Recipient/Subrecipient vs. Vendor/Contractor Determinations

September 13, 2018
Florida Grants Consortium Workgroup
Objectives

To answer requests for help identifying the relationship(s) created by agency contracts, grants and other agreements

To provide examples for discussion/review

To share questions and draft tools

To identify other topics of interest and future training opportunities
Overview

- Differences between these entities
- Why these differences matter
- When/how to analyze proposed contracts and agreements
- How to document your process and your results
- Open Forum – Q&A
What are the differences?

Vendor/Recipient Determination
Pass-through Entity – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program. (section 200.74)

Subaward – An award provided by a PTE to a subrecipient for the subrecipient to carry out part of a Federal award received by the PTE. 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 PTE considers a contract. (section 200.92)

Subrecipient – A non-Federal entity that receives a subaward from a PTE to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. (section 200.93)
Contract – 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 Part 2 CFR 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. (section 200.22)

Contractor* – An entity that receives a contract, i.e. 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. (section 200.23)

*Contractor replaces the term “Vendor” from OMB Circular A-133.
Subrecipients vs. Contractors

Subrecipient

• Also referred to as a subawardee, subcontractor or subgrantee

• A legal entity that enters into an agreement for goods/services with an authorized State of FL agency

• Accountable to the State of FL for the use of the funds in carrying out a portion of the programmatic effort under State of FL awards/agreements

Source: Yale University OSP, Subrecipient Basics and Monitoring, February 2018
Subrecipients vs. Contractors

Vendor/Contractor

- A dealer, distributor, merchant or other seller providing goods or services during normal business operations and that are required for the conduct of a sponsored project
- Operates in a competitive environment

Source: Yale University OSP, Subrecipient Basics and Monitoring, February 2018
## Subrecipients vs. Contractors

### Subrecipient Considerations

- Carries out activities authorized by FL award(s)
- Measures performance against the objectives of FL award(s)
- Has responsibility for programmatic decisions
- Receives funds to carry out a program/project
- Exercises considerable discretionary judgment
- May provide matching/cost sharing funds

Source: Yale University OSP, Subrecipient Basics and Monitoring, February 2018
## Subrecipient Considerations

<table>
<thead>
<tr>
<th>Subrecipient Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Develops internal policies and procedures to ensure effective management of federal/state</td>
</tr>
<tr>
<td>funds and compliance</td>
</tr>
<tr>
<td>2. Puts a compliant financial management system in place to safeguard federal/state resources</td>
</tr>
<tr>
<td>and assets</td>
</tr>
<tr>
<td>3. Establishes a budget of the costs required to perform the program and a method for</td>
</tr>
<tr>
<td>monitoring actual costs against the budget</td>
</tr>
</tbody>
</table>

## Subrecipient Considerations

- Stays informed of changes in program policies, procedures or requirements
- Requests prior approval for cost items as required by federal and state cost principles
- Prepares necessary and timely reports
- Keeps pass-through entity aware and informed about the project performance and progress
- Closeout of the award or agreement

## Vendor/Contractor Considerations

- Provides goods/services to benefit of an award
- Sells similar goods/services as part of normal business operations
- Operates in a competitive environment
- Provides services of a repetitive nature or goods commonly available
- Provides goods/services that are “ancillary” to the program/project operations

Source: Yale University OSP, Subrecipient Basics and Monitoring, February 2018
# Subrecipients vs. Contractors

## Subrecipient Considerations
- Carries out activities authorized by FL award(s)
- Measures performance against the objectives of FL award(s)
- Has responsibility for programmatic decisions
- Receives funds to carry out a program/project
- Exercises considerable discretionary judgment
- May provides matching/cost sharing funds

## Vendor/Contractor Considerations
- Provides goods/services for direct benefit of an award
- Sells similar goods/services as part of normal business operations
- Operates in a competitive environment
- Provides services of a repetitive nature or goods commonly available
- Provides goods/services that are “ancillary” to the program/project operations

Source: Yale University OSP, Subrecipient Basics and Monitoring, February 2018
Subrecipients vs. Contractors

Project Determinations
- Four Key Characteristics of Financial Assistance vs. Vendor Contracts

- Recipients
  - Sub-Recipients
  - Commitment
  - Trust
  - Honesty/Good Faith
  - Empowerment

- Contractor
  - Vendor
  - Solicitation to Purchase Goods & Services
  - Open Competition
  - Fair Market Value
  - Exchange of Good & Services

GAA Categories
- Grants & Aids to Local Entities
- CSFA/CFDA
  - Must Be Cost Neutral, No Profits
- Purchases of Goods & Services
- Acquisitions of Goods & Services (Free & Open For Profits Market)

Source: FL DOH, Vendor/Recipient Presentation, 2017

Federal Compliance and Audit Management (FCAM)
Kenol Saint-Fort, Federal Compliance Officer
Jacquelyn Ross, Senior Analyst, Single Audit Review (SAR)
Division of Administration
Bureau of Finance and Accounting
Why do these differences matter?

• Duties/disclosures required by us (PTEs/agencies) are impacted

• Tasks/deliverables required by them will also be impacted
Relationship Determinations

…it’s the nature of the relationship!

- Eligibility
- Decisions
- Federal Objective
- Public Purpose
- Beneficiary
- Profitability

Determination

Source: FDLE, Managing Multi-tiered Subawards and Non-profit Service Providers, 2018
Uniform Guidance Section § 200.330

This section further states under § 200.330 (c):

“In determining whether an agreement between a pass-through entity (i.e. FDOH) 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”.

NOTE: With the implementation of the UG the official terminology has been changed from “vendor” to “contractor”.
A Pass-through entity must make a case-by-case determination as to whether each agreement casts the party as a subrecipient or contractor. Look at the nature of the relationship. It does not matter what the agreement is called.

<table>
<thead>
<tr>
<th>Subaward</th>
<th>Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Allowable activities based on applicable statute, local plan, State rules</td>
<td>- Allowable activities based on terms and conditions of contract</td>
</tr>
<tr>
<td>- Management rules</td>
<td>- Management rules</td>
</tr>
<tr>
<td>- Applicable OMB Circular; and</td>
<td>- Terms of the contract; and</td>
</tr>
<tr>
<td>- State law/policies and procedures</td>
<td>- State contract law</td>
</tr>
</tbody>
</table>

• A non-federal entity may concurrently receive Federal awards as a:
  ▪ Recipient
  ▪ Subrecipient
  ▪ Contractor

• PTE must make case-by-case determination 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
  ▪ Contractor

Source: AICPA UG for Federal Awards, October 2014
## Subrecipient/Contractor Determinations

<table>
<thead>
<tr>
<th>Subrecipient</th>
<th>Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Creates a Federal assistance relationship</td>
<td>Purpose is to obtain goods and services for the non-Federal entity’s own use and creates a procurement relationship</td>
</tr>
<tr>
<td>Determines who is eligible to receive what Federal assistance</td>
<td>Provides the goods and services within normal business operations</td>
</tr>
<tr>
<td>Has its performance measured in relation to whether objectives of a Federal program were met</td>
<td>Provides similar goods or services to many different purchasers</td>
</tr>
<tr>
<td>Has responsibility for programmatic decision making</td>
<td>Normally operates in a competitive environment</td>
</tr>
<tr>
<td>Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and</td>
<td>Provides goods or services that are ancillary to the operation of the Federal program; and</td>
</tr>
<tr>
<td>In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing stature, as opposed to providing goods or services for the benefit of the PTE</td>
<td>Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons</td>
</tr>
</tbody>
</table>

Source: AICPA UG for Federal Awards, October 2014
Subrecipient/Contractor Determinations

• All characteristics need not be present
• Judgment should be used in the determination process
• Substance of the agreement is more important than the form

Source: AICPA UG for Federal Awards, October 2014
Subrecipient/Contractor Determinations

- There is a responsible individual at the identified entity
- The entity is free to decide how to carry out the activities requested of it
- Publications are anticipated
- There is a potential that patentable or copyrightable technology will be created or implemented
- The activity to be performed is a series of repetitive tests or activities requiring little or no discretionary judgment

Source: Yale University OSP, Subrecipient Basics and Monitoring, February 2018
Subrecipient/Contractor Determinations

• There is a responsible individual at the identified entity = Subrecipient
• The entity is free to decide how to carry out the activities requested of it = Subrecipient
• Publications are anticipated = Subrecipient
• There is a potential that patentable or copyrightable technology will be created or implemented = Subrecipient
• The activity to be performed is a series of repetitive tests or activities requiring little or no discretionary judgment = Vendor

Source: Yale University OSP, Subrecipient Basics and Monitoring, February 2018
Subrecipient/Contractor Determinations

Who is responsible for these tasks?

• Assignments vary across agencies
  – Contracts Administration Team

• Duties for Project/Contract Managers
  – Will vary in scope across agencies

• Important to obtain, read and stay current on written agency policies and procedures for these tasks
Subrecipient/Contractor Determinations

When should the review(s) be done?

- During procurement phase for competitive procurements
- During pre-award phase for non-compete agreements
- Before execution of contract/award
- Post-award on a periodic basis
Subrecipient/Contractor Determinations

How should the review(s) be done?

• Identify the impacted units of your agency
• Obtain and review the scope of work (SOW)
• Obtain and review the proposed deliverables
  – Search for legislative or statutory authorization(s) for proposed SOW
  – Search for missing details/data so it can be requested
  – Impacted staff members should share/discuss their understanding of proposed goods/services
  – Use agency’s form or checklist
How is the determination made?

Section 215.97(2), Florida Statutes (F.S.), defines a state program as a set of special purpose activities undertaken to identify realizable goals and objectives to achieve a state agency’s mission and legislative intent requiring accountability for state resources. This statute defines a state project as a state program that provides state financial assistance to a nonstate organization and that must be assigned a state project identifier in the Catalog of State Financial Assistance (CSFA) (i.e., the CSFA number).

State agencies must use the Florida Single Audit Act State Project Determination Checklist to determine whether the program is a state project. A state program or budget appropriation may include more than one special purpose activity with distinctly different objectives. For each state program and distinct special purpose activity determined to be a state project subject to the requirements of the FSAA, the state agency must request the assignment of a separate CSFA number by the Department of Financial Services.

### Part A - State Program Resources

A state program may include more than one source of support, including federal financial assistance, matching funds, and state resources. Answer the questions below to identify the state program resources. Each source of support must be considered independently.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Entry “X” for all that apply</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Is the state program supported by federal financial assistance as defined in section 215.97(2), F.S.? If yes, note the Catalog of Federal Domestic Assistance (CFDA) number.

2. Is the state program supported by state matching resources, as defined by 2 C.F.R. §200.39 and section 215.97(2), F.S., to meet the matching requirements of a federal program?

3. Is the state program supported by state maintenance of effort (MOE) resources for a federal program? MOE refers to the federal maintenance of effort or level of effort requirements as discussed in 2 C.F.R. §200, Appendix XI, Section 5.1-G.

4. Is the state program supported by state resources other than state matching or state MOE?

Source: DFS Forms - [https://myfloridacfo.com/Division/AA/Forms/default.htm](https://myfloridacfo.com/Division/AA/Forms/default.htm)
# Florida Single Audit Act State Project Determination Checklist

## Part C - State Project Determination

Based on your analysis above and discussions with appropriate agency personnel, state your conclusion regarding the state program.

<table>
<thead>
<tr>
<th>Name of State Program</th>
<th></th>
</tr>
</thead>
</table>

Enter "X" to indicate the state project determination. All signatures are required.

<table>
<thead>
<tr>
<th></th>
<th>A State Project</th>
<th>Not a State Project</th>
</tr>
</thead>
</table>

### Completed By (Program Personnel)

<table>
<thead>
<tr>
<th>Name</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>Email</td>
</tr>
<tr>
<td>Signature</td>
<td>Date</td>
</tr>
</tbody>
</table>

### Budget Office Review

(Applies only to Questions 1 through 4 in Part A – State Program Resources)

<table>
<thead>
<tr>
<th>Reviewer</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title:</td>
<td>Email</td>
</tr>
<tr>
<td>Signature</td>
<td>Date</td>
</tr>
</tbody>
</table>

### Finance and Accounting Review

(Applies only to Questions 3 and 4 in Part B – State Program Evaluation)

<table>
<thead>
<tr>
<th>Reviewer</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title:</td>
<td>Email</td>
</tr>
<tr>
<td>Signature</td>
<td>Date</td>
</tr>
</tbody>
</table>

### Office of Inspector General Receipt

<table>
<thead>
<tr>
<th>Receiver</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>Email</td>
</tr>
<tr>
<td>Signature</td>
<td>Date</td>
</tr>
</tbody>
</table>

For questions regarding the evaluation of a state program or if it has been determined that the state program is a state project and has not been assigned a CPA number, contact your FSAA state agency liaison or the Department of Financial Services, Bureau of Auditing, at FSAA@FL.FloridaCFO.com or (850) 413-3000.

Email completed forms to the FSAA Coordinator at the Department of Financial Services, Bureau of Auditing, at FSAA@FL.FloridaCFO.com.

Source: DFS Forms - [https://myfloridacfo.com/Division/AA/Forms/default.htm](https://myfloridacfo.com/Division/AA/Forms/default.htm)
### How is the determination made?

*Source:* DFS Forms - [https://myfloridacfo.com/Division/AA/Forms/default.htm](https://myfloridacfo.com/Division/AA/Forms/default.htm)

**Florida Single Audit Act Checklist for Nonstate Organizations - Recipient/Subrecipient vs. Vendor Determination**

**Part A - Relationship and Applicability of the FSAA**

For each state project identified for inclusion in the CSFA, analyze the state agency's relationship with each nonstate organization receiving program resources to determine the applicability of the FSAA.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Enter &quot;X&quot; for all that apply</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1. Is the nonstate organization a district school board, charter school, Florida College System institution or state university as defined in section 1009.21, F.S., a governmental body outside the state of Florida, or a federal agency?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Is the relationship with the nonstate organization only to procure commodities (as defined in section 287.012(3), F.S.)?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Does the relationship with the nonstate organization consist of only federal resources, state matching resources, or local matching resources for federal programs?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Does the relationship with the nonstate organization consist of only state maintenance of effort (MOE) resources that meet all the following criteria (Questions A through C)? MOE refers to the federal maintenance of effort or level of effort requirements as discussed in 2 CFR 200.166 and Appendix XI, Section 3.1-G.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>A. The federal regulation specifies the requirements for the use of the state MOE resources and there are no additional state requirements?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>B. The contract(s) contains language to identify the state MOE resources and the associated federal program?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C. The audit requirements of 2 CFR 200 §501 apply to the state MOE resources and the contract(s) stipulates that the resources must be tested in a 2 CFR 200.501 audit in accordance with federal program requirements?</td>
</tr>
</tbody>
</table>

If any of the answers to Part A, Questions 1 through 4, above is Yes, the FSAA is not applicable to this nonstate organization based on the state agency’s relationship with the nonstate organization. However, agency responsibilities pursuant to section 215.971, F.S., and other guidelines for the management of contracts and agreements with the nonstate organization should be further evaluated by completing the recipient/subrecipient vs. vendor relationship analysis in Part B.

**Name of Nonstate Organization**

**Type of Nonstate Organization**

Enter type as: nonprofit, for-profit, or local government. If the nonstate organization is a local government, indicate the type of local government (e.g., municipality, county commission, constitutional officer, water management district).

**Awarding Agency**

**Title of State Project**

**Catalog of State Financial Assistance (CSFA) No.**

**Contract, Grant, or Agreement No.**
How is the determination made?

**FLORIDA SINGLE AUDIT ACT CHECKLIST FOR NONSTATE ORGANIZATIONS - RECIPIENT/SUBRECIPIENT VS. VENDOR DETERMINATION**

Part B - Recipient/Subrecipient vs. Vendor Relationship Analysis

For each state project identified for inclusion in the CSFA, analyze each nonstate organization receiving program resources to determine whether there is a recipient/subrecipient or vendor relationship.

Yes  
No  
Enter "X" for all that apply.

1. Does state law or legislative appropriation, including prior, direct the nonstate organization to carry out this state project?

2. Is the nonstate organization required to provide matching resources not related to a federal program?

3. To receive state resources, is the nonstate organization required to comply with specified state project requirements? (State project requirements include laws, rules, or guidelines specific to the state project such as eligibility guidelines, specified types of jobs to be created, donation of specified assets, etc. Specified state project requirements do not include procurement standards, general guidelines, or general laws and rules.)

4. Is the nonstate organization required to make state project decisions which the state agency would otherwise make (e.g., determine eligibility, provide case management)?

5. Is the nonstate organization’s performance measured against whether state project objectives are met (e.g., number of jobs to be created, number of patients to be seen, number of disadvantaged citizens to be transported)? The nonstate organization’s performance measures may or may not be related to state performance-based budgeting.

If any of the answers to Part B Questions 1 through 5 above are Yes, there is a recipient/subrecipient relationship and the state agency must comply with section 255.971, F.S., and other guidelines for the management of contracts and agreements with the nonstate organization. Also, the nonstate organization is a nonstate entity subject to the CSFA, unless the FSAA has been determined as not applicable in Part A above.

If all the answers to Part B Questions 1 through 5 above are No, the nonstate organization is a vendor and is not subject to the FSAA. Characteristics indicative of a procurement relationship between the state agency and a vendor are when the nonstate organization: (a) provides the goods and services within normal business operations, (b) provides similar goods or services to many different purchasers, (c) normally operates in a competitive environment, (d) provides goods or services that are ancillary to the operation of the state project, and (e) is not subject to compliance requirements of the state project as a result of the contract or agreement, though similar requirements may apply for other reasons.

Source: DFS Forms - https://myfloridacfo.com/Division/AA/Forms/default.htm
Why do these differences matter?

- Duties/disclosures required by us (PTEs/agencies) are impacted
  - Pre-award tasks
  - Post-award tasks

- Tasks/deliverables required by them will also be impacted

- Risk considerations are a vital part of each PTE/agency’s duties
What is the Uniform Guidance?

Uniform Guidance (UG) is a combined, simplified, version of 8 circulars that became effective 12/26/14.

This new Uniform Guidance contains the rules concerning how we administer, account for and audit federal grant & contract funds (sponsored projects).

http://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1&rgn=div5

Source: UT Health Science Center, 2 CFR Part 200 UG Changes, December 2015
Background – Federal Requirements

Source: FGC UG Guidance Updates, October 2015
Background – Federal Requirements

COMPLIANCE REQUIREMENTS FLOW DOWN

Source: FDLE, Managing Multi-tiered Subawards and Non-profit Service Providers, 2018
Public Laws
Passed by Congress and signed by President to become part of the United States Code.

Federal Regulations
From Federal Departments to implement the laws (programs) are found in the Code of Federal Regulations.

Uniform Guidance, 2 CFR Part 200
From the Office of Management and Budget is incorporated (codified) into administrative regulations from each Federal Department.

Specific Requirements
Applicable to a recipient would be incorporated into a grant condition.

Additional guidance from Federal agencies could be program instructions, information memorandums, technical assistance guides, etc.

Compliance Requirements

- Financial Assistance Life Cycle for CFSA/CFDA Contracts

Source: FL DOH, Vendor/Recipient Presentation, 2017
If a **vendor** is identified incorrectly as a **subrecipient**, what can happen?

| • Unnecessary risk assessment would be conducted |
| • Unnecessary additional regulatory requirements could be imposed on the entity |
| • Entity would inappropriately own the work product |
| • Potential for delays in invoice processing and payment |
| • Potential for findings from agency OIGs, OAG and/or other state/federal awarding agencies |

Source: Yale University OSP, Subrecipient Basics and Monitoring, February 2018
If a **subrecipient** is identified incorrectly as a **vendor**, what can happen?

- Entity would not be aware of Federal compliance requirements and flow down provisions
- Required risk assessment tasks would be missing
- Required federal and/or state program monitoring requirements
- Potential for delays in invoice processing and payment
- Potential for findings from agency OIGs, OAG and/or other state/federal awarding agencies
- Potential for misspent and/or misallocated expenditures that could result in questioned or unallowed costs

Source: Yale University OSP, Subrecipient Basics and Monitoring, February 2018
<table>
<thead>
<tr>
<th>If either a <strong>vendor</strong> or <strong>subrecipient</strong> is misidentified, what can happen?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• State and federal procurement policies regarding proper bidding and sole source requirements may be violated</td>
</tr>
<tr>
<td>• Agency policies may be violated</td>
</tr>
<tr>
<td>• Required federal and/or state program performance requirements may not be met</td>
</tr>
<tr>
<td>• Potential for delays in invoice processing and payment</td>
</tr>
<tr>
<td>• Potential for findings from agency OIGs, OAG and/or other state/federal awarding agencies</td>
</tr>
<tr>
<td>• Potential for misspent and/or misallocated expenditures that could result in questioned or unallowed costs</td>
</tr>
</tbody>
</table>

Source: Yale University OSP, Subrecipient Basics and Monitoring, February 2018
Subpart C – Pre Award Requirements

§ 200.205 New framework for risk

Awarding agency review of risk posed by applicants

- Risk factors may include
  - Financial stability
  - Quality of management systems
  - History of performance
  - Reports and findings from audits
  - Ability to effectively implement requirements

Source: FGC UG Guidance Updates, October 2015
Subpart D – Post Award Requirements

§ 200.330 Subrecipient monitoring

- Explains the roles of subrecipients vs. contractors so non-federal entities can determine the relationship and related requirements that apply
  - Subawards are provided to subrecipients to carry out a portion of a Federal award/program
  - Contracts are executed to obtain goods and services for the entity’s own use

Source: FL GCW Federal Grant Reform UG Guidance Updates, October 2015
§ 200.331 Requirements for pass-through entities

– Oversight and monitoring requirements

The pass-through entity must

• Put specific information in each subaward

• Consider operating factors for each subaward to complete a risk assessment to determine appropriate level of subrecipient monitoring

  – Risk of noncompliance

  – Subrecipient’s prior experience with the award

  – Results of previous audits or federal monitoring

  – Whether the sub has new personnel or systems

Source: FL GCW Federal Grant Reform UG Guidance Updates, October 2015
§ 200.331 the pass-through entity must

- Verify subrecipients have audits as needed*
  - *Reminder - this is not the only monitoring task
- Consider actions required to address any instances of subrecipient noncompliance
- Follow-up to ensure subrecipient takes appropriate action on all deficiencies related to the subaward identified through audits, onsite review or other monitoring tasks
- Issue a management decision for audit findings related to subaward(s) made by the PTE

Source: FL GCW Federal Grant Reform UG Guidance Updates, October 2015
Risk Assessments

What are they?

*Risk* – the chance that something will happen that will adversely impact the success of achieving expected results

*Risk assessments* - a thoughtful process designed to identify and evaluate operating conditions for an entity

Source: FL GCW Analyzing Financial Statements and Risk Assessment Updates, November 2016
Risk Assessments

Who is responsible for these tasks?

• Assignments vary across agencies
  – Contracts Administration Team

• Duties for Project/Contract Managers
  – Will vary in scope across agencies
  – To assess stability and experience of potential Contractors/Subgrantees for agency

Source: FL GCW Analyzing Financial Statements and Risk Assessment Updates, November 2016
Risk Assessments

Why are they important?

• Required by OMB and state guidance
• Risk assessments help each agency
  – Provide oversight for contracted federal and state funds for all administered programs
  – Identify the program/fiscal areas that represent the most risk/chance of errors
  – Identify potential “red flags” or serious problems on a timely basis
  – Identify and arrange for subsequent technical assistance required by Contractors/Sub-grantees
  – Prioritize efforts and “target” scarce staff resources

Source: FL GCW Analyzing Financial Statements and Risk Assessment Updates, November 2016
Risk Assessments

When should the review(s) be done?

• During procurement phase for competitive procurements
• During pre-award phase for non-compete agreements
• Before execution of contract/award
• Post-award on a periodic basis

Source: FL GCW Analyzing Financial Statements and Risk Assessment Updates, November 2016
Risk Assessments

Where do I find the data I need?

How do I search for the data I need?

How do I judge the data I find?

• Requests of data from/ submitted by each entity
• Criteria used or operating areas analyzed may vary slightly based on the agency and/or the individual contract or award
• Look for documentation related to risk criteria defined by your agency
• Use a tool or other form to document your results
  – *See workshop handouts for specific examples*

Source: FL GCW Analyzing Financial Statements and Risk Assessment Updates, November 2016
Background – Federal requirements
“Consider actions” may = Special conditions
Results may trigger special conditions for an award that includes, but is not limited to the following

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

Source: FDOE, UGG/Green Book, June 2015
CFO Memo No. 06 (2011-12)

Contract Monitoring and Documenting Contractor Performance

- Agencies must have a formal contract monitoring process that includes
  - Risk Assessment
  - Monitoring Plan
  - Monitoring Procedures and Criteria
  - Evidence to support results obtained
  - Corrective Action Plan (CAP), if required
  - Agency follow-up on CAP, if required

Source: FL GCW Analyzing Financial Statements and Risk Assessment Updates, November 2016
Recap of requirements

• Identify high-risk areas by considering
  – Stability (or lack) in entity’s management
  – Efficiency (or lack) in controls and processes
  – Coverage (or gaps) in expected/actual results
  – Past history/experience

• Assign risk levels based on results

• Develop appropriate monitoring plan
  – See workshop handouts for specific examples

Source: FL GCW Analyzing Financial Statements and Risk Assessment Updates, November 2016
Risk Assessments

What’s needed – the basics

Testing tasks/process – by entity/award

1. Determine/identify your agency’s current criteria (aka risk factors)

2. Determine/identify any additional risk factors that may apply based on specific scoped tasks or other program requirements

3. Ensure the entity’s data can be reviewed/tested to provide results for all the listed risk factors

4. Request/obtain entity data* (before award is issued)

Source: FL GCW Analyzing Financial Statements and Risk Assessment Updates, November 2016
Risk Assessments

What’s needed – the basics (cont’d)

Testing tasks/process – by entity/award

5. Review entity data to evaluate against your agency’s current criteria (aka risk factors)

6. Compile all risk factor answers to calculate one combined score

7. Repeat process for all contract/awards
   – Individual scores will help evaluate all agency activities and current levels of risk
   – Data can be used to “target” staff resources and tasks
     – See workshop handouts for specific examples
Open Forum - Q&A
BREAK

More examples will be presented after the break
Recipient/Subrecipient vs. Vendor/Contractor Determinations

September 13, 2018
Florida Grants Consortium Workgroup
Part 2
Examples and Tools

Sample forms

• Comparison table – USDOL One-Stop Comprehensive Financial Management Technical Assistance Guide (TAG), July 2011
• Checklist to determine Subrecipient or Contractor classification, OJP June 2017
• FDOE Form 620 Risk Analysis for Federal and State Grant Funding – Governmental and Non-Governmental Agencies
Example #1
Elm County receives a federal award to contract for delinquency counseling services with at risk youth. Elm County will contract with a local behavioral health partner to provide these services to the community. The services may include:

- Assessment screening
- Group counseling
- Individual Counseling
- Home visits
- Case management
- Referrals

Source: FDLE, Managing Multi-tiered Subawards and Non-profit Service Providers, 2018
Example #2
Elm County receives a federal award to implement a new software system for the Sheriff’s Office. Elm County will contract with a software developer to complete the following activities:

- Meet with Elm County SO to determine requirements
- Configure software
- Install software
- Train users on new software

Source: FDLE, Managing Multi-tiered Subawards and Non-profit Service Providers, 2018
Example #3

An agency contracts with an entity in the business of tracking, storing and processing blood specimens. These services are necessary for the agency to provide services and conduct research. The entity activities include

- Sending out blood shipping kits to genetic research centers
- Receiving blood from the genetic research centers
- Transferring DNA to the sponsor

Source: Yale University OSP, Subrecipient Basics and Monitoring, February 2018
Example #4

A university contracts with an off-site lab that will help complete the specific aims of a research award. The lab’s scope of work includes

– Conducting experiments focused on examining the structure, processing, and function of a plasma enzyme
– Providing the university with a technical report that includes evaluations of the experiments and conclusions
– Publishing articles in a scientific journal in collaboration with the university

Source: Yale University OSP, Subrecipient Basics and Monitoring, February 2018
Example #5

Technology provider will manage operations and maintain the Floridian Sunshine Infection data system. The system must be operational 24 hours a day, 7 days a week (except for scheduled and agency-approved down times). Provider will troubleshoot and provide repairs as necessary to ensure there is no disruption to service. Provider will develop enhancements for the system and will transition the system to the current version of the Floridian Sunshine Infection data system.

Source: FL DOH Contract Management Workshop, May 2017
Example #6

Media provider, at the direction of the agency, will be responsible for all campaign services to support the Floridian Sunshine Infection data system. Provider is responsible for developing media materials for the media campaign. Campaign services will include, but are not limited to graphic design and printing, media production, media buying, public relations, web/interactive activities and campaign account services.

Source: FL DOH Contract Management Workshop, May 2017
Example #7

Provider will perform community based activities in support of the Floridian Sunshine Infection program. The provider will conduct a minimum of six (6) infection tests per month. Provider will also provide outreach services to ten (10) clients per month. All provider activities must be consistent with the required program components contained in the Florida Sunshine Infection guidelines.
Example #8

Provider will perform eye exams and supply sunglasses to all referred clients. The agency will pay the provider $30 fee for each eye exam and $45 for each pair of standard sunglasses or $55 for each pair of polarized sunglasses based on the eye exam results.
Example #9

Provider receives a Senate appropriation to train preschools in relevant emergency preparedness and to implement local notification systems for all preschools in the state of Florida. Ultimate goal is to alert preschools of imminent danger in emergency situations such as active shooter events, as is currently done with K-12 schools. The outcome of this program will be measured by its successful statewide outreach and training of preschool children and staff.
Example #10
Agreement with a county government for $117,200 to purchase traffic signal maintenance services to ensure proper operations of traffic control signals on the State Highway System. These services are needed indefinitely, as determined by duties assigned in statute to FDOT, which include maintaining the highway system for the traveling public. This agreement is funded by state road maintenance funds and will be paid based on a fixed rate per signal.
Example #11
Agreement with a county government for $678,547 to widen and resurface a specific road. This program was established by the Legislature to provide small counties with road assistance. Awards are made each year with most projects lasting up to 3 years. These services are needed per Section 339.2816, Florida Statutes, and are funded by the state’s Small County Road Assistance Program (SCRAP), CSFA # 55.016. The total project budget is $678,547, which includes engineering inspection services, and the county agrees to comply with applicable federal/state laws, rules regulations and County standards and specifications.
Example #12
Agreement with a local area agency on aging for $7M for Title III Services (IIIB, IIIC1, IIIC2, NSIP, IIID and IIIE). These requirements were established by the Federal Older Americans Act, which requires this funding be distributed to local area Agencies on Aging to provide program services at the local level across the state. These goods/services are needed annually and are 99.9% funded by federal monies; the tiny remaining amount is general revenue - DOEA.
Example #13

Multiple agreements with counties and local governments that range between $10-15M each for local Justice Assistance Grant (JAG) program activities. Each is a 4-year award of Federal pass-through formula-block grant funds utilized for the purpose of reducing crime and improving public safety and the criminal justice system.
Example #14
Annual agreement for $275,000 to obtain onsite fiscal monitoring services on behalf of the agency. Monitoring will include federal and state programs funded by the agency and administered by selected agency subrecipients. Services to be provided by CPA firm(s) licensed in the state of Florida and qualified to analyze program activities based on extensive prior experience with federal/state grant programs and with performance of federal/state Single Audits. A monitoring tool, template forms and a list of minimum testing tasks are provided each year by the agency. This agreement is funded by federal/state program funds and a fixed per unit payment rate applies for each monitored entity.
Example #15

Two year agreement for $1.36M with a county to assist with the installation of a Rail Spur (aka a type of secondary track used by railroads to allow customers at a location to load/unload railcars without interfering with other railroad operations).

Project is funded by state monies from the Rural Infrastructure Fund (s. 288.0655, F.S.), which facilitates planning, prep and financing of infrastructure projects in rural communities. Project includes costs of project labor, equipment, quarterly reports and construction engineering inspections.
Subrecipient/Contractor Determinations

Closing thoughts

Differences between these entities
• What they provide to us
• How they provide goods/services

Why these differences matter
• Our tasks as contract and project managers are impacted
• The entity’s tasks and deliverables to us are impacted
Closing thoughts

Differences between these entities

• What they provide to us
• How they provide goods/services

Why these differences matter

• Our tasks as contract and project managers are impacted
• The entity’s tasks and deliverables to us are impacted
Who is responsible for these tasks?

• Assignments vary across agencies
  – Contracts Administration Team

• Duties for Project/Contract Managers
  – Will vary in scope across agencies

• Important to obtain, read and stay current on written agency policies and procedures for these tasks
When should the review(s) be done?

• During procurement phase for competitive procurements
• During pre-award phase for non-compete agreements
• Before execution of contract/award
• Post-award on a periodic basis
How should the review(s) be done?

- Identify the impacted units of your agency
- Obtain and review the scope of work (SOW)
- Obtain and review the proposed deliverables
  - Search for legislative or statutory authorization(s) for proposed SOW
  - Search for missing details/data so it can be requested
  - Impacted staff members should share/discuss their understanding of proposed goods/services
  - Use agency’s form or checklist
Reminders

• A case-by-case analysis must be performed for each agreement
• Changes to the details in any example shared in this workshop could change the nature of the contractual relationship
Closing thoughts

• Be sure to understand processes already in place for your agency
  – Make sure your processes align
  – Ask questions or get help if you don’t know

• Know/obtain details about each “contract”

• Remember
  – There is no “one size fits all” answer
  – Document your review results
Open Forum - Q&A
Thank you for attending this workshop!

Contact us with your questions

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