

Islander's Kids, Inc. v New York City Dept. of Educ.

2019 NY Slip Op 30207(U)

January 17, 2019

Supreme Court, New York County

Docket Number: 450410/2018

Judge: Alexander M. Tisch

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER M. TISCH PART IAS MOTION 52EFM

Justice

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INDEX NO. 450410/2018

ISLANDER'S KIDS, INC.

MOTION DATE 10/25/2018

Plaintiff,

MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, it is ORDERED and ADJUDGED that the petition is denied and dismissed.

"In reviewing an administrative agency determination, courts must ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious" (Peckham v Calogero, 12 NY3d 424, 431 [2009], quoting Matter of Gilman v New York State Div. of Hous. & Community Renewal, 99 NY2d 144, 149 [2002] [alteration omitted]).

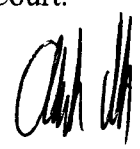
"Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County, 34 NY2d 222, 231 [1974]).

The Court finds that the respondent's decision to deny petitioner a UPK contract was rational. More specifically, it is rational and reasonable to deny a UPK contract to a vendor who lacks integrity, has a record of unsatisfactory performance, and a history of repeated safety violations. It is these types of factors that are determinative of the DOE's decision to award DOE

contracts per the Procurement Policy and Procedures (see Dkt # 24 [PPP] § 2-05). The inferences to be drawn from the evidence submitted provides more than enough reasonable basis to deny this petition and uphold the respondent’s decision (see generally Matter of Kayfield Constr. Corp. v Morris, 15 AD2d 373, 378 [1st Dept 1962]).

Petitioner claims that respondent’s decision to deny the instant proposal contradicts its decision to permit petitioner to operate as a part-time vendor (see dkt # 5, ¶¶ 23, 35, 43; dkt # 26, ¶¶ 3, 44). While this could arguably be considered arbitrary, petitioner failed to indicate how, or explain why that would be relevant to the determination being challenged sub judice. For example, there is no argument or proof that the “non-responsible” determination would, or should, be the same for both types of contracts. Therefore petitioner failed to meet its burden of proof in this regard.

This constitutes the decision, order, and judgment of the Court.



1/17/2019
DATE

ALEXANDER M. TISCH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE

HON. ALEXANDER M. TISCH