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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0321-21

IN THE MATTER OF SOUTH JERSEY
TRANSPORTATION AUTHORITY,
RESOLUTION 2021-109 REJECTING
THE BID OF GAUDELLI BROTHERS,
INC. AND AUTHORIZING THE AWARD
OF A CONTRACT TO AP CONSTRUCTION,
INC. OF BLACKWOOD, NEW JERSEY FOR
THE ATLANTIC CITY EXPRESSWAY
FARLEY SERVICE PLAZA NATURAL
GAS CONVERSION PHASE 2 PROJECT.

Argued January 19, 2022 – Decided November 17, 2022

Before Judges Fisher and DeAlmeida.

On appeal from the South Jersey Transportation
Authority, Resolution 2021-109.

John F. Palladino argued the cause for appellant
Gaudelli Brothers, Inc. (Hankin Sandman Palladino
Weintrob & Bell, attorneys; John F. Palladino and
Colin G. Bell, on the briefs).

Katharine A. Fina argued the cause for respondent
South Jersey Transportation Authority (Florio Perrucci
Steinhardt Cappelli Tipton & Taylor, LLC, attorneys;
Louis Cappelli, Jr., and Nicholas A. Sullivan, of
counsel and on the brief).

PER CURIAM

Although Gaudelli Brothers, Inc. submitted the lowest bid in response to the South Jersey Transportation Authority's solicitation of bids on an upcoming project,¹ the Authority gave notice that it would be conducting a responsibility hearing to determine whether Gaudelli had the ability to complete the project satisfactorily and without delay. The Authority's position was based on an assertion that Gaudelli was thirty-two days late completing another project for the Authority "due to Gaudelli's inability to secure equipment."

The responsibility hearing took place before a panel of three members of the Authority's board on May 24, 2021, and the full board later rejected Gaudelli's bid and awarded the contract to the next lowest bidder, AP Construction, Inc.

After Gaudelli unsuccessfully sought reconsideration, it filed this appeal and moved in this court for supplementation of the record and a stay pending appeal. We granted both motions and accelerated the appeal. We now reverse

¹ The Authority was established by the Legislature under the South Jersey Transportation Authority Act, N.J.S.A. 27:25A-1 to -51, to own and operate the Atlantic City Expressway and the Atlantic City International Airport. N.J.S.A. 27:25A-8(a) requires the Authority to publicly advertise and receive bids for "[a]ll purchases, contracts or agreements made pursuant to this [A]ct." The public contract for which it sought bids here concerned a project for converting the Atlantic City Expressway Farley Service Plaza to natural gas.

and remand for further proceedings before the Authority because the manner in which the Authority determined that Gaudelli was not a responsible bidder was inadequate and defies appellate review.

At the responsibility hearing, Gaudelli submitted evidence about its ability to timely complete the project, including evidence that it had already secured the necessary equipment to complete this project, as well as numerous "attestations from multiple public entities about the quality and timeliness of [its] work." No minutes were kept, no transcript prepared, and no record made of what occurred at the hearing. On ending the hearing, the panel advised it would make a report to the full board.

A few months later, the Authority's general counsel provided a legal memorandum summarizing what occurred at the responsibility hearing and analyzing the legal issues for a determination by the full board.

This matter was not placed on the Authority's agenda for its August 18, 2021 meeting. The minutes of that meeting, however, revealed that during the course of the meeting the full board went into an executive session "to discuss personnel matters." Minutes from that executive session state that the vice chairman advised the other board members of his desire to discuss the project in question, and the Authority's counsel updated the board members about the

concerns about Gaudelli and apparently recounted what occurred at the responsibility hearing. Specifically, counsel noted that, during the responsibility hearing, Gaudelli's representative "seemed to deflect all questions" and that the references Gaudelli provided "mostly" concerned work done prior to 2010 and nothing after 2014. Apparently based on these assertions, the Board came to a consensus "that Gaudelli was unwilling to take responsibility for any project insufficiencies." Before adjourning the executive session, the full board decided "to add a resolution to [the] agenda which will reject the bid of Gaudelli Brothers, Inc. and authorize the award of a contract to AP Construction, Inc."

After conclusion of the private executive session and during the public portion of the meeting, the Board officially added Resolution 2021-109 to the agenda for consideration. This resolution stated that the Board, pursuant to N.J.A.C. 19:2-7.2(a)(7), rejected Gaudelli's bid "based on the reliability and credibility of Gaudelli Brothers, Inc. following the prior negative experience . . . and in the best interest of the Authority." With four members absent, the resolution was approved by a unanimous, five-to-zero vote.

After learning of the resolution, Gaudelli wrote to the Authority's executive director, advising "that the Board's vote to adopt the Resolution is invalid and the matter must be reconsidered." This request in particular raised a

potential conflict of interest because the board member who made the motion to pass the resolution, was employed, according to Gaudelli, by a union; Gaudelli asserted that it does not employ union labor and argued that the consequence of the resolution was to give the contract "to a union contractor that . . . employ[s] union sheet metal workers," to the benefit of that one board member.² The Authority declined to reconsider.

In appealing, Gaudelli argues that the Authority acted arbitrarily, unreasonably, and capriciously by (1) violating the Open Public Meetings Act, N.J.S.A. 10:4-6 to -21, in "entering into an executive session without notice to the public of its intent to discuss" the project, and (2) failing "to keep any record of the responsibility hearing," thereby demonstrating that its decision "was based on an objectively inaccurate and incomplete understanding of the evidence presented at the responsibility hearing."

Appellate review of a final agency decision state agency is limited. Russo v. Bd. of Trs., Police & Firemen's Ret. Sys., 206 N.J. 14, 27 (2011). A final agency decision "will be sustained unless there is a clear showing that it is


² Gaudelli also argued that if this board member was excluded, the Authority would have lacked a quorum, because it cannot act without the participation of five members.

arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Id. at 27 (quoting In re Herrmann, 192 N.J. 19, 27-28 (2007)).

In challenging the Authority's determination, Gaudelli has argued a violation of the OPMA, but we also note that these contentions have been asserted as part of Gaudelli's action in lieu of prerogative writs pending in the trial court. We thus decline at this time to determine whether the Authority violated the OPMA. It suffices for our purposes to conclude that the Authority's failure to create or preserve an adequate record of what occurred at the responsibility hearing and its subsequent failure to adequately explain the factual basis for the resolution in question, precludes our ability to say whether the Authority did or did not act arbitrarily, unreasonably, or capriciously in its determination that Gaudelli was not a responsible bidder.

For these reasons, we vacate the resolution and remand the matter to the Authority for further proceedings. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION