

SUBRECIPIENT VS. SUPPLIER DETERMINATION SHEET

Suppliers (also referred to as Contractors) and Subrecipients must be budgeted for in a sponsored project proposal and managed differently after an award is made under University and federal regulations. Failure to categorize outside organizations properly can result in processing delays, unexpected costs, and misunderstandings between Berkeley and other outside entities. To determine whether an outside entity should be categorized as a subrecipient or a supplier the substance of the relationship will be more important than the type of award or the amount of funding received by Berkeley or even the type of outside entity that the Berkeley PI wants to work with. The following guide is presented to help the campus community make more informed and accurate decisions about categorizing subrecipients and suppliers.

Signs that the outside entity is a subrecipient include:

1. Under Section “E” of the Subrecipient Commitment Form, the outside entity has signed the certification indicating that it is correctly categorized as a subrecipient and has not indicated anywhere else on the form that it is not a subrecipient.
2. There is a named individual who is employed by the outside entity who will serve as the entity’s Principal Investigator/Project Director and who will be involved in programmatic decision-making that will impact the overall project or the achievement of one or more of Berkeley’s project objectives.
3. The outside entity will have the right to retain right, title and interest, including all copyrights and other intellectual property rights, in and to all materials, inventions, works of authorship, software, information and data conceived or developed by the outside entity’s personnel in the performance of the project.
4. Key personnel of the outside entity who are involved in Berkeley’s funded project will receive appropriate attribution of authorship on any Berkeley publications resulting from the outside entity’s scope of work.
5. The outside entity will use the funds provided to carry out a program for a public purpose, as opposed to providing goods or services for the benefit of Berkeley.
6. Any use of live vertebrate animals by the entity will not be limited to biological testing.
7. Any use of human subjects for research by the entity will require IRB review.
8. The outside entity will be contributing required cost sharing in the form of funds, personnel effort, or resources in support of Berkeley’s Scope of Work under the sponsored project.

Signs that the outside entity is a supplier include:

1. The supplier has established rates for goods and services they offer to public at large.
2. The supplier is not responsible for the research results or any decision-making responsibilities with the research.
3. There is no expectation from the UC or Supplier of any collaboration or co-publications.
4. Services are generally work made for hire.
5. Provides goods or services that are ancillary to the operation of the sponsored program.

All of the characteristics listed under the two categories above may not be present in all cases. If a question exists about a particular entity that cannot be resolved at the proposal stage, a final determination will be made by SPO’s Subaward Team during a regularly scheduled Subaward Risk Committee meetings. Supply Chain Management (SCM) will be consulted prior to making the final determination. Note: Movement from one category to another can have financial implications, so care must be used when deciding if an outside entity is performing a subrecipient or supplier role on a sponsored project.

DEFINITIONS

Subaward or Subagreement: Legal instrument by which the UC as the recipient of a grant, cooperative agreement or a contract provides funds to an eligible subrecipient to perform a substantive portion of the sponsor supported program. The term includes such collaborative activities when funding is provided to the recipient by any legal agreement (even if the agreement is called a contract), but does not include activities which are the procurement of property or services needed to carry out the program.

Subrecipient: An outside entity that has agreed to work in collaboration with Berkeley to perform a substantive portion of the programmatic effort on an award and is closely involved in programmatic decision-making.

Independent Contractor / Supplier: An individual or business that supplies goods or services to the competitive market.

***Goods and Services Competitive Bids:**

California Public Contract Code (PCC) requires UC to competitively and publicly bid requirements of ordinary goods and/or services that are \geq \$100,000 per annual year, including sponsored funds requirements for ordinary goods and services needed to support research activities. The exceptions to the competitive bid requirements are interpreted narrowly and will rarely apply to ordinary goods and/or services [Sole Source, Professional Services, Personal Services, Emergencies (operational or harm)].

ADDITIONAL GUIDANCE

Subrecipients

Generally subrecipients named in a proposal are considered approved by the sponsor when an award is made. However, some sponsors will request additional information about a proposed subrecipient and may require Berkeley obtain the sponsor's prior approval of the subrecipient before making a subaward.

Subrecipients listed as "TBD" in a proposal may require prior sponsor approval. The process of naming and vetting a subrecipient after an award has been issued is the same as the proposal stage. A Subrecipient Commitment Form along with a scope of work and a budget must be submitted to the SPO CGO that processed the proposal. The SPO CGO will determine if sponsor prior approval is required before issuing a subaward number for a new subrecipient.

SPO will not begin the process of establishing a subaward between Berkeley and an outside entity until the PI/RA submits a complete "Subaward Request Form" to SPO.

Suppliers

Naming a Supplier on the proposal and award does not mean that the supplier can perform the work without bidding out the requirements for ordinary goods and services.

If a specific Supplier is named in the proposal budget, the budget justification should indicate that multiple Supplier's would be considered via Request for Proposals. The Supplier demonstrating the most advantageous balance of price, quality, service, performance and other elements as defined by the Department by either using Best Value scoring will be awarded the contract.

Suppliers to be paid \$100,000 or more should contact [Supply Chain Management](#) for guidance.)