

## **NOTICE OF PROPOSED GUIDANCE DOCUMENT**

DTIM BTLRRH 77

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DTIM BTLRRH 77, 40 U.S.C. 1101 - 1104, a proposed guidance document.

### **PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION**

Comments may be submitted to the Wisconsin Department of Transportation for 21 days by:

1. Department's website: <https://appengine.egov.com/apps/wi/dot/guidance-docs?guidDocId=DTIMBTLRRH77>

2. Mailing written comments to:

Division of Transportation Investment Management  
Wisconsin Department of Transportation  
4822 Madison Yards Way  
PO Box 7913  
Madison, WI 53707- 7913

### **WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT**

The final version of this guidance document will be posted at [wisconsindot.gov](http://wisconsindot.gov) to allow for ongoing comment.

### **AGENCY CONTACT**

Kaleb Vander Wiele  
DOTDTIMGuidanceDocs@DOT.WI.GOV

# **REQUEST FOR PROPOSALS (RFP) PROCUREMENT TOOLKIT**

Wisconsin Department of Transportation

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## 1.0 Scope. This toolkit:

- a. Provides recipients of Federal Transit Administration (FTA) funding under grants through the Wisconsin Department of Transportation (WisDOT) with specific policies and procedures when contracting using competitive Requests for Proposals (RFP), otherwise known as negotiated procurement.
- b. Applies to all negotiated procurements funded, in whole or in part, by the FTA except for the types of procurements identified below. For the exceptions listed below, consult with WisDOT prior to initiating the procurement:
  1. Shared Ride Taxi (SRT) services procurements that are governed by WisDOT's SRT Toolkit;
  2. Qualifications-based procurements for Architectural Engineering (A&E) services and other construction-related services subject to the Brooks Act (40 U.S.C. 1101 – 1104; see also 49 U.S.C. Section 5325(b)(1)); and
  3. Construction procurements when using sealed bids.
- c. May be used for conducting competitive, negotiated procurements when:
  1. The specification is of a type (e.g., performance, functional, or detailed) that would necessitate the need for oral presentations or for discussions with offerors concerning their offers (price, schedule, specification, terms and conditions, etc.);
  2. The award will be made on the basis of factors *other* than price and price-related factors (i.e., price alone is not determinative, such as when technical or past performance considerations play a dominant role in source selection and supersede price); and
  3. Time permits the solicitation, submission, evaluation, and negotiation of offers.
- d. Must be used in concert with the RFP Source Selection Guide and document formats provided as appendices to this Procurement Toolkit.

## 2.0 Purpose. This toolkit provides subrecipients with procedures applicable to negotiated procurements in order to:

- a. Save time – Reduce administrative costs by promoting the use of common procedures;
- b. Attain the best price – Promote “full and open” competition for all contract requirements;
- c. Facilitate approval – Promote efficiency and economy in purchasing; and

- d. Help ensure compliance with FTA Circular 4220.1 requirements (as amended) applicable to third party contracts funded, in whole or in part, by the FTA.

3.0 Definitions. The terms used throughout this toolkit are defined as follows:

“Authorized individual” means a person who has been granted authority, in accordance with local procedures, to buy supplies and services using proper contracting procedures. The authorized individual serves as the Chair in the source selection process.

“Best and Final Offer” (BAFO) means a firm’s final offer following the subrecipient’s conclusion of negotiations with firms who had previously been determined to be in the competitive range. A call for “Best and Final Offers” is made in writing and provides notice to the offerors that negotiations are concluded, that offerors have an opportunity to submit their best and final offers, establishes a common date and time for vendors to submit written best and final offers, and advises offerors that the subrecipient will select the source whose best and final offer is most advantageous to the subrecipient, based only on price and the other factors included in the solicitation.

“Brand Name” means the name of a product or service that is limited to the product or service produced or controlled by one private entity or by a closed group of private entities. Brand names may include trademarks, manufacturer names, or model names or numbers that are associated with only one manufacturer.

“Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public.

“Clarifications” means limited exchanges, between the subrecipient and offerors, that may occur when award without discussions is contemplated. *If the solicitation provides for award without conducting discussions*, offerors may be given the opportunity to clarify certain aspects of their proposals (*e.g.*, the relevance of an offeror’s past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.

“Commercial item” means any item, other than real property, that is of a type customarily used by the general public and which has been sold, leased, or licensed to the general public or which has been offered for sale, lease, or license to the general public. This includes installation services, maintenance services, repair services, training services, and other services if such services are procured for the support of a commercial item and the potential source provides similar services to the general public.

“Competitive range” means the range of proposals that the Source Selection Chair has identified as the most highly rated, unless the range is further reduced for purposes of efficiency (provided that the solicitation notifies offerors that the competitive range might be limited for purposes of efficiency). The competitive range is determined on the basis of the ratings of each proposal against the solicitation’s evaluation factors. Significant

weaknesses, deficiencies, and other aspects of proposals remaining in the competitive range must be made known to and discussed with each offeror still being considered for award. At the time that the competitive range is determined, all offerors who have been eliminated from the competitive range must be provided with written notice that they have been eliminated from further consideration for award.

“Cost analysis” is the element-by-element examination of the estimated or actual cost of contract performance to determine the probable cost to the vendor. The goal is to form an opinion on whether the proposed costs are in line with what reasonably economical and efficient performance should cost. Some of the cost elements examined for necessity and reasonableness are materials costs, labor costs, equipment, overhead, and profit. The end result of a cost analysis should always be a determination that the price is “fair and reasonable.”

“Day,” unless otherwise specified, means calendar day.

“Discussions” are negotiations that occur after establishment of the competitive range that may, at the subrecipient’s discretion, result in the offeror being allowed to revise its proposal.

“Evaluation criteria” means the factors that will be considered in evaluating offeror responses to the solicitation’s stated requirements. These must be clearly identified and describe how the offerors’ responses will be evaluated

“Fair and reasonable” is a pricing concept that can be described as *the price that a prudent businessperson would pay for an item or service under competitive market conditions, given a reasonable knowledge of the marketplace.*<sup>1</sup> A “fair and reasonable” pricing determination must be made for every procurement that uses FTA funds.

“Filed” means, in reference to protests, the complete receipt of any document by a subrecipient before its close of business. Documents received after close of business are considered filed as of the next day. Unless otherwise stated, the subrecipient’s close of business is presumed to be 4:30 p.m., local time.

“Formal solicitation” refers to two very different procurement methodologies--sealed bid or negotiated proposal. In the first, competitive price quotes are obtained from suppliers by sealed bids (Invitation for Bid (IFB)), with public notice given by advertising the solicitation. Bids are publicly opened and recorded, evaluated strictly against the IFB specifications, and awarded based on the lowest responsive price. In the second, sealed proposals are obtained from suppliers (Request for Proposal (RFP)) to provide a solution to a problem or desired outcome, with public notice given by advertising. Proposals are evaluated, negotiated, and awarded based on price as well as other weighted factors.

“Full and open competition” means that all responsible sources are permitted to compete.

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<sup>1</sup> FTA Circular 4220.1F clearly establishes the requirement for a recipient (or subrecipient) to determine a price to be “fair and reasonable” before purchase orders are placed or contracts awarded.

“Geographic preference” refers to statutorily or administratively imposed in-State or local geographical preferences applied to local contractors in the evaluation and award of contracts. Except when contracting for architectural engineering services, the FTA prohibits the practice of such geographic preference.<sup>2</sup>

“Independent cost estimate (ICE)” means an estimate of the anticipated cost or price to be paid for an item, service, or project that is developed by an entity or entities not associated with the item, service, or project to be procured. To be considered “independent,” the estimate cannot be developed by any potential source, supplier, or provider of the item, service, or project. However, it is acceptable to have an “independent” third party develop the estimate for the purchasing activity as long as that party has no interest in bidding or offering on the procurement. For more complex procurements, the ICE represents the documented result of a practical and unbiased analysis, assessment, and quantification of all costs and risks associated with a particular procurement. The ICE must be based upon the procurement’s technical specifications. Irrespective of the procurement’s complexity, the ICE serves as an essential tool for conducting the subsequent required cost or price analysis.

“Interested party” means, for the purpose of filing a protest, an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

“In writing,” “writing,” or “written” means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“Liquidated Damages” - FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect the recipient’s costs should the standards not be met, and must be specified in the solicitation and contract. The procurement file should include a record of the calculation and rationale for the amount of damages established.

“Market research” means collecting and analyzing information about capabilities within the market to satisfy agency needs.

"Negotiation" means contracting through the use of either competitive or other-than-competitive proposals and discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract. Negotiation is a procedure that includes receiving proposals from offerors, evaluating such proposals in accordance with the solicitation’s stated evaluation factors, bargaining with offerors, and providing offerors with an opportunity to revise offers before the award of a contract. Bargaining--in the sense of discussion, persuasion, alteration of initial assumptions and positions, and give-

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<sup>2</sup> FTA C 4220.1F, VI, 2.a.(4) (g).

and-take--may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

“Notice of Intent to Award” means the written or electronic notice that the subrecipient publishes or publicly posts indicating that it has completed bid or offer evaluations and intends to award a contract or multiple contracts under a specific solicitation. The Notice, as a minimum, must identify the:

- (1) Subrecipient making the award and contact person;
- (2) Applicable solicitation number and title;
- (3) Applicable contract number, term, and value; and
- (4) Intended contractor(s) and address.

“Offer” means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to Invitations for Bids (sealed bidding) are offers called “bids” or “sealed bids”; responses to Requests for Proposals (negotiation) are offers called “proposals.”

“Offeror” means the firm or entity that is submitting an offer in response to a Request for Proposals.

“Option” means a unilateral right in a contract by which, for a specified time, the subrecipient may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

“Past performance” means an offeror’s or contractor’s performance on active and physically completed contracts

“Piggybacking” is the post award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process (“FTA Dear Colleague” letter, October 1, 1998).

“Price analysis” is the process of examining and evaluating a proposed price without evaluating its separate cost elements and profit/fee. The end result of a price analysis should always be a determination that the price is “fair and reasonable.”

“Procurement” refers to a range of activities related to purchasing goods, services, and construction. It is a process that typically begins with the specification, proceeds through solicitation and award, and ends with receipt, acceptance, and payment.

“Procurement Plan” means the written document which describes the overall strategy for the procurement and the efforts of all personnel responsible for coordinating and managing their activities in ensuring that the subrecipient’s procurement needs are met in a timely manner and at a reasonable cost.



“Proposal modification” is a change made to a proposal before the solicitation’s closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

“Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by the authorized individual as the result of negotiations.

“Protest” means a written objection by an interested party to any of the following:

- (1) A solicitation or other request by a subrecipient for bids or offers for a contract for the procurement of property or services.
- (2) The cancellation of the solicitation or other request.
- (3) An award or proposed award of the contract.
- (4) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

“Qualified source” or “qualified supplier” means a supplier who has the abilities, qualities, attributes, etc., necessary to perform the work required or furnish the items or services solicited.

“Request for Proposals” means a written solicitation that will use negotiation procedures as opposed to sealed bids.

“Responsible” refers to a set of tangible characteristics that would make an apparent low quoter eligible for award.

“Salient characteristics” means those qualities of an item that are essential to ensure that the intended use of the item can be satisfactorily realized. The term is used in connection with a “brand name or equal” purchase description.

“Solicitation” means any request to submit offers or quotations to the subrecipient. Solicitations under sealed bid procedures are called “Invitations for Bids.” Solicitations under negotiated procedures are called “Requests for Proposals.”

“Source Selection” means the formal process of evaluating competitive proposals in accordance with established source selection policies, procedures, and criteria to ultimately enter to into a procurement contract. All solicitations shall identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

“Source selection information” means any of the following information that is prepared for use by the procuring activity for the purpose of evaluating a bid or proposal to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- (1) Bid prices submitted in response to an invitation for bids, or lists of those bid prices before bid opening.
- (2) Proposed costs or prices submitted in response to a solicitation, or lists of those proposed costs or prices.
- (3) Source selection plan.
- (4) Technical evaluation plans.
- (5) Technical evaluations of proposals.
- (6) Cost or price evaluations of proposals.
- (7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.
- (8) Rankings of bids, proposals, or competitors.
- (9) Reports and evaluations of source selection panels, boards, or advisory councils.
- (10) Other information marked as “Source Selection Information” that, if disclosed, would jeopardize the integrity or successful completion of the procurement to which the information relates.

“Source Selection Plan” means the written document which describes the formal process for evaluating offers and selecting a potential contactor for award. The process begins with the establishment of an evaluation plan for a proposed acquisition and it ends when the Source Selection Chair selects or recommends a contractor to receive a contract award and debriefs the offerors.

“Subrecipient” means a Wisconsin entity, such as a local government, Indian tribe, or non-profit, that expends FTA grant funds received from WisDOT to carry out a program.

“VendorNet” means the Wisconsin statewide electronic purchasing information system used by state agencies, the university system, technical colleges, and participating municipal governments. WisDOT requires municipalities to advertise their solicitations requirements for Request for Proposals on VendorNet.

- 4.0 WisDOT Involvement in the Sub-Recipient Procurement Process. As the designated recipient of FTA grant funds, WisDOT must ensure that sub-recipients are aware of and comply with Federal procurement requirements delineated in FTA Circular C 4220.1 (as amended). In order to qualify for maximum reimbursement, all requirements for contract services that will be made by subrecipients with FTA funds must follow appropriate procurement procedures. As such, WisDOT encourages sub-recipients to:

- a. Make the appropriate WisDOT Program Manager aware of its intent to solicit for services before the procurement is initiated.
- b. Work with the appropriate WisDOT Program Manager or authorized WisDOT representative throughout the procurement process to ensure proper steps are followed.
- c. Submit clear and complete documentation to WisDOT electronically (via email) to help facilitate timely WisDOT review throughout the procurement process.

5.0 Principles. During the conduct of any procurement, authorized individuals must:

- a. Comply with all applicable local and WisDOT standards of conduct restricting the solicitation or acceptance of gifts, gratuities, favors, or anything of monetary value from contractors or potential contractors. This restriction also applies to any individuals with technical evaluation responsibilities for the procurement and/or assigned to a Source Selection Team.
- b. Facilitate “full and open” competition by--
  1. Using appropriate specifications and avoiding unduly restrictive specifications; such as, specifying only a ‘brand name’ product instead of allowing ‘an equal’ product to be offered without listing its salient characteristics.
  2. Not applying a geographic preference for local or in-State suppliers when evaluating quotes for award (except when purchasing architectural engineering services);<sup>3</sup>
  3. Soliciting at least three qualified, potential sources.
- c. Develop an independent cost estimate before receiving proposals.
- d. Appropriately safeguard proprietary and source selection information.
- e. If purchasing a commodity, estimate the quantity as accurately as possible, you may include an assignability clause in the original procurement so that others may be able to piggyback off of your contract.
- f. Prior to recommending or making any award--
  1. Conduct cost or price analysis, as appropriate;
  2. Determine that bidders are “responsive” to the solicitation’s stated requirements;
  3. Determine that the apparent successful offeror is “responsible;”

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<sup>3</sup>) Except for procurements for A&E services, this practice is prohibited (FTA C 4220.1F, VI, 2.a.(4) (g)).

4. Document the basis for the award decision; and
  5. Obtain the appropriate local and WisDOT approvals.
- 6.0 Procedures. The procedures in this Toolkit and its Appendices reference multiple Department of Administration (DOA) forms. Municipalities must ensure that they are using the most current version of these forms that are available on the VendorNet System at:

<https://vendornet.wi.gov/>

- 6.1 *Develop appropriate specifications*. Develop a solicitation specification that best describes the product or service needs clearly and accurately and facilitates “full and open” competition.<sup>4</sup> Keep in mind that the solicitation’s stated evaluation factors and subfactors must be tied to significant requirements of the specification. Also, the factors and subfactors used in the Source Selection Plan MUST mirror those stated in the solicitation.
- 6.2 *Maintain a Written History of Procurement*
  - a. Complete the Written History of Procurement template (Appendix A) and understand and complete the documentation required to maintain a compliant Procurement History File (Appendix O).
- 6.3 *Develop an Independent Cost Estimate*.
  - a. Each procurement must have an independent cost estimate (ICE) developed before bids or proposals are received. The ICE will facilitate the ability to perform the cost or price analysis required for every procurement action.<sup>5</sup> Appendix B, Independent Cost Estimate, provides a format that can be used for developing and documenting the required cost estimate.
  - b. If prepared with sufficient detail and reliability, the estimate alone may be sufficient to determine whether the quoted price is “fair and reasonable.”
  - c. Sources of independent cost estimates can also include:
    - a. Past pricing from recent contracts, adjusted for levels of service or inflation if appropriate (identifying the specific contracts);

*Note:*

- (a) *For comparative pricing purposes, there is no requirement to limit comparisons to FTA-compliant contracts. For example, if the same or similar item has been purchased by a municipal police or public works*

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<sup>4</sup> FTA C 4220.1F, III, 3.a.(1)(a) and FTA C 4220.1F, VI, 2.a.

<sup>5</sup> FTA Circular C 4220.1F, VI, 6.

*department, it is acceptable to use those prices as long as the sources are properly identified and adjusted to reflect inflation, etc.*

*(b) “Recent,” as used in this context, means within the last year or two. Prices older than 1-2 years may be stale and will need to be adjusted by the appropriate Producer or Consumer Price Index to reflect current market conditions.*

2. Estimates developed by in-house engineering or technical personnel; and
3. Estimates developed by independent third-party firms.

6.4 *Document the Procurement Plan and timelines.* For simple procurements, subrecipients must develop a simple timeline of events identifying essential stages in the solicitation development, solicitation, evaluation, and award stages, including time associated with obtaining various local and WisDOT approvals. For more complex procurements WisDOT may require the subrecipient to develop a Procurement Plan and formal Timeline (a sample timeline is at Appendix C, Solicitation/Contract timeline), which is why it is important to consult with WisDOT early in the procurement process. Examples would include when complex specifications are involved, when multiple awards may be made, when awards will be based upon fixed-price with economic price adjustment for option periods, etc.

- a. For complex procurements, develop a Procurement Plan and anticipated timelines, using form DOA-3720, Procurement Plan. Append the form with additional supporting information/documents that accurately and completely describe the procurement requirement, including the draft solicitation (see Appendix E). Attach the Solicitation/Contract Timeline (Appendix C) to the Procurement Plan. The subrecipient’s authorized individual signs the form DOA-3720.
- b. The Procurement Plan should address or include:
  1. The title of the procurement;
  2. Method of procurement;
  3. Contract term (including any option periods) and rationale for same;
  4. Estimated annual costs (ICE);
  5. Relevant historical contract data for similar previous procurements;
  6. Method(s) for advertising the procurement to maximize “full and open” competition;
  7. Any special contract provisions (e.g., option periods, economic price adjustment, etc.);
  8. The solicitation evaluation criteria (factors) and attendant weights;
  9. Source Selection Plan; and
  10. Proposed evaluation team members.

- c. The timeline must take into consideration any local and/or WisDOT required reviews and approvals such as the need for a Pre-Proposal conference or negotiation sessions, which must be approved by WisDOT. The timeline must also reflect any scheduled oral presentations if authorized by WisDOT.

6.5 *Establish the Source Selection Plan, including evaluation factors and weights.*

- a. The Source Selection Plan must describe the particulars of the procurement, including the cost estimate, and identify the evaluation team members. A Source Selection Guide that provides detailed guidance for conducting source selections is included at Appendix H. The Source Selection Plan documentation must include:
  1. The evaluation criteria, including price, in rank order and attendant weights,
  2. Policies and procedures governing the evaluation team's proceedings,
  3. A copy of the individual rating sheets to be used for each factor,
  4. The summary rating sheet to be used for each offeror, and
  5. The evaluation team member certifications (Form DOA-3780).
- b. The solicitation language describing how proposals will be evaluated for award must mirror the Source Selection Plan, including identifying the evaluation factors and their relative importance (rank order). However, weights assigned to each factor do not need to be disclosed in the solicitation.
- c. At a minimum, Source Selection Plans shall:
  1. State how all source selection information will be properly safeguarded from unauthorized, intentional or unintentional release;
  2. State that individual evaluators will evaluate individual proposals in strict accordance with the solicitations stated evaluation criteria (factors) and the basis for points assigned for each factor;
  3. Identify evaluators by name, title, and organization (specific evaluator duties are identified in Appendix H);
  4. Identify the Source Selection Chair, whose specific responsibilities are discussed in Appendix H.
  5. Require evaluators to sign the unified agreement of final scoring and return all copies of proposals and source selection information to the Source Selection Chair for safekeeping with the Procurement History File.

6. State that the Source Selection Chair will determine when to request WisDOT approval for oral presentations or negotiations with the highest ranked offeror or with offerors determined to be in the competitive range (generally no more than three of the highest-ranked offerors);
7. State that if oral presentations are held, that such presentations are time-limited for all offerors, structured, and documented. Further, that no offeror will be provided an opportunity to submit a revised proposal unless all offerors are provided the same opportunity to do so based upon a subsequent solicitation amendment that addresses issues which arose during Oral Presentations and which would have an impact on all offerors. Such amendment and a call for BAFO must be pre-approved by WisDOT.
8. State that if negotiations are held, that such negotiations will be held with all offerors in the competitive range and be structured and documented. Further, that no offeror will be provided an opportunity to submit a revised proposal unless all offerors in the competitive range are provided the same opportunity to do so based upon a subsequent solicitation amendment that addresses issues which arose during negotiations and which would have an impact on all offerors in the competitive range (e.g., a change in specification, delivery requirement, etc.). Such amendment and a call for BAFO must be pre-approved by WisDOT.
9. Affirm that the Source Selection Chair is responsible for managing and documenting negotiations with the apparent highest scoring offeror (if needed), with all offerors in the competitive range, or with the sole offeror in a single-offer (sole source) circumstance. Each of these instances and a call for BAFO must be pre-approved by WisDOT.
10. Affirm that after the Notice of Intent to Award is released, all queries from interested parties concerning the procurement and source selection be directed to the Source Selection Chair for appropriate handling.

6.6 *Prepare the solicitation and develop contract administration plan.*

- a. The Request for Proposals includes all documents (whether attached or incorporated by reference) furnished to prospective offerors for the purpose of submitting an offer. Do not use unnecessarily restrictive specifications or requirements that might unduly limit the number of prospective offerors.
- b. As a minimum, include provisions that clearly state or identify:
  1. The time when and the place where proposals must submitted;
  2. If considered appropriate, that offers will be evaluated and may be considered for award without discussion with any offeror (in this case, “clarifications” are permitted);

3. That an award will be made to the responsible offeror whose offer has been determined to represent the “best value” to the subrecipient.
  4. The offices and individuals assigned to oversee the contract, accept delivery, and certify invoices for payment on behalf of the subrecipient.
  5. Option years and the method used to calculate prices for option years, if applicable.
  6. When procuring services on a long-term basis (2 or more years) or through a contract with option periods, consider developing a comprehensive contract administration plan which accurately and completely identifies and describes the role and responsibilities of individuals assigned to oversee the contract for handling issues related to coordinating issues with WisDOT, approving invoices for payment, making invoice payments, tracking and recording contractor performance, contract closeout (final payment), etc. The plan’s comprehensiveness depends upon the complexity of the procurement but in any event, in its simplest form, must mirror any solicitation provisions that address these issues.
- c. Appendix D provides a sample solicitation Cover Sheet that must accompany the solicitation and Appendix E provides a sample RFP solicitation (Solicitation, Offer, and Award).
- d. Part I, (The Schedule), Section D, of the sample RFP solicitation may be used to address any special contract requirements applicable to contracts that are partially or wholly funded with Federal grant monies.
1. For example, this may include any special contract clauses and contractor reporting requirements pertinent to the product, system, or services being procured. Clearly identify the nature and frequency of the reporting requirement (e.g., periodic progress or final performance reports, subcontractor utilization reports, minority business utilization reports, etc.). Include the form as an attachment to the solicitation and identify the requirement in the RFP, Part III, Section F, also.
  2. In addition, while it is the contractor’s responsibility to be aware of the pertinent solicitation certifications and contract clauses, it is the subrecipient’s responsibility to identify and include the proper Federal clauses applicable for the instant procurement and to ensure compliance with such requirements prior to award and throughout the term of any resultant contract. A list of the Federal clauses and certifications applicable to the procurement must be included at Part III, Section F, and reference made to the full text of these clauses available at the National Rural Transit Assistance Program (RTAP) website under “ProcurementPro.” The website address is:

<http://www.nationalrtap.org/>



- 6.7 *Identify an adequate number of sources to facilitate “full and open” competition.*
- a. Requests for Proposals must be publicized through distribution to prospective offerors, posting in public places, and other means as may be appropriate. As a minimum, the Wisconsin statewide electronic purchasing information system (VendorNet) must be used to advertise the solicitation.
  - b. Provide a reasonable amount of time before the solicitation closing date to enable prospective offerors sufficient time to prepare and submit offers, *recognizing that setting unreasonable time limitations may impact the level of competition and/or result in higher offer prices than anticipated.* In some instances, subrecipients may have already established minimum acceptable times for advertising procurements.
  - c. FTA recommends soliciting at least three firms to ensure that an adequate level of competition is attainable.
- 6.8 *Obtain WisDOT solicitation-release approval.* Allow a minimum of 10 calendar days for the WisDOT Procurement Manager to review and approve the total procurement package. This review, along with the recipient’s own review, will help detect and correct discrepancies or ambiguities in the RFP that could limit competition or otherwise delay contract award. The package must, as a minimum, include:
- a. The complete solicitation document;
  - b. Any special provisions, including exercising options for multiple-year contracts;
  - c. Bidders Mailing List (source list);
  - d. Source Selection Plan, including individual evaluator certifications;
  - e. Any plans for a pre-proposal conference.
- 6.9 *Conduct and document pre-proposal conference, if approved for use.* In most instances, a pre-proposal conference is not necessary. For more complex procurements, the pre-proposal conference may provide an opportunity to discuss the solicitation requirements, including explaining complicated specifications, and to address any questions from potential offerors. Such conference is held as early as possible after the RFP has been issued and before the solicitation closing date. It must never be used as a substitute for amending a defective or ambiguous specification or RFP.
- a. Plans to hold a pre-proposal conference must be approved by WisDOT as part of the pre-solicitation approval process (see 6.8, above).

- b. Representatives hosting the pre-proposal conference must include individuals who can address the specifics of the procurement including any historical data that would help offerors consider whether to participate in the procurement.
- c. Requiring potential offerors to attend pre-proposal conferences is prohibited. However, offerors should be highly encouraged to attend.
- d. Proceedings must be recorded and documented. All questions raised and answers provided shall be addressed in a subsequent solicitation amendment issued to the complete list of potential sources, whether or not such potential offerors attended the pre-proposal conference.

6.10 *Issue appropriate solicitation amendments.*

- a. Any changes in solicitation requirements (e.g., special provisions, specifications, changes in quantity, delivery schedules, closing dates, or to correct a defective or ambiguous solicitation, etc.) that will impact all potential offerors must be made by formal written amendment to the solicitation. Obtain WisDOT approval before issuing the appropriate solicitation amendment to firms on the source list.
- b. All questions raised and answers provided during or as the result of a pre-proposal conference must be addressed promptly in a subsequent solicitation amendment issued to the complete list of potential sources, whether or not such potential offerors attended the pre-proposal conference. WisDOT must approve all such amendments.
- c. Any questions raised by potential offerors prior to the solicitation closing date that have a potential impact on all offerors (e.g., questions that resulted in a change in the specification) must be addressed promptly in a solicitation amendment issued to all offerors before the RFP closing date. WisDOT approval is required for such an amendment and for any resultant extension of the closing date.
- d. If negotiations are held, any questions raised during negotiations with individual offerors in the competitive range, which have a potential impact on all offerors in the competitive range (e.g., questions that resulted in a change in the specification, etc.), must be addressed in a solicitation amendment issued to all offerors in the competitive range before a call for Best and Final Offers (BAFO). WisDOT approval is required for such an amendment and for the call for BAFO.
- e. Before amending the RFP, consider the time remaining until the closing date and the need to extend this period to permit prospective offerors to consider the additional information in submitting or modifying their proposals. When only a short time remains before the time set for closing, first notify offerors on the source list of the time extension by e-mail or telephone. Confirm such extension in the solicitation amendment.

- f. Amendments shall be sent, before the time for closing, to everyone to whom the RFP has been provided. If the RFP was posted electronically or in a public place, such amendments must be similarly posted.

6.11 *Receive, evaluate, score, and safeguard offeror proposals.*

a. General.

1. Offers must be received at a set place, date, and time. Offers must be recorded as they are received but they must not be opened publicly (the procurement is a negotiated procurement--not a sealed bid procurement).
2. Offers must be evaluated and scored in strict accordance with the Source Selection Plan (see also Appendix H) to minimize the risk of a protest. All source selection documentation must be retained with the Procurement History File.
3. To protect the competitive process, all offers must be safeguarded from inadvertent or unintentional/intentional release to unauthorized personnel. This means securing offers and source selection information and documents in a locked drawer, file cabinet, or room with controlled access at all times until the award decision is announced.

b. Competitive Circumstances (More Than One Offer). Once the evaluation committee has completed its initial technical evaluation of offers and ranked the offerors on all factors except price, the committee may recommend that the Source Selection Chair:

1. Open and score the attendant pricing proposals to determine the apparent successful offeror based upon the final evaluation scoring which includes price; OR
2. With WisDOT approval to proceed, provide offerors with a list of questions or issues concerning their proposals which require explanation or clarification and schedule the offerors for oral presentations to address such issues concerning their proposals (but not to modify their proposals); after such presentations, the Administrator would open and evaluate the attendant pricing proposals to determine the apparent successful offeror; OR
3. With WisDOT approval to proceed, negotiate any outstanding conditions, exceptions, reservations, or understanding to any of the contractual requirements, including any pricing issues, with a “short” list of the top-ranked (usually no more than three offerors). This “short” list would necessarily be determined after the Source Selection Chair has opened pricing proposals and made a clear point demarcation between offerors who have made the “short” list and those who have not. Following

negotiations, offerors would be required to submit a sealed “Best and Final Offer (BAFO)” which would reflect any modifications made to their proposals as a result of the negotiations. The evaluation committee would conduct a final technical evaluation and the Source Selection Chair would evaluate any revised pricing proposals, including option year pricing if applicable, before making a determination of the apparent successful offeror.

- c. Non-Competitive (Single Offer) Circumstances. When only a single offer is received in response to a solicitation, the subrecipient is essentially in a sole source situation that requires certain procedures for determining “price reasonableness,” including providing immediate notice to WisDOT that only one offer was received. The offer still must be evaluated according to evaluation criteria noted in the solicitation. Procedures for handling of a single offer are described in Section 6.12 c. If, after contacting vendors on the original source list, the subrecipient discovers a fatal flaw in the solicitation that restricted “full and open” competition, the subrecipient is required to notify WisDOT, modify the solicitation, and re-solicit the procurement.

6.12 *Conduct oral presentations and/or negotiations, if needed and approved by WisDOT*

- a. Oral presentations are an efficient way to obtain essential information from Offerors regarding their proposals. Oral presentations are different from negotiations in that offerors are not permitted to modify their proposals as a result of such presentations. Oral presentations must be pre-approved by WisDOT.
- b. Negotiations provide an opportunity for the subrecipient and offerors to address pricing and other issues that may require a modification of an offeror’s proposal or a contract term or condition. Negotiations under competitive or non-competitive (single offer) circumstances must be pre-approved by WisDOT with the subrecipient providing sufficient information to WisDOT as to why negotiations must be held.
- c. In a non-competitive (single offer) procurement, the subrecipient may proceed directly into negotiations only after it has notified WisDOT of the circumstances and taken the following steps:
  1. Contacted firms on the original source list to determine why such firms did not submit a proposal and documented such reasons. Complete Appendix I;
  2. Revised its original independent cost estimate to provide for an element-by-element break-down of all cost elements including profit or fee; and

3. Failing to determine a basis for “price reasonableness” based on using price analysis techniques, requested and conducted a cost analysis of cost data submitted by the single offeror.
- d. The proceedings for both oral presentations and negotiations shall be formal and structured, as well as documented (recorded) with each offeror provided with a date and time for their scheduled presentation or negotiation session. Oral presentations are time limited for each of the offerors and followed by a Question and Answer session. Negotiations sessions are not time-limited.
- e. The evaluation committee may limit the number of offeror representatives present at either oral presentations or negotiations but attendees should generally include the proposed project manager, other key personnel, and representatives from any major subcontractor.

#### 6.13 *Call for Best and Final Offers and re-evaluate offers*

- a. Following negotiations, offerors shall be required to submit a sealed “Best and Final Offer (BAFO)” which would reflect any modifications made to their proposals as a result of the negotiations.
- b. In considering any modifications to offeror proposals as a result of negotiations, the evaluation committee shall conduct a final technical evaluation using the same evaluation criteria, structure, and format as used for the initial technical evaluation of offers prior to providing the result of their final evaluation to the Source Selection Chair.
- c. In conjunction with the final technical rankings provided by the evaluation committee, the Source Selection Chair shall evaluate and rank any revised pricing proposals before making a determination of the apparent successful offeror.

#### 6.14 *Conduct and document preliminary and final cost or price analysis.* Cost or price analysis must be conducted as part of the initial evaluation of offers and again, after Best and Final Offers have been received.

- a. Federal policy is to contract for supplies and services at fair and reasonable prices. FTA Circular 4220.1 (as amended) clearly establishes the requirement for a recipient (or subrecipient) to determine a price to be “fair and reasonable” before purchase orders are placed or contracts awarded.
- b. After determining the apparent successful offeror and before requesting WisDOT approval for award, the subrecipient must determine “price reasonableness” of the final offered price. When conducting price analysis to determine price reasonableness, the end result of the price analysis should always be a determination that the price is “fair and reasonable” (Appendix J provides a sample format for documenting the price analysis and the determination of price reasonableness).

- c. When conducting cost or price analysis, it is important to:
  1. Develop and examine data from multiple sources which will help prove or suggest that the proposed price is fair;
  2. Determine when multiple data consistently indicate that a given price represents a good value for the money.
  3. Document the data sufficiently to convince a third party reviewer that the conclusions are valid.
- d. The Federal Acquisition Regulation (FAR) discusses several price analysis techniques by which a proposed price for a particular procurement can be determined to be “fair and reasonable.”<sup>6</sup> These techniques can be used singly or, if quoted prices vary significantly between offerors, used in combination with each other to help explain any significant price variances. The techniques are briefly described below:
  1. Comparison of proposed prices received. Normally, adequate price competition establishes price reasonableness. This is the most commonly used technique, as the majority of procurement actions attract two or more offers that are competing independently for the award.
  2. Comparison with previously proposed or awarded prices. This comparison must be for recent awards for the same or similar items. In addition, both the validity of the comparison and the reasonableness of the previous price(s) must be established and documented in the determination.

*(Note:*

*(a) For comparative pricing purposes, there is no requirement to limit comparisons to FTA-compliant contracts. For example, if the same or similar item has been purchased by a municipal police or public works department, it is acceptable to use those prices as long as the sources are properly identified and adjusted to reflect inflation, etc.)*

*(b) “Recent,” as used in this context, means within the last year or two. Prices older than 1-2 years may be stale and will need to be adjusted by the appropriate Producer or Consumer Price Index to reflect current market conditions.)*

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<sup>6</sup> FAR 15.404-1(b)(2).

3. Using parametric estimating methods or application of rough yardsticks. For example, comparing the proposed price per square foot for a certain type of building construction against an established commercial cost per square foot.
4. Comparison with competitive published catalogs or price lists. These may be hard-copy or Internet-based and include published market prices of commodities, similar indexes, and discount or rebate arrangements.
5. Comparison with independent cost estimates. See Section 6.3, above.
6. Comparison with prices obtained through market research for the same or similar items. This includes prices for standard commercial items sold in substantial quantities on the open market to the general public. For example, trade journals, newspapers, and economic indexes can provide useful comparative information.
7. Analysis of pricing information provided by the offeror. This “catch-all” category includes information that does not fall into the other categories and may include verifiable sales information for like or similar items sold to the supplier’s other customers.

e. A cost analysis must be performed on all change orders. Documentation must include the review and justification of the contractor’s proposed change and any associated profit negotiations. Appendix J provides a template for the cost analysis.

6.15 *Determine offeror “responsibility” and “responsiveness” of apparent successful offeror.* The subrecipient must make a written determination that the apparent successful offeror is “responsible” before requesting WisDOT approval to make the award.

- a. Typical supplier “responsibility” and “responsive” characteristics include:
  1. Having a satisfactory record of integrity and business ethics;
  2. Not being debarred or suspended from doing business with the Government;
  3. Being in compliance with affirmative action rules and Disadvantaged Business Enterprise requirements;
  4. Having, or having the ability to, obtain the necessary organization, experience, accounting, and operational controls, and technical skills to perform the work;
  5. Being in compliance with applicable licensing and tax laws and regulations;

6. Having, or having the ability to obtain, sufficient financial resources to perform;
  7. Having, or having the ability to obtain, the necessary production, construction, and technical equipment and facilities to perform;
  8. Being able to meet the required delivery or performance schedule; and
  9. Having a satisfactory record of past or current performance.
- b. Data to help determine whether a potential supplier is responsible is available from multiple sources including in-house experts familiar with the supplier, external agencies or customers, financial records, and the System for Award Management (SAM) which has information on federally debarred or suspended firms. The SAM can be accessed at:

<https://www.sam.gov/>

In addition, the State of Wisconsin, Department of Workforce Development, maintains a “*Consolidated List of Debarred Contractors*” at:

<http://wisconsindot.gov/hcciDocs/debar.pdf>

- c. A responsive supplier is one that conforms to all requirements and specifications of the solicitation.
- 6.16 *Request WisDOT and local approvals to award.* WisDOT must approve all federally-funded procurements before the subrecipient awards the contract. As such, WisDOT encourages subrecipients to work collaboratively with WisDOT to ensure that subrecipients are in full compliance with this toolkit and are able to show documented evidence to support the recommendation and decision to make the contract award.
- 6.17 *Notify unsuccessful offerors.* Subrecipients shall notify unsuccessful offerors in writing within one working day of receiving approval to proceed with the contract award and shall provide unsuccessful offerors the opportunity to request a debriefing. The Source Selection Chair shall be responsible for scheduling and conducting the debrief. Any debriefing should be structured and recorded in the event that a protest is subsequently filed. If a protest is filed, the subrecipient shall comply with any local or WisDOT procedures to “stay” the award, address the merits of the protest, and make a determination concerning the protest.
- 6.18 *Protests before or after award.* Subrecipients must consider all protests and consult in a timely manner with WisDOT, irrespective of whether protests are submitted before or after contract award. A protester must exhaust all administrative remedies with the subrecipient before pursuing a protest with WisDOT or FTA.



- b. Protests based on alleged apparent improprieties in a solicitation must be filed with the subrecipient before bid opening or the closing date for receipt of proposals. In all other cases, protests must be filed no later than 10 days after the basis of protest is known or should have been known, whichever is earlier. However, the subrecipient, for good cause shown, or where it determines that a protest raises issues significant to the subrecipient's procurement system, may consider the merits of any protest that is not timely filed but may only do so after consulting with WisDOT.
- c. In order to facilitate review by the subrecipient and by WisDOT, protests must be concise and logically presented. Failure to substantially comply with any of the requirements of paragraph (d) of this section may be grounds for dismissal of the protest.
- d. Protests must include the following information:
  1. The protestor's name, address, and fax and telephone numbers.
  2. Solicitation or contract number.
  3. Detailed statement of the legal and factual grounds for the protest, including a description of resulting prejudice to the protester.
  4. Copies of relevant documents.
  5. Request for a ruling by the subrecipient.
  6. Statement as to the form of relief requested.
  7. All information establishing that the protester is an interested party for the purpose of filing a protest.
  8. All information establishing the timeliness of the protest.
- d. After receiving a protest, the subrecipient must:
  1. **If, before contract award, not make contract award, pending resolution of the protest.** However, award may be made if such action is justified, in writing, for urgent and compelling reasons or it is determined, in writing, to be in the subrecipient's best interest to do so. In these instances, in addition to any local approval requirements, WisDOT must approve the justification or determination prior to any action to award the contract.
  2. **If, withholding contract award pending agency resolution of the protest, inform the bidders or offerors** whose bids/offers might become eligible for award of the contract. If appropriate, the bidders/offerors should be requested, before expiration of the time for acceptance of their bids/offers, to extend the time for acceptance to avoid the need for re-soliciting the procurement. If bidders/offerors fail to grant such time extensions, the subrecipient may consider proceeding with award pursuant to paragraph (d)(1) of this section but only with the appropriate local and WisDOT approvals to do so.
  3. **If, the protest is received within 10 days after contract award, immediately suspend contract performance.** However, contract performance may continue,

pending resolution of the protest, if continued performance is justified, in writing, for urgent and compelling reasons or it is determined, in writing, to be in the best interest of the subrecipient. In addition to any local approval requirements, WisDOT must approve such justification or determination.

- e. Subrecipient's must make their best efforts to resolve protests filed with the subrecipient within 30 days after the protest is filed. Unless otherwise prohibited by law, the parties may exchange relevant information. To help facilitate timely WisDOT action, subrecipient protest decisions must be well reasoned, factually accurate and complete, and fully explain the subrecipient's position. The final protest decision must be provided to the protester using a method that provides evidence of receipt.
- 6.19 *Document the file.* At a minimum, the Procurement History file must contain or address the items or elements listed below (see also Appendix O). All elements a. through k. must be evidenced in the file before seeking appropriate approvals to award the contract.
- a. As applicable, a funded Purchase Request with an appropriate description or Statement of Work;
  - b. An independent cost estimate and any supporting documents such as historical contract or operating data;
  - c. The Procurement Plan and timeline;
  - d. A sole source justification explaining the single-offer circumstances, if necessary;
  - e. A copy of the final solicitation (as amended) and any supporting documents such as pre-proposal conference notes and Questions and Answers;
  - f. The solicitation mailing or source list, annotated with the date the RFP and any amendments were distributed and the solicitation closing date;
  - g. All source selection-related documents (see Section 3.0, Definitions) including but not limited to: the Source Selection Plan, individual evaluators' certifications, individual evaluators' initial and final scoring sheets, initial and final evaluation summary sheets (including price), oral presentation documentation, negotiation memoranda (if applicable), basis for the award, etc.
  - h. A copy of all proposals received including offeror acknowledgment of any solicitation amendments and "Best and Final Offers," if applicable;
  - i. Price or cost analysis (as appropriate) including any supporting documents and a written determination that the price offered by the apparent successful offeror is "fair and reasonable;"

- j. A written determination that the proposed contractor is “responsible” and “responsive;”
- k. A copy of the proposed contract that is consistent with the solicitation, including the applicable federal clauses;
- l. Any additional supporting documents;
- m. Evidence of any required approvals (e.g., local and WisDOT); and
- n. After approval, the Original and signed Contract/Agreement.
- o. After award, any subsequent contract amendments/modifications including but not limited to those exercising available option periods.