



<b>New Jersey Institute of Technology University Policies and Procedures</b>	<b>Number: Date of Issue:</b>
<b><i>Subject:</i> SUBCONTRACT AND CONTRACTUAL AGREEMENT MANAGEMENT POLICY</b>	

**A. OVERVIEW**

This policy provides guidelines for the preparation and management of University-issued Subcontracts, Consultant Agreements, and Service Agreements (collectively “Contracts”) under externally-funded programs to another institution, organization, or individual, in order to provide the monitoring required by federal regulations to ensure that the Subcontractor, Consultant, and Service Provider (collectively “Contractor”) is complying with the programmatic and financial terms of the Contract and that performance goals are achieved.

This policy applies to all Contracts issued under all sponsored projects awarded to the University regardless of the source of funding.

**B. PURPOSE**

The purpose of this policy is to establish procedures for the awarding and management of Contracts in accordance with the regulatory standards set forth in 2 CFR 200, Uniform Guidance (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ([https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)))

**C. DEFINITIONS**

Cost ~200.330-200.332 Principles	Principles for determining costs applicable to grants, Contracts, and other agreements with educational institutions. <a href="https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/federal_register/FR2005/083105_a21.pdf">https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/federal_register/FR2005/083105_a21.pdf</a>
~200.330-200.332 Uniform Administrative Requirements	Standards for obtaining consistency and uniformity among Federal agencies in the administration of grants to and agreements with institutions of higher education, hospitals, and other non-profit organizations. <a href="https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A110/2cfr215-0.pdf">https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A110/2cfr215-0.pdf</a>
~200.330 -200.332 Audit Requirements	Standards for obtaining consistency and uniformity among Federal agencies for the audit of states, local governments, and nonprofit

	<p>organizations expending Federal awards.</p> <p><a href="https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A133/a133_revised_2007.pdf">https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A133/a133_revised_2007.pdf</a></p> <p><a href="https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/circulars/a133_compliance/2016/2016_compliance_supplement.pdf">https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/circulars/a133_compliance/2016/2016_compliance_supplement.pdf</a></p>
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Allowable	A cost is allowable to a project if it: <ul style="list-style-type: none"> <li>(1) is reasonable,</li> <li>(2) is allocable to the specific project,</li> <li>(3) is treated consistently in like circumstances, and</li> <li>(4) conforms to any limitations set forth in the sponsored agreement.</li> </ul>
AP	Accounts Payable
Consultant	Experienced professional who possesses a particular unique expertise and provides expert knowledge for a fee. He or she works in an advisory capacity and is usually not accountable for the outcome of a project. For the purpose of this policy, Subcontractor, Consultant, and Service Provider are all “Contractors”. An employee of the University cannot be a Consultant.
Consultant Agreement	Agreement for the provision of expert knowledge for a stated fee. For the purpose of this policy, Subcontracts, Consultant Agreements, and Service Agreements are all considered “Contracts”.
Contract	Agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration that is written and enforceable by law. For the purpose of this policy, Subcontracts, Consultant Agreements, and Service Agreements are all considered “Contracts”.
Contractor	Entity that is responsible for performing under the terms of the Contract. For the purpose of this policy, Subcontractor, Consultant, and Service Provider are all “Contractors”. An employee of the University cannot be a Contractor.
GCA	Grant and Contract Accounting
Government Property	<ul style="list-style-type: none"> <li>• Government Furnished Property: Property in the possession of or acquired by the Federal, State, or local government and subsequently delivered to or otherwise made available to the University for use under specified Contracts and grants.</li> </ul>

	<ul style="list-style-type: none"> <li>Government Funded Property: Property purchased or otherwise acquired with Federal, State, or local government funds for the performance of a sponsored award.</li> </ul>
PI	Principal Investigator
Service Agreement	Agreement for the provision of services for a stated fee. For the purpose of this policy, Subcontracts, Consultant Agreements, and Service Agreements are all considered “Contracts”.
Service Provider	Experienced entity which possesses a particular unique expertise and provides expert service for a fee. For the purpose of this policy, Subcontractor, Consultant, and Service Provider are all “Contractors”. An employee of the University cannot be a Service Provider.
SOW	Statement or Scope of Work
SRA	Sponsored Research Administration
Subcontract	Agreement issued to another organization to perform substantive programmatic work on an award with the terms and conditions passed on from the Sponsor award. For the purpose of this policy, Subcontracts, Consultant Agreements, and Service Agreements are all considered “Contracts”.
Subcontractor	Entity that is responsible for performing under the terms of the Subcontract. For the purpose of this policy, Subcontractor, Consultant, and Service Provider are all “Contractors”. An employee of the University cannot be a Subcontractor.
Subrecipient	A term used by the Federal Government for Subcontractors.
University Official	A representative of the University who is authorized by the Board of Trustees to execute Contracts.
Vendor	A dealer, distributor, merchant or other seller providing goods or services that is required for the conduct of a program.

#### **D. GENERAL**

The Office of Research is responsible for issuing, negotiating and executing Contracts on sponsored projects. Contracts are legal commitments by NJIT that are executed only by University Officials. Contracts cannot be issued until the Office of Research has received the award from the Sponsor and an NJIT Index in the Banner system has been established.

Procurement process should be followed as per award requirement. Please refer to:

<http://www.njit.edu/finance/purchasing/>

The Financial Conflict of Interest procedures must be followed. Please refer to:

<http://www.njit.edu/research/researchers/policies-forms.php>

The Subcontract “Step” procedure to be followed is located as Annex A.

### **Contract Negotiation**

The Office of Research negotiates all Contracts on behalf of the PI and in the best interests of NJIT. Contracts and other legal instruments are negotiated with the review and assistance of counsel for the university, and are executed by the Senior Vice Provost for Research. Other signatures are not binding as they carry no delegated authority.

The designated official (Assistant Director of Post-Award) in t is assigned the duties of issuing contract agreements to subrecipients and is responsible for the following:

1. Preparing the Contract and sending it to the Contractor. Any changes to the Contract must be negotiated and approved through the designated official in SRA.
2. Advising the Contractor of all applicable federal requirements by including appropriate flow-down provisions of the award.
3. Informing the Contractor of all applicable state and federal requirements which must be completed as outlined in Section E.

Upon execution of the Contract by NJIT and the Contractor, the Office of Research will send a fully executed copy to the PI.

Only upon receipt of a fully executed Contract should the Contractor begin work on the project; any work started prior to receipt of this document is at the risk of the Contractor.

### **Subcontract vs. Consultant/Service Agreement**

A Subcontract is a formal arrangement by which responsibility for a defined integral portion of the work is transferred from the University to a third party considered to be a Subcontractor. Subcontracts are entered into with universities and businesses but not with individuals.

Consultant and Service Agreements are usually reserved for businesses or individuals, considered to be vendors, performing a specialized/less significant portion of the overall award work or providing professional advice or services. The Service Provider acts as an independent Consultant who gives professional advice or service to a project.

### **Contractor and Vendor Determinations**

**General.** Federal awards expended as a Subcontractor are subject to audit. Payments to vendors for goods or services are not Federal awards. The following guidance should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

**Federal award.** Characteristics indicative of a Federal award are that the Subcontractor:

1. Can determine who is eligible to receive what Federal financial assistance;
2. Has its performance measured against the objectives of the Federal program;
3. Has responsibility for programmatic decision making;
4. Has responsibility for adherence to applicable Federal program compliance requirements;
5. Uses the Federal funds to carry out a program for the University as compared to providing goods or services.

**Payment for goods and services.** Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

1. Provides the goods and services within normal business operations;
2. Provides similar goods or services to many different purchasers;
3. Operates in a competitive environment;
4. Provides goods or services that are ancillary to the operation of the Federal program;
5. Is not subject to compliance requirements of the Federal program.

## **E. SUBCONTRACTS**

In order for SRA to issue the Subcontract, the PI must fully complete and submit via email to the designated official at [srard@njit.edu](mailto:srard@njit.edu), the Subcontract Checklist, a detailed SOW and a budget. The SOW and budget must be in accordance with the award. Incomplete checklists will be returned to the sender for completion. The PI should retain a copy of the Subcontract Checklist for future reference.

**Subcontract Checklist.** Annex B and also located at the following URL:

<http://www.njit.edu/research/researchers/policies-forms.php>

### **Elements of the SOW**

The SOW is the portion of a Subcontract that describes the work to be undertaken by the Contractor, including, but not limited to:

1. Objective, aim, or purpose.
2. Period of performance.
3. A general description of the work to be performed by the Contractor and the expected results.
4. A list of detailed work requirements, which includes a list of tasks and expectations, and provides both technical and performance specifications.
5. Performance, quality and timeliness requirements - this includes required or acceptable levels of performance on each specific task measured in terms of accuracy, response time, and speed.
6. Workload requirements - a description of levels or size of Contractual effort.

7. Personnel requirements - minimum qualifications or skill levels expected in the Contractor's staffing.
8. Government-furnished equipment and other resources to be furnished to the Contractor.
9. Reporting requirements – a description of any reports to be submitted by the Contractor to show progress.

## **Budget**

The budget usually provides a total of the costs to be incurred, but can also function as a ceiling cost when an exact cost is unknown. The budget information should include the following, as applicable:

1. Personnel Costs (including fringe if applicable).
2. Equipment Costs.
3. Supply Costs.
4. Travel Costs.
5. Other Costs.
6. Facilities and Administration or F&A (Overhead) Costs.

## **F. CONSULTANT AND SERVICE AGREEMENTS**

The selection of Consultants and Service Providers should meet the following minimum standards:

1. The Contractor rendering service does not participate in programmatic decision-making.
2. There is evidence that the assistance to be provided is essential and cannot be provided by an employee of the University.
3. The Contractor provides similar services or goods to many different purchasers.
4. The Contractor is not an employee of the University.

In order for SRA to issue a Consultant or Service Agreement, the PI must fully complete and submit via email to [srard@njit.edu](mailto:srard@njit.edu) the Consultant/Service Agreement Checklist, a detailed SOW and a budget. The SOW and budget must be in accordance with the award. Incomplete checklists will be returned to the sender for completion. The PI should retain a copy of the Consultant/Service Agreement Checklist.

**Consultant/Service Agreement Checklist.** Annex D and also located at the following URL:

<http://www.njit.edu/research/researchers/policies-forms.php>

## **Elements of the SOW**

The SOW is the portion of a Consultant/Service Agreement that describes the work to be undertaken by the Contractor, including, but not limited to:

1. Objective, aim, or purpose.
2. Period of performance.

3. A general description of the work to be performed by the Contractor and the expected results.
4. A list of detailed work requirements, which includes a list of tasks and expectations, and provides both technical and performance specifications.
5. Performance, quality and timeliness requirements - this includes required or acceptable levels of performance on each specific task measured in terms of accuracy, response time, and speed.
6. Workload requirements - a description of levels or size of Contractual effort.
7. Personnel requirements - minimum qualifications or skill levels expected in the Contractor's staffing.
8. Government-furnished equipment and other resources to be furnished to the Contractor.
9. Reporting requirements – a description of any reports to be submitted by the Contractor to show progress.

## **Budget**

The budget usually provides a total of the costs to be incurred, but can also function as a ceiling cost when an exact cost is unknown.

As a minimum, the budget information should include the following, as applicable:

1. Personnel Costs (including fringe- if applicable).
2. Equipment Costs.
3. Supply Costs.
4. Travel Costs.
5. Other Costs.
6. Facilities and Administration or F&A (Overhead) Costs.

\*Note that while a “fee” is typically not allowed, there may be circumstances where sponsor/agency guidelines permit inclusion.

## **G. REQUIREMENTS**

**New Jersey State Requirements.** New Jersey Institute of Technology (NJIT) is an instrumentality of the State of New Jersey and therefore anyone contracting with NJIT must abide by certain requirements mandated by the State of New Jersey. These requirements consist mainly of completing and submitting certain forms as follows:

Form W-9 Request for Taxpayer Identification Number and Certification. (All Contractors)

Business Registration Certificate (BRC) (Contact the Purchasing Department for requirement criteria):

<http://www.state.nj.us/treasury/revenue/busregcert.shtml>

Proof of Insurance (All Contractors).

Affirmative Action Form (All Contracts > \$25,200):

[http://www.state.nj.us/treasury/contract\\_compliance/index.shtml](http://www.state.nj.us/treasury/contract_compliance/index.shtml)  
[http://www.state.nj.us/treasury/contract\\_compliance/pdf/aa302.pdf](http://www.state.nj.us/treasury/contract_compliance/pdf/aa302.pdf)  
[http://www.state.nj.us/treasury/contract\\_compliance/pdf/aa302ins.pdf](http://www.state.nj.us/treasury/contract_compliance/pdf/aa302ins.pdf)

**US Federal Requirements.** In addition to the above State requirements, which apply to all NJIT Contracts, Contracts involving the disbursement of federal funds have additional requirements. These additional items must be checked for all potential Contractors receiving federal funding:

The potential Contractor must be registered with, and be in an “ACTIVE” status in, the Federal System for Award Management (SAM). The URL for the SAM site is as follows:

<https://www.sam.gov/sam/>

Suggestions may be made to contractors requiring assistance in getting SAM registration to investigate the following link/service that can be provided to do so.

<https://uscontractorregistration.com/>

Federal Awards greater than \$25,000 are subject to the Federal Funding Accountability and Transparency Act (FFATA) Certification reporting requirements. The Form attached as Annex F is to be completed by the Contractor prior to the award of the Contract.

## **H. EQUIPMENT UNDER CONTROL OF CONTRACTOR**

OMB UG (2 CFR 215) and Federal Acquisition Regulations (FAR) apply to each Contract entered into by the University whereby Government Property may come under the control of a Contractor.

The NJIT PI will require all Contractors possessing or controlling Government Property to adequately care for and maintain that property and assure that it is used only as authorized by the Contract.

The Contractor will assume responsibility for the Government Property. This includes any reporting requirements, title transfers, and final report closeouts.

See University Policy and Procedure PP 13-06 “Capital Assets – Accounting and Control”

**<http://www.njit.edu/policies/sites/policies/files/lcms/pdf/PP-13-06-Capital-Assets-Accounting-and-Control.pdf>**

## **I. MANAGING THE CONTRACT AND MODIFICATIONS**

**Invoicing and Payments.** The Contractor is responsible for invoicing in accordance with the terms of the Contract. Invoices are to be sent to the PI’s address identified in the Contract and not to SRA.



After the Contractor has accomplished a portion of the work, they will invoice NJIT for reimbursement of their expenses under the agreement. The NJIT PI must review the invoice for reasonableness and consistency with the Contract budget. If the PI is satisfied with the invoice, he/she should sign the invoice, mark it "Okay to pay," date it, and annotate it with the purchase order number before forwarding it to AP.

Once AP has the approved invoice they will enter it into the Banner system. The PI will log into the Banner system and approve the invoice electronically.

At that point AP will process payment of the invoiced amount to the Contractor.

**Modifications.** Changes to the Contract must be made in writing via a Contract modification. Such changes include, but are not limited to, increases/decreases in funding, extensions of time on the project, changes in the SOW, changes in the PI or Contractor, or termination of the Contract. The NJIT PI must complete the Modification Checklist and submit it to SRA. SRA will prepare the modification.

**Subcontract Modification Checklist.** Annex C and also located at the following URL:

<http://www.njit.edu/research/researchers/policies-forms.php>

**Consultant/Service Modification Checklist.** Annex E and also located at the following URL:

<http://www.njit.edu/research/researchers/policies-forms.php>

## **J. CONTRACT MONITORING**

**Factors Determining Frequency and Intensity of Monitoring.** Higher risk Contracts require more frequent, closer monitoring. Factors indicating level of risk are:

1. Program Complexity: Programs with complex requirements have a higher risk of non-compliance.
2. Percentage Passed Through: The larger the percentage of Contracts in relation to the total award, the greater the need for Contractor monitoring.
3. Amount of Award: Larger dollar awards are of greater risk. Other factors being equal, large awards (e.g. annual budgets > \$500k) will receive more substantial and/or more frequent review and monitoring.
4. NJIT prior experience with Contractor.
5. Contractor's level of experience, history of non-compliance, and audit findings.
6. Sophistication of Contractor's systems and administrative operations.

7. Contractor location: There is an increased risk associated with some foreign Contractors which dictates a greater degree of review and attention.
8. For-profit status: There is an increased risk associated with some for-profit Contractors which dictates a greater degree of review and attention.
9. Degree of external oversight by auditors or sponsoring agencies.

### **Potential Indicators of High-Risk Contractors**

1. A modified audit report, or failure to have a current audit report.
2. Designation as a high risk auditee in the Contractor's A-133 (Single Audit) report.
3. Inadequate response to a NJIT Federal Funding Accountability and Transparency Act (FFATA) Certification Questionnaire.
4. History of non-compliance.
5. History of non-performance or failure to use funds for their authorized purposes.
6. New Contractor (or new to this type of project).
7. New personnel or systems.
8. Large Contract/large percentage pass-through.
9. Award size relative to Contractor's sponsored research portfolio.

### **Methods of Monitoring Activity**

1. Regular contact with Contractors and appropriate inquiries concerning program activities.
2. Reviewing financial invoices and performance reports submitted by Contractor.
3. Obtaining and reviewing supporting documentation from Contractor.
4. Performing site visits at the Contractor to review program activities, financial and programmatic records.

### **K. PI'S ROLE AND RESPONSIBILITIES**

The PI has primary responsibility, on an ongoing basis throughout the life of the project, to monitor the activities of the Contractor in accordance with the governing (prime award) agreement; to assure that awarded funds are used for authorized purposes in compliance with

Federal/State regulations, sponsoring agency, and/or NJIT policies; and to ensure that the performance goals are achieved. The PI:

1. Ensures compliance with Contract monitoring guidelines.
2. Maintains documentation to support monitoring activities.
3. Ensures all required programmatic reporting is current.
4. Certifies/Approves all Contractor invoices.
5. Keeps detailed records of communications regarding unsatisfactory performance by Contractor.
6. Determines and takes the appropriate steps when a Contract needs to be issued an amendment/modification (i.e. additional funding, extension of time, etc.).
7. Compares and reviews Contractor actual expenses to approved budget.
8. Conducts on-site visits and/or maintains regular contact with Contractor.

### **Monitoring Guidelines**

1. Review of technical performance reports.
2. Periodic reviews of scientific and/or technical reports from the Contractor.
  - a. Informal progress reports via phone conversations, email communications, and/or face to face discussions with the Contractor.
  - b. Formal progress reports should be retained by the PI for audit purposes.
3. Any unusual items should be investigated, documented and retained by the PI.
4. If there are technical deficiencies that may require the PI to consider terminating the Contract, this must be documented in writing and forwarded to SRA.

### **Review of Contractor Invoices**

1. The invoice must indicate the approved budget by line-item and reflect both current and cumulative expenses for each line-item.
2. The invoice appears reasonable based upon the technical progress of the project.
3. Expenses reported are within the budget parameters of the Contract/prime Agreement and within the start/end dates of project stipulated in the executed Contract.

4. The invoice does not overlap or duplicate a previously submitted invoice.
5. An open, valid purchase order for the Contract is referenced.
6. The final invoice for the project is marked "FINAL" and received by the final reporting due date of the executed Contract.
7. To ensure that expenditures for sponsored agreements are proper and in accordance with the agreement documents and approved project budgets, all fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the Contractor, which reads essentially as follows: "I certify that all expenditures reported (or payment requested) are for appropriate purposes and in accordance with the provisions of the application and award documents."
8. Clarification of Invoice Charges: Any charges which appear to be unallowable, unusual, or excessive must be investigated and resolved by the PI prior to releasing payment.
  - a. Request clarification or further justification from the Contractor.
  - b. If insufficient to render a prudent judgment on the allowability of the cost, request supporting documentation from the Contractor.
  - c. Particularly from higher-risk Contractors, the PI may periodically request detailed support for selected invoice charges to verify appropriateness and reasonableness. Some examples are:
    - Payroll records.
    - Copies of paid invoices to vendors.
    - Description of services rendered by Consultants, including hourly rates and time reports.
    - Detail of travel charges incurred.
9. Unallowable or Unreasonable Costs.
  - a. Should be disallowed and deducted from current invoice.
  - b. In circumstances where questionable costs remain unresolved, it may become necessary to conduct more definitive monitoring procedures.
10. Invoices should not be approved for payment until all issues or concerns have been resolved.
11. Other Considerations and Reminders.
  - a. Cost-sharing. If required, the amount must be clearly reflected on the invoice.

- b. Cost-sharing dollars should be spent at the same rate as the award dollars.
- c. The type of cost-sharing provided must be in accordance with what was designated as acceptable cost-sharing per the executed agreement.

12. Final Invoice Processing.

- a. The PI must have a copy of the Contractor's final technical report and must retain it on file for audit purposes.
- b. The PI must ensure that the Contractor has submitted all their closeout documents such as patent reports, property reports, etc.
- c. The final invoice must be marked "FINAL" and submitted by the required due date.
- d. To ensure that expenditures for sponsored agreements are proper and in accordance with the agreement documents and approved project budgets, the final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the Contractor, which reads essentially as follows: "I certify that all expenditures reported (or payment requested) are for appropriate purposes and in accordance with the provisions of the application and award documents."
- e. The PI's approval to pay a Contractor's Invoice indicates that:
  - The PI is satisfied with the performance of the Contractor as of the time period covered on the invoice.
  - The Contractor has satisfactorily submitted to NJIT all required interim/final technical, financial, and other closeout documents.
  - The expenses and required cost-sharing shown are allowable and reasonable in accordance with the Contract and prime agreements' terms and conditions.
  - All the monitoring guidelines have been adhered to.

**L. GCA**

Reviews A-133 (Single) audit reports to determine whether any findings pertaining to NJIT exist, and if they are of significance to NJIT. If so, reviews and monitors any corrective actions taken by Contractor.

