

EPA Subaward Policy Frequent Questions

Version 2.3

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Note: These answers to frequent questions (FQ) are intended to provide information to recipients of EPA financial assistance to help them understand EPA's interpretations of the Uniform Grant Guidance (UGG) and EPA's Subaward Policy. They do not alter the requirements in the UGG or the guidance in the Subaward Policy and are subject to revision based on EPA's experience with subawards. Recipients should consult their EPA Project Officers and Grant Specialists for additional clarifications.

EPA conducted webinars on the Subaward Policy specifically designed for recipients in April 2016. A recorded version of one of the webinars is available at [EPA Subaward Policy Training Webinar for Recipients](#).

The FQs cover the following topics.

- A. Subawards and Partnerships.
- B. Interagency transfers by non-Federal units of government.
- C. Recipient and Subrecipient Procurement Contracts.
- D. Transactions with Federal Agencies.
- E. Fixed Amount Subawards.
- F. Competition for Subawards.
- G. EPA Oversight.
- H. Subrecipient Management and Monitoring
- I. Miscellaneous Questions.

A. Subawards and Partnerships.

Q A.1. Are states subject to the UGG requirements for Subrecipient Monitoring and Management when they are pass-through entities?

Yes. Unlike prior regulations (40 CFR 31.37(a)) the UGG does not allow states to follow their own laws and procedures when awarding and administering subawards. All pass-through entities must comply with 2 CFR 200.331 and other applicable provisions of the UGG.

Q A. 2. What if the state agency calls an agreement a contract but EPA determines that the transaction is a subaward?

If the transaction is a subaward as defined/described in the UGG and Appendix A to the EPA Subaward Policy, EPA will advise the state to characterize the proposed agreement as a subaward. The term a state agency uses for the agreement does not determine how EPA characterizes the transaction for grant purposes. Please refer to the definition of subaward

at 2 CFR 200.92 which states “[a] subaward may be provided by any form of legal agreement, including an agreement the pass-through entity considers a contract.” Also refer to questions .23-1 and .23-2 in OMB’s September 2015 Frequently Asked Questions on the UGG.

Q A.3. If a recipient identifies transactions that EPA considers to be subawards under the “Contracts” budget category in the SF 424 because they call the agreement with the subrecipient a contract should an EPA Project Officer or Grant Specialist advise them put the costs in a subaward line item for the “Other” budget category?

Yes. Please refer to Section 8.0(a) of EPA’s Subaward Policy

Q A. 4. Are transactions in which states fund local government environmental programs or projects typically subawards?

Yes. Please refer to Appendix A of EPA’s Subaward Policy

Q. A. 5. What documentation does a pass-through entity need to support selection of a subrecipient?

A pass-through entity at a minimum should document its determinations that:

-The subrecipient is eligible for a subaward based on any limitations on subrecipient eligibility contained in the statutes and regulations authorizing the financial assistance the pass-through entity receives from EPA and the terms and conditions (T&C) of the EPA assistance agreement including the T&C “Suspension and Debarment” discussed in Questions A-27 and A-28;

- The activities the subrecipient will carry out are authorized by the terms of the pass-through entity’s assistance agreement with EPA.

If the terms of the pass-through entity’s agreement with EPA require competition for subawards, or the pass-through entity chooses to select subrecipients competitively, then the pass-through entity should maintain documentation of the selection process. Examples of such documentation include the announcement for the competition, the selection criteria, proposals received, and scoring sheets or other evaluation materials.

Record retention requirements for documentation of subrecipient selection are set forth at 2 CFR 200.333.

Q. A. 6. Does a cost analyses along the lines of 2 CFR 200.323 need to be done for subawards?

No. However, as required by 2 CFR 200.302(b)(7) and EPA’s “National Subaward Term and Condition” (Appendix B of the Subaward Policy and “Establishing and Managing Subawards” in EPA’s General Terms and Conditions) the recipient must have written procedures for ensuring that subaward costs are allowable under Subpart E, of the UGG.

One requirement for cost allowability is reasonableness. Please refer to 2 CFR 200.404 for guidance on reasonable costs.

Q. A. 7. State University “A” entered into a transaction with State University “B” for laboratory analysis. How should the transaction be characterized?

It depends.

-If state law provides that State University “A” and State University “B” are independent legal entities such that they are not part of a common financial management system for the purposes of interagency services then the transaction would be characterized as either a subaward or a procurement contract depending on the factors described at 2 CFR 200.330(a) and (b). EPA generally considers transactions between Institutions of Higher Education to be subawards but there may be unique circumstances (e.g. the transaction can be handled through micro-purchase procedures) which indicate that a procurement contract is the proper instrument. Please refer to Appendix A of EPA’s Subaward Policy.

-If State University “A” and State University “B” are part of a unitary state system of higher education then the transaction could be characterized as an Interagency Service Agreement under 2 CFR 200.417 provided state law authorizes state universities to transfer funds to each other “internally” through a common financial management system or similar arrangement.

-If State University “A” and State University “B” are independent legal entities under state law and state university “B” will contract with a commercial laboratory to perform the analysis then the transaction could be characterized as an Intergovernmental or Inter-entity Agreement to procure common services under 2 CFR 200.318(e) provided state law allows state universities to enter into those types of arrangements.

Q. A. 8. Department” A” of private institution of higher education (IHE) is named as the recipient of an EPA assistance agreement. The laboratory analysis for the project will be performed by Department “B” of the same IHE at a different campus. Would EPA characterize the financial arrangements between departments A and B as a procurement contract or a subaward?

Neither. EPA would consider the arrangement between “A” and “B” to be an interdepartmental transfer or similar internal transaction provided the IHE’s financial management system recognizes the arrangement. Interdepartmental transfers are governed by the IHE’s internal procedures and as long as the expenditures of EPA funds are properly accounted for and managed in compliance with the Uniform Grant Guidance. Per 2 CFR 200.86 a non-Federal entity may not be a recipient and a subrecipient under the same EPA assistance agreement.

Q. A.9. Would a transaction between a state and an institution of higher education to carry out training classes for regulated industries typically be a subaward?

It depends.

- In most cases, particularly if the transaction is between a state and a private university, then the transaction will be a subaward.

- If state law provides that state universities are legally separate from other components of the state for the purposes of financial transactions then EPA would consider the transaction to be a subaward for the purposes of the UGG. Please refer to Appendix A of EPA's Subaward Policy.

- There may be unique situations in which state law characterizes transfers of funds between state agencies and state universities as Interagency Service Agreements or a similar designation for an internal financial transaction because state universities are instrumentalities of state government. If that is the case, the governing regulation would be 2 CFR 200.417.

- There may also be other unique situations in which state law provides that transactions between state universities and other components of the state government are procurement contracts in all cases. As provided at 2 CFR 200.317 States follow their own procurement procedures with limited exceptions as described at Question C. 1.

Q. A. 10. Does the 2 CFR Part 200 Uniform Grant Guidance and EPA's Subaward Policy apply in exactly the same way when a subrecipient provides a subaward to a "sub-subrecipient"?

Yes. The 2 CFR 200.74 definition of the term "pass-through entity" encompasses any non-Federal entity that provides a subaward and the 2 CFR 200.93 definition of the term "subrecipient" includes any non-Federal entity that receives a subaward from a pass-through entity. Neither definition limits subrecipients to the first "tier" of funding.

Q. A. 11. Are "Advisory Board" members who are paid for participating in an EPA funded project subrecipients or procurement contractors?

Neither.

As provided at 2 CFR 200.422, direct costs for advisory councils or committees are generally unallowable unless authorized by statute or by EPA under the terms of the assistance agreement. An advisory board would fall under this provision as well.

By way of a programmatic term and condition or by approving a budget with a narrative and line item for stipends and travel reimbursement for advisory board members, EPA may allow direct costs for an advisory council. The program office must determine that their participation is necessary for the successful completion of a specific EPA funded project and the amount of the compensation must be reasonable. This approach is similar to that for participant support costs under 2 CFR 200.75 and 200.456. Otherwise, advisory council costs such as those for a council that provides general advice to a recipient are only allowable as indirect costs per 2 CFR 200.422.

Please note that compensation and travel reimbursement for individuals who are on the official board of directors or trustees of a nonprofit organization or institution of higher education is governed by 2 CFR 200.475 which provides that these costs are generally allowable. Although director/trustee compensation and travel would typically be allowable only as an indirect cost, there may be unusual situations in which their compensation and travel could be directly allocable to an EPA assistance agreement.

Q. A. 12. Are subawards the same as intergovernmental agreements such that the “National Subaward Term and Condition” applies to both types of transactions?

No. Intergovernmental agreements are not the same as subawards. Intergovernmental agreements are recognized at 2 CFR 200.318(e) as mechanisms for two different units of government (e.g. a state and local government or a city government and a county government) to use to procure or use common goods and services. Please refer to Questions A. 25 h. and C. 3. For examples of intergovernmental agreements.

Q. A. 13. Does the definition of “Nonprofit” at 2 CFR 200.70 apply to all EPA assistance programs in which nonprofits are eligible for EPA funding as subrecipients?

Yes, unless a statute, regulation, or published program policy (e.g. an announcement for a competitive funding opportunity) defines the term “nonprofit” differently. There may be situations in which only nonprofit organizations with tax exempt status under Section 501(c)(3) of the Internal Revenue Code are eligible for EPA financial assistance. However, 2 CFR 200.70 does not require 501(c)(3) status and an organization may document that it is a nonprofit by means other than 501(c)(3) status such as evidence that it is incorporated as a nonprofit under state law.

Q A.14. The Drinking Water SRF program has set-asides, which often result in the state funding projects under grants rather than loans. Are these transactions subawards?

Yes. If a state uses DWSRF “set aside” funds to provide grants to support a project under terms which do not require repayment of any of the project costs charged to the agreement EPA would consider the transaction to be a subaward. Additional information on what provisions of the Uniform Grant Guidance apply to the DWSRF program may be available in the DWSRF program guidance. Note that principal forgiveness and negative interest loans are not considered grants for the purposes of the answer to this question.

Q. A. 15. If the only grant our agency receives is a State Revolving Fund Capitalization Grant, would EPA’s Subaward Policy apply to our agency? (4-6-16 Webinar)

It depends.

Loans, loan guarantees, interest subsidies and principal forgiveness, purchases of insurance or similar subawards SRF recipients enter into with borrowers are not subject to EPA’s Subaward Policy. EPA provides program-specific guidance on the subawards under SRF capitalization grants. However, if the SRF uses Drinking Water or Clean Water funds (EPA

grant funds and/or “equivalency” funds) to provide grants EPA would consider the transaction to be a subaward that is subject to the Subaward Policy.

Q. A. 16. Does the EPA Subaward Policy apply to grants a state makes with revolving loan funds that are neither EPA grant funds nor “equivalency” funds?

No. EPA provides program-specific guidance on SRF subawards. Grants a state makes with its own funds or non-equivalency funds are governed by state law and policy.

Q. A. 17. If a State provides a grant to a Tribe to support an environmental project or program does EPA consider the transaction to be a subaward? (4-6-16 Webinar)

Yes, provided the state makes the grant with EPA funds. Please refer to Appendix A of EPA’s Subaward Policy which provides that transactions between different (i.e., legally separate) units of government are typically subawards.

Q. A. 18. If a pass-through entity attaches their EPA Award to a subaward, does that meet the requirements for including subaward content in 2 CFR 200.331(a)? (4-6-16 Webinar)

No. Attaching the pass-through entities’ EPA assistance agreement to a subaward would not provide the subrecipient or an auditor with all of the information required by the regulation. The following information would need to be included in the subaward agreement as well.

-The subrecipient’s “unique entity identifier” in the System for Award Management. The unique entity identifier currently is the subrecipient’s Data Universal Numbering System (DUNS) number.

- Subaward Period of Performance Start and End Date;

- Amount of EPA Funds Obligated under the initial subaward or this particular funded amendment to the subaward.

- Total or cumulative amount of EPA Funds Obligated to the subrecipient under the initial subaward plus any subsequent funded amendments;

- Contact information for the pass-through entity’s awarding official for the subaward.

- Any additional requirements such as financial and performance reports the pass-through entity imposes on the subrecipient to ensure that the pass-through entity meets its own responsibilities to the Federal awarding agency.

- Subrecipient’s Indirect Cost Rate.

- Requirements for the subrecipient to provide access to subaward records so that the pass-through entity and Federal auditors may verify compliance with regulatory requirements.

- Additional Requirements imposed by the pass-through entity under 2 CFR 200.207 that reflect the pass-through entity's assessment of the subrecipient's risk of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward based on the factors described at 2 CFR 200.331(b).

-Other requirements based on the pass-through entity's own laws, regulations, and policies to the extent that they do not conflict with applicable Federal laws, statutes, regulations and policies.

Please refer to Appendix D of EPA's Subaward Policy for additional guidance.

Q A. 19. What is the relationship between subaward costs and participant support costs?

Subawards are financial assistance transactions between an EPA recipient (the "pass-through entity") and another organization (the "subrecipient") to carry out an ongoing program or discrete project. The subrecipient carries out substantive tasks through its employees, contractors, and in some cases other subrecipients. Under 2 CFR 200.93 individuals who are program beneficiaries are expressly excluded from the definition of "subrecipient". While there may be some situations in which a subaward to an individual may be a proper subaward, those situations are rare. Please review Section 11.0(b) and Appendix A of EPA's Subaward Policy

In contrast, participant support costs are expenditures a recipient or subrecipient makes to program beneficiaries to enable them to participate in the EPA funded program or project. Program participants are not employees, contractors or subrecipients of the organization receiving EPA financial assistance. Examples of participant support costs include payments for stipends, travel and similar costs for trainees or community members to enable them to attend conferences. EPA considers rebates for purchases of commercially available "off the shelf" emission control technologies and vehicle replacements under Diesel Emission Reduction Act grants to be participant support costs.

There may be situations in which stipends, travel support and similar costs for subrecipient employees may properly be classified as participant support costs when those costs are borne solely by the pass-through entity. For example, if a pass-through entity directly pays for travel scholarships to a training conference and employees of subrecipients qualify for the scholarships then the subrecipient employees would be program participants for the purposes of 2 CFR 200.75. The subrecipient could not charge the subaward for the same travel costs in that scenario.

Q. A. 20. Are "Program Participants" in fellowship programs EPA funds through an assistance agreement with a nonprofit organization considered subrecipients who receive subawards? (4-6-16 Webinar)

No. Costs recipients incur for stipends, travel or training for individual fellows are classified as "participant support costs" under 2 CFR 200.75. Please refer to Section

11.0(b) of EPA’s Subaward Policy. Note also that fellowships in which EPA provides funds directly to the individual fellow under 40 CFR part 46 are not covered by EPA’s Subaward Policy.

Q. A. 21. If an employee of a subrecipient attends a conference that requires travel are those costs now considered a participant cost under 2 CFR 200.456?

No. Travel by employees of subrecipients is not participant support costs. Participant support costs only include travel by trainees or other program participants who are not employees of a subrecipient. Please refer to the definition of participant support costs at 2 CFR 200.75. Subrecipient employee travel is governed by 2 CFR 200.474, *Travel Costs*.

Q. A. 22. What does EPA mean by “partner” in the context of competitive funding announcements?

While the term “partner” may have a specific meaning depending on the particular competitive announcement, the term generally refers to a mutually understood, documented relationship between an applicant and one or more third parties to collaboratively carry out a proposed project. A partner may contribute funds or in-kind resources to the joint effort and/or EPA funds may be used to finance the partner’s activities. Any financial transactions between an applicant and a partner that involve EPA funds, however, must comply with the applicable requirements in the Uniform Grant Guidance (UGG) governing procurement contracts, subawards, or participant support costs depending on the nature of the relationship. Also, contributions of funds or in-kind resources that an applicant intends to use to meet a cost share on an EPA grant must comply with the UGG.

Q. A. 23. Does EPA consider all “partnership agreements” that establish funding relationships to be subawards?

No. The Uniform Grant Guidance, as with prior grant regulations, does not characterize financial transactions as “partnership agreements”. Transactions are subawards, procurement contracts, intergovernmental/inter-entity agreements for purchases of shared goods or services, or participant support costs. Characterizing the transactions consistently with the terms used in the UGG is important for determining what rules govern the agreement. It is the substance of the transaction and the financial structure of the “partnership” that matters for accurate characterization of the agreement. Some recipients refer to their contractors (particularly consultants) as “partners” so the label the recipient places on the transaction is not determinative of which rules govern the agreement.

Q. A. 24. If the pass-through entity has named a subrecipient as a “partner” in a successful competitive funding application then following award of the EPA assistance agreement decides to make a subaward to a different subrecipient is prior EPA approval from EPA’s Grants Management Office required under 2 CFR 200.308(c)(vi)?

Yes, if any the following circumstances or similar ones are present:

- The pass-through entity described the original subrecipient's qualifications in the competitive application in response to an EPA selection criteria. EPA approval will be necessary to ensure that the "new" subrecipient is an eligible subrecipient with comparable qualifications.

Or

-The "new" subrecipient will carry out a program or project that is significantly different than the one the pass-through entity described in the application. EPA approval would be necessary to ensure that:

*** The "new" subrecipient as well as the "new" subrecipient's program or project is eligible for funding under the statute/regulation authorizing the pass-through entity's assistance agreement and any program policy limits described in the competitive announcement,**

*** The different program or project is not a material change to the scope of work for the assistance agreement.**

Q. A. 25. EPA provides a grant to Nonprofit "A" for a regional public education project that involves community tree planting events. Nonprofit A "partners" with Nonprofit "B" to obtain accounting services for financial management of the grant and with Nonprofit "C" to sponsor the tree planting event in a local community. Why would a transaction between A and B for accounting services be characterized as a procurement contract for commercially available services while the transaction between A and C be considered a subaward?

Nonprofit A is procuring accounting services from B that are "ancillary" or secondary to the purpose of the EPA funded program in that financial management is normally part of the internal operations of a recipient. Accounting services are widely available in the commercial marketplace from for profit firms. These factors are indicative of a procurement contract under 2 CFR 200.22 and 2 CFR 200.330(b).

On the other hand, Nonprofit C is carrying out the substantive program (public education) EPA that is funded by EPA. Nonprofit C is subject to the requirements for that program set forth in the grant agreement (including the prohibition on management fees or other forms of profit) and will have responsibility for programmatic decision-making during the tree-planting event which are characteristics of a subaward under 2 CFR 200.92 and 200.330(a). Also, Nonprofit C does not sell tree planting services on the commercial market.

Note that if Nonprofit A acquired tree planting services from a commercial nursery the transaction would be characteristic of a procurement contract.

Q. A. 26. What are some examples of how EPA will characterize "partnership" transactions?

a. An Institution of Higher Education (IHE) applicant for competitive funding proposes to form a research consortium with other IHEs and fund its partners' portions of a study. The financial transaction between the partners would be a proper subaward under 2 CFR 200.92 and 200.330. The applicant need not conduct a competition to make the subawards under the UGG. EPA would consider the qualifications of the IHE research partners in evaluating the application.

b. A consultant prepares a competitive funding proposal for a non-profit organization or local government free of charge with the understanding that if EPA awards the applicant funds the consultant will receive a sole source contract in the amount of \$100,000 for the EPA funded work. The application specifies that the consultant is a "project partner".

*** Consultants are contractors for the purposes of the Procurement Standards of the UGG. Recipients must obtain quotes from an adequate number of qualified sources for contracts up to \$250,000 per 2 CFR 200.320(b). As indicated in Section IV, "Partnerships, Contracts and Subawards" of EPA's standard announcement clauses EPA will neither consider the qualifications of the consultant nor accept a sole source justification based on the consultant's role in preparing a project proposal.**

*** Consulting services are widely available in the commercial market place and there are no practical barriers to obtaining their services competitively. An argument that the consultant is "uniquely familiar with our project" will not persuade EPA that the consultant is only source for consulting services. The Agency would not accept a sole source justification along these lines.**

c. A nonprofit organization or local government determines that it lacks in-house expertise to prepare a funding application and manage the project if the application is successful. The applicant asks three consulting firms for rate quotes/qualification statements to perform this work and sets a price ceiling of \$250,000. It names the selected firm as a "project partner". This practice is acceptable to EPA.

*** Under 2 CFR 200.320(b), recipients must obtain price or rate quotes from an "... adequate number of qualified sources" for contracts that do not exceed the current \$250,000 simplified acquisition threshold. EPA considers a competition among three consulting firms to be consistent with the regulatory standard.**

*** If the applicant describes the process it followed to select the consultant as its project partner EPA will evaluate the consultant's qualifications as part of the grant competition. However, if any portion of the contract is attributable to proposal preparation costs those costs are normally treated as indirect as provided by 2 CFR 200.460.**

d. An applicant for competitive funding "partners" with members of an environmental group for a water quality monitoring project. The applicant will use volunteer services from members of the group to meet its cost share requirement. The volunteers will take samples from streams and lakes in the project area.

*** One of the volunteers is a surgeon whose billing rate is \$350 per hour. As provided at 2 CFR 200.306(e) the applicant may not use the surgeon's \$350 per hour rate when valuing her services but must use the rate for its own employees who obtain samples for water quality monitoring.**

*** If the applicants' own employees' do not conduct sampling, the applicant must perform labor market research to determine how to value the time volunteers spend sampling. One potential source for determining a reasonable value for volunteer sampling time would be the rate a state or local government pays employees or contractors for sampling work.**

e. Two small municipal applicants have private architect/engineering firms on retainer to provide a/e consulting services on an as needed basis. Municipality "A" did not conduct a competition to select the A/E firm. Municipality "B" hires its A/E firm competitively although qualifications rather than price is the determining factor in the selection. Both municipalities name the A/E firms as their project partners in a competitive funding application.

*** Municipality A may not use EPA funds in amounts over the \$10,000 micro-purchase threshold to contract with the A/E firm on a sole source basis for design work for its project even though the municipality named the firm as a "partner" in the application. A/E services are widely available commercially and the UGG at 2 CFR**

200.319(a)(4) expressly states that noncompetitive contracting with consultants on retainer improperly restricts competition. Note also that municipality A could not issue a series of \$3500 purchase orders to the A/E firm to circumvent competition requirements. Under 2 CFR 200.320(a) recipients must distribute micro purchases equitably among qualified sources.

*** Municipality B may use EPA funds to contract with the A/E firm in amounts over the \$10,000 micro-purchase threshold provided the municipality negotiates a fair and reasonable price for the EPA funded work. Under 2 CFR 200.318(d)(5), recipients may use qualifications based selection criteria for A/E firms. Provided the competition was properly conducted under state/local laws EPA will accept the results of the municipality B selection process. Note, however, that municipality B may not award an EPA funded contract to the A/E firm for other types of services (e.g. actual construction) which are not covered by the A/E professional services price competition exemption at 2 CFR 200.318(d)(5). Note also that EPA has special rules at 2 CFR 1500.10 for contracting with A/E firms for both the design and construction management phases of waste water projects.**

f. A nonprofit organization proposes an EPA funded project that requires the use of a specific pollution control technology that a firm has patented. The nonprofit names the firm in its proposal as a project partner.

*** The nonprofit may contract with the patent holder on a sole source basis to acquire the technology. Under 2 CFR 200.320(f)(1) the nonprofit may legitimately determine that the item is available from only one source based on the patent. EPA will consider the firm's**

qualifications if the nonprofit names it in the competitive proposal and explains why the firm's patented technology is necessary for successful implementation of the project.

g. A municipality proposes an EPA funded project that is based on a partnership with a community organization, a builder's association, and a union to implement "best management practice" systems to protect wetlands from runoff at construction sites. The project involves stakeholder meetings for design charrettes.

*** the municipality may use EPA funds to support the partners' participation in the project through noncompetitive subawards since the nature of the transaction is characteristic of financial assistance; none of these organizations will be providing services to the municipality on commercial terms.**

*** if successful implementation of the BMPs require training for construction managers and workers, reasonable training stipends to encourage attendance at training sessions would be allowable as a participant support cost under 2 CFR 200.74 and 200.456. These authorities also authorize stipends to be paid to community members who actively participate in the charrettes. The municipality should ensure that its proposal clearly describes the stipends and that there are adequate accounting records to document stipend payments particularly if the payments are made in cash.**

h. A municipality ("A") applies for EPA funding to restore a river that passes through the boundaries of two other municipalities ("B" and "C"). Municipality A proposes to partner with B and C on a comprehensive restoration project and to fund their participation in the project through subawards. The project partners determine that implementation of the project would be more effective if a single A/E firm designed and managed the project. However, A's ordinances do not allow the municipality to award a contract for work that will be performed outside of its jurisdiction. B and C have similar laws.

*** Under 2 CFR 200.318(e), the project partners could enter into an intergovernmental agreement that would allow A to competitively select an A/E firm that would be awarded separate contracts by the three municipalities as long as that practice complies with local law.**

Q. A. 27. May recipients and subrecipients (including "sub-subrecipients") provide a subaward to a non-Federal entity that is suspended, debarred or otherwise excluded ("excluded") from participation in Federal financial assistance programs?

No. Subawards at any tier are "covered transactions" under 2 CFR 180.200(b) and 2 CFR 180.970. Pass-through entities are precluded under 2 CFR 180.305(a) from entering into covered transactions with non-Federal entities who are listed in the System for Award Management (SAM) as excluded from participation in Federal financial assistance programs unless EPA grants an exception.

Note also that excluded individuals are precluded from acting as agents and representatives of pass-through entities or subrecipients in connection with covered transactions or from

being a “principal” in covered transactions per 2 CFR 180.130 and 2 CFR 180.980. Please refer to the definition of *Principal* at 2 CFR 180.995 and 2 CFR 1532.995.

Additional information regarding pass-through entities responsibilities to ensure that excluded entities do not participate in EPA financial assistance programs may be found in the general term and condition “Suspension and Debarment” in the pass-through entity’s agreement with EPA.

Q. A. 28. How should a pass-through entity, recipient or subrecipient find out whether a potential subrecipient or principal is suspended, debarred or otherwise excluded from participation in Federal financial assistance programs?

Pass-through entities and subrecipients may access suspension and debarment information at: <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. Additional information regarding recipient and subrecipient responsibilities to ensure that excluded entities do not participate in EPA financial assistance programs may be found in the general term and condition “Suspension and Debarment” in the pass-through entity’s agreement with EPA.

Q A. 29. Does the prohibition against the use of funds for charging administrative costs (including indirect costs) to Brownfields provided for at CERCLA 104(k)(4)(B)(i)(III) apply to subawards?

Yes. The Brownfields prohibition on administrative costs is statutory and applies to all brownfields grants. As provided at 2 CFR 200.331(a)(2), pass-through entities must ensure that subrecipients use EPA funds in accordance with statutory and regulatory requirements that apply to their assistance agreement with EPA.

Q. A 30. Does the 10% limit on administrative costs (including indirect costs) for Nonpoint Source Management provided for at Clean Water Act 319(h)(12) and 40 CFR 35.268(c) and 35.638(c) apply to subawards?

Not necessarily.

The statutory 10% limit on administrative costs applies to the amount of CWA 319 funding a state or tribe receives from EPA on an annual basis. Also, the statute and regulations exempt “[t]he cost of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs . . . “ from the 10% limit on administrative costs.

States and tribes may choose to require subrecipients to adhere to the 10% administrative cost limit as a means of complying with the statutory requirement but may comply with the limit by other means as well. Note, however, that even if a subrecipient has a negotiated indirect cost rate in excess of 10% with a cognizant Federal agency that under 2 CFR 200.408 and 200.414(c)(1) pass-through entities may still require that subrecipients adhere

to the 10% administrative cost limitation if necessary to ensure that the state or tribe complies with the statute and regulations.

Q. A-31 Will EPA provide guidance on how prior approvals of subrecipients should occur? (4-6-16 Webinar)

Yes, please refer to Questions A-24, A-32, A-34, A-42, G-3, G-4 and G-5.

Q A-32. Can amounts be given or do subrecipients need to be specifically named?

EPA generally does not require pass-through entities to name subrecipients in their EPA assistance agreement unless there is a program specific requirement in a regulation, guidance or the terms of an award that requires more specificity. Specifying an anticipated amount for subawards in line item for the "Other" SF 424 budget category and describing the types of subawards is sufficient although pass-through entities may provide more detail if they choose. Please refer to question G-7(?).

Q. A-33. To be clear we don't have to identify subrecipients in the proposal, we can just identify them as "type"? (4-6-16 Webinar)

Correct. Please refer to Questions A-24, A-32, A-34, G-3, G-4 and G-5.

Q. A-34. When will subrecipients be notified that they have received a subaward? (4-6-16 Webinar)

Pass-through entities should not advise subrecipients of subawards until after they have received their "Notice of Award" from EPA. After that, it is up to the pass-through entities to decide when to notify subrecipients that subaward funding is forthcoming.

Q. A-35. If a recipient has misclassified a procurement contract as a subaward what steps should the recipient take to rectify the situation? (4-7-16 Webinar)

EPA recommends that recipients consult with their own legal counsel in these situations. If the misclassified subaward was entered into competitively then the agreement may substantively comply with the procurement standards in the UGG or the EPA financial assistance regulations in effect at the time of the transaction. However, the appropriate course of action is very fact specific and as provided at 2 CFR 200.318(k) the recipient alone is responsible for resolving contractual issues.

Q A-36. Similarly, if a recipient has an existing procurement contract with an entity that should have been monitored and managed as a subaward do we have to renegotiate the agreement with them? (4-7-16 Webinar)

Yes, at least to the extent necessary to ensure that the subrecipient complies with the reporting subawards and executive compensation under Federal funding accountability

and transparency act (FFATA) set forth in general condition of the pass-through entity's agreement with EPA entitled "Reporting Subawards and Executive Compensation." The FFATA requirement is statutory and applies to subawards but not to procurement contracts entered into by EPA financial assistance recipients. Additionally, the recipient must ensure that as set forth in general condition of the pass-through entity's agreement with EPA entitled "management fees" the terms of the agreement do not allow the subrecipient to "profit" from the transaction by charging more than its direct costs and Federally recognized indirect cost rate. There are other provisions at 2 CFR 200.331(a) that apply to subawards and not to procurement contracts.

Q. A-37. Does the recipient have to submit a budget modification to reflect the reclassification? (4-7-16 Webinar)

Yes.

Q. A-38. Wouldn't the fixed price examples specified in Section 9.0(a) of EPA's Subaward Policy be procurement contracts? (4-6-16 Webinar)

No. The examples of fixed amount subawards EPA specified would be structured to support to units of government, institutions of higher education, nonprofit organizations, students or post-doctoral fellows with financial assistance to carry out public purposes. None of the examples involve transactions with for profit firms or individual consultants to acquire professional services or products on commercial terms. Please refer to Appendix A of EPA's Subaward Policy.

Q. A-39. If the Pass-Through entity modifies the existing agreement for supplemental funding or other reasons, do these new regulations apply only to subawards moving forward, or do they apply retroactively to all subawards? (4-6-16 Webinar)

EPA's new Subaward Policy applies only to subawards the pass-through entity makes after receiving supplemental or incremental funding unless the pass-through entity requests that the new policy or portions of the policy apply to other subawards.

Q. A-40. EPA's Subaward Policy provides in Section 8.0(a) that pass-through entities include aggregate estimates for subawards in a line item under the "Other" budget category in the Standard Form 424. Does the pass-through entity also have to provide EPA with detailed estimates of amounts subrecipients will expend for employee compensation, travel, contractual services, participant support costs and similar cost categories?

No. It is up to the pass-through entity to negotiate subaward budgets and ensure that the subrecipient incurs only eligible and allowable costs under the terms of the assistance agreement and the UGG. As provided at 2 CFR 200.331(d) and 2 CFR 200.521(b) the pass-through entity is responsible for monitoring subrecipient expenditures and resolving audits questioning costs subrecipient incurs.

Q. A-41. Does EPA require that pass-through entities exclude their subrecipients' participant support costs and other items of cost excluded from the definition of Modified Total Direct Costs at 2 CFR 200.68 when distributing their own indirect costs to EPA awards?

Not unless the terms of the pass-through entity's indirect cost rate agreement with the cognizant Federal agency requires that the MTDC take into account subrecipient costs excluded under 2 CFR 200.68. EPA's position is that pass-through entities may include the first \$25,000 in allowable costs for each subaward in MTDC regardless of the composition of the costs. However, subrecipients must exclude participant support costs and other items of costs excluded from MTDC when distributing their indirect costs to EPA funded subawards.

Q. A-42 Are there unique prior approval requirements for subawards to foreign or international organizations?

Yes. EPA's National Subaward Term and Condition requires that pass-through entities work with EPA's Project Officer to obtain the consent of EPA's Office of International and Tribal Affairs ". . . prior to awarding a subaward to a foreign or international organization, or a subaward to be performed in a foreign country even if that subaward is described in a proposed scope of work."

Q. A-43 Are loans made by Brownfields Revolving Loan Fund capitalization grant recipients subawards for the purposes of the Uniform Grant Guidance and 2 CFR Part 170, Reporting Subawards and Executive Compensation?

Yes. Brownfields RLF loans are a form of Federal financial assistance subject to the 2 CFR Part 170 reporting requirements as provided by 2 CFR 170.320(c). Consequently, these loans are also considered subawards for the purpose of the 2 CFR Part 170, Appendix "Reporting Subawards and Executive Compensation" Award Term which is included in EPA's General Terms and Conditions of Brownfields RLF capitalization grants.

Brownfields RLF capitalization grant recipients are considered pass-through entities for the purposes of the subrecipient monitoring and management requirements of 2 CFR 200.330 through 200.332 when they make loans to borrowers. However, as provided at 2 CFR 200.101(b) the only UGG provisions that apply to borrowers are the internal control requirements of 2 CFR 200.303. Borrowers are not subject to the 2 CFR 200.317 through 200.326 Procurement Standards. EPA provides additional guidance in the terms and conditions of Brownfields RLF cooperative agreements.

B. Interagency Transfers by non-Federal units of government.

Q B 1. When passing Federal dollars between two equal state agencies, does EPA consider this a subaward? (4-7-16 Webinar)

The answer depends on state law.

EPA's general policy, based on the definition of *Grantee* and *State* in 40 CFR 31.3 has historically been that the state itself is the legal entity that receives EPA funds even if one particular component of the state is named in the assistance agreement as the recipient. Transfers of EPA funds between state agencies to perform a particular financial assistance agreement would, therefore, be governed by state law. EPA takes the same position under the UGG based on the definitions of the definitions of the terms "Non-federal entity" (200.69), "Pass-through entity (200.74) "Recipient" (200.86) and "State" (200.90). Additionally, 2 CFR 200.417 "Interagency Services" contemplates situations in which one agency provides services to another agency within the same unit of government as a direct cost of performing the EPA assistance agreement. Subawards are typically transactions between two different units of government (e.g. a state and a local government) or between a unit of government and a nongovernmental organization.

There may be situations in which state law provides that state agencies or instrumentalities are legally separate for the purposes of financial transactions between them or state financial management policies for Federal assistance agreements require separate

instruments for accounting purposes (e.g. due to differences in indirect cost rates). In those situations, a state may characterize funding transfers as subawards. Note, however, that if one state agency provides a subaward to another state agency the state agency acting as the pass-through entity must comply with applicable provisions of 2 CFR Part 200, the National Term and Condition for Subawards, and the EPA Subaward Policy unless EPA provides an exception. The aggregate cost estimates for the subawards to other state agencies or instrumentalities would be in a line item in the “Other” budget category.

Q B 2. Are the requirements for state interagency transactions similar to a subaward?

No. The UGG requirements for Interagency Service Agreements at 2 CFR 200.417 do not include extensive subrecipient monitoring and management requirements along the lines of 2 CFR 200.331. Nonetheless, each state agency performing the EPA financial assistance agreement is subject to the same requirements of the EPA assistance agreements including statutory and regulatory restrictions on the use of EPA funds, financial management provisions of the UGG, and the administrative and programmatic terms and conditions of the EPA award.

Q B. 3. Where are interagency agreements between state agencies under 2 CFR 200.417 shown on the SF 424 Budget Categories? (4-7-16 Webinar)

In the direct cost categories (Personnel, Travel, Contractual etc.) corresponding to the expenditures the state agency makes to carry out the Interagency Service Agreement. Note that if state law characterizes agreements under which one state agency provides services to another state agency as a procurement contract then the costs would be placed in the contractual category. Note also that in interagency service situations 2 CFR 200.417 provides the state may charge a pro-rated share of indirect costs for the service or 10% of the “. . . The direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service.” Centralized services included in Central Service Cost Allocation plans subject to Appendix V of the UGG are accounted for separately.

Q B. 4. May a tribe make subawards to its own officially recognized chapters or is that type of situation the same as a transfer of funds between state agencies?

It depends. Transactions between chapters or similar components of the same tribe would typically be characterized as an Interagency Service Agreements under 2 CFR 200.417 if the chapters are components of the same Federally recognized tribe. However, there may be unusual situations in which Federal or tribal law provides that a tribe’s chapters are independent legally for the purposes of entering binding agreements between each other such that the transaction would be characterized as a subaward.

Q. B. 5. If a state transfers funds to a state university under an interagency service agreement rather than a subaward do requirements in the assistance agreement with EPA such as the consultant fee cap and the prohibition on management fees apply to the transferred funds?

Yes. All agencies and instrumentalities of a state receiving EPA funds are subject to the requirements of the EPA assistance agreement.

Q. B. 6. What are "special" units of government such as irrigation districts, conservation districts, utility districts, etc. considered for the purposes of the UGG and EPA's Subaward Policy?

Local governments in almost all cases. Under 2 CFR 200.64 special districts and intrastate districts are classified as local governments. Transactions between the state and the district would typically be subawards. There may be unique situations in which the state law establishing the district could yield a different result such that the transaction could properly be classified as an interagency transfer. Also, in some cases state or local governments may charter or otherwise establish redevelopment authorities that incorporate as nonprofits and have independent authority to enter into binding agreements. EPA would consider those authorities to be nonprofit organizations. Note, however, that under 2 CFR 200.64 Councils of Governments are classified as local governments even if they are incorporated as nonprofits under state law.

Q. B. 7. Would an interstate organization be considered a nonprofit or a governmental unit?

It depends

An interstate organization established under the laws of multiple states or a Federal statute to address environmental problems under governmental authority would be considered a local government unless the terms of a Federal statute provide otherwise. The definition of local government at 2 CFR 200.64 includes regional agencies and also provides that councils of government are classified as local governments even if they are incorporated as nonprofits under state law. Additionally, EPA regulations in effect prior to the UGG (which were based on OMB Circular A-102) provided at 40 CFR 31.3 that interstate government entities were local governments.

A nonprofit organization that represents the interests of multiple states on regional or national environmental issues but does not have governmental authority conferred on it by the laws of multiple states or a Federal statute would be classified as a nonprofit organization. An example of such a nonprofit organization is the Environmental Commissioners of the States.

C. Recipient and Subrecipient Procurement Contracts

Note: Additional information on how EPA interprets the UGG Procurement Standards is available in the examples of "partnership" transactions described in Question A. 26.

Q. C. 1. Are states subject to the competition requirements in the Uniform Grant Guidance when they procure services from commercial contractors?

No. As provided at 2 CFR 200.317 states follow the same procurement procedures as they do when acquiring goods and services with non-Federal funds. The Federal requirements that apply to states are the *Procurement of Recovered Materials* provision of 2 CFR 200.322 (which is based on Section 6002 of RCRA), any clauses required by 2 CFR 200.436, and EPA's 40 CFR Part 33 rule on *Participation by Disadvantaged Business Enterprises in EPA Programs*.

Q. C. 2. Is competition required before using another state agency for services? (4-7-16 Webinar)

No. Transactions between state agencies are typically Interagency Service Agreements under 2 CFR 200.417 or subject to the state's Central Service Cost Allocation Plan as provided in Appendix V of the UGG. These arrangements are not subject to competition. Note also that under 2 CFR 200.317 any competition requirements for procurement contracts states enter into with EPA funding are based on state rules rather than 2 CFR 200.319. Consequently, even if state law characterizes transactions in which one state agency acquires services from another state agency as procurement contracts then competition would be governed by the state's policies for competition.

Please refer to Question B 1 for a discussion of situations in which one state agency transfers funds to another state agency under a subaward. Under EPA's Subaward Policy, competition for subawards is not required unless a statute, regulation or the terms of an EPA award provide otherwise. States, however, may have their own subaward competition requirements.

Q. C. 3. A state agency is directed to use the state's hygienic lab for ambient air monitoring activities and does not require competitive bidding per their state code. Funds have been placed in the Contractual category. As they are following their laws, is it correct to place the funds in the Contractual category?

Yes, but only if state law characterizes such a transaction as a procurement contract rather than an interagency service agreement or similar arrangement. Under 2 CFR 200.317 EPA will defer to the state's procurement procedures and the funds could then be placed in the contractual budget category on the SF 424. If the state does characterize the transaction as a procurement contract then the state would be subject to the limited Federal requirements that apply to EPA funded state contracts. Please refer to Questions B. 3. and C. 1.

Q. C. 4. A State awards contracts to several firms for environmental consulting services. The terms of the State's contracts provide that the consultants may also provide services to municipalities in the state under the same terms as those the state has negotiated as long as the municipality agrees to pay the consulting fee. Does EPA require municipalities to conduct a competition prior to hiring a consultant that has a contract with the State?

No. EPA considers arrangements a state makes to procure services for municipalities to be intergovernmental agreements under 2 CFR 200.318(e). EPA defers to state procurement policies and procedures as required by 2 CFR 200.317. Note, however, that the consultant

fees charged to EPA grants must still be reasonable and comply with the limitations on EPA participation in compensation for individual consultants at 2 CFR 1500.9 and 69 Fed. Reg. 18380 (April 7, 2004). If the consultant charges fees on Federally funded projects that are higher than the state pays with its own funds then the costs may be questioned in an audit.

Q. C. 5. Is the \$10,000 micro-purchase threshold for one consultant over the life of the assistance agreement?

Not necessarily.

*** Recipients may purchase professional services non-competitively in amounts less than the \$10,000 micro-purchase threshold with the same consultant more than once during the life of the assistance agreement provided the recipient meets the requirement at 2 CFR 200.320(a) to distribute purchases equitably among qualified sources to the extent practicable.**

However, multiple micro-purchases from only one consultant throughout the performance period of the assistance agreement would raise serious doubts regarding the recipient's compliance with that requirement.

*** Consulting services are widely available in the commercial market-place so if the recipient needs additional consulting services it must make an effort to hire other consultants as well. Note that it may be more efficient for the recipient to use 2 CFR 200.320(b) small purchase procedures to obtaining proposals from an adequate number (at least 3) of sources for a contract up to the \$250,000 threshold rather than incur the transaction costs of multiple micro-purchases with different consultants.**

Q. C. 6. How does EPA interpret the requirement in 2 CFR 200.320(b) to obtain prices or quotes from “. . . an adequate number of qualified sources” for procurements at the \$250,000 small purchase threshold?

EPA has determined that if a recipient obtains prices or quotes from at least 3 qualified sources and fairly considers each quote during the contracting process, the requirements of 2 CFR 200.320(b) are satisfied. Note, however, if a recipient's own procurement policies require more than 3 prices or quotes the recipient must comply with those policies. Here are some examples of how a recipient could document compliance with 2 CFR 200.320(b).

- A recipient needs to hire a consultant to design a sampling protocol for a water quality study. The recipient's independent cost estimate indicates that the design services should cost less than \$250,000. In these circumstances, the recipient could send emails to three environmental consulting firms soliciting rate quotes, asking for a statement of qualifications, and requesting a project design proposal. The recipient should advise the firms that the contract would have a ceiling of less than \$250,000. Additionally, if the recipient does not select the consultant offering the lowest rates that decision must be justified on the basis of superior qualifications or technical factors.

- A recipient needs to purchase a piece of standard laboratory equipment that is available from a number of manufacturers. An internet search indicates that the catalogue price of the equipment is consistently less than \$250,000. The recipient could retain “screen shots” of three of the catalogue prices and purchase the item from the manufacturer offering the lowest price considering shipping and other incidental charges. A decision to purchase the item from a manufacturer charging a higher price would have to be justified by technical factors.

Q. C. 7. Are “sub-subrecipients” subject to the Procurement Standards in the Uniform Grant Guidance such as the requirement to obtain quotes from an adequate number of sources when contracting at the 2 CFR 200.320(b) \$250,000 simplified acquisition threshold?

Yes. All UGG requirements including the Procurement Standards “flow down” to subrecipients at every funding tier.

Q. C. 8. May pass-through entities provide subrecipients permission to enter into sole source contracts?

Yes. Under 2 CFR 200.320(f)(3) the pass-through entity has authority to approve sole source procurements by subrecipients. However, under 2 CFR 200.331(d) the pass-through entity is required to monitor the subrecipient to ensure that the subrecipient activities are in compliance with all applicable requirements, including procurement requirements. EPA may review a pass-through entity’s sole source approval procedures under 2 CFR 200.324(c)(1) to verify compliance with regulatory standards. The pass-through entity is accountable for ensuring that all sole source procurements by subrecipients are adequately justified and documented. If EPA’s OIG questions a subrecipient’s sole source procurement in an audit the agency may not support a pass-through entity’s position particularly if a subrecipient:

*** Has made a sole source contract to a consultant on retainer contract in violation of 2 CFR 200.319(a)(4),**

*** Contracts on a sole source basis for equipment or professional services that are widely available in the commercial marketplace, or,**

*** The price for the product or service is unreasonably high.**

Q. C. 9. A nonprofit pass-through entity provides subawards to small municipalities and community based organizations for implementation of watershed restoration projects. These subrecipients often lack the administrative infrastructure to conduct cost-effective competitions for environmental consulting and engineering services. What are the pass-through entity’s options to assist the subrecipients?

*** The pass-through entity could issue a solicitation under 2 CFR 200.319(d) to establish a list of pre-qualified consulting and engineering firms for the subrecipients to interview when services are needed. The number of firms on the pre-qualified list must be adequate**

to ensure open and free competition. The solicitation would need to remain open at least 30 days as provided in 40 CFR 33.301(b) and the pass-through entity should make the U.S. Small Business administration and the U.S. Minority Business Development Agency aware of the solicitation per 40 CFR 33.301(d). The subrecipients rather than the pass-through entity would be the contracting party with the firms and would pay them with subaward funds.

*** The pass-through entity could conduct a competition to hire one or more consulting and engineering firms and provide the services of these firms to subrecipients as “in-kind” assistance. The pass-through entity would be the contracting party with the firms and pay them directly.**

*** The pass-through entity could conduct a competition to hire one or more consulting and engineering firms for use in “inter-entity agreements” with the subrecipients as authorized by 2 CFR 200.318(e). The solicitation would need to remain open at least 30 days as provided in 40 CFR 33.301(b) and the pass-through entity should make the U.S. Small Business Administration and the U.S. Minority Business Development Agency aware of the solicitation per 40 CFR 33.301(d). Either the pass-through entity or the subrecipient would be the contracting party with the firms depending on the terms of the inter-entity agreement.**

Q. C. 10. Is the requirement for Federal Funding Accountability and Transparency Act (FFATA) reporting the same for subawards and procurement contracts entered into by recipients?

No. FFFATA reporting requirements apply to subawards provided by pass-through entities but not to procurement contracts recipients entered into with EPA funding. Please refer to the definition of “subaward” of the General T&C “Reporting Subawards and Executive Compensation”.

Q. C. 11. If a recipient has misclassified a procurement contract as a subaward what steps should the recipient take to rectify the situation? (4-7-16 Webinar)

See Question A. 35.

Q. C. 12. Similarly, if a recipient has an existing procurement contract with an entity that should have been monitored and managed as a subaward do we have to renegotiate the agreement with them? (4-7-16 Webinar)

Yes. See Question A. 36.

Q. C. 13. Does the recipient have to submit a budget modification to reflect the reclassification? (4-7-16 Webinar)

Yes. See Question A. 37.

Q. C. 14. May recipients or subrecipients enter into procurement contracts wholly or partially funded by EPA with non-Federal entities or individuals who are suspended, debarred or otherwise excluded (“excluded”) from participation in Federal financial assistance programs?

Not if the procurement contract equals or exceeds \$25,000 or requires EPA approval. Please refer to 2 CFR 200.220(b) and 2 CFR 1532.220. Note that this requirement extends to both prime contracts and all lower tiered subcontracts. Additional information regarding pass-through entities responsibilities to ensure that excluded entities do not participate in EPA financial assistance programs may be found in the General T&C “Suspension and Debarment” in the pass-through entity’s agreement with EPA.

Q. C. 15. How should a pass-through entity, recipient or subrecipient find out whether a potential procurement contractor or principal is suspended, debarred or otherwise excluded from participation in Federal financial assistance programs?

Pass-through entities and subrecipients may access suspension and debarment information at: <http://www.sam.gov>. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. Additional information regarding recipient and subrecipient responsibilities to ensure that excluded entities do not participate in EPA financial assistance programs may be found in the General T&C “Suspension and Debarment” in the pass-through entity’s agreement with EPA.

D. Transactions with Federal Agencies

Q. D 1. May an assistance agreement recipient use EPA funds for transactions with another Federal agency?

Maybe. If the Federal agency has statutory authority to provide services to non-Federal entities on a reimbursable basis or otherwise receive and use funds from non-Federal entities then assistance agreement recipients may finance these transactions with EPA funds. Examples of government-wide statutes that meet this criteria include the Intergovernmental Cooperation Act which allows Federal agencies to provide specialized services to state and local governments and the Federal Technology Transfer Act which authorizes Cooperative Research and Development Agreements. Some Federal agencies have unique statutory authority to provide services to non-Federal entities. EPA’s Project Officer or Grant Specialist will obtain a citation to the statute for EPA’s files.

Q. D. 2. Is the transaction between the recipient and the Federal Agency a subaward or a procurement contract for the purposes of the Uniform Grant Guidance?

It is neither. The transaction is governed by the terms of the relevant Federal statute and the instrument the Federal agency uses to establish its legal relationship with the recipient. EPA does not consider a Federal agency to be either a contractor or a subrecipient for the purposes of the UGG. Additional information regarding financial transactions between recipients and Federal agencies is available in Section 7.0(b) of EPA’s Subaward Policy.

Q. D. 3. If transactions between recipients and Federal agencies are not subawards or contracts, where do they go in the budget?

Recipients should include amounts budgeted for financial transactions with Federal agencies in the “other” budget category and include a separate line item for these transactions in their budget narrative. The UGG does require that recipients maintain financial records to support expending EPA funds for the transaction with the Federal agency so Grant Specialists should remind the recipient to properly account for payments made to the Federal agency.

E. Fixed amount subawards.

Q. E. 1. May pass-through entities enter into fixed amount subawards without EPA approval?

No. Under 2 CFR 200.332 and EPA’s “National Subaward Term and Condition” as implemented by the “Establishing and Managing Subawards” General T&C, pass-through entities must obtain prior approval from EPA before making subawards on a fixed amount basis. Fixed amount subawards do not require cost accounting; the subrecipient receives payment upon completion of milestones. EPA’s current policy is to approve fixed amount subawards on a pilot basis. Examples of fixed amount subawards that EPA will consider piloting are found in Section 9.0 of EPA’s Subaward Policy.

Q. E. 2. Will EPA consider approving fixed amount subawards for EPA grant programs that require a statutory or regulatory cost share?

Yes, provided the pass-through entity is otherwise able to meet its cost-share obligation with contributions verifiable through cost accounting records. A subrecipient’s contribution of in-kind services (directly or from a third party) to a fixed amount subaward would not meet this criteria because the subrecipient does not maintain cost accounting records. Examples of how a pass-through entity awarding fixed amount subawards could meet its cost share obligation under an assistance agreement with a mandatory cost share include:

- * Using its own funds for a portion of the fixed amount award provided the payments to the subrecipient are recorded in the pass-through entities accounting system as costshare.**
- * Personnel or contractor costs for overseeing subrecipient performance.**
- * Costs incurred for other allowable activities that the pass-through entity performs directly.**

Q. E. 3. Is there a maximum amount allowed for fixed amount subawards? (4-7-16 Webinar)

Yes. As provided at 2 CFR 200.332 the maximum amount of a fixed amount subawards is currently \$250,000. EPA adopted this ceiling in Section 9.0 (a) of the Subaward Policy with

the exception of fixed amount subawards for conference for support which are limited to \$25,000. Note that the \$250,000 maximum amount of fixed amount subawards in the UGG is tied to the simplified acquisition threshold for direct Federal procurements and is periodically adjusted for inflation.

Q. E. 4. Do all of the fixed amount subawards have to be the same fixed amount?

No. The amount of the fixed amount subaward should reflect the pass-through entities best estimate of the cost of the project taking into account the factors at 2 CFR 200.201(b)(1).

Q. E. 5. Are fixed amount transactions always subawards? (4-7-16 Webinar)

No. Recipients may enter into fixed amount procurement contracts when acquiring services. Please refer to 2 CFR 200.320(c). Fixed amount subawards are financial assistance transactions subject to the standards for differentiating between subrecipients and procurement contractors 2 CFR 200.330.

Q. E. 6. Should pass-through entities consult the Cost Principles in 2 CFR Part 200 Subpart E when negotiating fixed-amount subawards.

Yes. Although fixed amount subawards are not subject to cost accounting, 2 CFR 200.201(b)(1) provides that the Cost Principles may be used as a guide in negotiating fixed amount subawards. For example, a pass-through entity providing a fixed amount subaward to support a training conference should ensure that the budget for the subaward does not include funds for unallowable costs such as alcoholic beverages.

Q. E. 7. Wouldn't the fixed price examples specified in Section 9.0(a) of EPA's Subaward Policy be procurement contracts? (4-6-16 Webinar)

No. The examples of fixed amount subawards EPA specified would be structured to support to units of government, institutions of higher education, nonprofit organizations, students or post-doctoral fellows with financial assistance to carry out public purposes. None of the examples involve transactions with for profit firms or individual consultants to acquire professional services or products on commercial terms. Please refer to Appendix A of EPA's Subaward Policy.

F. Competition for Subawards.

Q. F. 1. May EPA programs require or encourage competition for subawards?

Yes. Although the Uniform Grant Guidance does not require pass-through entities to select subrecipients competitively, Section 10.0(a) of EPA's Subaward Policy provides that agency programs may require competition for subawards. Competition requirements must be communicated to recipients in EPA competitive announcements (if applicable) and programmatic terms and conditions. Programs may also encourage competition for subawards through program specific guidance to pass-through entities as authorized by

Sections 8.0(j) and 15.0(b)(9) of the Subaward Policy. Guidance encouraging subaward competitions issued prior to the March 29, 2016 effective date of the Subaward Policy remains in effect.

Q. F. 2. If a state has regulations or policies requiring competitive selection of subrecipients, will EPA allow the state to make subawards competitively?

Yes, provided a Federal statute, regulation or the terms of EPA's agreement do not expressly prohibit selection of subrecipients competitively. Section 10.0 of EPA's Subaward Policy provides that pass-through entities may choose to make subawards competitively in the absence of a superseding Federal policy.

Q. F. 3. Are EPA personnel allowed to sit on a subaward selection panel?

Yes, but only if the requirements specified in Section 10(b)(2) or (3) in EPA's Subaward Policy (below) are met. Note that EPA participation in selection panels is only authorized under cooperative agreements.

(2) Participation as Technical Advisors. EPA personnel may serve as technical advisors to a pass-through entity's subaward evaluation panel as part of EPA's substantial involvement in a cooperative agreement provided that they do not unduly influence the panel or selection decisions and are free of any conflicts of interest, and actual or apparent violations ethical standards (*e.g.*, Office of Government Ethics (OGE) Standards of Ethical Conduct for Employees of the Executive Branch), with respect to any competing subrecipients.

(3) Participation on Evaluation Panels. For subaward competitions conducted by pass-through entities under cooperative agreements, EPA personnel may serve as members of the recipient's subaward evaluation panel provided:

a. The pass-through entity uses objective, transparent criteria to rank and select subrecipients.

b. EPA and other Federal agency personnel do not unduly influence the panel or selection decisions (*e.g.*, Federal employees must comprise substantially less than a majority of the panel).

c. EPA employees are free of conflicts of interest, or actual or apparent violations of ethical standards (*e.g.*, OGE Standards of Ethical Conduct for Employees of the Executive Branch), with respect to any competing subrecipients.

G. EPA Oversight.

Note: For the purposes of these questions, the term “Appendix B” refers to Appendix B of EPA’s Subaward Policy, “National Subaward Term and Condition” which is implemented by the “Establishing and Managing Subawards” General T&C.

Q. G. 1. If an award is amended due to a change of work plan scope, but there is no addition of funding, would the new Subaward Policy apply?

No. Section 2.0 of the Subaward Policy provides that the policy only applies to assistance agreements in effect prior to March 29, 2016 when EPA adds either incremental or supplemental funding. Note that a pass-through entity may voluntarily agree to be subject to all or part of the Subaward Policy (e.g. fixed amount subawards) when an assistance is amended otherwise.

Q. G. 2. Do pass-through entities always send their proposed subaward agreements to EPA for approval?

No. There is no requirement in the subaward term and condition (Appendix B) for a pass-through entity to send subaward agreements to EPA for approval.

*** On a case by case basis EPA could obtain copies of the agreements under the access to records provision, 2 CFR 200.336. Also, if EPA awarded the pass-through entity a cooperative agreement the Project Officer could require that the recipient submit the substantive terms of the subaward agreement to EPA for approval. Please refer to Section 8.0 (g) of the Subaward Policy.**

*** EPA has provided pass-through entities with a template for pass-through entities to use (Appendix D of the Subaward Policy) that meets the requirements of 2 CFR 200.331(a) but use of that template is not mandatory. Pass-through entities may use their own forms for subawards as long as the regulatory requirements are met.**

Q. G. 3. Does EPA interpret 2 CFR 200.308(c)(vi) and Appendix B to require pass-through entities to obtain prior EPA approval by the Award Official for each subaward if the pass-through entity’s assistance agreement does not name the subrecipients?

No. If the pass-through entity described the types of subawards it intends to make in the EPA scope of work and included the aggregate amount of funding budgeted for subawards in a line item under the “other” budget category then prior EPA approval for particular subawards is not necessary. Prior approval would be necessary if the pass-through entity significantly changes the types of activities it intends to support through subawards or decides not to make subawards at all. EPA will determine on a case by case basis whether the changes are significant enough to alter the scope or objectives of the project such that a formal amendment under 2 CFR 200.308(c)(1)(i) is necessary.

Q. G. 4. If the pass-through entity has named a subrecipient as a “partner” in a successful competitive funding application then following award of the EPA assistance agreement decides

to make a subaward to a different subrecipient is prior EPA approval of EPA's Award Official required under 2 CFR 200.308(c)(vi) and Appendix B?

Yes, if any the following circumstances or similar ones are present:

- The pass-through entity described the original subrecipient's qualifications and/or performance history in the competitive application in response to an EPA selection criteria. EPA approval will be necessary to ensure that the "new" subrecipient is an eligible subrecipient with comparable qualifications.

Or

-The "new" subrecipient will carry out a program or project that is different than the one the pass-through entity described in the application for the original subrecipient. EPA approval would be necessary to ensure that the "new" subrecipient as well as the subrecipient's program or project is eligible for funding under the statute/regulation authorizing the pass-through entity's assistance agreement, any program policy limits described in the competitive announcement, and that the different program or project is not a material change to the scope of work for the assistance agreement. In the absence of unforeseen circumstances that render performance impossible, EPA is unlikely to approve material changes to scopes of work for competitively awarded assistance agreements.

Q. G. 5. If a pass-through entity names subrecipients in an application for noncompetitive funding but decides to provide subawards to different subrecipients after award of the EPA assistance agreement is prior EPA approval by the EPA Award Official required under 2 CFR 200.308(c)(vi) and Appendix B?

Yes, but only if the "new" subrecipients will carry out programs or projects that are significantly different than the ones the pass-through entity described for the original subrecipients. EPA approval would be necessary to ensure that the "new" subrecipients and their programs or projects are eligible for funding under the statute/regulation authorizing the pass-through entity's assistance agreement as well as any program policy limits described in program guidance. EPA will determine on a case by case basis whether the changes are significant enough to alter the scope or objectives of the project such that a formal amendment under 2 CFR 200.308(c)(1)(i) is necessary.

Q. G. 6. Are there unique prior approval requirements for subawards to foreign or international organizations?

Yes. Appendix B requires that pass-through entities work with EPA's Project Officer to obtain the consent of EPA's Office of International and Tribal Affairs ". . . prior to awarding a subaward to a foreign or international organization, or a subaward to be performed in a foreign country even if that subaward is described in a proposed scope of work."

Q. G. 7. Do EPA assistance agreement recipients need to include the financial information from their subrecipients in their reports to the EPA, broken out by cost category (ex. Personnel, Travel, Equipment, Supplies, etc.)?

No. If EPA’s agreement with the pass-through entity contains the standard subaward reporting condition (Appendix C of the Subaward Policy) the pass-through entity only needs to provide summaries of its reviews of the financial information obtained from subrecipients. Summaries would not include detailed financial information on subrecipient expenditure by cost categories. The summaries should, however, address total expenditures by each subrecipient, in order for EPA to effectively evaluate progress towards achieving the objectives of the assistance agreement.

H. Subrecipient Management and Monitoring.

Q H.1. Are states subject to the UGG requirements for Subrecipient Monitoring and Management when they are pass-through entities?

Yes. Unlike prior regulations (40 CFR 31.37(a)) the UGG does not allow states to follow their own laws and procedures when awarding and administering subawards. All pass-through entities must comply with 2 CFR 200.331 and other applicable provisions of the UGG.

Q. H. 2. Does EPA have any training available addressing risk assessments, the requirements, and acceptable assessment documentation to assist State pass-through entities comply with 2 CFR 200.331?

Yes, the training EPA developed on the Subaward Policy addresses pass-through entity responsibilities to assess non-compliance risks posed by subrecipients. The Uniform Grant Guidance (UGG) includes information on subrecipient risk assessment and monitoring also at 2 CFR 200.331. The EPA Subaward Policy training was delivered via webinars in April 2016 and both the slides and recorded versions of the webinars are available to States and other pass-through entities can be viewed online at <https://www.epa.gov/grants/epa-subaward-policy-additional-resources>.

The training essentially parallels the UGG but also highlights EPA’s position that pass-through entities must have “systems in place” to adequately assess subrecipient risks and monitor subrecipient compliance with applicable requirements. EPA took the “systems in place” approach to afford pass-through entities with flexibility to design their own approaches to subrecipient management that reflected resource availability as well as the program specific requirements. We did not, and do not, believe that it is appropriate to impose detailed requirements on pass-through entities that go beyond the provisions of 2 CFR 200.331 unless there are reasons in a particular case for imposing specific conditions under 2 CFR 200.207.

Q. H. 3. Once the assessment is completed on a subrecipient, is it required annually or once per agreement?

Neither the UGG nor EPA’s Subaward Policy prescribes the frequency of subrecipient risk assessments. Pass-through entities should exercise judgment on the frequency of risk assessments based on the factors described at 2 CFR 200.331(b). EPA recommends that as a minimum pass-through entities conduct risk assessment prior to making the initial subaward, document the results of that assessment in writing, and then require the subrecipient to inform the pass-through entity of the results of any subsequent audits or other reviews of the subrecipients financial management or performance. The pass-through entity should establish a 2 CFR 200.331(d) and (e) monitoring protocol based on the initial risk assessment. If the risk assessment warrants, the pass-through entity may impose 2 CFR 200.331(c) specific conditions (e.g. paying the subrecipient on a reimbursement basis following review of cost documentation) as resources permit.

Pass-through entities for EPA programs with substantial subaward components such as Clean Water Act 319 and Brownfields Revolving Loans should consult national program guidance and the programmatic terms and conditions of their agreements for additional information.

Q. H-4 How should pass-through entities handle the financial exchange between themselves and their subrecipients? Does the pass-through entity handle subawards based on deliverables? For example, do the subrecipients submit a dollar amount that their project activities cost them, and the grantee reimburses them accordingly? Is there a breakdown of a budget (Personnel, Travel, Supplies)—similar to our SF424A? In other words, can the pass-through entity pay the subrecipients fixed amounts based on deliverables, in advance or on a cost reimbursement basis?

Q. H. 5 Is EPA aware of an acceptable risk assessment format that is recommended for all federal grants?

No. We checked OMB’s Frequent Questions on the UGG as well as the preamble to the December 26, 2013 proposed rule for the UGG and did not identify a risk assessment format that can be used for all Federal awards.

These are complicated questions.

- Under 2 CFR 200.332 and section 9.0 of the Subaward Policy, pass through entities may fund subawards in fixed amounts up to \$250,000 that compensate subrecipients based on completion of deliverables. EPA must provide prior approval. EPA’s Office of Grants and Debarment will authorize program offices to approve fixed amount subawards on a pilot basis. Pass-through entities interested in piloting fixed amount subawards should contact their project officer. Additional information on fixed amount subawards is available in Section E of these Frequent questions.

- As a general matter if a subaward is not for a fixed amount, the pass-through entity must pay the subrecipient in advance, provided the subrecipient has financial management systems in place that minimize the time elapsed between payment and disbursement of

funds by subrecipients (2 CFR 200.305(b)(1)). Pass-through entities may use the 2 CFR 200.305(b)(3) reimbursement method to pay subrecipients if:

- * the subrecipient cannot meet “minimize the time elapsed” between payment and disbursement requirement. EPA recommends that pass-through entities require subrecipients to disburse funds within 5 working days of receipt of payment unless the pass-through entity approves a longer disbursement period based on extraordinary circumstances.
 - * the subrecipient requests payment on a reimbursement basis, or
 - * the pass-through entity decides under 2 CFR 200.331(c) that use of the reimbursement method is prudent based on its assessment of the risks of regulatory noncompliance (e.g. incurring unallowable costs) by the subrecipient.
 - * the pass-through entity must reimburse the subrecipient within 30 days of receiving a reimbursement request unless it appears that payment would be improper. 2 CFR 200.305(b)(3).
- There is no regulatory requirement in 2 CFR 200.331(a) for pass-through entities to use the SF 424-A budget categories in subaward agreements. EPA’s Subaward Policy provides that pass-through entities include a line item for subawards in the Budget Narrative for the “Other” budget category in the pass-through entity’s agreement with EPA. Recipients need not provide EPA with budget information based on estimates of subrecipient costs for personnel, contracts, travel etc. Therefore, it is up to pass-through entities to decide what subaward budget formats are appropriate for them to effectively monitor subrecipient expenditures.

I. Miscellaneous Questions.

Q. I. 1. Will there be training for EPA financial assistance recipients on EPA’s Subaward Policy?

Yes. EPA conducted webinars on the Subaward Policy specifically designed for recipients in April 2016. A recorded version of one of the webinars is available at [EPA Subaward Policy Training Webinar for Recipients](#).

