Cooperative and Piggybacking Best Practices

Karen Storm
Albany County Purchasing Agent

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#2018NYGovBuy @NYSPro @nysprocurement
Realities of our Public Procurement World

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Public Procurement – realities

• Our primary purpose is to obtain quality goods and services for our governmental entity by ensuring the prudent use of taxpayer funds.

• Purchasing laws have become more complex, staffing has decreased as workloads have increased, and our budgets have declined.
Public Procurement – realities

• We must continually look for new tools to make our governmental agencies more effective and efficient.

• Government cooperation – through the use of piggybacking or cooperatives – inspires public confidence that we are using our resources wisely.
Definitions
Definition of Piggybacking

Where one governmental entity will extend the pricing and terms of their contract to others. It’s competitively awarded and will include language allowing other governmental entities to utilize the contract.

Here in New York you must purchase the exact same item – using the same terms and conditions as presented in the original solicitation.
Definition of Cooperative Procurement

Cooperative Procurement (Purchasing)
1. The action taken when two or more entities combine their requirements to obtain advantages of volume purchases, including administrative savings and other benefits.
2. A variety of arrangements, whereby two or more public procurement entities (or agencies) purchase from the same supplier or multiple suppliers using a single Invitation for Bids (IFB) or Request for Proposals (RFP).
3. Cooperative procurement efforts may result in contracts that other entities may “piggyback.” (from NIGP Dictionary)
What the Law Allows

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Piggybacking Contracts

• GML 103 was amended to add a new Section 16 that authorizes the piggybacking of certain contracts.

• This will allow the use of contracts issued by all local governments within New York State and other governmental agencies outside of New York State (if the piggybacking language is included in the original bid).

• Guidance has been published by the New York State Comptrollers Office, however, if you have questions speak with your own Attorneys.
Piggyback Section of the GML Law

* 16. Notwithstanding the provisions of subdivisions one, two and three of this section, and section one hundred four of this article, any officer, board or agency of a county, political subdivision or of any district therein authorized to make purchases of apparatus, materials, equipment or supplies, or to contract for services related to the installation, maintenance or repair of apparatus, materials, equipment, and supplies, may make such purchases, or may contract for such services related to the installation, maintenance or repair of apparatus, materials, equipment, and supplies, as may be required by such county, political subdivision or district therein through the use of a contract let by the United States of America or any agency thereof, any state or any other county or political subdivision or district therein if such contract was let in a manner that constitutes competitive bidding consistent with state law and made available for use by other governmental entities.
What to Consider

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What to Consider

(1) That bids are solicited competitively through a public solicitation process like advertising in official newspapers or websites, etc. *

(2) That bids are sealed to guard against fraud, favoritism or collusion *

(3) That bid specifications must be fair/open and not skewed toward particular vendors, i.e. that the system fosters open competition;

(4) first adopt a local law, rule, regulation or resolution, as the case may be, authorizing the use of best value for awarding purchase contracts.*

* http://osc.state.ny.us/localgov/pubs/piggybackinglaw.pdf
What to Consider

(5) That the bid goes to the **lowest bidder** and that there is no process in which other bidders who are not the lowest bidders are "encouraged" to drop their prices for purposes of being awarded the bid.

   – “no 2\(^{nd}\) bite of the apple”

(6) National Cooperative Examples (there are many cooperatives)

   – U.S. Communities
   – National IPA and TCPN have merged under the National IPA logo
   – NJPA
   – NASPO ValuePoint
   – Plus many more
Best Practices to Consider

• Comparison shopping between State, County and National Cooperative contracts:
  – Office supply
  – Industrial supplies
  – Janitorial supplies
  – Automotive supplies

• Issue a formal document amongst cooperatives
• Keeps documentation for auditors in one place
Verification Template Examples

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# Albany County example

Albany County Justification for Utilizing a Cooperative Contract

<table>
<thead>
<tr>
<th>Issue</th>
<th>Procurement Consideration</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York State Considerations:</td>
<td></td>
</tr>
<tr>
<td>1. Was the contract let by the United States or any agency thereof, any state or any other political subdivision or district thereof?</td>
<td></td>
</tr>
<tr>
<td>2. Was the contract made available for use by other governmental entities?</td>
<td></td>
</tr>
<tr>
<td>3. Was the contract let in a manner that constitutes competitive bidding “consistent with state law”?</td>
<td></td>
</tr>
<tr>
<td>4. Was there a public solicitation of bids consistent with OML 105 and notice that the purposes of OML 105 are furthered?</td>
<td></td>
</tr>
<tr>
<td>5. Was the submission of sealed bids, or analogous procedure, done in a manner to secure and preserve the integrity of the process, and confidentiality of the bids submitted?</td>
<td></td>
</tr>
<tr>
<td>6. Was the preparation of bid specifications, or a similar document that provides a common standard for bidders to compete on the award to the lowest bidder who materially or substantially meets the bid specifications, and is determined to be a responsible bidder?</td>
<td></td>
</tr>
<tr>
<td>General Considerations:</td>
<td></td>
</tr>
<tr>
<td>6. Do the terms, conditions and scope of work/specifications meet the need?</td>
<td>It should be noted here if terms or prices were negotiated.</td>
</tr>
<tr>
<td>9. If no, are these terms, conditions and scope of work/specifications negotiable?</td>
<td>Factors may include advantageous terms, conditions, prices, quality, performance, timing, entity’s experience and ability to duplicate the contract, age of the contract, etc.</td>
</tr>
<tr>
<td>10. Does the cooperative contract provide the most advantageous solution? Why?</td>
<td></td>
</tr>
<tr>
<td>11. Will volume pricing advantages be applied to purchases?</td>
<td></td>
</tr>
<tr>
<td>12. Were local and regional vendors offered the opportunity to compete for the contracts?</td>
<td>Use this area if applicable to the entity’s procurement policies, practices or procedures.</td>
</tr>
</tbody>
</table>
Town of Colonie example
State Agency only

| Service       | Office of General Services | Procurement Services |

**Contract Use Request Form**

Instructs: Entities requesting OGS review of plugback should complete and submit the following to the Customer Services Team:
- By email: procurement@nysexec.state.ny.us
- By mail: NYS Office of General Services, Procurement Services (Routing Tower, 3rd Floor) Albany, NY 12242

Note: Individual agency contracts are subject to review & approval of OGS & other agency specific review & approval.

1. **Please provide contact information.**

<table>
<thead>
<tr>
<th>For End Agency/Person:</th>
<th>For the Contractor:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Name</td>
</tr>
<tr>
<td>Address</td>
<td>Address</td>
</tr>
<tr>
<td>Email</td>
<td>Email</td>
</tr>
</tbody>
</table>

2. **Please provide details of the procurement.**

- **Describe the product or service for the original contract:**
- **Describe the product or service which you intend to acquire:**
- **Original Contract Reference:**
- **Order Quantity (Units):**
- **Price Per Unit:**
- **Total Price:**
- **Estimated Quantity Required:**
- **Estimated Total Item Price for Plugback:**
- **Estimated Total Value of Plugback (excluding secondary contract items):**

3. **Provide information on the procurement method.**

<table>
<thead>
<tr>
<th>What was the original method of award for this contract?</th>
<th>What procurement alternative(s) could be used for your agency?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mini-Sell</td>
<td>Mini-Sell</td>
</tr>
<tr>
<td>Non-Competition Based On:</td>
<td>Non-Competition Based On:</td>
</tr>
<tr>
<td>Federal Sources</td>
<td>Federal Sources</td>
</tr>
<tr>
<td>Uniquely Sourced Material Source</td>
<td>Uniquely Sourced Material Source</td>
</tr>
<tr>
<td>Emergency</td>
<td>Emergency</td>
</tr>
<tr>
<td>Other</td>
<td>Other</td>
</tr>
</tbody>
</table>

Please describe why plugbacking is the appropriate mechanism for this procurement (i.e. timing, level of need, nature of item). Have other procurement methods considered? Is there any special, unique or exigent market circumstances warranting this extension request? Make sure to answer all questions and attach additional documents if you need more space.

4. **Please provide price justification information.**

- **Have market conditions changed since the original award? (i.e. availability of supply, price fluctuations?)**
- **Is there a mechanism in the contract for an adjustment to the original contract terms to reflect current pricing or market conditions?**

How have you determined the reasonableness of price for the plugback volume? Is there an additional discount being considered in consideration of your use of the agreement? Please describe.

5. **Agency Representation.**

In providing the above information to the Office of General Services for plugbacking approval under State Finance Law §163 (10)(c), the entity making this submission represents that it has done a thorough review of the original procurement documents and that the information furnished in this “Contract Use Request” provides a complete and accurate summary of both the original contract and relevant agency plugback procurements.

- **Supplier Name:**
- **Supplier Address:**
- **Authorized Signature:**

<table>
<thead>
<tr>
<th>For OGS Use Only</th>
<th>Authorized Signature:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approved</td>
<td>Approved with Comment (see attached)</td>
</tr>
</tbody>
</table>

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*Attach additional information as necessary.*

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*Another example if you are developing your own.*
Examples
Cooperatives
Currently Used by
Albany County

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US COMMUNITIES:

- BSN Sports
- Ricoh – Saved $35,000 over 5 yrs
- AMSAN – Janitorial products
- Safeware – Public Safety
- KONE – Elevator Maintenance and Modernization
• NATIONAL IPA:
  – Office Depot
  – Hill & Marks – Janitorial Supplies

• TCPN:
  – Lowes
  – Gov Connections
• National Joint Purchasing Alliance, NJPA:
  – Carpet
  – Fuel Master – Complicated Contract
  – Goodyear
  – Grainger
  – NAPA
  – Pitney Bowes
https://www.osc.state.ny.us/localgov/pubs/lgmg/seekingcompetition.pdf

To:  Chief Fiscal Officers
Subject:  New “Piggybacking” Law - Exception to Competitive Bidding (Updated)

Please provide copies of this bulletin to others who may need this information.

Background
Effective August 1, 2012, a new subdivision 16 was added to General Municipal Law (GML) § 103 to authorize political subdivisions and districts therein to purchase apparatus, materials, equipment and supplies, and to contract for services related to the installation, maintenance or repair of these items, through the use of contracts let by the United States or any agency thereof, any state or any other political subdivision or district therein. The contract must be made available for use by other governmental entities.

This exception to GML § 103 (1), as originally enacted, provided that the contract must have been let in a manner that encourages competitive bidding consistent with state law. GML § 103 (10) was amended by chapter 487 of the Laws of 2013, to provide that the contract must be let either to the lowest responsible bidder or on the basis of best value in a manner consistent with GML § 103. The amendment to subdivision 16 became effective on November 13, 2013. GML § 103 (16) is scheduled to expire on July 31, 2019. Political subdivisions (other than New York City) that wish to make procurements under GML § 103 (16) through the use of a contract let 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 cooperatives (e.g. for districts), school districts and BOCES, rule, regulation, or resolution. This authorization may be accomplished by the adoption of a single local law or multiple rules, regulations, or resolutions. The stated purpose of GML § 103 (16) is to reduce administrative and product cost, and increase efficiencies.

Many local governments have been approached by vendors offering goods and services under other governmental contracts and, in some cases, vendors have asserted that the contract falls within the exception (in GML § 103 (16)). It is the responsibility of local officials to review each proposed procurement to determine, as advice of the local government’s counsel as appropriate, whether the procurements falls within the exception. To assist local government officials in undertaking this review, we offer the following guidance.

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 let by the United States or any agency thereof, any state or any political subdivision or district therein. Therefore, there must be an underlying contract let by one of the listed governmental entities. Contracts developed for use by local governments that are let by private parties (e.g., a private company, association or not-for-profit corporation in the party awarding the contract to the vendor), and not by the United States or any agency thereof, any state or any other political subdivision or district thereof, would not fall within the exception.

   This phrase “any state or other political subdivision or district thereof” clearly includes other states, and political subdivisions in other states. In our view, it also includes New York State political subdivisions. Therefore, in addition to the current competitive bidding exception for certain purchases through contracts of New York State counties (County Law § 400-a; GML § 103 [3]), local governments also may purchase through qualifying contracts let by other New York State political subdivisions under this exception.

2. The contract must have been made available for use by other governmental entities. This means that the other governmental entity has taken steps to make its contract available for New York local governments. In general, this would occur by inclusion in the contract let by the other entity of a clause extending the terms and conditions of the contract to other governmental entities. Unilateral offers by vendors to extend contract pricing and other terms and conditions would not fall within the exception.

3. The contract must have been “let to the lowest responsible bidder or on the basis of best value in a manner consistent with this section.” The term “consistent with this section” refers to General Municipal Law § 103 (10) and related case law applicable to New York State political subdivisions. The purchasing local government would need to obtain background information on the procures used to let the contract and, as necessary, consult with its counsel, to determine whether this prerequisite is met. Additional guidance on complying with this prerequisite follows.

Determining Consistency with GML § 103
In order for a non-New York contract to have been let to the lowest responsible bidder or on the basis of best value (competitive offering) in a manner “consistent with” GML § 103, the procedures used by that government must not be exactly the same as those under GML § 103.

http://osc.state.ny.us/localgov/pubs/piggybackinglaw.pdf
Some Cooperatives in Alpha Order

NASPO ValuePoint  http://www.naspovaluepoint.org/#/home/contracts

NATIONAL IPA/TCPN  http://www.nationalipa.org/Pages/default.aspx

National Joint Purchasing Alliance, NJPA  https://www.njpacoop.org/

US Communities  http://www.uscommunities.org/

E&I Cooperative Services (education)  https://www.eandi.org/
Questions & Contact Information

Karen A. Storm, CPPB
Albany County Purchasing Agent
SAMPO Executive Board
518-447-7149
kstorm@albanycounty.com