

NOTICE OF PROPOSED GUIDANCE DOCUMENT

DTIM BTLRRH 80

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DTIM BTLRRH 80, FTA Circular 4220.1, 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=DTIMBTLRRH80>

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 to allow for ongoing comment.

AGENCY CONTACT

Kaleb Vander Wiele
DOTDTIMGuidanceDocs@DOT.WI.GOV

VEHICLE PURCHASE GUIDE

(For all recipients using federal funds)

Wisconsin Department of Transportation

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Small Purchase and Invitation for Bids link: <http://wisconsindot.gov/Pages/doing-bus/local-gov/astnce-pgms/transit/procure.aspx>

1.0 **Scope**

This guide provides Wisconsin Department of Transportation (WisDOT) and subrecipients with specific policies and procedures for purchasing vehicles, through the use of either informal or formal solicitation procedures. It applies to all purchases funded, in whole or in part, by the Federal Transit Administration (FTA). As such, where appropriate, references to FTA Circular 4220.1 (as amended) have been footnoted.

2.0 **Purpose**

This guide provides recipients with purchasing procedures in order to:

- a. Reduce administrative costs by promoting the use of common procedures;
- b. Promote “full and open” competition for purchases;
- c. 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**

For a more inclusive definition of terms used throughout this guide, refer to the [WisDOT Small Purchase Toolkit](#) or [Invitation for Bid Toolkit](#) depending on the size of your procurement.

Authorized individual means a person who has been granted authority, in accordance with local procedures, to buy supplies and services using small purchase procedures.

Disadvantage Business Enterprise or DBE means a for-profit small business concern – 1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals and 2) whose management and daily operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

- o Disadvantaged Business Enterprise (DBE) provisions apply to United States Department of Transportation (USDOT) assisted contracts for airports, highways and transit. This includes the use of FTA planning, capital and/or operating funds spent on contracts. The FTA requires organizations receiving these federal funds to make efforts to purchase from, or use DBE firms.
- o The DBE requirements include provisions that must be addressed in the vehicle procurement process. These provisions include required contract clauses, required information from bidders, DBE Approval Certification, Transit Vehicle Manufacturer (TVM) Certification, and TVM Reporting.

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 close group of private entities. Brand names may include trademarks, manufacturer names, or model names or numbers that are associated with only one manufacturer.

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 from a responsible bidder. 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.

Informal solicitation refers to the small purchase method of soliciting supplier quotes in writing or via telephone or fax. This method differs significantly from the solicitation of bids or proposals for more complex items, services, or construction using sealed bids (IFB) or negotiating offers after the issuance of an RFP. *The informal solicitation method is not approved for vehicle purchases in excess of \$50,000 (the small purchase threshold)--in this instance, you must use a formal Invitation for Bid.*

Procurement refers to a range of activities related to purchasing goods, services, and construction. It is a process that typically begins with the Independent Cost Estimate, then specifications, proceeds through solicitation and award, and ends with receipt, acceptance, and payment.

Purchase order means an offer by a subrecipient to buy supplies or services (including construction) under specified terms and conditions, using small purchase procedures.

Quotation means an informal solicitation of potential suppliers of goods or services to confirm specifications, terms, and pricing for a specific purchase requirement.

Recipient means either WisDOT or subrecipient conducting the procurement.

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

Responsive refers to the concept that, in order to be eligible for award, a bid must comply in all material respects with the invitation for bids. Such compliance enables all bidders to stand on an equal footing and helps maintain the integrity of the sealed bidding process.

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.

Small purchase means an acquisition of supplies, services, and construction in the amount of \$5,000 to \$49,999 using the procedures described in the *WisDOT Small Purchase Guide*. *This threshold is unique to WisDOT and its subrecipients.*¹

Small purchase procedures means the informal methods for making small purchases using a cash account, credit cards, and purchase orders.

Splitting requirements refers to the practice of breaking down known requirements into two or more purchases to reduce the dollar value of each to below the small purchase thresholds in order to be able to use small purchase procedures or otherwise circumvent more restrictive full-and-open competitive procedures. FTA prohibits the practice of splitting requirements.

¹ FTA recognizes a small purchase threshold of \$10,000 to \$250,000.

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.

Transit Vehicle Manufacturers (TVMs) means the manufacturer of vehicles used by FTA recipients for the primary purpose of providing public mass transportation (e.g., buses, railcars, modified mass produced vans).

4.0 **Procurement Process**

As the designated recipient of FTA grant funds, WisDOT must ensure that both they and subrecipients are aware of and comply with Federal procurement requirements delineated in FTA Circular 4220.1 (as amended). In order to qualify for maximum reimbursement, all purchases made with FTA funds must follow appropriate procurement procedures. As such, recipients are encouraged to:

- a. Make the appropriate WisDOT Program Manager aware of its intent to purchase a good or service before the procurement is initiated.
- b. Work with the appropriate WisDOT Procurement Manager to ensure proper steps are followed throughout the procurement process.
- c. Recipients should utilize the Procurement History Checklist for each type of procurement and complete the checklist in chronological order.
- d. Submit clear and complete documentation to WisDOT **before issuing a purchase order or awarding a contract**:
 1. Start the Written History of Procurement even though it cannot be completed until the procurement is complete.
 2. Fill out the Independent Cost Estimate (ICE), submit any necessary documentation to justify the ICE.
 3. Establish and document clear, accurate, and complete specifications. Be sure *no* brand names are included.
 4. After following the appropriate soliciting procedures, received and evaluated quotes or bids for the item, determined adequate competition existed, then perform a cost or price analysis to determine that the low price is “fair and reasonable;”
 5. Determine if the bidder is responsible. Conduct a www.sam.gov search on your vendor. Print out the results.
 6. Determine that bidders are “responsive” to the solicitation’s stated requirements, if there is only one bidder, complete single bid analysis;
 7. Complete Pre-Award Audit Report
 8. Document the basis for the award decision
 9. Email documentation to help facilitate timely WisDOT review
 10. Obtain the appropriate local and WisDOT approvals
 11. After award has been made, verify that everything on the checklist has been completed **in chronological order** including completing the Written History of Procurement.

4.1 WisDOT Staff Instructions as a Purchaser: Start with the checklist. An ICE will need to be developed along with the specifications before taking to WisDOT Purchasing. WisDOT Purchasing will finalize the bid document to add all of their requirements and may have questions before it is advertised on VendorNet. Respond promptly and completely to their questions.

The federal clauses, Buy America certifications (if appropriate), and bid opportunity list must be provided to Purchasing to be included in the solicitation.

If there are questions asked as part of the solicitation, be sure to get responses to Purchasing so that the timeline posted as part of the solicitation can be met. For the HSV procurement, allow plenty of time from when the questions are due until responses must be posted as there may be more research needed in order to respond.

Be sure that Purchasing has the Bid Opening Appendix. Because it is a public opening, a Transit staff person should attend the bid opening.

Once the bids are submitted and the information is received from Purchasing, complete the rest of the checklist and notify Purchasing in writing when it has been completed. Purchasing will send out the Notice of Intent to Award letters and the contracts.

5.0 Principles

When making any purchase, 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.
- b. Not “split” requirements in order to use small purchase procedures. Periodically review purchases to discern procurement patterns for a particular product or service.
- c. Facilitate “full and open” competition by--
 1. Using appropriate specifications and avoiding unduly restrictive specifications.
 - (a) Review WisDOT’s current procurement for Human Service Vehicles for sample specifications.
 - (b) The formats provided allow a bidder to indicate whether the solicited vehicle meets or exceeds the minimum specification for a particular item and also allows the procurement reviewer to check-off that the bidder has, in fact, indicated that it has met all material specification requirements.
 - (c) Subrecipients may modify these formats as necessary to meet their specific needs.
 2. Not applying a geographic preference for local or in-state suppliers when evaluating quotes for award (except when purchasing architectural engineering services).²
 3. Avoid 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 Except for procurements for A&E services, this practice is prohibited (FTA C 4220.1F, VI, 2.a.(4) (g)).

4. Soliciting at a minimum three qualified, potential sources.
- d. Prior to recommending or making any award, follow the processes outlined in either the Small Purchase toolkit or IFB toolkit.

6.0 **Vehicle Purchasing Procedures**

- 6.1 *Purchases up to \$50,000.* For vehicle purchases up to \$50,000, follow the specific procedures set forth in the [WisDOT Small Purchase toolkit](#), and use the recommended formats in all appendices. Pre-award and post-delivery audit reports will be required, but will be an abbreviated version of each report.
- 6.2 *Purchases over \$50,000.* For vehicle purchases over the small purchase threshold, use the formal solicitation procedures set forth in the [WisDOT Invitation for Bid toolkit](#) and use the recommended formats in all appendices. Pre-award and post-delivery audit reports will be required, but will be an abbreviated version of each report.
- 6.3 *Purchases Over \$150,000.* For vehicle purchases over \$150,000, ensure compliance with Buy America Act requirements, including pre-award and post-delivery audit requirements and certifications, as well as certifications applicable under the FMVSS. Follow the formal solicitation procedures set forth in the [Invitation for Bid toolkit](#).
- 6.4 DBE – TVM Contract Clause and Certifications – *All Rolling Stock Procurements*

Transit vehicle procurements using FTA funds must only occur with TVMs that adhere to the requirements. This is done through the inclusion of both a FTA required contract clause and certification, to be completed by the TVM, in the solicitation documents.

- 6.4.1 DBE - TVM Contract Clause (included in Appendix D-Federal Certifications)

Insert the following clause in transit vehicle solicitations:

DBE Requirements for Transit Vehicle Manufacturers (TVM)

Pursuant to Title 49, Code of Federal Regulations, part 26.49, a Proposer, as a condition of being authorized to respond to this solicitation, must certify by completing the *DBE Approval Certification* that it has on file with the Federal Transit Administration (FTA) an approved or not disapproved annual disadvantaged business enterprise (DBE) subcontracting participation goal.

- 6.4.2 FTA Required DBE Approval Certification

Require the submission of a *DBE Approval Certification* with each bid or proposal:

- a. If the vehicle being solicited requires a TVM certification, vendors must provide the certification to be deemed responsive. The certification must be provided with their submittal and subrecipients must retain in the vehicle procurement file.

- b. Verify that bids or proposals received include the required, signed *DBE Approval Certification* (bids or proposals missing this certification are determined non-responsive).

7.0 **Pre Award Report** – Appendix E

See *Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements Handbook* at <https://www.transit.dot.gov/regulations-and-guidance/buy-america/buy-america-handbook> for additional information.

“As part of the federal grant application for any revenue rolling stock grant, agencies that use federal funds (recipients) to procure vehicles ‘must certify to FTA that it will conduct or cause to be conducted pre-award and post-delivery audits’ as prescribed by 49 CFR Part 663.”

The pre-award report must be completed before the award of the contract. The audit should be done by someone qualified and independent from the procurement process, the manufacturer, and the manufacturer’s agent.

7.1 Pre-Award reports for procurements ***under*** \$150,000

7.1.1 Altoona Bus Testing (Master Agreement Reference 16, p. (43))

- 7.1.1.1 Verify the vehicle that was submitted as part of the solicitation has an Altoona test <http://altoonabustest.psu.edu/buses>
- 7.1.1.2 Read the report to see if there were any deficiencies noted in the testing, verify that they have been corrected and retested.

7.1.2 TVM Certification

- 7.1.2.1 Verify the manufacturer submitted the TVM Certification to FTA and that the manufacturer is listed among the [List of Manufacturers](#) eligible to bid on FTA funded transit procurements (only eligible TVMs are listed on the website).

Note: Print off a copy of the list and include it in the vehicle procurement file.

- 7.1.2.2 Verify the signed certifications are included in the bid documents.

7.1.3 FMVSS Certification – **Appendix F**

- 7.1.3.1 Obtain the FMVSS self-certification (sticker) information from the motor vehicle manufacturer
- 7.1.3.2 Complete a Pre-Award FVMSS Compliance Certification

7.1.4 Purchaser’s Requirement Certification – **Appendix F**

- 7.1.4.1 Assess whether the proposed manufacturer’s bid complies with the solicitation specifications and whether the manufacturer is responsible and has the capacity and capability to produce a vehicle that meets specifications.

Manufacturer’s technical information includes:

- a. Bid
- b. Specifications

- c. Product brochures
- d. Technical data sheet
- e. Bills of materials
- f. Drawings
- g. Any other information

Manufacturer's Capability and Capacity includes:

- a. Past performance
- b. Qualifications of key personnel
- c. Facility layouts/drawings, production line layout/flowchart
- d. Plant output capacity (i.e. max production rate per week)
- e. Staffing counts by craft
- f. Readiness of fixtures for car body construction
- g. Quality assurance and control plan
- h. Other item necessary to execute the work, e.g.:
 - i. Meet required schedule
 - ii. Verify manufacturer's financial viability or review the proposed manufacturer's public financial statement

7.2 Pre-Award reports for procurements **over** \$150,000

7.2.1 Altoona Bus Testing (Master Agreement Reference 16, p. (43))

- 7.2.1.1 Verify the vehicle that was submitted as part of the solicitation has an Altoona test <http://altoonabustest.psu.edu/buses>
- 7.2.1.2 Read the report to see if there were any deficiencies noted in the testing, verify that they have been corrected and retested.

7.2.2 TVM Certifications – **Appendix F**

- 7.2.2.1 Verify the manufacturer submitted the TVM Certification to FTA and that the manufacturer is listed among the [List of Manufacturers](#) eligible to bid on FTA funded transit procurements (only eligible TVMs are listed on the website).

Note: Print off a copy of the list and include it in the vehicle procurement file.

- 7.2.2.2 Verify the signed certifications are included in the bid documents.

7.2.3 FMVSS Certification – **Appendix F**

- 7.2.3.1 Obtain the FMVSS self-certification (sticker) information from the motor vehicle manufacturer
- 7.2.3.2 Complete a Pre-Award FVMSS Compliance Certification

7.2.4 Purchaser's Requirement Certification – **Appendix F**

- 7.2.4.1 Assess whether the proposed manufacturer's bid complies with the solicitation specifications and whether the manufacturer is responsible and has the capacity and capability to produce a vehicle that meets specifications.

Manufacturer's technical information includes:

- a. Bid
- b. Specifications

- c. Product brochures
- d. Technical data sheet
- e. Bills of materials
- f. Drawings
- g. Any other information

7.2.5 Buy America Certification – **Appendix F**

- 7.2.5.1 Prior to making awards for vehicle purchases over \$150,000, recipients must ensure that it has complied with the Buy America certification requirements of 49 C.F.R § 663.25(b) and completed its own certifications required by 49 C.F.R § 663.27 (a) and (b).

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

This language has been developed by FTA and ***must be inserted in all IFB/RFP documents***. Retain these documents with the vehicle procurement file.

There is a spreadsheet in the *Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements Handbook* for the vendors to utilize to verify domestic content before award.

8.0 **Post Award Documents**

8.1 FTA Transit Vehicle Award Report

- a. *Direct Recipients* – Submit within 30 days of making an award (and exercising a contract renewal/option), the name of the successful transit vehicle manufacturer and the total dollar value of the contract (49 CFR 26.49) using the Transit Vehicle Award Report form.

The FTA report form and instructions can be found at:

<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>

- b. *WisDOT Subrecipients* – Contact WisDOT to assist with completion and submission of the Transit Vehicle Award Report form. Completed forms are to be kept in the procurement file. A copy of the form is to be sent to WisDOT.

9.0 **Post Delivery Report and Delivery Documents**

Refer to **Appendix G** for the delivery documents that are specific to the type of funding used to purchase the vehicle(s).

See *Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements Handbook* at <https://www.transit.dot.gov/regulations-and-guidance/buy-america/buy-america-handbook> for additional information.

A recipient purchasing revenue service rolling stock must ensure that a post-delivery audit is completed before title to the rolling stock is transferred to the recipient as noted in 49 CFR § 663.31. **Appendix G** provides the template to use when completing the report.

9.1 Purchaser's Requirements (*all Rolling Stock*)

- 9.1.1 Complete the Post Delivery Purchaser's Requirements Certification – (**Appendix G, Attachment C**) that certifies:
The vehicles purchased comply with the contract specifications and identify areas of noncompliance either through a resident inspector or through the recipient inspecting and testing the vehicle.
- 9.1.2 After vehicle delivery, complete the following to verify the vehicle meets the contract specifications:
 - ✓ Visual inspections and
 - ✓ Road Tests
- 9.1.3 Keep a copy of the Post Delivery Purchaser's Requirements Certification – (**Appendix G, Attachment C**) in the vehicle procurement file.

9.2 Federal Motor Vehicle Safety Standards (FMVSS) Certification (*all Rolling Stock*)

- 9.2.1 Complete the Post Delivery Federal Motor Vehicle Safety Standards (FMVSS) Certification -- (**Appendix G, Attachment C**) that certifies the vehicle complies with FMVSS.
- 9.2.2 After vehicle delivery, ensure the vehicle was delivered with the following:
 - ✓ A copy of the manufacturer's self-certification
 - ✓ The FMVSS self-certification sticker information
 - ✓ Confirm the manufacturer's FMVSS sticker is affixed to each motor vehicle manufacturer.
- 9.2.3 Keep a copy of the Post Delivery Federal Motor Vehicle Safety Standards (FMVSS) Certification – (**Appendix G, Attachment C**) in the vehicle procurement file.
- 9.2.4 FMVSS Inapplicability
If the FMVSS is inapplicable, the subrecipient must:
 - ✓ Obtain the manufacturer's certified statement indicating that contracted motor vehicles are not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 Code of Federal Regulations, Part 571.
 - ✓ Complete a Post Delivery Certification of the FMVSS Inapplicability
 - ✓ Keep the FMVSS Inapplicability Certification in the vehicle procurement file

9.3 Buy America Certification Requirements (*over \$150,000*)

In the post-delivery audit, recipients purchasing rolling stock over \$150,000 must verify

that the manufacturer complied with applicable Buy America requirements in the production of the rolling stock and this verification must be based on actual data.

- 9.3.1 Complete the Post Delivery Buy America Compliance Certification – **(Appendix G, Attachment C)** before the vehicle title is transferred to the recipient.
- 9.3.2 Certify that the recipient received a waiver from FTA **or**
- 9.3.3 Certify that the vehicle(s) procured:
 - a. Contain components that exceeded the required domestic content per 49 CFR Part 661.

Note: Include documentation of the final list of major components and sub-assemblies made in the U.S., and the calculated percentage of total manufacturer's cost for each item.
 - b. Verifies final assembly:
 - ✓ Took place in the United States
 - ✓ The activities were compliant with Buy America Requirements

Note: Include documentation on the list of activities that took place during the final assembly.
 - d. Includes documentation on the cost of final assembly (the required percentage or more of the value of the components must be manufactured in the United States and final assembly must be made in the United States).
- 9.3.4 Keep a copy of the completed Post Delivery Buy America Compliance Certification – **(Appendix G, Attachment C)** in the vehicle procurement file.