

# SUBCONTRACTING POLICY

## *Lehigh University*

This document describes Lehigh University's policy and procedures on subcontracting. The term "subcontracting" as used here describes those situations when substantive work, that is project activities that are a primary part of a research program supported by a grant, contract, or cooperative agreement, are to be conducted by another institution. The activities involved must constitute a significant portion of the sponsored research program and require the leadership and direction of a responsible investigator located at the worksite of the cooperating institution. Usually on research projects, a subcontract is for collaboration with colleague(s) at another institution.

These procedures DO NOT apply to (1) vendor-type relationships, *i.e.*, routine purchase of equipment, supplies, and services via a Purchase Order; (2) employment of outside consultants; and (3) purchase of certain items, such as periodicals, conference fees, freight charges not included in a purchase order, travel, and postage, that can be paid through Accounts Payable (a more complete listing of this type of charge is included in the Purchasing Manual.)

### **Subcontracting Process**

#### a. Need for a Subcontract

The Principal Investigator (PI) is responsible for determining the need for subcontracting.

#### b. Conflict of Interest

It is also the PI's responsibility to assure that there is no conflict of interest in subcontracting to a third party. Subcontracts should not be authorized to third parties where the PI has ownership or substantial equity, and where he/she will receive individual gain from such an arrangement. If this is the PI's desire and these conditions exist, any subcontracts should be brought to the attention of the Director or the Office of Research and Sponsored Programs (ORSP). These situations should then be discussed with the responsible Chair or Dean.

#### c. Obtaining Sponsor Approval for a Subcontract

Sponsor approval is required in virtually all cases for subcontracting. Optimally, the request should be included in the project proposal, where it can be approved along with the project.

The proposal should include a scope of work for the subcontract, the criteria for selection of the proposed subcontractor, and a justification for the use of the subcontractor. Include a letter or other document indicating the organization's willingness to participate signed by an official authorized to commit the organization. The estimated amount of the subcontract should be included in the proposal budget as a lump-sum amount including both the subcontractor direct and indirect costs as a direct cost item under "other" expenses. A separate breakdown of the subcontractor's costs, documented to the same degree as the prime budget, should be appended. All required assurances and certificates should also be included. Proposals submitted under a

Federal prime contract must include a Standard Form 1411 along with the cost proposal.

For those cases where a subcontract is not requested at the proposal stage, prior written approval of the agency may be required before a subcontract can be issued. If agency approval is required, all of the information normally required at the proposal stage should be submitted to the agency in a letter requesting approval for subcontracting.

The ORSP will prepare a Subcontract Information Checklist (see Attachment 1) to verify that all required documentation and materials are available to obtain sponsor approval. This will include an analysis of the subcontractor's budget for appropriateness of cost, i.e., performing a cost and/or price analysis as necessary. Price analysis is the comparison of quotations submitted with market prices and similar indices. Cost analysis (the usual one with research projects) is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability. The PI will also review the budget for appropriateness in the context of the work to be performed.

d. When the PI Cannot Identify a Subcontractor: Issuing an RFP

If work must be subcontracted and the PI cannot identify a subcontractor, a Request for Proposal (RFP) should be prepared, in conjunction with the Purchasing Office and the ORSP, and sent to organizations that are technically qualified to do the work.

RFPs will be based on a clear and accurate description of the overall technical requirements and should not contain features that unduly restrict competition.

The PI, in conjunction with the ORSP and Purchasing, will review the qualifications of each prospective offeror before a proposal is submitted or subcontract awarded. Consideration must be given to such matters as contractor's integrity, record of past performance, financial and technical resources, and avoidance of conflict of interest. Subcontracts normally will be selected based upon lowest responsible price and factors stated in the RFP, such as technical merit, location, caliber of staff, etc.

e. Other Policy Issues

Federal contracts contain requirements that limit subcontracting to U.S. companies. If a foreign subcontractor is to be used, then a waiver of the "Buy American Act" provisions must be requested.

**It is the University's policy to subcontract with small, minority-owned, and woman-owned business firms to the maximum extent possible.**

**The Subcontract: Terms and Conditions**

When Lehigh University receives an award containing provisions for a subcontract, the ORSP will prepare the necessary subcontracting agreement. However, the ORSP needs verification that the PI has evaluated and approved the subcontractor's budget, and approval from the PI to release the

agreement. This is done via a Request to Issue a Subcontract form, available from the ORSP (see Attachment 2). This form provides background information needed by the ORSP to document the Subcontracting process. **The ORSP will not release a subcontract without a completed request.**

The prime grant, contract, or cooperative agreement is the controlling document in determining the terms and conditions that must be included in the subcontract. A standard subcontract includes institutional clauses, agency specific and general clauses, and any required certifications.

The type of prime agreement normally determines the type of subcontract used. The most common are:

1. Cost Reimbursement - an agreement to perform tasks over a stated period of time, up to an established dollar amount. It is used where the work cannot be clearly specified or defined, and always with the understanding that reimbursement is predicated on the allowability of costs incurred. This type of agreement is useful for basic research, but requires careful monitoring of the progress of the work.
2. Fixed Price - an agreement to perform certain tasks for a predetermined, fixed amount of money. It is used where the work to be done can be clearly specified and the elements of the price can be reasonably verified. It is not, however, usually the best type of agreement for basic research projects.

The ORSP will negotiate the subcontract agreement with the subcontractor.

### **Subcontract Administration: Monitoring and Compliance**

Federal policy states that Lehigh University has full responsibility for its subcontractor's performance, both programmatic and administrative. Adequate administration must be maintained during the period of performance to ensure conformance with (1) technical terms, conditions, and specifications, (2) cost performance and payment provisions, and (3) audit requirements.

Subcontract agreements specify that invoices from the subcontractor be sent to the ORSP. On receipt, the invoices are reviewed for adherence to the subcontract agreement and budget, and an Accounts Payable form is prepared and signed. These documents are forwarded to the PI for review and approval for adherence to technical/programmatic requirements. If all programmatic requirements have been met, the PI signs the form and forwards the materials to Accounts Payable for processing and payment.

Nonprofit organizations are required to comply with the audit requirements of OMB circular A-133 or A-128, as appropriate. A clause is included in subcontract agreements with such organizations directing them to provide Lehigh with copies of any of the independent auditors' reports. The ORSP compiles an annual listing of all accounts with expenditures in subcontract subcodes (8000 series) and requests audit reports from appropriate subcontractors. The audit reports are reviewed by the Internal Audit Office and any exceptions are noted and reviewed with the subcontractor. If findings of noncompliance are identified as a result of an audit, subcontractors are required to provide copies of responses to auditors' reports and a plan for corrective action. Payment of the final invoice may be

withheld until all audit requirements have been met.

## Closeout

The subcontract agreement describes final administrative requirements for completing the work. These include delivery of final reports, both performance and financial, report of inventions and intellectual property, property report, reports of royalties, program income, etc., and a final audit report.

A Subcontract Closeout Checklist (see Attachment 3) must be completed for each subcontract. This provides verification and certification that all required performance requirements have been met (PI's signature) and that all required reports have been received and accepted (ORSP signature).

## Responsibilities

The following chart summarizes the responsibilities of the various parties involved in subcontracting.

|     |  |                     |
|-----|--|---------------------|
| 1.  | Determining the need for subcontract   | PI                  |
| 2.  | Suggesting sources of potential subcontractors                                 | PI                  |
| 3.  | Determining any conflict of interest   | PI                  |
| 4.  | If PI cannot identify a Subcontractor:   |                     |
| a.  | Submitting Request for Proposal to appropriate subcontractors                  | ORSP/PI/Purchasing  |
| b.  | Reviewing quotations received in response to RFP                               |                     |
| (1) | Technical  | PI                  |
| (2) | Cost   | ORSP/Purchasing     |
| (3) | Selection of subcontractor   | ORSP/Purchasing/PI  |
| 5.  | Obtaining sponsor approval to subcontract                                      | ORSP                |
| 6.  | Preparing subcontract agreement  | ORSP                |
| 7.  | Negotiating agreement with subcontractor                                       | ORSP                |
| 8.  | Approving invoices & forwarding to Accounts Payable                            | ORSP/PI             |
| 9.  | Requesting audits  | ORSP/Controller     |
| 10. | Closeout—review and acceptance of:   |                     |
| a.  | Technical reports  | PI                  |
| b.  | Inventions & property reports, royalties, etc.                                 | ORSP                |
| c.  | Final audit of costs incurred  | ORSP/Internal Audit |
| 11. | Maintaining complete file of all papers and transactions concerning the award. | ORSP/Controller     |