

Subrecipient and Contractor Determination Checklist

Name of Outside Entity: _____

CHECKLIST QUESTIONS (Check YES or NO for each question. Complete both lists to ensure accuracy.)

Subrecipient

YES	NO	Will the Entity:
		1. Determine who is eligible to receive what Federal financial assistance?
		2. Have its performance measured against whether the objectives of the Federal program are met?
		3. Have responsibility for programmatic decision-making?
		4. Have responsibility for adherence to applicable Federal program compliance requirements?
		5. Use the Federal funds it receives under the contract to carry out a program of the Subrecipient as opposed to providing goods or services for a program of DEC?

Contractor

YES	NO	Does the Entity:
		6. Provide the goods and services within normal business operations?
		7. Provide similar goods and services to many different purchasers?
		8. Operate in a competitive environment?
		9. Provide goods or services that are ancillary (secondary) to the operation of a federal program?

HOW TO USE THE CHECKLIST

A preponderance of “Yes” answers to questions 1 - 5 and “No” answers to questions 6 - 9 signify that a **subrecipient** relationship is more appropriate. Likewise, more “No” answers to questions 1 - 5 and “Yes” answers to questions 6 – 9 indicate a **contractor** relationship is more appropriate.

USE OF JUDGMENT

In determining whether a subrecipient or contractor relationship exists, 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; therefore, DEC must use judgment in classifying each agreement as a subaward or a procurement contract.

Explanation of use of judgment determination (use only when the determination cannot clearly be made using the above criteria):

DETERMINATION OF RELATIONSHIP (Subrecipient/Contractor):

Signed by:

State’s Project Manager: _____ Date: _____

GUIDANCE FOR SUBRECIPIENT AND CONTRACTOR DETERMINATION

All of the characteristics listed above may not be present in all cases and the pass-through entity must evaluate the features of each agreement individually to determine whether it appears more like a contract or a subaward. *The substance of the relationship is more important than the form of the agreement and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract (Bulletin 5 Section V.2.C).*

Additional considerations for each question in the checklist:

1. Determines who is eligible to receive what financial assistance. For example:
 - a. Organization determines whether a potential customer meets a program's eligibility requirements for assistance under that program.
2. Has its performance measured against whether it meets the objectives of the program. For example:
 - a. Awarding entity holds the organization responsible for meeting performance targets that are tied to program objectives.
 - b. Awarding entity holds the organization responsible for meeting expenditure targets to maximize the use of program funding.
 - c. Awarding entity requires organization to submit regular oral or written progress reports and/or explanations of variance relating to program objectives and/or fund maximization.
 - d. Awarding entity may sanction the organization if program objectives are not met.
 - e. Organization must submit a comprehensive closeout package at the end of the agreement.
3. Has responsibility for programmatic decision making. For example:
 - a. Organization has latitude to make decisions within terms of agreement.
 - b. Organization makes policy decisions governing how it carries out a program.
 - c. Organization makes operational decisions governing how it carries out a program.
 - d. Organization makes decisions regarding the appropriate assistance for a particular customer.
4. Has responsibility for adherence to applicable program requirements. For example:
 - a. Awarding entity holds the organization responsible for compliance with applicable program statutes, regulations, rules, policies (including local policies) and guidance.
 - b. Organization receives technical assistance or training from the awarding entity relating to program requirements.
 - c. Awarding entity monitors the organization for compliance with applicable program requirements.
5. Uses the funds to carry out a program of the organization as compared to providing goods or services for a program of the awarding entity. For example:
 - a. Organization performs all or a portion of the scope of work or objectives of the award received by the awarding entity.
 - b. Organization's role require more than dealing, distributing or selling goods or services that support a program.
 - c. Awarding entity identifies the organization's programmatic involvement as a separate scope of work and budget that must be approved by the awarding entity.
6. Provides the goods and services within normal business operations. For example:
 - a. Organization exists for the purpose of providing a particular goods or services.
 - b. Organization receives little, if any, instruction from the awarding entity as to how the organization goes about producing the goods or services.
 - c. Organization generally receives payment after delivery of a particular good or service.

- d. Organization invoices awarding entity in the organization's normal way and is not required to submit a comprehensive closeout package at the end of the agreement.
 - e. Organization assumes the risk if cost of performance increases or requires more time than expected.
 - f. Organization has its performance measured against whether it meets specific contract deliverables, rather than a program's performance outcomes.
7. Provides similar goods or services to many different entities. For example:
- a. Organization provides similar goods or services to a number of entities in addition to the awarding entity.
 - b. Services provided are of a repetitive nature.
 - c. Goods provided are commonly available.
8. Operates in a competitive environment. For example:
- a. Organization competes with other organizations to provide a similar good or service.
9. Provides goods and services that are ancillary to the operation of the program. For example:
- a. Organization aids or supports the program in a subsidiary capacity.
 - b. Organization provides a good or service (in a manner that does not create a subrecipient relationship) which enables the awarding entity to carry out a program.
 - c. Organization provides a particular good or service that enables the awarding entity to operate, e.g., office supplies, janitorial services, equipment, staff development, printing, travel, etc.

Note: GMS should scrutinize the role of the party delivering the services to make a proper determination. Even if reimbursement is based on clients served or a similar procurement contract-like basis, is the entity providing those same services for profit to multiple customers in a competitive environment? Or is this entity already operating a program to assist these clients and accepting the award funds to build on or expand the services provided? The former is a contractor, the latter is a subrecipient.