

AMENDED IN SENATE AUGUST 20, 2010

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 De La Torre~~ *Committee on Accountability and Administrative Review (De La Torre (Chair), Arambula, Block, Caballero, Bonnie Lowenthal, V. Manuel Pérez, and Audra Strickland)***

**(~~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 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, ~~De La Torre~~ *Committee on Accountability and Administrative Review*. 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: *provide that, for a project for the repair or replacement of a roof of a public school or community college, a material, product, thing, or service shall be considered equal if it meets specified requirements.* The bill would require an architect, engineer, roofing consultant, and other specified persons or entities to *complete and sign a certification related to financial relationships in connection with such a roof project and provide the certification to the school district or community college district. The bill would make related changes.* 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.~~

~~Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: *yes-no*.  
State-mandated local program: *yes-no*.~~

*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.~~

*(b) "District" means a school district with an average daily attendance greater than 2,500 or a community college district.*

(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 or community college.~~

(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, *except that "roof project" does not include a project for the repair of 25 percent or less of the roof or a repair project that has a total cost of twenty-one thousand dollars (\$21,000) or less.*

(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

1 by virtue of the inclusion of proprietary products or a proprietary  
2 warranty.

3 ~~3004. (a) Specifications for any roof project shall be designed~~  
4 ~~to promote competition. These specifications shall (1) name a~~  
5 ~~minimum of three separate manufacturers that share no financial,~~  
6 ~~partnership, or subsidiary relationships, or interests, or shared~~  
7 ~~product lines, or (2) require performance standards that at least~~  
8 ~~three manufacturers have indicated, in writing, in advance of the~~  
9 ~~bidding period, the ability to comply with.~~

10 ~~(b) Specifications requiring proprietary products or a proprietary~~  
11 ~~warranty may not be included in specifications for a roof project~~  
12 ~~if these items would cost more than 10 percent more than for~~  
13 ~~similar projects utilizing open competitive bidding without a~~  
14 ~~requirement for proprietary products or a proprietary warranty.~~

15 ~~3006. (a) For purposes of this section, “necessary” means~~  
16 ~~essential for determining performance and durability characteristics.~~

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

24 ~~3008. A district or governmental body shall ensure and verify~~  
25 ~~in writing that an architect, engineer, or roofing consultant develops~~  
26 ~~the plans and specifications for a roof project to ensure that the~~  
27 ~~project is designed to conform to state codes and structural integrity~~  
28 ~~and conformity with Section 3004 is maintained.~~

29 ~~3010. (a) (1) The~~

30 ~~3006. (a) (1) An architect, engineer, or roofing consultant~~  
31 ~~who develops the specifications for a roof project shall disclose~~  
32 ~~any financial relationships to the district or governmental body~~  
33 ~~who provides professional services related to a roof project shall~~  
34 ~~disclose any financial relationships by completing and signing the~~  
35 ~~certification set forth in subdivision (b), prior to the opening of~~  
36 ~~any bids or the award of any project. The awarding authority shall~~  
37 ~~review, approve, and acknowledge the disclosure.~~

38 ~~(2) The materials subdivision The materials manufacturer,~~  
39 ~~contractor, or vendor shall disclose any financial relationship to~~

1 ~~the district or governmental body by completing the same~~  
2 ~~disclosure.~~

3 *(b) prior to the time professional services are engaged. A*  
4 *materials manufacturer, contractor, or vendor involved in a bid*  
5 *or proposal for a roof project shall disclose any financial*  
6 *relationships by completing and signing the certification set forth*  
7 *in subdivision (b) when the award is made. The architect, engineer,*  
8 *roofing consultant, materials manufacturer, contractor, or vendor*  
9 *shall provide the certification to the district.*

10 ~~(3) The~~

11 ~~(2) An architect, engineer, or roofing consultant roofing~~  
12 ~~consultant, materials manufacturer, contractor, or vendor shall~~  
13 ~~not disclose a financial relationship in which the architect, engineer,~~  
14 ~~or roofing consultant that person or entity is a stockholder of a~~  
15 ~~corporation the stock of which is listed for sale to the general public~~  
16 ~~on a national securities exchange and registered with the United~~  
17 ~~States Securities and Exchange Commission, if he or she the person~~  
18 ~~or entity holds less than 10 percent of the outstanding stock entitled~~  
19 ~~to vote at the annual meeting of the corporation.~~

20 ~~(4)~~

21 ~~(3) An architect, contractor, engineer, materials manufacturer,~~  
22 ~~roofing consultant, or vendor who knowingly provides false~~  
23 ~~information and or fails to disclose a financial relationship pursuant~~  
24 ~~to this section shall be liable to the district or governmental body~~  
25 ~~for any costs to the district or governmental body that are~~  
26 ~~reasonably attributable to excess or unnecessary costs, when~~  
27 ~~compared to competing bids, incurred by the district or~~  
28 ~~governmental body as a result of the undisclosed financial~~  
29 ~~relationship.~~

30 ~~(b) I, \_\_\_\_\_, certify that I have not offered,~~  
31 ~~\_\_\_\_\_~~  
32 ~~Name, Employer~~

32 *(b) I, \_\_\_\_\_, \_\_\_\_\_, certify that I*  
33 *\_\_\_\_\_*  
34 *Name Name of Employer*

34 *have not offered, given, or agreed to give, received, accepted, or*  
35 *agreed to accept, any gift, contribution, or any financial incentive*  
36 *whatsoever to or from any person in connection with the roof*  
37 *project contract. As used in this certification, "person" means any*  
38 *natural person, business, partnership, corporation, union,*  
39 *committee, club, or other organization, entity, or group of*

1 individuals. Furthermore, I, \_\_\_\_\_, certify that  
 2 \_\_\_\_\_  
 3 ~~I do not have, and I, \_\_\_\_\_, \_\_\_\_\_,~~  
 4 *Name Name of Employer*  
 5 *certify that I do not have, and* throughout the duration of the  
 6 contract, I will not have, any financial relationship in connection  
 7 with the performance of this contract with any *architect, engineer,*  
 8 *roofing consultant,* materials manufacturer, distributor, or vendor  
 9 that is not disclosed below.

10 I, \_\_\_\_\_, have the following financial  
 11 \_\_\_\_\_  
 12 *Name, Employer*  
 13 I, \_\_\_\_\_, \_\_\_\_\_, have the following  
 14 *Name Name of Employer*  
 15 *financial relationships with* ~~a~~ *an architect, engineer, roofing*  
 16 *consultant,* materials manufacturer, distributor, or vendor, or other  
 17 person in connection with the following roof project contract:

18 \_\_\_\_\_  
 19 *Name and Address of Building, Contract date and number*  
 20 \_\_\_\_\_  
 21 *Name and Address of Building, Contract Date and Number*

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

24 \_\_\_\_\_  
 25 *Signature Date*  
 26 \_\_\_\_\_  
 27 *Print Name*  
 28 \_\_\_\_\_  
 29 *Print Name of Employer*

30 ~~Reviewed for financial conflicts and approved prior to the~~  
 31 ~~opening of bids or the award:~~  
 32 ~~Name \_\_\_\_\_ Date \_\_\_\_\_~~  
 33 ~~\_\_\_\_\_~~  
 34 ~~*Title and Employer*~~

35 (c) Any person who knowingly provides false information *or*  
 36 *fails to disclose a financial relationship* in the disclosure set forth  
 37 in subdivision (b) shall be subject to a civil penalty in an amount  
 38 up to ~~\$1000 dollars~~ *one thousand dollars (\$1,000)*, in addition to  
 any other available remedies. An action for a civil penalty under

1 this provision may be brought by any public prosecutor in the name  
2 of the people of the State of California.

3 ~~3012.~~

4 3008. (a) To report bid rigging involving local government  
5 agencies and employees, including, but not limited to, county, city,  
6 and school district employees and officials, an interested person  
7 may contact the Antitrust Law Section of the Office of the Attorney  
8 General, 300 S. Spring St., Ste. 1702, Los Angeles, CA 90013,  
9 (800) 952-5225, or fill out the online complaint form on the Internet  
10 Web site of the Office of the Attorney General (Consumer  
11 Complaint Against a Business/Company) at  
12 [ag.ca.gov/contact/complaint\\_form.php?cmplt=CL](http://ag.ca.gov/contact/complaint_form.php?cmplt=CL).

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

18 ~~3014. A district or governmental body shall publish on its~~  
19 ~~Internet Web site the specifications for a roof project from the day~~  
20 ~~those specifications are issued until six months after the bid is~~  
21 ~~accepted and awarded. The information presented online shall~~  
22 ~~include the district or governmental body's written responses to~~  
23 ~~bids, the contract amounts, the date of the contract, the type of~~  
24 ~~project, bidding phase, the bidders, their bid amounts, and the~~  
25 ~~winning bidder's accepted bid at award. The district or~~  
26 ~~governmental body shall also publish on its Internet Web site any~~  
27 ~~subsequent change orders so the total project cost may be~~  
28 ~~ascertained in an easily accessible manner. When the district or~~  
29 ~~governmental body removes this information from its Internet Web~~  
30 ~~site, it shall retain the information for a period of three years.~~

31 ~~3016. The State Allocation Board, Office of Public School~~  
32 ~~Construction, and the Department of General Services may provide~~  
33 ~~educational programs, information, or online material to school~~  
34 ~~and state government administrators on California bidding statutes~~  
35 ~~to ensure that the administrators are adequately informed regarding~~  
36 ~~the legal requirements to maintain a fair and transparent bidding~~  
37 ~~process.~~

38 ~~SEC. 2. If the Commission on State Mandates determines that~~  
39 ~~this act contains costs mandated by the state, reimbursement to~~  
40 ~~local agencies and school districts for those costs shall be made~~

1 pursuant to Part 7 (commencing with Section 17500) of Division  
2 4 of Title 2 of the Government Code.

3 *3010. This article shall not apply to a school district operating*  
4 *in accordance with Section 20113 or a community college district*  
5 *operating in accordance with Section 20654.*

6 ~~SEC. 3.~~

7 SEC. 2. This act is an urgency statute necessary for the  
8 immediate preservation of the public peace, health, or safety within  
9 the meaning of Article IV of the Constitution and shall go into  
10 immediate effect. The facts constituting the necessity are:

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

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18 CORRECTIONS:

19 ~~Text—Pages 4, 5, 6, 7, and 8.~~

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