Using Others' Awards ('Piggybacking')

Purpose

Local government employees responsible for procurement can refer to this guidance when considering using the bid awards of others, also known as "piggybacking." This guidance should help local governments meet the requirements of this method of procurement, an area of frequent audit issues. In the appendix, there is an optional checklist that may be used.

Disclaimer

This guidance is intended to assist entities with procurement requirements in this area, however it does not constitute legal advice and does not address all possible situations or issues that might arise with procurement processes. Local governments are encouraged to seek legal advice when entering into contracts with other organizations or when questions or issues arise. Ultimately, management is responsible for compliance with federal, state and local laws, as well as its own policies. Management is also responsible for evaluating and selecting the procurement methodology that meets its needs and circumstances. This guidance is not intended to be a resource for that evaluation. The purpose of this resource is to address compliance questions and supplement existing internal control processes and procedures.

Instructions

Refer to this information as questions arise regarding piggybacking responsibilities. Consider using the optional checklist to help track compliance requirements. If additional questions arise, consider contacting your legal counsel or submitting questions to our HelpDesk.

What is piggybacking?

To be "carried" by another in a contracting sense is to participate in a cooperative purchasing arrangement where one party is doing most of the work (such as advertising, bid opening, and tabulating bids). In a piggybacking situation, generally a larger entity (lead government) procures goods or services in a competitive environment and then extends the pricing to other entities (participating governments). This might benefit the larger entity, allowing it to obtain better pricing due to the economies of scale of including the buying power of other entities. It might benefit those participating in the contract by potentially obtaining better pricing and avoiding the time and resources it takes to conduct the public bidding process.

What Washington laws govern the use of 'piggybacking'?

Washington law allows this alternative to a competitive bidding process, provided the applicable requirements in RCW 39.34.030 are satisfied. Each government should also check its local policy to determine if it allows this option, as well as evaluate the most optimal form of procurement for the goods or services sought. This procurement method might have advantages – primarily in saving some time and possibly better pricing – but it is does not guarantee a lower price or a suitable quality item. It also could have disadvantages such as not advertising the purchase or project in the government's local area. Further discussion of whether this type of procurement is preferable to other methods is outside the scope of this document.

Can a local government use another's bid award for a public work project?

Local governments are allowed by state law to use another's bid award for public works projects provided the requirements are met. However, we recommend exercising due care in this area. For a local government to piggyback, the project of the lead government and the project of the participating government must be essentially the same. Specifically, the lead government and those later relying upon the bid should each have the same project plans and specifications. The only differences should be the quantities purchased. For example, in the case of a roofing contract, if the lead government procured a metal roof, then those participating would also have to procure the same metal roof with no changes in scope such as adding a gutter system that was not part of the original bid. The only difference in the projects would be the amount of the metal roofing purchased. Governments should ensure the labor paid is consistent with the bidded labor price after compensating for any changes in roof size or differences in prevailing wage rates that might vary by region.

What are the responsibilities of the lead government(s)?

The lead government or group of governments must (in accordance with RCW 39.34.030(5(b)):

- Comply with its own bid requirements
- Advertise in accordance with its own statutory requirements. If these requirements are satisfied, the advertising requirements for other participating governments are also satisfied even if they are different from those of the lead government.
- Post the bid or solicitation notice on its website or provide an access link on the state's web portal to the notice
- Ensure that its request for bids and final contract allows for the eventual contract to be used by more than one local government. This obligates the vendor to provide its product or service to other participating governments at the same price and terms.

What are the responsibilities of the participating governments?

The local government must ensure it complies with its own policies and procedures. In addition, a local government that desires to rely on another's procurement and bid award process must:

Step 1: Read the lead government's contract. The local government should confirm the lead agency's contract with the prospective vendor has not expired and will be open and active for the time period desired. Also, the local government should ensure the original solicitation and resulting contract specifically allows for others to use it post-award (may be referred to as an assignability clause). This is important because the bid process needs to fairly describe the scope as it could affect those that might choose to bid, and the pricing offered. The lead government must have conducted the actual procurement process (it cannot already be a participating government relying on the bid award of another).

There are other reasons to read the contract as well, such as to gain a complete understanding of the specifications or deliverables and other contract terms that might impact the decision to move forward.

Step 2: Ensure the bid award meets your requirements. For example, if the local government must award the bid to, or purchase from, the lowest responsible bidder, it may only use another government's contract if the award was to the lowest responsible bidder. Also, if the project or purchase amount is above the local government's formal bid limit, then the other jurisdiction's contract must have been formally bid. Many cooperatives use a request for proposal (RFP) process instead of formal sealed bidding. Since many governments have a requirement to award a contract to the lowest responsible bidder, the RFP process may not meet bid law requirements.

Local governments should be aware that bid laws can vary significantly between different types of municipalities. Governments should be particularly cautious when looking to piggyback on contracts entered into by entities that are out-of-state or of a different government type. For example, school districts have a process requirement that is unique to schools in our state. School Districts have a special requirement to hold a public bid opening under RCW 28A.335.190. Consequently, school districts should ensure this process requirement has been met by the cooperative or the lead government in order to access their contract.

Governments should also be cautious if the bid award contains both products and services. In this case, the local government should evaluate the substance of the contract. If the contract is for the purchase of a product that has a service agreement, the local government would be subject to bidding requirements for purchases.

Step 3: Document that the award met its own bid requirements. The participating government must retain documentation of the bid process to demonstrate its own bid laws were satisfied by the lead government. This is best accomplished by keeping copies of the lead government's bid documents. These documents might include: advertisement/affidavit of publication, bid tabulation or summary of bids received, competitive negotiation scoring for professional services, and governing body approval of the contract in meeting minutes.

Step 4: Enter into an interlocal agreement or contract. After steps 1-3, local governments must enter into interlocal agreements or contracts to use another's bid award, unless they are already a member of the cooperative and all requirements are met with the membership agreement.

Can a local government make purchases using a cooperative's contract?

Local governments often purchase through contracts procured by cooperatives. To do this, the participating local government must first become a member of the cooperative or enter into an interlocal agreement, otherwise it would not be authorized to make purchases through the cooperative. To use a membership agreement, participating local governments should consult with legal counsel to ensure it satisfies all the interlocal agreement act requirements found in RCW 39.34.030 (2).

The State Auditor's Office does not evaluate cooperatives or provide an approved list. Each local government must evaluate cooperatives and make its own determination.

How do all governments involved comply with the various advertising requirements?

The lead government will advertise in accordance with its requirements. If the lead government's advertising requirements are satisfied, the advertising requirements for all participating governments are satisfied even if they are different. It is not necessary for participating governments relying on the bid award to ensure it is advertised locally. However, those participating governments should retain evidence that advertisement occurred.

What if a local government would like to change contract specifications (i.e., exercise contract options)?

This circumstance might arise in cases like buying an ambulance, where a government might want different add-ons or options than what was included in the lead government's bid award. State law does not provide for this scenario. If the government has questions in this area, it should consult its legal counsel.

Is it possible to extend the contract?

Contracts can be extended as long as the lead government's original contract language allows for extensions. State law does not address contract extensions or renewals. However, when governments have multi-year contracts, they should have policies and controls in place to evaluate and demonstrate the ongoing reasonableness of the contract. For example, such internal controls might include formal evaluations of price and service prior to contract extension, independent extension approval, and limits on contract lengths (ex: no more than five years).

Can a government 'piggyback' on the small works roster of another?

Yes, the participating government would need to follow the requirements outlined above when relying on the bid award process of another. The participating government would need to ensure that the roster had been established and maintained in accordance with RCW 39.04.155.

Some governments use the Municipal Research and Services Center (MRSC) small works roster. This is allowable so long as the local government is a member.

Do state bus bids result in a 'piggybacking' situation?

State law (RCW 28A.160.195) covers bus purchases through the Office of Superintendent of Public Instruction (OSPI). As long as the statute's requirements are followed, this would not be considered a "piggybacking" situation subject to this guidance.

Can I piggyback if I'm using federal funds to procure the goods or services?

The Uniform Guidance, Code of Federal Regulations (CFR) 2 CFR 200.318 (e) - General Procurement Standards provides an option for piggybacking:

> "To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services."

However, federal grantors might have procurement guidelines or limitations within specific awards that must be followed. For example, the Federal Transit Administration (FTA) has specific requirements. Consequently, local governments are encouraged to carefully review grant award documentation and program guidance. In addition, a local government might want to contact the respective granting agency for specific guidance. This may be accomplished by reaching out to the contact listed in the award documentation.

If piggybacking is allowable under the terms of the grant, and absent any specific guidance from the grantor on piggybacking, the local government should also consider some potential problem areas:

- **More restrictive requirements:** Any local government using federal funding must ensure they are following the most restrictive of federal or state procurement laws. In many cases, federal procurement requirements are more restrictive. For example, the procurement of services (method and advertisement) is an area of significant difference under federal requirements as compared to state laws. In another example, state law allows for use of small works roster for projects under $300,000 but the federal requirements do not coincide with this threshold. Local governments should make sure they are aware of the various differences between state and federal requirements to ensure they are following the most restrictive requirements.
- **Plan ahead if you might want to use federal funds:** Occasionally a government might unexpectedly receive federal dollars that it could use to cover some contract costs. However, if a contract has already been awarded, and federal requirements were not considered or followed during the procurement process, then project costs cannot be charged to federal funds at any point in the future. If there is any possibility a local government might receive federal funding for a project, they should plan ahead and handle the procurement process in a manner that will allow for this future possibility.
- **Federal contract provisions:** Any government using federal funding must ensure the contract with its vendor contains the applicable provisions described in the Uniform Guidance, 2 CFR Section 200.326 – Contract provisions. Examples include prevailing wages clauses (Davis-Bacon Act) and termination for cause.
- **Suspension and debarment:** This requirement is to ensure payment is not made to any parties excluded from doing business with the federal government. It requires checking a website of excluded parties, obtaining a certification, or including language in the contract. If the lead government verified that the vendor was not suspended or debarred, this would not fulfill the local government's requirement to do its own verification. It is the sole responsibility of the local government to comply with this requirement.
- **Use of a consultant's roster:** For qualification-based procurements, requests for proposals must be publicized and identify all evaluation factors and their relative importance. Local governments should be cautious when using another's roster when spending federal funds and ensure all federal requirements were met.

There are many different federal requirements, and it is not within the scope of this guidance to include all the requirements that should be considered. If a local government has questions about complying with a federal award, it should contact its grantor directly.

For assistance

This resource has been developed by the Performance Center of the Office of the Washington State Auditor. Please send any questions, comments, or suggestions to **center@sao.wa.gov**. For specific questions about procurement practices or federal grants, please submit questions to the HelpDesk available through the client portal at **www.sao.wa.gov**.

Checklist item	Yes/no	Reviewer notes
1. Has the government evaluated all procurement options and determined piggybacking is the best viable option for the procurement?		
1a. Does the government's procurement policy support use of this procurement method?		
2. Has the lead government solicitation and contract been obtained and reviewed for the original bid award?		
2a. Did the lead government handle the procurement process itself? (if not, cannot piggyback)		
2b. Does the solicitation and contract allow for others to use the bid award (i.e., contain an assignability clause)?		
2c. Does it include the goods or service sought?		
2d. Is the contract active and will it be open for the period desired (including renewal options) and the option for piggybacking valid, if applicable?		
2e. Does the quality, specifications or deliverables meet expectations?		
2f. Has the government evaluated the effect of or drawback to any changes or options it would like, but that this procurement method would not provide for?		
2g. Is the price reasonable when compared to a cost or price analysis?		
3. Have you evaluated whether the bid meets your requirements?		
3a. Did the lead government follow its own bid requirements and complete a proper evaluation of bids?		
3b. Was it advertised in accordance with the lead government's requirements and notice posted on its website?		
3c. Does the bid award adhere to the local government's procurement requirements?		
3d. Was documentation obtained to support the bid process and various requirements were met? Retain records for your files.		
4. If using federal funds, did you ensure all federal procurement requirements are met?		
4a. Does the lead government's procurement process comply with federal procurement requirements?		
4b. Did you ensure compliance with suspension and debarment requirements before entering into a contract with the vendor (do not rely on the lead agency)?		
4c. Did you consider any specific guidance the federal agency might have?		
4d. Does your draft or proposed contract with the vendor include required contract language such as for the Davis Bacon Act/prevailing wages?		
5. Did you enter into an interlocal agreement or contract with the lead government or entity after completing the steps above?		
5a. Did you ensure any interlocal agreement meets legal requirements under RCW 39.34.030?		
5b. Did you become a member if using a cooperative?		
5c. If relying on a membership agreement in place of an interlocal agreement, did you ensure it met applicable requirements?		