UNIVERSITY OF ROCHESTER

POLICIES AND PROCEDURES FOR THE ADMINISTRATION OF SUBAGREEMENTS ISSUED TO A THIRD PARTY

http://www.rochester.edu/ORPA/manual/submanual.pdf

March 2006

TABLE OF CONTENTS

I. DEFINITIONS

For the purposes of this policy, where reference is made to "research" awards, it is defined as all awards (i.e., clinical trials, training grants, etc.) where a subagreement is issued. Similarly, where reference is made to "subagreement", it may refer to subaward, subcontract or consortium agreement, dependent upon the nature of the prime award.

A. Introduction: Concept of Substantive Work

Sponsored research awards made to the University of Rochester (UR) are generally conducted within the physical boundaries of the UR. On occasion, substantive programmatic work is parceled out to one or several institution(s) that are made responsible for a portion of a project awarded to the UR. The concept of **substantive work conducted by a third party** is defined as follows:

> Project activities that are a primary purpose of the research program which, for whatever reason, are not conducted at the University. These activities constitute a significant portion of the research program and require the leadership and direction of a responsible investigator located at the work site of the cooperating institution.

Substantive work usually encompasses any one or more of the following: Personnel costs, supplies, equipment, travel and Facilities & Administrative (F&A) costs needed by a third party (i.e., industry, hospital, university) who is performing a portion of a research program under an award made to the UR.

OMB Circular A-133 also makes a distinction between a subrecipient (substantive work) and a vendor:

> A subrecipient is defined as "any person or government department, agency, establishment, or nonprofit organization that receives financial assistance to carry out a program through a primary recipient or other subrecipient..." A vendor is defined as "an organization providing a recipient or subrecipient with generally required goods or services that are related to the administrative support of the Federal assistance program."
>
> Circular A-133 states (§ ___.210) that an organization is considered to be a **subrecipient** of a federal award when it:

- determines who is eligible to receive what financial assistance;
- has its performance measured against whether the objectives of the federal program are met;
- has responsibility for programmatic decision-making;
- has responsibility for adherence to applicable federal program compliance responsibilities;
- uses the federal funds to carry out a program of the organization as compared to providing goods or services for a program of the passthrough entity.

Under A-133, an organization is considered to be a **vendor** when it

- provides goods and services within normal business operations;
- provides similar goods and services to many different purchasers;
- operates in a competitive environment;
- provides goods and services that are ancillary to the operation of the federal program; and
- is not subject to compliance requirements of the federal program.

Not all of the characteristics need to be or will be present to determine whether the organization is a subrecipient or a vendor, and the circular states that judgment should be used in each case.

The clear distinction between a subrecipient providing substantive programmatic work and a vendor providing goods and services provides the basis for the decision as to whether ORPA or Corporate Purchasing will issue the agreement. ORPA will only issue agreements for substantive programmatic work.

This distinction is not always crystal clear. One test that ORPA Research Administrators (RA's) can use to make this distinction is the following:

Key Questions to Make the Vendor-Subrecipient Determination

Key questions to ask to determine whether the lower-tier organization is a subrecipient are: If the answers are "yes," the relationship probably is with a subrecipient.

- Is there an identified investigator at the lower-tier organization? If yes, is he or she a co-investigator on the primary award?
- Is the lower-tier organization free to decide how to carry out the activities requested of it?
- Will there be potentially patentable or copyrightable technology created or reduced to practice from the activities of the lower-tier entity? If yes, does the entity have rights to or the right to file for protection of its technology?
- Are publications anticipated from the lower tier entity? Will individuals at the lower-tier organization be co-authors on articles?
- Under federal assistance funding, is the lower-tier organization providing cost sharing or matching funds?

A key question to ask to determine whether the lower-tier organization is a vendor is: If "yes," the relationship most likely is with a vendor.

- Is the activity to be performed a series of repetitive tests or activities requiring little or no discretionary judgment on behalf of the service provider?

B. Defining the Subagreement Relationship

The term **prime sponsor** refers to the agency, which makes an award directly to the UR. The **award document** is the official document committing funding received by the UR from the sponsor.

The document, which formalizes a "third party" relationship with an institution performing substantive work based upon an award made to the UR, is called a **subaward** or **subagreement**. The institution performing work under a subagreement is called the **subrecipient** or **subawardee**. Some sponsors, notably NIH, label the cooperating institution a "consortium", and similarly label the subaward a consortium agreement. While the intent is identical, this policy refers to all consortium agreements as subawards or subcontracts, depending upon the nature of the prime agreement.

The most commonly used subagreements at the University of Rochester are those that are awarded under federal assistance grants. The UR uses the FDP Model Subaward for most of these situations as the flow-down requirements are clearly delineated in each model, and the standard terms should provide for facilitation in subaward negotiation. The process for issuing the FDP subawards follows in Section IV. For subawards issued under non-FDP terms, the process can be found in Section III. The template terms and conditions for non-FDP subawards of Federal Contracts, some Federal Assistance Grants, NYS Contracts, Foundation and Voluntary Health Organization awards, and Clinical Trials can be found on the shared ORPA h: drive. Case-by-case revisions to any subagreement may be necessary depending upon the terms and conditions negotiated with the UR's prime sponsor and upon the subrecipient organization (e.g., terms for a commercial organization will normally differ from terms to a non-profit, educational institution.) The ORPA Research Administrators are responsible for maintaining and distributing updated versions of standard subaward terms and conditions; these assignments will be made based upon the RA's area of expertise or sponsor liaison responsibilities.

Activities performed by an individual who is not working under the auspices of an entity, and who is not employed by the UR, are administered through a consulting (services) agreement via a requisition form (See http://www.rochester.edu/working/hr/policies/pdfpolicies/122.pdf and http://www.urmc.rochester.edu/purchasing/PurchaseOrder.cfm#Consultant). Other purchased services may involve another organizational entity, but may not involve substantive scientific research. For example, a service agreement is appropriate for the performance of repetitive tests or activities requiring little or no discretionary judgment on the part of the service provider. Service agreements are normally handled through Corporate Purchasing by a select buyer.

C. Documents Associated with Subcontracting

There are primarily two (2) documents associated with UR subagreements for sponsors OTHER than those issued from federal assistance awards (as these will be issued using the FDP template), although other attachments are usually necessary. These are:

1) The **G-Purchase Order (G-PO)**. This is a form provided and maintained by ORPA and serves as the face and signatory page for subagreements. Generally this form specifies the

dollar threshold and period of performance, and enables the recipient to bill the UR for expenses incurred in a research project. This form also lists all the purchase order attachments, such as the terms and conditions, budget and statement of work. Signature by both parties on this page indicates agreement and acceptance of the subagreement.

2) The **Terms and Conditions** of the subagreement. These include both the sponsor requirements imposed upon the UR as well as requirements imposed by UR. As indicated previously, sample terms and conditions for various prime awards are attached, however, the Research Administrators are responsible for modifying the terms as necessary.

As indicated, the G-PO may attach other documents such as a statement of work, protocol or budget. Further discussion on the G-PO subagreement format is provided in Section III.

The FDP Template comprises the documents associated with subawards issued from Federal assistance funding. The process for FDP subawards is located in Section IV.

II. SUBCONTRACTING: PROPOSAL STAGE

A. Subagreement Proposal

The subagreement proposal includes, at a minimum, the statement of work, the project budget, and the written evidence that an authorized organizational official has endorsed the subrecipient's proposal. Additional documents might include a resources/facilities page, checklist page, biosketch, other support, and a signed face page.

It is the responsibility of the UR principal investigator (PI) to discuss and negotiate the scope of work to be performed by the subrecipient. The subrecipient submits a statement of work or subagreement proposal that outlines the procedures and methods to be employed in accordance with the goals of the project proposed by the UR PI. The statement of work should be submitted to the UR PI well in advance of the agency deadline to allow for review and negotiation. If the subagreement involves human or animal work, appropriate subrecipient approvals should be included in the proposal if required. Many sponsors have now initiated Just In Time processes whereby regulatory approvals are only sought upon a favorable proposal score or upon agency request.

A budget is also submitted which includes appropriate salaries, fringe benefits, supplies, travel, equipment, and other direct costs as well as appropriate F&A costs that are needed to perform the discrete aspect of research that the subrecipient has been called upon to perform. It is also the responsibility of the UR PI to evaluate the proposed budget for cost and price reasonableness against the proposed statement of work. The subcontracting institution’s designated business representative who is authorized to commit the institution’s resources should sign the subagreement proposal. This signature can be provided in several formats, including a signed copy of the agency cover page, a signed budget page, a letter of commitment, an email or an electronic submission.

Just as it is the responsibility of the PI to discuss and negotiate the scope of work and assess the budget, it is also the PI's responsibility to assure that there is no conflict of interest in subcontracting to a third party. (See the HR policy on conflict of interest http://www.rochester.edu/working/hr/policies/pdfpolicies/113.pdf, the Faculty Policy on Conflict of Interest and Commitment http://www.rochester.edu/ORPA/policies/coipolicy.pdf and the University's Code of Conduct http://www.rochester.edu/working/codeofconduct/).

B. Building the Subagreement Proposal into the UR Proposal

At the time of University sign-off (preferably earlier), ORPA reviews the subagreement portion of the University proposal to ensure that the applicable items discussed above have been incorporated. The subcontractor's budget should be reviewed by ORPA and costs must be determined to be appropriate and reasonable. If submitted under a federal program, subrecipient F&A should be budgeted in accordance with the "fixed for the life of the award" principle. It may be necessary to clarify costs or other items with the subcontractor business official. The first step, of course, is to discuss questions concerning a subagreement with the UR PI or representative.

In summary, the following documents may be requested for submission to the sponsor in the UR proposal on behalf of the subrecipient:

1) cover page, authorized signature or intent letter (see note below – NIH no longer requires this)[1]
2) statement of work, (may be incorporated into the proposal)
3) approved detailed budget, not required to submit to NIH for a modular proposal, but ORPA requires a budget for review
4) resources page, biosketch, checklist, other support pages (if required)

C. Special Requirements for Proposals for Federal Procurement Contracts

Subcontract proposals submitted in response to a federal procurement services request (e.g., a contract) will have additional requirements at the proposal stage. The UR RA should ensure that the proposal is accompanied by a completed Contract Pricing Proposal Cover Sheet (Standard Form 1411). This form should be submitted to the sponsor along with the prime recipient's complete proposal; it may also be required at the "best and final" offer stage when a revised budget and/or scope of work have been negotiated with the sponsor. The SF 1411 is found at Appendix A or at http://www.usaid.gov/procurement_bus_opp/procurement/forms/1411. The UR PI and Research Administrator should review the Request for Proposal (RFP) or Request

[1] NIH, for instance states, "The signature of the authorized organizational official on the Face Page signifies that the applicant and all proposed consortium participants understand and agree to the following statement: The appropriate programmatic and administrative personnel of each organization involved in this grant application are aware of the NIH consortium agreement policy and are prepared to establish the necessary inter-organizational agreement(s) consistent with that policy. **A separate statement is no longer required."**

for Quote (RFQ) carefully to identify additional requirements, such as completed Representations and Certifications, or a Small Business Subcontracting Plan (i.e., Subcontracting Report for Individual Contracts) if the proposed recipient's costs exceed $500,000. With some RFP's the Small Business Subcontracting Plan may only be required at the time of "best and final offer". The UR also should review the subcontractor's budget to be sure it includes all additional required information, such as the basis for proposing labor costs, fringe benefits, equipment, and materials. For proposals resulting in federal contracts, the UR should obtain and submit appropriate F&A and fringe benefit negotiation agreements for proposed subrecipients to the sponsor at the time of proposal.

IMPORTANT:

It is critical to communicate to participating UR investigators that additional time may be required to assemble and review proposals involving subcontractors in response to an RFP or RFQ, and all subcontractors' materials should be obtained well before the deadline.

D. University of Rochester's Budget

Subcontractor costs are included in the UR budget as a direct cost to the UR. When estimating UR F&A costs, exclude that portion of each subagreement contained in the proposal that exceeds $25,000, as required by OMB Circular A-21. Normally F&A costs should only be applied to the first $25,000 of each subagreement issued under any government-sponsored prime award regardless of the number of budget periods involved during performance. Subcontracts budgeted on awards that assess UR F&A on a Total Direct Cost (TDC) basis (e.g. industry or foundation awards) are subject to UR F&A on the full amount of the subaward, not just on the first 25K. Any waiver of the UR F&A costs on the subagreement cost requires the approval of the appropriate Dean's office.

UR will assess indirects on the first $25,000 of each subcontract on all new grants, including competing renewal grants. Each new project period will generate a new account and subaward PO number and once again, the assessment of the UR indirects on the first $25,000 of each subcontract. For projects that require a new account and a new PO number on an annual basis, the UR will not assess indirects on the first $25,000 each year because the accounts are all part of the same project period.

E. Other Preaward Considerations

As noted below, there may be other special preaward considerations to ensure that the expectations of all parties are clear and that there will be no surprises at award stage. Some of these considerations are:

- If the subrecipient is a DOE federal lab, a foreign site or a small business, have all parties agreed that an advance payment may be necessary in order to initiate the subrecipient's work, and has the department or school/college agreed to provide this advance?
- If the proposal is in response to a NSF GOALI application, has the ORPA RA included and negotiated an Intellectual Property Agreement with the small business subrecipient?

- If the subagreement will be with a commercial entity that does not allow for inspection of records or itemization of costs does the proposal allow for the costs of an assist audit?
- If the subagreement will be with a foreign developing country, does the proposal allow for the costs of an assist audit?
- For commercial subrecipients, any fixed fee or claimed Facilities Capital Cost of Money (FCCOM) must be included in the budget proposal. The sponsor's requirements will specify whether fixed fee is an allowable cost. NIH, for instance, does not allow profit or fee to commercial organizations, except under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Programs (STTR).
- If the subrecipient proposes mandatory cost sharing or matching as a component of the budget under an assistance award, the ORPA Research Administrators should take special precautions to ascertain whether an authorized official of the subrecipient approved the mandatory cost sharing or matching and that these costs are allowable under the prime sponsor's requirements. The ORPA RA is encouraged to use the Pre-Award 3rd Party Cost Sharing Form for this purpose that is attached in Appendix B.

III. SUBCONTRACTING: AWARD STAGE

A. Request for Letter of Intent

It is possible that the prime award document to the UR is delayed; the subrecipient will seek some assurance that a subaward will be forthcoming. ORPA RA's should be very careful in offering any such assurance to a subrecipient. While it is acceptable to indicate the start date and estimated budget for the subrecipient, a written letter of intent should clearly indicate that preaward spending is at the risk of the collaborating site.

B. Time of Award Considerations

When UR receives notice of an award, if applicable, the ORPA RA needs to ascertain whether the sponsor approved the subrecipient agreement and, if so, whether any changes were made. Some sponsors will require the prime recipient to obtain the sponsor's formal written approval before it transfers a significant portion of the work to another organization, as this may be an indication of a change in the scope of work. If the sponsor already has approved the subrecipient in the normal course of proposal review and acceptance, no additional approval is required in most instances. (This is not true in the case of subcontracts from procurement awards).

When it appears likely that an award will be funded, some federal and non-federal sponsors require recipients to submit additional documentation. This documentation could include revised or detailed budgets, current and pending support statements for the investigators, and required assurances and certifications. For example, additional assurances may include necessary approvals for human subjects or animal research. The UR department or unit is responsible for ensuring that these assurances have been obtained and forwarded to the ORPA RA from the subrecipient. Similarly, if a subrecipient has transferred substantive work to a lower-tier organization, the subrecipient is responsible for obtaining assurances from that lower

tier. In addition, other UR Compliance Offices (such as RSRB or UCAR) may be required to review the protocol and provide approval or a secondary review.

Of particular note is the Public Health Service's (PHS) education requirements regarding protections in human research. Prior to the award of funds for competing applications or contract proposals, investigators must provide a description of the education completed in the protection of human subjects for each individual identified as "key personnel." The UR department or unit must obtain this description, which is certified by an authorized official, from any subrecipient conducting human subjects research on UR's behalf.

C. Request to Issue a Subcontract

When the UR receives its prime award from the sponsoring agency, it is necessary to establish a subagreement with the subcontracting institution. While it is ORPA's responsibility to prepare the subagreement documents, ORPA needs to receive verification and approval from the PI to release the subagreement. ORPA also requires verification that the PI has evaluated the subrecipient's cost proposal. This is done via a Request to Issue a Subcontract form, ORPA Form No. 122 (see Appendix C or http://www.rochester.edu/ORPA/Forms/reqsub.pdf). The information contained in that request is important for ORPA's determination and for audit purposes. ORPA will not issue a subagreement without a completed request. This request must be completed for the first year ONLY. When the non-competing yearly award is issued from the prime sponsor, the ORPA Support Staff will contact the department to obtain a budget and updated statements of work (if necessary) for the ongoing and continuing subrecipient agreements. However, if ORPA forgets to do so, it is the department's responsibility to ensure that their subagreements are updated to reflect ongoing activities and provide ORPA with a request to amend the subagreement to include additional time and/or funds.

D. Assessing Subrecipient Qualification

To assure that the UR is subcontracting to an organization qualified to receive Federal funds, ORPA will request that all small, unknown businesses, clinics and organizations receiving a subcontract over $25,000 complete a Pre-Qualifying Questionnaire prior to issuing the subcontract. Typically, these are done with these types of organizations who have never been a UR subrecipient before. This questionnaire (Appendix D) addresses the capabilities of the subrecipient's internal control systems.

The ORPA RA is responsible for assuring that the questionnaire is completed. Any concerns regarding the responses to the questionnaire (individually or in the aggregate) should be brought to the attention of the Director of the Office of Research Accounting and Costing Standards (ORACS) and Office of University Audit. These offices will advise regarding how the risk associated with the responses might be mitigated (including proposed risk mitigation actions for either the potential subrecipient, the UR, or both entities). These offices may communicate directly with the potential subrecipient and/or the associated UR department (with the prime award) during the advisement process. Depending on the nature of any proposed risk-mitigation actions and the deemed amount of residual risk, the ORPA RA, the Director of ORACS and the associated UR

department will need to apply professional judgment in deciding whether or not to issue the subcontract.

The pre-qualifying review is not required for subrecipients funded from non-federal clinical trials where payment is made on a per patient basis.

E. Subaward Cost Review and Negotiation

Under Assistance Funding:

An additional cost analysis is NOT required for subcontracts under assistance funding. As the FDP Statement on Subawards says, "The level of documentation concerning the issuance of subawards should be consistent with good management practices." If the subcontract has been reviewed and approved in the normal course of institutional review, peer review, and agency review, additional documentation on sole source selection and cost reasonableness is NOT required.

ORPA will request verification of the subrecipient's F&A rate for the **initial year** of the subagreement in the following ways:

- For institutions not covered by OMB Circular A-133, ORPA will request certification of the rate and fringe benefits and will forward to ORACS.

- Like the UR, subrecipients under federal awards are subject to the A-21 requirement that F&A is fixed for the life of the award. Normally, the F&A rate of the subrecipient should not change during the project period, unless a varying rate per year was predetermined at the time of award issuance. Subrecipients may always request less than their federally approved rate. Provided that subrecipients certify charges on its invoice, and provided that ORACS can recalculate the F&A rate used in preparation of invoices to the rate submitted on the budget, no further verification will be required.

Under Contract Funding:

There is a different standard for cost review for subcontracts issued from federal contract awards [2]. It is important to remember that a subcontract relationship and associated agreement resulting from federal procurement contracts are subject to both the procurement standards of OMB Circular A-110 and the Federal Acquisition Regulations (FAR) (and its supplements when applicable). As such, these subcontractors are subject to the standards of "open and free competition" and sole source justification and documentation. This requirement is documented by the PI on the Request to Issue A Subcontract Form.

[2] Refer to FAR Parts 44.201-1 and 44.201-2 for the consent criteria for subcontracts and to FAR Parts 15.805-2 and 15.805-3 for the criteria used in price and cost analysis.

IMPORTANT:

Even if the approved technical and cost proposal identifies the subrecipient, do not take it for granted that the agency will not require additional action in order to issue the subcontract

The FAR clause governing subcontracting (52.244-2) does not automatically eliminate the requirement for federal sponsor consent of subcontracts listed in the UR's budget. This FAR citation (listed in the General Contract Clauses section of the contract) should state clearly any advance understandings with respect to subcontract approval requirements. These understandings generally are noted in the main section of the contract (sometimes referred to as the Schedule). RA's should ensure that the contract clearly indicates that approval has been obtained for all subcontracts identified in the cost proposal. This clarifying provision in the contract could read as follows:

Sample Provision

> *Approval for subcontracting or transfer of substantive program performance under this Contract is required for subcontracts that have not been itemized in the approved budget.*

In accordance with both OMB Circular A-110 and the FAR, a formal cost and price analysis MUST be completed for each procurement subcontract award prior to issuance. Often, the federal agency will conduct a pre-award audit that will entail review of each subrecipient. The RA may use this documentation during the cost and price analysis. The internal Subagreement Information Sheet (Appendix E) is utilized by the RA to document the degree of cost evaluation performed. Regardless of the level of the subcontract, the cost and price analysis must be documented and placed in the subcontract file.

If the subcontract is less than $100,000 and we have had successful prior experience with the subcontractor, the RA performs a desk review and the Information Sheet/Cost Analysis is documented accordingly. If the subcontract value is over $100,000, the subcontractor may be required to provide detailed pricing support data to ORPA where costs are not adequately defined or justified. Cost verification should include, at a minimum, copies of all applicable rates, verification of salary, and verification of equipment cost for large equipment items. Note that some commercial organizations are unwilling to provide copies of rate agreements to non-government agencies. For those commercial entities that are government contractors, certification on their approved budget is sufficient.

Finally, the subcontractor is required to submit a Certificate of Current Cost or Pricing Data (provided in Appendix F or can be found at http://www4.od.nih.gov/ocm/contracts/rfps/nih1397.htm) to the UR if the subcontract exceeds $100,000, or for DOD and NASA, if the subcontract exceeds $500,000.

If the subcontract is expected to exceed certain dollar thresholds, then other requirements also apply. If the subcontractor's expenditures are expected to exceed $500,000, the Small

Business Subcontracting Plan will need to be finalized, and if necessary, accepted by the federal agency sponsor prior to award. Similarly, if the subcontract is expected to exceed $10 Million, the subcontractor will need to submit documentation in order to receive clearance from the sponsor's contracting officer that the proposed subcontract is in compliance with Equal Employment Opportunity (EEO) requirements[3].

F. Preparing the Subcontract Terms and Conditions

The subrecipient agreement serves many purposes:

(1) It serves as the legal, binding document that states the rights and responsibilities of both parties.

(2) It protects the interest of the sponsor and the prime recipient and "flows-down" all necessary requirements, certifications, and assurances required by the sponsor.

(3) It demonstrates to the sponsor that the prime recipient (UR) has acted on its behalf and is demonstrating proper stewardship.

This Section discusses some of the problematic primary provisions found in a subrecipient agreement; however, these provisions are not exclusive, and ORPA RA's should check sponsor requirements carefully to ensure that the agreement contains all necessary provisions. Standard templates can be found on the ORPA H: drive as noted above.

Statement of Work

One of the most critical components of the subrecipient agreement is the description of the work that the UR expects and requires from the subrecipient. An inadequately prepared statement of work may lead to dispute or disagreement between the UR and the collaborating entity. The statement of work should be accurate and concise as to what, when, and if appropriate, how, the UR expects the subrecipient to accomplish the tasks. Because of the importance of this contract provision, it generally is not advisable to simply reference the approved proposal or budget justification, unless the subrecipient's responsibilities are clearly delineated and the research aims have not been changed or reduced during the sponsor's review process.

Period of Performance

For obvious reasons, the subrecipient period of performance can never be longer than that accorded to the UR. Periods of performance are normally awarded on a 12 month budget period cycle, however, the RA in collaboration with the department, may award a longer budget period (e.g., for NSF grants that are fully funded for 3 years, or other incremental funding not awarded on an annual basis.)

[3] Requirements for pre-award clearances for contracts and subcontracts of $10,000,000 or more are found at FAR 22.805.

Budget

The RA is responsible for ensuring that the approved budget is included in the agreement. This budget should be as detailed as required by the sponsor's requirements. Not unlike the statement of work, the subrecipient's budget should be clear and unambiguous. If the sponsor reduced the amount requested by the UR for the subrecipient during its review process, all parties must agree to a revised budget.

Most subrecipient awards will be cost reimbursable, meaning that the subrecipient's costs will be reimbursed against actual expenditures up to a predetermined ceiling amount.

The other predominant type of agreement is fixed price. Fixed price agreements specify a fixed price for project performance or completion of certain project milestones. If this type of agreement is used, the subrecipient is paid in accordance with the fixed price amount, regardless of actual costs. Sometimes the fixed price may be adjusted during the project period if funds are available and the sponsor allows for adjustment.

It is very important that the payment clauses support the attached budget, or the agreement terms may be ambiguous.

Submission of Invoices and Payment

This clause in the subrecipient agreement must contain the following information:

- the intervals at which the subrecipient should submit invoices (the UR's default is quarterly, we will accept monthly);
- the format for the invoices (the UR's standard format is attached as Appendix G, if subrecipient is required to report mandatory cost-sharing, the invoice format in Appendix H should be used, if subrecipient is a foreign entity, the invoice format in Appendix I should be used. A sample of an invoice does not apply, nor does it need to be included, when using the FDP subagreement template);
- the frequency of payment noted on the invoice (the UR's standard business practice is net 30 days from the date of the subrecipient's invoice), however, if research/subrecipient requires earlier reimbursement, RA will notify ORACS. ORACS will then notify Accounts Payable. If the term is less than 30 days (should not be less than 15 days), it must be noted in the subaward terms & conditions;
- any additional or special requirements for the final invoice (UR's standard requirement is 45 days after completion).

Mandatory Cost Sharing

It is possible that the subrecipient is providing mandatory cost sharing of some portion of the project's expenses. This is done primarily under federal assistance awards; however, cost sharing may be present in lower-tier awards under private foundation funding as well. In these situations, it is important to identify the cost-shared amount in the subrecipient's budget. The subrecipient's cost share should be identified in its invoices to UR. The following provision should be added to the terms and conditions and should identify whether the cost-shared amount will require any additional documentation in order to verify the shared expenses. Note that if the subrecipient is providing voluntary cost sharing, no additional provision or accounting is

required as it is the subrecipient's obligation to track such cost sharing if necessary.

Sample Provision: Cost Sharing

Invoices shall display and total actual costs for reimbursement by major budget category. In addition to reimbursable costs, the Subrecepient's actual costs incurred to meet the cost share commitment made to the prime sponsor shall be labeled as cost sharing and displayed and totaled by major budget category on each invoice during the period the costs are incurred. Final invoices will not be paid until mandatory cost-sharing is certified.

Advance Payments

Payments to subrecipients normally are made only after service is rendered and costs associated with performance are reviewed and approved. Advance payments to a subrecipient are not the norm. Advance payments may be made under unusual circumstances. These circumstances may include subcontracting with a small or foreign entity that does not have a cash reserve in order to initiate the proposed work or work done under a sponsor that allows for cash advances to both the prime and lower-tier recipients. If advances are to be made, the requirement and method of reimbursement must be written into the terms of the subrecipient agreement (a sample provision is provided below). If the sponsor does not provide for advance payment to the subrecipient, it is the UR department that must "up front" the funding for the advance by providing an unrestricted departmental/college account number. Advance payments will be issued by ORACS only after the fully executed purchase order has been returned to ORPA. Advance funding requests will be handled on a case by case basis and require communication between the UR PI, ORPA and ORACS early in the application process.

Sample Provision: Advance Funding

Subrecipient agrees to immediately invoice UR for an initial advance payment equal to <one quarter of the total annual budgeted cost>. For year one of this subagreement, this advance payment will be $___. Subrecipient will be required to invoice UR for actual expenses up to the amount of the initial advance payment before any additional payment for actual expenses can be made. If there are any advanced funds remaining at the end of the budget period, Subrecipient must notify UR of the amount and request that it be carried forward into the next budget period. If there are any unobligated advanced funds left at the end of the project period, subrecipient will issue a check for that amount to UR.

Records and Audit

The subrecipient agreement should require that the subrecipient maintain acceptable financial systems and accurate records to identify the expenditure of project funds. Subrecipient accounting practices should be consistent with the expectations of the sponsor. This provision should allow for access to relevant records by the UR and/or the sponsor, depending upon the specifications of the award.

Intellectual Property: Patents, Inventions, and Copyright

Intellectual property rights must be granted in accordance with U.S. patent and copyright law and additional sponsor requirements. The subrecipient usually maintains ownership rights to the intellectual property it develops by itself and grants to the UR royalty-free, non-exclusive rights to subrecipient intellectual property in order to meet the UR's obligations under the agreement. This is a requirement of Bayh-Dole under federal funding.

Indemnification

Institutional or state policy of our collaborating institutions may dictate what type of indemnification provision may be included in a subrecipient agreement. Typically, the subrecipient agreement will state that each party will be responsible for its negligent acts or omissions or that each party will indemnify the other party for negligent acts or omissions. If the sponsor provides a certain level of indemnification to UR, ORPA RA's should ensure that the same level of indemnification is provided to our subrecipient.

G. Assembling the Subaward Documents

When NOT using the FDP template, the subagreement terms and conditions are appended to a UR G-Purchase Order (G-PO). The G-PO states the "variables" of the subagreement, namely the project period and the dollar amount. The G-PO also references all attachments. Generally this includes a budget, scope of work and the terms and conditions. The G-PO is also the document that the subcontractor will sign to show acceptance of the subcontract agreement. A copy of a G-PO (non-FDP) subaward agreement template is included in Appendix J (for awards that allow for automatic carryover from year to year) and Appendix K (for awards that do not allow for carryover).

In summary, the G-PO should be completed by the ORPA Research Administrator and include the following information:

1) The dollar amount and time period of the subagreement;
2) Any attachments to the purchase order;
3) Approval and acknowledgement to be completed by the subrecipient.

H. Subaward Approval

The subagreement should be reviewed or discussed with the UR PI to ensure that programmatic considerations (including timing and submission of technical reports by the subrecipient) are adequately addressed and that the PI is aware of his/her responsibilities. This is especially important for new faculty. The procedure for approval and mailing follows:

1) The RA should ascertain whether prime sponsor approval or notification is required prior to issuing the subagreement. Under Federal contracts the request for prior approval to the prime sponsor should contain the information required by FAR 52.244-2. It may be advantageous to send an advance "draft" copy simultaneously to the subrecipient, provided the subrecipient is notified that further changes may be negotiated with the prime sponsor.

2) In cases where the prime award is a contract requiring the ORPA Director's signature, the responsible RA will give the Director the G-PO along with its attachments, including the completed Subagreement Information Sheet, for signature. If the package is acceptable, the Director will sign the G-PO. For all other types of prime awards, the responsible RA at a Research Administrator II level can provide signature. The Director can designate signatory authority for subcontracts funded from contracts to Senior Research Administrator staff.

3) ORPA mails two originals of the G-PO or FDP agreement and one copy of the subagreement attachments (terms, budget, and statement of work) to the subcontractor under a cover letter. A complete copy of these documents is made for the ORPA subagreement file and a copy of the cover letter and G-PO or FDP face page is sent to ORACS and department administrator via e-mail. Provided that the terms and conditions are acceptable to the subcontractor, we request that the G-PO or FDP agreement be signed by the subcontractor business official and then returned to ORPA. The subcontractor is instructed to keep one original copy of the G-PO or FDP agreement; the other original must be returned in order for payment to be made. The subcontractor is also required to return any necessary certifications or other information.

4) When ORPA receives the fully executed copy of the G-PO or FDP agreement from the subcontractor, copies of the G-PO or FDP agreement, including the Subrecipient's F&A rate agreement and/or any other backup documentation, will be distributed to PI, department administrator and ORACS. In addition, the PI and department administrator will be made aware of their responsibilities in a letter attached to the copy of the G-PO or FDP agreements (Appendix L).

5) On a monthly basis, support staff shall query the subcontract database for unreturned outstanding POs. A report will be provided to ORPA RAs for follow-up.

IV. SUBRECIPIENT AGREEMENTS UNDER FEDERAL ASSISTANCE GRANTS – THE FDP MODEL AGREEMENT

By utilizing the FDP model subaward, UR assures that the appropriate federal flow-down requirements are incorporated into the agreement as well as agency-specific provisions, representation, certifications, and assurances. This includes all the requirements of OMB Circular A-110, A-21 and A-133.

The FDP subaward agreement template should be used when issuing subagreements to U.S. entities that are covered by A-110 (non-foreign universities, hospitals and not-for-profits) under Federal grants awarded by NIH, NSF, DOE, AFOSR, AMRMC, ARO, EPA, NASA, ONR, and USDA. The sponsoring agency will usually identify on their Notice of Award if the grant is issued under FDP terms. Because AHRQ and HRSA are not agencies that participate in the FDP project, the FDP template cannot be used for subawards issued under their grants.

The FDP subaward agreement template is comprised of a cover page, which replaces the G-PO, and four (4) standard attachments. A copy of an FDP subaward agreement template is included in Appendix M (for awards that allow for automatic carryover) and Appendix N (for awards that do not allow for automatic carryover).

- The cover page will identify the Prime Awardee, which will be the UR and the Subawardee or subrecipient. It will also identify the Prime Award Grant number, the Prime Awarding Agency (NIH, NSF, etc.) and the CFDA number. It will also list the G-PO number, the UR account number as well as include a box to mark if the UR account and the G-PO numbers will change annually. The Subaward Period of Performance will list both the Budget Period and the Project Period. Also included, will be boxes for "Amount funded this action," "Cumulative total," and "Total anticipated funding." Standard Reporting Requirements box will always be checked making reference to Attachment 4.
- The cover page also identifies the general terms and conditions that govern the subaward: payment mechanism, reporting requirements, indemnification, termination, and prior approvals. For the most part, there should be no need to make any changes to these general terms. If changes are necessary, Item # 10 on the cover page will be bolded and changes will be added to Attachment 2 and/or 4.
- Attachment 1 identifies the certifications the Subrecipient, by signing the subaward agreement, agrees to comply with: Certification Regarding Lobbying, Debarment and Compliance with OMB Circular A-133. No changes to this attachment should ever be required.
- Attachment 2 identifies Agency Specific Certifications, General Terms & Conditions and Special Terms and Conditions regarding copyright and data rights. There are Attachment 2 templates for NIH, NSF, ONR, USDA, DOE, NASA, EPA, ARO, AMRMC, and AFOSR. The ORPA RA will make any appropriate changes to the General Terms & Conditions if the Prime Award contains special requirements or additional terms and conditions, for example, restrictions on automatic carry forward.
- Attachment 3 contains the contact information. If possible, Attachment 3 should be requested from the Subrecipient at the time of proposal.
- Attachment 4 identifies non-fiscal Reporting Requirements. The ORPA RA will select the appropriate requirement that applies to the Subrecipient.
- Attachment 5 will contain the Statement of Work and Budget.

Amendments to the subagreement will be processed using the FDP Subaward Amendment template. If the prime grant allows for automatic carryforward, the template in Appendix O will be used. If carryforward is not automatic, the amendment template found in Appendix P will be used. The FDP Subaward Amendment template is fairly similar to the G-PO Subagreement Modification (formerly known as Change Order). See Section VI.F for processing G-PO modifications.

V. SUBRECIPIENT AGREEMENTS UNDER FEDERAL CONTRACTS

The Contract Schedule or primary sections of the UR's prime contract define funding increments, the statement of work, contact information, payment, special approval requirements, delivery, and so on. The general provisions incorporate the various and numerous FAR clauses that are applicable to the statement of work and contractor (UR), as well as the agency-specific Federal Acquisition Regulations (FARs). It is the responsibility of the ORPA RA's to review the contract carefully and to flow down only those clauses to the subrecipient that are appropriate. It is not appropriate to merely append the prime recipient's contract to the subcontract document.

General Provisions

Several steps are required to determine what general provisions to flow down to the subcontractor.

- Recognize that the nature of the subcontractor's organization, the type of contract (e.g., fixed price, cost reimbursable, etc.) and purpose of the contract (e.g., research and development, services, etc.). These conditions will determine which FAR clauses to incorporate into the subcontract. It is not appropriate to incorporate clauses intended for a cost reimbursable contract into a fixed fee subcontract. Similarly, it is not appropriate for a clause intended for an R&D subcontract to be included in a services subcontract.
- Review the list of clauses and determine which ones are applicable *only* to the UR and not to the subcontractor. For instance, the various payment clauses found in the FAR are not appropriate to flow down to the subcontractor, as the subcontract will govern payment between the parties. FAR Subpart 52.3 (the Provision and Clause Matrix) is a useful tool to help determine which contract clauses are required in the subcontract agreement as well as in the prime award.
- If the UR is subcontracting to an entity other than another nonprofit educational research institution, ascertain whether federal contracting officer approval is required to substitute the clause found in the prime contract. For instance, federal contracting officer approval is required to flow down 52.227-14, Alternate IV (Rights in Data — General) to commercial organizations, if the commercial subcontractor desires this clause.

For those clauses that are appropriate to flow down, but where UR wishes to exercise the same right as the government, some differentiation must be made to recognize that UR is retaining these rights. For example, UR normally would wish to retain inspection rights, along with the government. UR also may wish to specifically note which provisions are *not* applicable the subcontractor, such as noted below:

Sample Provision: Inapplicable Provisions

> *Any reference to a "Disputes" clause in any of the clauses listed below shall be deemed to refer to the "Disputes" clause contained in the prime Sponsor's award. In no event shall such reference to a "Disputes" clause be construed to allow the Subrecipient, without concurrence or approval of the UR, to prosecute and appeal either directly or in the name of the UR to the Contracting Officer for such prime award.*

UR is not required to incorporate the full text of any cited FAR clause but RA's should be prepared to produce the full text to the subcontractor or if it has access to the internet, the FAR web site at http://www.arnet.gov/far/.

The UR has developed a template for subs under federal contract funds, which can be found on the ORPA h: drive. However, RA's should take care to properly flow-down FAR clauses to subcontractors under prime contracts. For instance, if the subagreement is anticipated to be larger than $500,000 and will be awarded under a Federal prime contract, the subrecipient should also submit a final Small Business/Small Disadvantaged Business Subcontracting Plan to the University. It is ORPA's responsibility to review and approve this final plan prior to issuing the subagreement. This plan will be appended to the subagreement terms and conditions.

VI. SPECIAL CONSIDERATIONS FOR SUBRECIPIENTS

A. Special Considerations for Commercial Organizations

The terms and conditions governing issuance of subrecipient agreements either under grants or contracts to commercial organizations will differ from the terms and conditions offered to nonprofit entities. Again, it is important that the UR RA's ensure that the sponsor has approved the collaboration, as there may be sponsors that are prohibited by their own requirements from funding for-profit entities.

Other considerations for commercial subrecipients include the following:

- **Administrative requirements**. Even though OMB Circular A-110 is not applicable to commercial organizations, for-profit organizations generally are subject to the same administrative requirements as nonprofit organizations under federal grants. Some federal agencies, such as DOE, have issued specific administrative provisions applicable under assistance awards. When subcontracting with commercial organizations; care should be given to identify administrative requirements correctly. For instance, program income requirements are applicable to commercial concerns; however, the federal agency may require the deductive alternative (as opposed to the additive alternative) for commercial subrecipients.
- **Cost Principles**. The cost principles for commercial organizations are set forth in FAR 31.2.
- **Audit.** Because OMB Circular A-133 is not applicable to commercial organizations, the agreement should specify the type of audit that will be required if subcontracting from federal funds. NIH, for instance, has required that if the commercial organization expended a total of $500,000 or more during its fiscal year and at least one of those awards was a DHHS grant, the commercial organization must conduct a non-federal audit. This audit may either be a financial-related audit or and an audit that meets the requirements of A-133.
- **Inspection and audit clauses.** Some (usually large) commercial concerns are reluctant to accept inspection or audit clauses enabling the prime recipient to audit its internal records. In these cases, it often is necessary to negotiate the named party that will have

the right to audit project related records, such as the commercial organization's cognizant audit agency, on behalf of the prime recipient.

Sample Provision

All costs incurred in the performance of the research effort shall be subject to audit by the cognizant Federal audit agency. The Subrecipient agrees to allow the auditors access to records necessary to support the reported costs. Records shall be retained for a period of four years beginning on the day the Subrecipient submits its final expenditure report to the UR as specified in 45 CFR 74, Subpart D (see www.access.gpo.gov/nara/cfr/waisidx_00/45cfr74_00.html).

The Subrecipient agrees to comply with the requirements of 45 CFR 74.16(d). As a for-profit organization, Subrecipient is required to have a non-Federal audit if, during its fiscal year, it expended a total of $500,000 or more under one or more HHS awards (either as a direct grantee or as a consortium participant) and at least one of those awards is an HHS grant. 45 CFR 74.16(d) incorporates the thresholds and deadlines of OMB Circular A-133 but provides for-profit organizations two options regarding the type of audit that will satisfy the audit requirements. For-profit organizations expending less than $500,000 a year are not required to have an annual audit for that year, but must make their grant-related records available for inspection by representatives of the UR or the government during normal business hours.

Subrecipient either may have (1) a financial-related audit as defined in, and in accordance with the Government Auditing Standards, commonly known as the "Yellow Book", available on-line at http://www.gao.gov/govaud/ybk01.htm of all the HHS awards, or (2) an audit that meets the requirements of OMB Circular A-133 available electronically at http://www.whitehouse.gov/omb/circulars/a133/a133.html.

The Subrecipient further agrees to provide the UR with copies of any of the independent auditors' reports that present instances of non-compliance with federal laws and regulations that bear directly on the performance or administration of this Agreement. In cases of such non-compliance, the Subrecipient shall provide copies of responses to auditors' reports and a plan for corrective action.
All records and reports prepared in accordance with the requirements of 45 CFR 74.16(d) shall be available for inspection by representatives of the UR or the government during normal business hours.

- **Profits and fees.** While sponsors generally allow F&A (or, as relevant, G&A) costs under subawards to commercial collaborators, not all federal agencies allow profit or fee to a for-profit organization. As noted above, NIH will not allow for profit or fee, except under SBIR/STTR grants. Some federal agencies will limit the amount of profit or fee that will be allowed. Commercial organizations generally may request Facilities Capital Cost of Money (FCCOM) with supporting documentation to the federal sponsor.
- **Intellectual property.** For commercial organizations that are subrecipients of federal

grant funds, 37 CFR Part 401, *Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements,* governs intellectual property. Under federal procurement contracts, FAR 52.227-12 (Patent Rights — Retention by the Contractor (Long Form)) should be utilized.

As difficult as it may be to identify the intellectual property government rights and reporting requirements that apply to commercial organizations, negotiating an intellectual property agreement between the prime recipient and the commercial subrecipient may be an even greater hurdle. Some federal programs, such as the NSF Grant Opportunities for Academic Liaison with Industry (GOALI) Program, require that the proposing institutions and the commercial firm agree to intellectual property terms at the time of proposal submission. If an intellectual property agreement is not required at proposal submission, it is still a good idea to discuss intellectual property concerns in the event that the proposal is funded. This discussion will help avoid unrealistic expectations on either side. It is not uncommon to negotiate an option to license the UR's intellectual property derived during the course of the project to the commercial subrecipient. The negotiation of terms may be time consuming, and ORPA RA's should plan ahead for the time that will be required to negotiate these agreements, whether required at time of proposal submission or at the time of award.

- **Indemnification.** Even under federal awards where no indemnification is provided by the sponsoring agency, UR will include an indemnification provision in the subrecipient agreement. Often, the results or intellectual property derived during the course of the project will be utilized by the for-profit subrecipient in commercial endeavors, and UR should obtain appropriate indemnification.

B. Special Considerations for Small Businesses or agencies

The following guidelines apply when subcontracting with a small business (under 500 employees):

1) A small business does not need to obtain an audited F&A cost rate until it has reached $3,000,000 in federal government sales;
2) The small business must submit its F&A cost rate with its cost proposal. If a small business does not know how to estimate a rate, they can be referred to **Section II of OMB Circular No. A-21**, entitled "Simplified Method for Small Institutions" or they can be provided with the worksheets found in Appendix Q.
3) It is the University's responsibility to obtain certification of the F&A cost rate.

Other considerations when subcontracting to a small business include:

- ORPA RA's may wish to verify that a small business is capable of receiving federal funding by utilizing the Subrecipient Pre-Qualifying Questionnaire, Appendix D.
- When the small business is a university start-up, or when a faculty investigator has a significant financial interest in the small business, conflict of interest may result.

Subcontracting to small businesses in these situations will require a conflict-of-interest review and management plan prior to entering into a contractual relationship.

- A small business normally needs to be reimbursed faster than the usual "net 30" terms. This situation would result when the small business subrecipient employs additional staff or resources solely as the result of the collaboration. Any deviation from the standard "net 30 terms" will be identified in the terms & conditions of the subagreement and will be communicated by email to ORACS who will notify Accounts Payable.

C. Special Considerations for Foreign Institutions

Foreign institutions, primarily developing countries, present the most complex issues in subcontracting. One of the challenges when dealing with foreign subrecipients is ensuring the presence of the appropriate clauses in the subrecipient agreement and that the foreign site is informed and fully understands its obligations. Especially under federal awards, there are a multitude of clauses that do not apply to foreign sites, but for those that do, the UR *must* flow them down. As shown in Appendix R, some federal agencies provide good guidance in this area. The *NIH Grants Policy Statement* provides detailed information of public policy requirements and objectives and identifies which requirements are not applicable to international organizations. For instance, as can be noted in Appendix R, research misconduct, such as the misconduct in science requirement, is applicable to foreign sites, but the Civil Rights Act is not.

(Appendix S to be added. ORPA to work on a pre-qualifying questionnaire at proposal time.)

There may be terms that are common knowledge to institutional collaborators from the United States and surrounding countries, such as "carryforward" and "no cost extension." These terms may mean nothing to the foreign site. The UR RA, UR PI and departmental administrator should be prepared to educate the foreign collaborator on the specific requirements and to offer to send additional documentation in the case of federal awards, such as grant policy statements or the full text of regulations or requirements.

Many of these issues will need to be handled on a case-by-case basis; however, a general framework for addressing some of these issues in international subcontracting follows:

During Proposal Stage:

Suggestion of possibly requiring completion of special pre-qualifying questionnaire that discusses the availability of administrative support, IRB and UCAR oversight, organizational structure, and interpreters. Are there complex hiring practices and regulations, what infrastructure exists, what is the financial situation of the country, are American banks in the area?

- **Not all sponsors will support international subrecipients.** The prime recipient must ensure that the sponsor has approved the foreign subrecipient. If foreign subrecipients are approved, most federal sponsors will not provide any F&A costs to international sites. NIH does allow foreign institutions to assess an eight percent indirect cost rate on total direct costs less equipment, but other sponsor regulations should be consulted.

- **Is the budget clear, concise, and comprehensive**:
  - There needs to be a level of review by the ORPA RA or other outside experts. Labor laws and payment issues must be explored. Is there a mechanism in place whereby payments can be made for the services provided (i.e. bank, hospital, university) with responsible oversight?
  - Has UR previously issued a subcontract to this developing country to ensure that all items that will be necessary have been requested?
  - For items that would generally not be allowable (such as administrative support or access to personnel to monitor the funds), these costs may be reasonable to request for a developing country subrecipient that has little infrastructure support.
  - Does UR budget include funds for auditor and compliance oversight? The need to budget for an external audit would depend on several factors:
    - the size of the subcontract, e.g., $500,000 or more;
    - the scope of work, e.g., a clinical trial is more likely a candidate for audit
    - the country where the foreign work is to take place, e.g., is it a "restricted" country with which the US can do business with;
    - the sophistication of the subrecipient organization, e.g., has it ever had a US subcontract; can they provide financial statements, preferably audited; have they ever done human subject research.

    It is strongly recommended that the UR PI contact their ORPA RA at the initial stage of the application when a foreign site is involved so these questions can be worked out. Depending on the size of the subproject and the country, it may cost up to $10,000 or more for an external audit to be conducted.

During Award Stage:

- **With respect to public policy requirements, it will be more difficult to ensure that the foreign subrecipient is in compliance with all necessary requirements.** For instance, foreign subrecipients must submit an Assurance of Compliance (single project assurance) if human subjects are involved. The UR retains the responsibility to ensure that this assurance is completed and submitted. RSRB also must conduct an internal IRB review at the prime recipient's (or lower-tier, if applicable) site. Foreign subrecipients also are required to provide certification that the organization is not delinquent on debt owed to the United States.
- **For NIH awards, State Department approval must be obtained for any non-**US site that is proposed as a participant in an NIH-funded study. This may take 2 months. While the approval process is being completed, what does the site do? May it begin to hire people and ramp up?
- **The PHS requirement for education of key personnel involved in human subjects research is an example of another requirement that has been problematic.** The UR maintains the responsibility to ensure that the foreign site's educational program is adequate. Some prime recipients have conducted educational programs for their foreign subrecipients in order to ensure the adequacy of the educational program. As the NIH website is not bi-lingual, it has been suggested by NIH to look to other Institutions that

may have developed multi-language training programs to guide the foreign subrecipients to. PI must be aware that he/she is responsible for keeping track of this certification for personnel at the sub-site and the yearly IRB approval.

- **Foreign sites typically require advance payment in order to conduct the project.** This may be problematic for the UR if the sponsor will not provide advance payment. See section III.F for additional information on advance payment.
- **Fluctuations in currency exchange rates could cause budgetary issues**. The budget should be prepared showing both the proposed costs in the country's currency value and the converted US dollar value, noting the conversion rate that was used. All payments to the foreign site will be in U.S. dollars. The subcontract will identify a not to exceed amount in US dollars. Similarly, invoices or financial reports should utilize the currency rate in existence at the time the expense is incurred, not the currency rate used during the proposal stage (see below). This may cause problems if the value of the dollar is fluctuating or unstable, which may result in insufficient funds for the foreign subrecipient to conduct the project. Sponsor will rarely provide additional funds to pay for deficits due to fluctuations in currency rates from the time of proposal to the time the study is actually conducted. The UR PI should have a contingency plan in case this happens. If the foreign site will be made to bear additional costs that might be incurred due to these fluctuations, they should be made aware of this at the time of application. The sample provision below will be included in the terms & conditions of a foreign subcontract:

Sample Provision

Submission of Invoices. *UR will reimburse Subrecipient in U.S. dollars not more often than quarterly upon submission of invoices to UR in care of the UR PI at the "ship to" address noted on the purchase order. Such invoices shall be in duplicate (a certified original and one copy) and shall reference UR's purchase order number. Invoices should reflect summary detail by major budget category of the costs incurred, be submitted in comparable format to the example appended to these terms and conditions, and reflect current U.S. dollar exchange rates. Current U.S. dollar exchange rates will be calculated as follows: 1) for ongoing expenses during the period of the invoice (e.g., salary charges), an average of the daily conversion rate in effect during the period of invoice must be used. The following website can be used to enter the period of invoice and arrive at the average rate during that period: http://www.oanda.com/convert/fxhistory; 2) for one-time transactions (e.g. purchase of equipment) the specific conversion rate on the date of the transaction (i.e., the rate on the day of payment) must be applied. The conversion to U.S. dollars must be clearly identified on the invoice. Invoices must include the following certification signed by a financial officer of the organization: "I certify that this request represents actual costs incurred during the invoice period and these costs are appropriate and in accordance with the agreement set forth in the award document." Final invoices marked "Final" shall be submitted to Subrecipient PI within forty-five (45) days of the termination date of this Agreement.*

Exceptionally, monthly invoicing could be allowed to accommodate foreign subrecipients who have limited on-hand cash supplies. A note requesting a shorter invoicing period should be added to the request to issue a subcontract.

- **Foreign sites may be required to submit additional documentation to verify invoices, and these requirements should be spelled out in the subaward.** The type of documentation that will be required to verify how the funds were spent will be determined with in put from ORACS. ORACS will also assist in determining if invoices should be requested on a monthly basis for closer administrative oversight as well as what back up documentation should be provided for the invoice expenditures.
- **Accounting practices in a particular foreign country may vary from accepted accounting practices in the United States.** The subrecipient agreement should be very specific with respect to accounting requirements, including identification of expenditures, reporting, and documentation required with invoices. Cost sharing expenditures by a foreign site can be especially problematic, and the agreement should itemize how cost sharing will be verified. In addition, the agreement should specify the prime recipient's and UR's right to audit, and the methods used in the event of audit.
- **How will language barrier issues be resolved for both programmatic and administrative oversight**? Are translators available and have they been budgeted for?

During Post-Award:

- **Subrecipient Monitoring**: The UR PI will need to maintain a high level of oversight for programmatic, administrative and regulatory issues (e.g., human subjects, animal, and biohazard monitoring). It is the UR's responsibility to clarify and verify that the terms and conditions as well as regulatory requirements and assurances are being followed.
- **Fiscal Monitoring:** UR PI will need to develop a plan for monitoring **w**hat practices will be put in place to make sure the indirect funds are being used (as well as the direct costs) appropriately, such as hiring or paying for IBR and animal oversight, as well as for someone to verify the other assurances are in place.
- **Audit**: has a person been budgeted to conduct audits at the site?

D. Special Considerations for Pharmaceuticals Clinical Trials

At the UR Medical Center, there are a growing number of subagreements related to multi-center pharmaceutical studies for which the UR is the prime contractor. Because the payment terms must be more flexible due to the scope of work inherent in clinical trails (e.g., payment is per enrolled subject/patient), the following guidelines are appropriate:

a) G-PO's accompanying clinical trial subagreements may be issued for the full length of the anticipated project period;

b) G-PO's may be issued without a ceiling amount, however, it is preferable to indicate a "not-to-exceed" amount. The PI will be responsible for determining a subrecipient's enrolled patients; summary patient enrollment forms or other verifiable methods will be developed by the PI and subrecipient and approved by ORPA and ORACS. For further accounting control purposes, it may be necessary to assign a separate ledger 5 account number for subagreements associated with clinical trials.

If there is not a "not-to-exceed" amount indicated on the G-PO, the following clause should be noted in the terms and conditions: "Authorization by UR to release funding is contingent upon payment from the prime sponsor for Subrecipient costs. UR will not be liable for payment to Subrecipient for amount exceeding reimbursement and/or budget approval by the prime sponsor."

VII. SUBCONTRACTING: POST-AWARD CONSIDERATIONS

A. Establishing an Account

When an account is established for the prime award, subagreement funds are to be recorded in subcode 2968 on the Notice of Award (NOA). There are no exceptions to this policy as the University must be able to document, for purpose of audit, the amount of subagreement funds exempt from F&A cost recovery. Subcode 2969 is exempt from F&A cost recovery. ORACS staff has the responsibility of allocating the "first $25,000" from each subagreement to subcode 2968 to enable the University to recover F&A costs on that portion of a subagreement. ORACS's fiscal oversight of subcontracts is discussed below.

B. Assignment of G-PO Numbers

The issuance of G-PO numbers will mirror the issuance of UR account numbers. Normally, the same ledger 5-account number is assigned to a G-PO throughout the project period of the subagreement and the same G-PO number is retained for the project period. For NIH project or training grants or American Cancer Society grants, where it may be necessary for UR to request the sponsor for approval to carry-forward funds each year, a different account number must be issued each year. In these cases, a G-PO Subagreement Modification or FDP amendment will be issued to reflect the change in account number, purchase order number and other attachments such as a new budget or a new scope of work. The G-PO Subagreement Modification or FDP Amendment will make reference to the old G-Purchase Order number and UR account number, and state that: "All other terms and conditions of the original subcontract remain unchanged, and in full force and effect." It is also acceptable to include an additional set of terms and conditions for the benefit of the subrecipient. Subagreement amendments are further discussed below.

C. Other Post-Award Considerations

ORPA will request verification of the subrecipient's F&A rate for the **initial year** of the subagreement in the following ways:

- For institutions not covered by OMB Circular A-133, ORPA will request verification of the rate and fringe benefits and will forward to ORACS. Any further clarification or documentation that may be required will be the responsibility of ORACS to pursue.

- Like the UR, subrecipients under federal awards are subject to the A-21 requirement that F&A is fixed for the life of the award. Normally, the F&A rate of the subrecipient should not change during the project period, unless a varying rate per year was predetermined at the time of award issuance. Subrecipients may always request less than their federally approved

rate. Provided that subrecipients certify charges on its invoice, and provided that ORACS can recalculate the F&A rate used in preparation of invoices to the rate submitted on the budget, no further verification will be required.

D. Monitoring Requirements under Federal Awards

Under federal grants, the monitoring requirements of OMB Circular A-110 (§__.51) and those of OMB Circular A-133 (§__.400(d)(3)) apply. It is recommended that prime recipients stratify subrecipient awards according to the relative risk or lack of program performance to establish a "risk-based" model for conduct of monitoring. In summary, these techniques include:

- **Use of audits performed under OMB Circular A-133.** The A-133 audit is an effective tool to determine whether federal funds are being spent properly. For subrecipients who received awards from federal and federal pass thru dollars, ORACS will verify their A-133 audit reports by sending a letter requesting verification of an A-133 audit. A sample of such letter is included in Appendix T. If any material findings are found in the verification process, ORACS will decide if further monitoring techniques will be needed.
- **Other types of audits.** For those subrecipient organizations that are not subject to the A-133 audit, other types of audits (as agreed to in the subaward provisions) may be effective tools for monitoring. This could include limited scope audits by the prime institution's own internal audit staff.
- **Preaward techniques.** Preaward reviews, and tools, such as the Subrecipient Qualifying Questionnaire, also are effective techniques, particularly when augmented by selective post-award follow-up.
- **Financial reports.** Content and timeliness of on-going expenditure reports or invoices is a good indicator of the subrecipient's grant management system.
- **Performance reporting.** Performance reporting also provides an on-going tool for monitoring, as these reports should provide information on any deviation or delay in the agreed upon scope of work.
- **Documentation of routine contact.** Ongoing correspondence between the prime recipient's and subrecipient's investigators, sponsored programs offices, and financial offices is another tool used in monitoring.
- **Site Visits**. Site visits also may be used as a tool for monitoring, primarily as a means of verifying information obtained by the other techniques and predominantly, by Principal Investigators when conducting collaborative visits with subrecipients. However, site visits are suggested as a monitoring tool in the Compliance Supplement, and prime recipients may use them as last resort in problematic cases.

E. Technical Monitoring

As prime grantee, the UR bears the ultimate responsibility for the conduct and completion of a project. Annual progress reports should be requested by the UR PI and discussed with the

subcontractor as needed. The progress report should include, if applicable, updated Other Support pages, proof of current IRB or IACUC approval, and a detailed budget for the upcoming year. It is the responsibility of the UR PI to ensure the relevant performance of the Subrecipient, under federal and non-federal awards. The UR has the responsibility to notify the sponsor if any lack of performance on behalf of the subrecipient will have a significant (unanticipated) impact on the scope of the funding. The subagreement progress report is usually incorporated in the overall progress report submitted by the UR to the sponsor. ORPA may be responsible for collecting other reports from the subcontractor, as required by the terms and conditions. For instance, interim invention reports may be required under Federal prime awards, and small business subcontracting reports are required for subagreements exceeding $500,000 under Federal contracts.

F. Fiscal Monitoring

The UR PI and the designated CLASP-certified administrator should approve subcontractor invoices and submit them to ORACS. The UR PI's review indicates that the invoice is in line with the technical performance of the subrecipient. Invoices are reviewed for accuracy and for compliance with the terms of the subaward. The process for fiscal monitoring is detailed below:

UR Department:

1. The invoice is reviewed to determine that the requested payment falls within the subaward dates.
2. If the dates do not fall within the subaward period or if the total amount invoiced exceeds the total amount on the subcontract, the invoice cannot be processed. The department should contact the subawardee to seek clarification. If a Modification/Amendment or a new subagreement is needed, ORPA should then be contacted. The invoice will be held until proper paperwork is in place.
3. If the invoice meets the criteria of conditions #1 and #2, the current monthly activity is then verified for correctness and all prior and cumulative amounts must match.
4. The invoice is reviewed to determine if the expenses are in accordance with the terms and format prescribed in the subaward documents. If there are any unusual charges or changes appearing on the invoice, the department will contact the subawardee for clarification. Any irregularities that are not satisfactorily resolved will be discussed with the PI.
5. The invoice must be signed and dated by the Principal Investigator (PI) or a designated CLASP-certified administrator. The signature indicates that the invoice has been reviewed and that the payment requested is appropriate in accordance with the agreements set forth in the proposal and award documents.
6. If a subrecipient has not submitted an invoice six (6) months into a budget period the department will contact the subrecipient and request an update. The timely submission of subreceipient invoices can be a problem in closing out accounts and submitting financial status reports to sponsors, and is an area that requires monitoring.
7. Original invoices are forwarded to ORACS (ORACS does not accept faxed or emailed invoices).

ORACS:

1. Once the invoice is reviewed and approved by the UR department, ORACS reviews the following items:

- Agreement reference numbers or purchase order numbers are not missing.
- The time period of the expenditures is specified. The dates need to be within the period of the PO.
- The principal investigator or the designated CLASP-certified administrator has approved the invoice in writing.
- The invoice (current and/or cumulative costs) adds up correctly.
- The invoice is sequential (either number or time period), this could indicate invoices are missing.
- The cumulative total expenses do not exceed the authorized amount.
- In a cost reimbursable situation, the invoice is not against "budget" (i.e., dividing the budget by the number of budget months and invoicing against that amount) but is actual costs.
- The invoice is an original, not a copy.
- An original signature and certification by an authorized financial officer from the subrecipient is on the invoice.
- The final invoice is marked final. Note that an invoice marked "final" is required at the end of the project period not the budget year. If the grant gets a new account number each year and consequently, the subcontract gets a new PO number each year, the last invoice at the end of the budget year is not the final. For clarification purposes, the invoice at the end of a budget year could be marked "final for this budget year".
- The F&A calculation is verified.
- Check for cost sharing commitments if mandatory.

2. An internal summary sheet is used to record the current and cumulative amounts that have been invoiced and paid against each PO/subagreement. The cumulative amount invoiced is matched against the total amount awarded on the subcontract.

3. The internal summary sheet and the invoice are reviewed to determine whether the current payment will be subject to UR F&A charges and assure that the proper ledger subcode is assigned. Subcode 2968 is used for the first $25,000 of expense on each new project period. Subcode 2969 is for payments that are above $25,000 (if applicable). Subcode 2967 may be used in special circumstances.

4. Once the invoice is accepted for payment, it is stamped with the approval stamp. The ORACS reviewer will put his or her initials and the date on the line indicated. If a copy of the invoice is to be returned to the payee, this must also be indicated.

5. A copy of the invoice is made for ORACS' file. The original invoice is sent to Accounts Payable for processing.

6. Final invoices will not be processed until all terms of the subaward have been completed.

7. Findings from post-award audit will be acted on in compliance with Circular A-133.

8. Active subawards are maintained in a separate area within ORACS. Once the subaward has been terminated and all activity completed, the subaward records are transferred to the appropriate account file.

While some of these are seemingly insignificant issues, errors or omissions will delay payment and are troublesome for both the UR and subrecipient. In some cost reimbursable cases, reimbursement for the subcontract from the sponsor will occur only after the prime recipient invoices for those expenses. Therefore, incomplete or incorrect subrecipient invoices create issues for all parties.

G. Mandatory Cost Sharing

Mandatory cost sharing by the subrecipient may require additional documentation in order to verify the cost-shared expenditures, as stipulated by the terms of the subrecipient agreement and sponsor requirements. In all cases, a statement that certifies the value of the cost-shared services to the project should be made and signed by a person with knowledge of the project and in a position to verify official financial information for the subrecipient. Institutions that are not institutions of higher education may not readily understand the requirement and expectations of documenting cost sharing. The UR has developed a certification that can aid subrecipients in documenting and certifying to cost shared expenses. The 3rd Party Post-Award Cost Sharing Form can be found at http://www.rochester.edu/ORPA/Forms/151form.pdf or at Appendix U. As noted in Section III.F, voluntary cost sharing does not require any additional documentation, and tracking is the responsibility of the subrecipient.

H. Subagreement G-PO Modifications and FDP Amendments

It may be necessary during the course of a subagreement to change one or several terms or conditions of award. Some changes, such as a change in the statement of work, rebudgeting, substitution of the subrecipient's project director, or no-cost extensions may require sponsor approval before a subagreement modification may be issued. The subrecipient's authorized official submits the request for the change to the UR's principal investigator and ORPA. If required, ORPA and UR PI will obtain approval from the sponsor. This request typically will be in writing, and it may append the request from the subrecipient. . Only after approval is the amendment or modification to the agreement issued. It is ORPA's responsibility to determine whether approval for the modification is required under the terms of the sponsor's award. Any request from the subrecipient to ORPA should be sent to the UR PI for approval if he/she has not approved it already.

ORPA is also responsible for including applicable revisions to sponsor requirements in any subagreement amendments. In the case of federal sponsors, requirements may vary with annual appropriation bills.

As yearly awards are issued by the sponsor, the ORPA Support Staff will send a standard email to the department contact inquiring about the subrecipient's performance and request a detailed budget for the new year. This will provide an opportunity for the PI's to reflect on the work

performed by the subrecipient and report any issues they might have experienced. It will also allow ORPA to issue yearly G-PO Modifications or FDP Amendments in a timely fashion.

Note however that when a no-cost extension is approved on the UR prime grant, this will not trigger an automatic extension of the subcontract. It will be the PI or the designated department administrator's responsibility, to notify ORPA that an amendment needs to be issued to extend the subcontract as well.

Preparing a G-PO Modification or a FDP Amendment. Normally, the terms and conditions for a subagreement remain fixed for the duration of the project period. Changes to the subagreement such as time extensions, additional funds or the like are implemented by issuing a Subagreement Modification to the G-PO or an Amendment to the FDP agreement. The G-PO Modification will reference, if applicable, changes to the project period, the dollar amount, the G-PO and UR account numbers; examples of G-PO Modifications are attached as Appendix V (with carryover) and W (w/o carryover) and FDP Amendments can be found at Appendix O and P. Any other changes to the original subagreement (such as the budget and/or scope of work) or the original terms & conditions will also be noted on the Modification/Amendment. If no changes to the terms & conditions, the Modification/Amendment should indicate that: "All other terms and conditions of the original subagreement remain unchanged and in full force and effect." Note that Modifications or Amendments authorizing an increase in budget must have a revised budget attached, unless the budget is on a per patient basis and this rate has not changed. If any of the original terms have changed, these should be referenced and appended to the Modification or Amendment. The appendices attached to the Modification or Amendment should refer back to the original G-PO subagreement or FDP subaward; a second year budget would therefore be labeled Attachment B-1 or Amendment 1. Similarly, the first amendment to the workscope would be Attachment A-1 and again Amendment 1 if FDP subaward. The procedure for mailing and obtaining approvals is identical to that of the original purchase order. The Modification or Amendment is the vehicle that states the changes to the initial subagreement and provides signature approvals for both parties.

Final Year Modification/Amendment. When issuing the G-PO Modification or the FDP Amendment for the final year of the subaward, ORPA will check the "Final Year" box at the bottom of the Modification or Amendment and attach the Closeout Certification Form found in Appendix X (see Section VIII for Closeout process). If applicable, the ORPA RA will mark what closeout forms and/or certifications are needed from the Subrecipient.

I. Early Termination

Early termination of a subrecipient agreement may occur for a number of reasons, all of which may be problematic. Among the reasons for early termination are

(1) failure of the subrecipient to perform;

(2) relocation or illness of the subrecipient's principal investigator; or

(3) termination by the project's sponsor.

The subrecipient agreement must authorize early termination and specify the conditions. With regard to failure to perform, the UR's principal investigator and/or ORPA should have been documenting lack of progress by the subrecipient and recorded communications with and efforts

to correct the situation. Even with ample documentation and clearly defined terms, this decision should be made carefully. Other solutions should be considered as well, such as requesting the sponsor to extend the project to allow for sufficient progress.

If the sponsor terminates the project, the UR has the responsibility to represent the subrecipient's interests towards a fair and orderly closeout and settlement. The subagreement provisions should allow for payment of all non-cancelable costs, if applicable, prior to the date of termination, if this is consistent with the prime award. In early termination, the sponsor usually still requires the submission of all reports. Therefore, closeout procedures will be very similar, if not identical, to the procedures followed if the project continued to the projected termination date.

VIII. CLOSE-OUT PROCEDURES FOR SUBAGREEMENTS (does not include clinical trials)

Before a final invoice can be paid, the UR PI must certify that all technical reports and /or deliverables have been received and that the Subrecipient has fulfilled its obligations. Depending on who the prime sponsor is, the Subrecipient might also have to provide additional documentation.

What is a final invoice?

A final invoice is required at the end of the grant/contract project period, not at the end of a budget year. Even if the grant or contract and consequently, the subaward, requires a new account/PO number each year, a final invoice is processed only at the end of the project period (whether it be a two year grant or a five year grant).

- A final invoice indicates that all work done by the Subrecipient is complete and all deliverables, whether it be a final report, case report forms, analyzed data, publication, reagents or any other item, have been received by the UR PI.
- Depending on the terms & conditions contained in the subaward, the Subrecipient has a certain number of days to submit a final invoice (usually, we require 45 days from the end of the subcontract project period). This will usually require the Subrecipient to proceed with a financial close out of their internal account.

Once the PI/department receives a final invoice, the following steps must be followed:

1) The PI or designated department administrator will review the last Modification/Amendment issued to the Subrecipient. As noted in section VII.I. above, the ORPA RA will have attached a Closeout Certification Form to that final amendment. The Closeout Certification Form will identify if any forms or certifications are needed from the Subrecipient. If any additional forms are needed, they will be attached to the Certification Form.
2) If any items in the Subrecipient section of the Closeout Certification Form are checked, and the Subrecipient does not submit the required forms with the final invoice, the department will send the Certification Form and any other attached

form (s) to the Subrecipient for completion. The Subrecipient will be instructed to return all forms to the department. When the department receives the forms, the PI will sign the UR PI section of the Closeout Certification Form and certify that he or she has received all deliverables and approves the payment of the final invoice.

3) If no item is checked in the Subrecipient section, the UR PI can proceed with his or her certification.
4) The completed Closeout Certification Form and any other applicable forms must be attached to the final invoice and sent to ORACS for processing. The department will also send a copy of all forms to ORPA. ORACS will review the "Final Year" Modification/Amendment to ensure that all required forms have been submitted and proceed with the payment of the invoice. The ORPA RA will review the file, within 2 weeks of receiving the forms to ascertain that nothing else is required and will contact the PI or designated department administrator and ORACS, only if additional information is needed from the Subrecipient.

If a final invoice is received by ORACS without the Closeout Certification Form, they will return the invoice to the department with a copy of the form (that was attached to the "final year" Modification/Amendment) for completion.

TABLE OF CONTENTS - APPENDICES