

#258-09 (OAL Decision: Not yet available online)

D & B ENGINEERING OF NEW JERSEY, INC.	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE SHORE REGIONAL HIGH SCHOOL DISTRICT, MONMOUTH COUNTY AND TORMEE CONSTRUCTION, INC.,	:	DECISION
	:	
RESPONDENTS.	:	

SYNOPSIS

D & B Engineering of New Jersey challenged the respondent Board's award of a contract for utility upgrades to respondent Tormee Construction, based upon a bid which was allegedly not the lowest responsive and responsible bid. Respondents assert that the petitioner lacks standing to bring this action as it is not a bidder but rather a vendor of specific equipment, and that the petition was untimely filed. The petitioner filed a motion for emergent relief.

The ALJ found, *inter alia*, that: petitioner is a vendor of heating, ventilation and air conditioner (HVAC) equipment and the sole supplier of Fafco brand equipment in the State of New Jersey; the respondent Board's bid specifications indicated a Fafco product, however, a bid addendum provided for an alternate product by another manufacturer; respondent Tormee Construction was awarded the contract as lowest responsible bidder utilizing the alternate bid specification; and petitioner's challenge was clearly out of time pursuant to *N.J.S.A. 18A-15(e)*. The ALJ denied the emergent relief motion, and issued an Initial Decision dismissing the petitioner for lack of standing and on timeliness grounds.

Upon full review and consideration of the record, the Commissioner adopted the Initial Decision as the final decision in this matter.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.
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August 13, 2009

OAL DKT. NO. EDU 8127-09
AGENCY DKT. NO. 131-6/09

D & B ENGINEERING OF NEW JERSEY, INC.	:	
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PETITIONER,	:	
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties filed no exceptions to the Initial Decision.

Upon full consideration, the Commissioner concurs with the Administrative Law Judge that this matter is appropriately dismissed as 1) petitioner lacks standing to challenge the Board's bid award of a contract to Tormee Construction, Inc. which proposed utilizing Calmac rather than Fafco equipment and 2) its challenge to the bid specifications was untimely.

Accordingly, the recommended decision of the OAL is adopted for the reasons detailed therein and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: August 13, 2009

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* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).