

Piggybacking Worksheet – A Piggybacking Worksheet may be found in Appendix B.16. The issues referred to in the worksheet that must be evaluated prior to a decision to piggyback another contract are as follows:

1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-Award or Post-Delivery audits?
2. Does the contract contain an express *assignability clause* that provides for the assignment of all or part of the specified deliverables? FTA’s policy is that the original solicitation must contain an *express notification* to all bidders that an assignment would be possible under the terms of the contract. Such a notification would put the bidders on notice that they would likely be called upon to deliver all of the deliverable items, both the base as well as the option quantities. The assignment clause would thus be an important factor in the original competitive bidding. If the contract does not contain an express assignability clause, piggybacking is not permitted.
3. Did the Contractor submit the “certifications” required by Federal regulations in accordance with the requirements of this solicitation? See the BPPM Section 4.3.3.2. - *Federally Required Submissions with Offers*. Piggybacking is not permitted when the Contractor has failed to submit the required Federal certifications with its bid.
4. Does the contract contain the clauses required by Federal regulations? See the BPPM Appendix A - *Federally Required and Other Model Contract Clauses*. Note that not all clauses in Appendix A will apply to all contracts – review each clause for applicability to the specific contract to be piggybacked. If a required Federal clause is not included in the contract, piggybacking is not permitted.
5. Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision? If not, a *Tag-on is not permitted*.
6. If the contract is an *indefinite quantity contract*, did the original solicitation and resultant contract contain both a minimum and a maximum quantity, which represent the reasonably foreseeable needs of the parties to the solicitation? See BPPM Section 2.2.5.3 – *Indefinite-quantity Contracts*, and the paragraph below *Indefinite Quantity Contracts, Unlimited Options and Piggybacking*.
7. If the piggybacking action represents the exercise of an option provision in the contract, is the option still valid? Options that have expired may not be exercised.

8. Does your State law allow for the procedures used by the original contracting agency; e.g., negotiations vs. sealed bids?
9. Was a cost or price analysis performed by the original procuring agency documenting the reasonableness of the contract price? Include a copy in your files. Does the contract term comply with the five-year term limit established by FTA 4220.1E, paragraph 7.m?
10. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.
11. What types of changes will you require to be made to the vehicles? For an assignment, only “within scope” (non-cardinal) changes are allowed (e.g., seating fabrics and colors, paint schemes, signage, floor coloring, etc.). For further guidance see BPPM Section 9.2.1-*Contract Scope and Cardinal Changes*.

Indefinite Quantity Contracts, Unlimited Options and Piggybacking – Serious problems arise when agencies issue solicitations with unlimited quantities, which result in open-ended contracts which other agencies then piggyback. This practice creates a number of serious problems; therefore, *unlimited quantities are not permitted*.

- Since the rolling stock manufacturers do not know what the potential orders may be under the contract, they cannot plan their operations nor can they quote prices which reflect the quantities that may be produced.
- Unspecified quantities result in higher unit prices for the procuring agency because manufacturers must use the minimum quantity specified to calculate prices for material, engineering, etc.

For these reasons, *open-ended, indefinite quantity/indefinite delivery contracts, or contracts with unlimited options are not permitted*. They are not only disruptive to bus manufacturers and their suppliers, who cannot plan their production schedules given the degree of uncertainty that these contracts entail, but they are also counter-productive to the grantee community, which will invariably pay higher prices for items which were not really competed in a “full and open competition.”

APPENDIX B.16**PIGGYBACKING WORKSHEET**

Definition: *Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process. ("FTA Dear Colleague" letter, October 1, 1998).*

In order to assist in the performance of your review, to determine if a situation exists where you may be able to participate in the piggybacking (assignment) of an existing agreement, the following considerations are provided. Ensure that your final file includes documentation substantiating your determination.

| WORKSHEET | YES | NO |
|---|------------|-----------|
| 1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post-Delivery audits? | | |
| 2. Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables? | | |
| 3. Did the Contractor submit the "certifications" required by Federal regulations? See BPPM Section 4.3.3.2. | | |
| 4. Does the contract contain the clauses required by Federal regulations? See BPPM Appendix A1. | | |
| 5. Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision? | | |
| 6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract? | | |
| 7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired? | | |
| 8. Does your State law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids? | | |

| WORKSHEET | | YES | NO |
|------------------|---|------------|-----------|
| 9. | Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files. | | |
| 10. | Does the contract term comply with the five-year term limit established by FTA? | | |
| 11. | Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files. | | |
| 12. | If you will require changes to the vehicles (deliverables), are they “within the scope” of the contract or are they “cardinal changes”? See BPPM Section 9.2.1. | | |

Note: This worksheet is based upon the policies and guidance expressed in (a) the FTA Administrator's "Dear Colleague" letter of October 1, 1998, (b) the *Best Practices Procurement Manual*, Section 6.3.3—*Joint Procurements of Rolling Stock and “Piggybacking,”* and (c) FTA Circular 4220.1E.