



**Harvard Pilgrim Health Care, Inc.  
Harvard Pilgrim Health Care Institute  
*Office of Sponsored Programs*  
Policy and Procedure**

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**TITLE: Subcontractor, Vendor (Contractor), Consultant**

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**PURPOSE:** To communicate the policy and process.

**PERSONS AFFECTED:**

This policy & procedure (P/P) applies to all Harvard Pilgrim Health Care, Inc. (HPHC) and Harvard Pilgrim Care Institute, LLC (HPHCI) (collectively, HPHC/I) personnel engaged in research, teaching or research administration activities in support of the charitable and educational mission of HPHC, Inc.

**GUIDANCE:**

Under the OMB Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, which went into effect on 12/16/2014, the term “vendor” was replaced with “contractor.” The terms vendor and contractor substantially have the same meaning and may be used interchangeably in other guidance. For consistency purposes, when HPHC provides funds from a federal award to a non-federal entity, the non-federal entity receiving these funds is classified as a subrecipient or a contractor based on the nature of the agreement and the criteria in 2 CFR §200.330.

While most of the work on sponsored awards at HPHC is conducted by faculty and staff, it is sometimes determined that a portion of the research or project must be completed by an individual consultant<sup>1</sup> or entity<sup>2</sup> or outside of HPHC. In these cases, a legal agreement outlining the relationship between the parties and HPHC is required and may take the form of either a subaward/subcontract or an agreement with a contractor (vendor) for purchase of services.

**POLICY:**

It is the policy of HPHC that, before entering into a relationship with another entity under a sponsored award in which the other entity will provide goods or services or substantive, programmatic work to HPHC, as the prime recipient of funding, a determination must be made by the Office of Sponsored Programs (OSP) as to the nature of the legal relationship of HPHC and other entity, which in turn will determine the type of legal agreement required to document the relationship.

It is important that the correct agreement determination is made early in the process of preparing a grant application, as overhead treatment and monitoring requirements for these types of agreements vary and will impact the grant budget and, in some cases, the grant narrative. In addition, if specified in the award terms and conditions (as sometimes occurs), sponsor approval may be required prior to executing a subagreement; sponsor pre-approval is rarely, if ever, required for HPHC to enter into a contractor (vendor) agreement for purchase of services.

The decision is also important because it determines the allocation of responsibilities and influences the appropriate application of indirect cost rates. In the case of a subagreement, it is incumbent upon the prime recipient (HPHC) to ensure that subrecipients conduct their portions of research projects in compliance with all applicable terms and conditions of awards and subawards and that project costs incurred by subrecipients are reasonable and allowable.

Agreements with contractors (vendors) for the purchase of services, however, typically do not bind vendors to the full set of sponsor terms and conditions, and are subject to competitive bidding procurement practices, to assure that funds paid to vendors do not exceed fair market value.

Section 200.330 Subrecipient and Contractor Determinations, as well as section 200.22 Contractor and 200.92 Subaward of the Uniform Guidance provide guidance on making subrecipient and contractor determinations.

**DEFINITIONS** (see **GLOSSARY** for meaning of the terms listed below):

**Contractor** (aka Vendor) – means an entity that receives a contract. A contract is 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. (Uniform Guidance §200.22, §200.23)

**Subaward** – means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract (Uniform Guidance §200.92)

**Subrecipient** – means a non-federal entity that receives a subaward from a pass-through entity to carry out a 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 agency (Uniform Guidance §200.93)

**Strategic Technical Partner** – means vendors that provide necessary technology and computing expertise, to develop critical technology and programs under a grant or contract. Qualifying technology and computing services include data storage, managed hosting or cloud services, software development, design, management, maintenance and expert computer programming.

## **PROCEDURE:**

All agreements are initiated and/or negotiated by OSP.

*A subcontractor performs activities that are significant to the sponsored research project. Its work is unique, and it has clearly distinguished deliverables for the project.*

- The entity's Principal Investigator serves as an Investigator on the primary project and shares responsibility with the primary project's Principal Investigator for the results and decisions of the research effort.
- The entity retains title to and bears responsibility to protect intellectual property that it creates during the research project.
- The entity's Principal Investigator and/or key personnel may author publications related to its portion of the research activities.
- The entity's performance is measured against whether its unique contributions help to meet the objectives of the overall research project.
- The entity uses federal funds to carry out its specific portion of the project as compared to providing routine goods or services.
- The entity is responsible to adhere to applicable Federal compliance and audit requirements.
- The entity provides cost sharing or matching funds for which it is not reimbursed by HPHC.
- The entity regards itself, and/or is regarded by HPHC, as "engaged in research" involving human subjects under the [Common Rule](#) and therefore requires approval for its interactions with human subjects.

*A consultant provides particular expertise on specific component(s) of the project.*

- The individual is not an employee of HPHC/I;
- The individual uses his/her own equipment and materials, not equipment from his/her institution, for the work on the project;
- The individual is paid for time spent on a fixed hourly/ daily basis, which includes travel expenses, supplies, overhead, etc.;
- The individual's work is considered as being paid a "fee for service" whose work and IP belongs to HPHC;
- The individual is not involved in programmatic work on the project; including project deliverables such as reports.

*A vendor provides the same good or service to the general public. It is usually a for-profit entity and does not innovate its goods or services for the sponsored research project. A Strategic Technical Partner is a vendor who provides technology and computing services (e.g., General Dynamics, Statlog, Amazon Web Services or Microsoft Azure via Marketplace) that allow researchers to develop health IT projects with technology infrastructure that is not available in house.*

- The entity provides similar goods and services to many different purchasers within normal business operations operates in a competitive environment.
- The entity has not significantly participated in the design of the research itself, but is implementing the research plan of the HPHC investigator.
- The entity is not directly responsible to the sponsor for the research or for determining research results.
- The entity has little or no independent decision-making in the design and conduct of the research work being completed and is not responsible for the results of the research project.
- The agreement only specifies the type of goods/services provided and the associated costs.
- The entity commits to deliverable goods or services, which if not satisfactorily completed will result in nonpayment or requirement to redo deliverables.
- The entity is not typically subject to the full compliance requirements of the Federally-funded project.
- The entity performs work on HPHC's behalf, and HPHC retains ownership of the product
- The entity does not possess ownership of intellectual property created during the research project.
- The entity does not independently produce publications related to the research project.
- The entity does not expect to have its employees or executives credited as co-authors on papers that emerge from the research.
- The entity is not typically subject to the full compliance requirements of the Federally-funded project.

**What rules and restrictions apply?**

<b>Subaward</b>	<b>Supplier (Vendor) Agreement</b>	<b>Strategic Technical Partner (Vendor) Agreement</b>	<b>Consultant</b>
May require prior approval of the sponsor, if not originally included in proposal.	Generally, does not require prior approval of the sponsor, subject to rebudgeting restrictions imposed on the particular category of cost.	Generally, does not require prior approval of the sponsor; subject to rebudgeting restrictions imposed on the particular category of cost.	Generally, does not require prior approval of the sponsor; subject to rebudgeting restrictions imposed on the particular category of cost.
Indirect costs are only assessed on the first \$25,000 of the subaward. No additional indirect costs will be assessed on a subaward during the approved period of the award under which it was issued. However, if there is follow-on funding beyond the originally approved period of the award (e.g., competitive renewal), then indirect costs will again be assessed, on the first \$25,000 of each subaward. It is particularly important to keep this in mind when preparing proposal budgets.	Indirect costs are assessed on entire amount, just as with most other direct costs.	Indirect costs are only assessed on the first \$25,000 of the contract. No additional indirect costs will be assessed on a strategic technical partner agreement during the approved period of the award under which it was issued. However, if there is follow-on funding beyond the originally approved period of the award (e.g., competitive renewal), then indirect costs will again be assessed, on the first \$25,000 of each contract. It is particularly important to keep this in mind when preparing proposal budgets.	Indirect costs are assessed on entire amount, just as with most other direct costs.
Is NOT subject to sole-source documentation or open-bid requirements.	Is subject to sole-source documentation or open-bid requirements.	Is subject to sole-source documentation or open-bid requirements.	Is subject to sole-source documentation or open-bid requirements.
Is subject to federal subrecipient monitoring requirements.	Is NOT subject to federal subrecipient monitoring requirements.	Is NOT subject to federal subrecipient monitoring requirements	Is NOT subject to federal subrecipient monitoring requirements

**REVISION HISTORY:**

<b>Department:</b> OSP/Grants Management	<b>Title:</b> Policy & Procedure Subcontractor, Vendor, Consultant
<b>Effective Date:</b> 9/1/2018	<b>Owner:</b> Director, Office of Sponsored Programs
<b>Reviewed By/On:</b> Compliance Committee 8/8/2018	
<b>Replaces P/P Dated:</b>	
<b>Related Documents:</b> P&P Grant Related Procurement; P&P Facilities and Administrative Costs	
<b>References:</b> Uniform Guidance	
<b>Approved By:</b> Compliance Committee	