

18A:18A-5

LEGISLATIVE HISTORY CHECKLIST

NJSA: 18A:18A-5, 18A:33-3, 18A:18A-42.1 (School contracts--food services--exempt from bidding requirements)

LAWS OF: 1985

CHAPTER 527

BILL NO: S1657

Sponsor(s): Ewing

Date Introduced: May 14, 1984

Committee: Assembly: Education

Senate: Education

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: January 13, 1986

Senate: February 28, 1985

Date of Approval: January 21, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

Attorney General Opinion, mentioned in statements--attached.

[OFFICIAL COPY REPRINT]

SENATE, No. 1657

STATE OF NEW JERSEY

INTRODUCED MAY 14, 1984

By Senator EWING

Referred to Committee on Education

AN ACT concerning the provision of food to school pupils and amending N. J. S. 18A:18A-5, N. J. S. 18A:33-3 and P. L. 1981, c. 186.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 18A:18A-5 is amended to read as follows:

2 18A:18A-5. Exceptions to requirement for advertising. Any
3 purchase, contract or agreement of the character described in
4 N. J. S. 18A:18A-4 may be made, negotiated or awarded by the
5 board of education by resolution at a public meeting without public
6 advertising for bids and bidding therefor if

7 a. The subject matter thereof consists of:

8 (1) Professional services;

9 (2) Extraordinary unspecifiable services which cannot reason-
10 ably be described by written specifications, which exception as to
11 extraordinary unspecifiable services shall be construed narrowly in
12 favor of open competitive bidding where possible and the State
13 Board of Education is authorized to establish rules and regula-
14 tions limiting its use in accordance with the intention herein
15 expressed; and the board of education shall in each instance state
16 supporting reasons for its action in the resolution awarding the
17 contract for extraordinary unspecifiable services;

18 (3) The doing of any work by employees of the contracting unit;

19 (4) The printing of all legal notices; and legal briefs, records
20 and appendices to be used in any legal proceeding in which the
21 contracting party may be a party;

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted January 28, 1985.

22 (5) Textbooks, copyrighted materials, kindergarten supplies,
23 and student produced publications and services incidental thereto;

24 (6) Food *services and* supplies, including food supplies for home
25 ***[economic]*** *economics** classes, when purchased pursuant to
26 rules and regulations of the State board and in accordance with the
27 provisions of N. J. S. 18A:18A-6;

28 (7) The supplying of any product or the rendering of any service
29 by a public utility, which is subject to the jurisdiction of the Board
30 of Public **[Utility Commissioners]** *Utilities*, in accordance with the
31 tariffs and schedules of charges made, charged and exacted, filed
32 with said board;

33 (8) The printing of bonds and documents necessary to the issu-
34 ance and sale thereof by a board of education;

35 (9) Equipment repair service if in the nature of an extraordinary
36 unspecifiable service and necessary parts furnished in connection
37 with such services;

38 (10) Insurance, including the purchase of insurance coverage
39 and consultant services;

40 (11) Publishing of legal notices in newspapers as required by
41 law;

42 (12) The acquisition of artifacts or other items of unique in-
43 trinsic, artistic or historic character;

44 (13) Election expenses, including advertising expenses inci-
45 dental thereto;

46 (14) Electronic data processing service obtained from another
47 board of education;

48 (15) Driver education courses provided by licensed driver edu-
49 cation schools***[.]*** *,*

49A **(16) Performance of work or services or the furnishing of ma-*
49B *terials, supplies or equipment for the purpose of conserving energy*
49C *in buildings owned by any local board of education, the entire price*
49D *of which shall be established as a percentage of the resultant sav-*
49E *ings in energy costs.**

50 b. It is to be made or entered into with the United States of
51 America, the State of New Jersey, county or municipality or any
52 board, body, officer, agency or authority or any other state or sub-
53 division thereof.

54 c. The board of education has advertised for bids pursuant to
55 N. J. S. 18A:18A-4 on two occasions and has received no bids in
56 response to its advertisement and, after reasonable inquiry, it is
57 determined that no board, body, officer, agency or authority of the
58 United States, or of the State of New Jersey or of any county or
59 municipality in which the board of education is located is willing

60 and able to perform any work or furnish or hire any materials or
61 supplies in conformity with the specifications of the board of
62 education. Any such contract or agreement entered into pursuant
63 to this subsection c. may be made, negotiated or awarded only upon
64 adoption of a resolution by the affirmative vote of two-thirds of
65 the full membership of the board of education at a meeting thereof
66 authorizing such a contract or agreement. Any amendment or
67 modification of the terms, conditions, restrictions and specifications
68 which were the subject of the competitive bidding pursuant to
69 N. J. S. 18A:18-4 shall be stated in the resolution awarding the
70 contract.

71 d. The board of education has advertised for bids pursuant to
72 N. J. S. 18A:18A-4 on two occasions and has rejected such bids on
73 each occasion because the board of education has determined that
74 they are not reasonable as to price on the basis of cost estimates
75 prepared for the board of education prior to the advertising
76 therefor or have not been independently arrived at in open compe-
77 tition, but no such contract or agreement may be entered into after
78 such rejection of bids, unless:

79 (1) Notification of the intention to negotiate and a reasonable
80 opportunity to negotiate shall have been given by the board of
81 education to each responsible bidder;

82 (2) The negotiated price is lower than the lowest rejected bid
83 price of a responsible bidder who bid thereon and is the lowest
84 negotiated price offered by any responsible supplier and is a rea-
85 sonable price for such work, materials, supplies or services;

86 (3) Any amendment or modification of the terms, conditions,
87 restrictions and specifications which were the subject of competitive
88 bidding pursuant to N. J. S. 18A:18A-4 shall be stated in the reso-
89 lution awarding the contract; and

90 (4) The negotiated price is lower than the price of the same or
91 equivalent materials or supplies available from the State, county
92 or municipality in which the board of education is located.

93 Whenever a board of education shall determine that a bid was
94 not arrived at independently in open competition pursuant to this
95 subsection d. of N. J. S. 18A:18A-5, it shall thereupon notify the
96 county prosecutor of the county in which the board of education is
97 located and the Attorney General of the facts upon which its
98 determination is based, and when appropriate, it may institute
99 appropriate proceedings in any State or federal court of compe-
100 tent jurisdiction for a violation of any State or federal antitrust
101 law or laws relating to the unlawful restraint of trade.

102 e. The board of education has solicited and received at least

103 three quotations on materials, supplies or equipment for which a
 104 State contract has been issued pursuant to N. J. S. 18A:18A-10,
 105 and the lowest responsible quotation is at least 10% less than the
 106 price the board would be charged for the identical materials,
 107 supplies or equipment, in the same quantities, under the State
 108 contract.

109 Any such contract or agreement entered into pursuant to sub-
 110 section d. or subsection e. may be made, negotiated or awarded only
 111 upon adoption of a resolution by the affirmative vote of two-thirds
 112 of the full membership of the board of education at a meeting
 113 thereof authorizing such a contract or agreement.

1 2. N. J. S. 18A:33-3 is amended to read as follows:

2 18A:33-3. A board of education of any district may, itself or
 3 under contract, install, equip, supply and operate cafeterias or
 4 other agencies for dispensing food to public school pupils without
 5 profit to the district and may purchase food *services and* supplies
 6 therefor subject to the provisions of [section 18A:18-5.1] *N. J. S.*
 7 *18A:18A-6* and pursuant to rules and regulations of the State
 8 board, without advertisement for bids.

1 3. Section 1 of P. L. 1981, c. 186 (C. 18A:18A-42.1) is amended
 2 to read as follows:

3 1. Every contract or agreement for the services of a food service
 4 management company heretofore or hereafter entered into between
 5 a board of education and a food service management company
 6 [after public advertising for bids and bidding therefor] *which*
 7 *meets federal standards and procurement requirements pursuant*
 8 *to 7 C.F.R. § 210.8a and 7 C.F.R. § 210.19a* may be renewed yearly
 9 for not more than two additional years * [without any further solici-
 10 tation for bids or bidding] * upon a finding by the board of education
 11 that the services are being performed in an effective and efficient
 12 manner; however, if a board of education elects to renew an exist-
 13 ing contract with a food service management company, the terms
 14 and conditions of the existing contract shall remain substantially
 15 unchanged and any increase in the contract cost of the food or
 16 services, or both, shall be no greater than 20% over the additional
 17 two-year period.

1 4. This act shall take effect immediately.

SENATE, No. 1657

STATE OF NEW JERSEY

INTRODUCED MAY 14, 1984

By Senator EWING

Referred to Committee on Education

AN ACT concerning the provision of food to school pupils and amending N. J. S. 18A:18A-5, N. J. S. 18A:33-3 and P. L. 1981, c. 186.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

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2 18A:18A-5. Exceptions to requirement for advertising. Any
3 purchase, contract or agreement of the character described in
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5 board of education by resolution at a public meeting without public
6 advertising for bids and bidding therefor if

7 a. The subject matter thereof consists of:

8 (1) Professional services;

9 (2) Extraordinary unspecifiable services which cannot reason-
10 ably be described by written specifications, which exception as to
11 extraordinary unspecifiable services shall be construed narrowly in
12 favor of open competitive bidding where possible and the State
13 Board of Education is authorized to establish rules and regula-
14 tions limiting its use in accordance with the intention herein
15 expressed; and the board of education shall in each instance state
16 supporting reasons for its action in the resolution awarding the
17 contract for extraordinary unspecifiable services;

18 (3) The doing of any work by employees of the contracting unit;

19 (4) The printing of all legal notices; and legal briefs, records
20 and appendices to be used in any legal proceeding in which the
21 contracting party may be a party;

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23 and student produced publications and services incidental thereto;

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25 economic classes, when purchased pursuant to rules and regulations
26 of the State board and in accordance with the provisions of N. J. S.
27 18A:18A-6;

28 (7) The supplying of any product or the rendering of any service
29 by a public utility, which is subject to the jurisdiction of the Board
30 of Public **Utility Commissioners** *Utilities*, in accordance with the
31 tariffs and schedules of charges made, charged and exacted, filed
32 with said board;

33 (8) The printing of bonds and documents necessary to the issu-
34 ance and sale thereof by a board of education;

35 (9) Equipment repair service if in the nature of an extraordinary
36 unspecifiable service and necessary parts furnished in connection
37 with such services;

38 (10) Insurance, including the purchase of insurance coverage
39 and consultant services;

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41 law;

42 (12) The acquisition of artifacts or other items of unique in-
43 trinsic, artistic or historic character;

44 (13) Election expenses, including advertising expenses inci-
45 dental thereto;

46 (14) Electronic data processing service obtained from another
47 board of education;

48 (15) Driver education courses provided by licensed driver edu-
49 cation schools.

50 b. It is to be made or entered into with the United States of
51 America, the State of New Jersey, county or municipality or any
52 board, body, officer, agency or authority or any other state or sub-
53 division thereof.

54 c. The board of education has advertised for bids pursuant to
55 N. J. S. 18A:18A-4 on two occasions and has received no bids in
56 response to its advertisement and, after reasonable inquiry, it is
57 determined that no board, body, officer, agency or authority of the
58 United States, or of the State of New Jersey or of any county or
59 municipality in which the board of education is located is willing
60 and able to perform any work or furnish or hire any materials or
61 supplies in conformity with the specifications of the board of
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82 (2) The negotiated price is lower than the lowest rejected bid
83 price of a responsible bidder who bid thereon and is the lowest
84 negotiated price offered by any responsible supplier and is a rea-
85 sonable price for such work, materials, supplies or services;

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89 lution awarding the contract; and

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91 equivalent materials or supplies available from the State, county
92 or municipality in which the board of education is located.

93 Whenever a board of education shall determine that a bid was
94 not arrived at independently in open competition pursuant to this
95 subsection d. of N. J. S. 18A:18A-5, it shall thereupon notify the
96 county prosecutor of the county in which the board of education is
97 located and the Attorney General of the facts upon which its
98 determination is based, and when appropriate, it may institute
99 appropriate proceedings in any State or federal court of compe-
100 tent jurisdiction for a violation of any State or federal antitrust
101 law or laws relating to the unlawful restraint of trade.

102 e. The board of education has solicited and received at least
103 three quotations on materials, supplies or equipment for which a
104 State contract has been issued pursuant to N. J. S. 18A:18A-10,
105 and the lowest responsible quotation is at least 10% less than the
106 price the board would be charged for the identical materials,

107 supplies or equipment, in the same quantities, under the State
108 contract.

109 Any such contract or agreement entered into pursuant to sub-
110 section d. or subsection e. may be made, negotiated or awarded only
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112 of the full membership of the board of education at a meeting
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9 for not more than two additional years without any further sollicita-
10 tion for bids or bidding upon a finding by the board of education
11 that the services are being performed in an effective and efficient
12 manner; however, if a board of education elects to renew an exist-
13 ing contract with a food service management company, the terms
14 and conditions of the existing contract shall remain substantially
15 unchanged and any increase in the contract cost of the food or
16 services, or both, shall be no greater than 20% over the additional
17 two-year period.

1 4. This act shall take effect immediately.

STATEMENT

This bill exempts public school contracts with food service management companies from the bidding requirements of the "Public School Contract Law," N. J. S. 18A:18A-1 et seq.

Currently, the purchase of food supplies and cafeteria equipment is exempt from the bidding requirements (N. J. S. 18A:18A-5 and N. J. S. 18A:33-3). However, New Jersey statutes do not specifically exempt the service component offered by food service man-

agement companies from bidding requirements. Primarily on this basis, the Attorney General ruled that contracts must be bid (AAA No. M 79-4138, July 13, 1979). The opinion also cited federal regulations (7 C.F.R. § 210.19a(j)). However, the federal register makes clear that the mandatory competitive bid procedure was specifically deleted from federal regulations, and that a request-for-proposal procurement process is permissible at the discretion of a school board, providing that it is not prohibited by State law (43 F.R. 251 at 60860).

This bill clarifies State law, and brings the statute specifically governing contracts with food service management companies (section 1 of P. L. 1981, c. 186, C. 18A:18A-42.1) into conformity with federal regulations.

ASSEMBLY EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 1657

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: JANUARY 6, 1986

PROVISIONS:

This bill exempts public school contracts with food service management companies from the bidding requirements of the "Public School Contracts Law," N. J. S. 18A:18A-1 et seq.

BACKGROUND:

Currently, the purchase of food supplies and cafeteria equipment is exempt from the bidding requirements (N. J. S. 18A:18A-5 and N. J. S. 18A:33-3). However, New Jersey statutes do not specifically exempt the service component offered by food service management companies from bidding requirements. Primarily on this basis, the Attorney General rules that contracts must be bid (Ad.A. No. M 79-4138, July 3, 1979). The opinion also cited federal regulations (7 C.F.R. § 210.19a(j)). However, according to the federal register the mandatory competitive bid procedure was specifically deleted from federal regulations, and a request-for-proposal procurement process is permissible at the discretion of a school board, providing that it is not prohibited by State law (43 F.R. 251 at 60860).

The committee favorably reports this bill.

SENATE EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 1657

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 28, 1985

PROVISIONS:

This bill exempts public school contracts with food service management companies from the bidding requirements of the "Public School Contracts Law," N. J. S. 18A:18A-1 et seq.

BACKGROUND:

Currently, the purchase of food supplies and cafeteria equipment is exempt from the bidding requirements (N. J. S. 18A:18A-5 and N. J. S. 18A:33-3). However, New Jersey statutes do not specifically exempt the service component offered by food service management companies from bidding requirements. Primarily on this basis, the Attorney General rules that contracts must be bid (Ad.A. No. M 79-4138, July 3, 1979.) The opinion also cited federal regulations (7 C.F.R. § 210.19a(j)). However, according to the federal register the mandatory competitive bid procedure was specifically deleted from federal regulations, and a request-for-proposal procurement process is permissible at the discretion of a school board, providing that it is not prohibited by State law ((43 F.R. 251 at 60860).

S-1487, sponsored by Senator John Dorsey, R-Morris, to mandate a formula for the calculation of connection fees to be charged to a developer for tapping into a sewerage system or water system.

S-1657, sponsored by Senator John Ewing, R-Somerset, to exempt food management contracts from the bidding requirements for school districts.

S-2350, sponsored by Senator Edward O'Connor, D-Hudson, to make a number of technical changes in the Banking Act of 1948.

S-3436, sponsored by Senator Carmen Orechio, D-Essex, to permit a member of the Public Employees' Retirement System who had discontinued service to retain membership in the system if he returns to service within 10 years and if he has not withdrawn his pension system contribution.

A-2963, sponsored by Assemblywoman Barbara Kalik, D-Burlington, to exempt from the fees imposed by the Worker and Community right to Know Act any employer who certifies that no hazardous substances are located within his facility.

A-3013, sponsored by Assemblyman Harry McEnroe, D-Essex, to permit a municipality acting as a redevelopment agency or a local housing authority to sell property to a private developer without requiring a right of first refusal be given to the municipality.

A-3188, sponsored by Assemblyman Eugene Thompson, D-Essex, to permit omnibuses to be equipped with flashing lights to warn others that an emergency exists on the vehicle.

A-3539, sponsored by Assemblyman John Doyle, D-Ocean, to remove certain municipal and county utilities authorities from the provisions of the Civil Service law.