

**COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

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**In the Matter of the Application of AAA CARTING  
AND RUBBISH REMOVAL, INC.,**

**Petitioner,**

**DECISION & ORDER**

**For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules**

**Index No.: 56419/2023**

**- against -**

**THE TOWN OF YORKTOWN, MATTHEW J.  
SLATER, in his capacity as the Town Supervisor and a  
councilman of the Town Board of Yorktown, THOMAS  
P. DIANA, in his capacity as a councilman of the Town  
Board of Yorktown, EDWARD LACHTERMAN, in his  
capacity as a councilman of the Town Board of  
Yorktown, SERGIO ESPOSITO, in his capacity as a  
councilman of the Town Board of Yorktown, LUCIANA  
HAUGHWOUT, in her capacity as a councilwoman of  
the Town Board of Yorktown, and COMPETITIVE  
CARTING, CORP.**

**Respondents.**

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**ROBERT J. PRISCO, J.**

The following papers, numbered 1-4, were read and considered<sup>1</sup> in determining Petitioner's Verified Petition for relief pursuant to Civil Practice Law and Rules ("CPLR") Article 78:

Papers

Numbered

Verified Petition/Exhibits 1-12/Notice of Petition/Petitioner AAA Carting and Rubbish Removal, Inc.'s Memorandum of Law in Support of its Verified

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<sup>1</sup> Letters filed by the parties after this matter was fully submitted were not considered by the Court (*see Matter of Bennett v Zoning Bd. Of Appeals of the Vil. Of Sagaponack*, 170 AD3d 716 [2d Dept 2019], quoting *Matter of Featherstone v Franco*, 95 NY2d 550, 554 [2000] ["Consideration of 'evidentiary submissions as to circumstances after the [Authority] made its determination violates a fundamental tenet of CPLR article 78 review--namely, that judicial review of administrative determinations is confined to the facts and record adduced before the agency"]; *see also Matter of Yarbough v Franco*, 95 NY2d 342, 347 [2000]; *Matter of Torres v New York City Hous. Auth.*, 40 AD3d 328, 330 [1st Dept 2007]; *Matter of Fanelli v New York City Conciliation & Appeals Bd.*, 90 AD2d 756, 757 [1st Dept 1982], *aff'd* 58 NY2d 952 [1983]).

Petition Pursuant to Article 78 of the Civil Practice Law and Rules <sup>2</sup>	1
Verified Answer <sup>3</sup> /Rodriguez Affirmation/Exhibit 1/Affidavit of Diana L. Quast, Town Clerk/Exhibits A-F/Affidavit of Phillip Marino/Exhibits A-C/Affidavit of Luciana Haughwout/Exhibit 1/Respondents' Memorandum of Law in Opposition to Petition	2
Verified Answer/Exhibits A-C/Respondent Competitive Carting Corp's Memorandum of Law in Opposition to the Petition of AAA Carting Corporation, Inc.	3
Affirmation of Nicholas R. Caputo in Further Support of Verified Petition/Exhibits 1-8/Memorandum of Law in Further Support of Verified Petition	4

### Relevant Background

AAA Carting and Rubbish Removal, Inc. (hereinafter "Petitioner") was the waste hauler for the Town of Yorktown (hereinafter "Respondent Town of Yorktown") from January 1, 2018 through December 31, 2022, and Respondent Town of Yorktown exercised three extensions of the contract during this time period (*see* Page 2, Paragraph 1, of the Verified Petition, and Page 2, Paragraph 1, of the Verified Answer of Town Respondents).

On or about March 22, 2022, Respondent Town of Yorktown's Board adopted a resolution authorizing the Town Clerk to advertise a bid for the collection and disposal of residential refuse and recycling material (*see* Page 5, Paragraph 13, of the Verified Petition, and Page 3, Paragraph 13, of the Verified Answer of Town Respondents).

On or about May 26, 2022, Respondent Town of Yorktown's Clerk published a "Notice to Bidders" for "residential garbage and recyclable material collection and disposal" (hereinafter "the Public Contract"), along with the Town's "Instructions to Bidders" (*see* Page 5, Paragraph 14, of the Verified Petition, and Exhibit 1 attached thereto; *see also* Page 3, Paragraph 14, of the Verified Answer of Town Respondents). Pursuant to the Public Contract, Respondent Town of Yorktown sought bids for the collection of garbage, trash, and recyclable material in the Town for a contract period of two years, beginning on January 1, 2023 and ending on December 31, 2024. The

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<sup>2</sup> Hereinafter Petitioner's Memorandum of Law in Support.

<sup>3</sup> The Verified Answer was filed by the Town of Yorktown, Matthew J. Slater, in his capacity as the Town Supervisor and a councilman of the Town Board of Yorktown, Thomas P. Diana, in his capacity as a councilman of the Town Board of Yorktown, Edward Lachterman, in his capacity as a councilman of the Town Board of Yorktown, Sergio Esposito, in his capacity as a councilman of the Town Board of Yorktown, and Luciana Haughwout, in her capacity as a councilwoman of the Town Board of Yorktown (hereinafter the "Verified Answer of Town Respondents").

agreement further provided for an option to extend for three (3) additional one (1) year terms, bringing the potential total term of the Public Contract to five years (*see* Page 5, Paragraphs 15-16, of the Verified Petition, and Exhibit 1 attached thereto; *see also* Page 3, Paragraph 15-16, of the Verified Answer of Town Respondents).

On or about June 24, 2022, Respondent Town of Yorktown received a singular bid for the Public Contract from Petitioner (*see* Page 6, Paragraphs 17 and 19, of the Verified Petition, and Exhibit 2 attached thereto; *see also* Page 3, Paragraphs 17 and 19, of the Verified Answer of Town Respondents, and Page 2 of Town Respondents' Memorandum of Law in Opposition). As only one bid was received,<sup>4</sup> Respondent Town of Yorktown did not open and review Petitioner's first bid. Instead, this bid remained sealed, and was returned to Petitioner (*see* Page 6, Paragraph 20, of the Verified Petition; *see also* Page 3, Paragraph 20 of the Verified Answer of Town Respondents, and Page 3 of Town Respondents' Memorandum of Law in Opposition). Respondent Town of Yorktown subsequently re-bid the Public Contract (*see* Page 6, Paragraph 22, of the Verified Petition, and Page 3, Paragraph 22, of the Verified Answer of Town Respondents).

On or about July 29, 2022, Petitioner submitted a second bid for the Public Contract (*see* Page 6, Paragraph 23, of the Verified Petition, and Exhibit 3 attached thereto; *see also* Page 4, Paragraph 23, of the Verified Answer of Town Respondents). Again, Petitioner's bid was the only bid submitted for the Public Contract,<sup>5</sup> the bid from Petitioner was rejected, and the Town prepared a third bid specification (*see* Page 6, Paragraphs 24-25, of the Verified Petition, and Page 4, Paragraphs 24-25, of the Verified Answer of Town Respondents).

On or about August 25, 2022, Respondent Town of Yorktown received third round bid proposals from Petitioner and Competitive Carting Corp. (hereinafter "Respondent Competitive Carting") (*see* Page 7, Paragraph 26, of the Verified Petition, and Exhibits 4-5 attached thereto; *see also* Page 4, Paragraph 26, of the Verified Answer of Town Respondents). While this round

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<sup>4</sup> Diana L. Quast, the Town Clerk for Respondent Town of Yorktown states that, it was "standard practice" for the Town "to leave Petitioner's bid sealed ... because it was the only bid received for the Public Contract's first round of bids" and, therefore, Petitioner's bid "was left unopened, rejected, and returned to Petitioner" (*see* Page 3, Paragraph 8, of the Affidavit of Diana L. Quast, Town Clerk).

<sup>5</sup> Respondent Town of Yorktown also received a letter from Oak Ridge Waste & Recycling "stating they would not be submitting a bid" (*see* Page 3, Paragraph 10, of the Affidavit of Diana L. Quast, Town Clerk, and Page 3 of Town Respondents' Memorandum of Law in Opposition).

of bids yielded more than a singular offer, Respondent Town of Yorktown chose to reject both bids and to rebid the Public Contract “because [the Town found that] the prices submitted ... were exorbitantly high”<sup>6</sup> (*see* Page 7, Paragraph 30, of the Verified Petition, and Exhibit 6 attached thereto; *see also* Page 4, Paragraph 30, of the Verified Answer of Town Respondents, and Page 3 of Town Respondents’ Memorandum of Law in Opposition).

On September 6, 2022, Respondent Town of Yorktown adopted a resolution to accept a fourth round of bids for the Public Contract on September 29, 2022 (*see* Page 7, Paragraph 31, of the Verified Petition, and Page 4, Paragraph 31, of the Verified Answer of Town Respondents). According to Town Respondents, “[i]n an effort to reduce the costs submitted [ ], the Town added ten bid alternate options to the proposal sheet for the fourth and final round of bidding for the Public Contract” (*see* Page 4 of Town Respondents’ Memorandum of Law in Opposition). Petitioner and Respondent Competitive Carting once again submitted bids (*see* Page 8, Paragraphs 38 and 40, of the Verified Petition, and Exhibits 7-8 attached thereto; *see also*, Page 5, Paragraphs 38 and 40, of the Verified Answer of Town Respondents). In every alternate option for which Petitioner and Respondent Competitive Carting submitted bids, Respondent Competitive Carting’s bids were less expensive (*see* Page 4 of Town Respondents’ Memorandum of Law, and Exhibits 7-8 attached thereto).

On October 19, 2022, Respondent Town of Yorktown awarded the Public Contract to Respondent Competitive Carting because they were determined by the Town to be the lowest bidder (*see* Page 10, Paragraphs 45 and 47, of the Verified Petition, and Exhibit 9 attached thereto; *see also* Page 5, Paragraphs 45 and 47, of the Verified Answer of Town Respondents).

Thereafter, Respondent Competitive Carting entered into a contact with Respondent Town of Yorktown dated December 2, 2022, for the “Collection and Disposal of Residential Refuse” (*see* Page 10, Paragraph 46, of the Verified Petition, and Exhibit 10 attached thereto; *see also* Page 5, Paragraph 46, of the Verified Answer of Town Respondents).

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<sup>6</sup> Petitioner’s third bid “proposed a cost of \$4,125,000.00 for 2023 and \$4,372,500.00 for 2024,” while Respondent Competitive Carting “proposed a cost of \$3,715,000.00 for 2023 and \$3,800,000.00 for 2024” (*see* Page 7, Paragraphs 28-29, of the Verified Petition, and Exhibits 4 and 5 attached thereto).

### Procedural Background

On February 3, 2023, Petitioner, by way of Counsel, commenced the instant Article 78 proceeding, requesting that a judgment be entered “(a) ... annulling and setting aside the award of the Public Contract to Competitive Carting on the grounds that it violates General Municipal Law § 103 and is arbitrary and capricious, not supported by substantial evidence,<sup>7</sup> affected by error of law, and an abuse of discretion; (b) ... annulling and setting aside the award of the Public Contract to Competitive Carting on the grounds that it violates Town Law § 122 and is arbitrary and capricious, not supported by substantial evidence, affected by error of law, and an abuse of discretion; (c) [d]irecting the Town of Yorktown to award the Public Contract to Petitioner as the lowest responsible bidder; (d) [a]warding Petitioner its costs and disbursements in bringing the instant Petition, including reasonable attorney’s fees; and (e) [g]ranteeing Petitioner such other and further relief as the Court deems just, equitable, and proper” (*see* Pages 18-19, WHEREFORE Paragraph, of the Verified Petition, and Page 2 of the Notice of Petition). Petitioner also filed a Memorandum of Law in Support, and Exhibits 1-12.

On April 7, 2023, the Town Respondents, by way of counsel, filed a Verified Answer and raised five objections in point of law. Counsel has also filed an Affirmation with one exhibit attached, Affidavits of Diana L. Quast,<sup>8</sup> Philip Marino,<sup>9</sup> and Luciana Haughwout,<sup>10</sup> and a Memorandum of Law in Opposition.

Also on April 7, 2023, Respondent Competitive Carting, by way of counsel, filed a Verified Answer and raised six affirmative defenses. Counsel has also filed a Memorandum of Law in Opposition.

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<sup>7</sup> Although Petitioner argues that award of the Public Contract to Respondent Competitive Carting is not supported by substantial evidence, that “standard of review is not applicable here as the challenged determination did not arise from a quasi-judicial hearing required by law” and, thus, review “is limited to whether the determination was arbitrary and capricious, or without rational basis in the administrative record” (*Matter of Hack v Town Bd. of Town of Putnam Val.*, 219 AD3d 489, 490 [2d Dept 2023]; *see Matter of Razzano v Remsenburg-Speonk UFSD*, 162 AD3d 1043, 1045 [2d Dept 2018]; *Matter of Jefferson v New York City Bd. of Educ.*, 146 AD3d 779, 780 [2d Dept 2017]; CPLR § 7803 (3), (4)).

<sup>8</sup> Attached to this Affidavit are six exhibits labeled A-F.

<sup>9</sup> Attached to this Affidavit are three exhibits labeled A-C.

<sup>10</sup> Attached to this Affidavit is one Exhibit labeled 1.

On April 28, 2023, Petitioner’s counsel filed the Affirmation of Nicholas R. Caputo in Further Support of the Verified Petition, and a Memorandum of Law in Further Support. Petitioner also filed Exhibits 1-8.

### Analysis

#### Standard of Review

“The applicable standard of review in this matter is whether the challenged determination ‘was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion’” (*Matter of Gibson v Commissioner of the N.Y. State Dept. of Motor Vehs.*, 223 AD3d 667, 667 [2d Dept 2024], quoting *Matter of Gorecki v New York State Dept. of Motor Vehs.*, 201 AD3d 802, 803 [2d Dept 2022]; see *Matter of Van Dunk v Orange-Ulster Bd. of Coop. Educ. Servs. (BOCES)*, 219 AD3d 1434, 1436 [2d Dept 2023]; *Matter of Hack v Town Bd. of Town of Putnam Val.*, 219 AD3d 489, 489 [2d Dept 2023]; *Matter of CHT Place, LLC v New York State Div. of Hous. & Community Renewal*, 219 AD3d 486, 487 [2d Dept 2023]; *Matter of Dobson v New York State Dept. of Motor Vehs.*, 218 AD3d 680, 681 [2d Dept 2023]; *Matter of Andes v Planning Bd. of the Town of Riverhead*, 217 AD3d 669, 670 [2d Dept 2023]; *Matter of Gerber v New York State Dept. of Motor Vehs.*, 129 AD3d 959, 960 [2d Dept 2015]; CPLR § 7803 [3]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*Matter of CHT Place, LLC v New York State Div. of Hous. & Community Renewal*, 219 AD3d at 487, quoting *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; see *Matter of Van Dunk v Orange-Ulster Bd. of Coop. Educ. Servs. (BOCES)*, 219 AD3d at 1436; *Matter of Parsons Manor, LLC v New York State Div. of Hous. & Community Renewal*, 219 AD3d 945, 946 [2d Dept 2023]; *Matter of Forbes & Assoc., LLC v Nassau County Dept. of Consumer Affairs*, 208 AD3d 480, 481 [2d Dept 2022]; *C.F. v New York City Dept. of Health & Mental Hygiene*, 191 AD3d 52, 69 [2d Dept 2020]; *Matter of McCollum v City of New York*, 184 AD3d 838, 839 [2d Dept 2020]).

“A court may not substitute its judgment for that of the board or body it reviews unless the decision under review is irrational, illegal, arbitrary and capricious, or an abuse of discretion” (*Matter of Cipco Boarding Co., Inc. v Town of Hempstead*, 164 AD3d 1235, 1236 [2d Dept 2018]; see *Matter of 278, LLC v Zoning Bd. of Appeals of Town of E. Hampton*, 159 AD3d 891, 892 [2d

Dept 2018]; *Matter of AAA Carting & Rubbish Removal, Inc. v Town of Clarkstown*, 132 AD3d 857, 859 [2d Dept 2015], *lv. denied* 26 NY3d 918 [2016]; *Matter of Dreier v LaValle*, 29 AD3d 790, 791 [2d Dept 2006]; CPLR § 7803 (3)). Therefore, courts “may disturb the [ ] determination only if no rational basis exists for its conclusion” (*Matter of National Compressor Exch., Inc. v New York City Tr. Auth.*, 127 AD3d 867, 867 [2d Dept 2015]; *see Matter of Conduit & Found. Corp. v Metropolitan Transp. Auth.*, 66 NY2d 144, 149 [1985]), and “[i]t is the petitioner's burden to demonstrate that a contract has been wrongly awarded” (*Matter of Cipco Boarding Co., Inc. v Town of Hempstead*, 164 AD3d at 1236; *see Matter of Terraferma Elec. Constr. Co., Inc. v City of New York*, 30 AD3d 607, 607 [2d Dept 2006]).

### Performance Bond Requirement

Petitioner argues that Town Respondents violated General Municipal Law § 103 and Town Law § 122 “by making material changes to Competitive Carting’s Performance Bond Requirement” (*see* Page 5, Point B Heading, of Petitioner’s Memorandum of Law in Support). Specifically, Petitioner avers that “instead of requiring an annual performance bond, as set forth in the Instructions [ ],<sup>11</sup> [the Town] materially modified the requirement for Competitive Carting [by] only requiring monthly performance bonds” (*see* Page 7 of Petitioner’s Memorandum of Law in Support; *see also* Page 15, Paragraph 70, of the Verified Petition). Thus, Petitioner argues that Respondent Competitive Carting gained an “unfair competitive advantage” and asserts that they submitted bids for the Public Contract with the cost of an annual performance bond as a “material part of its projected cost calculation” (*see* Page 14 Heading, and Page 15, Paragraph 71, of the Verified Petition, and Page 7 of Petitioner’s Memorandum of Law in Support).

“A municipality or agency may waive a technical noncompliance with bid specifications if the defect is a mere irregularity and it is in the best interest of the municipality to do so” (*Matter of Hungerford & Terry, Inc. v Suffolk County Water Auth.*, 12 AD3d 675, 676 [2d Dept 2004]; *see*

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<sup>11</sup> Pursuant to the Public Contract, “[f]or the life of the contract, the successful bidder shall provide a performance bond issued by a Surety in an amount equal to no more than 100% of the annual value of the contract. The successful bidder shall provide said performance bond, which shall be provided prior to or concurrent with the delivery of the executed contract. The performance bond for each succeeding year shall be delivered to the Town with proof of full payment of the premium one hundred twenty (120) days prior to the expiration of the current bond” (*see* Exhibit 1, Section 12.1, attached to the Verified Petition).

*Matter of Accadia Site Contr., Inc. v Caruana*, 96 AD3d 1630, 1632 [4th Dept 2012]; *Matter of Varsity Tr. v Board of Educ. of City of N.Y.*, 130 AD2d 581, 581 [2d Dept 1987], *lv. denied* 70 NY2d 605 [1987]). “However, a municipality must reject the bid if the noncompliance is material or substantial” (*Id.*). “Noncompliance is considered material only when it would impair the interests of the contracting public authority or place some of the bidders at a competitive disadvantage” (*Matter of Hungerford & Terry, Inc. v Suffolk County Water Auth.*, 12 AD3d at 676; *see Matter of Cataract Disposal v Town Bd. of Town of Newfane*, 53 NY2d 266, 272 [1981]; *Matter of Varsity Tr. v Board of Educ. of City of N.Y.*, 130 AD2d at 582; *Matter of Donno Co. v Board of Trustees of Vil. of Village of Kings Point*, 115 AD2d 603, 604 [2d Dept 1985]; *Le Cesse Bros. Contr. v Town Bd. of Town of Williamson*, 62 AD2d 28 [4th Dept 1978], *aff’d* 46 NY2d 960 [1979]). Further, a municipality “has the right to determine whether a variance from bid specifications is material or whether to waive it as a mere irregularity, and that determination must be upheld by the courts if supported by any rational basis” (*Matter of Hungerford & Terry, Inc. v Suffolk County Water Auth.*, 12 AD3d at 676; *Matter of Accadia Site Contr., Inc. v Caruana*, 96 AD3d at 1632; *Matter of Vancom-New York, Inc. v County of Nassau*, 203 AD2d 581, 582 [2d Dept 1994]; *Matter of A&S Transp. Co. v County of Nassau*, 154 AD2d 456, 459 [2d Dept 1989]; *Matter of Varsity Tr. v Board of Educ. of City of N.Y.*, 130 AD2d at 582).

In *Matter of Cataract Disposal v Town Bd. of Town of Newfane*, the Court of Appeals held that “the town’s acceptance of a cash deposit [in lieu of a performance bond] ... did not constitute a material departure from the advertised bid specifications” (*Matter of Cataract Disposal v Town Bd. of Town of Newfane*, 53 NY2d at 270). The Court of Appeals further held that deviation from the bid specifications as originally posted was immaterial because the Town was “in no worse position than it would have been had [the successful bidder] posted a third-party surety bond,” and there was “no indication ... that the town’s decision to permit [the successful bidder] to post a cash deposit placed the other bidders at a competitive advantage” (*Id.* at 272).

Likewise, here, Town Respondents acceptance of a monthly performance bond instead of an annual performance bond is not a material deviation from the bid specifications as the Town still received insurance for the work to be performed under the Public Contract. The Town Respondents did not waive the performance bond requirement in its entirety, but simply accepted one form of security over another. Therefore, “the Town retained the ability to waive the ‘technical noncompliance’ of a yearly performance bond as a ‘mere irregularity,’ and instead allow[ed]



Competitive Carting to submit monthly insurance bonds” (see Pages 7-8 of Town Respondents’ Memorandum of Law, citing *Matter of Hungerford & Terry, Inc. v Suffolk County Water Auth.*, 12 AD3d at 676).

Moreover, Respondent Town’s decision to allow for a monthly performance bond in lieu of an annual performance bond is supported by a rational basis as the Town’s determination to award the contract to Respondent Competitive Carting saved the Yorktown taxpayers “a total of \$1,535,832.60 over the five-year term of the contract, or an average of \$307,166.52 per year” (see Page 4, Paragraph 14, of the Affidavit of Philip Marino, and Page 8 of Town Respondents’ Memorandum of Law, citing *Matter of Hello Alert, Inc. v East Moriches Fire Dist.*, 129 AD3d 966, 967 [2d Dept 2015]).

Further, Petitioner does not explain how the monthly bond placed it at a competitive disadvantage. Specifically, Town Respondents argue that Petitioner does not claim or establish “that twelve (12) monthly bonds will be less costly to Competitive Carting than one (1) yearly performance bond would have been,” and “how any such cost differential would have abrogated the \$1.5 million cost differential between Petitioner’s bid number and Competitive Carting’s bid number, such that Petitioner would have been the lowest bidder if its bid had contemplated a monthly performance bond” (see Page 8 of Town Respondents’ Memorandum of Law). Additionally, while Petitioner argues that it “submitted its bids with the cost of an annual performance bond as a material part of its projected cost” (see Page 3 of Petitioner’s Memorandum of Law in Further Support, and Page 15, Paragraph 71, of the Verified Petition), Respondent Competitive Carting also states that they included the cost of a bond in its bid (see Page 7 of Respondent Competitive Carting’s Memorandum of Law).

Finally, assuming *arguendo* that the substitution of an annual performance bond requirement with a monthly bond requirement was not considered a “mere irregularity,” Respondent Competitive Carting’s noncompliance was immaterial because by letter dated April 7, 2023, Respondent stated that they would be “curing” their alleged noncompliance by May 1, 2023 to cover the balance of the 2023 contract term (see Page 8 of Town Respondents’ Memorandum of Law; Exhibit 1 attached to the Affirmation of Adam Rodriguez, Esq., Page 5 of Respondent Competitive Carting’s Memorandum of Law in Opposition, and Exhibits B and C attached to Respondent Competitive Carting’s Verified Answer; see also *Matter of Varsity Tr. v*

*Board of Educ. of City of N.Y.*, 130 AD2d at 582 [holding “Moreover, almost all of the instances of noncompliance were ‘cured’ shortly after the bids were submitted”]).

*Lowest Responsible Bidder*

Next, Petitioner argues that Town Respondents should not have awarded the Public Contract to Respondent Competitive Carting because they were not the “lowest responsible bidder” (*see* Pages 12-14 of the Verified Petition). Specifically, Petitioner argues, inter alia, that: “in 2020, Amico, individually and together with d/b/a ‘Competitive Carting Corp’ filed for Chapter 7 bankruptcy protection;” although the bid was awarded to Competitive Carting, Inc., “there does not appear to be such an entity registered with the New York Secretary of State;” and that “Competitive Carting could not even obtain a 1-year performance bond that was required by the bid specifications” (*see* Pages 9-10 of Petitioner’s Memorandum of Law in Support). Petitioner further argues that the Town’s failure to conduct due diligence raises serious questions regarding Respondent Competitive Carting’s “foundational capabilities,” including its financial solvency, its technical qualifications and capabilities of its infrastructure and personnel, its lack of experience, and its history of performance (*Id.*).

“Pursuant to Town Law § 122 and General Municipal Law § 103, all contracts for public work must be awarded to ‘the lowest responsible bidder’” (*Matter of AAA Carting & Rubbish Removal, Inc. v Town of Southeast*, 17 NY3d 136, 142 [2011]; *see Matter of Cipco Boarding Co., Inc. v Town of Hempstead*, 164 AD3d at 1236; *Matter of AAA Carting & Rubbish Removal, Inc. v Town of Clarkstown*, 132 AD3d at 859; *Matter of Accadia Site Contr., Inc. v Caruana*, 96 AD3d at 1632). “The central purposes of New York’s competitive bidding statutes are the ‘(1) protection of the public fisc by obtaining the best work at the lowest possible price; and (2) prevention of favoritism, improvidence, fraud and corruption in the awarding of public contracts’” (*Matter of AAA Carting & Rubbish Removal, Inc. v Town of Southeast*, 17 NY3d at 142, quoting *Matter of New York State Ch., Inc., Associated Gen. Contrs. of Am. v New York State Thruway Auth.*, 88 NY2d 56, 68 [1996]; *see Matter of Auctions Intl., Inc. v County of Orange*, 196 AD3d 688, 689-690 [2d Dept 2021]; *Matter of Cipco Boarding Co., Inc. v Town of Hempstead*, 164 AD3d at 1236; *Matter of AAA Carting & Rubbish Removal, Inc. v Town of Clarkstown*, 132 AD3d at 859). “In determining the responsibility of a bidder, an administrative agency or municipality should consider the bidder’s skill, judgment and integrity and where good reason exists, the low bid may

be disapproved” (*Matter of Auctions Intl., Inc. v County of Orange*, 196 AD3d at 690, quoting *Matter of AAA Carting & Rubbish Removal, Inc. v Town of Southeast*, 17 NY3d at 143; *Matter of DeFoe Corp. v New York City Dept. of Transp.*, 87 NY2d 754, 763 [1996]; *Matter of Conduit & Found. Corp. v Metropolitan Transp. Auth.*, 66 NY2d at 148). ““Nevertheless, it is a municipality's right to determine whether a bid meets its specifications, and that determination is entitled to deference if it is supported by ‘any rational basis’” (*Matter of Cipco Boarding Co., Inc. v. Town of Hempstead*, 164 AD3d at 1236; see *Matter of Hello Alert, Inc. v East Moriches Fire Dist.*, 129 AD3d at 967; *Matter of Hungerford & Terry, Inc. v Suffolk County Water Auth.*, 12 AD3d at 676; *Matter of AAA Carting & Rubbish Removal, Inc. v Town of Clarkstown*, 132 AD3d at 859).

In order to determine the responsibility of bidders, the Town’s instructions state that “[t]he Town will consider the qualifications of all bidders and may conduct such investigation as it deems necessary to assist in the evaluation of any bid” (see Exhibit 1, Page 8, attached to the Verified Petition). The instructions further provide that “[i]n evaluating a bidder’s responsibility, the Town may consider the following factors: (i) financial resources; (ii) technical qualifications; (iii) experience; (iv) organization, material, equipment, facilities, and personnel resources and expertise (or the ability to obtain them) necessary to carry out the work and to comply with required delivery or performance schedules, taking into consideration other business commitment; (v) a satisfactory record of performance; and (vi) a satisfactory record of business integrity[.]” (*Id.*).

With respect to the first factor, financial resources, Town Respondents argue that while Petitioner claims that the filing of personal bankruptcy by Competitive Carting’s owner demonstrates that the business entity is not a responsible bidder, “[a]n *individual* filing for bankruptcy is unrelated to the responsibility of a *company’s* performance [as] the bidder is the entity furnishing the bid, not the person who completes the bid proposal sheet on the business’s behalf” (emphasis added) (see Page 10 of Town Respondents’ Memorandum of Law). Town Respondents further argue that they “had ample reason to believe that Competitive Carting [was] financially able to perform” (*Id.*), based upon its evaluation of the third and fourth factors, as set forth below.

Specifically, as to the third factor, experience, Town Respondents argue that they “previously held a contract for the disposal of refuse and recycling materials from January 1, 2013 through December 31, 2017 with a waste hauling company that was owned and operated by the

same individual as Competitive Carting,” and that “Competitive Carting is a related entity with the same principal and manager that ran the day-to-day operations under the previous contract” (*see* Pages 10-11 of Town Respondents’ Memorandum of Law, and Page 2, Paragraph 6, of the Affidavit of Philip Marino).

With respect to the fourth factor, organization, material, equipment, facilities, and personnel resources and expertise, necessary to conduct work according to the terms of the Public Contract, Town Respondents opine that “the Town held an executive section meeting, authorized under Section 105 (1) (f) of the Open Meetings Law, to ensure that Competitive Carting had secured the trucks necessary to perform according to the terms of the Public Contract” (*see* Page 11 of Town Respondents’ Memorandum of Law, and Pages 1-2, Paragraphs 3-4, of the Affidavit of Luciana Haughwout). The Town Board claims that it was provided with documentary proof of such securitization in the form of a check and a purchase order (*Id.*; *see also* Exhibit 1 attached to the Affidavit of Luciana Haughwout). Further, “the Town Board confirmed that Competitive Carting had secured the space to store said trucks via a telephone conversation with the space’s landlord” (*see* Page 11 of Town Respondents’ Memorandum of Law, and Page 2, Paragraphs 5, of the Affidavit of Luciana Haughwout).

Moreover, Town Respondents argue that while Petitioner challenges the responsibility or lack thereof of Respondent Competitive Carting, “the Town’s most recent contract for waste hauling was held by AAA Carting and the Town consistently received complaints regarding Petitioner’s performance, of lack thereof” (*see* Page 11 of Town Respondents’ Memorandum of Law, and Page 2, Paragraphs 4-5, of the Affidavit of Philip Marino).<sup>12</sup> Town Respondents further argue that “[w]hen the entity related to Competitive Carting held the contract as the Town’s waste hauler, there were fewer complaints” (*see* Page 11 of Town Respondents’ Memorandum of Law, and Page 2, Paragraph 7, of the Affidavit of Philip Marino).

Finally, Petitioner’s conclusory claims of collusion are insufficient to annul the award of the public contract as “a party challenging a procurement ‘has the burden to demonstrate actual impropriety, unfair dealing or some other violation of statutory requirements’” (*Matter of Hello*

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<sup>12</sup> According to Town Respondents, the residents “routinely took issue with the following, among other things: Petitioner’s trucks leaking oil and/or hopper juice; missing waste and recycling collections; beginning collections prior to the contracted 6 a.m. time; and Petitioner’s employees being rude and abrasive when a resident would call to file a complaint” (*see* Page 2, Paragraph 5, of the Affidavit of Philip Marino, and Exhibit A attached thereto; *see also* Page 11 of Town Respondents Memorandum of Law).

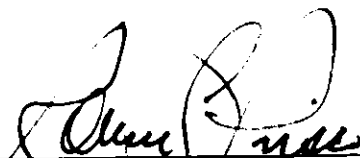
*Alert, Inc. v East Moriches Fire Dist.*, 129 AD3d at 968, quoting *Matter of Acme Bus Corp. v Board of Educ. of Roosevelt Union Free School Dist.*, 91 NY2d 51, 55 [1997]; *Matter of Conduit & Found. Corp. v Metropolitan Transp. Auth.*, 66 NY2d at 149-150; see Page 11 of Petitioner's Memorandum of Law in Support).

#### Conclusion

As Petitioner has failed to demonstrate that the award of the Public Contract to Respondent Competitive Carting was arbitrary and capricious, an abuse of discretion, in violation of a lawful procedure, or affected by an error of law, the Verified Petition is denied.

The foregoing constitutes the Decision, Order and Judgment of this Court. To the extent not addressed, the relief is denied.

Dated: White Plains, New York  
March 18, 2024

  
HONORABLE ROBERT J. PRISCO  
Acting Supreme Court Justice

To: *ALL PARTIES VIA NYSCEF*