

SCHOOL LAW AND MUNICIPAL LAW

INFORMATION MEMO

FEBRUARY 27, 2025

General Municipal Law 103(16) and Cooperative Purchasing Agreements for “Public Work Projects”

This information memo is intended to provide an update on an area of law that affects many of our municipal and school district clients.

Under General Municipal Law § 103(1), “all contracts for public work involving an expenditure of more than thirty-five thousand dollars ... shall be awarded ... to the lowest responsible bidder furnishing the required security after advertisement for sealed bids.” Other requirements that the letting public entity must follow for how bids are solicited, opened, and recorded are found in General Municipal Law § 103(2). These requirements are colloquially referred to as competitive bidding.

General Municipal Law § 103(16), the “piggybacking” exception to the traditional competitive bidding process, provides that any public entity can alternatively contract for goods or services “through the use of a contract let by the United States of America or any agency thereof, any state or any other political subdivision or district therein if such contract was let to the lowest responsible bidder or on the basis of best value in a manner consistent with this section and made available for use by other governmental entities.”

Public sector entities throughout the state have consistently and prolifically used the piggybacking exception to the competitive bidding process to obtain work for “public works” or construction projects. Recently, in Sept. 2024, a construction contract that was procured under the piggybacking exception between Smith Site Development, LLC, and the Maine-Endwell Central School District was challenged in an Article 78 Proceeding as violative of New York’s competitive bidding laws described above (the Maine-Endwell Case).

On Feb. 13, 2025, the court in the Maine-Endwell Case held that the “piggybacking” statute cannot be used under any circumstances for “public works projects” and those projects can only be let after strict compliance with the traditional competitive bidding process outlined in General Municipal Law § 103(1) and (2). “Public works projects,” according to this court, means “construction or repair projects undertaken by municipalities on their infrastructure.”

While the judge in the Maine-Endwell Case held that the piggybacking exception could not be used in public works projects going forward, the court is allowing the contractor to finish work on the current Phase of the project without disgorgement, payment of attorneys’ fees, or other financial penalties. For this reason, we do not believe that there is any risk associated with work currently in progress that has been procured through the piggybacking exception. Additionally, this decision only applies to “construction or repair projects undertaken by municipalities on their infrastructure,” meaning that entities can still use cooperative purchase agreements for contracts unrelated to construction projects.

Lastly, this decision was issued by a trial level court in Broome County and it is the first court to address this issue in New York State. While courts in other counties are not bound by this decision, it may be considered persuasive authority by other courts. For this reason, municipalities and school districts should consult with counsel before piggybacking on another governmental entity's contract in connection with a public works project.

If you have any questions, please contact [Ed Hourihan](#), [Greg McDonald](#), or the attorney at Bond with whom you are regularly in contact.

