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Lunch and Learn Webinar Series

Piggybacking and Cooperative Contracts in New York State

June 12, 2018





Piggybacking and Cooperative Contracts in New York State

What Public Administrators Need To Know

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June 12, 2018



Piggybacking vs. Joint or Cooperative Procurement

- Local governments, school districts, and fire districts can utilize contracts that are awarded by other government agencies, which is called “Piggybacking.” This saves local governments the time and costs associated with bidding needed items. However, piggybacking does not leverage purchasing volume.
- A cooperative contract is created when all agencies establish their requirements together and go out to bid for those requirements in a coordinated effort. Cooperative purchasing leverages purchasing volume and provides greater savings.

Principles of Cooperative Purchasing

- The basic principle behind cooperative purchasing is that supplies, materials, services and equipment can often be purchased for substantially less, if bought in quantity.
- Additional savings is achieved through lower joint administrative costs.

Principles of Cooperative Purchasing

- Many local governments and school districts purchase similar items, such as electricity, office supplies, vehicle maintenance parts, cafeteria food and beverages, sports equipment, and cleaning supplies, which could be purchased through a cooperative arrangement.

Principles of Cooperative Purchasing

- Sections 119-n and 119-o of General Municipal Law authorize Cities, towns, counties, villages, fire districts, school districts, BOCES and town or county improvement districts are authorized to enter into cooperative purchasing arrangements among themselves through intergovernmental cooperation agreements.
- Local governments and school districts may generally perform any function or service on a cooperative basis that they may perform individually. Purchasing is an example of where intergovernmental cooperation can be employed.

Principles of Cooperative Purchasing

- All laws relating to competitive bidding or competitive offering (Best Value) must be complied with and the cooperative agreement, which must be approved by each board, must be in place prior to the solicitation of bids or offers.

Principles of Cooperative Purchasing

- Typical cooperative purchasing activities include development of a single set of specifications for common items, preparation of advertisements of bids or offers, administration of the competitive bidding or offering process, and arrangement for purchase deliveries.

Piggybacking on Certain Government Contracts

- As an alternative to soliciting competition on your own or through cooperative purchasing arrangements, local governments and school districts may “piggyback” on contracts that have been extended to local governments and school districts by certain other governments.
- These include:
 - County Contracts
 - State Contracts
 - Federal Contracts
 - Certain other government contracts
- Use of these contracts constitutes an exception to the competitive bidding and offering requirements of the law.

Piggybacking on Certain Government Contracts – County Contracts

- Counties in New York State may authorize the inclusion of a provision in their solicitations, purchase contracts and contracts for services (with the exception of those that are subject to prevailing wage provisions of Article 9 of the labor law (Building Services) which are awarded to the lowest responsible bidder or by Best Value, after public advertisement, for any political subdivision to obtain commodities or services under such contracts.
- Procurements made under these contracts by other localities must be made upon the same terms, pricing and conditions as the original contract.

Piggybacking on Certain Government Contracts – State Contracts

- Certain State Contracts for the procurement of commodities, equipment, materials, supplies, services, technology and food products are made available to local governments and school districts through the NYS Office of General Services (OGS).
- Local governments can make purchases at the same prices and under the same terms as the State. Examples include
 - Road Salt, fuel, vehicles, heavy equipment, school buses, computer hardware and software.

Piggybacking on Certain Government Contracts – State Contracts

- You may register to receive notices of contract awards and amendments for contracts you have interest in.
- Orders are placed directly with the contractors listed.
- Purchase Orders are required. – The state contract number should be included on your purchase order.
- Some state contracts require “mini-bids”. Competition among the awarded contractors.
- “Field Requirements” contracts require local governments to provide estimated usage to the state. Your government can be held to purchasing at least 80% of your estimated amount. (Fuel, Road Salt)

Piggybacking on Certain Government Contracts – Federal Contracts

- Local governments and school districts may purchase from certain federal General Services Administration (GSA) contracts. These include:
 - Schedule 70 – Information technology and telecommunications hardware, software, and professional services.
 - Schedule 84 – Alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing and related services.
 - Section 1122 Program – Certain equipment suitable for counter-drug, homeland security, and emergency response activities through the United States Department of Defense
 - Certain products and services to be used to facilitate recovery from major disasters declared by the President, or from terrorism or nuclear, biological, chemical or radiological attack.
 - Certain goods and services used to “facilitate disaster preparedness or response”.

Piggybacking on Certain Government Contracts – Certain other Government Contracts

- Local governments and school districts may contract to purchase apparatus, materials, equipment, or supplies or contract for services related to the installation, maintenance, or repair of apparatus, materials, equipment, and supplies through the use of a contract let by the United States of America or any agency thereof, any state or any other county, political subdivision, or district therein. (General Municipal Law 103(16)).
- In order for this exception to apply, the contract must also have been awarded either to the lowest responsible bidder or on the basis of best value, in a manner consistent with GML section 103 and made available for use by other governmental entities.

Piggybacking on Certain Government Contracts – Certain other Government Contracts

- Political subdivisions (other than New York City) that wish to make procurements under GML 103(16) through the use of a contract awarded on the basis of best value must have first authorized the use of best value for awarding their own purchase contracts by local law, or in the case of district corporations, school districts and BOCES, by rule, regulation or resolution.
- This authorization may be accomplished by the adoption of a single local law or single rule, regulation or resolution. (NYS Comptroller – July 2016)

Piggybacking on Certain Government Contracts – Certain other Government Contracts – Three Prerequisites

- There are three prerequisites that must be met in order for a procurement of apparatus, materials, equipment and supplies, and related installation, repair and maintenance services, to fall within this exception
 1. The contract must have been awarded by the United States or any agency thereof, any state or any other political subdivision or district therein;
 2. The contract must have been made available for use by other governmental agencies (piggybacking clause)
 3. The contract must have been “awarded to the lowest responsible bidder or on the basis of best value in a manner consistent with GML 103

Piggybacking on Certain Government Contracts – Certain other Government Contracts – Three Prerequisites

- The local government making the purchase would need to obtain background information on the procedures used to let and award the contract, and, as necessary, consult with counsel, to determine if the prerequisites are met.
- For a non-New York contract to be consistent with GML 103, the procedures used by that government need not be exactly the same as those under GML 103. Rather the procedures must be in harmony or general agreement with GML 103 and further the same principles of competitive bidding

Piggybacking on Certain Government Contracts – Certain other Government Contracts – Three Prerequisites

- There are four fundamental elements that should be present in the procedures used by the non-New York entity in awarding the contract in order to be consistent with GML 103.
 1. Public solicitation of bids, or in the case of best value, offers;
 2. Submission of sealed bids or offers, or analogous procedures to secure and preserve the integrity of the process and confidentiality of bids or offers submitted;
 3. Preparation of specifications, or a similar document that provides a common standard for bidders or offerors to compete fairly;
 4. Award to the lowest responsible bidder who materially or substantially meets the bid specifications and is determined to be a responsible bidder; or in the case of a best value process, an award to the responsive and responsible offeror.

Piggybacking on Certain Government Contracts – Other Considerations

- You should also consider other cost factors including delivery charges.
- Most OGS contracts are FOB Destination (free on board) and delivery to the purchaser's location is free or included in the price.
- Most GSA contracts are FOB Origin and delivery to the purchaser's location is additional to the contract price.
- Amend your procurement policy to authorize piggybacking for purchases under the formal statutory bid thresholds in lieu of obtaining request for quotations.

Piggybacking on Certain Government Contracts – Other Considerations

- While purchasing through extended State, county and other government contracts may be advantageous, it is not required, and does not guarantee a lower price and/or quality items or services.
- State, county and other government contracts do provide officials with the following benefits:
 - Reduction or elimination of the time required to prepare specifications;
 - Enhancement and simplification of the procurement process, and
 - Minimization of the time required to determine “responsibility” of bidder(s)

National Cooperatives and Piggybacking

- Numerous national cooperatives all seeking your participation:
 - U.S. Communities
 - Value Point – National Association of State Purchasing Officials (NASPO)
 - National Joint Powers Alliance (NJPA)
 - National IPA
 - National Cooperative Purchasing Alliance (NCPA)
 - Purchasing Cooperative of America (PCA)
 - Educational Data Services

National Cooperatives and Piggybacking

- Does the national cooperative meet the three prerequisites identified by the NYS Comptroller?

National Cooperatives and Piggybacking – Due Diligence

- **Solicitation, Evaluation and Award**

- Was the issuing entity and awarding entity of the solicitation an independent lead public agency that meets the standard definition of a political subdivision (county, city, school district, state, public higher education or special district) and therefore meets the cooperative purchasing legal criteria in all states where cooperative purchasing is permitted?
- Was the development of the solicitation, evaluation of the responses and award determination all performed by public employees of a political subdivision that is separate from and independent of the cooperative organization?
- Are all solicitations for the cooperative performed by a variety of independent public agencies?
- Was the procurement process substantially similar to the process your agency is required to use?

National Cooperatives and Piggybacking – Due Diligence

- **Contract Compliance Processes and Programs**

- Does the cooperative organization conduct independent third-party supplier audits to ensure contract compliance?
- Does the cooperative organization have adequate staff relative to the number of awarded suppliers?
- Does the cooperative organization's staff conduct quarterly performance reviews with supplier executives and lead agency to evaluate performance and compliance?

National Cooperatives and Piggybacking – Due Diligence

- **Contract Volume & Quality**

- Does the cooperative organization's agreement contain terms and conditions that require the supplier to provide their best government pricing to your agency?
- Is the amount procured through the contract significant?
- How competitive was the award process? Were awards to a limited number of highly competitive responses?

Questions



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- **Sat., September 29 ♦ Saratoga Lake Golf Course**
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Annual Conference and Expo*

Sun., September 30 - Wed., October 3 ♦ Saratoga Springs, NY

- **School Facilities Managers' Academy
December 4 - 5 ♦ Latham**

