



Subaward and Contract Review Guidance

This guidance is designed to assist OCED financial assistance selectees and recipients by providing an overview of the differences between subawards and contracts. While not exhaustive, the guidance explains what information the selectee/recipient must provide and how OCED will review it.

OCED Policy on Subawards and Contracts

- ▶ **Determination of Subaward versus Contract is determined by the selectee/recipient.** In accordance with 2 CFR § 200.331, the selectee/recipient, not OCED, has the responsibility to determine "...whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor."
- ▶ **All subawards will be reviewed and approved by OCED.** The Grants and Agreements Officer (G/AO) and the Federal Project Manager will use their judgment to determine the depth of review based on the size, complexity, and scope of the project.
- ▶ **Recipient must provide all relevant procurement documents when they** do not have a pre-approved procurement system and the contemplated contract will be placed on a sole source basis and exceeds the simplified acquisition threshold.

What is the difference between Subawards and Contracts?

A **recipient** is a non-Federal entity that receives Federal dollars in the form of a grant. A **subrecipient** is a non-Federal entity that receives a **subaward** from a recipient to carry out a portion of the scope of the work or objectives of the Federal award, or a non-Federal entity that receives a subaward from a subrecipient. The **subrecipient** has a Federal assistance relationship with the recipient. In contrast, a **contractor** is a non-Federal entity that enters into a "procurement contract under an award" with a recipient or subrecipient. A **contractor** has a procurement relationship with the recipient. A **contract** is a legal instrument by which a non-Federal entity purchases goods or services needed to carry out the project or program under a Federal award. A **contract** is not subject to many of the compliance requirements of the Federal program as a result of the agreement. [2 CFR §200.331](#) provides guidance on the characteristics of subawards versus contracts.

When a recipient passes Federal funds to a subrecipient to carry out part of a Federally assisted project, the recipient is referred to as a **pass-through entity**. **The terms recipient and pass-through entity are used interchangeably throughout this guidance.**

Only organizations can be subrecipients. Individuals who are beneficiaries of Federal awards are participants, not subrecipients. Individuals who are members of a particular profession or possess a special skill and who are not officers or employees of the organization are not subrecipients. The costs associated with these individuals are most likely subject to the applicable cost principles for professional service costs ([2 CFR §200.459](#) or [FAR 31.205- 33](#)) and are outside the scope of this guidance.

The guidance provided highlights areas of compliance typically required of recipients of Federal assistance awards. It is not intended to fully document all requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200 or 2 CFR Part 910. This guidance document does not supersede Federal laws and regulations. This OCED guidance document is for informational purposes only and is not a requirements document. If there are inconsistencies between this OCED guidance document and any specific program or project document, the specific OCED program or project document should be relied upon as it is the controlling document.

General procurement requirements for recipients, other than states, are located in [2 CFR §200.318](#). The regulations require that procurement activities be performed in an equitable and competitive manner to promote equal treatment, efficiency, and economy in Federal grant activities. A recipient must comply with the procurement standards, and the recipient's own written procurement policies and procedures, to the extent they are consistent with the procurement standards and other applicable Federal law.

Per [2 CFR §200.318\(i\)](#), the recipient must have a sufficient procurement system that maintains records to detail the history of procurement. This includes, but is not limited to, rationale for the (1) method of procurement, (2) selection of contract type, (3) contractor selection or rejection, and (4) the basis for the contract price. A recipient must provide for full and open competition in procurements to the extent required by the procurement standards and OCED award conditions.

Per the above-mentioned section of the CFR, when "determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. OCED employees should defer to the recipient's judgment in most cases."

The following lists identify some of the common differences between subrecipient and contract relationships.

A subrecipient:

- Determines who is eligible to receive what Federal assistance;
- Has its performance measured in relation to whether Federal program objectives were met;
- Has responsibility for programmatic decision making;
- Must adhere to applicable Federal program compliance requirements specified in the award; and
- Uses the Federal funds to carry out a program for a public purpose specified in the authorizing statute, in accordance with its award.

A contractor:

- Provides goods or services within normal business operations;
- Provides goods and services to many different purchasers;
- Normally operates within a competitive market;
- Provides goods or services that are ancillary to the operation of the Federal program;
- Is not subject to the Federal program's compliance requirements, though similar requirements may apply for other reasons;
- Has its performance measured against the requirements of its contract; and
- Recipients must document how (single source or competitive) and why a contract was awarded.

What are OCED Responsibilities?

OCED has a legal and financial relationship with its recipients only; it does not have a relationship with subrecipients or contractors. Privity of contract exists between the recipient/subrecipient and its contractor. The Federal Government, on the other hand, is not a party to that contract and no privity of contract exists. Recipients/subrecipients that use public assistance funding for a contract must comply with the procurement requirements imposed by Federal law, executive orders, Federal regulations, and terms of the award.

The regulations at [2 CFR Part 200 Subpart D - Procurement Standards](#) set forth the required procurement standards which the recipients must follow when entering into a contract. For example, [2 CFR §200.324](#) requires recipients/subrecipients to perform a cost or price analysis for every procurement action in excess of the Simplified Acquisition Threshold. Similarly, [2 CFR §200.325](#) states that OCED can request, and that the non-Federal entity must provide, procurement documents if the recipients/subrecipients' procurement procedures do not comply with the procurement standards. Procurement documents include, but are not limited to, requests for proposals, invitations for bid, cost estimates, proposals or bids, and price or cost analysis of proposals or bids.

The regulations at [2 CFR 200 Subpart D – Subrecipient Monitoring and Management](#) set forth the guidance for Federal monitoring and management of subrecipients. For example, [2 CFR §200.332](#) lists the requirements that the recipient must follow such as monitoring the activities of the subrecipient to ensure the subaward is used for authorized purposes and that the subrecipient is achieving the performance goals.

What Approvals are Needed for Subawards?

Applicants and recipients must receive prior approval from OCED before entering into a subaward agreement. OCED applications that include subawards, must clearly identify in the application narrative, work plan, budget, and budget justification which activities will be conducted by the recipient, and the activities to be performed by the subrecipients. Further, applicants must submit a separate budget and budget justification for each planned subrecipient, itemizing costs for each subrecipient using the same cost categories in the required budget form.

If a subaward was not identified and approved by OCED as part of the original award application and budget, the recipient must obtain prior approval from the OCED Grants and Agreements Officer before they issue the subaward.

What is the Process for Reviewing a Subaward Budget?

OCED will review all subaward budgets, and recipients must submit a separate budget and budget justification (narrative) for each subaward. The Grants and Agreements Officer will use professional judgment to determine what level and type of analysis to conduct.

Recipients of cooperative agreements are expected to conduct a pre-award risk review of each subaward as outlined in [2 CFR §200.332](#).

When reviewing a subaward budget, the Grants and Agreements Officer will consider the following when deciding what level of scrutiny to apply. Please note this list is not comprehensive.

- ▶ The results of the Pre-Award Organization Review, especially the adequacy of the recipient's subrecipient management and monitoring policies and procedures.
- ▶ The sufficiency of the recipient's documented risk analysis of the subrecipient.
 - › The subrecipient's prior experience with the Federal financial assistance.
 - › The subrecipient's project management experience.
 - › Any relevant information or exclusions found in SAM.gov or FAPIIS.
- ▶ Any relevant Single Audit findings which may be accessed at the Federal Audit Clearinghouse.
- ▶ Any issues or concerns noted by the G/AO or identified in previous reviews or other DOE financial assistance awards.

What is the Process for Reviewing a Contract?

OCED will exercise its responsibility for oversight and monitoring of contracts under the award to ensure that contracts are awarded in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. The recipient must obtain written approval from the G/AO prior to entering into a contract as determined by the Program and Award-Specific Terms and Conditions. Contracts clearly identified in Recipient's budget are considered approved at the time of award unless approval is withheld by the G/AO. The recipient does not have to complete or obtain an OCED budget justification workbook for a contract.

A Recipient's request to enter into a contract may include:

- A copy of the proposed contract;
- A statement of work, or equivalent document, describing the supplies or services required;
- The selection of contract type;
- The proposed price;
- The recipient's cost or price analysis for procurements in excess of the Simplified Acquisition Threshold;
- The rationale for the method of procurement;
- The proposed contractor and an explanation of why and how the proposed contractor was selected, and the method of competition;
- A detailed justification if the contract was awarded without competition; and
- A check of SAM.gov, FAPIIS, CPARS, Federal Audit Clearinghouse of the U.S. Census Bureau for any relevant information or exclusions of the contractor.

OCED will review proposed activities and estimated costs for compliance with Federal regulations and the terms and conditions of the award. OCED approval of the contract request does not constitute a determination of cost allowability. OCED will not review the contract for legal sufficiency.

Recipients may request a procurement system compliance determination from OCED. If OCED certifies the procurement system, the recipient is exempt from the requirements of [2 CFR §200.325.\(b\)](#). If a recipient chooses to self-certify their procurement system, the recipient must make its system available to OCED for review. These reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

Roles and Responsibilities of OCED, Recipients, and Subrecipients

Federal regulation and policy establish roles and responsibilities for OCED, recipients, and subrecipients, including ways to prevent fraud, waste, and abuse and ensure programmatic integrity.

OCED Responsibilities	Recipient Responsibilities	Subrecipient Responsibilities
Ensure proper internal controls and oversight of recipients to prevent and detect fraud, waste, and abuse.	Establish and maintain effective internal control over the award funds and subrecipient oversight.	Establish and maintain effective internal control over the subaward.
Verify recipient eligibility.	Verify subrecipient eligibility.	Maintain and provide relevant documentation to substantiate eligibility claims.
Ensure pass-through entities are not suspended or debarred and that they comply with all award requirements.	Ensure subrecipients are not suspended or debarred and that they comply with all award requirements.	Ensure contractors are responsible and, if applicable, not suspended or debarred.
Conduct risk assessments of the selectees prior to making awards and continue to monitor risk over the period of performance.	Conduct risk assessments of the subrecipients prior to making an award and continue to monitor risk over the period of performance.	Monitor internal controls to ensure compliance with regulations.
Monitor recipients to ensure compliance with all Federal statutes, regulations, and conditions of the award.	Monitor subrecipient's activities to ensure that the subaward is used for authorized purposes in compliance with Federal statutes, regulations, and conditions of the subaward, and that subaward performance goals are achieved. In addition to required reporting, pass-through entities may require periodic financial and programmatic reports, site visits, and reviews of subrecipients' audit reports.	Monitor contractor activities to ensure compliance with applicable Federal requirements. Comply with relevant Federal regulations for procurement under grants.
Review recipient performance and financial reports against proposed activities and approved budget. Close out projects.	Certify that all costs are associated with the approved scope of work and that the subrecipient completed all work in accordance with regulations and OCED policies. Certify project as complete.	Complete all work in accordance with Federal regulations and OCED policies.
Take appropriate action to remedy noncompliance with the recipient.	Identify instances of subrecipient noncompliance and take prompt action.	Promptly remedy instances of noncompliance when they are identified.
Identify disallowed costs and recover funds from the pass-through entity, if necessary.	Ensure subrecipients are aware of their responsibility to repay duplicate funding. Identify and recover funds for unallowable costs, unexpended funds, and funds expended in error or through misrepresentation or fraud. Repay improper payments or overpayments.	Repay improper payments or overpayments.
Remind pass-through entities expending \$750,000 or more in Federal awards during their fiscal year to conduct a Single Audit per 2 CFR Part 200 Subpart F .	Conduct a Single Audit when expending \$750,000 or more in Federal funds in their fiscal year. Remind subrecipients expending \$750,000 or more in Federal awards during their fiscal year to conduct a Single Audit per 2 CFR Part 200 Subpart F .	Conduct a Single Audit when expending \$750,000 or more in Federal funds in their fiscal year per 2 CFR Part 200 Subpart F .
Issue management decisions regarding audit findings related to the recipient.	Issue management decisions regarding audit findings related to the subaward within six months of the audit report's release.	Resolve management decisions relating to the program's audit.
Report any suspected fraud and cooperate with investigations.	Report any suspected fraud and cooperate with investigations.	Report any suspected fraud and cooperate with investigations.

Subrecipient and Contractor Differences

Review Element	Subrecipient	Contractor
Project/Scope of Work Design	Collaborates on design or development	Recipient defines statement of work
Funding Application	May work on overall application submission	Does not work on application submission
Work Performance	Substantive programmatic work, significant portion of overall project	Incidental to overall project (e.g. “skilled hands/ minds”)
Goods and Services	N/A	Provides similar goods and services to others as part of their business
Decision Making	Controls method and results of their portion of the project	Makes no project decisions
Compliance	Must comply with the award terms and conditions	Not subject to the award terms and conditions
Performance Measurement	Measured against meeting the project objectives	Tied specifically to contract deliverables, not project objectives
Publications	May create or co-author publications	Does not typically create or co-author project publications
Intellectual Property	Intellectual property rights detailed in subaward agreement	No potential for intellectual property to be created by contractor/vendor

A subaward is likely appropriate if the project meets the criteria above **AND** you can answer “YES” to any of the following questions:

1. Does the entity’s statement of work represent an intellectually significant and clearly separable portion of the programmatic effort of the overall project? For example, is the proposed subrecipient’s work a specific aim in the recipient’s scope of work?
2. Does the entity have responsibility for programmatic decision making?
3. Could the entity’s work result in intellectual property being developed or publishable results (including co- authorship)?

Related Resources

- ▶ [2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#)
- ▶ [2 CFR 910, DOE Implementation of 2 CFR 200](#)

Questions

Questions regarding this guidance should be directed to your cognizant Grants and Agreement Officer.