

Subaward – Contract Agreement Classification Determination

OBJECTIVE

To provide information about the judgment used to classify an agreement as a subaward or a procurement contract with Governors State University in partnerships.

HOW AGREEMENT CLASSIFICATION IS DETERMINED

Flow-through agreements are generally classified as a subaward or a procurement contract. The substance of the relationship is more important than the form of the agreement. All of the characteristics listed below may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract. A description of each is below. When the agreement is not easily classified as a subaward or a procurement contract according to the descriptions below, the use of judgment in making the determination is allowable.

SUBAWARD

Uniform Guidance - Code of Federal Regulations, Title 2

§200.93: Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding

HHS Uniform Administrative Requirements - Code of Federal Regulations, Title 45

§75.351: A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

1. Has its performance measured in relation to whether objectives of a Federal program were met;
2. Has responsibility for programmatic decision making;
3. In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

Entities that are classified as subrecipients are responsible for adherence to applicable Federal program requirements specified in the Federal award.

PROCUREMENT CONTRACT

Uniform Guidance - Code of Federal Regulations, Title 2

§200.22: Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award.

HHS Uniform Administrative Requirements - Code of Federal Regulations, Title 45

§75.351: A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

1. Provides the goods and services within normal business operations;
2. Provides similar goods or services to many different purchasers;
3. Normally operates in a competitive environment;
4. Provides goods or services that are ancillary to the operation of the Federal program.

Entities that are classified as contractors are not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

Appendix II to Part 75:

- A. Contracts for more than the simplified acquisition threshold, currently \$150,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

CONTACT INFORMATION

Subaward agreements are handled by the *Office of Sponsored Programs and Research*, who can be reached at ospr@govst.edu or 708-235-2846.

Procurement contracts are handled by the *Office of Procurement and Business Services*, who can be reached at 708-235-4056.