



Staff Report

September 12, 2023	<u>FCD Resolution 2023-XX</u> A RESOLUTION of the Board of Supervisors of the King County Flood Control Zone District amending FCD2009-06.2 setting forth the District's policies for the acquisition of materials, equipment, supplies and services.	<u>Materials</u> 1. FCD Resolution 2020-13 2. Attachment A thereto (Resolution 2009-06.2, as proposed for amendment)
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By Resolution FCD2009-06.2, the King County Flood Control Zone District adopted procurement procedures for the acquisition of materials, equipment, supplies and services by the District, consistent with Chapter 86.15 RCW (Flood Zone Districts) and Title 39 RCW (Public Contracts). In 2020, following an internal review to increase efficiencies, the Board amended FCD2009-06.2 through Resolution FCD2020-13.1 to allow flexibility for the procurement of professional and non-professional services – consistent with state law – to allow for the selection of vendors to perform services based not only of price but of the quality of the services provided.

In order to further increase efficiency in procurement consistent with the statutory framework for purchasing and contracting, staff recommends the District enter into an Interlocal Agreement with the Washington State Department of Enterprise Services (DES) to allow the District access to the contracts for purchases and services procured by the state of Washington to cost-effectively obtain competitive pricing from vetted contractors. Consistent with the Interlocal Cooperation Act and applicable bidding rules, DES competitively bids statewide contracts to leverage the state's collective buying power to help agencies in Washington save money, reduce risk, and streamline purchasing. DES partners with most agencies in Washington, including King County, to allow for this collective purchasing commonly known as "piggybacking".

Prior to utilizing these statewide contracts, the District must: (1) execute an Interlocal Agreement / Contract Usage Agreement with DES; and (2) modify its procurement policies to permit the use of statewide contracts in lieu of the existing methods for procurement set out in the District's policies. By this Resolution the District Board of Supervisors would authorize the Chair to execute the Interlocal Agreement and modify the District's procurement policies to expressly authorize the use of statewide contracts where feasible, provided: (1) staff shall follow the statutory contracting requirements and post solicitations online, as outlined in RCW 39.34.030; (2) staff shall confirm the procurement process utilized by the state complies with all applicable state bidding requirements; and (3) if federal funds are utilized for a procurement, staff shall follow all applicable requirements, including but not limited to 2 CFR §200.318(e).

Attachment: Exhibit A, Piggybacking under Washington State Law

Piggybacking

under Washington State Law



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Introduction

Piggybacking is an alternative to conducting your own public bidding process. In a piggybacking arrangement, a public agency or group of public agencies acts as an awarding entity, procuring goods or services in a competitive environment and extending the pricing to other entities who can then “piggyback” onto its contract. It’s commonly used to procure goods, sometimes used to procure services, and rarely used to procure public works. In the case of the latter, the public works projects are usually roofing related.

Local governments have an option to piggyback under the Interlocal Agreement Act, [RCW 39.34.030](#). However, this can be a complicated endeavor, and it’s an area that tends to generate many SAO HelpDesk questions and audit recommendations. This guidance will help you navigate the terms and conditions of the Interlocal Agreement Act, as well as apply best practices.

We’ve also included an optional checklist to help you document the steps you’ve taken ([see Appendix A](#)). If you have questions this guidance doesn’t address, we recommend you consult with your legal counsel to help you ensure you’ve complied with your local and state laws.



Is piggybacking the right option for you?

- **Make sure piggybacking is the best option: evaluate the pros and cons early.** Piggybacking might save you time since you won't have to undertake a public bidding process, and you might obtain better pricing (but that's not guaranteed). It can have its drawbacks too. For example, it's likely the advertisement was not posted in your area, which means local vendors weren't informed about the potential contract and didn't have the opportunity to bid on it. Also, you won't have control over the specifications, deliverables, or other contract terms; rather, you have to accept them as they are.
- **Check your local policy.** You'll want to make sure your policy allows you to piggyback onto another's award. Also, be sure to familiarize yourself with any specific policy requirements for this procurement alternative.
- **Consider state requirements.** The Interlocal Agreement Act ([RCW 39.34.030](#)) authorizes local governments to piggyback on the awards of others, but it contains certain requirements that must be satisfied to do so. You should familiarize yourself with the requirements in the Interlocal Agreement Act early in the process.

Local governments also have statutory authority in [RCW 39.26.050](#) and [39.26.060](#) to use contracts offered by the Washington Department of Enterprise Services (DES), after entering into a master usage agreement. The process to use these contracts is established by DES and will not be covered further in this resource. The requirements of the Interlocal Agreement Act do not apply to these procurements.

One other item of note, you are not piggybacking when purchasing from the federal government (e.g., the General Services Administration); those purchases are exempt from bidding as per [RCW 39.32.090](#).

- **Consider your federal grantor requirements if you will be using any federal funding.** There is an option for piggybacking in the Uniform Guidance, [2 CFR §200.318\(e\)](#). However, you should carefully review your grant award's terms and conditions and program guidance, as well as contact your grantor to understand any parameters or limitations it may have. When it comes to federal procurement in general, you have to demonstrate that you followed the most restrictive local, state, or federal requirements, including piggybacked contracts. As the guidance is expected to vary by grantor, this resource is limited in providing advice for federally funded piggybacking procurements.



You've decided you want to piggyback, what are your first steps?

- **Define your expectations in advance.** You should define your scope and set your expectations in advance, so that you can evaluate whether the goods or services in potential contracts meet your needs. Define what you want with regard to the specifications for any good or service, the options or add-ons, the quality, quantities, and any specific contract deliverables.
- **Perform your own cost or price analysis.** You should evaluate the cost or price you expect to pay for specified goods or services. That way, as you identify contracts, you will have the information you need to determine if the price or cost is reasonable. This is a best practice and, in some cases, might even be required in state law. However, whether cost estimates are required in state law depends on what is being procured and the government's authorizing statutes. For example, cost estimates are required by statute for all public works projects ([RCW 39.04.020](#)).
- **If this is a federally funded procurement, federal grantors will require you to perform a cost or price analysis.** You must retain documentation, which could include documentation of the cost or price analysis the awarding entity performed. If the awarding entity did not perform one, you will have to do your own.

You've identified an award you might piggyback onto, is it the right one for you?

- **Verify the awarding entity qualifies as a public agency or a group of public agencies.** You can only piggyback on a contract awarded by a public agency or a group of public agencies as per the Interlocal Agreement Act ([RCW 39.34.030](#)). (Public agency is a term defined by [RCW 39.34.020](#).) You must make and support your own decisions; SAO does not preapprove cooperatives or perform this evaluation for you. If the awarding entity is not a public agency or a group of public agencies, you cannot piggyback on its contract using the authority in the Interlocal Agreement Act. If you have questions, consult your legal counsel.



- **Verify the awarding entity conducted the procurement itself.**

The awarding entity must have conducted the actual procurement process (you cannot piggyback onto another piggyback arrangement).

- **Verify the awarding entity's contract is open for your use.**

You'll want to ensure the original solicitation and resulting contract specifically allows others to use it post-award (i.e., they contain an assignability clause or the equivalent). You should also confirm that the awarding entity's contract has not expired and will be open and active for the period desired, including any renewal periods.

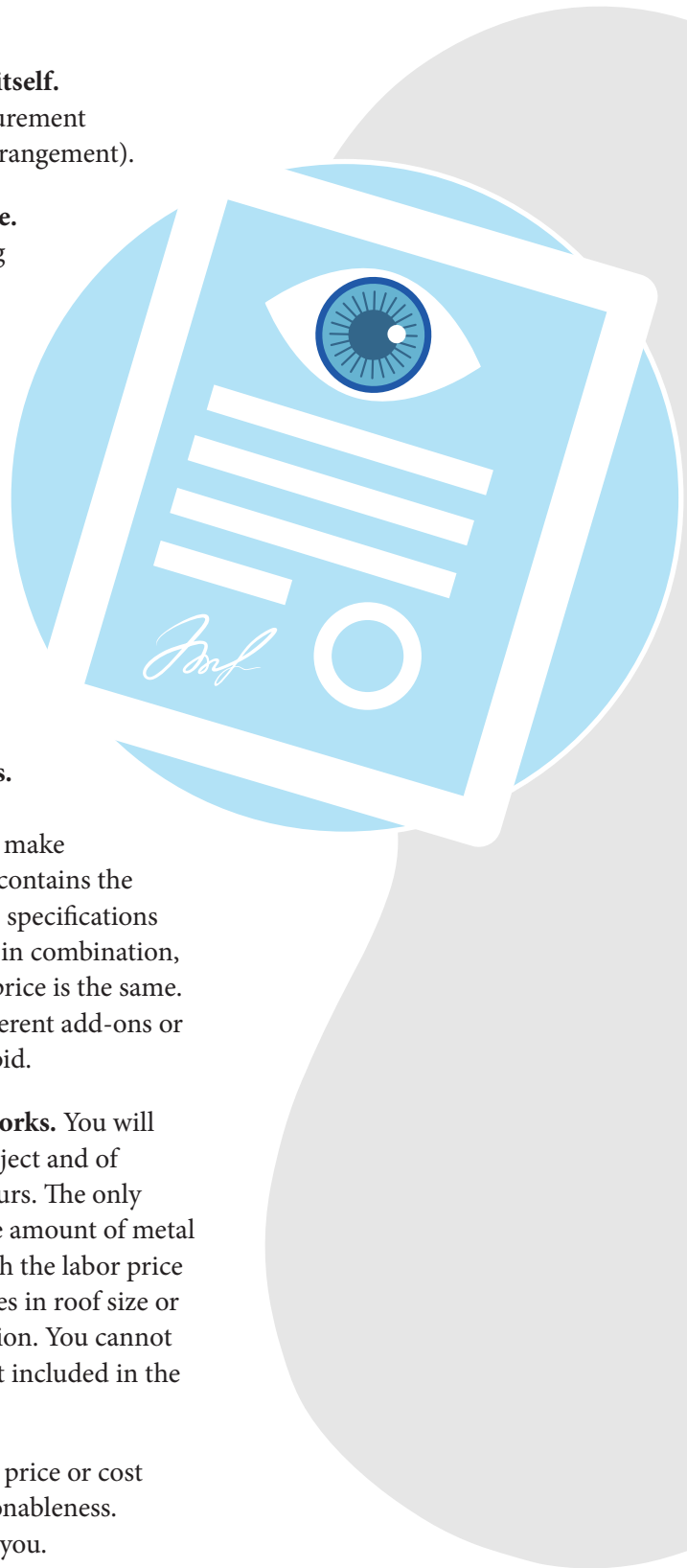
- **Verify the quantities available.** If applicable, consider the number of items available at the stated price per the original solicitation and resulting contract. You should evaluate whether your needs are within any contract limitations. You must adhere to any contract limits with regard to quantity.

- **Check that the goods or services meet your expectations.**

Carefully evaluate the entity's contract, bid specifications, the deliverables and the quality of the goods or services to make sure they meet your expectations. Make sure the contract contains the options you need. If the awarding entity's contract and bid specifications allowed them to select the items and services they needed in combination, or as separate items, then you can do it too as long as the price is the same. However, state law does not provide for you to choose different add-ons or options than what were included in the awarding entity's bid.

- **Make sure the specifications are the same if it's public works.** You will need to make sure the plans and specifications of your project and of the awarding entity's project are essentially the same as yours. The only differences should be the quantities purchased, such as the amount of metal roofing. You should ensure the labor paid is consistent with the labor price (as indicated in the bid) after compensating for any changes in roof size or differences in prevailing wage rates that might vary by region. You cannot add or change the options, such as gutters, if they were not included in the awarding entity's specifications for its original contract.

- **Make sure the price or cost is reasonable.** Compare your price or cost estimate to the awarding entity's contracted price for reasonableness. You will have to decide if the cost or price is acceptable to you.



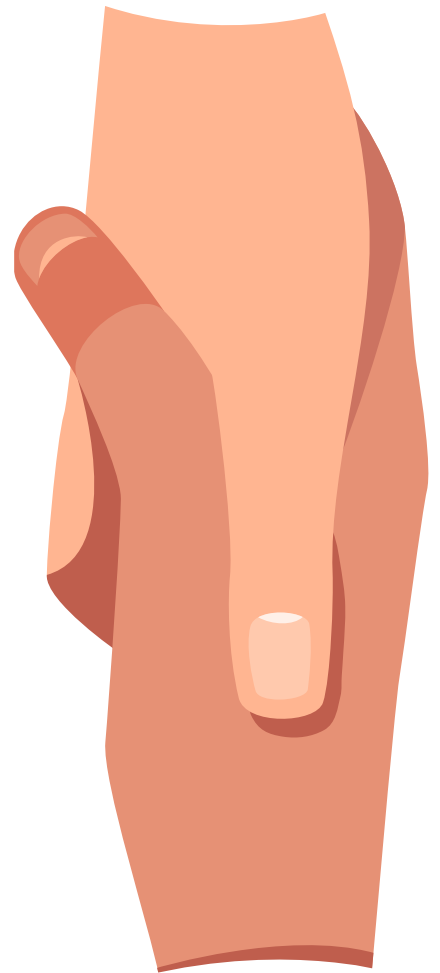
You've selected a contract that meets your needs, but does it comply with the bidding and notice requirements in the Interlocal Agreement Act?

- **Review evidence the awarding entity complied with its own requirements.** As per [RCW 39.34.030\(5\(b\)\)](#) your obligations are deemed satisfied as long as the awarding entity is a public agency or group of public agencies, and complied with its own statutory requirements for procuring the goods or services and posted the appropriate notice. Before accessing another's contract, review the awarding entity's bid documentation and make sure it followed its procurement requirements. Obtain documentation and set up the bid file as if it were your own. This documentation might include items like its advertisement/affidavit of publication, bid tabulation summarizing the bids received, competitive negotiation scoring for professional services, and the governing body's approval of the contract in the meeting minutes.
- **Ensure the awarding entity met the additional notice requirement.** [RCW 39.34.030\(5\(b\)\)](#) stipulates that in order to piggyback, the awarding entity must have posted the bid or solicitation notice on a website established and maintained by a public agency, purchasing cooperative, or similar service provider, for the purpose of posting public notice of bid or proposal solicitations, or have provided an access link to the notice on the state's web portal. You'll want to retain a screen printout or other evidence to support that the awarding entity completed this.
- **If using federal funds, make sure you follow federal requirements.** If you are using any federal funds, the procurement must follow the strictest of your local, state, or federal requirements. Federal procurement requirements are found in the Uniform Guidance [2 CFR §200.317 \(200.318 for local government\) –200.327](#). Again, work closely with your grantor to determine the requirements you must follow for federally funded piggybacking procurements. The additional flexibility provided for in the Interlocal Agreement Act may not help you when using federal funds on a piggybacking procurement.



Once you've decided on the contract you want to use, what should you consider as you finalize the arrangement?

- **Enter into an Interlocal Agreement with the awarding entity before you access its contract.** In order to take advantage of the piggybacking provisions in [RCW 39.34.030\(5\(b\)\)](#), you need to enter into an interlocal agreement to comply with [RCW 39.34.030](#), and your documentation needs to follow the timeline of events. This means that you must enter into the interlocal agreement before contracting to buy goods or services. If you are a member of a cooperative, then your membership agreement might suffice as long as the awarding entity (that is also a public agency) is party to the contract and it meets all the requirements of [RCW 39.34.030](#), including containing the required contractual elements. You might consider consulting with your legal counsel to ensure any agreement you plan to use satisfies all of the Interlocal Agreement Act requirements. The agreement must be signed by the parties to be in effect and valid. You must also comply with this requirement when using federal funds. Although federal requirements do not specifically require an interlocal agreement, they do require you to follow the strictest local, state, or federal laws — and state law does require it.
- **Make sure your contract extensions do not exceed that of the original contract.** You'll want to verify the awarding entity's original contract language allows for extensions. If the awarding entity's contract is not expired and still allows for extensions, then your contract may be extended too. However, you should have policies and controls in place to evaluate and demonstrate the ongoing reasonableness of the contract. This might include formal evaluations of price and service before contract extension, independent extension approval, and limits on contract length (such as no more than five years).
- **If using federal funds, verify suspension and debarment.** Before entering into a contract with the vendor, you must verify suspension and debarment to comply with the [Uniform Guidance 2 CFR 200.214](#). You should not rely on the awarding entity's verification process; you must do your own before you piggyback. Keep documentation of how you verified the vendor was not suspended or debarred.



- **If you are using federal funds, include the required federal contract provisions in your contract with the vendor.** Any government using federal funding must ensure the contract with its vendor contains the applicable provisions described in the Uniform Guidance, [2 CFR §200.327](#), and any specific provisions required by the federal awarding agency. Contract provisions are further detailed in [Appendix II](#). Provisions include prevailing wage clauses (Davis-Bacon Act) and termination for cause. SAO is unable to provide you with sample language for your contract provisions; you should work with your legal counsel.

It is also possible that the federal grantor might require federal contract provisions (as per the Uniform Guidance) in both the awarding agency's original contract and the local government's contract with its vendor.



For assistance

This resource was developed by the Center for Government Innovation at the Office of the Washington State Auditor. For specific questions about procurement requirements, please submit them using our [HelpDesk in the client portal](#).

Please send any other questions, comments, or suggestions to Center@sao.wa.gov.

Disclaimer

This resource is provided for informational purposes only. It does not represent prescriptive guidance, legal advice, an audit recommendation, or audit assurance. It does not relieve governments of their responsibilities to assess risks, design appropriate controls, and make management decisions.

Appendix A: Use this optional checklist when using the piggybacking alternative to public bidding (under the Interlocal Agreement Act)

Date performed _____

Completed by (name and title) _____

Project name _____

If you answer 'no' to any of these questions, you should not proceed with piggybacking under the Interlocal Agreement Act. If the issue is with a particular contract, then you might be able to locate a different contract and proceed.

Checklist question	Yes/no	Notes
Determining if piggybacking is the right option		
1. Did you evaluate your procurement options (and the pros and cons) to determine if piggybacking is the best option for the procurement?		
2. Does your procurement policy allow you to piggyback onto another's award? If so, do you meet the terms of your policy?		
3. Have you familiarized yourself with state requirements pertaining to piggybacking in RCW 39.34.030 ?		

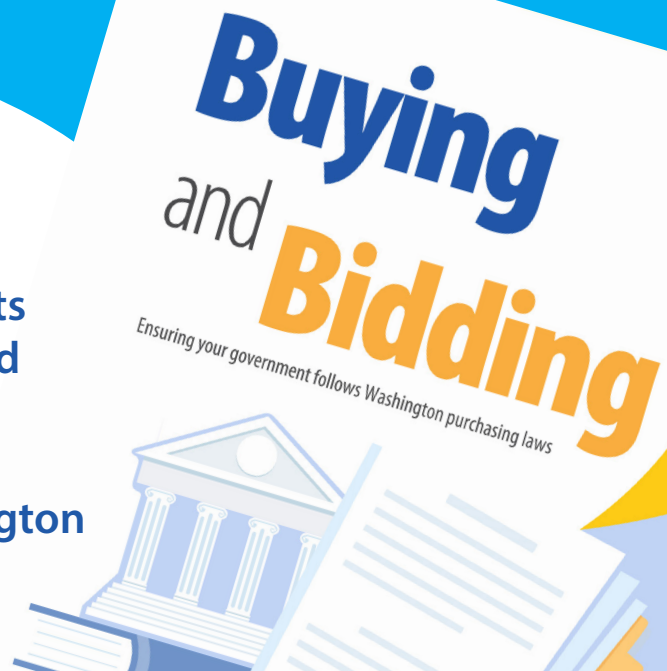
Checklist question	Yes/no	Notes
4. If you plan to use federal funding to pay for the procurement, have you checked with your grantor to understand its requirements? Have you reviewed your grant award's terms and conditions and program guidance to understand parameters or limitations?		
Preparing to piggyback		
5. Have you defined the specifications, options, add-ons, quality, quantities, or any specific contract deliverables that you want and need before you start to search for potential contracts you might use?		
6. Have you performed a cost or price analysis of what you expect to reasonably pay for the procurement?		
Evaluating potential contracts		
7. Is the awarding entity a public agency or a group of public agencies in accordance with the definition in RCW 39.34.020 ?		
8. Did the awarding entity handle the procurement itself? <i>Note: you cannot piggyback onto a contract that is already a piggyback onto another.</i>		

Checklist question	Yes/no	Notes
9. Does the awarding entity's original solicitation and resulting contract contain an assignability clause or the equivalent, specifically allowing others to use it post-award?		
10. Is the awarding entity's contract active (i.e., not expired) and will it be open for the period desired, including any renewal options?		
11. Is your need within any contractually imposed limits on the quantity you may purchase at the stated price?		
12. Do the goods or services described in the original solicitation and resulting contract meet your predetermined need? Have you carefully reviewed the contract terms, bid specifications, the deliverables and the quality of goods or services?		
13. Does the original solicitation and resulting contract include the options or add-ons you need?		
14. If you are evaluating a potential contract for a public works project, did you ensure the plans and specifications are essentially the same?		
15. Are the prices or costs included in the awarding entity's contract reasonable and acceptable, considering your original estimate?		

Checklist question	Yes/no	Notes
Evaluating bidding and notice requirements		
16. Did you determine the awarding entity followed its own bid requirements, including those for advertisements, and that it completed a proper evaluation of bids? Have you saved this documentation in a safe place for audit purposes?		
17. Did you determine and document the awarding entity complied with the notice requirements in RCW 39.34.030 (5(b))? Have you saved this documentation in a safe place for audit purposes?		
18. If federal funds are used, did you ensure the procurement follows the strictest of your local, state or federal requirements? And did you ensure it complies with any additional requirements your grantor imposed?		
Finalizing the arrangement		
19. Did you enter into an interlocal agreement with the awarding entity? Does it meet all the requirements of RCW 39.34.030 ?		
20. Does your contract with the vendor only allow for extensions to the extent the awarding entity's original contract allowed for extensions?		
21. If using federal funds, did you verify the vendor was not suspended or debarred before you accessed the contract?		
22. If using federal funds, did you include all of the federally required contract provisions in your contract with the vendor?		

More details on other aspects of procurement can be found in our guide, **“Buying and Bidding – Ensuring your government follows Washington purchasing laws.”** Find it at:

www.sao.wa.gov



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– Pat McCarthy, State Auditor

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