

# Piggy-Back Laws: More Bang for Your Buck. An Analysis of How Efficient Public Procurement Laws Benefit Counties, Bidders, and Taxpayers

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## I. INTRODUCTION

Presently, many states are in the midst of a budget crisis partly due to inefficient public procurement.<sup>1</sup> Public procurement is the government's acquisition of products, supplies, and equipment.<sup>2</sup> In order to protect public funds, a government acquires such items by competitive bidding.<sup>3</sup> Competitive bidding prevents collusion and favoritism from influencing government officials.<sup>4</sup> Many states such as Washington, Montana, Idaho, and Alaska, however, have recognized the inherent

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1. See, e.g., Mike Dennison, *Budget Crisis: Job No. 1*, GREAT FALLS TRIBUNE, January 2, 2003, <http://greatfallstribune.com/news/stories/20030102/localnews/692937.html>; Brad Shannon, *State Budget Crisis Will Require Sacrifice*, THE OLYMPIAN, Dec. 15, 2002, at front p., <http://www.theolympian.com/home/news/20021215/frontpage/28379.shtml>.

2. See ALASKA STAT. § 36.30.990(17) (Michie 2003).

3. See, e.g., IDAHO CODE § 31-4014 (Michie 2003).

4. Peerless Food Prod., Inc. v. State, 835 P.2d 1012, 1018 (Wash. 1992) (quoting *Mottner v. Mercer Island*, 452 P.2d 750, 753 (Wash. 1969)).

inefficiency that accompanies competitive bidding.<sup>5</sup> In an attempt to streamline the bid process, these four states have enacted piggy-back laws.<sup>6</sup> Piggy-back laws allow one governmental entity to join in or “piggy-back” another governmental entity’s competitively bid procurement.<sup>7</sup> As a result, two or more governmental entities can purchase the same item by competitively bidding the procurement once.<sup>8</sup> Washington, Montana, Idaho, and Alaska all, however, take a different approach to their piggy-back laws.<sup>9</sup>

Washington counties must jump through multiple bureaucratic hoops in order to piggy-back.<sup>10</sup> Montana counties are only allowed to piggy-back state procurements.<sup>11</sup> Idaho encourages counties to set up cooperatives and piggy-back whatever procurement they can.<sup>12</sup> Similarly, Alaska counties are able to piggy-back any government procurement and are free to buy, sell, or trade supplies with one another.<sup>13</sup>

Washington and Montana legislatures should repeal their inefficient piggy-back laws and enact schemes more similar to Idaho and Alaska. This article will explain how piggy-back laws aid counties in the efficient procurement of products, supplies, and equipment. Next, it will critically analyze Washington, Montana, Idaho, and Alaska’s specific piggy-back laws. The article will then look at piggy-back laws from a bidder’s perspective and describe how efficient piggy-back laws can increase business. Finally, it will show that the Idaho and Alaska statutory schemes allow counties to get the most out of each competitively bid procurement.

## II. PIGGY-BACK LAWS AND PUBLIC PROCUREMENT

Once a government entity decides to purchase products, supplies, or equipment the competitive bidding process is ready to begin.<sup>14</sup> First, a call for bids is issued.<sup>15</sup>

5. See, e.g., WASH. REV. CODE § 39.34.010 (2003); MONT. CODE ANN. § 18-4-401 (2003); IDAHO CODE § 31-4014 (Michie 2003); ALASKA STAT. § 36.30.700 (Michie 2003).

6. See, e.g., WASH. REV. CODE § 39.34.010; MONT. CODE ANN. § 18-4-401; IDAHO CODE § 31-4014; ALASKA STAT. § 36.30.700.

7. See, e.g., WASH. REV. CODE § 39.34.010; MONT. CODE ANN. § 18-4-40; IDAHO CODE § 31-4014; ALASKA STAT. § 36.30.700.

8. See, e.g., WASH. REV. CODE § 39.34.010; MONT. CODE ANN. § 18-4-40; IDAHO CODE § 31-4014; ALASKA STAT. § 36.30.700.

9. Compare WASH. REV. CODE § 39.34.010, with MONT. CODE ANN. § 18-4-401, IDAHO CODE § 31-4014, and ALASKA STAT. § 36.30.700 (Michie 2003).

10. See *infra* pp. 7-11 and note 38.

11. See *infra* pp. 12-14.

12. See IDAHO CODE §§ 31-4014, 31-4015.

13. See ALASKA STAT. § 36.30.700.

14. E.g., IDAHO CODE § 31-4004. However, there are exceptions to the competitive bidding process. See, e.g., *id.* §§ 31-4003, 31-4013. These usually include emergency procurements or relatively inexpensive purchases. *Id.*

15. See, e.g., *id.* § 31-4004.

This invites suppliers to make a bid, and notifies them of the county's specifications.<sup>16</sup> Next, multiple suppliers submit bids in sealed envelopes.<sup>17</sup> Then, on a chosen date and time, the county opens the bids.<sup>18</sup> The county does not have to award the contract if it is unsatisfied with the bid prices.<sup>19</sup> However, if the county decides to award the contract it must do so pursuant to the requirements of the competitive bidding statutes.<sup>20</sup> Usually, the lowest responsible bidder is awarded the contract.<sup>21</sup> All other bids are rejected.<sup>22</sup>

In theory, the competitive bidding process ensures competition, which affords the government the best possible price.<sup>23</sup> However, some counties do not have the funding to purchase multiple items at once.<sup>24</sup> These counties receive fewer bids because the dollar amount of the resulting contract is relatively small.<sup>25</sup> Fewer bidders result in less competition, and higher prices for the county.<sup>26</sup> On the other hand, a county that competitively bids a procurement of multiple items draws more bidders because the profits from the resulting contract are larger.<sup>27</sup> This increases competition which drives prices down, and allows the county to purchase an item at the lowest possible cost.<sup>28</sup>

Efficient piggy-back laws help counties get the best price possible.<sup>29</sup> Such laws allow a county that may only need, or can only afford, one item to piggy-back another county's procurement of that item.<sup>30</sup> This increases the quantity of items on which suppliers bid because the price of the resulting contract will be greater.<sup>31</sup> This increases competition and lowers prices.<sup>32</sup> Thus, the county that could only afford one item is able to benefit from the competition.

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16. *Id.*

17. *E.g., id.* § 31-4005.

18. *E.g., id.* §§ 31-4004, 31-4007.

19. *E.g.,* IDAHO CODE § 31-4011.

20. *E.g., id.* § 31-4003.

21. *See, e.g., id.* §§ 31-4003, 31-4007.

22. *See, e.g., id.* § 31-4003.

23. *Reiner v. Clarke County*, 241 P. 973, 976 (Wash. 1926).

24. Telephone Interview with Janet Pallister, Director of Finance and Operations, Lewis and Clark County Public Works (Feb. 4, 2003).

25. *Id.*

26. *Gough v. Rossmoor Corp.*, 487 F.2d 373, 378 (9th Cir. 1973).

27. Telephone Interview with Janet Pallister, *supra* note 24.

28. *Reiner*, 241 P. at 976.

29. *See generally id.*

30. *See* ALASKA STAT. § 36.30.700 (Michie 2003); IDAHO CODE § 31-4014 (Michie 2003); MONT. CODE ANN. § 18-4-402 (2003); WASH. REV. CODE § 39.34.010 (2003).

31. Telephone Interview with Janet Pallister, *supra* note 24.

32. *See* O'Sullivan v. Trident Microsystems, Inc., 1994 WL 124453, at \*6 (N.D. Cal. Jan. 31, 1994) (stating that when competition increases, prices decrease); *cf.* *Gough v. Rossmoor Corp.*, 487 F.2d 373, 378 (9th Cir. 1973) (stating "[w]hen competition is reduced, prices increase").

Furthermore, counties save money because the procurement is only bid once.<sup>33</sup> For example, one hundred different counties all need to purchase the same item. Efficient piggy-back laws allow all one hundred counties to bid the purchase only once.<sup>34</sup> The call for bids will specify that the contract will be for one hundred items.<sup>35</sup> All the counties will obtain what they need through a single competitively bid procurement. Without efficient piggy-back laws each county would have to bid their item separately. This would result in one hundred separate procurements, each for a single item. The effective use of piggy-back laws will enable all the counties to benefit from the competition they have created.<sup>36</sup> Each will be able to satisfy its needs at the lowest possible cost to the taxpayer.<sup>37</sup>

### III. DIFFERENT APPROACHES TO PIGGY-BACK LAWS

#### A. *Washington's Approach: Bureaucratic Cooperation*

Washington's piggy-back laws<sup>38</sup> are codified in the Interlocal Cooperation Act

33. See generally ALASKA STAT. § 36.30.700; IDAHO CODE § 31-4014.

34. See, e.g., ALASKA STAT. § 36.30.700; IDAHO CODE § 31-4014.

35. See, e.g., IDAHO CODE § 31-4004.

36. See *O'Sullivan*, 1994 WL 124453, at \*6 (stating that when competition increases, prices decrease); cf. *Gough*, 487 F.2d at 378 (stating "[w]hen competition is reduced, prices increase").

37. See *Reiner v. Clarke County*, 241 P. 973, 976 (Wash. 1926).

38. WASH. REV. CODE § 39.34.030 states:

(1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter: PROVIDED, That any such joint or cooperative action by public agencies which are educational service districts and/or school districts shall comply with the provisions of RCW 28A.320.080. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following: (a) Its duration; (b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. Such entity may include a nonprofit corporation organized pursuant to chapter 24.03 or 24.06 RCW whose membership is limited solely to the participating public agencies or a partnership organized pursuant to chapter 25.04 RCW whose partners are limited solely to participating public agencies and the funds of any such corporation or partnership shall be subject to audit in the manner provided by law for the auditing of public funds; (c) Its purpose or purposes; (d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor; (e) The

("ICA").<sup>39</sup> The Washington Legislature enacted the ICA for the purpose of allowing governmental units to make efficient use of their powers and resources.<sup>40</sup> Pursuant to the ICA, a public agency<sup>41</sup> can enter into an agreement with another public agency to

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permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; (f) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items (a), (c), (d), (e) and (f) enumerated in subdivision (3) hereof, contain the following: (a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented; (b) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking. Any joint board is authorized to establish a special fund with a state, county, city, or district treasurer servicing an involved public agency designated "Operating fund of . . . joint board."

(5) No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, the performance may be offered in satisfaction of the obligation or responsibility.

(6) Financing of joint projects by agreement shall be as provided by law.

WASH. REV. CODE § 39.34.030 (2003).

WASH. REV. CODE § 39.34.040 provides:

Prior to its entry into force, an agreement made pursuant to this chapter shall be filed with the county auditor. In the event that an agreement entered into pursuant to this chapter is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States the agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

WASH. REV. CODE § 39.34.040 (2003).

WASH. REV. CODE § 39.34.050 states:

In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control. The agreement shall be approved or disapproved by the state officer or agency with regard to matters within his, her, or its jurisdiction within ninety days after receipt of the agreement. If a state officer or agency fails to act within the ninety-day time limit, the agreement shall be deemed approved by that state officer or agency.

WASH. REV. CODE § 39.34.050 (2003).

39. See WASH. REV. CODE § 39.34.900 (2003).

40. *Id.* § 39.34.010.

41. The ICA defines Public Agency to mean:

jointly exercise any of the powers or privileges capable of being exercised alone.<sup>42</sup> For example, a county can enter into an agreement with the Washington State Department of Transportation to jointly competitively bid the procurement of snowplows.<sup>43</sup>

However, these agreements between public agencies are subject to a tremendous amount of bureaucracy.<sup>44</sup> First, the agreement is required to contain specific information.<sup>45</sup> The agreement must specify its duration, purpose, manner of financing, methods for termination, and “[t]he precise organization, composition and nature of any separate legal . . . entity” that is created.<sup>46</sup> Second, the agreement must be filed with the county auditor.<sup>47</sup> Third, if the agreement deals with an officer or agency of the state government, then the agreement must be submitted to that officer or agency for approval.<sup>48</sup> The state agency then has ninety days to approve the agreement.<sup>49</sup> Only after a county fulfills these requirements can it piggy-back another public agency’s procurement.<sup>50</sup>

In Washington, a public agency must plan ahead if it wants to piggy-back another public agency’s competitively bid procurement. Before a public agency is allowed to piggy-back the procurement it must wade through the bureaucracy of the ICA.<sup>51</sup> A more efficient statute would eliminate the filing and submission requirements<sup>52</sup> and make it easier for a county to piggy-back another public agency’s procurement.<sup>53</sup>

any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

*Id.* § 39.34.020(1).

42. *Id.* § 39.34.030(1)(2003).

43. *See id.*

44. *See* WASH. REV. CODE § 39.34.010 (2003).

45. *Id.* § 39.34.030(3).

46. *Id.*

47. *Id.* § 39.34.040.

48. *Id.* § 39.34.050.

49. WASH. REV. CODE § 39.34.050 (2003).

50. *Id.* §§ 39.34.030-39.34.050 (2003).

51. *Id.* These agreements do not last indefinitely. *See id.* § 39.34.030 (3)(a). By requiring that the agreement specify duration as well as procedures for termination the Act implies that these agreements cannot last indefinitely. *Id.* Thus, counties are required to renegotiate their agreements periodically. *Id.*

52. *Id.* As discussed above, a county is required to file its piggy-back agreement with the county auditor. *Id.* § 39.34.040. Also, if a county wants to piggy-back a state agency’s procurement the agreement between the county and the state agency must be submitted to the agency head for approval. *Id.* § 39.34.050.

53. Montana, Idaho, and Alaska all have separate statutes that authorize cooperative purchasing or “piggy-backing.” *See* MONT. CODE ANN. § 18-4-402 (2003); IDAHO CODE § 31-4014 (Michie 2003); ALASKA STAT. § 36.30.700 (Michie 2003). On the other hand, Washington’s piggy-

### B. *Montana's Approach: Limited Cooperative Purchasing*

Montana's piggy-back laws<sup>54</sup> authorize cooperative purchasing only through the Department of Administration.<sup>55</sup> A local public procurement unit<sup>56</sup> may enter into an agreement with the Montana Department of Administration to conduct cooperative purchasing.<sup>57</sup> Once the Department authorizes a county to do cooperative purchasing, that county is put on a list.<sup>58</sup> This allows counties to piggy-back the state's competitively bid procurements.<sup>59</sup> However, Montana's piggy-back laws prohibit a county from piggy-backing any other governmental entity's procurements.<sup>60</sup> This approach seriously limits the effectiveness of Montana's piggy-back laws, because the counties cannot piggy-back each other's contracts, nor on a city's or school district's procurements.<sup>61</sup>

This limitation makes public procurement extremely inefficient.<sup>62</sup> Often a county has different needs than those of the state.<sup>63</sup> For instance, many counties

back law is merely a by-product of the Legislature's desire to authorize "public agencies" to provide emergency services, police protection, etc. *See generally* WASH. REV. CODE §§ 39.34.010-39.34.050 (2003); *State v. Knight*, 904 P.2d 1159, 1165 (Wash. Ct. App. 1995). While the ICA achieves its intended purposes, the Washington Legislature needs to enact a separate piggy-back law that specifically authorizes cooperative purchasing.

54. MONT. CODE ANN. § 18-4-402 states:

The department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more public procurement units in accordance with an agreement entered into between the participants independent of the requirements of part 3. Cooperative purchasing may include purchasing through federal supply schedules of the United States general services administration, joint or multiparty contracts between public procurement units and open-ended state public procurement unit contracts that are made available to local public procurement units.

MONT. CODE ANN. § 18-4-402.

55. *Id.*

56. Montana's cooperative purchasing statutes define a local public procurement unit as: a county, city, town, or other subdivision of the state or a public agency of any such subdivision; public authority; educational, health, or other institution; to the extent provided by law, any other entity that expends public funds for the procurement of supplies and services; and any nonprofit corporation operating a charitable hospital.

*Id.* § 18-4-401(2).

57. *Id.* § 18-4-402.

58. List of Cooperative Purchasers, at [http://www.discoveringmontana.com/dao/gsd/content/Downloads/CO-OPLIST3\\_updates.htm](http://www.discoveringmontana.com/dao/gsd/content/Downloads/CO-OPLIST3_updates.htm) (last visited Feb. 6, 2004).

59. Telephone Interview with Sheryl Olson, Manager of State Procurement B, Montana Department of Administration (Feb. 4, 2003); MONT. CODE ANN. § 18-4-402.

60. *See* MONT. CODE ANN. § 18-4-402.

61. *See generally id.*

62. *Id.*

63. Telephone Interview with Janet Pallister, *supra* note 24.

cannot afford to buy brand new equipment.<sup>64</sup> Instead of piggy-backing the state's procurement of new equipment, the counties will try to purchase used equipment discarded by the state and other counties.<sup>65</sup> Montana's piggy-back laws are only effective if the state procures items that the county needs at a price the county can afford.<sup>66</sup>

### C. Idaho's Approach: A Model Piggy-Back Law

Idaho's piggy-back law<sup>67</sup> allows any county to enter into a joint purchasing agreement with any other governmental entity.<sup>68</sup> Idaho's statutory scheme also expressly allows counties to participate in Idaho's Association of Counties.<sup>69</sup> This association assists counties in the negotiation and bidding process for joint purchase contracts.<sup>70</sup>

Idaho's piggy-back laws provide counties an efficient way to pool their resources in order to spend taxpayer dollars in a responsible manner.<sup>71</sup> Once a joint purchasing agreement is established, the counties can choose to piggy-back any other entity's procurement.<sup>72</sup> For instance, a county can piggy-back a city, state, or school district's procurement.<sup>73</sup> Idaho counties are not limited only to state procurements.<sup>74</sup> In addition, no bureaucracy is forced on the counties, neither is filing with the county auditor's office required.<sup>75</sup>

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64. *Id.*

65. *Id.*

66. *Id.*

67. IDAHO CODE § 31-4014 states:

The boards of county commissioners in their respective counties may enter into joint purchasing agreements with other counties or political subdivisions or joint purchasing agreements through a joint purchase program established by the Idaho association of counties. Contracts let pursuant to such joint purchase agreement shall be bid in accordance with the provisions of this chapter. This authority does not preclude or limit counties from entering into purchase agreements otherwise provided by statute.

IDAHO CODE § 31-4014 (Michie 2003).

68. *Id.*

69. *Id.* § 31-4015.

70. *Id.*

71. *See id.* § 31-4014.

72. IDAHO CODE § 31-4014 (Michie 2003).

73. *Id.*

74. *Compare* IDAHO CODE § 31-4014, *with* MONT. CODE ANN. § 18-4-402 (2003).

75. *Compare* IDAHO CODE § 31-4014, *with* WASH. REV. CODE § 39.34.010-39.34.920 (2003) (bureaucracy); *compare* IDAHO CODE § 31-4014, *with* WASH. REV. CODE § 39.34.040 (filing).



*D. Alaska's Approach: Another Version of Perfection*

Piggy-back laws in Alaska<sup>76</sup> have the same practical effect as those in Idaho.<sup>77</sup> In Alaska, a public procurement unit<sup>78</sup> can cooperatively purchase supplies or equipment with one or more public procurement units.<sup>79</sup> Furthermore, the Alaska statute allows counties<sup>80</sup> to sell, use, or acquire supplies belonging to another public procurement unit.<sup>81</sup>

Similar to the piggy-back laws of Idaho, Alaska's version of public procurement is extremely efficient.<sup>82</sup> Counties are authorized to share, sell, or trade supplies with each other.<sup>83</sup> This statute maximizes scarce resources while facilitating inter-government cooperation.<sup>84</sup>

Alaska counties are not required to file their agreements with the county auditor, nor submit them to the head of a state agency for approval.<sup>85</sup> Consequently, Alaska counties are not hindered by the bureaucratic process that Washington counties are required to undergo.<sup>86</sup> Further, unlike counties in Montana, Alaska counties are free to piggy-back any public procurement they choose.<sup>87</sup> They are not limited to only state procurements.<sup>88</sup>

76. ALASKA STAT. § 36.30.700 provides:

A public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of supplies, services, professional services, or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. Cooperative purchasing may include joint or multi-party contracts between public procurement units and open-ended state public procurement units contracts that are made available to local public procurement units.

ALASKA STAT. § 36.30.700 (Michie 2003).

77. Compare ALASKA STAT. § 36.30.700 (Michie 2003), with IDAHO CODE § 31-4014.

78. A "public procurement unit" is defined as "either a local public procurement unit or a state public procurement unit." ALASKA STAT. § 36.30.790(4). A "local public procurement unit" "means a municipality or other subdivision of the state or other entity that expends public funds for the procurement of supplies, services, professional services, and construction, and any nonprofit corporation operating a charitable hospital." *Id.* § 36.30.790(3). A "state public procurement unit" "means the Department of Administration and any other contracting agency of the state." *Id.* § 36.30.790(5).

79. *Id.* § 36.30.700.

80. Alaska counties are, by definition, public procurement units. *Id.* § 36.30.790 (3)-(4).

81. *Id.* § 36.30.710.

82. Compare ALASKA STAT. § 36.30.700 (Michie 2003), with IDAHO CODE § 31-4014 (Michie 2003).

83. ALASKA STAT. § 36.30.710.

84. *See id.*

85. Compare ALASKA STAT. § 36.30.700, with WASH. REV. CODE §§ 39.34.030, 39.34.050 (2003).

86. Compare ALASKA STAT. § 36.30.700, with WASH. REV. CODE §§ 39.34.030-39.34.050.

87. Compare ALASKA STAT. § 36.30.700, with MONT. CODE ANN. § 18-4-402 (2003).

88. Compare ALASKA STAT. § 36.30.700, with MONT. CODE ANN. § 18-4-402 (2003).

IV. EFFICIENT PUBLIC PROCUREMENT: A COMPARISON BETWEEN THE WASHINGTON/MONTANA APPROACH AND THE IDAHO/ALASKA APPROACH

Washington's approach to piggy-backing is much too bureaucratic.<sup>89</sup> It completely stifles unplanned joint purchasing.<sup>90</sup> In order to piggy-back, a county is required to enter into agreements containing only specific information.<sup>91</sup> Also, the agreements must be filed with the county auditor.<sup>92</sup> If a Washington county wants to piggy-back a state agency, the agreement must be submitted to the agency for approval.<sup>93</sup> Consequently, Washington counties cannot piggy-back another county without first completing several arduous tasks.<sup>94</sup> These inefficient piggy-back laws cost Washington counties time and money.

Piggy-back laws in Montana pose more problems than Washington's approach.<sup>95</sup> Montana counties can only piggy-back the state's competitively bid procurements.<sup>96</sup> No Montana county can take advantage of a favorable procurement competitively bid by another county or city.<sup>97</sup> This inefficient approach requires counties to bid their own contracts. Multiple counties offering multiple bids reduces competition among suppliers and increases prices paid by the counties.<sup>98</sup>

On the other hand, Idaho and Alaska's piggy-back laws allow counties to seek out the best price for an item.<sup>99</sup> A county can piggy-back any governmental entity's competitively bid procurement.<sup>100</sup> These free-for-all systems enable the counties and other governmental entities to collectively bid procurements.<sup>101</sup> This results in cooperative purchasing, cost sharing, and promotes cooperation between all levels of government.<sup>102</sup>

For instance, in Idaho and Alaska, multiple counties may piggy-back a city's competitively bid procurement of equipment.<sup>103</sup> The piggy-backing counties and the city share the costs of soliciting bids for the procurement, and they also share the

89. See WASH. REV. CODE §§ 39.34.030-39.34.050.

90. See *id.*

91. *Id.* § 39.34.030(3).

92. *Id.* § 39.34.040.

93. *Id.* § 39.34.050.

94. See WASH. REV. CODE §§ 39.34.030-39.34.050.

95. Compare WASH. REV. CODE § 39.34.010-39.34.050, with MONT. CODE ANN. § 18-4-401 to 18-4-404 (2003).

96. MONT. CODE ANN. § 18-4-402.

97. *Id.*

98. *Gough v. Rossmoor Corp.*, 487 F.2d 373, 378 (9th Cir. 1973); *cf. Reiner v. Clarke County*, 241 P. 973, 976 (Wash. 1926).

99. See ALASKA STAT. § 36.30.700 (Michie 2003); IDAHO CODE § 31-4014 (Michie 2003).

100. See ALASKA STAT. § 36.30.700; IDAHO CODE § 31-4014.

101. See ALASKA STAT. § 36.30.700; IDAHO CODE § 31-4014.

102. See IDAHO CODE § 31-4014; ALASKA STAT. §§ 36.30.700, 36.30.710.

103. See IDAHO CODE § 31-4014; ALASKA STAT. §§ 36.30.700, 36.30.710.

delivery costs of the equipment.<sup>104</sup> The increased quantity of equipment being procured drives up the overall amount of the resulting contract, and this entices bidders.<sup>105</sup> Attracting more bidders increases competition, which ultimately decreases the prices paid by the procuring entities.<sup>106</sup> Different levels of government are able to work together cooperatively to purchase equipment solely because of efficient piggy-back laws.<sup>107</sup>

Overall, Idaho and Alaska's statutory schemes allow counties to efficiently acquire necessary items.<sup>108</sup> Counties can piggy-back any government procurements and do not have to bid the procurement themselves.<sup>109</sup> As a result, many counties can each purchase a desired item through a single procurement.<sup>110</sup> The Idaho/Alaska approach decreases the number of procurements needed for the counties to acquire their necessary materials.<sup>111</sup> This saves the county time and money, in the form of taxpayer dollars.

Against the backdrop of Idaho and Alaska's piggy-back laws, Washington and Montana's approaches severely limit cooperation between counties.<sup>112</sup> Their statutory schemes increase the price of products<sup>113</sup> and require multiple procurements for the same items.<sup>114</sup> In order to ease the pressure on the budget and the taxpayer, the Washington and Montana legislatures need to amend or repeal their existing piggy-back laws. Once systems similar to Idaho or Alaska's are enacted, public procurement will be optimized and the taxpayers will finally receive the most bang for their buck.

#### V. THE IDAHO/ALASKA APPROACH: A BIDDER'S PREFERENCE OVER THE WASHINGTON/MONTANA APPROACH

Under Idaho and Alaska's piggy-back laws, a supplier has the opportunity to contact any governmental entity once it has been awarded the bid.<sup>115</sup> The supplier can inform the other entity that it has been awarded a certain county's procurement contract and invite the other entity to piggy-back an order on that procurement.<sup>116</sup>

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104. *See supra* text accompanying notes 23-37.

105. *See id.*

106. *See id.*

107. *See* ALASKA STAT. §§ 36.30.700, 36.30.710; IDAHO CODE § 31-4014.

108. *See* ALASKA STAT. § 36.30.700; IDAHO CODE § 31-4014.

109. *See* ALASKA STAT. § 36.30.700; IDAHO CODE § 31-4014.

110. *See* ALASKA STAT. § 36.30.700; IDAHO CODE § 31-4014.

111. *See* ALASKA STAT. § 36.30.700; IDAHO CODE § 31-4014.

112. *See* ALASKA STAT. § 36.30.700; IDAHO CODE § 31-4014; MONT. CODE ANN. § 18-4-401 (2003); WASH. REV. CODE § 39.34.010 (2003).

113. *Gough v. Rossmoor Corp.*, 487 F.2d 373, 378 (9th Cir. 1973).

114. *See generally* MONT. CODE ANN. § 18-4-40; WASH. REV. CODE § 39.34.010.

115. *See generally* ALASKA STAT. § 36.30.700; IDAHO CODE § 31-4014.

116. *See generally* ALASKA STAT. § 36.30.700; IDAHO CODE § 31-4014.

This marketing technique can increase the quantity of the items sold, thereby increasing the amount of the resulting contract.<sup>117</sup>

For example, suppose Ada County, Idaho decides to purchase ten trucks. It publicizes the call for bids with an indefinite quantity.<sup>118</sup> A truck dealer submits a bid of \$45,000 per truck. The truck dealer, after it is awarded the contract and agrees to the public agency clause,<sup>119</sup> contacts other public entities. The dealer informs them that it has won the Ada County bid for the procurement of trucks at \$45,000 per truck. The truck dealer also informs the other governmental entities that they can piggy-back Ada County's contract to purchase additional trucks at bid price.<sup>120</sup> If another governmental unit is in the market for trucks, but simply failed to know that Ada County was competitively bidding this procurement, it can still piggy-back this procurement to fulfill its needs.<sup>121</sup> The bidder has increased the number of trucks it has sold, only because other governmental entities could piggy-back Ada County's procurement. This scenario and result would be possible under Alaska's piggy-back laws as well.<sup>122</sup>

In Washington, other governmental units would be precluded from piggy-backing the procuring county's contract unless they entered into an agreement containing the information required by statute.<sup>123</sup> Furthermore, this agreement must have been filed with the county auditor prior to the joint purchase.<sup>124</sup> In Montana, other governmental entities would be prohibited from using the piggy-back laws unless they were authorized to conduct cooperative purchasing by the Department of Administration and the procurement was competitively bid by the state.<sup>125</sup>

From a bidder's perspective, Idaho and Alaska's piggy-back laws provide a simple yet effective way to increase sales to counties.<sup>126</sup> The ability to supply many counties with a product by only bidding on one procurement is cost-effective.<sup>127</sup> This increases the bidder's customer base because a bidder is able to sell to a county that under normal circumstances it could not. Geography and distance often preclude a non-local bidder from being awarded a procurement contract because the increased cost of shipping drives up its bid. A local bidder without these added costs has an advantage.

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117. See *supra* text accompanying note 27.

118. IDAHO CODE § 31-4004. Telephone interview with Jan Cox, Administrator of Idaho State Purchasing (Aug. 16, 2004).

119. The public agency clause is a clause that allows other public entities to piggy-back the contract. Telephone interview with Jan Cox, Administrator of Idaho State Purchasing (Aug. 16, 2004).

120. *Id.* § 31-4014.

121. See *id.*

122. See ALASKA STAT. § 36.30.700.

123. WASH. REV. CODE § 39.34.030 (2003).

124. *Id.* § 39.34.040.

125. MONT. CODE ANN. § 18-4-402 (2003).

126. See *supra* text accompanying note 27.

127. See *Reiner v. Clarke County*, 241 P. 973, 976 (Wash. 1926).

The ability to increase the quantity of items sold entices bidders to bid on government procurements in Idaho and Alaska. Unfortunately, Washington and Montana's piggy-back laws do not offer bidders as efficient of an incentive.<sup>128</sup>

## VI. CONCLUSION

Piggy-back laws are designed to help counties make efficient use of limited resources by joining in (or "piggy-backing") another governmental entity's procurement.<sup>129</sup> This saves money in two ways. First, the procurement need only be bid once. Each county does not have to waste time and energy bidding the same purchase. Second, it increases competition. When more counties engage in cooperative purchasing, more items are sold.<sup>130</sup> This increases the number of bidders, which fosters competition.<sup>131</sup> The increased competition drives prices down and allows the county coffers to reap the benefits.<sup>132</sup>

Idaho and Alaska's piggy-backing approaches are far superior to those of Washington and Montana. Idaho and Alaska's piggy-back laws allow counties to procure equipment and supplies at a lower cost to the taxpayer.<sup>133</sup> Washington and Montana's legislatures need to enact laws similar to the piggy-back laws in Idaho and Alaska in order to make public procurement more efficient, thus saving taxpayer dollars and easing the budget crunch.

Bidders can utilize piggy-back laws to increase the quantity of items sold each time they bid on a public procurement. The Idaho/Alaska approach is more favorable to bidders because they can inform other counties, cities, and the state when they bid a procurement contract. This allows the other governmental entities the information they need to piggy-back that procurement. The supplier can then sell more items, and increase the profitability of the resulting contract.<sup>134</sup>

Counties, bidders, and taxpayers all benefit from efficient public procurement laws. Changing Washington and Montana's piggy-back laws to a system similar to Idaho and Alaska's would improve efficiency and increase competition. This increased efficiency and competition would help conserve their respective state treasuries, and facilitate responsible government spending. Overall, increased efficiency and competition would ease the budget crisis and the burden on the taxpayer.

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128. *See generally* WASH. REV. CODE § 39.34.010; MONT. CODE ANN. § 18-4-401.

129. *See, e.g.*, WASH. REV. CODE § 39.34.010.

130. *See supra* text accompanying notes 23-37.

131. *See id.*

132. *See id.*

133. *See Reiner v. Clarke County*, 241 P. 973, 976 (Wash. 1926).

134. *See supra* text accompanying note 27.

