



# State Procurement Manual

Department of Administration, State Bureau of Procurement

Number  
PRO-501

<b>Section</b>	<b>Effective</b>	<b>Replaces</b>
EXCEPTIONS, WAIVERS AND SPECIAL HANDLING	9/16/19	PRO-C-9, C-10, C-11, C-13 Various Dates
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**SCOPE:** The scope of this policy is to define authority for waiving the bidding process under various circumstances, and to establish procedure and restrictions governing non-competitive negotiation (sole source) waivers, general waivers, and the composition of waiver justifications.

**POLICY:** The State Bureau of Procurement may provide for a waiver of bidding when certain circumstances exist which preclude bidding. One or more of the following, with adequate justification, may serve as a basis for waiving use of competitive processes:

**Uniqueness:** When a product or service can be established as not being available from more than one supplier.

**Patent or Proprietary:** The patented or proprietary features of a product or service gives the state a superior and necessary utility that cannot be obtained from others. The features are available from only one source and not merchandised through competitive outlets.

**Intrinsic Value:** When a product has historic, artistic, or educational value, and/or viable specifications or standards cannot be determined in the procurement of a professional or technical service.

**Emergency:** When the risk of human suffering or substantial damage to state real or personal property exists that requires immediate action. See PRO-503, Emergency Procurement.

**Substantial Time Pressure:** When substantial time pressure exists beyond the agency's control. This does not include administrative or processing delays or in submitting the necessary documents for purchasing approval.



**Legal Authority**

Wis. Stats. 16.71; 16.72(4)(a); 16.75(1)(a)(c);  
16.75(6)(a)(b)(c)(d)(f); 16.82(4); 19.36(5); 134.90(1)(c)  
Wis. Adm. Code Chapter Adm 8.05  
Agencies Affected: All, unless otherwise noted

Authorized:  
Sara Redford, Director  
State Bureau of Procurement



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Specifications presented to the potential supplier as part of any approved waiver must correspond to the specifications of any resulting contract. All approved waivers and supporting documentation will be open to public inspection to the extent practical under governing state open records law. See PRO-105, Procurement Record Retention and Access.

Bidding policies and procedures may not be waived for procurements of printing and stationery. See PRO-505, Printing Procurement Policy and Procedure.

Grant exemptions are a form of waiving State of Wisconsin-specific bidding procedures. See PRO-504, Grants and Other Non-Procurement Transactions.

- PROCEDURE:
- I. Non-Competitive Negotiation (Sole Source)
    - A. One or more of the following circumstances, with adequate justification, may serve as the basis for using noncompetitive negotiation:
      1. The service is unique or of a proprietary nature available from only one source.
      2. Grant monies are involved, that cannot qualify as an exemption, that require subcontracts and specify the contractor.
      3. A public emergency exists where the urgency for the required service will not permit competitive solicitation.
      4. Substantial time pressure exists beyond the agency's control.



### Legal Authority

Wis. Stats. 16.71; 16.72(4)(a); 16.75(1)(a)(c);  
 16.75(6)(a)(b)(c)(d)(f); 16.82(4); 19.36(5); 134.90(1)(c)  
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B. When only one source is known, the agency may find it in the best interests of the state to issue a competitive solicitation to seek any additional sources and/or to encourage future competition. See PRO-301, Competitive Procurement Policy.

II. General Waivers

- A. The agency will consolidate like transactions that will be required on a recurring basis and submit a single RPA to support a general waiver.
- B. General waivers are issued for a period of up to one year.
- C. For recurring general waivers, the agency will include the previous year's total expenditure (with justification for any increase in this year's request) and a breakdown of the total dollar amount by vendor. The agency will include all transactions entered under the general waiver authority regardless of the dollar amount.
- D. General waivers are issued when such action is justified and deemed to be in the best interests of the state. The Bureau may issue a general waiver on specific materials or services, except:
  - 1. Stationery and printing will be purchased from the lowest responsible bidder regardless of dollar amount, except when the Department of Administration exercises the discretion vested in it by s. 16.82(4), Wis. Stats.



Legal Authority

Wis. Stats. 16.71; 16.72(4)(a); 16.75(1)(a)(c);  
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2. Each transaction for legal services will have prior approval by the governor and the Bureau regardless of dollar amount in accordance with PRO-511, Legal Services.
3. Each transaction for acquisition of motor vehicles will have prior approval by the Bureau regardless of dollar amount in accordance with PRO-506, Procurement and Leasing of Motor Vehicles.

### III. Public and Legal Notice

- A. All sole source and general waivers over the delegated procurement threshold require notice as prescribed by PRO-601, Public/Legal Notices. Placement of a public notice will be done prior to submitting an RPA for approval from the Bureau.

### IV. Justifications

- A. Justifications will be written in clear, nontechnical language that can be understood by persons who may not be directly involved in, or familiar with, the specific program. Therefore, procuring agencies bear responsibility for providing justification for the waiver request. Justifications will include:
  1. A description of the product or service and why it is needed;
  2. A demonstration that only one source exists (sole source only);



#### Legal Authority

Wis. Stats. 16.71; 16.72(4)(a); 16.75(1)(a)(c);  
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3. A description of the process used for selecting contractors (general waivers only);
4. A statement showing that the price is reasonable either on a fair market value or on a cost basis; and
5. Justification on why the procurement cannot be bid and why the competitive negotiation (request for proposal) process cannot be used, and why the noncompetitive negotiation (sole source) or general waiver method is being recommended; and
6. A statement indicating that the procurement is in the best interests of the state.

See PRO-205, Cost Benefit Analysis (CBA), Continued Appropriateness and Justification of Need for Services, for additional information required when contracting for services.

- V. Submittal, Required Components and Recordkeeping
  - A. The procuring agency will submit complete waiver requests in accordance with PRO-210, Request for Purchasing Authority (RPA) Policy and Procedure.
  - B. The procuring agency will retain all documentation for approved waivers including:
    1. All records originally submitted as required by DOA-3046A: RPA Checklist



## Legal Authority

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2. All records created during the approval process
3. Authorization of the procurement by the Bureau and/or agency official responsible for the transaction.
4. A copy of the contract and/or purchase order.



**Legal Authority**

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