

**PropertyRoom.com, Inc. v New York City Dept. of  
Citywide Admin. Servs.**

2022 NY Slip Op 34286(U)

December 12, 2022

Supreme Court, New York County

Docket Number: Index No. 161582/2021

Judge: Laurence L. Love

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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. LAURENCE L. LOVE PART 63M**

*Justice*

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PROPERTYROOM.COM, INC.,

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF CITYWIDE  
ADMINISTRATIVE SERVICES, DAWN M. PINNOCK, AS  
COMMISSIONER OF THE DEPARTMENT OF CITYWIDE  
ADMINISTRATIVE SERVICES, CITY OF NEW YORK,  
INSURANCE AUTO AUCTIONS CORPORATION

Respondent.

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**INDEX NO. 161582/2021**

**MOTION DATE 05/26/2022**

**MOTION SEQ. NO. 001**

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

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

Upon the foregoing documents, the instant Petition and Respondents’ cross-motions seeking dismissal of the instant action are decided as follows:

Petitioner, PropertyRoom.com (“PropertyRoom”) commenced the instant CPLR Article 78 Petition seeking an Order vacating the New York City Department of Citywide Administrative Services’ (“DCAS”) award of a contract to Respondent, Insurance Auto Auctions Corporation (“IAA”) based upon DCAS’ alleged failure to comply with various Procurement Policy Board (“PPB”) Rules in the awarding of said contract. Specifically, Petitioner alleges that DCAS failed to comply with PPB Rule 3-03(d), which requires that all notices related to the awarding of contracts must be published in the City Record including a Procurement Identification Number (“PIN”). Respondents cross-move to dismiss pursuant to CPLR §§ 7804(f), and Rule 3211(a)(1), (a)(2), (a)(3), (a)(5) and (a)(7).

As described in the Petition, for approximately the last ten years, PropertyRoom has been contracted by DCAS to facilitate the sale of used vehicles and equipment on behalf of the City. PropertyRoom was aware that DCAS was soliciting proposals for a new contract. On or about November 14, 2019, DCAS issued a request for proposals (the “RFP”) using the competitive sealed proposals process, entitled “DCAS Surplus Vehicle and Equipment Towing and Auctions.” DCAS assigned the solicitation a Procurement Identification Number, or PIN, of “85620P0001.” On January 24, 2020, IAA submitted a response to the RFP, with PropertyRoom listed as a subcontractor. On June 8, 2020, PropertyRoom sent a letter to IAA withdrawing as a subcontractor in the parties’ proposal. PropertyRoom forwarded its letter of withdrawal to DCAS the following day. On January 29, 2021, DCAS published in the City Record an announcement of a February 11, 2021 public hearing for a proposed contract between the City and IAA for “Surplus Vehicle and Equipment Towing and Auction Services,” PIN “85620B0006” and EPIN “85620P0001001.” the award was published under PIN “85621P0005001.” Petitioner alleges that the award of the contract to IAA, published October 21, 2021, was unlawful based upon the subtle changes in the PIN. On November 17, 2021, PropertyRoom met with DCAS. At that meeting, DCAS claimed that it had published a notice of award for the Contract. On November 26, 2021, PropertyRoom complained to the DCAS Commissioner (“PropertyRoom’s Letter”), and requested that DCAS reverse or stay any implementation of the Contract in light of DCAS’ failure to consistently use a PIN that would have enabled the public to track the procurement, as required by the PPB Rules. By letter dated December 7, 2021, DCAS issued a procurement protest denial. On December 14, 2021, PropertyRoom’s contract expired and DCAS began using IAA’s services, resulting in the instant Petition. It is undisputed that at no time did PropertyRoom submit a bid for the contract.

As discussed in *Friends of Dag Hammarskjold Plaza v. City of New York Parks & Recreation*, 13 Misc. 3d 1220(A) (Sup. Ct. NY Cty. 2006), “Article 78 standing has traditionally been limited to persons whose interests are directly affected by the action of the body whose action is being challenged. It has been regularly held that in the context of a public bid, a qualifying bidder who has not been selected has standing to challenge the award” As further discussed in *Transactive Corp. v. NYS Dept. of Social Services*, 92 N.Y.2d 579 (1998) a non-bidder cannot challenge the award of a government contract, wherein the Court of Appeals held that because a non-bidder “had no direct stake in the outcome of the bidding process, it did not have an injury in fact.” Id. at 587.


PropertyRoom contends that it has standing as the incumbent contractor, IAA’s competitor, and a member of the public entitled to testify at a public hearing. First, Petitioner contends that as the City did not raise standing as an issue in its November 2021 letter, that such an issue is waived. Petitioner cites no authority for said assertion. Second, Petitioner argues an injury arising from its incumbency as a city contractor not being extended due to its inability to testify at the public hearing for the contract. However, Petitioner submitted a bid. Petitioner has no standing as a subcontractor on the bid, *See, Transactive*, 92 N.Y.2d at 587. Petitioner in its affidavit in opposition to Respondent’s cross-motions claims that, had it been aware of the public hearing on the contract would have appeared and testified about the alleged additional cost of awarding the contract to IAA, its dissatisfaction with IAA as PropertyRoom’s subcontractor between July 2018 and May 2019 and the accessibility of IAA’s auction website. Such contentions are absurd given that PropertyRoom was listed as a subcontractor to IAA in IAA’s bid, which was submitted in 2020. PropertyRoom, an experienced government contractor, appears to have taken no steps whatsoever to track the subject contracting process, even after disassociating with IAA in June

2020. Petitioner contends that it was deceived by the City into believing that its prior contract would be extended ad infinitum but fails to support said claim in any way. While Petitioner has certainly been injured by its own inaction since June 2020, it did not bid on the contract, made no attempt to bid on the contract after disassociating itself with IAA and its position as the incumbent contractor only makes these failings more glaring. As Petitioner lacks standing, this action must be dismissed.

Additionally, PPB Rules Section 2-10 provides that “Any vendor may protest a determination of any procurement action pursuant to this section,” “A protest shall be made within ten days after the protesting vendor knows or should have known of the facts that prompted the protest but no later than ten days after publication of the notice of award.” Petitioner failed to challenge the award within ten days of its publication, which is similarly fatal to the instant Petition. Finally, the Court notes that the changes in the PIN appear to be de minimis changes applied at different points in the contracting process as all of the PINs have the same first nine characters.

ORDERED that the instant Petition is DENIED in its entirety; and it is further

ORDERED that Respondents’ cross-motions seeking dismissal of this action are GRANTED in their entirety.

<u>12/12/2022</u> DATE					 <hr/> LAURENCE L. LOVE, 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	<input type="checkbox"/>	GRANTED IN PART	<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