



Subcontract and Contractual Agreement Management

Office of Research
Policy Number: 3.6

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I. Policy

Summary

The purpose of this policy is to establish procedures for the awarding and management of subcontracts and contractual agreements in accordance with the regulatory standards set forth in 2 CFR 200, Uniform Guidance (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

II. Policy Purpose

This policy provides guidelines for the development, preparation and management of University-issued Subcontracts, Consultant Agreements, and Service Agreements (collectively “Agreements”) under externally-funded programs to another institution, organization, or individual, in order to provide the monitoring required by federal regulations to ensure that the Subcontractor, Consultant, and Service Provider (collectively “Contractor”) is complying with the programmatic and financial terms of the Contract and that performance goals are achieved. This policy applies to all contracts issued under all sponsored projects awarded to the University regardless of the source of funding.

III. Policy Scope and Applicability

This policy applies to all Sponsored Research Programs conducted at or under the auspices of NJIT. While significant attention is placed upon transfers directed to federally-funded Sponsored Projects, this policy will be administered consistently across all funds and project accounts managed within the Office of Research.

IV. Definitions

- A. “NJIT” includes all NJIT Colleges, Departments, Centers and all entities that are controlled by any of them, except where specifically excluded.
- B. “Cost Principles” are principles for determining costs applicable to grants, contracts, and other agreements with educational institutions.
- C. “Allowable Costs” means those costs that can be charged against a Sponsored Project pursuant to NJIT’s *Policy on Charging Direct Costs to Sponsored Research Programs*. To be an Allowable Cost, the cost must be (*Please see CFR 200 Subpart E – Cost Principles*):
 - i. Reasonable - The cost must be necessary for the performance of the Sponsored Project and reflect the action that a prudent person would have taken.
 - ii. Allocable - The cost can be identified specifically with the Sponsored Project(s) in reasonable proportion to the benefit provided or other equitable relationship.

iii. Consistently Applied – All costs incurred for the same purpose, in like circumstances, must be treated consistently as direct costs only or F&A costs only. Particular types of costs must always be treated as direct costs or F&A costs for all Sponsored Projects.

- D. **“AP”** – the Accounts Payable department within the Finance Division.
- E. **“Consultant”** - Experienced professional who possesses a particular unique expertise and provides expert knowledge for a fee. He or she works in an advisory capacity and is usually not accountable for the outcome of a project. For the purpose of this policy, Subcontractor, Consultant, and Service Provider are all “Contractors”. An employee of the University cannot be a Consultant.
- F. **“Consultant Agreement”** - Agreement for the provision of expert knowledge for a stated fee. For the purpose of this policy, Subcontracts, Consultant Agreements, and Service Agreements are all considered “Agreements”.
- G. **“Contract”** - Agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration that is written and enforceable by law. For the purpose of this policy, Subcontracts, Consultant Agreements, and Service Agreements are all considered “Agreements”.
- H. **“Contractor”** - Entity that is responsible for performing under the terms of the agreement. For the purpose of this policy, Subcontractor, Consultant, and Service Provider are all “Contractors”. An employee of the University cannot be a Contractor.
- I. **“Government Property”** - Government Furnished Property: Property in the possession of or acquired by the Federal, State, or local government and subsequently delivered to or otherwise made available to the University for use under specified Contracts and grants.
- J. **“Government Funded Property”** - Property purchased or otherwise acquired with Federal, State, or local government funds for the performance of a sponsored award.
- K. **“PI”** means NJIT’s principal investigator on the Sponsored Project.
- L. **“Service Agreement”** - Agreement for the provision of services for a stated fee. For the purpose of this policy, Subcontracts, Consultant Agreements, and Service Agreements are all considered “Agreements”.
- M. **“Service Provider”** - Experienced entity which possesses a particular unique expertise and provides expert service for a fee. For the purpose of this policy, Subcontractor, Consultant, and Service Provider are all “Contractors”. An employee of the University cannot be a Service Provider.
- N. **“SOW”** - Statement or Scope of Work
- O. **“Subcontract”** - Agreement issued to another organization to perform substantive programmatic work on an award with the terms and conditions passed on from the Sponsor award. For the purpose of this policy, Subcontracts, Consultant Agreements, and Service Agreements are all considered “Agreements.”

- P. “Subcontractor”** - Entity that is responsible for performing under the terms of the subcontract. For the purpose of this policy, Subcontractor, Consultant, and Service Provider are all “Contractors”. An employee of the University cannot be a Subcontractor.
- Q. “Subrecipient”** - A term used by the Federal Government for Subcontractors and maybe used interchangeably.
- R. “University Official”** - A representative of the University who is authorized by the Board of Trustees to execute Contracts.
- S. “Vendor”** - A dealer, distributor, merchant or other seller providing goods or services that is required for the conduct of a program.

V. Policy Statement

The Office of Research is responsible for issuing, negotiating and executing agreements on sponsored research projects. These agreements are legal commitments by NJIT that are executed only by University Officials. Agreements cannot be issued until the Office of Research has received the award from the Sponsor, an NJIT Index has been established in the Banner system, and a budget has been developed.

The PI is responsible for the programmatic management of the contractor to ensure that all project scope and deliverables are being met, invoicing requests are reasonable with regards to progress made and subrecipients are in compliance with prime award terms.

The PI must also ensure that:

1. In coordination with the purchasing department, appropriate procurement processes are followed in compliance with NJIT policies and governing regulations such as the Uniform Guidance.
2. The Financial Conflict of Interest procedures are followed.
3. The subrecipient is being monitored regularly.

VI. Contract Negotiation

The Office of Research negotiates all agreements on behalf of the PI and in the best interests of NJIT. Agreements and other legal instruments are negotiated with the review and assistance of counsel for the university, and are executed by the Senior Vice Provost for Research. Other signatures are not binding as they carry no delegated authority.

The designated official (currently Director for Pre Award Services) is assigned the duties of issuing contract agreements to subrecipients and is responsible for the following:

1. Preparing the agreement and sending it to the contractor. Any changes to the agreement must be negotiated and approved through the designated official in pre-award services.
2. Advising the Contractor of all applicable federal requirements by including appropriate flow-down provisions of the award.
3. Informing the Contractor of all applicable state and federal requirements.

Upon execution of the agreement by NJIT and the contractor, the Office of Research will send a fully executed copy to the PI.

Only upon receipt of a fully executed agreement should the contractor begin work on the project; any work started prior to receipt of this document is at the risk of the contractor. Likewise, the PI must not allow work to start without the execution of the agreement and a purchase order issuance or he/she will bear the risk of any unreimbursable costs by the sponsor.

VII. Subcontract vs. Consultant/Service Agreement

A Subcontract is a formal arrangement by which responsibility for a defined integral portion of the work is transferred from the University to a third party considered to be a Subcontractor. Subcontracts are entered into with universities and businesses but not with individuals.

Consultant and Service Agreements are usually reserved for businesses or individuals, considered to be vendors, performing a specialized/less significant portion of the overall award work or providing professional advice or services. The Service Provider acts as an independent Consultant who gives professional advice or service to a project.

VIII. Contractor and Vendor Determinations

NJIT 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.

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

IX. Procedures

A. Proposing an agreement

In order for the pre-award unit to issue the Agreement, the PI must fully complete and submit via email to the designated official at srard@njit.edu:

1. The appropriate Subcontractor or Consultant/Service agreement checklist based on determination.
2. A detailed SOW and a budget in accordance with the prime sponsor award.

Incomplete checklists will be returned to the sender for completion. The PI should retain a copy of the checklist for future reference.

Elements of the SOW

The SOW is the portion of a Subcontract that describes the work to be undertaken by the Contractor, including, but not limited to:

1. Objective, aim, or purpose.
2. Period of performance.
3. A general description of the work to be performed by the Contractor and the expected results.
4. A list of detailed work requirements, which includes a list of tasks and expectations, and provides both technical and performance specifications.
5. Performance, quality and timeliness requirements - this includes required or acceptable levels of performance on each specific task measured in terms of accuracy, response time, and speed.
6. Workload requirements - a description of levels or size of Contractual effort.
7. Personnel requirements - minimum qualifications or skill levels expected in the Contractor's staffing.
8. Government-furnished equipment and other resources to be furnished to the Contractor.
9. Reporting requirements – a description of any reports and/or invoices to be submitted by the Contractor to show progress, instructions on how to submit these deliverables, and frequency for reporting.

Budget

The budget usually provides a total of the costs to be incurred, but can also function as a ceiling cost when an exact cost is unknown.

As a minimum, the budget information should include the following, as applicable:

1. Personnel Costs (including fringe- if applicable).
2. Equipment Costs.
3. Supply Costs.
4. Travel Costs.
5. Other Costs.
6. Facilities and Administration or F&A (Overhead) Costs.

*Note for consulting/service agreements: While a “fee” is typically not allowed, there may be circumstances where sponsor/agency guidelines permit inclusion.

X. REQUIREMENTS

New Jersey State Requirements. New Jersey Institute of Technology (NJIT) is an instrumentality of the State of New Jersey and therefore anyone contracting with NJIT must abide by certain requirements mandated by the State of New Jersey. These requirements consist mainly of completing and submitting certain forms as follows:

1. Form W-9 Request for Taxpayer Identification Number and Certification. (All Contractors)
2. Business Registration Certificate (BRC) (Contact the Purchasing Department for requirement criteria)
3. Proof of Insurance (All Contractors).
4. Affirmative Action Form (All Contracts > \$25,200):

In coordination with the purchasing department, these items will be required upon creating the Contractor as a supplier.

US Federal Requirements. In addition to the above State requirements, which apply to all NJIT Contracts, Contracts involving the disbursement of federal funds have additional requirements. These additional items must be checked for all potential Contractors receiving federal funding:

1. The potential Contractor must be registered with, and be in an “ACTIVE” status in, the Federal System for Award Management (SAM).
2. Federal Awards greater than \$25,000 are subject to the Federal Funding Accountability and Transparency Act (FFATA) Certification reporting requirements. The Form attached as Annex F is to be completed by the Contractor prior to the award of the Contract.

XI. EQUIPMENT UNDER CONTROL OF CONTRACTOR

OMB UG (2 CFR 215) and Federal Acquisition Regulations (FAR) apply to each Contract entered into by the University whereby Government Property may come under the control of a Contractor.

The NJIT PI will require all Contractors possessing or controlling Government Property to adequately care for and maintain that property and assure that it is used only as authorized by the Contract.

The Contractor will assume responsibility for the Government Property. This includes any reporting requirements, title transfers, and final report closeouts.

XII. MANAGING THE CONTRACT AND MODIFICATIONS

Modifications. Changes to the agreements must be made in writing via a Contract modification. Such changes include, but are not limited to, increases/decreases in funding, extensions of time on the project, changes in the SOW, changes in the PI or Contractor, or termination of the Contract. The NJIT PI must complete the Modification Checklist and submit it to the pre-award unit. SRA will prepare the modification.

XIII. CONTRACT MONITORING

Factors Determining Frequency and Intensity of Monitoring. Higher risk agreements require more frequent, closer monitoring. Factors indicating level of risk are:

1. Program Complexity: Programs with complex requirements have a higher risk of noncompliance.
2. Percentage Passed Through: The larger the percentage of Contracts in relation to the total award, the greater the need for Contractor monitoring.
3. Amount of Award: Larger dollar awards are of greater risk. Other factors being equal, large awards (e.g. annual budgets > \$500k) will receive more substantial and/or more frequent review and monitoring.
4. NJIT prior experience with Contractor.
5. Contractor's level of experience, history of non-compliance, and audit findings.
6. Sophistication of Contractor's systems and administrative operations.
7. Contractor location: There is an increased risk associated with some foreign Contractors which dictates a greater degree of review and attention.
8. For-profit status: There is an increased risk associated with some for-profit Contractors which dictates a greater degree of review and attention.
9. Degree of external oversight by auditors or sponsoring agencies.

Potential Indicators of High-Risk Contractors

1. A modified audit report, or failure to have a current audit report.
2. Designation as a high risk auditee in the Contractor's A-133 (Single Audit) report.
3. Inadequate response to a NJIT Federal Funding Accountability and Transparency Act (FFATA) Certification Questionnaire.
4. History of non-compliance.
5. History of non-performance or failure to use funds for their authorized purposes.
6. New Contractor (or new to this type of project).
7. New personnel or systems.
8. Large Contract/large percentage pass-through.
9. Award size relative to Contractor's sponsored research portfolio.

Methods of Monitoring Activity

1. Regular contact with Contractors and appropriate inquiries concerning program activities.
2. Reviewing financial invoices and performance reports submitted by Contractor.
3. Obtaining and reviewing supporting documentation from Contractor.
4. Performing site visits at the Contractor to review program activities, financial and programmatic records.

XIV. Roles & Responsibilities

- A. Principal Investigator** - The PI has primary responsibility, on an ongoing basis throughout the life of the project, to monitor the activities of the Contractor in accordance with the governing (prime award) agreement; to assure that awarded funds are used for authorized purposes in compliance with Federal/State regulations, sponsoring agency, and/or NJIT policies; and to ensure that the performance goals are achieved. The PI:
 1. Ensures compliance with Contract monitoring guidelines.
 2. Maintains documentation to support monitoring activities.
 3. Ensures all required programmatic reporting is current.
 4. Certifies/Approves all Contractor invoices.
 5. Keeps detailed records of communications regarding unsatisfactory performance by Contractor.
 6. Determines and takes the appropriate steps when a Contract needs to be issued an amendment/modification (i.e. additional funding, extension of time, etc.).
 7. Compares and reviews Contractor actual expenses to approved budget.
 8. Conducts on-site visits and/or maintains regular contact with Contractor.

Monitoring Guidelines

1. Review of technical performance reports.
2. Periodic reviews of scientific and/or technical reports from the Contractor.
 - a. Informal progress reports via phone conversations, email communications, and/or face to face discussions with the Contractor.
 - b. Formal progress reports should be retained by the PI for audit purposes.
3. Any unusual items should be investigated, documented and retained by the PI.
4. If there are technical deficiencies that may require the PI to consider terminating the Contract, this must be documented in writing and forwarded to SRA.

Review of Contractor Invoices

1. The invoice must indicate the approved budget by line-item and reflect both current and cumulative expenses for each line-item.
2. The invoice appears reasonable based upon the technical progress of the project.
3. Expenses reported are within the budget parameters of the Contract/prime Agreement and within the start/end dates of project stipulated in the executed Contract.
4. The invoice does not overlap or duplicate a previously submitted invoice.
5. An open, valid purchase order for the Contract is referenced.
6. The final invoice for the project is marked "FINAL" and received by the final reporting due date of the executed Contract.
7. To ensure that expenditures for sponsored agreements are proper and in accordance with the agreement documents and approved project budgets, all fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the Contractor, which reads essentially as follows: "I certify that all expenditures reported (or payment requested) are for appropriate purposes and in accordance with the provisions of the application and award documents."
8. Clarification of Invoice Charges: Any charges which appear to be unallowable, unusual, or excessive must be investigated and resolved by the PI prior to releasing payment.
 - a. Request clarification or further justification from the Contractor.
 - b. If insufficient to render a prudent judgment on the allowability of the cost, request supporting documentation from the Contractor.
 - c. Particularly from higher-risk Contractors, the PI may periodically request detailed support for selected invoice charges to verify appropriateness and reasonableness. Some examples are:
 - Payroll records.
 - Copies of paid invoices to vendors.
 - Description of services rendered by Consultants, including hourly rates and time reports.
 - Detail of travel charges incurred.
9. Unallowable or Unreasonable Costs.
 - a. Should be disallowed and deducted from current invoice.
 - b. In circumstances where questionable costs remain unresolved, it may become necessary to conduct more definitive monitoring procedures.
10. Invoices should not be approved for payment until all issues or concerns have been resolved.
11. Other Considerations and Reminders.
 - a. Cost-sharing. If required, the amount must be clearly reflected on the invoice.
 - b. Cost-sharing dollars should be spent at the same rate as the award dollars.

- c. The type of cost-sharing provided must be in accordance with what was designated as acceptable cost-sharing per the executed agreement.

12. Final Invoice Processing.

- a. The PI must have a copy of the Contractor's final technical report and must retain it on file for audit purposes.
- b. The PI must ensure that the Contractor has submitted all their closeout documents such as patent reports, property reports, etc.
- c. The final invoice must be marked "FINAL" and submitted by the required due date.
- d. To ensure that expenditures for sponsored agreements are proper and in accordance with the agreement documents and approved project budgets, the final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the Contractor, which reads essentially as follows: "I certify that all expenditures reported (or payment requested) are for appropriate purposes and in accordance with the provisions of the application and award documents."
- e. The PI's approval to pay a Contractor's Invoice indicates that:
 - The PI is satisfied with the performance of the Contractor as of the time period covered on the invoice.
 - The Contractor has satisfactorily submitted to NJIT all required interim/final technical, financial, and other closeout documents.
 - The expenses and required cost-sharing shown are allowable and reasonable in accordance with the Contract and prime agreements' terms and conditions.
 - All the monitoring guidelines have been adhered to.

B. Post Award Management Unit

1. Reviews A-133 (Single) audit reports to determine whether any findings pertaining to NJIT exist, and if they are of significance to NJIT. If so, reviews and monitors any corrective actions taken by _____ the _____ Contractor.
2. Distributes the su recipient certifications forms to subcontractors and collects and maintains all records.

XV. Authority and Responsibility

The Office of Research has institutional authority for the matters addressed in this policy. Questions related to this policy are to be directed to the executive director, sponsored research programs administration.

Related Policies and Regulations