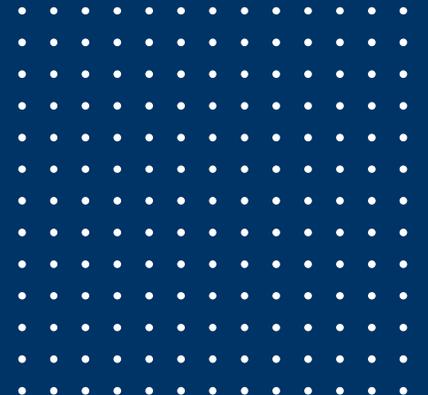




Waivers: The Exception, Not the Rule

Presented by Cheryl Edgington and Matt Limoges, SBOP



Waivers: The Exception, Not the Rule

- This session will explore reasons why the competitive bidding process can't be used
- We will provide practical guidance on how to address those reasons and ways to build your case
- And we'll discuss some of the issues identified in waivers submitted and ideas for how to avoid them
- First, let's review some basics



Per Adm 8.05(1):

“All requests for waivers shall be thoroughly documented including justification for not using a competitive process.”

Per Adm 10.06

“Competitive bidding is the preferred method for procuring contractual services, and shall be used in every case that permits the preparation of specifications or standards, or both, that can be used as the basis for award.”

Basics of a Waiver



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



Waiver Types



General Waiver

- Multiple vendors
- Consolidation of like transactions that will be required on a recurring basis
- Maximum of one year

Sole Source Waiver

- Available from only one source
- No maximum contract length





Justifying a Waiver

- Waiver justifications must include:
 - Description of the good/service
 - Demonstration that only one source exists (sole source only)
 - Description of the process used for selecting contractors (general waivers only)
 - Statement showing price is reasonable
 - ★ **Justification on why the procurement cannot be bid**
 - Statement indicating that the procurement is in the best interest of the State



Why Competitive Bidding Can't Be Used

Common Reasons



Common Reasons to Waive Bidding

1

Bidding Process Takes Too Much Time

2

Switch in Product/Vendor Too Costly

3

Uncertainty in the Market

4

We Like our Current Tool/Vendor





Bidding Process Takes Too Much Time: Proactive Steps

- Future planning
 - Start the procurement process earlier
 - Build in plenty of time for vendor transition or implementation
 - Ensure timeline accounts for staff time needed to implement contract
 - Build a month-to-month contract extension clause into the solicitation that could be exercised if needed to complete the procurement
- Alternative procurement methods
 - Make use of existing contracts (other agencies, states, consortium)





Bidding Process Takes Too Much Time: Making the Case

- Substantial time pressure exists outside agency control
 - Identify what deadlines your agency must meet
 - Explain how the time pressure is outside of agency control (e.g., newly imposed federal deadline that won't allow enough time for the competitive bidding process, agency receives federal funding that must be spent in an expedited manner)
- Provide a procurement strategy
 - Include the timeline which you are going to follow
 - Identify dates
 - Include a statement that you will not seek another waiver until you





Switch in Product/Vendor Too Costly: Proactive Steps

- Future planning
 - Request funding in agency budget
- Conduct extensive market research to get realistic idea of cost
- Issue a Request for Information or solicitation
- Break larger contracts into modular approaches as appropriate





Switch in Product/Vendor Too Costly: Making the Case

- Detail the cost for a new solution using actual numbers to demonstrate it is not economically feasible to switch to a new solution or vendor
 - Don't include staff time as part of the calculation
- Conduct a fair market analysis and provide information as part of your justification
 - Ensure you are comparing equitable goods/services





Uncertainty in the Market: Proactive Steps

- Conduct extensive market research to get realistic idea of current landscape
- Issue a Request for Information
- Conduct a solicitation to provide concrete information to support uncertainty in the market





Uncertainty in the Market: Making the Case

- Provide industry data as part of your request (e.g., CPI, PPI)
- Review information on other states' bids
- Talk with other customers
- Network with peer organizations or industry associations to offer third-party support of market uncertainty
- Outline your long-term strategy to address the market uncertainty to show waiver is a temporary solution





We Like Our Current Tool/Vendor: Proactive Steps

- Identify what the REQUIREMENTS and not the WANTS are for the good/service
- Review with staff why the State publicly bids opportunities in the first place
 - Stewards of taxpayer dollars
- Additional offerings in the space may be better
- Avoid becoming too dependent on a specific tool or vendor to provide critical operations for the State





We Like Our Current Tool/Vendor: Making the Case

- Demonstrate that the solution is UNIQUE as defined in the State Procurement Manual
- Demonstrate that the solution is proprietary and only available from one source but also why that is the only solution that will meet your needs
- Include documentation to support these statements
 - Letter from the manufacturer stating the good/service can only be purchased directly from them or confirming only one reseller is available



Waiver Trends



Section 3: State's Existing Investment



“If the rationale for this waiver is based on the contractor being the only economically feasible source because of the state’s existing investment in a proprietary product or service, provide the cost comparative analysis of continuing with the existing investment compared to the cost to replace.”

Questions to Answer:

- How long has the product or service been in use by the agency?
- How much, in terms of actual dollars, has the agency spent to implement and maintain the product or service?
- How much, in terms of actual dollars, would it cost the agency to replace the good/service?
- Why is the cost to replace the service not economically feasible?



Waiver Amendments

- Use amendments only when appropriate
 - Used to increase amount or contract length originally approved
 - Stay within parameters of the waiver
 - General waiver can't exceed one year
 - Won't be approved for substantial change in scope or intent of the original RPA – in those cases submit new RPA





State Procurement Manual
Department of Administration, State Bureau of Procurement

Number
PRO-210

Section	Effective	Replaces
PLANNING AND PROCUREMENT STRATEGY	2/18/2020	PRO-C-2, D-28 Various Dates
Title	Page	
REQUEST FOR PURCHASING AUTHORITY (RPA) POLICY AND PROCEDURE	1 of 6	

SCOPE: The scope of this policy is to establish authority and procedure for the Request for Purchasing Authority (RPA) requisition method and define the circumstances under which RPAs are processed or amended.

POLICY: Agencies initiate procurement activities by means of requisition processes established by the State Bureau of Procurement.

An RPA is required and will be submitted to the Bureau for the following procurements at dollar thresholds determined by applicable law. See PRO-101, Procurement Definitions and Thresholds for threshold information:

- Sole source and general waivers; see PRO-501, Waiver of Bidding Process.
- Motor vehicle purchases, regardless of dollar amount; see PRO-506, Procurement and Leasing of Motor Vehicles.
- Legal service procurements, regardless of dollar amount; see PRO-511, Legal Services.
- Collective purchasing; see PRO-502, Collaborative Contracting: Piggybacking and the Use of Contracts with Other Authorities.

To determine if a request is necessary, the agency will use the estimated dollar amount of the initial contract length including renewal options.

Agencies must ensure that the state standard terms and conditions, as published by the Department, are incorporated into all contracts resulting from approved RPAs. See PRO-404, Standard Terms and Conditions.

PROCEDURE: I. Required Form and Systems

A. The official system of record for the submittal and approval processing of RPAs is the Request for Purchasing Authority website, <https://rpa.wi.gov>.

Legal Authority
Wis. Stats. s. 16.72(4)(a); 16.75(1)(a); 16.75(1)(c); 16.75(3)
Admin Code Ch. 5.04; 7.10; 8.05; 8.06; 10.04; 10.07; 10.09
Agencies Affected: All, unless otherwise noted

Authorized:
Sara Redford, Director
State Bureau of Procurement



Waiver Amendments



- Include information from original waiver including:
 - Upload original case letter in Documents
 - Include spend under original waiver in the Previous Years tab
 - Ensure the estimates tab only includes the amount of the amendment
 - Same goes for the Total Contract Spend on DOA-3046
- Complete Section 9 of DOA-3046 explaining why the amendment is needed



Other Minor Issues



Public Notice

- Be sure that you include all elements as outlined in [PRO-601](#) Legal and Public Notices

Consistency

- Verify consistency across all documents for costs, term lengths, waiver type
- Ensure that the public notice matches the request

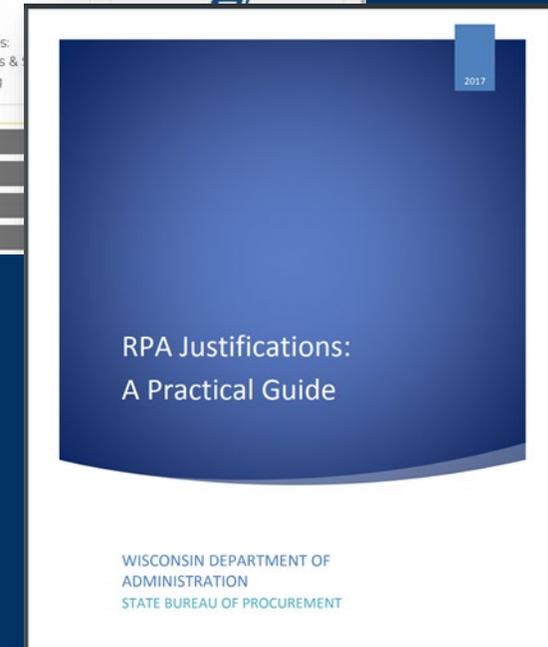
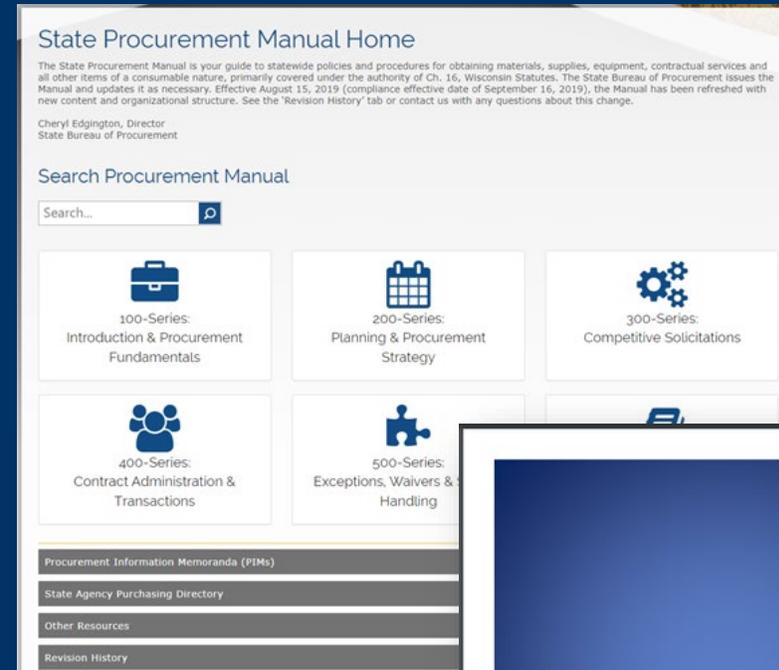
Expenditure

- Input the actual amount spent in the previous year or on previous waiver in the Prior Year tab – not the amount approved
- If amount has increased be sure to include reason (Section 3, #8)



Resources

- [PRO-501](#) Waiver of Bidding Process
- [PRO-210](#) Request for Purchasing Authority (RPA) Policy and Procedure
- [RPA Practical Guide](#) (you need to be logged into rpa.wi.gov to access this guide)



Questions?

Thank
You