OFFICE OF RESEARCH AND PROJECT ADMINISTRATION
Updated September 2026

POLICIES AND PROCEDURES FOR THE ADMINISTRATION OF SUBAGREEMENTS ISSUED TO A THIRD PARTY

October 2026
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I. INTRODUCTION

This manual is to assist faculty and staff with the preparation and administration of subagreements associated with sponsored projects. This guidance excludes discussion of subagreements for construction activities.

II. DEFINITIONS

For the purposes of this policy, where reference is made to sponsored projects, it is defined as all awards (i.e., clinical trials, training grants, etc.) where a subagreement is issued. Similarly, where reference is made to "subagreement", it may refer to subaward, subcontract or consortium agreement, dependent upon the nature of the prime award.

A. Concept of Substantive Work

On occasion sponsored project awards made to the University of Rochester (UR) , may require substantive programmatic work to be parceled out to one or several third parties that are made responsible for a portion of a project awarded to the UR. The concept of **substantive work conducted by a third party** is characterized by:

- The work conducted is independent and directed by an on-site investigator;
- The work conducted is substantial (not necessarily in the monetary sense, but more importantly in the programmatic sense -the work constitutes a meaningful component of the proposed aims);and
- The work conducted is of consequence to the project (necessary to the completion of the aims).

Substantive work usually requires one or more of the following: personnel costs, supplies, equipment, travel and Facilities and Administrative (F & A) costs needed by a third party (i.e., company, hospital, university) who is performing a portion of a research program under an award made to the UR.

2 CFR 200 (Section 200.330) makes a distinction between a subrecipient (substantive work) and a vendor:

Characteristics of a **subrecipient** are that the entity:

- determines who is eligible to receive what financial assistance;
- has its performance measured against whether the objectives of the federal program are met;
- has responsibility for programmatic decision-making;
- has responsibility for adherence to applicable federal program compliance responsibilities specified in the federal award; and

- uses the federal funds to carry out a program for a public purpose as compared to providing goods or services for a program of the pass-through entity.

A third party is considered to be a **vendor** when it:

- provides goods and services within normal business operations;
- provides similar goods and services to many different purchasers;
- normally operates in a competitive environment;
- provides goods and services that are ancillary to the operation of the federal program; and
- is not subject to compliance requirements of the federal program as a result of the agreement, though similar requirements may apply for other reasons.

Not all of the characteristics need to be or will be present to determine whether the third party is a subrecipient or a vendor. Judgment should be used in each case. Using the FDP Template results in compliant documentation of whether the third party is a subrecipient or a vendor.

Distinguishing between a subrecipient providing substantive programmatic work and a vendor providing goods and services provides the basis for the decision as to whether ORPA or Corporate Purchasing will issue the corresponding agreement. ORPA will only issue agreements for substantive programmatic work.

Key Questions to Make the Vendor-Subrecipient Determination

Below are helpful questions to determine whether a third party entity is a subrecipient. If the answers are "yes" the relationship is probably a subrecipient relationship.

- Is there an identified investigator at the third party entity? If yes, is he or she a co-investigator on the primary award?
- Is the third party free to decide how to carry out the activities requested of it?
- Will there be potentially patentable or copyrightable technology created or reduced to practice from the activities of the third party? If yes, does the third party have rights to or the right to file for protection of its technology?
- Are publications anticipated from the third party? Will individuals at the third party be co-authors on articles?

A key question to answer to determine whether the third party is a vendor is bulleted below:

- Is the activity to be performed a series of repetitive tests or activities requiring little or no discretionary judgment on behalf of the third party?

If the answer is "yes" the relationship is most likely a vendor relationship.

B. Defining the Subagreement Relationship

The term **prime sponsor** refers to the agency which makes an award directly to the UR. The **award document** is the official document committing funding received by the UR from the sponsor.

The document which formalizes a "third party" relationship with an entity performing substantive work for an award made to the UR, is called a **subaward, subcontract**, or **subagreement**. The third party performing work under a subagreement is called the **subrecipient, subcontractor,** or **subawardee**. Some sponsors, notably NIH, label the cooperating institution a "consortium", and similarly label the subaward a consortium agreement. While the intent is identical, this policy refers to all consortium agreements as subawards or subcontracts, depending upon the nature of the prime agreement.

The most commonly used subagreements at the University of Rochester are those that are awarded under federal assistance grants. The UR uses the FDP Model Subaward for most of these agreements as the flow-down requirements are clearly delineated in the FDP model, and the standard terms should facilitate subaward negotiation. The process for issuing the FDP subawards follows in Section IV.

For subawards not utilizing the FDP terms, the process can be found in Section III. The UR has templates that are customized for different sponsors.

Activities performed by an individual who is not working under the auspices of an entity, and who is not employed by the UR, are administered through a purchase order agreement via a requisition form. Other purchased services may involve another organizational entity, but may not involve substantive scientific research. For example, a service agreement is appropriate for the performance of repetitive tests or activities requiring little or no discretionary judgment on the part of the service provider. Service agreements are normally handled through Corporate Purchasing.

C. Documents Associated with Subagreements

Essential elements of any subagreement include:

1. The subaward face page
2. The general terms and conditions
3. The flow down terms and conditions of the prime award
4. Contact information pages
5. A detailed statement of work
6. A detailed budget and justification
7. A (redacted) copy of the original award (if appropriate)

Every subagreement issued to a third party will contain some variation of the above documents. Additional documents may be included, as necessary, as attachments and exhibits.

III. PROPOSAL STAGE

A. Subagreement Proposal

The subagreement proposal includes, at a minimum, a detailed statement of work, the project budget and budget justification, and the written evidence that an authorized organizational official has endorsed the subrecipient's proposal. Additional documents might include a resources/facilities page, checklist page, biosketch, other support, and a signed face page.

It is the responsibility of the UR principal investigator (PI) to discuss and negotiate the statement of work to be performed by the subrecipient. The statement of work should be submitted to the UR PI well in advance of the agency deadline to allow for review and negotiation. If the subagreement involves human subject research or use of animals in research, appropriate subrecipient approvals should be included, if required, in the proposal.

A budget and budget justification are submitted which includes appropriate salaries, fringe benefits, supplies, travel, equipment, and other direct costs as well as appropriate F & A costs that are needed to complete the statement of work. It is the responsibility of the UR PI to evaluate the proposed budget for cost and price reasonableness against the proposed statement of work.

The subrecipient institution's authorized official must approve the subagreement proposal. This can be accomplished in several formats, including a signed copy of the agency cover page or a letter of commitment.

B. Building the Subagreement Proposal into the URochester Proposal

It is essential that ORPA review the subagreement portion of the University proposal to ensure that the applicable items discussed above have been incorporated. If questions or concerns arise regarding costs or other items, these are discussed with the UR PI or administrator, as appropriate.

C. Special Requirements for Proposals for Federal Procurement Contracts

Subcontract proposals submitted in response to a federal procurement services request (e.g., a contract) will have additional requirements at the proposal stage. The UR PI and ORPA Research Administrator should review the Request for Proposal (RFP) or Request for Quote (RFQ) carefully to identify additional requirements, such as completed Representations and Certifications, or a Small Business Subcontracting Plan (i.e., Subcontracting Report for Individual Contracts) if the proposed recipient's costs exceed $650,000. With some RFP's, the Small Business Subcontracting Plan may only be required at the time of "best and final offer". If a Small Business Subcontracting Plan is

required, the PI's department should work closely with the Purchasing Department to develop it.

UR also should review the subcontractor's budget to be sure it includes all additional required information, such as the basis for proposing labor costs, fringe benefits, equipment, and materials. For proposals resulting in federal contracts, the UR should obtain and submit to the sponsor appropriate F & A and fringe benefit negotiation agreements for proposed subcontractors at the time of proposal.

D. University of Rochester's Budget

Subrecipient costs are included in the UR budget as a direct cost. For federal projects, the portion of each subagreement contained in the proposal that exceeds $50,000* is excluded from the application of F & A, as required by 2 CFR 200. Normally F & A should only be applied to the first $50,000* of each subagreement issued under any government-sponsored prime award regardless of the number of budget periods involved during performance. Subagreements budgeted on awards that assess UR F & A on a Total Direct Cost (TDC) basis (e.g. industry or foundation awards) are subject to UR F & A on the full amount of the subagreement (i.e., not limited to the first $50,000*). Any waiver of UR F & A on the subagreement cost requires the approval of the appropriate Dean's office.

* For projects whose proposals were submitted prior to the date (to be determined) of our current Overhead Rate Agreement, $25,000 is the applicable amount.

E. Other Preaward Considerations

Fixed Amounts Subawards

A fixed amount subaward is when the UR provides a specific level of support without regard to actual costs incurred. A subaward based on fixed amounts of $500,000** or greater requires prior written approval from the federal awarding agency.

Fixed amount awards are allowed if the project scope is specific and if adequate cost (historical or unit pricing) data is available to provide assurance that the third party will realize no increment above actual cost. Fixed amount awards are generally allowed when (1) payments are based on meeting specific requirements of the federal award; (2) there is no required mandatory cost sharing or match; (3) the third party will certify in writing, at the end of the project, that the activity was completed or level of effort was expended; and (4) any change in Principal Investigator, or scope of effort, is not made without prior written approval of the UR.

** For projects whose proposals were submitted prior to 10/1/2024, $250,000 is the applicable amount.

Advance Payments

It is not UR policy to provide advance payments to any subrecipient. However, if an advance payment is necessary for the subrecipient to initiate the research work, the PI's department and school/college must agree to provide the advance from a non-restricted Financial Activity Object (FAO), if the advance cannot be recovered from the sponsor.

Mandatory Cost Sharing or Matching

If the subrecipient proposes mandatory cost sharing or matching as a component of the budget under an assistance award, the ORPA Research Administrator will take special precautions to ascertain whether an authorized official of the subrecipient approved the mandatory cost sharing or matching and that these costs are allowable under the prime sponsor's requirements. Note that for federal awards, cost sharing must be explicitly addressed in the funding opportunity announcement.

Other

Depending on the source of funding or subrecipient entity type, additional requirements might be necessary, such as an Intellectual Property Agreement (might be applicable to NSF GOALI awards), contingencies for a potential assist audit by a third party auditor (might be applicable when the subrecipient is a for-profit entity or a foreign entity), or a Facilities Capital Cost of Money schedule (might be applicable to Small Business Innovation Research and Small Business Technology Transfer Programs awards).

IV. AWARD STAGE

A. General

The UR is responsible to ensure a subrecipient complies with all requirements of the prime award. For federal awards, this includes the provisions of Federal Funding and Transparency Act (FFATA) and requirements on executive compensation, as applicable.

B. Time of Award Considerations

When it appears likely that an award will be funded, some federal and non-federal sponsors request additional information. The PI's department is responsible for gathering the required information from the subrecipient(s), including, if applicable, proof of education in the protection of human subjects.

If the award involves PHS funding (e.g., NIH funds), the PHS conflict of interest regulations apply.

The subrecipient entity needs to confirm that: it has adopted a conflict of interest policy that is compliant with the PHS financial conflict of interest regulations; the named investigators for the proposed subagreement have completed conflict of interest training within the prior three years; and the named investigators have made at least an annual disclosure of their financial conflicts of interest and none are related to the proposed subagreement (or else a conflict management plan has been established).

If the subrecipient entity does not have a policy, training, or disclosure process related to financial conflicts of interest, internal approval of the relevant Dean's office can be requested to allow that entity to adopt the UR policy. If approved, the subrecipient investigators must successfully complete the UR training and make at least an annual disclosure of their financial conflicts of interest using the UR's disclosure process. If any disclosures indicate a potential conflict of interest applies to the proposed subagreement, a conflict of interest management plan must be established by the UR.

C. Request to Issue a Subagreement

After the UR receives its prime award from the sponsoring agency, it is then possible to establish a subagreement with the subrecipient entity. In order to do this, the PI's department must supply the following information to ORPA:

- Statement of Work
- Detailed Budget
- Contact Information Sheets

This is all done via a Request to Issue a Subcontract form. This request must be completed only for the first year. When a non-competing award is issued, it is the department's responsibility to ensure that each subagreement is updated to reflect ongoing activities and to provide ORPA with a request to amend the subagreement to include additional time and/or funds.

D. Assessing Subrecipient Qualification and Risk of Non-Compliance

It is important that each subrecipient maintain effective internal controls that provide reasonable assurance that the restricted project funds are managed in compliance with applicable statutes, regulations and the terms and conditions of the prime award. As such, the subrecipient's financial management system must provide for: records that identify adequately the source and application of funds for sponsored activities; effective control over, and accountability for, all funds, property and other assets; comparison of expenditures with budget amounts for each award; written procedures regarding payment methods; and written procedures for determining the allowability of costs (in accordance with 2 CFR 200 Subpart E for federal awards).

Each subrecipient's risk of noncompliance with applicable statutes, regulations and terms and conditions of the subagreement is evaluated through consideration of: (1) the subrecipient's prior experience with the same or similar subawards; (2) the results of previous audits, including whether or not the subrecipient receives a Single Audit; (3) whether the subrecipient has new personnel or new or substantially changed systems; and (4) the extent and results of federal awarding agency monitoring.

Entities Non Peer Institutions* and No UR Subaward Relationship in Prior 18 Months

To assure that the UR is issuing a subaward to an organization qualified to receive restricted project funds, special risk assessment steps are applied to entities with whom UR has not previously subawarded with on federal projects within the prior 18 months which are not Peer Institutions. Peer Institutions are defined as colleges, universities, academic medical centers and research institutions which have annual 2 CFR 200 audits. If requested to issue a subaward of $25,000 or more to such an entity, ORPA will review the list of debarred entities in the federal government's System for Award Management ("SAM") (or Visual Compliance, if the entity is not registered in SAM). If the entity is present on the list of debarred entities, the subagreement will not be issued.

If the entity is not present on the list of debarred entities, ORPA will request the entity to provide its most recent audited financial statements (and 2 CFR 200 audit reports, if applicable) and to complete a Pre-Qualifying Questionnaire . This questionnaire addresses the capabilities of the subrecipient's financial systems and internal controls. Refer to Appendix A for the Pre-Qualifying Questionnaire template.

The financial statements, 2 CFR 200 audit report (if applicable) and Pre-Qualifying Questionnaire are provided to the Director of Accounting Operations and Director of Research Compliance. (The Controller will be a substitute should either the Assistant Controller or Research Compliance Officer be unavailable.) If these persons identify any compliance and/or fraud and/or financial risk concerns, they might assign a "High Risk" rating to the entity, and thus no subagreement will be executed.

However, depending on the nature of the concerns, these persons might assign an "Other Than High Risk" rating to the entity by proposing special/additional contractual terms and conditions that will be added to the subaward to mitigate the concerns. Depending on the nature of any proposed risk-mitigation actions and the deemed amount of residual risk, the ORPA RA, Assistant Controller, Research Compliance Officer and the respective UR department will need to apply professional judgment in deciding whether or not to issue the subagreement.

Completion of the above steps is documented by ORPA on the "ORPA Subagreement Risk Assessment Checklist".

Peer Institutions

The risk assessment steps differ slightly for entities that are Peer Institutions (colleges, universities, academic medical centers and research institutions which have annual 2 CFR 200 audits).

The Assistant Controller maintains a list of all active UR subaward entities who undergo 2 CFR 200 audits. Annually, the Assistant Controller reviews the 2 CFR 200 reports to identify any internal control weaknesses/deficiencies or findings/questioned costs that might relate to the subaward programs from the UR. If there are relevant matters, they are documented on a "Report of Problematic Entities" which is provided to ORPA.

When requested to execute a subaward with a Peer Institution, ORPA looks at the "Report of Problematic Entities" to see if the institution is included. If the institution is included, the proposed subaward will be assigned a "High Risk" categorization and will not move forward unless appropriate special/additional contractual terms and conditions are possible to mitigate the concerns. This risk adjudication decision must be made in consultation with two of these following three persons: Controller, Assistant Controller, Research Compliance Officer.

If the institution is not included on the "Report of Problematic Entities", ORPA then looks at the FDP Expanded Clearinghouse to determine if the institution is listed therein. If it is, then the entity is understood to be in good standing with federal agencies and the subaward can proceed.

ORPA will review the list of debarred entities in SAM (or Visual Compliance, if the entity is not registered in SAM). If the entity is present on the list of debarred entities, the subagreement will not be issued.

If the entity is not present on the list of debarred entities, ORPA will obtain the entity's most recent 2 CFR 200 audit report.

The 2 CFR 200 audit report is provided to the Assistant Controller and Research Compliance Officer. (The Controller will be a substitute should either the Assistant Controller or Research Compliance Officer be unavailable.) If these persons identify any compliance and/or fraud and/or financial risk concerns, they might assign a "High Risk" rating to the entity, and thus no subagreement will be executed.

However, depending on the nature of the concerns, these persons might assign an "Other Than High Risk" rating to the entity by proposing special/additional contractual terms and conditions that will mitigate the concerns. Depending on the nature of any proposed risk-mitigation actions and the deemed amount of residual risk, the ORPA RA, Assistant Controller, Research Compliance Officer and the respective UR department will need to apply professional judgment in deciding whether or not to issue the subagreement.

Completion of the above steps is documented by ORPA on the "ORPA Subagreement Risk Assessment Checklist".

Special/Additional Contractual Terms and Conditions

The following are examples of award conditions that can be considered to mitigate risk of non compliance: (1) requiring payments as reimbursements rather than advance payments; (2) withholding authority to proceed to a subsequent phase until receipt of evidence of acceptable performance in the prior and current phase; (3) requiring more detailed financial reports; (4) requiring additional project monitoring; (5) requiring the subrecipient to obtain technical or management assistance; (6) establishing additional prior approvals; (7) requiring personnel to sign off on hours worked and rates of pay presented on invoices; and (8) submitting supporting documentation (e.g., invoices, receiving papers) for supplies and equipment purchases. The UR may remove special award conditions if the circumstances that prompted them has been corrected by the subrecipient.

If any of the award conditions are imposed by the UR, the UR will notify the subrecipient of: (1) the nature of the additional requirements; (2) the reason why the additional requirements are being imposed; (3) the nature of the action needed to remove the additional requirement (if applicable); (4) the time allowed for completing the actions (if applicable); and (5) the method for requesting reconsideration of the additional requirements.

Once the special/additional award terms and conditions are agreed to by the department and subrecipient, ORPA will communicate such items to the sponsor.

The following examples are specific award conditions and monitoring tools that may be useful for the University to ensure proper accountability and compliance with program requirements and achievement of performance goals:

- Providing subrecipient with training and technical assistance on program-related matters;
- Performing on-site reviews of the subrecipient's program operations; and
- Arranging for agreed-upon-proceduresengagements.

The pre-qualifying review is not required for subrecipients funded from non-federal clinical trials where payment is made on a per patient basis.

E. Subagreement Cost Review and Negotiation

If the subrecipient has an approved federally recognized F & A rate, it must be recognized when issuing the subagreement. Except for non-federal entities described in Appendix VII to 2 CFR 200 (States and Local Government and Indian Tribe Indirect Cost Proposals), if no such rate exists, a de minimis indirect cost rate that is no greater than an amount that conforms with 2 CFR 200.414 (15 percent*** of modified total direct costs) must be used. When the subrecipient does not have a federally recognized negotiated rate, all subawards the UR makes to that entity must no greater than the de minimis rate that conforms with 2 CFR 200.414 (currently at 15 percent***). Note that 8% is the rate that must be used for a foreign entity, if the subaward is related to a NIH prime award.

When the subrecipient has a federally negotiated F & A rate, ORPA will request verification of that F & A rate for the **initial year** of the subagreement. Also, ORPA will request certification of the rate and fringe benefits and will forward the certification to ORACS. Normally, the F & A rate of the subrecipient should not change during the project period, unless a varying rate per year was predetermined at the time of awardissuance.

When the prime funding mechanism is a federal contract, ORPA issues a subcontract to the third party. There is a different standard for cost review for subcontracts issued from federal contract awards. A subcontract relationship from federal procurement contracts are subject to both the procurement standards of 2 CFR Part 200 and the Federal Acquisition Regulations (FAR). As such, these subcontractors are subject to the standards of "open and free competition" and sole source justification and documentation. This requirement is fulfilled by the PI on the Request to Issue A Subcontract form.

In accordance with both 2 CFR 200 and the FAR, a formal cost and price analysis must be completed for each procurement subcontract award (i.e. not a subaward under assistance funding) prior to issuance when it exceeds the Simplified Acquisition Threshold (currently $750,000). The method and degree of analysis is dependent on the facts surrounding the particular situation. As a starting point, the UR develops an

independent estimate of the cost prior to receiving bids or proposals. Unless Terms and Conditions are approved, UR will need to approve all the "other" prior approvals required by 2 CFR 200.407.

Furthermore, for procurement subcontracts, procurement by noncompetitive proposal (i.e., single source) is appropriate when: the item is available from only a single vendor; the public exigency or emergency does not permit a delay that might result from competitive solicitations; the sponsor authorizes a noncompetitive proposal in response to a specific request from UR; or after solicitation from a number of sources, it is apparent that competition is inadequate.

If the subcontract is expected to exceed certain other dollar thresholds, then other requirements also apply. For example, if the subcontractor's expenditures are expected to exceed $650,000, the Small Business Subcontracting Plan will need to be finalized, and if necessary, accepted by the federal agency sponsor prior to award. As another example, if the subcontract amount is to be $700,000 or greater, a Certificate of Current Cost or Pricing Data, in the format specified in 48 CFR 15.406-2, must be obtained to support that the price is fair and reasonable and that the cost or pricing data is accurate, complete and current as of the contract date.

*** For projects whose proposals were submitted prior to 10/1/2024, 10% is the applicable amount.

F. Preparing the Subagreement Terms and Conditions

This Section reviews the standard provisions found in most subagreements. In every grant and contract, there are a number of standard, flow-down terms and conditions that affect UR and the subrecipient. ORPA reads sponsor award documents carefully to ensure that the subagreement contains all necessary flow-down provisions.

Statement of Work

One of the most critical components of the subrecipient agreement is a succinct, but detailed, description of the work that the UR expects and requires from the subrecipient.

Budget

An approved, detailed (and if necessary) negotiated budget must be included in every subagreement.

Types of Budgets

Cost-reimbursable awards – Subrecipients are reimbursed against actual expenditures, not to exceed a predetermined amount.

Fixed price agreements – UR specifies a fixed price for project performance or completion of certain project milestones. If this type of agreement is used, the subrecipient is paid in accordance with the fixed price amount, regardless of actual costs.

The fixed price may be adjusted during the project period if allowed by the prime sponsor.

Carryover and Rebudgeting

If allowable by the prime sponsor, the subrecipient may be granted the ability to carry over funds from one budget period to the next and to rebudget the funds within the prime sponsor's limitations.

Program Income

Use of program income must follow the sponsor's regulations or the terms and conditions of the award, if specified. If not specified on a federal award, with prior approval of the federal awarding agency, program income may be added to the federal award and be used for the purposes and under the conditions of the award.

Prior Approval

The subrecipient will need to request the UR to obtain prior approval from a federal sponsor for the following program and budget matters: change in the scope or objective of the project or program; change in key person; the disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or program director; the inclusion (unless waived by the awarding agency) of costs that require prior approval in accordance with 2 CFR 200 Subpart E; the transfer of funds budgeted for participant support costs to other expense categories; the subawarding, transferring or contracting out of any work (unless described in the application that was accepted); and changes in the amount of approved costsharing or matching. For federally funded projects, additional prior written approval requirements might exist as provided in 2 CFR 200.407.

Non-federal sponsors are likely to also have prior approval requirements. Their policies, and terms and conditions of specific awards and contracts, must be consulted.

Reporting

Frequency and content requirements for programmatic reports will be incorporated into the subcontract to allow the UR to understand the subrecipient's progress.

Financial reporting must provide for accurate, current, and complete disclosure of the financial activity and financial results of each award.

Submission of Invoices and Payment

The subrecipient agreement must identify:

- the intervals at which the subrecipient should submit invoices (the UR's default is quarterly, but will allow monthly);

- the format for the invoices (unless the FDP subagreement template is used);
- the frequency of payment noted on the invoice (the UR's standard business practice is net 30 days from receipt of the subrecipient's invoice); and
- any additional or special requirements for the final invoice (UR's standard requirement is 45 days after completion).

Mandatory Cost Sharing

It is possible that the subrecipient is providing mandatory cost sharing of some portion of the project's expenses. In these situations, it is important to identify the cost-shared amount in the subrecipient's budget and in its invoices to UR. The following provision should be added to the terms and conditions and should identify whether the cost-shared amount will require any additional documentation in order to verify the shared expenses.

Sample Provision: Cost Sharing

> *Invoices shall display actual costs for reimbursement by major budget category. In addition to reimbursable costs, the Subrecipient's actual costs incurred to meet the cost share commitment made to the prime sponsor shall be labeled as cost sharing and displayed and totaled by major budget category on each invoice during the period the costs are incurred. Final invoices will not be paid until mandatory cost-sharing is certified.*

[Note that if the subrecipient is providing voluntary uncommitted cost sharing, no additional provision or accounting is required as it is the subrecipient's obligation to track such cost sharing if necessary.]

Advance Payments

Payments to subrecipients normally are made only after service is rendered and costs associated with performance are reviewed and approved. Advance payments to a subrecipient are not the norm. Advance payments may be made under unusual circumstances. These circumstances may include subcontracting with a small business or foreign entity that does not have a cash reserve in order to initiate the proposed work or work done under a sponsor that allows for cash advances to both the prime and subrecipients.

Advance payments must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the subrecipient entity in carrying out the purpose of the approved program or project. If advances are to be made, the requirement and method of reimbursement must be written into the terms of the subrecipient agreement. The subrecipient must be able to account for the receipt, obligation and expenditure of funds and the advance payments must be maintained in interest-bearing accounts. Advance payments will not be issued until a final agreement is established.

Following is an example of the wording for the subagreement, when advance payments are to be made:

> ***Sample Provision: Advance Funding***
>
> *Subrecipient agrees to immediately invoice UR for an initial advance payment equal to $_____. Subrecipient will be required to invoice UR for actual expenses up to the amount of the initial advance payment before any additional payment for actual expenses can be made. If there are any advanced funds remaining at the end of the budget period, Subrecipient must notify UR of the amount and request that it be carried forward into the next budget period. If there are any unobligated advanced funds left at the end of the project period, subrecipient will issue a check for that amount to UR.*

If the subrecipient does not meet the criteria for advance payments and the University determines that reimbursement is not feasible because the subrecipient lacks sufficient working capital, the University can provide cash on a working capital advance basis. Under this procedure, the University advances cash payments to the subrecipient to cover its estimated disbursement needs for an initial period, generally geared to the subrecipient's disbursing cycle. Thereafter, the University will reimburse the subrecipient for its actual cash disbursements.

If the sponsor does not provide for advance payment to the subrecipient, the UR department must provide the funding for the advance by providing an unrestricted departmental/college Financial Activity Object (FAO) number. Advance payments will be issued by ORACS only after the fully executed purchase order has been returned to ORPA. Advance funding requests will be handled on a case by case basis and require communication between the UR PI, ORPA and ORACS early in the application process.

Period of Performance

The subaward start and end date must be clearly stated. The subrecipient period of performance can never be longer than the period of performance in the prime award to the UR. Periods of performance are normally awarded on a 12 month basis. Exceptionsto this normal time period will be reviewed on a case-by-case basis.

Records and Audit

The subrecipient agreement should require that the subrecipient maintain acceptable systems and accurate records to identify the expenditure of project funds. This provision should allow for access to relevant records by the UR and/or the sponsor, depending upon the specifications of the award.

Intellectual Property: Patents, Inventions, and Copyright

Intellectual property rights must be granted in accordance with U.S. patent and copyright law and additional sponsor requirements. The subrecipient usually maintains ownership rights to the intellectual property it develops by itself and grants to the UR royalty-free, non-exclusive rights to subrecipient intellectual property in order to meet the UR's obligations under the agreement. This is a requirement of Bayh-Dole under federal funding.

Indemnification

Institutional or state policy of our collaborating institutions may dictate what type of indemnification provision may be included in a subrecipient agreement. Typically, the subrecipient agreement will state that each party will be responsible for its negligent acts or omissions or that each party will indemnify the other party for negligent acts or omissions. If the sponsor provides a certain level of indemnification to UR, ORPA will ensure that the same level of indemnification is provided to our subrecipient.

Other Data Elements (federally sponsored projects)

2 CFR 200.331 requires the following data elements be incorporated into subaward documents associated with federally sponsored projects: (1) subrecipient name which matches the registered name in DUNS; (2) subrecipient's DUNS number; (3) Federal Award Identification Number (FAIN); (4) federal award date; (5) the total amount of the federal award; (6) the total amount of federal funds obligated to the subaward; (7) the federal award project description as required by the Federal Funding Accountability and Transparency Act (FFATA); (8) the name of the Federal awarding agency, the University as a pass-through entity, and contact information for the awarding official; (9) the CFDA number and name; (10) identification of the award as Research and Development or not; and (11) the indirect cost rate for the Federal award (which might be the de minimis rate as permitted by 2 CFR 200.414).

The UR terms and conditions in the subagreement must provide assurance that: the federal award is used in accordance with federal statutes, regulations and the terms and conditions of the federal award; and to ensure the UR meets its own responsibility to the Federal awarding agency, including identification of any required financial and performance reports. Terms and conditions specific to project closeout should also be included.

G. Assembling the SubagreementDocuments

When not using the FDP template, the subagreement terms and conditions are appended to a UR G-Subaward (G-SA) face page. The G-SA states the "variables" of the subagreement, namely the project period and the dollar amount. The G-SA also references all attachments. Generally this includes a budget, scope of work and the terms and conditions. The G-SA is also the document that the subrecipient will sign to show acceptance of the agreement.

The G-SA is completed by the ORPA Research Administrator.

H. Subagreement Approval

Once a draft of the subagreement is complete, ORPA provides it to the subrecipient for review. The subrecipient has the opportunity to request changes and clarifications to the terms and conditions. ORPA will not agree to make any changes, unless those changes are agreed to by the PI.

Once a final version of the subagreement is ready, the procedure for approval and submission to the subrecipient follows:

1) ORPA ascertains whether prime sponsor approval or notification is required prior to issuing the subagreement. Under federal contracts the request for prior approval to the prime sponsor should contain the information required by FAR 52.244-2.

2) If the subagreement package is acceptable, an ORPA representative (ORPA Director or designated Senior Research Administrator) will sign the G-SA. In cases where FFATA applies, the UR will be the last to sign the subagreement (i.e. subsequent to the subrecipient).

3) ORPA submits, via email, the G-SA or FDP agreement with the subagreement attachments (terms, budget, and statement of work) to the subrecipient . A copy of these documents are kept in the ORPA subagreement file and sent to the department administrator via e-mail. Provided that the terms and conditions are acceptable to the subrecipient, the G-SA or FDP agreement is signed by the subrecipient business official and then returned to ORPA via email. The subrecipient is instructed to keep a copy of the G-SA or FDP agreement. The subrecipient is also required to return any necessary certifications or other information.

4) When ORPA receives the fully executed copy of the G-SA or FDP agreement from the subrecipient, the G-SA or FDP agreement (including the subrecipient's F & A rate agreement and/or any other backup documentation) will be distributed to PI, department administrator and ORACS.

I. Federal Funding and Transparency Act (FFATA)

FFATA applies to all grants and contracts made directly from the federal government to the UR in the amount of $25,000 or greater, unless the grant or contract terms and conditions state otherwise (and unless the original grant was awarded prior to October 1, 2010 or the original contract was made prior to March 1, 2011).

When FFATA applies, the UR reports in the FFATA Subaward Reporting System (FSRS) fully executed subawards/subcontracts of $25,000 or more by the end of the month of subaward/subcontract execution, plus one additional month. For example, if a subaward is issued October 14th, ORPA updates FSRS is by November 30th. Any subsequent increase in those subawards is also entered into FSRS.

The respective subawardees must have DUNS numbers, be registered in SAM (System for Award Management) and provide their nine-digit zip code.

Regarding federal contracts whereby FFATA applies, besides reporting on subawardees the UR also reports, in FSRS, information regarding vendors when orders to the vendors for a particular award or contract reaches $25,000 or more. Any subsequent orders to those vendors are also subsequently entered into FSRS.

All respective vendors must have DUNS numbers, be registered in SAM and provide their nine-digit zip code.

V. SUBAGREEMENTS UNDER FEDERAL ASSISTANCE GRANTS – THE FDP MODEL AGREEMENT

By utilizing the current FDP model subaward, UR assures that the appropriate federal flow-down requirements are incorporated into the agreement as well as agency-specific provisions, representation, certifications, and assurances. This includes all the requirements of 2 CFR 200.

The FDP model agreement should be used when issuing subagreements under Federal grants awarded by NIH, NSF, DOE, AFOSR, AMRMC, ARO, EPA, NASA, ONR, and USDA. The sponsoring agency will usually identify on their Notice of Grant Award if the grant is issued under FDP terms. The FDP "model" can also be adopted to those federal agencies that are not FDP partners (e.g. DOE) provided they have adopted the federal research terms and conditions.

The FDP model agreement is comprised of a cover page, which replaces the G-SA, and four (4) standard attachments.

- The cover page will identify the Prime Awardee (the UR) and the Subawardee. It will also list the subaward number and the UR FAO number. The Subaward Periodof Performance will list both the Budget Period and the Project Period. Also included, will be boxes for "Amount funded this action," "Cumulative total," and "Total anticipated funding." Standard Reporting Requirements box will always be checked making reference to Attachment 4.

- Attachment 1 identifies the certifications the subawardee agrees to comply with: Certification Regarding Lobbying, Debarment and Compliance with 2 CFR 200. No changes to this attachment should ever be required.

- Attachment 2 identifies Agency Specific Certifications, General Terms & Conditions and Special Terms and Conditions regarding conflict of interest, copyright and data rights. There are Attachment 2 templates for NIH, NSF, ONR, USDA, DOE, NASA, EPA, ARO, AMRMC, and AFOSR. The ORPA RA will make any appropriate changes to the General Terms & Conditions if the Prime Award contains special requirements or additional terms and conditions.

- Attachment 3 contains the contact information.
- Attachment 4 identifies non-fiscal reporting requirements. ORPA selects the appropriate requirement that applies to the subawardee.
- Attachment 5 will contain the Statement of Work and Budget.
- The Prime Award can be included as an exhibit.

Amendments to the subagreement will be processed using the FDP Subaward Amendment template.

VI. SUBAGREEMENTS UNDER FEDERAL CONTRACTS

It is the responsibility of ORPA to review the contract carefully and to flow down only those clauses to the subrecipient that are appropriate.

General Provisions

Flow down of the contract and FAR clauses will be determined by the subcontractor's organization type (not-for-profit, industry, etc.). Flow down is also affected by the type of contract (fixed price, cost reimbursable, etc.) and purpose of the contract (research and development, services, etc.). FAR Subpart 52.3 (the Provision and Clause Matrix) is a useful tool to help determine which contract clauses are required in the subcontract agreement as well as in the prime award.

Special Provisions

If the subagreement is anticipated to be larger than $650,000 and will be awarded under a federal prime contract, the subrecipient should also submit a final Small Business/Small Disadvantaged Business Subcontracting Plan to the UR. It is ORPA's responsibility to review and approve this final plan prior to issuing the subagreement. This plan will be appended to the subagreement terms and conditions.

VII. SPECIAL CONSIDERATIONS BASED ON TYPE OF ENTITY

A. Special Considerations for Commercial Organizations

The terms and conditions governing issuance of subrecipient agreements (either under grants or contracts) to commercial organizations will differ from the terms and conditions offered to nonprofit entities. ORPA will ensure that the sponsor has approved the collaboration.

Other considerations for commercial subrecipients include the following:

- **Administrative requirements**. Administrative requirements in the Prime Award/contract are applicable to the for-profit subrecipient and flow-down accordingly. 2 CFR 200, Subparts A - E may be applied to for-profit entities.

- **Cost Principles**. The cost principles for commercial organizations are set forth in FAR 31.2.

- **Audit.** 2 CFR Part 200 Subpart F is not applicable to commercial organizations. The subagreement should specify the type of audit that will be required if subcontracting from federal funds, based on information in the Prime Award/contract.

- **Inspection and audit clauses.** Some (usually large) commercial organizations are reluctant to accept inspection or audit clauses enabling the prime recipient to audit its internal records. In these cases, it often is necessary to negotiate the named party that will have the right to audit project related records on behalf of the prime recipient, such as the commercial organization's cognizant audit agency.

Sample Provision

All costs incurred in the performance of the research effort shall be subject to audit by the cognizant federal audit agency. The subrecipient agrees to allow the auditors access to records necessary to support the reported costs. Records shall be retained for a period of four years beginning on the day the Subrecipient submits its final expenditure report to the UR as specified in 45 CFR 74, Subpart D.

The Subrecipient agrees to comply with the requirements of 45 CFR 74.16(d). As a for-profit organization, Subrecipient is required to have a non-federal audit if, during its fiscal year, it expended a total of $750,000 or more under one or more HHS awards (either as a direct grantee or as a consortium participant) and at least one of those awards is an HHS grant. 45 CFR 74.16(d) incorporates the thresholds and deadlines of 2 CFR 200 but provides for-profit organizations two options regarding the type of audit that will satisfy the audit requirements. For-profit organizations expending less than $750,000 a year are not required to have an annual audit for that year, but must make their grant-related records available for inspection by representatives of the UR or the government during normal business hours.

Subrecipient either may have (1) a financial-related audit as defined in, and in accordance with the Government Auditing Standards, commonly known as the "Yellow Book", of all the HHS awards, or (2) an audit that meets the requirements of 2 CFR 200.

The Subrecipient further agrees to provide the UR with copies of any of the independent auditors' reports that present instances of non-compliance with federal laws and regulations that bear directly on the performance or administration of this Agreement. In cases of such non-compliance, the Subrecipient shall provide copies of responses to auditors' reports and a plan for corrective action.

All records and reports prepared in accordance with the requirements of 45 CFR 74.16(d) shall be available for inspection by representatives of the UR or the government during normal business hours.

- **Profits and fees.** While sponsors generally allow F & A costs under subawards to commercial collaborators, not all federal agencies allow profit or fee to a for-profit organization. NIH will not allow for profit or fee, except under SBIR/STTR grants. Some federal agencies will limit the amount of profit or fee that will be allowed. Commercial organizations generally may request Facilities Capital Cost of Money (FCCOM) with supporting documentation to the federal sponsor.

- **Intellectual property.** For commercial organizations that are subrecipients of federal grant funds, 37 CFR Part 401*, Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements,* governs intellectual property. Under federal procurement contracts, FAR 52.227-12 (Patent Rights — Retention by the Contractor (Long Form)) should be utilized.

  Some federal programs, such as the NSF Grant Opportunities for Academic Liaison with Industry (GOALI) Program, require that the proposing institutions and the commercial organization agree to intellectual property terms at the time of proposal submission.

- **Indemnification.** Even under federal awards where no indemnification is provided by the sponsoring agency, UR will include an indemnification provision in the subrecipient agreement. Often, the results or intellectual property derived during the course of the project will be utilized by the for-profit subrecipient in commercial endeavors, and UR should obtain appropriate indemnification.

B. Special Considerations for Small Businesses

The following considerations apply when entering into a subagreement with a small business (under 500 employees):

- A small business will entail particular attention to subrecipient qualification and risk of noncompliance. Refer to Section IV. D. regarding how to assess and respond to the underlying risks.

- Often a small business does not have a federally negotiated F & A rate. Refer to Section IV. E.

- Small businesses are at greater risk of cash flow constraints and might request advance payments. Refer to Section IV.F.

- A conflict of interest might exist if the small business is a university start-up, or a faculty investigator has a significant financial interest in the small business. Subcontracting to small businesses in these situations will require a conflict-of-interest review and management plan prior to UR entering into a contractual relationship.

C. Special Considerations for Foreign Entities

Considerations to be mindful of include:

During Proposal Stage:

- Not all sponsors will support international subrecipients. Check with the prime sponsor regarding allowability of collaboration with foreign entities.

- Ensure the presence of the appropriate clauses in the subagreement and that the foreign site is informed and fully understands its obligations. Especially under federal awards, there are many clauses that do not apply to foreign sites. For those that do, the UR *must* flow them down. The *NIH Grants Policy Statement* provides detailed information of public policy requirements and objectives and identifies which requirements are not applicable to international organizations. For instance, research misconduct, such as the misconduct in science requirement, is applicable to foreign sites, but the Civil Rights Act is not.

- For NIH awards, State Department approval must be obtained for any non-US site. It may take several months to obtain approval.

- Labor laws, Value Added Tax, residency requirements and payment issues must be researched. Ensure there is a mechanism in place whereby payments can be made for the services provided (i.e. a bank).

- Based on the assessment of risk of noncompliance (refer to Section IV. D.), it might be necessary to budget for costs of direct oversight and/or external audit assistance.

- A foreign institution likely will not have a federally negotiated F & A rate. Refer to Section IV. E.

- Export control restrictions may apply if transferring controlled tangible items or collaborating with embargoed countries.

- Language barriers might exist. Translators might be needed for both programmatic and administrative oversight. Ensure the cost of translators, if needed, are budgeted.

During Award Stage:

- With respect to public policy requirements, it will be difficult to ensure that the foreign subrecipient is, and remains, in compliance with all necessary requirements. For instance, foreign subrecipients must submit an Assurance of Compliance if human subjects are involved. Foreign subrecipients also are required to provide certification that the organization is not delinquent on debt owed to the United States.

- The PHS requirement for education of key personnel involved in human subjects research must be satisfied. The investigator and research team can access the CITI web-based program to obtain the requisite knowledge. The UR PI is responsible for keeping track of this certification for personnel at the foreign site and the yearly IRB approval of the particular study. Similarly, foreign sites will need to comply with the PHS Conflict of Interest requirements.

- Terminology needs to be defined in the subagreement (for example, "no-cost extension"). Applicable policies and guidelines should be made available to the foreign subrecipient.

- Costs that are generally not allowable (such as administrative support) may be reasonable to request for a developing country subrecipient that has little infrastructure support. A foreign entity might have a greater risk of cash flow constraints. Refer to Section IV. F. More frequent invoicing (e.g. monthly) could be allowed to accommodate foreign entities that have limited on-hand cash reserves. A note requesting a shorter invoicing period should be added to the request to issue a subagreement.

- Pursuant to NIH NOT-00-24-151, effective October 1, 2024, foreign recipients (whether they serve as a direct and/or subrecipient of NIH grants and cooperative agreements) that expend $750,000 (cumulative amount) or more in Federal awards during their fiscal year are required to conduct either a single audit, performed in accordance with the requirements outlined in 2 CFR 200 Subpart F, or program-specific audit (as required by the terms and conditions of award). A program-specific audit may not be elected unless all the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit. If the proposed subrecipient is a foreign entity, the prime award funding is from the NIH and the Subrecipient Profile Form submitted to ORPA by the foreign entity indicates annual expenditures of $750,000 or greater on US federally funded projects in the prior year, then ORPA will request the 2 CFR 200 audit or program-specific audit reports to be utilized during the risk assessment process.

- Fluctuations in currency exchange rates could cause budgetary issues. The budget should be prepared showing both the proposed costs in the country's currency and the converted US dollar value, noting the conversion rate that was used. All payments to the foreign site will be in U.S. dollars. The subagreement will identify a not to exceed amount in US dollars. Invoices and financial reports should utilize the currency rate in existence at the time the expense is incurred, not the currency rate used during the proposal stage (see below).

The sample provision below will be included in the terms & conditions of a foreign subagreement:

Sample Provision

Submission of Invoices. *UR will reimburse Subrecipient in U.S. dollars not more often than quarterly upon submission of invoices to UR in care of the UR PI at the "ship to" address noted on the subaward. Such invoices shall be in duplicate (a certified original and one copy) and shall reference UR's subaward number. Invoices should reflect summary detail by major budget category of the costs incurred, be submitted in comparable format to the example appended to these terms and conditions, and reflect current U.S. dollar exchange rates. Current U.S. dollar exchange rates will be calculated as follows: 1) for ongoing expenses during the period of the invoice (e.g., salary charges), an average of the daily conversion rate in effect during the period of invoice must be used; 2) for one-time transactions (e.g. purchase of equipment) the specific conversion rate on the date of the transaction (i.e., the rate on the day of payment) must be applied. The conversion to U.S. dollars must be clearly identified on the invoice. Invoices must include the following certification signed by a financial officer of the organization: "I certify that this request represents actual costs incurred during the invoice period and these costs are appropriate and in accordance with the agreement set forth in the award document." Final invoices marked "Final" shall be submitted to Subrecipient PI within forty-five (45) days of the termination date of this Agreement.*

- Foreign sites may be required to submit additional documentation to support invoiced amounts. The type of documentation that will be required to support how the funds were spent will be determined in collaboration with ORACS and will be included in the written agreement. ORACS will also assist in determining if invoices should be requested on a monthly basis for closer administrative oversight, as well as the documentation to be provided as support for the invoice expenditures.

- Accounting practices in a particular foreign country may vary from accepted accounting practices in the United States. The subagreement should be very specific with respect to accounting requirements to be used for submitting invoices and preparation of financial reports. In addition, the agreement should specify the prime recipient's and UR's right to audit, and the methods used in the event of audit.

During Post-Award:

- UR PI will need to determine whether funds are being used appropriately. It is required that the PI review all programmatic reports. The UR PI will need to maintain a high level of oversight for programmatic, administrative and regulatory issues (e.g., human subjects, animal, and biohazard monitoring). It is the PI's responsibility to verify the terms and conditions, as well as ensuring regulatory requirements and assurances, are being followed.

D. Special Considerations for Clinical Trials

The following considerations apply when entering into a subagreement related to a clinical trial:

- Payment terms for clinical trials must be more flexible due to the nature of the conduct of the work (e.g., payment is per enrolled participant).
- Clinical trial subagreements may be issued for the full length of the anticipated project period.
- Clinical trial subagreements will be issued with a "not-to-exceed" amount.
- The PI will be responsible for determining a subrecipient's enrollment goals. Summary enrollment forms or other verifiable methods will be developed by the PI and subrecipient and approved by ORPA and ORACS.
- If there is not a "not-to-exceed" amount indicated in the subagreement, the following clause is noted in the terms and conditions: "Authorization by UR to release funding is contingent upon payment from the prime sponsor for Subrecipient costs. UR will not be liable for payment to Subrecipient for amount exceeding reimbursement and/or budget approval by the prime sponsor."

VIII. POST-AWARD CONSIDERATIONS

A. Establishing a FAO

When a FAO is established for the prime award, subagreement funds are to be recorded in Spend Category (SC) 57150 on the Notice of Award (NOA). The amount paid on a subcontract in excess of $50,000* is excluded from application of F & A if the subcontract is comprised of federal funds.

*For projects whose proposals were submitted prior to the date (to be determined) of our current Overhead Rate Agreement, $25,000 is the applicable amount.

B. Assignment of Subagreement Numbers

A subagreement will retain its subagreement number (G-SA) throughout the life of the subagreement. An amendment/ modification will be processed for any changes (e.g. additional budget periods).

C. Indirect Cost Rate Considerations

When the subrecipient has a federally negotiated F & A rate, verification of the subrecipient's F & A rate for the **initial year** of the subagreement should be on file.

Subagreements issued under federal awards are subject to the 2 CFR 200 requirement that the F & A rate is fixed for the life of the award. Thus, normally the F & A rate of the subrecipient should not change during the project period, unless a varying rate per year was predetermined at the time of award issuance. If subrecipients certify charges on its invoices, and ORACS reconciles the F & A rate used for the invoices to the rate submitted on the budget, no further verification will be required.

D. Monitoring Methods For Federal Awards

Activities of the subrecipient must be monitored to ensure that the subaward funds are used for authorized purposes; are spent in compliance with federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. This can be accomplished through any of the following methods:

- **Audits performed under 2 CFR 200 Subpart F**

It is ORACS' responsibility to review financial reports of the subrecipient (e.g. Single Audit reports); follow up and ensure the subrecipient takes timely and appropriate action on all deficiencies pertaining to the federal award the UR provided to the subrecipient as detected through audits, on-site reviews, and other means; issue a management decision for audit findings pertaining to the federal award UR provided; and consider whether the results of the audits, on-site reviews or other monitoring indicate adjustments are necessary to the UR's own records and reports.

In circumstances of lack of compliance with federal statutes, regulations or terms and conditions of a federal award, the University can impose additional conditions on the subrecipient. (Examples of these conditions are described in Section IV D.)

If the University determines that noncompliance cannot be remedied by imposing additional conditions, the University may take one or more of the following actions, as deemed appropriate in the circumstances: (1) temporarily withhold cash payments pending correction of the deficiency; (2) disallow all or part of the cost of the activity or action that is not compliant; (3) wholly or partially suspend the federal award; (4) terminate the federal award; (5) recommend a suspension or debarment proceedings be initiated by the federal awarding agency; and (6) withhold further federal awards for the project or program.

For circumstances when UR is requested to issue a subaward, but the 2 CFR 200 audit of the potential subawardee is aged approximately a year or more, the UR will apply one of the following two approaches: (1) defer subaward execution until the 2 CFR 200 report for the most recent reporting period is available; or (2) execute the subaward (assuming no other negative risk assessment matters) but include a special award term/condition that the most recent 2 CFR 200 must be provided by a specified date or the subaward will be terminated at such date.

- **Other Types of Audits**

  Since 2 CFR 200.501 does not apply to for-profit recipients and foreign entities (unless such foreign entity expended $750,000 or more on US federal government projects in the prior year), the UR is responsible for establishing requirements, as necessary, to ensure compliance by each for-profit and foreign subrecipient. The subagreement should describe applicable compliance requirements and the subrecipient's compliance responsibility. Methods to ensure compliance for federal awards made to for-profit and foreign subrecipients (not meeting the annual $750,000 threshold above) may include pre-award audits, monitoring during the agreement, and post-award audits.

- **Financial reports**

  Content and timeliness of on-going expenditure reports or invoices is a good indicator of the subrecipient's financial and grant management system.

- **Performance reporting**

  Performance reporting also provides an ongoing tool for monitoring, as these reports should provide information on any deviation or delay in the agreed upon scope of work which can be used to derive expectations for spending variances to be used when reviewing invoices.

- **Site Visits**

  Site visits (predominantly by the Principal Investigator) also may be used as a tool for monitoring, primarily as a means of verifying information obtained by the other techniques.

  Ongoing correspondence between the prime recipient's and subrecipient's investigators, sponsored programs offices, and financial offices is another tool used in monitoring.

E. Programmatic Reports

As recipient of the Prime Award, the UR bears the ultimate responsibility for the conduct and completion of a project. At a minimum, annual progress reports should be requested by the UR PI and discussed with the subrecipient, as needed. The subrecipient's progress report is usually incorporated in the overall progress report submitted by the UR to the sponsor.

The subrecipient's progress report should include, as applicable, updated Other Support pages, proof of current IRB or IACUC approval, and a detailed budget for the upcoming year.

It is the UR PI's responsibility to ensure the relevant performance of the subrecipient. The UR has the responsibility to notify the sponsor if any lack of performance on behalf of the subrecipient will have a significant (unanticipated) impact on the scope of work.

ORPA may be responsible for collecting other reports from the subrecipient, as required by the terms and conditions (e.g., interim invention reports and small business subcontracting reports).

F. Fiscal Monitoring

The UR will monitor the fiscal activities of the subrecipient as necessary to ensure that the subagreement is used for authorized purposes. Such monitoring activities include: (1) reviewing financial and programmatic reports; (2) ensuring the subrecipient takes timely and appropriate action on all deficiencies related to the University's subaward as detected through audits, on-site reviews and other means; and (3) issuing a management decision for such audit findings related to the subaward.

Management decisions related to audit reports required by 2 CFR 200 Subpart F must be issued within six months of acceptance of the audit report by the Federal Audit Clearinghouse. Management decisions must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. Timetables should be given when the auditee has not completed corrective action.

The UR PI must approve subawardee invoices prior to submitting them to ORACS for payment. The UR PI's review indicates that the invoice corresponds with the technical performance of the subrecipient. UR PI may reasonably delegate this responsibility. Invoices are reviewed for accuracy and for compliance with the terms of the subagreement.

The process for fiscal monitoring of invoices is as follows:

<u>UR Department</u>

- Determine that the requested payment (including dates of incurred expenditures) falls within the subagreement dates. If the dates do not fall within the subaward period or if the total amount invoiced exceeds the total amount on the subagreement, the invoice cannot be processed. The department is to contact the subrecipient to seek clarification. If a Modification/Amendment or a new subagreement is needed, ORPA should be contacted. The invoice will be held until proper paperwork is executed.

- If the invoice meets the prior condition, review the current activity to verify mathematical correctness, including accuracy of all prior and cumulative amounts and the computation of applied overhead.

- If there are "negative" expenses (or expense reversals) on the invoice, the department is to contact the subrecipient to obtain an explanation. A potential re-assessment of subrecipient risk might be necessary depending on the subrecipient's explanation and the materiality of the "negative" expenses.

- Determine if the expenses are in accordance with the terms and format prescribed in the subaward documents. If there are any unallowable charges appearing on the invoice, the department will contact the subawardee. Any irregularities that are not satisfactorily resolved will be discussed with the PI, and potentially ORACS and ORPA.

- If the subaward was issued with special/additional contractual terms (refer to Section IV. D.), ensure that the supporting documentation is in compliance with those terms. For example, if a special term require all hours worked and associated pay rates are to be certified by each respective employee, ensure such certifications have been provided before processing the invoice for payment. As another example, if a special term requires all supply and equipment amounts have supporting documentation provided to substantiate the timing, receipt and amount of said purchase, ensure such documentation has been provided before processing the invoice for payment.

- Ensure the request for payment includes the following certification from either the site's Principal Investigator or financial representative: "I certify to the best of my knowledge and belief that the information provided herein is true, complete, and accurate. I am aware that the provision of false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative consequences including, but not limited to violations of U.S. Code Title 18, Sections 2, 1001, 1343 and Title 31, Sections 3729-3730 and 3801-3812." Note: the certified should provide clear documentation of their name and title

- The PI signs and dates the invoice. The signature indicates that the invoice has been reviewed and that the payment requested is appropriate in accordance with the proposal, the award documents, and the work performed.

After department review and PI signature, invoices are submitted as SIR's (Supplier Invoice Requests) in UR Financials.

ORACS

ORACS reviews the following items in UR Financials:

- Reference numbers or subaward numbers are included
- The time period of the expenditures is specified (the dates need to be within the period of the subagreement)
- The Principal Investigator has approved the invoice

- The invoice (current and/or cumulative costs) is mathematically accurate
- The invoice is sequential (either number or time period)
- The cumulative total expenses do not exceed the authorized amount
- (In a cost reimbursable situation) the invoice reflects actual costs (i.e., is not derived from the budget, such as dividing the budget by the number of budget months)
- Mandatory cost sharing commitments (if any) are being achieved
- An original signature and certification by an authorized financial officer from the subrecipient
- The final invoice is marked "final". Note that an invoice marked "final" is required at the end of the subagreement project period not the subagreement budget year. For clarification purposes, the invoice at the end of a budget period could be marked "final for this budget period".

The UR will make payment of compliant subrecipient invoices within 10 calendar days after submission of the SIR, unless the University reasonably believes the request to be improper or other extenuating circumstances exist.

G. Mandatory Cost Sharing

Mandatory cost sharing by the subrecipient may require additional documentation in order to verify the cost-shared expenditures, as stipulated by the terms of the subrecipient agreement and sponsor requirements. In all cases, a statement that certifies the value of the cost-shared services to the project should be made and signed by persons with knowledge of the project and the ability to certify official financial information.

Voluntary cost sharing does not require any additional documentation, and tracking is the responsibility of the subrecipient.

H. Subagreement Modifications and Amendments

Most subagreements are issued for multiple years and will require annual modifications/amendments to extend the end date and provide additional funding. Modification and amendments must be requested by the department/PI. ORPA does not automatically issue a subaward modification for subsequent years. For a modification to be made, the department must supply a budget, updated budget/project period, a revised statement of work (if needed), and updated contact information. The Request to Issue A Subcontract form is not required for these annual modifications.

Some changes during the budget period, such as a change in the statement of work, rebudgeting, substitution of the subrecipient's project director, or no-cost extension may require sponsor approval before a subagreement modification may be issued. It is ORPA's responsibility to determine whether approval for the modification is required under the terms of the sponsor's award and to facilitate the request. Any request from the subrecipient to ORPA will be sent to the UR PI for approval prior to processing.

ORPA is also responsible for issuing subagreement amendments when there are revisions to sponsor requirements. In the case of federal sponsors, requirements may change based on annual appropriation bills.

Normally, the terms and conditions for a subagreement remain fixed for the duration of the project period. Changes to the subagreement (such as time extensions, additional funds) are implemented issuing a Subagreement Modification to the G-SA or an Amendment to the FDP agreement. The Modification/Amendment will reference, if applicable, changes to the project period, the dollar amount, the subaward and UR FAO numbers.

Any other changes to the original subagreement (such as the budget and/or scope of work) or the original terms and conditions will also be noted on the Modification/Amendment.

The Modification/Amendment will indicate that: "All other terms and conditions of the original subagreement remain unchanged and in full force and effect."

Note that Modifications or Amendments authorizing an increase in budget must have a revised budget attached, unless the budget is on a per patient basis and this rate has not changed. If any of the original terms have changed, these should be referenced and appended to the Modification or Amendment.

The appendices attached to the Modification or Amendment should refer back to the original G-SA subagreement or FDP subaward; a second year budget would therefore be labeled Attachment B-1 or Amendment 1. Similarly, the first amendment to the workscope would be Attachment A-1 and again Amendment 1 if FDP subaward.

The procedure for obtaining approvals is identical to that of the original subaward. The Modification or Amendment is the vehicle that states the changes to the initial subagreement and provides signature approvals for both parties.

When issuing the G-SA Modification or the FDP Amendment for the final year, ORPA will check the “Final Year” box at the bottom of the Modification or Amendment and attach the Closeout Certification Form. If applicable, the ORPA RA will mark what closeout forms and/or certifications are needed from the Subrecipient.

I. Early Termination

There are many reasons why a subagreement may be terminated early. For instance, the UR may decide to end an agreement because of lack of performance on behalf of the subrecipient.

With regard to failure to perform, the UR’s principal investigator and/or ORPA are to document lack of progress by the subrecipient as soon as it is suspected and record communications and efforts attempting to correct the situation. Even with ample documentation and clearly defined terms, the decision to terminate the agreement should be made carefully. Other solutions should be given careful consideration, such as requesting the sponsor to extend the project to allow for sufficient progress.

When a sponsor terminates a project early, the UR has the responsibility to represent the subrecipient's interests towards a fair and orderly closeout and settlement. The subagreement provisions should allow for payment of all non-cancelable costs, if applicable, prior to the date of termination, if this is consistent with the prime award. In early termination, the sponsor usually still requires the submission of all reports. Therefore, closeout procedures will be very similar (if not identical) to the procedures followed if the project kept the original termination date.

IX. CLOSE-OUT PROCEDURES (Other Than Clinical Trials)

Before a final invoice can be paid, the UR PI must certify that all technical reports and /or deliverables have been received and that the subrecipient has fulfilled its obligations. Depending on who the prime sponsor is, the subrecipient might also have to provide additional documentation.

What is a final invoice?

A final invoice is required at the end of the grant/contract project period, not at the end of a budget year. Even if the grant or contract (and consequently the subagreement), requires a new FAO number each year, a final invoice is processed only at the end of the project period.

- A final invoice indicates that all work done by the subrecipient is complete and all deliverables (whether it be a final report, case report forms, analyzed data, publication, reagents or any other item) have been received by the UR PI.
- Depending on the terms and conditions contained in the subaward, the subrecipient has a defined number of days to submit a final invoice (usually 45 days from the end of the project period). This will usually require the subrecipient to proceed with a financial close out of their internal account.

Once the PI/department receives a final invoice:

- The PI or designated department administrator will review the Closeout Certification Form attached to the last Modification/Amendment issued to the Subrecipient. The Closeout Certification Form will identify if any forms or certifications are needed from the subrecipient.

- The ORPA Research Administrator will review the file to ascertain that nothing else is required and will contact the PI or designated department administrator and ORACS, only if additional information is needed from the subrecipient.

- If any items in the subrecipient section of the Closeout Certification Form are checked, and the subrecipient does not submit the required forms with the final invoice, the department will send the Closeout Certification Form and any other attached form(s) to the subrecipient for completion. The subrecipient will be instructed to return all forms to the department. When the department receives the forms, the PI will sign the UR PI section of the Closeout Certification Form and certify that he or she has received all deliverables and approves the payment of the final invoice.

- If no item is checked in the subrecipient section, or if all required forms have been provided by the subrecipient, the UR PI can proceed with his or her certification.

- The completed Closeout Certification Form and any other applicable forms are sent to ORACS for processing. The department will also send a copy of all forms to ORPA**.**

- ORACS will review the "Final Year" Closeout Certification Form to ensure that all required forms have been submitted and proceed with the payment of the invoice.

If a final invoice is received by ORACS without the Closeout Certification Form, they will return the invoice to the department with a copy of the form (that was attached to the "final year" Modification/Amendment) for completion.