

Mazzocchi Wrecking, Inc. v. Dep't of Housing Preservation & Development

OATH Index No. 1296/06, mem. dec. (Mar. 27, 2006)

Prequalified vendor appeal. Motion to remand and for discovery; motion denied.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
MAZZOCCHI WRECKING, INC.

Petitioner

- against -

**DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT**

Respondent

MEMORANDUM DECISION

JOHN B. SPOONER, *Administrative Law Judge*

This is an appeal by petitioner Mazzocchi Wrecking, Inc., a construction company, from a determination of respondent Department of Housing Preservation and Development ("HPD") revoking its prequalified vendor status. The appeal is brought pursuant to section 324(b) of the New York City Charter, the Rules of the Procurement Policy Board, 9 RCNY section 3-10 (m) (5) (nylp.com 2005) ("PPB rules"), and the Rules of Practice of the Office of Administrative Trials and Hearings (48 RCNY §§ 2-01 *et seq.*).

By letter dated November 17, 2005, HPD's Agency Chief Contracting Officer ("ACCO") revoked petitioner's prequalified status for nondisclosure of information on petitioner's February 4, 2004 VENDEX questionnaires and its Certificates of No Change submitted to respondent on November 24, 2004, and June 8, 2005. Petitioner appealed to HPD Deputy Commissioner Kimberly Hardy, who affirmed the ACCO's revocation by letter dated January 30, 2006. Petitioner filed the instant appeal on February 14, 2006, seeking reinstatement to the prequalified list.

Petitioner has filed motions to remand the matter to HPD for a more definite statement of the reason why prequalification was revoked, specifically, directing HPD to make the ACCO and

agency head available for deposition and to direct HPD to provide copies of various documents. On March 9, 2006, respondent submitted a response in opposition to the motion.

In support of the motion, petitioner declares that the January 30, 2006 agency head determination is constitutionally infirm and violates the rules of the City of New York by not stating the reasons upon which the decision is based or addressing factual arguments raised by petitioner in its appeal. Additionally, petitioner argues that discovery is necessary to give petitioner adequate opportunity to prove bias.

I do not find the agency head's January 30, 2006 determination to be legally insufficient. The determination (Pet. Ex. I) articulates the reasons for the revocation: that petitioner failed to disclose in its VENDEX filing (1) that A.G. Mazzocchi, Inc. and Maztec Environmental Inc. were affiliated; (2) that Mazzocchi Wrecking, Inc. was the subject of an investigation; and (3) that violations were issued against Mazzocchi Wrecking, Inc. The determination thus sufficiently states "the reasons upon which the decision is based and informing the vendor of the right to appeal," as required by 9 RCNY section 3-10(m)(4). Hence the motion to remand the matter to the agency is denied.

There is similarly no legal basis for petitioner's motion to require document production or depositions in an appellate proceeding such as this. Pursuant to 48 RCNY section 2-04, all prequalified vendor appeals are to "be decided on the petition, answer and reply, unless the administrative law judge directs further written submissions, oral argument, or an evidentiary hearing, as may be necessary to the decision of the appeal." As this tribunal has held, "[t]he purpose of the appeal at this stage is to permit limited and expedient review of a decision already made by the agency, not to provide for a *de novo* fact-finding proceeding at which that decision will be made by this tribunal anew." *Red Knox Architect v. Dep't of General Services*, OATH Index No. 304/93, mem. dec. (Dec. 10, 1992). I find nothing in petitioner's motion papers that demonstrates why the issues here as to the accuracy of petitioner's VENDEX filing cannot be adequately reviewed on the petition, answer, and other papers filed. The motion for discovery is therefore also denied.

Accordingly, petitioner's motions for remand and discovery are denied in full.

John B. Spooner
Administrative Law Judge

March 27, 2006

APPEARANCES:

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