

Federal Uniform Guidance Procurement Requirements & ARPA Update

CCAO ARPA Symposium
September 29, 2021

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Agenda

Uniform Guidance Revisions

Procurement Requirements

Subrecipient Determination and Pass-Through
Entity Responsibilities

Single Audit Reminders

Uniform Guidance Revisions

Certain Revisions
Effective
August 13, 2020

Remaining
Revisions Effective
November 12, 2020

Federal Agencies Must Adopt Revised Regulations; local governments then adopt based on terms and conditions of the applicable Federal programs.

Uniform Guidance Procurement

Some key items must be followed for Subpart D, **Procurement**:

- **Competition** –must provide for full and open competition in procuring goods and services. This means situations must be avoided that may prevent competition, such as placing unreasonable requirements on firms to qualify noncompetitive pricing practices between firms or affiliated companies or specifying only a “brand name.”
- **Internal controls**– new UG emphasizes written, effective internal controls. 2 CFR 200.303 requires each recipient establish and maintain effective internal control to provide reasonable assurance that federal awards comply with all federal regulations and terms and conditions.

Uniform Guidance Procurement

Some key items must be followed for Subpart D, **Procurement**:

- **Documented policies** – must document procurement procedures and policies. If procedures aren't currently documented, must make this a priority. If policies already are documented, entities should review those policies and ensure they incorporate and follow applicable regulations. These procedures must ensure all solicitations clearly and accurately describe the requirements of the goods or services to be procured and identify all requirements that bidders must fulfill and the factors used in evaluating bids. In addition, if policies include a prequalified list of persons, firms, or products used in procuring goods and services, the list should be current and include enough qualified sources for open competition.
- **Advance Payments & Reimbursements** – written procedures that address collecting payments of federal funds and specific requirements associated with interest earnings that may be realized on advance payments. Policies should discuss how an entity will minimize the time between draws and actual disbursements (2 CFR 200.302(b)(6)).

Uniform Guidance Procurement

Some key items must be followed for Subpart D, **Procurement**:

- **Oversight** –must monitor contractors to ensure they perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. This requirement supplements a similar requirement in which contracts only are awarded to those that use funds responsibly and in accordance with the agreement’s terms.
- **Conflicts of interest** –must have written policies about conduct of its employees involved in the selection, award, and administration of contracts. These policies must cover both organizational and personal conflict of interest to prevent unfair or noncompetitive awards being provided. These policies also must include disciplinary actions for any violations of the conflict-of-interest standards.
- **Necessary purchases** – must avoid unnecessary or duplicative purchases. To this end, an entity should consider the most efficient and effective approach to purchases, e.g., bulk purchasing, lease versus purchase, agreements for use of common or shared goods and services, use of federal excess and surplus property as opposed to purchasing new equipment, etc..

Uniform Guidance Procurement

Some key items must be followed for Subpart D, **Procurement**:

- **Use of state or local geographical preferences** – Unless federal statutes specifically mandate or encourage geographical preference, must prohibit using statutorily or administratively imposed state or local geographical preferences when conducting procurements.
- **Records** – must maintain documentation to support the history of the procurement, i.e., rationalization for method used, contractor selection or rejection, basis for contract price, etc..

Uniform Guidance Procurement

Some key items must be followed for Subpart D, **Procurement**:

- **What about Ohio Competitive Bidding Laws?**– Most restrictive laws and regulations apply. For example, if State law is more restrictive than Federal Procurement law, State law applies.
- Certain costs may be exempt from State Competitive Bidding laws but are not exempt under Federal Procurement Rules (e.g., professional services, text books, motor vehicles, fuel, cost-sharing contracts).

Uniform Guidance Revisions

Subpart D
Procurement

- 200.318 Must have and use documented procurement procedures.
- **DOCUMENTATION IS KEY!**

Uniform Guidance Revisions

Subpart D

- 200.332 Requirements for pass-through entities
- Covered in Pass-Through Entity Slides

Procurement - Recipient Responsibilities

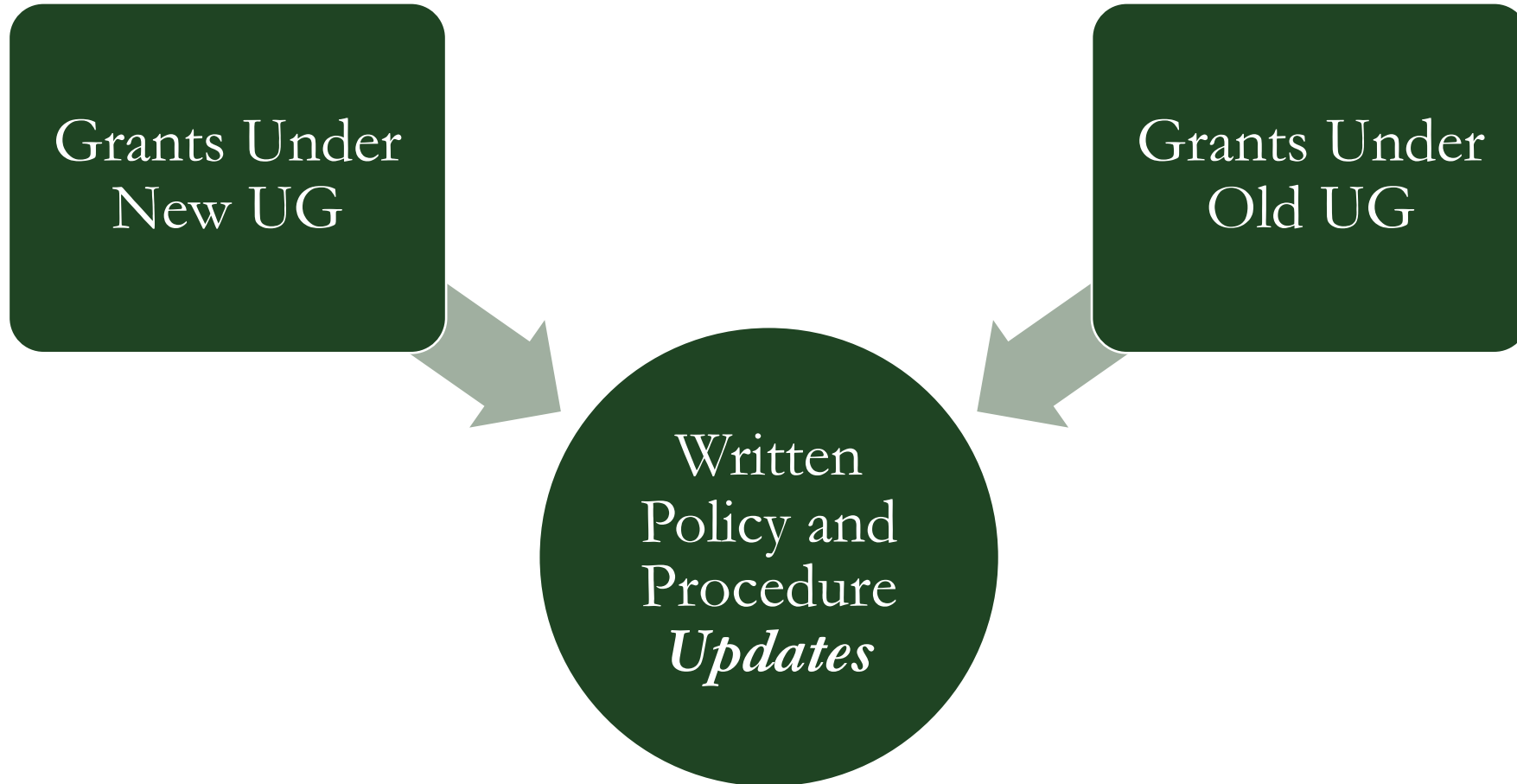
Recipients Must

Have Written
Policies /
Procedures

Maintain
Contractor
Oversight

Avoid
Unnecessary
or
Duplicative
Items

Uniform Guidance Revisions



Procurement - Recipient Responsibilities

Recipients Must

Perform Analysis to
Determine
Economical
Approach

Award Contracts to
Responsible
Contractors

Procurement - Recipient Responsibilities

Recipients Must

Maintain
Procurement Records

Responsible for
Settlement of Issues

Procurement - Recipient Responsibilities

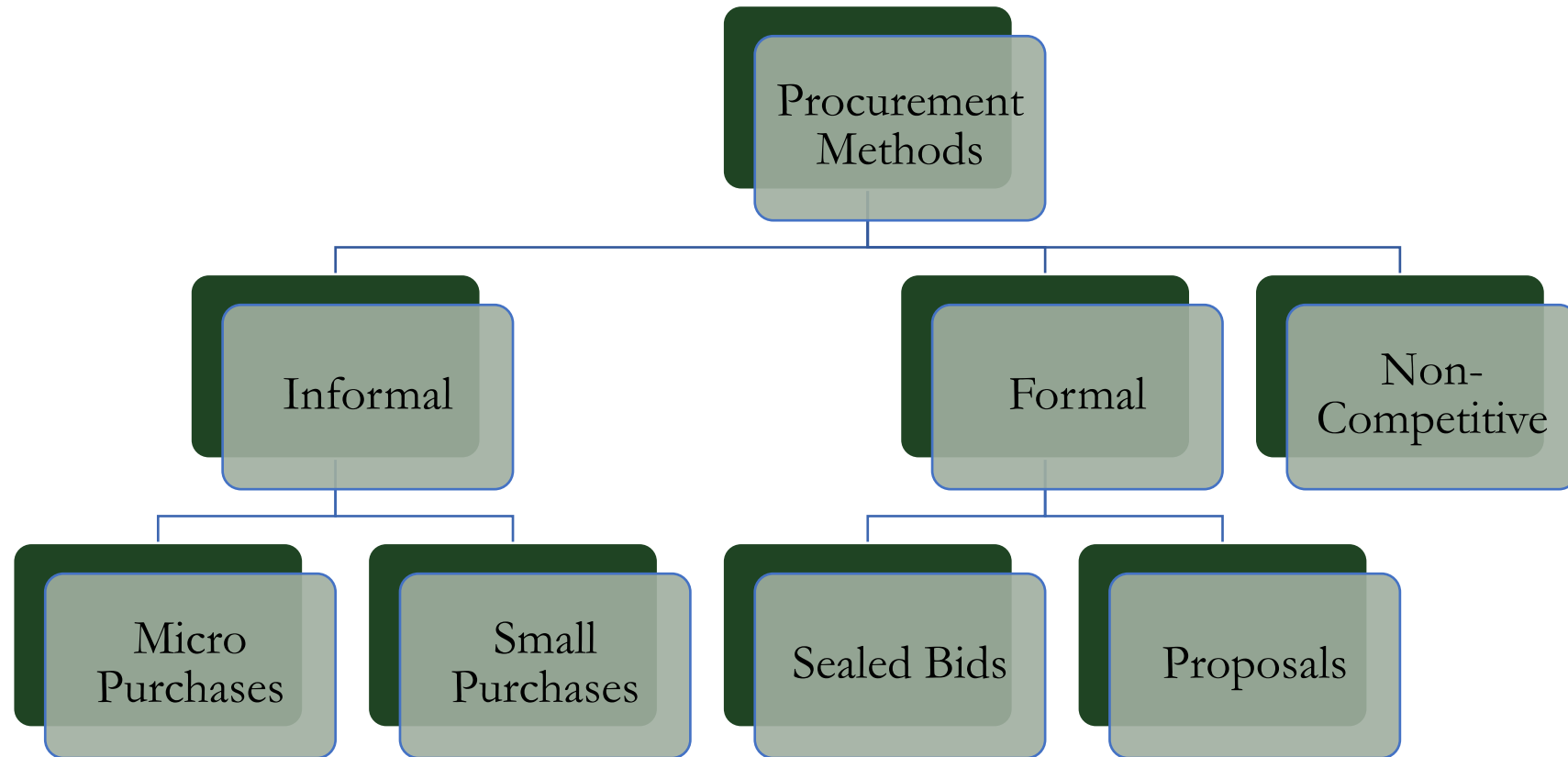
Recipients Encouraged To

Use Inter-
Entity
Agreements

Use Federal
Excess and
Surplus in
lieu of
purchasing
when feasible

Use Value
Engineering
Clauses

Procurement – Methods

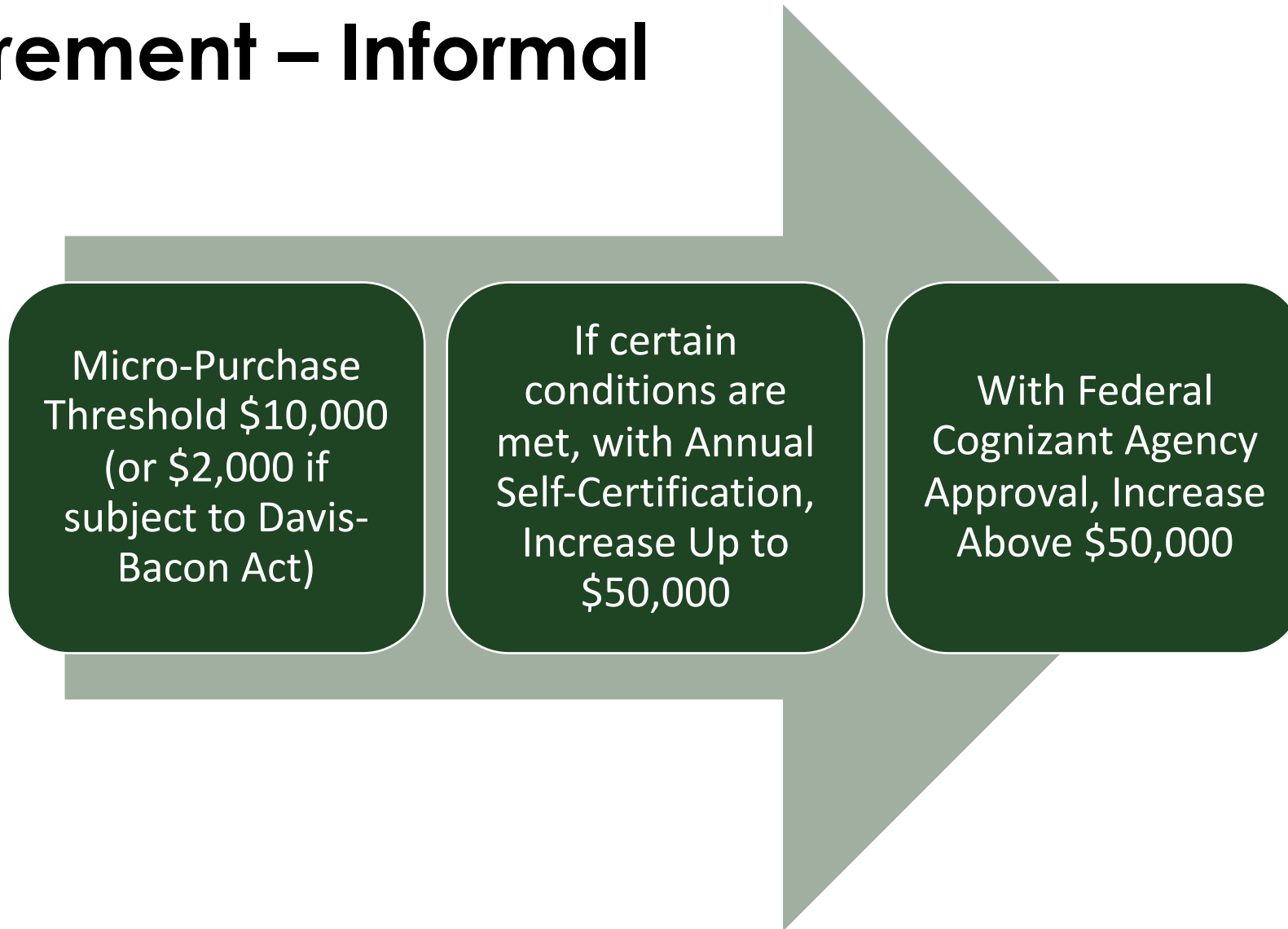


Procurement – Informal

Micro Purchase

- May be awarded **without** competitive rate quotes if price considered reasonable based on **documented** research, experience, purchase history, etc.
- Distributed equitably among qualified suppliers
- Purchase cards may be used with approved, written procedures

Procurement – Informal



Procurement – Informal

Small Purchase

Aggregate dollar amount greater than micro-purchase threshold, less than simplified acquisition threshold (currently \$250k).
Must obtain **and document** price or rate quotations from adequate number of qualified sources.

Procurement – Informal

Simplified Acquisition Threshold (SAT)

Determined by non-Federal entity based on internal controls, risk evaluation, and documented procurement procedures.

Cannot exceed \$250,000 FAR threshold.

Must perform cost or price analysis in connection with every procurement action in excess of the SAT, including contract modifications.

Procurement – Formal

Sealed Bids

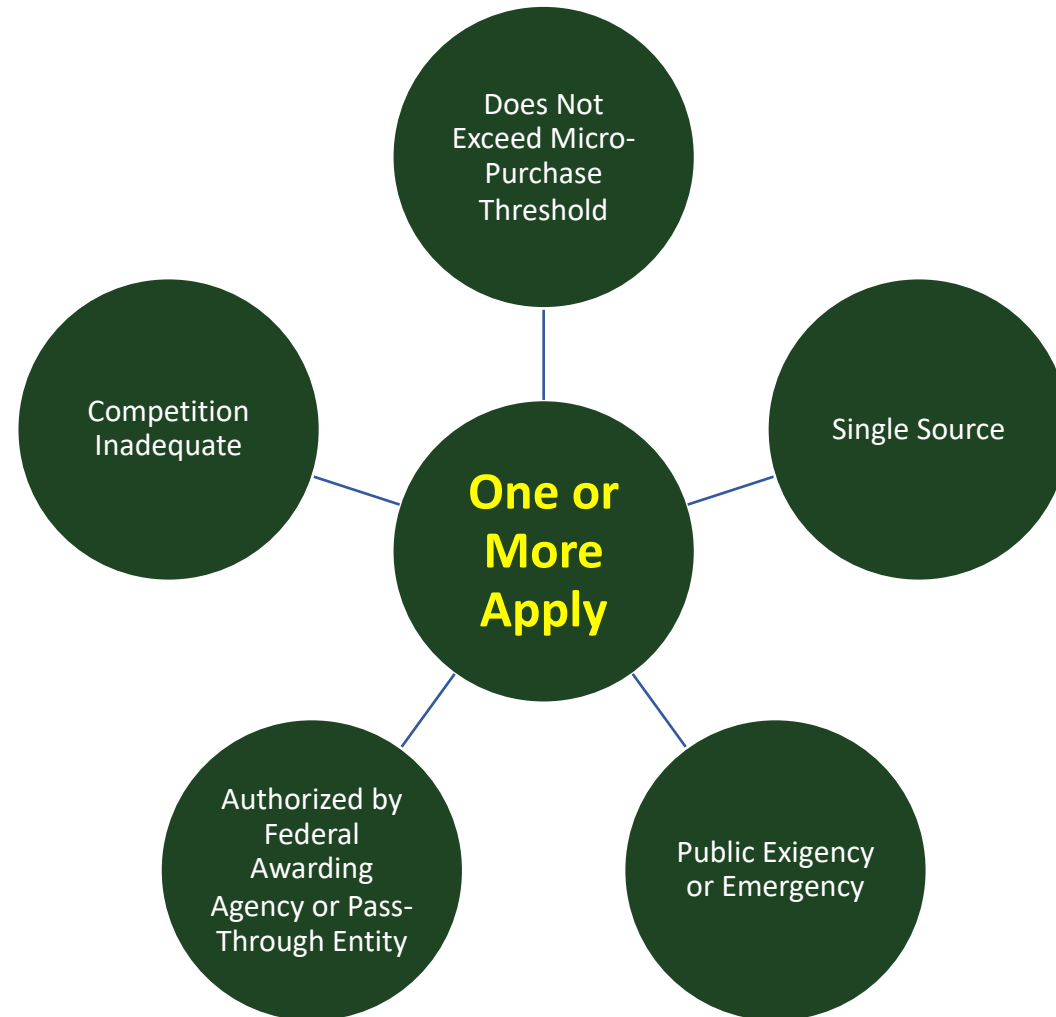
- Publically Solicited
- Firm, fixed-price contract awarded to responsible bidder with lowest price
- Must meet requirements in 2 CFR § 200.320(b)(1)
- Must **document** cost and price analysis

Procurement – Formal

Proposals

- Conditions not appropriate for sealed bids (generally because cost is not the only factor)
- Either fixed-price or cost-reimbursement contract awarded
- Must meet requirements in 2 CFR § 200.320(b)(2)
- Must **document** cost and price analysis.

Procurement – Non-Competitive Procurement



Procurement – Other Requirements

When possible, must use minority businesses, women's business enterprises, and labor surplus area firms

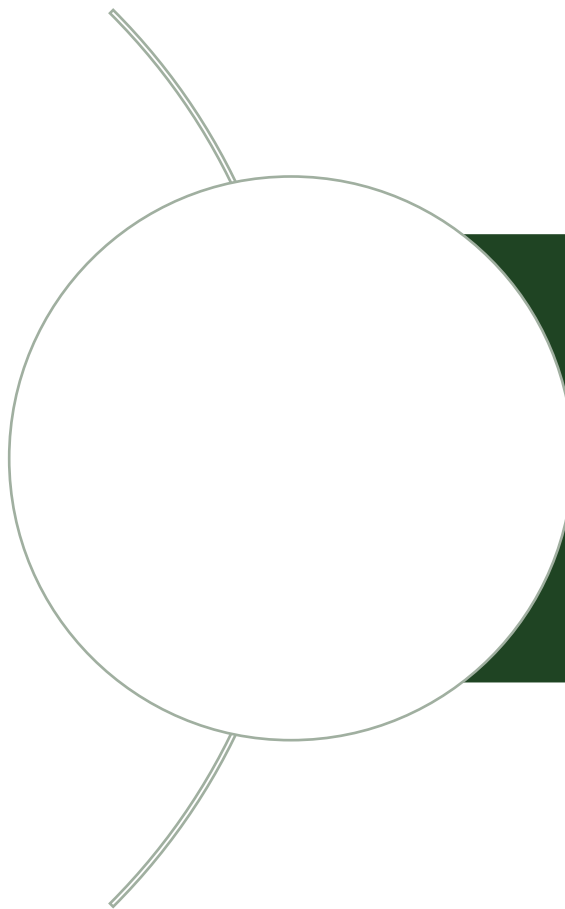
As appropriate and consistent with law, provide preference for purchase, acquisition, or use of goods, products, or materials produced in the United States

Various other contract provisions as outlined in Appendix II to 2 CFR Part 200 – these are items your statutory legal counsel should assist with.

Written Policy/Procedure Requirements – Allowable Costs and Cost Principles



Written Policy/Procedure Requirements – Cash Management



Procedures to Implement Requirements
of 2 CFR § 305

Written Policy/Procedure Requirements – Procurement



Subrecipient Versus Contractor Determinations

Subrecipient

- An entity...that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award.

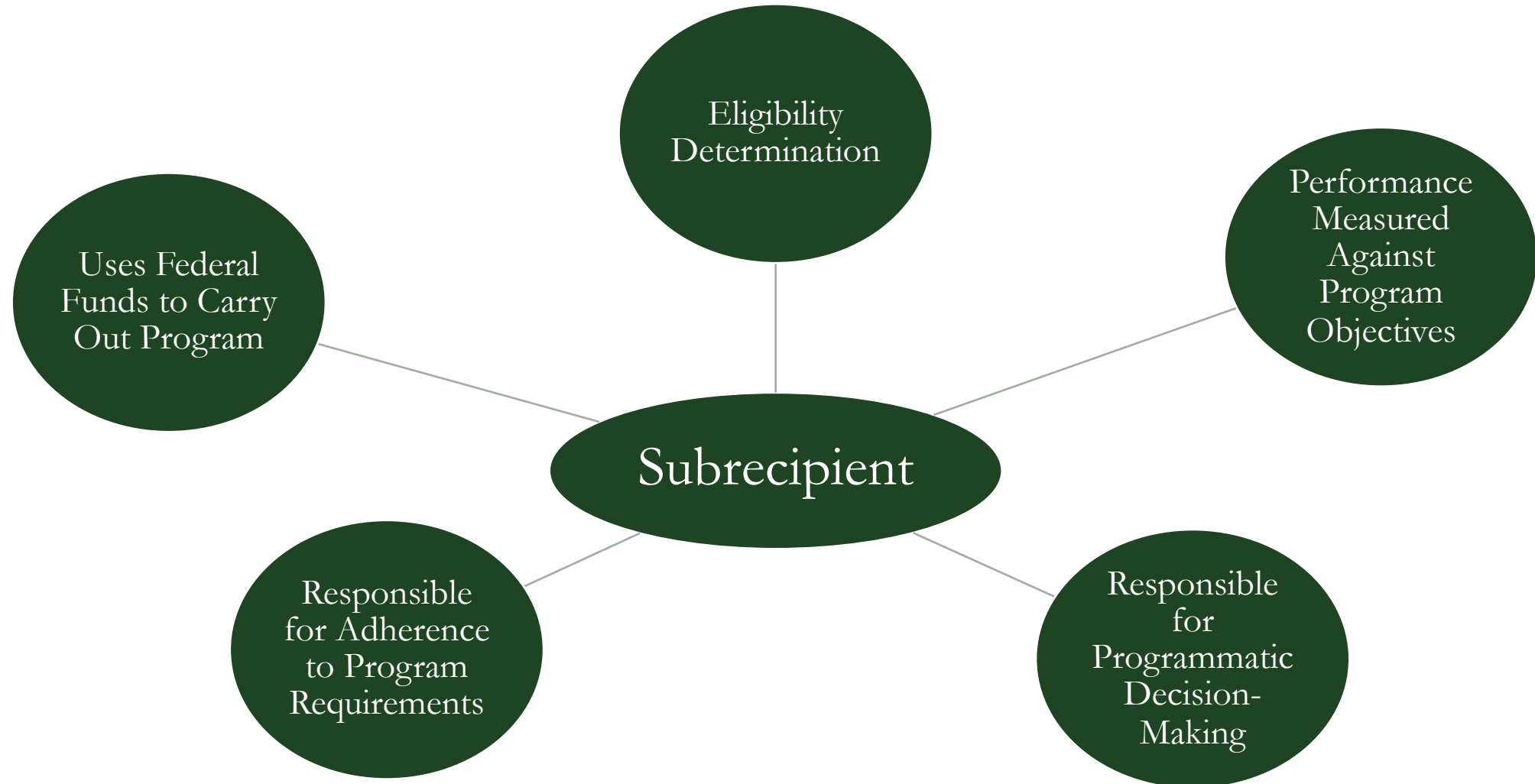
Contractor

- An entity that receives a contract.

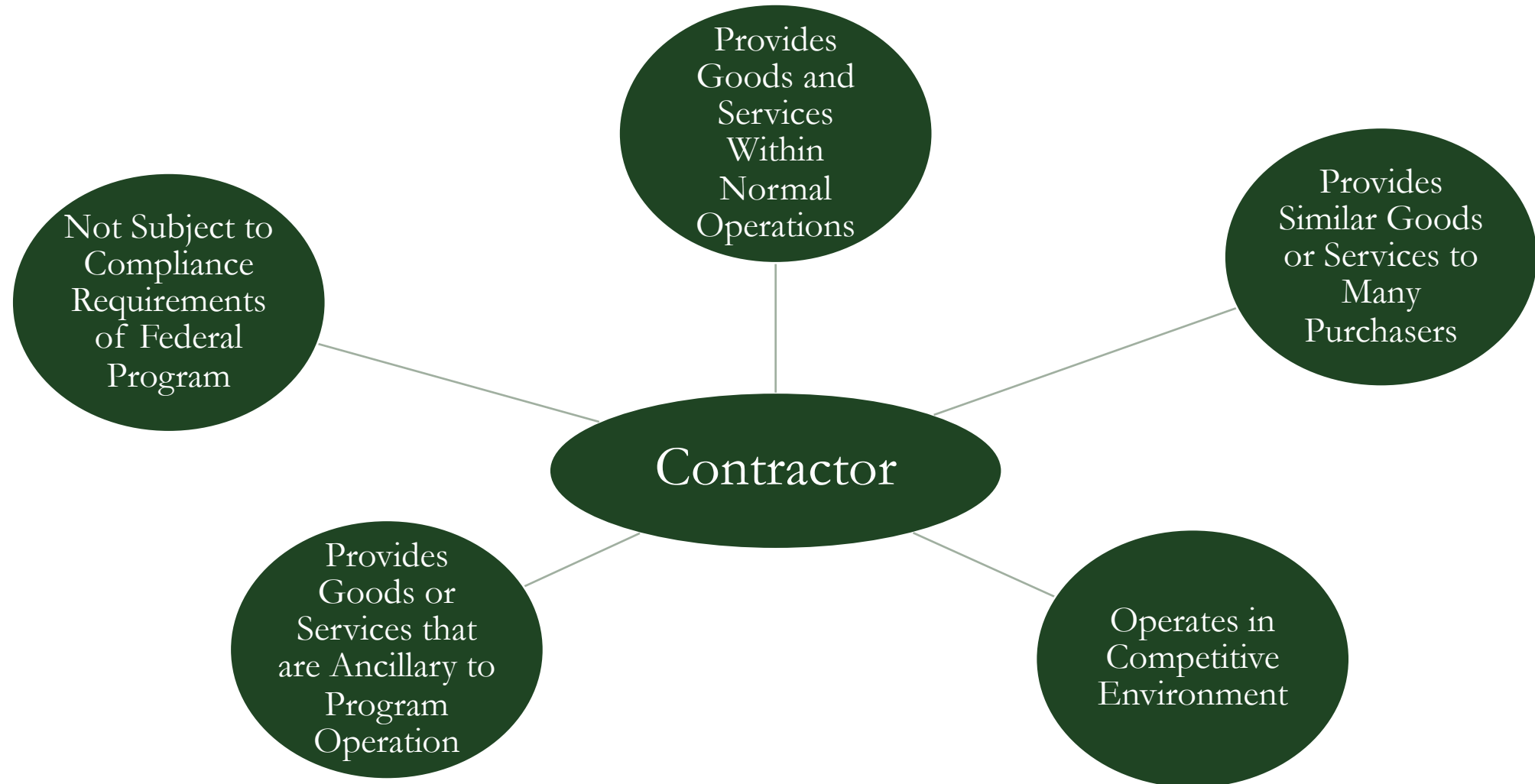
Contract

- A legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award.

Subrecipient Versus Contractor Determinations



Subrecipient Versus Contractor Determinations



Subrecipient Versus Contractor Determinations

UG Guidance

- 2 CFR 200.331
- Use judgement, substance over form

AGA Checklist

- <https://www.agacgfm.org/Intergov/More-Tools/Subrecipient-vs-Contractor-Checklist.aspx>

Pass-Through Entity Responsibilities

Evaluate
Subrecipient's Risk
of Noncompliance
to Determine
Appropriate
Monitoring

Consider Imposing
Specific Conditions
if Appropriate

Pass-Through Entity Responsibilities



Required Monitoring Activities

- Review Financial and Performance Reports
- Follow-Up and Ensure Subrecipient Takes Action on Deficiencies Pertaining to Award
- Issue Management Decision for Applicable Audit Findings Pertaining to Award
- Requirements for Crosscutting Findings

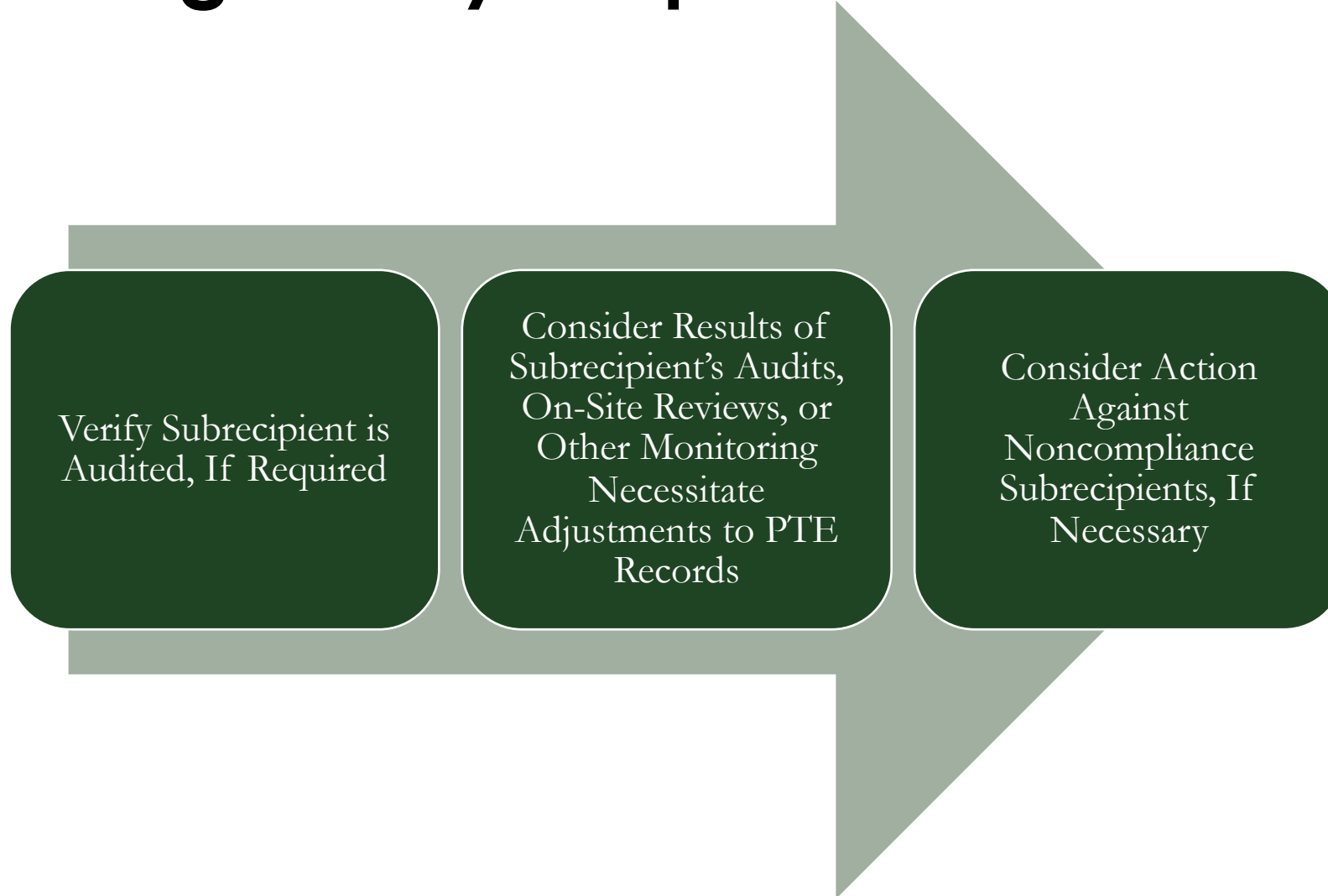
Pass-Through Entity Responsibilities



Other Potential Monitoring Activities

- Provide Subrecipients with Training and Technical Assistance
- Perform On-Site Reviews of Subrecipient's Program Operations
- Arrange for Agreed-Upon Procedures Engagements

Pass-Through Entity Responsibilities



Pass-Through Entity Responsibilities

Reporting on Schedule of Expenditures of Federal Awards (SEFA)

FEDERAL GRANTOR <i>PASS THROUGH GRANTOR</i> PROGRAM / CLUSTER TITLE	FEDERAL CFDA NUMBER	PASS THROUGH ENTITY IDENTIFYING NUMBER	TOTAL FEDERAL EXPENDITURES	PASSED THROUGH TO SUBRECIPIENTS
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES				
<i>Direct:</i>				
Comprehensive Community Mental Health Services for Children with Serious Emotional Disturbances (SED)	93.104	10001	\$348,707	\$348,707

<https://ohioauditor.gov/references/practiceaids.html>

Single Audit Reminders

COVID Identifier on SEFA

FFATA Applicability

- Direct Recipient and Make Subawards/Subcontracts Over \$30,000

Single Audit Deadline Extensions

- December 31, 2020 Due March 31, 2022
- No Extension for December 31, 2021

Single Audit Reminders

Single Audit - Recipient Responsibilities

- Schedule of Federal Award Expenditures
- Data Collection Form
- Corrective Action Plan
- Schedule of Prior Audit Findings



Single Audit Practice Aids & Audit Report Shells

Single Audit Reminders

State and Local Fiscal Recovery Fund (SLFRF)

- Interim Final Rule – Final Anticipated Late Fall
- Strongly encourage locals to identify & document Eligible Use Categories for each expenditure
- Eligible Uses for Expenditures Versus Revenue Reduction
- Use Available Resources – Treasury, AoS Website, Legal Counsel
- **Documentation is Key!**

Resources

Full Uniform Guidance Text

www.ecfr.gov

Beta Site for Updates ecfr.federalregister.gov



Code of Federal Regulations

A point in time eCFR system



eCFR

Auditor of State - Refer to COVID-19 Resources

www.ohioauditor.gov

US Department of the Treasury

home.treasury.gov

Questions?

Contact

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