



STATE CONTROLLER'S BULLETIN

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State Controller

Rebecca M. Wyke, Commissioner
Administrative & Financial Services

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SUBJECT: Determination of Subrecipient vs. Vendor Relationship

DATE: October 14, 2004
TO: All Departments and Agencies
FROM: Edward A. Karass, State Controller

During the review process of proposed contractual agreements by the Contract Review Committee, the OSC has determined that there may be a misunderstanding on the part of many state agency contracting personnel as to what constitutes a contract with a vendor and what qualifies as a grant.

There are three main agreements that encapsulate the relationship found between federal government agencies and the recipients of federal funding. These guidelines apply to the State of Maine via OMB Circular A -133 as we consider whether we have a vendor ("buyer – seller") or a subrecipient relationship with providers of goods and/or services. The three funding instruments are described below.

- **Contract-** The principal purpose of this relationship is to purchase, lease, or barter property or services for the direct benefit of the government. The relationship may be characterized as "buyer-seller."
- **Grant –** The principal purpose of this relationship is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support – with no substantial involvement between the federal agency and the recipient during the performance of the activity.

In this case, the federal government is the "sponsor" – providing financial assistance and thereby supporting an organization with minimal involvement. The purpose of a grant is to benefit some identified segment of the public, rather than the government.

- **Cooperative Agreement -** The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the recipient to accomplish a public purpose of support – with substantial programmatic involvement between the federal agency and the recipient during the performance of the activity.

In a cooperative agreement, the federal government provides financial assistance to the recipient and actively participates in specified aspects of the project. The relationship is a partnership.

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The regulations contained in § .210 of OMB Circular A -133 provide the guidance and test necessary to accurately determine the nature of an agreement that a state agency will likely enter into with a prospective provider of goods and services.

§___.210 Subrecipient and vendor determinations.

(a) General. An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) Federal award. Characteristics indicative of a Federal award received by a subrecipient are when the organization:

- (1) Determines who is eligible to receive what Federal financial assistance;
- (2) Has its performance measured against whether the objectives of the Federal program are met;
- (3) Has responsibility for programmatic decision making;
- (4) Has responsibility for adherence to applicable Federal program compliance requirements; and
- (5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

(c) Payment for goods and services. Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) 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.

(d) Use of judgment in making determination. There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, ***the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.***

(e) For-profit subrecipient. **Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients.** The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

(f) Compliance responsibility for vendors. In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. **Program compliance requirements normally do not pass through to vendors.** However, the auditee is responsible for ensuring compliance for vendor transactions which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

Guidance for Agencies

The OSC recognizes OMB's guidance from Circular A – 133 as the primary authority in making subrecipient/vendor determinations. The full text of OMB Circular A-133 may be found at www.whitehouse.gov/omb/circulars/a133. We recommend that agency personnel become familiar with the content of this Circular as well as the annual update to the Compliance Supplement as it applies to general operations and specific program requirements. OSC advises affected state agency personnel to make the subrecipient/vendor determination prior to the submission of the agreement to the Division of Purchases and commencement of services by the subrecipient or vendor. The contract for services or pass through will include:

- Application of the guidance from § .210 of Circular A -133 and explanation why the contract is either a vendor or subrecipient relationship.
- A narrative documenting each agency's responsibilities regarding compliance monitoring, audits, and the corresponding impact on the Schedule of Expenditures of Federal Awards – SEFA.

Subrecipient Relationship

The agency providing funding reflects the pass through as “Distributed to Subrecipients” on the SEFA. Circular A-133, section 400(d) identifies responsibilities of the agency providing funding, including a requirement to monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

The receiving agency would report the “Pass through Entity”, the “Pass Through Identification Number”, and report the expenditures under “Directly Expended by Department”. The receiving agency has primary responsibility for all federal regulations that relate to the accounting, auditing/reporting of the particular federal

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award(s). This includes, but is not limited to, compliance with Circulars A-133 and A-87; the Common Rule; Federal regulations relating to that particular program; and other aspects of the single audit conducted by the State Auditor.

Vendor Relationship

Expenditures by vendors are reported as “Directly Expended by Department” for the agency providing funds. The agency maintains responsibility for all aspects of the single audit. The vendor is not subject to audit requirements, however they would be expected to provide documentation to support the expenditures incurred.

Transition – January 1, 2005

While we encourage agencies to review the agreements executed prior to the issuance of this Bulletin that pertain to Fiscal Year 2005, we will not make this mandatory; however, agencies should be prepared to implement the provisions contained in the Bulletin on prospective basis effective on January 1, 2005. This is necessary to ensure compliance with management’s responsibilities under OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Agencies must take care to ensure that the proper coding conventions are applied to each agreement to ensure that agency based SEFA Reporting to the Financial Reporting and Analysis Division (FRAD) of the OSC is accurate and fairly presents the results of your agency’s operations for the fiscal year. If you have questions regarding the appropriate coding, please contact your Liaison in the FRAD.

For those agreements currently in effect that are determined to be vendor relationships where STA-CAP is not being charged, the OSC will not assess STA-CAP for the remainder of this fiscal year. However, commensurate with Fiscal Year 2006, an explanatory justification and supporting documentation for the waiver of STA-CAP charges will be necessary. Agencies should be aware that the STACAP methodology attempts to recover each agency's fair share and any under collections or over collections in a given year roll forward to a future year as an adjustment to the rate.