

**PROCUREMENT POLICY FOR
EXPENDITURE OF FEDERAL FUNDS
MANITOWOC COUNTY, WISCONSIN**

PURPOSE

The purpose of this Policy is to establish guidelines that meet or exceed the procurement requirements for purchases of goods, services, and construction or repair projects when federal funds are being used in whole or in part to pay for the cost of the contract.

GENERAL PROCUREMENT STANDARDS

[\$ 200.318]

A. Responsibility and Oversight *[\$ 200.318(b)]*. Manitowoc County staff is responsible for developing all contracts in accordance with the policy, applicable state statutes, and in conformance with applicable Federal Law and Uniform Guidance Standards, to ensure a full awareness and understanding by affected employees. The department head in charge of any approved contract will oversee that contractors perform in accordance with the terms, conditions, and specifications of their contracts and purchase orders.

B. Conflicts of Interest *[\$ 200.318(c)(1)]*. No employee, officer, or agent of Manitowoc County shall participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of Manitowoc County shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, unless the financial interest is not substantial or the gift is an unsolicited item of nominal value. Disciplinary actions shall be applied for violations of such standards by officers, employees, or agents of Manitowoc County.

C. Procurement Under Federal Awards *[\$ 200.318(d) through (k)]*. Procurement of goods and services whose costs are charged to federal awards received by Manitowoc County shall be subject to the following policies:

1. Manitowoc County shall avoid acquisition of unnecessary or duplicative items. When feasible, consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. *[\$ 200.318(d)]*.

2. Where appropriate, Manitowoc County will make an analysis of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. *[\$ 200.318(d)]*.

3. Manitowoc County may consider entering into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services. *[\$ 200.318(e)]*.

4. Manitowoc County may use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. [§ 200.318(f)].

5. Manitowoc County may use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reduction. [§ 200.318(g)].

6. Manitowoc County shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. [§ 200.318(h)].

7. Manitowoc County shall maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. [§ 200.318(i)].

8. Manitowoc County may use time and material type of contracts only after the department director determines that no other contract is suitable. Time and material contracts shall have a “not to exceed price” where the contractor exceeds at its own risk. Further, the department director shall assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. [§ 200.318(j)(1) and (2)].

9. Manitowoc County shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. [§ 200.318(k)].

COMPETITION

[§ 200.319]

A. Full and Open Competition [§ 200.319(a) and (b)]. Manitowoc County shall conduct all procurement transactions in a manner providing full and open competition and which is consistent with the standards of 2 C.F.R. § 200.319 and 320. Situations considered to be restrictive of competition include, but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business;
2. Requiring unnecessary experience and excessive bonding;
3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive contracts to consultants that are on retainer contracts;
5. Organizational conflicts of interest;

6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurements; and

7. Any arbitrary action in the procurement process.

B. Contractor’s Conflict of Interest [§ 200.319(b)]. Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals shall be excluded from competing for such procurements.

C. Geographic Preference [§ 200.319(c)]. When federal funds are involved, Manitowoc County prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. Notwithstanding the foregoing, when contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

D. Procurement Standards [§ 200.319(d)]. As applicable, all solicitation for projects using federal funds shall:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand that must be met by offers must be clearly stated; and

2. Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

E. Prequalification Lists [§ 200.319(e)]. All prequalified lists of persons, firms, or products used in acquiring goods and services shall be current and include enough qualified sources to ensure maximum open and free competition. Manitowoc County shall not preclude potential bidders from qualifying during the solicitation period.

F. Noncompetitive Procurements [§ 200.319(f)]. Manitowoc County shall only award noncompetitive procurements in accordance with 2 C.F.R. § 200.320 and the “Methods of Procurement” section of this policy.

METHODS OF PROCUREMENT

[§ 200.320]

Manitowoc County shall use one of the following methods of procurement for the acquisition of property or services required under a federal award or sub-award.

A. Informal Procurement Methods [§ 200.320(a)].

1. Micro-purchases [§ 200.320(a)(1)]. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000 or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act. Procurement by micro-purchase shall meet the following guidelines:

i. Distribution [§ 200.320(a)(1)(i)]. To the extent practicable, Manitowoc County will distribute micro-purchases equitably among qualified suppliers.

ii. Micro-purchase Awards [§ 200.320(a)(1)(ii)]. Micro-purchases may be awarded without soliciting competitive quotations if Manitowoc County considers the price to be reasonable based on research, experience, purchase history, or other applicable information.

2. Small Purchases [§ 200.320(a)(2)]. Procurement by small purchase is the acquisition of supplies or services where the aggregate dollar amount is more than the micro-purchase threshold (*i.e.* \$10,000) but does not exceed \$250,000 or \$750,000 in the case of acquisitions used to facilitate defense against or recovery from cyber-attack. Procurement by small purchase shall meet the following guideline:

i. When using the small purchase method of procurement, Manitowoc County shall obtain price or rate quotations from an adequate number of qualified sources. [§ 200.320(a)(2)(i)].

B. Formal Procurement Methods [§ 200.320(b)]. When the value of the procurement for property or services under a federal financial assistance award exceeds the small purchase threshold, Manitowoc County shall use one of the formal procurement methods below.

1. Sealed Bids [§ 200.320(b)(1)]. The sealed bid procurement method is one in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the lowest responsible bidder whose bid conforms with all the material terms and conditions of the invitation for bids. Generally, the sealed bid method is the preferred method for procuring construction.

i. For sealed bidding to be feasible, the following conditions should be present [§ 200.320(b)(1)(i)]:

(a) A complete, adequate, and realistic specification or purchase description;

(b) Two or more responsible bidders that are willing and able to compete effectively for the business; and

(c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

ii. If sealed bids are used, the following requirements shall apply [*§ 200.320(b)(1)(ii)*]:

(a) Bids shall be solicited from an adequate number of qualified sources, providing sufficient response time before the date set for opening the bids;

(b) The invitation for bids shall be publicly advertised;

(c) The invitation for bids, which shall include any specifications and pertinent attachments, shall define the items or services for the bidder to properly respond;

(d) All bids shall be publicly opened at the time and place prescribed in the invitation for bids;

(e) A firm fixed price contract award shall be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts shall only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(f) Any or all bids may be rejected if there is a sound documented reason.

2. Proposals [*§ 200.320(b)(2)*]. The proposal procurement method is one in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. If sealed bids are used, the following requirements shall apply:

(i) Requests for proposals shall be publicized and identify all evaluation factors and their relative importance [*§ 200.320(b)(2)(i)*];

(ii) Proposals shall be solicited from an adequate number of qualified sources [*§ 200.320(b)(2)(i)*];

(iii) Any response to publicized requests for proposals shall be considered to the maximum extent practical [*§ 200.320(b)(2)(i)*];

(iv) The department responsible for issuing the request for proposal shall have a written method for conducting technical evaluations of the proposals received and for selecting recipients [*§ 200.320(b)(2)(ii)*];

(v) Contracts shall be awarded to the responsible firm whose proposal is most advantageous to Manitowoc County, with price and other factors considered [*§ 200.320(b)(2)(iii)*]; and

(vi) Manitowoc County may use the competitive proposal procedure for qualifications-based procurement of architectural/engineering (“A/E”) professional services, whereby competitors’ qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, can only be used in the procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed project [§ 200.320(b)(2)(iv)].

C. Noncompetitive Procurement. [§ 200.320(c)]. Noncompetitive procurement shall be used only if one or more of the following circumstances apply:

1. The item is available only from a single source;
2. Public exigency or emergency will not permit a delay resulting from competitive solicitation;
3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from Manitowoc County; or
4. After solicitation of a number of sources, competition is determined inadequate.

**CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES,
AND LABOR SURPLUS AREA FIRMS**
[§ 200.321]

Manitowoc County shall take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include the following:

1. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs 1. through 5. of this section.

DOMESTIC PREFERENCE

[\S 200.322]

To the extent consistent with law, Manitowoc County shall, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section shall be included in all contracts and purchase orders for work or products under a federal award.

RECOVERED MATERIALS

[\S 200.323]

Manitowoc County and its contractors shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. The decision not to procure such items shall be based on a determination that such procurement items: (a) are not reasonably available within a reasonable period of time; (b) fail to meet the performance standards set for the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or (c) are only available at an unreasonable price.

CONTRACT COST AND PRICE

[\S 200.324]

A. Cost Analysis *[\S\S 200.324(a) and (c)]*. Manitowoc County shall perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold as defined in 2 C.F.R. § 200.1 and 48 C.F.R. Part 2, subpart 2.1 (“Simplified Acquisition Threshold”) including contract modifications. The method and degree of analysis shall be dependent on the facts surrounding the particular procurement situation, but as a starting point, Manitowoc County shall make independent estimates before receiving bids or proposals. Costs or prices based on estimated costs for contracts under the federal award shall be allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for Manitowoc County under 2 C.F.R. Part 200, subpart E (“Cost Principles”). Manitowoc County may reference its own cost principles that comply with the federal cost principles.

B. Profit *[\S 200.324(b)]*. Manitowoc County shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed. To establish a fair and reasonable profit, consideration shall be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor’s investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

C. Procurement by Cost Plus Percentage [§ 200.324(d)]. Manitowoc County shall not use either the “cost plus a percentage of cost” or the “percentage of construction cost” method of contracting.

AGENCY REVIEW
[§ 200.325]

A. Technical Specifications [§ 200.325(a)]. Manitowoc County shall make available, upon request of the federal awarding agency or pass-through entity, technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.

B. Pre-procurement Review [§ 200.325(b)]. Manitowoc County shall make available upon request for pre-procurement review by the federal awarding agency or pass-through entity procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

1. Manitowoc County’s procurement procedures or operation fails to comply with the procurement standards in this part;

2. The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

3. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;

4. The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

BONDING
[§ 200.326]

For construction or facility improvement contracts that exceed the Simplified Acquisition Threshold, Manitowoc County shall require, at a minimum, the following:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified [§ 200.326(a)];

2. A performance bond from the contractor for 100 percent of the contract price. The “performance bond” shall be executed in connection with the contract to secure fulfillment of all the contractor’s requirements under such contract [§ 200.326(b)]; and

3. A payment bond from the contractor for 100 percent of the contract price. The payment bond shall be executed in connection with the contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract [§ 200.326(c)].

CONTRACT PROVISIONS

[§ 200.327]

As applicable, contracts made by Manitowoc County, along with all related subcontracts, shall contain the following provisions:

A. Remedies [§ 200 Appendix II (A)]. All contracts in excess of the Simplified Acquisition Threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such sanctions and penalties as appropriate.

B. Termination [§ 200 Appendix II (B)]. All contracts in excess of \$10,000 shall contain suitable provisions for termination for cause and for convenience, including the manner by which termination shall be effected and the basis for settlement.

C. Equal Employment Opportunity [§ 200 Appendix II (C)]. All contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. Part 60-1.3 shall include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339) as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as implemented by regulations at 41 C.F.R. Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

D. Davis-Bacon Act, as Amended (40 U.S.C. §§ 3141-3148) [§ 200 Appendix II (D)]. When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by Manitowoc County shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors shall be required to pay wages not less than once a week. Manitowoc County shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract shall be conditioned upon the acceptance of the wage determination. Manitowoc County shall report all suspected or reported violations to the federal awarding agency. The contracts shall also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). Manitowoc County shall report all suspected or reported violations of the Copeland “Anti-Kickback” Act to the federal awarding agency.

E. Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708) [§ 200 Appendix II (E)]. Where applicable, all contracts awarded by Manitowoc County in excess of \$100,000 that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). The requirements of 40 U.S.C. § 3704 shall be applicable to construction work and shall provide that no laborer or mechanic is required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

F. Rights to Inventions Made Under a Contract or Agreement [§ 200 Appendix II (F)]. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and Manitowoc County wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under that “funding agreement,” Manitowoc County shall comply with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

G. Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 -1387), as Amended [§ 200 Appendix II (G)]. Contracts in excess of \$150,000 shall contain a provision that requires the contractor to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251–1387). Violations shall be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

H. Debarment and Suspension (Executive Orders 12549 and 12689) [§ 200 Appendix II (H)]. Manitowoc County shall not make a contract award to any party listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), “Debarment and Suspension.”

I. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) [§ 200 Appendix II (I)]. Contractors that apply or bid for an award exceeding \$100,000 shall file the required Byrd Anti-Lobbying certification. Each tier shall certify to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

I. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment [§ 200 Appendix II (K)]. Manitowoc County shall not procure or enter into a contract to procure equipment, services, or systems that use telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) as a substantial or essential component of any system, or as critical technology as part of any

system.. Further, Manitowoc County shall not procure or enter into a contract to procure video surveillance or telecommunications equipment and services produced or provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Additionally, Manitowoc County shall not procure or enter into a contract to procure video surveillance equipment or telecommunications or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Adopted by Manitowoc County Board: December 21, 2021