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PASSED THE SENATE AUGUST 27, 2010 (33-1)

PASSED THE ASSEMBLY AUGUST 30, 2010 (77-0)

AMENDED IN SENATE AUGUST 20, 2010

AMENDED IN SENATE AUGUST 5, 2010

AMENDED IN ASSEMBLY APRIL 2, 2009

INTRODUCED BY Committee on Accountability and Administrative Review (De La Torre (Chair), Arambula, Block, Caballero, Bonnie Lowenthal, V. Manuel Perez, and Audra Strickland) FEBRUARY 25, 2009 *[Note: An old bill from 2009 was taken and revised]*

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, 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 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.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 1 (commencing with Section 3000) is added to Chapter 3 of Part 1 of Division 2 of the Public Contract 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" 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 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 by virtue of the inclusion of proprietary products or a proprietary warranty.

3004. Specifications for any roof project shall be designed to promote competition.

3006. (a) (1) An architect, engineer, or roofing consultant who provides professional services related to a roof project shall disclose any financial relationships by completing and signing the certification set forth in subdivision (b) prior to the time professional services are engaged. A materials manufacturer, contractor, or vendor involved in a bid or proposal for a roof project shall disclose any financial relationships by completing and signing the certification set forth in subdivision (b) when the award is made. The architect, engineer, roofing consultant, materials manufacturer, contractor, or vendor shall provide the certification to the district.

(2) An architect, engineer, roofing consultant, materials manufacturer, contractor, or vendor shall not disclose a financial relationship in which that person or entity is a stockholder of a corporation the stock of which is listed for sale to the general public on a national securities exchange and registered with the United States Securities and

Exchange Commission, if the person or entity holds less than 10 percent of the outstanding stock entitled to vote at the annual meeting of the corporation.

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

(b) I, ____ Name , _____Name of Employer, certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roof project contract. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals. Furthermore, I, ____ Name , _____ Name of Employer , certify that I do not have, and throughout the duration of the contract, I will not have, any financial relationship in connection with the performance of this contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below. I, ____ Name , _____ Name of Employer , have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract: _____ Name and Address of Building, Contract Date and Number I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

_____Signature ____ Date _____Print Name _____
Print Name of Employer

(c) Any person who knowingly provides false information or fails to disclose a financial relationship in the disclosure set forth in subdivision (b) shall be subject to a civil penalty in an amount up to one thousand dollars (\$1,000), in addition to any other available remedies. An action for a civil penalty under this provision may be brought by any public prosecutor in the name of the people of the State of California.

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

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

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

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to control expenditures for the repair or replacement of roofs on public schools and community colleges, it is necessary that this act take effect immediately.