



February 8, 2011

HOUSE BILL No. 1400

DIGEST OF HB 1400 (Updated February 3, 2011 9:38 am - DI 75)

Citations Affected: IC 5-16.

Synopsis: Roofing projects of political subdivisions. Requires specifications for a roofing project of a political subdivision to be written to encourage free, open, and competitive bidding and refrain from calling for unique or proprietary materials.

Effective: July 1, 2011.

Leonard, Neese, Welch

January 18, 2011, read first time and referred to Committee on Local Government.
February 7, 2011, reported — Do Pass.

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HB 1400—LS 7535/DI 75+



February 8, 2011

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1400

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-16-13 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]:

4 **Chapter 13. Specifications for Roofing Projects.**

5 **Sec. 1. As used in this chapter, "brand name" refers to materials**
6 **that are unique or proprietary to only one (1) manufacturer.**

7 **Sec. 2. (a) As used in this chapter, "contract officer" refers to**
8 **the board or individual responsible for awarding the contract for**
9 **a roofing project.**

10 **(b) If the contract officer consists of more than one (1)**
11 **individual, an action authorized or required of a contract officer**
12 **must be taken by a majority of the individuals who constitute the**
13 **contract officer.**

14 **Sec. 3. As used in this chapter, "design professional" refers to**
15 **a professional retained by a contract officer to draft specifications**
16 **for a roofing project or to advise the contract officer with respect**
17 **to the award of a roofing project and is either of the following:**

HB 1400—LS 7535/DI 75+



- 1 (1) An architect registered under IC 25-4.
- 2 (2) An engineer registered under IC 25-31.
- 3 Sec. 4. As used in this chapter, "materials" refer to materials,
- 4 products, or supplies used on a roofing project.
- 5 Sec. 5. As used in this chapter, "person" refers to any of the
- 6 following:
- 7 (1) An individual.
- 8 (2) A business partnership.
- 9 (3) A corporation.
- 10 (4) A committee.
- 11 (5) A club.
- 12 (6) A union.
- 13 (7) Any other organization, entity, or group of individuals.
- 14 Sec. 6. As used in this chapter, "roofing project" means a
- 15 project for the replacement or repair of a roof of a facility owned
- 16 by a political subdivision or an agency of a political subdivision.
- 17 The term does not include the following:
- 18 (1) A project for the repair of twenty-five percent (25%) or
- 19 less of the roof.
- 20 (2) A repair project that has a total cost of not more than
- 21 twenty thousand dollars (\$20,000).
- 22 Sec. 7. As used in this chapter, "specifications" refers to the bid
- 23 specifications for supplying materials for a roofing project.
- 24 Sec. 8. (a) Specifications must be written to accomplish the
- 25 following:
- 26 (1) Encourage free, open, and competitive bidding.
- 27 (2) Prevent corruption, extravagance, favoritism, graft, and
- 28 improvidence.
- 29 (3) Ensure honest competition to acquire the best work and
- 30 materials for a roofing project at the lowest reasonable cost.
- 31 (b) Specifications must be based upon generally accepted
- 32 standards in the commercial roofing industry.
- 33 (c) A specification may state the kind or quality of materials
- 34 sought by referring to a brand name. Referring to materials by a
- 35 brand name is considered to mean that the materials supplied must
- 36 be of the general style, type, character, and quality of the materials
- 37 identified by the brand name.
- 38 (d) Other materials are considered the equivalent of materials
- 39 of a brand name if the materials:
- 40 (1) are at least equal in quality, durability, strength,
- 41 appearance, energy efficiency, and design, but need not
- 42 necessarily be of an identical color;

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1 (2) will perform at least as well for the function imposed by
2 the general design for the roofing project; or
3 (3) conform substantially, even with deviations, to the
4 requirements for the materials in the specifications.
5 (e) In response to a specification that calls for a brand name, a
6 bidder may furnish:
7 (1) the brand name material; or
8 (2) material that is equivalent to the brand named material.
9 (f) A substitute material will be considered unequal to brand
10 name material only if the resulting roof system would be
11 substantially different from other equal or better systems in terms
12 of performance and durability, not merely different because of the
13 inclusion or proprietary products or a proprietary warranty.
14 (g) None of the following, if present in specifications, may be
15 used to reject materials as unequal to brand name material:
16 (1) Requirements applicable to alternate or substitute
17 materials or bidders proposing the use of alternate or
18 substitute materials that differ substantially from the
19 requirements to be met by materials named in the
20 specifications.
21 (2) Conferral of authority to accept or reject alternate or
22 substitute materials upon persons other than:
23 (A) the contract officer; or
24 (B) the design professional who prepared the
25 specifications.
26 (3) Testing requirements that may be met by only one (1)
27 manufacturer's materials. However, specifications may
28 require materials to meet standards issued by independent
29 standards organizations or to pass tests accepted by
30 independent testing organizations. In any case where
31 materials are required to meet a certain standard set forth in
32 the specifications, the materials are considered to meet the
33 standard if they meet or exceed the standard.
34 (4) Testing requirements for alternate or substitute materials
35 that are exclusionary due to time or expense for compliance.
36 (5) Standards for, or a restriction, condition, or limitation
37 upon the use of alternate or substitute materials that is not
38 directly related to the purpose, function, or activity for which
39 the contract is awarded.
40 Sec. 9. This chapter does not prohibit design-build contracts
41 awarded in compliance with IC 5-30.
42 Sec. 10. A contract officer may not artificially divide a roofing

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1 project into smaller projects to avoid application of this chapter.
 2 Sec. 11. (a) The plans and specifications for a roofing project
 3 must bear the stamp or seal of the design professional who
 4 prepared the plans or the specifications.
 5 (b) The contract officer shall require that the design
 6 professional who prepares the plans or specifications for a roofing
 7 project must certify that the design professional has the applicable
 8 license or registration required by Indiana law.
 9 Sec. 12. (a) A contract officer may not accept or agree to accept
 10 any property from a person in return for the contract officer's
 11 agreement to do any of the following:
 12 (1) To purchase or recommend the purchase of that person's
 13 materials with respect to a roofing project.
 14 (2) To incorporate or recommend incorporation of the
 15 person's materials into specifications for a roofing project.
 16 (3) To award or recommend the award of a roofing project
 17 contract to that person.
 18 (4) To recommend, promote, or endorse that person's
 19 materials with respect to the roofing project.
 20 (b) A person may not confer or agree to confer any property on
 21 a contract officer for the contract officer's agreement to do any act
 22 described in subsection (a).
 23 Sec. 13. (a) As used in this section, "interested party" refers to
 24 an architect, engineer, consultant, materials manufacturer,
 25 distributor, or vendor.
 26 (b) A design professional or a design or construction consultant
 27 who provides professional services relating to a roofing project
 28 shall disclose any ownership, investment, or compensation
 29 relationships with any interested party. The certification must be
 30 provided to the contract officer before the design professional's or
 31 consultant's services are engaged.
 32 (c) A materials manufacturer, contractor, or vendor involved in
 33 a bid or proposal for a roofing project shall disclose any
 34 ownership, investment, or compensation relationships with any
 35 interested party. The certification must be provided with the bid or
 36 proposal.
 37 (d) For purposes of this section, a design professional or a design
 38 or construction consultant who:
 39 (1) is employed by a person; and
 40 (2) owns more than ten percent (10%) interest in the
 41 employer;
 42 is considered to represent the employer and must disclose the

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1 employer's ownership, investment, and compensation relationships
2 as if those relationships were held personally by the design
3 professional or the design or construction consultant.

4 (e) A person required to make disclosures under this section is
5 not required to disclose a relationship in which that person is a
6 stockholder of a corporation if both of the following apply:

7 (1) The stock of the corporation is listed for sale to the general
8 public on a national securities exchange and registered with
9 the United States Securities and Exchange Commission.

10 (2) The person holds less than ten percent (10%) of the
11 outstanding stock entitled to vote at the annual meeting of the
12 corporation.

13 Sec. 14. (a) The certification referred to in section 13 of this
14 chapter must be in the following form:

15 "For purposes of this certification, "person" means any
16 individual, business partnership, corporation, committee, club,
17 union, or any other organization, entity, or group of individuals.

18 "I _____ (insert the name of the individual
19 making the certification), employed by _____
20 (insert the name of the employer of the individual making the
21 certification if required by this chapter), certify that I have not:

22 (1) offered, given, or agreed to give any gift, contribution, or
23 any financial incentive to any person; or

24 (2) received, accepted, or agreed to accept any gift,
25 contribution, or any financial incentive from any person;

26 in connection with the roofing project.

27 "I further certify that I do not have, and throughout the
28 duration of the contract, I will not have, any financial relationship
29 in connection with the performance of this contract with any
30 architect, engineer, roofing consultant, materials manufacturer,
31 distributor, or vendor that is not disclosed below.

32 "I have the following relationships with an architect, engineer,
33 consultant, materials manufacturer, distributor, or vendor:
34 (adequate space must be given for the insertion of information
35 required by the certification).

36 "I certify to the best of my knowledge, the representations made
37 in this certification are true or are believed to be true."

38 (b) The following must be included on a page that includes text
39 of the certification:

40 (1) The signature of the individual making the certification.

41 (2) The printed name of the individual making the
42 certification.

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(3) The date the individual makes the certification.

(4) The printed name of the employer of the individual making the certification (if applicable).

Sec. 15. A design professional, contractor, materials manufacturer, consultant, or vendor who knowingly or intentionally:

(1) provides false information; or

(2) fails to disclose an ownership, investment, or compensation relationship;

under section 14 of this chapter is liable to the political subdivision for any costs to the political subdivision that are reasonably attributable to excess or unnecessary costs, when compared with competing bids, incurred by the political subdivision because of the undisclosed ownership, investment, or compensation relationship.

Sec. 16. (a) If the contract officer makes the attendance of a bidder at a prebid meeting or conference a condition of the acceptance of a bid from that bidder for a roofing project, the contract officer shall publish notice of the date and time of the prebid meeting or conference in the same fashion and for the same period as the board must advertise the date of receiving bids under IC 5-3-1.

(b) If a prebid meeting is not advertised as required by this section, the contract officer may not refuse to accept a bid from a bidder solely because that bidder failed to attend the prebid meeting.

Sec. 17. (a) As used in this section, "certification board" refers to the certification board established by IC 4-13.6-3-3.

(b) A prospective bidder may file a protest alleging that bid specifications for a roofing project violate this chapter with the certification board.

(c) A person who challenges the specifications has the burden of demonstrating that the specifications violate this chapter.

(d) If the certification board concludes that the specifications violate this chapter, the certification board shall direct the contract officer to revise the specifications to comply with this chapter.

(e) A decision of the certification board under this section is final.

Sec. 18. A contract awarded in violation of this chapter is voidable by the political subdivision.

Sec. 19. (a) The attorney general may petition a court with jurisdiction to impose a civil penalty on any person who violates this chapter.

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1 **(b) If the court finds that a person violated this chapter, the**
2 **court may impose a civil penalty against the person of not more**
3 **than twenty-five thousand dollars (\$25,000) for each violation, plus**
4 **any investigative costs incurred and documented by the attorney**
5 **general.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1400, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

NEESE, Chair

Committee Vote: yeas 5, nays 2.

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