

AP-BOYD, INC., A NEW JERSEY CORPORATION,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP OF MIDDLETOWN, MONMOUTH COUNTY AND FRANK C. GIBSON, INC.,	:	DECISION
RESPONDENTS.	:	
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SYNOPSIS

Petitioning contractor and unsuccessful bidder alleged the Board did not award contract for plumbing and fire protection to the lowest bidder. The Board contended petitioner did not comply with a statutory disclosure requirement and sought award of counsel fees.

The ALJ found that the Board was correct in rejecting petitioner’s bid, accepting the next lowest bid from Respondent Gibson and awarding the contract to Gibson. The ALJ determined that failure to comply with the statutory disclosure requirement was a material defect in the bid requiring its rejection. *N.J.S.A. 52:25-24.2*. Moreover, the ALJ concluded that, pursuant to the provisions of the Instructions to Bidders, petitioner was obligated to reimburse the Board the legal fees and costs it incurred in defending against petitioner’s protest. The ALJ ordered the reimbursement.

The Commissioner adopted the findings and determination in the Initial Decision as his own and directed petitioner to reimburse the Board in the amount of \$4,453.21 for legal fees and costs. The Petition was dismissed.

OAL DKT. NO. EDU 4723-02
AGENCY DKT. NO. 170-6/02

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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 his full and independent review, the Commissioner concurs with the determination of the Administrative Law Judge (ALJ) that petitioner's failure to submit a timely stockholder or partnership disclosure statement, pursuant to *N.J.S.A. 52:25-24.2*, rendered its bid materially defective and, therefore, the Board was correct in rejecting petitioner's bid, accepting the next lowest bid and awarding the plumbing and fire protection contract to this company. The Commissioner, similarly, agrees with the ALJ that the within Board is entitled to a recovery of legal fees and costs, pursuant to the provisions of the Instructions to Bidders, in the amount of \$4,453.21.

Accordingly, the recommended decision of the OAL is adopted for the reasons stated therein. Petitioner is directed to reimburse the Board, in the amount of \$4,453.21, for

legal fees and costs incurred in defending against petitioner's protest here. The instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: June 9, 2003

Date of Mailing: June 9, 2003

* This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*