

Waivers: Common Pitfalls & Bad Habits

Presenter by Matt Limoges, SBOP

Waivers: Common Pitfalls & Bad Habits

- This session will cover some of the more prevalent instances in which the State Bureau of Procurement will ask for edits to a Waiver request
- The good news is that the majority of requests are reviewed and approved based on their original submission
- Let's start with some background on the process

The Basics of a Waiver

- A waiver is approval to contract directly with supplier(s) without first completing a competitive bidding/proposal process
- Two types of waivers: general and sole source
- Waivers are typically requested for one of the following reasons:
 - Uniqueness
 - Patent/proprietary
 - Intrinsic value
 - Emergency
 - Substantial time pressure

Waiver Types: General & Sole Source

General Waiver

- Multiple vendors
- Maximum one year

Sole Source Waiver

- Available only from one source
- No maximum contract length

General Waiver:

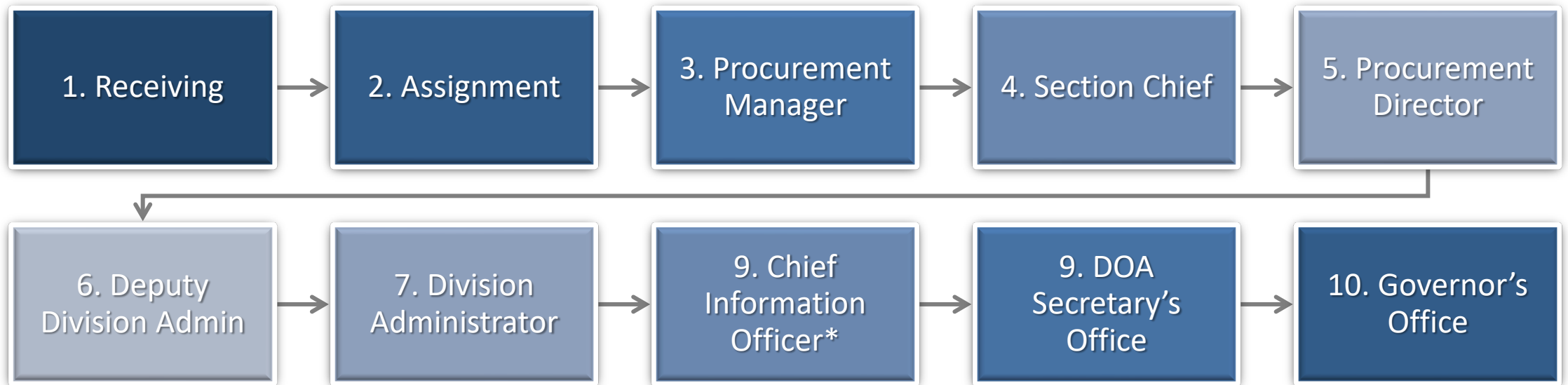
The Department of Administration (DOA), State of Bureau of Procurement (SBOP) requests a general waiver from the competitive bid process to establish contracts with prequalified companies to provide COVID-19 related testing services for use by agencies and campuses throughout the State of Wisconsin. The requested contract period is for one year with a total estimated spend not to exceed \$300,000,000. Previous approval for these services was granted under Governor's Case No. TE0415 (attached).

Sole Source Waiver:

The Wisconsin Department of Corrections (DOC) requests a sole source waiver to extend a contract with SkyGen for third party administrator (TPA) services for DOC inmate medical bill processing and payment. This waiver request is for one year from March 1, 2021, through February 28, 2022, and will not exceed \$35,000,000.

Waiver Process

Every Request for Purchasing Authority (RPA) for a waiver of the bidding process follows this approval procedure:



*IT requests only

State Bureau of Procurement's Role

- The State Bureau of Procurement is responsible for reviewing requests and drafting a brief statement (Case Letter) that contains:
 - Basics of the request
 - Types of waiver
 - Estimated cost of waiver
 - Length of the requested contract
 - Justification
 - Why the competitive bidding process cannot be used
 - Why the program area needs the requested purchase
 - What happens if a waiver is not approved

Remember...

- Every Waiver request goes to the Governor's office for approval
- SBOP will make sure that all details are correct before moving on to the subsequent approvers
- SBOP views that any request that gets returned to SBOP for other edits is a failure of our role
- SBOP will ask for things to be clarified for agencies that may not seem like a big deal to the agency, but we need all details locked down before we approve them forward

Common Pitfalls & Bad Habits

1) Details not matching throughout the request

- This is the most common pitfall SBOP comes across on all agency requests
- If there's a difference in details from the DOA-3046 and the request in the tool, we will ask a clarifying question

STATE OF WISCONSIN
 DEPARTMENT OF ADMINISTRATION
 DOA-3046 (R09/2021)
 S. 16.72 WIS. STATS



STATE BUREAU OF PROCUREMENT
 101 EAST WILSON STREET, 6TH FLOOR
 P. O. BOX 7867
 MADISON, WI 53707-7867

Request for Purchasing Authority (RPA)

Instructions: Attach the completed form to the online RPA request at <https://rpa.wi.gov>. Unless otherwise noted, complete all sections of this form. Only complete Section 6 if applicable. Complete section 9 (RPA Checklist) at the end of this form to ensure all applicable, required components of the RPA are included.

Section 1: General Information		
Agency Requesting RPA:		Agency Business Unit Number:
[REDACTED]		[REDACTED]
RPA Type (Check one only)	<input type="checkbox"/> Noncompetitive (Sole Source)	<input type="checkbox"/> Legal Services
	<input type="checkbox"/> General Waiver	<input type="checkbox"/> Collective Purchase (sections 1, 2, 4 and 5)
	<input type="checkbox"/> Motor Vehicle (sections 1, 2 and 8)	
RPA Title	[REDACTED]	
RPA Number ((Agency Prefix (2 alpha) FY Code (1 alpha) Number (4))		Amendment No. (if applicable)
[REDACTED]		[REDACTED]
Agency Program Contact Name:	Phone Number:	Email Address:
[REDACTED]	[REDACTED]	[REDACTED]
Contract Term:	Renewals:	Total Spend (Contract Term and Renewals):
[REDACTED]	[REDACTED]	[REDACTED]
Vendor Name ("Multiple" if General Waiver)		Vendor Address ("Multiple" if General Waiver)
[REDACTED]		[REDACTED]
NIGP Code(s): [REDACTED]		Funding (e.g. SEG, GPR, etc): [REDACTED]

Enter the request basics. Once you fill out this form you can save it as a draft so you can come back to it later.

Contract Number

505505

W22

SPB0005

00

Agency

Administration, Dept Of

RPA Number

SPB0005

Program Contact

Andrew Shuck

Contact Phone

(608) 266-1558

Contact Email

andrew.shuck@wisconsin.gov

Request Flags

Non Legal Request

Non Information Technology Request

Rush

Method of Procurement

B—General waiver

Delivery (F.O.B.)

Destination

Contract Term

1 Year

Renewal Option

None

Funding

Other

1) Details not matching throughout the request

- The RPA tool denotes this as a General Waiver, but the DOA-3046 says the request is a Sole Source Waiver
- Contract Term does not match in the tool and the DOA-3046
- Vendor does not match in the tool and the DOA-3046
- NIGP Codes do not match between RPA tool and the DOA-3046
- Agency Program Contact Name does not match

2) Forms not signed

The second most common pitfall is documents that need to be signed are not signed

DOA-3046

- This is because we want to make sure the party responsible for signing this form understands the scope of the details contained within
 - If the form comes through unsigned for a 4-year contract term, then when SBOP asks for it to be signed, the signatory realizes that this is a 4-year term, vs what they believed to be a 3-year

DOA-3821a CBA Narrative

- Any Contractual Services Waiver must have the DOA-3821a completed and signed
 - Even if agency is claiming an exception to the CBA requirements
- For Solicitations, the CBA does not need to be completed until immediately before the contract is signed, however for waiver, we assume contract will be executed immediately after waiver is approved, this is why we require this

3) Incomplete/incorrect request

- This occurs when agencies submit requests that do not have the required documents, or have the appropriate sections of the DOA-3046 filled out
 - Public Notice
 - DOA-3046
 - Is this an Amendment?
 - Previous Case Letter
 - CBA
 - Sole Source Letter from Proprietary Provider

3) Incomplete/incorrect request: Public Notice

- The public notice must establish the following details:
 - Minimum public notice posting be 7 days before agency intends to sign the contract
 - Contract Value
 - Vendor to contract with (Sole Source only)
 - Contract Length
 - Agency Contact Information
- Public notice is important because vendors routinely reach out to SBOP with questions about requests and the true sole source nature of them

3) Incomplete/incorrect request: DOA-3046

- This is the most common document that we will ask for clarification on
- The Justification in Section 3 of the DOA-3046 is often not filled in fully
- If the agency's justification relies on it being the only economic feasible option – the agency must have some sort of accounting to back up this claim
- If the length of the contract in Section 3 does not match the contract term in Section 1, the request in the RPA tool, or the years in the estimates tab, we will ask for clarification
- If the request is an amendment, fill out box 9 in section 3
- Boxes in Section 3 – Justification of Need must be checked appropriately

3) Incomplete/incorrect request: DOA-3046 (IT)

- Section 5 of the DOA-3046 must be completed for all IT Requests (Agencies Only)
- This includes checking that the agency:
 - Has reviewed PRO-508 and will adhere to all policy contained
 - Has reviewed the in-scope module of the STAR System and whether:
 - The Agency considers the requested software does overlap with STAR Modules
 - The Agency considers the requested software does NOT overlap with STAR Modules
- The Agency must also provide an Agency Technical Contact Name and information

3) Incomplete/incorrect request: Amendment?

- If the request submitted is an amendment to an existing approval, the agency must include:
 - Box 9 of Section 3 in the DOA-3046
 - Tell us why you need to amend the request
 - Click the tab in the initial request page denoting the request as an amendment
 - Use the appropriate naming convention for a waiver amendment
 - A copy of the previously approved Case Letter
 - The amount the waiver is being amended by is in the estimates tab of the request on the tool
 - Only if there is an increase in Spend, not contract term
 - This is the amount that should be denoted in the DOA-3046 as well

3) Incomplete/incorrect request: Previous Case Letter

- If the request is for a reoccurring need that has been approved via a waiver of the bidding process before, the agency must include a copy of the existing case letter in the attachments of the request
- In addition, in the “Prior Years” tab of the request, the agency should denote the previous case letters along with the ACTUAL Expenditure, NOT the amount that waiver was approved for
- If, for a reoccurring need, the amount for the new request has increased from the last request, there needs to be a justification for that increase in the new request

3) Incomplete/incorrect request: CBA

- As mentioned before, the DOA-3821a must be submitted for every Contractual Services Contract regardless of whether the Services Amount is over \$50,000
 - This is because this form now serves as both the Statutory Required Justification of Need as well as the place for the Agency to fill out narrative information on the CBA
- If an agency has a Contractual Services component of over \$50,000 in the requested contract, the agency must either have the DOA-3821a and claim an exception to the CBA requirement, or it must also complete DOA-3821b

3) Incomplete/incorrect request: Sole Source Letter

- If the justification from the Agency is that the vendor being requested is the only vendor that can provide the service or product, SBOP requires a letter from the Vendor that the Vendor is in fact the sole provider of that service or commodity
- Note: Even if the Vendor truly is the only provider of that specific commodity or service, the justification statement within the DOA-3046 must speak to the fact as to why that product is the only available option
 - Just buying a proprietary product is not sufficient justification of a sole source waiver

4) Estimates Tab not filled in

- Recently, SBOP has noticed that the 'Estimates' tab on the RPA tool is not being filled in by the agencies
 - For every Contract year, including renewals, a year must be added to the Estimates Tab
 - The amount from the Estimates tab feeds the Case Letter Field of the Overall Cost, so this needs to be absolutely correct

Request

Vendors **0**

Prior Years **1**

Estimates **1**

Documents **4**

Case Letter

You must estimate the cost of this request for at least 1 year. Estimates can be 0.

Add Year 2 Purchase Estimate

\$ 0 + Add

Year 1 \$ 300,000,000 -

← Back Save & Continue →

Wisconsin Department of Administration
Division of State Agency Services
DOA - 3453IT(R09 / 2004)

State Bureau of Procurement
101 East Wilson Street, 6th Floor
Post Office Box 7867
Madison, WI 53707 - 7867
Fax(608) 267 - 0600

Request To Waive Bidding Requirements

[Wis. Stats. Chap. 16, Subchap. IV]

RPA #: SPB0005
Case #: TE0719
Received: 8/26/2021

Contract Number: 505505-W22-SPB0005-00
Amount Not To Exceed: \$300,000,000.00
Issued: 8/30/2021

Agency: Administration, Dept Of
Agency Contact: Andrew Shuck
Agency Phone: (608)-266-1558

Procurement Contact: Leann McGowan
Procurement Phone: (608)-266-8024

Waiver For: COVID-19 Testing and Analysis

Contractor: Multiple
Contract Period: 1 Year

Renewal Option: None

5) Vendors tab not filled In

- The “Vendors” tab on the RPA tool is often not filled in
- Reminder, that you must click ‘Save & Continue’ on the Vendors page for the request to save that detail
- The request can be submitted without any data submitted in this field as we do not require every Vendor name to be filled out for General Waivers

6) RUSH justification not provided

- If an Agency is requesting a RUSH processing of its request, the agency must provide a justification in Section 6 of the DOA-3046
- SBOP will then review this justification and identify whether or not to apply the RUSH designation

7) Working with Waivers sent back to Agency Revision

- Once SBOP sends the request back to Agency Revision, the Agency will not be able to act on the request within the 'RPA Approve' section of the RPA Tool
- The Agency must click into the "RPA Drafts" tab in order to take action on the request
- Agencies have recently been reporting they can't access their requests

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In Conclusion:

- These requests seem simple, but involve a lot of moving parts, and some of the details can be missed easily
- SBOP will ask for things to be clarified as needed
- Remember, these request go the Governor's office, and the last thing that we want is for questions related to some of these easy details that we can refine on the front end
- Please know, SBOP is not asking for clarifications to be difficult. We cannot make assumptions on the requests, so we want to make sure that we know all of the details before we approve the request in question.



Questions?