

FDP STATEMENT ON SUBAWARDS

Subawards Task Force
Federal Demonstration Partnership
Revised September 18, 2000

This is the understanding of the Federal Demonstration Partnership in regard to the issuance of subawards under OMB Circular A-110.

THE DEFINITION AND CHARACTER OF A SUBAWARD

A subaward is defined as follows by A-110:

"Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award¹ by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of 'award'." (A.2(f)) [See Exclusion 1, below].

Subawards may be called subcontracts, subagreements, purchase orders, subgrants, etc., and they may also have the appearance of procurement agreements in format and language, but they nonetheless remain forms of "financial assistance" and do not constitute what A-110 describes as a "procurement action." Thus their issuance is not subject to the procurement standards specified in Sections 40-48 of A-110.

Typical subaward situations include arrangements in which two (or more) qualifying legal entities/institutions are working collaboratively on a sponsored project. Each institution has its own principal investigator/project director; however, one of the collaborating institutions takes on the role of prime awardee with the sponsoring federal agency.

The language of OMB Circular A-133 regarding subawardees (which A-133 calls "subrecipients") gives further support to the concept that the above example constitutes a subaward situation. The relevant provisions (210(b)(2-5)), describe a subrecipient as one that:

- "Has its performance measured against whether the objectives of the Federal program are met." [A collaborating institution is responsible for meeting its scope of work.]

¹ As defined in OMB A-110 Subpart A2(e), an award includes "grants and other agreements."

- "Has responsibility for programmatic decision making." [The PI at the collaborating institution is responsible for directing his/her segment.]
- "Has responsibility for adherence to applicable Federal program compliance requirements." [The collaborating institution is responsible for compliance with A-21, A-110, and A-133 requirements, or those circulars applicable to not-for-profit entities.]
- "Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity." [A collaborating institution is conducting its own scope of work and is not providing goods or services, such as simply executing lab tests or constructing experimental instrumentation. In a subaward situation, the principal investigator/project director of the subrecipient may be a co-author on publications or the subrecipient may seek patent protection for inventions and otherwise function in much the same manner as if the award came directly from a federal sponsor.]

Exclusions:

1. A subaward does not include:

"... technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations." (A-110 Subpart A.2(e), definition of "award.")²

2. A subaward does not include the provision of goods and services. A-133 makes clear the kind of entity that provides goods and services (.210(c)):

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program.

² An August 25, 2000 letter from Joseph L. Kull, Deputy Controller of the Office of Management and Budget, to Charles R. Paoletti of the Office of Naval Research points out: "While the definition of subawards provided... is consistent with the provisions of Circular A-110, it is inconsistent as it relates to audit requirements in accordance with OMB Circular A-133.... Specifically, Circular A-110 defines subawards to exclude 'other assistance in the form of loans, loan guarantees, interest subsidies, or insurance' because they are pass-thru money. Circular A-133 audit requirements, however, extend to these four items." This footnote is inserted to make that clarification. It should be noted that in terms of issuing subawards, institutions must comply with the A-110 definition and subsequent requirements, while in terms of audits the A-133 definition must be followed.

3. A subaward may not be issued at any level where the higher-tier agreement is a contract. "Contract" in this context is as defined in A-110:

"Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract."
(A.2(h))

DOCUMENTATION AND MONITORING REQUIREMENTS

Whether an institution issues an agreement as a subaward or as a procurement contract, the arrangement must be made in the form of a legally binding agreement. This agreement may be bilateral or unilateral, but must contain all the clauses or other provisions and requirements appropriate to either a subaward or a procurement contract.

The level of documentation concerning the issuance and performance of a procurement contract should be consistent with the procurement standards requirements of OMB Circular A-110.

Absent specific additional award requirements, the level of documentation concerning issuance of subawards, should be consistent with good management practices. These good practices normally include obtaining the following information from the subawardee at the time of proposal or award:

- A scope of work to be completed by the subawardee.
- A budget that meets the requirements of the federal sponsor and the awarding institution.
- An institutional signature indicating commitment to perform the scope of work proposed, assuring the accuracy and reasonableness of the budget, and agreeing to enter into a subaward if the proposal is funded.
- All required representations, certifications, and assurances (e.g., human subjects assurance).

The awarding institution is responsible for providing an appropriate level of its review of the subawardee's scope of work and budget. The normal proposal review process of the institution fulfills this requirement.

The awarding institution is responsible for maintaining a system for monitoring the activities of subrecipients to ensure that they are complying with the terms of the subaward agreement. Responsibilities include general compliance (A-133 section 400(d)(3)) and subrecipient audit compliance (A-133 section 400(d)(4)).