

EPA Subaward Policy Appendix A: Distinctions Between Subrecipients and Contractors

This Appendix uses 2 CFR 200.331 as the basis for distinguishing between subrecipients and contractors.

Pass-through entities make subawards to other organizations to carry out a portion of the Federal award under terms that establish a financial assistance relationship to accomplish a public purpose that is authorized under a Federal program. Subrecipients only receive reimbursement for their actual direct or approved indirect costs such that they do not “profit” from the transaction and subrecipients are subject to the same Federal requirements as the pass-through entity. In contrast, consistent with [2 CFR 200.331](#), procurement contractors (including individual consultants) typically provide goods and services on commercial terms, operate in a competitive environment and a reasonable profit is allowable.

The regulations require that non-Federal entities award contracts following full and open competition with the exception of transactions in amounts below the micro-purchase level or when a sole source contract is properly justified; [2 CFR 200.319](#); [2 CFR 200.320](#). Pass-through entities may enter into subawards without competition unless a statute, regulation, or the terms of the EPA award provide otherwise. This distinction makes accurate determinations regarding whether a transaction is with a subrecipient or a contractor particularly important.

A subaward may be provided by any form of legal agreement that complies with [2 CFR 200.332\(a\)\(1\)](#). A pass-through entity may use the term ‘contract’ to characterize a subaward arrangement. It is, therefore, important to examine the substance of the agreement using this appendix to determine if the transaction is a subaward or a procurement contract.

The legal status of an organization as a governmental unit, non-profit organization, institute of higher education, or for-profit organization while not necessarily determinative of whether the transaction at issue is a subaward or procurement contract is an important factor to consider. As provided in 2 CFR 200.331 recipients must exercise sound judgment in deciding whether a transaction is a procurement contract or subaward subject to this EPA guidance. Based on the standards at [2 CFR 200.331\(a\) and \(b\)](#) EPA has determined that transactions:

1. Between legally distinct units of government (e.g. a state providing funds to a local government) will in almost all cases be either subawards or intergovernmental agreements under [2 CFR 200.318\(e\)](#) rather than procurement contracts since governmental units do not provide services on commercial terms.
2. Between institutions of higher education (IHE), or between IHEs and units of government or nonprofit organizations, are typically subawards particularly when the transactions relate to joint research, training (including technical assistance and public education) or demonstration projects.
3. Between nonprofit organizations for collaborative projects that further the missions of both organizations are typically subawards although situations in which one nonprofit provides ancillary services that are widely available in the competitive market such as accounting or information technology for operations (e.g., payroll) to another nonprofit are characteristic of a procurement contract.

4. Between any recipient and a for-profit firm or individual consultant, in almost all cases, would be a procurement contract subject to the competitive requirements of [2 CFR 200.319](#) and [2 CFR 200.320](#). For-profit firms and individual consultants operate in a competitive environment and provide goods and services on commercial terms to many different purchasers rather than carrying out a program for public purposes under the statute authorizing EPA to award financial assistance.

EPA's [National Term and Condition for Subawards](#) requires EPA Award Official approval for subawards to for-profits and individual consultants. Examples of situations in which a for-profit firm may be an eligible subrecipient would be an EPA financial assistance program that provides funding for pollution control projects at a company's production facilities and the firm will receive reimbursement for personnel and contractor costs. The for-profit firm in that case would not be providing goods and services to the pass-through entity.

As provided in [2 CFR 1500.1](#), EPA considers rebates and similar subsidies for the purchase of commercially available "off the shelf" pollution control equipment or to encourage participation in environmental stewardship programs by companies and individuals to be participant support costs. These payments to program beneficiaries are not subawards. EPA's [Guidance on Participant Support Costs](#) provides additional information on the distinction between participant support costs and subawards.