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Title 45 – Public Welfare

Subtitle A – Department of Health and Human Services

Subchapter A – General Administration

Part 75 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards

Subpart D – Post Federal Award Requirements

Subrecipient Monitoring and Management

Authority: 5 U.S.C. 301; 2 CFR part 200.

Source: 79 FR 75889, Dec. 19, 2014, unless otherwise noted.

§ 75.351 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with HHS awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The HHS awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

- (a) **Subrecipients.** A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See § 75.2 *Subaward*. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:
- (1) Determines who is eligible to receive what Federal assistance;
 - (2) Has its performance measured in relation to whether objectives of a Federal program were met;
 - (3) Has responsibility for programmatic decision making;
 - (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
 - (5) 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.
- (b) **Contractors.** 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. See § 75.2 *Contract*. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:
- (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; and

(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) ***Use of judgment in making determination.*** In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above 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.

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