



State of New Jersey, Department of Law and Public Safety, Office of the Attorney General

Checklist to Determine Subrecipient or Contractor Classification

INSTRUCTIONS: *To help make the determination, please first review the Office of Justice Programs (OJP) [Subaward vs Procurement Contract Toolkit](#). Complete Sections 1 and 2 which describe the characteristics that may be present in subrecipient and contractor relationships. The section with the greatest number of marked characteristics indicates the likely type of relationship. ***The substance of the relationship should be given greater consideration than the form of agreement between the subrecipient and the outside entity.*** Section 3 should be used to provide a written justification for determining the proper relationship classification. Maintain a copy of this form in the subaward file. This checklist is solely for aiding the State of New Jersey, Department of Law and Public Safety, Office of the Attorney General (L&PS) in determining subrecipient or contractor relationships pursuant to 2 C.F.R. 200 and is not conclusive nor binding on L&PS.*

DEFINITIONS FROM UNIFORM GUIDANCE (2 C.F.R. 200 applicable to L&PS):

§200.1 Recipient – (L&PS)

Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. Recipient refers to L&PS.

§200.1 Non-Federal entity

Non-Federal entity means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. Non-Federal Entity can refer to L&PS, the subrecipient, or the sub-subrecipient.

§200.1 Subaward

Subaward means an award provided by a pass-through entity (L&PS) to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

Subaward also means an award provided by a subrecipient to a sub-subrecipient for the sub-subrecipient to carry out part of a Federal award received by the subrecipient. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

A Subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. I.e., it does not matter what the subrecipient calls the legal agreement, L&PS must review the scope of the relationship between the subrecipient and the sub-subrecipient or contractor to determine if the legal



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agreement and relationship should be treated as a subaward or procurement contract.

§200.1 Subrecipient

Subrecipient means an entity, usually but not always a non-Federal entity, that receives a subaward from a pass-through 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. Subrecipient refers to the Local Public Agency or Non-profit Agency that receives a subaward from L&PS.

Sub-subrecipient

Sub-subrecipient means an entity, usually but not always a non-Federal entity, that receives a subaward from a subrecipient to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A sub-subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Sub-subrecipient refers to the non-Federal entity that receives a subaward from the subrecipient. (2 C.F.R. 200 makes no distinction between Subrecipient and Sub-subrecipient)

§200.1 Contract

Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. For L&PS purposes, you are reviewing when a subrecipient enters into a Contract.

§200.1 Contractor

Contractor means an entity that receives a contract as defined in §200.1 Contract.



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NAME OF SUBRECIPIENT:

NAME OF SUB-SUBRECIPIENT/CONTRACTOR ENTITY:

SECTION 1 - SUB-SUBRECIPIENT

Description: *A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship between the subrecipient and the sub-subrecipient. Sub-subrecipients may have one or more of the following characteristics:*

- May determine who may be eligible to receive Federal assistance under the program guidelines. *For example: A sub-subrecipient that identifies mentors and mentees under a mentoring program.*
- Has its performance measured in relation to whether objectives of a Federal program were met. *The Subrecipient will rely upon the sub-subrecipient's data to submit its own performance data to L&PS.*
- Has responsibility for programmatic decision making. *For example: If the Subrecipient funds a sub-subrecipient to develop (or improve) a particular program and the sub-subrecipient will use its own judgment, discretion, and expertise to develop all or part of the program.*
- In accordance with its subaward agreement (which may be in the legal form of a contract), the sub-subrecipient 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 subrecipient. *For example: To provide crime- or criminal-justice-related services (and, in the case of crime victims, compensation) to individual members of the public, such as victims of crime, or at-risk youth.*
- The sub-subrecipient will not earn a profit under the arrangement.
- The sub-subrecipient is required to contribute cash or in-kind match in support of the subaward.

SECTION 2 - CONTRACTOR

Description: *A contract is for the purpose of obtaining goods and services for the subrecipient's own use and creates a procurement relationship between the subrecipient and the contractor. A contractor relationship may have one or more of the following characteristic:*

- Provides goods and services within normal business operations;



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- 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.
 - *Examples include but are not limited to: Office equipment, supplies, software licenses, reference books, chemical reagents, cell phones, body-worn cameras, body armor, internet services, cell phone service, website hosting, copying/printing, lodging*
- The entity may earn a profit under the contract.

FINAL DETERMINATION:

SUB-SUBRECIPIENT

CONTRACTOR

SECTION 3 - Justification

In determining whether an agreement between a subrecipient and another non-Federal entity reflects a sub-subrecipient or a contractor relationship, the substance of the relationship is more important than the form of the agreement. Considering the characteristics checked above, provide a written justification for the final determination of either a sub-subrecipient or contractor relationship. The checklist and justification should be prepared by L&PS.

Justification of Determination.

Prepared By: _____

Date: _____

Title: _____