

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1342

Introduced by Assembly Member Dickinson

February 18, 2011

An act to amend ~~Section 3004~~ of Sections 3000 and 3004 of, and to add Sections 3003, 3003.5, 3004.5, 3005, and 3007 to, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1342, as amended, Dickinson. 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. Existing law provides 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 certain requirements, and requires specifications for any roof project to be designed to promote competition.

This bill would *extend those requirements imposed on public schools and community colleges for roof projects to state universities and facilities owned or operated by the state and would define "district or governmental body" for purposes of its provisions, to mean a school district, community college district, state university, or state agency. The bill would require, if a substitution is offered in a bid for a roof project, the district or governmental body to require a decision on*

whether the proposed substitution is “equal” to be made by an independent architect, engineer, or roofing consultant, who would be subject to specified disclosure requirements and civil penalties for failure to disclose, and these same requirements would be imposed on the materials manufacturer, contractor, or vendor, as specified. The bill would also require specifications for such a roof project to contain certain information regarding manufacturers, and would prohibit specifications requiring proprietary products or a proprietary warranty for proprietary installation, products, or warranty from being included, unless specified conditions are met.

The bill would 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 on California bidding statutes to state government administrators. The bill would additionally require a district or governmental body to publish on its Internet Web site the specifications for a roof project, in accordance with certain criteria. By imposing new duties on local government agencies with respect to the publication of this material, the bill would impose 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: ~~no~~-yes.

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

- 1 **SECTION 1.** *Section 3000 of the Public Contract Code is*
- 2 *amended to read:*
- 3 3000. For purposes of this article, the following terms have
- 4 the following meanings:
- 5 (a) “Architect” means an architect who has a current license
- 6 issued by the state.
- 7 (b) ~~“District” means a school district with an average daily~~
- 8 ~~attendance greater than 2,500 or a community college district.~~

1 *“District or governmental body” means a school district,*
2 *community college district, state university, or state agency.*

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

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

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

10 (f) *“Roof project” means a project for the replacement or repair*
11 *of a roof of a public facility, except that “roof project” does not*
12 *include a project for the repair of 25 percent or less of the roof or*
13 *a repair project that has a total cost of twenty-one thousand dollars*
14 *(\$21,000) or less.*

15 (g) *“Substitute” or “substitution” means a material, product,*
16 *thing, or service proposed by a bidder to be an adequate substitute*
17 *material, product, thing, or service that is equal to an item*
18 *designated in specifications, pursuant to subdivision (b) of Section*
19 *3400 and subdivision (a) of Section 10129.*

20 *SEC. 2. Section 3003 is added to the Public Contract Code, to*
21 *read:*

22 *3003. (a) For purposes of this section, “necessary” means*
23 *essential for determining performance and durability*
24 *characteristics.*

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

32 *SEC. 3. Section 3003.5 is added to the Public Contract Code,*
33 *to read:*

34 *3003.5. A district or governmental body shall ensure and verify*
35 *in writing that an architect, engineer, or roofing consultant*
36 *develops the plans and specifications for a roof project to ensure*
37 *that the project is designed to conform to state laws, and structural*
38 *integrity and conformity with Section 3004 is maintained.*

1 SECTION 1.

2 SEC. 4. Section 3004 of the Public Contract Code is amended
3 to read:

4 3004. (a) Specifications for any roof project shall be designed
5 to promote competition. These specifications shall do at least one
6 of the following:

7 (1) Name a minimum of three separate manufacturers that share
8 no financial, partnership, or subsidiary relationships, or interests,
9 or shared product lines.

10 (2) Require performance standards that at least three
11 manufacturers have indicated, in writing, in advance of the bidding
12 period, the ability to comply with.

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

18 *(b) Specifications for proprietary installation, products, or*
19 *warranty shall not be included in specifications for a roof project*
20 *unless they satisfy all of the following requirements:*

21 *(1) Are prepared by an architect, engineer, or roof consultant*
22 *with no financial or professional connection to the specified*
23 *products.*

24 *(2) Contain a description of the specific project circumstances*
25 *requiring the proprietary product and a finding that the specified*
26 *product is uniquely suited to satisfy the project's special*
27 *circumstance and in what way.*

28 *(3) Contain an expressed professional opinion that the specified*
29 *product is the only product that will meet the requirements of the*
30 *project.*

31 *(4) List the manufacturer known to comply with the*
32 *specifications.*

33 SEC. 5. Section 3004.5 is added to the Public Contract Code,
34 to read:

35 3004.5. A district or governmental body shall publish on its
36 Internet Web site the specifications for a roof project from the day
37 those specifications are issued until six months after the bid is
38 accepted and awarded. The information provided online shall
39 include the district's or governmental body's written responses to
40 bids, the contract amounts, the date of the contract, the type of

1 *project, bidding phase, the bidders, their bid amounts, and the*
2 *winning bidder's accepted bid award. The district or governmental*
3 *body shall also publish on its Internet Web site any subsequent*
4 *change orders so the total project cost may be ascertained in an*
5 *easily accessible manner. When the district or governmental body*
6 *removes this information from its Internet Web site, it shall retain*
7 *the information for a period of no less than three years.*

8 *SEC. 6. Section 3005 is added to the Public Contract Code, to*
9 *read:*

10 *3005. The State Allocation Board, the Office of Public School*
11 *Construction, and the Department of General Services may provide*
12 *educational programs, information, or online material on*
13 *California bidding statutes to school and state government*
14 *administrators to ensure that the administrators are adequately*
15 *informed regarding the legal requirements to maintain a fair and*
16 *transparent bidding process.*

17 *SEC. 7. Section 3007 is added to the Public Contract Code, to*
18 *read:*

19 *3007. (a) The architect, engineer, or roofing consultant who*
20 *develops the specifications for a roof project shall disclose any*
21 *financial relationships to the district or governmental body by*
22 *completing and signing the certification set forth in subdivision*
23 *(b) of Section 3006, prior to the opening of any bids or the award*
24 *of any project. The awarding authority shall review, approve, and*
25 *acknowledge the disclosure.*

26 *(b) The materials manufacturer, contractor, or vendor shall*
27 *disclose any financial relationship to the district or governmental*
28 *body by completing and signing the certification required by*
29 *subdivision (b) of Section 3006.*

30 *(c) An architect, engineer, roofing consultant, materials*
31 *manufacturer, contractor, or vendor who provides false*
32 *information or fails to disclose a financial relationship shall be*
33 *subject to a civil penalty, as set forth in subdivision (c) of Section*
34 *3006.*

35 *SEC. 8. If the Commission on State Mandates determines that*
36 *this act contains costs mandated by the state, reimbursement to*
37 *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.*

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