

SUPREME COURT OF THE STATE OF NEW YORK
IAS/ TRIAL PART 34- SUFFOLK COUNTY

COPY

PRESENT:

HON. JOSEPH C. PASTORESSA

JUSTICE OF THE SUPREME COURT

PAUMANOK ENVIRONMENTAL LLC, x

Petitioner(s),

-against-

INCORPORATED VILLAGE OF PATCHOGUE,
BOARD OF TRUSTEES OF THE
INCORPORATED VILLAGE OF PATCHOGUE,
TOWN OF BROOKHAVEN, TOWN BOARD OF
THE TOWN OF BROOKHAVEN, COVANTA
HEMPSTEAD COMPANY,

Respondent(s),
_____x

Mot Seq: #001-MD

002-MG

003-MG; CASE DISP

004-MD

005-MD

006-MD

ATTYS FOR PETITIONER(S):

RUSKIN MOSCOU FALTISCHEK

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UNIONDALE, NY 11556

ATTYS FOR RESPONDENT(S):

EGAN & GOLDEN

96 SOUTH OCEAN AVENUE

PATCHOGUE, NY 11772

GERMANO & CAHILL

4250 VETERANS MEMORIAL HWY., SUITE 275

HOLBROOK, NY 11741

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100 MERRICK ROAD, SUITE 514WEST

ROCKVILLE CENTRE, NY 11542

Pages Numbered

Notice of Motion/Order to Show Cause/

Petition/Cross Motion and Affidavits (Affirmations) Annexed _____ 1-6 _____

Opposing Affidavits (Affirmations) _____ 7-9 _____

Reply Affidavits (Affirmations) _____ 10-15 _____

_____ Affidavit (Affirmation) _____

Other Papers _____

Upon the foregoing papers, it is

ORDERED that the motion by the petitioner for a preliminary injunction is denied, and it is further

ORDERED that the motions by the respondents to dismiss the petition are granted, and it is further

ORDERED that the motion by the petitioner for discovery and the cross-motions by the respondents for protective orders are denied.

In 2011, the petitioner's predecessor in interest entered into a contract with the respondent Village of Patchogue for the disposal of municipal solid waste and recyclables. The contract was set to expire in May 2016 and the Village issued invitations to bid pursuant to section 103 of the General Municipal Law. The petitioner submitted a bid and alleges that it was the low bidder but

the Village decided to reject all bids. Instead, the Village entered into an inter-municipal agreement with the respondent Town of Brookhaven, in which the Town would accept the Village's municipal solid waste. The agreement noted that the Town provides for the disposal of municipal solid waste through an agreement with the respondent Covanta Hempstead Company (Covanta). In 2014, the Town approved an extension and modification of a prior existing agreement with Covanta. In a prior proceeding, Trinity Transportation Company challenged the amended agreement on the grounds that the Town failed to comply with the bidding requirements of the General Municipal Law. This Court granted the petition finding that the Town could not extend the agreement without complying with competitive bidding requirements. The Town has appealed the judgment in that proceeding and the appeal is pending.

The petitioner commenced this proceeding, pursuant to CPLR Article 78, alleging that the Village and Town did not engage in a competitive bidding process prior to entering into the inter-municipal agreement. The petition alleges that the agreement is based upon the Town's contract with Covanta that was found invalid in the prior proceeding and seeks an order annulling the resolutions of the Village and the Town adopting the inter-municipal agreement. The petitioner moves for a preliminary injunction staying the inter-municipal agreement and the respondents move to dismiss the petition. The petitioner also moves for discovery and the respondents cross-move for a protective order.

Pursuant to General Municipal Law § 103, all contracts for public work must be awarded to "the lowest responsible bidder" (*Matter of AAA Carting & Rubbish Removal v Town of Southeast*, 17 NY3d 136, 142). The central purposes of New York's competitive bidding statutes are the "(1) protection of the public fisc by obtaining the best work at the lowest possible price; and (2) prevention of favoritism, improvidence, fraud and corruption in the awarding of public contracts" (*Matter of AAA Carting & Rubbish Removal v Town of Southeast*, *supra* quoting *Matter of New York State Ch. Inc., Associated Gen. Contrs. Of Am. v New York State Thruway Auth.*, 88 NY2d 56, 68). However, where good reason exists, the low bid or all the bids may be rejected (*see Matter of Conduit & Found. Corp v Metropolitan Transp. Auth.*, 66 NY2d 144, 148). Neither the low bidder nor any other bidder has a vested property interest in a public works contract (*see Matter of Conduit & Found. Corp v Metropolitan Transp. Auth.*, *supra*). Thus, where a municipality exercises its discretion to reject a bid, that decision "ought not to be disturbed by the courts unless irrational, dishonest or otherwise unlawful" (*Matter of Conduit & Found. Corp v Metropolitan Transp. Auth.*, *supra* at 149). The burden is on the petitioner to establish that a contract has been improperly awarded (*see I. Janvey & Sons v County of Nassau*, 60 NY2d 887; *Matter of Terraferma Elec. Constr. Co. Inc v City of New York*, 30 AD3d 607).

Here, the record demonstrates that the Village did not award the contract to another bidder but rejected all bids and entered into an inter-municipal agreement with the Town. Such cooperation agreements between municipalities are not subject to competitive bidding requirements (*see* General Municipal Law § 119-o; Opns. State Compt., No 81-104). In opposition to the motions to dismiss, the petitioner alleges that the respondents acted in bad faith and improperly relied upon the invalid agreement between the Town and Covanta.

The petitioner has the burden to demonstrate actual impropriety, unfair dealing or some other violation of statutory requirements when challenging the award of a public contract (*see Matter of Acme Bus Corp v Board of Educ of Roosevelt Union Free School Dist.*, 91 NY2d 51, 55; *Matter of Hello Alert v East Moriches Fire Dist.*, 129 AD3d 966; *Brega Transport Corp v Brennan*, 105

AD3d 985). In this case, the fact that the Town's agreement with Covanta is currently in litigation is insufficient to demonstrate any actual impropriety or unfair dealing by the Village. The inter-municipal agreement is between the Village and the Town, not the Village and Covanta. Although this Court found the Town did not properly extend the agreement with Covanta, the Town has appealed which results in an automatic stay of the judgment (*see* CPLR 5519[a][1]). Therefore, the agreement remains in effect pending the determination of the appeal. In addition, as conceded by the Town, it will still be obligated by the agreement with the Village even if the judgment is affirmed and it is required to obtain a new contractor. Under these circumstances, the petitioner's conclusory allegations of bad faith and collusion are insufficient to support any relief (*see Matter of Hello Alert v East Moriches Fire Dist., supra*).

Accordingly, the motions to dismiss are granted and the proceeding is dismissed. In view of this determination, the motion for a preliminary injunction and the motions for discovery are denied.

DATED: February 2, 2017



HON. JOSEPH C. PASTORESSA, J.S.C.

FINAL DISPOSITION X NON-FINAL DISPOSITION