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OAL DKT. NO. EDU 1639-05 (http://lawlibrary.rutgers.edu/oal/html/initial/edu01639-05_1.html)

AGENCY DKT. NO. 448-12/04

NORBERT POWELL, o/b/o ROMEO'S EXOTIC JUICE, INC.,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF NEWARK, ESSEX COUNTY,	:	DECISION
	:	
RESPONDENT.	:	
	:	
_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions, dated July 7, 2006 and filed July 11, 2006 - in response to an Initial Decision which was mailed to the parties on June 16, 2006 - were untimely pursuant to *N.J.A.C.* 1:1-18.4 and, thus, these and the District's reply thereto are not considered herein.

Upon an independent and comprehensive review of the record, the Commissioner, giving due deference to the Administrative Law Judge's (ALJ) credibility determinations,¹ agrees with her conclusion that petitioner has failed to sustain his burden of establishing that the District acted in an arbitrary or capricious manner when it cancelled petitioner's contract with the school district. The Commissioner further concurs with the ALJ that even assuming, *arguendo*,

¹ The Commissioner "may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record." *N.J.S.A.* 52:14B-10(c)

that petitioner's allegation that the District's bid specifications were violative of *N.J.S.A.* 18A:18A-15 was properly before the Commissioner,² *N.J.S.A.* 18A:18A-15 clearly specifies:

Any prospective bidder who wishes to challenge a bid specification shall file such challenges in writing with the purchasing agent no less than three business days prior to the opening of the bids. Challenges filed after that time shall be considered void and having no impact on the board of education or the award of a contract. (emphasis supplied)

Therefore, any challenge of petitioner to the specifications is untimely and must be dismissed as a matter of law.

Accordingly, the recommended decision of the OAL is adopted for the reasons stated therein and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 19, 2006

Date of Mailing: July 19, 2006

² Such a challenge to the bid specifications was neither pled in the Petition of Appeal nor was it listed in the ALJ's Prehearing Order as an issue for resolution. Rather, this claim was raised for the first time in a submission made by petitioner shortly before the hearing.

³ 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.*