

SUPREME COURT OF NEW JERSEY

Matthew J. Barrick, Jr. v. State of New Jersey, Department of Treasury, Division of Property Management and Construction

218 N.J. 247 (2014) · No. A-8/9 September Term 2013; 072795 · Decided July 23, 2014

SUMMARY

The Supreme Court of New Jersey reviewed the State Division of Property Management and Construction’s award of a ten-year office-space lease to RMD Properties, LLC, the lowest bidder. The Court held that the Division reasonably determined that the public-transportation-distance requirement was not material and that awarding the contract to RMD was not arbitrary, capricious, or unreasonable. The Court reversed the Appellate Division and declined to resolve the broader mootness issue, while cautioning unsuccessful bidders to promptly seek a stay pending appeal.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Justice LaVecchia; Chief Justice Rabner; Justice Patterson; Justice Fernandez-Vina; Judge Rodríguez; Judge Cuff
JURISDICTION	New Jersey
DECIDED	July 23, 2014
DOCKET	A-8/9 September Term 2013; 072795
DISPOSITION	reversed
PROCEDURAL POSTURE	The Supreme Court of New Jersey reviewed on certification the Appellate Division's reversal of an administrative agency's award of a state lease contract to RMD Properties, LLC.
STANDARD OF REVIEW	Agency decisions in public-bidding matters are reviewed under the gross-abuse-of-discretion standard and will not be disturbed unless arbitrary, capricious, or unreasonable or unsupported by substantial credible evidence in the record as a whole. An appellate court may not substitute its judgment for that of the agency.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Jersey
PARTIES	State of New Jersey, Department of Treasury, Division of Property Management and Construction, RMD Properties, LLC v. Matthew J. Barrick, Jr.

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QUESTIONS PRESENTED

1. Whether the Division acted arbitrarily, capriciously, or unreasonably by determining that the RFP's public-transportation distance requirement was not material and awarding the lease to RMD.
2. Whether the Director was required to determine bid deviations based on information available when the bids were opened and could properly reject Barrick's later supplemental information.
3. Whether an unsuccessful bidder's failure to seek a stay rendered the appeal moot after the State and the successful bidder expended resources performing the contract.

HOLDINGS

1. The Director reasonably determined that the quarter-mile public-transportation requirement was not material and therefore could be waived because it was not imposed by statute or regulation, all qualified bids exceeded it, and the deviations were de minimis.
2. The threshold determination whether a bid deviates from an RFP requirement must be made by the agency director when the bids are opened, based on the information available at that time.
3. The Division's award of the lease to RMD, the lowest bidder, was not arbitrary, capricious, unreasonable, or unsupported by substantial credible evidence.
4. The Court declined to decide whether an unsuccessful bidder's failure to seek a stay creates a bright-line rule of mootness because the merits reversal resolved the appeal.

KEY QUOTATIONS

“Public bidding statutes exist for the benefit of the taxpayers and are construed as nearly as possible with sole reference to the public good.” (11)

“The threshold step in the analysis is to determine whether there is a deviation.” (14-15)

“The decision to award the lease contract to RMD was not arbitrary, capricious, or unreasonable.” (17)

FACTUAL BACKGROUND

The Division issued an RFP for a ten-year lease of office space in Morris County for a Department of Labor one-stop career center. The RFP required the property to be within one-quarter mile of accessible public transportation, but all qualified bids exceeded that distance. After consulting with the Department of Labor, the Division determined that the distance requirement was not legally mandated, that the deviations were de minimis, and that cost-effectiveness was paramount; it awarded the lease to RMD, whose bid was lower than

Barrick's. Barrick later supplied information showing that his property was within one-quarter mile of a bus stop, but the Division declined to consider the supplemental information.

PROCEDURAL HISTORY

The Division awarded a ten-year state office-space lease to RMD, the lowest bidder, after determining that the RFP's one-quarter-mile public-transportation requirement was not material and could be waived. Barrick appealed, and the Appellate Division reversed and remanded for an award to Barrick or rebidding. The Division and RMD sought reconsideration, including on mootness grounds, but the Appellate Division declined to address mootness. The Supreme Court granted certification and reversed the Appellate Division.

DISPOSITION

reversed

CASES CITED

- *Keyes Martin & Co. v. Director, Division of Purchase & Property*, 99 N.J. 244, 252-53, 256 (1985)
- *Terminal Construction Corp. v. Atlantic County Sewerage Authority*, 67 N.J. 403, 409-10 (1975)
- *Trap Rock Industries, Inc. v. Kohl*, 59 N.J. 471, 479 (1971), cert. denied, 405 U.S. 1065 (1972)
- *In re DBC Project No. A0716-00*, 303 N.J. Super. 384, 396 (App. Div. 1997)
- *Commercial Cleaning Corp. v. Sullivan*, 47 N.J. 539, 548-49 (1966)
- *In re Protest of Award of On-Line Games Production & Operation Services Contract*, 279 N.J. Super. 566, 592-96, 602 (App. Div. 1995)
- *Meadowbrook Carting Co. v. Borough of Island Heights*, 138 N.J. 307, 315 (1994)
- *In re Jasper Seating Co.*, 406 N.J. Super. 213, 219 (App. Div. 2009)
- *In re Stallworth*, 208 N.J. 182, 194 (2011)
- *Henry v. Rahway State Prison*, 81 N.J. 571, 579-80 (1977)
- *In re Proposed Quest Academy Charter School of Montclair Founders Group*, 216 N.J. 370, 385-86 (2013)
- *In re Young*, 202 N.J. 50, 70 (2010)
- *In re Carter*, 191 N.J. 474, 482 (2007)
- *Mazza v. Board of Trustees*, 143 N.J. 22, 25 (1995)
- *Circus Liquors, Inc. v. Governing Body of Middletown Township*, 199 N.J. 1, 10 (2009)
- *In re Alleged Improper Practice Under Section XI, Paragraph A(d) of the Port Authority Labor Relations Instruction*, 194 N.J. 314, 331-32 (2008), cert. denied, 555 U.S. 1069 (2008)
- *In re Herrmann*, 192 N.J. 19, 28 (2007)
- *In re Challenge of Contract Award Solicitation No. 13-X-22694 Lottery Growth Management Services*, ___ N.J. Super. ___, ___ (App. Div. 2014) (slip op. at 30)
- *Weidner v. Tully Environmental, Inc.*, 372 N.J. Super. 315, 325 (App. Div. 2004)
- *United States v. Joint Meeting of Essex & Union Counties*, 997 F. Supp. 593, 600 (D.N.J. 1998)

- *Barrick v. State, Department of Treasury, Division of Property Management & Construction*, 430 N.J. Super. 377, 389, 391 (App. Div. 2013)

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