

GOVERNMENT CONTRACTING

Government Contracting: Contracts & Agreements

Accela, Inc. v. Sarasota County,
993 So. 2d 1035 (Fla. 2d Dist. App. 2008)

A local government or public entity is eligible to use the Procurement Code's piggyback exception only if its agreement to purchase goods and services does not significantly expand the terms and conditions in the prior agreement. The exception cannot be used to circumvent the competitive bidding process.

FACTS AND PROCEDURAL HISTORY

In 2001, Sarasota County (County) decided to replace the software system it used to track land management within the County. After a nearly two-year search, the County reached an agreement with CSDC Systems to purchase software, following the lead of other local governments and public entities that had already upgraded to this system. However, the County's Procurement Code required it to utilize a competitive procurement process and solicit bids from other competitors; stated differently, the County's own code prohibited it from simply buying the system it wanted.

However, an exception in the Procurement Code—the piggyback exception—afforded the County the opportunity to take an existing contract between CSDC and another local government and use that contract to procure CSDC's software system without going through the competitive bidding process. Importantly, compliance with the piggyback exception required: (1) that the purchasing party to the existing contract be a local government, public entity, or Sarasota County itself; (2) that the terms and conditions of the contract between CSDC and the other public entity be extended to the County; and (3) that the other public entity used procedures substantially similar to the County's Procurement Code in selecting CSDC's software system.

The County attempted to piggyback its own agreement with CSDC on the terms and conditions in three prior agreements—a purchase agreement for the software, an implementation agreement, and a maintenance agreement—between CSDC and the

state of Wisconsin. While most of the alterations in the text of the agreements were technical, changes in the quantity and cost itemization sections were substantial. The County's software agreement was for forty CSDC modules, thirty-one more than the Wisconsin-CSDC agreement. Moreover, as a result of purchasing more modules, the total price of the County's purchase, implementation, and maintenance agreements exceeded that of the Wisconsin-CSDC agreements by over \$1 million.

Because of the huge disparity between the County-CSDC agreements and the Wisconsin-CSDC agreements, Accela and CRW Systems challenged the purchase agreement, arguing that the County was unable to use the piggyback process and should have to follow the competitive procurement process outlined in the Code. The County countered that the availability of the piggyback provision did not hinge on the scope of the agreements; rather, the piggyback provision could be used so long as the terms from the Wisconsin-CSDC agreement were included.

The trial court agreed with the County's argument, denying Accela and CRW's request for a declaration that the County-CSDC agreements were void. Accela appealed to the Second District Court of Appeal.

ANALYSIS

On appeal, the court ruled that the trial court's decision was arbitrary and capricious because the terms and conditions in the prior agreements were not extended to the County-CSDC agreements, as required for the piggyback exception to be applicable.

The court reached its conclusion through an examination of the policies and intent behind the Procurement Code. According to the court, even the statutory exceptions to the competitive procurement requirements are consistent with the Code's underlying goal of fostering competition. For example, the piggyback exception's requirement that the procedures used by CSDC in its prior agreement be substantially similar to the requirements of the County's Procurement Code necessarily preserved this element of competition; it ensured that CSDC had previously been awarded its contract with Wisconsin through some type of competitive bidding process. Similarly, the court concluded that these competition concerns should guide its decision regarding whether the

terms and conditions from the prior agreement were extended to the County-CSDC agreements.

Mindful of the Procurement Code's purpose, the court concluded that the substantial differences in the price and number of modules in the two agreements mandated a holding that the terms and conditions of the prior agreement were not properly extended to the County-CSDC agreement within the meaning of the exception. Instead, the County was merely using the prior agreement as a basis to begin negotiations and impermissibly circumvent the competitive procurement requirements. The court reasoned that to permit such an outcome would be to allow the County to "use an existing contract in which a minimal amount of goods or services were listed and then expand the scope of the contract . . . at will, regardless of how competitive or noncompetitive the pricing of the additional goods or services would be." *Accela*, 993 So. 2d at 1043. Such an outcome would emasculate the Procurement Code's goal of promoting competition in the procurement process.

Therefore, the County-CSDC agreements were not an extension of the terms and conditions in the prior agreements, which would be needed to utilize the piggyback exception, and the County was required to procure its software through the competitive procurement process.

SIGNIFICANCE

Accela demonstrates that while the piggyback exception allows counties to avoid the competitive procurement process because the prior agreement was procured through competitive means, it does not provide them with a limitless ability to expand the scope of the prior contract's terms and conditions. However, it remains to be seen how similar in scope the courts will require the terms and conditions to be when a county attempts to utilize the piggyback exception. While the large quantity and price differences in the Wisconsin-CSDC and the County-CSDC agreements made the court's decision relatively clear, more ambiguous situations may arise.

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RESEARCH REFERENCES

- 64 Am. Jur. 2d *Public Works and Contracts* § 52 (2001 & Supp. 2008).
- 20 C.J.S. *Counties* § 250 (2007 & Supp. 2008).

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