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TO: OUR MUNICIPAL AND SCHOOL DISTRICT CLIENTS

FROM: LAMB & BARNOSKY, LLP

RE: NEW RULES FOR MUNICIPAL CONTRACT PROCUREMENT

DATE: NOVEMBER 27, 2013

Governor Cuomo recently signed a bill amending General Municipal Law Section 103 to clarify the bidding requirements for school districts and municipalities that wish to purchase devices, materials, equipment and supplies, and their related maintenance services through contracts awarded by other federal, state, and local government entities. The bill also amended General Municipal Law Section 104 to provide for additional federal programs that municipalities and school districts may use to purchase certain products and services. This memorandum discusses the amendments, which became effective November 13, 2013.

Bidding Requirement

General Municipal Law Section 103 allows a municipality or school district to purchase devices, materials, equipment and supplies, and to contract for services related to the installation, maintenance or repair of these items, through a contract awarded by other government entities. Section 103 previously stated that, in order for a municipality or school district to be able “piggyback” on a contract, the contract must have been awarded pursuant to the competitive bidding process. The amendment to Section 103 clarifies that municipalities and school districts may “piggyback” on contracts that are awarded to the lowest responsible bidder or on the basis of best value. Contracts awarded on the basis of best value are granted based on a combination of quality, cost and efficiency, rather than solely based on cost, thus providing municipalities with greater flexibility in the purchasing process. A municipality or school district may award a contract on the basis of “best value” only if it first adopts a local law, rule, regulation or resolution authorizing the use of best value for awarding purchase contracts. The provision covering the “piggybacking” of municipal contracts is set to expire on August 1, 2017.

Additional Federal Purchasing Programs

General Municipal Law Sections 103(1-b) and 104(2) previously allowed municipalities and school districts to make purchases by participating in certain federal purchasing programs. Prior to the new amendment, Section 104(2) authorized municipalities and school districts to make purchases from federal general service administration supply schedules pursuant to Section

211 of the Federal E-government Act of 2002 and pursuant to Section 1122 of the National Defense Authorization Act for Fiscal Year 1994. Use of these federal contracts has given municipalities and school districts the ability to save money by lowering purchasing costs and administrative expenses.

In order to provide more opportunities for potential savings, the amendment to Section 104 provides for the use of additional federal supply schedules for purchasing. Municipalities and school districts may now also make purchases from supply schedules pursuant to the federal Local Preparedness Acquisition Act and Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007. The supply schedule for the Local Preparedness Acquisition Act includes the purchase of alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purposes clothing, and related services. The supply schedule for the John Warner National Defense Authorization Act includes the purchase of products and services to be used to facilitate recovery from major disasters or recovery from terrorism or nuclear, biological, chemical or radiological attack. Section 104 is set to expire on June 24, 2014.

Please contact us if you have any questions about the amendments to General Municipal Law Sections 103 and 104 and their requirements.

THIS MEMORANDUM IS MEANT TO ASSIST IN GENERAL UNDERSTANDING OF THE CURRENT LAW. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.