

Public School Contracts Law
N.J.S.A. 18A:18A-1 et seq.

(Current as of June 7, 2007)

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18A:18A-1. Short title; citation

This chapter shall be known and may be cited as the "Public School Contracts Law."

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-2. Definitions

As used in this chapter, unless the context otherwise indicates:

a. "Board of education" means and includes the board of education of any local school district, consolidated school district, regional school district, county vocational school and any other board of education or other similar body other than the State Board of Education, the Commission on Higher Education or the Presidents' Council, established and operating under the provisions of Title 18A of the New Jersey Statutes and having authority to make purchases and to enter into contracts for the provision or performance of goods or services. The term "board of education" also shall include the board of trustees of a charter school established under P.L.1995, c.426 (C.18A:36A-1 et seq.).

b. "Purchasing agent" means the secretary, business administrator or the business manager of the board of education duly assigned the authority, responsibility and accountability for the purchasing activity of the board of education and having the power to prepare advertisements, to advertise for and receive bids and to award contracts as permitted by this chapter, but if there be no secretary, business administrator or business manager, such officer, committees or employees to whom such power has been delegated by the board of education.

c. (Deleted by amendment, P.L.1999, c.440.)

d. "District" means and includes any local school district, consolidated school district, regional school district, county vocational school and any other board of education or other similar body other than the State board, established under the provisions of Title 18A of the New Jersey Statutes.

e. (Deleted by amendment, P.L.1999, c.440.)

f. (Deleted by amendment, P.L.1999, c.440.)

g. "Extraordinary unspecifiable services" means services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.

h. "Professional services" means services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law and the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study as distinguished from general academic instruction or apprenticeship and training.

Professional services may also mean services rendered in the provision or performance of goods or services that are original and creative in character in a recognized field of artistic endeavor.

i. (Deleted by amendment, P.L.1999, c.440.)

j. "Purchases" means transactions, for a valuable consideration, creating or acquiring an interest in goods, services and property, except real property or any interest therein.

k. "Work" means any task, program, undertaking, or activity, related to any development, redevelopment, construction or reconstruction performed or provided pursuant to a contract with a board of education.

l. "Aggregate" means the sums expended or to be expended for the provision or performance of any goods or services in connection with the same immediate purpose or task, or the furnishing of similar goods or services, during the same contract year through a contract awarded by a purchasing agent.

m. "Bid threshold" means the dollar amount set in N.J.S.A. 18A:18A-3, above which a board of education shall advertise for and receive sealed bids in accordance with procedures set forth in N.J.S.A. 18A:18A-1 et seq.

n. "Contract" means any agreement, including but not limited to a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and a board of education which agrees to compensate a vendor, as defined by and subject to the terms and conditions of the agreement. A contract also may include an arrangement whereby a vendor compensates a board of education for the vendor's right to perform a service, such as, but not limited to, operating a concession.

o. "Contract year" means the period of 12 consecutive months following the award of a contract.

p. "Competitive contracting" means the method described in sections 45 through 49 of P.L.1999, c.440 (C.18A:18A-4.1 through C.18A:18A-4.5) of contracting for specialized goods and services in which formal proposals are solicited from vendors; formal proposals are evaluated by the purchasing agent or counsel or school business administrator; and the board of education awards a contract to a vendor or vendors from among the formal proposals received.

q. "Goods and services" or "goods or services" means any work, labor, commodities, equipment, materials, or supplies of any tangible or intangible nature, except real property or any interest therein, provided or performed through a contract awarded by a purchasing agent, including goods and property subject to N.J.S.A. 12A:2-101 et seq.

r. "Library and educational goods and services" means textbooks, copyrighted materials, student produced publications and services incidental thereto, including but not

limited to books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microfilms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, video and magnetic tapes, other printed or published matter and audiovisual and other materials of a similar nature, necessary binding or rebinding of library materials, and specialized computer software used as a supplement or in lieu of textbooks or reference material.

s. "Lowest price" means the least possible amount that meets all requirements of the request of a purchasing agent.

t. "Lowest responsible bidder or vendor" means the bidder or vendor: (1) whose response to a request for bids offers the lowest price and is responsive; and (2) who is responsible.

u. "Official newspaper" means any newspaper designated by the board of education pursuant to R.S.35:1-1 et seq.

v. "Purchase order" means a document issued by the purchasing agent authorizing a purchase transaction with a vendor to provide or perform goods or services to the board of education, which, when fulfilled in accordance with the terms and conditions of a request of a purchasing agent and other provisions and procedures that may be established by the board of education, will result in payment by the board of education.

w. "Quotation" means the response to a formal or informal request made by a purchasing agent to a vendor for provision or performance of goods or services, when the aggregate cost is less than the bid threshold. Quotations may be in writing, or taken verbally if a record is kept by the purchasing agent.

x. "Responsible" means able to complete the contract in accordance with its requirements, including but not limited to requirements pertaining to experience, moral integrity, operating capacity, financial capacity, credit, and workforce, equipment, and facilities availability.

y. "Responsive" means conforming in all material respects to the terms and conditions, specifications, legal requirements, and other provisions of the request.

z. "Public works" means building, altering, repairing, improving or demolishing any public structure or facility constructed or acquired by a board of education to house school district functions or provide water, waste disposal, power, transportation and other public infrastructures.

aa. "Concession" means the granting of a license or right to act for or on behalf of the board of education, or to provide a service requiring the approval or endorsement of the board of education, and which may or may not involve a payment or exchange, or provision of services by or to the board of education, provided that the term concession shall not include vending machines.

bb. "Index rate" means the rate of annual percentage increase, rounded to the

nearest half-percent, in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, computed and published quarterly by the United States Department of Commerce, Bureau of Economic Analysis.

cc. "Proprietary" means goods or services of a specialized nature, that may be made or marketed by a person or persons having the exclusive right to make or sell them, when the need for such goods or services has been certified in writing by the board of education to be necessary for the conduct of its affairs.

dd. "Service or services" means the performance of work, or the furnishing of labor, time, or effort, or any combination thereof, not involving or connected to the delivery or ownership of a specified end product or goods or a manufacturing process. Service or services may also include an arrangement in which a vendor compensates the board of education for the vendor's right to operate a concession.

Amended 1994, c.48, s.59; 1999, c.440, s.50.

18A:18A-3. Bid threshold

When the cost or price of any contract awarded by the purchasing agent in the aggregate, does not exceed in a contract year the total sum of \$17,500, the contract may be awarded by a purchasing agent when so authorized by resolution of the board of education without public advertising for bids and bidding therefor, except that the board of education may adopt a resolution to set a lower threshold for the receipt of public bids or the solicitation of competitive quotations. If the purchasing agent is qualified pursuant to subsection b. of section 9 of P.L.1971, c.198 (C.40A:11-9) the board of education may establish that the bid threshold may be up to \$25,000. Such authorization may be granted for each contract or by a general delegation of the power to negotiate and award such contracts pursuant to this section.

b. Commencing in the fifth year after the year in which P.L.1999, c.440 takes effect, and every five years thereafter, the Governor, in consultation with the Department of the Treasury, shall adjust the threshold amount and the higher threshold amount which the board of education is permitted to establish as set forth in subsection a. of this section or the threshold amount resulting from any adjustment under this subsection, in direct proportion to the rise or fall of the index rate as that term is defined in N.J.S.A. 18A:18A-2, and shall round the adjustment to the nearest \$1,000. The Governor shall notify all local school districts of the adjustment no later than June 1 of every fifth year. The adjustment shall become effective on July 1 of the year in which it is made.

Any contract made pursuant to this section may be awarded for a period of 24 consecutive months, except that contracts for professional services pursuant to paragraph (1) of subsection a. of N.J.S.A. 18A:18A-5 may be awarded for a period not exceeding 12 consecutive months.

Amended 1980, c.144, s.1; 1983, c.171, s.1; 1999, c.440, s.51.

18A:18A-3.1. Private driver education schools

Boards of education may enter into contracts with private driver education schools for the purpose of providing driver education courses to students on an individual or group basis, according to rules prescribed by the Commissioner of Education, when it is determined by the local board of education that the private driver education school can provide behind-the-wheel driver education that is substantially equivalent to that provided by the board of education, and at less cost than current or other proposed programs.

Each private driver education school shall hold a current license or certificate of approval issued by the Director of the Division of Motor Vehicles pursuant to P.L. 1951, c.216 (C. 39:12-1 et seq.), and be approved for the purposes of this act by the Commissioner of Education.

L.1983, c. 281, s. 1, eff. July 29, 1983.

18A:18A-3.2. Group legal insurance

Any school district, hereinafter referred to as an employer, may enter into contracts of group legal insurance with an insurer authorized, pursuant to P.L. 1981, c. 160 (C. 17:46C-1 et seq.), to engage in the business of legal insurance in this State or may contract with a duly recognized prepaid legal services plan with respect to the benefits which they are authorized to provide. The contract or contracts shall provide coverage for the employees of the employer and may include their dependents. "Dependents" shall include an employee's spouse and the employee's unmarried children, including stepchildren and legally adopted children, and, at the option of the employer and the carrier, children placed by the Department of Human Services with a resource family, under the age of 19 who live with the employee in a regular parent-child relationship, and may also include, at the option of the employer and the carrier, other unmarried children of the employee under the age of 23 who are dependent upon the employee for support and maintenance. A spouse or child enlisting or inducted into military service shall not be considered a dependent during the military service.

"Employees" shall not include persons employed on a short-term, seasonal, intermittent or emergency basis, persons compensated on a fee basis, or persons whose compensation from the public employer is limited to reimbursement of necessary expenses actually incurred in the discharge of their duties.

The contract shall include provisions to prevent duplication of benefits and shall condition the eligibility of an employee for coverage upon satisfying a waiting period stated in the contract.

The coverage of an employee, and of his dependents, if any, shall cease upon the discontinuance of his employment or upon cessation of active full-time employment in the classes eligible for coverage, subject to the provision as may be made in a contract by his employer for limited continuance of coverage during disability, part-time employment, leave of absence other than leave for military service or layoff, or for continuance of coverage after retirement.

A contract for group legal insurance entered into pursuant to this act shall not include any legal services attendant to a claim brought by a teaching staff member against a board of education or legal services for the defense of a teaching staff member facing disciplinary action pursuant to subarticle B of article 2 of chapter 6 of Title 18A of the New Jersey Statutes (N.J.S.A. 18A:6-9 et seq.).

L.1986,c.73,s.1; amended 2004, c.130, s.42.

18A:18A-3.3. Payment of premiums

An employer entering into a contract is authorized to pay part or all of the premiums or charges for the contract and may appropriate any money necessary to pay the premiums or charges or portions thereof. The contribution required of an employee toward the cost of the coverage may be deducted from the pay, salary or other compensation of the employee upon an authorization in writing made to the appropriate disbursing officer.

The continuance of coverage after retirement of an employee may be provided at the rates and under the conditions as shall be prescribed in the contract, subject, however, to the requirements hereinafter set forth in this section. The contribution required of a retired employee toward the cost of the coverage may be paid by him to his former employer or in any other manner as the employer shall direct.

Retired employees may be required to pay for the entire cost of coverage for themselves and their dependents at rates which are determined based upon the reasonable expected use of retired persons.

L. 1986, c. 73, s. 2, eff. Aug. 5, 1986.

18A:18A-3.4. Employment payment for retirees

In providing for the continuance of coverage after retirement of employees and their dependents as authorized by section 2 of this act and notwithstanding any of the provisions of section 2 to the contrary, the employer may assume the entire cost of the coverage and pay all the premiums for employees who have retired after 25 years or more of service with the employer, including the premiums for their dependents, if any, under uniform conditions as the school district shall prescribe.

L. 1986, c. 73, s. 3, eff. Aug. 5, 1986.

18A: 18A-4. Contract awarded by board of education resolution; disqualification conditions

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

The board of education may, by resolution approved by a majority of the board of education and subject to subsections b. and c. of this section, disqualify a bidder who would otherwise be determined to be the lowest responsible bidder, if the board of education finds that any board or, in the case of a contract for a school facilities project, the New Jersey Economic Development Authority, has had prior negative experience with the bidder within the past 10 years, as reported in a contractor evaluation submitted pursuant to N.J.S.A. 18A:18A-15 or in a school facilities project performance evaluation submitted pursuant to regulations of the Department of the Treasury or section 62 of P.L.2000, c.72 (C.18A:7G-36), as appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

Amended 1980, c.144, s.2; 1983, c.171, s.2; 1999, c.440, s.52; 2002, c.90.

18A:18A-4.1. Use of competitive contracting by boards of education; purposes

Notwithstanding the provisions of any law, rule or regulation to the contrary, competitive contracting may be used by boards of education in lieu of public bidding for procurement of specialized goods and services the price of which exceeds the bid threshold, for the following purposes:

a. The purchase or licensing of proprietary computer software designed for board of education purposes, which may include hardware intended for use with the proprietary software. This subsection shall not be utilized for the purpose of acquiring general purpose computer hardware or software;

b. The hiring of a for-profit entity or a not-for-profit entity incorporated under Title 15A of the New Jersey Statutes for the purpose of:

(1) the operation, management or administration of recreation or social service facilities or programs; or

(2) the operation, management or administration of data processing services;

c. Services performed by an energy services company, including the design, measurement, financing and maintenance of energy savings equipment or renovations, which result in payment derived, in whole or in part, from the sale of verified energy savings over the term of an agreement with a public utility or subsidiary, but not the provision or performance of the physical improvements that result in energy savings, provided that such savings are calculated pursuant to guidelines promulgated by the Board of Public Utilities and further provided that the Local Finance Board, in consultation with the State Board of Education, shall find that the terms and conditions of any financing agreement are reasonable;

d. Telecommunications transmission or switching services that are not part of a tariff or schedule of charges filed with the Board of Public Utilities;

e. The purchase of specialized machinery or equipment of a technical nature, or servicing thereof, which will not reasonably permit the drawing of specifications;

f. Food services provided by food service management companies when not part of programs administered by the New Jersey Department of Agriculture, Bureau of Child Nutrition Programs;

g. Driver education courses provided by licensed driver education schools;

h. At the option of the board of education, any good or service that is exempt from bidding pursuant to N.J.S.A. 18A:18A-5;

i. Laboratory testing services;

j. Concessions;

k. The operation, management or administration of other services, with the approval of the Division of Local Government Services in the Department of Community Affairs.

Any purpose included herein shall not be considered by a board of education as an extraordinary unspecifiable service pursuant to paragraph (2) of subsection a. of N.J.S.A. 18A:18A-5.

L.1999,c.440,s.45.

18A:18A-4.2. Five-year contract term limit; exceptions

Unless an exception is provided for under N.J.S.A. 18A:18A-42 permitting a longer contract duration, contracts awarded pursuant to section 49 of P.L.1999, c.440 (C.18A:18A-4.5) may be for a term not to exceed five years.

L.1999,c.440,s.46.

18A:18A-4.3. Competitive contracting initiated by board of education resolution; process administration

a. In order to initiate competitive contracting, the board of education shall pass a resolution authorizing the use of competitive contracting each time specialized goods or services enumerated in section 45 of P.L.1999, c.440 (C.18A:18A-4.1) are desired to be contracted. If the desired goods or services have previously been contracted for using the competitive contracting process then the original resolution of the board of education shall suffice.

b. The competitive contracting process shall be administered by a purchasing agent qualified pursuant to subsection b. of section 9 of P.L.1971, c.198 (C.40A:11-9) or by legal counsel of the board of education, or by the school business administrator of the board of education. Any contracts awarded under this process shall be made by resolution of the board of education subject to the provisions of subsection e. of section 49 of P.L.1999, c.440 (C.18A:18A-4.5).

L.1999,c.440,s.47.

18A:18A-4.4. Request for proposals; documentation; provisions

The competitive contracting process shall utilize a request for proposals documentation in accordance with the following provisions:

a. The purchasing agent or counsel or school business administrator shall prepare or have prepared a request for proposal documentation, which shall include: all requirements deemed appropriate and necessary to allow for full and free competition between vendors; information necessary for potential vendors to submit a proposal; and a methodology by which the board of education will evaluate and rank proposals received from vendors.

b. The methodology for the awarding of competitive contracts shall be based on

an evaluation and ranking, which shall include technical, management, and cost related criteria, and may include a weighting of criteria, all developed in a way that is intended to meet the specific needs of the contracting unit, and where such criteria shall not unfairly or illegally discriminate against or exclude otherwise capable vendors. When an evaluation methodology uses a weighting of criteria, at the option of the board of education the weighting to be accorded to each criterion may be disclosed to vendors prior to receipt of the proposals. The methodology for awarding competitive contracts shall comply with such rules and regulations as the Director of the Division of Local Government Services in the Department of Community Affairs, after consultation with the Commissioner of Education may adopt pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

c. At no time during the proposal solicitation process shall the purchasing agent or counsel or school business administrator convey information, including price, to any potential vendor which could confer an unfair advantage upon that vendor over any other potential vendor. If a purchasing agent or counsel or school business administrator desires to change proposal documentation, the purchasing agent or counsel or school business administrator shall notify only those potential vendors who received the proposal documentation of any and all changes in writing and all existing documentation shall be changed appropriately.

d. All proposals and contracts shall be subject to the provisions of section 1 of P.L.1977, c.33 (C.52:25-24.2) requiring submission of a statement of corporate ownership and the provisions of P.L.1975, c.127 (C.10:5-31 et seq.) concerning equal employment opportunity and affirmative action.

L.1999,c.440,s.48.

18A:18A-4.5. Competitive contracting proposal solicitation

Competitive contracting proposals shall be solicited in the following manner:

a. A notice of the availability of request for proposal documentation shall be published in an official newspaper of the board of education at least 20 days prior to the date established for the submission of proposals. The board of education shall promptly reply to any request by an interested vendor by providing a copy of the request for proposals. The board of education may charge a fee for the proposal documentation that shall not exceed \$50.00 or the cost of reproducing the documentation, whichever is greater.

b. Each interested vendor shall submit a proposal which shall include all the information required by the request for proposals. Failure to meet the requirements of the request for proposals may result in the board of education disqualifying the vendor from further consideration. Under no circumstances shall the provisions of a proposal be subject to negotiation by the board of education.

c. If the board of education, at the time of solicitation, utilizes its own employees to provide the goods or perform the services, or both considered for competitive contracting, the board of education shall, at any time prior to, but no later than the time of

solicitation for competitive contracting proposals, notify affected employees of the board of education's intention to solicit competitive contracting proposals. Employees or their representatives shall be permitted to submit recommendations and proposals affecting wages, hours, and terms and conditions of employment in such a manner as to meet the goals of the competitive contract. If employees are represented by an organization that has negotiated a contract with the board of education, only the bargaining unit shall be authorized to submit such recommendations or proposals. When requested by such employees, the board of education shall provide such information regarding budgets and the costs of performing the services by such employees as may be available. Nothing shall prevent such employees from making recommendations that may include modifications to existing labor agreements in order to reduce such costs in lieu of award of a competitive contract, and agreements implementing such recommendations may be considered as cause for rejecting all other proposals.

d. The purchasing agent or counsel or school business administrator shall evaluate all proposals only in accordance with the methodology described in the request for proposals. After proposals have been evaluated, the purchasing agent or counsel or school business administrator shall prepare a report evaluating and recommending the award of a contract or contracts. The report shall list the names of all potential vendors who submitted a proposal and shall summarize the proposals of each vendor. The report shall rank vendors in order of evaluation, shall recommend the selection of a vendor or vendors, as appropriate, for a contract, shall be clear in the reasons why the vendor or vendors have been selected among others considered, and shall detail the terms, conditions, scope of services, fees, and other matters to be incorporated into a contract. The report shall be made available to the public at least 48 hours prior to the awarding of the contract, or when made available to the board of education, whichever is sooner. The board of education shall have the right to reject all proposals for any of the reasons set forth in N.J.S.A. 18A:18A-22.

e. Award of a contract shall be made by resolution of the board of education within 60 days of the receipt of the proposals, except that the proposals of any vendors who consent thereto, may, at the request of the board of education, be held for consideration for such longer period as may be agreed.

f. The report prepared pursuant to subsection d. of this section shall become part of the public record and shall reflect the final action of the board of education. Contracts shall be executed pursuant to N.J.S.A. 18A:18A-40.

g. The secretary of the board of education shall publish a notice in the official newspaper of the board of education summarizing the award of a contract, which shall include but not be limited to, the nature, duration, and amount of the contract, the name of the vendor and a statement that the resolution and contract are on file and available for public inspection in the office of the secretary of the board of education.

h. The Director of the Division of Local Government Services in the Department of Community Affairs, after consultation with the Commissioner of Education, may adopt additional rules and regulations, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to effectuate the provisions of sections 45 through 49 of P.L.1999, c.440 (C.18A:18A-4.1 through

C.18A:18A-4.5).

L.1999,c.440,s.49.

18A:18A-5. Exceptions to requirement for advertising

Any contract, the amount of which exceeds the bid threshold, shall be negotiated and awarded by the board of education by resolution at a public meeting without public advertising for bids and bidding therefor if

a. The subject matter thereof consists of:

(1) Professional services. The board of education shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed once, in an official newspaper, a brief notice stating the nature, duration, service and amount of the contract, and that the resolution and contract are on file and available for public inspection in the office of the board of education;

(2) Extraordinary unspecifiable services which cannot reasonably be described by written specifications. The application of this exception as to extraordinary unspecifiable services shall be construed narrowly in favor of open competitive bidding where possible and the Director of the Division of Local Government Services in the Department of Community Affairs is authorized to establish rules and regulations after consultation with the Commissioner of Education limiting its use in accordance with the intention herein expressed; and the board of education shall in each instance state supporting reasons for its action in the resolution awarding the contract for extraordinary unspecifiable services and shall forthwith cause to be printed, in the manner set forth in paragraph (1) of this subsection, a brief notice of the award of such contract;

(3) The doing of any work by employees of the board of education;

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

(5) Library and educational goods and services;

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

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

(8) The printing of bonds and documents necessary to the issuance and sale thereof by a board of education;

(9) Equipment repair service if in the nature of an extraordinary unspecifiable

service and necessary parts furnished in connection with such services, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;

(10) Insurance, including the purchase of insurance coverage and consultant services, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;

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

(12) The acquisition of artifacts or other items of unique intrinsic, artistic or historic character;

(13) Those goods and services necessary or required to prepare and conduct an election;

(14) (Deleted by amendment, P.L.1999,c.440.)

(15) (Deleted by amendment, P.L.1999, c.270).

(16) (Deleted by amendment, P.L.1999,c.440.)

(17) The doing of any work by persons with disabilities employed by a sheltered workshop;

(18) Expenses for travel and conferences;

(19) The provision or performance of goods or services for the support or maintenance of proprietary computer hardware and software, except that this provision shall not be utilized to acquire or upgrade non-proprietary hardware or acquire or update non-proprietary software;

(20) Purchases of goods and services at rates set by the Universal Service Fund administered by the Federal Communications Commission;

(21) Goods and services paid with funds that: are raised by or collected from students to support the purchase of student oriented items or materials, such as yearbooks, class rings, and a class gift; and are deposited in school or student activity accounts; and require no budget appropriation from the board of education;

(22) Food services provided by food service management companies pursuant to procedures established by the New Jersey Department of Agriculture, Bureau of Child Nutrition Programs;

(23) Vending machines providing food or drink.

b. It is to be made or entered into with the United States of America, the State of New Jersey, county or municipality or any board, body, officer, agency, authority or board of education or any other state or subdivision thereof.

c. Bids have been advertised pursuant to N.J.S.A. 18A:18A-4 on two occasions and (1) no bids have been received on both occasions in response to the advertisement, or (2) the board of education has rejected such bids on two occasions because it has determined that they are not reasonable as to price, on the basis of cost estimates prepared for or by the board of education prior to the advertising therefor, or have not been independently arrived at in open competition, or (3) on one occasion no bids were received pursuant to (1) and on one occasion all bids were rejected pursuant to (2), in whatever sequence; any such contract may then be negotiated and may be awarded upon adoption of a resolution by a two-thirds affirmative vote of the authorized membership of the board of education authorizing such a contract; provided, however, that:

(a) A reasonable effort is first made by the board of education to determine that the same or equivalent goods or services, at a cost which is lower than the negotiated price, are not available from an agency or authority of the United States, the State of New Jersey or of the county in which the board of education is located, or any municipality in close proximity to the board of education;

(b) The terms, conditions, restrictions and specifications set forth in the negotiated contract are not substantially different from those which were the subject of competitive bidding pursuant to N.J.S.A. 18A:18A-4; and

(c) Any minor amendment or modification of any of the terms, conditions, restrictions and specifications which were the subject of competitive bidding pursuant to N.J.S.A. 18A:18A-4 shall be stated in the resolution awarding the contract; provided further, however, that if on the second occasion the bids received are rejected as unreasonable as to price, the board of education shall notify each responsible bidder submitting bids on the second occasion of its intention to negotiate, and afford each bidder a reasonable opportunity to negotiate, but the board of education shall not award such contract unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any responsible vendor, and is a reasonable price for such goods or services.

d. Whenever a board of education shall determine that a bid was not arrived at independently in open competition pursuant to subsection c.(2) of N.J.S.A. 18A:18A-5, it shall thereupon notify the county prosecutor of the county in which the board of education is located and the Attorney General of the facts upon which its determination is based, and when appropriate, it may institute appropriate proceedings in any State or federal court of competent jurisdiction for a violation of any State or federal antitrust law or laws relating to the unlawful restraint of trade.

e. The board of education has solicited and received at least three quotations on materials, supplies or equipment for which a State contract has been issued pursuant to N.J.S.18A:18A-10, and the lowest responsible quotation is at least 10% less than the price the board would be charged for the identical materials, supplies or equipment, in the same quantities, under the State contract. Any such contract or agreement entered into pursuant to subsection d. or subsection e. may be made, negotiated or awarded only upon adoption of a resolution by the affirmative vote of two-thirds of the full membership of the board of education at a meeting thereof authorizing such a contract or agreement. The purchase order relating to any such contract shall include a notation that the material,

supplies, or equipment was purchased at least 10% below the State contract price. The board of education shall make available to the Director of the Division of Local Government Services in the Department of Community Affairs, upon request, any documents relating to the solicitation and award of the contract, including, but not limited to, quotations, requests for quotations, and resolutions.

Amended 1982, c.161, s.5; 1983, c.48; 1983, c.281, s.2; 1984, c.49, s.2; 1985, c.527, s.1; 1995, c.265; 1999, c.270, s.1; 1999, c.440, s.53; 2007, c.42, s.2.

18A:18A-6. Standards for purchase of fresh milk; penalties; rules and regulations

In purchases of fresh milk and as a condition thereof, the board of education shall require each vendor to agree in writing to purchase during the year in which he proposes to furnish such milk to the school district an amount of fresh milk from New Jersey producers or associations of producers at least equal to the amount he proposes to furnish to the school district plus an amount equal to the amount, if any, he shall be required to furnish to any other school district in the State. Every such agreement shall be filed by the board of education with the Secretary of Agriculture who shall be charged with the duty of enforcing the provisions of this section. Failure by any vendor to purchase milk in compliance with his agreement shall subject him to a penalty of not less than \$100.00 nor more than \$500.00 per day for each day of noncompliance, unless he can prove to the satisfaction of the Secretary that he is unable to obtain sufficient milk from New Jersey producers or associations of producers to enable him to comply with his agreement. In the absence of such proof, the penalties herein provided for shall be enforced and collected by the Secretary of Agriculture in the name of the respective school district in a summary proceeding in accordance with the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.). The penalty, when recovered, shall be paid to the school district so named in the proceeding. Any vendor found guilty of violating his agreement shall be ineligible for any contract award under this section for a period of 3 years thereafter.

The Secretary of Agriculture shall adopt and promulgate such rules and regulations as shall be necessary for the proper operation and enforcement of this section.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-7. Emergency contracts

Any contract may be negotiated or awarded for a board of education without public advertising for bids and bidding therefor, notwithstanding that the contract price will exceed the bid threshold when an emergency affecting the health or safety of occupants of school property requires the immediate delivery of goods or the performance of services, provided that the contracts are awarded in the following manner:

a. The official in charge of the building, facility or equipment wherein the emergency occurred or such other officer or employee as may be authorized to act in place of that official, shall notify the purchasing agent or a supervisor of the purchasing agent of the need for the performance of a contract, the nature of the emergency, the time of its occurrence and the need for invoking this section. If that person is satisfied that an emergency exists, that person shall be authorized to award a contract or contracts for such purposes as may be necessary to respond to the emergent needs. Such notification shall be reduced to writing and filed with the purchasing agent as soon as practicable.

b. Upon the furnishing of such goods or services, in accordance with the terms of the contract, the contractor furnishing such goods or services, shall be entitled to be paid therefor and the board of education shall be obligated for said payment. The board of education shall take such action as shall be required to provide for the payment of the contract price.

c. The Division of Local Government Services in the Department of Community Affairs, after consultation with the Commissioner of Education, shall prescribe rules and procedures to implement the requirements of this section.

d. The board of education may prescribe additional rules and procedures to implement the requirements of this section.

Amended 1980, c.144, s.3; 1983, c.171, s.3; 1999, c.440, s.54.

18A:18A-8. Contracts not to be divided

a. No contract in the aggregate which is single in character or which necessarily or by reason of the quantities required to effectuate the purpose of the contract includes the provision or performance of additional goods or services, shall be divided, so as to bring it or any of the parts thereof under the bid threshold, for the purpose of dispensing with the requirement of public advertising and bidding therefor.

b. In contracting for the provision or performance of any goods or services included in or incidental to the provision or performance of any work which is single in character or inclusive of the provision or performance of additional goods or services, all of the goods or services requisite for the completion of such contract shall be included in one contract.

Amended 1980, c.144, s.4; 1983, c.171, s.4; 1999, c.440, s.55.

18A:18A-8.1. Rules

For the purpose of ensuring consistency between the "Local Public Contracts Law, " P.L.1971, c.198 (C.40A:11-1 et seq.), and the "Public School Contracts Law," N.J.S.A. 18A:18A-1 et seq., the Director of the Division of Local Government Services in the Department of Community Affairs, after consultation with the Commissioner of Education, and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules concerning determinations of aggregation for the purposes of whether a contract is subject to public bidding as set forth in sections 3, 4 and 7 of P.L.1971, c.198 (C.40A:11-3, 40A:11-4 and 40A:11-7) and N.J.S.A. 18A:18A-3, N.J.S.A. 18A:18A-4, and N.J.S.A. 18A:18A-8.

L.1999,c.440,s.56.

18A:18A-9. Periodic solicitation of bids

Every board of education shall, on an annual basis or at such lesser intervals to be fixed by it, solicit by public advertisement the submission of bids for the provision or performance of goods or services which are and which under N.J.S.A. 18A:18A-4 can be contracted to be provided or performed only after public advertisement for bids and bidding therefor and all contracts for the provision or performance of such goods or services shall be awarded only in that manner.

Amended 1999, c.440, s.57.

18A:18A-10. Board of education purchases through State agency; procedure

A board of education, without advertising for bids, or after having rejected all bids obtained pursuant to advertising therefor, by resolution may purchase any goods or services pursuant to a contract or contracts for such goods or services entered into on behalf of the State by the Division of Purchase and Property.

b. A board of education may also use, without advertising for bids, or having rejected all bids obtained pursuant to advertising, the Federal Supply Schedules of the General Services Administration or schedules from other federal procurement programs promulgated by the Director of the Division of Purchase and Property in the Department of the Treasury pursuant to section 1 of P.L.1996, c.16 (C.52:34-6.1), subject to the following conditions:

(1) the price of the goods or services being procured is no greater than the price offered to federal agencies;

(2) (Deleted by amendment, P.L.2006, c.10;

(3) the board of education receives the benefit of federally mandated price reductions during the term of the contract;

(4) the price of the goods or services being procured is no greater than the price of the same or equivalent goods or services under the State contract, unless the board of education determines that because of factors other than price, selection of a vendor from

the Federal Supply Schedules or schedules from other federal procurement programs would be more advantageous to the board of education;

(5) a copy of the purchase order relating to any such contract, the requisition or request for purchase order, if applicable, and documentation identifying the price of the goods or services under the Federal Supply Schedules or schedules from other federal procurement programs shall be filed with the Director of the Division of Purchase and Property in the Department of the Treasury within five working days of the award of any such contract by the board of education.

c. Whenever a purchase is made, the board of education shall place its order with the vendor offering the lowest price, including delivery charges, that best meets the requirements of the board of education. Prior to placing such an order, the board of education shall document with specificity that the goods or services selected best meet the requirements of the board of education.

L.1999,c.39,s.39; amended 2006,c.9,s.1.

18A:18A-11. Joint purchases by districts, municipalities, counties; authority

The boards of education of two or more districts may provide jointly by agreement for the provision and performance of goods and services for their respective districts, or one or more boards of education may provide for such provision or performance of goods or services by joint agreement with the governing body of any municipality or county.

Amended 1999, c.440, s.59.

18A:18A-12. Contents of agreement

a. Such agreements shall be entered into by resolution adopted by each participating board of education, municipality or county and shall set forth the categories of goods or services to be provided or performed, the manner of advertising for bids and of awarding of contracts, the method of payment by each participating board of education, municipality or county, and other matters deemed necessary to carry out the purposes of the agreement.

b. Each participant's share of expenditures for purchases under any such agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the participant.

Amended 1999, c.440, s.60.

18A:18A-13. Purchases and contracts subject to law and rules and regulations

Such purchases and all contracts pertaining thereto shall be subject to all provisions of law and the applicable rules and regulations of the State board.

Amended 1999, c.440, s.61.

18A:18A-14. Controversies or disputes; determination; appeal

In the event that any controversy or dispute shall arise among the parties (except a municipality or county) to any such contract, the same shall be referred to the county superintendent of the county in which the districts are situate for determination and his determination thereon shall be binding, subject to appeal to the commissioner and the State board pursuant to law. In the event that the districts are in more than one county, the controversy or dispute shall be referred to the county superintendents of the counties for joint determination, and if they shall be unable to agree upon a joint determination within 30 days, the controversy or dispute shall be referred to the commissioner for determination.

Amended 1999, c.440, s.62.

18A:18A-14.1. Electronic data processing defined

As used in this act "electronic data processing" means the storage, retrieval, combination or collation of items of information by means of electronic equipment involving the translation of words, numbers and other symbolic elements into electrical impulses or currents.

L.1982, c. 161, s. 1, eff. Oct. 28, 1982.

18A:18A-14.2. Contract or lease for electronic data processing for another school district; combination of records and information

a. Any board of education may by contract or lease provide electronic data processing services for the board of education of another school district, and may undertake with such other board of education the joint operation of electronic data processing of their several official records and other information relative to their official activities, services and responsibilities.

b. The records and other information originating with any board of education participating in such a contract or lease may be combined, compiled, and conjoined with the records and other information of any and all other participating local units for the purposes of such electronic data processing; and any provisions of law requiring such records to be kept confidential or to be retained by any board of education or any officer or agency thereof shall be deemed to be isolated thereby.

L.1982, c. 161, s. 2, eff. Oct. 28, 1982.

18A:18A-14.3. Contract or lease; contents

A contract or lease entered into pursuant to this act shall set forth the charge for all services provided, or in the case of a joint undertaking the proportion of the cost each party thereto shall assume and specify all the details of the management of the joint undertaking, and any other matters that may be deemed necessary for insertion therein, and may be amended from time to time by the contracting parties.

L.1982, c. 161, s. 3, eff. Oct. 28, 1982.

18A:18A-14.4. Party to contract as agent

For the purpose of carrying into execution a contract or lease for a joint enterprise under this act, any party to such contract may act as agent for any or all the parties in acquiring, by lease, purchase or otherwise, any property, facilities or services, in appointing such officers and employees as may be necessary and directing its activities, to the same extent as a board of education is authorized to do separately.

L.1982, c. 161, s. 4, eff. Oct. 28, 1982.

18A:18A-15. Specifications generally

Any specifications for the provision or performance of goods or services under this chapter shall be drafted in a manner to encourage free, open and competitive bidding. In particular, no specifications under this chapter may:

- a. Require any standard, restriction, condition or limitation not directly related to the purpose, function or activity for which the contract is awarded; or
- b. Require that any bidder be a resident of, or that the bidder's place of business be located in, the county or school district in which the contract will be awarded or performed, unless the physical proximity of the bidder is requisite to the efficient and economical performance of the contract; or
- c. Discriminate on the basis of race, religion, sex, national origin, creed, color, ancestry, age, marital status, affectional or sexual orientation, familial status, liability for service in the Armed Forces of the United States, or nationality; or
- d. Require, with regard to any contract, the furnishing of any "brand name," but may in all cases require "brand name or equivalent," except that if the goods or services to be provided or performed are proprietary, such goods or services may be purchased by stipulating the proprietary goods or services in the bid specification in any case in which the resolution authorizing the contract so indicates, and the special need for such proprietary goods or services is directly related to the performance, completion or undertaking of the purpose for which the contract is awarded; or
- e. Fail to include any option for renewal, extension, or release which the board of education may intend to exercise or require; or any terms and conditions necessary for the performance of any extra work; or fail to disclose any matter necessary to the substantial performance of the contract.

The specifications for every contract for public work, the entire cost whereof will exceed \$20,000.00, shall provide that the board of education, through its authorized agent, shall upon completion of the contract report to the department as to the contractor's performance, and shall also furnish such report from time to time during performance if the contractor is then in default.

Any specification which knowingly excludes prospective bidders by reason of the impossibility of performance, bidding or qualification by any but one bidder, except as

provided herein, shall be null and void and of no effect and shall be readvertised for receipt of new bids, and the original contract shall be set aside by the board of education.

No provision in this section shall be construed to prevent a board of education from designating that a contract for goods or services shall be awarded to a small business enterprise, a minority business enterprise or a women's business enterprise pursuant to P.L.1985, c.490 (C.18A:18A-51 et seq.).

Any prospective bidder who wishes to challenge a bid specification shall file such challenges in writing with the purchasing agent no less than three business days prior to the opening of the bids. Challenges filed after that time shall be considered void and having no impact on the board of education or the award of a contract.

Amended 1983, c.266, s.1; 1985, c.490, s.11; 1988, c.37, s.10; 1999, c.440, s.63.

18A:18A-15.1. Payment from bequest, legacy or gift; conditions

Goods or services, the payment for which utilizes only funds received by a board of education from a bequest, legacy or gift, shall be subject to the provisions of N.J.S.A. 18A:18A-1 et seq., except that if such bequest, legacy or gift contains written instructions as to the specifications, manufacturer or vendor, or source of supply of the goods or services to be provided or performed, such instructions shall be honored.

L.1999,c.440,s.64.

18A:18A-16. Preparation and approval of plans and specifications for public schoolhouses

The Commissioner of Education is hereby authorized to withhold all or part of any State aid paid to any school district pursuant to chapter 58 of Title 18A of the New Jersey Statutes or any other law, unless and until said school district shall comply with the provisions of N.J.S.A 18A:18A-17 with respect to facilities for the physically handicapped.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-16.1. Regulation, policy adoption, restriction

1. The State Board of Education shall adopt no regulation or policy which requires as a condition for approval of plans and specifications for the erection, alteration, improvement or repair of a public school facility capacity requirements which exclude space occupied by movable furniture, equipment and other items when calculating net square footage.

L.1995,c.68,s.1.

18A:18A-17. Facilities for handicapped persons

Every board of education shall require that all plans and specifications for bids on any contract with the board for the construction, remodeling or renovation of any public building shall provide facilities for the physically handicapped.

As used in this section, "remodeling or renovation" shall mean to construct an addition to, alter the design or layout of said public building so that a change or modification of the entrance facilities, toilet facilities, or vertical access is achieved, or makes substantial repairs or alterations. As used herein, "substantial repairs or alterations" shall mean that if the costs of making such repairs or alterations:

- a. Shall exceed 60% of the value of the building the entire building shall be made to comply with the requirements of this section;
- b. Shall be between 30% and 60% of the value of the building, only those portions of the building repaired or altered shall be made to comply with the requirements of this section; or
- c. Shall be under 30% of the value of the building such repairs or alterations shall be either in accordance with the requirement of this section, or in compliance with their previously required condition and with the same or equivalent material or equipment, provided the general safety and public welfare are not thereby endangered.

The value of such public buildings shall be determined by every board of education in accordance with a formula which shall be established by the State Board of Education. Said formula may take into account the size, age, type of construction, original building cost and replacement cost of any such building.

The State Board of Education, by rules and regulations, shall prescribe the kinds, types and quality of the aforementioned facilities for the physically handicapped.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-17.1. Commissioner of Education authorized to withhold State aid

The Commissioner of Education is hereby authorized to withhold all or part of any State aid paid to any school district pursuant to chapter 58 of Title 18A of the New Jersey Statutes or any other law, unless and until said school district shall comply with the provisions of N.J.S.A. 18A:18A-17 with respect to facilities for the physically handicapped.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-18. Preparation of separate plans, specifications for certain construction work, goods and services; bidding; awarding of contracts

a. In the preparation of plans and specifications for the construction, alteration or repair of any building by a board of education, when the entire cost of the work will exceed the bid threshold, separate plans and specifications may be prepared for each of the following, and all work kindred thereto to be performed or furnished in connection therewith:

- (1) The plumbing and gas fitting work;
- (2) The heating and ventilating systems and equipment;
- (3) The electrical work, including any electrical power plant;
- (4) The structural steel and ornamental iron work;
- (5) General construction, which shall include all other work required for the completion of the project.

b. The board of education or its purchasing agent shall advertise for and receive, in the manner provided by law, (1) separate bids for each of the branches of work specified in subsection a. of this section, or (2) bids for all the work, goods and services required to complete the building to be included in a single overall contract, or (3) both. In the case of a single bid under paragraph (2) or (3) of this subsection, there will be set forth in the bid the name or names of all subcontractors to whom the bidder will subcontract the furnishing of plumbing and gas fitting, and all kindred work, and of the heating and ventilating systems and equipment, and electrical work, structural steel and ornamental iron work, each of which subcontractors shall be qualified in accordance with N.J.S.A. 18A:18A-1 et seq. The school district shall require evidence of performance security to be submitted simultaneously with the list of the subcontractors. Evidence of performance security may be supplied by the bidder on behalf of himself and any or all subcontractors, or by each respective subcontractor, or by any combination thereof which results in evidence of performance security equaling, but in no event exceeding, the total amount bid.

c. Contracts shall be awarded to the lowest responsible bidder in each branch of work in the case of separate bids and to the single lowest responsible bidder in the case of single bids. In the event that a contract is advertised in accordance with paragraph (3) of subsection b. of this section, the contract shall be awarded in the following manner: If the sum total of the amounts bid by the lowest responsible bidder for each branch is less than the amount bid by the lowest responsible bidder for all the work, goods and services, the board of education shall award separate contracts for each of such branches to the lowest responsible bidder therefore, but if the sum total of the amount bid by the lowest responsible bidder for each branch is not less than the amount bid by the lowest responsible bidder for all the work, goods and services, the board of education shall award a single overall contract to the lowest responsible bidder for all of such work, goods and services. In every case in which a contract is awarded under paragraph (2) or (3) of subsection b. of this section, all payments required to be made under such contract

for work, goods and services supplied by a subcontractor may, upon the certification of the contractor of the amount due to the subcontractor, be paid directly to the subcontractor. Payments to a subcontractor for work and materials supplied in connection with the contract shall be made within 10 calendar days of the receipt of payment for that work or the delivery of those materials by the subcontractor in accordance with the provisions of P.L.1991, c.133 (C.2A:30A-1 et seq.), and any regulations promulgated there under.

Amended 1980, c.144, s.5; 1983, c.171, s.5; 1999, c.280, s.1; 1999, c.440, s.65.

18A:18A-19. Number of working days specified

All specifications for the doing of any work for a board of education shall fix the date before which the work shall be completed, or the number of working days to be allowed for its completion; and every such contract shall contain a provision for a deduction, from the contract price, or any wages paid by the board of education to any inspector or inspectors necessarily employed by it on the work, for any number of days in excess of the number allowed in the specifications.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-20. American goods and products to be used where possible

Each board of education shall provide, in the specifications for all contracts for work for which it will pay any part of the cost or work which by contract it will ultimately own and maintain, that only manufactured and farm products of the United States, wherever available, be used in such work.

Amended 1999, c.440, s.66.

18A:18A-21. Advertisement for bids; bids; general requirements; notice of revisions

a. Except as provided in section 5 of P.L.1985, c.490 (C.18A:18A-55), all advertisements for bids shall be published in an official newspaper sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but in no event less than 10 days prior to such date. For all contracts, the date fixed for receiving the bids shall not fall on a Monday, or any day directly following a State or federal holiday.

b. The advertisement shall designate the manner of submitting and of receiving the bids and the time and place at which the bids will be received. If the published specifications provide for receipt of bids by mail, those bids which are mailed to the board of education shall be sealed and shall be opened only for examination at such time and place as all bids received are unsealed and announced. At such time and place the purchasing agent of the board of education shall publicly receive the bids and thereupon immediately proceed to unseal them and publicly announce the contents, which announcement shall be made in the presence of any parties bidding or their agents who are then and there present. A proper record of the prices and terms shall be made in the minutes of the board. No bids shall be received after the time designated in the advertisement.

c. Notice of revisions or addenda to advertisements or bid documents shall be provided as follows:

(1) For all contracts except those for construction work, notice shall be published no later than seven days, Saturdays, Sundays, and holidays excepted, prior to the date for acceptance of bids, in an official newspaper of the board of education and be provided to any person who has submitted a bid or who has received a bid package, in one of the following ways: (a) in writing by certified mail or (b) by certified facsimile transmission, meaning that the sender's facsimile machine produces a receipt showing date and time of transmission and that the transmission was successful or (c) by a delivery service that provides certification of delivery to the sender.

(2) For all contracts for construction work, notice shall be provided no later than seven days, Saturdays, Sundays, or holidays excepted, prior to the date for acceptance of bids, to any person who has submitted a bid or who has received a bid package in any of the following ways: i) in writing by certified mail or ii) by certified facsimile transmission, meaning that the sender's facsimile machine produces a receipt showing date and time of transmission and that the transmission was successful or iii) by a delivery service that provides certification of delivery to the sender.

d. Failure of the board of education to advertise for the receipt of bids or to provide proper notification of revisions or addenda to advertisements or bid documents related to bids as prescribed by this section shall prevent the board of education from accepting the bids and require the readvertisement for bids pursuant to subsection a. of this section. Failure to obtain a receipt when good faith notice is sent or delivered to the address or telephone facsimile number on file with the board of education shall not be considered failure by the board of education to provide notice.

Amended 1985, c.490, s.12; 1999, c.440, s.67; 2005, c.191, s.1.

18A:18A-22. Rejection of bids

A board of education may reject all bids for any of the following reasons:

- a. The lowest bid substantially exceeds the cost estimates for the goods or services;
- b. The lowest bid substantially exceeds the board of education's appropriation for the goods or services;
- c. The board of education decides to abandon the project for provision or performance of the goods or services;
- d. The board of education wants to substantially revise the specifications for the goods or services;
- e. The purposes or provisions or both of N.J.S.A. 18A:18A-1 et seq. are being violated; and

f. The board of education decides to use the State authorized contract pursuant to N.J.S.A. 18A:18A-10.

Amended 1999, c.440, s.68.

18A:18A-23. Certificate of bidder showing ability to perform contract

There may be required from any bidder submitting a bid on public work to any board of education, duly advertised for in accordance with law, a certificate showing that he owns, leases, or controls all the necessary equipment required by the plans, specifications and advertisements under which bids are asked for and if the bidder is not the actual owner or lessee of any such equipment, his certificate shall state the source from which the equipment will be obtained, and shall be accompanied by a certificate from the owner or person in control of the equipment definitely granting to the bidder the control of the equipment required during such time as may be necessary for the completion of that portion of the contract for which it is necessary.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-24. Security to accompany bid; amount

There may be required from any person bidding on any contract, advertised in accordance with law, that the bid be accompanied by a guarantee payable to the board of education that, if the contract is awarded to the bidder, the bidder will enter into a contract therefor and will furnish any performance bond or other security required as a guarantee or indemnification. The guarantee shall be in the amount of 10% of the bid, but not in excess of \$20,000.00, except as otherwise provided herein, and may be given, at the option of the bidder, by certified check, cashier's check or bid bond. In the event that any law or regulation of the United States imposes any condition upon the awarding of a monetary grant to any board of education, which condition requires the depositing of a guarantee in an amount other than 10% of the bid or in excess of \$20,000.00, the provisions of this section shall not apply and the requirements of the law or regulation of the United States shall govern.

L.1977, c.114; amended 1999, c.440, s.69.

18A:18A-25. Guarantee certificate

When a surety company bond is required in the advertisement or specifications for a contract, every board of education shall require from any bidder submitting a bid in accordance with plans, specifications and advertisements, as provided for by law, a certificate from a surety company stating that it will provide the contractor with a bond in such sum as is required in the advertisement or in the specifications.

This certificate shall be obtained for a bond--

a. For the faithful performance of all provisions of the specifications or for all matters which may be contained in the notice to bidders, relating to the performance of the contract; including the guarantees required under article 12 of chapter 44 of Title 2A of the New Jersey Statutes; and

b. If any be required, for a guarantee bond for the faithful performance of the contract provisions relating to the repair and maintenance of any work, project or facility and its appurtenances and keeping the same in good and serviceable condition during the term of the bond as provided for in the notice to bidders or in the specifications; or

c. In such other form as may be provided in the notice to bidders or in the specifications.

If a bidder desires to offer the bond of an individual instead of that of a surety company, the bidder shall submit with the bid a certificate signed by such individual similar to that required of a surety company.

The board of education may reject any such bid if it is not satisfied with the sufficiency of the individual surety offered.

Amended 1999, c.440, s.70.

18A:18A-26. Classification of bidders as requisite to bidding

Every board of education shall require that all persons proposing to bid on any contract requiring public advertisement for bids with the board for public work, the entire cost whereof will exceed \$20,000.00, shall first be classified in accordance with article 6 of this chapter as to the character and amount of public work on which they shall be qualified to submit bids. So long as such requirement is in effect, the board of education shall accept such bids only from persons qualified in accordance with such classification.

L.1977, c. 114, s. 1, eff. June 2, 1977. Amended by L.1983, c. 266, s. 2, eff. July 14, 1983.

18A:18A-27. Regulations for qualifications of prospective bidders

The State Treasurer may establish reasonable regulations appropriate for controlling the qualifications of prospective bidders upon contracts for public works, the entire cost whereof will exceed the bid threshold, by the amount, class or category of goods or services to be provided or performed which may fix the qualifications required according to the financial ability and experience of the bidders and the capital and equipment available to them pertinent to and reasonably related to the class or category of goods or services to be provided or performed in the performance of any such contract, and may require each bidder to furnish a statement thereof.

Such regulations shall be written in a manner:

- a. Which will not unnecessarily discourage full, free and open competition; or
- b. Which will not unnecessarily restrict the participation of small business in the public bidding process; or
- c. Which will not create undue preferences; or
- d. Which will not violate any other provision of this chapter, or any other law.

No qualification rating of any bidder shall be influenced by the bidder's race, religion, sex, national origin, nationality or place of residence.

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

Amended 1983, c.266, s.3; 1999, c.440, s.71.

18A:18A-27.1. Prequalification of certain persons performing school construction management services

1. Notwithstanding the provisions of N.J.S.A. 18A:18A-5 or any other section of law to the contrary, any person who performs construction management services for a school facilities project constructed by a school district, which services have a cost in excess of the bid threshold amount specified in N.J.S.A. 18A:18A-3, shall be prequalified by the Division of Property Management and Construction in the Department of the Treasury. This requirement shall not apply to construction management services performed by a full-time employee of a school district.

L.1977, c.114; amended 1983, c.266, s.3; 1999, c.440, s.71.

18A:18A-28. Application for classification; fee

Any person desiring such classification shall file with the department a statement under oath in response to a questionnaire, prepared and standardized for like classes of work, by the department together with a fee of \$10.00. The statement shall develop fully the financial ability, adequacy of plant and equipment, organization and prior experience of the prospective bidder, and also such other pertinent and material facts as may be deemed desirable.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-29. Classification by classes; notice to applicants

The department shall classify all such prospective bidders as to the character and amount of public work contracts on which they shall be qualified to submit bids. The department shall consider reports filed by boards of education pursuant to 18A:18A-15 as a basis for denial of a favorable classification to all prospective bidders. The classification shall be made and an immediate notice thereof shall be sent to the prospective bidder or bidders by registered mail within a period of 15 days after the date of receipt of the statement in response to the questionnaire; provided, however, that if the department shall require additional information from the prospective bidder, the classification shall be made and the notice sent within 15 days after receipt of such additional information.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-30. Appeal from determination as to classification; hearings; change

Any person, after being notified of his classification, being dissatisfied therewith or with the classification of another person or persons, may request in writing a hearing before the department, and may present such further evidence with respect to his financial ability, plant and equipment or prior experience, or that of the other person or persons, as might tend to justify a different classification.

Where the request for a hearing is related to the classification of another person, the applicant for the hearing shall notify such other person, by registered mail, of the time and place of hearing and at the hearing shall present to the department satisfactory evidence that such notice was given before any matters pertaining to the classification of such other person shall be taken up.

After the hearing the department may change or affirm the classification or classifications, the subject of the hearing.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-31. Change in classification as affecting bids; review and reconsideration of classification

Where there have been developments subsequent to the qualification and classification of a bidder which in the opinion of the board of education would affect the responsibility of the bidder, information to that effect shall forthwith be transmitted to the department for its review and reconsideration of the classification. Before taking final action on any such bid, the board of education concerned shall notify the bidder and give him an opportunity to present to the department any additional information which might tend to substantiate the existing classification.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-32. Bidders not submitting statements within one year ineligible to bid; affidavit of no change in status to accompany bid; reports as to performance, etc.

No person shall be qualified to bid on any public work contract with the board of education, the entire cost whereof will exceed \$20,000.00, who shall not have submitted a statement as required by N.J.S.A. 18A:18A-28 within a period of one year preceding the date of opening of bids for such contract. Every bidder shall submit with his bid an affidavit that subsequent to the latest such statement submitted by him there has been no material adverse change in his qualification information except as set forth in said affidavit.

L.1977, c. 114, s. 1, eff. June 2, 1977. Amended by L.1983, c. 266, s. 4, eff. July 14, 1983.

18A:18A-33. Penalties for false statements

Any person who makes, or causes to be made, a false, deceptive or fraudulent statement in the questionnaire required to be submitted, or in the course of any hearing under this article shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a

fine of not less than \$100.00 nor more than \$1,000.00; or, in the case of an individual or the officer or employee charged with the duty of making such questionnaire for a person, firm, copartnership, association or corporation, to pay such fine or undergo imprisonment, not exceeding 6 months, or both. All such persons and any copartnership, association, corporation or joint stock company of which any such person is a partner or officer or director, and any corporation of which he owns more than 25% of the stock, shall for 5 years from the date of such conviction be disqualified from bidding on all public work in this State.

The board of education shall cause the forfeiture as liquidated damages to the board of any certified check or certificate of deposit deposited as bid security by any person who makes or causes to be made any false, deceptive or fraudulent statement in the questionnaire or bid affidavit required to be submitted, or in the course of any hearing under this chapter.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-34, 18A:18A-35. Blank

18A:18A-36. Time for making awards, deposits returned

a. The board of education shall award the contract or reject all bids within such time as may be specified in the invitation to bid, but in no case more than 60 days, except that the bids of any bidders who consent thereto may, at the request of the board of education, be held for consideration for such longer period as may be agreed. All bid security except the security of the three apparent lowest responsible bidders shall, if requested, be returned after 10 days from the opening of the bids, Sundays and holidays excepted and the bids of such bidders shall be considered as withdrawn. Within three days after the awarding of the contract and the approval of the contractor's performance bond the bid security of the remaining unsuccessful bidders shall be returned to them forthwith, Sundays and holidays excepted.

b. The contract shall be signed by all parties within the time limit set forth in the specifications, which shall not exceed 21 days, Sundays and holidays excepted, after the making of the award; provided, however, that all parties to the contract may agree to extend the limit set forth in the specifications beyond the 21-day limit required in this subsection. The contractor, upon written request to the board of education, is entitled to receive, within seven days of the request, an authorization to proceed pursuant to the terms of the contract on the date set forth in the contract for work to commence, or, if no date is set forth in the contract, upon receipt of authorization. If for any reason the contract is not awarded and the bidders have paid for or paid a deposit for the plans and specifications to the board of education, the payment or deposit shall immediately be returned to the bidders when the plans and specifications are returned in reasonable condition within 90 days of notice that the contract has not been awarded.

L.1977, c.114; amended 1999, c.440, s.72.

18A:18A-37. Award of purchases, contracts or agreements

All contracts enumerated in this section shall be awarded as follows:

a. For all contracts that in the aggregate are less than the bid threshold but 15 percent or more of that amount, and for those contracts that are for subject matter enumerated in subsection a. of N.J.S.A. 18A:18A-5, except for paragraph (1) of that subsection concerning professional services and paragraph (3) of that subsection concerning work by employees of the board of education, the purchasing agent shall award the contract after soliciting at least two competitive quotations, if practicable. The award shall be made to a vendor whose response is most advantageous, price and other factors considered. The purchasing agent shall retain the record of the quotation solicitation and shall include a copy of the record with the voucher used to pay the vendor.

b. When in excess of the bid threshold, and after documented effort by the purchasing agent to secure competitive quotations, a contract for extraordinary unspecifiable services may be awarded when the purchasing agent has determined in writing that solicitation of competitive quotations is impracticable. Any such contract shall be awarded by resolution of the board of education.

c. If authorized by the board of education by resolution, all contracts that are in the aggregate less than 15 percent of the bid threshold may be awarded by the purchasing agent without soliciting competitive quotations.

d. Whenever two or more responses to a request of a purchasing agent offer equal prices and are the lowest responsible bids or proposals, the board of education may award the contract to the vendor whose response, in the discretion of the board of education, is the most advantageous, price and other factors considered. In such a case, the award resolution or purchase order documentation shall explain why the vendor selected is the most advantageous.

L.1977, c.114; amended 1983, c.171, s.6; 1999, c.440, s.73.

18A:18A-38, 18A:18A-39. Repealed by L.1999, c. 440, s.108

18A:18A-40. Form and execution of contracts and bonds

All contracts for the provision or performance of goods or services shall be in writing. The State Board of Education may, subject to the requirements of law, prescribe the forms and manner in which contracts shall be made and executed, and the form and manner of execution and approval of all guarantee, indemnity, fidelity and other bonds.

L.1977, c.114; amended 1999, c.440, s.74.

18A:18A-40.1. Partial payments

Any contract, the total price of which exceeds \$100,000.00, entered into by a board of education involving the construction, reconstruction, alteration, repair or maintenance of

any building, structure, facility or other improvement to real property, shall provide for partial payments to be made at least once each month as the work progresses, unless the contractor shall agree to deposit bonds with the board of education pursuant to section 2 of P.L.1987, c.343 (C.18A:18A-40.2).

L.1987,c.343,s.1; amended 1999, c.440, s.75.

18A:18A-40.2. Withholding, deposit of negotiable bearer bonds, notes

Whenever any contract, the total price of which exceeds \$100,000.00, entered into by a board of education for the construction, reconstruction, alteration or repair of any building, structure, facility or other improvement to real property, requires the withholding of payment of a percentage of the amount of the contract, the contractor may agree to the withholding of payments in the manner prescribed in the contract, or may deposit with the board of education negotiable bearer bonds of the State of New Jersey, or negotiable bearer bonds or notes of any political subdivision of the State, the value of which is equal to the amount necessary to satisfy the amount that otherwise would be withheld pursuant to the terms of the contract. The nature and amount of the bonds or notes to be deposited shall be subject to approval by the board of education. For purposes of this section, "value" shall mean par value or current market value, whichever is lower.

If the contractor agrees to the withholding of payments, the amount withheld shall be deposited, with a banking institution or savings and loan association insured by an agency of the federal government, in an account bearing interest at the rate currently paid by such institutions or associations on time or savings deposits. The amount withheld, or the bonds or notes deposited, and any interest accruing on such bonds or notes, shall be returned to the contractor upon fulfillment of the terms of the contract relating to such withholding. Any interest accruing on cash payments withheld shall be credited to the board of education.

L. 1987,c.343.

18A:18A-40.3. Withholding of partial payments

3. With respect to any contract entered into by a board of education pursuant to section 1 of P.L.1987, c.343 (C.18A:18A-40.1) for which the contractor shall agree to the withholding of payments pursuant to section 2 of P.L.1987, c.343 (C.18A:18A-40.2), 5% of the amount due on each partial payment shall be withheld by the board of education pending completion of the contract if the contractor does not have a performance bond. If the contractor does have a performance bond, 2% of the amount due on each partial payment shall be withheld by the board of education when the outstanding balance of the contract exceeds \$500,000, and 5% of the amount due on each partial payment shall be withheld by the board of education when the outstanding balance of the contract is \$500,000 or less.

L.1987,c.343,s.3; amended 1993, c.18; 1999, c.440, s.76.

18A:18A-41. Liquidated damages; void provisions as to contractor's remedies

Any contract made pursuant to chapter 18A of Title 18A of the New Jersey Statutes may include liquidated damages for the violation of any of the terms and conditions thereof or the failure to perform said contract in accordance with its terms and conditions, or the terms and conditions of chapter 18A of Title 18A of the New Jersey Statutes.

Notwithstanding any other provision of law to the contrary, it shall be void, unenforceable and against public policy for a provision in a contract entered into under Chapter 18A of Title 18A of the New Jersey Statutes to limit a contractor's remedy for the contracting unit's negligence, bad faith, active interference, tortious conduct, or other reasons unanticipated by the parties that delay the contractor's performance, to giving the contractor an extension of time for performance under the contract. For the purposes of this section, "contractor" means a person, his assignees or legal representatives with whom a contract with a contracting unit is made.

L.1977, c.114; amended 1999, c.440, s.77; 2001, c.206, s.2.

18A:18A-42. Multiyear contracts

All contracts for the provision or performance of goods or services shall be awarded for a period not to exceed 24 consecutive months, except that contracts for professional services pursuant to paragraph (1) of subsection a. of N.J.S.A. 18A:18A-5 shall be awarded for a period not to exceed 12 consecutive months. Any board of education may award a contract for longer periods of time as follows:

a. Supplying of:

(1) Fuel for heating purposes, for any term not exceeding in the aggregate, three years;

(2) Fuel or oil for use of automobiles, autobuses, motor vehicles or equipment, for any term not exceeding in the aggregate, three years;

(3) Thermal energy produced by a cogeneration facility, for use for heating or air conditioning or both, for any term not exceeding 40 years, when the contract is approved by the Board of Public Utilities. For the purposes of this paragraph, "cogeneration" means the simultaneous production in one facility of electric power and other forms of useful energy such as heating or process steam; or

b. Plowing and removal of snow and ice, for any term not exceeding in the aggregate, three years; or

c. Collection and disposal of garbage and refuse, for any term not exceeding in the aggregate, three years; or

d. Data processing service, for any term of not more than seven years; or

e. Insurance, including the purchase of insurance coverages, insurance consultant or administrative services, and including participation in a joint self-insurance fund, risk management program or related services provided by a school board insurance group, or

participation in an insurance fund established by a county pursuant to N.J.S.A. 40A:10-6, or a joint insurance fund established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more than three years; or

f. Leasing or servicing of automobiles, motor vehicles, electronic communications equipment, machinery and equipment of every nature and kind and textbooks and non-consumable instructional materials, for any term not exceeding in the aggregate, five years; except that contracts for the leasing of school buses may be awarded for any term not exceeding in the aggregate ten years. Contracts awarded pursuant to this subsection shall be awarded only subject to and in accordance with rules and regulations promulgated by the State Board of Education; or

g. Supplying of any product or the rendering of any service by a company providing voice, data, transmission or switching services, for a term not exceeding five years; or

h. (Deleted by amendment, P.L.1999, c.440.)

i. Driver education instruction conducted by private, licensed driver education schools, for any term not exceeding in the aggregate, three years;

j. Provision or performance of goods or services for the purpose of conserving energy in the buildings owned by any local board of education, the entire price of which shall be established as a percentage of the resultant savings in energy costs, for a term not to exceed 15 years; except that these contracts shall be entered into only subject to and in accordance with guidelines promulgated by the Board of Public Utilities establishing a methodology for computing energy costs;

k. Any single project for the construction, reconstruction or rehabilitation of any public building, structure or facility, or any public works project, including the retention of the services of any architect or engineer in connection therewith, for the length of time authorized and necessary for the completion of the actual construction;

l. Laundry service and the rental, supply and cleaning of uniforms for any term of not more than three years;

m. Food supplies and food services for any term of not more than three years;

n. Purchases made under a contract awarded by the Director of the Division of Purchase and Property in the Department of the Treasury for use by counties, municipalities or other contracting units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term not to exceed the term of that contract.

Any contract for services other than professional services, the statutory length of which contract is for three years or less, may include provisions for no more than one two-year, or two one-year, extensions, subject to the following limitations: a. the contract shall be awarded by resolution of the board of education upon a finding by the board of education that the services are being performed in an effective and efficient manner; b. no such contract shall be extended so that it runs for more than a total of five consecutive years; c.

any price change included as part of an extension shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or extension and shall not exceed the change in the index rate for the 12 months preceding the most recent quarterly calculation available at the time the contract is renewed; and d. the terms and conditions of the contract remain substantially the same.

All multiyear leases and contracts entered into pursuant to this section 18A:18A-42, including any two-year or one-year extensions, except contracts for insurance coverages, insurance consultant or administrative services, participation or membership in a joint self-insurance fund, risk management programs or related services of a school board insurance group, participation in an insurance fund established by a county pursuant to N.J.S.A. 40A:10-6 or contracts for thermal energy authorized pursuant to subsection a. above, and contracts for the provision or performance of goods or services to promote energy conservation authorized pursuant to subsection j. of this section, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause. All contracts shall cease to have effect at the end of the contracted period and shall not be extended by any mechanism or provision, unless in conformance with the "Public School Contracts Law," N.J.S.A. 18A:18A-1 et seq., except that a contract may be extended by mutual agreement of the parties to the contract when a board of education has commenced rebidding prior to the time the contract expires or when the awarding of a contract is pending at the time the contract expires.

Amended 1983, c.13; 1983, c.108, s.8; 1983, c.281, s.3; 1983, c.554; 1984, c.49, s.1; 1988, c.143, s.4; 1998, c.55, s.2; 1999, c.440, s.78; 2001, c.146, s.2.

18A:18A-43. Supervision of school building repairs

Repairs of all school buildings shall be supervised by the business manager of the district, if there be one, as provided by N.J.S.A. 18A:17-28, but if the district has no business manager, the board may delegate such power to any appropriate officer of the board as provided by N.J.S.A. 18A:16-1.2.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-44. Inspection, condemnation and rejection of work and materials

All goods and services provided or performed under contract shall be inspected by the purchasing agent of the district, if there be a purchasing agent of the district, but if there be no purchasing agent of the district, they may be inspected by an appropriate officer employed by the board to whom such power shall have been delegated by the board, and subject to the approval of the board the purchasing agent or such officer, as the case may be, shall condemn any goods or services which in his judgment do not conform to the specifications of the contract therefor.

Amended 1999, c.440, s.79.

18A:18A-45. Manner and method of sale

Any board of education may, by resolution and by sealed bid or public auction, authorize the sale of its personal property not needed for school purposes.

a. If the estimated fair value of the property to be sold exceeds 15 percent of the bid threshold in any one sale and it is neither livestock nor perishable goods, it shall be sold at public sale to the highest bidder.

b. Notice of the date, time and place of the public sale, together with a description of the items to be sold and the conditions of sale, shall be published once in an official newspaper. Such sale shall be held not less than seven nor more than 14 days after the publication of the notice thereof.

c. Personal property may be sold to the United States, the State of New Jersey, another board of education, any body politic, any foreign nation which has diplomatic relations with the United States, or any governmental unit in these United States by private sale without advertising for bids.

d. If no bids are received the property may then be sold at private sale without further publication or notice thereof, but in no event at less than the estimated fair value; or the board of education may if it so elect, reoffer the property at public sale. As used herein, "estimated fair value" means the market value of the property between a willing seller and a willing buyer less the cost to the board of education to continue storage or maintenance of any personal property not needed for school purposes to be sold pursuant to this section.

e. A board of education may reject all bids if it determines such rejection to be in the public interest. In any case in which the board of education has rejected all bids, it may readvertise such personal property for a subsequent public sale. If it elects to reject all bids at a second public sale, pursuant to this section, it may then sell such personal property without further publication or notice thereof at private sale, provided that in no event shall the negotiated price at private sale be less than the highest price of any bid rejected at the preceding two public sales and provided further that in no event shall the terms or conditions of sale be changed or amended.

f. If the estimated fair value of the property to be sold does not exceed the applicable bid threshold established pursuant to subsection a. of this section in any one sale or is either livestock or perishable goods, it may be sold at private sale without advertising for bids.

g. Notwithstanding the provisions of this section, by resolution of the board of education, a purchasing agent may include the sale of personal property no longer needed for school purposes as part of specifications to offset the price of a new purchase.

Amended 1983, c.171, s.7; 1999, c.440, s.80.

18A:18A-46. No action for damages for action by officials

No action for damages shall lie against the State board, any State official, or any board of education or any of its officers because of any action taken by virtue of the provisions of this chapter.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-46.1. Limitation on withholding of State funds from school districts for certain violations of public school contracts law

1. a. Notwithstanding any law to the contrary, except as otherwise provided in this section, the Commissioner of Education shall not withhold State funds from any school district, or require any school district to remit any State funds previously paid to that district, because of any act or omission by the district which the commissioner determines to have been taken or permitted to occur in violation of the extraordinary unspecifiable services exception to the requirements for public advertisement and bidding as set forth in N.J.S.A. 18A:18A-5, unless the commissioner determines that: (1) the act or omission was the result of any collusion between any officer or employee of the district and any contract vendor; or (2) the act or omission was prompted by an intent on the part of any officer or employee of the district to evade the public advertisement and bidding requirements of the "Public School Contracts Law," N.J.S.A. 18A:18A-1 et seq.; or (3) a prior act or omission resulted in a withholding of State funds or a remission of State funds due to a violation of the extraordinary unspecifiable services exception to the requirements for public advertisement and bidding as set forth in N.J.S.A. 18A:18A-5.

b. If the commissioner determines that the violation was caused by negligence and none of the provisions in paragraph (3) in subsection a. are met, the amount of State funds withheld shall not exceed 10% of the contract amount, or in the case of multiple contracts, 10% of the total amount of the contracts, or \$25,000, whichever is less.

c. Any school district from which the commissioner withheld funds or has sought to collect funds prior to the effective date of this act due to a determination that the district acted or permitted an action to occur in violation of the extraordinary unspecifiable services exception to the requirements for public advertising and bidding as set forth in N.J.S.A. 18A:18A-5 may apply to the commissioner for restoration of funds so withheld. If the commissioner determines that none of the provisions set forth in paragraph (1), (2) or (3) in subsection a. or in subsection b. applies, the commissioner shall remit to the school district the applicable funds previously withheld or forgive any amounts pending collection.

d. The limitations placed upon the commissioner pursuant to this act shall not restrict the commissioner's authority to supervise the compliance by school districts with the requirements of the "Public School Contracts Law," N.J.S.A. 18A:18A-1 et seq., and to seek all other remedies pursuant to Title 18A of the New Jersey Statutes.

L.1999,c.55,s.1.

18A:18A-47. Indemnity agreement with the United States, etc.

Any board of education may enter into an agreement indemnifying the United States of America, or any board, body, officer or agency thereof, from loss or damage to the property of others resulting from the furtherance of any project, undertaken or to be undertaken by the Federal Government for the benefit of such board of education where the cost or any part thereof is to be paid out of Federal funds.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-48. Contracts, etc.; validated and confirmed

Any action, purchase, sale, contract or agreement taken, made or entered into prior to the effective date of this chapter pursuant to any of the acts, amendments and supplements repealed by this chapter are hereby validated and confirmed, provided that in no event shall a lease of personal property entered into prior to the effective date of this chapter be renewed or extended, except in accordance with the terms and provisions of this chapter.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-49. Approval required for school building

The board of education of a school district shall be required to secure the approval of its final plans and specifications as required by the State Uniform Construction Code for the erection or alteration of any school building or vocational school building or any part thereof by the Bureau of Facility Planning Services in the Department of Education or an appropriately licensed municipal code official.

Amended 1990,c.23,s.2.

18A:18A-49.1. Transportation of pupils to and from schools

The provisions of this chapter shall not apply to contracts for the transportation of pupils to and from school, which contracts are regulated by Chapter 39 of this Title.

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-49.2. Rules

Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Director of the Division of Local Government Services in the Department of Community Affairs, after consultation with the Commissioner of Education, may adopt rules implementing the provisions of the "Public School Contracts Law," N.J.S.A. 18A:18A-1 et seq.

L.1999,c.440,s.81.

18A:18A-49.3. Contract for taking yearbook pictures, use of other photographers' photos permitted

A board of education may enter into a contract with a photographer for the taking of pupil yearbook pictures. The hiring of a photographer shall not prohibit a pupil from engaging a photographer of the pupil's choice nor prevent a picture taken by that photographer from appearing in the yearbook if the picture meets the specifications of the yearbook staff.

L.2003,c.313,s.1.

18A:18A-50. Statutes repealed

The following sections, chapters and acts, together with all amendments and supplements thereto, are hereby repealed:

Chapter 18 of Title 18A of the New Jersey Statutes;

Laws of 1969, c. 104, s. 2 (C. 18A:18-1.6);

Laws of 1971, c. 42 (C. 18A:18-2.1; C. 18A:18-2.2).

L.1977, c. 114, s. 1, eff. June 2, 1977.

18A:18A-51. Definitions

As used in this act:

a. "Minority" means a person who is:

(1) Black, which is a person having origins in any of the black racial groups in Africa;
or

(2) Hispanic, which is a person of Spanish or Portuguese culture, with origins in Mexico, South America, Central America, or the Caribbean Islands, regardless of race; or

(3) Asian-American, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, Hawaii, or the Pacific Islands; or

(4) American Indian or Alaskan native, which is a person having origins in any of the original peoples in North America;

b. "Women's business enterprise" means a business which is independently owned and operated, which is qualified pursuant to N.J.S.A. 18A:18A-27 and which is:

(1) A sole proprietorship owned and controlled by a woman;

(2) A partnership or joint venture owned and controlled by women in which at least 51% of the ownership is held by women and the management and daily business

operations of which are controlled by one or more women who own it; or

(3) A corporation or other entity whose management and daily business operations are controlled by one or more women who own it, and which is at least 51% owned by women, or if stock is issued, at least 51% of the stock is owned by one or more women;

c. "Minority business enterprise" means a business which is independently owned and operated, which is qualified pursuant to N.J.S.A. 18A:18A-27 and which is:

(1) A sole proprietorship, owned and controlled by a minority;

(2) A partnership or joint venture owned and controlled by minorities in which at least 51% of the ownership interest is held by minorities and the management and daily business operations of which are controlled by one or more of the minorities who own it; or

(3) A corporation or other entity whose management and daily business operations are controlled by one or more minorities who own it, and which is at least 51% owned by one or more minorities, or if stock is issued, at least 51% of the stock is owned by one or more minorities;

d. "Small business enterprise" means a business which is independently owned and operated, which is qualified pursuant to N.J.S.A. 18A:18 A-27 and which is a sole proprietorship, partnership or corporation which is a size and type defined by the Commissioner of the Department of Commerce, Energy and Economic Development;

e. "Set-aside contract" means (1) a contract for goods, equipment, construction, or services which is designated as a contract for which bids are invited and accepted only from small business enterprises, minority business enterprises or women's business enterprises, as appropriate, (2) a portion of a contract when that portion has been so designated, or (3) any other purchase or procurement so designated; and

f. "Total procurements" means all purchases, contracts or acquisitions of a board of education, whether by competitive bidding, single source contracting, or other method of procurement, as prescribed or permitted by law.

P.L. 1985, c. 490, s. 1; amended 1988,c.37,s.2.

18A:18A-52. Set-aside programs

a. A board of education may, by resolution, establish a minority business enterprise set-aside program. In authorizing such a program, the board of education shall establish a goal of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to minority business enterprises.

b. A board of education may, by resolution, establish a women's business enterprise set-aside program. In authorizing such a program, the board of education shall establish a goal of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to women's business enterprises.

c. A board of education may, by resolution, establish a small business enterprise set-aside program. In authorizing such a program, the board of education shall establish a goal of setting aside a certain percentage of the dollar value of total procurements to be awarded as set-aside contracts to small business enterprises.

P.L. 1985, c. 490, s. 2; amended 1988,c.37,s.3.

18A:18A-53. Attainment of goals

a. Any goal established pursuant to section 2 of this act may be attained by requiring that a portion of a contract shall be subcontracted to a small business enterprise, minority business enterprise or women's business enterprise, in addition to designating entire contracts to these enterprises.

b. Each board of education shall make a good faith effort to attain any goal established.

P.L. 1985, c. 490, s. 3; amended 1988,c.37,s.4.

18A:18A-54. "Public School Contracts Law" applicable

All provisions of the "Public School Contracts Law," N.J.S.A. 18A:18 A-1 et seq., and any supplements thereto, shall apply to purchases, contracts and agreements made pursuant to this act unless otherwise superseded by the provisions of this act.

L. 1985, c. 490, s. 4, eff. Jan. 17, 1986.

18A:18A-55. Designation of contracts

Notwithstanding the provisions of any law to the contrary, a board of education which has established a small business enterprise set-aside program, a minority business enterprise set-aside program or a women's business enterprise set-aside program shall designate that a contract, subcontract or other means of procurement of goods, services, equipment, or construction shall be awarded to a small business enterprise, a minority business enterprise or a women's business enterprise, if the board is likely to receive bids from at least two small business enterprises, minority business enterprises or women's business enterprises, as appropriate, at a fair and reasonable price.

The designations shall be made prior to any advertisement for bids, if required. Once designated, the advertisement for bids, if necessary, shall indicate that the contract to be awarded is a small business enterprise set-aside contract, a minority business enterprise set-aside contract or a women's business enterprise set-aside contract, as appropriate. All advertisements for bids shall be published in at least one newspaper which will best provide notice thereof to small business enterprises, minority business enterprises or to women's business enterprises, as appropriate, sufficiently in advance of the date fixed for receiving the bids to promote competitive bidding, but shall not be published less than 10 days prior to that date.

P.L. 1985, c. 490, s. 5; amended 1988,c.37,s.5.

18A:18A-56. Withdrawal of designation

a. If the board of education determines that two bids from small businesses, minority or women's businesses cannot be obtained, the board may withdraw the designation of the set-aside contract and resolicit bids on an unrestricted basis pursuant to the provisions of N.J.S.A. 18A:18 A-1 et seq. The cancelled designation shall not be considered in determining whether or not the board attained its goal established pursuant to section 2 of this act.

b. If the board of education determines that the acceptance of the lowest responsible bid will result in the payment of an unreasonable price, the board shall reject all bids and withdraw the designation of the set-aside contract. Small business enterprises, minority business enterprises or women's business enterprises, as appropriate, shall be notified in writing of the set-aside cancellation, the reasons for the rejection and the board's intent to resolicit bids on an unrestricted basis pursuant to the provisions of N.J.S.A. 18A:18A-1 et seq. The cancelled bid solicitation shall not be considered in determining whether or not the board attained its goal established pursuant to section 2 of this act.

P.L. 1985, c. 490, s. 6; amended 1988,c.37,s.6.

18A:18A-57. Annual report

Any board of education which has established a small business set-aside program, a minority business enterprise set-aside program or a women's business enterprise set-aside program shall prepare a report by January 31 of each year describing the board's efforts in attaining the set-aside goals and the percentage of the dollar value of total procurements awarded in the immediately preceding local fiscal year. The board of education shall publish a list of its attainments in at least one newspaper circulating in the school district by March 1 of each year.

P.L. 1985, c. 490, s. 7; amended 1988,c.37,s.7.

18A:18A-58. Rules, regulations

The State Board of Education, or any State department or agency the State board may designate, may adopt rules and regulations pursuant to the provisions of the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.) as it may deem necessary to effectuate the purposes of this act.

L. 1985, c. 490, s. 8, eff. Jan. 17, 1986.

18A:18A-59. False information; penalties

Where the local board of education determines that a business has been classified as a small business enterprise, minority business enterprise or women's business enterprise on the basis of false information knowingly supplied by the business and has been awarded a contract to which it would not otherwise have been entitled under this act, the local board of education shall have the authority to:

a. Assess the business any difference between the contract amount and what the local

board of education's cost would have been if the contract had not been awarded in accordance with the provisions of this act;

b. In addition to the amount due under subsection a., assess the business a penalty in an amount of not more than 10% of the amount of the contract involved; and

c. Order the business ineligible to transact any business with the local board of education for a period to be determined by the local board of education.

Prior to any final determination, assessment or order under this section, the local board of education shall afford the business an opportunity for a hearing on the reasons for the imposition of the penalties set forth in subsection a., b. or c. of this section.

L.1985, c.490, s.13; amended 1988,c.37,s.11.