

## **NOTICE OF PROPOSED GUIDANCE DOCUMENT**

### **DTIM BTLRRH 78**

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DTIM BTLRRH 78, 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=DTIMBTLRRH78>

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.

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# **SMALL PURCHASE TOOLKIT**

Wisconsin Department of Transportation

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## SMALL PURCHASE TOOLKIT

- 1.0 Scope. This toolkit provides recipients of Federal Transit Administration (FTA) funding under grants through the Wisconsin Department of Transportation (WisDOT) with specific policies and procedures for purchasing supplies and services (including construction) in amounts ranging from \$5,000 to \$50,000. It applies to all small purchases 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.
- 2.0 Purpose. This toolkit provides recipients with small purchase 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 small purchases;
  - 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:

“Architectural and engineering (A&E) services” means--

1. Professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;
2. Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
3. Other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services. (40 U.S.C. § 1102)

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

“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.

“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.

“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.”

“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 which uses FTA funds.

“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. All solicitations shall identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

“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

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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.

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.

“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.

“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 prices” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

“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.

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

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

“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.

“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 both subrecipients and WisDOT staff conducting a procurement.

“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.

“Small purchase” means an acquisition of supplies, services, and construction in the amount of \$5,000 to \$50,000 using the procedures described in this toolkit. *This threshold is unique to WisDOT and its subrecipients.*<sup>3</sup>

“Small purchase procedures” means the informal methods described in this toolkit 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.

“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.

4.0 WisDOT Involvement in the Procurement Process. As the designated recipient of FTA grant funds, WisDOT must ensure that 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 purchases made by recipients with FTA funds must follow appropriate procurement procedures.

- 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 Program Manager or WisDOT Procurement Manager to ensure proper steps are followed throughout the procurement process.
- c. Submit clear and complete documentation to WisDOT:

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<sup>3</sup> FTA recognizes a small purchase threshold of \$10,000 to \$250,000.

1. After the recipient has followed proper small purchase procedures, received quotes for the item, and performed a cost or price analysis to determine that the low price is “fair and reasonable;”
2. Before the recipient issues a purchase order for the item; and
3. Electronically (via email) to help facilitate timely WisDOT review.

5.0 Principles. When making small purchases, 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. Complete the Written History of Procurement template (Appendix A) and understand and complete the documentation required to maintain a compliant Procurement History File (Appendix K).
- c. Not “split” requirements in order to use small purchase procedures. Periodically review purchases to discern procurement patterns for a particular product or service.
- d. 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>4</sup>
  3. Soliciting at least three qualified, potential sources.
- e. Develop an independent cost estimate before receiving soliciting.
- f. Prior to recommending or making any award--
  1. Conduct cost or price analysis, as appropriate;
  2. Determine that the low quoter is “responsible” and “responsive;”
  3. Document the basis for the award decision; and
  4. Obtain the appropriate local and WisDOT approvals.

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



6.0 Quotations, Orders, and Acceptance. This section discusses quotations, types of orders, and acceptance.

6.1 *Legal Effect of Quotations.*

a. A quotation is not an offer and cannot be accepted to form a binding contract. Issuing a purchase order in response to a quotation does not establish a contract. The order is only an offer to the supplier to buy the supplies or services under the order's specified terms and conditions.

b. A contract is established only when the supplier accepts the recipient's offer by:

1. Signing the purchase order before delivery and returning it to the recipient (if the nature of the procurement warrants such procedure);
2. Furnishing the recipient with the supplies or services ordered; or
3. Proceeding to carry out the order to the point where substantial performance has occurred.

6.2 *Written Purchase Orders.*

The WisDOT preferred method for making small purchases, is for the recipient to issue a written purchase order following the receipt of quotes. When sent to a supplier, the purchase order acts as the recipient's offer to buy at the prices and under the terms and conditions stated in the order. When received and accepted by the supplier, the purchase order becomes an agreement having the same force and effect as a formal contract.

- a. **Unilateral Purchase Orders.** When sent to a supplier without requesting the supplier to sign and return a copy, the order is a unilateral (one party) document.
  1. A unilateral order is an offer to contract, i.e., to buy at the prices and under the stated terms and conditions. Issuing the order by itself gives no assurance that the supplier will provide the requested delivery or performance, nor does it obligate the supplier to perform.
  2. Only when the supplier accepts the purchase order by performance does the unilateral order become a formal contract. The supplier accepts simply by proceeding to furnish the supplies or services ordered or by proceeding to carry out the order to the point where substantial performance has occurred.
- b. **Bilateral Purchase Orders.** For some purchases, it is desirable to know immediately whether the supplier has accepted the purchase order. For example, written acceptance may be desirable when the time of delivery or performance is critical, when the recipient has experienced problems with the supplier in the past, or when the contract is for services.

1. A bilateral (two party) purchase order becomes a formal contract when both parties have signed the order.
2. The recipient sends the purchase order to the supplier requesting that the supplier sign and return a copy of the order or provides any other form of written notification indicating receipt and acceptance.

7.0 Applicable Federal Clauses. In general, FTA required clauses and requirements must be included in each purchase order. Flow-down requirements to potential subcontractors are not absolute and are dependent upon the clause in question. Recipients should familiarize themselves with each required clause and ensure that they are properly appended to or referenced in each Purchase Order. This includes purchase orders placed using other contracts (e.g., State of Wisconsin) which may not have included the clauses with the original award.

7.1 *Clauses Which Are Included with Each Purchase Order.* Refer to Appendix H for appropriate clause content.

7.2 *Additional Clauses which are Conditional with Some Purchase Orders.* In addition to the above clauses, include the following:

- a. For orders over \$10,000

Termination  
Civil Rights Requirements

- b. For orders over \$25,000

Termination  
Civil Rights Requirements  
Debarment and Suspension

- c. For construction (including alteration or repair) over \$2,000

Davis-Bacon Act  
Copeland Anti-Kickback Act

- d. For property transported by ocean vessel, irrespective of dollar value

Cargo Preference

- e. For foreign air transport or travel, irrespective of dollar value

Fly America

- f. For operations/management (as appropriate)

Charter Service Operations  
School Bus Operations

Drug and Alcohol Testing

- g. For Intelligent Transportation System projects, irrespective of dollar value

Conformance with ITS National Architecture

- h. For construction of new buildings or additions to existing buildings

Seismic Safety

- i. Certification for Small Purchases over \$25,000

Certification- Government-Wide Debarment and Suspension (Non Procurement).

8.0 Small Purchase Methods. Procurement methods are those procedures by which an organization translates its needs into contracts. Such methods establish the manner for soliciting bids or offers, evaluation, and supplier selection. Many organizations use a combination of methods when making small purchases from commercial sources. Irrespective of the method used, each small purchase must be documented with a written determination that the price is “fair and reasonable” (see Section 9.6 below). These may include oral (telephone) ordering, written Purchase Order, Petty Cash fund, or credit cards. The last two methods are more appropriately viewed as methods of payment for small purchases.

8.1 *Informal Solicitations.*

For most small purchases, an informal solicitation may be made in writing, email, or by fax (using the Request for Quotation Form at Appendix D), at the buyer’s option.

- a. Requesting quotations. Give all potential quoters the same item description or specification as well as a closing date and time by which quotations should be submitted. To help facilitate adequate “full and open” competition, solicit at least three qualified sources.

- b. Ordering. Normally, a written purchase order is issued shortly after receiving and evaluating either written or oral quotes.

- 1. The forms at Appendix D, Request for Quotation, and Appendix F, Micro/Small Purchase Source List and Abstract, are provided to help document the required actions prior to the issuance of any purchase order.

8.2. *Purchasing architectural and engineering (A&E services).*

A&E services may be procured using small purchase procedures. However, the language in FTA Circular 4220.1 (as amended) that requires the procurement of

A&E services using the Brooks Act procedures also applies.<sup>5</sup> This means that the selection must be based initially on stated qualifications, price excluded. Price may be considered only for the most qualified supplier. Proceed to negotiate with the next most qualified supplier if no agreement on a fair and reasonable price is reached with the first and so on. Prior to initiating procurement for A&E services, recipients should contact the WisDOT Procurement Manager to ensure that the procurement will be handled in a manner compliant with the Brooks Act.

### 8.3. *Purchasing construction and construction-related services.*

Small purchase construction projects require that recipients must determine the need for an appropriate wage determination(s) based upon the following general guidelines.

- a. The Davis-Bacon Act provides that contracts in excess of \$2,000 to which the United States is a party (i.e., federal funds are involved) for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States must contain a clause that no laborer or mechanic employed directly upon the work site shall receive less than the prevailing wage rates as determined by the Secretary of Labor.
  1. Typically, a general wage determination is used which contains prevailing wage rates for the types of construction designated in the determination and used in contracts performed within a specific geographical area. These determinations do not expire and remain valid until modified, superseded, or canceled by the Department of Labor.
  2. Federal wage determinations are available online at:  
  
<https://www.wdol.gov/Index.aspx>
- b. Wage determinations must be included with the applicable request for quotations/solicitation document and retained in the Procurement History File.

## 9.0 Small Purchase Procedures. This section addresses WisDOT's recommended procedures for executing small purchases.

### 9.1 *Restrictions on use.* Small purchase procedures may not be used when:

- a. There is a possibility that the procurement will exceed the small purchase threshold. If there is any chance that the procurement will potentially exceed the small purchase threshold, use more formal sealed bidding or request for proposal procedures.
- b. Purchasing products or services in which there are complex questions to be considered or specific contract provisions to be included (inspection and testing, insurance, patents, price adjustments, etc.).

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<sup>5</sup> FTA C 4220.1F, VI, 3.f.

- c. Purchasing complex studies and services or other requirements which may require technical evaluation or involved negotiations, and where award cannot be made confidently on the basis of low price. In these cases, use more formal methods for soliciting sealed bids or requesting proposals.
- d. Purchasing consultant services which may require a more defined work statement and multiple delivery schedules or deliverables.

9.2 *Use appropriate specifications.*

- a. Excessively detailed specifications are not appropriate for small purchase transactions and may discourage potential sources from providing a quote. Use a specification which describes the agency's needs clearly and accurately and facilitates "full and open" competition.<sup>6</sup>
- b. When there is no clear and accurate description available, a "brand name or equal" description may be used. In this case, describe only the salient characteristics of the named brand that suppliers must provide.<sup>7</sup> The purchase description should address only those important physical, functional, or other characteristics of the "brand name" product that an equal product must have in order to meet the recipient's needs.

9.3 *Develop an independent cost estimate.*

- a. Each recipient must make an independent cost estimate before soliciting for bids or proposals in order to be able to perform the cost or price analysis required for every procurement action.<sup>8</sup> Appendix B, Independent Cost Estimate, provides a form which 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 include:
  - 1. Published hard-copy or Internet-based catalog or price lists (citing the source(s));
  - 2. Past pricing from recent contracts or purchase orders, adjusted for inflation if appropriate (identifying the specific contracts/purchase orders);

*(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*

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<sup>6</sup> FTA C 4220.1F, III, 3.a.(1)(a) and FTA C 4220.1F, VI, 2.a.

<sup>7</sup> FTA C 4220.1F, VI, 2.a.(3).

<sup>8</sup> FTA Circular C 4220.1F, VI, 6.

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

#### 9.4 *Solicit an adequate number of sources.*

FTA recommends solicitation of at least two firms for each small purchase to ensure that an adequate level of competition is attainable.

- a. Small purchases are obtained informally through unsealed written or oral quotes. Posting small purchase requirements on an agency website may help to foster “full and open” competition.
- b. If a purchase requisition form is used, competitive quotes can be noted on the form. Alternatively, Appendix F provides a Micro/Small Purchase Source List and Abstract which can be used as a single document for noting such things as the sources sought, quotes received, winning supplier, basis for award, etc. This documentation must be retained in the small purchase file.
- c. No small purchase should be awarded without the required quotations or without an appropriate waiver or sole source justification. Evidence of market analysis and the appraisal of competition should be included for every sole source procurement. A sample sole source form is provided at Appendix C.

#### 9.5 *Evaluate quotes.*

Evaluate all quotes received on the basis specified in the oral or written solicitation, inclusive of transportation charges from the supplier’s shipping point to the delivery destination. Discounts offered should not be evaluated (because they may not actually be taken) but must be stated on the purchase order document.

#### 9.6 *Determine price reasonableness.*

- 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 to determine a price to be “fair and reasonable” before purchase orders are placed or contracts awarded. When conducting price analysis to determine price reasonableness, keep in mind that the end result of a price analysis should always be a determination that the price is “fair and reasonable.”

- b. For many small purchases, it may be possible to do an abbreviated price analysis, similar as to what is done for micro-purchases. One method to record this price analysis is through the use of a preprinted form, such as that provided at Appendix F, Micro/Small Purchase Source List and Abstract. Among other things, the form allows the authorized individual to annotate a finding of “fair and reasonable” pricing by checking off the most common reasons why this would be so (e.g., catalog or market prices for standard commercial items sold on the open market in substantial quantities to the general public, regulated prices (for example, for utilities purchases), or a comparison with recent prices for similar goods and services, etc.). These are discussed in more detail in paragraph d, below.
- 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>9</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*

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<sup>9</sup> FAR 15.404-1(b)(2).

*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 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 9.3, 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 G provides a template for the cost analysis.

#### 9.7 *Determine supplier “responsibility” and “responsiveness.”*

The recipient must make a written determination that the apparent low quoter is “responsible” and “responsive” before making the award.

- a. For most micro- and small purchases, this is a relatively simple matter to research and can be documented by checking the appropriate blocks on the Micro/Small Purchase Source List and Abstract form (Appendix F).
- b. 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.
- c. 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) managed by the General Services Administration. SAM can be accessed at:

<https://www.sam.gov/portal/SAM/#1>

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

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

- d. A responsive supplier is one that conforms to all requirements and specifications of the solicitation.

#### 9.8 *Document the file.*

- a. Purchase Terms and Conditions. The applicable terms and conditions, including all required Federal clauses, are normally stated on or included with the recipient’s purchase order document. Suppliers should be notified that the recipient’s terms and conditions shall govern.
1. If a supplier acknowledges a purchase order with additional qualifying terms such as "prices subject to change prior to delivery" or "prepayment required," deal with it promptly. Such an acknowledgement is a counteroffer and entitles the agency to cancel the order outright or return the counteroffer as unacceptable and attempt to negotiate acceptance of the governing terms.
  2. If the terms of the counteroffer are acceptable, and do not conflict with the standard terms and conditions, the counteroffer may be accepted. If there is any question as to the acceptance of the supplier's terms and conditions, contact

WisDOT for advice. If prompt action is not taken, the agency may be held to have accepted the supplier's terms.

- b. The Procurement History File. At a minimum, the Procurement History file must contain or address the following items or elements:
1. As applicable, a funded Purchase Request with an appropriate item description or specification;
  2. An independent cost estimate and any supporting documents;
  3. A sole source justification, if appropriate;
  4. Evidence of competitive quotes solicited and evaluated as well as any supporting documents;
  5. Price or cost analysis, as appropriate and a determination that the price is “fair and reasonable” and any supporting documents;
  6. A written determination that the proposed contractor is “responsible;”
  7. Evidence of any required approvals (e.g., WisDOT);
  8. A copy of the written and signed Purchase Order, including required federal clauses.
  9. Any additional supporting documents (e.g., wage determination).
  10. Bidder’s list sheet for each contractor submitting a bid and their subcontractors.
- 9.9 *Obtain appropriate approvals.*

WisDOT must approve all federally-funded small purchases before the recipient places a written or oral small purchase order. As such, WisDOT encourages recipients to work collaboratively with WisDOT to ensure that recipients are in full compliance with this toolkit and are able to show documented evidence to support the recommendation and decision to make a small purchase award.