

DECISION OF THE BOARD OF EDUCATION OF CARROLL COUNTY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

¹ The State Board has long held that there is no need for an evidentiary hearing or oral argument when, as in this case, the appeal does not involve an alleged liberty or property interest deprivation thereby invoking the protections of the Fourteenth Amendment Due Process Clause. See Anderson and Blake v. Board of Education of Prince George's County, 5 Op. MSBE 415, 417 (1989); Bricker v. Frederick County Board of Education, 3 Op. MSBE 99 (1982); Moon v. Board of Education of Somerset County, MSBE Op. No. 12-26, at 5 (2012)(holding that “[t]here is nothing in Maryland law or regulation that confers upon a potential contractor a protected property interest in a contract that has not been awarded to him.”). For this reason, and because we do not believe that a hearing would aid us in the decision-making process, we decline to conduct an evidentiary hearing or oral argument on this appeal but shall render a decision based upon the written record presented to us by the [redacted] and the Superintendent’s Designee.

bid process only for the purchase of buildings, improvements, supplies, or equipment costing more than \$25,000).

During recent years, however, both the CCPS and the HCPSS developed concerns over billing irregularities that required the expenditure of time and effort of the staffs of both respective school systems in order to resolve. Consequently, on May 24, 2012, the Supervisors of Athletics for the CCPS and the HCPSS issued a joint letter in which they sought bids for officiating services for field hockey and girls' lacrosse games during the 2012-2013 school year. Nothing in the contract for the 2011-2012 school year indicated that the would be selected or was otherwise entitled to provide these services for the 2012-2013 school year.

The CCPS and the HCPSS thereafter initiated a joint solicitation process in which the purchasing supervisors of each school system jointly evaluated the merits of the bid responses but whereby each respective school system reserved the right to make its own independent decision as to which bidder it would select. The and the were the only two entities that submitted proposals.

On or about August 9, 2012, CCPS Superintendent Stephen H. Guthrie decided to award only the field hockey officiating contract pursuant to the above described procurement process. On August 9, 2012, the decision was made to award the 2012-2013 field hockey officiating contract to the At that time, the Superintendent declined to award the girls' lacrosse officiating contract to either the or the

² The filed an appeal of this award with the Board of Education of Carroll County. On November 14, 2012, by written decision, the Board dismissed the appeal of the field hockey officiating contract award as moot because the field hockey season had already been concluded.

, opting instead to award the 2012-2013 girls' lacrosse officiating contract pursuant to an informal award process after further consideration.³

During the period between August 9, 2012, and the Superintendent's subsequent award of the officiating contract for girls' lacrosse to the on November 2, 2012, the Superintendent considered the following additional information. (1) The Superintendent considered that there had been no issues with performance of its duties during the 2012 field hockey season and that the CCPS Supervisor of Athletics was satisfied with the quality and responsiveness of the . (2) The Superintendent considered the data collected from a survey conducted at the end of the 2012 sports season. (3) The Superintendent obtained and considered information from regarding the qualifications of individuals officiating for the and determined that a substantial number of individuals who had officiated for the the previous year would be officiating for the in 2013. (4) The Superintendent confirmed the proposed rates for officiating the 2013 girls' lacrosse season with the and determined that the was able to reduce its rates to a level comparable to the rates proposed by the during the previous bidding process.

In support of their appeal to the Board, the claims that the award of the 2012-2013 girls' lacrosse officiating contract is subject to the procurement procedures set forth in the joint solicitation which was issued by the CCPS and the HCPSS on May 24, 2012, and that the should have been awarded the contract based on its proposed costs and its qualifications to provide the requested services. For the reasons set forth below, the Board has determined that the allegation of error has no merit.

³ As noted above, the award of the officiating contract for the 2012-2013 girls' lacrosse season was not subject to the competitive bidding requirements set forth in Md. Code Ann., Educ. § 5-112.

At the core of the arguments is the contention that the bidding process initiated on May 24, 2012, controls the Superintendent's award of the 2012-2013 girls' lacrosse officiating contract. This argument, however, ignores that the Superintendent concluded that process on August 9, 2012, when he awarded the field hockey contract to the [redacted] and declined to make an award of the girls' lacrosse contract. From this point onward, the Superintendent was no longer bound to comply with the procurement process set forth in the May 24, 2012, solicitation. Instead, the Superintendent was free to procure a vendor to perform the contract based on his best judgment, subject to this Board's review on appeal to determine whether the decision was illegal, arbitrary, or unreasonable.

Even assuming, *arguendo*, that the Superintendent's November 2, 2012, decision to award the contract to the [redacted] was subject to the procedures set forth in the May 24, 2012, solicitation, the [redacted] has failed to demonstrate that the award to the [redacted] was arbitrary, unreasonable, or illegal. The [redacted] in its appeal contends that dispositive weight should be given to the costs and qualifications set forth in the [redacted] and the [redacted] respective bid proposals. However, what the [redacted] argument ignores is that cost and qualifications comprised only 75% of the total evaluation criteria. The remaining 25% of the total evaluation criteria was comprised of each bidder's service description and business plan. Contrary to the [redacted] assertions that cost and qualifications are dispositive, when the Board examined the overall rating of both proposals by the CCPS and the HCPSS it became clear (1) that both the HCPSS and the CCPS rated the [redacted] proposal with a higher overall score, (2) the CCPS and the HCPSS both ranked the [redacted] proposal as high or higher than the [redacted] proposal in the area of qualifications, and (3) the only criteria which the [redacted] achieved a higher

rating on than the was cost. (See, Evaluation Form attached as Exhibit A to Appeal Packet). The contention that cost must necessarily be the dispositive and controlling factor in the procurement process runs counter to Maryland State Board of Education precedent. See, Bates Trucking and Trash Removal, Inc. v. Board of Education of Montgomery County, MSBE Op No. 06-15, at 5 (2006)(holding that a contract award was not rendered arbitrary by local board's decision to consider other factors besides cost); Robinson Lighting v. Board of Education of Howard County, 90 Md. App. 515, 522-23 (1992)(holding that even when making procurements subject to the competitive bidding requirements of § 5-112 of the Education Article, local board have discretion to determine the lowest responsible bidder).

To be clear, the Board has not determined that the procurement at issue was subject to the procedure outlined in the May 24, 2012, solicitation. Instead, the Board has determined that the procurement at issue fell within the Superintendent's sound discretion. As such the Board is charged with determining whether the Superintendent's decision was arbitrary, unreasonable or illegal within the meaning of COMAR 13A.01.05.05A. A decision may be arbitrary or unreasonable if it is either contrary to sound educational policy or a reasoning mind could not have possibly reached the same result. COMAR 13A.01.05.05B. A decision may be illegal if it is unconstitutional, exceeds statutory authority or jurisdiction, misconstrues the law, results from unlawful procedure, constitutes an abuse of discretion, or is otherwise affected by any other error of law. COMAR 13A.01.05.05C.

In this matter has alleged that the decision to award the the contract at issue was (1) illegal based on the failure to comply with the procurement procedures set forth in the May 24, 2012, solicitation and (2) arbitrary or unreasonable

based on an assessment of the _____ and the _____ proposals. For the reasons discussed above, the Board has determined that the Superintendent's decision was not illegal because the Superintendent was not bound to award the 2012-2013 girls' lacrosse officiating contract in conformity with the procurement procedures set forth in the May 24, 2012 solicitation. Furthermore, the Superintendent was not bound by any applicable local board policy, state regulation, or statute to make his subsequent contract award in conformity with those procedures.

Contrary to the _____ assertion, the Superintendent's decision to award the contract to _____ was neither arbitrary nor unreasonable; the record in this matter clearly indicates that the Superintendent considered information and data from a wide variety of sources including the previously submitted proposals when determining whether to award the contract to the _____ or the _____. Based on the diverse and extensive information the Superintendent considered in making this decision and the reasonable inferences he drew from the information, the Board can discern no basis upon which it might determine that the decision to award the contract to the _____ was either contrary to sound educational policy or a decision no reasoning mind could reach. Although not dispositive, the Board notes that the HCPSS reached an identical decision through the competitive bidding process the _____ erroneously asserts is controlling.

DECISION

For the reasons discussed above, this Board affirms the decision of Superintendent Stephen H. Guthrie to award the 2012-2013 girls' lacrosse officiating contract to the _____. Should it choose to do so, the _____ may appeal this decision to the Maryland State

Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201, in writing,
within thirty days of the date of this decision.

2-27-13
Date

Gary W. Bauer
Gary W. Bauer, Vice President

James L. Doolan
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Jennifer A. Seidel
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Dissenting:

Barbara J. Shreeve
Barbara J. Shreeve, President