

Foundational
Legal Strategy + On-the-Ground
Experience = Bid Protest
Defense

Overcoming the competing bidder's challenge to the winning bid for a visionary initiative to start construction on a six-year project that will provide New York City's East Side with critical protection from climate change-induced coastal flooding.



THE GOAL

Climate change is threatening all coastal cities, including prominent New York City. As sea levels rise and storm-induced coastal flooding compromises Manhattan's East Side, the city is collaborating with the federal government to fund a solution: The East Side Coastal Resiliency (ESCR) Project.

This one-of-a-kind, visionary project is aimed at:

- Reducing flood risk to property, landscapes, businesses, and critical infrastructure.
- Improving access to the waterfront for communities and visitors.
- Enhancing public spaces for recreation, using an ecologically diverse landscape.

Spanning Montgomery Street to East 25th Street, the large parcel is located within the Federal Emergency Management Agency (FEMA) 100-year floodplain and serves a residential community of 110,000+ New Yorkers, including 28,000 New York City Housing Authority (NYCHA) residents. City and Federal leaders know that ESCR is an ambitious, and necessary, resiliency project in the center of a dense urban environment. No doubt, this called for an experienced construction partner.



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New York City is home to almost 8.5 million people. Protecting it and its residents from rising sea levels is critical, not optional. A formal RFP was issued for applicants to bid on a cutting-edge project, and two contenders surfaced. One was the nation's largest, privately held construction firm, and the other was a three-party joint venture established by lovino Enterprises for the sole purpose of building ESCR.

lovino's JV united highly experienced, specialized construction companies who collectively put forth a competitive bid of \$1.25 billion – \$63 million less than the competition's bid.

The city awarded the project to lovino Enterprises' singularly focused JV.

THE CHALLENGE AT HAND

The competing bidder did not agree with the city's decision.

And to show their disapproval, filed an Article 78 proceeding — more commonly known as a bid protest. The suit claimed that as a new entity, the JV could not possibly meet the qualifying criteria outlined in the RFP in two specific ways:

1. The winning bidder had to have \$1 billion in revenues from the prior year.
2. The winning bidder had to have two projects worth more than \$400 million each, built in the prior ten years.



A STRATEGIC SOLUTION



The JV knew that they were the right fit for the work and that the losing bidder's challenge would upset a common practice in the city and the construction industry generally. It was clear they needed a resourceful legal team to stand up to this fierce opponent.

Goulston & Storrs is known for comprehensive experience in real estate, joint ventures, construction, and litigation. More specifically, firm attorneys Rhian Cull and Adam Safer successfully and regularly handle bid protests for construction clients in New York and beyond. This experience was the perfect fit for Iovino's JV. They knew Goulston & Storrs could find a way to confirm their qualifications and re-secure their selection as New York City's construction company of choice for ESCR.

THE PATH TO SUCCESS



The Goulston & Storrs team closely reviewed Iovino's proposal.

1. Combining superb legal skills with direct on-the-ground experience, they knew successful JVs regularly bid for and build projects in New York City by combining collective experience and resources—a method known as “stacking.”
2. But there is no law in New York establishing stacking as a qualifying means for meeting increasingly high criteria for building sophisticated projects in the city.
3. However, without stacking, experienced construction firms could be prevented from combining resources to bid on sophisticated projects, and the city could be deprived of considering competitive bids by joint ventures.

A foundational legal strategy was in place.

THE RESULTS

After multiple procedural steps leading the case all the way through the appeals courts, the Goulston & Storrs team prevailed. They not only proved that stacking is an accepted solution to meeting the criteria of complex RFPs, but also established precedent for future JVs to bid on projects using this process.

lovino's JV was victorious in achieving the bid from New York City, and construction began in the Fall of 2021 and will continue through 2026.

Ultimately, this project provides New York City's East Side with critical protection from climate change-induced coastal flooding.



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“We are thrilled to be a part of the East Side Coastal Resiliency Project, working with New York City to mitigate flood risk. Our involvement in this project was, at times, uncertain. Goulston & Storrs masterminded a strong legal strategy that not only ensured our involvement in ESCR, but ultimately pushed through the start of construction on this important initiative.

- Ruth Fagan, General Counsel Iovino Enterprises



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