

ASSEMBLY, No. 466

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ROMA and Assemblywoman HECK

1 AN ACT concerning public school contracts and amending  
2 N.J.S.18A:18A-31 and 18A:18A-37.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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7 1. N.J.S.18A:18A-31 is amended to read as follows:

8 18A:18A-31. Where there have been developments subsequent to  
9 the qualification and classification of a bidder which in the opinion of  
10 the board of education would affect the responsibility of the bidder,  
11 information to that effect shall forthwith be transmitted to the  
12 department for its review and reconsideration of the classification.  
13 Before taking final action on any such bid, the board of education  
14 concerned shall notify the bidder and give him an opportunity to  
15 present to the department any additional information which might tend  
16 to substantiate the existing classification ; except that the board of  
17 education may take final action on the bid if the board has had a prior  
18 negative experience with the bidder pursuant to the provisions of  
19 N.J.S.18A:18A-37.

20 (cf: N.J.S.18A:18A-31)

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22 2. N.J.S.18A:18A-37 is amended to read as follows:

23 18A:18A-37. All purchases, contracts or agreements which require  
24 public advertisement for bids shall be awarded to the lowest  
25 responsible bidder; except that a board of education shall not be  
26 required to award a purchase, contract or agreement to the lowest  
27 bidder if the board, because of a prior negative experience with that  
28 bidder, determines that it is not in the best interests of the school  
29 district to do so. As used in this section, "prior negative experience"  
30 shall include the following: the bidder has been found liable in an  
31 adjudicated case, through either a court proceeding or arbitration, for  
32 noncompletion or failing to complete work in a timely manner or

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 unsatisfactory job performance for work performed under a prior  
2 contract with the board; the board of education determines that the  
3 bidder did not complete work under a prior contract with the board in  
4 a timely and satisfactory manner; the board of education was required  
5 to withhold monies due the contractor to utilize the services of another  
6 contractor to correct or complete the project; or the liquidated damage  
7 clause of a contract had to be invoked against the contractor.

8 Prior to the award of any other purchase, contract or agreement,  
9 the contracting agent shall, except in the case of the performance of  
10 professional services, solicit quotations, whenever practicable, on any  
11 such purchase, contract or agreement the estimated cost or price of  
12 which is 20% or more of the amount set forth in, or calculated by the  
13 Governor pursuant to, N.J.S.18A:18A-3 and the award thereof shall  
14 be made, in accordance with N.J.S.18A:18A-3 or N.J.S.18A:18A-4,  
15 as the case may be, on the basis of the lowest responsible quotation  
16 received, which quotation is most advantageous to the board of  
17 education, price and other factors considered; provided, however, that  
18 if the contracting agent deems it impractical to solicit competitive  
19 quotations in the case of extraordinary unspecifiable service, or, in the  
20 case of such or any other purchase, contract or agreement awarded  
21 hereunder, having sought such quotations determines that it should not  
22 be awarded on the basis of the lowest quotation received, the  
23 contracting agent shall file a statement of explanation of the reason or  
24 reasons therefor, which shall be placed on file with said purchase,  
25 contract or agreement.

26 (cf: P.L.1983, c.171, s.6)

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28 3. This act shall take effect immediately.

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31 STATEMENT

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33 This bill provides that a board of education shall not be required to  
34 award a contract to the lowest bidder if the board, because of a prior  
35 negative experience with that bidder, determines that it is not in the  
36 best interest of the district to do so. The bill defines "prior negative  
37 experience" to include the following: the bidder was found liable in an  
38 adjudicated case for noncompletion or unsatisfactory job performance  
39 for work performed under a prior contract with the board; the board  
40 of education determines that the bidder did not complete work under  
41 a prior contract with the board in a timely and satisfactory manner; the  
42 board of education was required to withhold monies due the  
43 contractor to utilize the services of another contractor to correct or  
44 complete the project; or the liquidated damage clause of a contract had  
45 to be invoked against contractor.

46 Under existing law, a board of education is required to provide

1 information to the Department of Education on a contractor's  
2 performance at the time of the completion of the contract. This  
3 information is to be reviewed and used in any reconsideration of the  
4 bidder's qualification as a prospective bidder. However, before a  
5 board of education can take any final action on a bid submitted by a  
6 bidder with whom the board may have had a negative experience, the  
7 board must notify the bidder and give him an opportunity to present  
8 information to the department. The provisions of this bill continue to  
9 afford the bidder an opportunity to present information to the  
10 department to substantiate the bidder's classification, but allow the  
11 board of education to take final action on the bid if the board has had  
12 a prior negative experience with the bidder pursuant to the provisions  
13 of N.J.S.18A:18A-37.

14 The committee amended the bill to define "prior negative  
15 experience."

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21 Allows board of education to disqualify a bidder if the board has had  
prior negative experience with that bidder.