

Spotsylvania County

Grant Subcontracting and Subrecipient Policy

Introduction

This policy is designed to ensure programmatic and fiscal compliance for all grant funds subcontracted and subawarded by Spotsylvania County. The County is committed to utilizing grant funds for the greatest allowable public benefit while ensuring that appropriate internal controls are established and followed to safeguard these funds. It is the responsibility of all Constitutional Officers and County Department Heads that expend grant funds for subcontracts and subawards to adhere to this policy. The County Administrator will oversee the implementation of this policy.

Regulating Authorities

The Spotsylvania County Grant Subcontracting and Subrecipient Policy is intended to supplement, and not supplant or replace other policies and procedures that have been adopted by the Spotsylvania County Board of Supervisors. In those instances, where there may be a conflict between two or more policies, the most restrictive policy will be adhered to. Please contact the County's Grants Manager if additional assistance is needed in making this determination.

As a recipient of federal grants, Spotsylvania County will adhere to the regulations contained at 2 C.F.R. Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (referred to as the Uniform Guidance), in addition to all other applicable statutes, rules, regulations, executive orders, directives or other laws, including all laws presently in effect and as may be amended or otherwise altered during the grant's period of performance. The most recent version of the Uniform Guidance can be accessed at: <https://gov.ecfr.io/cgi-bin/ECFR> and by selecting "Title 2 – Grants and Agreements" from the dropdown list.

County Business Relationships

Legal Requirement: 2 C.F.R. §200.330 Subrecipient and contractor determinations.

Oftentimes County projects involve relationships with contractors, consultants, and subrecipients. When the County intends to utilize grant funds with these other entities, the County has the responsibility of determining whether any given arrangement constitutes a subaward, which will require the parties to enter into a written subaward agreement, or a contractor agreement for goods and services, whereupon the parties enter a procurement

contract. Determining the parties' accurate relationship is essential to ensure appropriate accounting for costs and meeting associated compliance requirements. Misclassification may result in subaward processing delays, ineligible costs, and additional time to request and secure grantor approval for project changes.

When federal funds are expended, it is important that subrecipients and contractors be defined accurately, as there are specific requirements that the County must comply with based on the designation in accordance with 2 C.F.R. §200.330. Accurate classification of subrecipients and contractors is critical to a program's success and integrity. It is the responsibility of the Constitutional Officer or County Department Head expending grant funds to determine the relationship that will be established.

Subrecipient Classification

A subaward is issued to subrecipients for the purpose of carrying out a portion of a federal award and creates a federal assistance relationship with the subrecipient. Characteristics which support the classification of the non-federal entity as a subrecipient include when the non-Federal entity:

1. Determines who is eligible to receive what federal assistance;
2. Has its performance measured in relation to whether objectives of a federal program were met;
3. Has responsibility for programmatic decision making;
4. Is responsible for adherence to applicable federal program requirements specified in the federal award; and
5. In accordance with its agreement, uses the federal funds to carry out 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.

In circumstances where the County issues a subaward to another entity, the County may also be referred to as the pass-through entity.

Contractor Classification

A contract is issued for the purpose of obtaining goods and services for the non-federal entity's own use and creates a procurement relationship with the contractor as specified in 2 C.F.R. §200.22. Characteristics indicative of a procurement relationship between the non-federal entity and a contractor are when the contractor:

1. Provides the goods and services within normal business operations;
2. Provides similar goods or services to many different purchasers;
3. Normally operates in a competitive environment;

4. Provides goods or services that are ancillary to the operation of the federal program; and
5. Is not subject to compliance requirements of the federal program as a result of the agreement, though similar requirements may apply for other reasons.

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. All of the characteristics listed above may not be present in all cases, and the County must use judgment in classifying each agreement as a subaward or procurement contract. When the relationship is that of a contractor, then the Spotsylvania County Procurement Policy must be adhered to in conjunction with any additional requirements that may be imposed by the grant agreement.

Procurement and Suspension and Debarment

The County and its subrecipients shall not award grant funds to entities that are debarred, suspended, otherwise excluded from, or ineligible for participation in federal assistance programs under Executive Order 12549. It is the responsibility of the Constitutional Office or County Department that will be expending grant funds to ensure that any potential contractor or subcontractor or subawardee that will be funded through a grant award is not prohibited from receiving federal or state funds due to suspension or debarment. A person or entity debarred or suspended is excluded from financial and non-financial assistance and benefits under federal programs and activities.

The Constitutional Officer or County Department Head must ensure and document that the following sites are checked prior to entering into any contractual relationship or use of services with grant funds as follows:

1. The System for Award Management (SAM) is the official federal system that consolidated the capabilities of CCR/FedReg, ORCA, and the Excluded Parties List System and is accessed at: <https://sam.gov/SAM/pages/public/searchRecords/search.jsf>
2. The Virginia Department of General Services Suspension and Debarment List is accessed at: <https://dgs.virginia.gov/procurement/resources/debarment--suspension-list/>
3. The List of Excluded Individuals and Entities (LEIE) is maintained by the U.S. Department of Health and Human Services Office of Inspector General. These individuals and entities are excluded from providing services for federally funded health care programs. It is accessed at: <https://exclusions.oig.hhs.gov/>

Subawards

Legal Requirement: 2 C.F.R. §200.331 Requirements for pass-through entities.

When the relationship is that of a subrecipient, the County shall secure prior approval from the grantor prior to issuance of a subaward. The Constitutional Officer or County Department Head

will work with the County's Grants Manager in securing this approval. Once approval is secured, the County must issue a subaward in accordance with 2 C.F.R. §200.331. The subaward must contain the following components:

1. Federal Award Identification consisting of:
 - a. Subrecipient name (which must match the name associated with its unique entity identifier);
 - b. Subrecipient's unique entity identifier which is the nine digit DUNS number issued by Dun & Bradstreet to identify entities receiving federal funds;
 - c. Federal Award Identification Number (FAIN);
 - d. Federal Award Date which is the date of the grant award to the County by the grantor;
 - e. Subaward Period of Performance Start and End Date;
 - f. Amount of federal funds obligated by the current subaward by the County to the subrecipient;
 - g. Total Amount of Federal Funds Obligated to the subrecipient by the County including the current obligation;
 - h. Total amount of the federal award committed to the subrecipient by the County;
 - i. Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
 - j. Name of federal awarding agency, pass-through entity, and contact information for awarding official of the County;
 - k. Catalog of Federal Domestic Assistance (CFDA) Number and Program Name; the County must identify the dollar amount made available under each federal award and the CFDA number at time of disbursement;
 - l. Identification of whether the award funds Research and Development; and
 - m. Indirect cost rate for the federal award (including if the de minimis rate is charged per 2 C.F.R. §200.414.
2. Requirements imposed by the County on the subrecipient so that the federal award is used in accordance with federal statutes, regulations and the terms and conditions of the federal award;
3. Any additional requirements that the County imposes on the subrecipient in order for the County to meet its own responsibility to the grantor including identification of any required financial and performance reports;
4. An approved federally recognized indirect cost rate negotiated between the subrecipient and the federal government or, if no such rate exists, either a rate negotiated between the County and the subrecipient (in compliance with 2 C.F.R. §200.331), or a de minimis indirect cost rate as defined in 2 C.F.R. §200.414 Indirect costs, paragraph (f);
5. A requirement that the subrecipient permit the County, auditors, and other authorized personnel to have access to the subrecipient's records and financial statements as necessary for the County to meet the requirements of 2 C.F.R. §331; and
6. Appropriate terms and conditions concerning closeout of the subaward.

The issuance of a subaward will require the approval of the Spotsylvania County Board of Supervisors. In order to secure this approval, the draft subaward must be reviewed and recommended by the County's Grants Manager, County Attorney's Office, County Administration, and the Finance Committee.

Federal Funding Accountability and Transparency Act (FFATA)

Legal Requirement: Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282); as amended by the Government Funding Transparency Act of 2008 (Public Law 110-252)

The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is located at www.USASpending.gov. As of October 1, 2010, all federal subawards of \$25,000 and over are subject to the FFATA subaward reporting requirements. Prime awardees are required to upload the subrecipient information in the FFATA Sub-Award Reporting System (FSRS) located at: <https://www.fsrc.gov/index> Subrecipients must maintain an active registration in the System for Award Management (SAM) in order to receive federal funding.

Per the Act, a prime awardee must provide:

1. The prime awardee DUNS number and the DUNS number of any sub-awardee(s).
2. The names and total compensation of the five most highly compensated officers of a prime or sub-awardee entity, if the entity in the preceding fiscal year: (1) Received 80 percent or more of its annual gross revenues in federal awards and \$25,000,000 or more in annual gross revenues from federal awards; and (2) the public does not have access to this information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or Section 6104 of the Internal Revenue Code of 1986. See § 2(b)(1).

The County's Grants Manager shall upload the required information in the FSRS for all applicable subaward obligations in the amount of \$25,000 or more no later than the 20th of each month following the month that the subaward was executed.

Subrecipient Risk Assessment

In consultation with the County's Grants Manager, the Constitutional Officer or County Department Head expending grant funds shall evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring level in accordance with 2 C.F.R. §200.331. Factors that will be utilized to determine the subrecipient's risk level will include:

1. The subrecipient's prior experience with the same or similar subawards;
2. The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with 2 C.F.R. §200 Subpart F—Audit Requirements, and the extent to which the same or similar subaward has been audited as a major program;
3. Whether the subrecipient has new personnel or new or substantially changed systems; and
4. The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

A subrecipient's risk level may be adjusted based on additional information that the County is made aware of, including results of other grant monitoring from other entities, financial instability, results from previous site visits, recurring or unresolved issues, concerns about internal controls, financial management issues, and timeliness of reporting.

Special Subaward Conditions

The County may impose additional specific subaward conditions on the subrecipient under the following circumstances:

1. When the subrecipient has a history of failure to comply with the general or specific terms and conditions of a grant award;
2. When the subrecipient fails to meet expected performance goals contained in a grant award; or
3. When the subrecipient is not otherwise responsible.

Some of the additional conditions that may be imposed include the following:

1. Requiring that payments be issued as reimbursements rather than advance payments;
2. Withholding authority to proceed to the next phase of the project until receipt of evidence of acceptable performance within a given period of performance;
3. Requiring additional, more detailed financial reports and supporting documentation;
4. Requiring additional project monitoring;
5. Requiring the subrecipient to obtain technical or management assistance; or
6. Establishing additional prior approvals.

In the event that special conditions are imposed, the County must notify the subrecipient in writing as to:

1. The nature of the additional requirements;
2. The reason why the additional requirements are being imposed;
3. The nature of the action needed to remove the additional requirement, if applicable;
4. The time allowed for completing the actions if applicable, and
5. The method for requesting reconsideration of the additional requirements imposed.

The County will promptly remove any specific subaward conditions once the circumstances prompting them have been corrected.

Subrecipient Monitoring

In addition to assessing the subrecipient's risk level, the Constitutional Officer or County Department Head responsible for the grant funds will monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, that the subrecipient is in compliance with federal statutes, regulations, and the terms and conditions of the subaward, and that the subaward performance goals are achieved. Subrecipient monitoring shall include:

1. Reviewing financial and performance reports required to comply with the federal award;
2. Following-up and ensuring the subrecipient takes timely and appropriate action on all deficiencies detected through audits, on-site reviews, and other means pertaining to the federal award; and
3. Issuing a management decision for audit findings pertaining to the federal award provided to the subrecipient in consultation with applicable staff from the County's Finance Department. Management decisions must adhere to requirements as identified in 2 C.F.R. §200.521.

The County may utilize the following monitoring tools to ensure proper accountability and compliance with program requirements and achievement of performance goals:

1. Providing subrecipients with training and technical assistance on program-related matters; and
2. Performing on-site reviews of the subrecipient's program operations;
3. Arranging for agreed-upon-procedures engagements as described in 2 C.F.R. §200.425 Audit services.

When it is expected that the total amount of all federal awards the subrecipient expends during the respective fiscal year equals or exceeds the threshold, as set forth in 2 C.F.R. §200.501, the Constitutional Officer or County Department Head responsible for the grant funds shall verify that the subrecipient is audited as required by 2 C.F.R. Subpart F—Audit Requirements.

After consultation with the County's Grants Manager, Constitutional Officer or County Department Head responsible for the grant funds must consider whether the results of the subrecipient's audit(s), on-site reviews, or other monitoring indicate conditions necessitating adjustments to the County's records or monitoring procedures.

Noncompliant Subrecipients

Legal Requirement: 2 C.F.R. §200.338 Remedies for noncompliance.

The County must consider taking enforcement action against noncompliant subrecipients as described in 2 C.F.R. §200.338. If the County determines noncompliance cannot be remedied by imposing additional conditions, it may take one or more of the following actions, as appropriate for the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency;
2. Disallow all or part of the cost of the activity or action not in compliance;
3. Wholly or partly suspend or terminate the federal award;
4. Recommend to the federal grantor that suspension or debarment proceedings of the subrecipient should be initiated;
5. Withhold further federal awards for the project or program; or
6. Take other remedies that may be legally available.

Permission to impose any of the above listed actions for non-compliance will require the prior approval of the County Administrator.

Subaward Close-out

Legal Requirement: 2 C.F.R. §200.343 Closeout.

An integral part of subrecipient monitoring is to ensure close-out of the subaward at the end of the project period. The Constitutional Officer or County Department Head responsible for the grant funds will close-out the subaward when it determines that all applicable administrative actions and all of the subrecipient's required work has been completed and the final payment has been made. 2 C.F.R. §200.343 specifies the actions the subrecipient and County must take to complete this process at the end of the performance period.

Post-closeout Responsibilities

Legal Requirement: 2 C.F.R. §200.344 Post-closeout adjustments and continuing responsibilities.

The closeout of a subaward does not affect any of the following:

1. The right of the County to disallow costs and recover funds on the basis of a later audit or other review. The County must make any cost disallowance determination and notify the subrecipient within the record retention period;
2. The obligation of the subrecipient to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments;
3. Audit requirements in Subpart F—Audit Requirements of 2 C.F.R. Part 200;
4. Property management and disposition requirements in Subpart D—Post Federal Award Requirements of 2 C.F.R. Part 200, §§200.310 Insurance Coverage through 200.316 Property trust relationship; and

5. Records retention as required in Subpart D—Post Federal Award Requirements of 2 C.F.R. Part 200, §§200.333 Retention requirements for records through 200.337 Restrictions on public access to records.