

AMENDED IN SENATE AUGUST 5, 2010

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 635**

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**Introduced by Assembly Member ~~V. Manuel Perez De La Torre~~  
(Coauthors: Assembly Members Arambula, Tom Berryhill, Block,  
Caballero, Bonnie Lowenthal, and V. Manuel Pérez)**

February 25, 2009

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~~An act to add Chapter 2.5 (commencing with Section 13065) to Part 1 of Division 12 of the Health and Safety Code, relating to firefighting.~~  
*An act to add Article 1 (commencing with Section 3000) to Chapter 3 of Part 1 of Division 2 of the Public Contract Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 635, as amended, ~~V. Manuel Perez De La Torre~~. ~~Fire protection: air purifying devices.~~ *Public contracts: roof projects.*

*Existing law prohibits a state agency, political subdivision, municipal corporation, or district from drafting specifications for bids, in connection with the construction, alteration, or repair of public works, calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service.*

*This bill would require a school district, community college district, state university, or state agency to require decisions, as to whether proposed substitute items in connection with a project to replace or repair a roof are equal pursuant to the above provisions, to be made*

by an independent architect, engineer, or roofing consultant, as provided. The bill would set forth requirements for the bidding specifications for these roofing projects. The bill would require an architect, engineer, roofing consultant, and other specified persons or entities to sign a certification related to financial relationships. The bill would require a school district, community college district, state university, or state agency to publish on its Internet Web site certain information pertaining to roofing projects. This bill would also authorize the State Allocation Board, the Office of Public School Construction, and the Department of General Services to provide educational programs, information, or online material to school and state government administrators in relation to these matters. By imposing duties on school districts, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law establishes the State Board of Fire Services in the Office of the State Fire Marshal. Existing law requires the board to recommend the establishment of minimum standards with respect to specified elements of fire protection, including fire equipment.~~

~~This bill would provide that a state or local agency shall not prohibit a firefighter from using an air purifying device during a wild land fire.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Article 1 (commencing with Section 3000) is
- 2 added to Chapter 3 of Part 1 of Division 2 of the Public Contract
- 3 Code, to read:

Article 1. Roofing Projects

3000. For purposes of this article, the following terms have the following meanings:

(a) “Architect” means an architect who has a current license issued by the state.

(b) “District or governmental body” means a school district, community college district, state university, or state agency.

(c) “Engineer” means an engineer who has a current license issued by the state.

(d) “Public facility” means a public school, community college, or state university, or any facility owned or operated by the state.

(e) “Roofing consultant” means a consultant who is registered by RCI (formerly Roof Consultants Institute).

(f) “Roof project” means a project for the replacement or repair of a roof of a public facility.

(g) “Substitute” or “substitution” means a material, product, thing, or service proposed by a bidder to be an adequate substitute material, product, thing, or service that is equal to an item designated in specifications, pursuant to subdivision (b) of Section 3400 and subdivision (a) of Section 10129.

3002. (a) For purposes of subdivision (b) of Section 3400 and subdivision (a) of Section 10129, for any roof project, a material, product, thing, or service shall be considered equal if it meets all of the following requirements:

(1) The item is at least equal in quality, durability, design, and appearance but not necessarily of an identical color.

(2) The item will perform the intended function at least equally well.

(3) The item conforms substantially, even with deviations, to the detailed requirements contained in the specifications.

(b) A substitute may be unequal if the resulting roof system would be substantially different than other equal or better systems in terms of performance and durability, but not merely different by virtue of the inclusion of proprietary products or a proprietary warranty.

3004. (a) Specifications for any roof project shall be designed to promote competition. These specifications shall (1) name a minimum of three separate manufacturers that share no financial, partnership, or subsidiary relationships, or interests, or shared

1 *product lines, or (2) require performance standards that at least*  
2 *three manufacturers have indicated, in writing, in advance of the*  
3 *bidding period, the ability to comply with.*

4 *(b) Specifications requiring proprietary products or a*  
5 *proprietary warranty may not be included in specifications for a*  
6 *roof project if these items would cost more than 10 percent more*  
7 *than for similar projects utilizing open competitive bidding without*  
8 *a requirement for proprietary products or a proprietary warranty.*

9 3006. *(a) For purposes of this section, “necessary” means*  
10 *essential for determining performance and durability*  
11 *characteristics.*

12 *(b) If a substitution is offered in a bid for a roof project, the*  
13 *district or governmental body shall require decisions on whether*  
14 *the proposed substitution is “equal” pursuant to subdivision (b)*  
15 *of Section 3400 or subdivision (a) of Section 10129 to be made by*  
16 *an independent architect, engineer, or roofing consultant based*  
17 *on industry standards for performance characteristics and any*  
18 *necessary generic testing standards for the industry.*

19 3008. *A district or governmental body shall ensure and verify*  
20 *in writing that an architect, engineer, or roofing consultant*  
21 *develops the plans and specifications for a roof project to ensure*  
22 *that the project is designed to conform to state codes and structural*  
23 *integrity and conformity with Section 3004 is maintained.*

24 3010. *(a) (1) The architect, engineer, or roofing consultant*  
25 *who develops the specifications for a roof project shall disclose*  
26 *any financial relationships to the district or governmental body*  
27 *by completing and signing the certification set forth in subdivision*  
28 *(b), prior to the opening of any bids or the award of any project.*  
29 *The awarding authority shall review, approve, and acknowledge*  
30 *the disclosure.*

31 *(2) The materials manufacturer, contractor, or vendor shall*  
32 *disclose any financial relationship to the district or governmental*  
33 *body by completing the same disclosure.*

34 *(3) The architect, engineer, or roofing consultant shall not*  
35 *disclose a financial relationship in which the architect, engineer,*  
36 *or roofing consultant is a stockholder of a corporation the stock*  
37 *of which is listed for sale to the general public on a national*  
38 *securities exchange and registered with the United States Securities*  
39 *and Exchange Commission, if he or she holds less than 10 percent*

1 of the outstanding stock entitled to vote at the annual meeting of  
2 the corporation.

3 (4) An architect, contractor, engineer, materials manufacturer,  
4 roofing consultant, or vendor who knowingly provides false  
5 information and fails to disclose a financial relationship pursuant  
6 to this section shall be liable to the district or governmental body  
7 for any costs to the district or governmental body that are  
8 reasonably attributable to excess or unnecessary costs, when  
9 compared to competing bids, incurred by the district or  
10 governmental body as a result of the undisclosed financial  
11 relationship.

12 (b) I, \_\_\_\_\_, certify that I have not offered,  
13 *Name, Employer*  
14 given, or agreed to give, received, accepted, or agreed to accept,  
15 any gift, contribution, or any financial incentive whatsoever to or  
16 from any person in connection with the roof project contract. As  
17 used in this certification, "person" means any natural person,  
18 business, partnership, corporation, union, committee, club, or  
19 other organization, entity, or group of individuals. Furthermore,  
20 I, \_\_\_\_\_, certify that I do not have, and  
21 *Name, Employer*  
22 throughout the duration of the contract, I will not have, any  
23 financial relationship in connection with the performance of this  
24 contract with any materials manufacturer, distributor, or vendor  
25 that is not disclosed below.

26 I, \_\_\_\_\_, have the following financial  
27 *Name, Employer*  
28 relationships with a materials manufacturer, distributor, or vendor,  
29 or other person in connection with the following roof project  
30 contract:

31 \_\_\_\_\_  
32 *Name and Address of Building, Contract date and number*

33 I certify that to the best of my knowledge, the contents of this  
34 disclosure are true, or are believed to be true.

35 \_\_\_\_\_  
36 *Signature* *Date*

37 \_\_\_\_\_  
38 *Print Name*

1 Reviewed for financial conflicts and approved prior to the  
2 opening of bids or the award:

3 Name \_\_\_\_\_ Date \_\_\_\_  
4 Title and Employer

5 (c) Any person who knowingly provides false information in the  
6 disclosure set forth in subdivision (b) shall be subject to a civil  
7 penalty in an amount up to \$1000 dollars, in addition to any other  
8 available remedies. An action for a civil penalty under this  
9 provision may be brought by any public prosecutor in the name  
10 of the people of the State of California.

11 3012. (a) To report bid rigging involving local government  
12 agencies and employees, including, but not limited to, county, city,  
13 and school district employees and officials, an interested person  
14 may contact the Antitrust Law Section of the Office of the Attorney  
15 General, 300 S. Spring St., Ste. 1702, Los Angeles, CA 90013,  
16 (800) 952-5225, or fill out the online complaint form on the Internet  
17 Web site of the Office of the Attorney General (Consumer  
18 Complaint Against a Business/Company) at  
19 ag.ca.gov/contact/complaint\_form.php?cmplt=CL.

20 (b) To file a complaint or request an investigation regarding  
21 improper bidding involving state funding, an interested person  
22 may contact the Bureau of State Audits Whistleblower Hotline for  
23 any state agency or institution, at 800-952-5665, or by mail at 555  
24 Capitol Mall, Suite 300, Sacramento, CA 95814.

25 3014. A district or governmental body shall publish on its  
26 Internet Web site the specifications for a roof project from the day  
27 those specifications are issued until six months after the bid is  
28 accepted and awarded. The information presented online shall  
29 include the district or governmental body's written responses to  
30 bids, the contract amounts, the date of the contract, the type of  
31 project, bidding phase, the bidders, their bid amounts, and the  
32 winning bidder's accepted bid at award. The district or  
33 governmental body shall also publish on its Internet Web site any  
34 subsequent change orders so the total project cost may be  
35 ascertained in an easily accessible manner. When the district or  
36 governmental body removes this information from its Internet Web  
37 site, it shall retain the information for a period of three years.

38 3016. The State Allocation Board, Office of Public School  
39 Construction, and the Department of General Services may provide

1 *educational programs, information, or online material to school*  
2 *and state government administrators on California bidding statutes*  
3 *to ensure that the administrators are adequately informed*  
4 *regarding the legal requirements to maintain a fair and transparent*  
5 *bidding process.*

6 *SEC. 2. If the Commission on State Mandates determines that*  
7 *this act contains costs mandated by the state, reimbursement to*  
8 *local agencies and school districts for those costs shall be made*  
9 *pursuant to Part 7 (commencing with Section 17500) of Division*  
10 *4 of Title 2 of the Government Code.*

11 *SEC. 3. This act is an urgency statute necessary for the*  
12 *immediate preservation of the public peace, health, or safety within*  
13 *the meaning of Article IV of the Constitution and shall go into*  
14 *immediate effect. The facts constituting the necessity are:*

15 *In order to control expenditures for the repair or replacement*  
16 *of roofs on public schools, colleges, and universities, and facilities*  
17 *owned or operated by the state, it is necessary that this act take*  
18 *effect immediately.*

19 ~~SECTION 1. Chapter 2.5 (commencing with Section 13065)~~  
20 ~~is added to Part 1 of Division 12 of the Health and Safety Code,~~  
21 ~~to read:~~

22  
23 ~~CHAPTER 2.5. FIREFIGHTING EQUIPMENT~~  
24

25 ~~13065. A state or local agency, including a city, county, city~~  
26 ~~and county, or district, shall not prohibit a firefighter from using~~  
27 ~~an air purifying device during a wild land fire.~~