



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
WASHINGTON, DC 20410-3000

OFFICE OF HEALTHY HOMES AND  
LEAD HAZARD CONTROL

<b>Policy Guidance Number: 2017-02</b>	<b>Date: August 4, 2017</b>
<b>SUBJECT:</b>	<b>Determining Subrecipient or Contractor Classification</b>
<b>STATUS:</b>	<b>Current</b>
<b>APPLICABILITY:</b>	<b>All OLHCHH Grants and Cooperative Agreements from Fiscal Year 2015 to Current</b>
<b>RELATED FEDERAL REGULATIONS:</b>	2 CFR §200.22 Contract 2 CFR §200.23 Contractor 2 CFR §200.64 Local Government 2 CFR §200.92 Subaward 2 CFR §200.93 Subrecipient 2 CFR §200.317 Procurements by States 2 CFR §200.318 General Procurement Standards through 2 CFR §200.326 Contract Provisions 2 CFR §200.330 Subrecipient and Contractor Determinations
<b>COMMENTS:</b>	

This Policy Guidance is being issued to provide instructions for determining the classification for subrecipients and contractors, and partnerships agreements initiated by the Prime Recipient (Grantee) for the Office of Lead Hazard Control and Healthy Homes (OLHCHH) grants and cooperative agreements. The Grantee is responsible for establishing and maintaining effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award.

**All partners or partnerships will be classified as being with either a subrecipient or a contractor.** An entity cannot serve as a subrecipient and contractor under the same grant or cooperative agreement number.

The Grantee is responsible for completing the OLHCHH, “Checklist to Determine Subrecipient or Contractor Classification” for each subrecipient or contractor **receiving funds greater than \$3,500.00** listed on line item 7 of the Budget Worksheet (HUD Form 424-CBW). The OLHCHH Grant Specialist will approve or disapprove the classification determination **in writing** for each entity submitted by the Prime Recipient **before, during, and after** grant or cooperative agreement award.

If the Grantee disagrees with the final classification determination by the Grant Specialist, the Grantee may appeal the decision to the Director, Grants Services Division, OLHCHH. If the Grantee wishes to submit a second appeal, the Grantee may appeal to the Deputy Director, OLHCHH. If Grantee wishes to submit a second appeal, the Grantee may appeal to the Director, OLHCHH for a final decision.

Failure to obtain an approved classification determination (subrecipient or contractor) for each entity from the OLHCHH **may** result in loss of funding for the unapproved entity or termination of the grant award or cooperative agreement in accordance with the Terms and Conditions, Article 46, **Suspension and Termination (For Cause)**.

All subrecipients or contractors shall be registered in the System for Award Management (SAM) website: [www.sam.gov](http://www.sam.gov), a U.S. Government website used by state and local governments, organizations, and industries doing business with the U.S. Government. There is **no cost** to use SAM. You can use this site to:

- Register to do business with the U.S. government
- Update or renew your entity registration
- Check the status of an entity registration
- Search for entity registration and exclusion records

### **Determining Classification – Subrecipient vs. Contractor**

To help Grantees comply with the subrecipient and contractor determinations under 2 CFR 200.330, **Subrecipient and contractor determinations**, OLHCHH has created these guidelines for determining subrecipients or contractors based partly on their “**Commercial and Government Entity (CAGE) Code**” registered in SAM and on the Grantee’s completed “Checklist to Determine Subrecipient or Contractor Classification” (attached).

**Subaward (2 CFR 200.92)** means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

**Subrecipient (2 CFR 200.93)** 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 agency.

OLHCHH may recognize as subrecipients other entities classified as “local government” in accordance with 2 CFR 200.64, Local government, for example, a county; borough; municipality; city; town; township; parish; local public authority, including any public housing agency under the United States Housing Act of 1937; special district; school district; intrastate district; council of governments, whether or not incorporated as a nonprofit corporation under state law; and any other agency or instrumentality of a multi-, regional, or intra-state or local government.

OLHCHH **may** recognize other organizations as a subrecipient, such as an organization that provides public services such as hospitals; no fee/profit organizations such as community based, faith based, and nonprofit foundations or institutions of higher education.

On the other hand, for the OLHCHH's lead hazard control grants and for healthy homes grants in which housing-related health and safety hazards are being treated, a homeowner or other individual housing owner (e.g., a person who is the landlord) is a beneficiary of the grant, because the housing is being made lead-safe and/or healthy at no cost or low cost to the owner, and cannot be a subrecipient of the Grantee, in accordance with 2 CFR 200.93, Subrecipient. One consequence of this beneficiary status is that a homeowner or individual landlord may not be reimbursed by the Grantee for contracting with a lead hazard assessment or control contractor, or with a housing hazard assessment or mitigation contractor.

Note that, if the **Grantee** properly contracts with several lead or healthy homes contractors to perform work under the grant, and the Grantee has a list of these contractors, the homeowner or landlord may choose which one they would like to have perform the work in their property. A contractor that is on the Grantee's list of having a properly awarded contract for work under the grant may market itself to homeowners and landlords for this work.

**Contract means (2 CFR 200.22)** 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. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (see 200.92 Subaward).

**Contractor (2 CFR 200.23)** means an entity that receives a contract as defined in 200.22 Contract.

Under 2 CFR 200.330. **Subrecipient and contractor determinations**, subsection (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 200.22 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.

In accordance with 2 CFR 200.317, **Procurements by States**, when procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state must comply with 2 CFR 200.322, **Procurement of recovered materials**, and ensure that every purchase order or other contract includes any clauses required by section 2 CFR 200.326, **Contract Provisions**.

All non-Federal entities other than states, including subrecipients of a state, must comply with 2 CFR 200.318, **General procurement standards**, through 200.326, **Contract Provisions**.

Attachment