

# Procurement Waiver Guide

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# Procurement Waiver Guide

A Resource for King County Agencies

**Department of Executive Services**  
**Procurement & Payables**

# Procurement Waiver Guide

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## Executive Summary

- Waivers allow you to bypass the competitive procurement process in specific, limited circumstances
- Waivers are auditable and may be provided to the public through Public Records Requests
- Waiver type is determined by the rationale for “no competition.” See below to learn more about the various [waiver types](#)
- When requesting a waiver, agencies are expected to provide proper justification for their request.
  - Continue reading for step-by-step guidance on the [waiver request process](#), including guiding questions to consider when writing a waiver request. View [Appendix A](#) for a sample waiver request
  - Things to Avoid:
    1. Timing and lack of planning with Procurement & Payables (P&P) is not a justification for a waiver.
    2. The process for determining the supplier with the best capability must occur in accordance to procurement guidelines and administered by P&P. This is a public and transparent process and designed to foster opportunity for all possible respondents to participate.
    3. Declarations that a supplier has the best capability or offers the lowest price are not basis for a Sole or Single source justification.
    4. Rationale that the chosen supplier is the most qualified to provide or perform, but does not establish why other suppliers cannot provide or perform is not acceptable.
    5. Incumbency does not justify a Sole or Single source purchase.
    6. Lack of consideration of King County’s equity and social justice goals.
  - Waivers for A&E / Construction are only allowed in emergencies or when standardizing a product to be specified in a future construction procurement. Continue reading to learn more about [emergency waivers](#)
- All waivers are submitted using a service request in King County’s E-Procurement system
  - Waiver requests must be approved at both the agency level and by P&P before being finalized
  - View the [waiver process overview](#) below
  - Continue reading for step-by-step guidance on the [waiver approval process](#)

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## What is a Waiver?

Public purchasing rules ensure fair and open competition for businesses of all sizes, promoting equity and social justice. Waivers allow you to bypass the competitive procurement process in specific, limited circumstances. “We need to make a purchase quickly” or “There’s not enough time for an ITB/RFP” are not a valid reasons for a waiver. As mentioned above, waivers enable you to bypass the procurement process, but not the contracting process. Waivers are auditable and subject to public disclosure.

## Types of Waivers

There are various types of waivers, depending on the funding source (Local or Federal), and the reason for “no competition.” The funding source and reason for “no competition” must be determined for compliance requirements:

Below are the type of waivers allowed when using **Non-Federal funds** only.

Type	Use this ONLY if...
Single Source	Two or more suppliers can supply the commodity, technology and/or perform the services required by an agency, but a single supplier is selected over the others for reasons like unique expertise, standardization, unique situation (but not sole offering & previous experience)
Sole Source	Only one supplier can deliver the required product or service. Service/goods may be proprietary in nature or the manufacturer may have only one distributor within a geographical area
Special Facilities	A supplier has a unique site or facility. You cannot use Special facilities or Special Market Conditions if using federal funds
Special Market Conditions	Unique circumstances resulting in cost savings

**Federal funds** alter the types of waivers available and their definitions. See the [Code of Federal Regulations \(CFR\)](#) for additional information.

Single Source	Item is available only from a single source (Equivalent to sole source listed above)
Pre-Approved Non-Competitive	Federal awarding agency expressly authorizes non-competitive proposal in response to a written request from King County
Inadequate Competition	After formal solicitation of several sources, competition is determined inadequate
Emergency	Non-competitive procurements in support of an Emergency Declarations require a waiver & must be directly related to the declaration with supporting documentation, i.e. COVID-19 Relief & the American Rescue Plan

## How to Initiate a Waiver

Purchases are administered by the Procurement and Payables Section (“P&P”) in accordance with Federal, State, and local laws. P&P establishes and administers the procurement process for contracts including guidelines, templates, and best practices for agencies to follow. P&P will provide waiver guidance/oversight to King County agencies that ensure we are in compliance with all public purchasing rules. Waiver requests

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are approved at both the agency level and by P&P before being finalized – *wavers must be approved by P&P.*

When requesting a waiver, agencies are expected to provide proper justification for their request. Do your due diligence to ensure that competition will not result in a different outcome, before submitting your request. If you're not sure if your purchase qualifies for a waiver, you may submit a Request for Advice (RFA) and P&P will recommend the appropriate procurement method for your needs.

## Policies Applicable to Waivers

**2 CFR 200.317-326** Uniform Guidance means that procurements using federal funds have to follow federal procurement rules – which are slightly different than State/County.

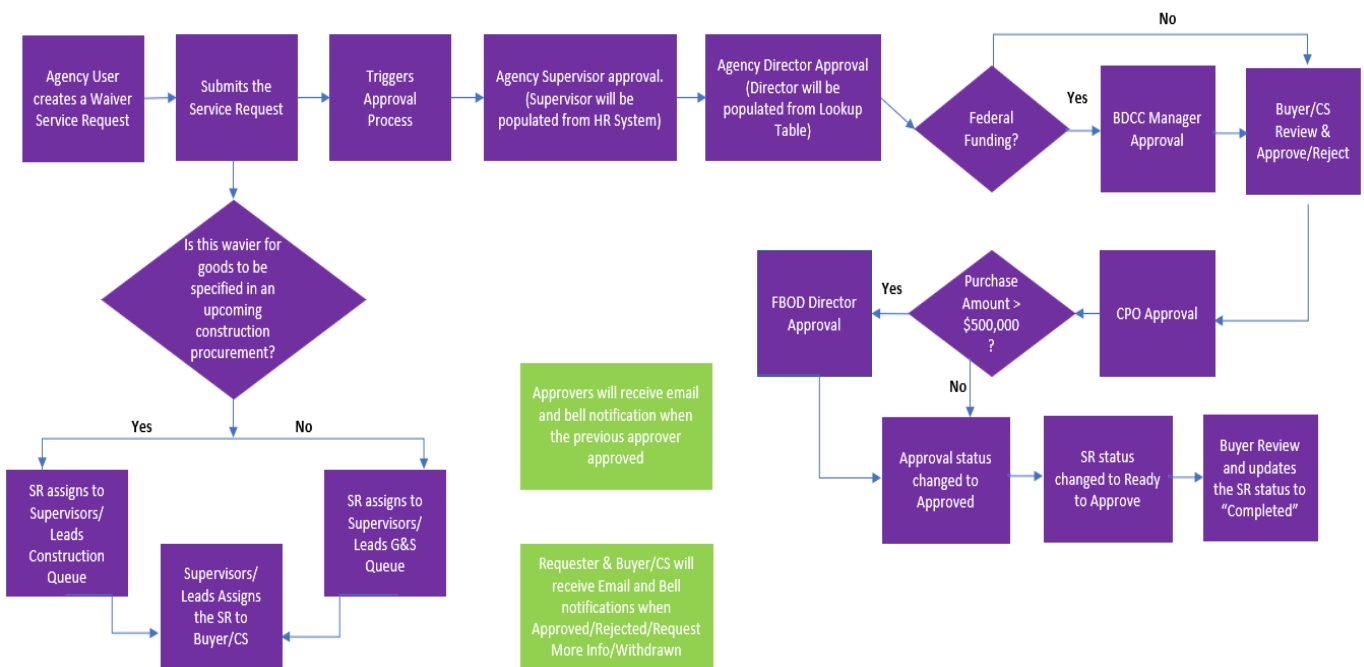
**RCW 39.04.280** defines the rules for when waiver exemptions can be issued and **KCC 2.93.080** is the county's refining of that rule to set more specific instructions on waivers issued in response to a State of Emergency. Emergency Waivers are only an option when the County Executive has declared a formal state of emergency as defined in King County Code.

**CON 7-27 General Procurement** establishes uniform guidance, encourages competition through open and transparent procurement, and ensures consistency, efficiency, and transparency of conducting business with third-party suppliers.

Under **CON 7-24-EP**, exempt purchases do not require a waiver. For example: utilities, postage, subscriptions, memberships, conferences/trainings, etc.

**CON 7-8-2-EP** requires compliance with federal regulations and federal grant guidelines regarding the use of federal funds in purchase orders/contracts to County supplier/contractors.

## Waiver Process At a Glance



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## Submitting a Waiver Request

**Purpose:** Waiver requests must clearly identify the *unique circumstances* that require a waiver, at the appropriate level of detail and depth, and with the correct documentation to ensure that approvers and auditors have the information they need regarding the waiver. This documentation must demonstrate why fair and open competition is not warranted.

All waiver requests will be submitted using a service request for a waiver in King County’s E-Procurement system. In order to receive a procurement waiver, you’ll need to indicate the funding source (local or federal), the waiver type, and the justification for using a waiver instead of completing the competitive procurement process. If using federal funds, read the federal guidelines carefully to ensure compliance. You must also provide reasoning how the procurement activity drives the best value for King County from a cost, equity and social justice, and sustainability prospective.

**NOTE:** Waivers will be rejected for incomplete information or if the basis of the waiver is “not enough time for the procurement process”. A waiver having been approved in the past does not automatically indicate that it will be approved again.

### Waiver Request Task Overview:

#	Tasks	Who is Responsible	
		IA : Implementing Agency	PP : P&P Staff
1	Research		IA
2	Complete Service Request in E-Procurement		IA
	Requester & Agency Information		IA
	Funding Detail		IA
	Buying & Purchase Detail		IA
	Request Detail		IA
	Waiver Type Justification		IA
	Attach all relevant documents in the SR		IA
	Change Status of SR to ‘Completed’		IA



## Step 1 – Research

### Funding Source

Prior to initiating a procurement service request, the requesting agency shall ensure that adequate funds have been appropriated. Agencies shall specify the source of contract funding for all contracts when initiating the Request for Advice.

### Waiver Type/Justification

Review the types of waivers and circumstances in which they can be used, on [page 3](#) of this guide. Agencies are responsible for providing waiver justification, as well as related research and/or pertinent data that enables approvers to clearly understand the need, and why a procurement waiver is needed.

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What are the unique circumstances that indicate to you a waiver is appropriate? How do you know that competition will not result in a different outcome. Some considerations include:

- ✓ Do you need a specific type of product or service?
- ✓ Do you have limitations based on other stakeholder needs?
- ✓ Do you have standardization waiver in place for specific brand of parts?
- ✓ Has P&P already solicited potential bidders, without receiving any response?

## IA Step 2 – Complete Service Request in E-Procurement

Login to the E-Procurement [Service Request system](#). Create a Waiver Service Request in E-Procurement.

Complete all required SR fields, as described below, and attach documentation.

### Requester & Agency Information

This section will identify who will be requesting the SR and their department. The fields related to Requester include some that will get auto populated based on who is creating Service Request: Requester Name, Requester Email, and Requester Phone number.

If Contact person is same as Requester, select the check box on 'Contact Person same as Requester'. If contact person is different, enter the details in Contact Person Name, Email & Phone number.

\* Grant Funding Yes

\* Federal Grant Number 654456654

\* Funding Type Federally Funded

\* Federal Fund Type

NOTE: Federal details display when Grant Funding field selected is "Yes"

Approval request will send to BDCC manager if the funding type is Federal Funding.

### Funding Detail

If applicable, enter the funding details on the fields and select the appropriate options from the list of values.

NOTE: Federal details display when Grant Funding field selected is "Yes"

If using federal funds, read the [federal guidelines](#) carefully to ensure compliance.

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The screenshot shows a web form with the following fields and elements:

- Buttons: Save and Close, Cancel
- Text: Draft status allows users to save their work to complete and submit it later.
- Field: \* Status (dropdown menu)
- Text: Phone 206-263-9400
- Field: Project Manager Name (dropdown menu, value: Baskar Periyakaruppan)
- Field: Contact Person same as Requester (checkbox, checked)
- Link: Read the federal guidelines carefully to ensure compliance (2 CFR 200.320). (highlighted with a red box and a red arrow pointing to it)

## Buying & Purchase Detail

Enter the summary of buying and purchase details.

The screenshot shows two sections of the form:

- Buying Detail** (highlighted with a red box):
  - \* What are you buying? Be specific. Example: manufacturer name, brand name, product description, catalog number, quantity, etc.
  - Text area for input.
- Purchase Details** (highlighted with a red box):
  - \* Why do these goods and/or services need to be purchased?
  - Text area for input.

Use the considerations below as questions to help guide your development of the Buying and Purchase details. See [Appendix A](#) for an example of a successful waiver request, as a model of the information that is needed for a waiver.

### Buying Detail Considerations

- ✓ Which agency/division does the procurement support?
- ✓ What is being purchased – products, quantity?
  - Be specific: include the manufacture name, manufacture #, Part #, Model #, Serial #
- ✓ What is the total price of the contract?
- ✓ Who is the supplier?
  - If a current supplier to King County, how would you rate their current performance?
  - If a new supplier to King County, what interviews were conducted & what was the feedback?
- ✓ What is the Period of Performance?
- ✓ Which agency/division is the effort in support of?
- ✓ Is this a new contract or a contract extension?

### Purchase Details Considerations

- ✓ Why do these goods and/or services need to be purchased?
- ✓ Is the activity in support of an Emergency Declaration? How will it support?



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- ✓ If a federal funded procurement, what federal agency authorized the non-competitive procurement & for what?
- ✓ Why is it prohibitive to have a competition?
- ✓ How will the residents and/or employees of King County benefit?
- ✓ How does this procurement align with and support King County values of Equity and Social Justice and Sustainability?

## Request Detail

When completing these fields, you will select a waiver type. Note that the selections will vary, depending on the funding source (Local or Federal).

The screenshot shows the 'Request Detail' form. The 'Waiver Type' dropdown menu is open, displaying four options: 'Special Facilities', 'Single Source', 'Sole Source', and 'Market Condition'. The 'Estimated Total Purchase Cost' field is empty.

If you indicate that this waiver for goods is to be specified in an upcoming construction procurement, your request will be routed to P&P's construction procurement team.

The screenshot shows the 'Request Detail' form with the 'Waiver Type' dropdown menu set to 'Special Facilities'. The 'Is this waiver for goods to be specified in an upcoming construction procurement?' dropdown menu is set to 'No'. The 'Supplier Name' dropdown menu is set to 'Yes' and the 'Supplier Number' dropdown menu is set to 'No'. The 'Purchase Type' dropdown menu is set to 'One Time Purchase' and the 'Estimated Total Purchase Cost' field is populated with '600,000.00'.

## Waiver Type Justification

### Waiver Type Justification Considerations

Use the considerations below as questions to help guide your development of the Buying and Purchase details. There are also examples of successful waiver requests, as models of the information that is needed for a waiver.

- ✓ Why are these goods and/or services unable to be competitively bid?
  - What is the cost & risk impact to King County if moving to a new supplier?
- ✓ What analysis was conducted to determine that King County is receiving a fair & reasonable price?
- ✓ How will King County hold the supplier accountable to deliver performance & quality?
- ✓ Is there a future opportunity for competition?
- ✓ What market analysis & research was conducted?

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- ✓ What expertise, standardization, or previous experience does this supplier have?
- ✓ Unique Circumstances
  - How will the supplier protect data & privacy?
  - What makes the supplier’s facility/site unique?

## Required Documentation

Submit all supporting documentation as attachments with your waiver request. Documentation will vary depending upon the unique circumstances for the waiver.

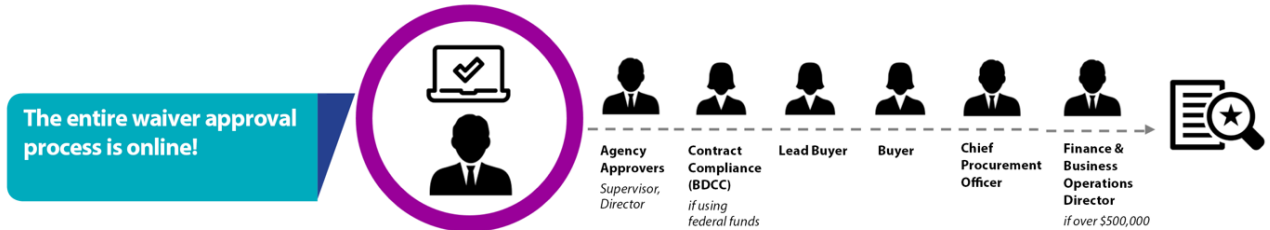
- ✓ If submitting a waiver request for a sole source, you will upload a formal letter (on letterhead) from the manufacturer, stating that XYZ company is the sole authorized distributor for YYY product
- ✓ If other suppliers offer similar products, you may want to include a justification document that compares the products and identifies why the others are incompatible with King County’s needs

## Waiver Request Approvals

**Purpose:** Depending on the funding source and dollar amount, your waiver may require many levels of approval before your request can be completed. You can track the status of your service request in King County E-Procurement Portal.

All waiver requests are reviewed for approval or rejection by Agency Leadership and King County’s Chief Procurement Officer (CPO). Approval is required from the manager of King County’s Business Development & Contract Compliance (BDCC) unit, if the funding type is Federal Funding. Approval is also required from the Division Director of the Finance & Business Operations division of the Department of Executive Services, for waivers over \$500,000.

Approvers can change the approval status value to ‘Request for more information’ if needed to complete their review/approval.



### Waiver Request Approvals Overview:

#	Tasks	Who is Responsible	
		IA : KC Agency staff	PP : P&P Staff
1	Approvals		
	Agency Approvals: Supervisor & Agency Director		IA
	BDCC Approval (For Federal Funds)		IA
	P&P Contract Specialist Review	PP	
	CPO Approval	PP	
	FBOD Director Approval (For waivers \$500,000+)	PP	
2	After Final Approval	PP	

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IA

## Step 1 – Agency Approvals

After you submit your waiver request, your supervisor and department director must approve the waiver. Agency approvers will receive an email and bell notification when it's their turn to approve. If an agency approver requests additional information about the waiver, you will receive an email and bell notification, and are expected to provide the requested information.

PP

## Next Step – P&P Review & Approvals

After being approved by your Agency Director (and BDCC for federal funds), the service request is automatically routed to Procurement & Payables. It will be reviewed by P&P and assigned to a contract specialist (CS). The CS will now receive the bell and email notification, when approvers (CPO, FBOD Director) request additional information.

PP

## Step 2 – After Final Approval

Once a waiver request receives final approval, the CS will change status from Assigned to Completed in E-Procurement, and will contact the Agency User to begin the process of creating, negotiating, and executing the contract. This may also result in the extension of the term or increase in value on an existing contract. The new waiver shall be noted in the Note to Approver/Justification field in Oracle EBS when the CPA is extended and/or increased.

If this is a waiver for goods to be specified in an upcoming construction project, the CS will add a note to the Final Summary field to remind the Agency to include the waiver number in the service request for the new construction solicitation.

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## Emergency Waivers

In order to apply for an emergency waiver, there must first be an Emergency Proclamation from the Executive, to waive the competitive procurement process. After the Emergency Proclamation is made, you can complete a Service Request in E-Procurement, to initiate a procurement waiver. Be sure to select the “Emergency Waiver” as your request type, and attach the approved proclamation to your waiver request.

Non-competitive procurements in support of an Emergency Declaration require a waiver and must be directly related the declaration with documentation, i.e. COVID-19 Relief & the American Rescue Plan.

**NOTE:** The funding source does not automatically constitute applicability of the use of a waiver.

Waivers for Construction Services are only available if the Executive declares an emergency that waives the standard procurement processes. These are obtained on the department level, but P&P can assist in drafting the memo to be sure they include the appropriate language for the procurement needs.

## Name Brand vs. Sole-Source

Specifying a name brand during the procurement process is not the same as declaring a sole source purchase.

### **Name-brand product**

You may specify a name brand product during the procurement process. A Waiver must be provided, through the E-Procurement system, which includes the brand required, why only this manufacturer’s equipment meets current operational needs, and why another manufacturer’s equipment could not be substituted. This documentation should be maintained and periodically evaluated to ensure the specific brand is still required.

### **Sole-source purchase**

A sole-source purchases are where there is only one supplier capable of providing an item or service, and therefore it is not possible to obtain competitive bids. If an item (even a specific name brand) is available from more than one supplier, it is not appropriate to declare the purchase sole source. To be considered a sole-source exception, the purchase must be clearly and legitimately limited to a single supplier. A Waiver request must be sent through the E-Procurement portal for approval prior to using the terms “no substitutions allowed”. Nonetheless, purchasers should make reasonable efforts to ensure it is receiving the lowest price and best terms from the supplier.

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## Appendix A – Sample Waiver Request 1

### Buying Detail

King County Information Technology (KCIT) is executing a contract extension with a current supplier, Smith Incorporated (SI) for a Period of Performance of 03/01/2021 to 2/28/2022 with a total contract value of \$5,000,000. SI's quality/delivery performance has exceeded expectations with no late deliveries, service failures, or quality concerns. The specific products that are being purchased are a Cloud Exchange, rack space in a 99.99% uptime facility, two 10GB connection into SI's Cloud Fabric Aggregation, & two 1GB remote connections to Oracle for the Business Resource Center (BRC).

The Cloud Exchange gives King County access to all major cloud providers, content providers, external networks, & Internet Service Providers. Additionally, the Cloud Exchange will continue to 1) provide a connection to Microsoft Azure through Microsoft ExpressRoute which provides a high-performance, private, & secure connection between King County's IT environments, Azure, & Office 365, 2) facilitate King County's connection to Oracle for the BRC, and 3) allow KCIT to continue to do a simple configuration within the County's existing account to create the connections to Oracle.

SI provides a single location in Downtown Seattle to several providers that reduces the overall cost for standing up the King County Exchange (KCX) Service. KCX infrastructure is housed in SI Datacenters that provide 99.999% uptime and is currently providing a reliable regional service saving King County over \$100K annually.

### Purchase Details Example 1 – KCIT Waiver Request

#### Purchase Details

KCIT Regional Services has developed a regional aggregation service, KCX, to provide easy, direct, secure and affordable access to the major cloud providers for both King County agencies as well as external Public, Education, Government (PEG) entities. The service provides access to cloud providers for PEGs at a significantly reduced price as compared to individual customers going through commercial providers. KCX infrastructure is currently deployed and relied on by Bellevue, Kirkland, Redmond, Renton, KCIT, BRC, & KCSO. If King County does not move forward to purchase the items from SI, the impact will be significant to KCIT, BRC, & other PEG entities.

This procurement is not a part of any Emergency Declaration & funded through local funding. A competition was unable to be conducted because Smith Incorporated (SI) is the only provider of the current service & enables King County to gain access to all other major cloud providers through one connection. In lieu of the relationship with SI, King County would need to create separate agreements with each individual cloud provider which is cost & time prohibitive; without SI Cloud Exchange, there would be a significant investment required in both hardware, contract negotiations, & administration. The benefit of the services/hardware provided for King County would be continuity in its cloud infrastructure without an impact to operations & enabling PEGs to leverage a contract with multiple stakeholders with a single cost-effective solutions, thus benefiting the public/tax-payers.

SI is a small business located in Bellevue, WA that is minority owned & supports King County's Equity & Social Justice initiatives.

#### Waiver Type Justification

Smith Incorporated (SI) has been identified as the single source provider for cloud aggregation ports & physical rack space facilities, plus is the industry expert in Cloud computing that has been conducting this type of work for King County since 2010. If King County was to compete this

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contract, the transition fees to a new supplier would be \$3,000,000 (analysis attached) thus outweighing any savings; a competition would introduce significant risk into the value stream from a quality/reliability perspective, force King County/EPGs to be removed by 2 degrees of Separation vs 1 degree of contracting directly with SI, & PEGs would be unable to obtain favorable pricing by having to contract on their own. The proposed contract value of \$5,000,000 has been deemed as a fair & reasonable price through a market analysis (attached). The Microsoft ExpressRoute website listed (attached) shows other providers available in Seattle, but the physical location for the ports is always provided by SI – other Cloud providers are contracting with SI to provide the same service, thus there would be a mark-up.

Through the bid process, Procurement & Payables (P&P) conducted a stakeholder analysis (attached) on SI based on SI's current performance for areas of opportunity, evaluate potential solutions (attached), & incorporated Key Performance Indicators (KPIs) that SI will be measured against to ensure quality, cost, & delivery performance. A data privacy, protection, & security evaluation (attached) was conducted by KCIT to verify that the SI has the appropriate controls & measures in-place

Going forward, P&P will work with stakeholders to continue to evaluate opportunities to introduce competition & ensure that King County is receiving a fair and reasonable price.