

Purchasing, Bidding, and Contract Management Mini-Workshop

Association of Government Accountants
Central Washington Chapter
May 16, 2007

Intergovernmental Purchases (Piggybacking)

Municipal Research and
Services Center
2601 Fourth Avenue, Suite
800
Seattle, WA 98121-1280
206-625-1300
Fax: 206-625-1220
www.mrsc.org

John W. Carpita, P.E.
Public Works
Consultant
jcarpita@mrsc.org

Patrick Mason
Senior Legal Consultant
pmason@mrsc.org



Rock and Roll Moment

Your Facilities Manager just found this really great deal on widgets on the Bakersfield, California purchasing Web site that will save the city \$80,000 if they can 'piggyback' on the contract. What is this guy thinking? We can't do that! Or can we?



RCW 39.34.010
authorizes interlocal
agreements with public
agencies in any other
state. There are a few
hoops to jump through,
though.



Outline

- 2003 Attorney General Memo
- Basic Principles
- RCW 39.34.030 (5)
- Checklist
- Other Issues

The 'Piggyback Guru'

Nancy Locke

City Purchasing Manager

Purchasing Services Division

City of Seattle

Department of Executive Administration

700 Fifth Ave., Suite 4112

P.O. Box 94687

Seattle, WA 98124-4687

(206) 684-8903

Fax: (206) 233-5155

nancy.locke@seattle.gov

AGO Memo June 23, 2003

Strong Reiteration of Obligations

- There is a strong public policy in Washington State favoring competitive bidding.
- Unless permitted otherwise, contracts shall be let only after bid requirements are met.
- When Legislature statutorily imposes competitive bid requirements... competitive bid requirements will not be narrowly construed.
- And...specifically...bid advertisement must be pursuant to all pertinent codes and statute.

Is it mandatory that an using agency sign an interlocal agreement (ILA) with the host agency before bid is performed?

■ AGO April 2003:

- “We do not interpret the Act as mandating a rule that purchases can only be made from another public agency’s purchase contract pursuant to such an Interlocal agreement. Rather, our interpretation of general local government bidding requirements is that public agencies may subsequently avail themselves of purchase contracts entered by other public agencies
”
...

April 1, 2003 AGO Memo - Continues

- We can piggyback....
- As long as all involved agencies have the authority to bid/contract....
- And as long as the contract was awarded in compliance with bid requirements of each agency...
- And awarded with language about the intent to use Interlocal; and
- No statutes prohibit the purchase.
- The Interlocal Agreement does not have to be in place prior to award.

Piggy-backing

The Basic Legal Framework

- 39.34.030 – Interlocal Cooperation Act
- Two or more public agencies may exercise powers jointly. Specify duration, the entity, the purpose, the matter of financing, termination.
- A nonprofit can be formed, if all members are a public agency.
- Each participating agency must have power to do individually what they agree to do jointly.
- Does not relieve any agency of their statutory obligations that otherwise exist, especially advertising.
- Several AGO provide basic interpretations:
 - AGO 1991 No 19
 - AGO 1988 No 19
 - AGO 1979 No 2
 - AGO 1969 No 8

Post 2004 Bid Piggybacking

- RCW 39..4.030 (5) (adopted in 2004)
 - With respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or by a group of public agencies, any statutory obligation to provide notice for bids or proposals that applies to the public agencies involved is satisfied if the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its own statutory requirements and either

Post 2004 Bid Piggybacking

- (i) posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for purposes of posting public notice of bid or proposal solicitations,
- or ii) provided an access link on the state's web portal to the notice.

You are the Host

1. Advertise in your papers, like you are always required to do per your codes.
2. Post the bid on a website.
3. Be thoughtful to features that might limit shared use (local preferences, WMBE, FTA, etc)
4. Document the advertising and posting in the Solicitation and in the Contract to make it easy for others to find. Perhaps include a signed certification.
5. Add language to allow ILA purchasing. There is standard language, although many variations work.
6. Be thoughtful of documenting the purpose of multiple award.
7. Someone wants to piggyback? Provide the RFP/ITB, Ad, Website “certification,” Bid Tab and contract all in a package.

When you are the piggybacker

1. Sign an Interlocal Agreement with the host Agency.
2. Office of State Procurement (OSP) ILA just covers OSP.
3. US Communities – register on-line. Sign US Communities Participation Certificate provided by the vendor on behalf of the host for each contract (or sign ILA with the agency that hosts the bid/contract).
4. Evaluate each bid piggyback uniquely – use your checklist.
5. Obtain the ITB/RFP, Ad, Bid Tab, Web Site “Certification,” Contract and keep for your files.
6. Evaluate for competitive bid rules (if you have sealed bid requirements), WMBE, other legal prohibitions.
7. Terms and conditions can vary, as long as they don’t violate a legal prohibition.

The Checklist

1. Do you each have authority to bid/contract?
2. Is it sponsored by a public or non-profit agency? City, count, state, school district, port, non-profit (such as US Communities) or Co-Op established for this purpose. Do your rules require a sealed bid process for this purchase?
3. Was the bid conducted and awarded using consistent to your codes and bid statutes?
4. Was the bid awarded consistent with the ITB instructions? Proper award?
5. Do you have statutory restrictions do you have (do you prohibit in law.....WMBE, Local Preference, Equal Benefits, multiple awards?)
6. Advertising – does this bid comply with the new approach – posted on web and host advertisement?

Advertising...New Requirements

- Host advertises according to host requirements.
- Host posts on Web Site. Any website sponsored by any public agency, purchasing cooperative; or similar service provider (E-bid, Builders Exchange etc.)
- Brings bid compliant for Interlocal Sharing.

Purchases through Interlocal Agreements

City Contract #: [Click here and type number]

Interlocal Agreement with (government agency or Purchasing Co-Op name): [Click here and type name]

Item Description: [Click here and type description]

Do you have an Interlocal agreement signed with the Contract Agency?

- If yes, where is it filed: _____
- If no, get a mutually signed Agreement in place before you continue.

State OSP Contract #: _____ *If a State OSP contract you may skip the remainder of this test because the OSP contracts comply with remaining requirements and retain the documentation on hand for SAO to review in the OSP offices.*

Is this a technology contract?

- If yes, do your own rules allow for technology contracts to be negotiated?
- If your own rules allow for negotiated IT contracts, you can skip the test.

Is this a services contract?

- If yes, do your own rules allow services to be negotiated?
- If your own rules allow for negotiated services, you can skip the remainder of the test.

Are you using this as only one of multiple quotes, for a small purchase?

- If yes, you can skip the remainder of the test. Your purchase will not mandate the sealed bid rules.

Checklist for Required Compliance

Does the host agency have a requirement to run a newspaper ad in their local paper and did they comply	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Federal and State contract rules usually don't require a newspaper ad. For others, attach the ad or place into the file
Did they list on a website? If so, state when and the address. Attach proof if possible.	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Always required. Indicate date, address and/or attach or place into the file.
Did the bid & award comply with your codes?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If the bid and award violate your own sealed bid laws, stop. You can not use the bid.
Did bid avoid any preference	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

Who can we piggyback with?

Can my agency use Federal Contracts?

Can my agency use State Contracts?

Can my agency buy from US Communities and similar purchasing co-ops?

US Communities

- Non-profit agency
- All lead bid agencies signed a Master Agreement. This is on the website.
- All participating agencies then register which adds your signature to the Master Agreement.
- This forms the ILA.
- All bids are posted on the US Communities website, which is compliant to the new RCW. Lead agency also posts on their own city/county website.
- Individual bids are reviewed for competition, advertising, web posting, award.
- The Bid, results, ad and web posting should all be on the US Communities website.

Federal, State, Others

1. What about other cooperatives?
 - a) Those under delegated authority of OSP and OSPI, follow such direction.
 - b) Otherwise, seek and use cooperatives that meet your needs, per your statutory limitations and rules. Use the Checklist.

Negotiated Contracts?

1. Are negotiated contracts always invalid?
Well.....No.....
 - a. It depends on your statutory requirements.
 - b. Technology products
 - c. Services
 - d. Small Purchases
 - e. Sole Source

Below my bid limit....

- We are making a small purchase less than our statutory bid threshold. Do I still have to test the piggyback bid against all my sealed bid rules?
No
 - You have to comply with your statutory requirements. If you must bid normally, you must bid on your piggyback. If it is one of 3 quotes, or a sole source, you can use as you normally would.

Advertising & Posting

1. When I host a bid, do I still have to advertise in my newspaper? Yes.
 - You follow your own advertising rules.
2. Do I have to post on a website? Yes.
 - If you want to make it possible for others to share, it must be posted on a website.
3. Does it have to be on my website? No.
 - Many websites qualify. Ask any friendly local agency, school district, city, county, DIS or cooperative website to post. The law requires it be posted on a website designed for that purpose. Keep a record of where it was posted.
4. Does the DJC satisfy all advertising? No.
 - If you are conducting a bid, you must continued to meet your own paper ad requirements and also post on a website.

Interlocal Agreements

Is an interlocal agreement required if we want to buy a piece of equipment off another agency's bid, and which party initiates the document?

Yes

Either (see sample agreements from Seattle and Lynnwood)

Preferences?

1. Do preferences automatically eliminate a bid and contract from piggyback, since I don't have preferences in my bids?
 - If your statutes prohibit a particular preference, then it is prohibited in your piggy-back. i.e. WMBE which is prohibited by I-200.

Multiple Awards

- Do multiple awards disqualify the bid?
- Multiple awards can be OK based on your own codes. Most agencies seek to find a differentiation among the winning vendors when multiple awards are used.
- OSP and OSPI may have another direction to their agencies.

