

FISCAL: PROFICIENCY IN PROCUREMENT

CAPLAW 2009 National Training Conference

June 25, 2009
9:00 a.m. – 11:00 a.m.

Seattle, WA

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Handouts:

1. PowerPoint
2. Sample Federal Procurement Procedures Manual
3. Sample Procurement Manual Table of Contents
4. Procurement Self Assessment Tool

Proficiency in Procurement

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Your Greatest Procurement Challenges ???

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Workshop Topics:

- Procurement goals
- Requirements
- Documenting your system
- Testing your system
- System improvements

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Procurement System Goals

- Good decisions
- Fairness
- Appropriate balance of price and quality
- No real or perceived Conflict of Interest
- Satisfaction of your contractual requirements

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Requirements

- Federal Requirements
 - OMB A-110
 - CFR for Specific Programs
 - ARRA
- State & other contractual requirements
- IRC 4958 Excess Benefits Transactions

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OMB A-110

- Standards for Federal agencies in admin of grants and agreements with higher ed, hospitals, and non-profit organizations
- Applicable to all Federal agencies
- If any statute specifically prescribes policies or requirements that differ from A-110, the provisions of the statute govern

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Code of Federal Regulations

- Identify federal agency and program
- Regulations for state/local government are distinct from those for nonprofits
- **CFRs may conflict with or impose additional requirements to A-110**

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Web Sources

- Matrix of CFR references by program
<http://www.gpoaccess.gov/CFR>
- Matrix by type of requirements by program:
http://www.whitehouse.gov/omb/circulars/a133_compliance/04/pt2.pdf

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Matrix for Your Org

- Identify all Federal sources
- Determine whether specific CFR applies
- Identify CFR conflicts/additions to A-110
- Identify modifications required to your general procurement procedures

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ARRA Requirements

- **Davis-Bacon prevailing wage requirements for laborers and mechanics working on ARRA-funded construction projects**
- **Buy-American requirement for ARRA-funded public buildings and public works projects**
 - Only applies to government entities

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Key Elements

- **Written policies and procedures**
- **System for testing compliance**
- **Consequences for non-compliance**
- **Continuous review and revision as needed**

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Key Federal Requirements

- **Avoid purchasing unnecessary items**
- **Analyze alternatives to identify the most economical and practical procurement**
- **Conduct solicitations properly**

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Solicitations must include:

- Accurate description of requirements
- Requirements which bidder must fulfill
- Factors used to evaluate proposals

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Solicitations include. . .

- Technical requirements – acceptable minimum standards
- “Brand name or equal” descriptions
- Preferences for metric measurements, environmental protection and energy efficiency

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Simplified Acquisition Procedures

- Apply to purchases of \$100,000 or less – sealed bidding or negotiated procedures specified in Federal Acquisition Regulation (FAR) used for acquisitions over \$100,000
- Thresholds adjusted periodically – review contracts carefully for additional requirements
 - States may require lower thresholds and/or additional procedures

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**Simplified Acquisition
Procedures: Micro-Purchases**

- Up to \$3,000 (“micro-purchase threshold”): no requirement to solicit competitive quotations if price is considered reasonable
 - Need to verify price only if suspect that price is unreasonable or if purchasing a supply or service for which no comparable pricing information is available

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**Simplified Acquisition
Procedures: Micro-Purchases**

- To extent practicable, micro-purchases must be distributed equitably among qualified suppliers
- For construction purchases subject to Davis-Bacon Act, micro-purchase threshold is \$2,000

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**Simplified Acquisition
Procedures**

- From \$3,000 to \$30,000: use oral solicitations to seek oral or written quotations from at least 3 potential sources
 - Written solicitations (e.g., bids or RFPs) rarely used, except as required for construction purchases over \$2,000

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Simplified Acquisition Procedures

- From \$30,000 to \$100,000: use written solicitations to obtain written quotations from enough vendors (at least 3) to promote competition to the maximum extent practicable

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More federal requirements . . .

- Facilitate purchasing from small business, minority and women owned firms
- Cost and price analysis
- Use appropriate contracting methods
- Code of Conduct – Conflict of Interest

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Facilitating purchasing . . .

- Use small businesses, minority-owned firms, and women's business enterprises whenever possible
- Make info available
- Consider larger firms use of sub-contractors
- Encourage consortiums
- Use SBA and Commerce Depart. MBDA

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Appropriate Contracting Methods

- Determine most appropriate instrument – fixed price, cost reimbursable, purchase order, incentive contracts, etc.
- Do not use “cost-plus-a-percentage of cost” or “percentage of construction cost” instruments

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Conflict of Interest

- Written code of conduct
- No participation in selection, award, or administration of contract by any person with a real or apparent conflict of interest

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Persons with Conflicts

- Include any employee, officer, or agent and their:
 - immediate family members,
 - his or her partner, or
 - any organization which employs or is about to employ any of these persons or has a financial interest in firm selected

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More Federal Requirements. . .

- Avoid contracting with debarred or suspended parties
<https://www.epls.gov/>
- Make procurement documentation available to Federal awarding agency

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Documenting Your System

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Developing Policies & Procedures

- Utilize OMB A-110 outline
- Review samples
- Develop draft
- Circulate internally for review
- Input from contract monitors
- Revise
- Obtain management approval
- Put adoption date in footer

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Procurement Systems

- Clarify **authority** and **responsibility** for management of procurement system
- Establish electronic & paper **file structure**
- Review funding agreements to identify all procurement requirements
- Design forms and report formats

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Testing Compliance

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Internal Audit Approach

- Identify **authority/responsibility** for **internal testing** of procurement efforts
- Design internal audit program
 - Identify highest risk areas
 - Determine scope and frequency of testing
 - Develop audit work-paper format
- Implement audit program and document findings

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System Improvement

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Improvement Strategies

- Document review of **internal audit findings** and **external audit or monitoring findings**
- Identify areas in which **policy** appears unclear or inadequate
- Identify most significant and most common system failures

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Improvements. . .

- Identify and address any performance problems resulting in procurement system failures
- Propose needed revisions to **Procurement Policies and Procedures**
- Document revision of **Policies and Procedures**

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Barriers to Procurement Compliance

- Unclear or inadequate written policies and procedures
- Failure to stay current on contractual requirements
- Inadequate training for staff involved in all aspects of purchasing
- Staff turn-over
- **Turf battles** – poor communication

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Case Studies

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CASE I

CAP needs to purchase new accounting software. CFO has identified “ideal” product sold in modules. Cost estimates:

- Core module- \$15,000
- AP, PR, Budget \$5,000 each
- Initial training/set-up consulting: \$15 - 25,000
- Annual support agreement: \$3,000

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Case I - continued

“Ideal” product is sold either directly by manufacturer or through re-sellers who provide training/consulting service.

Some re-seller/consulting firms are minority or women owned.

Procurement policies require written bids for procurements over \$30,000.

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Case I - ????

- Basic approach for procuring the products and services?
- Would breaking total procurement of products and services into component pieces be wise?
- Potential issues you would consider in drafting specifications?

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Case 2

XYZ CAP has determined that a specific procurement requires written bid process and has prepared a detailed request for proposals for services. Bid requirements include: description of qualifications, detailed description of services, and price quotation. The RFP notes that bids submitted after a specified date and time will not be considered.

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Case 2 - continued

- RFP announced via email list of over 100 potential bidders & on website
- 20 bid packets were requested & sent
- 10 potential bidders attended non-mandatory bidders conference
- 3 proposals received by deadline

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Case 2 - continued

- After the submission deadline but before proposals have been reviewed, one of the three bidders requests permission to submit a document inadvertently left out of their proposal.
- XYZ CAP staff believe this bidder may be the most qualified and may offer the best price.

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Case 2 ????

- How should XYZ CAP respond to the request to submit the additional document?
- What options should be considered?

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Your Next Steps?

- **Procurement Self-Assessment Tool**
- **Elements in your Policies and Procedures to check out?**
- **High risk areas for noncompliance in your system?**
- **Staff training needs?**

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Sample Federal Procurement Procedures Manual

Table of Contents

- I. Overview of Federal Procurement Requirements**
- II. Identifying Federal Funds**
 - Responsibility and process for determining source of funds and applicable procurement requirements
- III. Small Purchase Procedures**
 - Define small purchase threshold. A-110 defines \$25,000 threshold – describe any lower thresholds which may result from your agency policies, state or other contractual requirements. Identify responsibility for determination of small purchase threshold
- IV. Competitive Bidding for Contracts**
 - Threshold for purchases requiring competitive bidding and documentation
 - Use of oral solicitations
 - Documentation of oral quotes
 - Use of written bids/quotes
 - Recording justification for vendor selection
- V. Non-Competitive Vendor Selection**
 - Selected and Sole Sources
 - Cost/Price Analysis for non-competitive purchases
 - Documenting Non-Competitive Purchases
- VI. Minority and Women Owned Vendors**
 - Responsibility for outreach and solicitation
 - Resources for identifying and contacting vendors
 - Documentation of outreach efforts
- VII. Debarment**
 - Responsibility for identifying debarred bidders
 - Debarment Certification forms

Procurement Manual Table of Contents

Adapted from Harvard University Manual http://vpf-web.harvard.edu/ofs/procurement/pro_rec.shtml

Overview

Section I: Conflict of Interest, Code of Ethics, Minority Business Enterprise

- Conflict of Interest
- Code of Ethics
- Minority Business Enterprise Program

Section II: Recommended Purchasing Procedures

- The Requisition/Purchase Order
- Purchase Order Guidelines
- Authority/Responsibility for Purchasing
- Invoice Processing
- Taxes and Exemptions
- Potentially Problematic Purchasing Categories

Section III: Guidelines on Purchasing Practices

- Selecting Qualified Vendors
- Preparing and Evaluating a Bid
- Negotiation Techniques
- Equipment Maintenance and Service Agreements
- Purchasing Capital Equipment
- Receiving Purchases
- Managing Vendor Relationships

Section IV: Federal Procurement Requirements

- Overview of Federal Procurement Requirements
- Purchasing with Contract Funds
- Federal Acquisition Regulation
- Purchasing with Grant Funds
- Office of Management and Budget Circular A-110
- Subcontracting Plans for Small and Small Disadvantaged Businesses
- Debarment

Section V: Federal Procurement Reporting Policy

- Procedures for Reporting Purchasing Accomplishments under Federal Contracts

Section VI: Additional Resources

- Personal Purchases
- Credit Applications and References
- Standing and Blanket Purchase Orders

Procurement SELF-ASSESSMENT TOOL

Self Assessment Date: _____

Self Assessment Team: _____

Directions: This self-assessment tool is designed to be completed by a team including the Procurement Officer (or other staff member with lead responsibility for procurement), the CFO/Fiscal Manager, and program managers or supervisors from each major program. The self assessment is intended to aid in identification of both overall limitations in procurement policies and procedures and areas in which additional staff training and/or problem solving strategies may be required to promote consistent implementation of procurement policies and procedures.

	Fully Achieved	Partially Achieved	Not Addressed	Lead Role
A. Procurement Policies				
1. A comprehensive written Procurement Policy has been adopted and is reviewed annually. Date adopted: _____ Date of last review/revision: _____				
2 .Procurement Policies include:				
▪ Goals of Procurement Policies				
▪ Code of Ethics				
▪ Conflict of Interest Policy				
▪ Policy to avoid purchase of unnecessary items				
▪ Commitment to utilize minority and women owned firms and small businesses				
▪ Prohibition of use of debarred or suspended parties				
3. Responsibility is clearly assigned for review of new contracts/grant agreements to identify procurement policy and procedure requirements.				
4. Responsibility for obtaining and reviewing current OMB Circulars and CFRs and applicable state requirements for each grant/contract is clearly assigned.				

Item	Fully Achieved	Partially Achieved	Not Addressed	Lead Role
Procurement Policies – continued				
5. A matrix of procurement requirements for all contracts/grants is established and reviewed regularly for all current contracts/grants.				
6. The procurement matrix includes requirements from:				
▪ OMB A-110				
▪ ARRA requirements including Davis Bacon and Buy America				
▪ CFRs applicable to federal sources				
▪ Additional state requirements				
▪ Other contractual requirements				
6. Requirement that the most appropriate procurement instrument be utilized. Policies regarding the appropriate use of: ▪ Purchase order ▪ Fixed price ▪ Cost reimbursable ▪ Incentive contracts				
7. Policy prohibiting “cost-plus-a percentage of cost” instruments				
8. Definition of purchase amount thresholds requiring use of formal solicitation procedures				
9. Policy regarding sole source purchasing				
11. Requirement for staff training in procurement policies and procedures				

Item	Fully Achieved	Partially Achieved	Not Addressed	Lead Role
B. Procurement Procedures				
1. Small purchases				
a. Threshold for small purchases is consistent throughout agency or specific thresholds have been established for specific programs. <i>OMB A 110 defines small purchases as less than \$25,000.</i>				
b. Authority to make small purchases				
c. Review procedures for small purchases				
2. Purchase Order procedures				
3.Oral solicitations <ul style="list-style-type: none"> ▪ Authorization to use oral solicitation ▪ Procedure for oral solicitation ▪ Documenting oral quotes ▪ Documenting purchasing decisions based on oral quotes 				
4. Larger purchases				
a. \$ threshold for which a bid process is required. <i>Note A-110 requires formal bid process for purchases of \$25,000 or more.</i>				
b. Procedure for initiating solicitation of bids				
c. Procedures/checklist for review of solicitations to verify inclusion of: <ul style="list-style-type: none"> ▪ accurate description of requirements and minimum standards, ▪ “brand name or equal” descriptions, and ▪ preferences such as metric measurement, environmental protection, energy efficiency, etc. 				

Item	Fully Achieved	Partially Achieved	Not Addressed	Lead Role
<i>Larger purchase procedures: continued</i>				
d. Authority to approve solicitations				
e. Procedure for communication with potential bidders				
f. Processing bids and proposals				
g. Evaluating bids and proposals				
h. Final decision-making authority				
i. Communication with unsuccessful bidders				
j. Completion of procurement process				
k. Documentation of procurement process				
4. Selecting qualified vendors				
a. Debarment and suspension checking procedures				
b. Reference checking procedure and documentation				
5. Sole source procurement; <ul style="list-style-type: none"> ▪ Justification for use of sole source ▪ Review and authorization ▪ Proposal submission and review 				
6. Procedures for procurement of capital equipment and facilities <ul style="list-style-type: none"> ▪ Capitalization threshold ▪ Justification for purchase rather than lease ▪ Obtaining funder approval to purchase when required ▪ Development of specifications ▪ Qualifications of evaluators ▪ Use of expert evaluators 				
7. Other specific procurement categories requiring special procedures				

Item	Fully Achieved	Partially Achieved	Not Addressed	Lead Role
C. Minority and Women Owned Business and Small Businesses				
1. Maintaining current list of useful contacts				
2. Utilizing community resources including Small Business Administration and Women and Minority Owned and Small Business Associations				
3. Documenting outreach and solicitation efforts				
4. Documenting evaluation and selection of women, minority, and small business vendors				
5. Tracking of efforts including number of contacts maintained, proposals and bids submitted, vendors selected, contracts negotiated with women, minority and small business vendors				
D. Quality Control Procedures				
1. Responsibility for testing compliance with Procurement Policies and Procedures is clearly assigned				
2. Characteristics of high risk procurement activities are identified				
3. Written internal audit procedures for procurement are reviewed annually				
4. Checklist for procurement file review is developed, tested, and revised				
5. Purchasing files are analyzed to identify highest dollar purchases and vendors				
6. Threshold for high dollar purchase is established and records for highest dollar procurements are reviewed				

Item	Fully Achieved	Partially Achieved	Not Addressed	Lead Role
<i>Quality Control Procedures – continued:</i>				
7. Threshold for highest dollar vendors are established and records for procurements from identified vendors are reviewed.				
8. Sampling of oral solicitation purchases selected and reviewed				
9. Sampling of sole source procurements is selected and reviewed				
10. Questions regarding integrity of procurement system are included in employee surveys periodically				
11. Progress in expanding the role of women and minority owned and small business vendors is reviewed and analyzed				