

2.207 Subcontract Administration for RCUH Direct Projects

This policy is for RCUH Direct Projects only.

I. Overview

As the prime contractor, an RCUH Direct Project must (1) ensure that award information and compliance requirements are provided to the subrecipient (subcontractor) and (2) be responsible for the programmatic and financial monitoring of the subrecipient (subcontractor), including implementing corrective action on any audit finding.

Before initiating a subcontract, an RCUH Direct Project must have a clear understanding of the distinguishing characteristics between a subrecipient (subcontractor) and a vendor.

A. A subrecipient/subcontractor of a federal award has the following obligations:

1. Determines who is eligible to receive what financial assistance;
2. Is measured in terms of performance in relation to whether objectives of a federal program were met;
3. Has responsibility for programmatic decision making;
4. Is responsible for adherence to applicable federal program requirements specified in the federal award; and
5. In accordance with its agreement, uses the federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

B. A vendor has the following obligations:

1. Provides the goods and services within normal business operations;
2. Provides similar goods or services to many different purchasers;
3. Normally operates in a competitive environment;
4. Provides goods or services that are ancillary to the operation of the federal program; and
5. Is not subject to compliance requirements of the federal program as a result of the agreement, though similar requirements may apply for other reasons.

II. Responsibilities

A. Principal Investigator

1. Administer the subcontract.
2. Maintain regular oversight over the subcontractor.
3. Manage any contract disputes that may arise.

B. Fiscal Administrator

1. Provide guidance to the Principal Investigator for all phases of subcontract administration.
2. Provide prime award terms and conditions and applicable purchase order terms and conditions to subcontractor.

III. Details of Policy

The RCUH [Attachment 21 Subcontractor Agreement](#) is used for subcontractor agreements utilizing federal prime contract funds, federal grants, federal cooperative agreements, and non-federal funds (alternatively, and by mutual agreement of the parties, the [Federal Demonstration Partnership Subaward Template](#) may be used). A purchase order referencing the subcontractor agreement and the grant/contract number is used to encumber the funds. In cases where a subcontractor agreement is extended using a different purchase order, it must reference the original purchase order number.

It is the responsibility of the RCUH Fiscal Administrator (FA) to send the subcontractor agreement along with the prime award's terms and conditions to the subcontractor. Attachments 32a, 32b, 32c, or 32d shall be attached to the subcontractor agreement; refer to [Policy 2.201 Purchase Orders](#) for an explanation of each attachment. Attachment 31 does not apply, as the terms and conditions are stated in the RCUH subcontractor agreement.

A subcontract of \$25,000 or more requires a valid tax clearance from the Hawaii Department of Taxation and the U.S. Internal Revenue Service prior to the execution of the subcontract and prior to processing final payment; refer to [Policy 2.302 Tax Clearance \(Certificate of Vendor Compliance\)](#) for details. A tax clearance is not required if the subcontractor is a government agency.

The Principal Investigator (PI) is responsible for administering and overseeing all subcontracts handled by the Project. The responsibilities include the following:

- A.** Overseeing the work in progress to ensure conformity to plans and specifications and quality of workmanship.
- B.** Providing recommended changes to the subcontract statement of work, including proposed written changes to the technical specifications, plans, and/or performance requirements.
- C.** Acting as technical advisor in actions involving subcontract change orders, supplemental agreements, or disputes.

- D. Complying with applicable Federal Acquisition Regulation (FAR) requirements concerning Small Business and Small Disadvantaged Business Utilization Programs. See [FAR 52.219-1 et al.](#)

If a subcontract is expected to exceed \$700,000, and the prime contract or higher tier subcontract requires RCUH to submit a Small Business Subcontracting Plan, the PI must comply with [FAR 52.219-9](#) with respect to its subcontract. Specifically, the PI must require the subcontractor to submit and comply with its Small Business Subcontracting Plan, and to file the required federal reports. [FAR 52.219-9](#) should be flowed down or incorporated into the subcontract.

- E. Under [FAR 52.219-9\(d\)\(11\)\(iii\)](#), if a subcontract or purchase order is expected to exceed \$250,000 utilizing federal prime contract funds, the (PI) must make an effort to contract with a small business concern. To assist the (PI) in recording his/her efforts in finding a small business vendor or subcontractor, the PI shall refer to RCUH [Attachment 38 Subcontract/Purchase Order Expected to Exceed \\$250,000 Under a Federal Prime Contract Worksheet](#). This worksheet is used to record the information obtained by the (PI) in locating a small business concern. The PI shall provide this worksheet to the RCUH FA for filing in the procurement file. For a definition of the various types of small business concerns, refer to [Policy 2.208 Small Business Subcontracting Plan](#).

- F. When executing a subcontract or purchase order under a Department of Defense (DoD) prime contract and in accordance with [FAR 52.211-15](#) Defense Priority and Allocation Requirements, the following elements shall be included in the purchase order or subcontract agreement:

1. The Prime DoD contract DPAS (Defense Priorities and Allocations System) rating. This number is located at the top right side of the SF26 (Standard Form) award document.
2. A required delivery date for the deliverable items or performance period for a service or R&D contract.
3. A signature of an individual authorized to sign the award.
4. A statement that reads as follows: "This is a rated order certified for national defense, emergency preparedness, and energy program use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation ([15CFR700](#))."
5. Purchases under \$50,000 are not required to have a rating used provided timely delivery can be obtained without it.
6. Commercial items are exempt, except for computer equipment that will be integral to an end item that is necessary for use at a government site.

- G. **Payment of Allowable Costs and Fixed Fee (Utilizing Federal Prime Contract Funds)** – In preparing a cost plus fixed fee subcontract, in addition to incorporating/adapting [FAR 52.216-7](#) Allowable Cost and Payment, and [FAR 52.216-](#)

[8](#) Fixed Fee, the subcontract amount should identify/reflect the fixed fee amount as well as the amount for estimated cost. A fee rate should not be specified in the subcontract, as that would violate the prohibition against awards of cost-plus-percentage of cost contracts and subcontracts.

As consideration for the proper performance of the work and services required under the contract, the subcontractor shall be paid as follows:

1. Costs, as provided for under the contract clause entitled "Allowable Cost and Payment," shall not exceed the amount set forth as "Estimated Cost" in the contract, and is subject to the contract clause entitled "Limitation of Cost" or "Limitation of Funds," whichever is applicable.
2. A fixed fee, in the amount set forth as "Fixed Fee" in the contract, in accordance with the contract clause [FAR 52.216-8](#). The fixed fee shall be paid upon completion of the work and services required under the contract and upon final acceptance by the Contracting Officer. The total fixed fee billed shall not exceed the total fixed fee specified in the contract and is subject to the contract clause entitled "Limitation of Cost" or "Limitation of Funds," whichever applies.
3. In accordance with [FAR 52.216-8](#), and in order to protect the Government's interest, the Contractor (RCUH) is directed to withhold 10% of the fixed fee amount as set forth in the contract or until a reserve is set aside in the amount of \$100,000, whichever is less. The Administrative Contracting Officer (of RCUH) shall release 75% of the fixed fee reserve to the subcontractor upon acceptance of the final deliverables identified in the contract. The remaining 25% of the fixed fee reserve will be released to the subcontractor after completion of any final audits, submission of the final patent and royalty reports, and if the contractor is not delinquent in submitting final vouchers for prior years' settlements.

[FAR 52.216-8](#) provides the following:

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; provided that the Contracting Officer withholds a reserve not to exceed 15 percent of the total fixed fee or \$100,000, whichever is less, to protect the Government's interest. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of an adequate certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

H. Terminations – Any failure of the contractor to meet all commitments in accordance with the contract specifications that are not remedied, constitutes default and

grounds for termination of the contract. If the PI cannot satisfactorily remedy the deficiency with the contractor, such failure shall be reported to the RCUH Procurement & Disbursing manager for resolution and possible termination of the contract.

- I. **Closeout** – The (PI) must submit to the RCUH FA the final invoice (which must be labeled “Final Invoice”) and final receiving report or other payment authorization form indicating that goods and/or services have been satisfactorily delivered. The contract will be closed upon submission of these documents, and the following supporting documents and requirements, if applicable:
 1. Valid tax clearance for final payment;
 2. Final report of invention when subcontract involves research and a report is required;
 3. Final report of government property, when applicable, and government disposition instructions;
 4. When classified information is provided, ensure the proper disposition via the RCUH Facility Security Officer; and
 5. Ensure that the required financial reports and/or final vouchers with [Attachment 41 Contractor’s Release Under Contract](#) and [Attachment 42 Contractor’s Assignment of Refunds, Rebates, Credits, and Other Amounts](#) are submitted, and that the costs are determined to be reasonable and allowable in accordance with the award.

IV. Relevant Documents

[Federal Demonstration Partnership Subaward Template](#)

[Attachment 21 Subcontractor Agreement](#)

[Attachment 32a Terms and Conditions Applicable to Contracts and Purchase Orders \(Under Federal Grants\)](#)

[Attachment 32b Federal Provisions – Government Subcontract Provisions Incorporated In All Subcontracts/Purchase Orders \(Under Federal Prime Contracts\)](#)

[Attachment 32c Federal Provisions Applicable When Subcontractor \(Commercial Entity\) Is In Possession of Government Property – Government Subcontract Provisions Incorporated In All Subcontracts/Purchase Orders \(Under Cost-Type Prime Cost Reimbursable Contracts\)](#)

[Attachment 32d Federal Provisions Applicable When Subcontractor \(Educational or Nonprofit Organization\) Is In Possession of Government Property – Government Subcontract Provisions Incorporated In All Subcontracts/Purchase Orders \(Under Cost-Type Prime Cost Reimbursable Contracts\)](#)

[Attachment 38 Subcontract/Purchase Order Expected to Exceed \\$250,000 Under a Federal Prime Contract Worksheet](#)

[Attachment 41 Contractor's Release Under Contract](#)

[Attachment 42 Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts](#)

[Policy 2.201 Purchase Orders](#)

[Policy 2.208 Small Business Subcontracting Plan](#)

[Policy 2.302 Tax Clearance \(Certificate of Vendor Compliance\)](#)

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