

NOTICE OF PROPOSED GUIDANCE DOCUMENT

DTIM BTLRRH 79

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DTIM BTLRRH 79, 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=DTIMBTLRRH79>

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.

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SHARED-RIDE TAXI PROCUREMENT TOOLKIT

Wisconsin Department of Transportation

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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 for Shared-Ride Taxi (SRT) services (NIGP Commodity Code 962-17). SRT services are paratransit, door-to-door, demand-responsive, and advanced reservation services that are made available to the general public. Scheduled service is normally seven days a week with specific daily hours. The service is available to disabled individuals with the contractor responsible for assisting such passengers into and out of the accessible vehicle.
- b. Applies to all SRT procurements funded, in whole or in part, by the Federal Transit Administration (FTA). As such, where appropriate, references to FTA Circular C 4220.1 (as amended) have been footnoted.
- c. Must be used in concert with the SRT Source Selection Guide and document formats provided as appendices to this SRT Procurement Toolkit.

2.0 Purpose. This toolkit provides subrecipients with SRT contracting procedures 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 SRT 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.

“Best and Final Offer” (BAFO) means a firm’s final offer following the Municipality’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 Municipality will select the source whose best and final offer is most advantageous to the Municipality, based only on price and the other factors included in the solicitation.

“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. The competitive range is determined on the basis of the ratings of each proposal against the solicitation's evaluation factors. The Chair may limit the number of proposals in the competitive range to the greatest number that will allow efficient competition among the most highly rated proposals. The Chair must then indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal. The Chair also provides written notice to all offerors who have been eliminated from the competitive range 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.”

“Curb-to-Curb Service” means a service that picks up and delivers passengers at the curb or roadside, as distinguished from door-to-door service. Passenger assistance is generally not rendered other than for actual boarding and alighting.

“Demand-Responsive Service” means a service which is activated based on passenger requests. Usually passengers call the scheduler or dispatcher and request rides for particular dates and times. A trip is scheduled for the passenger and may be canceled by the passenger. Usually this service involves curb-to-curb or door-to-door service. Trips may be scheduled on an advance reservation basis or in “real time.” Usually smaller vehicles are used to provide demand-response service. This type of service usually provides the highest level of service to the passenger but is the most expensive for the transit system to operate in terms of cost per trip.

“Door-to-Door Service” means a service that picks up passenger at the door of their place of origin and delivers them to the door of their destination. The driver pulls the vehicle off the road, if possible, and escorts or physically assists the passengers if needed. Door-to-door service provides a higher level of assistance than curb-to-curb service and is typically used for passenger with physical disabilities.

“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.*¹ A “fair and reasonable” pricing determination must be made for every procurement which uses FTA funds.

¹ 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.

“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.

“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.²

“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.

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

“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 which 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 Municipality may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

“Paratransit Service” means a shared-ride transportation method other than fixed-route mass transit services and usually using smaller vehicles (less than 25 passengers). These services typically serve the needs of persons that standard mass transit services would

² FTA C 4220.1F, VI, 2.a.(4) (g).

serve with difficulty or not at all. A paratransit service is usually advance reservation, demand-responsive, providing curb-to-curb or door-to-door service. Route deviation and point deviation are also considered paratransit.

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

“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 Municipality’s procurement needs are met in a timely manner and at a reasonable cost.

“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 which will use negotiation procedures as opposed to sealed bids.

“Responsible” refers to a set of tangible characteristics which 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.

“Shared-ride taxi service” means a service in which riders with similar points of origin and destination group together to share the cost of a taxi trip. The service is a door-to-door, demand responsive, and advanced reservation service that is made available to the general public. The scheduled service is normally seven days a week with specific daily hours outlined in the solicitation. The system is subsidized with state and federal transit operating funds. The service is available to the disabled with the provider responsible for assisting the disabled passenger into and out of the accessible taxi vehicle.

“Shared Ride Taxi” means a shared ride taxi service provides taxi transportation in which more than one passenger is in the vehicle at the same time, usually at a reduced rate for each of the passengers. Shared ride taxi is a way of using taxicabs for paratransit service.

“Solicitation” means any request to submit offers or quotations to the Government. 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 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 or 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 Procurement Administrator 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 shared ride taxi services 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 SRT contract services which will be made by subrecipients with FTA funds must follow appropriate procurement procedures. As such, WisDOT requires sub-recipients to:

- a. Make the appropriate WisDOT Program Manager aware of its intent to solicit for SRT services before the procurement is initiated.
- b. Work with the appropriate WisDOT Program Manager or Procurement Manager 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.
- b. Facilitate “full and open” competition by--
 1. Using appropriate specifications and avoiding unduly restrictive specifications;
 2. Not applying a geographic preference for local or in-State suppliers when evaluating quotes for award (except when purchasing architectural engineering services);³
 3. Soliciting at least three qualified, potential sources.
- c. Develop an independent cost estimate before receiving proposals.
- d. Keep a Written History of Procurement during the entire procurement process.
- e. Appropriately safeguard proprietary and source selection information.
- f. Prior to recommending or making any award--
 1. Conduct cost or price analysis, as appropriate;
 2. Determine that the apparent successful offeror is “responsible;”

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

3. Document the basis for the award decision; and
 4. Obtain the appropriate local and WisDOT approvals.
- 6.0 **Procedures.** Use the Procurement File Checklist (Appendix M) as a guide for completing the documentation required to maintain a compliant procurement file. 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 which are available on the VendorNet System at:

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

6.1 *Identify participating entities and develop appropriate specifications.*

- a. If multiple entities have a shared-ride taxi requirement and will participate in a cooperative procurement, the Host City, County, or Municipality for the Shared-Ride Taxi Program must designate a primary contact/procurement administrator responsible for coordinating the procurement with WisDOT. This individual is the focal point for all facets of the procurement including specification and solicitation development, advertising, source selection, contract placement, and contract administration.
- b. In concert with participating entities, develop a solicitation specification which best describes the service needs clearly and accurately and facilitates “full and open” competition.⁴
- c. Determine the type and length of contract, including the length of the base year contract and number of option years.

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 File (Appendix M).

6.3 *Develop an Independent Cost Estimate.*

- a. Each SRT procurement must have an independent cost estimate (ICE) developed before bids or proposals are received. The ICE, which must be developed in concert with any participating entities, will facilitate the ability to perform the cost or price analysis required for every procurement action.⁵ Appendix B, Independent Cost Estimate, provides a format which can be used for developing and documenting the required cost estimate.

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

⁵ FTA Circular C 4220.1F, VI, 6.

- 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. WisDOT requires hourly and annual cost estimates before it will grant approval to release the solicitation. Use prior years as a basis for future expenses, adjusted for factors such as changes in service, inflation, etc.
- c. Sources of independent cost estimates can also include:
 1. 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 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.*

- a. In concert with participating entities, develop a Procurement Plan and attendant timelines, using form DOA-3720, Procurement Plan. Append the form with additional supporting information/documents which accurately and completely describe the procurement requirement, including the draft SRT solicitation (see Appendix E). Attach the Solicitation/Contract Timeline (Appendix D) to the Procurement Plan. The designated Procurement Administrator (see 6.1.a., above) signs the form DOA-3720.
- b. The Procurement Plan should address or include:
 1. The title of the procurement;
 2. Method of procurement;
 3. Participating entities, representatives, and respective responsibilities;
 4. Contract term (including any option periods) and rationale for same;
 5. Estimated annual costs (ICE);
 6. Historical operational statistical data for previous SRT procurements (see paragraph c., of this section and Appendix C);

7. Method(s) for advertising the procurement to maximize “full and open” competition;
 8. Any special contract provisions;
 9. The solicitation evaluation criteria (factors);
 10. Source Selection Plan; and
 11. Proposed evaluation team members.
- c. Operational statistical data, if it exists and can be derived from previous SRT procurements, will provide important planning information for potential offerors. Such data should be addressed in the Procurement Plan and be included in the solicitation for offeror planning purposes. The data can be presented in a table format for each year that data is available (Appendix C provides a sample format for recording SRT historical data).
- d. 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.

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 which provides detailed guidance for conducting SRT source selections is included at Appendix G. The Source Selection Plan documentation must include:
1. The evaluation criteria 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 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 solicitation’s 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 G);
4. Identify the Procurement Administrator, whose specific responsibilities are discussed in Appendix G.
5. Require evaluators to sign the unified agreement of final scoring and return all copies of proposals and source selection information to the procurement Administrator for safekeeping with the Procurement History File.
6. State that the Procurement Administrator 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. Affirm that the Procurement Administrator 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.
9. Affirm that after the Notice of Intent to Award is released, all queries from interested parties concern the procurement and source selection be directed to the Procurement Administrator for appropriate handling.

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

- a. Appendix E provides a sample solicitation template for SRT services.
- b. Develop a 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, handling passenger complaints, invoice payments, tracking and recording contactor performance, contract closeout (final payment), etc. The plan's comprehensiveness necessarily reflects the complexity of the procurement (e.g., the number of participating entities, etc.) but in any event, in its simplest form, must mirror any solicitation provisions which address these issues.

- 6.7 *Identify an adequate number of sources to facilitate “full and open” competition.*
- a. FTA recommends soliciting at least three firms to ensure that an adequate level of competition is attainable.
 - b. The Wisconsin statewide electronic purchasing information system (VendorNet) must be used to advertise the solicitation.
- 6.8 *Obtain WisDOT solicitation-release approval. Allow a minimum of 10 calendar days for the appropriate WisDOT Procurement Manager to review and approve the total procurement package. The package must, as a minimum, include:*
- a. The complete solicitation document;
 - b. Any special provisions;
 - c. Bidders Mailing List (source list);
 - d. Source Selection Plan, including individual evaluator certifications (DOA-3780);
 - e. Any plans for a pre-proposal conference.
- 6.9 *Conduct and document pre-proposal conference, if needed. The complexity of the procurement, including the number of participating entities, will determine the need for a pre-proposal conference to discuss the solicitation requirements and address any questions raised by potential offerors.*
- 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 which would help offerors consider whether to participate in the procurement (e.g., Appendix C).
 - 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, etc.) must be vetted through WisDOT before issuing an appropriate solicitation amendment to firms on the source list or offerors.

- b. All questions raised and answers provided during or as the result of a pre-proposal conference must 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. Such amendments must be vetted through WisDOT.
- c. Any questions raised during negotiations with individual offerors which have a potential impact of all offerors (e.g., questions which resulted in a change in the specification) must be addressed in a solicitation amendment issued to all offerors before a call for Best and Final Offers (BAFO). WisDOT approval is required for such an amendment and for the call for BAFO.

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 G) 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 Procurement Administrator:

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 Procurement Administrator 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 Procurement Administrator would evaluate any revised pricing proposals 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 Municipality is essentially in a sole source situation which 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 Municipality discovers a fatal flaw in the solicitation which restricted “full and open” competition, the Municipality 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 Municipality 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 Municipality providing sufficient information to WisDOT as to why negotiations must be held.
- c. In a non-competitive (single offer) procurement, the Municipality 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 J;

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-evaluation of 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 Procurement Administrator.
- c. In conjunction with the final technical rankings provided by the evaluation committee, the Procurement Administrator 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.*

- 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 Municipality 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 H 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.”⁶ 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.)
 3. Using parametric estimating methods or application of rough yardsticks. For example, comparing the proposed price per square foot for a certain

⁶ FAR 15.404-1(b)(2).

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 H provides a template for the cost analysis.

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

a. Typical supplier “responsibility” 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, and the System for Award Management (SAM) managed by the General Services Administration. The SAM can be accessed at: <https://www.sam.gov/SAM/>

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 *Document the file.* At a minimum, the Procurement History file must contain or address the items or elements listed below (see also Appendix M). All elements a. through m. 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. All source selection-related documents 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.
- g. Documentation if there is only one bidder.

- 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;”
 - k. A copy of the proposed contract;
 - l. Any additional supporting documents;
 - m. Bidder’s list sheet for each contractor submitting a bid and their subcontractors;
 - n. Evidence of any required approvals (e.g., local and WisDOT); and
 - o. After approval, the Original and signed Contract/Agreement, including applicable federal clauses.
 - p. After award, any subsequent contract amendments/modifications including but not limited to those exercising available option periods.
- 6.17 *Request WisDOT and local approval to award.* WisDOT must approve all federally-funded purchases before awarding 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.
- 6.18 *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 Procurement Administrator shall be responsible for scheduling and conducting the debriefing. 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.