

18A:18A-4

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2002 **CHAPTER:** 90

NJSA: 18A:18A-4 (Board of Education can disqualify low bidder)

BILL NO: A677 (Substituted for S346)

SPONSOR(S): Chatzidakis and Bodine

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Education

SENATE: ----

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** September 23, 2002

SENATE: June 27, 2002

DATE OF APPROVAL: November 4, 2002

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (2nd reprint enacted)
(Amendments during passage denoted by superscript numbers)

A677

[SPONSORS STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: **[ASSEMBLY:](#)** [Yes](#)

SENATE: No

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

LEGISLATIVE FISCAL ESTIMATE: No

S346

[SPONSORS STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)
Bill and Sponsors Statement identical to A677

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

P.L. 2002, CHAPTER 90, *approved November 4, 2002*
Assembly, No. 677 (*Second Reprint*)

1 AN ACT concerning the awarding of school facilities contracts by a
2 board of education and amending N.J.S.18A:18A-4.

3

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

6

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

8 18A:18A-4. a. Every contract for the provision or performance of
9 any goods or services, the cost of which in the aggregate exceeds the
10 bid threshold, shall be awarded only by resolution of the board of
11 education to the lowest responsible bidder after public advertising for
12 bids and bidding therefor, except as is provided otherwise in this
13 chapter or specifically by any other law.

14 The board of education may, by resolution approved by a majority
15 of the board of education and subject to subsections b. and c. of this
16 section, disqualify a bidder who would otherwise be determined to be
17 the lowest responsible bidder, if the board of education finds that ¹[;

18 (1)]¹ [it] ¹[the] any¹ board¹ or, in the case of a contract for a
19 school facilities project, the New Jersey Economic Development
20 Authority,¹ has had prior negative experience with the bidder¹ [;

21 (2) in the case of a contract for a school facilities project as defined
22 in section 3 of P.L.2000, c.72 (C.18A:7G-3),there have been at least
23 two instances of prior negative experience with the bidder by other
24 boards of education, or by the New Jersey Economic Development
25 Authority, or any combination thereof]^{1 2}within the past 10 years²,
26 as reported in a contractor evaluation submitted pursuant to N.J.S.
27 18A:18A-15 or in a school facilities project performance evaluation
28 submitted pursuant to regulations of the Department of the Treasury
29 or section 62 of P.L.2000, c.72 (C.18A:7G-36), as appropriate.

30 b. As used in this section, "prior negative experience" means any
31 of the following:

32 (1) the bidder has been found, through either court adjudication,
33 arbitration, mediation, or other contractually stipulated alternate
34 dispute resolution mechanism, to have: failed to provide or perform
35 goods or services; or failed to complete the contract in a timely
36 manner; or otherwise performed unsatisfactorily under a prior contract
37 with ¹[the] a¹ board of education or, in the case of a school facilities
38 project, with the New Jersey Economic Development Authority;

39 (2) the bidder defaulted on a contract, thereby requiring ¹[the] a¹

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AED committee amendments adopted June 6, 2002.

² Senate floor amendments adopted June 27, 2002.

1 board of education or, in the case of a school facilities project, the
2 New Jersey Economic Development Authority, to utilize the services
3 of another contractor to provide the goods or perform the services or
4 to correct or complete the contract;

5 (3) the bidder defaulted on a contract, thereby requiring ¹[the] a¹
6 board of education or, in the case of a school facilities project, the
7 New Jersey Economic Development Authority, to look to the bidder's
8 surety for completion of the contract or tender of the costs of
9 completion; or

10 (4) the bidder is debarred or suspended from contracting with any
11 of the agencies or departments of the executive branch of the State of
12 New Jersey at the time of the contract award, whether or not the
13 action was based on experience with ¹[the] a¹ board of education or,
14 in the case of a school facilities project, with the New Jersey
15 Economic Development Authority.

16 c. The following conditions apply if the board of education is
17 contemplating a disqualification based on prior negative experience:

18 (1) The existence of any of the indicators of prior negative
19 experience set forth in this section shall not require that a bidder be
20 disqualified. In each instance, the decision to disqualify shall be made
21 within the discretion of the board of education and shall be rendered
22 in the best interests of the board of education.

23 (2) All mitigating factors shall be considered in determining the
24 seriousness of the prior negative experience and in deciding whether
25 disqualification is warranted.

26 (3) The bidder shall be furnished by the board of education with a
27 written notice (a) stating that a disqualification is being considered; (b)
28 setting forth the reason for the disqualification; and (c) indicating that
29 the bidder shall be accorded an opportunity for a hearing before the
30 board of education if the bidder so requests within a stated period of
31 time. At the hearing, the bidder shall show good cause why the bidder
32 should not be disqualified by presenting documents and testimony. If
33 the board of education determines that good cause has not been shown
34 by the bidder, it may vote to find the bidder lacking in responsibility
35 and, thus, disqualified.

36 (4) Disqualification shall be for a reasonable, defined period of
37 time which shall not exceed five years.

38 (5) A disqualification, other than a disqualification pursuant to
39 which a board of education is prohibited by law from entering into a
40 contract with a bidder, may be voided or the period thereof may be
41 reduced, in the discretion of the board of education, upon the
42 submission of a good faith application under oath, supported by
43 documentary evidence, setting forth substantial and appropriate
44 grounds for the granting of relief, such as reversal of a judgment, or
45 actual change of ownership, management or control of the bidder.

46 (6) An opportunity for a hearing need not be offered to a bidder

1 whose disqualification is based on its suspension or debarment by an
2 agency or department of the executive branch of the State of New
3 Jersey. The term of such a disqualification shall be concurrent with
4 the term of the suspension or debarment by the State agency or
5 department.

6 d. The purchase of text books and materials that exceed the bid
7 threshold and are approved by a board of education pursuant to
8 N.J.S. [18A-34-1] 18A:34-1 shall not require the further adoption of
9 a resolution for purchase.

10 (cf: P.L.1999, c.440, s.52)

11

12 2. This act shall take effect 90 days after enactment.

13

14

15

16

17 _____
18 Permits board of education to disqualify low bidder if any school
19 district or the EDA in certain cases has had prior negative experience
with the bidder.

ASSEMBLY, No. 677

STATE OF NEW JERSEY 210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:

Assemblyman LARRY CHATZIDAKIS

District 8 (Burlington)

Assemblyman FRANCIS L. BODINE

District 8 (Burlington)

SYNOPSIS

Permits board of education to disqualify low bidder for a school facilities project when there have been two instances of prior negative experience with the bidder by other school districts or the EDA.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



A677 CHATZIDAKIS, BODINE

2

1 AN ACT concerning the awarding of school facilities contracts by a
2 board of education and amending N.J.S.18A:18A-4.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.18A:18A-4 is amended to read as follows:

8 18A:18A-4. a. Every contract for the provision or performance of
9 any goods or services, the cost of which in the aggregate exceeds the
10 bid threshold, shall be awarded only by resolution of the board of
11 education to the lowest responsible bidder after public advertising for
12 bids and bidding therefor, except as is provided otherwise in this
13 chapter or specifically by any other law.

14 The board of education may, by resolution approved by a majority
15 of the board of education and subject to subsections b. and c. of this
16 section, disqualify a bidder who would otherwise be determined to be
17 the lowest responsible bidder, if the board of education finds that:

18 (1) **[it]** the board has had prior negative experience with the
19 bidder; or

20 (2) in the case of a contract for a school facilities project as defined
21 in section 3 of P.L.2000, c.72 (C.18A:7G-3), there have been at least
22 two instances of prior negative experience with the bidder by other
23 boards of education, or by the New Jersey Economic Development
24 Authority, or any combination thereof, as reported in a contractor
25 evaluation submitted pursuant to N.J.S. 18A:18A-15 or in a school
26 facilities project performance evaluation submitted pursuant to
27 regulations of the Department of the Treasury or section 62 of
28 P.L.2000, c.72 (C.18A:7G-36), as appropriate.

29 b. As used in this section, "prior negative experience" means any
30 of the following:

31 (1) the bidder has been found, through either court adjudication,
32 arbitration, mediation, or other contractually stipulated alternate
33 dispute resolution mechanism, to have: failed to provide or perform
34 goods or services; or failed to complete the contract in a timely
35 manner; or otherwise performed unsatisfactorily under a prior contract
36 with the board of education or, in the case of a school facilities
37 project, with the New Jersey Economic Development Authority;

38 (2) the bidder defaulted on a contract, thereby requiring the board
39 of education or, in the case of a school facilities project, the New
40 Jersey Economic Development Authority, to utilize the services of
41 another contractor to provide the goods or perform the services or to
42 correct or complete the contract;

43 (3) the bidder defaulted on a contract, thereby requiring the board

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Matter underlined thus is new matter.

1 of education or, in the case of a school facilities project, the New
2 Jersey Economic Development Authority, to look to the bidder's
3 surety for completion of the contract or tender of the costs of
4 completion; or

5 (4) the bidder is debarred or suspended from contracting with any
6 of the agencies or departments of the executive branch of the State of
7 New Jersey at the time of the contract award, whether or not the
8 action was based on experience with the board of education or, in the
9 case of a school facilities project, with the New Jersey Economic
10 Development Authority.

11 c. The following conditions apply if the board of education is
12 contemplating a disqualification based on prior negative experience:

13 (1) The existence of any of the indicators of prior negative
14 experience set forth in this section shall not require that a bidder be
15 disqualified. In each instance, the decision to disqualify shall be made
16 within the discretion of the board of education and shall be rendered
17 in the best interests of the board of education.

18 (2) All mitigating factors shall be considered in determining the
19 seriousness of the prior negative experience and in deciding whether
20 disqualification is warranted.

21 (3) The bidder shall be furnished by the board of education with a
22 written notice (a) stating that a disqualification is being considered; (b)
23 setting forth the reason for the disqualification; and (c) indicating that
24 the bidder shall be accorded an opportunity for a hearing before the
25 board of education if the bidder so requests within a stated period of
26 time. At the hearing, the bidder shall show good cause why the bidder
27 should not be disqualified by presenting documents and testimony. If
28 the board of education determines that good cause has not been shown
29 by the bidder, it may vote to find the bidder lacking in responsibility
30 and, thus, disqualified.

31 (4) Disqualification shall be for a reasonable, defined period of
32 time which shall not exceed five years.

33 (5) A disqualification, other than a disqualification pursuant to
34 which a board of education is prohibited by law from entering into a
35 contract with a bidder, may be voided or the period thereof may be
36 reduced, in the discretion of the board of education, upon the
37 submission of a good faith application under oath, supported by
38 documentary evidence, setting forth substantial and appropriate
39 grounds for the granting of relief, such as reversal of a judgment, or
40 actual change of ownership, management or control of the bidder.

41 (6) An opportunity for a hearing need not be offered to a bidder
42 whose disqualification is based on its suspension or debarment by an
43 agency or department of the executive branch of the State of New
44 Jersey. The term of such a disqualification shall be concurrent with
45 the term of the suspension or debarment by the State agency or
46 department.

1 d. The purchase of text books and materials that exceed the bid
2 threshold and are approved by a board of education pursuant to
3 N.J.S. [18A-34-1] 18A:34-1 shall not require the further adoption of
4 a resolution for purchase.

5 (cf: P.L.1999, c.440, s.52)

6
7 2. This act shall take effect 90 days after enactment.
8
9

10 STATEMENT
11

12 This bill expands the power of boards of education to disqualify low
13 bidders on contracts for school facilities projects. The bill would
14 permit boards of education to disqualify low bidders on school
15 facilities projects if there have been at least two instances of "prior
16 negative experience" with the bidder by other boards of education, or
17 by the New Jersey Economic Development Authority, or any
18 combination thereof. This prior negative experience would be
19 documented through the school facilities project performance
20 evaluations completed under Department of Treasury regulations or
21 in the contractor evaluations submitted pursuant to N.J.S.18A:18A-15,
22 if a district contracted directly for the construction of the project, or
23 under the provisions of the "Educational Facilities Construction and
24 Financing Act," P.L.2000, c.72, if the New Jersey Economic
25 Development Authority contracted for the construction of the project.

26 Currently, a board of education can only disqualify a bidder
27 otherwise determined to be the lowest responsible bidder if the board
28 itself has had "prior negative experience" with the bidder.

ASSEMBLY EDUCATION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 677

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 23, 2002

The Assembly Education Committee favorably reports Assembly Bill No. 677 with committee amendments.

As amended, this bill expands the power of boards of education to disqualify the low bidders on school district contracts. The bill would permit a board of education to disqualify a low bidder if any board of education or, in the case of a contract for a school facilities project, the New Jersey Economic Development Authority (EDA), has had a "prior negative experience" with the bidder. This prior negative experience would be documented through a contractor evaluation submitted by a school district pursuant to N.J.S.18A:18A-15, or, in the case of a school facilities project constructed by the EDA, in a school facilities project performance evaluation submitted pursuant to the provisions of the "Educational Facilities Construction and Financing Act," P.L.2000, c.72. Currently, a board of education may only disqualify a bidder otherwise determined to be the lowest responsible bidder if the board itself has had "prior negative experience" with the bidder.

The committee amended the bill to expand the bill from its original application only to contracts for school facilities projects to all school district contracts. The amendments also eliminate the requirement that there be two instances of prior negative experience by another board of education or the New Jersey Economic Development Authority and to provide that there need only be one instance of prior negative experience by any board of education or, in the case of a school facilities project, by the EDA.

This bill was prefiled for introduction in the 2002-2003 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 677

with Senate Floor Amendments
(Proposed By Senator BARK)

ADOPTED: JUNE 27, 2002

This floor amendment requires that in order for a board of education to disqualify the lowest responsible bidder based on prior negative experience, the prior negative experience has to have occurred within the past 10 years.

SENATE, No. 346

STATE OF NEW JERSEY
210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:

Senator MARTHA W. BARK

District 8 (Burlington)

SYNOPSIS

Permits board of education to disqualify low bidder for a school facilities project when there have been two instances of prior negative experience with the bidder by other school districts or the EDA.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the awarding of school facilities contracts by a
2 board of education and amending N.J.S.18A:18A-4.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
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7 1. N.J.S.18A:18A-4 is amended to read as follows:

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10 bid threshold, shall be awarded only by resolution of the board of
11 education to the lowest responsible bidder after public advertising for
12 bids and bidding therefor, except as is provided otherwise in this
13 chapter or specifically by any other law.

14 The board of education may, by resolution approved by a majority
15 of the board of education and subject to subsections b. and c. of this
16 section, disqualify a bidder who would otherwise be determined to be
17 the lowest responsible bidder, if the board of education finds that:

18 (1) **[it]** the board has had prior negative experience with the
19 bidder; or

20 (2) in the case of a contract for a school facilities project as defined
21 in section 3 of P.L.2000, c.72 (C.18A:7G-3), there have been at least
22 two instances of prior negative experience with the bidder by other
23 boards of education, or by the New Jersey Economic Development
24 Authority, or any combination thereof, as reported in a contractor
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26 facilities project performance evaluation submitted pursuant to
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28 P.L.2000, c.72 (C.18A:7G-36), as appropriate.

29 b. As used in this section, "prior negative experience" means any
30 of the following:

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32 arbitration, mediation, or other contractually stipulated alternate
33 dispute resolution mechanism, to have: failed to provide or perform
34 goods or services; or failed to complete the contract in a timely
35 manner; or otherwise performed unsatisfactorily under a prior contract
36 with the board of education or, in the case of a school facilities
37 project, with the New Jersey Economic Development Authority;

38 (2) the bidder defaulted on a contract, thereby requiring the board
39 of education or, in the case of a school facilities project, the New
40 Jersey Economic Development Authority, to utilize the services of
41 another contractor to provide the goods or perform the services or to
42 correct or complete the contract;

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- 1 (3) the bidder defaulted on a contract, thereby requiring the board
2 of education or, in the case of a school facilities project, the New
3 Jersey Economic Development Authority, to look to the bidder's
4 surety for completion of the contract or tender of the costs of
5 completion; or
- 6 (4) the bidder is debarred or suspended from contracting with any
7 of the agencies or departments of the executive branch of the State of
8 New Jersey at the time of the contract award, whether or not the
9 action was based on experience with the board of education or, in the
10 case of a school facilities project, with the New Jersey Economic
11 Development Authority.
- 12 c. The following conditions apply if the board of education is
13 contemplating a disqualification based on prior negative experience:
- 14 (1) The existence of any of the indicators of prior negative
15 experience set forth in this section shall not require that a bidder be
16 disqualified. In each instance, the decision to disqualify shall be made
17 within the discretion of the board of education and shall be rendered
18 in the best interests of the board of education.
- 19 (2) All mitigating factors shall be considered in determining the
20 seriousness of the prior negative experience and in deciding whether
21 disqualification is warranted.
- 22 (3) The bidder shall be furnished by the board of education with a
23 written notice (a) stating that a disqualification is being considered; (b)
24 setting forth the reason for the disqualification; and (c) indicating that
25 the bidder shall be accorded an opportunity for a hearing before the
26 board of education if the bidder so requests within a stated period of
27 time. At the hearing, the bidder shall show good cause why the bidder
28 should not be disqualified by presenting documents and testimony. If
29 the board of education determines that good cause has not been shown
30 by the bidder, it may vote to find the bidder lacking in responsibility
31 and, thus, disqualified.
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33 time which shall not exceed five years.
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40 grounds for the granting of relief, such as reversal of a judgment, or
41 actual change of ownership, management or control of the bidder.
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44 agency or department of the executive branch of the State of New
45 Jersey. The term of such a disqualification shall be concurrent with
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5 (cf: P.L.1999, c.440, s.52)

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7 2. This act shall take effect 90 days after enactment.

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10 STATEMENT

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12 This bill expands the power of boards of education to disqualify low
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16 negative experience" with the bidder by other boards of education, or
17 by the New Jersey Economic Development Authority, or any
18 combination thereof. This prior negative experience would be
19 documented through the school facilities project performance
20 evaluations completed under Department of Treasury regulations or
21 in the contractor evaluations submitted pursuant to N.J.S. 18A:18A-
22 15, if a district contracted directly for the construction of the project,
23 or under the provisions of the "Educational Facilities Construction and
24 Financing Act," P.L.2000, c.72, if the New Jersey Economic
25 Development Authority contracted for the construction of the project.

26 Currently, a board of education can only disqualify a bidder
27 otherwise determined to be the lowest responsible bidder if the board
28 itself has had "prior negative experience" with the bidder.

SENATE EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 346

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 13, 2002

The Senate Education Committee reports favorably and with committee amendments Senate Bill No. 346.

As amended, this bill expands the power of boards of education to disqualify the low bidders on school district contracts. The bill would permit a board of education to disqualify a low bidder if any board of education, or in the case of a contract for a school facilities project, the New Jersey Economic Development Authority (EDA), has had a "prior negative experience" with the bidder within the past 10 years. This prior negative experience would be documented through a contractor evaluation submitted by a school district pursuant to N.J.S.18A:18A-15, or in the case of a school facilities project constructed by the EDA, in a school facilities project performance evaluation submitted pursuant to the provisions of the "Educational Facilities Construction and Financing Act," P.L.2000, c.72. Currently, a board of education may only disqualify a bidder otherwise determined to be the lowest responsible bidder if the board itself has had "prior negative experience" with the bidder.

The committee amended the bill to expand the bill from its original application only to contracts for school facilities projects to all school district contracts. The amendments also eliminate the requirement that there be two instances of prior negative experience by another board of education or the New Jersey Economic Development Authority and to provide that there need only be one instance of prior negative experience by any board of education or, in the case of a school facilities project, by the EDA, within the past 10 years.

This bill was pre-filed for introduction in the 2002 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.