



# NY GovBuy

co-sponsored by



Office of  
General Services

# Purchasing: A Legal Perspective

Mary Anne Sadowski, Esq.



May 2 & 3, 2017

#2018NYGovBuy  @NYSPro  @nysprocurement

# Overview – General Municipal Law Section 103

#2018NYGovBuy  @NYSPRO  @nysprocurement



**NY GovBuy**

# General Municipal Law Section 103

General Municipal Law requires that bids be advertised and awarded pursuant to a competitive bidding process for:

- Purchase contracts in excess of \$20,000
- Public Works contracts in excess of \$35,000

# Requirements of Law

#2018NYGovBuy  @NYSPRO  @nysprocurement



**NY GovBuy**



# Requirements of Law

General Municipal Law Section 103 requires that award be made to the lowest *responsible* bidder submitting a bid in response to an advertised bid

- Requires a “sealed bid”
- Responsiveness of the bidder must be determined first
- Once responsiveness determined, review of bidder to determine its responsibility

# Piggybacking under GML §103(16)

#2018NYGovBuy  @NYSPRO  @nysprocurement



**NY GovBuy**

# Piggybacking under GML §103(16)

- Prior to enactment of GML §103(16), piggybacking doctrine applicable when purchasing from
  - NYSOGS (“State contract”)
  - County contract where county has authorized purchase by other municipalities pursuant to County Law §408-a
- Applies only to purchases of apparatus, materials, equipment or supplies, or contracts for services related to the installation, maintenance or repair of apparatus, materials, equipment and supplies contract



# Piggybacking under GML §103(16)

- Contract must have been let by the United States or any agency thereof, any state or any other political subdivision or district therein: Contracts by private parties do not fall within the exception!

AND

- The contract must have been made available for use by other governmental entities:
  - the other governmental entity must have expressly indicated in the terms and conditions of the contract that it is available for use by other governmental entities
  - vendors cannot offer pricing in existing contracts to other municipalities

AND

- The contract must have been let in a manner that constitutes competitive bidding “consistent with state law”
  - “state law” refers to New York State’s bidding laws



# Cooperative Bidding

#2018NYGovBuy



@NYSPRO



@nysprocurement



**NY GovBuy**

# Cooperative Bidding

## Intermunicipal Agreements under GML §119-o:

- Provides that two or more municipalities can join together to perform functions that each has the right to engage in on their own
- Provides the basis for preparing a bid that can be used by all participants in the cooperative
- Requires an agreement between and among the participants in the cooperative which dictates rights and responsibilities of the participating municipalities

# Use of Best Value Awards GML 103(16)

#2018NYGovBuy  @NYSPRO  @nysprocurement



**NY GovBuy**

# Use of Best Value Awards

Prior to the change in legislation, purchase contracts in excess of \$20,000 were required to be awarded to the lowest responsible bidder after the solicitation of sealed bids.

The Legislature amended General Municipal Law §103 to permit award of a purchase contract based upon the “best value” standard, rather than to the lowest bidder. The language of the statute is as follows:

“Purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) may be awarded on the basis of best value, as defined in section one hundred sixty-three of the State Finance Law, to a responsive and responsible bidder ... in the manner provided by this section ... ”

# Use of Best Value Awards

State Finance Law defines “best value” as follows:

“ ... the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall consider every possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for offerers that are small businesses or certified minority– or woman-owned enterprises ... ”

To implement the use of “best value” standard for contract awards, the purchasing/ procurement policy should be amended to reflect that the municipality may in various circumstances utilize a “best value” manner of award.

# Use of Best Value Awards

Where the basis for the award is “best value,” documentation in the procurement record should include:

- a quantification of the criteria to be utilized in evaluating proposals,
- the rating assigned to each criterion, and
- the evaluation results of the bids received.

Specifically, the specifications should include the evaluation criteria the municipality intends to use in making an award, as well as the relative importance and/or weight each criteria will have and upon which a determination of “best value” will be made.

In addition, the governing body should adopt a resolution each time it seeks to make an award based upon “best value,” and delineate the evaluation criteria to be used in connection with an award.

# Conclusion

#2018NYGovBuy  @NYSPRO  @nysprocurement



**NY GovBuy**

# QUESTIONS?

Mary Anne Sadowski, Esq.  
150 Motor Parkway, Suite 400  
Hauppauge, New York 11788

#2018NYGovBuy  @NYSPRO  @nysprocurement



**NY GovBuy**