

# CAPLAW

Community Action Program Legal Services, Inc

## SAMPLE PROCUREMENT POLICY

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***This publication is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance Center. It was created by CAPLAW in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement – Grant Award Number 90ET0467-03. Any opinion, findings, conclusions, or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration for Children and Families.***

***The contents of this publication are intended to convey general information only and do not constitute legal advice. This publication does not constitute or create an attorney-client relationship. If you need legal advice, please contact CAPLAW or another attorney directly.***

## How to Use This Sample Policy

This sample procurement policy is intended to help Community Action Agencies (CAAs) comply with the federal rules and regulations related to procurement transactions. You should review this sample policy thoughtfully and modify it to meet the needs of your organization and to comply with any applicable laws and regulations. ***When using this sample to develop, review or update a procurement policy, CAPLAW strongly recommends that you consult with counsel familiar with your CAA's operations and the laws of your state.***

This sample procurement policy contains bracketed text and footnote annotations that correspond with specific provisions. These are intended to help you identify and understand the legal requirements and some key options available when modifying the sample policy and adapting it to meet the needs of your organization. Any bracketed text and footnotes should be reviewed and deleted when finalizing the procurement policy.

This sample policy is informed by the following federal requirements:

- **CSBG Organizational Standards:** CSBG Organizational Standard 8.11 requires nonprofit CAAs to have a written procurement policy that has been reviewed by their governing board within the last 5 years. Public CAAs are not subject to an analogous requirement; they must follow local government procurement policies. If using this sample policy to comply with Standard 8.11, a nonprofit CAA's board must review and vote to adopt the policy that is developed.
- **Uniform Guidance:** The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the Uniform Guidance) published by the Office of Management and Budget sets forth procurement standards that apply to direct federal funding. The procurement standards are contained in Subpart D of the Uniform Guidance, which does not apply to block grants such as CSBG. However, some states incorporate Subpart D or all Subparts of the Uniform Guidance into their CSBG statute, regulations or grant agreements. Furthermore, since most CAAs receive funding from multiple federal sources, some of which require compliance with Subpart D, many CAAs elect to incorporate the Uniform Guidance's procurement standards across all of their funding sources.

In addition to the sources above, you should look at the program statutes, regulations and funding source requirements applicable to your CAA's programs when developing and updating procurement processes. If you encounter multiple applicable rules with varying levels of restrictiveness, the safest approach is to follow the most restrictive rule. If there is direct conflict between applicable laws, consult with your attorney or reach out to CAPLAW.

**Every CAA operates differently, especially when it comes to procurement. The goals of this sample policy are (1) to provide a template that meets the basic requirements for a procurement policy under the Uniform Guidance and (2) to offer recommendations (referred to below as **Compliance Tips**) for drafting and implementing a procurement policy that benefits, rather than burdens, CAA personnel and resources.**

# [Name of Community Action Agency] Procurement Policy

## 1. *Introduction and Purpose.*

In keeping with its commitment to maintain the highest standards of conduct and ethics, [Name of Community Action Agency] (“CAA”) has adopted this Procurement Policy (“Policy”) to ensure that goods and services purchased by CAA are obtained in a cost-effective manner and in compliance with applicable federal and state laws.<sup>1</sup>

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”).<sup>2</sup> Purchases may also be subject to prior funding source approval and additional requirements imposed by grants or contracts. Program Directors are responsible for reviewing any such additional requirements, bringing them to the attention of the Purchasing Department, and ensuring that contractors and vendors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

## 2. *Code of Conduct.*<sup>3</sup>

- A. 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.<sup>4</sup>
  - 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

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<sup>1</sup> While some program statutes and regulations contain procurement rules, in the case of many federal grantees, the most comprehensive source of such requirements is the Uniform Guidance ([2 CFR parts 200.317-200.326](#), as codified by the Department of Health and Human Services (HHS) at [45 CFR parts 75.326-75.335](#)). This policy was drafted to provide CAAs with flexibility to adapt their procurement practices to meet their needs while maintaining compliance with the procurement standards contained in the Uniform Guidance.

<sup>2</sup> **Compliance Tip:** Think about who buys things for your organization. Will the procurement policy apply just to purchases with federal funds, or to all purchases? Although this policy is drafted to apply to all purchases, individual CAAs must decide how broadly the policy applies. Keep in mind that anyone who conducts purchasing on behalf of your organization will be subject to a code of conduct and your conflict of interest policies. This will impact the amount of monitoring you will have to undertake. Also, consider whether your other grants are subject to the Uniform Guidance or similar state policies, and whether a single policy and standard will be easier to implement.

<sup>3</sup> **Compliance Tip:** This section is not meant to replace the conflicts of interest policy in CAA’s personnel policies or any policy covering CAA’s board or volunteers. Rather, it places all CAA Purchasers on notice that such policies exist and apply in the procurement setting. Non-federal entities are required to maintain written standards of conduct covering conflicts of interest and governing the actions of their employees engaged in the award, selection, or administration of a procurement contract.

<sup>4</sup> [2 CFR § 200.318\(c\)\(1\)](#); [45 CFR § 75.327\(c\)\(1\)](#).

such that CAA is or appears to be unable to be impartial in conducting a procurement action involving the related organization.<sup>5</sup>

- B. CAA Purchasers shall not solicit or accept gifts, money, gratuities, favors, or anything of monetary value, except unsolicited items or services of nominal value<sup>6</sup> from vendors, prospective vendors, parties to subcontracts, or any other person or entity that receives, or may receive, compensation for providing goods or performing services for CAA.<sup>7</sup>
- C. All CAA Purchasers shall review and comply with the CAA's procedures for disclosing, reviewing and addressing actual and potential conflicts of interest.<sup>8</sup>

### 3. ***Procurement Requirements and Considerations.***<sup>9</sup>

- A. **Competition.** All procurements shall be conducted in a manner that provides, to the maximum extent practical, full and open competition.<sup>10</sup> Procurements shall:
  - i. Avoid noncompetitive practices that may restrict or eliminate competition, including but not limited to:
    - a. Unreasonable qualification requirements.
    - b. Unnecessary experience and excessive bonding requirements.
    - c. Noncompetitive pricing practices between firms or affiliated companies.
    - d. Noncompetitive contracts to consultants on retainer contracts.
    - e. Organizational conflicts of interest.
    - f. Specifying "brand name" only instead of allowing "an equal to" product.
    - g. Arbitrary actions.<sup>11</sup>
  - ii. Not intentionally split a single purchase into two or more separate purchases to avoid dollar thresholds that require more formal procurement methods.<sup>12</sup>

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<sup>5</sup> **Compliance Tip:** If CAA has a parent, affiliate or subsidiary relationship with another organization that is not a state or local government, it must maintain written procedures for minimizing the risk of organizational conflicts. [2 CFR § 200.318\(c\)\(2\)](#); [45 CFR § 75.327\(c\)\(2\)](#).

<sup>6</sup> **Compliance Tip:** A CAA typically sets its own definition of "nominal value" as long as its definition is reasonable. In CAPLAW's experience, nominal value is commonly defined as \$25-\$50 value.

<sup>7</sup> [2 CFR § 200.318\(c\)\(1\)](#); [45 CFR § 75.327\(c\)\(1\)](#).

<sup>8</sup> **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.

<sup>9</sup> In addition to the methods that it prescribes for certain procurement transactions, the Uniform Guidance contains a variety of requirements and considerations that guide CAAs through solicitations, vendor selections, and negotiations of specific procurement terms. Requirements can be identified by looking for words of legal obligation such as "shall" and "must", whereas considerations are usually accompanied by words like "should" and "encourage". We grouped the requirements and considerations in the Uniform Guidance Procurement Standards by topic. You may chose integrate these requirements and considerations into other subsections of your policy. However, don't forget that the requirements are binding obligations.

<sup>10</sup> [2 CFR § 200.319\(a\)](#); [45 CFR § 75.328\(a\)](#).

<sup>11</sup> [2 CFR § 200.319\(a\)](#); [45 CFR § 75.328\(a\)](#).

<sup>12</sup> **Compliance Tip:** A non-federal entity's intention to split a single purchase into two or more separate purchases

- iii. Exclude contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for a proposal from competing for such procurement.<sup>13</sup>
  - iv. Include in any prequalified list an adequate number of current, qualified vendors, firms, or products.<sup>14</sup>
  - v. Not preclude potential bidders from qualifying during the solicitation period.<sup>15</sup>
  - vi. Not use any geographic preferences (state, local or tribal) in the evaluation of bids or proposals, except where expressly mandated or encouraged by applicable Federal statutes.<sup>16</sup>
- B. Profit. For sole source procurements or when cost analysis is used<sup>17</sup>, profit must be negotiated as a separate element of the procurement price.
- i. 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.<sup>18</sup>
  - ii. CAA may not use either the cost plus a percentage of cost, or percentage of construction cost methods of contracting.<sup>19</sup>
- C. Minority Owned, Women Owned, and Small Business Vendors. CAA is committed to taking all necessary affirmative steps to assure that minority business, women's business enterprises and labor surplus area firms<sup>20</sup> ("MWSB Vendors") are used whenever possible. Such steps include:
- i. Placing qualified MWSB Vendors on solicitation lists;

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can be inferred from the circumstances of the entity's purchases, such as their timing and amount.

<sup>13</sup> [2 CFR § 200.319\(a\)](#); [45 CFR § 75.328\(a\)](#).

<sup>14</sup> [2 CFR § 200.319\(d\)](#); [45 CFR § 75.328\(d\)](#).

<sup>15</sup> [2 CFR § 200.319\(d\)](#); [45 CFR § 75.328\(d\)](#).

<sup>16</sup> [2 CFR § 200.319\(b\)](#); [45 CFR § 75.328\(b\)](#). When contracting for architectural/engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

<sup>17</sup> **Compliance Tip:** Cost analysis is not required for procurements under the Simplified Acquisition Threshold.

<sup>18</sup> [2 CFR § 200.323\(b\)](#); [45 CFR § 75.332\(b\)](#).

<sup>19</sup> A cost plus percentage of cost contract is one where the profit or fee is a specified percentage of the actual cost of accomplishing the work to be performed. The [Government Accountability Office](#) determines whether a contract constitutes a cost-plus-a-percentage-of-cost system of contracting by considering whether: (1) payment is at a predetermined rate; (2) this rate is applied to actual performance costs; (3) the contractor's entitlement is uncertain at the time of contracting; and (4) the rate increases commensurately with increased performance costs. [2 CFR § 200.323\(d\)](#); [45 CFR § 75.332\(d\)](#).

<sup>20</sup> A labor surplus area is an area with a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the national average over the same period.

- ii. Soliciting MWSB Vendors whenever they are potential sources;
  - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MWSB Vendors;
  - iv. Establishing delivery schedules, where requirement permits, which encourage participation by MWSB Vendors;
  - v. Using services and assistance, as appropriate, of such organizations as Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - vi. Requiring the prime contractor, if subcontracts used, to take affirmative steps listed in paragraphs (i) through (v) of this section.<sup>21</sup>
- D. <sup>22</sup>Minimum Bonding Requirements. For construction or facility improvement contracts or subcontracts exceeding \$250,000<sup>23</sup>, the requirements for bonding shall, at a minimum, be as follows:
- i. A bid guarantee from each bidder is equivalent to five percent of the bid price.<sup>24</sup>
  - ii. A performance bond on the part of the contractor is for 100% of the contract price.<sup>25</sup>
  - iii. A payment bond on the part of the contractor is for 100% of the contract price.<sup>26</sup>
  - iv. All bonds required in this section are obtained from companies holding certificates of authority as acceptable sureties pursuant to the surety requirements for companies doing business with the United States (31 CFR Part 223).<sup>27</sup>
- E. 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.

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<sup>21</sup> [2 CFR § 200.321](#); [45 CFR § 75.330](#).

<sup>22</sup> Under the Uniform Guidance, an HHS awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the HHS awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements set forth in this section must be followed. [2 CFR § 200.325](#); [45 CFR § 75.334](#)

<sup>23</sup> Or the Simplified Acquisition Threshold, as adjusted from time to time. See FN 50.

<sup>24</sup> The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified. [2 CFR § 200.325\(a\)](#); [45 CFR § 75.334\(a\)](#).

<sup>25</sup> A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. [2 CFR § 200.325\(b\)](#); [45 CFR § 75.334\(b\)](#).

<sup>26</sup> A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. [2 CFR § 200.325\(c\)](#); [45 CFR § 75.334\(c\)](#).

<sup>27</sup> [2 CFR § 200.325\(d\)](#); [45 CFR § 75.334\(d\)](#).

- 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.
  - v. May use a “brand name or equivalent” description to define performance or other salient requirements when impractical or uneconomical to make a clear and accurate description of technical requirements. Specific named brand features required to be met must be clearly stated.
  - vi. Must identify all requirements which offerors must fulfill and all other factors to be used in evaluating bids and proposals.<sup>28</sup>
- F. **Considerations.** CAA Purchasers should consider taking the following actions when procuring goods and services:
- i. Conduct a lease vs. purchase analysis, when appropriate, including for property and large equipment.<sup>29</sup>
  - ii. Consolidate or break out procurements to obtain a more economical purchase, if possible.<sup>30</sup>
  - iii. Use state and local intergovernmental or inter-entity agreements, or common or shared goods and services, where appropriate.<sup>31</sup>
  - iv. Use federal excess and surplus property in lieu of purchasing new equipment and property, if feasible and reduces project costs.<sup>32</sup>
  - v. Use value engineering clauses to offer reasonable opportunities for cost reductions in construction contracts for projects of sufficient size.<sup>33</sup>
  - vi. Use time and materials contracts only if no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at their own risk. If such contract is negotiated and awarded, CAA must assert a high degree of oversight to obtain

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<sup>28</sup> [2 CFR § 200.319\(c\)](#); [45 CFR § 75.328\(c\)](#).

<sup>29</sup> **Compliance Tip:** Think about conducting this analysis for items like copiers, vehicles, or facilities/buildings. The higher the price of the item, the more likely the expectation that this type of analysis will be conducted. [2 CFR § 200.318\(d\)](#); [45 CFR § 75.327\(d\)](#).

<sup>30</sup> [2 CFR § 200.318\(d\)](#); [45 CFR § 75.327\(d\)](#).

<sup>31</sup> **Compliance Tip:** Buying through group purchasing consortiums, like [PurchasingPoint](#), can be a helpful source of cost savings and can ease the administrative burden of complex procurements. If your agency has separate procurement procedures for buying through a group purchasing contract, you can include them in this policy. [2 CFR § 200.318\(e\)](#); [45 CFR § 75.327\(e\)](#).

<sup>32</sup> [2 CFR § 200.318\(f\)](#); [45 CFR § 75.327\(f\)](#).

<sup>33</sup> Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. [2 CFR § 200.318\(g\)](#); [45 CFR § 75.327\(g\)](#).

reasonable assurance that contractor using efficient methods and effective cost controls.<sup>34</sup>

#### 4. **Procurement Methods.**

A. All procurements.<sup>35</sup> All procurements made under this policy shall:

- i. Be necessary, at a reasonable cost, documented, not prohibited by law or the applicable funding source, and made in accordance with this Policy.<sup>36</sup>
- ii. Avoid acquiring unnecessary or duplicative items.<sup>37</sup>
- iii. Engage responsible vendors who possess the ability to perform successfully under the terms and conditions of a proposed procurement.<sup>38</sup> CAA Purchasers shall consider: vendor integrity, public policy compliance, past performance record and financial and technical resources.<sup>39</sup>

B. Standard Methods. For transactions meeting the specifications set forth in Appendix 1, CAA Purchasers shall follow the applicable procurement method set forth therein.

C. 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.<sup>40</sup>

#### 5. **[Procurement Procedures. See Appendix 2 for CAA Procurement Procedures.]**<sup>41</sup>

6. **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

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<sup>34</sup> A time and materials contract means a contract where the cost to the CAA is the sum of (1) the contractor's actual cost of materials and (2) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Since this formula generates an open-ended contract price, time and materials contracts provide no positive profit incentive to the contractor for cost control or labor efficiency. [2 CFR § 200.318\(j\)](#); [45 CFR § 75.327\(j\)](#).

<sup>35</sup> These are key overarching requirements for every procurement transaction.

<sup>36</sup> [2 CFR § 200.403\(a\)-\(c\)](#); [45 CFR § 75.403\(a\)-\(c\)](#).

<sup>37</sup> **Compliance Tip:** Methods for implementing this consideration include consolidating or breaking down procurements, conducting lease/purchase analyses, and other appropriate analyses to determine the most economic method of purchase. [2 CFR § 200.318\(d\)](#); [45 CFR § 75.327\(d\)](#).

<sup>38</sup> [2 CFR § 200.318\(h\)](#); [45 CFR § 75.327\(h\)](#).

<sup>39</sup> [2 CFR § 200.318\(h\)](#); [45 CFR § 75.327\(h\)](#).

<sup>40</sup> [2 CFR § 200.320\(f\)](#); [45 CFR § 75.329\(f\)](#)

<sup>41</sup> **Compliance Tip:** You may choose to integrate procurement procedures in the body of your policy or to attach them as an appendix for ease of reference.

Contracts Under Federal Awards.<sup>42</sup>

## **7. Documentation.**

- A. Debarment. CAA shall either:
  - i. Confirm and document that the vendor is not excluded from doing business with the federal government (see [www.sam.gov/SAM/](http://www.sam.gov/SAM/)) before entering into a contract<sup>43</sup>; or
  - ii. Obtain a signed Debarment Certificate substantially in the form of Appendix 3.
- B. Lobbying Certificate. CAA shall obtain signed Lobbying Certificates substantially in the form of Appendix 4 for procurements > \$100,000.<sup>44</sup>
- C. Records. CAA shall maintain records sufficient to detail history of each procurement transaction. These records must include, but are not limited to:
  - i. A description and supporting documentation showing rationale for procurement method (e.g., cost estimates);
  - ii. Selection of contract type;
  - iii. Written price or rate quotations (such as catalog price, online price, email or written quote), if applicable;
  - iv. Copies of advertisements, requests for proposals, bid sheets or bid proposal packets;
  - v. Reasons for vendor selection or rejection, including Finance Committee and Board minutes, rejection letters and award letter; and
  - vi. The basis for the contract price.<sup>45</sup>

**8. Compliance with this Policy.** Program Directors and, where applicable, the Purchasing Department, shall maintain oversight to ensure that contractors and vendors perform in accordance with the terms, conditions, and specifications of contracts or purchase orders.<sup>46</sup> Violations of this policy may result in disciplinary action, up to and including termination.<sup>47</sup>

Reviewed by Legal Counsel: [DATE]

Reviewed and Adopted by CAA Board of Directors: [DATE]

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<sup>42</sup> [2 CFR § 200.326](#); [45 CFR § 75.335](#).

<sup>43</sup> [Appendix II to 2 CFR Part 200](#); [Appendix II to 45 CFR Part 75](#).

<sup>44</sup> [Appendix II to 2 CFR Part 200](#); [Appendix II to 45 CFR Part 75](#); [31 U.S.C. 1352](#).

<sup>45</sup> [2 CFR § 200.318\(i\)](#); [45 CFR § 75.327\(i\)](#).

<sup>46</sup> [2 CFR § 200.318\(b\)](#); [45 CFR § 75.327\(b\)](#).

<sup>47</sup> [2 CFR § 200.318\(c\)\(1\)](#); [45 CFR § 75.327\(c\)\(1\)](#).

**Appendix 1**  
**Standard Methods of Procurement**

Type	Threshold <sup>48</sup>	Method
<i>Micro-purchase</i> <sup>49</sup>	≤ \$10,000	<ul style="list-style-type: none"> <li>- Price must be reasonable</li> <li>- Periodically distribute purchases equitably among qualified vendors</li> </ul>
<i>Small Purchase</i> <sup>50</sup>	\$10,000.01 ≤ \$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>
<i>Sealed Bids</i> <sup>51</sup>	> \$250,000	<p><b>Pre-Solicitation</b></p> <ul style="list-style-type: none"> <li>- Conduct cost or price analysis<sup>52</sup></li> </ul> <p><b>Solicitation</b><sup>53</sup></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> </ul>

<sup>48</sup> **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.

<sup>49</sup> This is the Micro-Purchase Threshold set out by the Federal Acquisition Regulation at [48 CFR Subpart 2.1](#). It is periodically adjusted for inflation, so make sure to check it. Note that no cost analysis is required for procurements under this threshold. [2 CFR § 200.320\(a\)](#); [45 CFR § 75.329\(a\)](#).

<sup>50</sup> Small Purchases are those “relatively simple and informal” purchases valued at and above the Micro-Purchase Threshold but below the Simplified Acquisition Threshold, which is set out by the Federal Acquisition Regulation at [48 CFR Subpart 2.1](#) and periodically adjusted for inflation. Note that no cost analysis is required for procurements under this threshold. [2 CFR § 200.320\(b\)](#); [45 CFR § 75.329\(b\)](#).

<sup>51</sup> **Compliance Tip:** In order for sealed bids to be feasible, the following conditions should be present: (i) a complete, adequate, and realistic specification or purchase description is available; (ii) two or more responsible bidders are willing and able to compete effectively for the business; and (iii) the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price. Sealed bids are the preferred method for procuring construction contracts if the above conditions are met. [2 CFR § 200.320\(c\)](#); [45 CFR § 75.329\(c\)](#).

<sup>52</sup> **Compliance Tip:** Cost analysis is the review and evaluation of each element of the contract’s total estimated cost to determine whether it is reasonable, allocable to the grant program, and allowable for that grant program. The method and degree of such analysis should be dependent on the facts surrounding the particular procurement situation, but as a starting point, CAA must make independent estimates before receiving bids or proposals. A cost analysis is also required when contract modifications introduce new conditions that were not examined under the previous analysis, or where more current information is needed. **Example:** Construction of a new Head Start facility – obtain commercial cost per square foot to build from various sources, (appraisers, contractors, engineers, architects, real estate professionals, etc.) parking lot, playground, fencing. [2 CFR § 200.323\(a\)](#); [45 CFR § 75.332\(a\)](#).

<sup>53</sup> [2 CFR § 200.320\(c\)\(2\)\(i\), \(ii\)](#); [45 CFR § 75.329\(c\)\(2\)\(i\), \(ii\)](#).

Type	Threshold <sup>48</sup>	Method
		<ul style="list-style-type: none"> <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<sup>54</sup></li> <li>- Award to lowest responsive and responsible bidder<sup>55</sup></li> <li>- May reject bids for sound, documented reason<sup>56</sup></li> <li>- Award written, fixed price contract<sup>57</sup></li> </ul>
<i>Competitive Proposals</i> <sup>58</sup>	> \$250,000	<p><b>Pre-Solicitation</b></p> <ul style="list-style-type: none"> <li>- Conduct cost or price analysis<sup>59</sup></li> </ul> <p><b>Solicitation</b><sup>60</sup></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>Proposal Review/Selection</b><sup>61</sup></p> <ul style="list-style-type: none"> <li>- Consider all proposals to maximum extent practical</li> <li>- Use written method<sup>62</sup> 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>

<sup>54</sup> For local and tribal governments, bids must be opened publicly. [2 CFR § 200.320\(c\)\(2\)\(iii\)](#); [45 CFR § 75.329\(c\)\(2\)\(iii\)](#).

<sup>55</sup> **Compliance Tip:** The lowest responsive and responsible bidder is considered a qualified bidder with the lowest or best bid price, and whose business and financial capabilities, past performance, and reputation meet the required standards. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. [2 CFR § 200.320\(c\)\(2\)\(iv\)](#); [45 CFR § 75.329\(c\)\(2\)\(iv\)](#).

<sup>56</sup> **Compliance Tip:** Possible sound reasons to reject a bid include: (i) no responsible bidder; (ii) bids did not conform; (iii) insufficient number of bidders; or (iv) price appears unreasonable when compared to the CAA's cost and price analysis. Any or all bids may be rejected if there is a sound, documented reason.

<sup>57</sup> [2 CFR § 200.320\(c\)\(2\)\(iv\)](#); [45 CFR § 75.329\(c\)\(2\)\(iv\)](#).

<sup>58</sup> Procurement by competitive proposals should be used when: (i) more than one source will submit an offer; (ii) either a fixed price or cost-reimbursement contract will be awarded; and (iii) conditions are not appropriate for the use of sealed bids. [2 CFR § 200.320\(d\)](#); [45 CFR § 75.329\(d\)](#).

<sup>59</sup> See FN 52.

<sup>60</sup> [2 CFR § 200.320\(d\)](#); [45 CFR § 75.329\(d\)](#).

<sup>61</sup> [2 CFR § 200.320\(d\)](#); [45 CFR § 75.329\(d\)](#).

<sup>62</sup> Such as the RFP Decision Matrix referenced in Appendix 4.

**Appendix 2**  
**[SAMPLE] CAA Procurement Procedures<sup>63</sup>**

A. **[Frequency of Procurement]**

1. A Procurement Period is the period of time after the initial procurement procedure, i.e., a quote or request for proposals, and before CAA must conduct a new procurement process.
2. Unless otherwise stated, Procurement Periods can vary in length.
  - a. Factors to consider when setting a Procurement Period: length of funding source contract, complexity of funding source requirements, type of service to be provided, customization needed.
3. Generally, CAA should conduct a procurement for most goods and services every three to five years. However, the frequency at which CAA conducts procurement processes should be reasonable and should take into account funding source requirements as well as the nature of the goods and services procured.<sup>64</sup> Unless otherwise specified, the default is for CAA to conduct a procurement every five years.

B. **[New Contract/Purchase Order]**

1. CAA Purchaser determines the applicable and appropriate procurement method.
  - a. If micro-purchase or small purchase methods are appropriate, conduct procurement as outlined in this Policy and retain appropriate documentation of quotes and vendor selection, etc. If prior approval is required for the purchase, refer to step 2.
  - b. If sealed or competitive bid methods are required, complete steps 2 through 5.
2. If funding source approval is required, work with [Designated Staff] to obtain. Depending on the procurement method used, CAA Purchaser completes Bid Form and submits to [Designated Staff] as part of the approval process.
3. [Designated Staff, e.g., CAA Purchaser, in consultation with Purchasing Department] formalizes the bid packet and submits it to [specify method of public distribution, i.e., local newspaper, websites, etc.]
4. Depending on thresholds set for Board of Director's approval, [Designated Staff] either makes the procurement decision or presents all bid responses to the Finance Committee of the Board of Directors.
5. If the Finance Committee is involved, it makes a recommendation on awarding the bid to the Board of Directors. Bid award is reviewed and voted on by the Board of Directors and noted in Board minutes.

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<sup>63</sup> **Compliance Tip:** These procedures are simply examples of the types of provisions that may appear in this Appendix. You should modify your CAA's procurement procedures according to its needs and practices.

<sup>64</sup> **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](#).

C. [Extension/Renewal of Existing Contract/Purchase Order]

1. For procurements > \$250,000, if the Procurement Period has not expired, CAA Purchaser may amend or renew an existing contract/purchase order to extend its term for the remainder of the Procurement Period if any adjustment in price is deemed reasonable pursuant to a cost analysis, and all other terms remain the same.
  - a. Example, if the competitive procurement covered a 5 year period and the initial contract/purchase order was for two years, CAA Purchaser may extend the term of the initial contract/purchase order for up to three years so long as the price is deemed reasonable pursuant to a cost analysis and all other terms remain the same.
2. For procurements  $\leq$  \$250,000, if the Procurement Period has not expired, CAA Purchaser may amend or renew an existing contract/purchase order to extend its term for the remainder of the Procurement Period if any adjustment in price is deemed reasonable and all other terms remainder the same.

**Appendix 3**  
**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion  
Lower Tier Covered Transactions**

***Instructions for Certification***

1. By signing and submitting this contract or proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. The term "principals" includes, but is not limited to, officers, directors, owners, partners, and principal investigators. You may contact the person to which this proposal or contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by signing and submitting this contract or proposal that should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the

ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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**Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion  
Lower Tier Covered Transactions**

(1) The prospective lower tier participant certifies, by signing and/or submission of this proposal or contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name of Vendor, Contractor, or Subgrantee: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Appendix 4**  
**Certification Regarding Lobbying**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Organization

**Appendix 5**  
**RFP Decision Matrix**

You can find a sample RFP Decision Matrix on CAPLAW's website.