

## Procedure: Subrecipient Contracts (Federal)

Subrecipient contracts may be executed for pass-through awards of Federal funding to partner agencies or contractors. ESD must determine whether services it contracts for under Federal award funding to accomplish the purposes of the award are delivered under a vendor or subrecipient/partner relationship. Guidelines for this determination are found in 2 CFR §200.330. Helpful guidelines in making this determination are provided below. Determination of relationship status should be based on the substance of the relationship rather than the form of an agreement. All the characteristics listed below may not be present in all cases. An evaluation guide is available to help evaluate the potential for subrecipient relationship, see [6210-R3 Subrecipient Status Determination](#).

### Subrecipients

Characteristics which support the classification as a subrecipient may include when the receiving entity:

- Determines who is eligible to receive what Federal assistance;
- Has its performance measured in relation to whether objectives of a Federal program were met;
- Has responsibility for programmatic decision-making;
- Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- In accordance with its agreement, uses the Federal funds to carry out a program for a specified public purpose under the authorization, as opposed to providing goods and services for the benefit of the receiving entity.

### Vendor Contracts

Characteristics which support identification as a vendor or procurement relationship may include when the receiving entity:

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

### **Subrecipient Contract Agreements**

Prior to executing a subrecipient contract and annually thereafter, the program together with their budget staff must document a risk assessment of the awardee. [Form 6210-F4 Subrecipient Risk Assessment Questionnaire](#) should be completed by the subrecipient as an important component of that assessment. Tools have been developed to support risk evaluation, Results of that evaluation should be reviewed and based on identified risks, monitoring and reporting requirements shall be identified (see discussion below "Subrecipient Monitoring"). Significant potential risks may need to be addressed through contractual provisions and requirements and should be considered in drafting the subaward contractual agreement.

The Federal government has set forth specific requirements for provisions and disclosures that must be contained in subrecipient award agreements, as defined in 2 CFR Part 200.331. The Associate Superintendent of Business Services shall ensure that subrecipient award contract templates are developed

and updated annually that meet Federal compliance standards. All subrecipient award contracts must be reviewed and approved by Business Services, together with the completed risk assessment.

### **Requirement to Provide Notice of Federal Financial Assistance Programs (FFAP)**

Under the Federal Funding Accountability and Transparency Act (FFATA), ESDs issuing federal subrecipient awards of \$25,000 or more must report the obligating action for those awards on the FFATA site: <http://www.frs.gov>. The Associate Superintendent of Business Services shall appoint a designee to manage FFATA site reporting. Subaward information must be reported no later than the end of the month following the month in which the obligation was made. For example, if the obligation was made on November 7, 2017, the obligation must be reported by no later than December 31, 2017 and requires annual update and maintenance thereafter.

### **Subrecipient Monitoring (2 CFR §200.331)**

If ESD issues a subrecipient award from federal funding received, ESD is required to fulfill certain requirements and responsibilities with regard to that award.

- (1) ESD must evaluate each subrecipient's risk of noncompliance and establish appropriate monitoring procedures based on the risk assessment, as described in 2 CFR §200.331(b)(1-4).
- (2) ESD may consider imposing specific subaward conditions if appropriate based on the risk assessment.
- (3) ESD must monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, is in compliance with required provisions, and that the subaward goals are achieved. Such monitoring should be well documented and include review of financial and performance reports as required by ESD and follow up on any appropriate actions to correct identified deficiencies, if any. Monitoring procedures shall be determined based on risk assessment.

Tools for monitoring may include:

- a. Providing training and technical assistance
  - b. Performing desk reviews, including monitoring of budget to actual performance for the award
  - c. Performing on-site reviews or limited scope "audits"
  - d. Requesting detail documentation and validation of procedures and underlying documentation of expenses charged.
- (4) ESD must verify that subrecipients are audited if required by 2 CFR 200 Subpart F
  - (5) ESD shall consider whether the results of risk assessment, monitoring results or audit reports issued necessitate adjustments to the subrecipient's award.
  - (6) ESD shall consider taking enforcement action against noncompliant subrecipients as described in 2 CFR §200.338.

Department staff together with their budget team shall develop an annual monitoring plan based on the completed risk assessment. If deficiencies are identified during monitoring procedures, the monitoring plan should be updated and revised to include additional procedures to mitigate risk of non-compliance with the terms of the award, including failure to achieve objectives. It is likely that two separate monitoring plans may be set in place: (1) to address achievement of programmatic objectives and outcomes and (2) to address fiscal and accountability compliance. Monitoring must be executed reasonably according to the plan and documented for review by originating funders and/or state auditors. Risk assessments should be updated periodically, at least bi-annually, including update of [Form 6210-F4 Suprecipient Risk Assessment Questionnaire](#).

When approving reimbursement to a subrecipient, the program together with the budget staff shall review claim documentation provided by the subrecipient and request additional documentation as needed to (1) determine that the expenditures are allowable and in accordance with the subaward objectives, (2) obtain documentation on matching expenditures required, if any, verifying the subrecipient has fulfilled its obligation against reimbursements claimed.

### **Certification and Disclosures**

Subrecipients must provide certification, by someone with fiscal authority, with their invoice billings for reimbursement regarding any violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. An example of required wording follows:

*“By signing this report, I certify to the best of my knowledge and belief that the report is true, complete and accurate and the expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims, or otherwise.”*

Additionally, subrecipients must disclose in writing any potential conflict of interest related to the funding received in accordance with applicable Federal awarding agency policy.

Any amendments to the Federal CFRs shall be considered as automatic updates to the current documented procedures.

*Updated: 8/2018*