

TO: Units of Local Government & Public Procurement Units in Pennsylvania

FROM: Sourcing Office

RE: Ability of public procurement units in Pennsylvania to join Sourcing Office and utilize Sourcing Office's publicly procured contracts for products and/or services

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### **What is Sourcing Office's legal authority?\***

Sourcing Office is an Ohio-based Council of Governments organized under Section 167 of the Ohio Revised Code.

*Section 167.01:*

*That governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may enter into an agreement with each other, or with the governing bodies of any counties, municipal corporations, townships, special districts, school districts or other political subdivisions of any other state to the extent that laws of such other state permit, for establishment of a regional council consisting of such political subdivisions.*

Sourcing Office is a political subdivision and a unit of local government under Ohio law. It is legally empowered to enter into agreements such as the Sourcing Office Affiliate Membership Agreement with political subdivisions and units of local government in any state to the extent permitted by law in that other state.

*Section 167.03:*

*(A) (2) Promote cooperative arrangements and coordinate action among its members, and between its members and other agencies of local or state governments, whether or not within Ohio, and the federal government;*

*(A) (4) Promote cooperative agreements and contracts among its members or other governmental agencies and private persons, corporations, or agencies;*

Through this legal authority, Sourcing Office competitively procures contracts for products and/or services in accordance with applicable public sector procurement guidelines. Sourcing Office then makes these already-procured contracts available to its members and affiliates. Local and state governmental agencies within and outside of Ohio and Sourcing Office members and affiliates, including political subdivisions and units of local government in other states, are eligible to utilize Sourcing Office's competitively procured contracts to the extent permitted by law in those other states.

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### **Are units of local government in Pennsylvania authorized to join Sourcing Office and piggyback on Sourcing Office contracts?\***

Please review with your legal counsel whether Title 62 Procurement (Pa.C.S.A.) of the Pennsylvania State Statutes defines the types of entities authorized to participate in cooperative purchasing activities and whether your entity meets that criteria.

*62 Pa.C.S.A. § 1901. Definitions*

*The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:*

*"Cooperative purchasing." Procurement conducted by or on behalf of more than one public procurement unit or by a public procurement unit with an external procurement activity.*

*"External procurement activity." A buying organization not located in this Commonwealth which if located in this Commonwealth would qualify as a public procurement unit. An agency of the United States is an external procurement activity.*

**\*\* SOURCING OFFICE DOES NOT GIVE LEGAL OPINIONS**

The legal information provided herein is of a general nature and cannot substitute for the advice of a **licensed legal professional**. This is not intended to be legal advice or a legal opinion. Sourcing Office and its employees are not attorneys and are not responsible for any actions taken based upon the views provided herein. Sourcing Office encourages local government and public procurement units in Pennsylvania to have their legal counsel review the applicable statutes to determine their eligibility to join Sourcing Office and utilize the Sourcing Office's competitively procured contracts.

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"Local public procurement unit." A political subdivision, public authority, educational, health or other institution and, to the extent provided by law, any other entity, including a council of governments or an area government, which expends public funds for the procurement of supplies, services and construction, any nonprofit corporation operating a charitable hospital and any nonprofit fire company, nonprofit rescue company and nonprofit ambulance company.

"Public procurement unit." A local public procurement unit or a purchasing agency.

Please review with your legal counsel whether Sourcing Office meets the Pennsylvania criteria of a public procurement unit and/or an external procurement activity because it is a Council of Governments under Ohio Revised Code, it is a unit of local government and political subdivision in Ohio, and it is a buying organization. Sourcing Office conducts cooperative public procurement activities through its external procurement activities.

62 Pa.C.S.A. § 1902. Cooperative purchasing authorized

A public procurement unit may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any supplies, 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, but is not limited to, joint or multiparty contracts between public procurement units and open-ended purchasing agency contracts which are made available to local public procurement units.

Under Ohio Revised Code and through its Code of Regulations, Sourcing Office is specifically authorized to develop group purchasing programs through a publicly procured competitive solicitation process, establish contracts with winning suppliers, and make those contracts available to local and state governmental agencies within and outside of Ohio such as units of local government and public procurement units in Pennsylvania.

Please review with your legal counsel whether Pennsylvania public procurement units, including political subdivisions, public authorities, educational/health/other institutions, councils of governments, and area governments can purchase through external procurement activities such as Sourcing Office. Please also review with your legal counsel whether a) such purchasing activities must be conducted in accordance with agreements between the public procurement unit and an external procurement activity, and b) your entity is eligible under Pennsylvania statutes to join Sourcing Office through its Affiliate Membership Agreement, which governs the relationship between the parties.

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## **When are public procurement units in Pennsylvania eligible to utilize group purchasing contracts without conducting their own procurement process?\***

16 P. S. § 1802. Contract procedures; terms and bonds; advertising for bids

(a) All contracts for services and personal property where the amount thereof exceeds the sum of ten thousand dollars (\$10,000), shall be written and shall, except as otherwise hereinafter specified, be made by advertising for bids.

(h) The contracts or purchases made by the commissioners which shall not require advertising, bidding or price quotations, as hereinbefore provided, are as follows:

(7) Those made with any public body, including, but not limited to, the sale, lease or loan of any supplies or materials to the county by a public body, provided that the price thereof shall not be in excess of that fixed by the public body. The requirements of 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation) shall not apply when a county purchases cooperatively with another public body which has entered into a contract for supplies or materials. As used in this paragraph, "public body" shall mean any of the following:

(i) the Federal Government;

(ii) the Commonwealth of Pennsylvania;

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(iii) any other state;

(iv) a political subdivision, local or municipal authority or other similar local entity of the Commonwealth or any other state; or

(v) an agency of the Federal Government, the Commonwealth or any other state.

Sourcing Office is a political subdivision and unit of local government organized in the State of Ohio; please review with your legal counsel whether Sourcing Office and constitutes a "public body" for purposes of 16 P. S. § 1802. Please also review with your legal counsel whether public procurement units in Pennsylvania are exempted from advertising, bidding, or price quotations when purchasing cooperatively with another public body, such as Sourcing Office, that has entered into a contract for supplies or materials.

Please contact Sourcing Office at 216.581.6200 with any questions about your entity's ability to join Sourcing Office and utilize our publicly procured contracts.



*Your Partner in Governmental Collaboration*

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