

PRITCHARD INDUSTRIES, INC., :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF WYCKOFF, :
 BERGEN COUNTY, AND :
 GCA SERVICES GROUP, INC., :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner Pritchard Industries (Pritchard) challenged the rejection of its bid by respondent Board for custodial and management services for the period from July 1, 2009 through June 30, 2011, and sought to enjoin the performance of the contract awarded to GCA Services Group. Pritchard had been engaged by the Board prior to bidding to provide personnel to assist in the transition from having custodial and building maintenance services performed by direct employees to outsourcing these services. The Board concluded that although Pritchard's bid was the lowest, it was defective and non-responsive. At issue is whether the alleged omissions and defects in the Pritchard bid were material and non-waivable.

The ALJ found, *inter alia*, that: the alleged non-conformities or deviations in Pritchard's bid were not material and were waivable, as they reflected the reality that Pritchard was already a presence in the Wyckoff district, and was thereby able to accelerate the performance of startup/transition tasks before the contemplated start date; such waivers would not adversely affect the competitive bidding by placing Pritchard in a position of advantage over other bidders; and the Board should be enjoined from awarding the contract to GCA. The ALJ granted Pritchard's petition, ordered that performance of the contract being let by the Board to GCA Services Group be enjoined and restrained; and ordered that the Board award the contract to Pritchard Industries as the lowest responsible bidder, in accordance with *N.J.S.A. 18A:18A-37*.

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

<p>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.</p>

OAL DKT. NO. EDU 5757-09
AGENCY DKT. NO. 104-5/09

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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 did not file exceptions to the Initial Decision.

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) – for the reasons comprehensively detailed in his decision – that the alleged non-conformities or deviations in Pritchard Industries’ bid proposal for the provision of Custodial and Management Services upon which the Board relied to reject its proposal were not material and, therefore, were waivable; that the effect of such waivers would not deprive the Board of its assurance that the contract will be entered into, performed and guaranteed according to its specific requirements; and that the waivers would not have frustrated the policies underlying competitive bidding by placing Pritchard in an advantageous position over other bidders or by otherwise undermining the necessary standard of competition. Consequently, the Commissioner is in full accord with the ALJ’s conclusion that Pritchard Industries, as the lowest responsible bidder, should be awarded this contract.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. It is hereby ordered that the performance of the Custodial and Management Services contract awarded to GCA Services Group be enjoined and restrained and that such contract shall instead be awarded to Pritchard Industries, Inc., as the lowest responsible bidder, in accordance with *N.J.S.A. 18A:18A:37*.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: July 14, 2009

Date of Mailing: July 14, 2009

* 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*).