



Initially, we note that General Municipal Law § 103(1), which governs bidding for public work contracts “[e]xcept as otherwise provided by an act of the legislature,” does not apply here. Under a law passed in 2014 (Joint Bidding Statute):

“Notwithstanding any general, special or local law or rule or regulation to the contrary, the city of New York may include utility interference work in any contract for a public work project ... If the city of New York undertakes a New York city utility interference work project, the city shall award the contract to the lowest responsible bidder. . .”

(L. 2014 ch 332, § 3[a]; *see Kuzmich v 50 Murray St. Acquisition LLC*, 34 NY3d 84, 92 [2019]). The question, then, is whether the City’s joint bidding provisions complained of here (JB 4.0), issued November 9, 2021 and revised February 11, 2022, comply with the Joint Bidding Statute.

We find that it does. No limitation on the City’s ability to set utility work prices is evident from the general language chosen by the legislature authorizing the City to jointly bid contracts that include utility work (*see Matter of New York County Lawyers’ Assn. v Bloomberg*, 19 NY3d 712, 722 [2012]). Additionally, the fixed price scheme, which is applicable to all bidders, ensures that the City will “award the contract to the lowest responsible bidder” even when considering only the public work portion, since it eliminates variations in the utility work portion of bids (L 2014 ch 322 § 3[a]).

Petitioners proffered self-serving affidavits from their corporate officers claiming, with no documentary support, that they inflated the public work portions of their bids to make up for what they allege are unreasonably low fixed utility prices (*see e.g. Matter of Brennan v Kelly*, 111 AD3d 407, 408 [1st Dept 2013]). Even crediting those affiants, the evidence demonstrates that the lowest bids on each of the four projects at issue were

well below the City's estimated total cost, two of the petitioners submitted the lowest bid on a contract, and there is no dispute that the lowest bidders were awarded contracts.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: November 2, 2023

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is fluid and cursive, with the first name being the most prominent.

Susanna Molina Rojas  
Clerk of the Court