

Building a Strong Case: The Why and How of Waivers

Cheryl Edgington

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Agenda

- Waiver Types and Circumstances
- Elements of a Waiver Justification
- Making the Case
 - Evidence
- Reasonable Doubt Scenarios
 - Ways to improve
- Resources



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Waiver Basics



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 the exception; not the rule
- Only the Governor can waive competitive bidding for purchases that exceed \$25,000
- All waiver requests must be thoroughly documented including justification for not using a competitive process
- Waiver requests > \$25,000 must be submitted through the [Procurement Request Portal](#)



Waiver Types

General Waiver

- Multiple vendors
- Maximum of one year

Wisconsin Air Services (WAS) is requesting a general waiver of the official sealed bidding process to utilize multiple vendors to supply parts and services that are required for the maintenance and operation of state-owned fleet aircraft.

Sole Source Waiver

- Available from only one source
- No maximum contract length

DMA requests a sole source waiver of the competitive bid process to contract with TEDOM USA Inc. (TEDOM) for maintenance and repair services of their Combined Heat and Power Unit (CHP). TEDOM is the sole authorized provider for maintenance and repair services of the CHP unit.



Waiver Circumstances

One Source

- Patent or proprietary
- Uniqueness

Intrinsic Value

- Historic, artistic or educational value
- Can't be competitively bid using standard specifications

Substantial Time Pressure

- Time pressure exists beyond agency's control
- Does not include administrative delays



Waiver Circumstances: Examples

One Source

- The SBOP submitted a sole source waiver request to purchase access to the NIGP codes from Periscope.
- **Justification:** NIGP created the codes and licenses use of the codes to Periscope making them the sole provider of access to the codes.

Intrinsic Value

- WHS requested a general waiver to purchase artifacts of historical significance for the new History Center and Museum on Capitol Square
- **Justification:** WHS acquires, catalogs, and preserves collections that sustain WHS' national reputation and provides access to its collections. These are unique, proprietary items with intrinsic value that makes competitive bidding impossible.

Substantial Time Pressure

- DHS submitted a request to waive bidding requirements to contract with a vendor to conduct a security audit of one of its systems.
- **Justification:** The Federal Government issued DHS a conditional order that required them to conduct a third-party audit. To meet the timeline established by the Feds, DHS needed to contract immediately with a vendor qualified to perform the service.

Elements of a Waiver Justification

- Description of the good/service and why they are needed
- **Why** the competitive bidding or proposal process can't be used
 - Process used to select sole source vendor (sole source only)
- Procurement authority used for prior purchases
- **How** does cost reflect fair market value?
- If rationale is based on the contractor being the only economically feasible source, provide cost analysis of continuing with existing investment compared to cost to replace
- Impact to agency/campus if waiver is not approved



Making The Case

Why The Competitive Bidding
Process Can't Be Used



One Source: Making the Case

- Demonstrate that the solution is proprietary and only available from one source
- Explain **how** it is the only solution that will meet your agency's needs (requirements not wants)
- Explain **why** a competitive process would not produce an acceptable result
 - If the vendor has always been the sole source, how often is your agency researching the market to determine if new solutions or vendors could meet need



One Source: Evidence



Letter from the manufacturer stating good/service can only be purchased from them or confirming only one reseller/distributor/service provider is available



Cost comparative analysis of continuing with the existing investment compared to cost to replace – use actual costs to calculate



Research results including industry data, information from peer organizations or industry associations



One Source: Proprietary Example

- **Description:** DOA, DET requests a sole source waiver to contract with Vertiv for emergency service, preventative maintenance and parts for all the Liebert Uninterrupted Power Systems (UPS) equipment owned by DET.
- **Why Competitive Bidding Can't be Used:** Expertise in servicing and maintaining these UPS's requires specialized training for the specific UPS models owned by the State. Vertiv Services is the only authorized service provider for the Liebert product line.
- **Reasonable Price:** Pricing is a 16% increase over the costs provided by Vertiv five years ago in previous solicitation.

Proprietary Example: Evidence



March 11, 2024

Re: Sole Source Service Provider for Liebert® Power Products

With your purchase of Liebert power products, you now have the best critical support equipment available. As you choose the appropriate level of service support for this equipment, please consider the following.

To ensure top performance, reliability, and duration of equipment, Vertiv Corporation is the only authorized service provider for the Liebert power product line (uninterruptible power supply/battery, static transfer switch, power distribution units, and monitoring products). In order to meet the objective of providing the highest level of service possible, Vertiv Corporation has invested in the very best individuals to create the strongest support organization in the industry.

With more than 850 technical experts and support personnel across the United States; a 24/7/365 customer resolution center that is fully staffed by personnel having immediate access to equipment detail and service histories for Liebert equipment; a multi-level parts distribution system; and a technical support group available 24/7, Vertiv Corporation offers the most comprehensive power product service program in existence today.

There are distinct advantages in having the original equipment manufacturer (OEM) perform your service, and they are specific to the proprietary information, materials, and expertise maintained by the OEM. These exclusive advantages are summarized below and are the basis for sole source qualification.

Factory Training

- Vertiv Corporation's customer engineers (CEs) are required to have completed a two-part comprehensive training program before entering a customer's site.
- This program includes more than 110 hours of core training such as fundamentals of data center applications, and electrical and personal safety; more than 400 hours of product-specific and structured on-the-job training; and at least another 200 hours of training on elective topics.
- Vertiv Corporation's CEs keep their level of training up to date by participating in at least 20 hours of new and refresher training courses each year.
- No other organization is authorized to have their field technicians participate in maintenance training programs for Liebert solutions.

Startup Services

- The standard factory warranty for Liebert three-phase UPS units is active for 12 months from the date of startup and is only valid with startup by a Vertiv Corporation CE.
- Startup performed by an outside service organization reduces the equipment warranty to 90 days with coverage for parts only.

Maintenance and Troubleshooting Information

- Vertiv Corporation's CEs have instant access to Technical Knowledge Online (TKO). This database includes the latest in maintenance and troubleshooting techniques specific to Liebert equipment.
- The information available through TKO is only accessible to Vertiv Corporation's CEs and includes proprietary information like equipment schematics and assembly drawings.
- Access to the proprietary software used in Liebert UPS units allows Vertiv Corporation's CEs to properly configure your UPS and to be more informed for a superior level of service.
- Through Power Technical Support (PTS), Vertiv Corporation's CEs have access to the engineers who designed and built your power equipment.

1050 Dearborn Drive Columbus, OH 43085 USA
VertivCo.com
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Part Availability

- Part support is available to all customers and service providers.
- Part priority is given to Vertiv Corporation's contract customers to make certain that contractual obligations are met.
- To guarantee availability for contract customers, standard lead times apply for all part orders from non-contract customers and outside service providers.

Technical Support

- PTS exists solely to support Vertiv's field service organization and is not available to outside service organizations.
- PTS is comprised of long-tenured factory engineers who are experts in servicing, troubleshooting, and maintaining Liebert equipment. PTS engineers engage in complex startup activities, support the Vertiv Corporation CE in difficult troubleshooting situations, and develop equipment modifications that improve system performance.

Field Modifications – Field Change Notice (FCN)

- The FCN process for Liebert equipment is managed by PTS and factory personnel and is not available to outside service organizations.
- The FCN process allows for engineering improvements to be made to the equipment as soon as an enhancement has been identified. These FCNs enhance the safety and reliability of Liebert power systems.
- Safety related FCNs are distributed to the Vertiv customer contact on file. Contract customers are automatically notified and scheduled for installation.
- Technical FCN enhancements are only available, at no charge, to Vertiv contract customers.

Vertiv Proprietary Service Tools and Software

Vertiv Customer Engineers (CEs) are the only authorized, factory-trained and OEM-supported service providers for Vertiv equipment with access to Vertiv's proprietary service tools and software to ensure optimal equipment performance.

- Using proprietary software PPvis™, Paramset™, and WinSVT™ CEs apply Vertiv's knowledge base to diagnose, configure and optimize your Vertiv equipment.
- Vertiv is the only authorized source for critical proprietary firmware updates providing your equipment the latest version of operational firmware to ensure equipment is running at optimal performance and efficiency levels.
- Vertiv exclusively enables:
 - Access to OEM engineering support and product enhancements.
 - Optimized methods of procedure for efficient service supported by proprietary documentation.
 - Improved MTBR and MTTR.
 - Root cause forensic analysis.
 - Continual improvements with tested and certified updates for software and hardware improvements throughout the equipment's lifecycle.
- CEs to be equipped with proprietary service documentation that provides access to the latest method of procedures and event data to return equipment online in the most efficient manner possible.

Vertiv Corporation's wide range of offerings for system startup, preventive maintenance, emergency service, battery management, project management, and customer training are available through your local representative or by calling 1-800-543-2378.

1050 Dearborn Drive Columbus, OH 43085 USA



Substantial Time Pressure: Making the Case

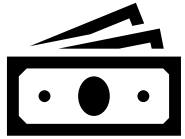
- Explain **how** the time pressure is outside of agency control
- Explain **why** there isn't enough time to use the competitive bidding process
 - Identify what deadlines your agency must meet
 - Consequences for failing to meet deadlines



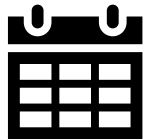
Substantial Time Pressure: Evidence



Newly passed legislation with stated timelines



Funding information or spending deadlines



Complete timeline of actions taken and next steps



Substantial Time Pressure: Example

- **Description:** UW-Stout requests approval to contract with Employee Health Center, LLC to provide student health services on campus.
- **Why Competitive Bidding Can't be Used:** UW-Stout's existing contractor provided five-month's notice that they would be terminating the contract due to closures. There was substantial time pressure beyond the campus' control to identify and contract with a new provider.
- **Reasonable Price:** Based on current supplier pricing and verbal pricing received received from a large-scale service provider, the proposed pricing is reflective of the current market in the Menomonie, WI area.



Substantial Time Pressure: Evidence

Timeline of events showing it was impossible to issue a RFP, negotiate a new contract and have services start in time to meet UW Board of Regent requirement to provide student health services.

List of steps taken to identify another vendor, including issuance of a Request for Quote to local providers.

Pricing received in the Request for Quote process was used to determine price was reasonable

Making The Case

How Cost Reflects Fair Market Value



Cost is Reasonable: Making the Case

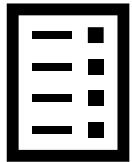
- Conducting a solicitation is the best way to ensure we are receiving the best pricing
 - Timely, adjusted to meet our needs, competitive
- When agencies request to waive bidding, they must include a statement indicating costs are reasonable
- Must also demonstrate *how* agency made that determination



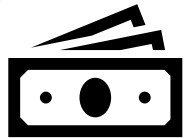
Cost is Reasonable: Evidence



Vendor provided quote or contract that was offered to similar organization

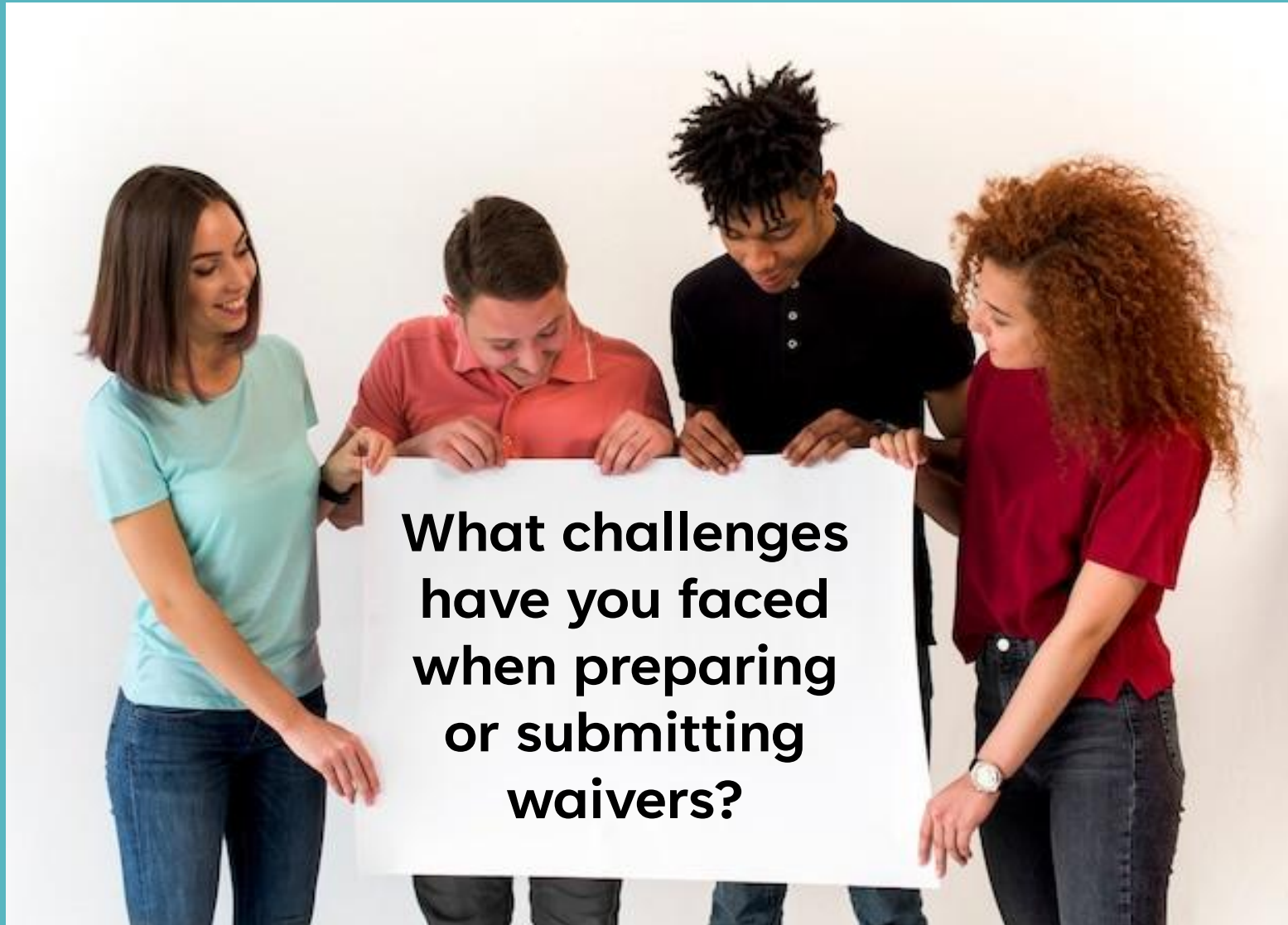


Published price list with discounts applied



Costs paid by other entities who conducted similar solicitations

Using Chat...



Reasonable Doubt Scenarios



**“Our program area
conducted research and
determined that this is the
only vendor that can meet
our needs.”**



Issues

- Self-fulfilling prophecy
 - You will establish the specific good/service as a need, and it will only be available from one source
- Missing the Why
 - Might answer the question of how a particular good/service will meet an agency need but it doesn't answer why competitive bidding can't be done



Ways to Improve

- Identify the needs before conducting research on any product or service to ensure that you aren't using existing product or service to define your requirements
- Provide documents to support the research
 - Other state solicitations
 - Third-party objective documents related to the industry
 - Summaries of conversations with industry experts

**“There is too much
uncertainty in the market.”**



Issues

- Experts?
 - We are procurement experts, and our program areas are program experts but typically we are not also market experts
- Lack of Proof
 - The state serves as its own unique market so without conducting a solicitation, this is very difficult to know with certainty



Ways to Improve

- Issue a Request for Information
- Conduct extensive market research to get a realistic idea of current industry landscape
- Provide objective industry data as part of the request (i.e., CPI, PPI)
- Include in your request your long-term strategy to address market uncertainty

“It will cost us too much money or time to switch vendors.”



Issues

- Reality of the procurement process
 - Switching vendors can create risk but that doesn't mean it isn't the right thing to do or that there won't be benefits in switching
 - The procurement process takes time so it's important to start the process early enough – administrative delays is not sufficient to justify substantial time pressure
- Lack of Proof
 - Speculation is not a defensible reason to stay with the same vendor



Ways to Improve

- Provide analysis comparing cost to switch vendor solution against existing investment using:
 - Cost for initial purchase and enhancements
 - Additional expenses for parts, training, etc.
- Issue a Request for Information to obtain data on cost to switch to a new solution/vendor
- Start the procurement process sooner than necessary to ensure adequate transition time

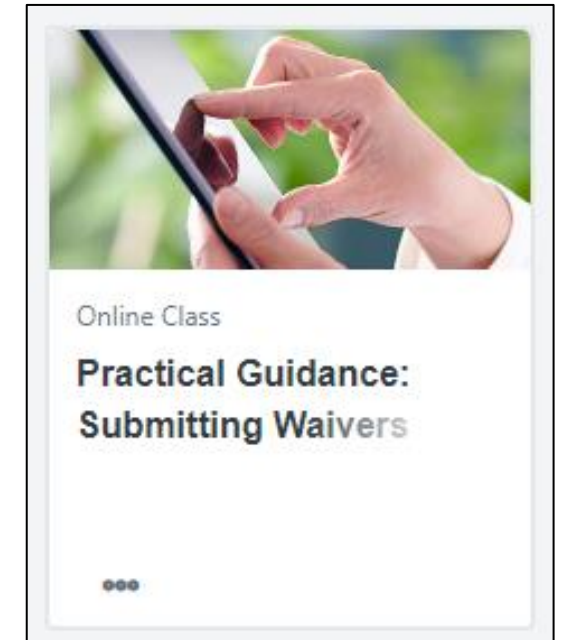
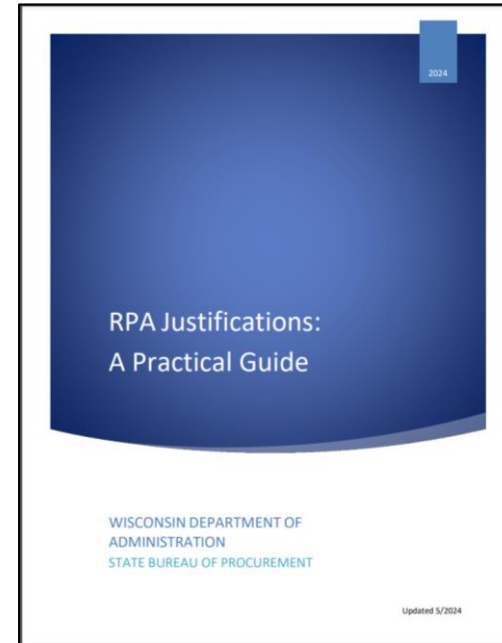
Resources

RPA Practical Guide

- Available on the Purchasing Request Portal homepage
- Provides guidance for how to answer justification questions
- Includes common questions asked by SBOP during review

Training – eLearning

- Available in Cornerstone



Questions



Thank you!

Cheryl Edgington

Cheryl.Edgington@wisconsin.gov

608.266.1060

