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# Cooperative and Piggybacking Best Practices

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# Realities of our Public Procurement World

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# Public Procurement – realities

- Our primary purpose is to obtain quality goods and services for our governmental entity by ensuring the prudent use of taxpayer funds.
- Purchasing laws have become more complex, staffing has decreased as workloads have increased, and our budgets have declined.

# Public Procurement – realities

- We must continually look for new tools to make our governmental agencies more effective and efficient.
- Government cooperation – through the use of piggybacking or cooperatives – inspires public confidence that we are using our resources wisely.

# Definitions

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# Definition of Piggybacking

Where one governmental entity will extend the pricing and terms of their contract to others. It's competitively awarded and will include language allowing other governmental entities to utilize the contract.

Here in New York you must purchase the exact same item – using the same terms and conditions as presented in the original solicitation.





# Definition of Cooperative Procurement

## Cooperative Procurement (Purchasing)

1. The action taken when two or more entities combine their requirements to obtain advantages of volume purchases, including administrative savings and other benefits.
2. A variety of arrangements, whereby two or more public procurement entities (or agencies) purchase from the same supplier or multiple suppliers using a single Invitation for Bids (IFB) or Request for Proposals (RFP).
3. **Cooperative procurement efforts may result in contracts that other entities may “piggyback.”** (*from NIGP Dictionary*)

# What the Law Allows

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# Piggybacking Contracts

- GML 103 was amended to add a new Section 16 that authorizes the piggybacking of certain contracts.
- This will allow the use of contracts issued by all local governments within New York State and other governmental agencies outside of New York State (if the piggybacking language is included in the original bid).
- Guidance has been published by the New York State Comptrollers Office, however, if you have questions speak with your own Attorneys.

# Piggyback Section of the GML Law

\* 16. Notwithstanding the provisions of subdivisions one, two and three of this section, and section one hundred four of this article, any officer, board or agency of a county, political subdivision or of any district therein authorized to make purchases of apparatus, materials, equipment or supplies, or to contract for services related to the installation, maintenance or repair of apparatus, materials, equipment, and supplies, may make such purchases, or may contract for such services related to the installation, maintenance or repair of apparatus, materials, equipment, and supplies, as may be required by such county, political subdivision or district therein through the use of a contract let by the United States of America or any agency thereof, any state or any other county or political subdivision or district therein if such contract was let in a manner that constitutes competitive bidding consistent with state law and made available for use by other governmental entities.

# What to Consider

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# What to Consider

- (1) That bids are solicited competitively through a public solicitation process like advertising in official newspapers or websites, etc. \*
- (2) That bids are sealed to guard against fraud, favoritism or collusion \*
- (3) That bid specifications must be fair/open and not skewed toward particular vendors, i.e. that the system fosters open competition;
- (4) first adopt a local law, rule, regulation or resolution, as the case may be, authorizing the use of best value for awarding purchase contracts.\*

\* <http://osc.state.ny.us/localgov/pubs/piggybackinglaw.pdf>



# What to Consider

(5) That the bid goes to the lowest bidder and that there is no process in which other bidders who are not the lowest bidders are "encouraged" to drop their prices for purposes of being awarded the bid.

– “no 2<sup>nd</sup> bite of the apple”

(6) National Cooperative Examples (there are many cooperatives)

- U.S. Communities
- National IPA and TCPN have merged under the National IPA logo
- NJPA
- NASPO ValuePoint
- Plus many more



# Best Practices to Consider

- Comparison shopping between State, County and National Cooperative contracts:
  - Office supply
  - Industrial supplies
  - Janitorial supplies
  - Automotive supplies
- Issue a formal document amongst cooperatives
- Keeps documentation for auditors in one place

# Verification Template Examples

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# Albany County example

## Albany County Justification for Utilizing a Cooperative Contract

Cooperative or Lead Agency \_\_\_\_\_

Contract No. \_\_\_\_\_

Vendor(s) Name(s) \_\_\_\_\_

We have reviewed and completed due diligence on the aforementioned cooperative contract. As part of the due diligence review, we have confirmed that the contract complies substantially with our procurement rules and practices. We have further confirmed that all purchases will comply with the terms and prices in the contract. It has been determined that it is in the best interests of our entity to utilize this contract for the reasons cited below.

Issue	Procurement Consideration
<b>New York State Considerations:</b>	
1. Was the contract let by the United States or any agency thereof, any state or any other political subdivision or district therein?	
2. Was the contract made available for use by other governmental entities?	
3. Was the contract let in a manner that constitutes competitive bidding "consistent with state law"?	
4. Was there a public solicitation of bids consistent with GML 103.5 and serves to ensure that the purposes of GML 103 are furthered?	
5. Was the submission of sealed bids, or analogous procedure, done in a manner to secure and preserve the integrity of the process and confidentiality of the bids submitted?	
6. Was the preparation of bid specifications, or a similar document that provides a common standard for bidders to compete fairly?	
7. Was the award to the lowest bidder who materially or substantially meets the bid specifications and is determined to be a responsible bidder?	
<b>General Considerations:</b>	
8. Do the terms, conditions and scope of work/specifications meet the need?	
9. If no, are the terms, conditions and scope of work/specifications negotiable?	It should be noted here if terms or prices were negotiated.
10. Does the cooperative contract provide the most advantageous solution? Why?	Factors may include advantageous terms, conditions, prices, quality, performance, timing, entity's experience and ability to duplicate the contract, age of the contract, etc.
11. Will volume pricing advantages be applied to purchases?	
12. Were local and regional vendors offered the opportunity to compete for the contracts?	Use this area if applicable to the entity's procurement policies, practices or principles.
13. Did the cooperative or lead agency have	





# Town of Colonie example

	<p><b>TOWN OF COLONIE</b>  <b>General Services Department</b>          Memorial Town Hall          Newtonville, New York 12128</p> <p>Phone (518) 783-2726 Fax (518) 786-7329  <a href="http://www.colonie.org/genservices">www.colonie.org/genservices</a></p>
<p>Paula A. Mahan Town Supervisor</p>	<p>Douglas W. Sippel, CFPB Director</p>
<p><b>Town of Colonie</b>  <b>Contract Verification Form</b></p>	
<p>Municipality: _____</p> <p>Address: _____</p> <p>Phone Number: _____</p> <p>Contact Name: _____</p> <p>Contract Title: _____</p> <p>Awarded Vendor: _____</p>	
<p>The Town of Colonie is attempting to determine if the above contract meets the New York State requirements that allow political subdivision to use this contract. The information requested is only for the Town's use to help make that determination. The Town of Colonie is a New York State Political Subdivision located in Albany County New York.</p>	
<p>This contract was let by the United States or any agency thereof, any state or any other political subdivision or district therein.</p> <p>YES ____ NO ____</p>	
<p>This contract has been made available for use by other government entities.</p> <p>YES ____ NO ____</p>	
<p>This contract was the result of a public solicitation that included public</p>	
<p>This contract required sealed submissions of bids or offers from vendors to secure and preserve the integrity of the process and confidentiality of the bids or offers submitted.</p> <p>YES ____ NO ____</p>	
<p>Prepared specifications were supplied to potential vendors as part of the solicitation of this contract.</p> <p>YES ____ NO ____</p>	
<p>The award of this contract was made on the basis of lowest responsible bidder or best value.</p> <p>YES ____ NO ____</p>	
<p>I affirm that the above answers are true and correct.</p>	
<p>Signature _____</p>	
<p>Printed Name _____</p>	
<p>Date _____</p>	
<p>Thank you for your assistance. Please fax this completed back to the Town of Colonie at 518-786-7329. If you have any questions please contact Douglas Sippel, CFPB at 518-783-2726.</p>	





# Examples Cooperatives Currently Used by Albany County

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- US COMMUNITIES:
  - BSN Sports
  - Ricoh – Saved \$35,000 over 5 yrs
  - AMSAN – Janitorial products
  - Safeware – Public Safety
  - KONE – Elevator Maintenance and Modernization



- NATIONAL IPA:
  - Office Depot
  - Hill & Marks – Janitorial Supplies
- TCPN:
  - Lowes
  - Gov Connections

- National Joint Purchasing Alliance, NJPA:
  - Carpet
  - Fuel Master – Complicated Contract
  - Goodyear
  - Grainger
  - NAPA
  - Pitney Bowes

# Resources

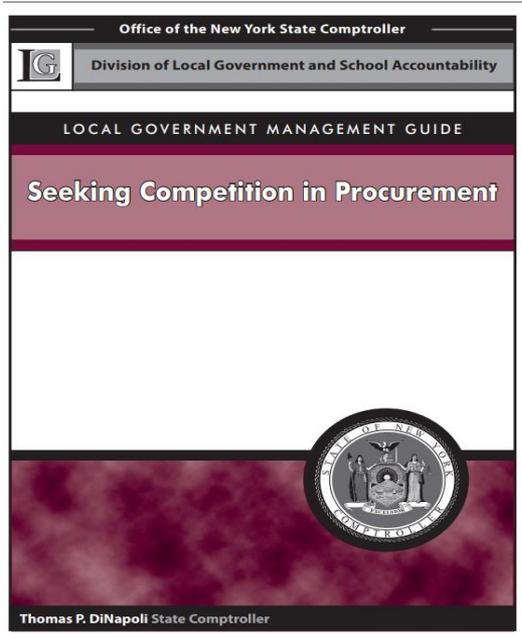
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<https://www.osc.state.ny.us/localgov/pubs/lmgmg/seekingcompetition.pdf>



### Guide for Piggybacking in New York State

New York State Finance Law Article 11, §163 (10)(e) empowers OGS to authorize purchases required by state agencies from contracts let by other state agencies, the U.S. government, or any other state with the concurrence of the Office of the State Comptroller and under appropriate circumstances. This type of procurement option is called "piggybacking."

As with other forms of state procurement, contracting through piggybacking remains subject to internal and external review, and must be consistent with the policies and principles of government public contracting. When using this form of procurement, the requesting agency should examine and weigh the following factors in order to determine the appropriateness of piggybacking as a preferred methodology over other contracting alternatives:

- 1. Subject Matter Comparison:** There should be an equivalency between the product or service sought and the original contract which should reflect your agency's form, function and utility requirements. Does the existing contract encompass the product or service sought? Did it anticipate the possibility of contract extension? All relevant factors in the proposed extension acquisition (including but not limited to price, quality, and nature of deliverable) should be clearly identified and compared to the original acquisition.
- 2. Procurement Method:** The size and scope of the new acquisition should be evaluated in comparison to the original acquisition and its method of award. Does the proposed piggyback significantly unbalance the original scope, or change the nature, quantity, scope of the original contract? Could a substantially different procurement response or increased bidder pool involving greater competition reasonably be expected based upon the volume of your proposed request?
- 3. Notice to Originating Agency:** Where the subject of the original acquisition in a New York State agency specific contract, the original contracting entity should be contacted and advised of the intended piggyback. Concerns about the intended piggyback, including diminution of supply and contractor capacity should be forwarded to OGS with the piggyback request. Where the requesting agency proposes to piggyback using an amendment to an existing contract, consent of the originating agency must be obtained. Notification to the originating agency is not an issue for centralized contracts open to multiple entities.
- 4. Consent of Vendor & Terms of Piggyback:** The vendor's consent to the piggyback request must be in written legal form (contract, letter agreement, etc.) separate from a purchase order, which sets forth the agreed terms of the piggyback. A decision on whether to amend the original agreement or to execute a separate, independent contract based upon the original contract must be considered based upon your facts and circumstances. In either event, the legal form should set forth, not only the agreed terms of the piggyback acquisition, but also its effect on the original agreement, including liability for default, and aggregation of volume and pricing discounts for the intended acquisition as well as for subsequent acquisitions under the original agreement.
- 5. Absence of Other Acceptable Established Contracting Alternatives:** Why is piggybacking the appropriate mechanism to use for this procurement (i.e. timing, level playing field, nature of use)? Were other procurement methodologies considered? Are there any special, unusual or exigent market circumstances underlying this extension request?
- 6. Pricing Justification:** Similar to other methods of procurement, your agency must document that the price for the proposed acquisitions is reasonable under the circumstances. You should indicate whether pricing concessions have been requested and obtained from the contractor based upon the increased volume of purchases under the agreement.

[https://nyspro.ogs.ny.gov/sites/default/files/uploaded/PSPiggybackGuide\\_2.2015.pdf](https://nyspro.ogs.ny.gov/sites/default/files/uploaded/PSPiggybackGuide_2.2015.pdf)





STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER  
110 STATE STREET  
ALBANY, NEW YORK 12236

July 2016

To: Chief Fiscal Officers

Subject: New "Piggybacking" Law - Exception to Competitive Bidding (Updated)

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.

This exception to GML § 103 (1), as originally enacted, provided that the contract must have been let in a manner that constitutes competitive bidding consistent with state law. GML § 103 (16) was amended by chapter 497 of the Laws of 2013, to provide that the contract must be let either to the lowest responsible bidder or on the basis of best value in a manner consistent with GML § 103. The amendment to subdivision 16 became effective on November 13, 2013. GML § 103 (16) is scheduled to expire on July 31, 2019.<sup>1</sup> 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.<sup>2</sup>

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.

1

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.<sup>3</sup>

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.

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)<sup>4</sup> in a manner "consistent" with GML § 103, the procedures used by that government need not be exactly the same as those under GML § 103.

2

<http://osc.state.ny.us/localgov/pubs/piggybackinglaw.pdf>



# Some Cooperatives in Alpha Order

NASPO ValuePoint <http://www.naspovaluepoint.org/#/home/contracts>

NATIONAL IPA/TCPN <http://www.nationalipa.org/Pages/default.aspx>

National Joint Purchasing Alliance, NJPA <https://www.njpacoop.org/>

US Communities <http://www.uscommunities.org/>

E&I Cooperative Services (education) <https://www.eandi.org/>

# Questions & Contact Information

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SAMPO Executive Board

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