

Subaward, Subcontract, Professional Service Agreements, and Flow-through (pass-through) Indirect Cost Rate Determinations

The classification of subawards, subcontracts, and professional service agreements is a difficult topic to address because it cannot be applied universally. The Uniform Guidance states the determining factor [in 2 CFR §200.331 Subrecipient and contractor determinations](#) , “In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, **the substance of the relationship is more important than the form of the agreement.**” The chart below was derived from the Uniform Guidance:

<u>Relationship Substance</u>	<u>Subaward</u>	<u>Subcontract</u>	<u>Professional Services</u>	<u>Flow-through (Pass-through)</u>
<u>Definition</u>	A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See 2 C.F.R. § 200.1 Subaward.	A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See 2 C.F.R. §200.1 Contract.	Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity, are allowable, subject to paragraphs (b) and (c) when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. See 2 C.F.R. § 200.459 Professional service costs.	Flow-through (passthrough) costs are excluded from the indirect cost rate calculation with approval from the cognizant agency for indirect costs. See 2 C.F.R. § 200.1 Modified Total Direct Cost
<u>Characteristics</u>	<p>(1) Determines who is eligible to receive what Federal assistance;</p> <p>(2) Has its performance measured in relation to whether objectives of a Federal program were met;</p> <p>(3) Has responsibility for programmatic decision making;</p> <p>(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and</p> <p>(5) Implements a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.</p>	<p>(1) Provides the goods and services within normal business operations;</p> <p>(2) Provides similar goods or services to many different purchasers;</p> <p>(3) Normally operates in a competitive environment;</p> <p>(4) Provides goods or services that are ancillary to the operation of the Federal program; and</p> <p>(5) Is not subject to compliance requirements of a Federal program as a result of the agreement. However, similar requirements may apply for other reasons..</p>	<p>(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:</p> <p>(1) The nature and scope of the service rendered in relation to the service required.</p> <p>(2) The necessity of contracting for the service, considering the non-Federal entity's capability in the particular area.</p> <p>(3) The past pattern of such costs, particularly in the years prior to Federal awards.</p> <p>(4) The impact of Federal awards on the non-Federal entity's business (i.e., what new problems have arisen).</p> <p>(5) Whether the proportion of Federal work to the non-Federal entity's total business is such as to influence the non-Federal entity in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.</p> <p>(6) Whether the service can be performed more economically by direct employment rather than contracting.</p> <p>(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.</p> <p>(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).</p> <p>(c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.</p>	<p>(1) Non-federal entity acts as a conduit of grant funds which “flow through” to other entities. In such cases, the activities supported by the funds generally require minimal administrative benefit.</p> <p>(2) If the flow-through (pass-through) funding were included in the indirect cost rate calculation, they would distort the calculation.</p>
<u>Treatment</u>	Generally, subject up to \$50,000 included in the 2 CFR §200.1 Modified Total Direct Cost base (excluding payments in excess) or the negotiated threshold approved by the cognizant agency for indirect costs. (outsourcing action)	Generally, subject to up to \$50,000 included in the 2 CFR §200.1 Modified Total Direct Cost base (excluding payments in excess) or the negotiated threshold approved by the cognizant agency for indirect costs. (outsourcing action)	Generally, not subject to exclusion of amounts over \$50,000 when providing an auxiliary expertise normally provided in-house. (insourcing action)	Generally, excluded from the direct cost base with approval from the cognizant agency for indirect costs.