

Cooperative “Piggyback” Contracting and Joint Service Agreements

by René L. Rimelspach

When purchasing goods and services, political subdivisions are required to follow numerous statutory requirements which can be time consuming and burdensome, such as entering into written contracts and engaging in competitive bidding processes. However, political subdivisions can gain efficiencies by joining in – or “piggybacking onto” – the competitively bid contracts of other public entities. Political subdivisions also can gain efficiencies by providing services to or obtaining services from other public entities through joint service agreements.

Ohio Revised Code Section 9.48

Ohio Revised Code (ORC) section 9.48 initially was enacted by the Ohio General Assembly in 1997. It applies to “political subdivisions,” defined as municipal corporations, townships, counties, school districts or other bodies corporate and political responsible for governmental activities in a geographic area smaller than that of the state.

Political subdivisions can use ORC 9.48 in three different ways. First, a political subdivision can permit one or more other political subdivisions to “participate” in contracts into which it already has entered for the acquisition of equipment, materials, supplies or services. Second, a political subdivision can participate in a joint purchasing program operated by or through a national or state association of political subdivisions in which the purchasing entity is eligible for membership. Third, a political subdivision can participate in contract offerings from the federal government.

The primary benefit of cooperative piggyback contracting is that if a political subdivision acquires goods or services through participation in a contract of another political subdivision, it is exempt from the competitive selection requirements the law otherwise requires, so long as the original contract was competitively bid. One caveat is that a political subdivision may *not* acquire goods or services by participating in a cooperative piggyback contract if the political subdivision has received its own bids, unless participation in another political subdivision’s contract allows the political subdivision to obtain goods or services under the same terms, conditions and specifications at a lower price.

Offices

Toledo Office:

One Seagate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699
Phone: 419-241-6000
Fax: 419-247-1777

Columbus Office:

100 East Broad St.
Ste. 2100
Columbus, Ohio 43215
Phone: 614-564-1445
Fax: 614-280-1777

Findlay Office:

510 South Main St.
Findlay, Ohio 45840
Phone: 419-424-5847
Fax: 419-424-9860

Detroit Office:

615 Griswold, Ste. 1305
Detroit, Michigan 48226
Phone: 313-818-3040
Fax: 313-285-9282

Political subdivisions can use cooperative piggyback contracting for the purchase of any kind of equipment, materials or supplies. Some examples include firefighting equipment; road construction and repair materials; road salt; trucks or other vehicles, including snow plows or lawn mowers; and memorials, monuments, or statues, just to name a few.

Cooperative piggyback contracting also can be used to acquire services, such as political subdivision building maintenance; vehicle maintenance and repair; or solid waste and recycling services, again to name a few examples. However, utilizing cooperative piggyback contracting can be more complicated for the provision of services.

If political subdivisions wish to use this tool to obtain services, they should be mindful of what it means to “participate” in another political subdivision’s service contract. Political subdivisions utilizing cooperative piggyback contracting for services should consider factors such as:

- the length of the contract term;
- whether special services are being provided, with unique service requirements;
- how payment will be handled;
- how similar the original contracting political subdivision and piggyback political subdivision are to one another; and
- whether the service contractor is agreeable to taking on the new political subdivision under the same terms and conditions.

Ideally, the piggyback political subdivision should be prepared to accept *all* of the material terms and conditions of the original contracting community’s service agreement, and both political subdivisions should seek the advice of legal counsel.

Ohio Revised Code Section 9.482

In 2011, the Ohio General Assembly enacted a second piece of legislation which complements the cooperative piggyback contracting concept. Ohio Revised Code Section 9.482 allows political subdivisions to enter into an agreement with another political subdivision which agrees to “exercise any power, perform any function, or render any service” for the recipient political subdivision. In other words, this statutory section allows political subdivisions to directly render services to one another. However, this statute *cannot* be used to levy a tax (but it can be used to allow for the collection, administration or enforcement of taxes); and *cannot* be used to exercise investment powers, perform investment functions or render investment services. It can be used to create and operate joint economic development zones or districts.

Some examples of joint service agreement possibilities include building inspections; cemetery maintenance; fire/EMS/911 dispatching services; shared contract employees; grant writing; IT service provision; road construction, maintenance and repair; zoning and planning inspections; or administration and training services.

Conclusion

It is certain there will be continuing pressure on political subdivisions to “do more with less.” Political subdivisions should be aware of all of the tools at their disposal to more efficiently acquire goods and services through competitive bidding, and provide or obtain services directly from other political subdivisions through joint service agreements.

[René L. Rimelspach](#) is a member of Eastman & Smith in Columbus, Ohio, and practices in the areas of public and environmental law, with a specialty in solid waste management. For questions regarding political subdivision contracts, please contact Ms. Rimelspach.

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