

EPA Subaward Policy Frequent Questions

Version 3.

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Note: These answers to frequent questions are intended to provide information to recipients of EPA financial assistance to help them understand EPA's interpretations of [2 CFR Part 200](#) (Uniform Grants Guidance or "UGG") and EPA [Subaward Policy](#).

These answers do not alter the requirements in the UGG or the guidance in the [Subaward Policy](#) and are subject to revision based on EPA's experience with subawards. Recipients should consult their EPA Project Officers and Grant Specialists for additional clarifications.

The [EPA Grants Community Library of Frequently Asked Questions \(FAQ\)](#) from EPA's grants webinars is also a useful reference.

The frequent questions cover the following topics.

- A. [Subawards and Partnerships.](#)
- B. [Interagency transfers by non-Federal units of government.](#)
- C. [Recipient and Subrecipient Procurement Contracts.](#)
- D. [Transactions with Federal Agencies.](#)
- E. [Fixed Amount Subawards.](#)
- F. [Competition for Subawards.](#)
- G. [EPA Oversight.](#)
- H. [Subrecipient Management and Monitoring.](#)

A. Subawards and Partnerships.

Q.A.1. Are States subject to the UGG requirements for Subrecipient Monitoring and Management when they are pass-through entities?

Yes. Unlike prior regulations (40 CFR 31.37(a)) the UGG does not allow States to follow their own laws and procedures when awarding and administering subawards. All pass-through entities must comply with [2 CFR 200.332](#) and other applicable provisions of the UGG.

Q.A.2. What if the State agency calls an agreement a contract but EPA determines that the transaction is a subaward?

If the transaction is a subaward as defined/described in the UGG and [Appendix A to the EPA Subaward Policy](#), EPA will advise the State to characterize the proposed agreement as a subaward. The term a State agency uses for the agreement does not determine how EPA characterizes the transaction for grant purposes. Please refer to the definition of *Subaward* at [2 CFR 200.1](#) which states a "*Subaward* means an award provided by a pass-through entity to a subrecipient for the subrecipient to contribute to the goals and objectives of the project by carrying out part of a Federal award received by the pass-through entity. It does not include

payments to a contractor, beneficiary, or participant. A subaward may be provided through any form of legal agreement consistent with criteria in with [2 CFR 200.331](#), including an agreement the pass-through entity considers a contract.”

Q.A.3. If a recipient identifies transactions that EPA considers to be subawards under the “Contracts” budget category in the SF-424A, Budget Information for Non-Construction Programs or SF-424C, Budget for Construction Programs because they call the agreement with the subrecipient a contract should an EPA Project Officer or Grant Specialist advise them to put the costs in a subaward line item for the “Other” budget category?

Yes. Please refer to Section 8.0(a) of EPA [Subaward Policy](#).

Q.A.4. Are transactions in which States fund local government environmental programs or projects typically subawards?

Yes. Please refer to Appendix A to the EPA Subaward Policy.

Q.A.5. What documentation does a pass-through entity need to support selection of a subrecipient?

A pass-through entity at a minimum should document its determinations such that:

- The subrecipient is eligible for a subaward based on any limitations on subrecipient eligibility contained in the statutes and regulations authorizing the financial assistance the pass-through entity receives from EPA and the terms and conditions (T&Cs) of the EPA assistance agreement including the T&C “Suspension and Debarment” discussed in Questions A.27 and A.28.
- The activities the subrecipient will carry out are authorized by the terms of the pass-through entity’s assistance agreement with EPA.
- A subaward agreement that complies with the requirements of [2 CFR 200.332](#). [Appendix D of EPA Subaward Policy](#) includes an optional template for a subaward agreement.

If the terms of the pass-through entity’s agreement with EPA require competition for subawards, or the pass-through entity chooses to select subrecipients competitively, then the pass-through entity should maintain documentation of the selection process. Examples of such documentation include the announcement for the competition, the selection criteria, proposals received, and scoring sheets or other evaluation materials.

Record retention requirements for documentation of subrecipient selection are set forth at [2 CFR 200.334](#).

Q.A.6. Does a cost analyses along the lines of [2 CFR 200.324](#) need to be done for subawards?

No. However, as required by [2 CFR 200.302\(b\)\(7\)](#) and EPA’s “National Subaward Term and Condition” ([Appendix B of the Subaward Policy](#) and “Establishing and Managing Subawards” in EPA’s General Terms and Conditions) the recipient must have written procedures for ensuring that subaward costs are allowable under [Subpart E](#), of the UGG. One

requirement for cost allowability is reasonableness. Please refer to [2 CFR 200.404](#) for guidance on reasonable costs.

Q.A.7. State University “A” entered into a transaction with State University “B” for laboratory analysis. How should the transaction be characterized?

It depends.

- If State law provides that State University “A” and State University “B” are independent legal entities such that they are not part of a common financial management system for the purposes of interagency services then the transaction would be characterized as either a subaward or a procurement contract depending on the factors described at [2 CFR 200.331\(a\)](#) and [2 CFR 200.331\(b\)](#). EPA generally considers transactions between Institutions of Higher Education to be subawards but there may be unique circumstances (e.g. the transaction can be handled through micro-purchase procedures) which indicate that a procurement contract is the proper instrument. Please refer to [Appendix A to the EPA Subaward Policy](#).
- If State University “A” and State University “B” are part of a unitary State system of higher education, then the transaction could be characterized as an Interagency Service Agreement under [2 CFR 200.417](#) and [2 CFR 200.418](#) provided State law authorizes State universities to transfer funds to each other “internally” through a common financial management system or similar arrangement.
- If State University “A” and State University “B” are independent legal entities under State law and State university “B” will contract with a commercial laboratory to perform the analysis, then the transaction could be characterized as an Intergovernmental or Inter- entity Agreement to procure common services under [2 CFR 200.318\(e\)](#) provided State law allows State universities to enter into those types of arrangements.

Q.A.8. Department “A” of private institution of higher education (IHE) is named as the recipient of an EPA assistance agreement. The laboratory analysis for the project will be performed by Department “B” of the same IHE at a different campus. Would EPA characterize the financial arrangements between departments A and B as a procurement contract or a subaward?

Neither. EPA would consider the arrangement between “A” and “B” to be an interdepartmental transfer or similar internal transaction provided the IHE’s financial management system recognizes the arrangement. Interdepartmental transfers are governed by the IHE’s internal procedures and if the expenditures of EPA funds are properly accounted for and managed in compliance with the Uniform Grants Guidance. Per the definition of *Recipient* at [2 CFR 200.1](#) “means an entity that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program. The term recipient does not include subrecipients or individuals that are participants or beneficiaries of the award.” A non-Federal entity may not be a recipient and a subrecipient under the same EPA assistance agreement.

Q.A.9. Would a transaction between a State and an institution of higher education to carry out training classes for regulated industries typically be a subaward?

It depends.

- In most cases, particularly if the transaction is between a State and a private university, then the transaction will be a subaward.
- If State law provides that State universities are legally separate from other components of the State for the purposes of financial transactions, then EPA would consider the transaction to be a subaward for the purposes of the UGG. Please refer to [Appendix A to the EPA Subaward Policy](#).
- There may be unique situations in which State law characterizes transfers of funds between State agencies and State universities as Interagency Service Agreements or a similar designation for an internal financial transaction because State universities are instrumentalities of State government. If that is the case, the governing regulation would be [2 CFR 200.417](#).
- There may also be other unique situations in which State law provides that transactions between State universities and other components of the State government are procurement contracts in all cases. As provided at [2 CFR 200.317](#) States follow their own procurement procedures with limited exceptions as described at [Question C. 1](#).

Q.A.10. Does the 2 CFR Part 200 Uniform Grants Guidance and EPA Subaward Policy apply in the same way when a subrecipient provides a subaward to a “subrecipient”?

Yes. The definition of the term *Pass-through entity* at [2 CFR 200.1](#) “means a recipient or subrecipient that provides a subaward to a subrecipient (including lower tier subrecipients) to carry out part of a Federal program. The authority of the pass-through entity under this part flows through the subaward agreement between the pass-through entity and subrecipient.” encompasses any recipient or subrecipient that provides a subaward and the definition of the term *Subrecipient* at [2 CFR 200.1](#) includes “means an entity that receives a subaward from a pass-through entity to carry out part of a Federal award. The term subrecipient does not include a beneficiary or participant. A subrecipient may also be a recipient of other Federal awards directly from a Federal agency.” Any recipient or subrecipient that receives a subaward from a pass-through entity. Neither definition limits subrecipients to the first “tier” of funding.

Q.A.11. Are “Advisory Board” members who are paid for participating in an EPA funded project subrecipients or procurement contractors?

Neither.

As provided at [2 CFR 200.422](#), Advisory councils direct costs for advisory councils or committees are generally allowable if authorized by statute, EPA under the terms of the agreement or through approval of a work plan describing the advisory council, or as an indirect cost where allocable to Federal awards. See [2 CFR 200.444](#), which applies to States, local governments, and Indian Tribes.

For costs for advisory councils to be allowable as direct costs, the advisory council must be dedicated to providing advice on the grant that will be charged directly for the costs. Otherwise, advisory council costs such as those for a council that provides general advice to a recipient are only allowable as indirect costs per [2 CFR 200.422](#).

By way of a programmatic term and condition or by approving a budget with a narrative and line item for stipends and travel reimbursement for advisory council members, EPA may allow direct costs for an advisory council. The program office must determine that their participation is necessary for the successful completion of a specific EPA funded project and the amount of the compensation must be reasonable. EPA uses the compensation for Level IV of the Federal Executive Schedule specified in [2 CFR 1500.10](#) as a benchmark for determining reasonableness. Advisory council member compensation must be based on time spent participating in or preparing for advisory council meetings. Compensation based on “honorary” membership or structured as a retainer fees do not meet the reasonableness test.

Please note that compensation and travel reimbursement for individuals who are on the official board of directors or trustees of a nonprofit organization or institution of higher education is governed by [2 CFR 200.475](#) which provides that these costs are generally allowable. Travel costs of officials covered by provisions of [2 CFR 200.444](#) are allowable with prior written approval of the EPA or pass-through entity when they are specially related to the Federal award. Although director/trustee compensation and travel would typically be allowable only as an indirect cost, there may be unusual situations in which their compensation and travel could be directly allocable to an EPA assistance agreement.

Refer to the EPA [Office of Grants and Debarment Guidance on Selected Items of Cost for Recipients](#) for additional information on advisory council costs.

Q.A.12. Are subawards the same as intergovernmental agreements such that the “National Subaward Term and Condition” applies to both types of transactions?

No. Intergovernmental agreements are not the same as subawards. Intergovernmental agreements are recognized at [2 CFR 200.318\(e\)](#) as mechanisms for two different units of government (e.g. a State and local government or a city government and a county government) to use to procure or use common goods and services. Please refer to Questions A.28.g and [C. 2.](#) for examples of intergovernmental agreements.

Q.A.13. Does the definition of Nonprofit organization at 2 CFR 200.1 apply to all EPA assistance programs in which nonprofits are eligible for EPA funding as subrecipients?

Yes, unless a statute, regulation, or published program policy (e.g. an announcement for a competitive funding opportunity) defines the term “nonprofit” differently. There may be situations in which only nonprofit organizations with tax exempt status under Section 501(c)(3) of the Internal Revenue Code are eligible for EPA financial assistance. However, the UGG definition of *Nonprofit* does not require 501(c)(3) status, and an organization may document

that it is a nonprofit by means other than 501(c)(3) status such as evidence that it is incorporated as a nonprofit under State law.

Institution of Higher Education (IHE) is defined at 20 U.S.C 1001. Institutes of Higher Education are not considered nonprofit organizations for the purposes of [2 CFR Part 200](#). However, for some grant programs nonprofit IHEs (which are typically exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code) are eligible to apply for funding as nonprofit organizations provided the Notice of Funding Opportunity or other EPA guidance specifies that IHEs are eligible for funding.

Q.A.14. The Drinking Water State Revolving Fund (DWSRF) program has set asides, which often result in the State funding projects under grants rather than loans. Are these transactions subawards?

Yes. If a State uses DWSRF set aside funds to provide grants to support a project under terms which do not require repayment of any of the project costs charged to the agreement EPA would consider the transaction to be a subaward. Additional information on what provisions of the UGG apply to the DWSRF program may be available in the DWSRF program guidance. Note that principal forgiveness and negative interest loans are not considered grants for the purposes of the answer to this question.

Q.A.15. If the only grant our agency receives is a State Revolving Fund Capitalization Grant, would EPA's Subaward Policy apply to our agency?

It depends.

Loans, loan guarantees, interest subsidies and principal forgiveness, purchases of insurance or similar subawards SRF recipients enter into with borrowers are not subject to EPA [Subaward Policy](#). Additionally, as provided in [2 CFR 1500.3\(b\)](#) the subrecipient monitoring and management requirements in [2 CFR 200.332](#) do not apply to SRF transactions with borrowers. EPA provides program-specific guidance on the subawards under SRF capitalization grants. However, if the SRF uses Drinking Water or Clean Water funds (EPA grant funds and/or "equivalency" funds) to provide grants EPA would consider the transaction to be a subaward that is subject to the [Subaward Policy](#).

Q.A.16. Does the EPA Subaward Policy apply to grants a State makes with revolving loan funds that are neither EPA grant funds nor "equivalency" funds?

No. Grants a State makes with its own funds or non-equivalency funds are governed by State law and policy.

Q.A.17. If a State provides a grant to an Indian Tribe to support an environmental project or program does EPA consider the transaction to be a subaward? (4-6-16 Webinar)

Yes, provided the State makes the grant with EPA funds. Please refer to [Appendix A to the EPA Subaward Policy](#) which provides that transactions between different (i.e., legally separate) units of government are typically subawards.

Q.A.18. If a pass-through entity attaches their EPA Award to a subaward, does that meet the requirements for including subaward content in [2 CFR 200.332\(a\)](#) and [2 CFR 200.332\(b\)](#)?

No. Attaching the pass-through entities' EPA assistance agreement to a subaward would not provide the subrecipient or an auditor with all the information required by the regulation. The following information would need to be included in the subaward agreement as well.

- The subrecipient's unique entity identifier obtained in accordance with [2 CFR Part 25.300](#)
- Subaward Period of Performance Start and End Date;
- Amount of EPA Funds Obligated under the initial subaward or this particular funded amendment to the subaward.
- Total or cumulative amount of EPA Funds Obligated to the subrecipient under the initial subaward plus any subsequent funded amendments;
- Contact information for the pass-through entity's awarding official for the subaward.
- 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.
- Subrecipient's Indirect Cost Rate.
- Requirements for the subrecipient to provide access to subaward records so that the pass-through entity and Federal auditors may verify compliance with regulatory requirements.
- Additional Requirements imposed by the pass-through entity under [2 CFR 200.208](#) 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 200.332\(b\)](#).
- 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.

Please refer to [Appendix D of EPA Subaward Policy](#) for additional guidance.

Q.A.19. What is the relationship between subaward costs and participant support costs?

Subawards are financial assistance transactions between an EPA recipient (the "pass-through entity") and another organization (the "subrecipient") to carry out an ongoing program or discrete project.

The subrecipient carries out substantive tasks through its employees, contractors, and in some cases other subrecipients on a cost reimbursable or fixed amount subaward basis. Under [2 CFR 200.1](#) individuals who are program beneficiaries are expressly excluded from the definition of *Subrecipient*. EPA regulations at [2 CFR 1500.1](#) expand the definition of *Q costs* to include subsidies rebates and similar payments companies and organizations participating in EPA funded programs to promote environmental stewardship.

While there may be some situations in which a subaward to an individual may be a proper subaward, those situations are rare. In contrast, participant support costs are expenditures a recipient or subrecipient makes to program beneficiaries to enable them to participate in the EPA funded program or project. Examples of participant support costs include payments for stipends, travel and similar costs for trainees or community members to enable them to attend conferences. EPA considers rebates for purchases of commercially available “off the shelf” emission control technologies and vehicle replacements under Diesel Emission Reduction Act grants to be participant support costs as provided in [2 CFR 1500.1](#).

There may be situations in which stipends, travel support and similar costs for subrecipient employees may properly be classified as participant support costs when those costs are borne solely by the pass-through entity. For example, if a pass-through entity directly pays for travel scholarships to a training conference and employees of subrecipients qualify for the scholarships then the subrecipient employees would be program participants for the purposes of the definition of *Participant Support Costs* in [2 CFR 200.1](#). The subrecipient could not charge the subaward for the same travel costs in that scenario.

Please review [Section 11.0\(b\)](#) and [Appendix A of EPA Subaward Policy](#) and EPA [Guidance on Participant Support Costs](#) for information on the difference between subawards and participant support costs.

Q.A.20. Would a subsidy paid by a recipient or subrecipient to a farmer to offset a portion of the costs of constructing a “best management practice” conservation or pollution control project authorized by the Clean Water Act be a subaward or a participant support cost?

The subsidy payment would be characterized as a participant support cost as provided in [2 CFR 1500.1](#) as long as the payment met the criteria for differentiating between participant support costs and subawards in [Appendix A of EPA Subaward Policy](#) and EPA [Guidance on Participant Support Costs](#). For example, if the subsidy only covered a portion of the farmer’s cost for hiring a contractor to construct a berm or other barrier to protect a water body from non-point source pollution EPA would characterize the transaction as a participant support cost.

Q.A.21. Would a subsidy paid by a recipient or subrecipient to a business to promote the adoption of source reduction practices authorized by the Pollution Prevention Act be a subaward or a participant support cost?

The subsidy payment would be characterized as a participant support cost as provided in [2 CFR 1500.1](#) as long as the payment met the criteria for differentiating between participant support costs and subawards in [Appendix A of EPA Subaward Policy](#) and EPA [Guidance on Participant Support Costs](#). For example, if the subsidy only covered a portion of the business’s cost of purchasing and installing equipment then EPA would characterize the transaction as participant support costs. However, if the subsidy also covered the business’s personnel costs for operation and maintenance of the equipment then the transaction would be characterized as a subaward.

Q.A.22. Are "Program Participants" in fellowship programs EPA funds through an assistance agreement with a nonprofit organization considered subrecipients who receive subawards? (4-6- 16 Webinar)

No. Costs recipients incur for stipends, travel or training for individual fellows are classified as *Participant Support Costs* under [2 CFR 200.1](#). Please refer to Section 11.0(b) of [EPA Subaward Policy](#) and EPA [Guidance on Participant Support Costs](#). Note also that fellowships in which EPA provides funds directly to the individual fellow under [40 CFR Part 46](#) are not covered by EPA [Subaward Policy](#).

Q.A.23. If an employee of a subrecipient attends a conference that requires travel are those costs now considered a participant cost under [2 CFR 200.456](#)?

No. Travel by employees of subrecipients is not participant support costs. Participant support costs only include travel by trainees or other program participants who are not employees of a subrecipient. Subrecipient employee travel is governed by [2 CFR 200.475](#).

Q.A.24. What does EPA mean by "partner" in the context of competitive funding announcements?

While the term "partner" may have a specific meaning depending on the particular competitive announcement, the term generally refers to a mutually understood, documented relationship between an applicant and one or more third parties to collaboratively carry out a proposed project. A partner may contribute funds or in-kind resources to the joint effort and/or EPA funds may be used to finance the partner's activities. Any financial transactions between an applicant and a partner that involve EPA funds, however, must comply with the applicable requirements in the UGG governing procurement contracts, subawards, or participant support costs depending on the nature of the relationship. Also, contributions of funds or in-kind resources that an applicant intends to use to meet a cost share on an EPA grant must comply with the UGG.

Note that some EPA grant statutes authorize funding for partnerships. The program office for those statutory grant programs provided guidance on requirements for these "Statutory Partnerships".

Q.A.25. Does EPA consider all "partnership agreements" that establish funding relationships to be subawards?

No. The Uniform Grants Guidance, as with prior grant regulations, does not characterize financial transactions as "partnership agreements." Transactions are subawards, procurement contracts, intergovernmental/inter-entity agreements for purchases of shared goods or services, or participant support costs. Characterizing the transactions consistently with the terms used in the UGG is important for determining what rules govern the agreement. It is the substance of the transaction and the financial structure of the "partnership" that matters for accurate characterization of the agreement. Some recipients refer to their contractors (particularly consultants) as "partners" so the label the recipient places on the transaction is not determinative of which rules govern the agreement.

Note that some EPA grant statutes authorize funding for partnerships. The program office for those statutory grant programs typically provides guidance on requirements for these “Statutory Partnerships”.

Q.A.26. If the pass-through entity has named a subrecipient as a “partner” in a successful competitive funding application, then following award of the EPA assistance agreement decides to make a subaward to a different subrecipient is prior EPA approval from EPA’s Grants Management Officer required under [2 CFR 200.308\(f\)\(6\)](#)?

It depends, refer to [2 CFR 200.308\(f\)\(6\)](#). A change of subrecipient only requires prior approval if EPA or the pass-through entity includes the requirement in the terms and conditions of the Federal award, or the circumstances described below are present.

- The pass-through entity described the original subrecipient’s qualifications in the competitive application in response to EPA selection criteria. EPA approval will be necessary to ensure that the “new” subrecipient is an eligible subrecipient with comparable qualifications.

OR

- The “new” subrecipient will carry out a program or project that is significantly different than the one the pass-through entity described in the application. EPA approval would be necessary to ensure that:
 - * The “new” subrecipient as well as the “new” subrecipient’s program or project is eligible for funding under the statute/regulation authorizing the pass-through entity’s assistance agreement and any program policy limits described in the competitive announcement.
 - * The different program or project is not a material change to the scope of work for the assistance agreement.

Recipients should contact the Project Officer and Grant Specialist identified in their Notice of Award for information on how to request prior approval from the cognizant Grants Management Officer.

Q.A.27. EPA provides a grant to Nonprofit “A” for a regional public education project that involves community tree planting events. Nonprofit A “partners” with Nonprofit “B” to obtain accounting services for financial management of the grant and with Nonprofit “C” to sponsor the tree planting event in a local community. Why would a transaction between A and B for accounting services be characterized as a procurement contract for commercially available services while the transaction between A and C be considered a subaward?

Nonprofit A is procuring accounting services from B that are “ancillary” or secondary to the purpose of the EPA funded program in that financial management is normally part of the internal operations of a recipient. Accounting services are widely available in the commercial marketplace from for profit firms. These factors are indicative of a procurement contract under [2 CFR 200.331\(b\)](#) and [Appendix A of EPA Subaward Policy](#).

On the other hand, Nonprofit C is carrying out the substantive program (public education) that is funded by EPA. Nonprofit C is subject to the requirements for that program set forth in the grant agreement (including the prohibition on management fees or other forms of profit) and will have responsibility for programmatic decision-making during the tree-planting event which are characteristics of a subaward under [2 CFR 200.331\(a\)](#). Also, Nonprofit C does not sell tree planting services on the commercial market.

Note that if Nonprofit A acquired tree planting services from a commercial nursery the transaction would be characteristic of a procurement contract.

Q.A.28. What are some examples of how EPA will characterize “partnership” transactions?

a. An Institution of Higher Education (IHE) applicant for competitive funding proposes to form a research consortium with other IHEs and fund its partners’ portions of a study. The financial transaction between the partners would be a proper subaward under [2 CFR 200.331](#) and [Appendix A of EPA Subaward Policy](#). The applicant need not conduct a competition to make the subawards under the UGG. EPA would consider the qualifications of the IHE research partners in evaluating the application.

b. A consultant prepares a competitive funding proposal for a non-profit organization or local government free of charge with the understanding that if EPA awards the applicant funds the consultant will receive a “sole source” noncompetitive contract in the amount of \$100,000 for the EPA funded work. The application specifies that the consultant is a “project partner”.

* Consultants are contractors for the purposes of the Procurement Standards of the UGG. Recipients must obtain quotes from an adequate number of qualified sources for contracts up to \$250,000 per EPA’s interpretation of [2 CFR 200.320\(b\)](#). As indicated in Section IV, “Coalitions, Contracts, and Subawards” of [the EPA Notice of Funding Opportunity \(NOFO\) Clauses](#), EPA will consider the qualifications, expertise, and experience of an applicant’s named subrecipients and contractors as appropriate.

* Consulting services are widely available in the commercial marketplace and there are no practical barriers to obtaining their services competitively. An argument that the consultant is “uniquely familiar with our project” will not persuade EPA that the consultant is only source for consulting services. The Agency would not accept a “sole source” noncompetitive justification along these lines.

c. A nonprofit organization or local government determines that it lacks in-house expertise to prepare a funding application and manage the project if the application is successful. The applicant asks three consulting firms for rate quotes/qualification Statements to perform this work and sets a price ceiling of \$250,000. It names the selected firm as a “project partner”. This practice is acceptable to EPA.

Under [2 CFR 200.320\(a\)\(1\)\(i\)](#) “recipient or subrecipient should distribute micro-purchases equitably among qualified suppliers.”. Under [2 CFR 200.320\(a\)\(2\)](#) for Simplified acquisition

procedures, “if simplified acquisition procedures are used, price or rate quotation must be obtained from an adequate number of qualified sources” as specified by the Federal awarding agency. EPA has determined that recipients must solicit price or rate quotations from at least three (3) qualified sources as specified in the [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#).

* If the applicant describes the process it followed to select the consultant as its project partner EPA will evaluate the consultant’s qualifications as part of the grant competition. However, if any portion of the contract is attributable to proposal preparation costs those costs are normally treated as indirect as provided by [2 CFR 200.460](#) and EPA [Guidance on Selected Items of Cost for Recipients](#).

d. An applicant for competitive funding “partners” with members of an environmental group for a water quality monitoring project. The applicant will use volunteer services from members of the group to meet its cost share requirement. The volunteers will take samples from streams and lakes in the project area.

* One of the volunteers is a surgeon whose billing rate is \$350 per hour. As provided at [2 CFR 200.306\(e\)](#) the applicant may not use the surgeon’s \$350 per hour rate when valuing her services but must use the rate for its own employees who obtain samples for water quality monitoring.

* If the applicants’ own employees do not conduct sampling, the applicant must perform labor market research to determine how to value the time volunteers spend sampling. One potential source for determining a reasonable value for volunteer sampling time would be the rate a State or local government pays employees or contractors for sampling work.

e. Two small municipal applicants have private architect/engineering (A/E) firms on retainer to provide A/E consulting services on an as needed basis. Municipality “A” did not conduct a competition to select the A/E firm. Municipality “B” hires its A/E firm competitively although qualifications rather than price is the determining factor in the selection. Both municipalities name the A/E firms as their project partners in a competitive funding application.

* Municipality A may not use EPA funds in amounts over the \$10,000 micro-purchase threshold to contract with the A/E firm on a sole source basis for design work for its project even though the municipality named the firm as a “partner” in the application. A/E services are widely available commercially and the UGG at [2 CFR 200.319\(c\)](#) expressly states that noncompetitive contracting with consultants on retainer improperly restricts competition. Note also that municipality A could not issue a series of \$10,000 purchase orders to the A/E firm to circumvent competition requirements. Under [2 CFR 200.320](#) recipients must distribute micro purchases equitably among qualified sources.

* Municipality B may use EPA funds to contract with the A/E firm in amounts over the \$10,000 micro-purchase threshold provided the municipality negotiates a fair and reasonable

price for the EPA funded work. Under [2 CFR 200.320\(b\)\(2\)\(iv\)](#) recipients or subrecipients may use qualifications-based selection criteria for A/E firms where the qualifications are evaluated and the most qualified offer is selected, given that it is fair and reasonable. The method described, where price is not used for selection is only allowable for A/E professional services when state, tribal or local law requires the use of an A/E firm. This provision does not apply to other services available for an A/E firm that can legally be performed by other types of firms such as assessments of Brownfields sites. Note, however, that municipality B may not award an EPA funded contract to the A/E firm for other types of services (e.g. actual construction) which are not covered by the A/E professional services price competition exemption at [2 CFR 200.320\(b\)\(2\)\(iv\)](#). Although A/E firms are one potential source for a Qualified Environmental Professional (QEP) for site assessments as indicated in the definition of Environmental Professional in the All Appropriate Inquiry Rule, [40 CFR 312.10](#), other types of firms and individuals may also provide QEP services. See [Brownfields Grants: Guidance on Competitively Procuring a Contractor](#).

Provided the competition was properly conducted under State/Tribal/local laws EPA will accept the results of the municipality B selection process. Note also that EPA has special rules at [2 CFR 1500.11](#) for contracting with A/E firms for both the design and construction management phases of waste-water projects for contracting with A/E firms for both the design and construction management phases of waste-water projects.

f. A nonprofit organization proposes an EPA funded project that requires the use of a specific pollution control technology that a firm has patented. The nonprofit names the firm in its proposal as a project partner.

* The nonprofit may contract with the patent holder on a noncompetitive procurement to acquire the technology. Under [2 CFR 200.320\(c\)\(2\)](#) the nonprofit may legitimately determine that the item is available from only one source based on the patent. EPA will consider the firm's qualifications if the nonprofit names it in the competitive proposal and explains why the firm's patented technology is necessary for successful implementation of the project.

g. A municipality A applies for EPA funding to restore a river that passes through the boundaries of two other municipalities B and C. Municipality A proposes to partner with B and C on a comprehensive restoration project and to fund their participation in the project through subawards. The project partners determine that implementation of the project would be more effective if a single A/E firm designed and managed the project. However, A's ordinances do not allow the municipality to award a contract for work that will be performed outside of its jurisdiction. B and C have similar laws.

* Under [2 CFR 200.318\(e\)](#), the project partners could enter into an intergovernmental agreement that would allow A to competitively select an A/E firm that would be awarded separate contracts by the three municipalities as long as that practice complies with local law.

Q.A.29. May recipients and subrecipients (including “sub-subrecipients”) provide a subaward to an entity that is suspended, debarred, or otherwise excluded (“excluded”) from participation in Federal financial assistance programs?

No. Subawards at any tier are “covered transactions” under [2 CFR Part 180](#). Pass-through entities are precluded from entering into covered transactions with non-Federal entities who are listed in <https://sam.gov/content/exclusions>. (SAM.gov) as excluded from participation in Federal financial assistance programs unless EPA grants an exception.

Note also that excluded individuals are precluded from acting as agents and representatives of pass-through entities or subrecipients in connection with covered transactions or from being a “principal” in covered transactions per [2 CFR Part 180](#) and [2 CFR Part 1532](#).

Additional information regarding pass-through entities responsibilities to ensure that excluded entities do not participate in EPA financial assistance programs may be found in [EPA’s General Term and Condition](#) “Suspension and Debarment” in the pass-through entity’s agreement with EPA.

Q.A.30. How should a pass-through entity, recipient or subrecipient find out whether a potential subrecipient or principal is suspended, debarred, or otherwise excluded from participation in Federal financial assistance programs?

Pass-through entities and subrecipients may access suspension and debarment information at: <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. Additional information regarding recipient and subrecipient responsibilities to ensure that excluded entities do not participate in EPA financial assistance programs may be found in the [EPA’s General Term and Condition](#) “Suspension and Debarment” in the pass-through entity’s agreement with EPA.

Q.A.31. Does the prohibition against the use of funds for charging administrative costs (including indirect costs) to Brownfields provided for at CERCLA 104(k) apply to subawards?

Yes. The Brownfields prohibition on administrative costs is statutory and applies to all Brownfields grants. As provided at [2 CFR 200.332\(a\)](#) and [2 CFR 200.332\(b\)](#) and EPA’s General Term and Condition [“Establishing and Managing Subawards”](#) and condition of its EPA grant, pass-through entities must ensure that subrecipients use EPA funds in accordance with statutory and regulatory requirements that apply to their assistance agreement with EPA.

Q.A.32. Does the 10% limit on administrative costs (including indirect costs) for Nonpoint Source Management provided for at Clean Water Act 319(h)(12) and [40 CFR 35.268\(c\)](#) and [40 CFR 35.638\(c\)](#) to subawards?

Not necessarily.

Pursuant to Section 319(h)(12), administrative costs in the form of salaries, overhead, or certain indirect costs for services provided and charged against activities and programs carried out with the grant shall not exceed 10% of the total grant budget (EPA allocation plus cost share).

The costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer (including salaries, overhead, and certain indirect costs for services provided related to implementation) are not subject to the 10% cap limitation. Generally, activities that are required for states to develop, implement, and report on progress in their Nonpoint Source Management Plans (NPSMP) do not count as administrative costs (e.g., work plan/application development, grant annual reports). In many cases, work related to Grants Reporting and Tracking System (GRTS) activities (e.g., estimating and entering load reductions and programmatic information from a project) can be considered a program activity and does not need to be counted toward this 10% cap on administrative costs.

States and Indian Tribes may choose to require subrecipients to adhere to the 10% administrative cost limit as a means of complying with the statutory requirement, but a State or Tribe may comply with the limit by other means as well. Note, however, that even if a subrecipient has an indirect cost rate in excess of 10% with a cognizant Federal agency that under [2 CFR 200.408](#) and [200.414\(c\)\(1\)](#), the State or Tribe may still require that subrecipients adhere to the 10% administrative cost limitation if that is necessary to comply with the statutory administrative cost cap.

Q.A.33. Will EPA provide guidance on how prior approvals of subrecipients should occur?
Yes, please refer to Questions [A.26, A.32, A.42, G.3, G.4 and G.5](#).

Q.A.34. Can amounts be given or do subrecipients need to be specifically named?
EPA generally does not require pass-through entities to name subrecipients in their EPA assistance agreement unless there is a program specific requirement in a regulation, guidance or the terms of an award that requires more specificity. Specifying an anticipated amount for subawards in line item for the “Other” SF-424A budget category and describing the types of subawards is sufficient although pass-through entities may provide more detail if they choose. Please refer to [Question G.6](#).

Q.A.35. To be clear we don't have to identify subrecipients in the proposal, we can just identify them as "type"?
Yes. Please refer to Questions [A.26, A.32, A.42, G.3, G.4 and G.5](#).

Q.A.36. When will subrecipients be notified that they have received a subaward?
Pass-through entities should not advise subrecipients of subawards until after they have received their “Notice of Award” from EPA. After that, it is up to the pass-through entities to decide when to notify subrecipients that subaward funding is forthcoming.

Q.A.37. If a recipient has misclassified a procurement contract as a subaward what steps should the recipient take to rectify the situation?
EPA recommends that recipients consult with their own legal counsel in these situations. If the misclassified subaward was entered into competitively then the agreement may substantively comply with the Procurement Standards in the UGG or the EPA financial assistance regulations

in effect at the time of the transaction. However, the appropriate course of action is very fact specific and as provided at [2 CFR 200.318\(k\)](#) the recipient alone is responsible for resolving contractual issues.

Q.A.38. Similarly, if a recipient has an existing procurement contract with an entity that should have been monitored and managed as a subaward do we have to renegotiate the agreement with them?

Yes, at least to the extent necessary to ensure that the subrecipient complies with the reporting subawards and executive compensation under Federal funding accountability and transparency act (FFATA) set forth in [EPA's General Terms and Conditions](#) of the pass-through entity's agreement with EPA entitled "Reporting Subawards and Executive Compensation." The FFATA requirement is statutory and applies to subawards but not to procurement contracts entered into by EPA financial assistance recipients. Additionally, the recipient must ensure that as set forth in [EPA's General Terms and Conditions](#) of the pass-through entity's agreement with EPA entitled "management fees" the terms of the agreement do not allow the subrecipient to "profit" from the transaction by charging more than its direct costs and Federally recognized indirect cost rate. There are other provisions at [2 CFR 200.332](#) that apply to subawards and not to procurement contracts.

Q.A.39. Does the recipient have to submit a budget modification to reflect the reclassification from procurement contract to subaward?

Yes.

Q.A.40. Wouldn't the fixed price examples specified in Section 9.0(a) of EPA's Subaward Policy be procurement contracts?

No. The examples of fixed amount subawards EPA specified would be structured to support to units of government, institutions of higher education, nonprofit organizations, students, or post-doctoral fellows with financial assistance to carry out public purposes. None of the examples involve transactions with for profit firms or individual consultants to acquire professional services or products on commercial terms. Please refer to [Appendix A of EPA Subaward Policy](#).

Q.A.41. If the pass-through entity modifies the existing agreement for supplemental funding or other reasons, do these new regulations apply only to subawards moving forward, or do they apply retroactively to all subawards?

EPA's Subaward Policy applies only to subawards the pass-through entity makes after receiving a new award or supplemental or incremental funding after March 29, 2016.

Q.A.42. EPA's Subaward Policy provides in Section 8.0(a) that pass-through entities include aggregate estimates for subawards in a line item under the "Other" budget category in the SF-424A. Does the pass-through entity also have to provide EPA with detailed estimates of amounts subrecipients will expend for employee compensation, travel, contractual services, participant support costs and similar cost categories?

No. It is up to the pass-through entity to negotiate subaward budgets and ensure that the subrecipient incurs only eligible and allowable costs under the terms of the assistance agreement and the UGG. As provided at [2 CFR 200.332\(d\)](#) and [2 CFR 200.521\(c\)](#) the pass-through entity is responsible for monitoring subrecipient expenditures and resolving audits questioning costs subrecipient incurs.

Q.A.43. Does EPA require that pass-through entities exclude their subrecipients' participant support costs and other items of cost excluded from the definition of *Modified Total Direct Costs* at [2 CFR 200.1](#) when distributing their own indirect costs to EPA awards?

No, unless the terms of the pass-through entity's indirect cost rate agreement with the cognizant Federal agency requires that the Modified Total Direct Costs (MTDC) consider subrecipient costs. EPA's position is that pass-through entities may include the first \$50,000 in allowable costs for each subaward in MTDC regardless of the composition of the costs. However, subrecipients must exclude participant support costs and other items of costs excluded from MTDC when distributing their indirect costs to EPA funded subawards.

Q.A.44. Are there unique prior approval requirements for subawards to foreign or international organizations?

Yes. EPA's [General Term and Condition](#) entitled "[Establishing and Managing Subawards](#)" requires that pass-through entities work with EPA's Project Officer to obtain the consent of EPA's Office of International and Tribal Affairs ". . . 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."

Q.A.45. Are loans made by Brownfields Revolving Loan Fund capitalization grant recipients subawards for the purposes of the Uniform Grants Guidance and [2 CFR Part 170](#), Reporting Subawards and Executive Compensation?

Yes. Brownfields RLF loans are a form of Federal financial assistance subject to the 2 CFR Part 170 reporting requirements as provided by [2 CFR 170.320\(c\)](#). Consequently, these loans are also considered subawards for the purpose of the [2 CFR Part 170](#), Appendix A "Reporting Subawards and Executive Compensation" Award Term which is included in [EPA's General Terms and Conditions](#) of Brownfields RLF capitalization grants.

Brownfields RLF capitalization grant recipients are considered pass-through entities for the purposes of the [Subrecipient Monitoring and Management requirements of 2 CFR Part 200](#) when they make loans to borrowers. However, as provided at [2 CFR 200.101\(b\)](#) the only UGG provisions that apply to borrowers are the internal control requirements of [2 CFR 200.303](#). Borrowers are not subject to the [2 CFR Part 200 Procurement Standards](#).

EPA provides additional guidance in the terms and conditions of Brownfields RLF cooperative agreements.

Q.A.46. Can recipients use procurement contracts rather than subawards to support an eligible subrecipient's program when the amount of the transaction is relatively small?

Yes. There may be situations in which a funding arrangement of \$10,000 or less between a State, Indian Tribe, or local government and a nonprofit organization, between two nonprofit organizations or between different units of government that EPA would normally consider to be a subaward may be executed as a micro-purchase under [2 CFR 200.320\(a\)](#) for reasons of efficiency. Refer to **Micro-Purchase and Simplified Acquisition Threshold for Procurements by EPA Assistance Agreement Recipients and Subrecipients** [RAIN-2018-G04-R1](#) for \$10,000 micro-purchase subawards. For example:

- a. Several nonprofit and governmental recipients want to support a particular nonprofit's participation in an ongoing forum for coordinating cross-program communication, issue analysis and discussion, joint project development and other matters of mutual interest relating to an EPA financial assistance program. Each transaction will be approximately \$5,000.
- b. A recipient conducting an EPA funded public education project wants to support the participation of several local community based nonprofit organizations in an outreach meeting. The estimated cost for compensating each nonprofit is \$3,000.

In both examples, rather than developing multiple subaward agreements that meet the extensive requirements of [2 CFR 200.332](#), the recipients could determine that the use of micro-purchase procedures would be a more cost-effective means of compensating the non-profits for the activities they will carry out. This approach is consistent with the coverage in [Appendix A in the Subaward Policy](#) on recipients using contracts rather than subawards to acquire ancillary services from nonprofit organizations.

Q.A.47. Are there rules that a recipient must follow when using micro-purchases in lieu of subawards?

Yes. Refer to **Micro-Purchase and Simplified Acquisition Threshold for Procurements by EPA Assistance Agreement Recipients and Subrecipients** [RAIN-2018-G04-R1](#).

Micro-purchase procedures may not be used to simply transfer funds from the recipient to another organization. The Recipients or subrecipients receiving the micro-purchase contract must be compensated for carrying out activities necessary for the execution of the recipient's work plan as required by [2 CFR 200.403](#).

- a. The cost for compensating the Recipients or subrecipients receiving the micro-purchase order must meet the reasonableness requirement of [2 CFR 200.404](#).
- b. Invoices or other contractual documents describing the activities that will be carried out under the micro-purchase arrangement are necessary to meet the documentation requirements of [2 CFR 200.318\(i\)](#).

c. The policy of allowing recipients to use micro-purchase procedures in lieu of subawards does not apply when a statute or regulation requires a pass-through entity to use subawards. For example, under section 6 of the Environmental Education Act recipients of pass-through funding must use 25% of the amount of the EPA grant for subawards of \$5,000 or less. Micro-purchase procedures may not be used in these circumstances.

Q.A.48. If my organization has a micro-purchase threshold of higher than \$50,000 as provided in [2 CFR 200.320\(a\)\(1\)\(iii\)](#), [2 CFR 200.320\(a\)\(1\)\(iv\)](#), and [2 CFR 200.320\(a\)\(1\)\(v\)](#) will EPA approve the use of a micro-purchase contract in lieu of a subaward?

Probably not. If using a micro-purchase contract allows the recipient to exceed the \$50,000 limit on distributing indirect costs to subawards described in the definition of *Modified total direct costs* at [2 CFR 200.1](#) and other applicable provisions of [2 CFR Part 200](#), EPA will not approve the transaction. The maximum amount of a micro-purchase allowable under those circumstances would be \$50,000. However, if the recipient's distribution base for indirect costs does not include subawards as is the case for some governmental recipients then EPA will consider allowing the recipient to use micro-purchases to provide financial assistance in amounts up to the recipient's unique micro-purchase threshold.

Q.A.49. Does EPA recognize the "fiscal sponsor" or "fiscal agent" concept under which an eligible applicant such as a nonprofit organization applies for funding "on behalf of" an ineligible applicant such as a for-profit firm?

No. Eligible applicants apply for and receive awards under a specific grant program on their own behalf. An entity that is ineligible such as a for-profit firm cannot arrange for an eligible entity to apply on their behalf as a "fiscal sponsor" or "fiscal agent" and then receive EPA funding under a "sole source" noncompetitive procurement contract. Any contractual arrangement must be made through full and open competition required by the Procurement Standards in 2 CFR Parts [200](#) and [1500](#). The recipient could not award the firm a "sole source" noncompetitive procurement contract based on the role the firm played in preparing the application or a long-standing "partnership" relationship. Also, the recipient may not provide a noncompetitive subaward to a for-profit firm except in very limited circumstances such as those described in [Appendix A to EPA Subaward Policy](#). EPA staff will communicate with the recipient on official matters relating to programmatic performance and regulatory compliance.

Q.A.50. Can an otherwise eligible "fiscal agent/ fiscal sponsor"" apply "on behalf of" an unincorporated group?

It depends. Eligible applicants apply for and receive awards under a specific grant program on their own behalf. An unincorporated group cannot receive a subaward because it lacks the capacity to enter into a legally binding agreement with a pass-through entity (aka the "prime grantee" or "recipient") or obtain a UEI. However, the "fiscal agent/fiscal sponsor" may be able to apply for the funding as the recipient who will be accountable for financial management and programmatic performance. To the extent consistent with [EPA Guidance on Participant Support Costs](#), recipients may provide stipends and other support to members of unincorporated groups to facilitate their participation in EPA funded environmental stewardship programs or

hire the individuals as 1099 independent contracts (following competitive procurement procedures as applicable) or W-2 employees.

Q.A.51. Can an otherwise eligible “fiscal agent” or “fiscal sponsor” apply on behalf of an otherwise eligible entity, such as an incorporated nonprofit organization, that may lack the capacity to apply and/or manage a full EPA grant on their own?

Yes, if the fiscal agent/sponsor assumes all fiscal and programmatic responsibility for the grant, without regard to any arrangements the fiscal agent/sponsor has with the incorporated nonprofit organization. Applicants for EPA funding apply on their own behalf and become the “Recipient” as that term is defined in [2 CFR 200.1](#). However, the recipient fiscal agent/sponsor may provide a subaward to a lower-resourced incorporated nonprofit organization (subrecipient) acting as a Pass-through entity under [2 CFR 200.1](#). As the recipient, the fiscal agent/sponsor remains accountable to EPA for the proper expenditure of EPA funds and effective programmatic performance. The pass-through entity is also accountable to EPA for the subrecipient’s compliance with applicable statutory and regulatory requirements, such as those governing competitive procurement. Refer to [2 CFR Part 25](#), [2 CFR 200.332](#) and EPA’s General Terms and Conditions implementing those regulatory requirements for details on pass-through entity responsibilities.

Note that as indicated in [Appendix A to the EPA Subaward Policy](#) a pass-through entity may not provide a subaward to a nonprofit organization to provide ancillary administrative services such as accounting or information technology for payroll operations. Such services would require a procurement contract consistent with competitive procurement requirements at [2 CFR 200.319](#) and [200.320](#) as interpreted in [EPA’s Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#). Subrecipients must carry out substantive parts of the EPA funded project consistent with the definition of *Subaward* and *Subrecipient* in [2 CFR 200.1](#).

Likewise, a fiscal agent/sponsor can apply for a subaward on an EPA-funded grant program on behalf of an otherwise eligible entity. The subrecipient fiscal agent/sponsor could make a sub-subaward to the lower-resourced incorporated nonprofit organization (sub-subrecipient), but it would take on accountability for the sub-subrecipient’s performance, proper expenditure of funds, and compliance with applicable statutory and regulatory requirements.

As outlined in the EPA [Subaward Policy](#) 11(c) for Special Considerations for Specific Types of Subawards, in the situation where a pass-through entity intends to subaward 100% of EPA funds requires further EPA review.

Q.A.52. When can a pass-through entity “draw down” funds from EPA to pay subrecipients for allowable costs they incur when performing a subaward?

Pass-through entities may draw down funds from EPA to pay subrecipients when the pass-through entity receives an invoice, payment request or similar documentation that the subrecipient has incurred costs in carrying out the subaward. As required by EPA’s Proper Payment Drawdown General Term and Condition, pass-through entities other than States must

disburse 95% of the drawn down funds or \$1,000 whichever is less within 5 business days of obtaining payment from EPA via the ASAP system. This same requirement “flows down” to subrecipients such that they must also disburse funds within 5 business days of receipt of payment from the pass-through entity unless the subrecipient is carrying out a fixed amount subaward. [See Q.E.9.](#)

Disbursement takes place when the pass-through entity transfers the drawn down funds to their subrecipients. State pass-through entities must draw down and disburse funds to subrecipients in compliance with their Cash Management Improvement Act agreements with the U.S. Treasury Department or in compliance with default procedures codified at [31 CFR Part 205](#) and Treasury Financial Manual (TFM) 4A-2000, “Overall Disbursing Rules for All Federal Agencies”.

Q.A.53. Are subrecipients required to maintain records to support expenditures of EPA funds?

Yes. Pass-through entities may require that subrecipients provide financial information to support payments of EPA funding as provided in [2 CFR 200.332\(e\)\(1\)](#). Subrecipients are subject to the source documentation requirements in [2 CFR 200.302\(b\)](#) unless EPA has provided an exception to that requirement for a fixed amount subaward. See Section E of these Frequently Asked Questions. Authorized EPA Officials or representatives of EPA’s Office of Inspector General or the Government Accountability Office must be provided with access to all subrecipient records pertinent to the EPA assistance agreement for audits and examinations as provided in [2 CFR 200.337\(a\)](#).

Q.A.54. Are the for-profit Alaska Native Corporations eligible to receive subawards under EPA financial assistance programs?

It depends on the policy of the EPA grant program.

Alaska Native Corporations (ANCs) are unique entities in that they are State chartered for-profit corporations established pursuant to the Alaska Native Claims Settlement Act of 1971. Nonetheless, ANCs also fall under the definition of *Indian Tribe* in [2 CFR 200.1](#) and are generally eligible for subawards under the EPA [Subaward Policy](#). Profit is not allowable under an EPA funded subaward. EPA has determined that ANCs may, depending on the policy of the EPA grant program, receive non-competitive subawards if the terms of the subaward provide that the ANC may only receive reimbursement for their direct and indirect costs. Parties who are interested in determining whether ANCs are eligible for subawards (or direct EPA funding) should contact the EPA point of contact identified in the Notice of Funding Opportunity for competitive programs, the EPA point of contact in program guidance for non-competitive programs, or the EPA project officers for assistance agreements that have already been awarded.

B. Interagency Transfers by non-Federal units of government.

Q.B.1. When passing Federal dollars between two equal State agencies, does EPA consider this a subaward?

The answer depends on State law.

EPA's general policy, which was historically based on the definition of *Grantee* and *State* in now superseded 40 CFR 31.3 has historically been that the State itself is the legal entity that receives EPA funds even if one particular component of the State is named in the assistance agreement as the recipient. Transfers of EPA funds between State agencies to perform a particular financial assistance agreement would, therefore, be governed by State law. EPA takes the same position under the UGG based on the definitions of the terms *Non-federal entity*, *Pass-through entity*, *Recipient*, and *State* in [2 CFR 200.1](#). Additionally, [2 CFR 200.417](#) "Interagency Service" contemplates situations in which one agency provides services to another agency within the same unit of government as a direct cost of performing the EPA assistance agreement. Subawards are typically transactions between two different units of government (e.g. a State and a local government) or between a unit of government and a nongovernmental organization.

There may be situations in which State law provides that State agencies or instrumentalities are legally separate for the purposes of financial transactions between them or State financial management policies for Federal assistance agreements require separate instruments for accounting purposes (e.g. due to differences in indirect cost rates). In those situations, a State may characterize funding transfers as subawards. Note, however, that if one State agency provides a subaward to another State agency the State agency acting as the pass-through entity must comply with applicable provisions of [2 CFR Part 200](#), the [EPA Subaward Policy](#) unless EPA provides an exception. The aggregate cost estimates for the subawards to other State agencies or instrumentalities would be in a line item in the "Other" budget category of the SF-424A.

Q.B.2. Are the requirements for State interagency transactions like a subaward?

No. The UGG requirements for Interagency Service Agreements at [2 CFR 200.417](#) do not include extensive subrecipient monitoring and management requirements along the lines of [2 CFR 200.332](#). Nonetheless, each State agency performing the EPA financial assistance agreement is subject to the same requirements of the EPA assistance agreements including statutory and regulatory restrictions on the use of EPA funds, financial management provisions of the UGG, and the administrative and programmatic terms and conditions of the EPA award.

Q.B.3. Where are interagency agreements between State agencies under 2 CFR 200.417 shown on the SF-424A Budget Categories?

In the direct cost categories (Personnel, Travel, Contractual etc.) corresponding to the expenditures the State agency makes to carry out the Interagency Service Agreement. Note that if State law characterizes agreements under which one State agency provides services to another State agency as a procurement contract, then the costs would be placed in the

contractual category. Note also that in interagency service situations [2 CFR 200.417](#) provides the State may charge a pro-rated share of indirect costs for the service or an indirect rate of 15% applied to “. . . The direct salaries and wages cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service.” The rate should not be applied to the centralized services included in their Statewide Cost Allocation Plan prepared in accordance with [Appendix V to Part 200](#).

Q.B.4. May an Indian Tribe make subawards to its own officially recognized chapters or is that type of situation the same as a transfer of funds between State agencies?

It depends. Transactions between chapters or similar components of the same Indian Tribe would typically be characterized as an Interagency Service Agreements under [2 CFR 200.417](#) if the chapters are components of the same Federally recognized Indian Tribe. However, there may be unusual situations in which Federal or Indian Tribe law provides that an Indian Tribe’s chapters are independent legally for the purposes of entering binding agreements between each other such that the transaction would be characterized as a subaward.

Q.B.5. If a State transfers funds to a State university under an interagency service agreement rather than a subaward do requirements in the assistance agreement with EPA such as the consultant fee cap and the prohibition on management fees apply to the transferred funds?

Yes. All agencies and instrumentalities of a State receiving EPA funds are subject to the requirements of the EPA assistance agreement.

Q.B.6. What are "special" units of government such as irrigation districts, conservation districts, utility districts, etc. considered for the purposes of the UGG and EPA’s Subaward Policy?

Local governments in almost all cases. Under the definition of *Local government* at [2 CFR 200.1](#) special districts and intrastate districts are classified as local governments. Transactions between the State and the district would typically be subawards. There may be unique situations in which the State law establishing the district could yield a different result such that the transaction could properly be classified as an interagency transfer. Also, in some cases State or local governments may charter or otherwise establish redevelopment authorities that incorporate as nonprofits and have independent authority to enter into binding agreements. EPA would consider those authorities to be nonprofit organizations. Note, however, that the definition of *Local government* provides that Councils of Governments are classified as local governments even if they are incorporated as nonprofits under State law.

Q.B.7. Would an interstate organization be considered a nonprofit or a governmental unit?
It depends.

An interstate organization established under the laws of multiple States or a Federal statute to address environmental problems under governmental authority would be considered a local government unless the terms of a Federal statute provide otherwise. The definition of *Local*

government at [2 CFR 200.1](#) includes regional agencies and also provides that councils of government are classified as local governments even if they are incorporated as nonprofits under State law. Additionally, EPA regulations in effect prior to the UGG (which were based on OMB Circular A-102) provided at 40 CFR 31.3 that interstate government entities were local governments.

A nonprofit organization that represents the interests of multiple States on regional or national environmental issues but does not have governmental authority conferred on it by the laws of multiple States or a Federal statute would be classified as a nonprofit organization. An example of such a nonprofit organization is the Environmental Commissioners of the States.

C. Recipient and Subrecipient Procurement Contracts.

Note: Additional information on how EPA interprets the UGG Procurement Standards is available in the examples of “partnership” transactions described in Question A. 26 and EPA’s [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#).

Q.C.1. Are States and Indian Tribes subject to the competition requirements in the Uniform Grants Guidance when they procure services from commercial contractors?

No. As provided at [2 CFR 200.317](#) States and Indian Tribes follow the same procurement procedures as they do when acquiring goods and services with non-Federal funds. The Federal requirements that apply to States and Indian Tribes are ***Contracting with small businesses, minority businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms at 2 CFR 200.321 as supplemented by EPA’s 40 CFR Part 33 Disadvantaged Business Enterprise rule; Domestic preferences for procurements in 2 CFR 200.322; Procurement of recovered materials in 2 CFR 200.323*** (which is based on Section 6002 of the Solid Waste Disposal Act). Provisions required by [2 CFR 200.327](#), and EPA’s [40 CFR Part 33](#) rule on *Participation by Disadvantaged Business Enterprises in EPA Programs*.

Q.C.2. Is competition required before using another State agency for services?

No. Transactions between State agencies of the same State government are typically Interagency Service Agreements under [2 CFR 200.417](#) or subject to the State’s Central Service Cost Allocation Plan as provided in [Appendix V](#) of the UGG. These arrangements are not subject to competition. Note that any competition requirements for procurement contracts States enter into with EPA funding are based on State rules as provided in [2 CFR 200.317](#). Consequently, even if State law characterizes transactions in which one State agency acquires services from another State agency as procurement contracts, then competition would be governed by the State’s policies for competition.

Please refer to [Question B.1](#) for a discussion of situations in which one State agency transfers funds to another State agency under a subaward. Under EPA [Subaward Policy](#), competition for subawards is not required unless a statute, regulation or the terms of an EPA award provide otherwise. States, however, may have their own subaward competition requirements.

Q.C.3. A State agency is directed to use the State's hygienic lab for ambient air monitoring activities and does not require competitive bidding per their State code. Funds have been placed in the Contractual category. As they are following their laws, is it correct to place the funds in the Contractual category?

Yes, but only if State law characterizes such a transaction as a procurement contract rather than an interagency service agreement or similar arrangement. Under [2 CFR 200.317](#) EPA will defer to the State's procurement procedures and the funds could then be placed in the contractual budget category on the SF-424A. If the State does characterize the transaction as a procurement contract, then the State would be subject to the limited Federal requirements that apply to EPA funded State contracts.

Please refer to [Questions B.3.](#) and [C.1.](#)

Q.C.4. A State awards contracts to several firms for environmental consulting services. The terms of the State's contracts provide that the consultants may also provide services to municipalities in the State under the same terms as those the State has negotiated if the municipality agrees to pay the consulting fee. Does EPA require municipalities to conduct a competition prior to hiring a consultant that has a contract with the State?

No. EPA considers arrangements a State makes to procure services for municipalities to be intergovernmental agreements for common services procurements under [2 CFR 200.318\(e\)](#). EPA defers to State procurement policies and procedures as required by [2 CFR 200.317](#). Note, however, that the consultant fees charged to EPA grants must still be reasonable and comply with the limitations on EPA participation in compensation for individual consultants at [2 CFR 1500.10](#). If the consultant charges fees on Federally funded projects that are higher than the State pays with its own funds then the costs may be questioned in an audit.

Q.C.5. Is the \$10,000 micro-purchase threshold (or a higher threshold pursuant [2 CFR 200.320\(a\)\(1\)\(iv and v\)](#)) for one consultant over the life of the assistance agreement?

Not necessarily.

* Recipients may purchase professional services non-competitively in amounts less than their authorized micro-purchase threshold with the same consultant more than once during the life of the assistance agreement provided the recipient meets the requirement at [2 CFR 200.320\(a\)\(1\)\(i\)](#) to distribute purchases equitably among qualified sources to the extent practicable. However, multiple micro-purchases from only one consultant throughout the performance period of the assistance agreement would raise serious doubts regarding the recipient's compliance with that requirement.

* Consulting services are widely available in the commercial marketplace so if the recipient needs additional consulting services it must try to hire other consultants as well. Note that it may be more efficient for the recipient to use [2 CFR 200.320\(a\)\(2\)](#) informal procurement methods such as simplified acquisition procedures obtaining proposals from an adequate number of sources (at least three (3)) As indicated in the [Best Practice Guide for Procuring](#)

[Services, Supplies, and Equipment Under EPA Assistance Agreements](#) pursuant to [2 CFR 200.320\(a\)\(2\)](#) EPA has specified that recipients solicit proposals from at least three (3) qualified sources for simplified acquisitions.

* As provided in [2 CFR 200.320\(a\)\(1\)\(iii\)](#) and [2 CFR 200.320\(a\)\(1\)\(iv and v\)](#) some recipients may establish micro-purchase thresholds of up to \$50,000 or, higher with the approval of their cognizant Federal agency for indirect costs.

Q.C.6. How does EPA interpret the requirement in [2 CFR 200.320\(a\)\(2\)\(i\)](#) to obtain prices or quotes from “. . . an adequate number of qualified sources” for procurements at the \$250,000 small purchase threshold?

If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

EPA specifies that if a recipient obtains prices or quotes from at least three (3) qualified sources and fairly considers each quote during the contracting process, the requirements of [2 CFR 200.320\(a\)\(2\)\(i\)](#) are satisfied. Please refer to the [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#) for additional guidance. Note, however, if a recipient’s own procurement policies require more than 3 prices or quotes the recipient must comply with those policies. Here are some examples of how a recipient could document compliance with regulatory requirements for small purchases.

- A recipient needs to hire a consultant to design a sampling protocol for a water quality study. The recipient’s independent cost estimate indicates that the design services should cost less than \$250,000. In these circumstances, the recipient could send emails to three environmental consulting firms soliciting rate quotes, asking for a Statement of qualifications, and requesting a project design proposal. The recipient should advise the firms that the contract would have a ceiling of less than \$250,000. Additionally, if the recipient does not select the consultant offering the lowest rates that decision must be justified based on superior qualifications or technical factors in order to meet the cost reasonableness provisions of [2 CFR 200.404](#).
- A recipient needs to purchase a piece of standard laboratory equipment that is available from several manufacturers. An internet search indicates that the catalogue price of the equipment is consistently less than \$250,000. The recipient could retain “screen shots” of three of the catalogue prices and purchase the item from the manufacturer offering the lowest price considering shipping and other incidental charges. A decision to purchase the item from a manufacturer charging a higher price would have to be justified by technical factors.

Q.C.7. Are “sub-subrecipients” subject to the Procurement Standards in the Uniform Grants Guidance such as the requirement to obtain quotes from an adequate number of sources when contracting at the [2 CFR 200.320\(a\)\(d\)](#) \$250,000 simplified acquisition threshold?

Yes. All UGG requirements including the [Procurement Standards](#) “flow down” to subrecipients at every funding tier.

Q.C.8. May pass-through entities provide subrecipients permission to enter into sole source contracts?

Yes. Under [2 CFR 200.320\(c\)](#) the pass-through entity has authority to “sole/single source”: procurements, identified as noncompetitive procurement, by subrecipients. However, under [2 CFR 200.332\(d\)](#) the pass-through entity is required to monitor the subrecipient to ensure that the subrecipient activities are in compliance with all applicable requirements, including procurement requirements. EPA may review a pass-through entity’s sole source approval procedures under [2 CFR 200.325](#) to verify compliance with regulatory standards. The pass-through entity is accountable for ensuring that all “sole source” noncompetitive procurements by subrecipients are adequately justified and documented. If EPA’s OIG questions a subrecipient’s “sole source” noncompetitive procurement in an audit the agency may not support a pass-through entity’s position particularly if a subrecipient:

- * Allows a consultant to prepare the specifications for a procurement competition and then submit a bid for the resulting contract in violation of [2 CFR 200.319\(b\)](#),
- * Has made a “sole source” noncompetitive procurement contract to a consultant on retainer contract in violation of [2 CFR 200.319\(b\)\(4\)](#),
- * Contracts on a “sole source” noncompetitive procurement basis for equipment or professional services (e.g. consulting) that are widely available in the commercial marketplace, or,
- * The price for the product or service is unreasonably high.

Q.C.9. A nonprofit pass-through entity provides subawards to small municipalities and community-based organizations for implementation of watershed restoration projects. These subrecipients often lack the administrative infrastructure to conduct cost-effective competitions for environmental consulting and engineering services. What are the pass-through entity’s options to assist the subrecipients?

- * The pass-through entity could issue a solicitation under [2 CFR 200.319\(d\)](#) to establish a list of pre-qualified consulting and engineering firms for the subrecipients to interview when services are needed. The number of firms on the pre-qualified list must be adequate to ensure open and free competition. The solicitation would need to remain open at least 30 calendar days as provided in [40 CFR 33.301\(b\)](#) and the pass-through entity should make the U.S. Small Business administration and the U.S. Minority Business Development Agency aware of the solicitation per [40 CFR 33.301\(e\)](#). The subrecipients rather than the pass-through entity would be the contracting party with the firms and would pay them with subaward funds.
- * The pass-through entity could conduct a competition to hire one or more consulting and engineering firms and provide the services of these firms to subrecipients as “in-kind” assistance. The pass-through entity would be the contracting party with the firms and pay them directly.

* The pass-through entity could conduct a competition to hire one or more consulting and engineering firms for use in “inter-entity agreements” with the subrecipients as authorized by [2 CFR 200.318\(e\)](#). The solicitation would need to remain open at least 30 calendar days as provided in [40 CFR 33.301\(b\)](#) and the pass-through entity should make the U.S. Small Business Administration and the U.S. Minority Business Development Agency aware of the solicitation per [40 CFR 33.301\(d\)](#). Either the pass-through entity or the subrecipient would be the contracting party with the firms depending on the terms of the inter-entity agreement.

Q.C.10. Is the requirement for Federal Funding Accountability and Transparency Act (FFATA) reporting the same for subawards and procurement contracts entered into by recipients?

No. FFFATA reporting requirements apply to subawards provided by pass-through entities but not to procurement contracts recipients entered into with EPA funding. Please refer to the definition of “subaward” of EPA’s [General Term and Condition](#) entitled “Reporting Subawards and Executive Compensation”.

Q.C.11. If a recipient has misclassified a procurement contract as a subaward what steps should the recipient take to rectify the situation?

See [Question A.37](#).

Q.C.12. Similarly, if a recipient has an existing procurement contract with an entity that should have been monitored and managed as a subaward do we have to renegotiate the agreement with them?

Yes. See [Question A.38](#).

Q.C.13. Does the recipient have to submit a budget modification to reflect the reclassification?

Yes. See [Question A.39](#).

Q.C.14. May recipients or subrecipients enter into procurement contracts wholly or partially funded by EPA with non-Federal entities or individuals who are suspended, debarred, or otherwise excluded (“excluded”) from participation in Federal financial assistance programs?

The requirements for pass-through entities at [2 CFR 200.332](#) included that pass-through entities must “Verify that the subrecipient is not excluded or disqualified in accordance with [2 CFR 180.300](#). Verification methods are provided at [2 CFR 180.300](#), which include confirming in SAM.gov that a potential subrecipient is not suspended, debarred, or otherwise excluded from receiving Federal funds.” Suspension and debarment at [2 CFR 200.214](#) provides more context. Recipients and subrecipients are subject to the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, as well as [2 CFR 180](#). The regulations in [2 CFR 180](#) restrict making Federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from receiving or participating in Federal awards.

No. If the procurement contract equals or exceeds \$25,000 or requires EPA approval. Please refer to [2 CFR 180.220](#), the and [2 CFR 1532.220](#). Note that this requirement extends to both prime contracts and all lower tiered subcontracts. Additional information regarding pass-through entities responsibilities to ensure that excluded entities do not participate in EPA financial assistance programs may be found in EPA's [General Terms and conditions](#) entitled "Suspension and Debarment" in the pass-through entity's agreement with EPA.

Q.C.15. How should a pass-through entity, recipient or subrecipient find out whether a potential procurement contractor or principal is suspended, debarred, or otherwise excluded from participation in Federal financial assistance programs?

Pass-through entities and subrecipients may access suspension and debarment information at: <https://sam.gov/content/exclusions>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. Additional information regarding recipient and subrecipient responsibilities to ensure that excluded entities do not participate in EPA financial assistance programs may be found in EPA's [General Term and Condition](#) entitled "Suspension and Debarment" in the pass-through entity's agreement with EPA.

Q.C.16. Does EPA consider Intertribal Consortia to be Indian Tribes for the purposes of the 2 CFR 200.317 provision allowing Indian Tribes to follow the same policies and procedures they use for procurements with non-Federal funds?

A. C. 17. Yes, EPA has determined that Intertribal Consortia that meet the requirements of [40 CFR 35.504](#) are covered by [2 CFR 200.317](#) when performing EPA financial assistance agreements even if the Intertribal Consortia is incorporated as a nonprofit organization. Note that the Intertribal Consortia must establish those policies and procedures for this regulation to supersede the competition requirements in [2 CFR 200.318](#), [2 CFR 200.319](#), and [2 CFR 200.320](#). In addition to its own policies and procedures, the Intertribal Consortia must also comply with the following procurement standards: [2 CFR 200.321](#) as implemented in [40 CFR Part 33](#), [2 CFR 200.322](#), [2 CFR 200.323](#), and [2 CFR 200.327](#).

Q.C.17. Are local government, nonprofit, and Institution of Higher Education subrecipients of States and Indian Tribes subject to the procurement standards in §§ 200.318 through 200.327?

A. C. 17. Yes. The exemption from Federal procurement standards in [2 CFR 200.317](#) only applies to States and Indian Tribes as those terms are defined in [2 CFR 200.1](#).

D. Transactions with Federal Agencies.

Q.D.1. May an assistance agreement recipient use EPA funds for subawards to another Federal agency?

Yes, if the Federal agency has statutory authority to provide services to non- Federal entities on a reimbursable basis or otherwise receive and use funds from non- Federal entities then

assistance agreement recipients may use EPA funds for subawards to other Federal agencies. Please refer to Section 7.0(b) of EPA [Subaward Policy](#).

Examples of government-wide statutes that authorize Federal agencies to receive and use funds from pass-through entities include the Intergovernmental Cooperation Act which allows Federal agencies to provide specialized services to State and local governments and the Federal Technology Transfer Act which authorizes Cooperative Research and Development Agreements. Some Federal agencies have unique statutory authority to provide services to non-Federal entities. EPA's Project Officer or Grant Specialist will typically obtain a citation to the statute for EPA's files.

Q.D.2. If transactions between recipients and Federal agencies are subawards, where do they go in the budget?

Recipients should include amounts budgeted for financial transactions with Federal agencies in the "other" budget category on the SF-424A and include a separate line item for these transactions in their budget narrative.

Q.D.3. Are there unique conditions for subawards to Federal agencies?

EPA has Terms and Conditions that cover subawards to Federal agencies based on the authority in [2 CFR 200.101\(a\)\(2\)](#) to limit the applicability of [2 CFR Part 200](#) to Federal agency awards and subawards. For example, EPA does not require Federal agency subrecipients to follow the Procurement Standards in [2 CFR Part 200](#) given that Federal agencies are subject to the Federal Acquisition Regulation.

E. Fixed amount subawards.

Q.E.1. May pass-through entities enter into fixed amount subawards without EPA approval?

No. Under [2 CFR 200.333](#) and [EPA's General Term and Condition entitled Establishing and Managing Subawards term and condition](#), pass-through entities must obtain prior approval from EPA before making subawards on a fixed amount basis. Fixed amount subawards do not require cost accounting; the subrecipient receives payment upon completion of milestones or other measures of performance.

Examples of fixed amount subawards that EPA will consider are found in Section 9.0 of EPA [Subaward Policy](#).

Q.E.2. Will EPA consider approving fixed amount subawards for EPA grant programs that require a statutory or regulatory cost share?

Yes, provided the pass-through entity is otherwise able to meet its cost-share obligation with contributions verifiable through cost accounting records. A subrecipient's contribution of in-kind services (directly or from a third party) to a fixed amount subaward would not meet this criteria because the subrecipient does not maintain cost accounting records. Examples of how a

pass-through entity awarding fixed amount subawards could meet its cost share obligation under an assistance agreement with a mandatory cost share include:

- * Using its own funds for a portion of the fixed amount award provided the payments to the subrecipient are recorded in the pass-through entities accounting system as cost share.
- * Personnel or contractor costs for overseeing subrecipient performance.
- * Costs incurred for other allowable activities that the pass-through entity performs directly.

Q.E.3. Is there a maximum amount allowed for fixed amount subawards?

Yes. As provided at [2 CFR 200.333](#) the maximum amount of a fixed amount subawards is up to \$500,000. EPA adopted this ceiling in Section 9.0 (a) of the [Subaward Policy](#).

Q.E.4. Do all of the fixed amount subawards have to be the same fixed amount?

No. The amount of the fixed amount subaward should reflect the pass-through entities best estimate of the cost of the project taking into account the factors at [2 CFR 200.201\(b\)\(1\)](#).

Q.E.5. Are fixed amount transactions always subawards?

No. Recipients may enter into fixed amount procurement contracts when acquiring services from for-profit organizations or when a micro-purchase (typically \$10,000 or less) is a more efficient means of supporting an eligible subrecipient's participation in a project.

Please refer to [RAIN 2018-G04-R1](#) for \$10,000 micro-purchase subawards. A fixed amount transaction may qualify as a rebate or subsidy and be characterized as participant support costs as provided at [2 CFR 1500.1](#) and EPA [Participant Support Cost Guidance](#).

Q.E.6. Should pass-through entities consult the Cost Principles in [2 CFR Part 200 Subpart E](#) when negotiating fixed-amount subawards?

Yes. Although fixed amount subawards are not subject to cost accounting, [2 CFR 200.201\(b\)\(1\)](#) provides that the Cost Principles may be used as a guide in negotiating fixed amount subawards. For example, a pass-through entity providing a fixed amount subaward to support a training conference should ensure that the budget for the subaward does not include funds for unallowable costs such as alcoholic beverages.

Q.E.7. Wouldn't the fixed price examples specified in Section 9.0(a) of EPA's Subaward Policy be procurement contracts?

No. The examples of fixed amount subawards EPA specified would be structured to support to units of government, institutions of higher education, nonprofit organizations, students, or post-doctoral fellows with financial assistance to carry out public purposes. None of the examples involve transactions with for profit firms or individual consultants to acquire professional services or products on commercial terms. Please refer to [Appendix A of EPA Subaward Policy](#).

Q.E.8. Are there regulatory requirements that EPA does apply to fixed amount subawards?

Although fixed amount subawards do not require financial reporting, the recipient or subrecipient must meet record retention requirements in [2 CFR 200.334](#) through [2 CFR 200.338](#) and be responsible for making records available during an audit, as outlined at [2 CFR 200.201\(b\)\(1\)](#). Additionally, quality assurance requirements at [2 CFR 1500.12](#) apply to fixed amount subawards.

Q.E.9. How are subrecipients paid under fixed amount subawards?

As provided in [2 CFR 200.201\(b\)\(1\)](#) pass-through entities pay subrecipients on fixed amount subawards using the following methods or one approved by the EPA Award Official and memorialized in the terms and conditions of the award.

- In several partial payments. The amount of each payment as well as the “milestone” or event triggering the payment must be contained in the terms of the fixed amount subaward.

- * An example of payments on a milestone basis would be for a sampling project in which the subrecipient receives a payment upon completion of an acceptable sampling design, another payment when sampling is complete, and a final payment when the sampling report is delivered.

- * Another example is a community meeting program in which payments are made when the facility is leased, when the speakers are selected, and finally when the meeting takes place.

- On a unit price basis. The defined unit(s) or price(s) should be agreed to in advance and included in the terms of the fixed amount subaward. An example of a unit price for a fixed amount subaward would be “per trainee attending class” payments for a training program.

- In one payment at the completion of the fixed amount subaward. An example of a single payment would be when the subrecipient delivers an acceptable research report to the pass-through entity.

F. Competition for Subawards.

Q.F.1. May EPA programs require or encourage competition for subawards?

Yes. Although the Uniform Grants Guidance does not require pass-through entities to select subrecipients competitively, Section 10.0(a) of [EPA Subaward Policy](#) provides that agency programs may require competition for subawards. Competition requirements must be communicated to recipients in EPA competitive announcements (if applicable), program guidance and programmatic terms and conditions. Programs may also encourage competition for subawards through program specific guidance to pass-through entities. as authorized by Section 15.0(b)(10) of the [Subaward Policy](#). Guidance encouraging subaward competitions issued prior to the March 29, 2016, effective date of the Subaward Policy remains in effect.

Q.F.2. If a State has regulations or policies requiring competitive selection of subrecipients, will EPA allow the State to make subawards competitively?

Yes, provided a Federal statute, regulation or the terms of EPA's agreement do not expressly prohibit selection of subrecipients competitively. Section 10.0 of [EPA Subaward Policy](#) provides that pass-through entities may choose to make subawards competitively in the absence of a superseding Federal policy.

Q.F.3. Are EPA personnel allowed to sit on a subaward selection panel?

Yes, but only if the requirements specified in Section 10(b)(2) or (3) in [EPA Subaward Policy](#) (below) are met. Note that EPA participation in selection panels is only authorized under cooperative agreements.

(2) Participation as Technical Advisors. EPA personnel may serve as technical advisors to a pass-through entity's subaward evaluation panel as part of EPA's substantial involvement in a cooperative agreement if they do not unduly influence the panel or selection decisions and are free of any conflicts of interest, and actual or apparent violations ethical standards (*e.g.*, Office of Government Ethics (OGE) Standards of Ethical Conduct for Employees of the Executive Branch), with respect to any competing subrecipients.

(3) Participation on Evaluation Panels. For subaward competitions conducted by pass-through entities under cooperative agreements, EPA personnel may serve as members of the recipient's subaward evaluation panel provided:

- a. The pass-through entity uses objective, transparent criteria to rank and select subrecipients.
- b. EPA and other Federal agency personnel do not unduly influence the panel or selection decisions (*e.g.*, Federal employees must comprise substantially less than a majority of the panel).
- c. EPA employees are free of conflicts of interest, or actual or apparent violations of ethical standards (*e.g.*, OGE Standards of Ethical Conduct for Employees of the Executive Branch), with respect to any competing subrecipients.

G. EPA Oversight.

Note: For the purposes of these questions, the term "Appendix B" refers to [Appendix B of EPA Subaward Policy](#), "National Subaward Term and Condition" which is implemented by [EPA's General Term and Condition](#) Entitled "Establishing and Managing Subawards".

Q.G.1. If an award is amended due to a change of work plan scope, but there is no addition of funding, would the new Subaward Policy apply?

No. Section 2.0 of the [Subaward Policy](#) provides that the policy only applies to assistance agreements in effect prior to March 29, 2016 when EPA adds either incremental or supplemental funding. Note that a pass-through entity may voluntarily agree to be subject to all

or part of the [Subaward Policy](#) (e.g. fixed amount subawards) when an assistance is amended otherwise.

For Revision of budget and program plans at [2 CFR 200.308\(f\)](#) for subaward activities not proposed in the application and approved in the Federal award, a change of subrecipient only requires prior approval if EPA or pass-through entity includes the requirement in the terms and conditions of the Federal award. In general, EPA or pass-through entity should not require prior approval of a change of subrecipient unless the inclusion was a determining factor in the merit review or eligibility process. This requirement does not apply to procurement transactions for goods and services.

Q.G.2. Do pass-through entities always send their proposed subaward agreements to EPA for approval?

Not necessarily. There is no requirement in the subaward term and condition ([Appendix B](#)) for a pass-through entity to send subaward agreements to EPA for approval.

EPA's relationship is with the pass-through entity, as detailed at [2 CFR 200.331](#). The EPA does not have a direct legal relationship with subrecipients or contractors of any tier; however, the EPA is responsible for monitoring the pass-through entity's oversight of first-tier subrecipients. All the characteristics listed below may not be present in all cases, and some characteristics from both categories may be present at the same time. No single factor or any combination of factors is necessarily determinative. The pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract. In making this determination, the substance of the relationship is more important than the form of the agreement.

* On a case by case basis EPA could obtain copies of the agreements under the access to records provision, [2 CFR 200.337](#). Also, if EPA awarded the pass-through entity a cooperative agreement the Project Officer could require that the recipient submit the substantive terms of the subaward agreement to EPA for approval. Please refer to Section 8.0 (g) of the [Subaward Policy](#).

* EPA has provided pass-through entities with a template for pass-through entities to use ([Appendix D of the Subaward Policy](#)) that meets the requirements of [2 CFR 200.332\(a\)](#) and [2 CFR 200.332\(b\)](#), but use of that template is not mandatory. Pass-through entities may use their own forms for subawards if the regulatory requirements are met.

Q.G.3. Does EPA interpret [2 CFR 200.308](#) and [Appendix B](#) to require pass-through entities to obtain prior EPA approval by the Award Official for each subaward if the pass-through entity's assistance agreement does not name the subrecipients?

No. If the pass-through entity described the types of subawards it intends to make in the EPA scope of work and included the aggregate amount of funding budgeted for subawards in a line item under the "other" budget category of the SF-424A then prior EPA approval for particular subawards is not necessary.

Prior approval would be necessary if the pass-through entity significantly changes the types of activities it intends to support through subawards or decides not to make subawards at all. EPA will determine on a case by case basis whether the changes are significant enough to alter the scope or objectives of the project such that a formal amendment under [2 CFR 200.308](#) is necessary.

For revisions requiring prior approval at [2 CFR 200.308\(f\)](#), a recipient or subrecipient must request prior written approval from the EPA or pass-through entity for the program and budget-related 10 reasons listed in [2 CFR 200.308\(f\)](#).

Q.G.4. If the pass-through entity has named a subrecipient as a “partner” in a successful competitive funding application, then following award of the EPA assistance agreement decides to make a subaward to a different subrecipient, is prior EPA approval of EPA’s Award Official required under [2 CFR 200.308\(b\)](#) and [Appendix B](#)?

Yes, consistent with [2 CFR 200.308\(f\)\(6\)](#), EPA’s Establishing and Managing Subaward General Term and Condition provides that if the pass-through entity described the original subrecipient’s qualifications and/or performance history in the competitive application in response to EPA selection criteria EPA’s Award Official, following consultation with EPA’s Project Officer, must approve the “new” subrecipient’s eligibility and verify that the “new” subrecipient has comparable qualifications. Additionally, if the “new” subrecipient will carry out a program or project that is different than the one the pass-through entity described in the application for the original subrecipient EPA Award Official approval would be necessary to ensure that the subrecipient’s program or project is eligible for funding under the statute/regulation authorizing the pass-through entity’s assistance agreement as well as any program policy limits described in the competitive announcement. Note also that the different program or project may not be a material change to the scope of work for the assistance agreement absent prior approval of the EPA Award Official.

Q.G.5. Are there unique prior approval requirements for subawards to foreign or international organizations?

Yes. Refer to [Question A.44](#).

Q.G.6. Do EPA assistance agreement recipients need to include the financial information from their subrecipients in their reports to the EPA, broken out by cost category (ex. Personnel, Travel, Equipment, Supplies, etc.)?

No. If EPA’s agreement with the pass-through entity contains the standard subaward reporting condition ([Appendix C of the Subaward Policy](#)) the pass-through entity only needs to provide summaries of its reviews of the financial information obtained from subrecipients. Summaries would not include detailed financial information on subrecipient expenditure by cost categories. The summaries should, however, address total expenditures by each subrecipient, for EPA to effectively evaluate progress towards achieving the objectives of the assistance agreement.

H. Subrecipient Management and Monitoring.

Q.H.1. Are States subject to the UGG requirements for Subrecipient Monitoring and Management when they are pass-through entities?

Yes. Unlike prior regulations (40 CFR 31.37(a)) the UGG does not allow State to follow their own laws and procedures when awarding and administering subawards. All pass-through entities must comply with [2 CFR 200.332](#) and other applicable provisions of the UGG. Note, however, as provided in [2 CFR 1500.3\(b\)](#) that subawards in the form of loan, loan guarantees, interest subsidies and principal forgiveness, purchases of insurance or local government debt or similar transactions with borrowers by recipients of Clean Water State Revolving Fund (CWSRF) capitalization grants and Drinking Water State Revolving Fund (DWSRF) capitalization grants are not covered by the requirements in [2 CFR 200.332](#).

Q.H.2. Does EPA have any advice on addressing risk assessments, the requirements, and acceptable assessment documentation to assist State or Indian Tribe pass-through entities comply with [2 CFR 200.332](#)?

EPA's position is that pass-through entities must have "systems in place" to adequately assess subrecipient risks and monitor subrecipient compliance with applicable requirements. EPA takes the "systems in place" approach to afford pass-through entities with flexibility to design their own approaches to subrecipient management that reflected resource availability as well as the program specific requirements. EPA has determined that it is not appropriate to impose detailed requirements on pass-through entities that go beyond the provisions of [2 CFR 200.332](#) unless there are reasons in a particular case for imposing specific conditions under [2 CFR 200.208](#).

Refer to Q.H.6. for additional guidance.

Q.H.3. Once the assessment is completed on a subrecipient, is it required annually or once per agreement?

Neither the UGG nor EPA [Subaward Policy](#) prescribes the frequency of subrecipient risk assessments. Pass-through entities should exercise judgment on the frequency of risk assessments based on the factors described at [2 CFR 200.332\(b\)](#). EPA recommends that as a minimum pass-through entities conduct risk assessment prior to making the initial subaward, document the results of that assessment in writing, and then require the subrecipient to inform the pass-through entity of the results of any subsequent audits or other reviews of the subrecipients financial management or performance. The pass-through entity should establish a [2 CFR 200.332\(c\)](#) and [2 CFR 200.332\(e\)](#) monitoring protocol based on the initial risk assessment. If the risk assessment warrants, the pass-through entity may impose specific conditions (e.g. paying the subrecipient on a reimbursement basis following review of cost documentation) as authorized by [2 CFR 200.332\(d\)](#) and [2 CFR 200.208](#).

Subrecipients are required to permit the pass-through entity and auditors to access the subrecipient's records and financial statements as outlined at [2 CFR 200.332\(b\)\(5\)](#). And the

pass-through is directed to evaluate each subrecipient's fraud risk and risk of noncompliance with specific considerations outlined at [2 CFR 200.332\(c\)](#).

Pass-through entities for EPA programs with substantial subaward components such as Clean Water Act 319 and Brownfields Revolving Loans should consult national program guidance and the programmatic terms and conditions of their agreements for additional information.

Q.H.4. How does the pass-through entity pay subrecipients who do not receive construction or fixed amount subawards?

Pass-through entities pay recipients in advance as provided in [2 CFR 200.305\(b\), Payments for recipients and subrecipients other than States](#), provided the subrecipient has financial systems in place that minimize the time that elapses between receipt of payment from the pass-through entity and disbursement for allowable costs (e.g. compensating personnel, paying contractor invoices) by the subrecipient. EPA Policy as implemented in the [General Terms and Conditions](#) requires disbursement of substantially all (i.e. 95%) of payments within 5 working days and pass-through entities must use that policy as a guide for assessing timely disbursement as provided in [2 CFR 200.332\(b\)\(3\)](#). Note that as provided in [2 CFR 200.332\(d\)](#) pass-through entities may pay subrecipients on a reimbursement basis if the subrecipient poses a compliance or program performance risk.

Whenever possible, as outlined at [2 CFR 200.305\(b\)\(2\)](#), advance payment requests by the recipient or subrecipient must be consolidated to cover anticipated cash needs for all EPA awards received by the recipient from the awarding EPA or pass-through entity.

If the subrecipient is not able to disburse funds in a timely manner, or the pass-through entity is concerned that the subrecipient may incur unallowable costs, then the pass-through entity may pay the subrecipient on a reimbursement basis as authorized by [2 CFR 200.332\(c\)](#) and [2 CFR 200.208](#). The reimbursement method requires that the subrecipient submit cost documentation (e.g. payroll information, contractor invoices) to the pass-through entity prior to receiving payment. 30-day payment on reimbursement.

- Paying the recipient based on deliverables is a fixed amount subaward. Under [2 CFR 200.333](#) and section 9.0 of the [Subaward Policy](#), pass-through entities may fund subawards in fixed amounts up to \$500,000 that compensate subrecipients based on completion of deliverables. EPA must provide prior approval. EPA's Office of Grants and Debarment will authorize program offices to approve fixed amount subawards. Additional information on fixed amount subawards is available in [Section E of these Frequent questions](#).

Q.H.5. How does the pass-through entity pay subrecipients of fixed amount subawards?

Refer to Question [Q.E.9](#).

Q.H.6. Is EPA aware of an acceptable risk assessment format that is recommended for subawards?

A risk assessment framework is described at [2 CFR 200.332\(c\)](#). Factors to consider in risk reviews include:

- The subrecipient's prior experience with the same or similar subawards;
- The results of previous audits. This includes considering whether the subrecipient receives a Single Audit in accordance with [Subpart F](#).
- Whether the subrecipient has new personnel or new or substantially changed systems; and
- The extent and results of any Federal agency monitoring, if known.