INVITATION FOR BID (IFB)

PROCUREMENT TOOLKIT

Wisconsin Department of Transportation

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1.0 Scope. This Toolkit:

a. Provides recipients of Federal Transit Administration (FTA) funding under grants through the Wisconsin Department of Transportation (WisDOT) with specific policies and procedures when contracting using Invitations for Bid (IFB), otherwise known as sealed bidding.

b. Applies to all sealed bid procurements (except construction) 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. For construction solicitation and contract requirements, consult with WisDOT.

c. Must be used for conducting sealed bid procurements when:

1. Time permits the solicitation, submission, and evaluation of sealed bids;
2. The award will be made on the basis of price and other price-related factors;
3. It is not necessary to conduct discussions with the responding bidders about their bids;
4. There is a reasonable expectation of receiving more than one sealed bid; and
5. Award will be made on a fixed-price or fixed-price with economic price adjustment basis.

d. Must be used in concert with the document formats provided as appendices to this Procurement Toolkit.

2.0 Purpose. This Toolkit provides subrecipients with sealed bid 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 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.

"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."

"Day," unless otherwise specified, means calendar day.

"Descriptive literature" means information provided by a bidder, such as cuts, illustrations, drawings, and brochures that shows a product's characteristics or construction of a product or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

"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 that uses FTA funds.

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

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

[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.

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.

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

"Invitation for Bid" (IFB) refers to the document and its attachments, which the subrecipient issues to solicit bids for its requirements and by which prospective suppliers may submit offers for such requirements, using sealed bids.

"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 bidders.

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

"Minor informality or irregularity" means an informality or irregularity in a bid that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the solicitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired.

[2] FTA C 4220.1F, VI, 2.a.(4) (g).

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

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

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

"Past performance" means a bidder's or contractor's performance on active and physically completed contracts

"Piggybacking" is the post award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process ("FTA Dear Colleague"letter, October1, 1998).

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

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

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

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

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

"Public Bid Opening" means the date and time after solicitation that the subrecipient publically opens all bids received before the date and time stated in the IFB. Late bids will not be opened or considered.

"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.

"Responsible" refers to a set of tangible characteristics that would make an apparent low 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.

"Sealed bidding" refers to a competitive method of contracting that employs competitive (sealed) bids, public opening of bids, and awards. Award is made on a fixed-price or fixed-price with economic price adjustment basis. Steps in the process include:

(1) Preparing the IFB,
(2) Publicizing the IFB,
(3) Receiving sealed bids,
(4) Publicly opening bids,
(5) Evaluating and comparing bids,
(6) Selecting the lowest-priced responsive bid, and
(7) Awarding the contract.

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

"Source selection information" means any of the following information that is prepared for use by the subrecipient 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 bids or 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 or technical evaluation 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.

"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 subrecipients to advertise their solicitations requirements for shared ride taxi services on VendorNet.

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

a. Make the appropriate WisDOT Program Manager aware of its intent to solicit for its contract requirements before the procurement is initiated.

b. Work with the appropriate WisDOT Program Manager or WisDOT 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; 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);[3]

3. Soliciting at least three qualified, potential sources.

c. Develop an independent cost estimate before receiving bids.

d. Appropriately safeguard proprietary and source selection information.

e. If purchasing a commodity, estimate the quantity as accurately as possible, you may include an assignability clause in the original procurement so that others may be able to piggyback off of your contract.

f. Prior to recommending or making any award--

1. Determine that bidders are "responsive" to the solicitation's stated requirements;

2. Conduct cost or price analysis, as appropriate;

3. Determine that the apparent low bidder is "responsible;"

4. Document the basis for the award decision; and

5. Obtain the appropriate local and WisDOT approvals.

6.0 Procedures. The procedures in this Toolkit and its Appendices may reference Department of Administration (DOA) forms. Subrecipients must ensure that they are using the most current version of these forms, which are available on the VendorNet System at:

http://vendornet.state.wi.us/vendornet/doaforms/doafrmn.asp

6.1 *Maintain a Written History of Procurement.* Complete the Written History of Procurement template (Appendix A) and understand and complete the documentation required to maintain a compliant Procurement History File (Appendix O).

6.2 *Develop appropriate specifications.* Develop a solicitation specification which best describes the product or service needs clearly and accurately facilitates "full and open" competition.[4] Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited.

[3] Except for procurements for A&E services, this practice is prohibited (FTA C 4220.1F, VI, 2.a.(4) (g)).
[4] FTA C 4220.1F, III, 3.a.(1)(a) and FTA C 4220.1F, VI, 2.a.

6.3 *Develop an Independent Cost Estimate*.

a. Each procurement must have an independent cost estimate (ICE) developed before bids or proposals are received. The ICE, 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.

b. If prepared with sufficient detail and reliability, the estimate alone may be sufficient to determine whether the quoted price is "fair and reasonable."

c. Sources of independent cost estimates can also include:

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

[5] FTA Circular C 4220.1F, VI, 6.

a. For complex procurements, develop the Procurement Plan and attendant timelines, using form DOA-3720, Procurement Plan. Append the form with additional supporting information/documents that accurately and completely describe the procurement requirement, including the draft IFB solicitation (see Appendix E). Attach the Solicitation/Contract Timeline (Appendix C) to the Procurement Plan. The subrecipient's authorized individual signs the form DOA-3720.

b. The Procurement Plan should address or include:

1. The title of the procurement;
2. Method of procurement;
3. Contract term (including any option periods) and rationale for same;
4. Estimated annual costs (ICE);
5. Relevant historical contract data for similar previous procurements;
6. Method(s) for advertising the procurement to maximize "full and open" competition;
7. Any special contract provisions (e.g., option periods, economic price adjustment;
8. The bid evaluation criteria (factors); and
9. Any proposed bid evaluation team members.

c. The timeline must take into consideration any local and/or WisDOT required reviews and approvals such as the need for a Pre-bid conference, which must be approved by WisDOT.

6.5 *Identify appropriate evaluation factors.*

a. Identify the price related factors other than the bid price that will be considered in evaluating bids and awarding the contract. These may include:

1. Foreseeable costs or delays to the subrecipient resulting from factors such as differences in inspection, locations of supplies, and transportation. If bids are on an f.o.b. origin basis, transportation costs to the designated points must be considered in determining the lowest cost to the subrecipient.

2. Changes made, or requested by the bidder, in any of the IFB provisions, if the change does not constitute a ground for rejection (see Section 6.13).

3. Advantages or disadvantages to the subrecipient that might result from making more than one award. For the purpose of making multiple awards, assume that $500 would be the administrative cost to the subrecipient for issuing and administering each contract awarded under a solicitation. Individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the subrecipient, including the assumed administrative costs.

4. Federal, state, and local taxes.

5. Origin of supplies, and, if foreign, the application of the Buy American Act or any other prohibition on foreign purchases.

b. Ensure that the solicitation includes all identified evaluation factors.

6.6 *Prepare the solicitation*.

a. Invitations for Bid must describe the subrecipient's requirements clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The IFB includes all documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding.

b. As a minimum, include provisions that clearly state or identify:

1. The time and place where bidders must submit sealed bids in order to be considered;

2. The time and place where bids will be publicly opened;

3. That bids will be evaluated and considered for award without discussion with any bidder;

4. That, after bids are publicly opened, an award will be made with reasonable promptness to the responsive, responsible bidder whose bid will be most advantageous to the subrecipient, considering only price and the price-related factors specified in the IFB; and

5. The offices and individuals assigned to oversee the contract, accept delivery, and certify invoices for payment on behalf of the subrecipient.

c. Appendix D provides a sample solicitation Cover Sheet that must accompany the solicitation and Appendix E provides a sample IFB solicitation (Solicitation, Offer, and Award).

d. Part I, The Schedule, Section H, of the sample IFB solicitation may be used to address any special contract requirements applicable to contracts that are partially or wholly funded with Federal grant monies.

1. Certain Buy America and Federal Motor Vehicle Safety Standard (FMVSS) requirements apply to rolling stock purchases. For example, for minivan procurements over $100,000, this would include the Buy America Clause and Certifications found in Section 8.0 of the WisDOT Minivan Purchase Guide as well as the Federal Motor Vehicle Safety Standard Requirements addressed in Section 12.0 of the Guide.

2. While it is the contractor's responsibility to be aware of the pertinent solicitation certifications and contract clauses, it is the Issuing Agency's responsibility to identify and include the proper Federal clauses applicable for the instant procurement and to ensure compliance with such requirements prior to award and

throughout the term of any resultant contract. A list of the Federal clauses and certifications applicable to the procurement must be included at Part III, Section J, and reference made to the full text of these clauses available at the National Rural Transit Assistance Program (RTAP) website under "ProcurementPro." The website address is: http://www.nationalrtap.org/home.aspx

6.7 *Identify an adequate number of sources to facilitate "full and open" competition*.

a. Invitations for Bid must be publicized through distribution to prospective bidders, posting in public places, and other means as may be appropriate. As a minimum, the Wisconsin statewide electronic purchasing information system (VendorNet) must be used to advertise the solicitation.

b. Provide a reasonable amount of time before the public bid opening to enable prospective bidders sufficient time to prepare and submit bids, *recognizing that setting unreasonable time limitations may impact the level of competition and/or result in higher bid prices than anticipated*. In some instances, subrecipients may have already established minimum acceptable times for advertising procurements.

c. FTA recommends soliciting at least three firms to ensure that an adequate level of competition is attainable.

6.8 *Obtain WisDOT solicitation-release approval*. Allow a minimum of 10 calendar days for the WisDOT Procurement Manager to review and approve the total procurement package. This review, along with the recipient's own review will help detect and correct discrepancies or ambiguities in the IFB that could limit competition or result in the receipt of nonresponsive bids. The package must, as a minimum, include:

a. The complete solicitation document;

b. Any special provisions;

c. Bidders Mailing List (source list);

d. Any plans for a pre-bid conference (discussed beforehand with WisDOT).

6.9 *Conduct and document pre-bid conference, if approved for use*. In most instances, a pre-bid conference is not necessary. For more complex procurements, the pre-bid conference may provide an opportunity to discuss the solicitation requirements, including explaining complicated specifications, and to address any questions from potential bidders. Such conference is held as early as possible after the IFB has been issued and before bids are submitted and opened. It must never be used as a substitute for amending a defective or ambiguous specification or IFB.

a. Plans to hold a pre-bid conference must be approved by WisDOT as part of the pre-solicitation approval process (see Section 6.7, above).

b. Representatives hosting the pre-bid conference must include individuals who can address the specifics of the procurement including any historical data that would help bidders consider whether to participate in the procurement.

c. Requiring potential bidders to attend pre-bid conferences is prohibited. However, bidders should be highly encouraged to attend.

d. Proceedings must be recorded and documented. All questions raised and answers provided must be addressed and approved by WisDOT in a subsequent solicitation amendment issued to the complete list of potential sources, whether or not such potential bidders attended the pre-bid conference.

6.10 *Issue appropriate solicitation amendments*.

a. Any changes in solicitation requirements (e.g., special provisions, specifications, changes in quantity, delivery schedules, opening dates, or to correct a defective or ambiguous invitation, etc.) that will impact all potential bidders must be made by formal written amendment to the solicitation. Obtain WisDOT approval before issuing the appropriate solicitation amendment to firms on the bidders source list.

b. All questions raised and answers provided during or as the result of a pre-bid conference must be addressed promptly in a subsequent solicitation amendment issued to the complete list of potential sources, whether or not such potential bidders attended the pre-bid conference. WisDOT must approve all such amendments.

c. Any questions raised by potential bidders prior to the bid opening time that have a potential impact on all bidders (e.g., questions that resulted in a change in the specification) must be addressed promptly in a solicitation amendment issued to all bidders before the IFB closing date. WisDOT approval is required for such an amendment and for any resultant extension of the IFB closing date.

d. Before amending the IFB, consider the time remaining until bid opening and the need to extend this period to permit prospective bidders to consider the additional information in submitting or modifying their bids. When only a short time remains before the time set for bid opening, first notify bidders on the source list of the time extension by e-mail or telephone. Confirm such extension in the solicitation amendment.

e. Amendments shall be sent, before the time for bid opening, to everyone to whom the IFB has been provided. If the IFB was posted electronically or in a public place, such amendments must be similarly posted.

6.11 *Receiving, safeguarding, opening, handling bid mistakes, and evaluating bids*. The procedures below are intended to protect the integrity of the competitive sealed bidding process.

a. <u>Receiving and Safeguarding Bids</u>. Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the proper office designated in the

IFB by the time specified in the IFB, using any transmission method the IFB authorized (see Section 6.12 for how to treat "late" bids").

1. Date- and time-stamp all bids, bid modifications, and bid withdrawals and record them as they are received.

2. Handle any bid samples with sufficient care to prevent disclosure of characteristics before bid opening.

3. Safeguard all bids from inadvertent or unintentional/intentional release prior to the public bid opening, as these documents are considered source selection information. This means that bids, bid modifications, and related documents (e.g., bid receipt sheets, etc.) must be secured in a locked drawer, file cabinet, or room with controlled access at all times until the bid opening.

4. Before bid opening, only disclose information concerning the identity and number of bids received on a "need to know" basis (i.e., individuals with legitimate reasons for needing access to the information in order to be able to carry out their official duties). Such information must never be disclosed to vendors.

5. Only an authorized individual may open envelopes to aid in identification when such envelopes are marked as bids but do not identify the bidder or the solicitation. If a sealed bid is opened by mistake (e.g., because it is not marked as being a bid), the envelope must be signed by the person who opened it by mistake, their position noted thereon, and delivered to the authorized individual. This authorized individual shall immediately write on the envelope:

   (i) An brief explanation for the opening,
   (ii) The date and time the envelope was opened, and
   (iii) The IFB number.

   The authorized individual must sign the envelope, reseal it, and secure it until the bid opening.

6. Late bids and modifications that are not considered (see Section 6.12) must be held unopened, unless opened for identification, until after award. After award, the late bidder must be notified in writing and these documents retained with other unsuccessful bids. Any associated bid bond or guarantee must be returned.

b. <u>Opening Bids and Handling Mistakes in Bids</u>.

1. *Public Opening*. The individual authorized to open bids will decide when the time set for opening bids has arrived and will inform those present of that decision. This official must:

   (i) Personally and publicly open all bids received before that time,
   (ii) If practical, read the bids aloud to the persons present, and

(iii) Have the bids recorded. The original of each bid must be carefully safeguarded, particularly until the record of bids (bid abstract) has been completed and its accuracy verified.

2. *Bid Examination*. Interested persons may examine bids only under the immediate supervision of an authorized official and under conditions that preclude the possibility of a substitution, addition, deletion, or alteration in a bid.

3. *Mistakes in Bid.* Immediately after bid opening, the subrecipient must examine all bids for mistakes. *If mistakes are found at any time before award, the subrecipient must consult with WisDOT before trying to correct the mistake or to confirm the mistake with the bidder*. Documents related to bid mistakes must also be made available to WisDOT. In cases of apparent mistakes and in cases where the subrecipient has reason to believe that a mistake may have been made, the subrecipient must ask the bidder to verify the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the mistake must be processed as discussed below, *after consulting with WisDOT*. Document all requests made for information/verification as well as actions taken with regard to any mistake in bid and retain the documentation with the procurement file.

(i) **Clerical Mistakes Before Award.** The subrecipient may correct any clerical mistake, apparent on its face in the bid, before award.

(a) First ask the bidder to verify the bid intended. Examples of apparent mistakes are--

i. Obvious misplacement of a decimal point;
ii. Obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days);
iii. Obvious reversal of the price “f.o.b. destination” and price “f.o.b. origin”; and
iv. Obvious mistake in designation of unit.

(b) Make the bid correction by attaching the bidder’s verification to the original bid and a copy of the verification to the duplicate bid. *Do not make the correction on the face of the original bid.* The correction must also be reflected in the award document.

(c) Correct electronic bids by including in the electronic solicitation file the original bid, the verification request, and the bid verification.

(ii) **Other Mistakes Before Award.**

(a) If a bidder asks to correct a mistake and clear and convincing evidence establishes *both the existence of the mistake and the bid intended*, the subrecipient may allow the bidder to correct the mistake. However, if this correction would displace one or more lower bids, the existence of

the mistake and the bid intended must ascertainable substantially from the IFB and the bid itself.

(b) The subrecipient may allow the bidder to correct the bid *and not permit its withdrawal* if the following conditions are met--

i. The bidder requests permission to withdraw the bid rather than correct it;
ii. The evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended; and
iii. The bid, both as uncorrected and as corrected, is the lowest bid received.

(c) The subrecipient, with WisDOT concurrence, may allow the bidder to withdraw the bid under paragraph (a) or (b) of this subsection, if the evidence--

i. Of a mistake is clear and convincing only as to the mistake but not as to the intended bid, or
ii. Reasonably supports the existence of a mistake but is not clear and convincing.

(d) *When the subrecipient suspects or alleges that a mistake in bid has been made*, a mere statement by administrative officials to that effect is not sufficient.

i. *The authorized individual must immediately request the bidder to verify the bid*. Action taken to verify bids must be sufficient to assure the subrecipient that the bid as confirmed is without error or to elicit the allegation of a mistake by the bidder. To assure that the bidder will be put on notice of a mistake suspected by the subrecipient, the bidder should be advised as appropriate --

(1) That its bid is so much lower than the other bids or the subrecipient's estimate as to indicate a possibility of error;
(2) Of important or unusual characteristics of the specifications;
(3) Of changes in requirements from previous purchases of a similar item; or
(4) Of any other information, proper for disclosure, that leads the subrecipient to believe that there is a mistake in bid.

ii. *If the bid is verified, the subrecipient will consider the bid as originally submitted*. If the time for acceptance of bids is likely to expire before a decision can be made, the authorized individual must request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids. If the bidder whose bid is believed erroneous does not (or cannot) grant a time extension, the bid must be considered as originally

submitted *(however, see subparagraph iv of this subsection for exceptions to this rule).* If the bidder alleges a mistake, the subrecipient must advise the bidder to make a written request to withdraw or modify the bid. The bidder's request must be supported by statements (sworn statements, if possible) and include all pertinent evidence such as the bidder's file copy of the bid, the original worksheets and other data used in preparing the bid, subcontractors' quotations, if any, published price lists, and any other evidence that establishes the existence of the error, the manner in which it occurred, and the bid actually intended.

iii. *When the bidder furnishes evidence supporting an alleged mistake, the subrecipient must refer the case to WisDOT along with the following data*:

(1) A signed copy of the bid involved.
(2) A copy of the IFB and any specifications or drawings relevant to the alleged mistake.
(3) An abstract or record of the bids received.
(4) The bidder's written request to withdraw or modify the bid, together with their written statement and supporting evidence.
(5) A written statement by the subrecipient setting forth --

(A) A description of the supplies or services involved;
(B) The expiration date of the bid in question and of the other bids submitted;
(C) Specific information as to how and when the mistake was alleged;
(D) A summary of the evidence submitted by the bidder;
(E) In the event only one bid was received, a quotation of the most recent contract price for the supplies or services involved or, in the absence of a recent comparable contract, the subrecipient's estimate of a fair price for the supplies or services;
(F) Any additional pertinent evidence; and
(G) A recommendation that either the bid be considered for award in the form submitted, or the bidder be authorized to withdraw or modify the bid.

iv. *If the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the subrecipient may consider the bid as submitted unless--*

(1) The bid amount is so far out of line with other bids received, or with the subrecipient's independent cost estimate, or

(2) There are other indications of error so as to reasonably conclude that acceptance of the bid would be unfair to the bidder or to other bona fide bidders.

(iii) **Mistakes After Award.** See Section 6.21 of this Toolkit.

c. Evaluating Bids.

1. Evaluate bids in strict accordance with the IFB's stated requirements in order to minimize the risk of a protest (see also Section 6.4, above).

2. Evaluate bids without discussions with any bidder.

3. Do not consider Prompt Payment discounts in evaluating bids. Any discount offered must be noted in any resultant contract and may be taken by the payment office if payment is made within the discount period specified. As an alternative to indicating a discount in conjunction with the offer, bidders may prefer to offer discounts on individual invoices.

4. Retain all evaluation documentation with the Procurement History File. Be sure the Bidder's List is filled out for all bidders. See Appendix H.

5. Competitive Circumstances (More Than One Bid). Once bid evaluation has been completed based upon price and price-related factors stated in the IFB, determine the apparent responsive, responsible low bidder (see Section 6.16 and Section 6.18 of this Toolkit) and notify WisDOT to obtain pre-award approval.

6. Non-Competitive (Single Bid) Circumstances. When a single bid is received in response to a solicitation that was issued to multiple sources, the subrecipient must notify WisDOT that only one bid was received. A single bid places the subrecipient essentially in a sole source situation that requires certain procedures for determining whether competition was adequate and for determining "price reasonableness" (see Section 6.17).

(i) Subrecipients must first determine if adequate competition existed by contacting vendors on the original source list to find out why they did not submit bids. Through this contact, if a fatal flaw in the solicitation is discovered that restricted "full and open" competition (e.g., a restrictive specification or delivery requirement), the subrecipient may either:

(a) Cancel the existing solicitation, make any required changes, and re-solicit the procurement; or

(b) If local and WisDOT procedures allow, process the procurement as a sole source, determining that the price is "fair and reasonable," and obtaining all appropriate local and WisDOT approvals to do so.

(1) If price analysis fails to yield a determination that the price is "fair

and reasonable," subrecipients must request and evaluate detailed cost data (including overhead and profit) provided by the single source.

(2) If cost analysis fails to yield a determination that the price is "fair and reasonable," subrecipients may request WisDOT approval to enter into negotiations to be able to reach agreement on price.

(ii) If the reasons given by the non-responders to the IFB are unrelated to the specification and/or solicitation terms, competition may be presumed to have been adequate and subrecipients may proceed with the award as a competitive one. Document the file so that it is clear how the determination was reached.

6.12 *Bid modification or withdrawal*.

a. Bids may be modified or withdrawn by any method that the IFB authorizes, if notice is received in the office designated to receive bids not later than the exact time set for opening of bids. No information contained in the bid envelope must be disclosed before the bid opening time. On the envelope, the authorized individual must:

1. Write the date and time of receipt and by whom, and
2. Identify the IFB number and sign the envelope.

b. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for bid opening, the identity of the persons requesting withdrawal is established and that person signs a receipt for the bid.

c. Upon withdrawal of an electronically transmitted bid, the data received shall not be viewed and must be purged from primary and backup data storage systems.

6.13 *Procedures for handling late bids, bid modifications, or bid withdrawals.*

a. In general, any bid, modification, or withdrawal of a bid received at the office designated in the IFB after the exact time specified for receipt of bids is "late" and must not be considered. Acceptable evidence to establish the time of receipt at the designated office includes the time/date stamp applied to the bid envelope or package, other documentary evidence of receipt maintained by the subrecipient, or oral testimony or written statements by subrecipient personnel. Subrecipients must consult with WisDOT when handling any late bid, modification, or withdrawal of a bid

b. If a bid, modification, or withdrawal of a bid is received before contract award and the subrecipient determines that accepting the late bid would not unduly delay the acquisition, such bid, modification, or withdrawal of a bid may be accepted (after consulting with WisDOT and documenting the file) only if:

1. It was transmitted through an electronic commerce method authorized by the IFB and was received at the initial point of entry to the subrecipient's infrastructure not later than 5:00 p.m. *one working day prior to the date specified for receipt of bids*; or

2. Acceptable evidence exists to establish that it was received at the subrecipient's facility designated for receipt of bids and was *under the subrecipient's control prior to the time set for receipt of bids*.

c. A late modification of an otherwise successful bid, that makes its terms more favorable to the subrecipient, may be considered at any time it is received and may be accepted.

d. *If an emergency or unanticipated event interrupts the subrecipient's normal processes* so that bids cannot be received at the designated office by the exact time specified in the IFB and urgent requirements prevent the subrecipient from formally amending the bid opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the IFB on *the first work day on which normal subrecipient processes resume*.

e. Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. Upon withdrawal of an electronically transmitted bid, the data received must not be viewed and, where practicable, must be purged from primary and backup data storage systems.

f. Promptly notify any bidder if its bid, modification, or withdrawal was received late and inform the bidder whether its bid will be considered.

6.14 *Rejecting any or all bids*. Bids may be rejected under the circumstances discussed below. Prior to taking such action, the subrecipient must consult with WisDOT and document the procurement file accordingly.

a. Circumstances under which an individual bid must be rejected include any bid that:

1. Fails to conform to the IFB's essential requirements.
2. Does not conform to the specifications unless the IFB authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the IFB.

3. Fails to conform to the stated delivery schedule or permissible alternates.

4. Imposes conditions that would modify the IFB's requirements or limit the bidder's liability to the subrecipient (to allow the bidder to impose such conditions would be prejudicial to other bidders). For example, bids must be rejected in which the bidder –

(i) Protects against future changes in conditions, such as increased costs, if total possible costs to the subrecipient cannot be determined;

(ii) Fails to state a price and indicates that price shall be "price in effect at time of delivery;"

(iii) States a price but qualifies it as being subject to "price in effect at time of delivery;"

(iv) When not authorized by the IFB, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder receives (or does not receive) award under a separate solicitation;

(v) Requires that the subrecipient determine that the bidder's product meets applicable solicitation specifications; or

(vi) Limits the subrecipient's rights under any contract clause.

b. A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not go to the substance, as distinguished from the form, of the bid, or work an injustice on other bidders. *A condition goes to the substance of a bid when it affects price, quantity, quality, or delivery of the items offered*.

c. Any bid may be rejected if the subrecipient determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid but also the prices for individual line items.

d. Any bid may be rejected if the prices for any line items or subline items are materially unbalanced. Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more bid line items is significantly over or understated as indicated by the application of cost or price analysis techniques.

e. Reject any bids from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the bid opening date.

f. Reject low bids from suppliers determined to be not "responsible."

g. Reject any bid when the bidder fails to furnish a required bid guarantee in accordance with the stated IFB requirements. However, after consultation with WisDOT and agreement that no harm is done to the subrecipient by the bidder's failure to meet the stated bid guarantee requirements, noncompliance with a solicitation requirement for a bid guarantee may be waived when--

1. Only one bid is received. In this case, the authorized individual may require the furnishing of the bid guarantee before award;

2. The amount of the bid guarantee submitted is less than required, but is equal to or greater than the difference between the bid price and the next higher acceptable bid;

3. The amount of the bid guarantee submitted, although less than that required by the solicitation for the maximum quantity offered, is sufficient for a quantity for which the bidder is otherwise eligible for award. Any award to the bidder shall not exceed the quantity covered by the bid guarantee;

4. The bid guarantee is received late and late receipt is waived with WisDOT approval;

5. A bid guarantee becomes inadequate as a result of the correction of a mistake under rules pertaining to mistakes in bid (but only if the bidder will increase the bid guarantee to the level required for the corrected bid);

6. A telegraphic bid modification is received without corresponding modification of the bid guarantee, if the modification expressly refers to the previous offer and the bidder corrects any deficiency in bid guarantee;

7. An otherwise acceptable bid bond was submitted with a signed bid, but the bid bond was not signed by the bidder;

8. An otherwise acceptable bid bond is erroneously dated or bears no date at all; or

9. A bid bond does not list the subrecipient as obligee, but correctly identifies the bidder, the solicitation number, and the name and location of the project involved, so long as it is acceptable in all other respects.

h. When it is determined necessary to reject all bids, the subrecipient must provide written notice to each bidder that all bids have been rejected and state the reason for such action.

i. Retain the originals of all rejected bids, and any written findings with respect to such rejections, with the procurement file.

6.15 *Postponing bid opening*. Prior to postponing a bid opening, the subrecipient must consult with WisDOT. A bid opening may be postponed, even after the time scheduled for the bid opening, under one of the circumstances discussed below:

a. The authorized individual believes that the bids of an important segment of bidders have been delayed in the mails or in the communications system specified for transmission of bids, for causes beyond their control and without their fault or negligence (*e.g.*, flood, fire, accident, weather conditions, strikes, or subrecipient equipment blackout or malfunction when bids are due).

1. Publicly post or electronically transmit an announcement of the determination to all prospective bidders.

2. Issue a formal IFB amendment providing the changed date and time.

b. Emergency or unanticipated events interrupt normal governmental processes so that the conduct of bid opening as scheduled is impractical.

1. When urgent requirements preclude formally amending the solicitation, the time specified for bid opening will be deemed to be extended to the same time of day specified in the IFB *on the first work day on which normal government processes resume*.

2. For the purpose of determining "late bids," the time of actual bid opening shall be the governing time. Document the abstract of bids or otherwise document the file to explain the circumstances of the postponement.

6.16 *Cancelling Invitations for Bid.*

a. General.

1. Cancelling an IFB involves a loss of time, effort, and money spent by all parties concerned and WisDOT must be promptly notified of the reason for cancellation. If an IFB is cancelled, bids must be returned to the bidders. In general, solicitations may not be cancelled unless cancellation is in the public interest such as:

(i) When the requirement for the supplies or services no longer exists,

(ii) When amendments to the IFB would be of such magnitude that a new solicitation is desirable, or

(iii) In the case of a single bid, when after contacting vendors on the original source list, the subrecipient discovers a fatal flaw in the solicitation that restricted "full and open" competition, requiring re-solicitation.

2. Subrecipients are responsible for anticipating changes in a requirement before the bid opening date and for timely notifying all prospective bidders of any resulting modification or cancellation. This allows bidders to change their bids and helps prevent unnecessary exposure of bid prices.

b. Documentation. The cancellation must be recorded in a file document that includes a statement of the number of bids invited and the number of bids received. This document and documents evidencing WisDOT approval to cancel must be retained in the Procurement History file.

c. Cancellation Before Bid Opening.

1. When an IFB issued other than electronically is cancelled, bids that have been received shall be returned unopened to the bidders and notice of cancellation shall be sent to all prospective bidders to whom invitations were issued.

2. When an IFB issued electronically is cancelled, a notice of cancellation shall be posted electronically, the bids received shall not be viewed, and the bids shall be purged from primary and backup data storage systems.

3. The cancellation notice must—

(i) Identify the IFB by number and short title or subject matter,
(ii) Briefly explain the reason that the IFB is being cancelled, and
(iii) Where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation or future requirements for the type of supplies or services involved.

d. Cancellation After Bid Opening. In order to preserve the integrity of the competitive bid system, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. WisDOT approval is required for any proposed IFB cancellation after bids have been opened.

1. As a general rule, after bids are opened, an IFB may not be cancelled and re-solicited due solely to increased requirements for the items being solicited. In this instance, award should be made on the IFB and the additional quantity treated as a new acquisition.

2. IFBs may be cancelled and all bids rejected before award but after opening when the authorized individual makes a written determination meeting one or more of the criteria listed below and has sought and received WisDOT approval for the cancellation. Such determination must be kept in the Procurement History file. Circumstances which may warrant cancellation after bid opening include one or more of the following:

   (i) Inadequate or ambiguous specifications were cited in the IFB;

   (ii) Specifications have been revised;

   (iii) The supplies or services being contracted for are no longer required;

   (iv) The IFB did not provide for consideration of all factors of cost to the subrecipient, such as cost of transporting subrecipient-furnished property to bidders' plants;

   (v) Bids received indicate that the subrecipient's needs can be satisfied by a less expensive article differing from that for which the bids were invited;

   (vi) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the authorized individual cannot determine the bid price to be "fair and reasonable";

   (vii) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;

   (viii) No responsive bid was received from a responsible bidder;

   (ix) For other reasons, cancellation is clearly in the public's interest.

3. If the subrecipient encounters administrative difficulties after bid opening that threaten to delay contract award beyond the bidders' stated acceptance periods, the lowest bidders whose bids have not expired (irrespective of the acceptance period specified in the bid) may be requested, before their bids expire, to extend in writing the bid acceptance period (with consent of sureties, if any) in order to avoid the need for the subrecipient to resolicit the procurement.

6.17 *Determine bidder "responsiveness."* Any determination by the subrecipient concerning a bidder's "responsiveness" or "nonresponsiveness" to an IFB's stated requirements must be made in writing and retained with the Procurement History file. Bidder's whose bids have been determined nonresponsive must be notified in writing stating the basis for that determination. No such determination may be made without first consulting with WisDOT.

a. To be considered "responsive" and eligible for award, a bid must comply in all material respects with the IFB. Such compliance enables bidders to stand on an equal footing and helps maintain the integrity of the sealed bidding system.

b. To be considered "responsive," bids must be submitted in the format specified in the solicitation.

c. Bids submitted electronically shall be considered only if such method was specifically stipulated or permitted by the IFB. If an electronic bid received is unreadable to the degree that conformance to the essential requirements of the IFB cannot be ascertained, the subrecipient must immediately notify the bidder that the bid will be rejected unless the bidder provides clear and convincing evidence--

   1. Of the content of the bid as originally submitted; and
   2. That the unreadable condition of the bid was caused by the subrecipient's software or hardware error, malfunction, or other subrecipient mishandling.

d. A bid may be determined to be "nonresponsive" if a bidder specifies that award will be accepted only on all or a specified group of items, unless the IFB specifically allows such bidding. However, if such bidding is allowed, bidders are not to be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualifications are substantive and affect the rights of other bidders.

e. When a bid is accompanied by descriptive literature and the bidder imposes a restriction that prevents the public disclosure of such literature, the restriction may render the bid "nonresponsive." The restriction renders the bid nonresponsive if it prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of the products offered or those elements of the bid that relate to quantity, price, and delivery terms. The provisions of this paragraph do not apply to unsolicited descriptive literature submitted by a bidder if such literature does not otherwise qualify the bid.

f. Bids should be filled out, executed, and submitted in accordance with the instructions in the IFB. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered responsive only if—

   1. The bidder accepts all the terms and conditions of the IFB; and

   2. Award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the IFB.

g. Minor informalities or irregularities in a bid do not automatically render the bid "nonresponsive." The subrecipient must give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is to the advantage of the subrecipient. Examples of minor informalities or irregularities include a bidder's failure to--

1. Return the number of copies of signed bids required by the IFB;

2. Furnish required information concerning the number of its employees;

3. Sign its bid, but only if --

(i) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or

(ii) The firm submitting a bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature and submits evidence of such authorization and the bid carries such a signature;

4. Acknowledge receipt of an IFB amendment, but only if--

(i) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation and the bidder submitted a bid on the item; or

(ii) The amendment involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item bid upon.

6.17 *Conduct and document 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. In a multiple bid situation, such determination is relatively straightforward (see 6.17 d.1 below).

b. After determining the apparent successful bidder and before requesting WisDOT approval for award, the subrecipient must determine "price reasonableness" of the bid 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 E 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 bidders, used in combination with each other to help explain any significant price variances. In cases where a single bid is received (see also Section 6.10, paragraph c.6), obviously precluding application of the first technique described below, the appropriate application of multiple techniques takes on even greater significance and must be adequately documented. 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 bids 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.)

[6] FAR 15.404-1(b)(2).

3. Using parametric estimating methods or application of rough yardsticks. For example, comparing the proposed price per square foot for a certain type of building construction against an established commercial cost per square foot.

4. Comparison with competitive published catalogs or price lists. These may be hard-copy or Internet-based and include published market prices of commodities, similar indexes, and discount or rebate arrangements**.**

5. Comparison with independent cost estimates. See Section 6.2, of this Toolkit.

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 bidder. 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.

6.18 *Determine "responsibility" of apparent successful bidder*. The subrecipient must make a written determination that the apparent successful bidder is "responsible" before requesting WisDOT approval to make the award.

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 federal excluded parties records managed by the System for Awards Management (SAM). The SAM can be accessed at:

https://www.sam.gov/

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

http://dwd.wisconsin.gov/dwd/publications/erd/pdf/erd_10908_p.pdf

6.19 *Request appropriate approvals and make award*. In addition to satisfying any local approval requirements, subrecipients must seek WisDOT approval for all federally-funded contracts prior to award. 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.

a. Award is made to the responsive, responsible bidder whose bid will be most advantageous to the subrecipient, considering only price and the price-related factors included in the IFB.

b. The "Notice of Intent to Award" may be issued by written or electronic notice (including public posting) but must be made before the bid acceptance period or any time extension expires. Formal contract award must be made as soon as possible after the "Notice of Intent to Award" is issued. However, see Section 6.22 concerning protests filed.

c. When an award is made to a bidder for less than all of the items that may be awarded to that bidder and additional items are being withheld for subsequent award, the award shall state that the subrecipient may make subsequent awards on those additional items within the bid acceptance period.

d. All provisions of the IFB, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document. The award is an acceptance of the bid, and the bid and the award constitute the contract.

6.20 *Notify unsuccessful bidders*.

a. Subrecipients shall notify unsuccessful bidders in writing within three working days after receiving approval to proceed with the contract award. Such notice shall thank the unsuccessful bidders for participating in the procurement, identify the winning bidder(s), and advise unsuccessful bidders where the bid abstract may be viewed. If award is made to other than the low bidder, the notice will state why the low bid was rejected.

b. 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.

c. Requests for records (e.g., Freedom of Information Act, etc.) shall be handled incompliance with local and/or WisDOT regulations and procedures.

6.21 *Handling bid mistakes after award.*

a. If a contractor discovers and requests correction of a mistake in bid after being awarded the contract, subrecipients must consult immediately with WisDOT to determine the appropriate action. Such correction and subsequent action may only be made on the basis of clear and convincing evidence that a mistake in bid was made. As a minimum, after consulting with WisDOT, the contractor may be required to provide a written statement and pertinent documents evidencing the alleged mistake, including--

1. The contractor's file copy of the bid,
2. The contractor's original worksheets and other data used in preparing the bid,
3. Subcontractors' and suppliers' quotations, if any,
4. Published price lists, and
5. Any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended.

b. Regardless of the final decision and action taken with regard to mistakes in bid after award, subrecipients shall include in the contract file a complete record of the pertinent decisions, the case facts, and the final action taken.

6.22 *Protests before or after award*. Subrecipients must consider all protests and consult in a timely manner with WisDOT, irrespective of whether protests are submitted before or after contract award. A protester must exhaust all administrative remedies with the subrecipient before pursuing a protest with WisDOT or FTA.

a. Protests based on alleged apparent improprieties in a solicitation must be filed with the subrecipient before bid opening or the closing date for receipt of proposals. In all other cases, protests must be filed no later than 10 days after the basis of protest is known or should have been known, whichever is earlier. However, the subrecipient, for good cause shown, or where it determines that a protest raises issues significant to the subrecipient's procurement system, may consider the merits of any protest that is not timely filed but may only do so after consulting with WisDOT.

b. In order to facilitate review by the subrecipient and by WisDOT, protests must be concise and logically presented. Failure to substantially comply with any of the requirements of paragraph (c) of this section may be grounds for dismissal of the protest.

c. Protests must include the following information:

1. The protestor's name, address, and fax and telephone numbers.
2. Solicitation or contract number.
3. Detailed statement of the legal and factual grounds for the protest, including a description of resulting prejudice to the protester.
4. Copies of relevant documents.
5. Request for a ruling by the subrecipient.
6. Statement as to the form of relief requested.
7. All information establishing that the protester is an interested party for the purpose of filing a protest.
8. All information establishing the timeliness of the protest.

d. After receiving a protest, the subrecipient must:

1. **If, before contract award, not make contract award, pending resolution of the protest**. However, award may be made if such action is justified, in writing, for urgent and compelling reasons or it is determined, in writing, to be in the subrecipient's best interest to do so. In these instances, in addition to any local approval requirements, WisDOT must approve the justification or determination prior to any action to award the contract.

2. **If, withholding contract award pending agency resolution of the protest, inform the bidders or offerors** whose bids/offers might become eligible for award of the contract. If appropriate, the bidders/offerors should be requested, before expiration of the time for acceptance of their bids/offers, to extend the time for acceptance to avoid the need for re-soliciting the procurement. If bidders/offerors fail to grant such time extensions, the subrecipient may consider proceeding with award pursuant to paragraph (d)(1) of this section but only with the appropriate local and WisDOT approvals to do so.

3. **If, the protest is received within 10 days after contract award, immediately suspend contract performance**. However, contract performance may continue, pending resolution of the protest, if continued performance is justified, in writing, for urgent and compelling reasons or it is determined, in writing, to be in the best interest of the subrecipient. In addition to any local approval requirements, WisDOT must approve such justification or determination.

e. Subrecipient's must make their best efforts to resolve protests filed with the subrecipient within 30 days after the protest is filed. Unless otherwise prohibited by law, the parties may exchange relevant information. To help facilitate timely WisDOT action, subrecipient protest decisions must be well reasoned, factually accurate and complete, and fully explain the subrecipient's position. The final protest decision must be provided to the protester using a method that provides evidence of receipt.

6.23 *Document the file*. At a minimum, the Procurement History file must contain or address the items or elements listed below (see also Appendix O). All elements a. through p. 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 (if required by WisDOT) and/or the procurement timeline;

d. A sole source justification explaining the single-bid circumstances, if necessary;

e. A copy of the final solicitation (as amended) and any supporting documents such as pre-bid conference notes and Questions and Answers;

f. The bidders source list, annotated with the date the IFB and any amendments were distributed, the record of public bid opening and who attended, and the bid abstract;

g. All source selection-related documents including but not limited to: individual evaluators' notes, bid abstract, cost or price analysis, basis for the award, etc.;

h. A copy of all bids received including bidder acknowledgment of any solicitation amendments;

i. Price or cost analysis (as appropriate) including any supporting documents and a written determination that the price offered by the apparent successful bidder is "fair and reasonable;"

j. A written determination that the proposed contractor is "responsible;"

k. Bidder's lists for all bids submitted and their subcontractors.

l. A copy of the proposed contract;

m. Any additional supporting documents;

n. Evidence of any required approvals (e.g., local and WisDOT); and

o. After approval, the Original and signed Contract/Agreement.

p. After award, any subsequent contract amendments/modifications including but not limited to those exercising available option periods.