

# 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

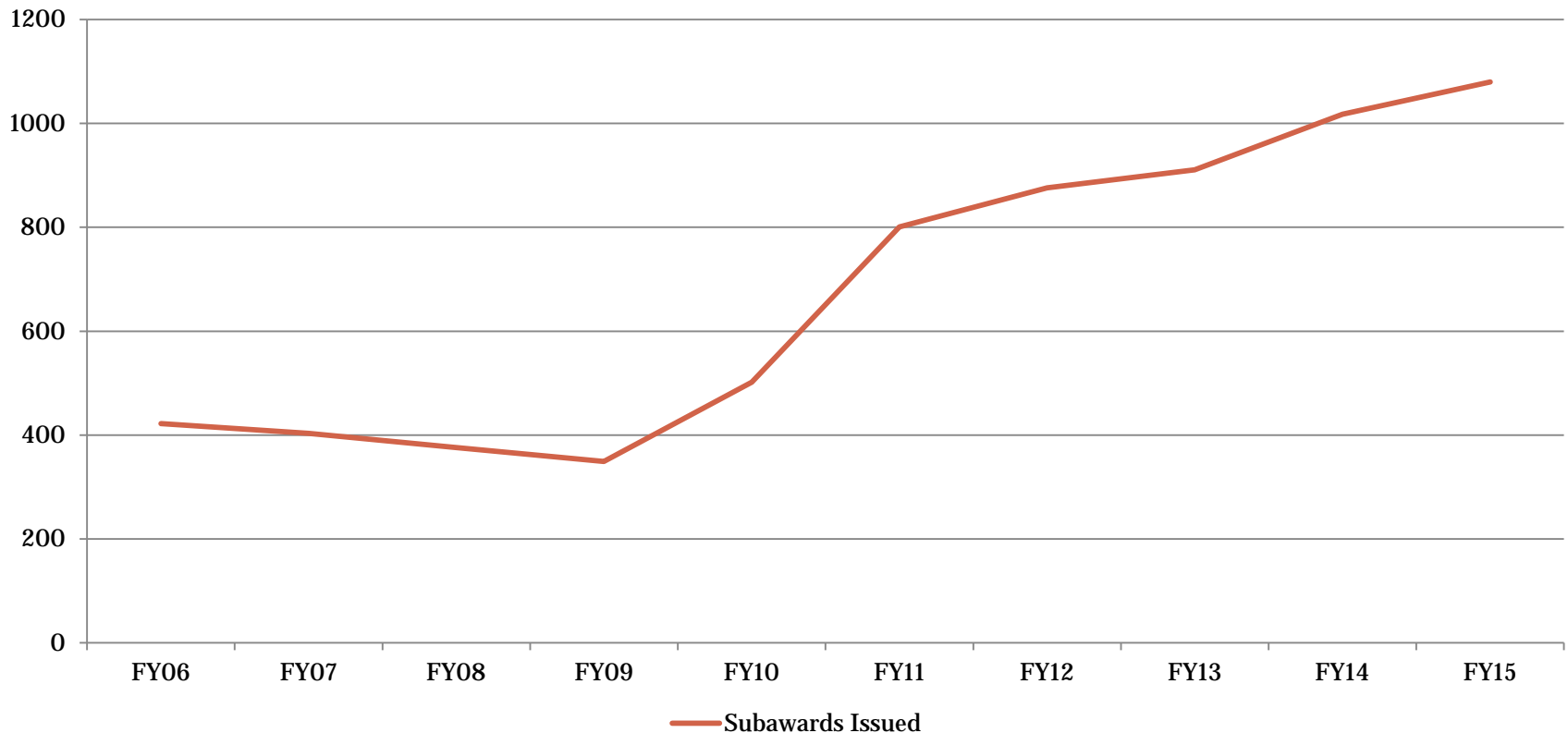
- **Consultant**
- **Collaborator (Contributor)**
- **Mentor/Co-Mentor**
- **Co-investigator**
- **Other Significant Contributor**

# 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





# 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

Office of Research Administration

Principal Investigator: \_\_\_\_\_

Compass Award ID: \_\_\_\_\_

## Checklist to Determine Subrecipient or Contractor Classification

**OBJECTIVE:** Generally, the determination of the relationship with an entity is verified through the institutional review of the proposal narrative, budget justification, and other related proposal documents, as well as through discussions with key personnel prior to proposal submission. In order to document this determination, this form must be provided with each subaward request.

### DEFINITIONS FROM INFORM GUIDANCE (2 CFR, PART 200)

#### Subrecipient:

§200.93 Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity (Emory University) to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding.

#### Contractor:

§200.23 Contractor means an entity that receives a contract as defined in §200.22 Contract. §200.22 Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award.

**INSTRUCTIONS:** Complete sections one and two of the checklist 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 Emory University. On occasion there may be exceptions to the type of relationship indicated by the completed checklist. In these situations, the substance of the relationship should be given greater consideration than the form of agreement between the University and the outside entity. Section 3 should be used to provide documentation on the use of judgment in determining the proper relationship classification.

NAME OF OUTSIDE ENTITY: \_\_\_\_\_

### 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.

FINAL DETERMINATION:

SUBRECIPIENT

CONTRACTOR

**OPTIONAL - SECTION 3 - USE OF JUDGMENT** (use only when the determination cannot clearly be made using the above criteria)

**Description:** In determining whether an agreement between a pass-through entity and another non-Federal entity constitutes the latter as a subrecipient or a 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 classifying each agreement as a subaward or a procurement contract.

Explanation of Use of Judgment Determination:

\_\_\_\_\_

Prepared By: \_\_\_\_\_

Date: \_\_\_\_\_



# Vendor vs. Subrecipient Determination

## **SECTION 1 - SUBRECIPIENT**

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*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.*

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# 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 not 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 Subaward 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 subaward 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?