

The Basics of Federal Non-Traditional Contract Vehicles (Grants, OTAs, and Cooperative Agreements)

Tim Allsup, Senior Counsel at RTI International

Marko Kipa, Deputy General Counsel at Comcast Cable

Anne Perry, Partner, Sheppard Mullin

Ryan Roberts, Partner Sheppard Mullin

Today's Roadmap

- Non-Traditional Contracting Vehicles 101
- Key Differences Between Non-Traditional Contracting Vehicles
- Common Pitfalls with Non-Traditional Contracting Vehicles

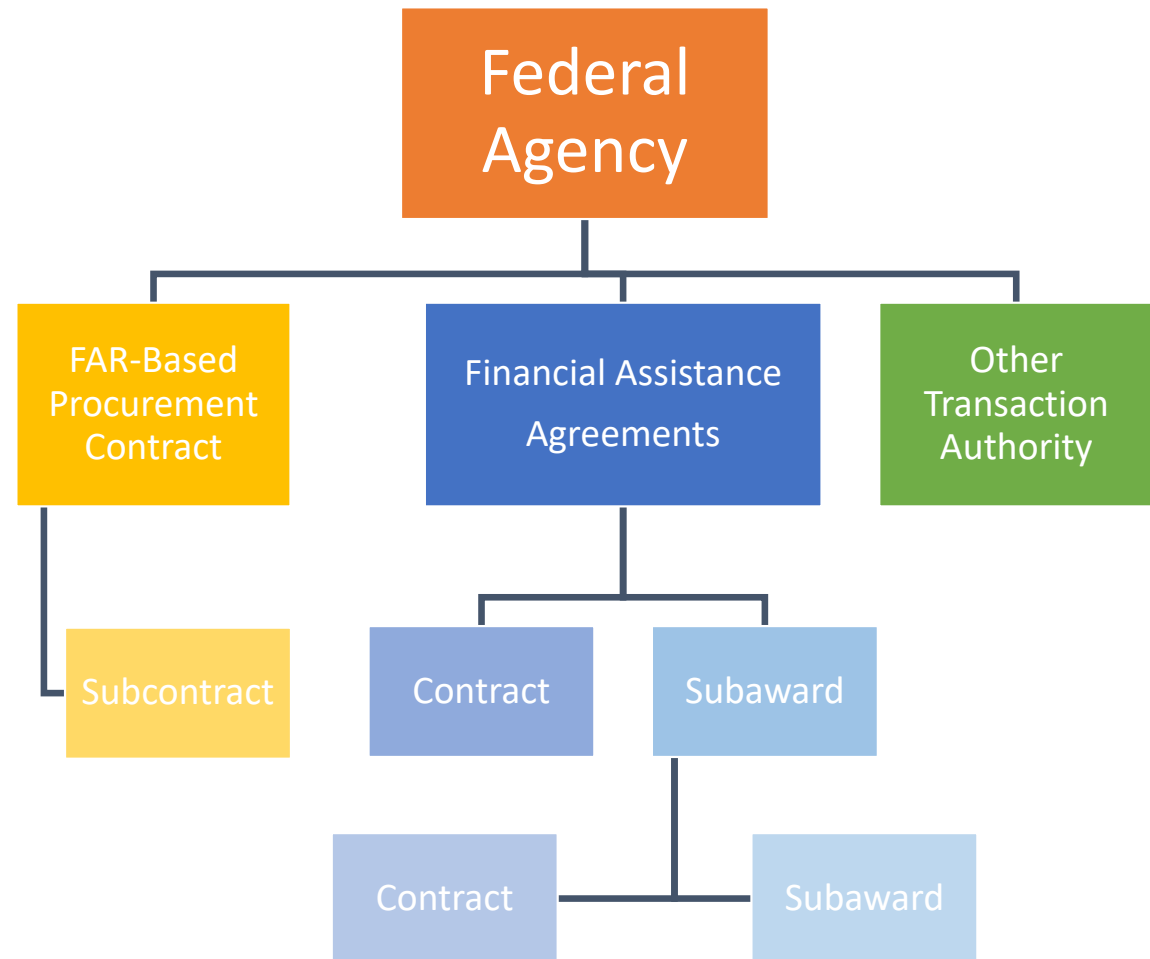


Non-Traditional Contracting Vehicles 101

SheppardMullin

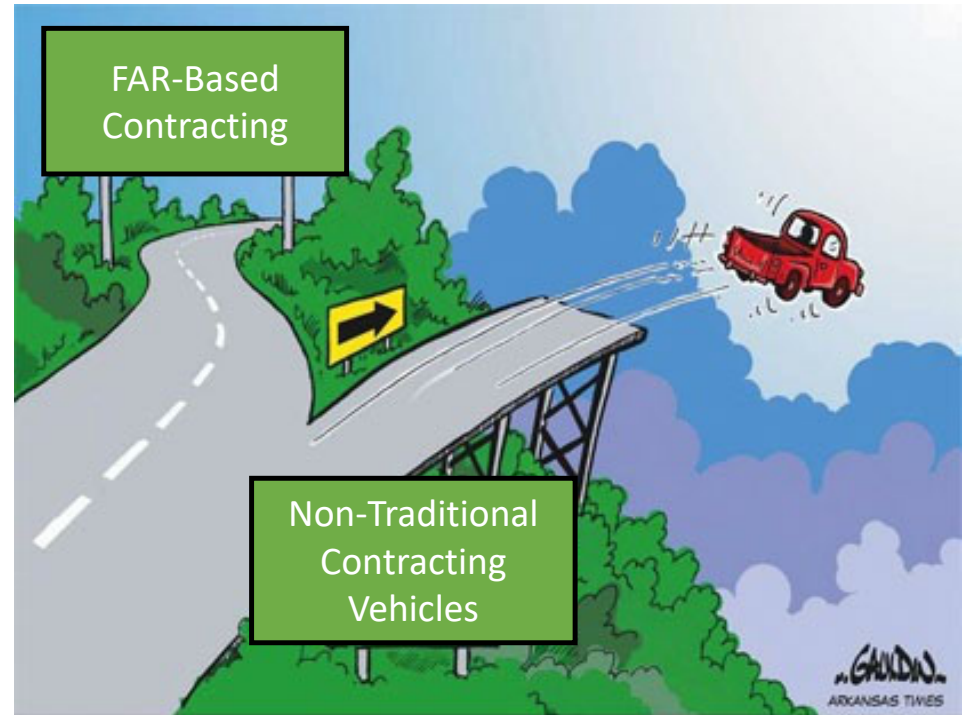


Non-Traditional Contracting Vehicles

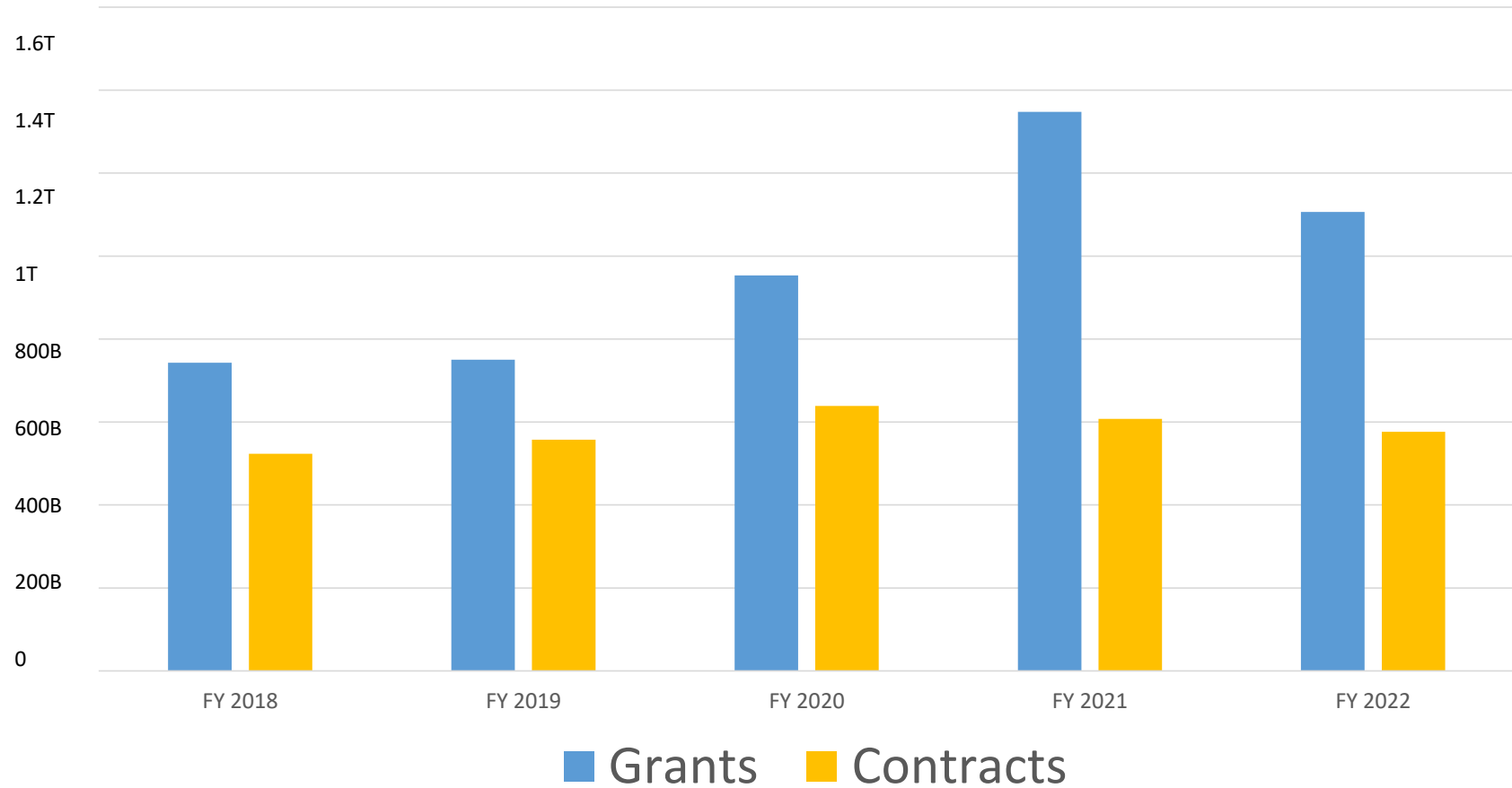


The Road Less Traveled...

- Players
- Laws/Regulations
- Contracting Authority
- Compliance Obligations



Federal Government Spending



Data Source: USASpending.gov

Recent Federal Grant Appropriations

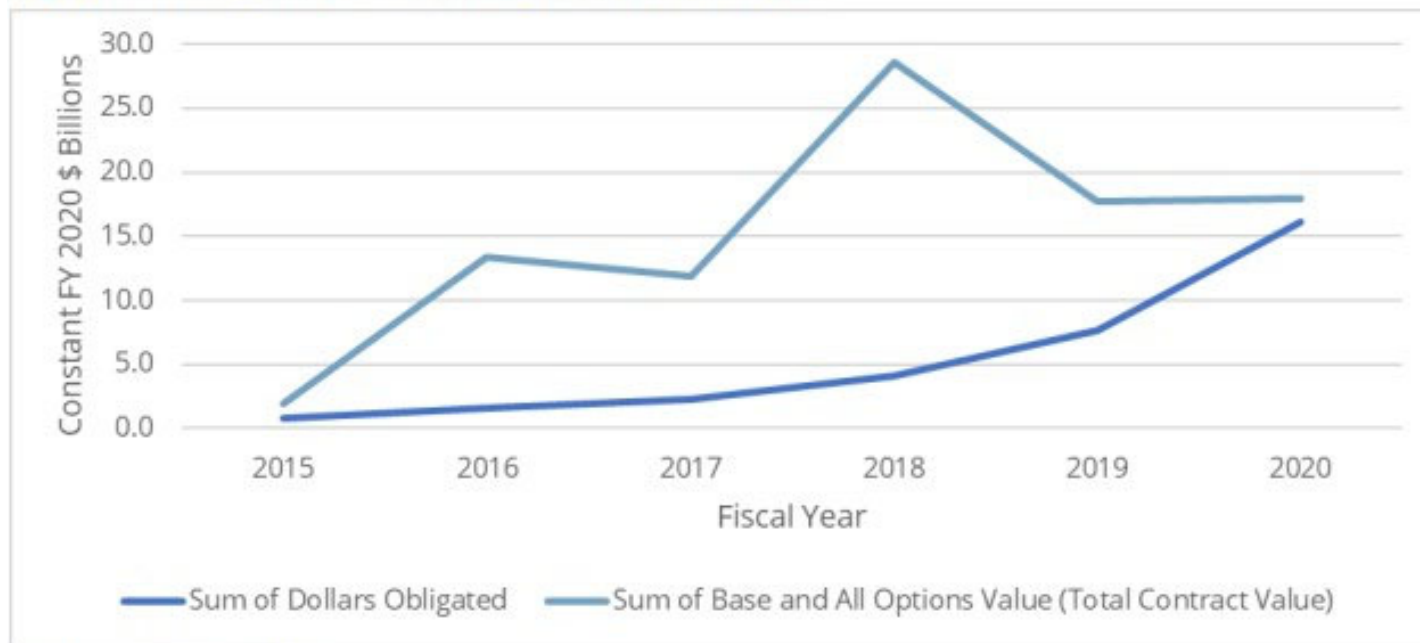
Infrastructure
Investment
and Jobs Act
(2021): \$550
billion

American
Rescue Plan
Act (2021):
\$350 billion

Program Name	5-year Funding Amount
National Highway Performance Program	\$148,000,000,000
National Highway Performance Program	\$72,000,000,000
Surface Transportation Block Grant Program	\$36,000,000,000
Federal-State Partnership for Intercity Passenger Rail Grants	\$33,390,947,107
Urbanized Area Formula Grants	\$26,675,000,000
Bridge Formula Program	\$21,640,412,832
State of Good Repair Grants	\$15,750,000,000
Amtrak National Network Grants	\$15,557,499,996
Highway Safety Improvement Program	\$15,000,000,000
Airport Infrastructure Grants	\$13,200,000,000
Congestion Mitigation & Air Quality Improvement Program	\$12,200,000,000

Federal Government Spending

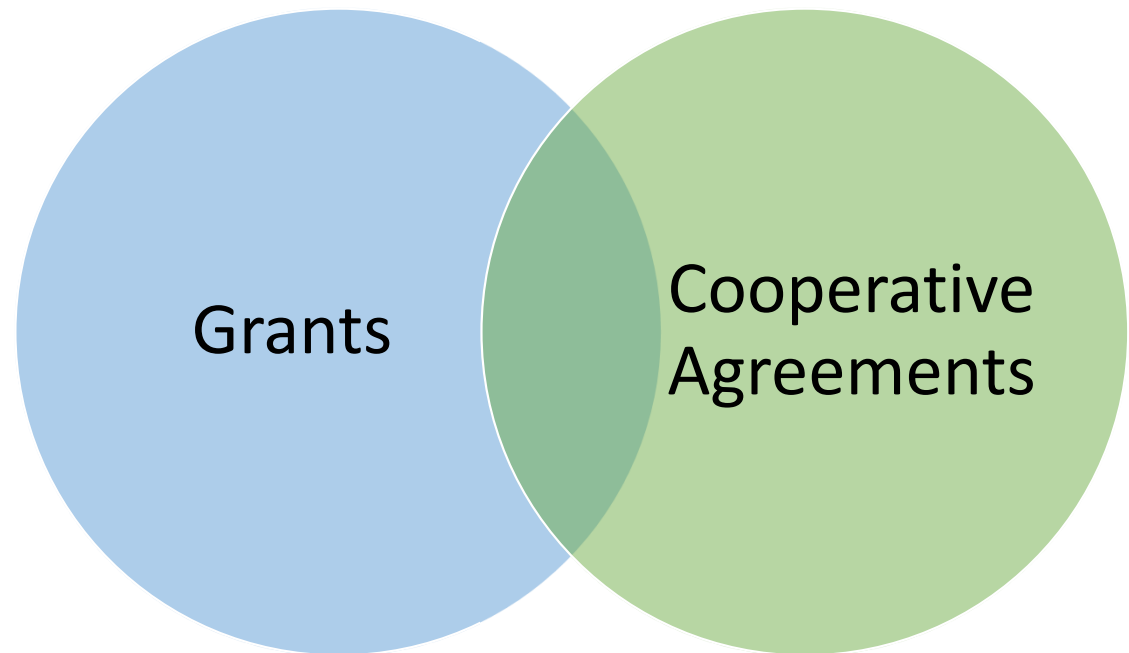
Figure 2-1: Defense OTA Obligations, 2015-2020



Source: FPDS; CSIS analysis.

Financial Assistance Agreements

SheppardMullin



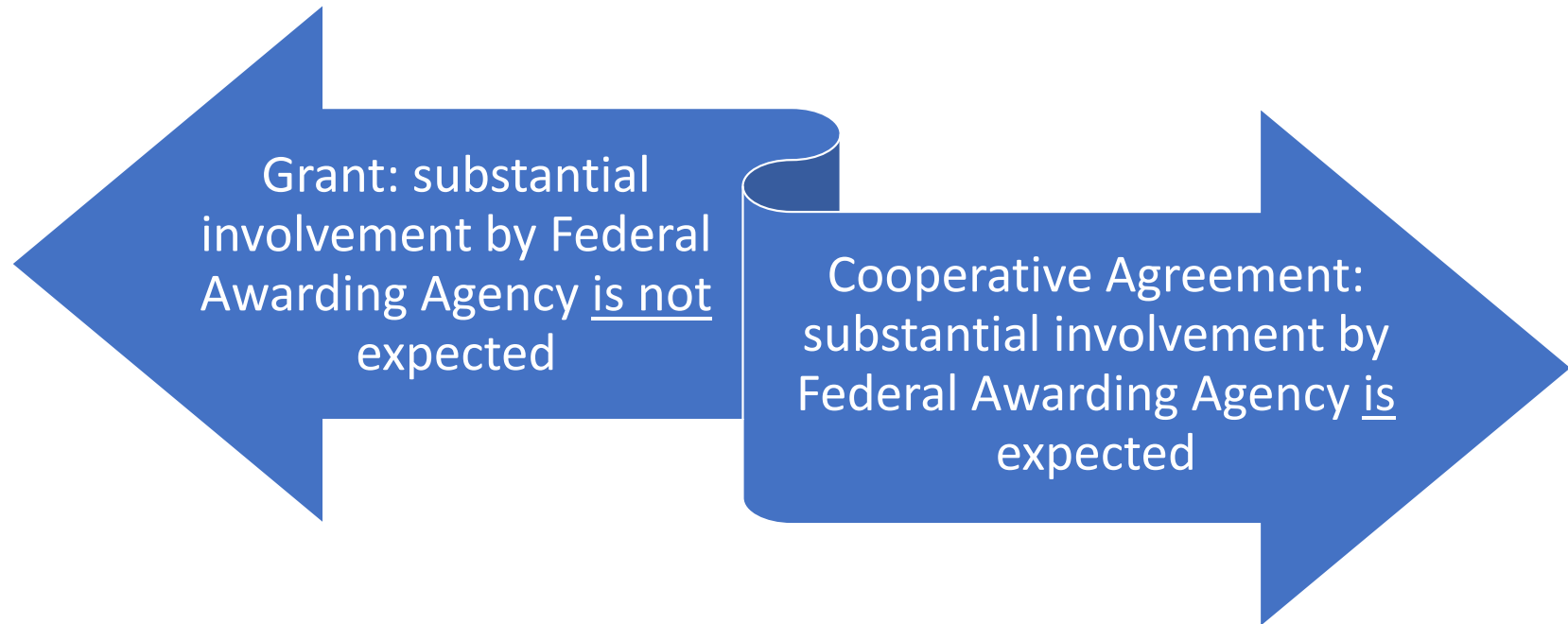
Grant Agreements

- Grant Agreement = Legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity
- Permissible uses:
 - The principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law
 - Substantial involvement is not expected between the executive agency and recipient when carrying out the activity contemplated in the agreement.
- *Not* to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use.
- Does not include: (1) direct US Government cash assistance to an individual; (2) a subsidy; (3) a loan; (4) a loan guaranty; or (5) insurance

Cooperative Agreements

- Cooperative Agreement = Legal instrument of financial assistance between a Federal awarding agency and a recipient or a pass-through entity and a subrecipient
- Permissible uses:
 - The principal purpose of the relationship is to transfer a thing of value to carry out a public purpose
 - Substantial involvement is expected between the executive agency and recipient when carrying out the activity contemplated in the agreement.
- Does not include: (1) direct US Government cash assistance to an individual; (2) a subsidy; (3) a loan; (4) a loan guaranty; or (5) insurance

Key Difference: Federal Involvement



Examples of Federal Involvement



Department of Energy

- Involvement in reviewing project plans and project performance,
- Conducting annual project review meetings to ensure adequate progress, and
- Recommending alternate approaches on a project to perform a front-end engineering design (FEED) study for carbon dioxide capture



USAID

- Approval of implementation plans and key personnel,
- Participation in selection of advisory committee members, and
- Concurrence on sub-awards for a Food Security Nutrition and Resilience project in Liberia



National Institutes of Health

- Conducting more frequent progress reviews,
- serving on External Advisory Committees,
- participating in coordinating collaborative project efforts and setting priorities, and
- providing advice on operating guidelines, QC procedures, and policies for a program to extract, accumulate, organize, annotate, and link growing bodies of information related to biomedical datasets

Unique Requirements of Financial Assistance Agreements

Compliance

Reporting

Oversight

Property
Management
/ Disposition

Property
Ownership

Procurement

Audits

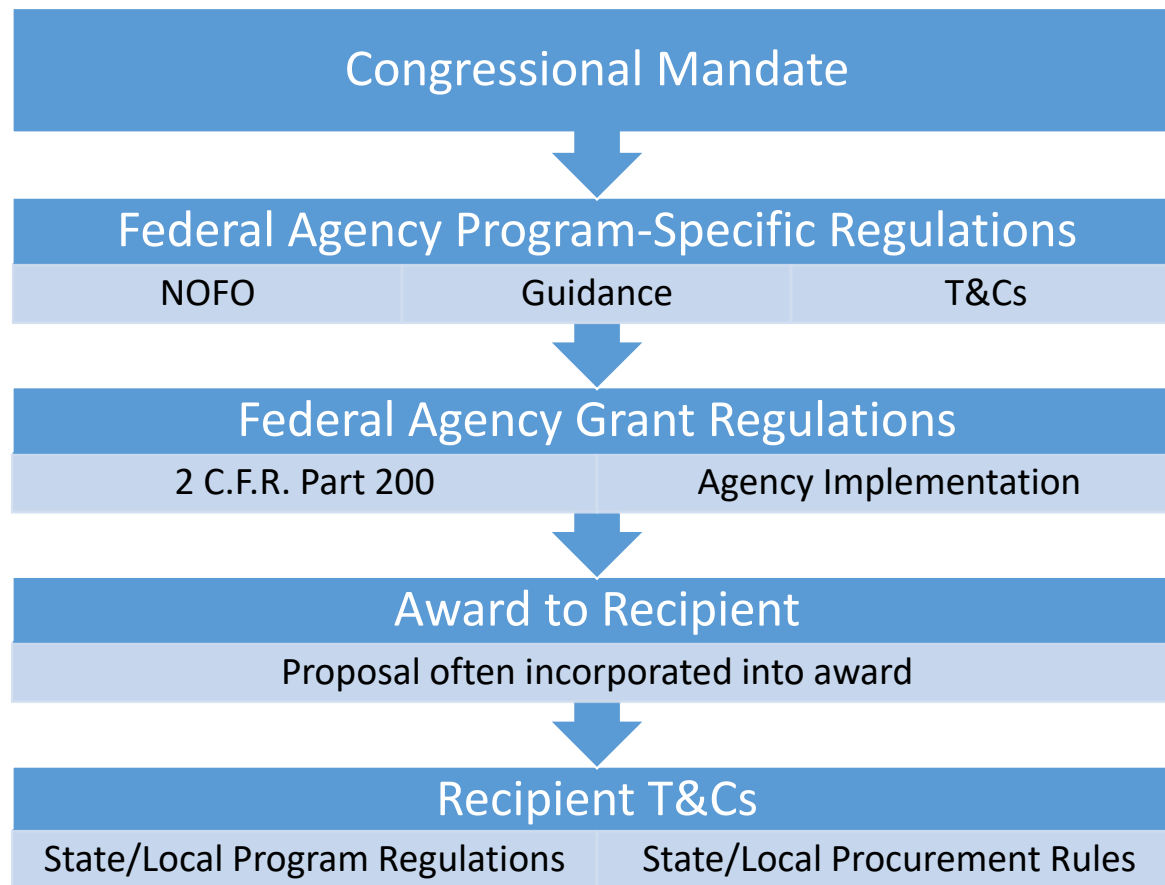
Subpart E Cost
Principles

Spotting a Financial Assistance Agreement (or Subaward)

Solicitation	<ul style="list-style-type: none">• Funding Opportunity Announcement• Notice of Funding Opportunity
Announcement	<ul style="list-style-type: none">• GovWin or SAM?
Compliance	<ul style="list-style-type: none">• Uniform Guidance• Subaward/Appendix II• <i>Absence</i> of FAR/DFARS clauses• <i>Presence</i> of state/local regulations/statutes
Players	<ul style="list-style-type: none">• Federal Awarding Agency• Pass-Through Entity• Non-Federal Entity• Subrecipient



A Whole New (Grant Compliance) World



The Uniform Guidance: The FAR, But Different...

Subpart A	Definitions
-----------	-------------

Subpart B	General Provisions: Authority & Applicability
-----------	---

Subpart C	Pre-Award Requirements and Contents of Federal Awards
-----------	---

Subpart C	Post Federal Award Requirements
-----------	---------------------------------

Subpart E	Cost Principles
-----------	-----------------

Subpart F	Audit Requirements
-----------	--------------------

Appendices

Key Players

- **Federal Awarding Agency:** Federal agency providing a federal award directly to a non-Federal entity.
- **Non-Federal Entity:** State, local government, Indian tribe, Institution of Higher Education, or Nonprofit organization that carries out a federal award as a recipient or subrecipient*
 - **Recipient:** Entity, usually an NFE, that receives a Federal award directly from a Federal awarding agency.
 - **Subrecipient:** Entity, usually an NFE, that receives a subaward from a pass-through entity to carry out part of a Federal award.
 - **Pass-Through Entity:** NFE that provides a subaward to a subrecipient
- **Contractor:** Entity that receives a contract

Subrecipients vs. Contractors

Subrecipient

- Subject to all requirements of the Federal Award
- Subject to all provisions of the Uniform Guidance applicable to NFEs
- Responsible for overseeing subawards and contractors

Contractor

- *Not* subject to all requirements of the Federal Award
- Subject to Uniform Guidance Appendix II
- Subject to State/Local procurement regulations

Subrecipient

- ✓ Determines who is eligible to receive what Federal assistance;
- ✓ Has responsibility for programmatic decision-making;
- ✓ Has its performance measured in relation to whether objectives of a Federal program were met;
- ✓ Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- ✓ 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.

VS

Contractor

- ✓ Provides the goods and services within normal business operations;
- ✓ Provides similar goods or services to many different purchasers;
- ✓ Normally operates in a competitive environment;
- ✓ Provides goods or services that are ancillary to the operation of the Federal program; and
- ✓ Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

Other Transaction Agreements



National Institutes
of Health



CHANGING WHAT'S POSSIBLE

Other Transaction Agreement (OTA) Authority

- Generally defined as what they are NOT:
 - *Not* grants
 - *Not* cooperative agreements
 - *Not* federal contracts

Origin of OTAs

- National Aeronautics and Space Act of 1958

In the performance of its functions, the Administration is authorized. . . without regard to [the prohibitions against advance payments], to enter into and perform such contracts, leases, cooperative agreements, or *other transactions* as may be necessary in the conduct of its work and *on such terms as it may deem appropriate*, with any agency or instrumentality of the United States. . . Or with any person, firm, association, corporation, [or] educational institution. . . .

10 U.S.C. § § 2371 & 2371b

- OTAs are contractual instruments other than standard procurement contracts, grants, or cooperative agreements
- Has all six legal elements for a contract: offer, acceptance, consideration, authority, legal purpose, and meeting of the minds, and will be signed by someone who has the authority to bind the federal government
 - Agreement terms can be enforced by and against either party
- OTAs can be used for:
 - Research for basic, applied, and advanced research projects
 - Prototype for the acquisition of prototype capabilities
 - Production (as a follow-on to Prototype)

Characteristics of an OTA

- ✓ Streamlined acquisition
 - ✓ No formal solicitation
 - ✓ Competition “to the maximum extent practicable”
- ✓ Flexible terms negotiated between the parties
- ✓ Most laws and regulations governing federal contracts do not apply to OTAs
- ✓ No mandatory flow downs
- ✓ Open-ended government requirements

When Can OTAs Be Used?

- Use of OTA authority for prototype projects is appropriate if:
 - At least ***one nontraditional Defense contractor*** is participating to a significant extent in the prototype project
 - ***No nontraditional Defense contractor*** is participating to a significant extent in the prototype project, but ***at least one of the following circumstances exists***:
 1. At least one third of the total cost of the prototype project is to be paid out of funds provided by non-Federal parties to the transaction.
 2. The Senior Procurement Executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a procurement contract.

Research OTAs – Requirements & Permissible Uses

- Requirements
 - FAR (and other agency supplements) not applicable
 - Cost share arrangement to the maximum extent practicable
 - Competition to the maximum extent practicable
 - Agencies must be authorized by Congress
 - CO must have Agreement Officer authority
- Permissible Uses
 - R&D (or RD&D – research, development, and demonstration) activities for *basic, applied, and advanced research* projects related to systems or other needs
 - Intended to spur dual-use R&D (commercial and government) without regulatory burden
 - Do not include authority for transition to a follow-on production contract

Prototype OTAs – Requirements & Permissible Uses

- Requirements
 - FAR (and other agency supplements) not applicable
 - Competition to the maximum extent practicable
 - Cost sharing if no significant participation by non-traditional contractors/NPs/SBs
 - Must address anticipated follow-on activities using competitive procedures
 - Agencies must be authorized by Congress
 - CO must have Agreement Officer authority
 - Agency Senior Executive approval for projects over \$500M
- Permissible Uses
 - Acquisition of prototype capabilities with potential to transition to Production OTAs
 - Project addressing a proof of concept, model, reverse engineering to address obsolescence, pilot, novel application of commercial technologies for government purposes, agile development activity, creation, design, development, demonstration of technical or operational utility, or combination.

Key Differences Between Contracting Vehicles

SheppardMullin



Purpose

Contract

Procurement to purchase property or services for USG's direct benefit or use.

Financial Assistance

Flexible instrument to provide monetary support or stimulate a public activity

OTAs

Used when USG needs access to R&D or prototypes from commercial sources requiring more flexibility than traditional contracting allows.

Applicable Regulations/Laws

Contract

FAR
Agency
Supplemental
Regulations

Financial Assistance

Uniform
Guidance
Agency-
Specific
Regulations

OTAs

*Not FAR**
Some U.S.
Laws (*e.g.*
PIA)

Terms & Conditions

Contract

Terms in the Agreement, FAR Clauses, FAR Supplement Clauses (plus *Christian Doctrine*)

Financial Assistance

Terms in the Agreement, Authorizing Act, Appropriations Act, Program Regulations, Governmentwide Regulations, Agency Guidance

OTAs

Flexible, as negotiated

Type of Contract

Contract

Preference for
Fixed Price
Contracts
(though other
types
permitted)

Financial Assistance

Preference for
Cost-
Reimbursement
(though other
types
permitted)

OTAs

May be fixed-
price,
expenditure
based, or hybrid

Profit

Contract

Expected

Financial
Assistance

Expressly
prohibited

OTAs

Expected

Intellectual Property

Contract

Government Purpose
Rights

Limited Rights

Restricted Rights

Unlimited Rights

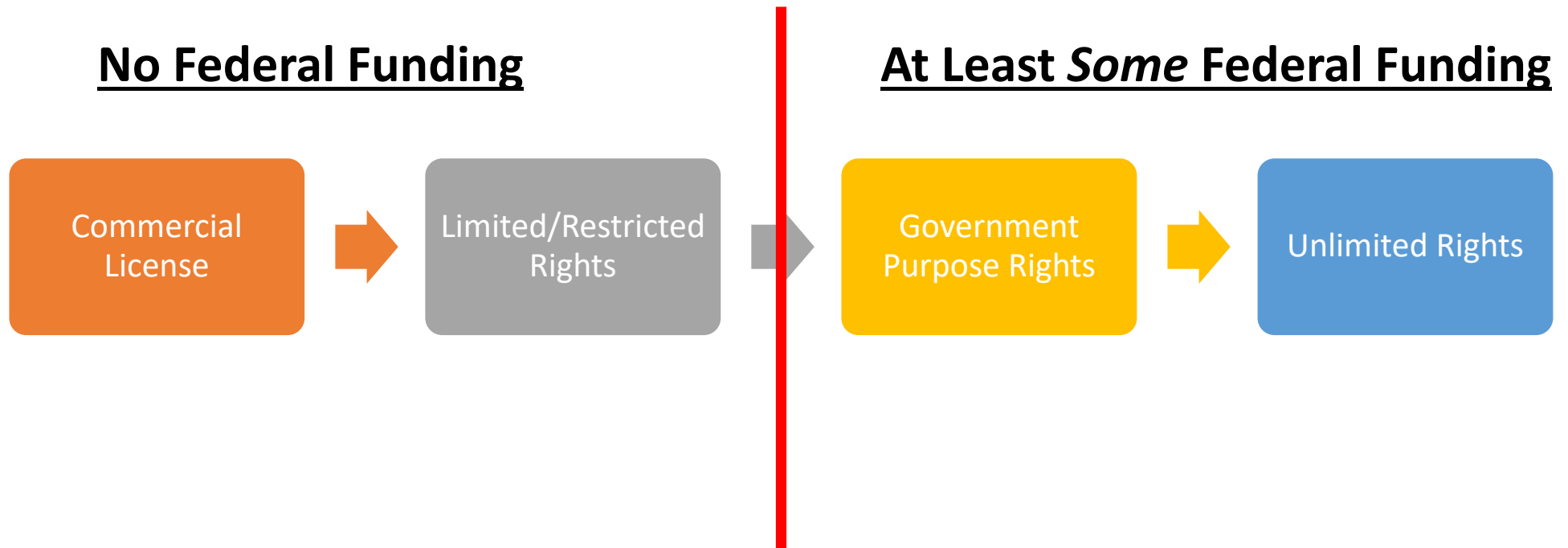
Financial Assistance

Flexible, but Federal
Purpose Rights

OTAs

Flexible

FAR IP Rights: Follow the Money



Financial Assistance Agreements

- Flexible, but funding is not the determinative factor
- 2 CFR 200.315: is the IP “produced” or “developed” under the agreement
- “Federal Purpose Rights”: the Federal Government has the right to
 - Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
 - Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

IP Rights for OTAs

- IP rights are fully negotiable under all types of OTAs.
- Although neither applies to OTAs, DOD OT Guide recommends that government negotiators have general understanding of the basics of intellectual property (IP) rights under the Bayh-Dole Act (35 U.S.C. §201-204) for patents, and 10 U.S.C. §2320-21 for technical data.
- DOD Contracting Officers are encouraged to consider:
 - Project goals, including any likely commercialization of the research or production and follow-on support of the prototype;
 - Balance the relative investments and risks borne by the parties both in past development of the technology and in future development and maintenance of the technology

Protests

Contract

Agency

GAO

COFC

Financial
Assistance

Limited
Jurisdiction

OTAs

Limited
Jurisdiction

Protests – FAR-based Contracts

	Agency	GAO	COFC
Suspension Of Procurement	Automatic suspension if protest filed within 10 days of award or 5 days after receipt of requested and required debriefing	Automatic suspension if protest filed within 10 days of award or 5 days after receipt of requested and required debriefing and GAO notifies agency within same time period	Temporary Restraining Order and Preliminary Injunction (Discretionary)
Discovery	Ordinarily none	“Agency Report” to include relevant documents and written response to protest allegations; protester may seek particular, relevant documents	Administrative record and potential for additional discovery
Remedies	Full range of remedies available	Full range of remedies available, plus protest costs, including “reasonable” attorneys’ fees	Injunction or declaratory judgment; may award bid and proposal preparation costs
Appeals	No direct appeal, may file a protest at GAO or COFC	No direct appeal, may seek reconsideration or file protest at COFC	Federal Circuit

Protests – Grants and Cooperative Agreements

- Processes are generally dependent on awarding agency requirements
- The GAO has declined to use its bid-protest procedures to review individual grant awards but has reviewed challenges where grant or cooperative agreement is used as de facto sole source for products or services previously acquired by agency through competitive procurements
 - 4 C.F.R. § 21.5(m) **Protests of awards, or solicitations for awards, of agreements other than procurement contracts.** GAO generally does not review protests of awards, or solicitations for awards, of agreements other than procurement contracts, with the exception of awards or agreements as described in § 21.13; GAO does, however, review protests alleging that an agency is improperly using a non-procurement instrument to procure goods or services.
- Protest procedures generally are provided in agency notice of funding opportunities

OTA Protests – Limited Jurisdiction

The Government Accountability Office (GAO) will only entertain protests challenging the propriety of the use of OTA filed before the date set for receipt of initial proposals

U.S. Court of Federal Claims has jurisdiction if the OTA “is in connection with a procurement or a proposed procurement”

- Because OTAs are not procurements, GAO has held it does not have jurisdiction to review protests relating to the award of an OTA. *MorphoTrust USA, LLC*, B-412711, May 16, 2016, 2016 CPD ¶ 133.
- GAO may have jurisdiction to hear a protest challenging the agency's use of other transaction authority but the protest would have to meet the GAO's strict timeliness rules and be filed *before* the deadline for receipt of proposals. See *Spartan Med., Inc.*, B-419503, Feb. 26, 2021, 2021 CPD ¶ 109.
- Like the GAO, the Court of Federal Claims has held that OTAs are not procurements. See *Space Expl. Techs. Corp. v. United States*, 144 Fed. Cl. 433, 435 (2019). However, the Court recently clarified that it has jurisdiction to hear a dispute relating to the award of an OTA when it is in connection with a procurement or a proposed procurement. *Hydraulics Int'l, Inc. v. United States*, 161 Fed. Cl. 167 (2022).

Termination

Contract

Unilateral
Government Right

Financial Assistance

Unilateral
Government Right

Negotiated Awardee
Right (though
unilateral right
standard)

OTAs

Negotiated Bilateral
Rights

Breach of Contract / Disputes

Contract

Contract
Disputes
Act

Financial
Assistance

Agreement-
specific

OTAs

Negotiated

Disputes

- FAR-based contracts: the Contract Disputes Act
- Grants and Cooperative Agreements
 - Not subject to the CDA
 - Uniform Guidance places the responsibility on non-federal entities to resolve all contractual and administrative issues arising out of these agreements including, but not limited to, source evaluation, protests, disputes, and claims
 - See, e.g., 2 C.F.R. 200.318, General procurement standards
- OTAs are not subject to the Contract Disputes Act
 - Generally, will have their own negotiated disputes provision
 - DOD OT Guide recommends Contracting Officers maximize the use of Alternate Dispute Resolution (ADR) procedures when possible and appropriate

Audits

Contract

Alphabet
Soup of
Auditors

**Financial
Assistance**

Subpart F
and Single
Audit Act

OTAs

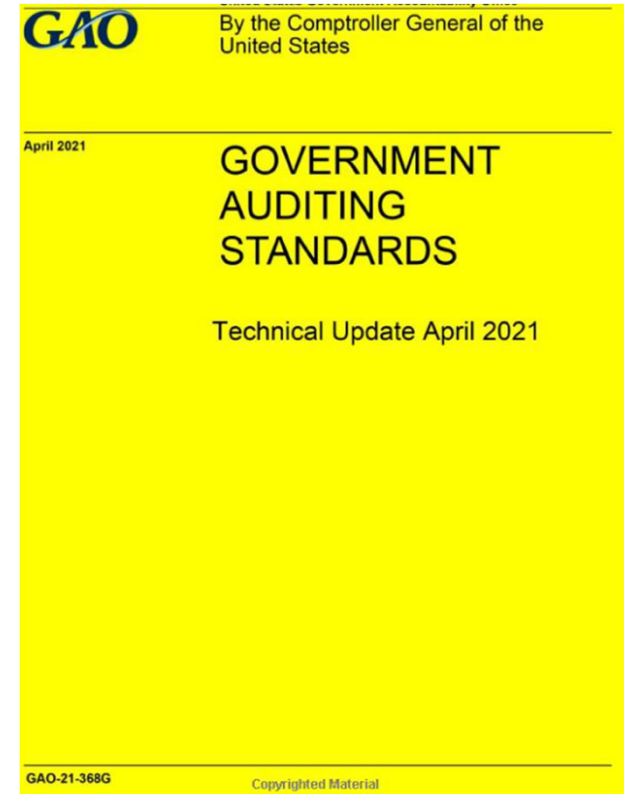
Negotiated
obligation

Financial Assistance Audits

- 2 CFR Part 200, Subpart F
 - A NFE that expends \$750,000 or more during the NFE's fiscal year in Federal awards must have a single or program specific audit conducted for that year in accordance with the provisions of Subpart F
- Two Options:
 - Single audit
 - Program specific audit
- Agency Supplements
 - DGARS (DoD Grant and Agreement Regulations): 32 CFR Part 21
 - DOE Grant Regulations: 2 CFR Part 910
 - HHS Grant Regulations: 45 CFR Part 75

GAGAS

- The Generally Accepted Government Auditing Standards (“GAGAS”), also known as the "Yellow Book," are published by GAO and apply to the audits of financial assistance agreements.
- GAGAS applies to both financial and performance audits.



Financial Assistance Audits Areas of Focus



Mandatory Disclosure

Contract

Required disclosure of *credible evidence* of Federal criminal law involving fraud, COI, bribery, or gratuity; significant overpayments; and FCRA violation

Financial Assistance

Required disclosure of Federal criminal law involving fraud, COI, bribery, or gratuity

OTAs

Negotiated obligation

Mandatory Disclosure

- **FAR-Based Contracts**

- Requires disclosure of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the U.S. Code
 - FAR 52.203-13 (Contractor Code of Business Ethics and Conduct)
 - FAR 9.406-2 and 9.407-2 (Causes for Debarment and Suspension)

- **Grants**

- Requires a timely, written disclosure to the federal awarding agency or pass-through entity regarding “all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.”
 - 2 C.F.R. 200.113, Mandatory Disclosure

- **OTAs**

- Requirement depends on terms of agreement

Compliance Infrastructure

Contract

Terms in the
Agreement,
FAR Clauses,
Plus Christian
Doctrine

Financial Assistance

Terms in the
Agreement,
Uniform
Guidance

OTAs

Negotiated

Lessons Learned: Key Compliance Considerations with Non-Traditional Contracting Vehicles

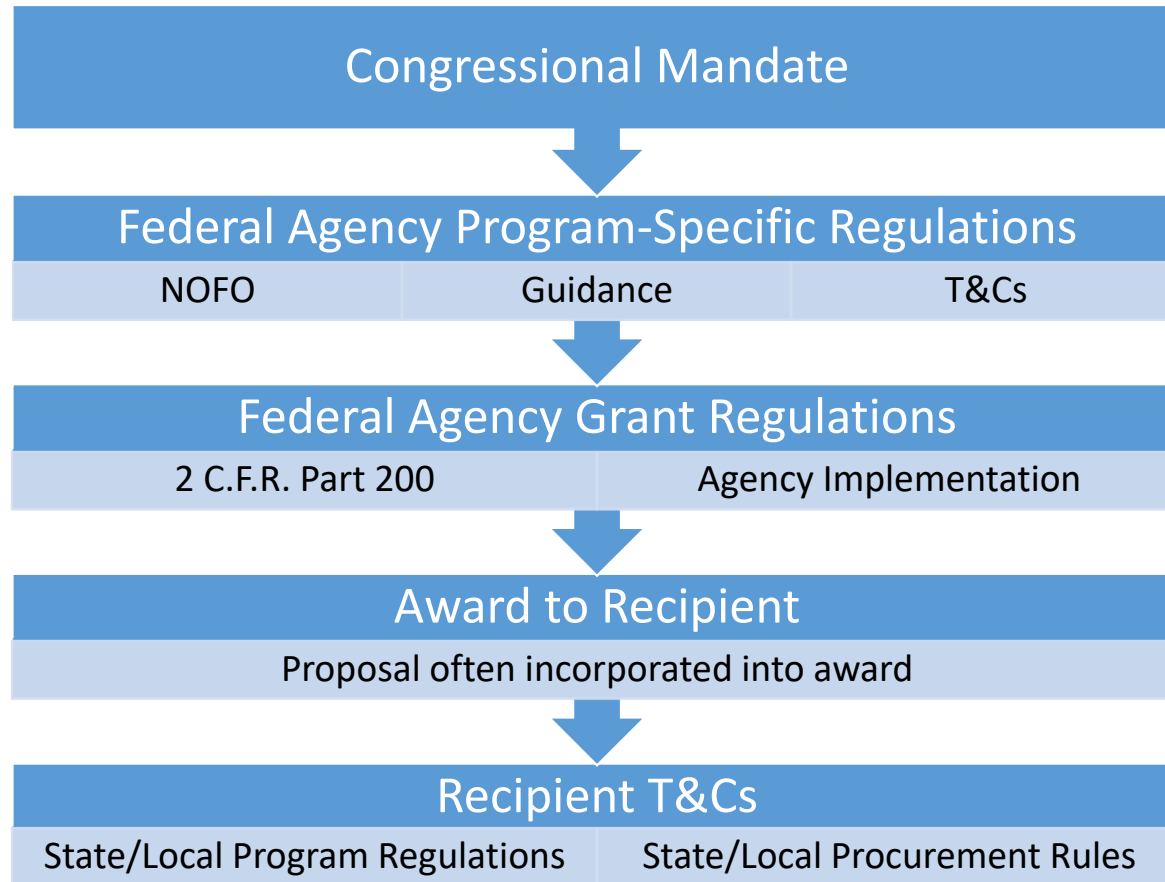
SheppardMullin



Common Pitfalls with Non-Traditional Contracting Vehicles

1. Terms and conditions are unique, even for Federal contractors
2. Commercial Products and Services are NOT Special
3. Understanding the differences between Uniform Guidance and the FAR
4. Burdensome Invoicing and Reporting Anomalies
5. Scope of Audit Rights

Understanding Terms and Conditions



Commercial Products and Services

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

As prescribed in 52.201(b)(4), insert the following clause:

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (Mar 2023)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

(1) ~~52.203-19~~, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) ~~52.204-23~~, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(3) ~~52.204-25~~, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) ~~52.209-10~~, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(5) ~~52.232-40~~, Providing Accelerated Payments to Small Business Subcontractors (Mar 2023) (31 U.S.C. 3903 and 10 U.S.C. 3801).

(6) ~~52.233-3~~, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(7) ~~52.233-4~~, Applicable Law for Breach of Contract Claim (Oct 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

[Contracting Officer check as appropriate.]

(1) ~~52.203-6~~, Restrictions on Subcontractor Sales to the Government (Jun 2020), with *Alternate I* (Nov 2021) (41 U.S.C. 4704 and 10 U.S.C. 4655).

52.244-6 Subcontracts for Commercial Products and Commercial Services.

As prescribed in 44.403, insert the following clause:

Subcontracts for Commercial Products and Commercial Services (Mar 2023)

(a) *Definitions.* As used in this clause—

Commercial product, commercial service and *commercially available off-the-shelf item* have the meanings contained in Federal Acquisition Regulation (FAR) 2.101.

Subcontract includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial products, commercial services, or non-developmental items as components of items to be supplied under this contract.

(c)

(1) The Contractor shall insert the following clauses in subcontracts for commercial products or commercial services:

(i) ~~52.203-13~~, Contractor Code of Business Ethics and Conduct (Nov 2021) (41 U.S.C. 3509), if the subcontract exceeds the threshold specified in FAR 3.1004(a) on the date of subcontract award, and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) ~~52.203-15~~, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) ~~52.203-19~~, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017).

(iv) ~~52.204-21~~, Basic Safeguarding of Covered Contractor Information Systems (Nov 2021), other than subcontracts for commercially available off-the-shelf items, if flow down is required in accordance with paragraph (c) of FAR clause ~~52.204-21~~.

(v) ~~52.204-23~~, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Nov 2021) (Section 1634 of Pub. L. 115-91).

(vi) ~~52.204-25~~, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Nov 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

The Uniform Guidance: The FAR, But Different...

Subpart A	Definitions
Subpart B	General Provisions: Authority & Applicability
Subpart C	Pre-Award Requirements and Contents of Federal Awards
Subpart C	Post Federal Award Requirements
Subpart E	Cost Principles
Subpart F	Audit Requirements
Appendices	

Cost Principles



FAR Part 31



Contains 52 contract cost principles



Provides guidance for determining allowability, reasonableness, and allocability of costs



Guidance on direct versus indirect costs



Uniform Guidance, Subpart E



Contains 56 select items of cost

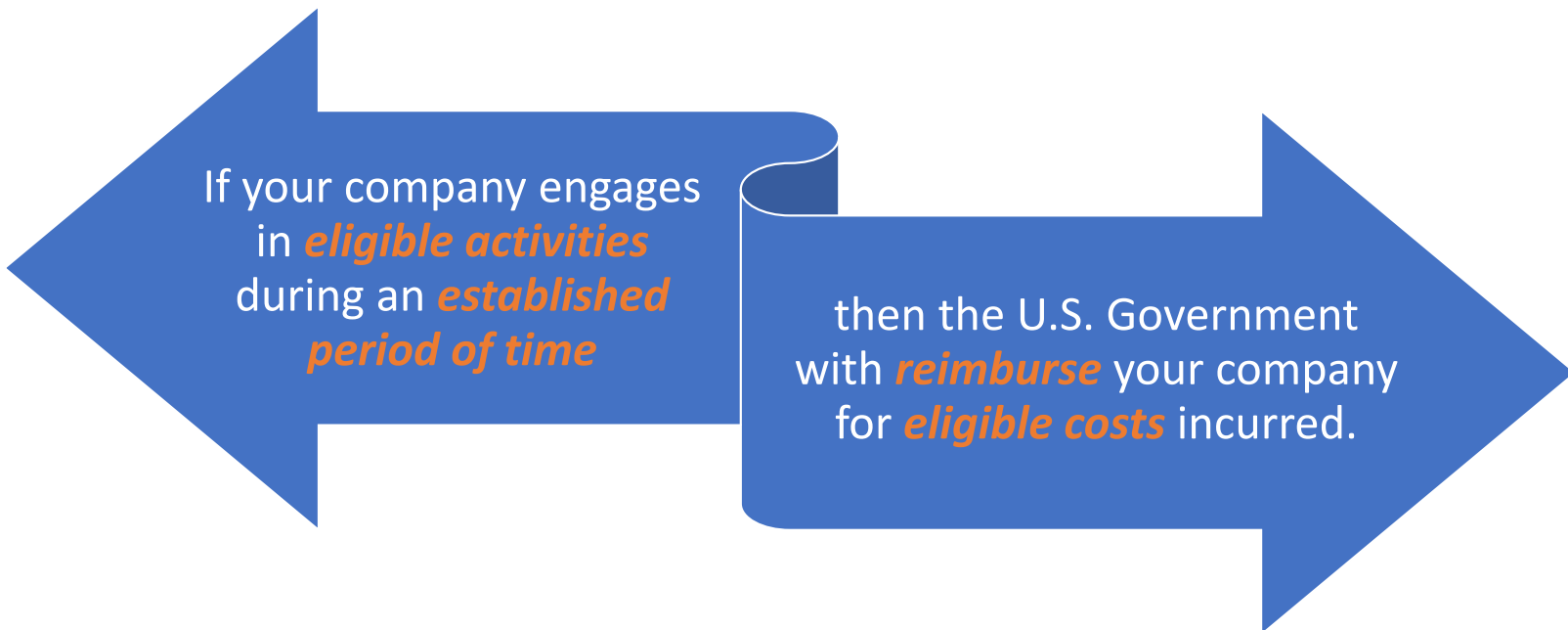


Provides guidance for determining allowability, reasonableness, and allocability of costs



Guidance on direct versus indirect costs

Financial Assistance Eligible Costs



Invoicing/Reporting

Coronavirus Capital Projects Fund Compliance and Reporting Guidance

For States, Territories, and Freely Associated States

Project and Expenditure Report User Guide

Capital Projects Fund

GUIDANCE FOR THE CORONAVIRUS CAPITAL PROJECTS FUND FOR STATES, TERRITORIES & FREELY ASSOCIATED STATES

U.S. Department of the Treasury



June 8, 2022

Capital Projects Fund (CPF) Grant Plan Best Practices For States, Territories, and Freely Associated States June 8, 2022

This document provides a brief overview of the CPF Grant and Program Plan submission process and identifies several best practices for recipients. **This document does not pertain to Tribal governments.**

This document may be updated or modified periodically; changes will be clearly marked. Recipients should consult the [CPF Guidance for States, Territories, and Freely Associated States \(CPF Guidance\)](#), [Frequently Asked Questions \(FAQ\) document](#), the [Sample CPF Grant Plan](#) (which also includes links to the Use Code Questionnaires), and the CPF website (treasury.gov/CPF) for additional information. Terms used in this document but not defined herein have the meaning specified in the CPF Guidance.

AS OF APRIL 28, 2022

Coronavirus Capital Projects Fund

Frequently Asked Questions

AS OF APRIL 28, 2022

This document contains answers to frequently asked questions (FAQ) regarding the Coronavirus Capital Projects Fund (CPF), established by Section 604 of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021. This FAQ document clarifies CPF Guidance for States (defined to include the District of Columbia and Puerto Rico), Territories, Freely Associated States, and Tribal Governments (the Guidance), and does not supersede the Guidance except as noted. Terms used in the FAQ but not defined herein have the meaning specified in the Guidance.

Treasury will be updating this document periodically in response to questions received from stakeholders; changes will be clearly marked. Recipients and stakeholders should consult Treasury's [CPF Guidance for States, Territories, and Freely Associated States](#) and [CPF Guidance for Tribal Governments](#) for additional information.

- For overall information about the program, including information on requesting funding, please see <https://treasury.gov/CPF>.
- For general questions about CPF, please email CapitalProjectsFund@treasury.gov.

Questions added 1/4/22: 2.9, 3.2, 3.6, 4.2, 4.3, 4.4, 4.8, 4.10, 4.13, 6.2, 6.3, 8.3 (noted with "[1/4]")

Questions added 4/28/22: 2.10, 3.7, 3.8, 3.9, 3.10, 4.6, 4.14, 5.5, 5.7 (noted with "[4/28]")

1. Eligibility and Allocations

1.1. Which governments are directly eligible for funds?

The following governments are eligible to apply for CPF grants:

- The 50 states, the District of Columbia, and Puerto Rico (the States)
- Tribal governments and the State of Hawaii (for Native Hawaiian Programs)
- The United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau

CPF PROGRAM OBJECTIVES

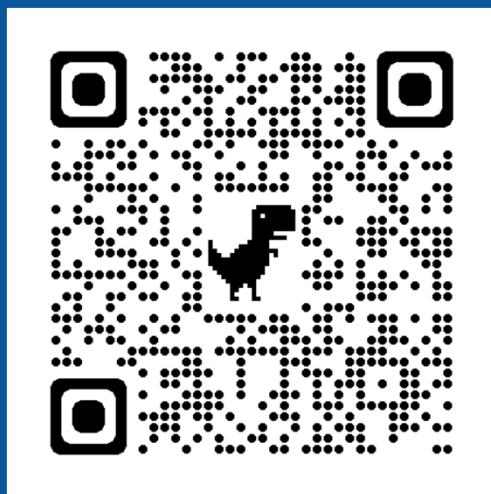
CAPITAL PROJECTS FUND WILL ADDRESS MANY CHALLENGES LAID BY THE PANDEMIC, ESPECIALLY IN RURAL AMERICA, TRIBAL UNITIES, AND LOW- AND MODERATE-INCOME COMMUNITIES, TO ENSURE THAT ALL COMMUNITIES HAVE ACCESS TO THE QUALITY MODERN INFRASTRUCTURE, INCLUDING BROADBAND, NEEDED TO ACCESS CRITICAL SERVICES.

1

Audits



Questions?



Federal Grants Survival Guide

SheppardMullin



Anne Perry
APerry@sheppardmullin.com
202.747.1902



Ryan Roberts
RERoberts@sheppardmullin.com
202.747.2187