

Subawards, Consultants, Vendors & Collaborator — Who Are You?

**NCURA 2012 Region IV / V Spring Meeting
Gateway to Innovation
St. Louis, MO**

April 17, 2012

Jamie Young

Interim Director, Office for Sponsored Research, Northwestern University

Sally Gale

Grants Officer, Office for Sponsored Research, Northwestern University

Why Does This Matter to Me?

- Subcontracts require subrecipient monitoring
- Costs for consulting that are not properly documented can be disallowed
- Vendor services and payments bypass all the above
- Accurate documentation of university resources and effort reporting
- Other significant contributors is the mystery category, e.g. “significant” with no measurable effort

What Does the Sponsored Research Office Encounter?

- Consultant letters with programmatic effort and the promise of institutional resources
- Faculty hesitant to involve collaborators as subcontractors
- PIs who want to get the funding first and then sort out the details on the back end
- Vendors being treated as subcontracts
- OSCs providing letters that imply work, university resources and “effort”

Overview

- What is a subcontract, consultant, and vendor?
- What is a collaborator and other significant contributor?
- Appropriate uses of each
- Implications of using each
- Adding agreements after the award is made

What is a Subcontract?

- A formal binding legal agreement between your institution and another legal entity
 - A portion of your (prime recipient) sponsored project's intellectually significant activity is assigned to another entity (subrecipient) to fulfill
 - Work is generally performed by the subrecipient's personnel using their resources, usually at their site
- The subrecipient takes full responsibility, including intellectual leadership, for a portion of your work statement
- The award terms and conditions you accepted are “flowed down” to the subrecipient, which must also agree to comply with them
 - Audit requirements, restrictions on rebudgeting, human and animal subjects approvals, conflict of interest, etc.

Characteristics of a Subcontracting Agreement

- Must abide by terms and conditions of subcontract
- Work within the budget
- Subcontract institution owns all the data, reports, drawings, materials and inventions they develop under the agreement
- Work is performed with “best or reasonable efforts” and performance is measured against meeting the objectives of the project
- Free to publish and disseminate results

When to Use a Subcontract

- A subaward is appropriate if you can answer “yes” to any of the following questions:
 - Does the entity’s statement of work represent an intellectually significant portion of the programmatic effort of the overall project?
 - Does the entity have responsibility for programmatic decision-making?
 - Can the entity’s work result in the development of intellectual property or publishable results (including co-authorship)?
 - Will the entity need animal and/or human subjects approvals for its portion of the work?
 - Will the entity be using institutional facilities, students and staff?

What is a Consultant?

- An individual, firm, and/or organization retained to provide professional advice or services for a fee
- Meets the independent contractor status established by the IRS
- Provides goods and services within normal business operations
- Provides similar goods or services to many different purchasers
- Operates in a competitive environment
- Can be an employee of the awardee organization in **limited** circumstances

Characteristics of a Consulting Agreement

- Awardee institution owns all the data, reports, drawings, materials and inventions developed under the agreement
- Publication rights can be prohibited
- Consultant work is often warranted
- Deadlines must be met
- Improper characterization of independent consultants can be costly to the hiring institution

Distinguishing Factors

- IRS 20 factors
 - <http://www.irs.gov/pub/irs-utl/x-26-07.pdf>
- Will they be contributing to the project in a programmatic manner?
- Will they be considered as “Key Personnel” on your proposal?
- Will a consultant agreement interfere with the faculty member’s institutional responsibilities?
- Where is the collaborator going to do the work and will his institutional resources be used?

When to Use a Consultant

- When the individual/firm rendering service does not participate in programmatic decision-making
- If consultant is affiliated with another academic institution, the services provided must be:
 - outside of their institutional time and commitments
 - without use of their institutional resources
 - paid directly to the consultant above and beyond their institutional salary with associated tax liability

What about “Internal” Consulting?

- Payment to an employee for internal consulting is allowable only when all of the following conditions exist:
 - Work is provided for in the award document or approved in writing by the sponsor
 - Consultation is performed for a department other than the individual's primary department or involves a separate or remote location
 - Work performed is beyond the scope of the individual's departmental responsibilities
 - Work is allowable under the terms of his/her regular appointment
 - Must be “incidental work”
 - Faculty are not “key personnel” for that particular grant or contract
 - Consultancy is not used to increment institutional base salary

What about a Vendor?

- Vendors provide goods and services in a competitive environment
- Individual(s) conducting the work are not necessarily identified
- Is prior approval required?
- Do you need to provide a quote?
- How about justification for the selection of the vendor?

What are Collaborators and Other Significant Contributors?

- Other Significant Contributors (OSCs) are individuals who have committed to contribute to the scientific development or execution of the project, but are not committing any specified measurable effort to the project.
- Collaborators, as defined by NIH, are individuals involved with the PD/PI in the scientific development or execution of a project, e.g. usually have the project role of Co-Investigator or Investigator.

Why is it Important to Make a Proper Determination?

- The prime recipient is responsible for the overall management of the project, regardless of who or where the work is being done.
- If issued, subcontracts are subject to OMB A-133 auditing and monitoring by the prime recipient.
- For consultants, we must have the documentation to support the services provided.
- Auditors will assess the strengths and weaknesses of the institution's internal controls over compliance regarding proper classification between subcontracts, consulting and vendor agreements.

Classification Issues

- Problems with classifying subcontracts as consultants or vendors:
 - Federal compliance requirements do not flow down to consultants and vendors
 - No subcontract monitoring
 - Consultants and vendors have no rights to data produced, no rights to IP and no publication rights
 - Not subject to conflicts of interest and research misconduct policies
 - Potential for audit findings if misclassified

Classification Issues

- Problems with classifying consultants or vendors as subcontracts:
 - Procurement standards required by OMB A-110 are bypassed (competitive bid process, cost and price analysis, sole source justifications, etc.)
 - Lack of review for high dollar requisitions
 - May impose unnecessary administrative and compliance burdens on consultants/vendors (effort reporting system, annual audits, etc.)
 - Requires subrecipient monitoring

What is Needed at Proposal Stage?

- Subcontracts
 - Scope of work, budget, and F&A
 - Budget costs are included in the consortium line item
 - Subrecipient's institutional approval

What is Needed at Proposal Stage?

- Consultants
 - Letter detailing services to be provided and rate schedule
 - Budget in consulting line item
 - Costs generally include fees and, possibly, travel

What is Needed at Proposal Stage?

- Other Significant Contributors (OSC)
 - Usually include letter of support
 - Biographical sketch required
- Collaborators
 - Can be classified as Co-I, Investigator, or other role — which requires measurable effort
 - Can be included with no effort, and usually include only letter of support

Adding Subcontracts After-the-Fact...

- Is prior approval needed?
- Infrequent, because of the added expense of F&A
- New subcontracting institution must submit:
 - Letter of intent
 - Scope of work
 - Budget

Adding Consultants After-the-Fact...

- More common
- PI must document:
 - that the services are essential,
 - cannot be carried out by an employee,
 - the most qualified person was hired, and
 - the payment was appropriate
- Documentation and the consulting agreement in place prior to the work being conducted
- PI must approve all invoices prior to being paid

And Finally Collaborators...

- Usually not added after-the-fact, but may be incorporated to replace individuals leaving the project
- Prior approval is required only if designated as key personnel

Examples

Are the following examples of a consulting agreement or a subcontract?

You decide...



Consulting Agreement or Subcontract?

A collaborator has agreed to perform analyses on blood samples on your grant as well as providing his expertise on the interpretation of the results. He will be interpreting the results at his home half of the time and the other half he will be interpreting them in his office at work. His lab will be performing the analyses of the blood samples.

Consulting Agreement or Subcontract?

A collaborator agrees to supervise a postdoctoral fellow and other personnel associated with the performance of specific aim 2 on your project. He will also assist the project PI with preparation of the progress reports and manuscripts resulting from the study. The collaborator plans to spend about 2 – 4% of his time per year on the project and will not request salary support.

Consulting Agreement or Subcontract?

A collaborator has agreed to provide expertise on your grant and will devote 20 hours/year. He requests to be paid \$100/hour, which is a total of \$2,000/year. He will perform all the work either at home or the local coffee shop on his personal laptop, but he prefers the ambience of the coffee shop.

Consulting Agreement or Subcontract?

Before

James Bond, PhD, Research Associate Professor, University of New Mexico
Consultant (\$5,000)

Dr. Bond is a consultant. He will provide guidance in searches conducted using FDA Adverse Event Reporting System (AERS) data. In addition, he will develop and follow-up on Freedom of Information (FOI) requests to the FDA regarding serious dermatologic adverse drug reactions identified in AERS. His role will include assessment and interpretation of the data retrieved from AERS. He will perform adverse event signal detection, determining appropriate statistical ratios that suggest the occurrence of a signal of an adverse event. Dr. Bond will contribute to the project 0.6 calendar months per year.

Explanation provided by administrator of why he is a consultant:

Dr. Bond will not use New Mexico University resources in this project. He is an expert who will utilize an FDA database and will be serving as a guide for the database.

Consulting Agreement or Subcontract?

After Revision

James Bond, PhD, Consultant (\$5,000)

Dr. Bond is an expert who will provide guidance in searches conducted using FDA data. In addition, he will develop and follow-up on Freedom of Information (FOI) requests to the FDA regarding serious dermatologic adverse drug reactions identified. His role will include assessment and interpretation of the data and he will perform adverse event signal detection, determining appropriate statistical ratios that suggest the occurrence of a signal of an adverse event. Dr. Bond will provide approx. 100 hours of consulting at the rate of \$50/hour.

Questions?

Thank you!



Contact Information

James E. Young
Interim Director
Office for Sponsored Research, Chicago Campus
jamie-amy@northwestern.edu
(312) 503-7911

Sally S. Gale, CRA
Grants Officer
Office for Sponsored Research, Chicago Campus
ssgale@northwestern.edu
(312) 503-3091