

Policies in Practice: Complying with the CSBG Organizational Standards

## Webinar Two: Procurement Policy

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Presented by:

**Allison Ma'luf, Esq.**  
allison.maluf@caplaw.org

**Caroline Kelley, Esq.**  
caroline.kelley@caplaw.org  
(617) 357-6915



**CAPLAW**  
Community Action Program Legal Services, Inc.

 <p><b>Webinar One:</b> <b>Whistleblower Policy</b> Thursday, February 13, 2020</p>	 <p><b>Webinar Two:</b> <b>Procurement Policy</b> Today's Webinar</p>
 <p><b>Webinar Three:</b> <b>Conflict of Interest Policy</b> Thursday, March 19, 2020 Thursday, May 14, 2020</p>	 <p><b>Webinar Four:</b> <b>Record Retention Policy</b> Thursday, June 4, 2020</p>

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## Agenda

- Why have a Procurement Policy?
- What's in CAPLAW's Sample Procurement Policy?
- How to implement CAPLAW's Sample Procurement Policy

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## Why Does My CAA Need a Procurement Policy?

*"As I hurtled through space, one thought kept crossing my mind – every part of this rocket was supplied by the lowest bidder"*  
-John Glenn

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## Bewildered Belinda

Belinda is the CSBG Program Director at a Community Action Agency. One day she receives a message telling her that the company that cleans the CAA's offices is going out of business. Belinda panics – she's never negotiated a cleaning contract before, and her program usually pays \$150,000 per year for cleaning services. That's a lot of money! She'll probably have to run a competitive bid process and everything 😞 Then Belinda remembers that her sister-in-law runs a cleaning company. They could probably give her a family discount, which would save some money that could be redirected to cover program costs. Smiling at her ingenuity, Belinda picks up the phone to call her sister-in-law.

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## Bewildered Belinda

- What are Belinda's blunders?
  1. She forgot that her CAA probably has a procurement policy covering this situation
  2. She assumed that she would need to do competitive bidding
  3. She chose her sister-in-law's company for the job
  4. All of the above

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## Bewildered Belinda

- What are Belinda's blunders?
  1. A Procurement Policy governs how to make purchases on behalf of a CAA
  2. Under the Uniform Guidance, competitive bidding is only required for purchases over \$250,000
  3. A CAA's conflicts of interest policy applies to its procurements

## Why Have a Procurement Policy? It's Required!

### CSBG Organizational Standard 8.11

#### Private

A written procurement policy is in place and has been reviewed by the governing board within the past 5 years.

#### Public

N/A – must follow local governmental procurement policies

## Why Have a Procurement Policy?

### Legal Requirements

- Uniform Guidance
  - 2 CFR § 200, 45 CFR § 75
  - “The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.”

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## CAPLAW Sample Procurement Policy

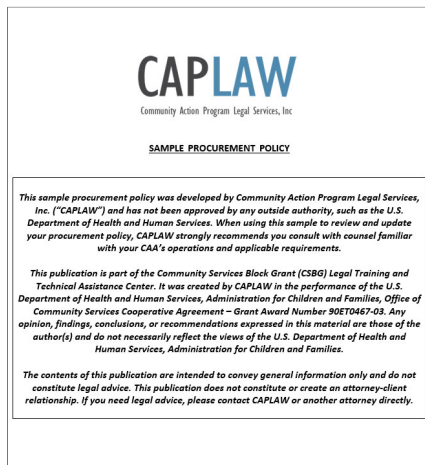
The screenshot shows the CAPLAW website interface. At the top, there's a header with the CAPLAW logo and navigation links: HOME, ABOUT CAPLAW, RESOURCES, TRAININGS, ATTORNEY NETWORK, and CONTACT US. Below the header, the main content area is titled 'CAPLAW Model Policies, Forms and Agreements'. It includes a brief description of the library and a list of model policies. A red arrow points to the 'Procurement' link under the 'Model Policies' heading. To the right, there are sections for 'Model Policies Quick Links' and 'Resources by Topic'.

<https://caplaw.org/resources/modelpolicies.html>

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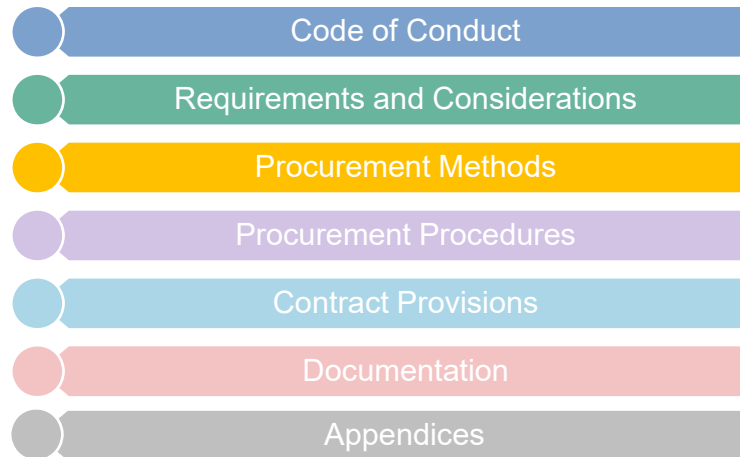
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## CAPLAW Sample Procurement Policy



## What Does CAPLAW's Sample Procurement Policy Cover?

## What Does It Include?



## Note on Application

- *The acquisition processes described in this Policy apply to all purchases made by (1) CAA's Purchasing Department, and (2) CAA programs independent of the Purchasing Department by employees, directors, officers, or agents (together, "CAA Purchasers").*
- May apply to all purchases or just federal funds
- Which funding sources subject to Uniform Guidance?

## What Does It Cover?

### Code of Conduct

- Applies a **conflict of interest review** to procurements
  - Periodic **disclosure** required
  - Organizational conflicts analyzed
- Prohibits soliciting or accepting gifts, favors, etc.
  - Nominal value exception

*2. CAA Purchasers shall not participate in the selection, award, or administration of a contract if they have a real or apparent conflict of interest. Such a conflict arises when:*

*i. The CAA Purchaser; any immediate family member (spouse, child, parent, parent-in-law, sibling, or sibling-in-law); partner; or an organization that employs, or is about to employ, any of the above has a direct or indirect financial or other interest in or will receive a tangible personal benefit from a firm or individual considered for the contract award.*

*ii. An "organizational conflict of interest" is created because of a relationship CAA has with a parent, affiliate, or subsidiary organization that is involved in the transaction such that CAA is or appears to be unable to be impartial in conducting a procurement action involving the related organization.*

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## What Does It Cover?

### Requirements and Considerations

- Competition
- Profit
- Minority Owned, Women Owned, and Small Business Vendors
- Minimum Bonding Requirements
- Solicitations
- Considerations

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## What Does It Cover?

### Requirements and Considerations

- Example:
  - Competition. All procurements shall be conducted in a manner that provides, to the maximum extent practical, full and open competition. Procurements shall:
    - ...Not intentionally split a single purchase into two or more separate purchases to avoid dollar thresholds that require more formal procurement methods.

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## What Does It Cover?

### Requirements and Considerations

- Example:
  - Profit. For sole source procurements or when cost analysis is used, profit must be negotiated as a separate element of the procurement price.
    - To establish a fair and reasonable profit, consider: complexity of work performed, risk borne by contractor, contractor's investment, amount of subcontracting, quality of contractor's record and past performance, and industry profit rates in surrounding geographical area for similar work...

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## What Does It Cover?

### Requirements and Considerations

#### ■ Example:

- Solicitations. All solicitations shall incorporate a clear and accurate description of the technical requirements for products or services to be procured. Descriptions:
  - i. Must not contain features which unduly restrict competition.
  - ii. May include a statement of the qualitative nature of the material, product or service to be procured.
  - iii. When necessary, must set forth minimum essential characteristics and standards necessary to satisfy its intended use.
  - iv. Must avoid detailed product specifications if at all possible...

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## What Does It Cover?

### Requirements and Considerations

#### ■ Example:

- Considerations. CAA Purchasers should consider taking the following actions when procuring goods and services:
  - Conduct a lease vs. purchase analysis when appropriate, including for property and large equipment.
  - Consolidate or break out procurements to obtain a more economical purchase, if possible...

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## What Does It Cover?

### Appendix: Procurement Methods

Type	Threshold	Method
<b>Micro-purchase</b>	$\leq \$10,000$	<ul style="list-style-type: none"> <li>- Price must be reasonable</li> <li>- Periodically distribute purchases equitably among qualified vendors</li> </ul>
<b>Small Purchase</b>	$\$10,000.01 \leq \$250,000$	<ul style="list-style-type: none"> <li>- Obtain written price or rate quotations from at least two qualified vendors</li> <li>- Example documentation: catalog price, online price, email or written quote</li> </ul>

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## What Does It Cover?

### Appendix: Procurement Methods

<b>Sealed Bids</b>	$> \$250,000$	<p><b>Pre-Solicitation</b></p> <ul style="list-style-type: none"> <li>- Conduct cost or price analysis</li> </ul> <p><b>Solicitation</b></p> <ul style="list-style-type: none"> <li>- Publicly advertise invitation for bids</li> <li>- Include specifications or information sufficient for bidders to respond</li> <li>- Provide adequate time to respond</li> <li>- Solicit a sufficient number of bids</li> </ul> <p><b>Bid Review/Selection</b></p> <ul style="list-style-type: none"> <li>- Open bids at time and place set forth in invite</li> <li>- Award to lowest responsive and responsible bidder</li> <li>- May reject bids for sound, documented reason</li> <li>- Award written, fixed price contract</li> </ul>
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## What Does It Cover?

### Appendix: Procurement Methods

<b>Competitive Proposals</b>	> \$250,000	<p><b>Pre-Solicitation</b></p> <ul style="list-style-type: none"> <li>- Conduct cost or price analysis</li> </ul> <p><b>Solicitation</b></p> <ul style="list-style-type: none"> <li>- Publicly advertise request for proposals</li> <li>- Identifies all evaluation factors and their relative importance</li> <li>- Solicit bids from at least two vendors</li> </ul> <p><b>Bid Review/Selection</b></p> <ul style="list-style-type: none"> <li>- Consider all proposals to maximum extent practical</li> <li>- Use written method to conduct technical evaluations of the proposals</li> <li>- Award contract to bidder with most advantageous proposal, considering price and other factors</li> <li>- Award fixed price or cost-reimbursement contract</li> </ul>
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## What Does It Cover?

### Procurement Methods

- Exceptions to Standard Methods.
  - i. *Sole Source. Procurement by solicitation of a proposal from a single source may only be used if one of the following apply and are documented:*
    - a. *Item is only available from a single source;*
    - b. *Public exigency or emergency will not permit any delay;*
    - c. *Federal awarding agency or pass-through expressly authorizes in response to a CAA request; or*
    - d. *After soliciting a number of sources, competition is determined inadequate.*

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## What Does It Cover?

### Appendix: Procurement Procedures

- Determined by each individual CAA
- Appendix 2 provides centralized location for policies
- Important considerations:
  - Procurement period - how long is a procurement procedure “good for”?
  - What internal approvals needed for sealed bids and competitive proposals?
  - How to renew or extend an existing contract?

## What Does It Cover?

### Contract Provisions

- **Contract Provisions.** *All CAA procurement contracts shall contain the applicable contract provisions contained in Appendix II to 2 CFR Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.*

## What Does It Cover?

### Contract Provisions

- **Contracts**
  - if over SAT, must address breach, remedies, penalties
  - if over \$10,000, must address termination for cause and for convenience
- **Equal Employment**– construction contracts
- **Davis-Bacon** – prime construction contracts over \$2,000
- **Hazardous Conditions** – contracts over \$100,000
- **Clean Air Act** – contracts and subawards over \$150,000
- **Debarment and Suspension** – any contract award
- **Anti-Lobbying** – bids on awards over \$100,000
- **Recovered Materials** – contractors of public CAAs

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## What Does It Cover?

### Documentation

- Debarment
- Lobbying Certificates
- Records
  - Rationale for procurement method
  - Selection of contract type
  - Written price or rate quotes
  - Advertisements, RFPs, bid sheets
  - Reasons for vendor selection
  - Basis for contract price

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## How Should I Use CAPLAW's Sample Procurement Policy?

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### Use the Sample to Revise Your Existing Policy

- Modify based on unique needs of your CAA
- State laws matter - consult a state attorney!
- [Bracketed text] – Customize for your CAA and then delete brackets
- Annotations<sup>1</sup>
  - **Compliance Tips**
- <sup>1</sup> **Read them!** – And then delete them

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## Use the Sample to Revise Your Existing Policy

**Compliance Tip:** CAA should implement a process by which CAA Purchasers periodically complete a disclosure of actual or potential conflicts of interest which are reviewed by a designated staff person (e.g., CFO, legal staff). The process could be described and implemented by adding to this policy or your personnel manual, or using an existing conflicts of interest policy.

**Compliance Tip:** Your CAA can set its own thresholds for standard procurement methods so long as they are *as* restrictive or *more* restrictive than the requirements of your state and funding sources. When deciding what thresholds to use, consider internal control structure, input from those charged with governance, size of the organization, level of activity, etc.

**Compliance Tip:** For most goods and services, CAPLAW's recommendation is that procurement be conducted every three to five years. However, there are exceptions to this recommendation that come from particular funding sources. One example of such an exception can be found in the Head Start Performance Standards, which require that Head Start grantees enter into lease agreements of 30 years or more for purchasing, constructing or renovating facilities on real property they do not own. [45 CFR § 1303.50](#).

## Implementing the Policy

- Consider a committee to oversee policy development process
  - Works w/ staff via executive director
- Remember CSBG Organizational Standard 8.11
  - ☑ Board review and approval

## Implementing the Policy

- Set the tone at the top
- Communicate about it
- Train on it

**Enforce!**

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