

## EDUCATION

## Suffolk Courts Validate School Districts' Use of RFPs for School Bus Contracts

By William M. Savino and  
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Two recent decisions by the New York State Supreme Court in Suffolk County clarify that public school districts in Suffolk County and New York State may utilize and rely upon Requests for Proposals (“RFPs”) to award pupil transportation contracts to school bus companies based on factors established by statute and Commissioner of Education regulations instead of solely upon lowest cost. *Matter of Application of Montauk Bus Service, Inc. v. Board of Education of Lindenhurst Union Free School District*, No. 14-10405 (Sup. Ct. Suffolk Co. Jan. 29, 2015); *Matter of Application of Acme Bus Corp. v. Harborfields Central School District*, No. 12-24004 (Sup. Ct. Suffolk Co. Jan. 28, 2014).<sup>1</sup> The courts recognized that since 1996, New York statutory law and regulations adopted by the New York State Education Commissioner expressly authorize — and, indeed, encourage — school districts to use RFPs for school bus transportation contracts, rather than rely solely on the lowest bid requirement under General Municipal Law Section 103. See N.Y. State Education Law § 305(14); 8 N.Y.C.R.R. § 156.12 (“Commissioner’s Regulation 156.12”) (identifying 10 criteria for districts to consider when evaluating RFPs).

#### Background

Nearly two decades ago, in October 1996, Section 305(14) of the New York State Education Law was amended to

authorize the Commissioner of Education and school districts to award school bus transportation contracts through RFPs. The legislative history indicates that the primary purpose of the bill was to “allow school districts to select providers of school transportation on the basis of proven quality of service in addition to economic considerations.”<sup>2</sup>

After Section 305 (14) was enacted, the Commissioner of Education promulgated Commissioner Regulation Section 156.12. The regulation provides that when a board of education elects to award a contract through an evaluation of proposals received in response to an RFP, the school board must consider:

- (1.) The previous experience of the contractor in transporting pupils.
- (2.) The name of each transportation company of which the contractor has been an owner or manager.
- (3.) A description of any safety programs implemented by the contractor.
- (4.) A record of accidents in motor vehicles under the contractor’s control.
- (5.) The driving history of the contractor’s employees.
- (6.) Inspection records and model year of each of the motor vehicles under the control of the contractor.
- (7.) Maintenance schedules of the motor vehicles under the control of the contractor.
- (8.) A financial analysis of the con-



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tractor.

- (9.) Documentation of compliance with motor vehicle insurance requirements; and
- (10.) The total cost of the proposal.

The only prohibition regarding allocations of points for these 10 criteria is that no single criteria, including total cost, may constitute more than 50 percent of the total points for all of the criteria used. It is also worth emphasizing in this regard that the Commissioner has acknowledged that the “most important feature of any transportation contract is the safety of the children being transported.”

A school district that complies with the procedures and requirements set forth in Education Law § 305(14) and in Commissioner’s Regulation 156.12 for an RFP to select a school bus transportation contractor — that is, designing an RFP, seeking bids, ranking responses, choosing a contractor, signing a contract, and then having that contract approved by the Department of Education — is in compliance with the law.

The recent New York State Supreme Court decisions in *Montauk Bus*

*Service* and *Acme Bus Corp.* reinforce the rights and ability of school districts to continue to utilize RFPs for these types of transportation contracts and demonstrate that lawsuits challenging the use by school districts of RFPs to award school bus transportation contracts are likely to be unsuccessful.

#### The Acme Bus Corp. decision

In the *Acme Bus Corp.* case, the petitioner challenged the allocations of points scoring methodologies and weights given to factors by several different school districts regarding criteria contained in different RFPs for several different school bus transportation contracts.

The New York State Supreme Court in Suffolk County found that the Commissioner of Education was “vested with the power to approve and reject bids for school transportation” and that the commissioner was “uniquely suited to resolve [the] controversy.” Accordingly, the court dismissed the proceeding during the pleading stages. A subsequent appeal of the judgment dismissing all of the challenges to all of the RFPs was withdrawn.

#### The Montauk Bus Service ruling

The Suffolk County New York State Supreme Court reached a similar result in a later case involving *Montauk Bus Service*. In *Montauk Bus*, the petitioner sought to vacate a transportation contract that the Lindenhurst Union Free School District had awarded to

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another school bus company pursuant to an RFP. The petitioner alleged that the school district had allegedly erroneously evaluated and scored proposals in two categories: "Insurance Requirements" and "Record of Drivers." The petitioner alleged that if the categories had been scored and evaluated as suggested by plaintiff, plaintiff would have received more points and scored higher than the bus company awarded the contract.

The petitioner in this case also alleged that the school district's use of the RFP process was flawed for several alleged procedural reasons and that the school board was allegedly required to award school bus transportation contracts only to the lowest responsible bidder under General Municipal Law Section 103 and not pursuant to an RFP process under

Education Law Section 305(14).

The Suffolk County Supreme Court rejected all of the plaintiff's arguments finding that the school district's scoring of the RFP, specifically in the "Insurance Requirements" and "Record of Drivers" categories, had a "rational basis and was not arbitrary and capricious." The court also decided that the district's use of the RFP process to evaluate and award the transportation contract did not violate any law or alleged school board policy. The court relied in part on Education Law § 305(14)(e), which states that, "[n]otwithstanding the provisions of any general, special or local law or charter, a board of education or a trust of a district" may award a contract for the transportation of pupils using the RFP process.

The Suffolk County Supreme Court dismissed the entire proceeding and

entered a judgement in favor of the school district. No appeal was taken by petitioner from that judgment, and the time to appeal has expired.

The ability of school districts to use RFPs to award school bus transportation contracts is well established in New York and has been widely used by many school districts since 1996. Further, Governor Cuomo and the New York State Legislature recently made Section 305(14) of the Education Law permanent. These two recent cases in New York State Supreme Court in Suffolk County confirm the use and award of school bus transportation contracts by school districts using RFPs and dismissed all of the challenges to the RFPs in these cases during the pleading stages.

The RFP process for school bus transportation contracts has now been

approved by the Governor, the Legislature, the Education Commissioner and the courts. As a result, school districts can continue to utilize the flexibility of the RFP process to meet the specific needs and concerns of their school districts and award school bus transportation contracts based on criteria other than *solely* costs under General Municipal Law Section 103.

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<sup>1</sup> The authors and their firm represented Suffolk Transportation Services, Inc. in these cases.

<sup>2</sup> New York State Assembly Memorandum in Support of Legislation Bill No. A. 6219-A.

<sup>3</sup> 19 N.Y. Reg. 16 (January 8, 1997).