

	Uniform Guidance Communication
Topic:	Subrecipient v. Contractor
Purpose:	Communication of changes to designation of subrecipients v. contractors in Federal awards under the Uniform Guidance
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Summary: The Uniform Guidance provides specific definition of the differences between a subrecipient and a contractor under terms of federally sponsored activities. Please note that the Uniform Guidance replaces the term “vendor” with the term “contractor.” Duke University must clearly identify the functions to be performed by either a subrecipient and/or a contractor at time of proposal submission to ensure accurate budgeting and reduce the possibility of delay in issuing either a subagreement (to a subrecipient) or a Research Support Services Agreement (RSSA) to a contractor.

Departments must perform an assessment of the appropriate relationship being established (subrecipient v. contractor) on a case-by-case basis during the development of the proposal to ensure budget accuracy. Duke has developed a reference checklist in conjunction with this communication. If the definition and application of F&A is not clear during the ORA/ORS review prior to application/proposal submission, this checklist may be required to be submitted with the application/proposal to provide additional a formal documentation of the department’s understanding of the work being completed by the subrecipient or contractor.

Definitions:

A **subrecipient** is a non-Federal entity that receives a subaward from a pass-through entity 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 agency.

A **contractor** is a non-Federal entity who provides goods or services needed to carry out the project or program under a Federal award. A contractor relationship is established via a legal document outlining terms of the procurement relationship.

Subrecipient v. Contractor Determinations:

According to the Uniform Guidance, the pass-through entity, or Duke, must make the determination regarding whether an entity should be classified as a subrecipient or a contractor. The substance of a relationship determines if it is defined as a subrecipient or a contractor. The characteristics listed below are guidelines and all may not be present in all cases.

Subrecipients:

Characteristics (not all inclusive) which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- Technical lead is a scientific collaborator or possibly a co-investigator on the proposed project
- Participates in development and execution of scope of work
- Services are uniquely designed in response to each project, and not provided commercially
- Retains rights to intellectual property
- Has its performance measured in relation to whether objectives of a Federal program were met
- Has responsibility for programmatic decision making
- Determines who is eligible to receive Federal financial assistance
- Is responsible for adherence to applicable Federal program requirements specified in the Federal award

Contractors:

Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

- Provides the goods and services commercially
- Provides the goods and services within normal business operations
- Provides similar goods or services to many different purchasers
- Normally operates in a competitive environment
- Provides goods or services that are ancillary to the operation of the Federal program
- Is not subject to compliance requirements of the Federal program as a result of the agreement
- Retains no rights to intellectual property

Recommended Departmental Best Practices:

- Departments should identify possible subrecipients and contractors prior to proposal submission.
- Departments should be able to identify clearly the work being done by the subrecipient or the contractor.
- Departments should be prepared to provide additional information to ORS/ORR regarding the activities being completed by the subrecipient or contractor as requested. This may include submission of the formal checklist to illustrate department's understanding of the research or services being conducted.
- Departments should communicate regularly with the subrecipient or contractor both prior to proposal submission and during the project.