



North Pacific Research Board Policy Compliance with Subaward Agreements (Adopted March 2009)

Purpose

The North Pacific Research Board (NPRB) supports marine research activities in the North Pacific based on highly competitive requests for proposals. Projects are funded through NPRB subawards with subrecipients who agree to comply with subaward provisions and all applicable federal law, and perform the work in the research plan. The research plan is the primary basis for selecting proposals by NPRB. It identifies hypotheses, conceptual approach, experimental design, and timelines and measurable milestones used to monitor progress based on periodic financial reports, semi-annual progress reports, and a final report. When approved and subsequently attached as an appendix 1 to the subaward, it becomes the primary basis for evaluating success or failure of the project.

In funding many research projects at institutions across the U.S. and beyond since 2002, NPRB has been fortunate to have supported many very capable principal investigators who have managed their projects successfully. The Board wishes to maintain that high success rate and intends to continue working closely with subrecipients toward successful completion of individual projects.

There are, however, the rare occasions when a project is not progressing satisfactorily. This may happen for a variety of very legitimate reasons, for example, bad weather, absence of animals, equipment failures in remote locations, acts of God, or other factors that may be outside the control of the principal investigators. NPRB fully understands there is risk inherent in conducting scientific research, especially in remote locations, and intends to work closely with subrecipients to bring about a reasonable and acceptable conclusion to those projects.

The procedures herein cover such inadvertence, but this policy is aimed more squarely at situations where principal investigators diverge from their research plan, fail to manage or report properly, or fail to meet other subaward provisions, without prior approval of NPRB. This policy describes steps that NPRB will take to address such deficiencies. Its provisions are derived mainly from a close reading of OMB Circular A-110 (referenced by § in text), NSF Award and Administration Guide (AAG), and the US Department of Commerce Financial Assistance Standard Terms and Conditions (DOC). Part 180 – OMB Guidelines on Governmentwide Debarment and Suspension also is referenced.

Guiding Principles

In general, NPRB will strive to adhere to two guiding principles in taking steps to resolve issues that may arise with research projects. The first guiding principle will be to identify performance problems as early as possible so the subrecipient, working with NPRB, has the opportunity to resolve problems before the situation worsens. NPRB will review progress reports to assess performance. It must be noted, however, that NPRB does not have the primary responsibility for detecting emerging issues. OMB A-133

§215.51(f) requires subrecipients to immediately notify NPRB, as the awarding agency in this case, of developments that have a significant impact on the subaward-supported activities, including any problems, delays, or adverse conditions which may materially impair the ability to meet the objectives of the subaward.

The second guiding principle will be to strive to resolve problems at the lowest point of potential failure, normally at the principal investigator level. Working with the principal investigators, and then the grants managers as appropriate, NPRB will strive to resolve issues at the staff level before elevating the situation to higher authority at the subrecipient or NPRB, as provided for in this policy.

Non-compliance

In agreeing to the subaward provisions, the subrecipient accepts full responsibility for managing and monitoring its NPRB-funded project to a successful conclusion (§215.51(a)). Subrecipients must report performance in accordance with subaward provisions, which at a minimum, require brief information on each of the following: a comparison of actual accomplishments to stated goals and objectives, research findings and quantitative data as appropriate, reasons why established goals were not met, if appropriate, and any cost overruns (§215.51(d)). It has been NPRB's experience that when problems occur, they generally involve: (1) incomplete or late finance, progress, and final reports; (2) non-achievement of objectives or milestones or pursuit of new ones without prior approval; or (3) incomplete reporting of data or metadata. These problems, as well as any other occasion when subaward provisions are not followed without prior approval of NPRB, may be viewed as instances of non-compliance.

Problem Resolution

Successful completion of individual research projects is of paramount importance. NPRB will proceed in good faith to work with recipients and their respective principal investigators and grants managers to resolve potential issues early and at the lowest level necessary in accordance with the two guiding principles stated above. To facilitate resolution, subrecipients are reminded that they are required to:

- Report deviations from budget and program plans and request prior NPRB approval for any change in scope or objective, even if there is no associated budget revision (§215.25(c)).
- Immediately notify NPRB of any development that may significantly impact their subaward-supported activities, particularly problems, delays, or adverse conditions which may materially impair the ability to meet their objectives and milestones. The notification must describe the action taken or contemplated and any assistance needed to resolve the situation (§215.51(f)).

Staff Resolution

Problems and issues will be resolved to the extent possible through communication between NPRB staff, normally the Science Director, and the principal investigators. If the issue cannot be resolved, the NPRB Executive Director will review the situation and notify the subrecipient, normally through the grants manager, in writing of the circumstances, the nature of the problem, citing the specific deficiency, and the status and outcomes of direct negotiation with the principal investigators to date. A copy of the written communication will be provided to the principal investigator(s). The subrecipient will be requested to respond in writing within 30 calendar days of the date of such communication, describing the steps and schedule for correcting the deficiency (AAG VII.A.2.b(i)). If the prospective actions are deemed satisfactory by the Executive Director, the grants manager will be notified of that decision in writing.

Elevation to NPRB

If deficiencies remain unresolved, or the subrecipient has not provided a satisfactory response within the 30-day period or requests to elevate the decision to the Board, the Executive Director will refer the matter in a written report to the NPRB Executive Committee. The report will present the facts as understood, describe the situation and deficiencies, provide responses from the subrecipient, and recommend remedial action as appropriate.

The subrecipient will be notified in writing of this elevation. Upon notification, the subrecipient will have up to 15 calendar days to provide additional information. The NPRB Executive Committee then will review the report and any additional information and take action as appropriate. All actions will be taken by unanimous vote of the members eligible to vote in accordance with NPRB recusal policies. Following a decision, the NPRB Executive Committee will formally notify the subrecipient by certified mail, with copies to the principal investigator(s). The full Board will be informed of the actions taken at their next regularly scheduled meeting.

Mediation

If the above procedures fail to resolve the situation, NPRB or the subaward recipient may request formal mediation. In that event, the subaward recipient and NPRB agree to participate in at least two hours of mediation with an independent, professional mediator, with both parties agreeing to share equally in the costs of the mediation. The costs will not include costs incurred by a party for representation by counsel at the mediation. Mediation involves each side of the dispute sitting down with an impartial person, the mediator, to attempt to reach a voluntary settlement. Mediation involves no formal court procedures or rules of evidence, and the mediator does not have the power to render a binding decision or force an agreement on the parties.

Suspension without Prior Notice

NPRB may temporarily withdraw its sponsorship under a subaward, pending corrective action by the subrecipient or a decision to terminate the subaward, if the subrecipient has failed to comply with the project objectives, the terms and conditions of the subaward, or reporting requirements (§215.2(ii), §215.22(h)(1), and §215.62(a)). Action by NPRB to suspend an award normally will be taken only after the grants manager has been informed by NPRB of the proposed action and provided an opportunity for hearing, appeal, or other administrative proceeding to which the subrecipient is entitled (§215.62(b)), or the steps described above have been taken, and there has been an opportunity to correct the problem(s).

The Executive Director may immediately suspend a subaward without prior notice when it is believed that such action is reasonable to protect the interests of NPRB and the federal government (AAG VII.A.2.a(ii)). No costs incurred during a suspension period will be allowable, except those costs approved by NPRB in the suspension notice, or which, in the opinion of NPRB, are necessary and not reasonably avoidable (§215.62(c)).

The Executive Director then will send a follow-up notice of suspension by certified mail to the subrecipient (normally the grants manager), with a copy to the principal investigator(s), setting forth the reasons for suspension and its effective date. The NPRB Executive Director will inform the NPRB Executive Committee of any such action and provide a written report fully describing the situation, the need for immediate suspension, and the conditions under which the suspension may be lifted. The NPRB Executive Committee will meet as appropriate to determine the next steps for resolving the situation.

Remedies

After carefully reviewing the situation and responses from the subrecipient, NPRB will consider taking action as appropriate. NPRB may impose temporary special subaward conditions in accordance with §215.14. NPRB also may take actions as allowed under 215.62(a):

1. Temporarily withhold cash payments pending correction of the deficiency.
2. Disallow all or part of the cost of the activity or action not in compliance.
3. Wholly or partly suspend or terminate the current award.
4. Withhold further awards for the project or program.
5. Take other remedies that may be legally available.

NPRB also may prohibit participation by an individual as a principal investigator, co-investigator or collaborator on new projects for a specified time and under specified conditions until problems are deemed to be resolved by NPRB. Failure to provide required reports within the period specified in the subaward could delay NPRB review and processing of pending proposals for all identified principal investigators and co-PIs on a given subaward (AAG Chapter II.E.4). NPRB also may call for a full audit of expenses for the subaward in question and other subawards to the institution as appropriate.

Remedial actions will stay in effect until all issues identified in writing have been fully resolved to the satisfaction of NPRB. NPRB reserves the right to terminate a subaward if it has attempted to resolve issues under the guidance provided in this policy, but has failed to do so. In cases of termination, NPRB will adhere closely to requirements set out in §215.61 and §215.62.

Research Misconduct

Research misconduct means fabrication, falsification, or plagiarism in proposing or performing research funded by NPRB, reviewing research proposals submitted to NPRB, or in reporting research results funded by NPRB. In determining if misconduct has occurred and in taking action, NPRB will adhere as closely as possible to procedures described at AAG Chapter VII.C.

Debarment and Suspension

This policy does not refer to debarment or suspension as covered by Part 180 – OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement), in Federal regulations at 70 FR 51865, August 31, 2005, and Executive Orders 12549 and 12689. Under those regulations, certain parties who are debarred, suspended or otherwise excluded may not be participants or principals in Federal assistance awards and subawards, and in certain contracts under those awards and subawards (§215.13). NPRB is not defined as a Federal agency pursuant to §180.950, and thus can only make recommendations to the Secretary of Commerce regarding debarment and suspension. The above procedures and remedies do not preclude a subrecipient from being subject to debarment and suspension (§215.62(d)).

Notification

This policy was approved by NPRB on March 2, 2009. By reference, it is made part of all NPRB subaward agreements beginning in 2009. Subrecipients will be notified of this policy during each NPRB request for proposals, and must acknowledge and agree to it when accepting subawards. Current and past subawards are covered by their subaward provisions and all applicable Federal law.