



PUBLIC SECTOR ENTITY PIGGYBACK GUIDELINE

Procurement

<https://procurement.novascotia.ca/>

Updated: June 29, 2021



Table of Contents

1.1	PURPOSE	2
1.2	INTERPRETATION	2
1.3	DEFINITION	2
1.4	WHEN NOT TO ENTER INTO A PIGGYBACK.....	2
1.5	WHEN AND WHY TO ENTER INTO A PIGGYBACK.....	3
1.6	ORIGINATING PUBLIC SECTOR ENTITY USAGE Procedures	4
1.7	AWARD POSTING	4
1.8	SOLICITATION CLAUSE	4
1.9	FORM OF AGREEMENT WITH SUPPLIER	7
	APPENDIX A - PUBLIC TENDERS APPLICATION POSTING EXAMPLE.....	10
	RECORD OF REVISION	11

Public Sector Entity Piggyback Guideline

1.1 PURPOSE

The purpose of this guideline is to provide assistance and direction to both the Public Sector Entity (“PSE”) that initially ran the solicitation (“Originating PSE”) and the requesting PSE (“Piggybacking PSE”) for entering into piggyback contracts with the awarded vendor (“Supplier”).

1.2 INTERPRETATION

This guideline should be read in conjunction with the Nova Scotia Sustainable Procurement Policy. Terms used in this guideline are as defined in the Nova Scotia Sustainable Procurement Policy.

Where terms conflict between this guideline and the PSE’s Procurement policy, the PSE’s Procurement policy shall supersede.

1.3 DEFINITION

A piggyback contract or piggybacking (“Piggyback Contract”) is the post-award use of a contractual document or procurement process (“Enabling Contract/Process”) that allows a PSE that was not contemplated in the Enabling Contract/Process (i.e. not specifically named and usage/requirements not included) to enter into a new contract to purchase the same goods and/or services as if they were a party to the Enabling Contract/Process.

1.4 WHEN NOT TO ENTER INTO A PIGGYBACK

- A Piggyback is not a joint procurement. Refer to the Nova Scotia Sustainable Procurement Policy for further information on joint procurement.
- The Piggyback Contract that the Piggybacking PSE is adopting permits it to buy only the goods and/or services listed in the Enabling Contract/Process. For clarity, a separate Piggyback Contract must still be entered into for the specific goods and/or services. It is not sufficient that there be an existing or previous contract with the same company.
- Piggyback Contract cannot exceed the period of contract, including extension periods (“Term”) of the Enabling Contract/Process.
- Piggyback Contract is not recommended for a firm or fixed price tenders (e.g. Request for Construction).
- Where piggyback clause does not apply to the Piggybacking PSE.

- When the Enabling Contract/Process does not have a piggyback clause.

1.5 WHEN AND WHY TO ENTER INTO A PIGGYBACK

Refer to the following prompts when considering entering into a Piggyback Contract. Contact your PSE’s legal advisor should your PSE wish to proceed where it is not recommended to proceed below.

<ul style="list-style-type: none"> • Has the Piggybacking PSE obtained a copy of the contract and the solicitation document, including the specifications from either the Originating PSE or Supplier? 	<p>If yes, acceptable to proceed.</p> <p>If no, contact Originating PSE to obtain a copy before moving forward.</p>
<ul style="list-style-type: none"> • Did the Originating PSE competitively solicit the contract? (e.g. not an Alternative Procurement) 	<p>If yes, acceptable to proceed.</p> <p>If no, contact your legal advisor to discuss.</p>
<ul style="list-style-type: none"> • Does the Enabling Contract/Process contain a specific “piggyback” clause? 	<p>If yes, acceptable to proceed.</p> <p>If no, unable to proceed.</p>
<ul style="list-style-type: none"> • Does the Enabling Contract/Process include relevant factors, including but not limited to: quantity and scope of work, match the parameters of your proposed requirements? 	<p>If yes, acceptable to proceed.</p> <p>If no, unable to proceed.</p>
<ul style="list-style-type: none"> • If this piggybacking action represents an option in the Enabling Contract/Process, is the option provision still valid? That is, is the contract current and active, whether in its Enabling Contract/Process initial term or extended-term. 	<p>If yes, acceptable to proceed.</p> <p>If no, unable to proceed.</p>
<ul style="list-style-type: none"> • Do the Enabling Contract/Process terms comply with the Piggybacking PSE’s policies and/or applicable trade agreements? 	<p>If yes, acceptable to proceed.</p> <p>If no, unable to proceed.</p>
<ul style="list-style-type: none"> • If you require changes to the deliverables, are they “within the scope” of the Enabling Contract/Process or considered “material changes”? 	<p>If within scope, acceptable to proceed.</p> <p>If considered a material change, contact your legal advisor to discuss.</p>

1.6 ORIGINATING PUBLIC SECTOR ENTITY USAGE Procedures

- Obtain written approval from the Supplier to release the contract documents.
- Subject to the Supplier's approval, provide to the requesting PSE the following documents:
 - The executed contract between the Supplier and Originating PSE (if applicable).
 - If not included in the agreement, a copy of the solicitation document that shows how the contract was competed.
 - Supplier's response to the solicitation (bid/proposal including pricing)
- Depending on the Originating PSE, and the solicitation, the Piggybacking PSE may be required to sign a confidentiality declaration with the Originating PSE. Further, it may be required to sign a separate confidentiality declaration with the Supplier.

1.7 AWARD POSTING

- It is recommended that when an award of the Piggyback Contract exceeds trade agreement thresholds, PSE should post the award notification on the Nova Scotia Public Procurement Portal using the Public Tenders Application. Refer to Appendix A for an example of notification posting.
- Piggybacking is not considered an Alternative Procurement ("ALTP"); therefore, notices should not be posted on the ALTP portal.

1.8 SOLICITATION CLAUSE

Following are examples of language currently in use by PSE in Nova Scotia. These clauses allow other PSE to Piggyback off an Enabling Contract/Process. Contact your PSE's legal advisor before adopting any of these terms and conditions.

Government of Nova Scotia (Negotiated RFP Templates)

By submitting a proposal in response to this RFP, a proponent undertakes and agrees that if successful, and following execution of an agreement with the Province, it will make the specified goods and/or services available, on substantially the same terms and conditions as those agreed to with the Province, to any public sector entity eligible to participate in this procurement process, upon request by a public sector entity seeking access to those goods and/or services, provided however, that the proponent's obligation to allow participation by other public sector entities does not extend to circumstances in which the proponent would have to make capital or operational expenditures in order to accommodate subsequent requests for goods or services by public sector entities.

The proponent may only provide the goods and services specified under this RFP to additional entities by entering into a separate contract with the new entity (“Subsequent Contract”). The proponent acknowledges and agrees that the Province will not be a party to any Subsequent Contract, nor will the Province be liable in any respect for any obligation under, or act or omission by a party to, a Subsequent Contract.

The proponent acknowledges and agrees that notwithstanding any enactment or other obligation the Province may disclose the proponent’s proposal, and any agreement between the proponent and the Province, to any public sector entity eligible to participate in this procurement process, and the Province is not liable for any loss or damage to any person arising from or otherwise in relation to such disclosure.

For the purposes of this section, a public sector entity means any provincial government or provincially funded entity in Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations.

Government of Nova Scotia (Contract “A” Solicitations Templates)

By submitting a proposal in response to this RFP, a proponent irrevocably undertakes and agrees that if successful, and following execution of an agreement with the Province, it will make the specified goods and/or services available, on the same terms and conditions as those agreed to with the Province, to any public sector entity eligible to participate in this procurement process, upon request by a public sector entity seeking access to those goods and/or services, provided however, that the proponent’s obligation to allow participation by other public sector entities does not extend to circumstances in which the proponent would have to make capital or operational expenditures in order to accommodate subsequent requests for goods or services by public sector entities.

The proponent may only provide the goods and services specified under this RFP to additional entities by entering into a separate contract with the new entity (“Subsequent Contract”). The proponent acknowledges and agrees that the Province will not be a party to any Subsequent Contract, nor will the Province be liable in any respect for any obligation under, or act or omission by a party to, a Subsequent Contract.

The proponent acknowledges and agrees that notwithstanding any enactment or other obligation the Province may disclose the proponent’s proposal, and any agreement between the proponent and the Province, to any public sector entity eligible to participate in this procurement process, and the Province is not liable for any loss or damage to any person arising from or otherwise in relation to such disclosure.

For the purposes of this section, a public sector entity means any provincial government or provincially funded entity in Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations.

Halifax Regional Municipality (All solicitation type templates)

If requested by any other public sector entity, the successful bidder agrees to make its goods and services available to the other public sector entity upon the same pricing, terms and conditions as those provided to HRM.

The successful bidder is not obligated to extend its goods and/or services to other public sector entities if doing so would cause the bidder to make capital or operational expenditures in order to accommodate the request.

Any arrangement or agreement with another public sector entity will be solely between the successful bidder and the other public sector entity. HRM will not be a party to any such agreement, and HRM is not liable in any respect for any obligation, act or omission by a party to such agreement.

For the purposes of this section, a public sector entity means any provincial government or provincially funded entity in Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and Crown corporations, and entities defined by contract as agents of HRM.

Nova Scotia Community College

In the interest of standardization of equipment and services amongst the thirteen (13) NSCC campuses, throughout the province of Nova Scotia, the Proponent agrees to extend its proposal to all NSCC sites, and to all MASH sector members within the province of Nova Scotia, “as their needs require.”

This option would be subject to receipt of satisfactory equipment including product support and services, continued technological competitiveness, and maintenance of an equitable prices structure relative to other manufacturers.

1.9 FORM OF AGREEMENT WITH SUPPLIER

Following is an example of an agreement currently in use by PSE in Nova Scotia. Contact your PSE's legal advisor before adopting any of these terms and conditions.

ADOPTION OF SUPPLY AGREEMENT

Between
[INSERT PUBLIC SECTOR ENTITY NAME]
(the "PSE")
And
[INSERT SUPPLIER NAME] (the "Supplier")

WHEREAS on [insert date] the Supplier entered into an agreement with [ORIGINAL PUBLIC SECTOR ENTITY NAME] to provide [insert description of Services] (the "Supply Agreement");

AND WHEREAS the Supply Agreement is attached hereto as Schedule A;

AND WHEREAS the Supply Agreement expressly permits the PSE to enter into a similar agreement;

AND WHEREAS the PSE and the Supplier now wish to adopt the Supply Agreement as if they were the original parties thereto, subject to the changes set out herein; and

NOW THEREFORE, the PSE and the Supplier agree as follows:

1. The Supplier agrees to provide [insert description of the Services] to the PSE.
2. Subject to any modifications set out herein, the PSE and the Supplier agree to adopt and be governed by the terms and conditions of the Supply Agreement, with the PSE taking the place of [ORIGINAL PSE] and with all other necessary changes applied *mutatis mutandis*.
3. [Notwithstanding section [X] of the Supply Agreement, the PSE and the Supplier agree that ...]
4. [Notwithstanding section [Y] of the Supply Agreement, the PSE and the Supplier agree that ...]
5. [Notwithstanding section [Z] of the Supply Agreement, the PSE and the Supplier agree that ...]

6. Any notice to be given under this Agreement by the PSE or the Supplier shall be in writing and delivered by hand, by facsimile transmission, email or by registered mail, to the other party at the address and to the attention of the contact individual indicated below:

PSE: [insert mailing and email or other relevant contact information]

Supplier: [insert mailing and email or other relevant contact information]

Notice shall be deemed to be duly given and received upon delivery, if delivered by hand; upon receipt of the facsimile or emailed transmission, if the transmission is received by the intended recipient prior to the recipient's close of business (and otherwise on the next business day of the recipient); or three (3) business days after posting, if sent by registered mail with a return receipt. Either party may change its address or contact for receipt of notices, provided that such party gives notice thereof in accordance with this provision and confirms the effective date of the change in such notice. This Adopting Agreement shall enure to the benefit of and be binding on the PSE and on the successors and permitted assigns of the Supplier.

7. This Adopting Agreement may be signed by the PSE and the Supplier in separate counterparts, each of which when signed and delivered, shall constitute an original and binding agreement for all purposes.
8. The Supplier and the PSE agree to execute and deliver all such further documents and instruments, and do or cause to be done all such acts and things, as either party may reasonably consider necessary to evidence the intent and meaning of this Adopting Agreement.
9. This Adopting Agreement shall be governed by and interpreted in accordance with the laws of Nova Scotia and the laws of Canada applicable therein.

[signature page to follow.]

The PSE and the Supplier have executed this agreement through their authorized representatives on the date stated opposite each party's signature.

[INSERT SUPPLIER NAME]

Date

Name:
Title:

[INSERT PSE NAME]

Date

Name:
Title:

APPENDIX A - PUBLIC TENDERS APPLICATION POSTING EXAMPLE

Tender Details

Tender ID	CW555
Description	Notice of Participation - Fitness Equipment (This posting IS NOT a tender/RFP opportunity)
Tender Docs Location	To access tender documents see below.
Tender Document	
Addendum Document	
Department / Agency Name	Agriculture
Closing	Closing on Friday, January 8, 2021 at 02:00 PM Atlantic Time. Location:
Opening	Opening on Friday, January 8, 2021 at 02:00 PM Atlantic Time. Location: same as close location
Posted	08 January 2021
Trade Agreement	Canadian Free Trade Agreement (CFTA)
Category	Goods: Y Services: N Construction: N
Pickup Fee	N/A
Addendum	N
Addendum Notes	
Contact	Geneviève Sharkey, Director, Procurement Operations, Goods, Services & Construction, genevieve.sharkey@novascotia.ca
Memorandum	Notice of participation in RFP 615278 - Playground and Outdoor Fitness Equipment. This posting IS NOT a tender/RFP opportunity. In accordance with RFP 615274, Public Sector Entities may participate on the same terms and conditions as those agreed to with the originating entity.
Awarded Date	08 January 2021
Awarded Amount	\$0.00
Awarded Vendor	Spartan Fitness
Award Memo	

RECORD OF REVISION

Version	Revision	Revision Date	Modified By