American Rescue Plan
Grant Implementation:
Procurement Best Practices

Kansas Office of Recovery

August 18, 2021

Questions Being Answered Today

1 — What is procurement?
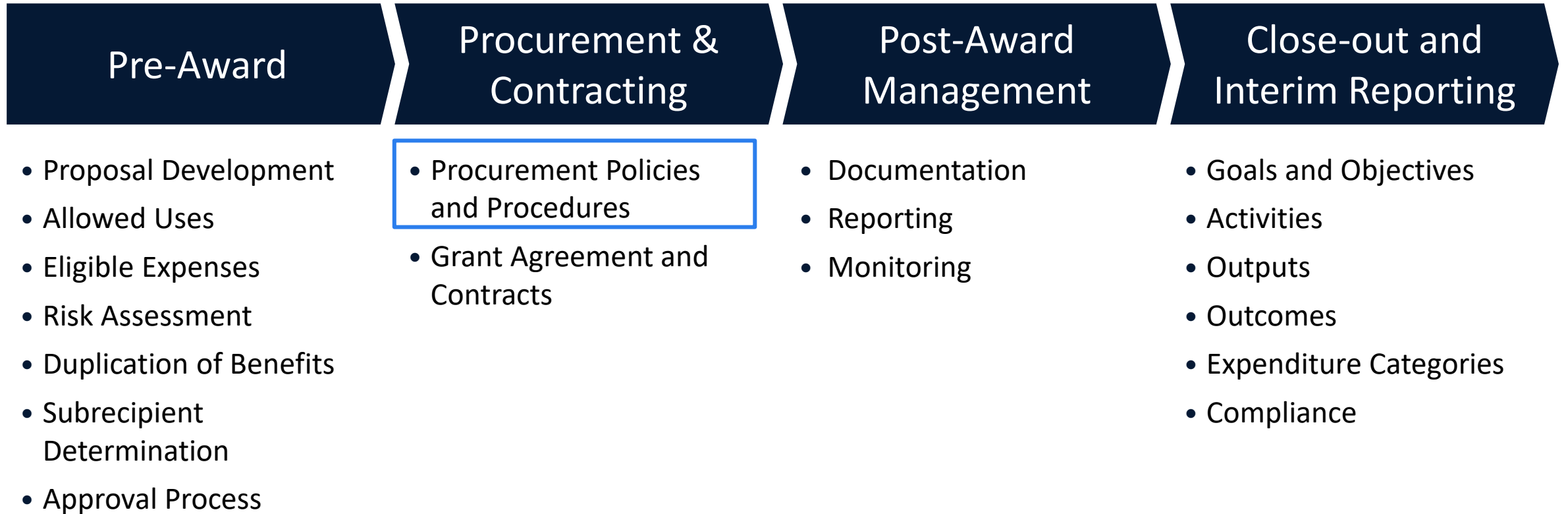
2 — What are the different types of procurement?

3 — What procurement standards and controls should be followed?

4 — What must be included in a procurement policy?

Program Design Flow

Pre-Award	Procurement & Contracting	Post-Award Management	Close-out and Interim Reporting
• Proposal Development • Allowed Uses • Eligible Expenses • Risk Assessment • Duplication of Benefits • Subrecipient Determination • Approval Process	• Procurement Policies and Procedures • Grant Agreement and Contracts	• Documentation • Reporting • Monitoring	• Goals and Objectives • Activities • Outputs • Outcomes • Expenditure Categories • Compliance

Focus for today

Procurement Overview

What is Procurement?

- Public procurement is <u>the process local, state, and federal government agencies use to acquire necessary goods and services; through purchases from for profit and not-for-profit businesses</u>

- Procurement is critical when the funding to purchase goods and services comes from taxpayer money

- Public procurement laws and regulations must be followed to ensure taxpayer money is properly spent, and goods/services are responsibly purchased

Public Procurement Policy: Policy that describes the process and defines the legal requirements of purchasing goods and services from suppliers, vendors, and contractors. Based on pre-negotiated fair prices and under a predetermined set of terms

Procurement to **follow and conform to the legal requirements of the more restrictive policy** (federal vs. local)

Two types of Federal procurement and thresholds

Informal

- **Micro Purchase:** up to $10,000
  - Can increase threshold up to $50,000 with self-certification justified and documented

- **Small Purchase:** $10,000 to $250,000
  - $250,000 is known as the Federal Simplified Acquisition Threshold (SAT)

Formal

- **Competitive Procurements:** SAT at $250,000

- **Sealed Bid Procurements:** SAT of $250,000

- **Sole Source:** does not have a threshold

- **Cooperative Purchasing Agreements:** does not have a threshold

See Federal Acquisition Regulations, CFR Title 48 Part 2

Informal Procurement Methods

Micro Purchase

No required bid processes or price quotes;

Distribute purchases equitably among suppliers

Maintain documentation regarding price quotes (formal or informal)
- May include notes, emails, web site catalog screen shots etc.

Small Purchase

No required bid processes and cost / price analysis

Obtain adequate number of price or rate quotations from a Vendor price list on a website *or* generated via an online search engine
- Quotations can be written or verbal

Maintain documentation regarding price quotes (formal or informal)
- May include notes, emails, web site catalog screen shots etc.

Formal Procurement Methods

Competitive Procurements

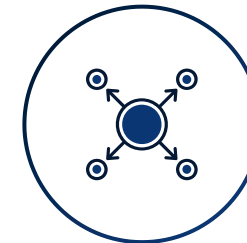**Public solicitation** for a firm fixed-price or cost reimbursement contract

- Written review and selection
- Two or more bidders (e.g., adequate number)
- Selection based on most advantageous offer, including price and other factors (best value)
- May be used with architectural and engineering contracts

Sealed Bid Procurements

Public solicitation for a firm, fixed-price contract

- Selection based on price (e.g., lowest price)
- Two or more bidders (e.g., adequate number)
- Preferred method for construction contracts
- Specifications defined (e.g., law enforcement or land mobile radios)

Sole Source

Public solicitation for a firm fixed-priced or cost reimbursement contract

- Can utilize micro-purchase threshold
- Item only available from one source
- Competition inadequate after solicitation attempts
- Typically used for public emergency purchases
- Requires awarding agency approval

Document retention required for all formal bids

See 2 CFR 200.320 (b) 1-2 & (c) 1-5

Procurement Standards (I/II)

General Uniform Guidance Procurement Standards

I	**Oversight** Maintain oversight to ensure contractors perform according to terms, conditions, and specifications of contract
II	**Necessity** Avoid unnecessary/duplicative supplies and services; limit purchases and acquisitions to what is necessary to perform scope or work
III	**Standards of Conduct** Have a written policy on conflicts of interest and performance of employees (e.g., non-disclosure agreements) engaged in contracting – include disciplinary action for employee violations of conflicts of interest
IV	**Conflicts of Interest** Cannot be involved in contracting process if have real or apparent conflict of interest – disclose conflicts in writing
V	**Gifts** Cannot solicit or accept gifts from contractors or subcontractors

Procurement Standards (II/II)

General Uniform Guidance Procurement Standards

VI — **Award to Responsible Contractors**
Award contracts to most responsible contractors – cannot award contract to federally debarred bidder (SAM.gov)

VII — **Records**
Maintain records describing procurement processes used, including rationale for method of procurement (e.g., contract type; contractor selection process, list of reviewers, basis for contract price)

VIII — **Time and Materials & Cost-Plus Contracts**
Generally not allowed – due to variability and open-ended nature of these agreements – when used should have a *not to exceed* amount

IX — **Settlement of Issues**
Entity awarding contract, not the federal government, is solely responsible for settling all contract disputes and claims

X — **Full and Open Competition**
Must be "full and open competition" – contractors who help design specs cannot bid on contract. Geographical preferences and brand name specs without equal alternatives are prohibited

Document everything; Contracts should be in writing
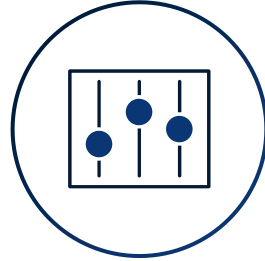
Procurement System Controls & Organization

Organization

- Is there a formal staff position devoted to procurement (e.g., fiscal or business manager)?
- Does this individual also perform subrecipient vs. vendor determinations?

Lines of Authority

- What are the roles and responsibilities, particularly delegation of authority, for different procurement thresholds?

Internal Controls

- Are there documented procedures for acquisitions at the various thresholds?
- Is there contract monitoring?

Workflow

- How do you communicate and coordinate the processing and oversight of contracts?

Monitoring Methods

- Are compliance checks for contract monitoring occurring during the pre-award, performance and close-out phases?

Procurement Policy Components

What a procurement policy addresses

1 Policies/Procedures and Code of Conduct

2 Types and Methods of Procurement

3 Award & Monitoring of Contracts for Goods and Services

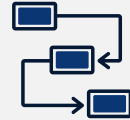**4** Records and Documentation Requirements

Procurement Policy Basics

Statement to comply with all federal laws and regulations applicable to federal grant funds

- *For Example:* Contracts funded with federal grant funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards

Detailed processes and internal controls to be used

Procedural and administrative details on how goods and services from vendors and contractors are procured, awarded, monitored, and paid

Describes process for documenting all procurement transactions

Remember: Procurement to <u>conform to the legal requirements of the more restrictive policy</u> (federal vs. local)
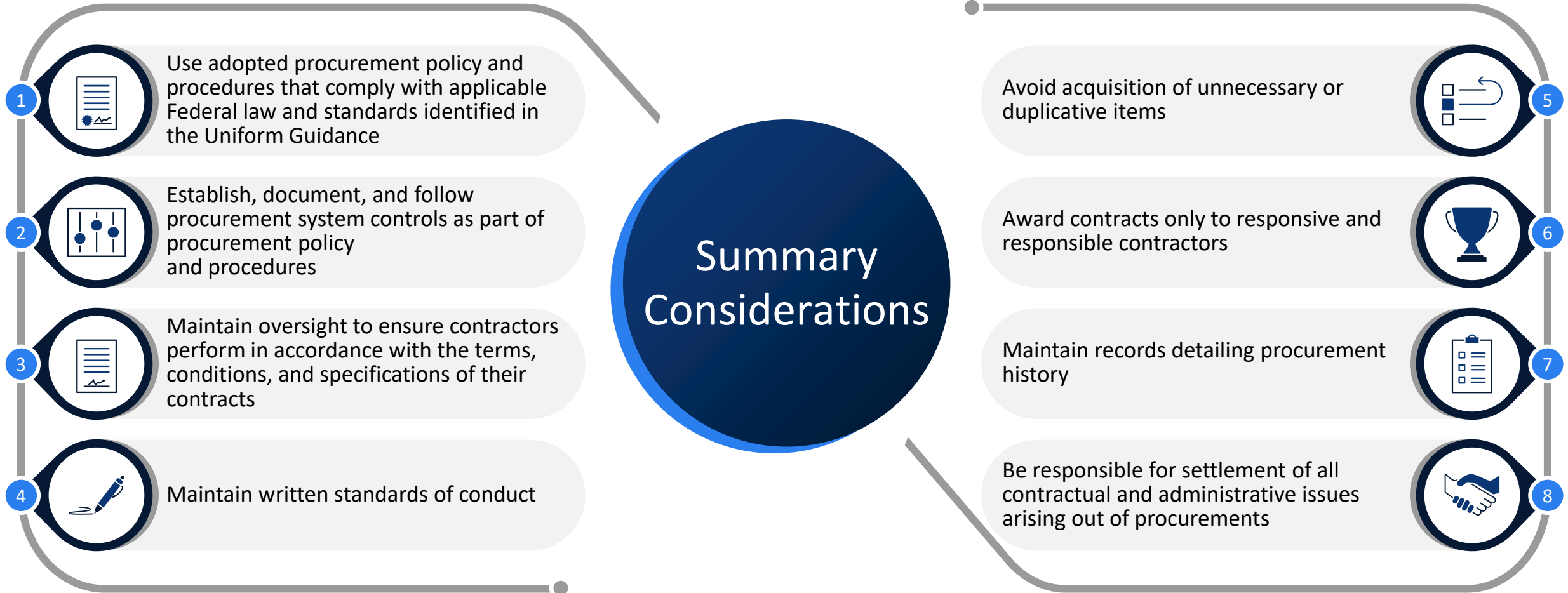
Examples of Procurement Failures

Example 1: Auditors found that a Department of Health did not follow some basic procurement procedures when replacing a computer system that would process Medicaid payments.

The cost of the project increased more than $20 million and became a public procurement example of excessive spending of taxpayer money without administrative oversight.

Example 2: A former maintenance supervisor at a public funded university awarded two dormitory painting contracts to a friend in exchange for money. The friend was not a professional commercial painter and failed to file required monthly records, resulting in a university inquiry and investigation.

The investigation found that the maintenance supervisor violated procurement policy and procedures and ended up being arrested.

Summary Considerations

Summary Considerations

1. Use adopted procurement policy and procedures that comply with applicable Federal law and standards identified in the Uniform Guidance

2. Establish, document, and follow procurement system controls as part of procurement policy and procedures

3. Maintain oversight to ensure contractors perform in accordance with the terms, conditions, and specifications of their contracts

4. Maintain written standards of conduct

5. Avoid acquisition of unnecessary or duplicative items

6. Award contracts only to responsive and responsible contractors

7. Maintain records detailing procurement history

8. Be responsible for settlement of all contractual and administrative issues arising out of procurements

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Questions