



Subrecipient Policy

For Sponsored Agreements

New Mexico Tech Business Office
Last modified August 25, 2011

The purpose of this document is to assist faculty and staff in ensuring that subrecipients conduct their portion of research projects in compliance with laws, regulations, and terms and conditions of awards and subawards. Frequently used terms are defined and an overview on oversight responsibilities is included.

This document is continually being updated; we would appreciate any information and/or insight that would help us develop stronger policies for NMIMT's research community.

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I. Introduction

New Mexico Institute of Mining and Technology (NMIMT) is ultimately responsible for all payments made from a sponsored project including payments to its subrecipients. A subrecipient is a third-party organization performing a portion of NMIMT's scope of work proposed to a funding agency. However, NMIMT is still responsible for management of project funds and meeting performance goals specified in sponsored agreement. The subrecipient does not include agreements for consulting services or purchase orders for equipment, materials, or other goods.

NMIMT is responsible for vetting its subrecipients in order to ensure they have adequate systems to conform to sound business practices and in order to comply with federal requirements. NMIMT uses a **risk-based** approach in monitoring its subrecipients. Factors taken into consideration include the following and influence the nature and extent of monitoring procedures:

- The relative size of the subrecipient award.
- Award complexity, program maturity, sensitivity of the work, and/or extensiveness of government regulations.
- Prior experience with the subrecipient. Examples include a new subrecipient, inexperienced subrecipient, history of non-compliance, new personnel, or new or substantially changed systems.
- Degree of external oversight by auditors or sponsoring agencies. NMIMT is obligated to monitor subrecipients performing effort on federal awards, regardless if the subrecipient is subject to an *A-133* audit.
- Sophistication of the subrecipient's systems and administrative operation.

A **risk-based** approach allows NMIMT to determine which subrecipients are deemed **high risk** and may require closer scrutiny and/or site visits. In addition, **high risk** subrecipients may be asked to submit supporting documentation in the form of original receipts, copies of payroll records, audits, etc. if circumstances warrant.

II. Definitions

A. Subcontract/Subaward/Subagreement

The terms **subcontract**, **subaward**, and **subagreement** are used interchangeably in this policy. However, in the strictest sense they are distinct. **Subaward** is used with the originating award is a grant and a **subcontract** is used when the originating awards is a contract. A **subagreement** refers to any lower tier award of financial support from a prime recipient/NMIMT to a subrecipient.

These documents represent a legal instrument used to contract with companies, individuals, or institutions outside of New Mexico Institute of Mining and Technology (NMIMT) for services that are for the direct benefit of a sponsored project.

The instrument serves many purposes:

1. It serves as the legal, binding document that states the rights and responsibilities of both parties.
2. It protects the interest of the funding agency and the prime recipient/NMIMT, and it "flows-down" all necessary requirements, certifications, and assurances required by the sponsor.
3. It demonstrates to the sponsor that the prime recipient has acted on its behalf and is demonstrating proper stewardship (NACUBO).

B. Subrecipient

Subrecipients are entities that **perform a portion of the scope of work** identified in a proposal for a funding agency (grantor). Their performance is measured against whether the objectives of the federal programs are met. They also have responsibility for adherence to applicable federal program compliance requirements. **Normally, a deliverable, is required.** Utilize the policy outlined within this document.

C. Vendor

A vendor provides goods and services but does not participate in the scope of the work itself. Under Office of Management and Budget (OMB) *Circular A-133*, an organization is considered to be a vendor when it provides goods and services within its normal business operations; provides similar goods and services to many different purchasers; operates in a competitive environment; provides goods and services that are ancillary to the operation of the federal program an example would include a consultant, office supply chain, etc.

Payments received for goods or services provided as a vendor represent a procurement arrangement and are not considered subawards to subrecipients (OMB A-133 Section .210). Purchasing department guidelines are to be followed. Normally, a deliverable, as specified under the terms and conditions of an externally funded agreement, is not required.

Note: Not all of the characteristics listed above may be present to determine whether an entity is classified as a subrecipient or a vendor. Consequently, pass-through entities should look at the substance of the relationship.

The following is a tip often used by institutions to test if a subrecipient relationship exists:

Whether an individual at the subrecipient entity could be the co-author of scientific manuscripts that describe the research results or whether the subrecipient entity has the right to file for intellectual property protection of inventions or software (NACUBO).

III. Governing Regulations

NMIMT, as an educational institution, is bound by the regulations stated in OMB *Circular A-133*, "Audits of States, Local Governments, and Non-Profit Organizations." The circular requires that the prime recipient/NMIMT be responsible for activities of the subrecipients, monitor their performance, and review their audits.

Responsibilities of the pass-through entity/NMIMT (OMB *Circular A-133* Subpart D - Federal Agencies and Pass through Entities) include:

1. Identifying federal awards made by informing each subrecipient of the Catalog of Federal Domestic Assistance (CFDA) title and number, the award name and number, the award year, whether the award is Research and Development (R&D), and the name of federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the federal award.
2. Advising subrecipients of requirements imposed on them by federal laws, regulations, provisions of contracts or grant agreements, as well as any supplemental requirements imposed by the pass-through entity.
3. Monitoring the activities of the subrecipients as necessary to ensure that federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
4. Assurance that subrecipients expending \$500,000 or more in federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.
5. Issuing a management decision on audit findings within six months after receipt of the subrecipient's audit report and assurance that the subrecipient takes appropriate and timely corrective action.
6. Considering whether subrecipient audits necessitate adjustment of the pass-through entity's own records.
7. Requiring each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with these guidelines.

NMIMT's subcontract/subaward template was designed to address these core monitoring mechanisms.

IV. Principal Investigator Responsibilities

A. Preaward

The Principal Investigator (PI) should request a signed proposal for the proposed work from any potential subrecipient(s). Each proposal should include the proposed approach to completing the requirement; level of effort required; budget for the project; definition of time commitments; and deliverables and technical information. If the award has cost share requirements that is to be satisfied by the subrecipient, then their proposal should quantify the value of their contribution.

If it is necessary to consider a sole source, justification should be provided in the budget narrative that will be presented to the prospective funding agency for approval. Otherwise, the PI must solicit proposals from several organizations.

Note: Prior written approval from the funding agency may be required before issuing a subcontract.

B. Postaward –Subrecipient Monitoring Process

The PI will work with the purchasing department to establish a purchase order for the subcontract. This practice will earmark funds for work performed by subrecipient. In addition, the originating department shall place the following verbiage (or similar) on the requisition:

Order with (Subrecipient Name) is in accordance with proposal submitted to (Name of Funding Agency) funding agency on (Month/Date/Year).

The Accounts Payable Office will receive and forward invoices from the subrecipient to the PI/originating department for payment approval.

NMIMT relies on the PI to be the primary control point for monitoring the activities of subrecipients as necessary to ensure that federal awards are being used for their authorized purpose and that performance goals are achieved. The primary mechanism for achieving this is the PI's approval of the invoice for payment.

Invoices should not be approved if the appropriate technical progress has not been made and/or deliverables have not been met.

The PI, by signing and approving subrecipient invoices, certifies the following:

- **Timely Submission of Invoices** – The subrecipient timely submits invoices for review and approval.

- **Allowable, Allocable, Reasonable, and Appropriate** – The invoice expenses are allowable, allocable, reasonable and appropriate *for the work being performed*.
- **Reports** – Subrecipient technical reports are submitted in accordance with statement of work specified in the subcontract instrument and submitted in a timely manner.
- **Progress and Performance** – The progress and performance of services conducted by the subrecipient are satisfactory.
- **Review of Expenses-to-budget** – For cost reimbursement subawards, the cumulative invoice amount has been compared to the approved budget submitted in subrecipient's proposal.
- **Clarification of Invoiced Charges** – Subrecipient invoices should be in enough detail to determine how the funds are being used. Charges that are unusual, miscellaneous, apparently excessive, or which otherwise stand out should be explained by the subrecipient with additional documentation attached to the invoice.

Examples of documentation that may be requested from subrecipient include, without limitation:

- Payroll records/data.
- Copies of paid invoices showing the cost of items purchased.
- Description of services rendered by consultants (including hourly rates and time reports).
- Details of travel charges stating the purpose, airfare, meals, ground transportation, and unallowable costs.

Additional elements for the PI to consider when certifying the invoices include the following:

- **On-site visits** may be conducted at the discretion of the PI to evaluate both compliance with the scientific and technical objective of the project and the appropriateness of the subrecipients administrative systems, processes, and charges.
- **Regular contact** and appropriate inquiries of work performed
- **Audits.** Discretionary audits of subrecipients are an acceptable monitoring procedure under federal regulations, and all of the subcontract agreements contain a **right-to-audit** clause. Formal audits may be performed when circumstances warrant such a review. It is permissible for NMIMT to hire an auditor to perform this review and direct charge the expense to the project, if approved by the funding agency. If the prospective grantor is a federal agency, they have the authority to request the Defense Contract Audit Agency (DCAA) to perform the audit at either the preaward or postaward stage.

The PI indicates approval to pay acceptable invoices and attaches a copy of the receiving copy of the purchase order. The documents are then forwarded to the Accounts Payable department for payment processing. If an approval cannot be made or there are issues with the invoice, the PI or Department Administrator should inform Restricted Funds Department so appropriate follow-up and action can be taken with the subrecipient.

The PI should notify the Sponsored Projects Office when the following changes have occurred and consequently warrant an amendment to the original subcontract:

- Change in the scope of work, and/or period of performance.
- Change in the expenditure level.
- Cancellation of all or a portion of the subcontract.
- Other changes, when it is in the best interest of NMIMT to issue an amendment.

After approval has been received from the Sponsored Projects Office, the PI/originating department has the responsibility to notify the Purchasing Office to revise the purchase order accordingly.

V. Restricted Funds Department's Responsibilities

A. Preaward

The financial administrator for the department acts as a liaison between the funding agency and the Principal Investigator (PI) to ascertain that all necessary documentation is generated and provided. To be included in a proposal submission, a subrecipient must provide:

- A statement of work.
- A budget.
- All required representations and certifications.
- A letter of commitment from an authorized official at the subrecipient organization (if appropriate).

The Restricted Funds Department (RFD) should also review the subrecipient's proposed budget and request supporting documentation for various cost elements and to ascertain that costs are allowable per OMB *Circular A-21*. Where appropriate a copy of the subrecipient's negotiated indirect costs (F&A) rate agreement should be maintained with the file. If the subrecipient does not have an audited and approved F&A rate, then they may not charge NMIMT for indirect costs.

Before executing subagreements, the RFD performs a risk assessment of all potential subrecipients using the Subrecipient Risk Analysis Matrix as guidance. If there is a high level of risk associated with the subrecipient, the RFD will ensure appropriate risk mitigation steps are taken and the necessary language is included in the subagreement. For example, **high risk** subrecipients may be asked to submit supporting documentation in the form of original receipts, copies of payroll records, audits, etc. if circumstances warrant. This additional requirement would be addressed in the subcontract instrument under Article IV- Payment.

Subcontract instrument includes:

- Exhibit A: Statement of Work and Cost Proposal
- Exhibit B: Prime Agreement
- Exhibit C: NMIMT "Vendor" Registration Form (to allow payments thru financial system)
- Exhibit D: Reporting Requirements, if appropriate
- Exhibit E: Certificate of Current Cost or Pricing Data (which is required on subawards equal to or greater than \$500,000 [per FAR 52.215-12 Subcontractor Cost or Pricing Data and FAR 15.403-4]).

Since it is unusual for NMIMT to enter into subawards greater than or equal to \$500,000, it should be emphasized that the prudent course of action would be to work closely with the funding agency before, during, and after the subcontract process. This practice will ensure that NMIMT does not incur subrecipient costs which are ultimately disallowed.

A memo shall be prepared from the financial administrator to the Vice President of Administration and Finance in order to notify the Board of Regents for awards made in excess of \$100,000. An example of the information to be addressed can be found at [regent notification memo](#).

The memo, along with the subcontract instrument, is routed to the Vice President of Administration and Finance. The subaward/subcontract is executed and returned to RFD for distribution. The original regent notification memo remains with the Vice President of Administration and Finance while a copy is maintained in the RFD's contract file.

Purchasing will also sign the award instrument which serves as official notification to them that a subcontract award has been made to a subrecipient. They will enter necessary data in their vendor database indicating a vendor type "SU". This practice facilitates the business office's ability to track and identify subrecipients in order to satisfy A-133 reporting requirements.

Distribute a copy of the fully executed subcontract instrument (a scanned version is acceptable) to the PI and the purchasing department with a reminder that the PI/department needs to initiate a requisition with the Purchasing Department. The Purchasing Department will be responsible for converting the requisition into a purchase order. This practice will ensure that funds have been earmarked for effort to be performed by the subrecipient.

B. Postaward

The RFD reviews invoices for the following:

- Expenses incurred during the period of performance.
- Randomly checks that the appropriate invoice format and level of detail exists.
- PI has approved invoice for payment.
- Appropriate FUND and account code have been assigned and used.
- Certification or signature by an authorized subrecipient representative.

Invoices deemed insufficient may be disapproved for payment and will need to be revised and resubmitted.

For invoices which contain equipment costs, the subrecipient has the additional responsibility to send interim and a final property list to the sponsored projects office and to NMIMT's Property Office. The purpose of this procedure is to allow NMIMT to satisfy Office of Naval Research property requirements for equipment purchases made by subrecipients. The list should contain items such as serial number, model number, and item description which will allow specific identification in order to satisfy NMIMT's various reporting requirements to the funding agency.

Closeout procedures should include proper documentation of mandatory cost sharing satisfied by the subrecipient, collection of required financial reports, receipt of an invoice marked as "final" and where equipment is involved the contract administrator will need to request disposition instructions for equipment acquired and/or furnished to the subrecipient in addition to disposition instructions for equipment acquired and/or furnished to NMIMT under the federal agreement.

VI. Coding Subaward Transactions

Subrecipient costs are tracked separately in the general ledger by usage of the BANNER FUND code and account codes 710412 -710421 and 710425-710439. A new subcontract agreement should be issued for each new Statement of Work (SOW). NMIMT is entitled to collect overhead (OH) on the first \$25,000 with the balance of the award OH exempt per OMB A-21 guidelines.

Note: BANNER tracks \$25,000 threshold by grant versus FUND - meaning you need to assign a unique account code for each unique subcontract within a grant regardless of FUND in order for the system to automatically calculate overhead on the first \$25,000 of activity.

VII. Advance Funding

The federal government only allows for advance funding in rare circumstances when a subrecipient lacks sufficient working capital to perform the work (see [Circular A-110, subpart C, 22\(f\)](#)).

In the rare event that an advance is made to a subrecipient, care should be exercised to ensure that NMIMT only advances the amount needed to cover short term working capital needs.

Note: Most subrecipients can meet their short term working capital needs and are able to conduct business on a cost reimbursable basis rather than requiring an advance.

These types of arrangements should be approved by the funding agency and documentation is to be obtained supporting that work has been performed in accordance with agreed upon Statement of Work and proof maintained that work has been completed.

VIII. Annual Monitoring for A-133 Audit Compliance

All state and local governments, colleges and universities, and nonprofit organizations that expend \$500,000 or more of federal awards in a fiscal year must have a single audit performed. **This is a valuable and primary monitoring tool for NMIMT.** The following components of a subrecipient's single audit report are reviewed as part of NMIMT's monitoring efforts:

1. The auditor's opinion on the financial statements.
2. The auditor's report on internal control.
3. The auditor's report and opinion on compliance with laws and regulations that could have an effect on major programs.
4. The schedule of findings and questioned costs.
5. The subrecipient's corrective action plan.

The Office of Sponsored Projects runs BRFA008 Subrecipient Report at the end of the fiscal year to identify all subrecipients of federal funds. While "for-profit" entities are not subject to OMB A-133, NMIMT sends an annual audit certification letter to all subrecipients of federal funds. A master log is maintained as letters are sent and received in order to track outstanding requests.

The annual audit certification letter allows NMIMT to ensure that subrecipients are in compliance with the requirements of appropriate standards for good business practices, including internal controls in accordance with OMB *Circular A-133*, "Audits of States, Local Governments, and Non-Profit Organizations."

NMIMT receives assurance from the subrecipient that it has satisfactorily completed the required audits and is in compliance with A-133 requirements. The subrecipient also has the responsibility of notifying NMIMT of any instances in which an adverse finding(s) impacts a subaward issued by NMIMT.

Subrecipients not subject to OMB *Circular A-133* are defined as for-profit organizations and those non-profit organizations not meeting the federal expenditure threshold of \$500,000 per annum as well as all foreign institutions or organizations. Such entities must still certify to NMIMT on the annual certification letter that they are in compliance with applicable federal, state or local laws and regulations and that no audit findings or questioned costs were discovered during the course of their annual audit which would have an adverse financial impact on awards made by NMIMT.

A. Corrective Actions

In the event audit findings do exist, NMIMT is obligated to obtain a corrective action plan from the subrecipient and determine if cost adjustments are required on the project(s). A subrecipient who is unable or unwilling to have the required audits, permit monitoring activities, and/or correct non-compliant conduct may lead to sanctions by NMIMT. Examples of sanctions may include withholding or a percentage of final payment, suspending subaward until compliance is achieved or terminating the subaward. Non-compliance may be reported by NMIMT to the funding agency.

IX. Record Retention Requirements**A. State and Federal Awards**

All financial, technical, and other records pertinent to the project must be retained for three years following submission of the final financial report (CFR article 2, part 215.53.(b)), unless the terms of the award provide for a different period. Electronic or copied paper versions of records may be used in place of the original records if authorized by federal awarding agency (CFR article 2, part 215.53.(c)).

Additionally, the *Code of Federal Regulations* article 2, part 215.53.(b).(1) states, "If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken."

B. Other Sponsors

Record retention for other sponsors is as specified in the award or in sponsor policy.

X. Regulatory References

Office of Management and Budget (OMB) *Circular A-133*, "Audits of States, Local Governments, and Non-Profit Organizations."

31 USC 7502(f)(2)(B)(Single Audit Act Amendments of 1996 Pub. L. 104-156)

45 CFR Part 74.26(d)(application of A-133 audit requirements to for-profit and non-US based entities)

Thompson Publishing Group, "Techniques for Monitoring Federal Subawards."

XI. File Location

[Subagreement Template](#)

[Subrecipient Risk Analysis Matrix](#)

[Regent Notification Memo](#)

[Subagreement Exhibit C: NMIMT "Vendor" Registration Form](#)

[Subagreement Exhibit D: Reporting Requirements](#)

[Subagreement Exhibit E: Certificate of Current Cost or Pricing Data](#)

[Annual Audit Certification Letter](#)