

Using Contractors in the HUD CoC and ESG Programs

Overview

Recipients and subrecipients under the Emergency Solutions Grants (ESG) Program and Continuum of Care (CoC) Programs may procure contractors to implement eligible program activities. However, when selecting a contractor, the recipient/subrecipient must follow federal procurement requirements. See “Procurement Requirements” section below for more information.

This document is intended only as a summary of certain relevant federal regulations. Recipients and subrecipients are responsible for adhering to all applicable federal and state regulations.

What is the difference between a contractor and subrecipient?

Key distinctions between subrecipients (including sub-subrecipients) and contractors are described below:

Subrecipient

- May exercise discretion in making program decisions and carrying out program activities.
- For-profit entities are not eligible to be subrecipients of grant funds.
- *The McKinney-Vento Homeless Assistance Act* and the program regulations impose specific restrictions and responsibilities on subrecipients, and each subrecipient must comply with those restrictions and responsibilities.
- These characteristics are indicative of a subrecipient: 1)Makes eligibility determinations 2)Accountable for meeting HUD-defined performance measures 3)Responsible for programmatic decision-making 4) Responsible for adhering to applicable requirements of program regulations and grant agreement 5) Uses funds for a public purpose specified in the Act (e.g. to benefit homeless/at-risk people) vs. for the benefit of a recipient/subrecipient.

Contractor

- May **not** exercise discretion in making program decisions and carrying out program activities.
- Allocating funds to any for-profit organization must be done through procurement of the organization as a contractor.
- Responsible for complying only with those requirements and conducting those activities specified in their contract; contract should specify applicable requirements.
- These characteristics are indicative of a contractor: 1)Provides the goods/ services within normal business operations 2)Provides similar goods/ services to many different purchasers 3)Operates in a competitive environment 4) Provides goods/ services that are ancillary to CoC/ESG programs 5)Is accountable to the terms of the contract rather than the CoC/ESG program requirements.

Not all characteristics will be present in every situation, and HUD expects recipients/subrecipients to use their best judgment in determining whether an entity is a subrecipient or contractor. A single entity could serve as a contractor in some situations and a subrecipient in others.



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Example for Classifying Subrecipients and Contractors

An organization that provides **rental assistance** would be:

A **contractor**—if the organization’s sole responsibility is to write and mail rent checks to landlords for program participants on whose behalf rental assistance is paid under the ESG or CoC Program. This is because the organization is hired and paid to complete a single task and has no other authority.

A **subrecipient**— if it is operating a Rapid Re-housing project on behalf of the recipient, and the recipient provides the subrecipient with the authority to make decisions about items such as: project design; eligibility requirements for the project; conducting its own intakes and assessments; and writing its own rent checks to landlords or contracting out for that service. This is because the recipient has given full decision-making authority regarding the project design to the subrecipient.

An organization that provides **CoC Planning services** would be:

A **contractor**—if the organization is a for-profit firm, does not have discretion to make decisions regarding CoC policy and processes, is responsible only for executing decisions made by the CoC Board or Collaborative Applicant and/or is accountable only for delivering services as per the terms of their contract. Examples might include contractors hired to: plan, facilitate, and document CoC meetings, provide training to CoC Board members, recipients, or subrecipients, administer the CoC Renewal Evaluation process, assist in writing the CoC application and/or make recommendations to the CoC Board regarding Coordinated Entry System design.

A **subrecipient**— if it is operating a Coordinated Entry project on behalf of the recipient, and the recipient provides the subrecipient with the authority to make decisions about items such as: system design; eligibility requirements; prioritization criteria; and assessment protocols. This is because the recipient has given full decision-making authority regarding the project design to the subrecipient.

Who is responsible for grant administration and oversight?

In all cases, **recipients** have responsibility to HUD for the grant, and HUD ultimately holds the recipient accountable if a subrecipient or a contractor uses funds in violation of program requirements. The recipient is prohibited from assigning certain administrative responsibilities and functions to either subrecipients or contractors. For example:

- The recipient must be the entity that signs the grant agreement with HUD; and
- The recipient must maintain oversight over the funds and activities.

Procurement Requirements

Federal awards made after 12/26/14¹ are subject to 2 CFR 200. When a non-profit recipient or subrecipient purchases property or services needed to carry out a project or program under a Federal award, that recipient/subrecipient must, for example:²

- use its own documented procurement procedures, which should be compliant with State, local, and federal laws and standards;
- maintain oversight to ensure that the contractors perform in accordance with the terms and conditions specified in contracts or purchase orders;

¹ For awards made prior to 12/26/14 see 24 CFR part 84 (nonprofit organizations); or

24 CFR part 85 (government entities).

² For a complete description of requirements, including those pertaining to States and instrumentalities, see 2 CFR part 200.



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- maintain written standards of conduct covering conflicts of interest;
- avoid acquisition of unnecessary or duplicative items and determine the most economical approach;
- award contracts only to responsible contractors possessing the ability to perform successfully;
- maintain records sufficient to detail the history of procurement, including rationale for the method of procurement, selection of contract type, contractor selection/rejection, and basis for the price;
- determine that no other contract is suitable, include a ceiling price, and comply with other requirements outlined in the regulation if using a time and materials type contract;
- alone be responsible for all contractual and administrative issues arising out of procurements;
- conduct all procurement transactions in a manner providing full and open competition consistent with federal requirements;
- conduct procurements in a manner that prohibits use of geographical preferences except when mandated by Federal statute;
- have written procedures for procurement transactions that are consistent with Federal requirements;
- use one of the following methods of procurement: procurement by micro-purchases (does not require solicitation of competitive quotes), procurement by small purchase procedures (price or rate quotations must be secured from an adequate number of qualified sources), procurement by sealed bid (bids are publicly solicited and a firm and fixed price contract is awarded to the responsible lowest bidder whose bid conforms with all terms and conditions of the bid invitation) procurement by competitive proposal (used when conditions are not appropriate for the preferred sealed bid method), procurement by non-competitive proposal (sole source bids are only allowable under certain conditions defined in the regulations);
- take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible;
- perform a cost or price analysis for every procurement action, including contract modifications, in excess of the Simplified Acquisition Threshold (i.e. the dollar amount below which the recipient/subrecipient may purchase property or services using the small purchase method; the threshold is set by the federal government and adjusted periodically and was \$150K as of July 2015)
- make available, upon request of the Federal awarding agency or pass-through entity, certain specifications and documents; and
- use contracts that contain certain required provisions.
- Use of shared services, common or shared goods and services, Federal excess and surplus property and other cost saving measures are encouraged.
- Except as authorized by statute, costs must be: necessary, reasonable, adequately documented, allocable under the Federal award, conform with Federal limitations and exclusions in terms of type/amount/cost, consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the recipient/subrecipient, in accordance with generally accepted accounting principles. Costs must not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program. Direct costs may not assigned to the Federal award if it has been allocated as an indirect cost.



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Related Resources

For more information see the Uniform Administrative Requirements at 24 CFR parts 84 and 85, 2 CFR part 200, the ESG Program Interim Rule at 24 CFR part 576, the CoC Program Interim Rule at 24 CFR part 578, and the NOFA under which your contract was awarded. Current Electronic Code of Federal Regulations available at www.ecfr.gov. Current and past CoC Program NOFAs available at www.hudexchange.info

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