Navigating the Complex World of Collaborative Research

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Collaborative Research - What is it?

From the American Heritage Dictionary:

Collaborate, v: to work together, esp. in a joint intellectual effort
Collaborative Research - Why Do It?

- Many funding agencies actively encourage collaborative research projects, including cross-disciplinary, translational and team-based research projects.
- Many agencies have specific mechanisms or processes to support or promote collaborative research.
- Research projects need not utilize these mechanisms to be collaborative in nature.
Collaborative Research - What It Looks Like

• Collaborative research can involve:
  ▫ Multiple investigators from a single institution
  ▫ Investigators from more than one institution
    • International collaborations
    • Collaborations with other domestic institutions
  ▫ Center grants
  ▫ Program project grants
  ▫ Joint programs between agency sponsors
Collaborative Research - Agency Approaches

- FOA’s requiring collaboration amongst multiple institutions
- NSF’s Collaborative Research Proposal Submission processes
- NIH’s Multiple PI policy
Collaborative Research - Individual Roles

- Consultant
- Collaborator (Contributor)
- Mentor/Co-Mentor
- Co-investigator
- Other Significant Contributor
Types of Agreements Related to Collaborative Research

- Subawards/Subcontracts
- Consulting Agreements
- Collaboration Agreements (usually unfunded)
- Material Transfer Agreements
- Data Use Agreements
- Teaming Agreements
- Intellectual Property Agreements
Growth in Collaborative Research

Subawards Issued

FY06  FY07  FY08  FY09  FY10  FY11  FY12  FY13  FY14  FY15

0  200  400  600  800  1000  1200

Subawards Issued
Consultants

- Consultants are generally engaged as individuals;
- Operating independently from any institution with which they are affiliated;
- Usually operate on a daily or hourly rate;
- Usually understood to be engaged as “work for hire;”
- Working at the direction of the investigator
Consultants - Things to Consider

- If affiliated with an institution or organization -- does that institution/organization allow for individual consulting?
- Paid directly (assumes responsibility for any applicable taxes);
Consultants - Things to Consider

- Must be sure individual is not utilizing institutional resources to accomplish tasks;
  - Support letters should not be on institution letterhead;
  - Is consultant providing data or other resources and, if so, do they individually own the resources they are providing;
  - Are there regulatory concerns related to the research being conducted.
Subawards

- Common form of agreement to facilitate collaborative research
- Usually included in original proposal to sponsor
- Adding a subaward after award may require prior approval
Subawards on Federal Grants

- Subject to Uniform Guidance
- Subject to specific sponsoring agency terms
- Subject to Federal Funding Accountability and Transparency Act (FFATA)
UG Subrecipient Monitoring/Management

• UG has detailed Requirements for Subrecipient Monitoring and Management
  ▫ Require a Vendor vs Subrecipient Determination
  ▫ Specifies certain data and terms that must be included in a subaward document
  ▫ Requires a risk assessment prior to issuance – implemented at Emory through use of Institutional Profile
UG Subrecipient Monitoring/Management

- Requires active monitoring during subaward period (reviews of financial and performance reports, including PI approval of invoices)
- Specifies allowable FAC rates for subs (NICRA or de minimis rate of 10%)
- Requires payment of invoices by prime within 30 days (or notified why if can’t be paid)
- Requires prime to issue a management decision related to audit findings of a subrecipient within 6 months
## Vendor vs. Subrecipient Determination

**Checklist to Determine Subrecipient or Contractor Classification**

### DEFINITION
- **Subrecipient:** A non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program, but does not include any individual that is a beneficiary of such program.
- **Contractor:** An entity that receives a contract as defined in 2 CFR Part 200.

**INSTRUCTIONS:** Complete one or both of the checklists by marking all characteristics that apply to the outside entity. The section with the greatest number of marked characteristics indicates the likely type of relationship the entity will have with the pass-through entity. In some cases, the type of relationship may be determined by the recipient or grantor. In these situations, the substance of the relationship should determine whether or not the pass-through entity is a subrecipient or contractor.

### NAME OF OUTSIDE ENTITY:

### SECTION 1 - SUBRECIPIENT

- **Characteristics:**
  - 1. Determination that the outside entity is a subrecipient.
  - 2. Agreement that is not subject to review by the pass-through entity.
  - 3. Agreement that meets the criteria outlined in 2 CFR Part 200.

### SECTION 2 - CONTRACTOR

- **Characteristics:**
  - 1. Agreement that is subject to review by the pass-through entity.
  - 2. Agreement that does not meet the criteria outlined in 2 CFR Part 200.

### FINAL DETERMINATION:

<table>
<thead>
<tr>
<th>Subrecipient</th>
<th>Contractor</th>
</tr>
</thead>
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### OPTIONAL SECTION 3 - USE OF JUDGMENT

**Instructions:** In determining whether the pass-through entity or another non-Federal entity meets the criteria for being a subrecipient or contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in identifying each agreement as a subrecipient or contractor.

**Signature:**

**Date:**

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Note: This document is a sample and may not reflect the actual criteria used by the pass-through entity for determining vendor vs. subrecipient status.
Vendor vs. Subrecipient Determination

SECTION 1 - SUBRECIPIENT

Description: A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

1. Determines who is eligible to receive what Federal assistance;
2. Has its performance measured in relation to whether objectives of a Federal program were met (participates in the implementation or conduct of the program; carries out an intellectually significant portion of the award);
3. Has responsibility for programmatic decision making;
4. In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

Entities that include these characteristics are responsible for adherence to applicable Federal program requirements specified in the Federal award; such requirements will be flowed down to the subrecipient via the subaward document.

SECTION 2 - CONTRACTOR

Description: A contract is for the purpose of obtaining goods and services for the non-Federal entity’s own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

1. Provides the goods and services within normal business operations;
2. Provides similar goods or services to many different purchasers;
3. Normally operates in a competitive environment;
4. Provides goods or services that are ancillary to the operation of the Federal program.

Entities that include these characteristics are not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.
Vendor vs Subrecipient differences

- Agency policies and terms flow down to subrecipients
- Subrecipients subject to audit requirements
- Any amount over $25,000 excluded from MTDC base
Vendor vs Subrecipient Determination

• Agency terms do not flow down to vendors
• Vendors price goods and services in competitive market
• Generally do not include overhead/indirect costs
• Entire amount of vendor agreement subject to Emory FAC
• Emory owns all IP
• Vendors do no participate in publications
Vendor vs Subrecipient Determination

- Uniform Guidance information is administrative/financial determination
- Need to look at the totality of situation to make final determination
- Written determination needs to be on file for each subaward on each grant/contract (once per subaward per competitive segment)
Issuing the Subaward

- Subawards can be issued only after the prime award is received
- Must have an active SmartKey
- Subaward request must be submitted through the Subward request page
- Subaward request includes information needed to issue appropriate subaward (questions on human or animal subjects use, type of action, etc).
- Request must include detailed Statement of Work and detailed budget, along with sub/vendor determination (and institutional profile if not on file)
Notes on Statement of Work

• Be sure Statement of Work contains sufficient detail
• SOW should include precisely what a collaborator is doing and what is expected from them (deliverables, if applicable)
• A vague SOW can be difficult to enforce, particularly on a cost-reimbursement subaward
Subaward Agreements

A subaward agreement includes many provisions:

- Business-related terms – amount of sub, period of performance, invoicing/payment terms/requirements and frequency, record retention, audit requirements
- Institutional terms – indemnification, dispute resolution, governing law
- Intellectual property terms – publication provisions, reporting requirements, IP/data ownership and use
- Required agency flow-down terms - including audit requirements, required institutional policies
- Regulatory requirements – human and animal subjects use, export controls, etc
International Subaward Agreements

• All of the above, plus more.....
• Detailed export controls review; contract provision on export controls and FCPA
• More detailed human and animal subjects provisions
• Consideration of in-country laws and requirements
  ▫ May require in-country due diligence/legal analysis to identify applicable laws (FDA-like) and requirements (e.g., registration, insurance, etc)
Subaward Agreements

• OSP maintains a number of template agreements:
  - 2 versions of UG-compliant subaward for domestic organizations (FDP and non-FDP)
  - UG-compliant international subaward
  - Non-federal templates
  - Clinical Trials templates

• Templates are frequently reviewed to ensure they meet needs

• Not every subaward fits neatly into an existing template....
Discussion is important

• Questions on the subaward process can be directed to OSP
• If you have a “non-routine” subaward, discussions can begin early in the process so that appropriate planning can occur
• OSP may have questions for you in order to determine the best course of action forward
Participating as a Subawardee

- Process similar to any other sponsored award
- Must review subaward for terms and conditions applicable toward Emory’s participation
- Subaward negotiated by OSP
- Must abide by subward reporting and invoicing requirements
- Timeframes are generally shorter than for prime awards from same agency
Is Collaborative Research always successful?

• “Expect the best; plan for the worst” (OSP takes care of the latter part)
• Differences in investigator expectations or style
• Differences in style across disciplines

• Communication is key.
• If issues arise, do not hesitate to seek advice or guidance. OSP is here to help.
QUESTIONS?