

VOLUNTARY ACQUISITION PROCESS

1.0 General Requirements for Acquisition & Relocation

As specified in the *Flexible Facilities Program (FFP) Grant Announcement* and award letter, and *Chapter 5: Acquisition & Relocation* of the *FFP Implementation Handbook*, FFP grantees, subrecipients and any entity acquiring real property for the FFP project are subject to the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (49 CFR § 24)*, also referred to as the URA). Real property acquisition (including easements) may only be completed after (i.e., the property purchase/closing cannot be finalized until) the grant agreement is fully executed and the *Environmental Report* is certified by DEHCR, to be an eligible cost paid (or reimbursed) with FFP funds. DEHCR recommends no acquisition for a FFP project to be completed until the grant agreement is fully executed and the *Environmental Report* (Attachment FFP-04-01 of Chapter 4 of the *FFP Implementation Handbook*) is certified by DEHCR, regardless of funding source. Contact the assigned DEHCR Project Representative to discuss exceptions for consideration.

Construction on the property cannot begin until the acquisition is complete/property closing and title/deed transfer is finalized.

Refer to Chapter 5: Acquisition & Relocation of the *FFP Implementation Handbook* for additional information on the applicable state and federal regulations, term definitions, conflicts of interest, and general standards for notices.

Important Reminder: A real property or easement acquisition may only be completed after (i.e., the property purchase/closing cannot be finalized until) the grant agreement is fully executed and the Environmental Review is certified by DEHCR to be an eligible cost paid (or reimbursed) with FFP funds. DEHCR recommends no acquisition for a FFP project to be completed until the grant agreement is fully executed and the Environmental Review is certified by DEHCR, regardless of funding source.

2.0 Criteria for Voluntary Acquisition

There can be no threat of eminent domain or condemnation when acquisition is undertaken as voluntary. Additional requirements apply under the URA. The requirements of *49 CFR 24.101(b)(1)-(5)*, which are summarized in the list that follows, must be satisfied for a transaction to be considered a voluntary acquisition. If not all criteria are met, the acquisition is deemed involuntary, for which additional requirements apply. Contact the assigned DEHCR Project Representative for guidance on involuntary acquisition.

The URA recognizes three general types of purchases which can be voluntary:

1. Purchases where the buyer has the power of eminent domain, but agrees that it will not condemn the property if an agreeable purchase price cannot be reached, and the acquisition meets the URA criteria listed in this document (and Chapter 5 of the *Handbook*);
2. Purchases in which the buyer does not have the power of eminent domain (e.g., non-profits, private developers, etc.); and
3. Purchases of government property (federal, state, local) in which the buyer does not have the power of eminent domain. For example, if a non-profit organization offers to purchase a piece of property from the government entity and with FFP funds.*

**Government entities are not covered under the protections of the URA as sellers of property, so the URA requirements would not apply to the acquisition activities for the property if the seller is a government entity.*

However, the URA relocation requirements would still apply for tenants, if any are on the property being acquired.

In addition, for buyers with eminent domain authority (e.g., local governments), the acquisition only qualifies as voluntary if all the following criteria are also met:

- No specific site is needed and multiple property options are available to acquire for the project site;
- The property is not part of an intended, planned, or designated project area where other properties will be acquired within specific time limits;
- The buyer informs the owner in writing of the property's market value; and
- The buyer informs the owner in writing that the property will not be acquired, through condemnation, if negotiations do not reach an amicable agreement.

A common misconception is that a “willing seller” or “amicable agreement” means a transaction is “voluntary.” This is not necessarily true under the URA and the applicable requirements of [49 CFR §§ 24.101\(b\)\(1\)-\(5\)](#) (as summarized above) must be satisfied for a transaction to be considered a voluntary acquisition for purposes of the URA.

For buyers without eminent domain authority, the acquisitions are voluntary and the following is required under the URA:

- The buyer must notify the owner in writing of the property’s market value; and
- The buyer must notify the owner prior to making an offer that it will not acquire property if an amicable settlement cannot be reached.
- If any tenants occupy (or have possessions on) the property, the buyer must comply with applicable federal and state relocation regulations and requirements pertaining to tenant-occupants.

3.0 Relocation Applicability (Tenants Only)

An owner does not have relocation rights and is not eligible for relocation assistance in a voluntary acquisition, but tenants have relocation rights and may be eligible for relocation assistance. Tenant-occupants are eligible for relocation assistance in a voluntary acquisition if deemed displaced persons. The grantee/buyer may offer relocation assistance to an owner as part of negotiations for a voluntary acquisition, but federal funds may not be used for a relocation payment to an owner when the acquisition is voluntary.

4.0 Voluntary Acquisition Process

The grantee/buyer must complete the processes deemed applicable among those presented in this section, and should consult legal counsel to ensure all applicable state and federal laws are followed (the guidance below is not meant to be and should not be interpreted as legal advisement from DEHCR).

NOTE: The order in which Steps #2-8 are completed may vary, depending on when the grantee/buyer determines the property will be acquired and when the grantee/buyer becomes aware of tenants or displaced persons (excluding the property owner). Certain notices to the property owner(s) and tenant(s) may be combined. If the acquisition for property for the FFP project site occurred without completing the requirements below, contact the assigned DEHCR Project Representative to determine whether the project site is eligible for the FFP project.

Refer to the “General Standards for All Notices” within Chapter 5 of the [Handbook](#) regarding specifications for notices and record keeping requirements.

1. Notice to DEHCR

The DEHCR Project Representative must be notified prior to starting the acquisition/relocation process and the start of construction if acquisition and/or relocation will occur as part of a project. Complete and submit the *Notice of Acquisition/Relocation to DEHCR*.

2. Determination of Fair Market Value

The current fair market value (FMV) of the property must be determined and the owner must be informed of the FMV (in the initial notice to the owner referenced below). The FMV of the property may be obtained via formal appraisal by a licensed appraiser, but a formal appraisal is not required for a voluntary acquisition. The grantee/buyer may obtain a determination of the FMV from a person with knowledge of/expertise in the current local real estate market in lieu of obtaining an appraisal. The “assessed” value of property based on a tax assessment is not necessarily the FMV. The value must be based on current real estate market information. The source and method of the FMV determination records must be maintained in the project file.

3. Informational Notice (Initial Notice to Owner)

As soon as feasible and prior to negotiations, the grantee/buyer must notify the owner in writing of the grantee’s/buyer’s interest in acquiring the real property and the basic protections provided to the owner by law.

When the buyer is an agency/entity with eminent domain authority (e.g., a local government), then this notice should include the following:

- A property value amount based on the current fair market value (FMV) determination. The sale price may be negotiated, but the owner must be informed of the current FMV. Provide the source/basis of the FMV determination.
- A clause that states the buyer possesses eminent domain authority; however, in the event the owner is not interested in selling their property, or if the owner cannot reach an amicable purchase agreement, the buyer will NOT pursue its acquisition under eminent domain.
- A clause stating that the property is not a necessary part of the proposed project.
- A clause stating that the property is not part of an intended, planned, or designated project area where substantially all the property within the area is to be acquired.
- Notification that owner occupants who move as a result of a voluntary acquisition are NOT eligible for relocation assistance, but tenants do have relocation rights and may be eligible for relocation assistance.
- A contact name, title, address, email address (optional) and telephone number for a person who can answer questions.
- Providing the applicable publications listed in #4, “Brochures,” below may be provided with the initial informational notice to the property owner or provided separately.

Refer to the *Informational Notice to Owner for Voluntary Acquisition* letter template for guidance on the required language for this type of notice. Contact the assigned DEHCR Project Representative for a copy of the *Informational Notice to Owner for Voluntary Acquisition* letter template.

When the buyer is an agency/entity without eminent domain authority, this notice should include the following:

- A property value amount based on the current FMV determination. The sale price may be negotiated, but the owner must be informed of the current FMV. Provide the source/basis of the FMV determination.

- A clause that states the agency does not have eminent domain authority and in the event that an amicable purchase agreement cannot be reached, the agency will not pursue the acquisition.
- Notification that owner occupants who move as a result of a voluntary acquisition are NOT eligible for relocation assistance, but tenants do have relocation rights and may be eligible for relocation assistance.
- A contact name, title, address, email address and telephone number for a person who can answer questions.
- The applicable publications listed in #4, “Brochures,” below may be provided with this initial informational notice to the property owner or provided separately.

Additional Notices To Tenants:

While property owners are not eligible for relocation assistance using federal funds for voluntary acquisition, notice of relocation rights must be given to any tenants. The buyer must consult with the property owner and URA and State regulations to make the determination of whether any persons will qualify as tenants, for which the additional notices apply. Contact the assigned DEHCR Project Representative for additional guidance if there are any individuals or entities (businesses, farms, other commercial/non-residential entities) that are ‘tenants’ on the property who have a home, business, or other personal property on the real property to be acquired for the FFP project.

4. Brochures to Owners and Notices & Brochures to Tenants

The grantee/buyer must determine the applicable brochures that must be provided to the owner(s) and tenant(s) (if applicable). The brochure(s) may be sent with the initial informational notice to the property owner(s) and tenant(s) (recommended) or provided separately but must be provided prior to the initiation of negotiations.

The grantee/buyer must consult with the property owner to make the determination of whether any persons will qualify as “displaced tenants” who must be provided with relocation rights brochure(s) and applicable notices. The State has developed brochures to be provided to potential sellers and tenants during the acquisition/relocation process. The grantee/buyer is required to provide the applicable Wisconsin State brochure(s).

Acquisition

State Acquisition Brochures:

Regardless of the type of funds used (federal, state, local) at any stage of a publicly funded project, a displacing grantee/public agency with eminent domain authority in Wisconsin is **required** to provide the applicable state acquisition brochure(s) listed below:

Transportation [Wis. Stat. § 32.05(2)(a)] Projects:

- [*The Rights of Landowners Under Wisconsin Eminent Domain Law, Procedures Under § 32.05 Wisconsin Statutes; Street, Utility, Airports*](#)

Other than Transportation [Wis. Stat. § 32.06(2a).] Projects:

- [*The Rights of Landowners Under Wisconsin Eminent Domain Law, Procedures Under § 32.06 Wisconsin Statutes*](#)

Relocation

For voluntary acquisition, when there are any residential tenants or business tenants (including businesses, farms, non-profits, and other non-residential and non-governmental entities) *will or potentially will* be displaced as a result of the acquisition or associated project, the buyer is **required** to provide the applicable State relocation brochure(s) to the property owner and tenants. The applicable relocation brochure(s) must be provided to the affected persons prior to the initiation of negotiations for the acquisition:

- [Wisconsin Relocation Rights Residential](#)
- [Wisconsin Relocation Rights for Businesses, Farm and Nonprofit Organizations](#)

The state acquisition and relocation brochures are provided in English, Spanish, and Hmong languages on the [State Relocation website](https://doa.wi.gov/Pages/AboutDOA/RelocationAssistance.aspx) [https://doa.wi.gov/Pages/AboutDOA/RelocationAssistance.aspx], managed by DOA Legal Services.

Refer to the [State Relocation website](#) and the *Relocation Planning & Process* document (Attachment FFP-05-04 for Chapter 5 of the *Handbook*) for guidance on the state relocation brochure and notice requirements.

5.0 RELOCATION PLANS AND PROCESSES

For voluntary acquisition, while property owners are not eligible for relocation assistance, tenant-occupants who will or potentially will be displaced as a result of a voluntary acquisition or the associated project may be entitled to relocation assistance and must be so informed. The relocation processes may begin earlier in the acquisition process. The grantee is to proceed with the Relocation Plan and relocation planning processes as soon as it is known that any tenants (or their possessions) are on the property to be acquired and the tenant(s) will or potentially will experience displacement as a result of the acquisition or associated project.

If relocation will be or may be required for the FFP project, the grantee must complete and file the Relocation Plan with and receive approval in writing from DOA Division of Legal Services before proceeding with the initiation of negotiations. Templates for the Relocation Plan may be accessed on the [State Relocation website](#). The grantee must also complete the required relocation processes for tenant-occupants who will or potentially will be displaced.

1. Notice of Intent to Acquire (if Tenant Relocation is required)

If tenant relocation is required, a Notice of Intent to Acquire must be issued to trigger relocation eligibility. Please contact the assigned DEHCR Project Representative for guidance on actions required for relocation rights/assistance for tenants who will be displaced tenants as a result of the voluntary acquisition. The Intent to Acquire notice may be combined with the initial informational notice or other notices associated with relocation.

2. Negotiations

A written offer to purchase generally serves as the initiation of negotiations. However, the date of a verbal monetary offer to purchase authorized by the acquiring buyer must be considered as initiation of negotiations to establish eligibility for a relocation benefit.

Proceed with negotiations with the property owner(s) to determine a mutually agreed upon sale price and any other terms of the sale, if applicable. Maintain any documentation associated with the negotiations process in the FFP project file.

3. Determination of Final Offering Price

Determine the final offering price after negotiations with the property owner(s) are complete and a mutually agreed upon sales price and any other terms of the sale are settled. Maintain any documentation associated with the negotiations process in the FFP project file. Any amount above the FMV cannot be paid with FFP funds and must be paid by the grantee/buyer (using non-Federal funds).

4. Official Determination/Approval To Acquire

The grantee must make an official determination to acquire the property and approve the purchase price (if the grantee is the buyer). Record of the grantee's actions must be in the acquisition file for the FFP project. If a subrecipient is the buyer rather than the grantee, an official determination from the grantee is not required but recommended, due to the grantee being the responsible entity for the expenditure of grant funds.

5. Purchase Agreement and Title Transfer

Upon finalizing negotiations, a written agreement for the purchase of property with the purchase terms and amount must be executed, signed by the seller and buyer. The purchase agreement must be in writing and include details of the property and purchase amount. Provide a copy of the executed purchase agreement to the seller. The signed purchase agreement and records of the financial transaction and title transfer must be maintained in the acquisition file for the FFP project. *[Note: If the acquisition is to be paid/reimbursed with any FFP funds, the grant agreement must be fully executed, and the Environmental Review must be certified by DEHCR prior to the acquisition purchase being completed/closed. Construction cannot begin on any property until the acquisition is complete (i.e. after the purchase is completed and the deed/title is transferred).]*

6. Records of Notices

Refer to the "General Standards for All Notices" section within Chapter 5 of the *FFP Implementation Handbook* regarding specifications for notices and record keeping requirements. Note that in addition to all correspondence and records of communication with owners and tenants (and/or their designated authorized representative), the case file must include the records of the method of delivery of the required acquisition and/or relocation notice(s) [which must be via official certified or registered First Class mail, return receipt requested, or personal delivery, *unless* they voluntarily agree to receive notices electronically] to owners and tenants (and/or their designated authorized representative), as applicable; the date of delivery; and signed confirmation of receipt (e.g., signed official mail returned receipt or signed statement(s) of acknowledgement of receipt from the owner(s)/tenant(s) that specify(ies) the type/nature/title(s) of the document(s) received and date of receipt; or the electronic tracking information document(s) and electronic signature that are date- and time-stamped for electronic delivery). If additional optional notices are provided using other methods of delivery, the copies of the notices, method(s) of notice(s) (e.g., newspaper(s) or other publication(s), online/website publication(s), posting(s) at central location(s) within the community, etc.) and the date(s) of the notice(s) must also be in the case file. These additional methods of notices are allowed as supplemental optional efforts but *cannot* be *in lieu* of the required personal delivery or certified/registered mail delivery, or electronic delivery if voluntarily agreed upon by the intended recipient.

7. Recordkeeping in Project File

All documentation for the acquisition process must be maintained in the FFP project acquisition file. A separate file for each property acquisition and each relocation case must be maintained. Refer to *Wis. Admin. § 92.20* and Chapter 2: *Grant Administration* and Chapter 5: *Acquisition & Relocation* of the *Handbook* for guidance on the records to be maintained and retained. The grantee must also complete an *Acquisition/Relocation Monitoring Checklist* (Attachment FFP-05-11 for Chapter 5 of the *Handbook*) as part of the monitoring process when DEHCR monitor's the grantee's project during the performance period.