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FDP Subcontract Sample vs. Subaward Template

The *FDP Subaward templates* were designed to expedite review among FDP member institutions under *federal assistance awards* (i.e., grants and cooperative agreements) supporting a public purpose. The Subaward templates pass down the provisions of 2 CFR 200 [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Award](#) (UG) and federal agency-specific regulations and policies for grants and cooperative agreements. The Subaward templates *should not be changed* beyond the editable parameters of the forms, and it is expected that FDP members use the Subaward templates with other FDP member institutions; they may also be used by non-member institutions (refer to the [FDP Subaward Template Frequently Asked Questions](#) document for further guidance.

On the other hand, the *FDP Subcontract sample* is designed for use when the prime award is a *federal contract*, which is a procurement action for the benefit of the government. The Subcontract sample provides boilerplate language that may be revised according to each institution's policies, the applicable Federal Acquisition Regulation (FAR) clauses included in the prime contract, the organization type of the subcontractor, and any project-specific requirements. The Subcontract sample is designed as a tool to help guide an institution's development of a customized template. Because of the flexibility of the Subcontract sample, it may be modified for use with non-federal awards as well.

Federal Contracts vs. Assistance Awards

Federal contracts are used by the Government for the procurement of goods or services by a federal agency for the direct benefit of the federal agency. All federal contracts are administered under the [Federal Acquisition Regulations \(FAR\)](#) and agency supplemental regulations (i.e., DFARS, HHSAR, etc.). Federal contracts are binding agreements between the federal agency and contractor to provide goods or services in return for compensation. Generally speaking, the federal government will solicit proposals or bids via Broad Agency Announcements (BAAs), Requests for Quotations (RFQs), Requests for Proposals (RFPs) etc.. Contracts are generally inflexible; the federal agency is seeking specific work and will be heavily involved in determining the project scope, cost, time frame, etc.

On the other hand, federal assistance awards are awarded by a federal agency for a public purpose - such as education, health care, research, economic development, and other programs - via the award mechanism of a grant or cooperative agreement. All federal assistance listings will be associated with a five-digit Catalog of Federal Domestic Assistance

(CFDA) number, which provides descriptions of the purpose/uses, criteria for applying, eligibility, compliance requirements, and other information. Federal assistance awards are administered under [2 CFR 200](#), i.e., Uniform Guidance, or “UG.” Also, with grants (and with cooperative agreements, to some extent), the recipient of funds defines the scope of work.

The Federal Grant and Cooperative Agreement Act of 1977 established the distinctions between these types of federal awards.

FAR and 2 CFR 200 - How they work together

While FAR and UG 2 CFR 200 generally do not overlap, for educational institutions there are specific sections of UG that still apply under FAR contracts. [2 CFR 200.101\(b\)\(2\)](#) states that if a non-federal entity receives a cost reimbursable contract, the following sections of UG still apply:

- *Subpart D § 200.330 - 200.332 (in addition to any FAR related requirements for subaward monitoring),*
- *Subpart E (§ 200.400 - 200.475) - Cost Principles and*
- *Subpart F (§ 200.500 - 200.521) - Audit Requirements*

The FAR also recognizes that specific areas of the UG apply when contracts are awarded to educational institutions. Under Federal Register notice [FR-2016-07-14](#), section 45852 (see page 474 of pdf) and in FAR 31.3, the FAR recognizes that UG cost principles (Subpart E) apply under contracts with educational institutions.

As part of the UG Cost Principles, other parts of the UG are also incorporated by reference. For example, [2 CFR 200.414\(d\)](#) explicitly states that PTE’s are subject to the requirements of §200.331.

Federal Contracting Officers are not typically familiar with the UG, so it may be necessary to provide an explanation as to why certain aspects of the UG will be applicable to a federal contract for educational institutions.

Structure of a Federal Contract

Federal Contracts and/or Solicitations can be issued on several “templates” depending upon the specifics of the award. The most commonly used form is the Uniform Contract Format (“UCF”). This provides a very structured format for the solicitation or contract. The following are the Sections included in the UCF:

Part I - The Schedule

Section A - Solicitation/Contract Form. This section includes administrative information such as issuing agency, contact information, payment information, and due dates for proposal submission, among other items.

Section B - Supplies or Services. This is where the Contract Line Items (CLINs) are found. Each CLIN can be either priced or informational, and may also include priced or informational subCLINs. This is where the Government specifies on a line item basis what it is buying under the contract.

Section C - Description/Specifications. This is where the applicable Statement of Work (SOW), Performance Work Statement (PWS) or Statement of Objectives (SOO) can be found.

Section D - Packaging, Preservation and Marking Requirements. This is where the Government will instruct the contractor on how to provide the deliverables to the Government.

Section E - Inspection and Acceptance. This is where the Government indicates who is responsible for conducting inspection of the deliverables and at what point title passes to the Government, depending upon the stated “FOB” location.

Section F - Deliveries or Performance. This section specifies where and how each CLIN or subCLIN is to be delivered.

Section G - Contract Administration Data. This section provides the relevant administrative information for each award such as the accounting information/lines of accounting, invoicing instructions, and contact information for some of the administrative personnel. The personnel generally will include the Contracting Officer, Contract Specialist, Contracting Officer’s Representative and Program Manager.

Section H - Special Contract Requirements. This section may be one of the most significant sections in a UCF contract. This section will include, among other information, Government Furnished Property (GFP)/Government Furnished Information (GFI), security information, Organizational Conflict of Interest (OCI) requirements, data rights requirements, and Key Personnel requirements.

Part II Contract Clauses

Section I - Contract Clauses. This section is where the Government identifies which Federal Acquisition Regulation (FAR) clauses, and agency supplement (e.g. DFARS, DEARS, etc.) clauses are included. The “by reference clauses” are usually identified by number only and are listed first. The “full text” clauses are listed next and include the actual full text of the clause found in the FAR and the supplemental regulations.

Part III Documents, Exhibits and Other Attachments

Section J - List of Attachments. This is where the Government will identify what attachments or exhibits are included in the contract

Part IV Representations and Instructions

Section K - Representations and Certifications. If the Government is requiring that Representations and Certifications be included, this is where they will be found.

Section L - Instructions to Offerors. This is where the Government will tell the offeror what specifically to include in their proposals such as technical volumes, pricing volumes, etc.

Section M - Evaluation Factors. This is where the Government will explain the methodology that it will use to evaluate a proposal.

User Guide: Section Guidance

Face Page		
Description of Section	Guidance for Use	Background
<p>Subaward vs. Subcontract</p> <p>Pass-through entity (PTE) vs. Contractor</p> <p>Subrecipient vs. Subcontractor</p>	<p>Choose either “Subcontract” or “Subaward”</p> <p>“Subaward”, “PTE” and “Subrecipient” are all terms consistent with 2 CFR 200 and are used in the FDP subaward template.</p> <p>“Subcontract”, “Contractor” and “Subcontractor” are terms more consistent with FAR.</p> <p>Your institution should decide which terms are preferred and use it consistently throughout the agreement.</p>	<p>“Subcontract” is a term defined in FAR 52.244-2. The term as defined in the FAR is much more broad than a research subaward.</p> <p>“Subaward” is a term defined in 2 CFR 200.92.</p> <p>When working under a federal contract, using either term can be problematic without further context. Under the FAR, the term “subcontract” applies to any third party of the Contractor/PTE who is providing work/services or supplies. Contractors/PTEs may elect to use the term “subaward” to indicate that the subcontractor/subrecipient is performing a substantive part of the programmatic work, or to indicate the work is scoped as research. However, it should be understood by both parties that “subaward”, “subrecipient”, and “pass-through entity” are not recognized terms under the FAR. Using this terminology may imply that the institution is not aware that the FAR applies to the work.</p>
<p>Subaward/Subcontract No.</p>	<p>The number that is being assigned to this agreement for reference purposes</p>	<p>This is the number that you want the subrecipient to reference on their invoices</p>

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Federal Awarding Agency	Indicate the federal sponsor	Federal contracts may list several agencies on their award. The “Federal Awarding Agency” should be the agency indicated under the “Payment will be made by” box on the face page of the federal contract.
Federal Award / Contract No.	Federal contract number	
PTE or “Contractor” information	The legal name and administrative address of the organization issuing the subaward	Contractors (prime recipients) may elect to use the term “PTE”. However, it should be understood by both parties that the term is not defined under the FAR. Using this terminology may imply that the awarding institution is not aware that the FAR applies to the work.
Subrecipient/subcontractor information	The legal name and administrative address of the organization receiving the subaward	
Period of Performance	The authorized period for the subcontractor to work and incur expenses	
Subaward/Subcontract Value: Amount Funded by this Action	This should be the amount of funding currently obligated (i.e. authorized for spending)	
Subaward/Subcontract Type	This will usually be “Cost reimbursement” or “fixed price”, however there are many other types of contracts detailed in FAR part 16 .	Per FAR 16.302 , Cost reimbursement contracts are most appropriate for R&D with nonprofit educational institutions or other nonprofit organizations. However, Contractors/PTEs should consider issuing the subcontract/subaward type consistent with that of their prime contract.
Project Title		

Attachment 1

You can add additional certifications here when the FAR requires subcontractor certification. For example, DFAR 252.222-7006 requires subcontractors receiving over \$1M to also provide a certification, which can be added here.

Description of Section	Guidance for Use	Background
Annual Representations & Certifications	Review the prime contract for the required annual representations and certifications. FAR 52.204-8 is presumed	See FAR 52.204-8 Annual Representations and Certifications 48 CFR § 52.204-8 - Annual Representations

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	to be incorporated into the prime contract or solicitation. You must choose between “including none of the sections at 52.204-8(c)(2)” OR “including 52.204-8(c)(c)” and specify which sections the Contracting Officer included from that section. If there are any other required Annual Representations and Certifications, it should be stated on the prime award.	and Certifications. CFR US Law LII / Legal Information
Representations & Certifications	The solicitation for the prime contract would have the requirements set out under 48 CFR 4.1202. If the solicitation for this prime award is for anything but a commercial item solicitation, 48 CFR 4.1202 will apply. The contractor and the subcontractor satisfy these Reps & Certs by registering in SAM.gov and completing them online each year. The subcontractor will need to certify on the subcontract whether they have completed the Online Representations and Certifications within the last year.	Per 48 CFR 4.1202 https://www.law.cornell.edu/cfr/text/48/4.1202#a
Debarment, Suspension, and Other Responsibility Matters	This certification comes from 2 CFR 200 and is the same requirement FDP prime awards and subawards have. Do not change any of this language and do not delete it. This certifications should be included in all Federal subcontracts.	2 CFR § 200.213 - Suspension and debarment. CFR US Law LII / Legal Information Institute And 2 CFR Part 180 - OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)
Additional certifications as required by the Federal Award	If there are any additional certifications required by the prime award, they should be listed in Section K of the prime award. List them here.	

Attachment 2

Description of Section	Guidance for Use	Background
1. Independent Contractor	This section is intended to clarify that there is no employer/employee	Employee vs. Independent Contractor determinations are very important for legal

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	relationship established through this agreement. <i>This is not the same as the vendor/subcontractor determination.</i>	and tax purposes. https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee
2. Publicity/Use of Name	This clause tends to be more of a concern for commercial contractors. They frequently request broad prohibitions on use of their name. Their concern is usually around advertising/press releases though.	Ensure that at a minimum the language at the end of the clause(notwithstanding the forgoing..." is included. Universities often have funding reports, and PIs often need to cite "current and pending" research projects.
3. Publication	Make sure this reflects any publication restriction in the prime contract. This clause is critical for most universities. Most are engaged in fundamental research and should not have publication restrictions. For DoD in particular look for DFARS 252.204-7000	DFARS 252.204-7000 requires Contracting Officer approval before publishing. DODI 5230.27 provides exceptions for fundamental research. It requires a written determination from the Contracting Officer however.
4. Intellectual Property	This clause is usually very well defined based on the Government's prime award. Look for FAR 27/DFARS 227 clauses. In general, for DoD subcontracts, the rights usually follow funding. If paid for with Government funding, subcontractors should expect to provide the PTE, and the Government, with at least Government Purpose Rights. Copyright: <i>"Disposition of any copyrights or any copyrightable material created by Subrecipient in performance of the Statement of Work will be determined by the policy of the Subrecipient"</i> - This section is intended to convey that the policy of the subrecipient organization will determine ownership. For example, most universities have a policy where the university owns IP, except for academic publications. This clause is not intended to assert ownership, but rather to defer to university policies.	For DoD contracts, ensure that assertions are submitted along with the proposal for anything that the Government will get with less than unlimited rights. Government rights are defined here: https://www.acq.osd.mil/dpap/dars/dfars/html/current/227_71.htm#227.7103-5
5. Confidentiality	This clause can be catered to the specific	A clearly defined end-date is preferred.

	research project. Be sure that this section is consistent with any stand-alone Non-Disclosure Agreements.	Most universities prefer not to receive trade secrets. By their nature, they are considered confidential in perpetuity, so the risk of accepting them is great. Most universities also do not accept “classified” information (see section 7). Information needed for publications should also not be considered confidential.
6. Export Controls	This clause provides two options; for use in fundamental, or non-fundamental research. Most university work should be fundamental research. This determination is of critical importance, as it may impact other contractual provisions such as publications.	DFARS 252.247-7048 is a mandatory flow down and will appear in any subcontract under a prime that includes the clause. Guidance from university research compliance office should be sought for any subcontract with this clause. “Best practice” is to require written acceptance before exchanging export controlled information.
7. Classified Research	Most universities cannot accept classified information. This clause should almost never be altered to allow for acceptance of classified research.	Both personal and facilities clearances are required in order to accept classified research. A standard form DD254 will be issued for any classified work. Penalties for accepting classified material without proper clearances are significant for both the individual and university.
8. Liability	This clause is considered “industry standard”. Liability should be tied to a determination of fault.	Liability is preferred over indemnification if at all possible. If edits are considered, they should be tied to acts or omissions directly related to the research project under the subcontract.
9. Insurance	This clause is intended to be flexible, but you may want to modify it to reflect any specific insurance requirements required by the prime contract.	Insurance requirements under cost reimbursable contracts: FAR 28.307-2 Other common insurance clauses: 52.228-5 52.228-7
10. Termination and Stop Work Order (SWO)	Termination for convenience with 30 days-notice is the industry standard. Review prime termination and SWO clauses and ensure that you allow your organization enough time to terminate or	It is important to consider the termination and SWO terms of the prime contract. Termination and SWO are not mandatory flow down FAR clauses, but you need to be able to <i>at least</i> terminate or stop work under the subcontracts if the prime

	<p>stop work under the subcontract.</p>	<p>terminates or stops your work.</p> <p>Beyond sponsor termination and SWO, as the PTE, your organization needs to retain the ability to control the direction of the research and if necessary, terminate or stop work on the subcontracts without resorting to breach of contract. Subcontractors also need the ability to stop work in the event they can no longer perform the work (ex: if the key personnel are no longer able to work on the project - think debarment, retirement, transfer, death). For these reasons termination for convenience with 30 day notice is the industry standard and should be provided whenever possible.</p>
11. Closeout	<p>Review prime contract closeout requirements and ensure that you receive subcontract final invoices and reports with enough time to incorporate into your organizations closeout documents.</p> <p>Note: If working with an organization not subject to 2 CFR 200 (for-profit, etc.), it is important to include the quick closeout language.</p>	<p>Quick closeout: Quick Closeout is outlined in FAR 42.708. This is very important for subcontractors that are not subject to 2 CFR 200 (for profit organizations, etc.) These organizations generally do not have “final” indirect cost rates and under their standard practices, will invoice the government several years later to reconcile their final indirect cost rates. Since universities need to closeout awards within a much shorter time frame, we have to request a quick closeout from the subcontractors, which entails accepting their provincial rate as final (see 42.708 (b)).</p>
12. HIPAA/PHI	<p>Review scope of work with PI or regulation compliance notifications and verify if any personal health information or personally identifiable information will be involved in the project. If yes, then a data management clause should be added here or a data management plan should be attached.</p>	<p>Data management clause</p>
13. Audit	<p>The subcontractor status determines whether Option 1 or Option 2 is chosen.</p> <p>Option 1 applies to domestic non-profit</p>	<p>48 CFR § 52.215-2 - Audit and Records - Negotiation. CFR</p>

	<p>entities that are subject to and comply with the Single Audit requirements of the Uniform Guidance.</p> <p>Note: 2 CFR 200 is implemented through 52.215-2 Alt II</p> <p>Option 2 applies to non-Federal audits of non-U.S. entities and for-profit organizations. Review the prime contract for the applicable language or clauses concerning audit and insert in the first sentence.</p> <p>Note: The most common clause is FAR 52.215-2. Please see FAR prescription to determine if this applies to your contract.</p> <p>45 CFR part 75.501(h) should apply unless the prime contract implements other applicable agency requirements. Review the prime contract for any agency implementation of other audit requirements including thresholds and deadlines for compliance.</p>	<p>45 CFR § 75.501 - Audit requirements. CFR - (h) For-profit subrecipients: This section explains what is required when the PTE issues a sub to a for-profit organization and what options they have</p>
<p>14. Disputes</p>	<p>This is a general disputes clause that any subcontractor should be able to accept. However, there may be terms and conditions or clauses in the prime contract that may dictate additional language in this section or may be applicable to the subcontractor. Additionally, each PTE may have institutional or state law requirements concerning disputes that can be incorporated here.</p> <p>Note: FAR 52.233-1 Disputes is not a required flow-down to the subcontractor. This clause only applies to the Contractor (PTE).</p>	<p>48 CFR § 52.233-1 - Disputes. CFR</p>
<p>15. Anti-Kickback</p>		<p>52.203-7 Anti-Kickback Procedures</p> <p>This is required in all contracts and is a mandatory flow down.</p>

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<p>16. Human/Animal Subjects</p>	<p>Review scope of work with PI and verify if human or animal subjects is authorized as part of the subaward, and insert appropriate Option.</p> <p>If Option 2 is appropriate, PTE’s may wish to add language regarding verification of IRB/IACUC approvals (i.e., request verification prior to subaward execution or upon request). (Note for DoD funded research, the Human Research Protection Office/Animal Care and Use Research Office must also approve.)</p> <p>PTE may need to include a restriction in the subcontract that only activities not involving human or animal subjects may be conducted, if the subcontractor/ subrecipient does not have proper IRB/IACUC approvals in place.</p> <p>If the subcontract will involve the exchange of human subjects data, a data transfer and use agreement may be needed.</p>	<p>48 CFR 252.235-7004, Protection of Human Subjects</p> <p>48 CFR 252.735-7002, Animal Welfare</p>
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**Attachments 3A, 3B, 4 and 5
Subaward guidance should be applicable and may be utilized**

Attachment 6 - Federal Contract Terms and Conditions

Description of Section	Guidance for Use	Background
<p>Incorporation of prime contract</p>	<p>This section is intended to include <i>applicable</i> sections of the prime federal contract. Generally the entire federal contract should not be included here since there are many sections (ex: invoicing, contact information, etc.) that are not applicable or relevant to the subcontract agreement.</p> <p>In the event that a prime contract has several parts that need to be included in Attachment 6, you may want to consider breaking it into subparts. For example, you could add the following statement:</p>	<p>It is important to keep in mind that the prime sponsor is not a party to the subcontract. It is the pass-through entity’s responsibility, as the recipient of the federal contract, to filter the relevant terms of the prime contract to the subcontractor.</p> <p>Federal contracts follow a uniform format, so for the most part, certain sections will consistently be more relevant to a subcontract than others.</p> <p>https://www.acquisition.gov/content/15204-1-uniform-contract-format</p>

	<p><i>Attachment 6 consists of the following parts:</i></p> <ul style="list-style-type: none"> <i>A. Prime Contract Terms and Conditions</i> <i>B. Supplemental Requirements</i> <i>C. Contract Data Requirement List</i> 	
<p>Full text clauses vs. incorporated by reference</p>	<p>FAR clauses should generally be included as fully text or by reference in the same way that they were incorporated in the prime contract. It is important to note however that some clauses require specific information to be filled in that may need to be changed for the subcontractor. For example, clause 52.244-2 should include a list of subcontracts that were evaluated and approved prior to contract execution.</p>	
<p>Contract Data Requirement List</p>		