



Guide for Piggybacking in New York State

New York State Finance Law Article 11, §163 (10)(e) empowers OGS to authorize purchases required by state agencies from contracts let by other state agencies, the U.S. government, or any other state with the concurrence of the Office of the State Comptroller and under appropriate circumstances. This type of procurement option is called "piggybacking."

As with other forms of state procurement, contracting through piggybacking remains subject to internal and external review, and must be consistent with the policies and principles of government public contracting. When using this form of procurement, the requesting agency should examine and weigh the following factors in order to determine the appropriateness of piggybacking as a preferred methodology over other contracting alternatives:

- 1. Subject Matter Comparison:** There should be an equivalency between the product or service sought and the original contract which should reflect your agency's form, function and utility requirements. Does the existing contract encompass the product or service sought? Did it anticipate the possibility of contract extension? All relevant factors in the proposed extension acquisition (including but not limited to price, quality, and nature of deliverable) should be clearly identified and compared to the original acquisition.
- 2. Procurement Method:** The size and scope of the new acquisition should be evaluated in comparison to the original acquisition and its method of award. Does the proposed piggyback significantly unbalance the original scope, or change the nature, quantity, scope of the original contract? Could a substantially different procurement response or increased bidder pool involving greater competition reasonably be expected based upon the volume of your proposed request?
- 3. Notice to Originating Agency:** Where the subject of the original acquisition in a New York State agency specific contract, the original contracting entity should be contacted and advised of the intended piggyback. Concerns about the intended piggyback, including diminution of supply and contractor capacity should be forwarded to OGS with the piggyback request. Where the requesting agency proposes to piggyback using an amendment to an existing contract, consent of the originating agency must be obtained. Notification to the originating agency is not an issue for centralized contracts open to multiple entities.
- 4. Consent of Vendor & Terms of Piggyback:** The vendor's consent to the piggyback request must be in written legal form (contract, letter agreement, etc.) separate from a purchase order, which sets forth the agreed terms of the piggyback. A decision on whether to amend the original agreement or to execute a separate, independent contract based upon the original contract must be considered based upon your facts and circumstances. In either event, the legal form should set forth, not only the agreed terms of the piggyback acquisition, but also its effect on the original agreement, including liability for default, and aggregation of volume and pricing discounts for the intended acquisition as well as for subsequent acquisitions under the original agreement.
- 5. Absence of Other Acceptable Established Contracting Alternatives:** Why is piggybacking the appropriate mechanism to use for this procurement (i.e. timing, level playing field, nature of use)? Were other procurement methodologies considered? Are there any special, unusual or exigent market circumstances underlying this extension request?
- 6. Pricing Justification:** Similar to other methods of procurement, your agency must document that the price for the proposed acquisitions is reasonable under the circumstances. You should indicate whether pricing concessions have been requested and obtained from the contractor based upon the increased volume of purchases under the agreement.