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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 813 Session of  
2013

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INTRODUCED BY VANCE, TEPLITZ, FOLMER, ALLOWAY, WAUGH, ARGALL,  
FERLO, WASHINGTON AND SCARNATI, APRIL 4, 2013

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REFERRED TO STATE GOVERNMENT, APRIL 4, 2013

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AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, further providing for application of part; and  
3 providing for local government unit roofing projects.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Section 3101 of Title 62 of the Pennsylvania  
7 Consolidated Statutes is amended to read:

8 § 3101. Application of part.

9 Except for [Chapter] Chapters 46 (relating to electronic  
10 bidding by local government units) and 47 (relating to local  
11 government unit roofing projects), which [applies] apply only to  
12 local government units, this part applies to government  
13 agencies. In the case of Commonwealth agencies, this part shall  
14 be read in pari materia with Part I (relating to Commonwealth  
15 Procurement Code).

16 Section 2. Title 62 is amended by adding a chapter to read:

17 CHAPTER 47

18 LOCAL GOVERNMENT UNIT ROOFING PROJECTS

1 Sec.

2 4701. Short title of chapter.

3 4702. Definitions.

4 4703. Roofing project specifications.

5 4704. Prohibited acts.

6 4705. Disclosure of financial interest.

7 4706. Advertisement of prebid meeting and bid opening.

8 4707. Enforcement and remedies.

9 4708. Cooperative purchasing prohibited.

10 4709. Scope of chapter.

11 § 4701. Short title of chapter.

12 This chapter shall be known and may be cited as the Roofing  
13 Projects Act.

14 § 4702. Definitions.

15 The following words and phrases when used in this chapter  
16 shall have the meanings given to them in this section unless the  
17 context clearly indicates otherwise:

18 "Brand name." Materials unique or proprietary to only one  
19 manufacturer.

20 "Brand name equivalent." Materials substituted for a brand  
21 name that:

22 (1) are at least equal in quality, durability, strength,  
23 appearance, energy efficiency and design, but not necessarily  
24 of an identical color;

25 (2) will perform at least as well as the function  
26 imposed by the general design for the roofing project; or

27 (3) will conform substantially, even with deviations, to  
28 the requirements for the materials in the specifications.

29 Materials substituted for brand names will only be considered  
30 unequal to brand name material if the resulting roof system

1 would be substantially different from other equal or better  
2 systems in terms of performance and durability, not merely  
3 different by virtue of the inclusion of proprietary products or  
4 a proprietary warranty.

5 "Compensation arrangement." An arrangement involving  
6 remuneration, direct or indirect, in cash or in kind, between  
7 two or more persons.

8 "Contracting officer." The individual, board, committee or  
9 agency authorized to enter into and administer contracts and  
10 make written determinations with respect to contracts on behalf  
11 of a local government unit.

12 "Design professional." Either a professional engineer as  
13 defined in the act of May 23, 1945 (P.L.913, No.367), known as  
14 the Engineer, Land Surveyor and Geologist Registration Law, or  
15 an architect as defined in accordance with the act of December  
16 14, 1982 (P.L.1227, No.281), known as the Architects Licensure  
17 Law, who is retained by the local government unit to draft  
18 specifications for a roofing project or to advise the  
19 contracting officer on awarding a roofing contract.

20 "Local government unit." A county, city, borough,  
21 incorporated town, township, school district, vocational school  
22 district, county institution district, home rule municipality,  
23 local authority or any joint or cooperative body of local  
24 government units or any instrumentality, authority or  
25 corporation thereof that has authority to enter into a contract.

26 "Professional consultant." A design professional or other  
27 design or construction consultant providing professional  
28 services related to a roofing contract.

29 "Roofing project." A project to replace or repair a roof of  
30 a facility owned by a local government unit. The term shall not

1 include a project for the repair of 25% or less of the roof or a  
2 repair project that has a total cost of \$10,000 or less.

3 "Specifications." The bid specifications for supplying  
4 materials to a roofing project.

5 § 4703. Roofing project specifications.

6 (a) General rule.--Notwithstanding any other provision of  
7 law, specifications for roofing projects shall be based upon  
8 generally accepted standards in the commercial roofing industry  
9 and shall be written to encourage open and competitive bidding  
10 and to prevent corruption and favoritism in order to achieve the  
11 best work and materials at the lowest reasonable cost.

12 (b) Preparation of specifications.--The plans and  
13 specifications for a roofing project shall be prepared by a  
14 design professional and shall bear the stamp or seal of the  
15 design professional who prepared the plans or specifications.  
16 The contracting officer shall require that every design  
17 professional preparing plans and specifications submit  
18 verification to the contracting local government unit that the  
19 design professional holds a valid Pennsylvania license or  
20 registration and a certification required by section 4705  
21 (relating to disclosure of financial interest).

22 (c) Brand name specifications.--

23 (1) A local government unit may specify materials by  
24 brand name in order to signify the kind or quality of  
25 materials sought. Specifications calling for materials by  
26 brand name shall be construed as requesting materials of the  
27 general style, type, character and quality of the materials  
28 identified by brand name.

29 (2) In response to any specification calling for a brand  
30 name, a bidder may furnish the brand name or a brand name

1 equivalent.

2 (d) Specification features.--None of the following features,  
3 if present in the specifications for a roofing project, may be  
4 used to reject materials substituted for a brand name:

5 (1) Requirements applicable to substitute materials or  
6 bidders proposing the use of substitute materials that differ  
7 substantially from the requirements to be met by the  
8 materials named in the specifications.

9 (2) Provisions conferring authority to accept or reject  
10 substitute materials upon persons other than the contract  
11 officer acting upon the recommendation of the design  
12 professional who prepared the specifications.

13 (3) Testing requirements that may be met by only one  
14 manufacturer's materials. However, specifications may require  
15 materials to meet standards issued by independent testing  
16 organizations. In any case in which a material is required to  
17 meet a certain standard set forth in the specifications, the  
18 material shall be deemed to do so if it meets or exceeds that  
19 standard.

20 (4) Testing requirements that are exclusionary due to  
21 time or expense for compliance.

22 (5) Provisions setting a standard for, or placing a  
23 restriction on, the use of substitute materials that are not  
24 related to the purpose, function or activity for which the  
25 contract is awarded.

26 § 4704. Prohibited acts.

27 (a) Separate contracts.--A local government unit,  
28 contracting officer or design professional may not divide a  
29 roofing project into smaller projects to avoid the application  
30 of this chapter.

1 (b) Improper influence.--A contracting officer may not  
2 solicit, accept or agree to accept from another, and no person  
3 may offer, agree to offer or confer or agree to confer on a  
4 contracting officer, any pecuniary benefit as consideration for:

5 (1) purchasing or recommending the purchasing of  
6 materials for a roofing project;

7 (2) the incorporation or recommendation for  
8 incorporation of materials in the specifications of a roofing  
9 project;

10 (3) the award or recommendation of an award of a  
11 contract for a roofing project; or

12 (4) the recommendation, promotion or endorsement of  
13 materials for a roofing project.

14 (c) Defenses prohibited.--It is no defense to a violation of  
15 this section that a person whom the actor sought to influence  
16 was not qualified to act in the desired way because of a lack of  
17 authority or for any other reason.

18 § 4705. Disclosure of financial interest.

19 (a) Professional consultants.--A professional consultant  
20 shall disclose any ownership, investment or compensation  
21 relationship with any architect, engineer, consultant, materials  
22 manufacturer, distributor or vendor by completing and signing  
23 the certification set forth in subsection (e). The certification  
24 shall be submitted to the contracting local government unit  
25 prior to the time the professional services are engaged.

26 (b) Manufacturers, contractors and vendors.--A materials  
27 manufacturer, contractor, vendor or any other party making a bid  
28 or proposal for a roofing project shall disclose any ownership,  
29 investment or compensation relationships with any architect,  
30 engineer, consultant, materials manufacturer, distributor or

1 vendor by completing and signing the certification set forth in  
2 subsection (e). The certification shall be submitted with the  
3 bid or proposal.

4 (c) Disclosure of employer interest.--For purposes of this  
5 section, a professional consultant who is employed by a  
6 partnership, corporation, limited liability company or other  
7 organization and who owns more than 10% of the employer's  
8 ownership interests shall disclose the ownership, investment or  
9 compensation relationships of the employer as if they were held  
10 personally by the professional consultant.

11 (d) Exception.--For purposes of this section, an ownership  
12 or investment interest shall not include a holding of less than  
13 10% of outstanding voting stock of any corporation listed for  
14 sale to the general public on a national securities exchange and  
15 registered with the United States Securities and Exchange  
16 Commission.

17 (e) Certification.--When required in accordance with this  
18 chapter, a professional consultant, materials manufacturer,  
19 contractor or vendor shall complete and submit a certification  
20 in the following form:

21 I, \_\_\_\_\_ (name),  
22 \_\_\_\_\_ (name of employer),  
23 certify that I have not offered, given, or agreed to  
24 give, received, accepted or agreed to accept, any gift,  
25 contribution or any financial incentive whatsoever to or  
26 from any person in connection with the roofing project.  
27 As used in this certification, "person" means any natural  
28 person, business, partnership, corporation, union,  
29 committee, club or other organization, entity or group of  
30 individuals. Furthermore, I certify that I do not have,

1 and throughout the duration of the contract I will not  
2 have, any financial relationship in connection with the  
3 performance of this contract with any architect,  
4 engineer, roofing consultant, materials manufacturer or  
5 vendor that is not disclosed below.

6 I have the following ownership, investment or  
7 compensation relationships with an architect, engineer,  
8 roofing consultant, materials manufacturer, distributor  
9 or vendor:

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

12 \_\_\_\_\_ Signature

13 \_\_\_\_\_ Date

14 \_\_\_\_\_ Print Name

15 \_\_\_\_\_ Print Name of Employer

16 § 4706. Advertisement of prebid meeting and bid opening.

17 (a) Prebid meeting.--In addition to advertising as required  
18 by any other provision of law, if the contracting officer makes  
19 the attendance of a bidder at a prebid meeting or conference a  
20 condition of the acceptance of a bid for a roofing contract, the  
21 contracting officer shall publish notice of the time and date of  
22 the prebid meeting twice in one newspaper of general circulation  
23 published or circulating in the county where the roofing project  
24 is located at intervals of not less than three days. The first  
25 notice may not be published less than 14 days prior to the date  
26 of the meeting. If attendance at a prebid meeting is not  
27 advertised as required by this section, then a contracting  
28 officer may not refuse to accept a bid from a bidder on the sole  
29 basis that the bidder failed to attend the prebid meeting.

30 (b) Bid opening.--In addition to advertising as required by



1 any other provision of law, the contracting officer shall  
2 publish notice of the time and date of the opening of bids for a  
3 roofing project twice in one newspaper of general circulation  
4 published or circulating in the county where the roofing project  
5 is located at intervals of not less than three days. The first  
6 notice may not be published less than 14 days prior to the date  
7 fixed for the opening of bids. If the date and time fixed for  
8 the opening of bids was not advertised in accordance with this  
9 section, any contracts awarded by the contracting officer after  
10 the opening of bids are void, and the contracting officer shall  
11 readvertise a new date and time fixed for the opening of bids as  
12 required by this section.

13 § 4707. Enforcement and remedies.

14 (a) Contracts voidable.--A contract awarded in violation of  
15 this chapter is voidable by the contracting officer.

16 (b) Attorney General.--At any time up to ten calendar days  
17 after a roofing contract is awarded, a prospective bidder or any  
18 bidder not awarded the contract may file a complaint with the  
19 Attorney General or the Attorney General's designee alleging  
20 that the specifications used in the solicitation for, or award  
21 of, a roofing project contract violate section 4703 (relating to  
22 roofing project specifications). The person challenging the  
23 specifications has the burden of demonstrating that the  
24 specifications violate this chapter. If the Attorney General or  
25 the Attorney General's designee concludes that the  
26 specifications do not comply with this chapter, the Attorney  
27 General or the Attorney General's designee shall declare any  
28 contract awarded void and shall direct the contracting officer  
29 to revise the specifications and reinitiate the solicitation  
30 procedure. The contracting officer shall provide documentation

1 to the Attorney General certifying that the specifications have  
2 been modified to comply with this chapter. The decision of the  
3 Attorney General or the Attorney General's designee regarding  
4 the compliance of the specifications is final and may not be  
5 appealed.

6 (c) Attorney General.--The Attorney General may petition a  
7 court with jurisdiction to impose a civil penalty on any person  
8 who knowingly violates this chapter in an amount not to exceed  
9 \$25,000 per violation, plus any investigative costs incurred and  
10 documented by the Attorney General.

11 (d) Local government units.--A local government unit may  
12 bring a civil action in the court of common pleas against any  
13 person who knowingly provides false information or knowingly  
14 fails to disclose an ownership, investment or compensation  
15 relationship in violation of section 4705 (relating to  
16 disclosure of financial interest). In the event the court finds  
17 a violation of section 4705, the local government unit may  
18 recover any costs that, when compared to the competing bids, are  
19 excessive or unnecessary costs to the local government unit and  
20 are reasonably attributable to the nondisclosure of the  
21 financial relationship.

22 § 4708. Cooperative purchasing prohibited.

23 Notwithstanding any other law, a local government unit may  
24 not procure a roofing project or the materials for a roofing  
25 project from or through a cooperative-purchasing agency or  
26 cooperative-purchasing agreement. A local government unit shall  
27 personally bid its roofing projects according to this act and  
28 the public-bidding laws applicable to that purchasing entity.

29 § 4709. Scope of chapter.

30 The provisions of this chapter shall preempt and supersede

1 any contrary law, ordinance or regulation.

2 Section 3. This act shall apply to roofing project contracts  
3 initially advertised after the effective date of this act.

4 Section 4. This act shall take effect January 1, 2014.