

Subcontract Execution and Approval Policy



Policy Number: 600-013
Effective Date: April 3, 2007
Last Updated: January 30, 2009
Issuing Authority: Vice President for Research and Compliance
Responsible Office: Office of Sponsored Programs/Research Administration, Grants/Contracts Accounting, Materials Management and Office of the General Counsel

Purpose

To ensure that the interests of Howard University and all related entities, business units, subsidiaries and affiliated organizations including, but not limited to, Howard University Hospital (hereinafter referred to collectively as “Howard University”) are protected in the negotiation and execution of sponsored research subcontracts.

Policy

It is the policy of Howard University to ensure that there are written subcontract arrangements in place for sponsored research in which Howard University is the subrecipient of a sponsored award or in which Howard University is the award recipient and is subcontracting part of the award to another entity. These agreements take a variety of forms and must be documented. Additionally, these arrangements are to be reviewed by the proper department (e.g., OSP/RA, OGC, MMD, PI/PD) to ensure that they are complete, clear, and protect the interests of Howard University.

Policy Definitions

Pass-through Entity means a non-Federal entity that provides a Federal or non-Federal award to a subrecipient to carry out a portion of a sponsored program.

Subrecipient/Subcontractor means a non-Federal entity that expends Federal or non-Federal awards received from a pass-through entity to carry out a sponsored program, but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal or non-Federal awards directly from a Federal or non-Federal awarding agency.

Vendor/Consultant means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization’s own use or for the use of beneficiaries of the Federal program.

Distinguishing between a Subrecipient and a Vendor/consultant

It may be necessary to distinguish between a subrecipient of a Howard University-awarded sponsored project and a vendor/consultant of a Howard University-awarded project. Toward that end, OMB Circular A-133 has outlined characteristics that are indicative of an award received by a subrecipient and that of an award received by a vendor/consultant. These characteristics are as follows:

Subrecipient

- The Subrecipient determines who is eligible to receive what Federal financial assistance;
- The subrecipient has its performance measured against whether the objectives of the Federal program are met;
- The subrecipient has responsibility for programmatic decision-making;

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- The subrecipient has responsibility for adherence to applicable Federal program compliance requirements; and
- The subrecipient uses Federal funds to carry out a program of the organization as compared to providing goods and services for a program of the pass-through entity.

Vendor/consultant

- The vendor/consultant provides the goods and services within normal business operations;
- The vendor/consultant provides similar goods and services to many different purchasers;
- The vendor/consultant operates in a competitive environment;
- The vendor/consultant provides goods and services that are ancillary to the operation of the Federal program; and
- The vendor/consultant is not subject to compliance requirements of the Federal program.

(Source: OMB Circular A-133, B §210 *Subrecipient and vendor determinations*)

Business Process Description:

Howard University as Pass-through Entity with Subrecipient or Vendor/consultant (Sub-Out)

In instances in which Howard University is the award recipient and elects to engage a subrecipient to carry out a portion of the sponsored award or a vendor/consultant to provide goods or services related to the award, Howard University drafts the subcontract agreement based on the following: the statement of work outlining the work that the Subrecipient is being engaged to complete, the proposed budget for the subrecipient's work, and the justification for use of the subrecipient as well as the anticipated expenditures. Vendor/consultant agreements are also drafted by Howard University and should also include specific detail of the work to be performed (or the goods to be provided) by the vendor/consultant and the pricing of the goods and/or services. If a vendor/consultant is used, the Research Administrator reviews the Associate Vice President and Controller's policy to determine if a contract or other documentation is needed.

A high-level workflow process for Howard University as the Pass-through Entity is as follows:

- The Principal Investigator/Project Director (PI/PD)'s proposal to the awarding agency identifies the need for a subcontractor/vendor/consultant.
- The Notice of Grant Award or sponsor contract is received from the awarding agency or sponsor and the RA is aware that the award includes funding for the subcontractor/vendor/consultant.
- The assigned RA initiates the setup and processing of the prime grant award in the University's financial system.
- The RA contacts the PI/PD to confirm the use of the subcontractor, the statement of work, and the proposed budget.
- The PI/PD confirms the use of the contractor, the statement of work, and the proposed budget or submits changes.
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- The RA verifies available budget in the financial system, then the RA drafts the sub-agreement/according to the OGC template¹ (incorporating the subcontractor's statement of work and proposed budget) and sends an electronic copy to OGC for review and approval.

¹ In addition to protecting the interests of Howard University and the Principal Investigator/Project Director, the OGC template includes terms and conditions necessary to meet OMB circular requirements such as the inclusion of

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- The initial draft of the subcontract is reviewed by OGC. If there are no changes, OGC sends an approving email or memorandum to OSP/RA.
- If there are changes, OGC sends a track-changed contract to the RA.
- Upon receipt of OGC's approval, the RA sends the subcontract to either the VPRC/CFO for signature.
- The partially executed subcontract is returned to the RA who sends it to the subrecipient requesting signature (along with the *Subrecipient Audit Compliance Certification Form* addressed in more detail in the Subrecipient Monitoring Policy #OSP 600-014).
- The PI/PD generates a *Purchasing Requisition* in the University's financial system to pre-encumber the funds to pay the subcontractor.
- The *Purchasing Requisition* is electronically routed to GCA for review and approval.
- Once GCA approves the *Purchasing Requisition*, a Purchase Order is required to encumber the funds. The Materials Management Department (MMD) will process the Purchase Order upon receipt of a copy of the fully-executed subcontract agreement from OSP/RA.
- If the Subrecipient does not sign and has changes, the RA negotiates the proposed changes and submits (via email) an electronic track-changed copy of the complete subcontract (i.e., with all related attachments), as well as a memo to the OGC with summary of the negotiation conducted by the RA.
- If the OGC approves the negotiated changes, an approval email is sent to the RA to proceed with ratification of the agreement.
- If OGC does not approve the changes, a track-changed copy of the subcontract is sent to the RA to further negotiate with the subrecipient until there is agreement.
- If the negotiations between the RA and the subrecipient reach an impasse, the RA notifies OGC and provides the name of the subrecipient's contact to finalize negotiations.

Once negotiations have been resolved and the fully executed subcontract is returned to the RA (with the signed *Subrecipient Audit Compliance Certification Form*), the original subcontract is sent to GCA, copies of the subcontract are sent to MMD, Accounts Payable, the PI/PD, OSP/PASU and the OSP/RA file. If the subcontract is returned without the completed *Subrecipient Audit Compliance Certification Form*, the subrecipient is notified that the subcontract will not be processed unless the *Subrecipient Audit Compliance Certification Form* is completed, signed, and returned.

Howard University as Subrecipient (Sub-In)

For instances in which Howard University is the subrecipient of a sponsored award, Howard University reviews the subcontract agreement sent from the pass-through entity. The contract is reviewed with a view towards two particular issues: the protection of the institution, and the assurance that the institution has the capacity to perform the required tasks for the budgeted amount. When Howard University is the subrecipient, the award document from the pass-through entity is treated as any other award document. All pertinent policies related to award processing apply (see Award Acceptance & Set-up Policy #OSP-006 for guidance). A high-level workflow process for Howard University as the subrecipient is as follows:

- The sponsored subcontract agreement is sent to Howard University or the PI/PD.
- The subcontract is forwarded to OSP/RA where the subcontract is delivered to the responsible RA.

the Catalog of Federal Domestic Assistance (CFDA) number and permission for sponsor and/or Howard University auditors to have access to the records and financials statements.

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- The RA ensures that an approved Application To Seek Off-Campus Funds is on file for this project and contacts the PI/PD to confirm acceptance of the award, the statement of work, and the proposed budget.
- The PI/PD confirms acceptance of the award, the statement of work, and the proposed budget or submits changes.
- The RA reviews the subcontract terms and conditions. If the terms and conditions are unacceptable, the RA negotiates changes with the pass-through entity.
- The subcontract (and any negotiated changes complete with an illustrative memo) is sent to OGC for review and approval.
- If there are any changes after OGC's review, the RA negotiates these changes with the pass-through entity. If negotiations between the RA and the contact at the pass-through entity reach an impasse, the subcontract is referred to OGC with the contact information for the personnel at the pass-through entity for OGC to finalize the negotiations.
- Once there is an approved subcontract, the RA submits the subcontract to either the VPRC/CFO for signature.
- The subcontract is returned to the RA who submits to the pass-through entity for signature (if unsigned copy was originally sent).
- The original fully executed subcontract is forwarded to GCA to set up the award (see [Award, Acceptance, and Set-up Policy #OSP 600-006](#)) with copies to the PI/PD and OSP/RA file.

Roles and Responsibilities (Howard University as Pass-through Entity):

Principal Investigator/Project Director (PI/PD): The PI/PD is responsible for determining if a subrecipient or vendor/consultant is necessary in the fulfillment of the sponsored award and whether it is a subrecipient or a vendor/consultant that is required. If a subrecipient or vendor/consultant is deemed necessary, the PI/PD (or his/her designee) includes this in his/her initial proposal to the awarding agency, complete with a statement of work, a proposed budget for the subrecipient's work and a justification for the budget, as well as the consortium letter from the subrecipient entity, if required. In the event that the sponsor contract or Notice of Grant Award (NOGA) is sent to the PI/PD, the PI/PD submits the contract/NOGA to OSP/RA along with the supporting documentation (e.g., statement of work, budget, justification of expenditures). In the event that there are any subsequent updates, the PI/PD submits supporting documents to the OSP/RA.

Office of Sponsored Programs/Research Administration (OSP/RA):

- **Research Administrator (RA):** Upon receipt of an award with a subcontract, the RA assigned to the award is responsible for preparation of the subcontract using the standard template provided by the Office of the General Counsel (OGC). The RA submits the subcontract to the OGC for review. Two copies of the subcontract are sent to the VPRC/CFO for signature. The partially executed agreement is returned to the RA who sends both signed agreements to the subrecipient/vendor/consultant for signature. If the subcontractor is a subrecipient, the RA reviews the Federal Audit Clearinghouse for a copy of the subrecipient's most recent audit. If the subrecipient is not in the Federal Audit Clearinghouse, the RA includes a copy of the *Subrecipient Audit Compliance Certification Form* (See [Subrecipient Monitoring Policy #OSP 600-014](#)) with the partially executed agreement. If the subcontract is returned with changes, the RA negotiates with the subrecipient regarding the requested changes. The RA submits an electronic track-changed version of the subcontract, along with a memo outlining the negotiation, to OGC for approval. If OGC does not accept all of the changes, the RA further negotiates with the subrecipient. If the negotiations reach an impasse, the RA submits the subrecipient's contact information to OGC to finalize the negotiations. The fully executed subcontracts are returned to the RA. The original fully executed subcontract, and all supporting

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documentation, is forwarded to GCA with copies to MMD, Accounts Payable, the PI/PD, and the OSP/RA file.

Office of the General Counsel (OGC):

- **Office of General Counsel (OGC):** OGC reviews the subcontract before it is executed. If there are changes, OGC returns a track-changed version of the subcontract to the RA for processing. If the subcontractor has changes, a track-changed version of the subcontract, along with an explanatory memo, is reviewed by OGC for approval. If additional changes are needed, OGC provides the changes in a track-changed version of the subcontract to the RA. If an impasse is reached in the negotiations, OGC attempts to finalize the subcontract. If the attempts to finalize the subcontract are unsuccessful, OGC notifies OSP to initiate the next steps.

Grant and Contract Accounting (GCA):

- **GCA Accountant:** The GCA Accountant approves the *Purchasing Requisition* to pre-encumber funds for the subrecipient's budget. The GCA Accountant maintains the original subcontract agreement with the other award documents.

Office of the Vice President, Research and Compliance:

- **Vice President for Research and Compliance (VPRC):** When appropriate, the VPRC reviews and signs the subcontract on behalf of Howard University and returns the partially executed agreement to OSP/RA.

Office of Senior Vice President, Chief Financial Officer and Treasurer:

- **Chief Financial Officer (CFO):** When appropriate, the CFO reviews and signs the subcontract on behalf of Howard University and returns the partially executed agreement to OSP/RA.

Roles and Responsibilities (Howard University as Subrecipient):

Office of Sponsored Programs/Research Administration (OSP/RA):

- **Research Administrator (RA):** The RA receives the contract for Howard University to act as a subrecipient. The terms and conditions of the subcontract are reviewed. If changes are necessary, the RA negotiates changes with the pass-through entity. The subcontract, a memo outlining the negotiation of the changes, and a correspondence slip are submitted to the OGC for review. If additional changes are recommended by OGC, the RA continues negotiation with the pass-through entity. If an impasse is reached, the RA notifies OGC of the need to negotiate with the personnel representing the pass-through entity. Once the finalized subcontract is received from OGC, another correspondence slip is completed and submitted, with two copies of the subcontract, to either the VPRC/CFO for signature. Once the partially executed subcontracts are received from the VPRC/CFO, a cover letter is drafted to the pass-through agency and both copies of the partially executed subcontract are sent to the pass-through agency for signature. Once the fully executed subcontract is received from the pass-through agency, the original subcontract is routed to GCA with copies to the PI/PD, and the OSP/RA file. The RA proceeds to set up the initial award in the University's financial system and continuing awards are loaded by GCA.
- **Office of the General Counsel (OGC):** OGC reviews the subcontract before it is executed. If there are no changes, the subcontract is returned to the RA for processing. If there are changes, OGC submits proposed changes to the RA for further negotiation with the pass-through entity. If an

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impasse is reached in the negotiation, OGC finalizes the negotiations with the pass-through entity. If the attempts to finalize the subcontract are unsuccessful, OGC notifies OSP to initiate the next steps.

Contract and Accounting (GCA):

- **GCA Accountant:** The GCA Accountant receives the original fully executed subcontract award from OSP/RA and finalizes the set up of the award in the University's financial system.

Office of the Vice President, Research and Compliance:

- **Vice President for Research and Compliance (VPRC):** When appropriate, the VPRC reviews and signs the subcontract on behalf of Howard University and returns the partially executed agreement to OSP/RA.

Office of Senior Vice President, Health Sciences:

- **Senior Vice President for Health Sciences (SVPHS):** When appropriate, the VPHS reviews and signs the subcontract on behalf of Howard University and returns the partially executed agreement to OSP/RA.

Related Processes/Events:

- Award Set-Up, Acceptance and Negotiation Procedure
- Subrecipient Monitoring Procedure

Related Policies:

- **Subrecipient Monitoring Policy**

Forms and Links:

- OVPRC Website <http://ovprc.howard.edu>