

# SNAPS-Shots

*Bite-Size Information on the Emergency Solutions Grants and Continuum of Care Programs*

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## Using Contractors in the ESG and CoC Programs

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Recipients and subrecipients under the Emergency Solutions Grants (ESG) Program and Continuum of Care (CoC) Programs may procure contractors as a means of implementing discrete eligible program activities. However, when selecting a contractor, the recipient/subrecipient must follow the procurement requirements in 24 CFR part 84 (government entities) or 85 (nonprofit organizations) or 2 CFR part 200, as applicable. A local government's or private nonprofit organization's own contracting process might not meet these requirements, so recipients/subrecipients must ensure that the process they use complies with HUD's rules.

When determining whether to use a subrecipient or a contractor, it is important to understand that there are key distinctions between subrecipients (including sub-subrecipients) and contractors—the two are not interchangeable. In general, a contractor does not have the same authority as a subrecipient:

- Subrecipients may exercise discretion in making program decisions and carrying out program activities, while contractors cannot. [\*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 as part of the terms of its subaward.
- Contractors are responsible for complying only with those requirements and conducting those activities that the recipient or subrecipient specifies in their contracts. Therefore, when a recipient/subrecipient uses a contractor, the recipient/subrecipient must ensure the contract specifies the program requirements and policies that apply to the tasks the contractor is to perform.

Please note that all subrecipients must be eligible under the ESG or CoC Program regulations, as applicable. Because for-profit organizations are not eligible subrecipients under either the CoC or ESG programs, allocating funds to any for-profit organization must be done through procurement of the organization as a contractor.

### Responsibility 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. Therefore, 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.

### How do I know if an entity is a subrecipient or contractor?

These distinctions are important to understand both in determining whether existing agreements meet the qualifications for subrecipients or contractors, and also when a recipient is deciding when to procure a contractor and when to subgrant funds to a subrecipient.

In determining whether an entity is actually acting as a subrecipient or a contractor, the nature of the relationship and the functions the entity is expected to perform are more important than the form or name of

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the agreement or what the entity is called (subgrant agreements are often referred to as “contracts” and are, in fact, a type of contract).

Recipients and subrecipients should keep the following characteristics of an entity in mind when deciding whether and to what extent to procure a contractor to carry out program activities.

### **Characteristics Indicative of a Subrecipient**

In general, characteristics whose presence supports the classification of an entity as a subrecipient are when the entity:

1. Makes determinations about who is eligible to receive what assistance;
2. Has its performance measured in relation to whether objectives of the program were met (e.g. is accountable for meeting HUD-established performance measures);
3. Has responsibility for programmatic decisionmaking;
4. Is responsible for adherence to applicable requirements in the program regulations and HUD’s grant agreement with the recipient; and
5. Uses the program funds to carry out a portion of a recipient’s ESG program or to carry out a CoC or ESG project, for a public purpose specified in the McKinney-Vento Homeless Assistance Act (e.g. the benefit of homeless individuals and families and individuals and families at risk of homelessness), as opposed to providing goods or services for the benefit of the recipient or subrecipient.

### **Characteristics Indicative of a Contractor**

Contractors are paid for providing goods or services to the recipient/subrecipient, to assist them in undertaking activities of the program. In general, characteristics whose presence supports the classification of an entity as a contractor are when the entity:

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 ESG and CoC programs; and
5. Is held to the terms of the contract rather than the compliance requirements of the ESG or CoC programs.

**Note:** Not all of the characteristics will be present in every situation, and there might be unusual circumstances or exceptions to the listed characteristics. HUD expects recipients/subrecipients to use their best judgment in determining whether an entity is cast in the role of a subrecipient or contractor. In addition, note that a single entity could serve as a contractor in some situations and a subrecipient in others.

### **Examples for Classifying Subrecipients and Contractors**

The following examples should help clarify the distinctions between a subrecipient and a contractor.

1. An organization that provides rental assistance would be:

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- **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 decisionmaking authority regarding the project design to the subrecipient.
2. An organization that provides legal services to persons residing in an emergency shelter would be:
- **A contractor**—if the organization provides limited legal services only to those program participants designated to receive legal services by the emergency shelter provider. This is because the organization is hired and paid to complete previously agreed-upon services for program participants.
  - **A subrecipient**—if the organization: identifies its own program participants; completes its own intake and assessment of program participants; and determines and carries out the legal services it believes are required by the program participant. This is because the organization is conducting intake and assessment and making decisions about the design of its program.

### Related Resources

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For more information on this issue, 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, and the [CoC Program Interim Rule](#) at 24 CFR part 578.

### Ask A Question

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If you have questions or suggestions for SNAPS-Shots topics, please submit them to HUD via [HUD Exchange Ask A Question](#) help desk.

**Please note: This SNAPS-Shot is provided as a resource to help recipients and subrecipients understand the ESG Program Interim Rule and the CoC Program Interim Rule. Always refer to the program regulations to ensure compliance with program requirements.**