

State of Wisconsin Department of Administration
Division of Energy, Housing and Community Resources

FLEXIBLE FACILITIES PROGRAM IMPLEMENTATION HANDBOOK

CHAPTER 3: PROCUREMENT & CONTRACTING



CHAPTER 3: PROCUREMENT & CONTRACTING

Contents

- 1.0 Uniform Guidance4
- 2.0 Conflicts of Interest4
 - 2.1 Applicability5
 - 2.2 Conflict of Interest Reviews and Exceptions/Waivers6
 - 2.3 Conflict of Interest Non-Compliance Implications9
- 3.0 Local Procurement Policy9
- 4.0 Initial Procurement Decisions 10
- 5.0 In-House Work by Employees & Officials 11
- 6.0 Procurement and Contracting General Provisions 12
 - 6.1 Federal Standards 12
 - 6.2 Contractor Clearance (Debarment Checks) 13
 - 6.3 Lobbying Restrictions 14
- 7.0 Contracting for Professional Services 15
 - 7.1 Use of One Firm for Multiple Services 15
 - 7.2 Non-Competitive Procurement of Professional Services 15
- 8.0 Procurement Method Options 16
 - 8.1 Option #1 – Small Purchase/Simplified Acquisition & Micro-Purchase Option [2 CFR Part 200.320(a)] 16
 - Small Purchase 16
 - Micro-Purchase Provision 19
 - State Procurement Contracting Provision 19
 - 8.2 Option #2 – Competitive Sealed Bid Option [2 CFR Part 200.320(b)(1)] 21
 - Notice Regarding Design-Build, Construction Manager At Risk, and Similar Contracts 23
 - Notice Regarding Bidding for Multiple Projects 23
 - Notice Regarding Bidding That Results in a Sole Bidder 24
 - Notice Regarding Bid Packet Omissions and/or Errors 25
 - 8.3 Option #3 – Competitive Proposals Option [2 CFR Part 200.320(b)(2); 2 CFR Part 200.459] 25
 - Overview 25
 - Request for Proposals (RFP) 26

*State of Wisconsin Department of Energy, Housing and Community Resources
FFP Implementation Handbook*

Request For Qualifications (RFQ).....27

8.4 Option #4 – Non-Competitive Proposals/Sole Source Option [2 CFR Part 200.320(c)].....29

9.0 Subrecipients29

10.0 Records and Files.....30

11.0 Summary of Relevant Laws31

12.0 Contract Language and Forms31

13.0 Chapter Attachments List33

14.0 Chapter Revision History.....34

1.0 Uniform Guidance

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (*2 CFR Part 200*) and Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, apply to the Flexible Facilities Program (FFP) grants. The applicable procurement and contracting requirements are within *2 CFR Part 200 Subpart D (2 CFR Part 200.317 - 2 CFR Part 200.327)* and this chapter of the *FFP Implementation Handbook*. Grantees (local and tribal governments) and subrecipients, as defined in Chapter 2: *Grant Administration* of the *Handbook*, must comply with all applicable federal, state and local procurement and contracting regulations and policies for the FFP project.

IMPORTANT NOTE!

*As of 12/10/2024, the Uniform Guidance *2 CFR 200* updates released by the Office of Management and Budget (OMB) on 10/1/2024 do not apply to the Capital Projects Fund grants, with the exception of updates to the single audit requirements raising the threshold from \$750,000 to \$1,000,000. When referencing Uniform Guidance *2 CFR 200* ([ecfr.gov](https://www.ecfr.gov)) make sure to use the most recent version available prior to 10/1/2024.

2.0 Conflicts of Interest

A conflict of interest (COI) may occur when an individual or entity is unable, or appears to be unable, to be impartial in conducting their responsibilities for the FFP project and for the public to be in compliance with the requirements associated with the FFP award. This also includes situations that create, or may create, a real or apparent conflict.

Grantees agree to have a COI policy in writing that is consistent with *2 CFR Part 200.318 (c)* and this chapter, and to include applicable COI related review activities for their contracting associated with the FFP project, *or* to follow the State's FFP COI written procedures for COI disclosures and reviews that are summarized in this chapter. Pursuant to this requirement, decisions concerning the FFP funds must be free of undisclosed personal or organizational COIs, both in fact and in appearance. No employee, officer, or agent of the grantee or subrecipient may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent COI. COI provisions within the Code of Federal Regulations must be addressed as part of procurement and contracting processes. Grantees and subrecipients must disclose in writing any potential COI to the State of Wisconsin Department of Administration (DOA) Division of Energy, Housing and Community Resources (DEHCR) to be in compliance with *2 CFR Part 200.112* and *2 CFR Part 200.318*.

Per *2 CFR Part 200.337(a)*, the grantee must have all documents pertaining to disclosure and review of potential COIs on file and available for review by state and federal regulating entities.

2.1 Applicability

The COI provision applies to “covered persons,” which may include any individual who is an employee, agent, consultant, officer, or elected official or appointed official of the State, grantee’s local/tribal government, or subrecipient’s organization. Except for eligible grant administration costs, the general rule for those individuals described above (who exercise or have exercised any functions or responsibilities with respect to FFP activities and who are in a position to participate in a decision-making process or gain inside information with regard to such activities), is that they **may not**:

- Obtain a financial interest or benefit from the activity;
- Have an interest or benefit from the activity; nor
- Have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder.

This rule also applies during their tenure, and for one year thereafter, to themselves and to those individuals with whom there is a family or business tie, with “family” intended to mean immediate family. The definition of an “immediate family member” is defined differently within the state statutes than the federal regulations, with the federal definitions being broader. An “immediate family member” includes “...(whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.”

IMPORTANT NOTE!

The grantee’s and subrecipient’s employees, officials, and their family members may not have financial interest in, and may not financially benefit from the FFP project activities.

Also, no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by the FFP grant if they have a real or apparent COI.

To determine if there are any potential COI, the grantee should gather the above information at the point of the contractor’s/entity’s submittal of a bid proposal or quote, or upon determining property to be acquired for the project. Potential contractors or sellers should be asked to disclose family or business ties to persons involved with the FFP

project that may be potential COIs. The *Potential Conflict of Interest Disclosure (Template)* document (Attachment FFP-03-01) may be used (but is not required) as for preparing a disclosure form. It is designed to use for contractors being considered for a *prime* contract with the grantee or subrecipient. The grantee must use some type of mechanism or form for ensuring and documenting that potential COIs are disclosed and reviewed prior to contracting.

The required contract language pertaining to COIs is in the *FFP Contract Terms & Conditions (Contract Insertion)* document (Attachment FFP-03-03). This document is to be included in all bid packets for construction contracts; and must be inserted in all prime contracts and subcontracts for construction and non-construction for the FFP project.

2.2 Conflict of Interest Reviews and Exceptions/Waivers

An exception/waiver to the federal COI provisions would require DEHCR approval and may require Treasury approval. Contact the assigned DEHCR project representative for guidance. Prior to submitting an exception/waiver request, public disclosure and review of the potential conflict must occur. For a grantee, a legal opinion also must be obtained from the corporate or municipal counsel specifically stating that the interest for which the exemption is sought and awarding the contract would not violate state or local law.

The following steps are to be used to identify and review potential conflicts of interest for prime contracts (between the grantee or subrecipient and a contractor), and request an exception/waiver to the federal COI provisions, if determined necessary, ***prior to awarding a contract to the contractor for which the potential COI has been disclosed:***

1. Review the contractor's potential COI disclosure, which may be on the *Potential Conflict of Interest Disclosure (Template)* document (Attachment FFP-03-01), which must be customized by grantees and subrecipients for their use, or a similar document prepared by the grantee or subrecipient to potential responders or confirmed responders of the procurement solicitation for a prime contract. The disclosure form should have the "covered persons" from the grantee, and subrecipient, if applicable, associated with the FFP project, such as the grantee's officials and employees involved with the project, and other persons from the subrecipient or other entities/organizations also associated with the project who had or will have a role in the procurement solicitation, contract award, reviewing or approving payment requests, and contractor oversight and compliance monitoring for the FFP project.
2. Identify "covered persons" in relation to the COI restrictions for the FFP project.
3. Consult legal counsel as needed prior to the taking the steps below. This is highly recommended to ensure state and local laws are followed for the potential COI disclosure and review process as listed below. Note that a written opinion from legal counsel will be required from grantees and must be submitted to DEHCR, as specified in #11 below.

4. Inform the company(ies)/firm(s) and person(s) for whom a potential COI has been identified that their names will be disclosed at the local board/council/committee meeting.
5. Add “disclosure of potential conflicts of interest” as a discussion item on the board/council/committee meeting agenda, and make the agenda available to the public. The meeting must be open to the public, with the proper public notice of the meeting given, following the grantee’s local policy/procedure and applicable state laws for giving notice for the grantee’s meetings.
6. Disclose and review the potential COI at the public meeting, disclosing the company(ies)/firm(s) and persons identified as having a potential COI and discussing the potential conflict publicly. Any covered person identified in the disclosure of the potential COI should not attend this meeting or must recuse their self from voting on a determination regarding the potential COI).
7. Adhere to the grantee’s and subrecipient’s applicable local policies (e.g., ethics and COI policies related to decision-making, voting, procurement and contracting) in reviewing all potential COIs.
8. If a contractor has been identified as having a COI of interest, disclose the name of the person and company/firm, and the nature of the potential COI (family or business tie[s]) applicable to the project at the public meeting.
9. Ask all in attendance at the public meeting if there are any objections to awarding the contract to the contractor in question, with the objective being to review the potential COI publicly and determine if there are any objections to awarding the contract.
10. Include the disclosure and review of the COI and “covered persons” discussed in the meeting minutes. Make the meeting minutes public through posting the minutes in accordance with local policy for public meetings, through physical postings in prominent/visible locations in the community, on the grantee’s website, and/or publishing in the local newspaper, etc. (following local policy).
11. The grantee must obtain and submit to DEHCR a letter or email from legal counsel specifically stating that it is their legal opinion that the interest for which the COI exemption is sought and awarding the contract would not violate state or local law.
12. If the grantee’s determination after reviewing the potential COI and the legal opinion is that no COI exists, then the grantee is to submit to DEHCR:
 - a summary on municipal letterhead signed by the chief elected official summarizing the grantee’s review, determination and basis of the determination regarding the potential COI;
 - the legal opinion letter from the grantee’s legal counsel certifying that the grantee’s contracting with the entity or person identified as having the potential conflict(s) would not violate state or local law;

- proof of proper notice of the public meeting in which the potential COI will be publicly disclosed and discussed;
 - the agenda and minutes of the public board/council/committee meeting in which the potential COI was disclosed and reviewed;
 - proof of public sharing of the meeting proceedings (e.g., proof of public posting(s), website posting, and/or publication in the newspaper, etc. of the meeting minutes), following local policy for making minutes available to the public for public meetings.
13. DEHCR will review the documentation submitted by the grantee for the potential COI review and make a determination of whether DEHCR concurs with or disagrees with the grantee's determination.
14. If the grantee's determination *or* the legal opinion *or* DEHCR's opinion after reviewing the potential COI is that a COI *does* exist, then the grantee cannot award the contract without a waiver. The grantee may request a waiver to the federal COI provisions to award the contract by submitting to DEHCR:
- a request on municipal letterhead signed by the chief elected official requesting a waiver to the federal COI provisions, with a summary of the grantee's review and determination regarding the COI, and the justification or basis on which the waiver should be allowed, citing all applicable factors for to be considered from the list provided in the federal regulations and any actions taken to mitigate and/or eliminate the potential conflict;
 - the names and contact information available (e.g., address, phone number, email address) of the individuals and entities named as having the potential COI;
 - the legal opinion letter from the grantee's legal counsel stating that the interest for which the exemption is sought and awarding the contract would not violate state or local law;
 - proof of proper notice of the meeting in which the potential COI will be publicly disclosed and discussed;
 - the agenda and minutes of the board/council/committee meeting in which the COI was disclosed and reviewed; and
 - proof of public sharing of the meeting proceedings (e.g., proof of public posting(s) of the meeting minutes.
15. The grantee should avoid signing the contract(s) in question until the exception/waiver decision has been issued by DEHCR (and Treasury if applicable).

2.3 Conflict of Interest Non-Compliance Implications

Remedies and penalties may be imposed on a grantee or subrecipient that does not comply with the COI requirements of the FFP, or an individual or entity that fails disclose information that pertains to potential COI. This includes remedies described in [2 CFR Part 200.339](#), and suspension or debarment as described in [2 CFR Part 180](#) (Subpart F, G, H) and Treasury's implementing regulations of [31 CFR Part 19](#).

The grantee should become familiar with the COI language included in this chapter and the *FFP Project Contract Terms & Conditions (Contract Insertion)* document (Attachment FFP-03-03) prior to executing contracts for the FFP project.

3.0 Local Procurement Policy

Grantees and subrecipients must maintain and use documented procedures for procurement transactions for the FFP project, including for acquisition of property, goods, and services. These documented procurement procedures must be consistent with State, local, and tribal laws and regulations and the standards identified in [2 CFR Part 200.317](#) – [2 CFR Part 200.327](#). The Division of Energy, Housing and Community Resources (DEHCR) requires all grantees to have and submit written procurement/purchasing procedures **prior** to the FFP grant agreement being executed for the FFP monies. A grantee must use procurement/purchasing procedures that are in conformance with federal, state and local laws and regulations. Federal regulations and standards are identified in [2 CFR Part 200.317](#) – [2 CFR Part 200.327](#), which set forth the standards that are applicable to procurement for federal grants, cooperative agreements, and sub-awards to state, local, and Indian tribal governments. State and federal FFP procurement requirements and guidance are provided in this chapter.

The general procurement requirements, local policy specifications, and COI standards applicable to the grantee and FFP project are listed in [2 CFR Part 200.318\(a\)](#) – (l) and [2 CFR 200.319\(b\)](#).

When the grantee is using FFP funds to cover the costs for a FFP project purchase or contract, the grantee must comply with its local procurement/purchasing policy(ies) and applicable state and federal procurement/purchasing requirements for the FFP project that are summarized in this chapter. The grantee must follow the most restrictive of the three when there are differences. When grantees are not using FFP funds to cover the costs for a FFP project purchase or contract, they must comply with its local procurement/purchasing policy(ies), with the exception of construction, for which the state competitive procurement requirements in [Wis. Stat. § 66.0901](#) and related laws for public works construction projects apply, in addition to the grantee's local laws, regardless of funding source.

4.0 Initial Procurement Decisions

Questions to consider when determining the procurement requirements that apply for each FFP project activity include:

1. Will a third party be selected to perform all or part of the FFP project activity, using some method of procurement, or will the work be performed in-house by municipal employees (either the grantee's or subrecipient's own employees or through a cooperative agreement with another government or a quasi-governmental entity, such as Wisconsin regional planning commissions or certain publicly funded economic development organizations)?
 - If the work will be performed in-house by employees of the grantee, subrecipient, another government or quasi-governmental entity, then no procurement process is required to be completed for the selection of the vendor/provider. FFP requirements still apply to certain terms for the contracting.
 - If contracting with a non-government third party, then some or all federal, state and local procurement requirements will apply to the selection of and contracting with the vendor/provider.
2. Will the contract be for construction, professional services (e.g., architectural and engineering, grant administration, acquisition/relocation, auditing, legal, etc.), or some other non-construction related work/purchase (e.g., computer equipment and devices, furnishings, etc.), and will FFP funds be used to fund all or part of the contract or purchase agreement?
 - If the contract/agreement is a *construction* contract, competitive procurement,* with adherence to *federal, state, and local* procurement regulations and policies, is required. Refer to the procurement options summarized later in this chapter to determine which option is most appropriate based on the anticipated amount of the construction contract.
 - If the contract is a professional services contract or other non-construction contract/agreement and FFP funds are *not* funding *any* part of the contract, then the grantee must ensure compliance with its *local* procurement policy.
 - If FFP funds are funding *all or part* of the professional services contract or other non-construction contract/agreement, and the contract/agreement is *not* with another governmental entity quasi-governmental entity, then the grantee must ensure compliance with *federal, state, and local* procurement regulations and policies. Federal regulations require that professional services and other non-construction work/purchases funded with FFP monies generally must be competitively procured.* Refer to the procurement options summarized later in this chapter to determine which

option is most appropriate based on the type of the professional services contract or other non-construction contract/agreement.

**Other exceptions for federal competitive procurement requirements are noted under the sole source procurement option summarized later in this chapter.*

5.0 In-House Work by Employees & Officials

Employees and officials of the grantee (local/tribal government) or subrecipient who are acting in their official capacity and completing work resulting from the FFP project are considered in-house and are eligible to be compensated for FFP-related duties if certain conditions are met, including:

- a) The costs must be eligible in accordance with state and federal regulations and requirements for the FFP project;
- b) The budget category for the services provided (e.g., grant administration, engineering, etc.) is listed as an FFP-funded cost on the grantee's *FFP Project Budget* form and the *FFP Payment Request* form (which is based on the grantee's *FFP Project Budget* form, as submitted by the grantee to DEHCR);
- c) The cost must be deemed reasonable;
- d) The work must be directly related to the FFP project (i.e., excluding "indirect" costs associated with standard facility or program operations and employees' standard responsibilities), and allowed in accordance with the federal and state regulations, the grantee's project budget, and *FFP Payment Request* form that is issued by DEHCR (which is based on the grantee's proposed budget during the pre-agreement process); and
- e) Acceptable, complete supporting documentation must be submitted to DEHCR with a payment request for the in-house work costs, including the name(s) of the worker(s), dates and number of hours worked each date by each employee, nature of the work completed each date, and the hourly wage plus fringe benefits rate (with a break-down of the fringe rate) of each employee.

For example, a village clerk or treasurer handling the management of FFP funds and payment requests to DEHCR for the FFP funds are eligible to be compensated using the FFP funds, contingent upon all other requirements noted in (a) through (e) above being met. The work must be that which they would otherwise not do if the local/tribal government did not have the award. If processing payroll for employees is part of their responsibilities, the cost of standard processing payroll for employees working on the FFP project cannot be paid with the FFP funds. Only *additional* payroll activities, if any, required as a result of the project, would be eligible.

Another example is if the city council has officially designated an attorney as city attorney or an engineer as city engineer for all legal or engineering services, then the individual or firm so designated becomes an official of the city, contingent upon their contract remaining current and valid at the time of the FFP award or start of services. As an official of the city performing FFP related duties, their legal or engineering service charges are

eligible program costs without procurement processes, contingent upon the requirements listed in (a) through (e) above being met.

DEHCR will disallow costs for grantees that abuse these in-house provisions. For instance, appointments of city engineers must not be made for the purpose of selecting an engineer to work on an anticipated FFP project. The grantee must show evidence that they have a history of appointment, unrelated to any current or anticipated FFP project.

Refer to Chapter 8: *Financial Management* of this *Handbook* for details on in-kind donated goods and services. In-kind donated goods and services are tracked differently than in-house work.

6.0 Procurement and Contracting General Provisions

6.1 Federal Standards

The federal standards for procurement and contracting are intended to ensure that supplies, equipment, construction, and other services are:

- Obtained as efficiently and economically as possible; and
- Procured in a manner that provides, to the maximum extent practical, open and free competition.

Contract solicitations for goods and/or services must explain all requirements the bidder/offeror must meet for his or her bid/offer to be evaluated by the grantee. Each solicitation must be based on a clear and accurate description of the material, product, or service to be procured and cannot contain features which unduly restrict competition.

Some of the situations considered to be restrictive of competition include, but are not limited to:

- Placing unreasonable qualifying requirements on firms;
- Requiring unnecessary experience or excessive bonding;
- Specifying only brand name products, instead of allowing an equal product;
- Non-competitive pricing practices between firms or affiliated companies; and
- Non-competitive awards to consultants on retainer contracts.*

**Non-competitive awards to professional services contractors may be allowed when no FFP funds will be applied to the costs, subject to compliance with the grantee's local procurement policy, or when sole source requirements listed later in this chapter are met. However, competitive procurement for all contracting is recommended, even when not required.*

Awards are to be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the grantee, price and other factors considered, as permitted for the method of procurement being applied. Any and all bids/offers may be rejected when it is in the grantee's interest to do so. The grantee must ensure that contracts are awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Considerations may include, but are not limited to, compliance with regulatory requirements and public policy, contractor integrity, record of past performance, financial capabilities, and technical capabilities.

6.2 Contractor Clearance (Debarment Checks)

FFP grantees and subrecipients must ensure that awards for construction, service, and purchasing contracts are not made to any party which is debarred or suspended, or is otherwise excluded from or ineligible for, participation in federally assisted programs or projects, to comply with federal regulations (*2 CFR Part 180* and *2 CFR Part 200.214*). The grantee is to check the "exclusion" (i.e., debarment) status of all construction and non-construction contractors and subcontractors on the System for Award Management (SAM) [Home page: <https://sam.gov/content/home>] **prior to the award** of any prime contract or subcontract and prior to the amendment of any prime contract or subcontract. Debarment checks must be made on the *official* federal *SAM website*. Private third parties have created sites that look very similar to the *SAM website* but they are not the *official* federal site and must not be used for SAM debarment checks for the FFP program.

Debarment Check Instructions

1. On the *SAM home page*, click the "*Entity Information*" link.
2. On the "Entity Information" page [<https://sam.gov/content/entity-information>], in the "Search Entity Information" section, select "Exclusions" from the dropdown and in the next box enter all or a portion of the search term (search the contractor's company name and owner/officer name(s) individually); and press or tap the "Enter" key on your keyboard.
3. The search results will show all 'excluded' entities meeting the search term parameters. When results appear, go to the "Filter by" column on the page. You may filter by location, by the full name of individual ('Excluded Individual') or by a company name ('Excluded Entity') or Unique Entity Identification Number (UEI #). If results show a 'match', select the name of the entity to review the firm's record to determine if the entity matches the prospective contractor and whether it is currently excluded/debarred. If a match is confirmed, the entity is debarred and cannot be awarded a contract for the FFP project.
4. If the contractor's company (name and/or UEI #) and owner/officer name(s) do not appear in the search results, the entity has no active exclusions and is not

debarred. The grantee must also have the contractor confirm/certify that it is not debarred prior to contracting (or when signing the contract).

5. Print the complete search results, and the contractor individual record if a record is generated (using the CTRL / P option, or by right clicking or tapping on the screen and selecting “Print”) and add it to the FFP project file.

When checking the [SAM Entity Information site](#) for debarred contractors, conduct a search by the business name, and a separate search by the owner’s and officer’s name. Additional searches may be conducted using the contractor’s UEI # or the Commercial and Government Entity (CAGE) Code.

The grantee must maintain copies of all debarment check records in the FFP project file, including search results of ‘No Records Found’.

If a contractor or other entity or their owner or officers have a current “exclusion” that appears on their SAM record, it must be reviewed to determine if it excludes the entity from eligibility for contracting for federally assisted projects. Contact the assigned DEHCR project representative for guidance as needed.

6.3 Lobbying Restrictions

In accordance with [31 U.S.C. § 1352](#), no FFP funds may be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than FFP or other federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the FFP contract, the grantee, subrecipient, or contractor representative, they must submit a complete a lobbying disclosure form.

Grantees, subrecipients, and all contractors and subcontractors (all tiers) for the FFP project, for both construction and non-construction activities and services, must do the following to comply with the applicable regulations pertaining to lobbying:

1. Include in all contracts and subcontracts, the language regarding lobbying activity restrictions and disclosure, which is included in the *FFP Project Contract Terms & Conditions (Contract Insertion)* document (Attachment FFP-03-03 on the [Handbook website](#)); and
2. Complete, sign and provide the *Lobbying Certification* form (Attachment FFP-03-04 on the [Handbook website](#)); and
3. Complete, sign and provide the *Disclosure of Lobbying Activities* form (Attachment FFP-03-05 on the [Handbook website](#), and also may be accessed

and also may be accessed at

https://apply07.grants.gov/apply/forms/sample/SFLLL_1_2_P-V1.2.pdf), *only if* the entity has lobbying activities to disclose.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The grantee must maintain in the FFP project file the completed and signed *Lobbying Certification* forms for all contractors and subcontractors; and the completed and signed *Disclosure of Lobbying Activities* forms for contractors and subcontractors that had lobbying activities to disclose.

7.0 Contracting for Professional Services

7.1 Use of One Firm for Multiple Services

The use of a single firm for grant administration, environmental review, acquisition/relocation, architectural and/or engineering professional services is generally acceptable, although separate procurement and contracting processes are encouraged.

No “loss-leader” arrangements are allowed, in which a firm may offer discounted or free pricing for grant administration services or other services in exchange for being guaranteed the contract award for the architectural/engineering contract.

Also, a **firm is not allowed to bid on or compete for a contract for services if the firm assists the grantee with preparation of the procurement advertisement, bid/proposal specifications, or assists in any aspect of the procurement process, as is a COI, presenting a real or perceived unfair advantage to the firm.** Assistance with the procurement process includes, but is not limited to, the preparation of advertisements and/or RFPs/RFQs/RFBs for the services contract, or the evaluation and scoring of bids/proposals for the services contract.

7.2 Non-Competitive Procurement of Professional Services

Grantees and subrecipients are advised to use the allowable procurement methods for securing professional services in accordance with the options presented in *2 CFR Part 200.320* and their local policy. However, the grantees may submit a request for DEHCR’s consideration for non-competitive procurement of professional services if they can provide sufficient justification, demonstrating one or more of the criteria for non-competitive procurement specified in *2 CFR Part 200.320(c)* are met.

Grantees must complete the *Request for Non-Competitive Procurement of Professional Services* form (Attachment FFP-03-09 available on the *Handbook website*) and submit the form to their assigned DEHCR project representative. The grantee must describe the procurement processes used to date, and justification for the request. This may include

specifying the implications of competitive procurement processes and how they may not be in the public's interest due to being prohibitive for timely construction start and project completion in accordance with the FFP project timeline restrictions. Grantees must follow their own local procurement policies in securing the professional services to be eligible for consideration of non-competitive procurement. Requests for non-competitive procurement of professional services will be reviewed by DEHCR on a case-by-case basis.

Any professional services contracts that do not qualify as a micro-purchase (described in the next section of this chapter), or are not approved for non-competitive procurement by DEHCR, must be competitively procured in accordance with the guidance in this chapter, or the cost must be covered by the grantee or subrecipient using their own funds and/or other match funding source(s).

Construction contracts and the purchasing for goods, supplies, furnishings, and equipment for the project must be procured following the specifications and processes summarized in the next section of this chapter.

8.0 Procurement Method Options

Depending on the type of the contract, scarcity of the item or service desired, and the amount of the contract or purchase, four (4) different options for procurement methods are available under the federal regulations:

- Small purchase(s)/simplified acquisition option (includes micro-purchases);
- Competitive sealed bids option;
- Competitive proposals option; and
- Non-competitive proposals/sole source option.

These procurement method options are summarized in [2 CFR Part 200.320](#) and below.

Refer to the *Overview of Procurement Method Options* (Attachment FFP-03-02) for brief summary of the options #1 - #4 that follow.

8.1 Option #1 – Small Purchase/Simplified Acquisition & Micro-Purchase Option [[2 CFR Part 200.320\(a\)](#)]

Small Purchase

DEHCR considers procurement by small purchase (also referred to as simplified acquisition) procedures best suited for obtaining small quantities of goods/products/supplies.

Grantees are to comply with their local, the State, or federal policies for small purchase/simplified acquisition, with the most restrictive prevailing for each type of contract and purchase.

The federal regulations allow for the small purchase/simplified acquisition method for the procurement of a good/service/supply/product that in aggregate totals \$250,000 or less for the FFP project (per *2 CFR Part 200.320(a)* [specified in *2 CFR Part 200.88*, *2 CFR Part 200.320* and the *OMB update letter to federal agencies 6/20/18*]). The small purchase/simplified acquisition method is allowed for the procurement of a good/service/supply/product that in aggregate totals **\$250,000 or less for non-construction contracts/items, or \$25,000 or less for a construction contract for the FFP project** (with the exception of professional services contracting, for which a competitive proposal procurement method is allowed (but not required), regardless of the contract amount.)

The simplified acquisition method includes a **micro-purchase** provision allowing for grantees to make purchases of **\$10,000 or less** without soliciting competitive quotations if a grantee considers the price to be reasonable. Because a cost-price analysis is required for all procurement and purchasing transactions under *2 CFR Part 200.219*, however, some type of documentation must be on file as verification that the price is reasonable.

A procurement/purchase of an item may not be inappropriately broken up into smaller components solely to qualify for the small purchase/simplified acquisition approach.

NOTICE!

The Wisconsin FFP Program's cost threshold for using the small purchase/simplified acquisition procurement method is **\$250,000 for a non-construction item/contract*** or **\$25,000 for a construction contract.****

The provision for **micro-purchases of \$10,000 or less** allows for purchasing/contracting without soliciting competitive quotations if the grantee considers the price to be reasonable.**

**Professional services may be procured using the simplified acquisition, competitive bid, or competitive proposal procurement method.*

***These provisions are allowed, contingent upon the grantee meeting local procurement policy requirements.*

In the small purchase method, competitive procurement is achieved through obtaining written price quotations. **The grantee *must* document the request for the quotes and the receipt of at least three (3) price or rate quotations from qualified providers/vendors (except for micro-purchases of \$10,000 or less, as noted later in**

this section of the chapter). The grantee's small purchase/simplified acquisition procurement process documentation is to include:

- Correspondence with providers/vendors in which the request for quotes was made, including:
 - the vendor/provider information, including the company/firm/organization name, address, and their email address and/or phone number (whichever method(s) was/were used to contact the vendor/provider);
 - the solicitation email(s) and/or letter(s) used to request the quotes from providers/vendors (***the solicitations must be in writing, with the exception of micro-purchases, summarized later in this chapter, or when obtaining quotes online from website sources***);
 - a description of the good/service/product/supply to be purchased/procured, as presented in the requests for quotes;
 - the price quotes in writing from the providers/vendors for the quantity of the item sought (which must be the same for all quotes, comparing pricing for the same quantity of the item);
 - and the date of the quote as well as an expiration date for the quote if applicable (i.e., if a price quote is only valid for a limited number of days, then this must be specified in the quote or in follow up email/written correspondence between the solicitor and the provider/vendor, and this documentation must be retained in the procurement file for the FFP project).

Or, if obtaining the quotes **online through website sources**, then the following documentation must be on record:

- the printed record of the source of the quote with the specific website address and date of accessing the website shown (a website "link" is insufficient, given weblinks and website addresses can change – the printed/PDF record of the page where the information and web address appear must be on file), as record of the source and to verify the quotes were obtained in the same time period;
- the vendor/provider contact information as listed on the website;
- the details of the specific item(s) and quantity sought, as verification that the price comparisons are for comparable items and specifications.

[Note: The request for quotes must include enough detail to solicit responses that will provide adequate information to verify that the quotes are for comparable products or services and of the same quantity. The online quote records must include enough detail to verify the price comparisons are for comparable products or services of the same quantity. Having a quote that is for a quantity of one of an item and having another quote that is for a quantity of 2 or more for an item is not acceptable. Having some quotes with the applicable shipping, handling, delivery

and/or installation costs included and other quotes without those costs included may deem the quotes invalid. All price quotes obtained should include all costs associated with the purchase. An exception may be considered if one price quote, which has all applicable shipping, handling, delivery, and installation costs included, is already confirmed to be lower than the other price quotes obtained for items with the same product specifications and quantities but that do not have the shipping, handling, delivery, and installation costs included.]

- Record of the cost/price analysis conducted, including the pricing information or quotes collected/documented;
- Record of written notifications given to each vendor/quote responder in writing, indicating whether they were or were not selected as the lowest responsive, responsible quote submitter for the contract or good/service/product/supply (which is only required if the quotes were solicited through direct communication with the providers/vendors); and
- The executed contract (if for construction or other services) or other written purchase agreement record (for goods/products/supplies) with the lowest responsible quote provider/vendor (or terms of sale and delivery and invoice/receipt for a product purchased through obtaining quotes online).

Micro-Purchase Provision

If the cost of the good/product/service (including the total quantity needed for the FFP project) will total less than \$10,000, then a cost-price analysis should be made but obtaining written competitive quotations is not required to meet FFP requirements* if the grantee considers the price to be reasonable (consistent with the principles in [2 CFR Part 200.404](#)). Records of cost comparisons and/or other documentation that the grantee or subrecipient used as the basis for deeming the cost to be “reasonable” must be on file.

**This exception is allowed contingent upon the grantee complying with its own local procurement policies.*

State Procurement Contracting Provision

Contingent upon compliance with the FFP competitive purchasing guidance, specifications, and requirements, a Grantee may purchase goods/products/services already competitively procured through a contract with a State of Wisconsin agency or entity, commonly known as “*Piggybacking*.” This excludes construction contracting, which is subject to the competitive bidding requirements set forth in Wisconsin State Statutes, [2 CFR Part 200.320\(b\)\(1\)](#), and this chapter. The State of Wisconsin uses [VendorNet](#) and the [eSupplier Portal](#) to procure goods/products/services, consistent with competitive purchasing practices and [2 CFR Part 200](#). For Grantees to purchase goods/products/services for their FFP project through piggybacking/using a State contract, **ALL** of the criteria that are in the list that follows must be met:

- 1) Piggybacking on/using the State agency's/entity's contract in lieu of conducting a separate procurement process for the item(s)/service(s) must be in compliance with the Grantee's local procurement policies; *and*
- 2) The Grantee must receive pre-approval from DEHCR to piggyback on/use the State agency's/entity's contract in lieu of conducting an individual procurement process; *and*
- 3) The original master State contract for the item(s)/service(s) must be an active contract (as presented in the [eSupplier Portal](#) and on [VendorNet](#)) – the contract cannot be expired; *and*
- 4) The original master contract must allow for piggybacking and/or specify that the terms for the State agency/entity also apply to other eligible entities (including the Grantee's entity type); *and*
- 5) Specific pricing for the items the Grantee is seeking to purchase must be included in the master contract, which may be through appendices, attachments or amendments [Note: **Percentage off-based-only pricing is *not* acceptable.** If the contract was awarded based only on terms for percentages off the list price(s), without the exact negotiated price(s) being listed for the item(s), the Grantee *cannot* use that State's procurement/contracting for the item(s) in lieu of a separate procurement process.]; *and*
- 6) The item(s) the Grantee is purchasing must be the same item(s) at the same price(s) specified in the State agency's/entity's master contract. The Grantee must show the *specific* price for the *exact* item being purchased is the same as listed in the State agency's/entity's contract. The purchase must also be under the same State contract or a subcontract/piggyback contract between the Grantee and the vendor if specified as required by the State contract terms.

If the criteria above are met and the Grantee will be using the State's procurement/contracting (as presented in the [eSupplier Portal](#) and on [VendorNet](#)) in lieu of a separate competitive procurement process for the purchase of the item(s)/service(s), the following documents must be retained in the FFP project file and provided to DEHCR, the U.S. Department of Treasury, and/or other regulating entities upon request:

- The "Contract Information" page from the ["Contracts" page of the VendorNet website](#))
- Copy of the original 'Master' State contract, i.e., the Master Agreement (linked on the "Contracts" page – the contract must be an open contract)
- Copy of any Sub-Agreements and Amendments that are vendor-specific and/or item-specific, associated with Original State contract (if applicable)
- Copy of the "piggyback" agreement (between the Grantee and vendor), if required per the terms for purchasing under the original 'Master' State contract

- Copy of the original solicitation (accessed on the “[Bids](#)” page on the [VendorNet website](#) if not provided under the “Documents” section of the “Contracts” page).

Contact the assigned DEHCR project representative if you have any questions about the contracting for design, construction management, and construction for the FFP project.

8.2 Option #2 – Competitive Sealed Bid Option [2 CFR Part 200.320(b)(1)]

DEHCR considers this method of procurement best suited to obtaining contractors for construction projects and for large quantities of goods or materials. The competitive sealed bid procurement method *must* be used by a grantee or subrecipient for any prime construction contract that will exceed \$25,000 and a non-construction contract and/or a good/product/supply purchase that in aggregate will exceed \$250,000 for the FFP project (*excluding professional services contracts, for which a competitive proposal process may be used, regardless of contract amount*).

This method of selection is to be made principally on the basis of price (fixed price contract using lump sum or unit price). Requirements for grantees and subrecipients using the competitive sealed bid method follow in this section.

- Follow the federal competitive bid specifications in [2 CFR Part 200.320\(b\)\(1\)](#) and comply with the applicable Wisconsin State Statutes for government and public entities with the authority and responsibility for contracting for public construction projects, including [Wis. Stat. § 66.0901](#) (all grantees); [Wis. Stats. §§ 62.15 – 62.155](#) (Cities); [Wis. Stats. §§ 59.52\(29\)-\(31\)](#) (Counties); [Wis. Stat. § 60.47](#) (Towns); and [Wis. Stats. §§ 61.50 and 61.54](#) –(Villages).
- Comply with the advertisement for bids requirements set forth the state statutes listed above for public works projects, including publishing a class 2 notice in accordance with [Wis. Stat. § Ch. 985](#) (i.e., two (2) published insertions in the newspaper in two consecutive weeks, with the last insertion being at least one (1) week [seven (7) days] prior to the bid submission due date, which is considered the date of the “act or event” referenced in the statutes [per [Wis. Stat. § 985.01\(1m\)\(a\)](#) and [Wis. Stat. § 985.07\(2\)](#)]). The first day of publication is not counted in the calculation of days for “one (1) week” but the bid due date (i.e., the date of the “act or event”) is counted(per [Wis. Stat. § 985.09](#)).
- Include in the advertisement for bids the following:
 - complete and accurate specifications
 - pertinent attachments, and
 - clearly defined items or services needed, in sufficient detail for the bidders to properly respond.

- Have two or more responsible bidders identified as willing and able to compete effectively for the business (i.e., receive bids from an adequate number of suppliers/contractors (at least two)).
- Comply with the “Escalator Clauses” in *Wis. Stat. § 62.15(1a)*, in providing for additional charges for labor and materials if, as a result of general inflation, the rates and prices increase during performance of the contract. Such escalator provision shall be applicable to all bidders and shall not exceed 15% of the amount of the firm bid nor the amount of the increase paid by the contractor. Each bid on a contract that is to include an escalator provision shall be accompanied by a schedule enumerating the estimated rates and prices of items of labor and materials used in arriving at the bid. Only as to such items as are enumerated shall an increased charge be allowed the contractor.
- Comply with the bonding specifications in *Wis. Stat. § 779.14* and the bonding requirements specifically for “local government contracts” for “a public improvement or public works” in *Wis. Stat. § 779.14(1m)(d)*.
- Include the *FFP Project Contract Terms & Conditions (Contract Insertion)* document (Attachment FFP-03-03) document in all prime bid packets and prime contracts. *Note: The grantee must also ensure all prime contractors and subcontractors include it in all subcontracts (all tiers). Amend contracts to include the Insertion if they were originally executed prior to the release of the Insertion.*
- Open the sealed bids publicly on the date and at the time and place stated in the bid solicitation. At least two (2) bids must be received for “competitive” procurement.
- If at least two (2) bids are not received, commence with re-bidding, unless there is sufficient justification for “sole bidder” consideration. Refer to the “sole bidder” section of this chapter for the guidance and requirements for requesting of a “sole bidder” procurement. Approval by DEHCR is required prior to contracting.
- Do not award, and proceed with re-bidding if it is deemed appropriate by the grantee or subrecipient. Grantees and subrecipients have the option to not award to any of the bidders and proceed with re-bidding under certain conditions. This may be due to receiving only one bid; all bids submitted being higher than the grantee or subrecipient is able to accommodate; none of the bidders being deemed responsible (i.e., is not debarred; has no known contractual concerns; their bid information provided appears correct, reasonably contrived, and complete, etc.) and responsive (i.e., their bids address all requirements of the bid solicitation and contain all the information necessary to evaluate the bid).
- Comply with all other state and federal regulations that apply to public works construction projects and the scope of activities for the grantee’s project.

- When the contract is to be awarded, award to the lowest responsible, responsive bidder as a firm fixed-price contract in writing.

Notice Regarding Design-Build, Construction Manager At Risk, and Similar Contracts

Any contract that includes the contracted entity performing *any* construction work as part of the contract scope *and/or* the contracting entity being the prime contractor under which the construction subcontractors are contracted is deemed a construction contract.

Construction contracts must be procured through competitive sealed bidding processes specified in [2 CFR Part 200.320\(b\)\(1\)](#) and Wisconsin Statutes referenced in this section of Chapter 3 of the *Handbook* if the cost will exceed \$25,000.

- Generally, the only procurement method option for a “design-build” contract above \$25,000 is the competitive sealed bid process in order for the costs of the contract and construction activities (and the project as a whole) to be eligible.
- A “construction manager at risk” or similar contract (referred to as a CMA or CM contract) would only be eligible for competitive proposal procurement (i.e., RFP, summarized in section 8.3 of this chapter) if the activities they will be performing under the contract scope do *not* include *any* construction work by their employees and the contractor is not serving as the prime contractor under which the construction subcontractors are contracted. There are potential provisions that would allow a CM selected through an RFP process to compete for the construction prime contract *separately* procured through the competitive bid process *if* another entity (e.g., the grantee) is managing the bidding process, bid review, and bid opening; *and* there are no conflict of interest issues.

Contact the assigned DEHCR project representative if you have any questions about the contracting for design, construction management, and construction for the FFP project.

Notice Regarding Bidding for Multiple Projects

The FFP project may be bid in conjunction with another non-FFP project for economy and efficiency purposes, contingent upon the FFP project components being clearly defined separately and the FFP component costs being clearly distinguishable and separate from the non-FFP component costs in the bid. Future pay applications/invoices from the contractor(s) awarded contract(s) must have FFP project activities and costs clearly separated from the non-FFP project activities and costs on the pay application/invoices.

Also note that federal regulations specify that a contract funded “in whole or in part” with federal funds must adhere to all applicable federal procurement, contracting and labor standards requirements. Therefore, if one contract covers both FFP project activities and non-FFP project activities, then the contract is ultimately funded “in part” with federal funds. Therefore, the non-FFP portion of the contract would be subject to federal requirements, in addition to the FFP portion of the contract. All contract language and

attachments required for bidding for FFP projects must be included in the bid packet and contract.

Notice Regarding Bidding That Results in a Sole Bidder

A minimum of two (2) bids is generally required when selecting a contractor through the open bidding process. When there is a sole bidder, DEHCR requires that the project be re-bid to attempt to obtain additional bids, or that justification be submitted for DEHCR's review and approval *prior to* awarding the contract to a sole bidder.

Prior to awarding a contract to a sole bidder, the following must be submitted to DEHCR for consideration of an exception to re-bidding (whether it is a result of the initial bidding process or after an additional bidding process):

1. A copy of advertisement for bids with the publisher's affidavit of publication, which verifies that the grantee or subrecipient used an competitive bidding process, with sealed bid submissions and a public bid opening, following FFP requirements and applicable state statutes referenced within this chapter of the *FFP Implementation Handbook*;
and
2. An email from the grantee confirming *FFP Project Contract Terms & Conditions (Contract Insertion)* documentation (Attachment FFP-03-03) document was included in the bid packet and stating the bid opening date, time and location; **and**
3. A request from the grantee (an email or signed letter) with a brief justification for awarding the contract to the single bidder, stating **all** circumstances and/or conditions that have led the grantee to determine that re-bidding the project would not serve the public's best interest, as it would:
 - i. not render a different result (i.e., more bids and/or lower bids), providing an explanation; and/or
 - ii. cause undue hardship due to the need for completing the scope to meet public needs within a certain time period; and/or
 - iii. restrict timeliness of project completion; and/or
 - iv. not serve the public's best interest for one or more other reasons (state the other reason(s));**and**
4. If the entity awarding the contract is a local or tribal government, provide a copy of a legal opinion from legal counsel (an email or signed letter) that verifies the entity awarding the contract to the sole bidder complies with local and state laws for bidding and contracting for public works construction projects. *Note: A legal opinion email or letter is not required if the entity awarding the contract is a non-profit subrecipient organization.*

Notice Regarding Bid Packet Omissions and/or Errors

If the bid solicitation or bid packet has missing or incorrect information, and/or the grantee does not ensure the required *FFP Project Contract Terms & Conditions (Contract Insertion)* document (Attachment FFP-03-03) is in the bid packet, the grantee may be required to repeat the bidding process for the contract. Contact the assigned DEHCR project representative to determine the implications and next steps to address the omission(s) and/or error(s). If the bidding for the project occurred prior to the release of the *FFP Project Contract Terms & Conditions (Contract Insertion)* document (Attachment FFP-03-03), the grantee must ensure all associated contracts and subcontracts are amended to include the required FFP language.

Refer to Chapter 7: *Labor Standards* of this *Handbook* for additional guidance on fair labor practices and labor standards pertaining to construction contractors.

8.3 Option #3 – Competitive Proposals Option [2 CFR Part 200.320(b)(2); 2 CFR Part 200.459]

Overview

DEHCR considers this procurement method best suited to obtaining professional services. This is typically conducted with more than one source submitting an offer, which results in a fixed-price, cost-reimbursement, or not-to-exceed type contract being awarded. It is generally used when conditions are not appropriate for the use of sealed bids. This method has two sub-parts:

1. The **Request for Proposals** (RFP), and
2. The **Request for Qualifications** (RFQ).

The review process for both statements of qualification and proposals should be thorough, uniform, and well documented. DEHCR prefers that this review be conducted by a committee, council or board which, to the extent possible, includes persons with technical skills relevant to the requests being sought.

Reviewers should have no potential COIs with the firms or individuals under review, such as family relationships, close friendships, or business partnerships. Grantees and subrecipients will maintain written standards of conduct governing the performance of their employees and officials engaged in the award and administration of contracts. No employee, officer, or agent of the grantee or subrecipient is to participate in the selection, awarding, or administration of a contract supported by federal funds if a COI, real or apparent, would be involved.

Evaluation criteria for reviewing competitive proposals should take into consideration:

- Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project;
- Past record of performance on contracts with the municipality and other clients, including quality of work, timeliness, and cost control;
- Capacity of the firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm; and
- Familiarity of the firm with the type of problems applicable to the project.

Request for Proposals (RFP)

Guidance and requirements for grantees and subrecipients using the RFP procurement method follow in this section.

- The *Request for Proposals* (RFP) must clearly and accurately state technical requirements for goods and services required. It should specify scope of services and the type of contract to be provided – cost reimbursement (also known as cost plus fixed fee), fixed price or per diem contract;
- The RFP also should specify the cost and pricing data required to support the proposed cost, anticipated start and completion dates, and evaluation criteria to be used in ranking proposals. The grantee or subrecipient should make available pertinent materials, such as reports, maps and site plans to assist the bidders in preparing proposals. For complicated projects, the grantee or subrecipient may wish to conduct a pre-bid conference to discuss the project, describe available materials and explain relevant FFP contract regulations;
- The RFP shall be “publicly noticed,” being made publicly available, e.g., posting on the grantee’s website, press releases and publishing in the newspaper, and/or posting on one or more professional association website(s), etc.), and to the maximum extent practicable, the grantee or subrecipient is to honor reasonable requests by parties to have an opportunity to compete;*
- Proposals shall be solicited from an adequate number of qualified sources, consistent with the nature and requirements of the procurement;
- The grantee or subrecipient must have written procedures for conducting the proposal technical evaluations and making selections; and shall conduct a technical evaluation of the submitted proposals following the written procedures to identify the responsible offers;
- The grantee or subrecipient shall award the contract to the most responsive, responsible contractor after price and other factors are considered through scoring the proposals according to the predetermined evaluation criteria specified in the RFP – the successful proposal/offer must clearly be the most advantageous source of the goods and services; and

- The grantee or subrecipient shall follow their local procurement policy(ies) in approving and executing the contract.

**The RFP may be sent to particular firms to encourage participation, in addition to making the RFP publicly available, but sending the RFP to the particular firms may not be in lieu of making the RFP publicly available.*

The [Request for Proposals \(RFP\) Template](#) (Attachment FFP-03-10) provided for this chapter by DEHCR serves as an example template for developing an RFP. It is not required (FFP grantees or subrecipients may use their own template), and requires modification and customization for the FFP project.

[Request For Qualifications \(RFQ\)](#)

For procurement involving architectural or engineering services, the grantee may use the *Request for Qualifications (RFQ)* competitive proposal procedure whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. **In these instances, price is generally NOT used as a selection factor.** The grantee should review and rank every statement of qualifications received.

Once the most-qualified firm is identified, only that firm is asked for a price proposal, which is subject to negotiation of a fair and reasonable price. If negotiations with the selected firm are unsuccessful, this process is repeated with the next highest-ranked firm, until a fair and reasonably priced contract can be awarded.

The qualifications-based (RFQ) competitive proposals method may not be used to purchase anything other than architectural and engineering services [[2 CFR Part 200.320\(b\)\(2\)\(iv\)](#)].

Note: The federal rule cited in the previous paragraph, relating to the procurement of architectural and engineering (A/E) services is quoted below:

The (grant) recipient or subrecipient may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used to procure architectural/engineering (A/E) professional services. The method may not be used to purchase other services provided by A/E firms that are a potential source to perform the proposed effort.

This language means that the Qualifications-based Procurement Method can be used only for A/E services. If an RFQ is issued, the competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

WARNING!

A *Request For Qualifications* (RFQ) cannot be used to purchase other types of services, even though A/E firms are potential sources to perform other types of services.

Guidance and requirements for using the RFQ procurement follow in this section.

- The *Request for Qualifications* (RFQ) must clearly and accurately state the qualifications submission content and format required.
- The RFQ also should specify relevant project details and evaluation criteria to be used in ranking qualifications submitted.
- The grantee may invite specific firms (must invite at least three (3)) to submit their qualifications, giving adequate notices for a response, but must also make the opportunity available to the public. The RFQ must be “publicly noticed,” being made publicly available (e.g., posting on the grantee’s website, press releases and publishing in the newspaper, and/or posting on one or more professional association website(s), etc.).
- The grantee is to the maximum extent practicable, honor reasonable requests by potential proposers to have an opportunity to compete.
- The grantee shall conduct a technical evaluation of the submitted qualifications to select the firm(s) to move forward with additional information and contract negotiations.
- The grantee shall award the contract on the basis of/with consideration for factors in the pre-established evaluation criteria set forth in the RFQ, and after satisfactory negotiations with the selected firm.
- The grantee shall document the basis for its determination of the most qualified competitor and the reasonableness of the contract price.
- The grantee shall follow its local procurement policy(ies) in approving and executing the contract.

The *Request for Qualifications (RFQ) Template* (Attachment FFP-03-11) provided by DEHCR for this chapter serves as an example template for developing an RFQ. It is not required (FFP grantees or subrecipients may use their own template), and requires modification and customization for the FFP project.

8.4 Option #4 – Non-Competitive Proposals/Sole Source Option [2 CFR Part 200.320(c)]

This method may be used only under very limited circumstances and **the grantee must obtain DEHCR approval before using this method**. When requesting approval to use this method, the grantee will have to demonstrate that another method of procurement was not feasible because:

- The item or service was only available from a single source;
- A public emergency or condition requiring urgency existed which did not permit the use of competitive procurement; or
- Competition was determined to be inadequate after solicitation of proposals from a number of sources.
- Refer to the guidance regarding sole bidders when using the competitive bid procurement method.

A request for a sole source procurement requires documentation that demonstrates one or more of the criteria above is/are met. For sole source *construction* contracting, the same items listed for “sole bidder” contracting within this chapter generally must be provided, as well as a detailed summary of how a “sole source” was verified. Some exceptions may apply. Similar documentation is required for *non-construction* sole source contracting. Typically, at least one and often two competitive procurement attempts must be made before sole source contracting would be considered for approval by DEHCR. Contact the assigned DEHCR project representative for additional guidance.

9.0 Subrecipients

A grantee must have their agreement with a subrecipient, if applicable, in writing and maintained in the FFP project file. The agreement should specify that the subrecipient is subject to the same procurement and contracting requirements as the grantee. There are exceptions to the requirements for certain types of contracting by non-governmental subrecipients. As examples, a subrecipient is generally subject to the same construction competitive bidding standards as FFP grantees, except if it is a non-government entity, DEHCR does not require the subrecipient to obtain a legal opinion verifying compliance with state laws that pertain to local and tribal governments when requesting sole bidder or sole source approvals; and the subrecipient is also not required to have the grantee’s governing body approve the construction contract prior to execution if the subrecipient is the contracting entity. However, having the grantee approve prime contracts is recommended, given the grantee is the responsible entity for compliance with the State. The grantee may require it as a term of its agreement with the subrecipient.

IMPORTANT NOTICE!

The grantee must have a written agreement with the subrecipient organization (if they have a grant subrecipient for their FFP project), signed by both parties, and maintain it in the FFP project file.

10.0 Records and Files

The grantee is required to retain FFP project procurement records in accordance with the requirements in Chapter 2: *Grant Administration* of this *Handbook*.

The grantee must establish procurement and contracting files and monitor the contracts to ensure that the contracts are completed in a satisfactory and timely manner.

The Procurement and Contracting records* must contain (if applicable):

- Grantee's local procurement policy;
- Descriptions of methods used to select consultants and contractors [e.g., Small Purchase/Simplified Acquisition, Request for Bids (RFB), Request of Qualifications (RFQ), Request of Proposals (RFP), sole source];
- Copies of quote requests (or quote source information and detailed item descriptions for quotes obtained online), RFB, RFQ and/or RFP documents used for soliciting responses from contractors/service providers, and related procurement correspondence/communications;
- Advertisement(s) for bids and/or proposals and proof of publication (as applicable);
- Quotes/bids/qualifications/proposals received and evaluation method(s) (e.g., quote review summary, bid tabulation detailed summary, qualifications review summary, proposal evaluation scoring summary, etc.);
- Cost/pricing comparison data/records;
- Record of the approval by the governing body of the quote/bid/qualifications/proposal accepted/selected (as applicable);
- Contract(s) for goods/services;
- COI related documentation (e.g., contractors' potential COI disclosure statements, local policy regarding COIs, local or tribal government public disclosure and review records [if applicable], legal opinion(s) [if applicable], related correspondence to DEHCR [if applicable], request(s) for waiver [if applicable], etc.);
- Records of SAM.gov [<https://sam.gov/content/home>] exclusion/debarment searches;

- Signed *Lobbying Certification* forms for all contractors; and
- Completed *Disclosure of Lobbying Activities* forms (as applicable).

The grantee may be asked to provide procurement documentation related to any or all contractors, suppliers and service providers applicable to the project at any time. Improperly procured services or goods will be deemed ineligible costs and DEHCR may deny payment or prohibit the costs from being counted towards the grantee's match funding for the FFP project.

11.0 Summary of Relevant Laws

Procurement and contracting laws governing public construction in Wisconsin include but are not limited to:

- Wisconsin State Statutes concerning advertising and bidding of public construction projects: [§ 66.0901](#) (general for all grantees and subrecipients); [§§ 59.52\(29\)-\(31\)](#) (county), [§ 60.47](#) (town), [§ 61.50](#) and [§ 61.54](#) through [§ 61.57](#) (village), and [§ 62.15](#) (city); and [ch. 985](#).

Procurement, contracting, and related records retention laws governing federal FFP projects include but are not limited to:

- Code of Federal Regulations: [2 CFR Part 200 Subpart D \(2 CFR Part 200.317 - 2 CFR Part 200.327\)](#); [2 CFR Part 200.334 – 2 CFR Part 200.338](#).

Refer to Chapter 6: *Equal Opportunity* and Chapter 7: *Labor Standards* of this *Handbook* for additional relevant laws for contracting.

12.0 Contract Language and Forms

All prime contracts and subcontracts for the FFP project, regardless of funding source and type of services provided, whether they are for construction or non-construction activities, including professional services, installation services, and other services, must be in writing and include certain language regarding FFP requirements compliance. The required FFP compliance language that must be in/part of all prime contracts and subcontracts is provided in the *FFP Project Contract Terms & Requirements* contract insertion (Attachment FFP-03-03), available on the [Handbook website](#). Inclusion of the required regulatory language and clauses only by reference to the prime contract or regulatory citation is NOT acceptable.

Contract provisions include language pertaining to:

- Uniform cost principles
- SAM.gov contractor clearance and checking for contractor debarment

- Conflicts of interest
- Lobbying restrictions and disclosure of lobbying activities
- Environmental laws, Solid Waste Disposal Act, Clean Air Act
- Protections for Whistleblowers
- Encouraging seat belt use
- Reducing text messaging while driving
- Publications specifications
- Participation by small businesses, minority-owned business enterprises (MBEs), woman-owned business enterprises (WBEs), disabled veteran-owned businesses (DVBs), and labor surplus area businesses.
- Civil Rights and equal opportunity compliance
- Fair labor practices, fair wages and labor standards
- Prohibition on certain telecommunications and video surveillance services or equipment
- Domestic preference in purchasing goods, products, or materials per [2 CFR Part 200.322](#) (*Note: While the Build America Buy America [BABA] requirements do not apply unless required by another funding source, the grantee and contractors are still subject to certain domestic preference standards.*)
- Contract termination clauses

13.0 Chapter Attachments List

Attachments for Chapter 3 of the *FFP Implementation Handbook* are listed below. The forms and templates are available in editable or 'fillable' format on the *FFP Implementation Resources website* under the "Chapter Attachments/Fillable Forms" section.

ATTACHMENT FFP-03-01	POTENTIAL CONFLICT OF INTEREST DISLCOSURE FORM (TEMPLATE)
ATTACHMENT FFP-03-02	OVERVIEW OF PROCUREMENT METHODS
ATTACHMENT FFP-03-03	FFP PROJECT CONTRACT TERMS & CONDITIONS (CONTRACT INSERTION)
ATTACHMENT FFP-03-04	LOBBYING CERTIFICATION FORM
ATTACHMENT FFP-03-05	DISCLOSURE OF LOBBYING ACTIVITIES FORM (STANDARD FORM LLL)
ATTACHMENT FFP-03-06	FFP PROJECT SITE SIGN
ATTACHMENT FFP-03-07	FFP ADVERTISEMENT FOR BIDS (TEMPLATE)
ATTACHMENT FFP-03-08	PROCUREMENT POLICY EXAMPLES
ATTACHMENT FFP-03-09	REQUEST FOR NON-COMPETITIVE PROCUREMENT OF PROFESSIONAL SERVICES FORM
ATTACHMENT FFP-03-10	REQUEST FOR PROPOSALS [RFP] (TEMPLATE)
ATTACHMENT FFP-03-11	REQUEST FOR QUALIFICATIONS [RFQ] (TEMPLATE)

14.0 Chapter Revision History

12/12/2024:

- Original chapter released.

1/31/2025:

- Pages 19-21: Section 8.1. Added requirements and guidance for procurement through piggybacking/using an existing State agency's/entity's procurement and contracting in lieu of conducting a separate procurement process.

5/27/2025:

- Page 21: Section 8.2. Revised text under second bulleted item by adding, "at least" and Wis. Stat. § 985.01(1m)(a) and Wis Stat. § 985.07(2) citation links. Revised last sentence in the same paragraph to specify, "...(*i.e.*, the date of the "act or event") is counted (per Wis. Stat. § 985.09)."

8/21/2025:

- Page 7: Section 2.2. Combined #9 and #10, which also reduced the numbered items from 16 to 15 for the potential conflict of interest review process.
- Page 11: Section 5.0. Revised text from "services provide" to "services provided" in item (b).

10/28/2025:

- Page 31: Section 12.0. Corrected Attachment FFP-03-03 reference number; and added text from Chapter 7 – Section 6.0 and additional guidance regarding all contracts needing to be in writing, and the inclusion of Attachment FFP 03-03 in subcontracts by reference-only being insufficient for compliance.