

BOARD OF EDUCATION OF THE :
TOWNSHIP OF NUTLEY :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
 :
 V. : DECISION
 :
 STATE OF NEW JERSEY, DEPARTMENT :
 OF EDUCATION, OFFICE OF FISCAL :
 ACCOUNTABILITY AND COMPLIANCE :
 :
 RESPONDENT. :
 :
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SYNOPSIS

Petitioner challenged respondent’s determination that petitioner improperly failed to solicit bids in conformity with the Public School Contracts Law, *N.J.S.A. 18A:18A-1 et seq.*, when it awarded a contract for construction management to Tri-Tech Engineering (Tri-Tech) that improperly relied upon the “Extraordinary Unspecifiable Services” (EUS) exception contained in that statute, and additionally exceeded the multi-year provision of *N.J.S.A. 18A:18A-42*. Petitioner denies that its use of the EUS exception was improper, and asserts an appropriate exception to the two-year contract limitation pursuant to *N.J.S.A. 18A:18A-42(k)*. Respondent argued that – regardless of whether or not the EUS exception applies in this case – the January 2001 contract with Tri-Tech, by law, expired on or about January 31, 2003 and any further payments to Tri-Tech beyond that date were inappropriate as they were made without the solicitation of bids as required pursuant to *N.J.S.A. 18A:1A-4*. Respondent demanded repayment of \$326,004.47 in state aid expended by the petitioner to pay Tri-Tech after the expiration of the contract in 2003.

The ALJ found, *inter alia*, that: this dispute involves the question of whether the legality of petitioner’s actions in regard to Tri-Tech should be based upon the January 2001 contract, or upon the absence of any legally effective contract subsequent to January 31, 2003; the long-range project which was the subject of the January 2001 contract and the two defeated 2002 voter referenda was not in any sense the same project as those that were later offered to and approved by voters in three subsequent referenda; therefore the multi-year exception for “any single project” pursuant to *N.J.S.A. 18A:18A-42(k)* cannot be used to defend the length of Nutley’s January 2001 contract with Tri-Tech and, as such, the petitioner had no effective contract with Tri-Tech after the expiration of 24 months following January 31, 2001; petitioner continued to treat the 2001 contract as if it were still effective, and made substantial payments to Tri-Tech under the terms of that contract after it expired in January 2003; and petitioner’s failure to bid a new contract encompassing the terms of the limited project as approved by voters in 2003, or at least to authorize a new contract with Tri-Tech or some other company utilizing the EUS exception, led to a violation of the bidding statute. Accordingly, the ALJ concluded that respondent is entitled to recoup state aid in the amount of \$326,004.47.

Upon full review and consideration, the Commissioner concurred with the ALJ’s findings of fact and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter. Accordingly, he granted summary decision to the respondent and ordered that petitioner to return \$326,004.47 in state aid. The petition was dismissed.

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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OAL DKT. NO. EDU 1662-10
AGENCY DKT. NO. 371-12/09

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The Commissioner has reviewed the record of this matter and the Initial Decision of the Office of Administrative Law (OAL) on the parties' cross-motions for summary decision. Petitioner (Nutley) filed exceptions, and the respondent (OFAC) filed a reply thereto as provided by *N.J.A.C. 1:1-18.4*.

Upon his considered review, the Commissioner concurs with the Administrative Law Judge (ALJ) that this matter is ripe for summary decision as there are no genuine issues of material fact to resolve. For the reasons cogently presented in the ALJ's decision, the Commissioner agrees that respondent OFAC did not act arbitrarily, capriciously or unreasonably when it determined that the contract Nutley Board of Education had entered into with Tri-Tech for additions and restorations to its seven schools exceeded the 24-month limitation for such contracts, in violation of *N.J.S.A. 18A:18A-42*.

Consequently, the Nutley Board of Education is ordered to return \$326,004.47, the state aid portion of the amount of money the Board paid to Tri-Tech after their contract expired in 2003.

Accordingly, summary disposition is granted to the respondent and the petition is dismissed.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 27, 2012

Date of Mailing: February 27, 2012

¹ 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*)