



Bipartisan Infrastructure Law: Request for Applications Series II Webinar

**Solid Waste Infrastructure for Recycling Grants for Tribes and Intertribal
Consortia**

Resource Conservation and Sustainability Division
U.S. EPA Office of Resource Conservation &
Recovery





Agenda

- Introduction
- Funding Opportunity Overview
- Subawards & Procurement
- Partnerships
- National Environmental Policy Act (NEPA)
- Build America, Buy America (BABA)
- Resources
- Questions and Answers



Previous Webinar Sessions

- Provided an overview of the request for applications, eligible entities, evaluation criteria, and the application process.
- This link (<https://www.epa.gov/infrastructure/grants-tribes-and-intertribal-consortia>) will take you to:
 - Presentation Slides for Webinar series 1
 - Recording for Webinar Series 1
- A Question-and-Answer document is coming soon!





Introduction

Goals of the Webinar

1

Provide an information on the Solid Waste Infrastructure for Recycling funding opportunity for **Tribes and Intertribal Consortia**

2

Clarify information and answer questions about subawards, procurement, partnerships, participant support costs, and other requirements.



Solid Waste Infrastructure for Recycling (SWIFR) Grant Program

SWIFR Grant Program

Grants
for Political
Subdivisions

Grants for Tribes and
Intertribal Consortia

Grants for States and
Territories





Funding Opportunity Overview

Funding Opportunity Overview

Eligible Entities:

- Federally Recognized Tribes, which include Alaskan Native Villages as defined in Public Law 92-203, and former Indian reservations in Oklahoma, as determined by the Secretary of the Interior, and
- Intertribal consortia, consistent with the requirements in 40 CR 35.504(a).
- **Estimated Funding:** Approximately **\$40,000,000**
 - \$100,000 to \$1,500,000 per award
 - Approximately 60 assistance agreements, at least one award per EPA Region
- **Applications Due: April 4, 2023**
- These grants are **not** PPG eligible for legal reasons.



Funding Opportunity Overview

- Projects **must** achieve one or more of the following objectives:
 - **Develop or update plans** focused on encouraging environmentally sound post-consumer, materials management such as source reduction (e.g., repair clinics, reuse centers), collection, storage, transportation, composting, recycling, and/or markets for recyclables
 - **Develop, strengthen, and/or implement comprehensive data collection** efforts that demonstrate progress towards the National Recycling Goal and Food Loss and Waste Reduction Goal;
 - **Establish, increase, or expand materials management infrastructure**, such as facilities for reuse, recycling or composting; collection and storage bins for recyclable or organic material, purchasing and maintaining equipment or supplies such as scales, crushers, balers, and sorting equipment, trucks, forklifts, and safety equipment);
 - **Establish or identify end-markets** for the use of recycled materials; or
 - **Demonstrate an increase in the diversion** recycling rate, and/or quality of materials collected.





Subawards & Procurement

Subawards

- **For the purpose of the EPA Subaward policy and training, “*subaward*” refers to:**
 - A financial assistance transaction (i.e., profit is unallowable) between an EPA assistance agreement recipient and an eligible subrecipient (or by a subrecipient to a lower subrecipient).
 - For the purpose of accomplishing a public purpose authorized by a Federal program statute.
 - Does not include payments to a procurement contractor or payments to an individual that is a beneficiary or participant in a Federal program.



Identifying Procurement Contracts

- **In contrast to subawards**, as provided in 2 CFR Part 200.331(b), **procurement contractors** (including individual consultants) typically:
 - Provide goods and services on commercial terms.
 - Provide similar goods and services to many different purchasers.
 - Operate in a competitive environment.
 - A reasonable profit is allowable.



Procurement, Subawards, and Participant Support Costs

- **Transactions with for-profit companies and individual consultants are considered procurement contracts with few exceptions.**
- **Two scenarios:**
 - 1. Subaward** would be allowable if the tribe, as the owner/operator of a commercial recycling facility received funding to upgrade equipment **that would be owned by the subrecipient.** A subaward would be appropriate if the owner/operator received funding for personnel, overhead and engineering/design/construction contracts.
 - 2. Participant Support Costs:** Grant recipient provides a rebate for all or a portion of equipment purchase and installation costs from the same vendor. This transaction could be handled as participant support costs and **the program beneficiary owns the equipment.**



Subawards vs. Procurement Contracts

- **The chart shows which option is most likely, based on the entity type that will be receiving funds from the pass-through entity.**
 - The UGG at [2 CFR 200.331\(c\)](#) and Appendix A of EPA's Subaward Policy emphasize the need to exercise judgment based on the substance of the agreement but EPA has tried to simplify the characterization.
 - The fact that the agreement between the pass-through entity and the other party is called a "contract" is not determinative.
- **Approval by EPA's Grants Management Office is required before making a subaward to a for profit firm or individual. Approval can be provided at time of award if the type of transaction is described in the scope of work and/or budget narrative.**

Entity Type	Subaward	Procurement Contract	Neither	Resources to Help Make Determination
For-Profit		✓		2 CFR 200.331 and Subaward Policy Appendix A, <i>Distinctions Between Subrecipients and Contractors</i>
Individual Consultant		✓		
Non-Profit	✓			
Institute of Higher Education	✓			
Federal Agency	✓			
Federally Funded Research & Development Center		✓		



Named Contractors and Subrecipients

- The EPA **does not require or encourage** applicants to name procurement contractors (including consultants) or subrecipients in applications for grant funding.
- However, if an applicant chooses to identify a procurement contractor(s) or subrecipient(s) to conduct work proposed in this application, the applicant **must** comply with the following requirements **even if** the entity is referred to as a “partner” in the application.
- Successful applicants that do not name procurement contractors or subrecipients in their applications must also comply with the requirements described below, regardless of if the contractor was procured before or after the EPA cooperative agreement is awarded.



Procurement under the Uniform Grant Guidance

- **All eligible recipients must comply** with the procurement requirements in [2 CFR Part 200](#) with regard to competition.
- EPA has posted a [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#) as guidance for other recipients and subrecipients of states.

Consultant Fee Cap—2 CFR 1500.10

- Limits the amount of compensation for individual consultants that recipients may charge to EPA agreements to Level IV of the Federal Executive Level.
- This is a statutory requirement and EPA cannot waive the requirement.
- Cap does not include consultant's overhead or travel costs.
- When the Cap applies is based on whether the recipient selects, directs or controls the consultant along the same lines as an employee. The cap will almost always apply to contracts with individual consultants unless the contract is on a fixed amount basis for a discrete product such as a report. [2 CFR 1500.10](#).
- Consultants are contractors even if they receive a IRS 1099 from recipient—competitive procurement rules apply.
- Contracts with multi-employee firms rarely trigger consultant fee cap—firm rather than recipient selects, directs, and controls.



Three Thresholds for Competition for Procurements for SWIFR Grants for Tribes and Intertribal Consortia

- 1. Purchases up to the micro purchase level (**\$10,000 for most recipients**) may be made without competition provided the recipient distributes purchases equitably among qualified suppliers to the extent “practicable” and the prices are reasonable. [2 CFR 200.320\(a\)\(1\)](#).**
 - Generally, for purchases of supplies (including computing devices) but recipients may obtain consulting services PROVIDED the equitable distribution requirement is met.
 - A series of micro purchases with the same consultant without using other sources as well will raise compliance issues.

Three Thresholds for Competition for Procurements for SWIFR Grants for Tribes and Intertribal Consortia

2. Recipients may use small purchase procedures for contracts up to the simplified acquisition threshold (\$250,000**) by obtaining price or rate quotations from an adequate number of qualified sources. [2 CFR 200.320\(a\)\(2\)](#).**

- EPA expects recipients to obtain prices/quotes from **at least 3 sources**.
- For professional services, recipients may use email solicitations to document their files.
- For equipment, internet searches of price catalogues documented by “screen shots” are acceptable.
- Recipients must justify selection of contractors quoting higher prices/rates based on qualifications or technical factors.
- Good faith efforts must be made to solicit disadvantaged businesses per [40 CFR Part 33](#).

Three Thresholds for Competition for Procurements for SWIFR Grants for Tribes and Intertribal Consortia

3. Procurements in excess of the simplified acquisition threshold (**greater than \$250,000**) are subject to formal competitive requirements and must obtain *Competitive Sealed Bids* or *Competitive Proposals*.

- **Sealed bidding** is appropriate when precise specifications can be developed and a firm fixed-priced contract will be awarded to the responsive bidder based principally on price. [2 CFR 200.320\(b\)](#).
 - Typically used for construction projects or purchases of equipment widely available in the commercial marketplace.
- **Procurement by competitive proposals** require more than one proposal and result in a fixed price or cost reimbursement contract. Requests for Proposals must be publicized and include factors to be evaluated and the relative importance of the factors. [2 CFR 200.319](#). Encourage Recipients to “Compete Smart”.
 - Typically used for acquisition of services where the offerors’ qualifications or technical approaches may be more important than price considerations.
- Additional Information on pages 10-13 of [EPA’s Best Practice Guide for Procuring Services Supplies, and Equipment Under EPA Assistance Agreements](#).



Sole Source?

- As provided at [2 CFR 200.320\(c\)](#), Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - The item is available only from a single source;
 - Public exigency or emergency;
 - The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request; or
 - After solicitation of a number of sources, competition is determined inadequate.
- EPA's position is that "sole source" procurements are justified by copyrights, patents, equipment maintenance agreements with manufacturers or similar arrangements.
- Under the Indian Self-Determination and Education and Assistance Act (ISDEAA) tribal recipients may give preference to Indian organizations and to Indian-owned economic enterprises when awarding procurement contracts under EPA assistance agreements. EPA does not interpret the ISDEAA to authorize sole source procurements with Indian organizations and Indian owned economic enterprises. However, tribal recipients may give preference to these entities when developing lists for soliciting bids and proposals.

Davis Bacon Act

- The Davis Bacon Act applies to SWIFR grants as required by 33 U.S.C. 4282(e)(1) and (2).
- The Davis Bacon Act gives the U.S. Department of Labor the responsibility for determining **prevailing wages** and issuing regulations and standards to be observed by federal agencies that award or fund projects.
- **All** SWIFR grant for tribes and intertribal consortia must comply with the Davis Bacon Act, where applicable.
 - **The Davis-Bacon Act applies to contractors and subcontractors performing work on federally-funded or assisted construction contracts in excess of \$2,000.**
- EPA must ensure that all laborers and mechanics employed on construction projects funded directly, **or assisted in whole or in part**, by a SWIFR grant be **paid wages at rates not less than those prevailing on projects** of a character similar in the locality as determined by the Secretary of Labor.
 - Means that the entire “project,” as determined by the Department of Labor’s *purpose, time, and place* test (even tasks outside of those being funded by the grant) could have prevailing wage requirements.



Participant Support Costs

- *Participant support costs* are defined at 2 CFR 200.1 and are allowable with prior EPA approval (pre or post award) as provided at 200.456. Common examples include travel assistance and stipends for trainees and incentives to participate in research programs.
- EPA expanded the definition of *Participant support costs* in 2 CFR 1500.1 to include rebates and subsidies for the purchase of pollution control equipment for Diesel Emission Reduction Act grants as well as subsidies to promote participation in environmental stewardship programs under CWA 319 and other statutes.
- Detailed information available in [EPA Guidance on Participant Support Costs](#) and internal [Frequent Questions](#).



Special Rules for Rebates and Subsidies

- Participant support costs for rebates, subsidies must be supported by EPA program guidance memoranda or by guidelines issued by the recipient and approved by EPA. **EPA's DERA program provides this guidance.**
- **These documents should define** the rules, restrictions, timelines, programmatic requirements, reporting and transaction documentation requirements, eligibility, and funding levels that rebate, subsidy or other payments beneficiaries must follow.
- **Other forms** of program records that are transaction specific (e.g., memoranda of understanding) **may be acceptable.**
- The terms of the EPA assistance agreement **must describe allowable rebates, subsidies or other payments.**
- There must be **written agreement** between recipient or subrecipient and the program beneficiary that outlines the program requirements.





Partnerships

Partnerships

- Project Narrative Attachment Form must identify names and phone numbers of individuals and organizations that have agreed to participate in the implementation of the project, if any.
- Prior to naming a “partner” in your application who will receive EPA funding as part of your project, carefully review the guidance on contracts and subawards in [EPA’s Solicitation Clauses](#) as well as additional guidance in this Request for Applications.



Partnership Agreements

- **Does EPA consider all “partnership agreements” that establish funding relationships to be subawards that are not subject to competition?**
 - **No.** Transactions are either:
 - subawards,
 - procurement contracts,
 - intergovernmental/inter-entity agreements for common procurement,
 - interagency service agreements or services, or
 - participant support costs.
 - Characterizing the transactions consistently with the terms used in the Uniform Grant Guidance is important for determining what rules govern the agreement.
 - Some recipients refer to their contractors (particularly consultants) as “partners” **but named contractors must still comply with competitive procurement requirements.**





Additional Acts to Consider

National Environmental Policy Act

- The National Environmental Policy Act (NEPA) applies as a general matter to federal actions, including actions funded by federal agencies.
- NEPA requires **environmental impact statement** (EIS) or **environmental assessment** (EA) be prepared **by EPA** for actions with potentially significant impacts.
 - It is anticipated that construction projects may require an EA to be prepared.
- **Grant funds may not be used** to conduct an EIS or EA.
 - EPA may require the recipient to prepare an **Environmental Information Document** (EID). An EID is a document prepared by the grant applicant that provides environmental information about the proposed project to assist EPA in the environmental review. Grant funds may be used to prepare the EID.
 - The main components of an EID may include:

Project Description and Funding	Existing Infrastructure	Interagency Coordination and Consultation Activities
Purpose and Need	Existing/Affected Environment	Summary of Public Participation Process
Alternatives Analysis	Environmental Consequences and Mitigation Measures	List of Preparers and List of References

- **Applicants should be aware that EPA may be required to prepare an EA as a part of the project.**
- EPA is exploring a categorical exclusion for NEPA requirements and can provide additional information in the future.



Build America, Buy America Act (BABA)

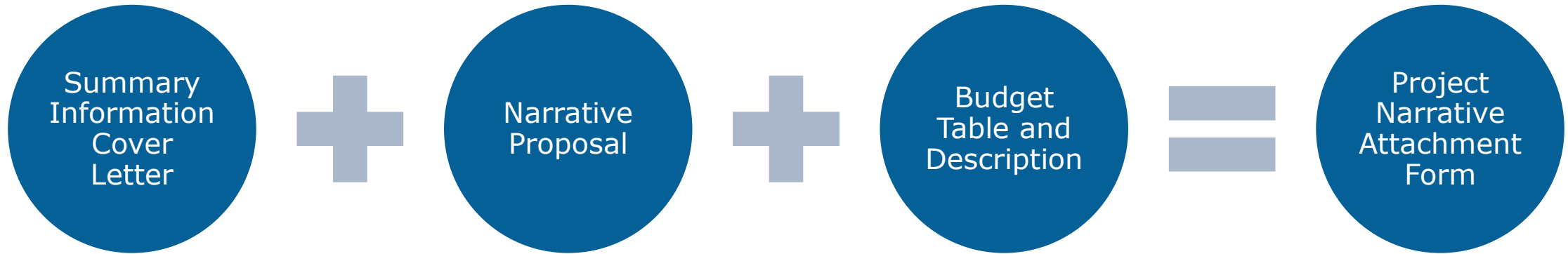
- Applicants should be aware that if their proposals include using federal funds for a project that includes the **purchase of goods, products, and materials on any form of construction, alteration, maintenance, or repair of infrastructure** in the United States for identified EPA financial assistance funding programs, they must comply with the Buy America Sourcing requirements under the Build America, Buy America provisions of the Infrastructure Investment and Jobs Act.
- “Rolling stock,” such as vehicles, do not count as infrastructure for the purposes of BABA.
- Current EPA Waivers that may apply to this funding opportunity:
 - De Minimis General Applicability Waiver: miscellaneous, low-cost products would not be subject to BABA requirements,
 - Small Project General Applicability: small projects where assistance agreements or subawards are less than \$250,000 would not be subject to BABA requirements
 - More information is found at <https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers>
- More information:
 - [EPA Grant Terms and Conditions](#)
 - [EPA’s BABA website](#)





Resources and Best Practices

Project Narrative Attachment Form: Appendix B of the Request for Applications



- Applicants may choose, but are not required, to use the Template for The Project Narrative Attachment Form in Appendix B.
- Applicants that do not use the template will not be penalized.



Budget Best Practices

- Budgets are a critical piece of grant applications and are highly scrutinized during application review.
- EPA recommends you refer to these resources for developing robust budgets:
 - EPA's "How to Develop a Budget" Online Training Course:
<https://www.epa.gov/grants/how-develop-budget>
 - EPA's Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance:
<https://www.epa.gov/sites/default/files/2019-05/documents/applicant-budget-development-guidance.pdf>

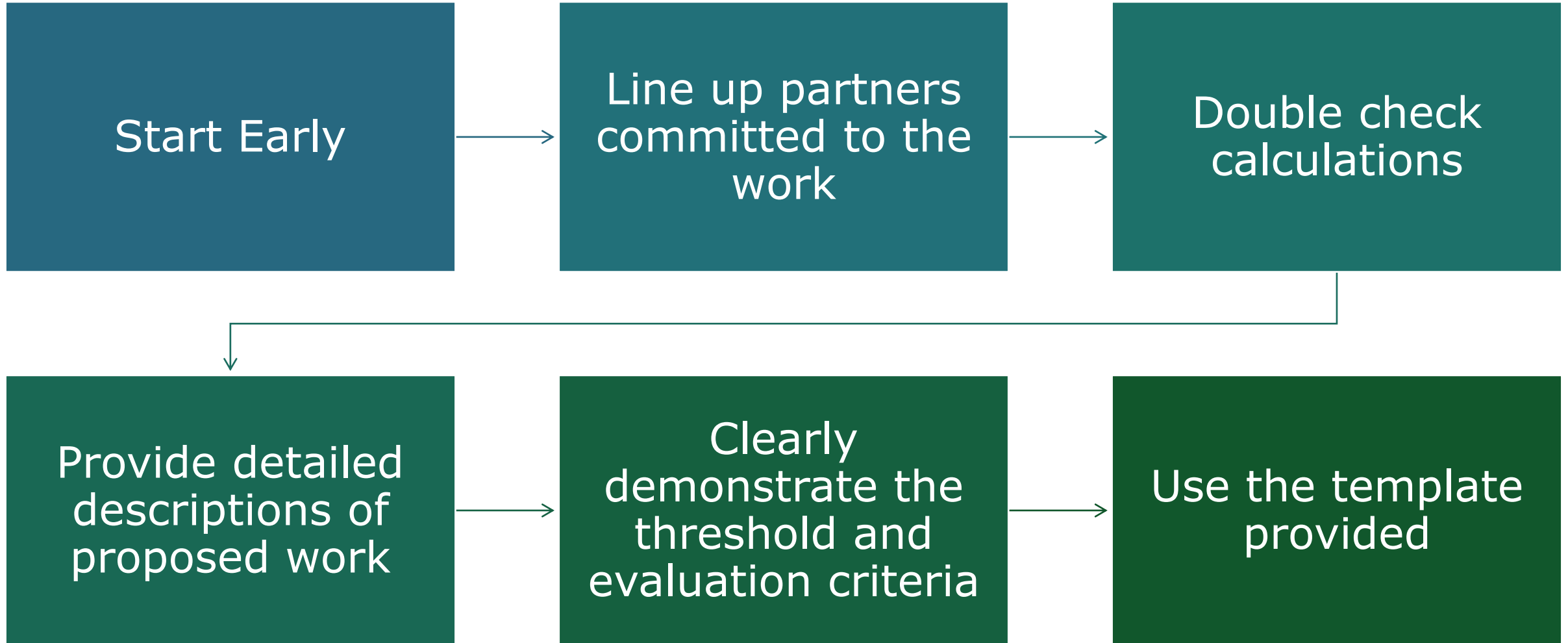


Audit Requirements

- From [EPA's General Terms and Conditions](#), page 13:
 - Audit Requirements: In accordance with [2 CFR 200.501\(a\)](#), the recipient hereby agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year beginning on or after December 26, 2014. The recipient must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the recipient's fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse's Internet Data Entry System available at: <https://facides.census.gov/>. For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <https://facweb.census.gov/>



Tips for Preparing an Application

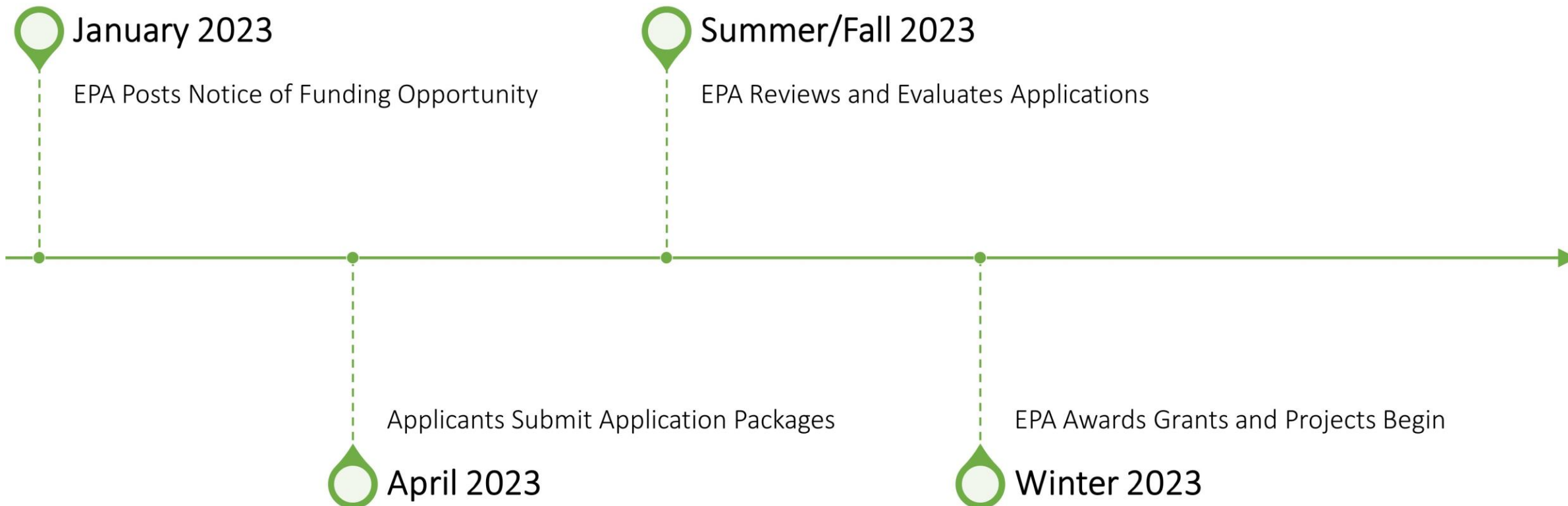


General EPA Grant Requirements

- ***Register Now on SAM.gov!*** These registrations are taking a month or more to complete!
- You must have an active SAM registration in www.SAM.gov to apply for the grant.
- Once your SAM.gov account is active, you must register in www.Grants.gov.



Estimated Timeline



Useful Links

- The EPA SWIFR Website: <https://www.epa.gov/rcra/bipartisan-infrastructure-law-transforming-us-recycling-and-waste-management>
- SWIFR Grants for Tribes and Intertribal Consortia: <https://www.epa.gov/infrastructure/solid-waste-infrastructure-recycling-grants-tribes-and-intertribal-consortia>
- SWIFR Grants Q&A Document: [https://www.epa.gov/system/files/documents/2023-02/SWIFR Tribal Q As 02 03 23.pdf](https://www.epa.gov/system/files/documents/2023-02/SWIFR_Tribal_Q_As_02_03_23.pdf)
- Prepare for a Grant Application Website: <https://www.epa.gov/rcra/prepare-grant-application>
- Best Practice Guide for Procuring Services, Supplies, and Equipment Under The EPA Assistance Agreements: www.epa.gov/grants/best-practice-guide-procuring-services-supplies-and-equipment-under-epa-assistance-agreements
- The EPA Subaward Policy with attachments: www.epa.gov/grants/grants-policy-issuance-gpi-16-01-epasubaward-policy-epa-assistance-agreement-recipients
- The EPA Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance: www.epa.gov/sites/default/files/2019-05/documents/applicant-budget-development-guidance.pdf
- The EPA Solicitation Clauses: www.epa.gov/grants/epa-solicitation-clauses
- The EPA Grants Policy Resources: www.epa.gov/grants/epa-grants-policy-resources
- The EPA Grants Management Training for Applicants and Recipients: www.epa.gov/grants/epa-grants-management-training-applicants-and-recipients
- The EPA Information on QAPPs: www.epa.gov/sites/default/files/2015-06/documents/g5-final.pdf ; www.epa.gov/sites/default/files/2016-06/documents/r5-final_0.pdf ; www.epa.gov/measurements-modeling/documents-about-measurement-competency-under-assistance-agreements





Questions?

THANK YOU!

