

**Agallas Equities, LLC v New York City Economic
Dev. Corp.**

2026 NY Slip Op 31613(U)

April 8, 2026

Supreme Court, New York County

Docket Number: Index No. 154193/2025

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

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AGALLAS EQUITIES, LLC,
Plaintiff,

INDEX NO. 154193/2025

MOTION DATE 03/28/2025

MOTION SEQ. NO. 001

- v -

NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION, ANDREW KIMBALL, VANESSA L
GIBSON, JANET PEGUERO, THE CITY OF NEW YORK,
8TH REGIMENT PARTNERS, LLC, MADD EQUITIES,
LLC, JOY CONSTRUCTION CORPORATION

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 9, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

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

Petitioner moves to annul and vacate the determination of respondent New York City
Economic Development Corporation (EDC) to award the Kingsbridge Armory redevelopment
project (project) to respondent 8th Regiment Partners LLC (8th Regiment); for a declaratory
judgment that EDC's actions in awarding the contract to 8th Regiment was arbitrary and
capricious, and a violation of New York State and City procurement laws, petitioner's due
process and equal protection rights and various legal standards; for a preliminary injunction
enjoining respondents from awarding the project to 8th Regiment pending the outcome of this
proceeding; and for the awarding of reasonable attorney's fees and costs incurred by petitioner in
bringing this proceeding. Respondents EDC; Andrew Kimball as CEO of NYCEDC (Kimbell);
Vanessa L. Gibson, as Bronx Borough President (Gibson); Janet Peguero, as Deputy Bronx
Borough President (Peguero); and the City of New York (New York) (hereinafter, the City
Respondents) cross-move for the dismissal of the verified petition pursuant to CPLR sections

7809 (f), 7806, 217 (1), 311 (1), 320 (b), 3017, Rule 3211 (e), 3211 (a) (1), (a) (2), (a) (3), (a) (5), (a) (7), and (a) (8), and raise objections in point of law to the verified petition. Peguero is presently no longer Deputy Bronx Borough President.

THE PETITION

The petition provides the following:

Petitioner is a limited liability company. EDC is a public benefit corporation. On September 22, 2023, EDC issued a Request for Proposals (RFP) for the redevelopment of the Kingsbridge Armory in the Bronx, New York. The RFP required specific programming elements outlined in the Visioning Documents, and the RFP itself. Petitioner participated in the procurement process throughout 2023. On January 16, 2024, petitioner submitted a proposal that was ‘fully compliant.’ Kimbell, in a draft press release, was quoted as stating that the proposal was consistent with the Visioning Documents. Petitioner communicated with an unnamed vice president of EDC who revealed certain irregularities in the procurement process. Respondent Madd Equities, LLC (Madd) was one of the bidders on the project. On January 7, 2025, Madd was awarded the contract for the project by EDC, despite the fact that Madd did not submit a compliant proposal. Madd collaborated with respondent Joy Construction Corporation (Joy) to form a joint venture, 8th Regiment. Petitioner asserts that Madd had access to its proprietary information and used the information without petitioner’s consent, and that EDC had facilitated this process before awarding the contract. Subsequently, petitioner communicated with EDC as to why petitioner did not receive the contract. EDC responded that Petitioner lacked the required security deposit and other financial commitments. Petitioner claims that EDC never addressed the matter of misappropriation of confidential information or procedural irregularities.

Petitioner brings this Article 78 proceeding to annual and vacate the award on the grounds that it was an arbitrary and capricious determination, that the determination was in violation of legal standards related to the procurement process, and that petitioner was deprived of its due process and equal protection rights. Petitioner is also seeking a declaratory judgment, injunctive relief and attorney's fees.

THE CROSS MOTION

The City Respondents cross move to dismiss the petition on various grounds. They challenge some of the statements in the petition. They contend that petitioner did not forward a proposal in response to EDC's RFP. They did receive a proposal from Kingsbridge City LLC (KC). In its proposal and subsequent term sheet, KC identified its bidding members as (1) Exact Capital LLC with an equity interest of 57.5%, McKissick with an equity interest of 20%, and JV Construction and Contracting LLC with an equity interest of 2.5%. Petitioner had an 20 % equity interest in KC.

After receiving all the proposals, EDC requested the submission of term sheets with proposed terms. KC's term sheet was executed by the principal of Exact Capital LLC. The term sheet expressly stated that it "intended solely as a basis for further non-exclusive discussions with respect to the terms of the project," not intended to constitute a "binding obligation" until a Pre-Development Agreement (PDA) was fully executed.

On January 7, 2025, EDC awarded the contract to 8th Regiment. EDC stated that KC did not receive the contract because it did not comply with the financial requirements of the RFP. In subsequent emails with EDC, petitioner referred to a potential partnership with two new capital partners. EDC responded that this would constitute a belated new proposal after a PDA with 8th

Regiment had been executed. Petitioner initiated the Article 78 proceeding after the rejection by EDC.

The City Respondents seek dismissal of the verified petition because:

- (1) Petitioner lacks standing in this proceeding. It was not the bidder in this project and cannot challenge the granting of a government contract.
- (2) Petitioner admits that the proposal by KC was non-compliant with RFP requirements, specifically financial commitments. EDC had a rational basis in not awarding the contract to KC.
- (3) Petitioner's claims are time-barred by the four-month statute of limitations with respect to Article 78 proceedings.
- (4) Regarding constitutional claims, petitioner failed to allege specific deprivation of equal protection and due process entitlements. A private cause of action under the New York Constitution is precluded by alternative legal remedies.
- (5) Respondents Gibson and Peguero should be dismissed from this proceeding because there are no specific claims brought against them, and
- (6) Petitioner lacks personal jurisdiction over the City Respondents due to invalid service of process. City and EDC were served by Federal Express, which is not a proper procedure. There was no personal service or service to the Secretary of State.

Although not supporting the cross motion, the other respondents, 8th Regiment, Madd and Joy, argue that they have not been properly served in this proceeding.

In opposing the cross motion, petitioner argues that all the arguments raised by the City Respondents are unavailing. Petitioner claims to have standing to bring this proceeding because it had a 20% equity interest in KC, the bidder, and is therefore a bidding partner. Petitioner

contends that the determination was arbitrary and capricious because 8th Regiment lacked a sufficient proposal and improperly used petitioner's confidential information to get the contract in collusion with EDC, which indulged in procedure irregularities. Petitioner contends that the petition is timely because the determination was made on January 7, 2025 and the Article 78 proceeding commenced on March 28, 2025, within the four-month period. Petitioner claims to have made out a case for violation of constitutional rights. Petitioner argues that Gibson and Peguero used their political influence to improperly guide EDC to award the contract to 8th Regiment. Petitioner argues that it properly served all the respondents in accordance with CPLR 308 and 311. As proof, petitioner submits copies of personal service of process affirmed and signed by process servers.

The Court shall first consider the procedural arguments raised by the City Respondents. The City Respondents argue that petitioner cannot bring this proceeding because it lacks standing. Petitioner was not the entity that actually sent a proposal for the Kingsbridge project, though it had an equity interest in said entity. To have standing, plaintiff must first show injury in fact, meaning that plaintiff will actually be harmed by the challenged action, second, the injury plaintiff asserts must fall within the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the agency had acted (*see Graziano v County of Albany*, 3 NY3d 475 [2004]). This would apply to Article 78 proceedings as well as regular actions. Petitioner has a 20% equity interest in KC, the bidder whose proposal was eventually rejected by EDC. The Court finds that petitioner's involvement in the bidding for the project was sufficient to give it standing and the capacity to bring an Article 78 proceeding.

The next issue is the statute of limitations. The four-month statute for Article 78 proceedings starts to run once a determination is made by an agency. The City Respondents aver

that the statute began to run on the date of the RFP, March 22, 2023, but it actually began to run on January 7, 2025, the date of the determination. Therefore, the petition, commenced on March 28, 2025, is timely.

The next issue is service of process. CPLR 311 (1) provides that service upon a domestic corporation like EDC is made by delivering the pleadings to an officer, director, managing agent, general agent, cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service. Alternatively, one can serve the Secretary of State who is authorized to accept service of process for a corporation.

The City Respondents argue that petitioner mailed City and EDC the Notice of Petition via Federal Express and sent a USB flash drive containing the pleadings. In reply, petitioner submits affirmations of the service of process from its process servers. Each respondent has been served. The court concludes that each respondent has been properly served except Peguero. Peguero was served at the Bronx Borough Hall office though she is no longer a Deputy Bronx Borough President. She is presently a private citizen. To date, petitioner does not have personal jurisdiction over her.

The Court will consider the claims allegedly brought against Gibson and Peguero. The petition alleges that Gibson, through her agent Peguero, unduly influenced the procurement process by favoring one bidder over petitioner, which resulted in petitioner not receiving the contract from EDC. The Court finds the allegation not specific enough. CPLR 3013 requires the assertions of a series of occurrences or transactions intended to give notice to the respondents and be ultimately proven in favor of petitioner. The lack of particularity here requires the dismissal of these respondents.

The Court will now determine the more substantive issues. Petitioner seeks an annulment or vacatur of EDC's determination because it is arbitrary and capricious. The City Respondents argue that there was a rational basis for the determination. The court's function in an Article 78 proceeding is to determine whether the action of an administrative agency had a rational basis or was arbitrary and capricious (*see Matter of Borenstein v New York City Employees' Retirement System*, 88 NY2d 756, 760 [1996]). A rational basis exists where the determination is supported by proof sufficient to satisfy a reasonable person, of all the facts necessary to be proved in order to authorize the determination (*see Consolation Nursing Home, Inc. v Commission of New York State Dept. of Health*, 85 NY2d 326, 331 [1995]).

Petitioner alleges that the determination involved the misappropriation of its information as well as political interference and procedural irregularities. It apparently contends that it was destined to receive the award until certain respondents conspired to avert that outcome. According to petitioner, 8th Regiment had no compliant proposal and used petitioner's information instead. The result was alleged to be an arbitrary act that needs to be reversed.

The City Respondents argue that there was no proof that petitioner or KC was destined to be the chosen bidder, nor was there any guarantee that KC would succeed. They state that the term sheet was not a binding agreement and that only an executed PDA would finalize the process. Furthermore, the City Respondents claim that the reason for KC's rejection was due to a failure to provide financial commitments pursuant to the RFP and other related papers.

The Court finds that EDC had a rational basis for denying petitioner the contract. Petitioner's claims are too conclusory and speculative. Unless petitioner, or KC was guaranteed the contract by EDC and then denied it, petitioner does not have a claim against the City Respondents. Based on the evidence, there was no proof that KC would receive the contract for

the project until a PDA was finalized. KC's apparent efforts to negotiate with EDC for the contract occurred after the PDA was finalized.

The petition is thereby dismissed. Petitioner's other claims are dismissed as without merit.

Accordingly, it is


ORDERED and ADJUDGED that petitioner Agallas Equities, LLC's petition is denied and this proceeding is dismissed; and it is further

ORDERED that petitioner shall, within twenty days of receipt of this decision and order, serve a copy of this order, with notice of entry, on respondents as well as on the Clerk of the Court (60 Centre St., Room 141B) and the Clerk of the General Clerk's Office (60 Centre St., Room 119), who is directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.

4/8/2026
DATE


LESLIE A. STROTH, J.S.C.

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