ORAA Subcontractor vs Vendor (Contractor) vs Consultant: Definitions

- 1. A Subcontractor is distinguished from both a vendor and a consultant in that a Subcontractor:
 - a. Performs a substantive portion of the proposed Statement of Work incorporated into the Prime Contract;
 - b. Has responsibility for internal programmatic decision-making and design;
 - c. Is responsible for assisting the Prime Recipient in meeting the goals of the project;
 - d. Is responsible for adhering to applicable Federal programmatic compliance requirements;
 - e. Retains intellectual property and copyright to the work produced by the **Subcontractor's** personnel; may co-author an article in a professional research journal.

<u>Note</u>: ORAA does not issue **Subcontracts** to individual persons; only to a company or organization/institution.

- 2. A **Vendor** is issued a Purchase Order based on a request sent by the lab business office to the UMCP Procurement Office (via KFS). The purchase of goods and services, including "Consulting Services", are obtained from a commercial vendor.
 - a. A **Vendor** provides similar goods and services to multiple customers as part of their routine business operations;
 - b. A Vendor competes for customers with other like providers;
 - c. A Vendor does not retain intellectual property or copyright to the deliverables;
 - d. Cost sharing is not required of a Vendor;
 - e. Joint authorship of publications is not sought by Vendors;
 - f. The general terms of the Prime Contract do not flow down to the **Vendor**.
- 3. A **Consultant** may be an individual or a commercial entity and is a type of Vendor paid through a Purchase Order issued by the Office of Procurement.
 - a. A **Consultant's** deliverable may be intermittent throughout the project, is not clearly defined and similar other work is performed by that Consultant commercially on a routine basis;
 - b. A **Consultant's** deliverables do not ordinarily generate patentable or copyrightable results of an original or substantive nature;
 - c. A **Consultant** is not subject to the compliance requirements of the Prime Contract;
 - d. A **Consultant's** fee is based on an hourly or daily rate which is provided and explained in a **Consultant** rate proposal;
 - e. A **Consultant's** services are on a "work for hire" basis and all intellectual property or copyrightable rights are assigned to UMCES by the **Consultant**;
 - f. A **Consulting** Firm is a commercial entity whose regular business activity is to provide services similar to those proposed under the current project.
 - g. An **Individual Consultant** is a non-UMCES employee hired to provide technical expertise in support of a sponsored research project. As a general rule, the activities performed by a non-UMCES faculty member who is named as an individual Consultant in a proposal must fall outside of the individual's normal academic duties and cannot make use of his/her institutional facilities, personnel or students. If these criteria are not met, then the faculty member's home institution should appear as a Subcontractor in the UMCES Proposal rather than an individual **Consultant**.

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University of Maryland Center for Environmental Science Office of Research Administration and Advancement

SUBRECPIENT AND VENDOR DETERMINATION CHECKLIST FOR SPONSORED PROJECTS

Answer the following questions below to determine how a provider should be paid: as vendor or subrecipient. See page (2) for instructions and clarification on each question.

VENDOR: Provides a service or good that is routinely provided to the general public and therefore is not unique to the project. Typically the organization is for-profit and not subject to Federal compliance requirements.	Yes	No
1. Does the organization operate in a competitive, for-profit environment (i.e. a for-profit entity)?		
2. Does the organization provide similar goods or services within its normal business operations to many different purchasers?		
3. Will the organization provide goods or services that are ancillary (a minor contribution) to the project?		
4. Will the activities performed be done by an unidentified individual or team of personnel?		
5. Will the activities performed be a series of repetitive tests or activities requiring little or no discretionary judgment by the person(s) performing the activities?		
6. Will the UMCES be able to complete reports about the project without the organization providing significant contributions regarding the activities it performed?		

SUBRECIPIENT: Activities will have significant impact on the total project with distinct deliverables for work that is unique to the project and minimal supervision from the PI at the University of Maryland Center for Environmental Science.	Yes	No
7. Is the organization subject to Federal compliance/audit requirements (2 CFR 200 (Subpart F)?		
8. Will the proposal to the sponsor identify the organization as having a key role in the project?		
9. Will the organization use project funds to carry out the organization's portion of the project rather than using the funds to provide generic goods or routine services to the UMCES?		
10. Will the work performed be unique to the project, designed specifically to enhance the research goals and outcomes of the primary project?		
11. Will the organization have any publishing rights to their portion of the activities of this project?		
12. Will the organization have any rights to resulting patentable or copyrightable technology developed during the activities of this project?		

ADDITIONAL COMMENTS:

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Relationship determined to be: _____ Vendor _____ Subrecipient

Preparer's Signature:

Preparer's Name:

_____ Date: _____

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SUBRECPIENT AND VENDOR DETERMINATION CHECKLIST FOR SPONSORED PROJECTS

Instructions

Purpose of the checklist:

To comply with the regulations of the Uniform Guidance, <u>2 CFR 200</u>, the University must determine whether services provided to further the purposes of an award (grant or contract) should be paid as a vendor agreement or subrecipient of the award. The checklist should be used to determine which of these agreements best applies to the project.

How to use the checklist:

Answer the questions in both sections of the checklist. The area in which you have the most "Yes" responses is probably the agreement type to be used. As always with grants, there are exceptions, and your best judgment should be applied to make that determination. If you have questions which are not answered by this checklist regarding subrecipients, contact the Office of Research Administration and Advancement (<u>ORAA</u>). Contact the Office of the <u>Comptroller</u> for more information on vendors and vendor agreements, the bidding process, sole source justifications, and so on.

Definitions of terms as they are used in this checklist:

University Organization	University of Maryland Center for Environmental Science (UMCES) An entity that provides goods or services required to complete a sponsored project and will be
	paid as a vendor or subrecipient of the prime award issued to the University.
Sponsor	The Federal, State, Local, Private, or Industry entity that provides funds to the University to complete a project.
Project	An investigation aimed at discovering and interpreting facts with defined objectives and deliverables that the University agrees to provide the Sponsor according to the agreed upon terms and conditions of an award or contract.
Goods/Services	Deliverables of the agreement. Goods are tangible products while services are activities performed, such as data processing or analysis. Goods and services are generic (something to benefit a general audience) compared to independent research (which is unique to the project).

Details and examples for specific questions (relates to questions 1-12 on page one):

1. A competitive environment is one that sells its product to anyone with funds to pay for it, i.e. a grocery store.

2. Answer "Yes" if the organization sells the same services or products to any customer who requests it. Answer "No" if the organization will have to develop or design something unique based on the objectives of the project.

3. In general, are you purchasing the beakers or the science performed in the beakers? Answer "Yes" if the product or service is something equivalent to the beakers, i.e. is ancillary to the project.

4. Answer "No" if the organization has been chosen because of the expertise of a specific person or team of persons within the organization that will be identified in the proposal.

5. Answer "Yes" if the organization will merely be providing goods or data for the University to analyze or use in its research. Answer "No" if the organization will use their knowledge and expertise to analyze or provide results.

6. Answer "No" if the information about the methodology and design of organization's activities will be needed in order to complete reports on the project.

7. 2 CFR 200 (<u>Subpart F</u>) contains the Federal audit standards that apply to States, Local Governments, and Non-Profit Organizations. Organizations that receive Federal funding must comply with these standards.

8. Answer "Yes" if the proposal will include any of the following for the organization's portion of the project: separate budget, facility and resource description, project site information, roles and responsibilities, etc.

9. Answer "Yes" if the funds issued to the organization will be dedicated to completing the project. Answer "No" if the funds will contribute to the general profit or operating funds of the organization.

10. Answer "Yes" if the organization's performance will be measured against the objectives of the primary project.

11 & 12. Questions are self-explanatory.