

San José State University Research Foundation

Subrecipient vs. Service Agreement Determination Form

The purpose of this form is to help the principal investigator (PI) and the San José State University Research Foundation (Research Foundation) determine the proper contracting mechanism to use for third party participation for a project.

Instructions: Please answer the questions in the following sections. In some cases when the determination is apparent, only one or two sections need be completed.

Name of Third Party Entity/Individual:

Prime Sponsor:

SJSU PI Name:

Research Foundation Account # (if any):

Definitions

Subrecipient: Subrecipient means a non-Federal entity that expends Federal funds received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program (participant). A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in 99.210 of the 2 CFR 200. **Although this definition generally applies to federal funding sources, the SJSU Research Foundation will consider all subawardees as subrecipients regardless of funding source.**

Vendor (Service Contractor): Refers to 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 own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in 99.210 of the 2 CFR 200.

Independent Contractor: An independent contractor (IC) is an individual, sole proprietor, or one person limited liability company (LLC)—using his or her own social security number—not the LLC's tax ID—who is contracted to perform or deliver specific tasks or services that are not normally engaged in by the Research Foundation or SJSU in its usual business. IC's are not considered employees of the Research Foundation.

QUESTIONNAIRE

PART 1 (CHECK ALL THAT APPLY)

The Proposed Subrecipient:

Will provide a statement of work that is intellectually significant and represents a significant portion of the programmatic effort of the overall project.

Is responsible for programmatic decision-making related to their scope of work.

Has an identified principal investigator for the proposed subrecipient and the individual is a co-investigator on the proposal.

Work will result in intellectual property development or publishable results (including co-authorship).

Work requires animal and/or human subject approval for its portion of the work.

Will provide cost-sharing or matching funds if mandated by the sponsor.

Performance will be measured against whether the objectives of the sponsored program are met.

Assumes responsibility for adherence to applicable sponsor program compliance requirements.

Will be required to abide by the terms and conditions of the prime award.

Uses sponsor funds to carry out a programmatic purpose (Statement of Work) secondary to the central purpose of the project, as compared to providing goods or services.

Will provide a budget and justification including details of full project costs, including their negotiated F&A.

Which entity retains ownership of all data, reports, materials and inventions developed under the subrecipient agreement? Check one:

Prime Sponsor

Subrecipient

Joint (all parties)

Research Foundation

If most of the statements above are applicable, the relationship between the Research Foundation and the third party entity is considered a subrecipient relationship. Therefore a subcontract will be used and is not subject to F&A after the first \$25,000 for the life of the project.

Subrecipient Agreement (subaward/subcontract)

A formalized agreement whereby a sponsored project is carried out by the grantee and one or more other organizations that are separate legal entities.

Under the agreement, the grantee must perform; a substantive role in the conduct of the planned sponsored project and not merely serve as a conduit of funds to another party, or a specific level of effort from the collaborating/consortium organization's PI and a categorical breakdown of costs (personnel, supplies, other allowable expenses, including F&A costs).

The subrecipient will be required to provide a completed and signed Subrecipient Commitment Form, issued by the San José State University Research Foundation, identifying specific required documentation such as, but not limited to; a detailed budget, justification, scope of work, and a signed institutional commitment letter at least eight business days prior to the submission deadline. **If instructed in the Subrecipient Form, the subrecipient is also required to provide its current federally negotiated F&A rate agreement, fringe benefits rate agreement, and Single Audit report (formally A-133 audit report).**

Note: A subrecipient must have a DUNS number and a Federal Tax ID number. If Federal funds will be passed down the subrecipient must also be registered and verified in good standing on the sam.gov website.

PART 2 (CHECK ALL THAT APPLY)

The Proposed Vendor (Service Contractor) will not:

- Have programmatic decision responsibility.
- Need to comply with the prime sponsor's terms and conditions.
- Be required to carry out work according to the prime sponsoring agency's specifications using standard operating procedures.
- Provide these goods and services to the central purpose of the project.

The Proposed Vendor (Service Contractor) will:

- Provide specialized services which cannot be performed by SJSU or Research Foundation employees and are ancillary to the operation of the program.
- Commonly provide these goods and/or services as part of their normal business operations.
- Provide these goods and services for a fee.
- Provide similar these goods and/or services to other purchasers.
- Compete with comparable entities to provide the same goods and/or services.

A service relationship exists when the Research Foundation has the right to control only the end result of a service, not the way it is performed. The Research Foundation generally receives something (e.g., transcription services, programming services).

The Research Foundation will issue a service agreement contract and proceed with negotiations. In some cases, a letter or quote identifying the services to be provided and cost will be needed.

Part 3 (CHECK ALL THAT APPLY)

The Proposed Independent Contractor will:

- Provide a social security number in order to receive payment.
- Render services, provide professional advice, or recommend solutions for a fee.
- Normally operate in a competitive environment, where similar services are also provided to other companies.
- Not have programmatic decision making responsibility.
- Not carry out or implement solutions.
- Not utilize the facilities and resources of an organization or institution.
- Perform the work in the state of CA?
- Reside in the state of CA?

Characteristics:

- Generally offer only advice or propose solutions to problems, but they do not direct, carry out, or implement solutions.
- SJSU and the Research Foundation cannot control either the result of the contractor's service or the way it is performed.
- Requires little or no guidance in providing input.
- Does not reside in the state of CA
- Does not typically perform work in the state of CA.

Important: The independent contractor cannot be a CSU employee. Individuals cannot be affiliated with an organization or company, and must be qualified based on the AB5 regulations.

Caveat: Individuals or companies that provide professional services may refer to themselves as "contractors," however, the contract mechanism used may not be an independent contractor agreement.

Final Determination:

Subrecipient: Issue a subaward agreement.

Vendor (Service Contractor): Issue a service agreement or memorandum of understanding.

Independent Contractor: PI to complete the SJSU Research Foundation Determination of Independent Contractor Status Checklist (in accordance with AB5 regulations) at time of award. SJSU Research Foundation to issue an independent contractor agreement.

Principal Investigator Signature:

Date:

OSP Manager Signature:

Date: