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To: **Chief Fiscal Officers**

Subject: **"Piggybacking" On Certain Other Governmental Contracts – Exception to Competitive Bidding (Updated – July 2026)**

Please provide copies of this bulletin to others who may need this information.

Background

Effective August 1, 2012, a new subdivision 16 was added to General Municipal Law (GML) § 103 to authorize political subdivisions and districts therein to purchase apparatus, materials, equipment and supplies, and to contract for services related to the installation, maintenance or repair of those items, through the use of contracts let by the United States or any agency thereof, any state or any other political subdivision or district therein. The contract must be made available for use by other governmental entities.

GML § 103 (16), which functions as an exception to GML § 103 (1), also requires that the contract be let either to the lowest responsible bidder or on the basis of best value in a manner consistent with GML § 103. GML § 103 (16) is now scheduled to expire on June 30, 2027.[1]

Political subdivisions (other than New York City) that wish to make procurements under GML § 103 (16) through the use of a contract let on the basis of best value must have first authorized the use of best value for awarding their own purchase contracts by local law, or in the case of district corporations (e.g. fire districts), school districts and BOCES, rule, regulation, or resolution. This authorization may be accomplished by the adoption of a single local law or single rule, regulation, or resolution. The stated purpose of GML § 103 (16) is to reduce administrative and product cost, and increase efficiencies.[2]

Many local governments have been approached by vendors offering goods and services under other governmental contracts and, in some cases, vendors have asserted that the contract falls within the exception in GML § 103 (16). It is the responsibility of local officials to review each proposed procurement to determine, on advice of the local government's counsel as appropriate, whether the procurements falls within the exception. To assist local government officials in undertaking this review, we offer the following guidance.

Three Prerequisites

There are three prerequisites that must be met in order for a procurement of apparatus, materials, equipment and supplies, and related installation, repair and maintenance services, to fall within this exception:

(1) The contract must have been let by the United States or any agency thereof, any state or any other political subdivision or district therein. Therefore, there must be an underlying contract let by one of the listed governmental entities. Contracts developed for use by local governments that are let by private parties (e.g., a private company, association or not-for-profit corporation is the party awarding the contract to the vendor), and not by the United States or any agency thereof, any state or any other political subdivision or district therein, would not fall within the exception.

The phrase "any state or other political subdivision or district therein" clearly includes other states, and political subdivisions in other states. In our view, it also includes New York State political subdivisions. Therefore, in addition to the current competitive bidding exception for certain purchases through contracts of New York State counties (County Law § 408-a; GML § 103 [3]), local governments also may purchase through qualifying contracts let by other New York State political subdivisions under this exception.

(2) The contract must have been made available for use by other governmental entities. This means that the other governmental entity has taken steps to make its contract available for New York local governments. In general, this would occur by inclusion in the contract let by the other entity of a clause extending the terms and conditions of the contract to other governmental entities. Unilateral offers by vendors to extend contract pricing and other terms and conditions would not fall within the exception.

(3) The contract must have been "let to the lowest responsible bidder or on the basis of best value in a manner consistent with this section." The term "consistent with this section" refers to General Municipal Law § 103 (and related case law) applicable to New York State political subdivisions. The purchasing local government would need to obtain background information on the procedures used to let the contract and, as necessary, consult with its counsel, to determine whether this prerequisite is met. Additional guidance on complying with this prerequisite follows.

Note, however, that a recent appellate court decision has held that the use of the piggybacking exception set forth in GML § 103 (16) is not available for public works, public works contracts, and public works projects.[3]

Determining Consistency with GML § 103

In order for a non-New York contract to have been let to the lowest responsible bidder or on the basis of best value (competitive offering) in a manner "consistent" with GML § 103, the procedures used by that government need not be exactly the same as those under GML § 103. Rather, the procedures for letting the non-New York contract must be in harmony or general agreement with, and further the same principles as the competitive bidding or best value requirements of GML § 103.[4] In this regard, the courts in this state have stated that the underlying purposes of GML § 103 are to guard against favoritism, improvidence, extravagance, fraud and corruption, and to foster honest competition in order that the local government may obtain the best goods and services at the lowest possible price to protect the public fisc.[5]

Based on the provisions of GML § 103 as construed by the courts in this State, and the underlying purposes of GML § 103, we believe there are four fundamental elements that should be present in the procedures used by the non-New York entity in letting its contract in order for the process to have been let to the lowest responsible bidder or on the basis of best value consistent with GML § 103. These elements are:

- Public solicitation of bids or, in the case of best value, offers. A public solicitation is consistent with the statutory advertising requirement in GML § 103, and serves to ensure that the purposes of GML § 103 are furthered.

- Submission of sealed bids or offers, or analogous procedures to secure and preserve the integrity of the process and confidentiality of the bids or offers submitted. A secure competitive bidding or best value process is consistent with the sealed competitive bidding and competitive offering requirements of GML § 103 and helps foster honest competition and guard against collusion.

- Preparation of specifications, or a similar document that provides a common standard for bidders or offerers to compete fairly. Consistent with the purposes of GML § 103, the contracting entity, in advance of the submission of bids or offers, should convey the nature of the goods or services and other information necessary for prospective bidders or offerers to make an intelligent evaluation and bid or offer, without being unduly restrictive.[6] In the case of a best value process, this generally should include a description of the manner in which the evaluation of the offers and award of the contract will be conducted and, as appropriate, identify the relative importance or weight of price and non-price factors.[7]

- Award to the lowest bidder who materially or substantially meets the bid specifications and is determined to be a responsible bidder, or in the case of a best value process, an award to the responsive and responsible offerer[8] which optimizes quality, cost and efficiency, reflecting objective and quantifiable analysis, whenever possible.[9] A contract awarded through a negotiation process would not be consistent with the requirements and purposes of awarding to the lowest responsible bidder or on the basis of best value in a manner consistent with GML § 103.

Other Factors to Consider; Internal Controls.

- Contractual Relationship. By placing an order with the contract vendor, the purchasing local government generally will be entering into a contractual relationship with that vendor in accordance with the terms and conditions of the contract. Accordingly, local officials, in consultation with the attorney for the local government as necessary, should carefully review those terms and conditions before making the purchase. In some cases, the contract may have been let in a manner consistent with GML § 103, but the terms and conditions of the contract may conflict with other New York State laws or regulations.[10] This could result in the local government being unable to use the contract.

- Audit of Claims. The payment to the contract vendor will be subject to standard procedures for claims processing, including audit of claims procedures.

- Cost Savings Justification. Unlike amendments to GML §§ 103 (3) and 104 pertaining to county and certain federal contracts (e.g. L 2003, ch 62; L 2011, ch 97), GML § 103 (16) does not expressly require local governments to consider whether the contract will result in cost savings. Nonetheless, local officials should perform a cost-benefit analysis before utilizing this exception. This will help ensure that the local government is furthering the underlying purposes of GML § 103(16), and that the procurement is consistent with the purposes of GML § 103. The analysis should be used to demonstrate whether "piggybacking" is cost effective and should consider all pertinent cost factors, including any potential savings on the administrative expense that would be incurred if the local government initiated its own competitive bidding or best value process.

- Documentation. Local governments should maintain appropriate documentation to allow for a thorough review of the decision to use this exception to competitive bidding by local government officials, external auditors and taxpayers. This documentation may include such items as copies of the contract, analysis of the contract to ensure it meets the three prerequisites stated above, and cost savings analysis including consideration of other procurement methods.

Procurements Below the Bidding Monetary Threshold; Policies and Procedures

As noted, GML § 103 (16) provides an exception to the requirements of subdivision one of that section. However, procurements that are below the monetary thresholds set forth in Section 103 (1) (or otherwise fall within another exception, such as emergency purchases) already are exempt from the requirements of GML § 103. Those procurements, instead, are subject to the local government's own procurement policies and procedures adopted pursuant to GML § 104-b. Therefore, whether a local government may make purchases that are below the statutory thresholds by "piggybacking" on contracts let by governmental entities listed in GML § 103 (16) will be governed by the local government's own procurement policies.

Please feel free to contact Mark Stevens in our Division of Legal Services (518-402-4437) with legal questions, and the State Comptroller's regional office that serves your local government with internal control and documentation questions.

End Notes

[1] See L 2014, ch 55, part G as amended by L 2026, ch 147.

[2] NY Senate and Assembly Mems in Support of S. 5525-C/A. 8034-C, 2012. The amendment also states that the authority provided in GML § 103 (16) does not relieve any obligation of the local government to comply with any applicable M/WBE business enterprise mandates and the preferred source requirements of State Finance Law § 162.

[3] See, Matter of Daniel J. Lynch v Board of Education of the Maine-Endwell Central School District, 86 Misc 3d 507(Broome Co. Sup. Ct. 2025; affirmed by Matter of Daniel J. Lynch v Board of Education of the Maine-Endwell Central School District et al., 2026 NY App. Div. LEXIS 3391, 2026 NY Slip Op 03209 [May 21, 2026]).

[4] See e.g. Stocker v Sheehan, 13 AD3d 1.

[5] See e.g. AAA Carting v Town of Southeast, 17 NY3d 136; Associated General Contractors v New York State Thruway Authority, 88 NY2d 56; Jered v NYCTA, 22 NY2d 187; see also GML § 100-a.

[6] See e.g. AAA Carting v Town of Southeast, 17 NY3d 136; Browning-Ferris v City of Lackawanna, 204 AD2d 1047; Progressive Dietary v Wyoming County, 90 AD2d 214; Matter of L & M Bus Corp. v New York City Dept. of Educ., 17 NY3d 149; Gerzof v Sweeney, 16 NY2d 206.

[7] See e.g. State Finance Law § 163 (9) (b).

[8] Whether a bidder or offerer is "responsible" involves a factual, case by case examination into a bidder's background, assessing factors such as a bidder's capacity and financial ability to complete the contract, accountability, reliability and integrity (see e.g. DeFoe v New York City, 87 NY2d 754; Abco Bus v Macchiorola, 75 AD2d 831, revd on dissent 52 NY2d 938; State Finance Law § 163 [1] [c]). For purposes of a contract that has been awarded on the basis of best value, a "responsive" offerer is offerer meeting the minimum specifications or requirement prescribed in the procurement solicitation (see State Finance Law § 163 [1] [d]).

[9] GML § 103 (1); SFL § 163 (1) (j); see e.g. Matter of Transactive v New York State Department of Social Services, 236 AD2d 48, affd on other grounds 92 NY2d 579. If the contracting entity let the best value contract based on criteria that was not objective and quantifiable, some form of justification should be provided (see State Finance Law § 163 [9] [a]).

[10] For example, an out-of-State contract may require advance payment to the vendor. With limited exceptions, local governments may not pay a claim for goods or services prior to audit and approval by the claims auditing body or official, or prior to the receipt of goods or services (see e.g. Town Law § 118; Village Law § 5-524 [4]; County Law § 369 [2]; Education Law § 1724; 8 [A-2] NYCRR § 170.2 [k]). Therefore, such a clause may conflict with New York State statutes.