

## **Procedures for the Administration of Subcontracts**

### **I. INTRODUCTION**

The purpose of this document is to assist Syracuse University (SU) faculty and staff in the preparation and administration of Syracuse issued Subcontracts on sponsored program accounts. The University's sponsors, and in particular the Federal and New York State government, have imposed regulations that Syracuse is required to follow. The Office of Sponsored Programs (OSP) is available to assist you in complying with the following requirements for Subcontracting.

Syracuse sponsored programs are usually conducted within the physical boundaries of Syracuse's campus. On occasion, however, a portion of the required work may need to be provided by one or more other institutions or companies (Third Party). The Third Party is responsible for a direct part of the project award made to Syracuse. The Third Party will be required to provide resources necessary to conduct its portion of Syracuse's project. These resources can include providing a responsible investigator at the work site of the cooperating institution or company to oversee the program activities, labor costs including fringe benefits, materials and supplies, travel, equipment, miscellaneous other direct costs, and indirect costs. In addition to these costs, it would not be uncommon to include such costs as material overhead, labor fringe benefits, general and administrative expense, cost of money, and profit associated with Third Parties who are commercial organizations. The following terms and procedures apply to all Subcontracts issued on a sponsored program.

## II. DEFINITIONS FOR SUBCONTRACT RELATIONSHIPS

1. The term Prime Sponsor or Sponsor refers to the governmental agency or commercial organization or any other sponsor that makes an award directly to Syracuse University. The award document is the paperwork processed by the Sponsor and sent to Syracuse University specifying the terms under which the program will be conducted.

2. The document which formalizes a third party relationship with another institution or commercial organization to perform substantive work based upon an award made to Syracuse University is called a Subcontract and the Third Party performing work under a Subcontract is called the Subcontractor. The document OSP generates to formalize a contractual relationship with a Third Party is referred to as a Subcontract.

Activities performed by a private individual who is not an employee of Syracuse University are normally administered through Pre-audit. In the case when purchased services may involve an organizational entity, but does not involve substantive scientific research, a Purchase Order may be used instead of a Subcontract. For example, a Purchase Order is appropriate for the performance of repetitive tests or activities requiring little or no discretionary judgment on the part of the provider. In situations such as this, a Consultant Agreement or a Purchase Order may be handled through the normal Syracuse University pre-audit procedures. When issuing a Consultant Agreement, keep in mind that an IRS Form 1099 will be issued to the consultant for tax purposes.

### III. **SUBCONTRACTING PROCEDURES**

#### A. **SUBCONTRACTOR SELECTION**

It is the responsibility of Syracuse University's Project Director, along with the coordinated efforts of the Purchasing Department and OSP, to comply with procurement requirements in selecting a Subcontractor. There are two primary methods of selecting a Subcontractor: competitive bidding or sole source procurement.

Competitive bidding is to be used as the normal method of Subcontractor selection. This method requires the Project Director to solicit proposals from a number of sources and make a final selection of a Subcontractor from those responding based on technical merit and cost objectives. The final selection is normally the lowest bid from a technically qualified respondent.

Sole source procurement may only be used when the nature of the program requires performance from a single entity because requisite services or expertise are not available from other sources. The Project Director is required to provide sole source justification identifying the need for the particular services and why the selected Subcontractor is the only source available for the needed services. Sole source selection is not justified simply by the fact that there has been ongoing collaboration between scientists. A sole source justification in these situations must be further justified with respect to the unavailability of the services or expertise from other sources.

## B. SUBCONTRACT PROPOSAL

1. Regardless of the method used in selecting a Subcontractor, there must be adequate time between the receipt of the Subcontractor's proposal and the Sponsor's proposal due date to allow Syracuse University's Project Director time to discuss and negotiate the scope of work to be performed by the Subcontractor. OSP has developed a Request for Proposal letter that the Project Director is responsible for providing to the intended Subcontractor (See Exhibit 1, page 14). If the Subcontract involves human subjects or animal experimentation, appropriate Subcontractor concurrence to their policy must also be included in the proposal. OSP will assist, if necessary, in obtaining the signed letter with exhibit from the proposed Subcontractor.

2. An itemized budget is submitted by the Subcontractor and should include appropriate salaries, wages, percentage of effort, fringe benefits, materials, supplies, equipment, travel and other direct costs, that are needed to accomplish the specific aspects of research that the Subcontractor has been requested to perform. The itemized budget should also include a budget justification. Indirect costs should be calculated using the Subcontract's current indirect cost rate(s). A copy of the Subcontractor's negotiated rate agreement should be submitted to the Project Director as part of the Subcontractor's proposal. A copy of the rate agreement is needed to verify the amount of indirect cost requested and to support costs in the event of an audit. If OSP is notified early enough, OSP can assist in obtaining the rate agreement.

3. The Subcontractor's proposal should be signed by a designated business official of the Subcontractor. This individual should be someone who is authorized to commit the Subcontractor's resources toward the completion of the Subcontract.

**C. INCORPORATING THE SUBCONTRACTOR'S PROPOSAL INTO THE SYRACUSE UNIVERSITY PROPOSAL**

1. Subcontract costs are included in Syracuse University's budget as a direct cost to Syracuse University. When calculating Syracuse University's indirect costs, exclude that portion of each Subcontract contained in the proposal which exceeds \$25,000 as required by the Office of Management and Budget (OMB) Circular A-21. Syracuse University calculates indirect cost only on the first \$25,000 of each separate Subcontract issued under any single sponsored prime award regardless of the number of budget periods involved for performance.

2. During proposal processing by OSP, the Subcontract portion of the Syracuse University proposal is reviewed to insure that items discussed in this Section III, Parts A and B above, have been incorporated. It may be necessary to clarify costs or other items with Syracuse University's Project Director and/or the Subcontractor's business official.

**D. SUBCONTRACT NEGOTIATION**

1. It is the responsibility of OSP to review the Subcontractor's proposal and to make a determination as to the acceptability of proposed costs. It is also necessary that OSP complete the Negotiation Memorandum (See Exhibit 5, page 22). This evaluation of acceptable costs may be accomplished in a number of ways but the most common methods used by OSP are:

a. If the Subcontract value is less than \$100,000 and Syracuse has had successful prior experience with the Subcontractor, a desk review of the proposed costs will be performed. Plainly stated, based on discussions with Syracuse University's Project Director, the nature of the work to be performed and possibly a telephone call to the financial representatives of the Subcontractor, a determination is made as to the reasonableness of proposed cost to the proposed effort.

b. If the Subcontract's total value is between \$100,000 and \$500,000, the Subcontractor will be required to provide detailed pricing support data for purposes of determining acceptability of costs. The Subcontractor will also be asked to provide a copy of its most recently approved rate agreement if one has not been provided with the Subcontractor's proposal. Some commercial organizations are unwilling to provide copies of rate agreements to anyone other than governmental agencies. In this case OSP will request a rate verification through our local Defense Contract Audit Agency (DCAA) office. For Subcontracts awarded under a Federal prime agreement, the Subcontractor will be required to provide a Certificate of Current Cost or Pricing Data (See Exhibit 2, page 17) if the price negotiated between OSP and the Subcontractor is in excess of \$100,000, or such other amount as may be determined by Federal regulation.

c. If the Subcontract value is over \$500,000, an audit will be requested through the Syracuse's Comptroller's Office, which will forward the request through the appropriate channels to Syracuse University's local DCAA office if the prime sponsor has not already performed an audit of the Subcontractor.

#### **E. PREPARING A SUBCONTRACT**

1. Upon Syracuse University's receipt of a fully executed prime award from our sponsor, it will be necessary to establish a Subcontract with the appropriate Third Party. It is OSP's responsibility to prepare the Subcontract document after a Request to Issue a Subcontract (See Exhibit 3, page 18) has been submitted by the Project Director to OSP. OSP can assist in preparing Exhibit 3, however, the Project Director needs to complete Section 2 and 3 and sign it. OSP completes the Subcontractor Data Sheet (Exhibit 4, page 20).

2. In preparing the Subcontract document, it is important to "flow-down" to the Subcontractor the special terms and conditions of the prime award with which both SU and the Subcontractor must comply. Sponsor review and approval of a Subcontract may be necessary prior to its implementation. Sponsor's acceptance of a Syracuse University budget that includes Subcontract costs constitutes the acceptance of the Subcontractor selected and not an approval of the Subcontract itself.

3. The Request to Issue a Subcontract, mentioned above, provides OSP with the necessary information needed to develop the Subcontract document. Of primary importance is the Statement of Work with its related budget for the proposed effort. The form also asks whether this Subcontract is being awarded under competitive bidding procedures or sole source procurement. The Project Director is requested to notify OSP if there are any other requirements he/she would like to see in the Subcontract.

Examples would be:

- a. Advance Payments (may not be an available option with Federally sponsored prime agreements);
- b. Copyright requirements;
- c. Publication requirements;
- d. Patent requirements; or
- e. Equipment ownership.

4. Upon receipt by OSP of the Request to Issue a Subcontract, the prime award document is reviewed by OSP to determine whether the OSP budget provided for a Subcontract and the maximum amount authorized to Subcontract; whether terms and conditions that are in text form in the prime award are applicable to the Subcontractor; whether there will be certifications required of the Subcontractor; whether any general provisions have been incorporated into the prime agreement that are required flow-down clauses or clauses that are necessary to protect the interests of Syracuse University and/or the prime sponsor; and whether prime sponsor prior approval of the Subcontract is required.

5. The request is reviewed to insure that: the proposed Statement of Work relates to the effort identified in Syracuse University's prime award; the proposed period of performance for Subcontract effort falls within the prime award period; the proposed Subcontract budget corresponds to the budget that was included in Syracuse University's proposal to the prime sponsor; a sufficient degree of negotiation was conducted with the Subcontractor for a final Subcontract price; the Subcontractor provided any required certifications voluntarily; and whether the Subcontract is to be issued to a for-profit or nonprofit organization.

6. After considering all of the above variables, the Subcontract document is prepared to meet the requirements of the prime award and the type of Subcontractor with which we will be associated.

7. Exhibit 6 is designed to accommodate the majority of Subcontracts prepared by OSP for NSF, and NIH, etc. Exhibit 6A is used for NSF; Exhibit 6B is used for PHS; Exhibit 6C is used for U.S. Dept. of Education; Exhibit 6D is used for the Administration of Aging, and Exhibit 6E is a Generic Subcontract.

8. The typed draft of the document is sent to the Project Director for his/her review and comments. Upon completion of this review, the document is returned to OSP

where appropriate and contractually acceptable changes will be made, if requested, as a result of the review.

9. If prime sponsor prior approval is required, copies of the Subcontract are sent simultaneously to the sponsor for such prior approval and to the Subcontractor for acceptance. Each letter will state that documents were sent simultaneously thereby requesting an expeditious approval from our sponsor, and alerting the Subcontractor that changes may need to be negotiated as a result of prime sponsor approval. Before sending the Subcontracts to the sponsor and Subcontractor, the Director of OSP is required to review, approve, and initial the Subcontract. Syracuse University cannot sign the agreement until receipt of the sponsor's approval. The request for prior approval to Syracuse University's sponsor will include the information required by FAR 52.244-2.

10. During the approval or Subcontractor's acceptance process, changes may need to be negotiated or clarifications provided. OSP will negotiate all changes to the Subcontract in close coordination with, and upon receiving input from the Project Director.

11. Upon receipt of a signed document from the Subcontractor, the Director of OSP will review all comments and initial the agreement before it is sent for final signature to the Vice Chancellor for Administration. Upon receipt of the fully executed Subcontract, OSP will mail one original document to the Subcontractor, distribute copies internally to the Project Director and Contract Accounting for filing with the prime agreement file.

#### **IV. POST-AWARD SUBCONTRACT ADMINISTRATION**

##### **A. TECHNICAL MONITORING**

1. As prime award recipient, Syracuse University assumes the ultimate responsibility for the conduct and completion of the project. Subcontractor progress

reports should be reviewed thoroughly by Syracuse University's Project Director and discussed with the Subcontractor as needed. The Subcontractor's progress report will usually be incorporated into the progress report submitted to the sponsor by the Project Director. Copies of the Subcontractor's transmittal letter sending the progress report to Syracuse University's Project Director should be provided to OSP.

**B. FINANCIAL MONITORING**

1. In accordance with terms in the Subcontract, all invoices are to be sent to the Project Director by the Subcontractor for review and approval.

2. Prior to approval by the Project Director, the invoice should be reviewed to determine that the amount being requested for payment is consistent with the amount of effort performed during the billing period. Normally, the Project Director would most likely be familiar with effort performed by the Subcontractor through telephone conversations, technical meetings, progress reports or possibly site visits. Once the Project Director is satisfied with the invoice, he/she should show approval by signing and forwarding it to Contract Accounting. This will constitute approval to pay the invoice. If there are problems noted in the invoice, such as equipment purchased without approval or more labor charged than Syracuse University's Project Director feels was expended, the invoice SHOULD NOT BE APPROVED. Contact OSP who will take whatever steps are necessary to resolve any problems.

3. Upon the Project Director's approval, the invoice should be returned to Contract Accounting where the invoice is processed for payment.

4. Any problems encountered during the life of the Subcontract should be appropriately addressed to OSP or the Project Director.

5. The Subcontractor will be required to furnish all reports identified in the Subcontract document and in accordance with the Reports Distribution article of the Subcontract.

**C. SUBCONTRACT AMENDMENTS**

Should it be determined during the life of the prime agreement that additional effort is required to be performed by the Subcontractor, a request to issue an amendment (in memorandum form) should be sent to OSP. The request should include the Subcontract number, name of the Subcontractor, and the necessary information required to prepare the amendment, *i.e.*, extending time, adding cost, amending existing budgets, etc.

**V. CLOSING REQUIREMENTS**

**A. REQUIRED DOCUMENTS**

1. The Subcontractor is required to submit the following documents at Subcontract completion in accordance with the terms of the Subcontract:

- a. Final Technical Report
- b. Final Property Inventory Report
- c. Final Patent Disclosure Statement
- d. Final Invoice

2. Contract Accounting will send the following documents to the Subcontractor for completion and return to Contract Accounting prior to final payment:

- a. Subcontractor's Release (See Exhibit 7, page 27)
- b. Subcontractor's Assignment of Refunds, Rebates, Credits and Other Amounts (See Exhibit 8, page 29)
- c. Certification of Compliance, if required.

3. When the final invoice has been received, the Project Director will be responsible for the same type review and approval procedures as required for the routine monthly invoice evaluations mentioned under Section IV, Paragraph B, Subparagraphs 1 through 4.

a. The OSP Administrator will review the final invoice to insure that total cost claimed is within the monetary limitations and time periods specified in the Subcontract and that all reports have been received by the appropriate University representatives on a timely basis. OSP will not approve final payment until all required reports have been received.

4. At the time a final invoice is received for review and approval by OSP, a Certification of Technical Completion (See Exhibit 9, page 31) will be sent to the Project Director by OSP. The Project Director is requested to attach a copy of the Subcontractor's final report transmittal letter to this Certification, sign the form if the technical effort has been completed, and return the Certification to OSP for processing of the final invoice. If the Subcontract is going to be extended, this certification is not required, and OSP should be notified immediately so the close-out procedure can be stopped.

5. The OSP Administrator will complete the Subcontract Closeout Checklist (See Exhibit 10, page 32) to insure compliance with the terms of the Subcontract and audit requirements. The original form, when completed, will be kept with the appropriate prime agreement closing papers. A copy of the form will be sent to Contract Accounting.

6. The Subcontract Closeout Desk Review Worksheet (See Exhibit 11, page 33) is prepared by the OSP Administrator at the time of Subcontract closeout and is used in conjunction with the final voucher review and approval as noted under Section V, Paragraph 3. This form is used in determining the allowability of costs incurred by the Subcontractor and the appropriateness of the costs incurred by the guidelines.

7. Exhibit 11, page 33, Administrative Closeout Memorandum, is used in lieu of a closeout audit of Subcontract if the total cumulative Subcontract award amount is less than \$100,000.

8. Upon receipt of appropriate Syracuse approvals and closing documents described in this Section V, final payment will be processed and mailed to the Subcontractor by Contract Accounting.

