

SPECIAL INVESTIGATIVE REPORT

SCHOOL ROOFING PROJECTS

July 1, 2010 through June 30, 2013



Oklahoma State
Auditor & Inspector
Gary A. Jones, CPA, CFE



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August 9, 2013

Honorable E. Scott Pruitt
Attorney General of Oklahoma
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105

Transmitted herewith is a summary of findings related to public school district roofing and reroofing contracts. Information on other public entities was reviewed for purposes of further illustration.

Pursuant to your request and in accordance with the requirements of **74 O.S. § 18f**, we obtained bid records and specifications of certain public school districts for recent fiscal years.

The objectives of our review were limited primarily to the areas noted in your letter. Our findings and recommendations related to these objectives are presented in the accompanying summary.

This summary concludes that restrictive bid language that has been identified in investigations in other states nationwide can also be found here in Oklahoma. The same roofing manufacturers and contractors that have been investigated in other states are also operating in Oklahoma, utilizing similar "marketing strategies" and restrictive bid language included in public entity bid documents.

Based on our review, it appears a comprehensive study of potential abuses of the Public Competitive Bidding Act and the Architectural and Registered Interior Designers Act would be a necessary prelude to any criminal investigation. The comprehensive study could review and evaluate the extent of restrictive bid language used by schools and municipalities and provide an estimate for the amount of potential waste and abuse to be found in public entity roofing and reroofing contracts statewide.

Sincerely,

A handwritten signature in blue ink that reads "Gary A. Jones".

GARY A. JONES, CPA, CFE
OKLAHOMA STATE AUDITOR & INSPECTOR

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INTRODUCTION **SCHOOL AND OTHER ENTITY ROOFING INVESTIGATIONS IN
NUMEROUS STATES**

Over the past decade, or longer in some cases, officials in other states have found that various public entities and political subdivisions – or their architects and/or contractors – have written restrictive specifications in bid notices for public construction projects, particularly roofing projects.

During the preliminary review of the issues involved, we found or were apprised of school roofing scandals or other public entity roofing scandals in California, Florida, Idaho, Louisiana, Minnesota, New Jersey, Ohio, and Wisconsin, to name a few. The record of these investigations is one of mixed results, with some criminal cases for bribery, etc., some civil cases to recover excessive costs, and some legislative initiatives.

The issue is so pervasive nationwide that it appears a cottage industry of roofing experts and consultants has come into existence to combat the roofing manufacturers and roofing contractors that have been engaged in competition restricting behaviors and even criminal activity in some cases.

In the most obvious form of bid-restricting, the bid specifications require bidders to submit bids that include a specific brand or a specific source. For example, specifications may require a contractor to install a roof system manufactured by a particular roofing company.

In a less easily detected form of bid restricting, the bid specifications may require the bidders to submit bids that include specifications that are proprietary in nature without specifying a manufacturer or product. For example, specifications may require a contractor to install a roof system that has a warranty covering damage from hail of a certain diameter or covering damage for a certain period of time, with such a warranty provided by only one manufacturer. Bid language may require a contractor to install a system that has certain dimensions, and only one manufacturer produces systems with those dimensions.

By various means, the bid specifications unfairly restrict bidding, because other manufacturers are precluded from providing their products, and/or some bidders are precluded from bidding, because they do not use the required products. Potential results would include unnecessary and often substantial premiums being paid for public entity roofing and reroofing projects.

OBJECTIVE I: Review specifications of bid notices for unfair product restrictions

Background

Oklahoma’s Public Competitive Bidding Act prohibits “any agreement or collusion among bidders, prospective bidders, or material suppliers in restraint of freedom of competition.”¹

Oklahoma’s Architectural and Registered Interior Designers Act requires the use of architectural services for:

- The construction, addition, or alteration of a building with the ‘Code Use Group’ “Education” that is more than two stories in height and/or will have an occupancy of 50 or more people¹
- The planning, design, and preparation of plans and specifications for all buildings “used by a municipality, county, state, public trust, or public agency” with a construction value of \$158,000 or higher²

Finding #1

Oklahoma public school districts have bid language similar to language found in investigations of public entity roofing contracts in other states.

Since 2009, the Edmond, Enid, Guthrie, Mid-Del, Newcastle, Piedmont, Stillwater, and Yukon public school districts have had the following roofing projects:

School	Buildings	Years	Architect
Edmond	12	2010-2013	Mass Architects (Oklahoma City)
Enid	8	2010	Easley Associates (Enid)
Guthrie	Numerous ^A	2009 & 2011 ^A	LWPB Architecture (Oklahoma City)
Mid-Del	17	2011-2012	Mass Architects (Oklahoma City)
Newcastle	5	2010-2012	Design Architects Plus (Oklahoma City)
Piedmont	2	2010-2011	Design Architects Plus (Oklahoma City)
Stillwater	15 ^B	2009 & 2012 ^B	Design Architects Plus (Oklahoma City) and Selser Schaefer Architects (Tulsa) ^B
Yukon	3 ^C	2009-2012	Design Architects Plus (Oklahoma City)

¹ 61 O.S. § 115

^[1] 59 O.S. § 46.21b(C)(1)

^[2] 59 O.S. § 46.21b(C)(5)(g)

PUBLIC SCHOOL DISTRICTS ROOFING CONTRACTS
RELEASE TO OAG – JULY 23, 2013

- ^A Guthrie Public Schools reroofed one building in 2009 and several buildings in 2011.
^B Stillwater Public Schools reroofed 10 buildings in 2009 with Design Architects Plus and five buildings in 2012 with Selser Schaefer Architects.
^C Yukon Public Schools’ projects included roofs on Surrey Hills Elementary School.

For these projects, the bid specifications required the following:

School	Requirement(s)
Edmond	<ul style="list-style-type: none"> • Built-up membrane systems manufactured by Johns Manville, GAF, or Garland; • Ethylene-propylene-diene-monomer membrane systems manufactured by Carlisle SynTec, Versico, or Firestone; • Asphalt-composition shingles manufactured by CertainTeed, GAF, Malarkey, or TAMKO^A
Enid	Systems and components manufactured by Duro-Last
Guthrie	Polyvinyl-chloride membrane materials manufactured by Duro-Last or Johns Manville
Mid-Del	<ul style="list-style-type: none"> • Systems manufactured by Ecology Roofing, Global Shield, or Simon Roofing^B • Laminated-composition shingles manufactured by CertainTeed or GAF^C
Newcastle	<ul style="list-style-type: none"> • Coal-tar elastomeric membrane “incorporating a DuPont Elvaloy ketone ethylene ester” • Self-adhering welded-seam membrane “incorporating a DuPont Ethylene Interpolymer alloy”
Piedmont	<ul style="list-style-type: none"> • Asphalt shingles manufactured by CertainTeed; • Standing-seam metal systems manufactured by MBCI LocSeam with bituthane-membrane underlayment manufactured by TAMKO or Grace Construction
Stillwater	Systems manufactured by GAF, Johns Manville, or Siplast ^D
Yukon	Standing-seam metal systems manufactured by AEP with bituthane-membrane underlayments manufactured by TAMKO or Grace Construction

- ^A for the 2013 projects
^B for three of the 2011 projects (pre-submission and approval of proposed manufacturer of steel roof decks for other five projects)
^C for eight of the 2012 projects (pre-submission and approval of proposed manufacturer of steel roof decks for projects)
^D for the 2012 projects

Enid Public Schools’ bid specifications additionally specified that “a minimum of 75% of factory rolls must measure not less than 30’ x 50’ in order to minimize field seams”. Only one roofing system (Duro-Last) uses rolls with a width of 30 feet.

The Edmond and Newcastle school districts’ bid specifications did not address product substitutions.

The Enid, Guthrie, Mid-Del, Piedmont, Stillwater, and Yukon school districts' bid specifications allowed bidders to substitute the required roof systems upon prior approval by the architects.

Enid Public Schools' bid specifications allowed bidders to substitute the required roofing components upon prior approval by the architect *and Duro-Last*.

Guthrie Public Schools' 2011 specifications specified, "Roof material manufacturers (PVC membrane 40mil) but not limited to Dura-Last Roofing or Johns Manville" *[sic]*.

Mid-Del Public Schools' bid specifications specified that the contractor had to use "laminated composition shingle roofing equal to GAF."

Finding #2

Other school districts and other political subdivisions appear to have similarly restricted bid specifications.

According to Miami Public Schools' administrative assistant who oversees construction projects, the District's bid specifications require contractors to install roofs manufactured by TAMKO, and he does not know why.

The bid specifications for a 2011 reroofing project by Norman Public Schools required the contractor to install roofs that "conformed to the published specifications and details of Duro-Last Roofing" with "no deviation or substitution without prior written approval" of Duro-Last and the architect, which was The Stacy Group in Edmond. The specifications also stipulated that "a minimum of 75% of the factory rolls must measure a minimum of 30' x 50' in order to minimize field seams."

The bid specifications for a reroofing project by Sand Springs Public Schools required the bidders to submit base bids for roofs that were manufactured by Tremco "or approved equal," first alternate bids for roofs that were manufactured by GAF, second alternate bids for roofs that were manufactured by Johns Manville, third alternate bids for roofs that were manufactured by Koppers, and fourth alternate bids for roofs that were manufactured by TAMKO. The specifications additionally required the contractor to install roof components manufactured by Tremco.

The bid specifications for a 2011 reroofing project by Tulsa Public Schools required the contractor to install roof systems and components manufactured by Tremco "or approved equal." According to an investigation by Oklahoma City and Tulsa's CBS News affiliates, the

District reroofed 26 buildings between 2008 and 2011 and used Tremco systems for 22 of them.

The bid specifications for a 2013 reroofing project by Weatherford Public Schools specified, “The recommended roof replacement type for this building is a 50 mil reinforced thermoplastic roofing membrane system equal to membrane manufactured by Duro-Last Roofing,” and, “A minimum of 75% of factory rolls must measure not less than 30’ x 50’ in order to minimize field seams.” According to the senior property adjuster for Alternative Service Concepts for Oklahoma Schools Insurance Group, “In making this specification of 30’ width, [the District] excludes all other roof system[s] EXCEPT [Duro-Last], as that is the width of [that company’s] rolls of material [*emphasis in original*].”

The bid specifications for a 2011 reroofing project by Moore Norman Technology Center in Norman required the contractor to install roof systems manufactured by Duro-Last and roof components that conformed to “the current published specifications and details of Duro-Last Roofing or equal.” Additionally, the specifications required the contractor to have “met the requirements to have obtained the status of a Duro-Last ‘Master Contractor’” and to have a Duro-Last representative inspect the installation. According to a representative of CSL Materials, a representative of Carlisle SynTec, “We submitted a substitution request and were told ‘no substitutions.’”

The bid specifications for a 2013 reroofing project by Pioneer Technology Center in Ponca City required the contractor to install roof systems and components manufactured by Duro-Last, to have installation done by a Duro-Last “Elite Contractor” according to Duro-Last’s specifications and instructions, and to have a Duro-Last representative inspect the installation. A separate section of the specifications stipulated, “Open competition is expected, but, in all cases, complete data must be submitted on all proposed materials. The contractor shall base his proposal on the material or specialty which is specified.”

According to the president of Roofing System Solutions, a representative of Johns Manville, Northeastern State University in Tahlequah issued bid specifications for a 2012 project that specified use of products manufactured by The Garland Company, Inc., while using a Garland sales rep as the University’s roofing consultant for the project.

The bid specifications for a 2012 reroofing of the Woods County Courthouse required the contractor to install roof systems and components manufactured by Duro-Last, to have installation done by a Duro-Last “Elite Contractor” according to Duro-Last’s specifications and

instructions, and to have a Duro-Last representative inspect the installation.

According to the president of Roofing System Solutions, a representative of Johns Manville, the City of Moore paid Garland Co. approximately \$150,000 more for a new roof on the City's Public Safety Center than the City would have paid if it had used roofing products manufactured by Johns Manville. According to Roofing System Solutions' president, "The architect, Robison & Associates [in Oklahoma City], would not take substitutions. The prices for the cap sheet and flashing sheet are over three times that of the products that I sell daily. The standing seam metal is around \$1 per square foot higher than the metal that I sell."

The bid specifications for a 2013 reroofing project by the City of Watonga required the contractor to install roof systems and components manufactured by Duro-Last with no substitutions permitted, to install them according to Duro-Last's specifications and instructions, and to have a Duro-Last representative inspect the installation. According to the contract city attorney:

Street Commissioner Marvin Schweigert and Mayor Clay Loosen discussed the matter. They then consulted with [...] the representative of Duro-Last Roofing[] as to materials, warranties, and other factors involved. Thereafter they requested [...] Byers Construction to assist them with measuring the areas involved and developing the parameters of the specs. These were then furnished to the City Clerk's office for formatting and typing.

Conclusion

Political subdivisions and/or their architects and/or their contractors appear to restrict roofing projects to roofing systems manufactured by specific companies. The issue would seem more systemic and more widespread than the limited number of school districts and municipalities discussed in this objective.

Our limited review indicated the potential for a significant amount of waste and abuse at the expense of Oklahoma's public entities and taxpayers, but no information came to our attention that would suggest a larger criminal investigation would result in criminal charges being identified and subject to prosecution.

Recommendation

A comprehensive study of systemic issues of public construction projects could present a broader view of the potential abuses and excessive costs resulting from restrictive bid specifications. The study could also review

how amendments to the Public Competitive Bidding Act and the Architectural and Registered Interior Designers Act subsequent to their initial passage have impacted the costs and quality of roofing and reroofing contracts for Oklahoma's public entities.

Subsequent Event In the 2013 legislative session, the Oklahoma Legislature passed – and the governor signed into law – Senate Bill 630, which became effective immediately. The bill added a section to Oklahoma's Central Purchasing Act, which provides as follows:

1. Any bid submissions received by a state agency or any political subdivision pursuant to authorized sole-source bidding procedures which substitute an item with one that is alike in quality and design or which meets the required specifications of the bid shall be considered and shall not be prohibited.
2. In terms of public-construction contracts, with exception of specific products submitted and approved prior to release for bidding by the Attorney General for matching preexisting materials, at least three equivalent items from more than one manufacturer and more than one supplier or representative shall be included in the required specifications.
3. No sole-source bid proposal shall require any limitation that materials must be supplied from a vendor within any specific geographical area; geographic preference for vendors inside the geographical boundaries may be given but only when the cost is the same or less.²

While SB630 appears to be a legislative attempt to address the concerns related to roofing and reroofing projects. Some time may be required to evaluate the impact of the statutory changes on bid behavior of political subdivisions and their seemingly preferred roofing systems and/or preferred roofing contractors.

² 74 O.S. § 85.45j.1

OBJECTIVE II: Review publications of bid notices for legal compliance

Background

The Public Competitive Bidding Act requires public entities to make all proposals to award public-construction contracts equally and uniformly known (1) by publishing notice in two consecutive weekly issues of a newspaper of general circulation in the county where the work, or the major part of it, is to be done, with the first publication being at least 20 days prior to the date set for opening bids, and (2) by sending notice to one in-state trade or construction publication whenever the estimated cost of the contract exceeds \$50,000.³

The Act allows public entities to avoid public-notice and bidding requirements by declaring an “emergency” when “a sudden unexpected happening or unforeseen occurrence or condition” occurs “whereby the public health or safety is endangered.”⁴

Finding

The Edmond, Enid, Guthrie, Mid-Del, Newcastle, Piedmont, Stillwater, and Yukon public school districts appear to have complied with the legal requirements for advertising their bid notices.

Edmond Public Schools advertised its March 3, 2011, and February 28, 2012, bid-openings in a local newspaper for two consecutive weeks each, although the date of the first publication for the 2011 bid was only 19 days prior to the bid-opening date.

Enid Public Schools advertised its August 10, 2010, bid-opening in a local newspaper for two consecutive weeks. School officials subsequently canceled that bid-opening but advertised its rescheduled September 14 opening for two consecutive weeks.

Guthrie Public Schools reroofed buildings in 2011, after tornado damage on May 24. The Board of Education declared an emergency on June 2, allowing district officials to proceed without competitive bidding, which is permitted under 61 O.S. § 130.

Mid-Del Public Schools advertised its March 31 and June 23, 2011, bid-openings in a local newspaper for two consecutive weeks each.

Newcastle Public Schools advertised its July 1, 2010; October 21, 2010; November 2, 2010; November 11, 2010; May 12, 2011; and May 24, 2011, bid-openings in a local newspaper for at least two consecutive

³ 61 O.S. § 104

⁴ 61 O.S. § 130

weeks each, although the date of the first publication for the May 12, 2011, bid was only 19 days prior to the bid-opening date.

Piedmont Public Schools advertised its June 3, 2010, bid-opening in a local newspaper for two consecutive weeks.

Stillwater Public Schools reroofed buildings in 2009 after severe wind allegedly damaged them on June 12. The Board of Education declared an emergency on July 21, allowing district officials to proceed without competitive bidding, although they subsequently bid the work.

Yukon Public Schools advertised its July 14, 2009, and February 24 and April 1, 2010, bid-openings in a local newspaper for two consecutive weeks each.

Conclusion For the audit period, the Edmond, Enid, Guthrie, Mid-Del, Newcastle, Piedmont, Stillwater, and Yukon public school districts appear to have complied with the legal requirements for advertising their bid notices.

Recommendation No recommendation is provided for this finding.

OBJECTIVE III: ONE EXAMPLE OF POTENTIAL ROOFING PREMIUMS PAID

Observation **A political subdivision’s justification for selecting a bid other than the lowest bidder appeared questionable. The board’s decision of “lowest and best” resulted in a 51% premium versus the low bidder.**

The City of Watonga received bids for its 2013 reroofing project in the amounts of \$23,000; \$27,215; \$34,666; and \$52,000. The City Council approved awarding the contract to Byers Co., which submitted the \$34,666 bid. The meeting minutes noted that an “insurance committee” allegedly recommended awarding the contract to that company but did not specify why, although the Council was required to “accompany its action with a publicized statement setting forth the reason for its action.”⁵ The minutes did not list the city councilors’ individual votes, as required by law⁶.

When the president of Nurnberg Roofing, which submitted the lowest bid, asked city officials for an explanation for the contract award, the city clerk responded:

The Council did not consider your bid to be the best bid, being the reason the bid was awarded to Byers Roofing. Also the attitude expressed in requesting bids specifications to be adopted lead the Council to believe the spec would not be followed to bid specifications. [...] Specifications for the locations mentioned were specified by Mayor [Clay] Loosen and Street Commissioner Marvin Schweigert. The Quality of materials to be utilized was an important factor for our consideration. *[sic]*

Despite repeated attempts by Nurnberg to identify the source of the specifications and to point out that the bid documents supplied by Byers Roofing had not included proof of liability or workers compensation coverage (and therefore was an incomplete bid), city officials have avoided a full explanation of their decision.

Conclusion In this situation, there was a *potential* 51% premium paid versus the low bid submitted by Nurnberg Roofing. This is for illustrative purposes only. We did not attempt to evaluate the validity of Nurnberg’s claim.

⁵ 61 O.S. § 117

⁶ 25 O.S. § 305



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