

Procurement Compliance in the Public Sector: *Frequently Asked Questions*

What does it mean to be “in compliance” with public sector procurement guidelines?

Public sector entities (local governments such as municipalities, counties, and special districts as well as K-12 schools and institutions of higher education) are subject to strict guidelines that define the processes through which they are allowed to spend taxpayer dollars. When public sector entities strictly follow these guidelines to purchase

products and services, they are **in compliance**. When the process public sector entities follow to make purchases deviates from these guidelines, they are **out of compliance**; public sector entities strive to avoid being out of compliance at all costs for the reasons more fully defined below.

How and where are public sector procurement guidelines defined?

Each state has statutes that define the public sector procurement guidelines for public sector entities in that state. The challenge is that there is not just one set of guidelines that applies to all of the public sector entities within a given state. Rather, the way state statutes are written is that most/all of the statutes relating to a particular type of entity are grouped together in one section. So, there will be an entire section of code devoted to how counties operate within that state, and there are subsections of the code for counties that define how counties are allowed to spend money on various types of products and services. Similarly, there will be other sections of code for public K12 schools, cities, towns, villages, libraries, sewer districts, transit authorities, water departments, community colleges, state universities and so on, with each of those sections including subsections defining the ways that each of those entity types is required to spend taxpayer dollars. And there

are different subsections for different types of products and services – the rules for purchasing utilities, engaging consultants, building facilities, purchasing supplies, and so on are defined in separate subsections. In other words, there can be literally hundreds of different subsections of code in any given state that define how specific public sector entities in that state can procure specific products and services.

If you want to find the purchasing guidelines for a specific type of entity in a particular state, initiate a search through your Internet browser using terms such as “**Ohio**” (the name of the state), “**state laws**” (to narrow the search to that state’s statutes or codes), “**counties**” (the type of public sector entity), and “**purchase**” (to narrow the search to procurement guidelines). *Happy reading!!*

How often do public sector procurement guidelines change?

The bad news is that there are tons of public sector procurement guidelines.

The good news is that these guidelines do not change all that often.

Why is public sector procurement compliance important to me?

Exposure and risk. If you win public sector business that was awarded to you through a non-compliant process, you are at risk of:

- Losing the business.
- Having to repay any revenue you have received.
- Receiving negative publicity that can affect your ability to win additional public sector business in the future.



Why is public sector procurement compliance important to my customers?

Again, exposure and risk. If your public sector customers award business to you (or any supplier) through a non-compliant process, they are at risk of:

- One or more vendors who were not awarded the contract challenging the award.
- Negative findings or findings for recovery publicly identified in the customer's annual audit that is conducted by the state auditor's office.
- The public official(s) who awarded the contract inappropriately being personally liable to repay to the

public sector entity any payments already made to the supplier. Think about that for a moment – a government employee who inappropriately awards a \$100,000 contract to a vendor might have to **pay that \$100,000 back out of their own pocket.**

- Bad headlines or other negative publicity for the public sector entity or government employee. As you can imagine, officials in the public eye seek to avoid bad press like the plague.

Who is responsible for public sector procurement compliance?

Technically, the public sector entity conducting the procurement process is responsible for adhering to all applicable procurement guidelines.

Practically, however, **both the buyer and the seller are at risk** if the buyer does not follow applicable public sector procurement guidelines.

Are there compliant alternatives to the standard public sector procurement process?

You might be having a Charlie Brown “Good grief” moment and wondering if there are any alternatives to the labyrinth-like public sector procurement guidelines which vary from state to state and, within each state, from entity type to entity type.

The answer is “Yes!” There are two compliant alternatives to traditional public sector procurement processes that *i)* apply to virtually all public sector entities across the country, and *ii)* provide a compliant exemption from a public sector entity having to conduct its own procurement process, which therefore provides suppliers with an alternative to having to respond to one bid at a time to win public sector business:

1. **Establishing and leveraging state term contracts.** State term contracts are agreements established between a state government and a supplier allowing that supplier to sell some or all of its products and services to state agencies without each state agency having to conduct a stand-alone bid process. These contracts may be awarded through a formal state agency procurement process or established through a registration process. A critical feature of state term contracts is that each state's laws allow for political subdivisions or public sector entities within that state to legally and appropriately purchase products and services through state term

contracts without having to conduct their own bid or RFP process.

2. **Establishing a piggybackable agreement, typically with a public sector group purchasing organization or GPO.** Pursuant to laws in each state, most public sector entities have the ability to purchase through cooperative agreements awarded to suppliers by other public sector entities without having to conduct their own procurement process. Purchasing through these contracts without conducting a stand-alone procurement process is called “**piggybacking**”, and such contracts are considered “**piggybackable**” or “**already-procured**” or “**cooperative**” contracts. To utilize a public sector GPO's piggybackable contracts, public sector entities typically are required to join the GPO as a member, which provides them with the option to purchase through any of the GPO's contracts.

The pricing and contract terms available to GPO members are memorialized in a “**master agreement**” between the supplier and the GPO. The GPO's members are then eligible to purchase directly from the supplier directly under the master agreement's pricing and contract terms.



What makes a master agreement piggybackable and therefore compliant?

There are three requirements for a master agreement to be considered piggybackable:

1. A public sector entity must have awarded the master agreement to a supplier following a formal, competitive public sector procurement process conducted in accordance with public sector procurement guidelines applicable to that public sector entity;
2. A public sector entity must be a party to the master agreement with the supplier; and,
3. The master agreement must include language authorizing other public sector entities to make purchases from the supplier through the master agreement.

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How does Equalis Group navigate public sector procurement compliance for its supplier partners?

Equalis Group invests substantial resources in public sector procurement compliance. Equalis Group:

- Researched and documented the applicable public sector procurement piggybacking guidelines in all fifty states.
- Establishes our master agreements in compliance with those piggybacking guidelines.
- Develops and maintains a repository of compliance documentation, including *i)* the procurement process followed leading to the award of each master agreement, *ii)* the original bid/request for proposal and related paperwork for each master agreement, and *iii)* the piggybacking laws in all fifty states.
- Makes the compliance documentation available to our supplier partners and trains our suppliers’ sales teams in how to utilize that documentation in their sales process.
- Engages directly with public sector prospects to answer any procurement and compliance questions that arise.