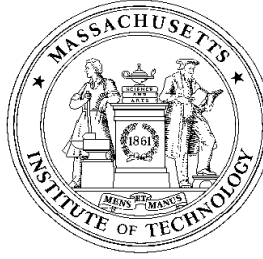


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MEMORANDUM

TO: Interested Parties

FROM: Diane J. Shea
Thomas W. Egan

DATE: 02/01

SUBJECT: DEFINITIONS OF SUBAWARD AGREEMENT AND VENDOR

The research subcontracting function has been transferred from the Procurement Office to the Office of Sponsored Programs. During the transition, both departments recognized the value of clarifying the differences between a subaward (subrecipient agreement, subgrant, subcontract) and the acquisition of goods and services in support of sponsored activities. These distinctions are important both in constructing research proposals and in preparing and submitting requisitions to acquire such activities or services.

In general, subaward agreements are used when the intent is to have another organization help carry out a portion of the scope of work described in the proposal and assigned under the subsequent award. It does not matter what the agreement is called (subcontract, subaward, subgrant, etc.), but it is directed as cooperatively working with another entity to carry out the program for which funding has been granted.

On the other hand, under a sponsored project a recipient also needs to acquire goods and services in order to carry out the project for which funds have been granted. This is a vendor relationship, and is not characterized by a cooperative effort to carry out the objectives of the project, but does require the acquisition of goods and services by the recipient. Using these definitions, for example, consulting contracts are vendor-type relationships and handled by the Procurement Office.

In most cases, distinctions between these two types of activities are relatively easy to make. For example, in a subaward agreement:

- 1) The Subawardee has its performance measured against its portion of the scope of work of MIT's program;
- 2) The Subawardee has responsibility for programmatic decision making;
- 3) The Subawardee has responsibility for adherence to applicable program compliance requirements (i.e.: OMB Circulars, regulations of Federal and Not-for-Profit Entities, etc);
- 4) The Subawardee uses the funds to carry out a portion of the scope of work of MIT's program as compared to providing goods or services for MIT's program; and
- 5) The Subawardee's principal investigator/project director may be a co-author on publications or may seek patent protection for inventions.

The distinction can become more difficult when the subawardee is not only acting as a subawardee in doing some of the program activity, *but also* as a vendor by, for example, constructing and providing (prototype) equipment required under an award. In such cases, investigators are urged to talk with their sponsored programs contract administrator and/or one of the staff in the OSP Research Subcontracts Office.

OMB Circular A-133, Subpart A, section 105 (Audits of Institutions of Higher Education...), and OMB Circular A-110 (Uniform Administrative Requirements for Institutions of Higher Education...) both contain definitions of subrecipient and vendor. On the attached page are excerpts of those regulations that may be helpful.

If you have any questions please call your OSP contract administrator, Diane Shea in the Procurement Office, or Tom Egan in the OSP Research Subawards Office.

NOTE: *The Procurement Office and the OSP Research Subawards Office jointly agree to abide by this policy. The OSP Research Subawards Office will be responsible for maintaining the policy.*

MASSACHUSETTS INSTITUTE OF TECHNOLOGY
ADDITIONAL INFORMATION ON
SUBAWARDEE AND VENDOR RELATIONSHIPS

Subaward (subrecipient agreement, subcontract, subgrant)

“Subaward means an award of financial assistance in the form of money made under an award (i.e.: grants and other agreements) by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance (grants or cooperative agreements) and procurements (contracts) when provided by any legal agreement whether it is called a contract or a purchase order, but does not include procurement of goods and services.”

In general, subawards are used when the intent is to have another organization help carry out a portion of the scope of work described in the proposal and assigned under the subsequent award. It does not matter what the agreement is called (subcontract, subaward, subgrant, etc.), but it is directed as cooperatively working with another entity to carry out the program for which funding has been granted.

A subaward is a complex form of procurement which (1) is generally issued under a WBS element, (2) provides for the acquisition of experimental, developmental or research work, and (3) is generally issued on a cost reimbursement basis.

Subawards may be called subcontracts, subagreements, subrecipient agreements, purchase orders, subgrants, etc., and they may also have the appearance of procurement agreements in format and language. Nevertheless they remain forms of financial acquisition and do not constitute a procurement of goods and services.

Typical subaward situations include arrangements in which two or more qualifying institutions work collaboratively on a sponsored project. Each institution has its own principal investigator; however, one of the collaborating institutions functions as the prime awardee and is the legal contact with the sponsor.

Terms for subawards generally mirror the terms in the prime award to MIT.
For example:

- ◆ The Subawardee has its performance measured against its portion of the scope of work of MIT’s program. [A collaborating organization is responsible for meeting its scope of work.]
- ◆ The Subawardee has responsibility for programmatic decision-making. [The PI at the collaborating organization is responsible for directing its segment.]
- ◆ The Subawardee has responsibility for adherence to applicable program compliance requirements. [As specified in the Subaward document.]

- ◆ The Subawardee uses the funds to carry out a portion of the scope of work of MIT's program as compared to providing goods or services for MIT's program. [A collaborating organization is conducting its own scope of work and is not providing goods or services, such as simply executing lab tests or constructing experimental instrumentation.]
- ◆ The Subawardee's principal investigator/project director may be a co-author on publications or may seek patent protection for inventions.

A key distinction with respect to a subaward is that of intellectual property. Title to intellectual property created by subawardee is normally retained by the subawardee when it is a small business or another institution of higher education. This complies with requirements of the Bayh-Dole Act which controls the ownership and management of intellectual property on federally funded projects.

MIT Implementation

Object Code/General Ledger Account

500/420600: Subaward Agreement: Facilities and Administrative costs on the 1st \$25,000

502/420620: Subaward Agreement: no Facilities and Administrative costs

Procurement (vendor relationship)

Vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's (MIT's) own use or for the use of beneficiaries of the Federal Program.

Characteristics indicative of a payment for goods and services are when an entity:

- ◆ Provides the goods and services within normal business operations;
- ◆ Provides similar goods and services to many different purchasers;
- ◆ Operates in competitive environment;
- ◆ Provides goods and services that are ancillary to the operation of the federal program; and
- ◆ Is not subject to monitoring or reporting requirements of the prime award.

The consultant purchase order is restricted for use to obtain non-employee type services which are clearly consultative in nature. Consultant orders are issued to either a company or to an individual who is clearly a bona fide consultant (expert advisor) who pursues this line of business for him/herself. If issued to an individual who is being compensated either under a tax ID# or SS#, the individual is considered an Independent Contractor and Form 4.15A entitled "MIT Independent Contractor Information" must be completed.

Per MIT Purchasing Policies and Procedures Section 2.12:

Consultant:

- (a) Under a consultant purchase order the consultant is paid for his/her time at the fixed daily (or hourly) rate of compensation specified in the purchase order.
- (b) The rate of compensation proposed by the consultant may be negotiated or accepted as fixed on the basis of (i) the present market value of his/her services or of others possessing like capabilities, (ii) the present market value of the services of other individuals possessing different capabilities, but who, in their fields of specialty, hold similar positions in the scientific or business communities, (iii) the Institute's needs, or (iv) the limits imposed by sponsoring agencies under Institute contracts and grants.
- (c) The purchase order may provide for payment of the cost of travel performed by the individual in connection with the performance of work under the purchase order following the Institutes Travel Policy or where applicable Government Travel Policy.
- (d) Payment under a consultant purchase order is based on invoices or vouchers submitted by the consultant, generally on a monthly basis. The purchase order must require that invoices itemize the calendar days during which service was provided, and the invoices must conform. Charges for travel must be backed up with appropriate detail evidencing the actual expenses incurred.

As contrasted to the regulations in subrecipient agreements, a consultant is considered “work for hire” and therefore all intellectual property and copyrightable information is assigned to MIT.

MIT Implementation

Object Code/General Ledger Account: 437/420710 Consultant