



Subaward and Contract Review Guidance

This guidance is designed to assist OCED financial assistance staff as they review a subaward or contract. While not exhaustive, this guidance provides an overview of the administration and oversight of subrecipients.

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 the entity receiving Federal funds is 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 judgement 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.

Common Terminology: Recipients, Pass-Through Entities, Subrecipients, Subawards, and Contractors

A **recipient** is an entity that receives Federal dollars in the form of a grant or cooperative agreement to carry out a project. A **subrecipient** is an 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 an entity that receives a subaward from a subrecipient. The subrecipient has a Federal assistance relationship with the recipient.

An entity that provides a subaward to a subrecipient (included lower tier subrecipients) to carry out part of a Federal program 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. The term recipient does not include subrecipients or individuals that are participants or beneficiaries of the award. Participant generally means an individual participating in or attending program activities under a Federal award, but who is not responsible for implementation of the Federal award. Individuals committing effort to the development or delivery of program activities under a Federal award are not participants. 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 pass-through entity must comply with Federal regulations when making a subaward. It is responsible for monitoring programmatic progress, ensuring compliance with Federal regulations and the terms and conditions of the award, issuing payments, reviewing requests, issuing approvals, reviewing reports, and ensuring that subrecipients complete closeout activities for each subaward.

A **contractor** is an 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 contractor is not subject to many of the compliance requirements of the Federal program as a result of the agreement.

General procurement requirements for recipients, other than States and Indian Tribes, 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 Federal procurement standards, and also with 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 or subrecipient must have a sufficient procurement system that maintains records to detail the history of each procurement transaction. This includes 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.

Refer to Roles and Responsibilities of OCED, recipients, and subrecipients for more information.

Responsibilities of OCED

OCED has a legal and financial relationship only with its recipients. It does not have a relationship with subrecipients or contractors. Therefore, there is privity of contract 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 between it and the contractor. 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 the terms of the award.

The regulations at [2 CFR Part 200 Subpart D §§200.317-200.327](#) set forth the required procurement standards that the recipients and subrecipients must follow when entering into a contract. For example, [2 CFR §200.324](#) requires recipients or subrecipients to perform a cost or price analysis for every procurement transaction, including contract modifications, in excess of the Simplified Acquisition Threshold. Similarly, [2 CFR §200.325](#) states that OCED can request 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 Part 200 Subpart D §§200.331-200.333](#) 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.

Authorization for Subawards

Applicants and recipients must receive prior approval from OCED before entering into a subaward agreement.

OCED applicants 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 which activities will 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.

The recipient may not function solely as a fiscal agent or sponsor; it must make substantive contributions to the success of the project.

Subawards versus Contracts

[2 CFR §200.331](#) provides guidance on the characteristics of subawards versus contracts. The 2 CFR 200 defines a **subaward** as an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. In contrast, a **contract** is a legal instrument by which a recipient or subrecipient conducts procurement transactions under a Federal award. The Federal agency does not have a direct legal relationship with subrecipients or contractors of any tier; however, the Federal agency is responsible for monitoring the pass-through entity's oversight of first-tier subrecipients.

Per [2 CFR §200.331](#), "[t]he pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract. In making this determination, the substance of the relationship is more important than the form of the agreement." If an OCED employee believes the recipient has not complied with the requirements of [2 CFR §200.331](#), they should consult with the relevant Grants and Agreements Officer for guidance. In addition, see Subrecipient and Contractor Differences below.

The following lists identify some of the common differences between subrecipient and contract relationships. OCED employees should defer to the prime recipient's judgment in most cases.

A subrecipient:

- ▶ May be selected competitively or noncompetitively;
- ▶ 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:

- ▶ Has its performance measured against the requirements of its contract;
- ▶ Recipients must document how (single source or competitive) and why a contract was awarded;
- ▶ 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 implementation of the Federal program; and
- ▶ Is not subject to the Federal program's compliance requirements, though similar requirements may apply for other reasons.

Subaward Budget Review

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 judgement 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](#).

The Grants and Agreements Officer should consider the following when deciding what level of scrutiny to apply to each subaward budget. 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.
- The percentage of the total award funds that are passed-through. For example, if one or more subawards make up 80% of the total award, consider a more thorough review of their budgets.
- The total dollar amount of the subaward budget.
- Any relevant Single or Compliance Audit findings which may be accessed in the Federal Audit Clearinghouse or directly through the recipient (for Compliance Audits)..
- Materiality of budget category amounts (e.g., due to lack of materiality to the overall budget, such as travel is proposed at 2% of the overall budget, a limited review or no review may be appropriate).
- Any issues or concerns noted by the G/AO or identified in previous reviews or other DOE financial assistance awards.

Example review techniques include, but are not limited to:

- Request a copy of the recipient's pre-award analysis of each of the proposed subaward(s). If a pre-award analysis is not available from the recipient, the G/AO may withhold approval of that subaward until the recipient provides sufficient details.
 - » The G/AO should consider the adequacy of the subrecipient's risk.
 - » The recipient should check SAM.gov, CPARS, and the Federal Audit Clearinghouse of the U.S. Census Bureau for any relevant information or exclusions of the subrecipient, if not documented in the evaluation of the subrecipient's risk.
- Verify that the recipient provided a description of how identified risks are planned to be monitored and managed.
- Obtain confirmation from the recipient that they completed a review and cost analysis of the subaward budget. Consider obtaining documentation of this review/assessment.
 - » If there are concerns on the indirect rate, consider requesting the recipient describe how they determined that the appropriate indirect rate, and thus the associated indirect costs, was proposed.

- » If concerns remain after review of the documentation provided, consider requesting the recipient obtain basis of estimate documentation from the subrecipient for selected areas of the budget.
- Review history of funding of subawards in USASpending.gov.

Contract Review

OCED will exercise its responsibility for oversight and monitoring of contracts under the award. OCED must 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. An OCED budget justification workbook is not completed or obtained 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; and
- A detailed justification if the contract was awarded without competition.
- A check of SAM.gov, CPARS, and the 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. |

| OCED Responsibilities | Recipient Responsibilities | Subrecipient Responsibilities |
|---|--|--|
| Remind pass-through entities expending \$1,000,000 or more in Federal awards during their fiscal year to conduct a Single Audit or Compliance Audit, as per 2 CFR Part 200 Subpart F (for a state or local government, Indian Tribe, Institution of Higher Education, or non-profit organization) or 2 CFR 910.501 (for a for-profit entity), respectively. | Obtain a Single Audit or Compliance Audit when expending \$1,000,000 or more in Federal funds in their fiscal year. Remind subrecipients expending \$1,000,000 or more in Federal awards during their fiscal year to conduct a Single Audit or Compliance Audit, as per 2 CFR Part 200 Subpart F (for a state or local government, Indian Tribe, Institution of Higher Education, or non-profit organization) or 2 CFR 910.501 (for a for-profit entity), respectively. | Obtain a Single Audit or Compliance Audit when expending \$1,000,000 or more in Federal funds in their fiscal year, as per 2 CFR Part 200 Subpart F (for a state or local government, Indian Tribe, Institution of Higher Education, or non-profit organization) or 2 CFR 910.501 (for a for-profit entity), respectively. |
| 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

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|-------------------------------------|---|--|
| Project/Scope of Work Design | Collaborates on design or development | Recipient defines Scope of Work |
| Work Performance | Substantive programmatic work, significant portion of overall project | Incidental to overall project (e.g., "skilled hands/minds") |
| Decision Making | Controls method and results of their portion of the project | Makes no project decisions |
| Performance Measurement | Measured against meeting the project objectives | Tied specifically to contract deliverables, not project objectives |
| Intellectual Property | IP rights detailed in subaward agreement | No potential for IP 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

- › [Subrecipient vs. Contractor Checklist](#)
- › [2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#)
- › [2 CFR 910, DOE Implementation of 2 CFR 200](#)
- › [DOE Guide to Financial Assistance](#)

Questions

Questions regarding this guidance should be directed to the OCED Award Management Team at ocedawardoversight@hq.doe.gov.