

CONSTRUCTION
&
SURETY

C. Allan Reeve, Chair
585-295-4430
creeve@hblaw.com

Janet M. Audunson

Marc S. Brown

James P. Domagalski

Michael E. Ferdman

Richard K. Hughes

Leigh M. Monette

Michael J. Smith

Samuel C. Watkins

Public Bidding - Request For Proposal Upheld.

In the Matter of *Omni Recycling of Westbury, Inc. v. Town of Oyster Bay*, 11 N.Y. 3d 868 (Ct. of App. Dec. 2008).

The Town of Oyster Bay passed a resolution to contract for recycling services. The procurement was to be accomplished by a request for proposals (RFP) pursuant to the Town's procedures under General Municipal Law §104-b, rather than the usual sealed competitive bidding process under GML §103.

Omni and another company were the two finalists, and the Town awarded the contract to the other company. Omni, which appears to have made a better initial monetary proposal, filed an Article 78 petition seeking to annul the award of the contract, and to compel the Town to award the contract to it on the basis that it was the low bidder.

The trial court denied Omni's petition and upheld the contract awarded through an RFP process based on the Town's compliance with GML §104-b. On appeal the Appellate Division reversed stating:

In light of the considerable amounts involved, we find that the Town was required, under the circumstances presented, to procure the subject contract in compliance with General Municipal Law §103.

On further appeal by the Town, the Court of Appeals reversed the Appellate Division's decision, saying:

We conclude, however, that based on the description of the particular services to be rendered in the RFP, this recycling contract fell within the special skills exception to the "lowest responsible bidder" requirement of GML §103 and therefore was properly awarded using an RFP process consistent with GML §104-b procedures adopted by the Town. (emphasis added)

Had the Court of Appeals not reversed this case, for all intents and purposes RFPs would have become unavailable to municipalities as an alternate method of procurement. This case fortunately affirms the legislature's intent in enacting GML §104-b, and permits municipalities to award contracts based upon supportable intangible benefits to the public rather than just purely monetary considerations.

It appears that the Town could also have argued that it was authorized to procure for recycling services based on an RFP under General Municipal Law §120-w. This section of the GML specifically pertains to contracts for the management, collection and disposal of municipal solid waste, and permits an award of such contracts based on either the lowest bid or an RFP. ■

If you require further information regarding the information presented in this Legal Alert and its impact on your organization, please contact any of the members of the Practice Area listed on this Alert.