Florida Education Grants
Requirements for Procurements and Contracts

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Piggybacks

Scenario One – Piggybacks

Instead of a separate, new competition, an LEA purchased goods and services from ABC Company using the same price structure as provided under a contract the company was awarded by another governmental entity, adding only the LEA's standard terms and conditions. The value exceeded the LEA's simplified acquisition threshold.

- Does this meet all applicable procurement requirements?

Scenario One – Piggybacks, continued

What if:

- No additional terms were added?
- The other governmental agency authorized the use of its contract for this purpose?
- The contract with the other governmental agency was not competitively procured in accordance with federal regulations?

Use of Piggybacks for Federal Grants

- Federal Regulations do not expressly authorize the use of "piggybacks"
- State Board Rule 6A-1.012, FAC, allows districts to
  - make purchases "at or below the specified prices"
  - from contracts awarded by [other governmental agencies]
  - when the vendor will permit purchases
  - at the same terms, conditions, and prices (or below such prices) awarded in such contract, and
  - such purchases are to the economic advantage of the district school board.

Federal Guidance on Piggybacks

- No guidance issued by U.S. Department of Education
- Guidance from other federal agencies suggest piggybacks only allowed if:
  - the original contract was competitively procured in compliance with the federal regulations;
  - the original contract allowed for piggybacking;
  - the entity using the piggyback becomes a party to the original contract; and
  - no material terms of the original contract are changed, including for example, scope of work, pricing, and total cost.

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Cooperative Purchasing

Scenario Two: Cooperative Purchasing

An LEA is a member of a purchasing cooperative. The cooperative posts Invitations to Bid and/or Requests for Proposals. Are the following allowed?

- The cooperative enters into a contract with all responsive bidders.
- The cooperative evaluates, ranks and selectively enters into contracts with responsive bidders.
- The cooperative enters into a contract with all responsive bidders after evaluating and ranking them.
- The cooperative enters into a contract with a vendor, which establishes only a discount, catalogue pricing schedule.

Cooperative Purchasing Considerations

- 2 CFR § 200.319 – all procurement transactions must be conducted in a manner that provides full and open competition and is consistent with 200.320.
- 2 CFR § 200.320 – establishes procurement thresholds, requirements and procedures. For contracts exceeding simplified acquisition, the following formal methods apply:
  - ITB – (sealed bids) – a firm-fixed-price contract is awarded in writing to the lowest responsive bid and responsible bidder.
  - RFP – (request for proposals) – contracts awarded to the responsible offeror whose proposal is most advantageous to the subrecipient considering price and other factors.

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State Exemptions

Scenario Three – State Exemptions

An LEA purchased laptops totaling $500,000 from Company ABC by direct negotiation, with no competition, because this is expressly authorized under State Board Rule 6A-1.012, FAC.

Is this allowed using federal funds?

Is there a circumstance under which this can be allowed?

Procurement Standards for Goods and Services Purchased with Federal Funds

When purchasing goods and services with federal funds, a subrecipient must meet the following standards:

- The LEA's own policies and procedures;
- State procurement requirements, in accordance with Rule 6A-1.012, Florida Administrative Code (Districts), Rule 6A-14.0734 (State Colleges), or BOG 18.001 (Universities); **and**
- Federal procurement methods and thresholds, as established in the Uniform Grant Guidance (2 CFR ss. 200.318 through 200.327).

Exceptions Authorizing Non-Competitive Procurement by Districts

FEDERAL EXCEPTIONS AUTHORIZING NON-COMPETITIVE PROCUREMENT	STATE EXCEPTIONS AUTHORIZING NON-COMPETITIVE PROCUREMENT FOR SCHOOL DISTRICTS under Rule 6A-1.012, F.A.C.
Single Source (2 CFR s. 200.320(c)(2))	Single Source (¶ (12)(d))
Public Exigency or Emergency (2 CFR s. 200.320(c)(3))	Immediate danger to public health, safety, or welfare or other substantial loss to the school district requires emergency action (¶(12)€
SEA Authorizes non-competitive procurement in response to written request from sub-recipient (2 CFR s. 200.320(c)(4))	
After solicitation of a number of sources, competition is determined inadequate (2 CFR s. 200.320(c)(5))	After competitive solicitations have been requested, no valid proposal has been received. (¶ (12)(a))

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	Professional services including: artistic services; academic program reviews; lectures by individuals; auditing services not subject to Section 218.391, F.S.; legal services…; and health services …. (¶ (11)(a))
	Educational services and any type of copyrighted materials including: educational tests, textbooks, … etc. (see full list in rule) ((¶ (11)(b))

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	State or federal law, grant or state contract prescribes with whom the district school board must contract. (¶ (12)(f))
	Contracts for utilities or government franchised services (¶ (12)(g))
	Information technology (¶ (14))
	Districts may use State-Term contracts – (¶ (5))
	Specified Piggy Back contracts (¶ (6))

Approval of Non-Competitive Procurements by FDOE – Process

- Authority for SEA to authorize Exception:

  2 CFR s. 200.320(c)(4)

- LEAs seeking exception should submit written request:
  - For ESSER/GEER funds submit to Mari.Presley@fldoe.org
  - For other federal grants submit to Janice.Brown@fldoe.org
  - Include description of proposed procurement, price, and reason non-competitive procurement is requested
  - Attach LEA's policies and procedures relating to procurement

Approval of Non-Competitive Procurements by FDOE – Criteria

The Department has established the following criteria for approval:

- Procurement must be consistent with state law (for school district, must be consistent with Rule 6A-1.012)
- Procurement must be consistent with LEA's own policies
- There is a reason competitive procurement is impracticable (inferred for exceptions under the rule)
  - Usually, procurements falling in the simplified acquisition threshold (under $250,000) will not meet this criteria, since it only requires two quotes
- Price is reasonable

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Sole Source

Scenario Four – Sole Source

An LEA purchased goods and services exceeding the micro-purchase threshold from Company ABC without competition or quotes in the following circumstances, claiming “sole source.” Was this allowed?

Scenario Four – Sole Source, continued

- The LEA followed its established procedures for a sole-source purchase by publishing a notice of intention to purchase, saving a written justification, and obtaining board approval.
- The LEA had no established procedures, but obtained a vendor statement indicating it was the sole source for the product purchased.
- The LEA followed its established procedures by saving a written justification indicating a particular brand was required for continuity of instruction or for technology compatibility.

Scenario Four – Sole Source, continued

2 CFR § 200.320(c)(2) authorizes non-competitive procurement where "The procurement transaction can only be fulfilled by a single source."

2 CFR § 200.319(c)(6) indicates it would be improper to restrict competition by "specifying only a 'brand name' product instead of allowing 'an equal' product to be offered.

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Procurement Thresholds

Scenario Five – Thresholds

Which procurement method is required?

- An LEA purchased software licenses for each of four schools at the same time, at a cost of $5,000 each. To ensure that the purchase would stay below the micro-purchase threshold, the LEA issued separate purchase orders for each school.
- An LEA authorizes school principles to procure goods for the school. School A purchased instructional materials from Company ABC in fall, and the purchase fell under the micro-purchase threshold. School B purchased the same instructional materials from Company ABC in spring, and the purchase also fell below the micro-purchase threshold. The combined total would exceed the micro-purchase threshold.

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