

Liberty Mobility Link v Port Auth. of N.Y. & N.J.

2025 NY Slip Op 31137(U)

April 4, 2025

Supreme Court, New York County

Docket Number: Index No. 151814/2024

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

LIBERTY MOBILITY LINK,

Petitioner,

- v -

PORT AUTHORITY OF NEW YORK AND NEW JERSEY,
DCCA1, INC.

Respondent.

-----X

INDEX NO. 151814/2024

MOTION DATE 10/21/2024

MOTION SEQ. NO. 008

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 008) 176, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275

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

Upon the foregoing documents, the petition is denied.

Background

In March of 2023, the Port Authority of New York and New Jersey (“PA” or “Respondent”) issued a request for proposals (“RFP”) for replacing the current AirTrain system at Newark Airport. Among the entities who responded were Liberty Mobility Link (“Liberty” or “Petitioner”) and DCAA1, Inc. (“Doppelmayr”).¹ As part of the multi-step process, technical proposals were due in September of 2023 and price proposals were due in October of 2023, with the best value recommendations due at the end of that month. In determining best value, according to the RFP, the PA did not need to choose a bidder with the best technical or best price proposal, but rather “may conduct a price-technical tradeoff whereby the Port Authority may, in its best interest, select as the Preferred Proposal a Proposal that does not offer the most favorable

¹ In a previous motion, Doppelmayr was dismissed from this action.

Price Proposal nor is the highest technically rated Proposal.” Ultimately, Doppelmayr was awarded the final bid. Liberty brought this underlying proceeding in February of 2024, seeking to have the PA’s actions in the RFP process deemed arbitrary and capricious. The current amended petition looks to vacate the bid award to Doppelmayr and remand the consideration back to the PA. Respondent opposes.

Standard of Review

A party may bring an Article 78 petition to challenge the final determination of an administrative agency. CPLR § 7801(1). A court must give great deference to the agency’s decision and cannot “interfere unless there is no rational basis for the exercise of discretion or the action complained of is arbitrary and capricious.” *Pell v. Board of Education*, 34 N.Y.2d 222, 231 (1974). Judicial review is also available if the agency’s determination was “contrary to law or procedure.” *Barrett Japaning, Inc. v. Bialobroda*, 190 A.D.3d 544, 545 (1st Dept. 2021). An action is irrational or arbitrary and capricious if “it is taken without sound basis in reason or regard to the facts.” *Matter of A.Z. v. City Univ. of N.Y., Hunter Coll.*, 197 A.D.3d 1027, 1027 (1st Dept. 2021).

Discussion

Over the course of this proceeding, Petitioner has advanced several theories on why the PA allegedly acted in an arbitrary and capricious manner. At the oral hearing held on April 4, 2024, Petitioner dropped several of their arguments from the amended petition. Petitioner now argues that the bid award to Doppelmayr should be overturned because 1) Doppelmayr was allowed to revise their final bid; and 2) Respondent allegedly arbitrarily increased Doppelmayr’s technical scores and decreased Petitioner’s technical scores. Respondent opposes the petition on the grounds that 1) Petitioner has failed to rebut any of the reasons why Doppelmayr’s bid was

chosen; 2) Petitioner has failed to rebut any of the seventeen reasons originally given why their bid was ultimately not deemed best value. For the reasons that follow, Petitioner has failed to meet their burden of showing that Respondent acted in an arbitrary and capricious manner, and therefore the petition is denied.

The Final Bid Submitted by Doppelmayr Did Not Violate the RFP

Petitioner argues that Respondent gave Doppelmayr, and only Doppelmayr, a chance to submit a revised Best and Final Bid, and that this violated the RFP mandate to act in a fair manner. They argue that this unequal treatment violates the common law doctrine of fairness in bidding for public works and the RFP terms. Respondent argues that the revised bid was part of the Best Value process outlined in the RFP and that all of their actions were consistent both with rights explicitly reserved in the RFP, and the process as outlined in the sworn affidavit of Ralph D'Apuzzo, the Senior Program Director for Respondent. The RFP permits the PA to require any proposer to provide additional information or clarification; corrections at any point before closing; waive deficiencies in a proposal; change the RFP requirements; seek any clarifications or modifications to a proposal; and so on. The RFP also reiterates that the PA may “at any time during the RFP Process, determine (acting in its sole discretion) that it is appropriate to request Proposal Revisions by all **or any** of the Proposers” (emphasis added). Furthermore, the RFP allowed for the PA to entertain negotiations with a Preferred Proposer.

Ultimately, Petitioner fails to cite to any provision of the RFP that Respondent violated in permitting Doppelmayr to submit a revised final bid, and Respondent has cited to multiple provisions that authorize their negotiations with Doppelmayr regarding revisions to their proposal, as part of the “value engineering” process once Doppelmayr was identified as the preferred proposer. A court must defer to an agency’s rational interpretation of its own

regulations. *Matter of Franklin St. Realty Corp. v. NYC Env'tl. Control Bd.*, 164 A.D.3d 19, 24 (1st Dept. 2018). Here, the PA's interpretation of the RFP as it relates to the negotiations with Doppelmayer is rational and will not be overturned by this Court.

Furthermore, multiple requests for clarification on their bid were sent to Petitioner, who either did not answer the requests or answered in a summary way that Respondent found unsatisfactory. Petitioner has not shown that the treatment of the two entities in the bidding process, as it relates to the availability of revisions to their bids, implicates a fairness issue. The procedures laid out in the RFP would have applied to any bidder chosen as the preferred proposer, and Petitioner did receive chances to respond to the PA's request for clarification on their bid. While the bidders must be treated fairly, an RFP is "a more flexible alternative to competitive bidding", does not need to "spell out every single factor", and final contracts do not need to conform to the RFP. *Madison Square Garden, L.P. v. N.Y. Metro. Transp. Auth.*, 19 A.D.3d 284, 286 (1st Dept. 2005). Here, Petitioner has not shown that there was unequal treatment of bidders that violated either the RFP or the fairness doctrine.

The Technical Proposals Do Not Provide a Basis for an Evidentiary Hearing

Petitioner argues that Respondent allowed price information to influence the evaluation of the bidders' technical proposals, and that Doppelmayer's technical score was arbitrarily increased. They want a hearing to determine whether the technical score increases might "provide an additional reason to declare the Award void." Respondent opposes on the grounds that during the technical evaluation process, the scores are being continually evaluated and the responses or lack of response to requests for clarification can impact a technical score. They further state, including through the supplemental affidavit of Raquel Pinto, former Procurement Contracts Manager for Respondent, that the price proposals were only provided to subcommittee

members who had no further involvement in the technical evaluations and were unaware of any revisions to the technical scores. Petitioner has not shown more than speculation that a hearing would be necessary, nor have they shown that the voting process was conducted in an arbitrary and capricious manner. Overall, Petitioner has failed to establish that Respondent acted in an arbitrary and capricious manner in the bid process. Accordingly, it is hereby

ADJUDGED that the petition is denied.

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4/4/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: