

EPA Subaward Policy Guidance  
September 2016

This attachment provides guidance to EPA's Subaward Policy Issuance (GPI) 16-01. The Policy Appendices "A" through "D" provide clear guidance on distinguishing between a subaward and a contract and the new regulatory requirements of assistance agreements containing subawards. If the recipient is still unable to distinguish between a subaward and a contract, they should contact their project officer for further clarification.

[Appendix A: Distinctions Between Subrecipients and Contractors](#)

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EPA Subaward Policy Appendix A: Distinctions Between Subrecipients and Contractors

This Appendix uses [2 CFR 200.330](#) 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 200.330\(b\)](#), 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 200.67](#); [2 CFR 200.319](#); [2 CFR 200.320\(a\)](#) and (f). 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 200.331\(a\)\(1\)](#). 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 200.330\(c\)](#) 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 200.330\(a\)](#) and (b) EPA has determined that transactions:

1. Between units of 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](#). 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, Appendix B below, 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 sub-recipient 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. EPA's Office of Grants and Debarment will issue guidance on rebates and similar subsidies for the purchase of commercially available "off the shelf" pollution control equipment by companies and individuals who are program beneficiaries.

#### EPA Subaward Policy Appendix B: National Term and Condition for Subawards

If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable provisions of [2 CFR Part 200](#) and the [EPA Subaward Policy](#), which may be found at [https://www.epa.gov/sites/production/files/2016-02/documents/grants\\_policy\\_issuance\\_gpi\\_16\\_01.pdf](https://www.epa.gov/sites/production/files/2016-02/documents/grants_policy_issuance_gpi_16_01.pdf).

As a pass-through entity, the recipient agrees to:

1. Be responsible for selecting subrecipients and as appropriate conducting subaward competitions using a system for properly differentiating between subrecipients and procurement contractors under the standards at [2 CFR 200.330](#) and EPA's supplemental guidance in Appendix A of the [EPA Subaward Policy](#).
  - (a) For-profit organizations and individual consultants, in almost all cases, are not eligible subrecipients under EPA financial assistance programs and the pass-through entity must obtain prior written approval from EPA's Award Official for subawards to these entities unless the EPA-approved budget and work plan for this agreement contain a precise description of such subawards.

- (b) Stipends and travel assistance for trainees (including interns) and similar individuals who are not are not employees of the pass-through entity must be classified as participant support costs rather than subawards as required by [2 CFR 200.75](#) and [2 CFR 200.92](#).
2. Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by [2 CFR 200.331\(a\)](#). EPA has developed a template for subaward agreements that is available in Appendix D of the [EPA Subaward Policy](#).
3. Prior to making subawards, ensure that each subrecipient has a “unique entity identifier.” This identifier is required for registering in the [System for Award Management](#) (SAM) and by [2 CFR Part 25](#) and [2 CFR 200.331\(a\)\(1\)](#). The unique entity identifier currently is the subrecipient’s Data Universal Numbering System (DUNS) number. Information regarding obtaining a DUNS number and registering in SAM is available in the General Condition of the pass-through entity’s agreement with EPA entitled “Central Contractor Registration/System for Award Management and Universal Identifier Requirements” T&C of the pass-through entity’s agreement with the EPA.
4. Ensure that subrecipients are aware that they are subject to the same requirements as those that apply to the pass-through entity’s EPA award as required by [2 CFR 200.331\(a\)\(2\)](#). These requirements include, among others:
  - (a) Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.
  - (b) Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition pass-through entity’s agreement with EPA entitled “Reporting Subawards and Executive Compensation.”
  - (c) Limitations on individual consultant fees as set forth in [2 CFR 1500.9](#) and the General Condition of the pass-through entity’s agreement with EPA entitled “Consultant Fee Cap.”
  - (d) EPA’s prohibition on paying management fees as set forth in General Condition of the pass-through entity’s agreement with EPA entitled “Management Fees.”
  - (e) The Procurement Standards in [2 CFR Part 200](#) including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants).

EPA provides general information on other statutes, regulations and Executive Orders on the Grants internet site at <http://www.epa.gov/grants>. Many Federal requirements are agreement or program specific and EPA encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice if necessary.

5. Establish and follow a system for evaluating subrecipient risks of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward as required by [2 CFR 200.331\(b\)](#) and document the evaluation. Risk factors may include:

- (a) Prior experience with same or similar subawards;
- (b) Results of previous audits;
- (c) Whether new or substantially changed personnel or systems, and;
- (d) Extent and results of Federal awarding agency or the pass-through entity's monitoring.

6. Establish and follow a process for deciding whether to impose additional requirements on subrecipients based on risk factors as required by [2 CFR 200.331\(c\)](#). Examples of additional requirements authorized by [2 CFR 200.207](#) include:

- (a) Requiring payments as reimbursements rather than advance payments;
- (b) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
- (c) Requiring additional, more detailed financial reports;
- (d) Requiring additional project monitoring;
- (e) Requiring the non-Federal entity to obtain technical or management assistance, and
- (f) Establishing additional prior approvals.

7. Establish and follow a system for monitoring subrecipient performance that includes the elements required by [2 CFR 200.331\(d\)](#) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.

8. Establish and maintain an accounting system which ensures compliance with the \$25,000 limitation at [2 CFR 200.68](#) on including subaward costs in Modified Total Direct Cost for the purposes of distributing indirect costs.

9. Work with EPA's Project Officer to obtain the written consent of EPA's Office of International and Tribal Affairs (OITA), prior to awarding a subaward to a foreign or international organization, or a subaward to be performed in a foreign country even if that subaward is described in a proposed scope of work.

10. Obtain written approval from EPA's Award Official for any subawards that are not described in the approved work plan in accordance with [2 CFR Part 200.308](#).

11. Obtain the written approval of EPA's Award Official prior to awarding a subaward to an individual if the EPA-approved scope of work does not include a description of subawards to individuals.

12. Establish and follow written procedures under [2 CFR 200.302\(b\)\(7\)](#) for determining that subaward costs are allowable in accordance with [2 CFR Part 200, Subpart E](#) and the terms and conditions of this award. These procedures may provide for allowability determinations on a

pre-award basis, through ongoing monitoring of costs that subrecipients incur, or a combination of both approaches provided the pass-through entity documents its determinations.

13. Establish and maintain a system under [2 CFR 200.331\(d\)\(3\)](#) and [2 CFR 200.521\(c\)](#) for issuing management decisions for audits of subrecipients that relate to Federal awards. However, the recipient remains accountable to EPA for ensuring that unallowable subaward costs initially paid by EPA are reimbursed or mitigated through offset with allowable costs whether the recipient recovers those costs from the subrecipient or not.

14. As provided in [2 CFR 200.332](#), pass-through entities must obtain EPA approval to make fixed amount subawards. EPA is restricting the use of fixed amount subawards to a limited number of situations that are authorized in official EPA pilot projects. Recipients should consult with their EPA Project Officer regarding the status of these pilot projects.

By accepting this award, the recipient is certifying that it either has systems in place to comply with the requirements described in Items 1 through 14 above or will refrain from making subawards until the systems are designed and implemented.

#### EPA Subaward Policy Appendix C: Model Programmatic Subaward Reporting Requirement

The recipient must report on its subaward monitoring activities under [2 CFR 200.331\(d\)](#). Examples of items that must be reported if the pass-through entity has the information available are:

1. Summaries of results of reviews of financial and programmatic reports.
2. Summaries of findings from site visits and/or desk reviews to ensure effective subrecipient performance.
3. Environmental results the subrecipient achieved.
4. Summaries of audit findings and related pass-through entity management decisions.
5. Actions the pass-through entity has taken to correct deficiencies such as those specified at [2 CFR 200.331\(e\)](#), [2 CFR 200.207](#) and the [2 CFR Part 200.338 Remedies for Noncompliance](#).

Note: Project Officers may customize this reporting requirement based on programmatic information needs provided they do not create a form for the collection of identical data from 10 or more pass-through entities. Doing so may trigger the Office of Management and Budget's Information Collection Request regulations. POs should consult with OGC or ORC as appropriate if there are questions regarding whether an ICR is required.

#### EPA Subaward Policy Appendix D: Subaward Agreement Template

OVERVIEW: Program Offices may provide this subaward template to recipients of EPA financial assistance that are "pass-through entities" as defined by [2 CFR 200.74](#) to assist them in complying with the "subaward content" requirements in [2 CFR 200.331\(a\)](#). EPA does not mandate the use of this template. Pass-through entities may use their own form of subaward agreements provided the requirements of [2 CFR 200.331\(a\)](#) are met. Any changes to the data elements that are required under [2 CFR 200.331\(a\)](#) must be reflected in subsequent modifications to subawards. If any of the information required by [2 CFR 200.331\(a\)](#) is not available, pass-through entities must provide the best information that is available to describe the Federal award and subaward.

Section I. [Title and Description of Subaward including whether the Subaward is for Research and Development]

Section II. Federal Requirements.

A. Federal Award Identification.

1. Subrecipient name--which must match registered name in the System for Award Management (SAM). If the subrecipient is not yet registered in SAM, then information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov/>).

2. The subrecipient's "unique entity identifier" in SAM. The unique entity identifier currently is the subrecipient's Data Universal Numbering System (DUNS) number. DUNS numbers may be obtained without charge at <http://fedgov.dnb.com/webform> . Note: Additional information regarding obtaining a DUNS number and registering in SAM is available in the "General Term and Conditions" (T&Cs), under the "Central Contractor Registration/System for Award Management and Universal Identifier Requirements" T&C, of the pass-through entity's agreement with EPA.

3. Federal Award Identification Number (FAIN) The FAIN corresponds with the "Assistance ID No." on the EPA Notice of Award.

4. EPA Award Date. This is the date the EPA Award Official signs the assistance agreement with the pass-through entity and may be found on page 1 of the EPA Notice of Award.

5. Subaward Period of Performance Start and End Date;

6. Amount of EPA Funds Obligated under the initial subaward or this particular funded amendment to the subaward.

7. Total or cumulative amount of EPA Funds Obligated to the subrecipient under the initial subaward plus any subsequent funded amendments;

8. Total Amount of the EPA Award(s) to the pass-through entity. This amount corresponds to the amounts in the "Total Budget Period Cost" and "Total Project Period Cost" boxes on page 1 of the EPA Notice of Award.

9. Federal award project description, as required to be responsive to the Federal Funding, Accountability and Transparency Act (FFATA). This information may be found in the "Project Title and Description" box on page 1 of the EPA Notice of Award.

10. Information identifying EPA as the Federal awarding agency, your organization as the pass-through entity, and contact information for your awarding official for the subaward.

11. Catalog of Federal Domestic Assistance (CFDA) Number and Name for each EPA award used to support the subaward. CFDA information for the pass-through entities' EPA award may be found on page 2 of EPA's Notice of Award form in the second

chart under “EPA Award Information”. (Note the Uniform Grant Guidance requires at [2 CFR 200.331\(a\)\(1\)\(xi\)](#) that the Pass-through entities identify the dollar amount under each Federal award and the CFDA number at the time of disbursement of Federal funds to the subrecipient so it is important for pass-through entities to maintain accounting records to meet this requirement.

12. Indirect cost rate for the pass-through entity’s Federal award. This rate may be found on page 3 of the pass-through entity’s EPA Award in Table A, Object Class Category and may be the 10% de-minimis indirect cost rate described at [2 CFR 200.414\(f\)](#).

B. All “flow down” requirements imposed on the subrecipient by the pass-through entity to ensure that the EPA award is used in accordance with Federal statutes, regulations and the terms of the EPA award. The subrecipient is accountable to the pass-through entity for compliance with Federal requirements. In turn, the pass-through entity is responsible to EPA for ensuring that subrecipients comply with Federal requirements. These requirements include, among others:

1. Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.
2. Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in General Condition of the pass-through entity’s agreement with EPA entitled “Reporting Subawards and Executive Compensation.”
3. Limitations on individual consultant fees as set forth in General Condition [2 CFR 1500.9](#) and the General Condition of the pass-through entity’s agreement with EPA entitled “Consultant Fee Cap.”
4. EPA’s prohibition on paying management fees as set forth in General Condition of the pass-through entity’s agreement with EPA entitled “Management Fees.”
5. The Procurement Standards in [2 CFR Part 200](#) including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants).

EPA provides general information on other statutes, regulations and Executive Orders on the Grants internet site at <http://www.epa.gov/grants>. Many Federal requirements are agreement or program specific and EPA encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice, if necessary.

C. Any additional requirements such as financial and performance reports the pass-through entity imposes on the subrecipient to ensure that the pass-through entity meets its own responsibilities to the Federal awarding agency.

D. Subrecipient’s Indirect Cost Rate. The indirect cost rate may be a rate negotiated and approved by the subrecipient’s cognizant Federal agency. If the subrecipient does not have a Federal indirect cost rate, the pass-through entity may negotiate an indirect cost rate with the

subrecipient that complies with [2 CFR Part 200, Subpart E](#) or use the 10% de-minimis indirect cost rate described at [2 CFR 200.414\(f\)](#).

E. Requirements for the subrecipient to provide access to subaward records so that the pass-through entity and Federal auditors may verify compliance with [2 CFR 200.331](#) as well as [2 CFR Part 200, Subpart D, Post Federal Award Requirements](#) for Financial and Program Management, and [2 CFR Part 200, Subpart F, Audit Requirements](#). Examples of records include:

1. Subrecipient financial statements and reports;
2. Programmatic reports including information on environmental results
3. Audit findings

F. Additional Requirements imposed by the pass-through entity under [2 CFR 200.207](#) that reflect the pass-through entity's assessment of the subrecipient's risk of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward based on the factors described at [2 CFR 200.331\(b\)](#).

1. Risk factors may include:
  - (a) Prior experience with same or similar subawards;
  - (b) Results of previous audits;
  - (c) Whether new or substantially changed personnel or systems, and;
  - (d) Extent and results of Federal awarding agency or the pass-through entity's monitoring.
2. Examples of additional requirements authorized by [2 CFR 200.207](#) include:
  - (a) Requiring payments as reimbursements rather than advance payments;
  - (b) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
  - (c) Requiring additional, more detailed financial reports;
  - (d) Requiring additional project monitoring;
  - (e) Requiring the non-Federal entity to obtain technical or management assistance, and;
  - (f) Establishing additional prior approvals.

G. Terms and conditions concerning the close out of the subaward.

Section III. Other requirements based on the pass-through entity's own laws, regulations, and policies to the extent that they do not conflict with applicable Federal laws, statutes, regulations and policies.