New York University
UNIVERSITY POLICIES

Title: Managing Subawards Issued by NYU Policy
Effective Date: December 1, 2017
Supersedes: December 26, 2014
Issuing Authority: Sponsored Programs Administration
Responsible Officer: Assistant Vice President for Post-Award Administration

Policy

It is the policy of New York University (NYU, “the University”) to comply with the requirements of the Federal Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Uniform Guidance) and other applicable regulations, pertaining to subawards.

Purpose of this Policy

The purpose of this policy is to provide guidance on proposing, developing, issuing, oversight and closeout of subawards.

Scope of this Policy

This policy is applicable to all schools, departments, units and personnel of the University involved in administering sponsored awards.

Procedures for Implementation

a. How Subawards Are Submitted and Awarded

i. Distinguishing Characteristics between Subawards and Contractor

NYU follows the requirements in the OMB Uniform Guidance, Section 200.330, that state; a pass-through entity must make case-by-case determination whether each agreement it makes for the disbursement of Federal program funds classifies the party receiving the funds in the role of a subrecipient or contractor. The table below provides guidance to help differentiate between subawards and other vendor relationships such as consulting agreements or purchasing agreements. The Federal awarding agency may require complying
with additional guidance to support these determinations. Not all characteristics listed need to be present in making such a classification.

<table>
<thead>
<tr>
<th><strong>Subaward</strong> (or Subrecipient)</th>
<th><strong>Vendor</strong></th>
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</thead>
<tbody>
<tr>
<td>a. Helps determine eligibility for assistance;</td>
<td>Provides the goods and services within its normal business operations;</td>
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<tr>
<td>b. Has its performance measured against meeting the objectives of the program;</td>
<td>Provides similar goods or services to many different purchasers;</td>
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<tr>
<td>c. Has responsibility for programmatic decision making;</td>
<td>Operates in a competitive environment;</td>
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<tr>
<td>d. Assumes responsibility for adherence to applicable sponsor program compliance requirements;</td>
<td>Provides goods or services that are ancillary to the operation of NYU’s sponsored project;</td>
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<tr>
<td>e. Uses sponsor funds to carry out a program of NYU as compared to providing goods or services.</td>
<td>Is not subject to compliance requirements of NYU’s sponsor.</td>
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ii. Proposing a Subaward

A. Determining the Need for a Subaward

The Principal Investigator (PI) is responsible for determining the need for a subaward and/or procurement action on a sponsored project, and for the initial determination of which mechanism is appropriate (See Section a.i above). In making these determinations, PIs are typically assisted by their Departmental Administrators (DA’s) and/or Projects Officers in the Office of Sponsored Programs (OSP). PIs generally outline this need (with appropriate rationale and authorization) in the grant proposal and signify acknowledgement of having met the required criteria for subaward or contractor classification in Cayuse. PIs should consult the Contract Office when issuing a consulting agreement on a sponsored project. However, all vendor relationships for the purchase of goods and services should be processed through NYU Procurement.

B. Required Elements to Include a Subaward in a Proposal

NYU requires that the following documents be completed for each Subaward that is included in a proposal to the sponsor. Proposals will not be signed by institutional officials until these items are completed and submitted to OSP.
• The Subaward Statement of Work (SOW), including a clear description of the work to be performed, the proposed timelines and deliverables. For guidance on scope development see:
  http://www.nyu.edu/content/dam/nyu/research/documents/Contracts/guidelinesforscopeofwork.pdf.

• Subaward Budget and Budget Justification, including the subaward direct and indirect costs, calculated using the Subaward approved Facilities and Administrative (F&A) cost rates and fringe benefit rates and verifying any committed cost sharing.

• A Fair and Reasonable Cost Analysis – Subawards Under Contract, as applicable, must be signed by NYU’s PI. The PI’s signature on this form certifies that the PI has selected the subawardee in accordance with this policy, and determined that their costs are reasonable with respect to the proposed SOW and that all proposed costs are allowable under the Sponsor’s anticipated terms and conditions.

Any additional information that may be required by NYU’s sponsor (e.g., Certificate of Current Cost or Pricing data, Sole Source Justification, biographies of Subaward key personnel).

The PI or Department Administrator are required to check the box in the Cayuse Subaward tab at the time of proposal to document that the request meets the conditions for subaward classification. If the classification changes at the time of the award, an explanation should be noted in Cayuse.

Subaward proposal elements are expected to comply with the sponsor requirements for NYU’s prime proposal. PIs are responsible for ensuring that they obtain all materials from their subawardee in the correct format and that the information is complete.

iii. Issuance of a Subaward

A. Initial Spending by Subawardee

A subaward will not be issued, nor payments to a subawardee authorized, prior to NYU’s receipt and acceptance of a funding commitment from the prime sponsor which authorizes NYU to enter into the proposed contractual agreement. An NYU PI or designee may not authorize a subawardee to begin working without a fully executed subaward agreement in place. Proposed subawardees that commence work without a fully signed subaward agreement from the NYU Contract Office do so at their own risk and have no assurance of payment from NYU. In the event a subaward is subsequently issued to a subawardee, a subawardee may claim costs properly incurred under its own risk, provided that the costs are otherwise allowable. In such cases, the subawardee must furnish evidence to NYU that all required compliance approvals were in place at the time the costs were incurred.

B. Subaward Periods of Performance and Duration
The period of performance of a subaward (including any requested extensions) may not be outside of NYU’s own period of performance. Subawards may, however, be issued for shorter periods of time than NYU’s full period of performance. A new subaward may be issued whenever NYU’s sponsored project receives funding under a new competitive segment.

C. Subaward Funding Mechanisms

NYU normally issues subawards on a cost-reimbursement basis. Fixed amount subawards for $150,000 or less may be issued with prior written approval from the Federal awarding agency, provided the subaward meets the conditions of a fixed amount award outlined in the OMB Uniform Guidance, section 200.201. In such cases, the proposal should include a justification statement that a particular subaward be designated as a fixed amount subaward to obtain prior written agency approval.

D. Requesting Issuance of a New Subaward

After a Prime Award (or an amendment to a Prime Award) has been accepted by New York University and a sponsored project is established, the Contract Office will draft subaward agreements proactively using information contained in Cayuse. The Contract Office will send the proposed agreement(s) to PIs, Departments and Project Officers for review and approval.

When the Contract Office receives those approvals, the subaward will be issued to the subawardee for review and execution. The Contract Office will handle the negotiation of any terms and conditions in the subaward and, once the agreement is acceptable to both parties, will sign on behalf of the University. The procedure that defines OSP’s issuance of subawards is contained on their Wiki site (NYUHome login required):

https://wikis.nyu.edu/display/RES/How+Subaward+Agreements+are+Issued+to+a+Collaborating+Institution.

E. Applying F&A (Indirect Cost) Rates to Subawards

There are two types of F&A costs on subawards: those earned by the subawardee, and those earned by NYU. A subawardee is expected to apply its own Federally-negotiated F&A rates and bases when preparing its subaward budget unless a lower rate or base has been agreed to by the subawardee institutional official (e.g., to meet cost-sharing requirements, or to meet a sponsor’s F&A rate limitation.). If a subawardee does not have a federally negotiated F&A rate, it must either apply the 10% de minimus F&A rate on Modified Total Direct Costs or elect not to recover F&A. The subrecipient’s decision to forego F&A should be noted in the subaward agreement. NYU applies the OMB Uniform Guidance “life-of-the-award” policy with respect to its subawards and will use the approved F&A rates authorized at the time of issuance of the subaward.

NYU’s “life-of-the-award” policy applies to subawards under a sponsored project. The terms of the subawardee’s F&A rate agreement in effect when the subaward is issued will govern F&A charges throughout the performance of the subaward. The period of performance on a subaward will not exceed NYU’s competitive segment on its award.
When a renewal subaward is issued under a NYU award that uses a modified total direct cost (MTDC) base for calculating F&A, NYU will recover its F&A on the first $25,000 of the renewal subaward.

When NYU’s prime award uses an F&A rate that is based on an MTDC base, NYU will recover its own F&A on the first $25,000 of each subaward on a project. This recovery is calculated on the life of the subaward.

In cases where the subawardee is NYU School of Medicine (SOM), the SOM is entitled to receive its F&A rate. NYU Washington Square (WSQ) would not be entitled to receive F&A on any portion of the subaward to SOM. For collaborations with the School of Medicine, no formal subaward is issued. A memorandum similar to a Notice of Grant Award is issued by the Office of Sponsored Programs. All invoices are submitted by SOM to the respective PI/department at WSQ with a copy to Sponsored Programs Administration (SPA / WSQ). After the PI reviews and approves the invoices, the department must forward the approved invoice to SPA for processing. For further details on routing and processing of invoices related to SOM subawards, please contact SPA.

F. Issuing a Purchase Order

Once a subaward has been signed by both NYU and an authorized representative of the subawardee, the Contract Office distributes copies of the subaward to the PI, SPA, OSP and the DA and/or other interested parties in the department should they exist and be identified. The email which accompanies this distribution indicates to the department that they may now generate or update (if the subaward is a continuation of an existing agreement) a Purchase Order for the subaward. The department then generates a requisition (in other words, a purchase order request) to Procurement identifying the proposed Subaward; this request documents the amount authorized for the subaward and delineates the desired period of performance. Then, Procurement will forward the completed purchase order (PO) to the department. The PO will allow funds to be encumbered and ensure payment at the time invoices are submitted by the subawardee.

At the time SPA receives the executed subaward from the Contract Office, SPA will update the subawardee’s name and subaward amount in FAME. SPA will also verify that there is sufficient budget available on the subaward to cover the subaward amount.

G. Requesting Modifications to Existing Subawards

Modifications to a subaward, which may include items such as modifications to the Scope of Work, changes in incremental funding, re-budgeting or extending or reducing the time for performance are issued by the Contract Office. While the process is designed for the Contracts Team to proactively issue subaward agreements and amendments, if at any time PIs need to issue an agreement, amendment, or terminate a subaward (for reasons other than the receipt or execution of a Prime Award or an amendment to the Prime Award), please reach out to the Contracts Team member for your unit or the Subaward Team.
The modification procedure is contained in the Special Considerations section of the OSP Wiki site (NYUHome login required):
https://wikis.nyu.edu/display/RES/How+Subaward+Agreements+are+Issued+to+a+Collaborating+Institution.

PIs may not reduce obligated funding or prematurely terminate an approved subaward on their own. If such urgent revisions to an existing subaward are needed, please contact the Contract Office immediately.

b. Monitoring Subawards

i. Subaward Audit Requirements

A. Subawards Subject to OMB Circular A-133

Proposed subawardees must complete and sign NYU’s subaward agreement (See https://wikis.nyu.edu/display/RES/How+Subaward+Agreements+are+Issued+to+a+Collaborating+Institution) after NYU’s award acceptance. The subaward must include all requirements imposed by the pass-through entity on the subrecipient to ensure compliance with the terms and conditions of the Federal award. Additional requirements may be imposed, such as identification of any required financial and performance reports. In order to meet their Single Audit Requirements, subawardees must provide a complete copy of their most recent independent audit, or a link to their record on the Federal Audit Clearinghouse. As prescribed in the Single Audit, the subawardee audit status will be reviewed by the Contract Office annually. This review will determine whether there are reportable conditions relating to the subaward internal controls, noncompliance by the Subaward with laws and regulations, questioned costs in the Subaward financial statements or other reportable audit findings, which might affect a NYU program.

If a Subaward is not subject to the Uniform Guidance, alternative documents will be collected (see below).

The Contract Office will review the documentation provided to verify that there are no findings or circumstances that may impact NYU’s subaward. In the event there are such findings the Contract Office will work with the PI and SPA on appropriate next steps.

B. Subawards Not Subject to the OMB audit requirement

There are subawardees not subject to the OMB audit requirements:

- For-profit entities,
- Foreign entities, or
- Organizations that expend less than $750,000 in a year in Federal awards.
All subawardees, including those not subject to the OMB Uniform Guidance, must complete the sub-recipient Monitoring Form, which is managed by the Contract Office.

ii. Know Your Subawardee – Risk Analysis

Before entering into a subaward relationship, PIs should evaluate the likelihood that a proposed subawardee will fail to comply with the requirements of the subaward. The following criteria should be considered when evaluating risk:

1. The subrecipient’s prior experience with the same or similar subawards;
2. The results of previous audits (including whether or not the subrecipient receives a Single Audit), and the extent to which the same or a similar subaward has been audited as a major program;
3. Whether the subrecipient has new personnel or new or substantially changed systems, and;
4. The extent and results of Federal awarding agency monitoring (e.g., if a subrecipient receives Federal awards directly from a Federal awarding agency).

A. Definition of Low Risk and High Risk subawardees

Low-risk subawardees (which constitute the vast majority of NYU’s subawardees) include entities with current annual single audits containing “unqualified” opinions on their financial statements and which have no reported material weaknesses in their internal controls. High-risk subawardees are entities which have not completed annual single audits or whose audit results have demonstrated weaknesses in administering Federal funding, a history of failing to adhere to applicable provisions of contracts and grant agreements or weak internal control structures. High-risk subawardees can also include start-up entities with limited resources or prior experience in performing research.

B. Special Actions for High-Risk Subawardees

When the PI has categorized a subawardee as “high-risk,” he/she must decide, with the help of the Contract Office, whether or not a subaward should be issued and what specific terms and conditions (see Uniform Guidance section 200.207) should be included in the subaward as well as what additional oversight requirements will be necessary to adequately monitor the subaward. Some of these additional monitoring requirements (e.g., more frequent reporting, shorter periods of performance or smaller, more frequent funding allocations, more detailed invoices or backup documentation) will become the responsibility of NYU’s PI and DA to monitor. Written agreements, developed at the time of the award and in collaboration with the PI, the Contract Office and SPA, should be used to outline the responsibilities of the parties.

C. Subaward Site Visits and Site Audits
Depending on the nature of the award and subaward involvement, PIs may elect to engage in a site visit to a subaward to verify their programmatic, financial and technical competency or to arrange for an auditor to carry out an agreed-upon procedures engagement subject to the requirements outlined in the Uniform Guidance Section 200.425, Audit Services. NYU may charge the Federal award for the cost of the agreed-upon procedures engagement.

iii. Role of the Principal Investigators (Assisted by their Departmental Administrators)

NYU is responsible for ensuring that sponsor funds, including those provided by NYU to other entities, are spent in accordance with all applicable laws and regulations. The OMB Uniform Guidance requires NYU, as the pass-through entity, to monitor its subawards. This monitoring requirement places NYU in much the same position as if it were a Federal agency dealing with its own primary recipient.

NYU has designated the PI as the individual primarily responsible for monitoring the programmatic and financial performance and progress of a subaward. Except as noted below, the subaward monitoring and compliance obligations of the PI as may be shared with DA’s or other NYU University employees; however, in no event may such monitoring and compliance obligations be delegated to a non-NYU employee.

As part of NYU’s monitoring responsibilities, the duties of the PI during the life of the subaward are as follows:

A. To understand the terms and conditions of the prime award, including those which flow down to the subawardee and those that may have been imposed by NYU, and to regularly monitor the subawardee’s adherence to these terms and conditions. Such monitoring may take place through phone calls, emails, site visits, meetings or other regular contact.

B. To ensure that subaward invoices are prepared in accordance with subaward requirements; to verify that the costs incurred are in accordance with the approved budget or permissible re-budgeting, were incurred within the approved period of performance and overall cost limitations, and are aligned in terms of cost and type of expense with the scientific progress reported to date; and that the costs are allowable, allocable and reasonable as they relate to the terms and conditions imposed by the sponsor and the subaward issued by NYU. In the event the level of detail included on an invoice is not sufficient to fully understand the costs, or if it appears that some costs may be excessive or understated, the PI is responsible for questioning the subawardee’s expenditures and requesting further documentation or explanation prior to approving an invoice. Copies of all such documentation and the ultimate outcome of the investigation should be retained in the project file. Such inquiries should be done in a timely manner (e.g., within thirty days after receipt of an invoice) so that the subawardee can be
promptly paid for approved costs. Contract Office personnel are available to assist PIs and their departmental staff in resolving issues that may arise.

C. To approve acceptable subawardee invoices for payment and to review expenditure statements or otherwise ensure that payments to subawardees are made in a timely manner, consistent with the terms of the subaward and approved invoices. Per the Uniform Guidance, NYU must make payment within 30 calendar days after receipt of the billing, unless we reasonably believe the request to be improper.

D. To monitor the subawardee’s scientific progress in terms of the SOW and any required milestones. If scientific progress is not satisfactory or if technical reports required of the subawardee are not prepared timely, the PI is responsible for contacting the subawardee to address these issues. If continued performance is not satisfactory, PIs should contact the Contract Office to discuss appropriate remedial actions or termination of the subaward.

i. On a quarterly basis, a review of the research project expenses (must be done personally by the PI) for the allowability, allocability, reasonableness and consistency of the subawardee’s expenditures and the related sufficiency of the subawardee’s technical progress under each subaward involved in the research project as well as expenses incurred directly at NYU.

ii. To verify that the subawardee’s indirect costs are in compliance with the “life-of-the-award” policy and indirect cost rate agreement specified in the subaward.

iii. To verify that any human subject, animal subject, biosafety or other compliance approvals applicable to the subawardee’s SOW are kept current throughout the performance of the subaward, both from the NYU Research Compliance Office and from the subawardee’s parallel boards or committees. In the event of a lapse in approval, the PI is responsible for immediately notifying NYU’s compliance committee and OSP. Costs incurred by a subawardee during a period of lapse may not be charged to a subaward.

iv. To be the primary point of contact for the subawardee during performance of the subaward. The PI may delegate those responsibilities on a day-to-day basis to another member of the research project so long as such other member is a full-time, regular NYU employee, however, such delegation may not be made to a contractor or temporary employee working at NYU.

v. To ascertain whether the subaward SOW or Statement of Budget, or both, require modification to add funding, time or other considerations and to notify the Contract Office in a timely manner so an amendment may be prepared.
vi. To plan for efficient completion of performance and closeout of the Subaward. This includes requiring that the Subaward period of performance end no later than the end date of the prime award and that the subawardee final invoice, final technical report and any required reports – including those on property, use of small businesses, or inventions – be submitted to NYU no later than 45 days after the end of the Subaward period of performance or as otherwise stated in the subaward terms and conditions.

iv. Corrective Action Plans and Sanctions

A. Imposition and Monitoring of Corrective Action Plans

In the event there are audit findings that relate to the funding provided by NYU under any Subawards, the PI will require compliance by the subawardee with a Corrective Action Plan, as required under the Single Audit. The PI will also monitor the subawardee’s compliance with this plan.

B. Remedies for Noncompliance

If the subawardee fails to have an audit performed in accordance with NYU’s requirements, does not exhibit reasonable diligence in adhering to subaward terms and conditions (including reporting and invoicing requirements) or does not fulfill its Corrective Action Plan, the PI, in consultation with OSP, may consider taking enforcement action against noncompliant subrecipients. These actions may include the withholding of payment, suspension of the subaward agreement or termination of the relationship. PIs must consult with their OSP Project Officer before taking such actions.

c. Closeout of Subawards

A Subaward is closed out when its period of performance comes to an end, regardless of whether NYU’s research project is ending or continuing. When feasible, it is advisable for a subaward period of performance to be slightly shorter than NYU’s, to allow sufficient time for collection and review of the subawardee’s final reports, verification of subaward data and incorporation of the subawardee’s research results into NYU’s final technical report to the sponsor.
i. Final Technical Reports

PIs are responsible for obtaining final technical reports from their subawardee and retaining a copy in their project file. PIs are encouraged to remind subawardees of this need well in advance of the due date for such reports.

ii. Other Closeout Reports and Documents

Other final reports, including property reports, patent reports, small disadvantaged business reports and Assignment and Release documents may also be required. In such cases, PIs are also responsible for obtaining such reports from their subawardees.

iii. Final Invoice

In order for NYU to comply with its financial report requirements, subawards are required to submit a final invoice clearly marked FINAL to NYU no later than 45 days after the end of the subaward period of performance or such other date as may be specified in the subaward. In the event no invoice is received 45 days after the end of a subaward, NYU may treat the subaward’s last invoice as the final invoice. Payment for subawardee’s invoices submitted to NYU later than 45 days after the end of the subaward might not be paid. PIs and departments are responsible for assisting SPA in obtaining final closeout information – including invoices – from their subawardees.

iv. Encumbrances

If there is a balance left on the PO after the final invoice has been received and paid, the Department needs to work with NYU Procurement to release the remaining encumbrance. The PI will not have access to these funds until the encumbrance has been released.

Policy Definitions

| Consultant | An individual, firm, company or institution which provides needed expertise to a project for a limited period of time. They function as independent contractors (with little or no day-to-day supervision by NYU staff) and they are not employees of the University. Consultants are typically paid on an hourly or daily fee including reimbursement for travel and other incidental expenses. Consultant agreements issued for sponsored projects are executed by the Contract Office. |
| Contractor | A procurement relationship established when obtaining goods and services for the non-Federal entity’s own use. |
Pass-through Entity
A non-Federal entity that provides an award to a subawardee to carry out a program through a Statement of Work on a sponsored project. The pass-through entity assumes many of the responsibilities typically assigned to a prime sponsor in issuance and oversight of an award to a grantee or contractor, including verification of the financial viability, adequacy of compliance controls, audit status and fulfillment of its portion of the programmatic effort.

Subaward (also referred to as a subgrant)
A formal written agreement made between NYU and a “Subawardee” (as defined below) to perform a portion of the Statement of Work under a NYU sponsored project.

Subawardee (also referred to as a subrecipient or a subgrantee)
An entity that expends award funds received from the prime grantee to carry out a portion of the prime’s programmatic effort under a sponsored project.

Related Policies

- Award Closeout Policy for Sponsored Programs
  http://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/award-closeout-policy-for-sponsored-programs.html

- Charging Administrative Expenses to Federal Awards Policy

- Costing Policy
  http://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/costing-policy.html

- Guidance on Scope of Work Development for Subawards
  http://www.nyu.edu/content/dam/nyu/research/documents/Contracts/guidelinesforscopeofwork.pdf

- Purchasing Policies and Procedure Manual

Federal Regulations

- OMB Uniform Guidance
  http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl