



STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
OFFICE OF GENERAL SERVICES

**NEW YORK STATE FINANCE LAW §163(10)(e)  
CONTRACT USE GUIDELINES**

Issued: March 20, 1998

This guideline outlines the criteria for approval of a request to use another entity's public contract ("Piggybacking"). The approval of the OGS Commissioner is required pursuant to New York State Finance Law, § 163 (10) (e), as follows:

§ 163(10)(e) The Commissioner may authorize purchases required by state agencies or other authorized purchasers by letting a contract pursuant to a written agreement, or by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states.

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 governing public contracting. Judicious use of this form of procurement requires that the requesting agency examine and weigh multiple factors in order to determine the appropriateness of piggybacking as a preferred methodology over other contracting alternatives. To assist in this analysis, several factors should be considered which are summarized below:

**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, quantity, 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 is 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 acquisition 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.

**OGS REVIEW AND DETERMINATION**

The requesting agency may summarize the above information by completing the "Contract Use Request" form provided by OGS which will serve as the basis for review. OGS reserves the right to obtain clarifications or additional information as requested in follow-up with the requesting agency.

OGS written approval of the request should be submitted, along with the appropriate procurement record, to the Office of the State Comptroller for final approval. A denial of the request will include details underlying the rejection.