is using human subjects or animal subjects (and needs their organization's IRB or IACUC approval) to do their portion of the work **(SUBAWARD)**
- Entity might be a legitimate author or co-author of a paper done on the project **(SUBAWARD)**

Hints on how to tell the difference when it gets fuzzy...

- An invention might arise from the work done by the subrecipient (**SUBAWARD**)
- Entity performs a test on data we provide to them
 - And give us the results to analyze (**PO**)
 - And provides routine professional services in analyzing the results (e.g, a radiologist reading an X-RAY) (**PO**)
 - And uses their professional expertise to contribute to generalizable knowledge in new ways (**SUBAWARD**)

Group Exercise #1

Evaluate each case and determine the appropriate type of agreement; a subaward or other procurement transaction:

What information do you need?

Do you have enough information?

What are the administrative implications of your decision?

Case Studies

- **Case Study #1**

Professor Elm is submitting a proposal to the National Institutes of Health for a large project studying AIDS. He would like UCSF to participate in the study specializing in the area of pediatric AIDS.

- **Case Study #2**

A PI Tells you that she is preparing a proposal and one of the things she needs can be done by a survey center that does this kind of work for PIs all over the country. The survey center will gather data from 1,000 respondents using telephone surveys developed by your PI. The center will collate the data in an electronic database and deliver it for analysis to your PI. The cost is \$30 per respondent or \$30,000.

- **Case Study #3**

Professor Maple is working with the Office of Naval Research (ONR) to develop a new generation of smart robots. He will be submitting a research proposal and would like a company (SmartRobot, Inc.) to actually build the robot from his specifications. The robot will be then given to ONR as a deliverable on the contract.

Get it Right the First Time!

If you incorrectly propose a subaward as a procurement action it affects the:

- F & A rate
- You may need to go back to the sponsor to get approval to enter into a subaward relationship



Reprise of Federal Requirements

Pass-through Entity Responsibilities

A-133 .400(d)

- **Monitor the Subrecipient to:**
 - Ensure that federal awards are used for authorized purposes in compliances with laws, regulations and provisions of the prime
 - Ensure that performance goals are achieved
 - Ensure that subrecipients expending \$500K or more annually have met the audit requirements for that fiscal year
 - Issue a management decision on audit findings within 6 months of receipt of the subrecipient's audit report
 - Ensure that the subrecipient takes appropriate and timely corrective action
 - Consider whether subrecipient audits necessitate adjustment of the pass through entity's own records
 - Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary

Pass-through Entity Responsibilities

A-133 -.400(d)

- **Inform subrecipient of:**
 - CFDA title and number of the prime award
 - Prime Award name and number
 - Prime Award year (if R&D)
 - Name of Federal agency
 - Requirements imposed on the subrecipient by Federal laws and regulations
 - Requirements imposed on the subrecipient by the provisions of grant and contract agreements
 - Requirements imposed on the subrecipient by any supplemental requirements imposed by the pass-through entity

Federal Expectations for Institutional Subaward Policies and Procedures

- Subaward Policies and Procedures Exist
 - Adequately addresses institution's pass-through entity responsibilities (per A-133)
 - Assigns institutional roles and responsibilities
 - Is attuned to the size and variety of your institution's subrecipient portfolio
 - Addresses subrecipient monitoring
 - How is routine monitoring performed?
 - Is Risk Assessment policy or guidance needed? If yes, how is it implemented?

Expectations for Policy

- Minimum Subaward Documentation Required
 - Fully-executed subaward agreement
 - Financial report(s) certified by subrecipient
 - Technical report(s) from subrecipient
- Corrective Action Plan
 - Documentation of when such will be required
 - Documentation that actions taken will be consistent with A-133 requirements

Evidence of Adequate Subrecipient Monitoring

- A-133 Audit Monitoring
 - Downloading data from Single Audit website not sufficient by itself
 - Need evidence that it was reviewed by institutional official relevant to the particular subaward
 - How are non-A-133 entities reviewed?
- Invoice Monitoring
 - Need evidence of institutional approval
 - Need detailed backup for invoices
 - Itemized expenditure reports

Evidence of Adequate Subrecipient Monitoring

- Cost-Sharing Monitoring
 - Major focus of NSF auditors!
 - Evidence that cost-sharing is directly attributable to benefiting project
 - Provide detailed backup for expenditures
 - Donations should be accompanied by a formal appraisal
- Pre-Award Reviews, Life-of-Award Monitoring, Award Closeout
 - Policy should list expectations for documentation for these areas

Internal Controls

- Proper classification between subawards and vendor agreements
- Auditors will assess the strengths or weakness of institution's internal controls over compliance as part of their assessment of risk

Subrecipient Monitoring – Proposal Stage

Subrecipient Monitoring at Time of Proposal

- Selecting a Subrecipient
 - How was the subrecipient selected, and by whom?
- A Subrecipient's ability to perform the work successfully must be assessed, based on:
 - Past performance
 - Technical/financial resources

Subrecipient Monitoring at Time of Proposal

- Obtain an Official Subrecipient's Proposal
 - Subrecipient Statement of Work & Deliverables
 - Subrecipient Budget and Budget Justification
 - FBs calculated in accordance with approved rates?
 - F&A calculated in accordance with approved rates?
 - What if the subrecipient doesn't have an approved F&A rate?
 - Cost-sharing commitment
 - Cost and Pricing Data/Certificate
 - Other data?

Signed by
Subrecipient's
Institutional official

Proposal Preparation: PI

1. Integrates the subrecipient's SOW into your work statement or Research Plan
2. Includes the subrecipient's budget as a direct cost line item in your budget
3. Forwards completed proposal to Institutional Representative for review including the subrecipient's proposal

Monitoring F&A Threshold

MTDC Base

Pass-through entity's F&A rate is charged only to the first \$25,000 of each subaward

S&W Base

Pass-through entity receives no F&A for subaward costs

Total Base

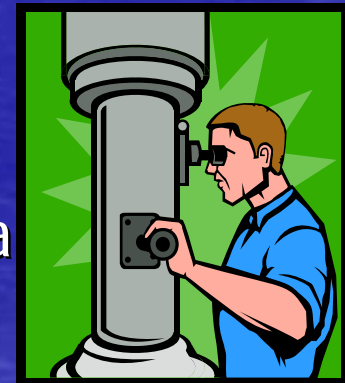
F&A charged to the whole subaward amount



Subrecipient Monitoring Setting up a Subaward

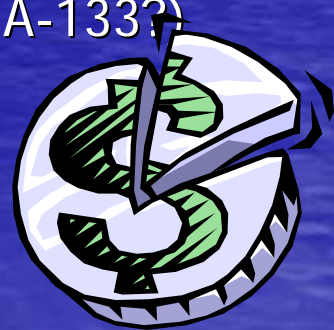
Proactive Monitoring –Before Authorizing Work to Begin

- Determine financial adequacy of the subrecipient
 - Acceptable A-133 or DCAA audit or financial questionnaire
 - Obtain satisfactory evidence of F&A rates/FB rates
 - Conduct and document formal or informal cost & pricing analysis and certificate if needed
- Verify Subrecipient is not debarred or suspended
- Obtain sole source justification if needed
- Verify all necessary approvals have been received
 - Agency prior approval normally needed for contracts
 - Some agencies require prior review of text
- Make high-risk/low-risk determination
- Ensure all compliance approvals have been obtained
- Ensure that subaward is fully-executed



Potential Indicators of High-Risk

- A qualified audit report, or failure to have a current audit report
- Inadequate response to a financial questionnaire
- History of non-compliance
- History of non-performance or failure to use funds for their authorized purposes
- New subrecipient (or new to this type of project)
- New personnel or systems
- Large subaward/large percentage pass-through
- Award size relative to subrecipient's sponsored research portfolio
- Criticality to overall success of pass-through entity's project
- Subrecipient in a remote location
- Type of subrecipient (is the subrecipient already subject to A-133?)

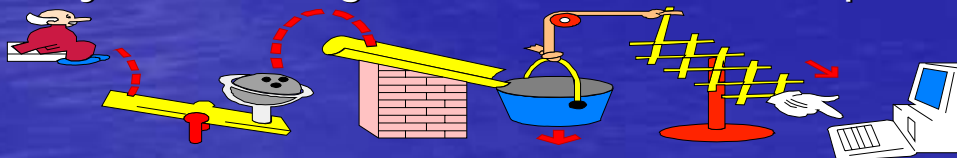


Potential Responses to High Risk Subrecipients

- Corrective Action Plan
- Discuss need for special monitoring with PI/dept.
 - Ask for extra contact between PI and Sub's PI
 - Ask for more frequent technical reporting
- Engage in "agreed-upon procedures engagements"
- Add more detailed or frequent invoicing requirements
 - Add requirement for expenditure backup materials
- Tie receipt of technical progress reports to payments
- Require on-site monitoring (technical and financial)
- Add more stringent termination or stop-work language for failure to comply with requirements

Corrective Action Plans

- Subrecipient:
 - Submits plan for correcting audit deficiencies to the pass-through entity, with specific activities and due dates
- Pass-through entity
 - Reviews adequacy of their proposed plan
 - Issues management decision within 6 months
- Subrecipient:
 - Conforms with steps listed in the corrective action plan
- Pass-through entity:
 - Monitor's subrecipient's progress to ensure full compliance with steps and dates
 - Take appropriate follow-up action (including sanctions) in cases of inability or unwillingness to come into compliance



Key Elements of Subaward Agreements

Domestic

Foreign

For-Profit

Developing the Subaward Instrument



- Remember, subawards:
 - Protect the sponsor's and your interests, and flow down requirements of the prime award
 - Are legally binding agreements between your institution and the subrecipient
 - Demonstrate your institution's commitment to due diligence and proper stewardship of sponsor funding
 - Should not include terms conflicting with prime nor add undue administrative burden to a subrecipient

Proactive Monitoring – Write a Solid Subaward

- Include:
 - Representations and Certifications
 - Prime flow-downs (include copy of prime, redacted if desired)
 - PRO: Covers you in case you missed a specific provision
 - CON: Not all prime clauses flow down to subrecipients
 - HINT: Just throwing in a copy of the prime without also educating your subrecipient on key areas is considered lazy .. And doesn't really help you achieve compliance

How do I know what to flow down??

Hierarchy of Regulations

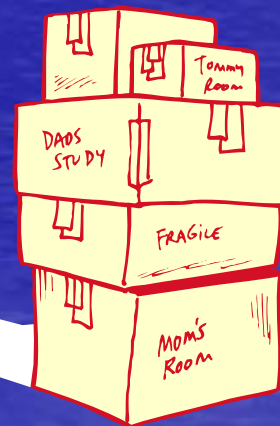
Legislation (*Federal and State Laws*)

Program & Administrative Regulations
(*Codified regulation including A-21, A-110, FAR, and Specific Policy Manuals*)

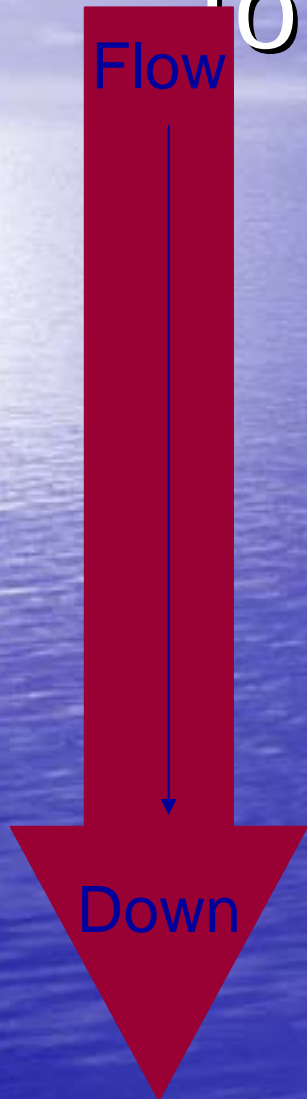
Sponsor Terms and Conditions
(*incorporates the authorities above*)

Your Institution's
Policy and T&C's

Subrecipient



Example of T&C Flow Down to Subrecipient



- Federal requirements, state and local laws
- **Prime funding source (NSF)**
 - T&C to prime recipient (Stanford)
- **Pass through entity (Stanford)**
 - Flows down appropriate NSF and Stanford T&C to
- **Subrecipient (UC Berkeley)**
 - Flows down appropriate NSF and SU and Berkeley T&C to Lockheed
- **Subrecipient (Lockheed)**
 - Subject to flow down of appropriate NSF, SU, Berkeley requirements

Subaward Box Exercise

Write a Solid Subaward

Dept Usually has Influence on:

- Statement of Work
- Key Personnel
- Period of Performance
- Dollar Amount
- Payment Terms
- Prior Approvals
- Cost Sharing
- Reporting Requirements

Central Office Usually Determines:

- Intellectual Property/Data
- Equipment Terms
- Indemnification, ITAR
- HIPAA, Rights in Data
- Publication, Termination
- Reference to Cost Principles
- Certs and Reps/Assurance
- Flow-Down Requirements
- Audit Requirements

Use Agency Guidance to Help

- See NIH Policy on Consortium Agreements

http://grants1.nih.gov/grants/policy/nihgps_2003/NIHGPS_Part12.htm#_Toc54600251

- See NIH Public Policy Requirements

http://grants1.nih.gov/grants/policy/nihgps_2003/NIHGPS_Part4.htm#Exhibit_2_Public_Policy_Requirements_and_obligations

- See FDP Model Subaward

<http://www.rtto.psu.edu/spa/subawards/subdemo.htm>

- OMB Memo Approving Generalized Use of FDP Model Subaward

<http://www.rtto.psu.edu/spa/subawards/modelsubagreement.pdf>

- See FDP National Policy Requirements Matrix

<http://www.nsf.gov/pubs/fdp/fdpopprocappb205.pdf>

Hints and Tips on a Solid Subaward

- **Clearly specify:**
 - What will happen in the case of non-performance
 - Deliverables, and their expected form/format and timetables
 - Prior approval requirements
 - Invoice requirements
 - Who is responsible for lost or damaged property

Hints and Tips on a Solid Subaward

- **Include Obligation to Promptly Notify Pass-Through Entity if:**
 - Compliance approvals lapse
 - Conflict of interest arises or management plan changes
 - Audit status changes
 - Debarment or suspension status changes

Ensure the Subrecipient Fulfills its Cost Sharing Commitment!

- Did the subrecipient commit to cost sharing in its budget?
- Was the cost sharing commitment included in the subaward?
- What specific expectations were incorporated in the T's&C's of subaward?
 - Subrecipients should provide reports on cost sharing



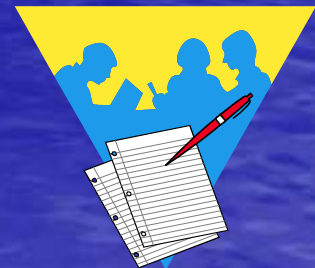
Setting Up the Subaward Agreement

- Allocate funding within the constraints of the prime agreement
 - Dollar amounts and dates
- Price changes should require a formal modification to the agreement.

Prior Approval from the Sponsor May be Required

- If the sponsor approves the subrecipient at the proposal review and acceptance stage, no additional documentation or sole source justification is usually required
- If a subaward was not included in the proposal, prior approval from the sponsor is more likely to be needed
 - More time will be needed to get the subaward in place!

Why would a sponsor want prior approval over a subaward?



Foreign Subs

- Must deal with exchange rates
 - Get budgets in U.S. dollars if at all possible
- Payment terms
 - Must be compliant with the prime; sub may object
 - Consider fixed price for modest subawards
- Flow downs
 - Some U.S. requirements DON'T flow down



Foreign Subs (continued)

Audit

- May not have regular audits. Use alternative language..
 - Subrecipient shall maintain and have available for audit and inspection all administrative and financial documents, and all other records, allocated to this Subaward Agreement for a period of four years following the expiration date except that, if an audit is initiated before the expiration of the four year period, the records shall be retained until audit findings have been resolved. The above records are subject to inspection and audit by STANFORD, its designated representatives, representatives of [insert sponsor name here], or the Comptroller General of the United States at all reasonable times during the life of the Agreement and for four years thereafter, or longer if required by audit.

How will you inspect?

For-Profit Subs



- **Audit**


- If the company objects to providing you their F&A and fringe benefit rate agreements, get your cognizant audit agency to help
 - **“Notwithstanding the foregoing, however, the parties acknowledge and agree that Subrecipient’s direct and indirect cost rates may be verified by STANFORD only through the appropriate government audit agency.”**

- **Property**

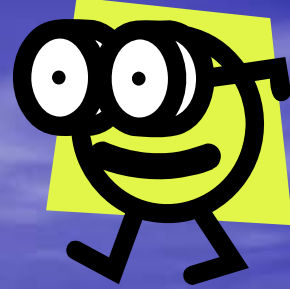
- If subcontracting (as opposed to a subgrant), special property requirements apply. Subrecipient must assume risk of all loss, damage or destruction to property under their control.

Non-Profits or other Universities under the \$500K A-133 Threshold

- Audits
 - Invoke a financial questionnaire in lieu of an audit
- F&A and FB rates
 - Do they have an approved F&A rate? (You will have to negotiate one with them if they don't)
- Consider fixed price
- Consider more frequent invoicing (help their cash flow)
- Conflict of interest provisions – will they use your policy? (If so, how will that work? How will you monitor it?)



Subrecipient Monitoring Life of the Subaward



Key Requirements

- Technical progress is being made according to schedule
 - Acceptable deliverables/progress reports are received on-time
 - Adequate communication is happening between PI and Subrecipient PI
- Subrecipient has proper control of property
- Subrecipient is continuing to meet compliance requirements
- Subrecipient is submitting invoices on time
- Required prior approvals are obtained
- Annual review of audit status or fulfillment of corrective action plan is satisfactory

Modifications are in Sync with Pass-through Award

- If terms and conditions or delivery dates are updated on prime, changes may need to be flowed down to subawards
- More \$/time on prime may require modification to augment the sub
 - Are human and animal subject(s) approvals still current? How do you know?

Monitoring Subrecipient Expenditures

- Ensure invoices are submitted in accordance with subaward requirements
 - Correct level of detail and including any required cost-sharing
 - Frequency/schedule
 - Backup materials adequate
- Ensure that duplicate costs or invoices have not been submitted
- Ensure invoices only contain expenses that are
 - Allowable (are there any prior approvals required?)
 - Allocable
 - Reasonable
- Verify costs are incurred within the period of performance (Requires PI)
- **Ensure expenses are aligned with technical progress**
- Verify cost sharing is appropriately reflected if required



How is review Documented?

Monitoring Subrecipient Invoices

- Invoices from the subrecipient allow us to reimburse them for project related expenses
- Level of detail required is specified in the subaward for:
 - Salaries
 - Material and Supplies
 - Travel
 - Equipment
 - Subawards
 - F&A (rate and amount)
 - Totals



Approving Invoices: PI or Dept

- **Do not approve** invoices for payment if technical or financial reports are delinquent
- **Do not approve** invoices that are insufficiently detailed for you to feel confident the costs are allowable, allocable, and reasonable

Communicate any deficiencies to the subrecipient in a timely manner!



When an Invoice Cannot be Approved

Communicate to:

- Subrecipient
- Sponsored Projects Office



Be careful NOT to be in *breach of your contract* !

Property Management Role

- Property clauses are “flowed down” from prime award
 - Some entity (usually Property Office) verifies subrecipient’s property system is “approved”
 - Some entity (usually Property Office) sends property reports to prime contractor (as required)



The background of the slide is a photograph of a vast blue ocean meeting a blue sky with wispy white clouds. The sun is visible on the left side, creating a bright reflection on the water's surface. The text "Subaward Closeout" is centered in the middle of the image.

Subaward Closeout

Ensure a Timely Closeout

- 90 days before the end date of the subaward confer with the subrecipient to determine whether work will be completed on time.
 - If not, request a no cost extension from prime. If a no cost extension is granted, pass it through to the subrecipient
- 30-90 days before the end, request an invoice marked "Final" and remind the subrecipient when it will be due
 - The Sponsored Projects Office needs a copy of the invoice marked ***"Final Invoice"*** even if they don't get invoices otherwise.

Ensure a Timely Closeout

Upon expiration ...

- Obtain all required reports from subrecipient (technical, patent, financial, property, etc.)
 - Review reports to make sure they are acceptable
- Ensure proper disposition of government property
- De-obligate commitment for subrecipient agreements (if necessary) in your financial system
- Settle any disputed or disallowed costs

Subaward Monitoring at Closeout

- Verify fulfillment of any cost-sharing requirements
- Verify receipt of invoice marked "Final"
- Obtain signed Refunds, Rebates, Credits Form (if necessary)
- Verify clear understanding about record retention
- Audit subaward (if necessary)
- Verify Subrecipient is not debarred or suspended
- Verify that Subrecipient has filed an audit report (or equivalent) through subaward end date
- Adjust Pass-through entity's records if necessary to reflect changes in subaward costs

Any Questions?