

18A:18A-15 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 18A:18A-15 et al (Public School Contracts Law -- qualification of bidders - increase minimum to \$20,000)

LAWS OF: 1983

CHAPTER: 266

Bill No: S1607

Sponsor(s): Feldman, Dumont and Ewing

Date Introduced: July 12, 1982

Committee: Assembly: Education

Senate: Education

Amended during passage: Yes Substituted for A-1740 (not attached since identical to S1607).

A amendments denoted by asterisks.

Date of Passage: Assembly: Dec. 13, 1982 Re-enacted 7-7-83

Senate: Nov. 8, 1982 Re-enacted 6-25-83

Date of Approval: July 14, 1983

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: No

Following were printed:

Reports: Yes

Hearings: No

Report referred to in statements:

974.90 New Jersey. Commission on Business Efficiency of the Public Schools.

S372 Financial Management Subcommittee.

1982 Public school district purchasing programs in N.J.: a review of specific issues and problems. August, 1982. (see pp. 1,5-6, Appendix D.)

Vertical stamp: RECORDED & INDEXED

CHAPTER 266 LAWS OF N. J. 1983
APPROVED 7-14-83

[OFFICIAL COPY REPRINT]

SENATE, No. 1607

STATE OF NEW JERSEY

INTRODUCED JULY 12, 1982

By Senators FELDMAN, DUMONT and EWING

Referred to Committee on Education

AN ACT concerning the qualification of bidders pursuant to the "Public School Contracts Law," and amending sections 18A:18A-15, 18A:18A-26, 18A:18A-27 and 18A:18A-32 of the New Jersey Statutes.

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

1 1. N. J. S. 18A:18A-15 is amended to read as follows:

2 18A:18A-15. Specifications generally. Any specifications for an
3 acquisition under this chapter, whether by purchase, contract or
4 agreement, shall be drafted in a manner to encourage free, open
5 and competitive bidding. In particular, no specifications under
6 this chapter may:

7 a. Require any standard, restriction, condition or limitation not
8 directly related to the purpose, function or activity for which the
9 purchase, contract or agreement is made; or

10 b. Require that any bidder be a resident of, or that his place
11 of business be located in, the county or school district in which the
12 purchase will be made or the contract or agreement performed,
13 unless the physical proximity of the bidder is requisite to the
14 efficient and economical purchase or performance of the contract or
15 agreement; or

16 c. Discriminate on the basis of race, religion, sex, national
17 origin; or

18 d. Require, with regard to any purchase, contract or agreement,
19 the furnishing of any "brand name," but may in all cases require
20 "brand name or equivalent," except that if the materials to be
21 supplied or purchased are patented or copyrighted, such materials

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 amendments adopted in accordance with Governor's recommenda-
tions January 31, 1983.

22 or supplies may be purchased by specification in any case in which
 23 the resolution authorizing the purchase, contract, sale or agree-
 24 ment so indicates, and the special need for such patented or copy-
 25 righted materials or supplies is directly related to the performance,
 26 completion or undertaking of the purpose for which the purchase,
 27 contract or agreement is made; or

28 e. Fail to include any option for renewal, extension, or release
 29 which the board of education may intend to exercise or require;
 30 or any terms and conditions necessary for the performance of any
 31 extra work; or fail to disclose any matter necessary to the sub-
 32 stantial performance of the contract or agreement.

33 The specifications for every contract for public work, the entire
 34 cost whereof will exceed ~~[\$10,000.00]~~ *~~[\$25,000.00]~~* *\$20,000.00*
 35 shall provide that the board of education, through its authorized
 36 agent, shall upon completion of the contract report to the depart-
 37 ment as to the contractor's performance, and shall also furnish such
 38 report from time to time during performance if the contractor is
 38A then in default.

39 Any specification adopted by the board of education which know-
 40 ingly excludes prospective bidders by reason of the impossibility
 41 of performance, bidding or qualification by any but one bidder,
 42 except as provided herein, shall be null and void and of no effect
 43 and such purchase, contract or agreement shall be readvertised,
 44 and the original purchase, contract or agreement shall be set aside
 45 by the board of education.

1 2. N. J. S. 18A:18A-26 is amended to read as follows:

2 18A:18A-26. Classification of bidders as requisite to bidding.
 3 Every board of education shall require that all persons proposing
 4 to bid on any contract requiring public advertisement for bids with
 5 the board for public work, the entire cost whereof will exceed
 6 ~~[\$10,000.00]~~ *~~[\$25,000.00]~~* *\$20,000.00*, shall first be classified in
 7 accordance with article 6 of this chapter as to the character and
 8 amount of public work on which they shall be qualified to submit
 9 bids. So long as such requirement is in effect, the board of educa-
 10 tion shall accept such bids only from persons qualified in accord-
 11 ance with such classification.

1 3. N. J. S. 18A:18A-27 is amended to read as follows:

2 18A:18A-27. Authority of State Board of Education to adopt
 3 regulations providing for qualification of bidders. The State Board
 4 of Education may establish reasonable regulations appropriate
 5 for controlling the qualifications of prospective bidders upon con-
 6 tracts for public work, the entire cost whereof will exceed
 7 ~~[\$10,000.00]~~ *~~[\$25,000.00]~~* *\$20,000.00*, by the amount, class or
 8 category of work to be performed or materials and supplies to be

9 furnished or hired which may fix the qualifications required accord-
 10 ing to the financial ability and experience of the bidders and the
 11 capital and equipment available to them pertinent to and reasonably
 12 related to the class or category of work to be performed or
 13 materials and supplies to be furnished or hired in the performance
 14 of any such contract, and may require each bidder to furnish a
 15 statement thereof.

16 Such regulations shall be written in a manner:

17 a. Which will not unnecessarily discourage full, free and open
 18 competition; or

19 b. Which will not unnecessarily restrict the participation of small
 20 business in the public bidding process; or

21 c. Which will not create undue preferences; or

22 d. Which will not violate any other provision of this chapter,
 23 or any other law.

24 No qualification rating of any bidder shall be influenced by his
 25 race, religion, sex, national origin, nationality or his place of
 26 residence or residence.

27 In lieu of adopting any qualification regulation under this section,
 28 the State Board may, in whole or in part, delegate by regulation to
 29 the Department of the Treasury or other appropriate State agency
 30 with its consent, the authority to qualify bidders subject to this
 31 article.

32 "Department," as used in this article, shall mean the Depart-
 33 ment of Education, Department of the Treasury or other State
 34 agency to which the authority to qualify bidders has been delegated
 35 by the State Board.

36 Such regulations shall not be effective unless they have been
 37 adopted as provided in the Administrative Procedure Act, P. L.
 38 1968, c. 410 (C. 52:14B-1 et seq.).

1 4. N. J. S. 18A:18A-32 is amended to read as follows:

2 18A:18A-32. Bidders not submitting statements, within [six
 3 months] *~~two years~~* *one year* ineligible to bid; affidavit of
 4 no change in status to accompany bid; reports as to performance,
 5 etc. No person shall be qualified to bid on any public work contract
 6 with the board of education, the entire cost whereof will exceed
 7 ~~[\$10,000.00]~~ *~~\$25,000.00~~* *\$20,000.00*, who shall not have sub-
 8 mitted a statement as required by N. J. S. 18A:28 within a period
 9 of [six months] *~~two years~~* *one year* preceding the date of
 10 opening of bids for such contract. Every bidder shall submit with
 11 his bid an affidavit that subsequent to the latest such statement
 12 submitted by him there has been no material adverse change in his
 13 qualification information except as set forth in said affidavit.

1 5. This act shall take effect immediately.

SENATE, No. 1607
STATE OF NEW JERSEY

INTRODUCED JULY 12, 1982

By Senators FELDMAN, DUMONT and EWING

Referred to Committee on Education

AN ACT concerning the qualification of bidders pursuant to the "Public School Contracts Law," and amending sections 18A:18A-15, 18A:18A-26, 18A:18A-27 and 18A:18A-32 of the New Jersey Statutes.

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5 and competitive bidding. In particular, no specifications under
6 this chapter may:

7 a. Require any standard, restriction, condition or limitation not
8 directly related to the purpose, function or activity for which the
9 purchase, contract or agreement is made; or

10 b. Require that any bidder be a resident of, or that his place
11 of business be located in, the county or school district in which the
12 purchase will be made or the contract or agreement performed,
13 unless the physical proximity of the bidder is requisite to the
14 efficient and economical purchase or performance of the contract or
15 agreement; or

16 c. Discriminate on the basis of race, religion, sex, national
17 origin; or

18 d. Require, with regard to any purchase, contract or agreement,
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20 "brand name or equivalent," except that if the materials to be
21 supplied or purchased are patented or copyrighted, such materials

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is not enacted and is intended to be omitted in the law.
Matter printed in italics thus is new matter.**

22 or supplies may be purchased by specification in any case in which
 23 the resolution authorizing the purchase, contract, sale or agree-
 24 ment so indicates, and the special need for such patented or copy-
 25 righted materials or supplies is directly related to the performance,
 26 completion or undertaking of the purpose for which the purchase,
 27 contract or agreement is made; or

28 e. Fail to include any option for renewal, extension, or release
 29 which the board of education may intend to exercise or require;
 30 or any terms and conditions necessary for the performance of any
 31 extra work; or fail to disclose any matter necessary to the sub-
 32 stantial performance of the contract or agreement.

33 The specifications for every contract for public work, the entire
 34 cost whereof will exceed ~~[\$10,000.00]~~ \$25,000.00 shall provide that
 35 the board of education, through its authorized agent, shall upon
 36 completion of the contract report to the department as to the con-
 37 tractor's performance, and shall also furnish such report from time
 38 to time during performance if the contractor is then in default.

39 Any specification adopted by the board of education which know-
 40 ingly excludes prospective bidders by reason of the impossibility
 41 of performance, bidding or qualification by any but one bidder,
 42 except as provided herein, shall be null and void and of no effect
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 4 to bid on any contract requiring public advertisement for bids with
 5 the board for public work, the entire cost whereof will exceed
 6 ~~[\$10,000.00]~~ \$25,000.00, shall first be classified in accordance with
 7 article 6 of this chapter as to the character and amount of public
 8 work on which they shall be qualified to submit bids. So long as
 9 such requirement is in effect, the board of education shall accept
 10 such bids only from persons qualified in accordance with such
 11 classification.

1 3. N. J. S. 18A:18A-27 is amended to read as follows:

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 3 regulations providing for qualification of bidders. The State Board
 4 of Education may establish reasonable regulations appropriate
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 7 ~~[\$10,000.00]~~ \$25,000.00, by the amount, class or category of work to
 8 be performed or materials and supplies to be furnished or hired

9 which may fix the qualifications required according to the
10 financial ability and experience of the bidders and the capital and
11 equipment available to them pertinent to and reasonably related to
12 the class or category of work to be performed or materials and
13 supplies to be furnished or hired in the performance of any such
14 contract, and may require each bidder to furnish a statement
15 thereof.

16 Such regulations shall be written in a manner:

17 a. Which will not unnecessarily discourage full, free and open
18 competition; or

19 b. Which will not unnecessarily restrict the participation of small
20 business in the public bidding process; or

21 c. Which will not create undue preferences; or

22 d. Which will not violate any other provision of this chapter,
23 or any other law.

24 No qualification rating of any bidder shall be influenced by his
25 race, religion, sex, national origin, nationality or his place of
26 residence or residence.

27 In lieu of adopting any qualification regulation under this section,
28 the State Board may, in whole or in part, delegate by regulation to
29 the Department of the Treasury or other appropriate State agency
30 with its consent, the authority to qualify bidders subject to this
31 article.

32 "Department," as used in this article, shall mean the Depart-
33 ment of Education, Department of the Treasury or other State
34 agency to which the authority to qualify bidders has been delegated
35 by the State Board.

36 Such regulations shall not be effective unless they have been
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38 1968, c. 410 (C. 52:14B-1 et seq.).

1 4. N. J. S. 18A:18A-32 is amended to read as follows:

2 18A:18A-32. Bidders not submitting statements, within ~~six~~
3 ~~months~~ *two years* ineligible to bid; affidavit of no change in status
4 to accompany bid; reports as to performance, etc. No person shall
5 be qualified to bid on any public work contract with the board of
6 education, the entire cost whereof will exceed ~~[\$10,000.00]~~
7 ~~\$25,000.00~~, who shall not have submitted a statement as required by
8 N. J. S. 18A:28 within a period of ~~six months~~ *two years* preceding
9 the date of opening of bids for such contract. Every bidder shall
10 submit with his bid an affidavit that subsequent to the latest such
11 statement submitted by him there has been no material adverse
12 change in his qualification information except as set forth in said
13 affidavit.

1 5. This act shall take effect immediately.

STATEMENT

This bill increases the minimum value of a contract which would require qualification of bidders as a requisite to bidding pursuant to the "Public School Contracts Law", from \$10,000.00 to \$25,000.00. It also would extend the life of bidder's qualification statements from six months to two years.

This bill is one of a series of bills implementing the July, 1982 report of the Financial Management Subcommittee of the Commission on Business Efficiency of the Public Schools.

ASSEMBLY EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 1607

STATE OF NEW JERSEY

DATED: DECEMBER 6, 1982

PROVISIONS:

This bill increases the minimum value of a contract which would require qualification of bidders as a requisite to bidding pursuant to the "Public School Contracts Law," from \$10,000.00 to \$25,000.00. It would also extend the life of bidder's qualification statements from six months to two years.

BACKGROUND:

This bill is one of a series of bills implementing the July, 1982 report of the Financial Management Subcommittee of the Commission on Business Efficiency of the Public Schools.

According to the commission, the complexity and frequency of the prequalification process, required before a vendor can do business with a school district, discourages local contractors from bidding.

This bill will modify that procedure, by requiring a prequalification statement every two years, rather than every six months.

It also raises the requirement for prequalification to \$25,000.00. The \$10,000.00 was established in 1968 and is no longer a realistic requirement.

SENATE EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 1607

STATE OF NEW JERSEY

DATED: OCTOBER 18, 1982

PROVISIONS:

This bill increases the minimum value of a contract which would require qualification of bidders as a requisite to bidding pursuant to the "Public School Contracts Law," from \$10,000.00 to \$25,000.00. It would also extend the life of bidder's qualification statements from six months to two years.

BACKGROUND:

This bill is one of a series of bills implementing the July, 1982 report of the Financial Management Subcommittee of the Commission on Business Efficiency of the Public Schools.

According to the commission, the complexity and frequency of the prequalification process, required before a vendor can do business with a school district, discourages local contractors from bidding.

This bill will modify that procedure, by requiring a prequalification statement every two years, rather than every six months.

It also raises the requirement for prequalification to \$25,000.00. The \$10,000.00 was established in 1968 and is no longer a realistic requirement.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 31, 1983

SENATE BILL NO. 1607

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 1607 with my recommendations for reconsideration.

This bill would increase the minimum value of a contract which would require qualification of bidders as a requisite to bidding pursuant to the "Public School Contracts Law," from \$10,000 to \$25,000 and would extend the life of a bidder's qualification statement from six months to two years.

This bill is one of a series of bills implementing the July 1982 report of the Financial Management Subcommittee of the Commission on Business Efficiency of the Public Schools. According to the Commission, the complexity and frequency of the prequalification process required before a vendor can do business with a school district, discourages local contractors from bidding. This bill will modify that procedure, by requiring a qualification statement every two years, rather than every six months. I agree with the Commission's results and believe that the life of a bidder's qualification statement should be extended, however, I have grave concerns with it being extended for two years.

The necessity for qualification statements is to insure solvency of the bidder so that bankruptcy or financial problems do not occur during the life of the contract. Requiring qualification statements every six months is viewed by many as too often, because the bidder's financial situation usually does not change in that short a period of time. However, two years is too long of a period, and a bidder's qualifications very well might change within a two year period. Therefore, I suggest that this bill be modified to allow qualification statements to be extended to one year.

Finally, this bill increases the minimum value from \$10,000 to \$25,000 as the amount which would require the qualification of bidders. This amount has not been changed since 1968, and, due to inflation, its viability with regard to construction cost has been realistically questioned. To more than double this amount at this time would not be prudent, therefore, I suggest that this amount be raised to \$20,000. This is consistent with recent upward revisions in contract law areas.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

2

Accordingly, I herewith return Senate Bill No. 1607 and recommend that it be amended as follows:

Page 2, Section 1, Line 34: Delete "\$25,000" insert "\$20,000"

Page 2, Section 2, Line 6: Delete "\$25,000" insert "\$20,000"

Page 2, Section 3, Line 7: Delete "\$25,000" insert "\$20,000"

Page 3, Section 4, Line 3: Delete "two years" insert "one year"

Page 3, Section 4, Line 7: Delete "\$25,000" insert "\$20,000"

Page 3, Section 4, Line 8: Delete "two years" insert "one year"

Respectfully,

/s/ Thomas H. Kean
GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards
Chief Counsel to the Governor