

# Subrecipient or Contractor?



Pam Miller, Director  
Noam Pines, Associate Director  
Sponsored Projects  
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# What's in a Name?



- From the Uniform Guidance:
  - 200.74, Pass-through entity - non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.
  - 200.93, Subrecipient - a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program.
  - 200.23, Contractor (replaces term “vendor” (used in A-133)) – means an entity that receives a contract.

# Role of the PTE at Proposal Stage

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- Must make a case-by-case determination whether each agreement casts the party as a subrecipient or contractor.
- It does not matter what the agreement is called.
  - Grant agreement
  - Cooperative agreement
  - Contract
- Look at the nature of the relationship.





# Characteristics of Each

Indicative Characteristics of Subrecipient vs. Contractor	
Subrecipient	Contractor (Vendor)
An assistance relationship	A procurement relationship
Determines eligibility	Provides good and services within normal business operations
Performance measured against federal program objectives	Provides similar goods and services to many purchasers
Responsible for programmatic decision making	Normally operates in a competitive environment
Adheres to applicable federal program requirements	Provides goods or services that are ancillary to the federal program
Uses federal funds to carry out a program for a public purpose specified in statute as opposed to providing goods or services for the benefit of the pass-through entity	Not subject to compliance requirements of the federal program

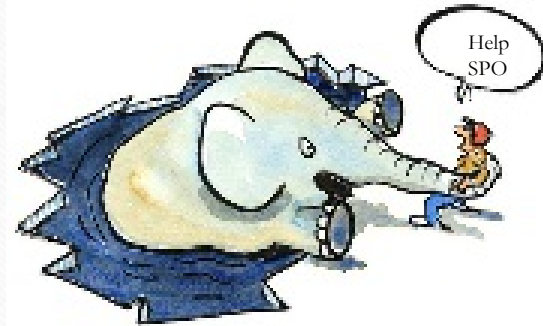
# What we look for:

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# What Can Go Wrong?

- Treating a Contractor as a Subrecipient
  - F&A is applied incorrectly (too little/too late)
  - The Contractor could own IP developed
  - Contractor will have to adhere to federal program requirements: single audit, financial reporting, access to records/financial statements
- Treating a Subrecipient as a Contractor
  - F&A is applied incorrectly (too much)
  - Subrecipient will not own IP if SOW is treated as a work for hire
  - May have to be competitively bid



# Evaluating a Subrecipient

- Pass-through must evaluate each subrecipient's risk of non compliance for purposes of determining appropriate monitoring
- Timing: before applicant receives funding
- Risk Factors, may include consideration of:
  1. Subrecipient's prior experience with the grant program
  2. Results of previous audits
  3. New personnel or substantially changed systems
  4. Results of federal monitoring





# High and Low Risk Criteria



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- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>• Foreign (International) Recipient</li><li>• Start-up</li><li>• For-profit</li><li>• Contract</li><li>• Awarded &gt;50% of funds</li><li>• No negotiated federal F&amp;A rate/s</li><li>• No Audit/Negative Audit Findings</li></ul> | <ul style="list-style-type: none"><li>• Domestic (U.S.) Recipient</li><li>• Mature</li><li>• University-Non-profit</li><li>• Grant/Cooperative Agreement</li><li>• Awarded &lt; 50% of funds</li><li>• Negotiated federal F&amp;A rate/s</li><li>• Audited within the last two years and has no negative findings</li></ul> |
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# Higher Risk Subrecipients

Pass-through must consider imposing additional federal award conditions, if appropriate, such as:

- Require reimbursement;
- Withhold funds until evidence of acceptable performance;
- More detailed reporting;
- Additional monitoring;
- Require grantee to obtain technical or management assistance; or
- Establish additional prior approvals.



# Special Problems

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- TBD Subrecipients (May require sponsor approval at the award stage)
- LLC Subrecipients (Mini-audit Questionnaire issues)
- Subrecipients without Necessary Infrastructure
- Subrecipients without Working Capital
- International Subrecipients
- Subrecipients Connected to the PI (FCOI)





# Questions?

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