

<b>Policy:</b>	<b>Subrecipient vs. Vendor/Contractor</b>		
<b>Responsible Office:</b>	Office of Sponsored Research	<b>Prepared By:</b>	Erica Kennedy, MBA, CRA Director, Office of Sponsored Research
<b>Approved Date:</b>	05/18/2018	<b>Reviewed By:</b>	James Krukones, PhD Associate Academic Vice President
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### **Scope**

This policy applies to all John Carroll University faculty and staff involved in the development and submission of proposals for external support.

### **Purpose**

It is not always clear when John Carroll 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](#) cover this topic by defining the relationships for subrecipients and contractors. In order to remain consistent, John Carroll 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, non-federal, state, or industry funding).

### **Policy Statement**

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).

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 about making this determination.

### **Subrecipient/Subaward**

Under [45 CFR 75.327](#), Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal 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.

Following are 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
- investigator would be considered as a co-author of publications resulting from the work performed under the prime award
- 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.

### **Vendor/Contractor**

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 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)
- 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.

### **Vendor/Contractor Selection**

In a vendor relationship, if the proposed subcontractor is providing services where the total amount of the subcontract exceeds \$25,000, the principal investigator is responsible for obtaining evidence of price competition through a request for quotation (RFQ) or a sole source justification. The investigator should contact the Office of Sponsored Research for assistance with obtaining proof of price competition or completing the sole source justification form. If competitive bidding is required, the principal investigator should allow three to four weeks for completion of this process.

## **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.

## **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 principal investigator must prepare a Statement of Work and send it to the Office of Sponsored Research (OSR). OSR will assist in preparation of any requests for proposals and prepare the subcontract in accordance with John Carroll 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 is not a JCU employee, that individual must be paid as a consultant.

Principal investigators are not authorized to obligate OSR or JCU contractually and should not sign any contracts or agreements. Principal investigators 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 JCU.

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.

## **Payments 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 the Office of Sponsored Research 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
- Invoices are not duplicates of previous submissions
- Cost sharing 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.

### **PI Responsibility**

It is the Principal Investigator's 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 the 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.

### **Sanctions**

Failure to adhere to the principles and processes 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.

#### **Related Information**

[45 CFR 75.327](#)

[45 CFR 75.335](#)

[2 CFR 200.318](#)

[2 CFR 200.326](#)

[HHS Grants Policy Statement](#)

[HRSA Legislative Mandates in Grants Management for FY 2018](#)

[NIH Grants Policy Statement](#)

[NSF Proposal and Award Policies and Procedures Guide](#)

Subrecipient (aka Subaward/Subcontract)	Vendor (aka Contractor)	Consultant
<p>An entity that has agreed to work in collaboration with the JCU PI to perform a substantive portion of the programmatic effort on an award.</p>	<p>An individual, business, or other entity which supplies products or services to the University.</p>	<p>An individual or business whose expertise is required to perform the project. Services are temporary and special or highly technical.</p>
<p>Works collaboratively with the JCU PI as a co-investigator at another entity to which funds are being passed</p> <p>Has authority to make administrative and programmatic decisions and to control the method and results of work</p> <p>Has responsibility to meet all applicable sponsor requirements</p> <p>Has performance measured against meeting the program objectives</p> <p>Are designated senior/key personnel in the proposal</p> <p>Uses sponsor funds to carry out a program rather than provide a good or a service</p> <p>Has responsibility for the end results of the research effort</p> <p>Services are complex and require a scope of work and budget, billing requirements, and a deliverable schedule</p> <p>The entity's statement of work may represent an intellectually significant portion of the programmatic decision making</p> <p>The entity's work results may involve intellectual property and/or may lead to publications</p> <p>Needs animal and/or human subjects approvals for its <u>independent</u> portion of the work</p> <p>Requires a separate budget and budget justification in the application</p>	<p>Provides similar goods or services to different purchasers</p> <p>Does not make program decisions or take actions that impact a program's overall success or failure</p> <p>Is not subject to sponsor compliance regulations</p> <p>Goods and services are ancillary to the program</p> <p>Provides goods or services as part of their normal business operations</p> <p>Competes with comparable entities to provide the same goods and/or services</p> <p>Is not responsible for research results</p> <p>There is no scope of work</p> <p>Goods and services are billed according to the vendor/contractor's established rates</p> <p>The goods and services are secondary to the central purpose of the project</p> <p>No potential for patentable or copyrightable technology to be created through project from activities of the entity</p> <p>Performs services only (no analysis or discretionary judgment)</p> <p>No one individual providing goods and services is identified</p>	<p>An individual or business outside the project who confers with the PI regarding research objectives</p> <p>Does not develop the objectives of the project</p> <p>Is not responsible for the overall outcome of the project</p> <p>Is not responsible in designing or developing the research</p> <p>Is not responsible for conducting the research</p> <p>Is not responsible for reporting the research</p> <p>Is not essential toward the shape, direction, and completion of the project</p> <p>Receives a fee for their services, not a salary</p> <p>Provides similar services to other organizations</p> <p>Does not serve as senior personnel</p> <p>Will not use university resources.</p> <p>JCU defines the scope of work</p> <p>Consultant determines how to accomplish the work</p> <p>Is not considered an employee of the University and therefore is not eligible for workers compensation, liability coverage, or unemployment</p> <p>Payment is based upon completion of specific work, rather than time worked</p>