

[First Reprint]

ASSEMBLY SUBSTITUTE FOR  
SENATE, No. 852

STATE OF NEW JERSEY

ADOPTED MARCH 13, 1997

Sponsored by Senators CARDINALE, MARTIN,  
Assemblywoman HECK and Assemblyman TALARICO

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  
24 require public advertisement for bids shall be awarded to the lowest  
25 responsible bidder; except that a board of education may take final  
26 action <sup>1</sup>[without notifying the bidder and without holding a hearing]<sup>1</sup>

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate floor amendments adopted May 22, 1997.

1 and shall not be required to award a purchase, contract or agreement  
2 to the lowest bidder if the board, because of a prior negative  
3 experience with that bidder, determines that it is not in the best  
4 interests of the school district to do so. <sup>1</sup>Such final action shall be  
5 taken in a public meeting, and the bidder being disqualified shall have  
6 an opportunity to appear and offer testimony. The bidder shall be  
7 notified of the date, time and place of the public meeting.<sup>1</sup> As used in  
8 this section, "prior negative experience" shall include the following:  
9 the bidder has been found liable in an adjudicated case, through either  
10 a court proceeding or arbitration, for noncompletion or failing to  
11 complete work in a timely manner or unsatisfactory job performance  
12 for work performed under a prior contract with the board; the board  
13 of education was required to withhold monies due the contractor to  
14 utilize the services of another contractor to correct or complete the  
15 project; or the liquidated damage clause of a contract had to be  
16 invoked against the contractor.

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

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

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37 3. This act shall take effect immediately.

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