

Subrecipient vs Contractor Determination

Definition

A "subrecipient" is defined in § 200.93 as a non-Federal entity that receives a subaward (as defined in § 200.92) from a pass-thru-entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

A "contractor" is defined in § 200.23 as an entity that receives a contract, which as defined in § 200.22 is a legal instrument by which a non-Federal entity purchases property, goods, or services needed to carry out the project or program under a Federal award. This term does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (as defined in § 200.92).

2 CFR 200.330 Subrecipient and contractor determinations

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations 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. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) Subrecipients. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See §200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision making;
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) Contractors. A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See §200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) Use of judgment in making determination. In 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. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

Frequently Asked Questions

Whose responsibility is it to make the subrecipient vs contractor determination?

It is the responsibility of the pass-through entity to make the correct determination between subrecipient or contractor determination. This determination is to be made on a case-by-case basis depending on the unique relationship of each individual situation.

Why is it important to properly distinguish between a subrecipient vs contractor?

Federal regulations differ between subrecipients and contractors. One of the biggest reasonings is that subrecipients are required to comply with applicable Federal compliance requirements (these get passed down from the pass-through entity to the subrecipient), while contractors are not subject to the same compliance requirements of the Federal program. It is the responsibility of the pass-through entity to identify the subaward to

the subrecipient and include the information listed in § 200.331(a)(1-6) in the agreement form between the pass-thru-entity and the subrecipient.

Our organization uses a "contract" as the legal instrument to enter into agreements with both subrecipients and contractors. Therefore we consider all of our relationships as contractors. Is this acceptable?

No. Many non-Federal entities, particularly State agencies, call all of their legal instruments "contracts". A non-Federal entity may concurrently receive Federal awards as a recipient, subrecipient, and a contractor, depending on the substance of its agreement with the Federal awarding agency and pass-through entities. Therefore, a pass-through entity must make a case-by-case determination 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. Pass-through entities need to reflect upon the nature of the case-by-case relationship of the agreement in order to determine if the non-Federal entity is a subrecipient or a contractor.

What guidance can you provide in order to help distinguish between a subrecipient or contractor?

§ 200.330(a) provides characteristics which generally support the classification of a non-Federal entity as a subrecipient. Characteristics generally supportive of a contractor are listed in 2 CFR 200.330(b). Both sets of characteristics are listed in the above section.

What are some of the characteristics indicative of a subrecipient relationship with a non-Federal entity?

Some of the more common characteristics of a subrecipient relationship include when the non-Federal entity: (1) determines who is eligible to receive the Federal financial assistance; (2) has its performance measured against whether the objectives of the Federal program are met; (3) has responsibility for programmatic decision making; (4) has responsibility for adherence to applicable Federal compliance requirements; and (5) uses Federal funds to carry out a program of the organization as compared to simply providing goods or services for a program of the pass-through entity.

What are some of the characteristics indicative of a contractor relationship with a non-Federal entity?

Some of the more common characteristics of a contractor relationship include when the non-Federal entity: (1) provides goods and services within normal business operations; (2) provides similar goods or services to many different purchasers; (3) operates in a competitive environment; (4) provides goods or services that are ancillary to the operations of the Federal program; and (5) is not subject to compliance requirements of the Federal program.

Can you provide an example of a scenario where a pass-through entity enters into a relationship with a subrecipient?

Scenario #1: A state fish and wildlife agency receives a Sport Fish Restoration grant to study the effects of stocking white crappie into a large flood control reservoir in terms of bolstering the population in order to improve abundance for recreational fishing. The state fish and wildlife agency in turn enters into a relationship with a local university to conduct the research as approved in the grant application. Under this scenario, the state fish and wildlife agency acts as the pass-through entity and the university becomes the subrecipient. A subrecipient determination would be adequate in this scenario because the university (1) has its performance measured against whether the objectives of the Federal program are met; (2) most likely has responsibility for programmatic decision making; (3) has responsibility for adherence to applicable Federal compliance requirements; and (4) uses the Federal funds to carry out a program of the organization as compared to simply providing goods or services.

Scenario #2: A state environmental protection agency has been designated by the governor to be the state agency to receive Clean Vessel Act (CVA) program funding. The state agency receives a Clean Vessel Act grant to construct marine sewage pumpout facilities at public lakes across the state. The state agency enters into an agreement with a private marina to construct a marine sewage pumpout facility that will be open and available to the boating public. The pumpout facility will safely accept and remove marine sewage from recreational vessels. Under this scenario, the state environmental protection agency acts as the pass-through entity and the private marina owner becomes the subrecipient. This subrecipient determination would be adequate because the private marina (1) has its performance measured against whether the objectives of the Federal program are met; (2) has responsibility for programmatic decision making; (3) has responsibility for adherence to applicable Federal compliance requirements; and (4) uses the Federal funds to carry out a program of the organization as compared to simply providing goods or services.

Can you provide an example of a scenario where a pass-through entity enters into a relationship with a contractor?

Scenario #1: A state fish and wildlife agency receives a Wildlife Restoration grant for annual operations and maintenance of its wildlife management areas and facilities located at the areas. The state fish and wildlife agency determines that a new roof is needed on one of its regional wildlife offices located at one of the wildlife management areas. The state agency in turn enters into a relationship with a local business to remove the existing roof and replace with a new roof. Under this scenario, the state fish and wildlife agency acts as the non-Federal entity and the local roofing business becomes the contractor. A contractor determination would be adequate in this scenario because the local roofing business (1) provides goods or services within normal business operations; (2) provides similar goods or services to many different purchasers; (3) operates in a competitive environment; (4) provides good or services that are ancillary to the operation of the Federal program; and (5) is not subject to compliance requirements of the Federal program.

Scenario #2: A state fish and wildlife agency receives a Sport Fish Restoration grant to sample, monitor, and manage 50 public recreational sport fisheries across the state. Included in the grant, the state agency requests to purchase five new vehicles and two new electrofishing boats from private businesses. Under this scenario, the state fish and wildlife agency acts as the non-Federal entity, while both the vehicle dealership and the electrofishing boat manufacturer become contractors, respectively. A contractor determination would be adequate in this scenario because both entities are (a) providing goods and services within normal business operations; (2) providing similar goods or services to many different purchasers; (3) operating in a competitive environment; (4) providing goods or services that are ancillary to the operation of the Federal program; and (5) not subject to compliance requirements of the Federal program.

Scenario #3: A state fish and wildlife agency receives a Sport Fish Restoration grant to compare growth, mortality, and recruitment of northern-strain vs Florida-strain largemouth bass in Lake Bobber. The state fish and wildlife agency will use its internal research biologist staff to conduct the research. However, they do not have the equipment and expertise to run the genetic samples from all largemouth bass collected. They enter into a relationship with a university that will perform the genetic testing of samples to determine which largemouth bass are

northern-strain vs Florida-strain. Once completed, the university will provide the results back to the state fish and wildlife agency staff who will in turn then perform the data analysis and develop the final report. Under this scenario, the state fish and wildlife agency acts as the non-Federal entity and the university acts as a contractor. A contractor determination is appropriate because the university is (1) providing goods or services within normal business operations; (2) providing similar goods and services to many different purchasers; (3) providing goods or services that are ancillary to the operation of the Federal program; and (4) not subject to compliance.

What additional requirements does the pass-through entity have in regards to its subrecipients?

§ 200.331 lists the various requirements that pass-thru entities have in regards to subrecipients.

Am I required to complete a Risk Assessment on both subrecipients and contractors before issuing the award?

§ 200.331(b) requires all pass-through entities to evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for the purposes of determining the appropriate monitoring needed to ensure that Federal funds are used properly. Pass-through entities are not required to complete a risk assessment on contractors.

Learning Aids

Related Pages

[Risk Assessment Requirements for Pass-Through Entities](#)

Resources

[USFWS Risk Assessment Form](#)

References

§ 200.22 Contract.

§ 200.23 Contractor.

§ 200.92 Subaward.

§ 200.93 Subrecipient.

§ 200.330 Subrecipient and contractor determinations.

§ 200.331 Requirements for pass-through entities.