Context:

When procuring goods or services for a sponsored project, it is not always clear when Alfred University should issue a subaward to a “subrecipient” or a procurement contract to a “contractor” (including independent consultants). For assistance in making these determinations, AU follows the governing regulations contained in OMB Uniform Administrative Requirements 2 CFR §200.330. In order to remain consistent, AU has adopted this guidance to determine the status of a subrecipient versus a contractor for all sponsored projects, no matter the funding type (federal, state, or industry funding).

Additionally, when hiring individuals as consultants/independent contractors, the designation of independent contractor status is further governed by the Internal Revenue Service (IRS) tax code and common law. Significant tax penalties exist for incorrect classification of an employee as a consultant/independent contractor. It is important that common standards are applied in classification and contracting, and that each case is fully documented and auditable.

Principal Investigators/Project Directors (PI/PDs) may use this document as a guide when making the determination on what type of procurement/agreement will occur, and should consult with the Office of Sponsored Projects (OSP) and Human Resources (HR) as necessary for assistance in this process. This document is intended to be referenced prior to embarking on the set-up procedures for either sponsored consulting agreements or subawards, as outlined in their respective policy documents.

Guidance:

Subawards

A “subrecipient” is an organization (not an individual) that expends funds received from a pass-through entity to carry out a sponsored project. Under a subaward, a subrecipient generally has a specific scope of work to conduct in conjunction with the proposed project.

Indications that an organization should be classified as a subrecipient include:

- Substantive, programmatic work or an important or significant portion of the research program or project is being undertaken by the other entity
- The research program or project is within the research objectives of the entity
- The entity participates in a creative way in designing and/or conducting the research
- The entity retains some element of programmatic control and discretion over how the work is carried out
- The entity commits to a good faith effort to complete the design or conduct of the research
- The entity makes independent decisions regarding how to implement the requested activities
- A principal investigator has been identified at the entity and functions as a “Co-Investigator”

- There is the expectation that the entity will retain ownership rights in potentially patentable or copyrightable technology or products that it produces in the course of fulfilling its scope of work

- Publications may be created or co-authored at the entity

**Contractors**

Contractors are entities (including individuals and companies acting as a vendor of consulting services) that provide services within normal business operations to many different customers. These services are secondary to the operation of the sponsored project.

Indications that an entity should be classified as a contractor include:

- The entity is providing specified services in support of the research program

- The entity has not significantly participated in the design of the research itself, but is implementing the research plan of the Alfred University investigator

- The entity is not directly responsible to the sponsor for the research or for determining research results

- The entity markets its services to a range of customers, including those in non-academic fields

- Little or no independent decision-making is involved in the design and conduct of the research work being completed

- The agreement only specifies the type of goods/services provided and the associated costs

- The entity commits to deliverable goods or services, which if not satisfactorily completed will result in nonpayment or requirement to redo deliverables

- The entity does not expect to have its employees or executives credited as co-authors on papers that emerge from the research

- The expectation is that the work will not result in patentable or copyrightable technology or products that would be owned by the entity

- In the case of an individual vendor of consulting services, the person has no employment relationship with AU, either academic or administrative in nature. (see “Consultants” section below for more information)

**Consultants**

Prior to making the decision to hire a consultant, PI/PDs need to further determine whether the individual is considered an employee or a consultant/independent contractor. The following checklist
can assist PI/PDs in making this determination. It is the sum of the circumstances rather than any one criterion that determines the proper relationship (employee or consultant). The more criteria met, the more likely the individual should be considered an Alfred University employee, even if temporary or part-time.

The PI/PD or Alfred University:

- provides instruction about when, where, and how to work
- provides the workstation, tools, materials, supplies
- can terminate, assign, or discharge the individual
- can terminate the contract without risk of lawsuit for breach
- pays the individual a salary rather than payment based on work completed
- can be in a continuing relationship, however frequent or irregular
- has the legal right to control both the method and results of work
- provides training to the individual
- hires other employees to assist the individual with the job
- integrates the individual into the project staff
- sets the individual’s work schedule

The individual:

- performs the work as part of the university’s customary line of business
- assumes no financial risks
- has no other clients for the same services
- makes no attempt to acquire other clients
- makes no profits or losses
- has no investment in the business