

Grant Managers  
Brown Bag

# LET'S TALK CONTRACTS

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# WHY CONTRACTS?

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- Definition Clarification
- Key method of spending grant funds
- Many different types of contracts with different requirements & processes – leads to points of confusion
- Can lead to increased risk of legal, financial, and compliance challenges



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# WHAT IS A CONTRACT

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Cornell Law School /  
Legal Information Institute

*A contract is an agreement between parties, creating mutual obligations that are enforceable by law.*

Basic elements of a contract:

- 1) Mutual assent;
- 2) Expressed by a valid offer and acceptance;
- 3) Adequate consideration of value, not necessarily financial, but not a gift;
- 4) Capacity to make a rational decision; and
- 5) Legality.

# MANY TYPES OF CONTRACTS

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Employment Offers

Loan Agreements

Mortgages

Gym Memberships

Partnership Contracts



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# CONTRACTS IN THE GRANT WORLD

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## REVENUE GENERATING



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## FUND OBLIGATION



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# REVENUE GENERATING CONTRACTS

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How do we receive funds from public or private entities?

- 1) Grants: An award, usually financial, given by one entity to another entity to facilitate a goal or incentivize performance
- 2) Cooperative Agreements: A legal instrument that facilitates the transfer of something value from the federal government to non-federal entities
- 3) Subaward Agreements: An award provided by a non-federal entity to a subrecipient for the subrecipient to carry out part of a federal award received by the non-federal entity;
- 4) Contracts: Payment to an entity for services rendered or materials purchased.

# REVENUE GENERATING TOOLS – FEDERAL

	<b>Federal Grants</b>	<b>Federal Cooperative Agreement</b>	<b>Federal Contracts</b>
<b>Basic Purpose</b>	A flexible instrument designed to provide money to support a public purpose. Assistance with few restrictions.	A flexible instrument designed to provide money to support a public purpose. Assistance with involvement between parties.	A binding agreement between a buyer and a seller to provide goods or services in return for consideration (usually monetary). Procures goods or services.
<b>Terms &amp; Conditions</b>	Governed by the terms of the grant agreement	Governed by the terms of the cooperative agreement	Governed by Federal Acquisition Regulations
<b>Scope</b>	Conceived by PI. Flexible as to scope of work, budget, and other changes	Conceived by PI. Typically flexible as to scope of work, budget, and other changes	Conceived by sponsor. Relatively inflexible as to scope of work, budget, and other changes
<b>Solicitation</b>	Application kit or guidelines	Request for application	Request for proposal or quote
<b>Effort</b>	Diligent efforts are used in completing research and the delivery of results	Diligent efforts are used in completing research and the delivery of results	Significant emphasis placed on delivery of results, product, or performance

## REVENUE GENERATING TOOLS – FEDERAL (CONT.)

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<b>Effort</b>	Diligent efforts are used in completing research and the delivery of results	Diligent efforts are used in completing research and the delivery of results	Significant emphasis placed on delivery of results, product, or performance
<b>Sponsor Involvement</b>	None	Substantial involvement	Approves activity, expects results
<b>Payment</b>	Payment awarded in annual lump sum	Payment awarded in annual lump sum unless otherwise specified in the cooperative agreement	Payment based on deliverables and milestones
<b>Re-budgeting</b>	Flexible	Usually flexible	More restrictive
<b>Reporting</b>	Annual reporting requirements	Reporting requirements determined by the cooperative agreement	Frequent reporting requirements
<b>Flexibility</b>	Principal Investigator has more freedom to adapt the project and less responsibility to produce results	Substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.	High level of responsibility to the sponsor for the conduct of the project and production of results



# SUBAWARD AGREEMENTS – REVENUE GENERATING

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- Similar to a grant
- Entities working together to achieve a shared outcome
- Follow institutional process for pursuing a competitive grant
  - Engage Grants Office (at college or district)
  - Executive Approval
  - Budget
  - Work Plan
  - Letter of Commitment
- Does not involve the Purchasing Office



# CONTRACTS THAT OBLIGATE FUNDS

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- 1) Subaward Agreements
- 2) Vendor Service Contracts
- 3) Consultants
- 4) Professional Experts



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# SUBAWARD AGREEMENTS .... ON THE OTHER SIDE

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- An award provided by a non-federal entity to a subrecipient for the subrecipient to carry out part of a federal award received by the non-federal entity
- Identified in the Grant Application
- Listed in the work plan & budget
- Generally requires Letter of Commitment by AOR
- Difficult to change post-award
- Almost always requires prior approval if not identified in grant application



# SUBAWARD COMPONENTS

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- Prime vs. Subrecipient
  - Subrecipient selected by Prime
- Listed under Contractual
- Indirect Costs only apply to the first \$25,000
- Subrecipient can also budget indirect costs if allowed by sponsor
- Requires a subaward agreement, as well as the Purchasing Office



# VENDOR SERVICE CONTRACTS

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- Vendor not always identified in grant application
- Payment to an entity for services rendered or materials purchased
- Purchased through Purchasing Office
- Competitive bid requirements apply
- Listed as supplies, equipment, or services as appropriate in the grant budget



# VENDOR SERVICE AGREEMENT VS. SUBAWARD

## VENDOR SERVICE AGREEMENT – AN ACT OF PROCUREMENT

Does the entity?

- Provide the goods and services your project requires within their normal business operations?
- Provide similar goods or services to many different purchasers? (this includes fabrication of new goods, consultants, editors, etc.)
- Operate in a competitive environment? (a for-profit organization or an entity/ university providing a testing service)

## SUBAWARD – AN ACTIVE PARTNER IN THE GRANT

Does the entity?

- Have their programmatic involvement identified as a separate scope of work, with separate budget and organization approval?
- Have their performance measured against whether the objectives of the project are met?
- Have responsibility for programmatic decision-making?
- Have responsibility for adherence to applicable program compliance requirements?

# VENDOR SERVICE AGREEMENT VS. SUBAWARD

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## VENDOR SERVICE AGREEMENT

Is the vendor:

- Not subject to terms and conditions/compliance of the sponsoring agency?
- Not involved in the programmatic work of the project, including project deliverable or technical report?

## SUBAWARD

Will the entity:

- Use the sponsored funds to carry out a program of their organization as compared to providing goods or services for a program at RCCD?
- Have responsibility for assisting in completion of a project deliverable and/or technical report?
- Have the right to publish project results or serve as a co-author?
- Have the option to develop patentable technology?

# VENDOR SERVICE CONTRACT VS. SUBAWARD

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## VENDOR SERVICE CONTRACT

- If the answers to these questions are Yes, Vendor Service Contract applies.

## SUBAWARD

- If the answers to these questions are Yes, Subaward Agreement applies.



# CONSULTANTS

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- An individual who provides specific services to a grant-funded project often through a professional services contract
  - Scope of Work and Budget required
- Prime determines role and responsibilities of consultant
- Consultant generally sets their own work schedule and location
- Consultant responsible for their own taxes

- Consultant selected for expertise in target area
- May be identified in grant application
- Cost included in Other
- Competitive Bid requirements apply
- Examples include:
  - Evaluator
  - Guest speakers
  - Curriculum Specialist

# CONSULTANT – QUESTIONS TO ASK

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- 1) Is the individual already an employee of the district in any capacity?
- 2) Is the individual working as an employee as prescribed by the Education Code 8002?
- 3) Has this category of worker already been classified as an employee by the IRS?
- 4) Has the individual performed substantially the same services for the district as an employee in the past?
- 5) Are there currently employees of the district doing substantially the same services as will be required of this individual?
- 6) Does the District require the individual providing services to comply with instructions concerning when, where, and how the work is done?
- 7) Must the required services be performed by this individual?
- 8) Does the District have a continuing relationship with this individual year to year?
- 9) Can this relationship be terminated without consent of both parties?

# PROFESSIONAL EXPERT

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- Hired by District or College to provide time limited services in support of the grant project
- Follow HRER process using Professional Expert Service Agreement
- Expert cannot provide the services of a classified employee nor can the project be primarily administrative
- Benefits apply
- Included under Salaries & Benefits
- Examples include: COVID contact tracers and instructional program developer



# WHY DOES THIS MATTER?

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- 1) Financial Reporting
- 2) Different processes for securing services and/or agreements
  - 1) Bid requirements
  - 2) Approval requirements
  - 3) Signatory requirements
  - 4) Forms



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# HOW CAN GRANTS & SPONSORED PROGRAMS ASSIST

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- District Grants will:
  - Provide technical assistance upon request
  - Assist with the development and processing of required forms
  - Complete application materials for subawards in which RCCD is a subrecipient
  - Develop subaward agreement for subawards in which RCCD is the prime
  - Secure authorizing or certifying signatures from college/district personnel
  - Conduct risk assessment for subaward agreements to subrecipients
  - Process invoices for subaward agreements
- College Grants
  - Provide technical assistance upon request
  - Connect grant managers with others within college who may assist
  - Complete application materials for subawards in which RCCD college is a subrecipient
  - Secure authorizing or certifying signatures from college/district personnel

# QUESTIONS

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