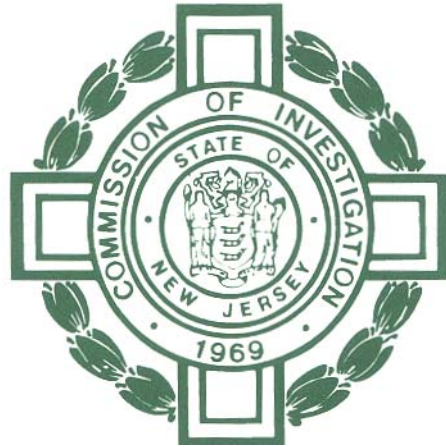


In the late 1990's my counterpart in New Jersey, Douglas Wicks, filed complaints identical to mine with the NJ authorities. With much less evidence than I had, it was still enough for the State of NJ Commission of Investigation to launch a state wide investigation. In New Hampshire, those in charge of investigating these crimes are looking the other way as their subordinates threaten to kill me.
GB

*State of New Jersey
Commission of Investigation*



WASTE AND ABUSE:

**PUBLIC SCHOOL
ROOFING PROJECTS**

September 2000

The Commission shall have the duty and power to conduct investigations in connection with the faithful execution and effective enforcement of the laws of the state, with particular reference...to organized crime and racketeering.

— N.J.S.A.
52:9M-2

TABLE OF CONTENTS

<i>EXECUTIVE SUMMARY</i>	1
<i>SCHOOL ROOFING: TILE PROCESS</i>	10
Doing It The Right Way	11
How The Process Is Subverted	13
<i>EDISON TOWNSHIP SCHOOL DISTRICT:</i>	
<i>A CASE STUDY</i>	15
The Inside Track	16
Beneath The Surface: 'The Real Roof Spec/Design'	23
The Hickman Connection Pays Off	30
<i>Nailing Down The Scam</i>	39
<i><u>Warnings Received. Warnings Dismissed</u></i>	48
The Bottom line: Excessive Cost, Questionable Quality	52
<i>ROOFING PROJECT SUMMARIES</i>	57
Manalapan/Englishtown Regional School District	57
School District of the Chathams	60
Green Township School District	65
Egg Harbor Township School District	69
Piscataway Township School District	73
Florham Park School District	75
Lincoln Park School District	77
Paulsboro School District	81
Ewing Township School District	83
Maple Shade Township school District	87
Clark School District	90
<i>IMPROPER LABOR PRACTICES/PAYROLL VIOLATIONS</i>	93
<i>OCEAN TOWNSHIP SCHOOL DISTRICT:</i>	
<i>SEIZING THE INITIATIVE</i>	99
<i>REFERRALS AND RECOMMENDATIONS</i>	103
<i>APPENDIX</i>	A-I

EXECUTIVE SUMMARY

Introduction

Hundreds of millions of taxpayer dollars are spent annually in New Jersey on the construction and renovation of public schools. In coming years, this investment will reach well into the billions as the state redoubles efforts to provide safe and secure facilities for the education of its children. Will the money be spent properly? Will there be adequate oversight and accountability? Will taxpayers get what they pay for?

This report details the results of a comprehensive Commission inquiry into one aspect of school-based construction, the repair and replacement of roof systems, which individually represents the single most expensive and integral component of a school's physical structure. *The investigation was begun in late 1997 after the Commission received confidential complaints suggesting abuse in the re-roofing of public schools. Subsequent investigation revealed evidence of widespread cost-gouging; unscrupulous bidding practices: contract manipulation; questionable design, installation and inspection procedures and other abuses.* The probe was statewide in scope, involving a review of 115 separate roofing projects in 39 school districts across 13 of New Jersey's 21 counties. Projects examined by the Commission carried a total taxpayer investment of more than \$37.8 million. 1

The Commission's findings reveal a systematic breach of the public trust. Evidence of waste and abuse totaling between \$6 million and \$10 million was uncovered

see Appendix p. A-2 for a stateside map Although this investigation was restricted to events and circumstance within the state of New Jersey, the Commission received extensive information indicating that problems related to the types of waste and abuse detected here are national in scope.

in more than half of the districts where roofing projects were examined. Construction budgets were squandered through unnecessarily costly roof repairs and replacements at the hands of consultants and manufacturers' sales representatives who contrived to line their own pockets at taxpayer expense. Processes which govern public bidding and contracting were subverted by those bent on putting personal gain ahead of the public interest. Moreover, these abuses were sustained by the action, and inaction, of high-level school district officials --- in some instances, even after they had been alerted to potential problems.

Based upon the results of this investigation, the Commission believes that these types of waste and abuse are widespread and continuing, that substantial sums of taxpayer money remain in jeopardy across New Jersey and that the entire system of public school repair, renovation and construction remains vulnerable to manipulation and subversion. Immediate action is warranted to address the problems outlined in this report, and the Commission herein presents a series of targeted reform recommendations for use as a basis to begin the corrective process.

At the same time, the Commission is constrained to point out that during the course of this investigation, it also became apparent that as egregious as the abuses are, they do not color the entire picture of school roof repair and renovation. There are many school buildings in New Jersey upon which successful and economical roofing work has been performed. Indeed, as outlined later in this report, there are instances in which the actions of attentive school district officials have actually resulted in quality roofing at significant savings to the taxpayers.

The initial results of the Commission's investigation, along with preliminary recommendations for systemic reform, were presented during two days of public hearings on December 8 and 15, 1999. In concluding those proceedings, Commission Chair Leslie Z. Celentano stated:

*. . . (T)he Commission's findings in this investigation should serve us a wake-up call to legislators, school administrators, taxpayers and parents alike. **We have identified a host of systemic problems that are costing millions of dollars every year and possibly placing the safety of our children in jeopardy.***

*At the same time, however, we have also identified an opportunity --- an opportunity to address and rectify these abuses before they become worse. The manner in which we go forward from here is critically important. With the state poised to invest billions in school construction and renovation, steps must be taken to assure the citizens of New Jersey that their money is spent wisely and prudently. **They deserve nothing less.***

This document embodies the final report and recommendations of the Commission based upon its investigation of waste and abuse in public school roofing projects.

Summary of Findings

The Commission's key findings fall into five major areas:

- **Conflicts of Interest/Professional Misrepresentation**
- **Manipulation of Public Bidding and Contracting**
- **Questions of Safety**
- **Inadequate Oversight**
- **Improper Labor Practices/Payroll Violations**

Conflicts of Interest/Professional Misrepresentation

School districts across New Jersey have paid millions more than they should have for roof repairs and replacements, in part, because projects were riddled from start to finish with conflicts of interest and deception.

- Project design consultants presumed by district officials and boards of education to be independent experts have been secretly compensated by roofing material suppliers. This hidden financial relationship is the basis for a scheme that results in excessive project costs.
- Hundreds of thousand of dollars in payments were funneled by a major roofing materials manufacturer to a consultant who repeatedly wrote project specifications favoring the firm's products. The consultant used this money for personal expenses and failed to report it for tax purposes.

- Key players in the school roofing industry, including a leading roof-design consultant and several contractors, were found to have criminal records while securing public contracts at taxpayer expense.
- Roof "inspections" were carried out by firms and/or individuals with a financial stake in the project.
- A leading supplier of roofing materials routinely was presented as a manufacturer of products bearing its own label for which no other product could be substituted. In reality, the firm produced few materials and instead chiefly re-labeled products made by others and sold them at inflated prices.
- School officials responsible for oversight of roof maintenance enjoyed social relationships with both a design consultant and a roofing company sales representative involved in projects undertaken within their districts.

Manipulation of Public Bidding and Contracting

The process by which boards of education award contracts for roof repairs and replacements was found to be rife with abuses that thwart the public's ability to obtain quality work at the most reasonable price.

- Design consultants, working in secret partnership with manufacturers and suppliers of roofing materials, routinely crafted “proprietary” project specifications that favor a given set of products, thus eliminating competition in the award of contracts.
- Technical "hurdles" were inserted throughout project specifications to foreclose the possible substitution of less expensive materials of similar or equal quality
- Installation contracts were steered into the hands of favored contractors through a variety of means, including inadequate public notice of project proposals, selective offers of preferential pricing and mandatory pre-bid meetings. In at least one instance, in which a multi-million-dollar public investment was at stake, the mandatory pre-bid meeting was held the same day the bid proposal was advertised.
- In some instances, work on public school roofs was performed by subcontractors lacking certification by the New Jersey Division of Property Management and Construction and without the approval of the school district.

Questions of Safety

A number of unusual and questionable circumstances give rise to concerns about the safety and structural integrity of public' school roof repairs and replacements completed through this process.

- In some instances, project plans were drawn or merely copied by individuals who were not licensed architects. In others, no design professionals were utilized at all.

Drawings lacked sufficient detail and the seal of a professional, and requisite building permits were not obtained prior to construction in nearly 30 percent of the projects examined.

- Less expensive and sometimes inferior roofing products were used in place of specified materials without knowledge of or credit to the school district. Specified materials sometimes were left out altogether with no substitution.
- Structural problems raised in various feasibility studies were not addressed in project plans and specifications.
- On-site inspections were lax, non-existent or tainted by conflicts of interest.

Inadequate Oversight

The abuses uncovered by the Commission in public-school roofing projects were, at times, abetted by the action, and inaction, of school district officials and by lax oversight and guidance at the state and local levels.

- Ranking school district officials placed millions of taxpayer dollars at the disposal of consultants, contractors and roofing manufacturers' sales representatives without asking the most basic questions about their qualifications and possible connections.

- District officials in a number of instances approved questionable contracts even though they had been warned of potential abuses.
- District officials responsible for roof maintenance struck up social relationships with roofing consultants who secured a share of various districts roofing business. In several cases, these and other school officials subsequently acted as references for a roofing consultant who had betrayed the taxpayers' best interests.
- New Jersey lacks an effective mechanism at the state level to monitor the public-school roofing industry and to provide school districts with technical training and advice on how to avoid abuses. Moreover, state officials, although warned of abuses for many years, failed to take action.

Improper Labor Practices/Payroll and Tax Violations

In an effort to undercut their competition and maximize profit.. certain roof installation contractors engaged in practices to evade or circumvent regulations governing proper labor and payroll practices, and federal and state laws governing income and employment taxes.

- In some instances, contractors were able to secure school roofing work by submitting low bids secretly conditioned on the fact that their laborers would be paid substantially less than the legally mandated prevailing wage

workmanship are provided by an independent, third-party expert or clerk of the works acting on behalf of the school district. The sales representative may serve as an on-the-job inspector but only on behalf of his employer, the material supplier or manufacturer to ensure that the product warranty is protected. Any savings accrued through economies, oversight and use of alternate materials are passed on to the school district.

How The Process Is Subverted

This process is readily exploited to the detriment of taxpayers by unscrupulous individuals who take advantage of unsuspecting, technically unsophisticated school district officials to manipulate weaknesses in bidding and contracting. In many instances, the Commission found these operators act in concert with one another.⁴ Instead of serving independently as a loyal agent of the school board, for example, the design professional/consultant misrepresents or distorts his or her true credentials, and in reality, participates in a lucrative hidden partnership with a roofing material supplier and its sales representative. This enables the consultant to undercut other potential bidders to obtain the design contract. Once the contract is awarded, *inadequate surveys are conducted on existing roofs, and vague and incomplete architectural plans are submitted as the basis for repairs.* Project specifications expressly favoring a given manufacturer's materials --- often involving premium built-up roof systems --- are written by the sales representative and passed off as the work of the design consultant. The specifications contain language which appears to open the project

⁴ See Appendix p. A-9 Chart illustrating how the bidding process is manipulated.

to alternate systems and materials of equal or better quality, but for all practical purposes, no such substitutions are possible. This is ensured by the insertion of multiple technical requirements, or "hurdles," that are extremely difficult, if not impossible, for alternate suppliers and/or manufacturers to overcome.⁵ In any event, evaluation of any proposed alternate rests in the hands of the compromised design consultant who has won the trust of local school board members and district administrators. These officials, in turn, possess neither the expertise nor, in some instances, the inclination to ask the right questions.

See Appendix p. A-10 Detailed recitation of the types of technical hurdles typically inserted into proprietary specification,.

CERTIFIED (licensed) INSTALLERS

The bidding process is further manipulated to steer the installation contract into the hands of a roofing contractor who is favored, or "certified," by the manufacturer/supplier that has gained the inside track through the "proprietary" specifications. The favored contractor under-bids possible competitors through various stratagems, including secretly arranging to pay his employees at a rate substantially below the statutorily mandated prevailing wage, a ploy designed to reduce his overall labor costs. During installation, no qualified, independent inspections are conducted to monitor the work and ensure that the specified materials, in proper quantity and quality, are used. If cheaper and/or inadequate materials are used, the district is not notified. Moreover, the cost differential is pocketed by the contractor or the material supplier with no adjustment passed on to the school district.

See Appendix p. A-10 Detailed recitation of the types of technical hurdles typically inserted into proprietary specification,.

The Bottom Line:

Excessive Cost, Questionable Quality

In order to determine whether, and to what extent, school districts across New Jersey have paid excessively for roofing repairs of uncertain quality, the Commission turned to three independent experts to assist in evaluating an assortment of projects, including the combined 17-school undertaking in Edison in 1997. Those experts are:

- Thomas Lee Smith of TlSmith Consulting Inc., Rockford, Illinois.
- Thomas A. Ewing of Ewing Associates, Longmeadow, Massachusetts, and
- Paul Brosnahan of Arcom Master System, Alexandria, Virginia.

Each is recognized throughout the roofing industry for his technical expertise in the field. Their work for the Commission was carried out separately from one another, and they prepared separate analyses.

The findings of these experts concerning the Edison roofing project, together with evidence developed by the Commission, reveal that the district paid as much as \$1.1 million more than was necessary for the repairs and/or replacements on all 17 school roofs. Further, the experts' analyses show that, **even at this premium price, there are serious unresolved questions about whether the repairs were performed satisfactorily from the standpoint of safety and structural integrity.**

* * *

Although Hickman markets its rubberized and modified asphalt as vastly superior in quality and performance to standard asphalt, the independent experts told the Commission there is no technical evidence to support such claims. As Thomas Ewing put it, "no great improvement in the system occurs despite the system's stratospheric cost." In Edison, the underlying premium for materials was sustained by the fact that they were purchased on a per school basis rather than in bulk for the entire project, thus precluding economies of scale. Moreover, the district paid the prevailing list price for every product. There were no discounts, despite the huge size of the project.

Hickman also typically charges twice as much for the same grade of roofing insulation as that available on the wholesale market. Moreover, although the company offers warranties of up to 30 years, and charges 25 cents per square foot for it, nearly double the rate for the industry's standard 20-year warranty, the firm did not start doing business until 1986. Thus, no Hickman system has been in place long enough to test the company's extended warranty. Moreover, all three experts noted that the modified coal tar process utilized by Hickman has been in existence for only the last several years. The process is so new, in fact, that Paul Brosnahan questioned whether Edison was used as a "guinea pig" to test it.

The experts' analyses show that if the project specifications had not been proprietary, that is, if they had provided a level playing field for Hickman competitors, the district could have saved an estimated \$470,000 while receiving essentially the same premium roofing system. The primary reason for this is that head-to-head competition between Hickman and other firms capable of providing the same premium roofing system would have generated discounts ranging as high as 30 percent on the materials alone.

NO HISTORY OF PERFORMANCE

The 1998 project involved \$94,000 in repairs to the high school roof. Although the district had a standing contract for the services of an architect --- the firm of Jordan & Pease --- no design professional was used in drawing up the plans and specifications. The reason was two-fold, according to executive session testimony by district business administrator Vincent Yaniro: The project was considered by district officials to be too small to warrant architectural attention, and the school board had grown dissatisfied with the rubber type of roof systems that had been installed pursuant to earlier project designs. Yaniro told the Commission that, at the time, he was not aware of a statutory mandate requiring the involvement of a licensed architect in public school roofing projects.

Yaniro testified that in considering alternatives to rubber roofs, district officials looked into various built-up roofing systems, including those manufactured by Tremco. He said the district "checked some references and found that people were satisfied" with the Tremco firm. He then met with a Tremco sales representative, John Marsiglia, to discuss a possible survey to examine the condition of the district's roofs. The inspection was conducted, Yaniro said, at a cost to the district of \$5,000.

After the survey, Yaniro said district officials opted for a cold tar built-up roof system of the type sold by Tremco because it was designed to emit fewer fumes during installation. The specifications were prepared and submitted by Marsiglia, replete with boilerplate language typical of proprietary Tremco specifications. *Yaniro acknowledged that he did not personally read or otherwise closely examine the document, which included the following unusual disclaimer patently designed to limit Tremco's potential liability.*

NO WARRANTY

OCEAN TOWNSHIP SCHOOL DISTRICT:

SEIZING THE INITIATIVE

In 1994, officials in the Ocean Township School District in Monmouth County took it upon themselves, literally, to make sure their schools would be equipped with quality roofs at a reasonable cost to the taxpayers. Dissatisfied with the performance of an outside contractor hired to undertake repairs two years earlier, they decided to explore alternatives when the time came for another project. They hired their own full-time roofers, secured their own materials and had their own employees do the work. In the process, they saved more than \$1 million, established clear lines of oversight and accountability, and acquired permanent expertise for future roof maintenance and repair projects. On a statewide scale, the Ocean Township experience represents but a small piece of the public school roofing picture in New Jersey. Nonetheless, the Commission believes it is an instructive piece, an example of how public entities, utilizing their own employees, can sometimes undertake basic construction more efficiently than their private-sector counterparts.

* * *

Loren C. MacIver, the district's business administrator, and William McKeon, the superintendent of building and grounds, appeared at the Commission's public hearing. They said the district adopted a hands-on approach to roofing in 1994 when it became apparent that the same contractor that had installed an elementary school roof in 1992

would be the low bidder for repairs to the roof of the district's intermediate school at a cost of approximately \$700,000. In addition to concern over this looming expenditure, McKeon said the district was not eager to proceed in this fashion because unexpected problems during the earlier project had caused "a lot of damage. . .to the school, the interior of the school" and in difficulty getting the work completed before the start of the regular school term.

As a result, the district set about exploring the possibility of obtaining its own in-house roofing team. While the hiring of full-time licensed tradesmen is unusual for public entities, it was hardly a novelty in Ocean Township. As early as the mid-1930s, the district began putting specialists on its building and grounds payroll on the theory that it would be cheaper and more efficient than retaining outside contractors or relying on generalists among the maintenance staff. The district currently employs two licensed electricians (not counting McKeon, who also possesses an electrician's license). At the time of the public hearing, the district was also seeking to hire a licensed plumber. According to the witnesses, although the district's collective bargaining agreement mandates premium pay for such licensed personnel, the investment has proved worthwhile both in terms of new work and preventive maintenance.

Ocean township officials soon discovered the same can apply to roofing. Opting for a do-it-yourself approach, the district in 1994 hired two experienced roofers. The district bid the materials; the roofers, with the assistance of temporary help, installed a roof on the intermediate school. The project worked out so well that district officials decided to employ the same strategy for subsequent roofing projects on the elementary and high schools. The overall cost for all three projects totaled approximately \$400,000,

an amount estimated to be less than one-third of what the district would have paid using outside contractors. One component of the savings was embodied by the salaries of the roofers themselves. According to MacIver, even at annual salaries of \$38,000 plus standard benefits, their hourly rate is between \$15 and \$17, one-half the prevailing wage for outside contract roofers. Also, when not engaged in their specialty, the district's roofers are available for other repair and maintenance work.

Beyond budgetary savings, MacIver said the in-house roofing initiative has enabled the district to establish a regular preventive maintenance regimen in which all school roofs are examined once a month for cracks and leaks:

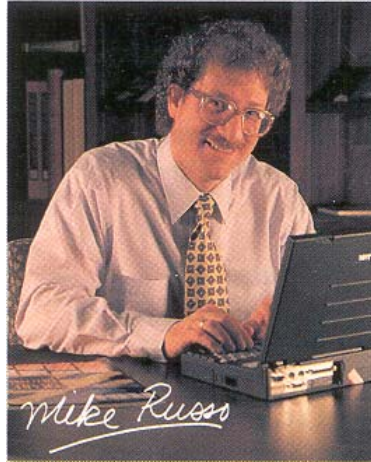
It permits us to make immediate repairs. It allows us not to be held mercy to just time in the continual leaking and leakage problems. It allows us to ensure very quickly that there'll be no moisture inside the school building and, from that, any deterioration of the internal structure.

MacIver said the program gives the district added advantage of being directly involved in monitoring both the material selection and the quality of the work:

...[I]t gives us a real assurance of answering the question of accountability, that we're not going to see a conflict between materials and contractor. We're going to have individuals who, tomorrow, are going to draw a paycheck from us, receive their benefits, and are part of our internal working group, who, if they did not do the job correctly, would be answerable for it and we would correct it again

As to the question of a warranty, in the absence of one typically provided by an outside contractor, MacIver told the Commission:

...[T]he Township of Ocean School District maintains a very, very broad general comprehensive liability insurance policy that certainly provides a degree of protection from damage and storm damage that a general warranty would.... I think I have a warranty in knowing who I'm dealing with that is not subject to second parties, a contractor, or third-party materials problems. I consider it a very good warranty.



Bidding irregularities have become a state-wide problem in Iowa as well.

Contractors battle locked specs

Closed specifications continue to plague roofing contractors bidding on public projects. While there are situations where a proprietary specification can be justified, *blatant examples of locked specs, bid-rigging and other illegal activities are becoming more and more common in the roofing industry.*

Six months ago, a study of 115 school roofing projects conducted by the New Jersey State Commission of Investigation (SCI) revealed that *59% of the work was done in a fraudulent manner.* Illegal practices included conflicts of interest, manipulation and subversion of public bidding and contracting, safety issues, and improper labor practices.

"We found a pattern of abuse here that repeated itself over and over from one end of the state to the other," said SCI spokesman Lee Seglem.

According to investigators, *thousands of dollars in "secret" payments were funneled by a major roofing materials supplier to a roof consultant who repeatedly wrote project specifications favoring the firm's products.* In at least one instance, the mandatory pre-bid meeting was held the same day the bid proposal was advertised.

Even worse, less expensive and or "inferior" roofing products were used and installed by crews who were paid substantially less than the legally mandated prevailing wage. Up to 70% of these roofing workers were illegal aliens.

Although the New Jersey roofing scam was one of the worst on record, *locked roofing specs aren't limited to the Garden State. According to Tom Tjelmeland, president of T&K Roofing, conflicts of interest and bidding irregularities have become a state-wide problem in Iowa as well.*

Tjelmeland, a three-time RSI Roofing Contractor of the Year winner, is also the mayor of Ely, IA, one of the fastest growing cities in the state. He has been building a case against locked specs in University of Iowa hospitals and schools over the last five years that *has gone as far as the Supreme Court.*

"We're not just fighting proprietary specifications from manufacturers here," said Tjelmeland. "We're seeing manufacturers' sales reps who present themselves as consultants and submit AIA documents, even though they are not registered by the State."

While roofing materials used by these manufacturers are not inferior, Tjelmeland said they are charging \$160-\$170 a roll for modified bitumen, when good product can be found for \$44-\$50 per roll.

It's also a sweet deal for roofing contractors in Iowa who are installing these products. "Two contractors I know of are making 25% profit on these projects, while the rest of us are fighting to make 5-10%," said Tjelmeland.

The contractor's crusade against locked specs now has the attention of the University of Iowa hospital system and the attorney general's office. *"We need to make sure the public understands what's going on, because millions of dollars are being wasted,"* said Tjelmeland.

Of course, proprietary specifications are not necessarily illegal. If a public agency can demonstrate that only one product can satisfy its legitimate needs, the agency can typically proceed with a proprietary spec. But because the legal issues are so complex, it's often time consuming and expensive for the average contractor to combat these proprietary specs. It's no wonder that some of the nation's largest roofing contractors are now concentrating exclusively on private work and avoiding the bidding wars altogether.

If you bid on public projects and have had a problem with locked specs recently, we'd like to hear about it. **RSI**

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NJ report cites fraud in school re-roofing

By Teresa O'Dea, RSI Senior Editor

Roofing was front-page news in several top New Jersey newspapers recently when the state's Dept. of Investigation released its report on waste and abuses in school re-roofing projects.

"I'm getting my brains kicked out because I can't get near these school jobs anymore," complained one New Jersey contractor (he prefers to stay unnamed) who prides himself on doing business on the up and up. Applauding the report, he explains, "We used to do four or five school jobs a year. Now, we get laughed at when we show up at a bid meeting that we did somehow happen to hear about." Plus, some contractors who did get the jobs were not paying the prevailing rates and using illegal aliens, he charges, agreeing with the report's findings on those counts. The installing contracting companies were owned, in two cases by the son of the roof consultant whose company wrote the Proprietary specs for many of these Projects. This was typical of the Undisclosed web of connections and mis-representations among several firms cited by the report.

This 115-page report, definitively entitled "Waste and Abuse: Public School Roofing Projects," examines many irregularities like these in school re-roofing projects. (the well-written report is posted at www.state.nj.us/sci.)

In more than half of the 39 different school districts in New Jersey that were reviewed, evidence of waste and abuse, totaling between \$6 and \$10 million in all, was uncovered. The report states: "Budgets were squandered through unnecessarily costly roof repairs and replacements at the hands of consultants and manufacturers' sales representatives who contrived to line their own pockets at taxpayer expense."

"Subsequent investigations revealed evidence of widespread cost-gouging: unscrupulous bidding practices; contractor manipulation; questionable design, installation and inspection procedures, and other abusers."

Significantly, the report's authors add, "The commission received extensive information indicating ... these ... problems are national in scope."

The report centers on the practices of one consultant and his relationships with two manufacturers of premium roof systems that promote proprietary specifications.

It identifies what it calls "a skewed contractor selection process designed to frustrate competition. District officials were used as facilitators."

For example, the mandatory pre-bid meeting for one district's roofing project was held at 8 AM the same morning it was advertised in the local daily paper.

In all, the report identified wide-ranging problems in five categories: conflicts of interest; manipulation of public bidding and contracting; questions of safety; inadequate oversight; and improper labor practices/payroll violations.

This inquiry was begun in 1997 after the Commission of Investigation received confidential complaints of abuse in public school re-roofing projects. The commission also held public hearings on the subject in December 1999.

To review job details, the Commission retained three architects: Tom Smith of TSmith Consulting Inc., Rockford, IL; Thomas Ewing of Ewing Associates, Longmeadow MA; and Paul Brosnahan of Arcom Master System, Alexandria, VA.

These independent experts found the roofing specifications and procedures deficient in many areas. Furthermore, they concluded, the expensive roofing systems tended to be under-insulated. In fact, the R-value of the specified material in at least one case was below that required by the township's own building code.

"Transcripts from the hearing are very illuminating," says another industry observer. "These practices have been a scourge on the industry."

Labor Dept. witnesses testified: "The ultimate victims of these abuses are honest contractors who submit legitimate bids only to find that they are repeatedly undercut. The legitimate contractors who try to comply with our laws don't get a chance to ever work."

Concluded one of those shutout contractors: "I'm not going to sell my soul. It may sound corny, but I take a lot of pride in what I do. This has tainted the whole roofing industry."



Opening up locked specs

Good job on the Editorial concerning locked specs (see July 2000, page 2). Is there anyone who contacted you who defeated the closed specification issue via legal wrangling? Are there any e-mails you received concerning the issue that you could share with me? Closed specifications hurt the credibility of our industry, the taxpayers and reeks of cheating.

Pete Phinney
President
Phinney Roofing Inc.
Huron, OH

The use of proprietary bid specifications by public agencies is finally beginning to get the attention it deserves. The State of New Jersey, Commission of Investigation, recently published its final report titled "Waste and Abuse: Public School Roofing projects." The entire 118page report is available on the internet at www.state.nj.us/sci.

I agree with Mike Beldon (see Sept. 2000, page 4) that these types of unethical and illegal sales practices used by a few roofing manufacturers and consultants gives the entire roofing industry a reputation as being crooks. **Legitimate contractors and their local associations need to take a pro-active approach by contacting their local school boards and elected officials and making them aware of the unscrupulous sales tactics used by these few bad apples in our industry.**

If we don't do something about it, how can we, or our industry, ever be expected to be viewed by the public as honest professionals?

Steve Camblin
President
Premier Roofing Inc.
San Diego, CA



Shut Out: New Jersey Strikes down suspicious Bidding

Proprietary specs --- the dream of any manufacturer. But at what point do such efforts cross the line? Shutting out legitimate competition on a consistent basis can present a number of ethical, legal and practical problems, but in New Jersey, there's a call to arms.

After numerous complaints from contractors, manufacturers, consultants and private citizens, the State of New Jersey Commission of Investigation looked into the matter. Last September, it released a scathing 118-page report entitled *Waste and Abuse: Public School Roofing Projects*. The investigation began in 1997 and eventually looked at 115 roofing projects costing \$37.8 million in 39 school districts throughout New Jersey. Irregularities were found in 59 percent of the school districts examined. The report concluded that \$6 to \$10 million dollars of "waste and abuse" were uncovered in a persistent and pervasive enterprise that continues to this day. Costly repairs, unnecessary replacements, safety concerns, payroll irregularities, subversion of the bidding process, and incompetent oversight by school officials are some of the charges leveled by the report, which includes a 68-page appendix containing rebuttals from those criticized.

"[T]he Commission's findings in this investigation should serve as a wake-up call to legislators, school administrators, taxpayers anti parents alike." commission chair Leslie Z. Celentano wrote months before the final report was issued. "We have identified a host of systemic problems, that are costing millions of dollars, every year and possibly placing the safety of our children in jeopardy."

Close Up

The concern about proprietary specs in public school roofing projects is nothing new, (see *Roofer Magazine* June 1989, page 31) and other areas of the country have experienced similar issues. However, the level of abuse outlined in the New Jersey Commission report raises serious questions about the ability of school districts and other public entities to benefit from fair and open competition.

Over 40 pages of the report were dedicated to Edison School District in Middlesex County, which had 17 roofing projects worth \$6.7 million that were examined by the board. By early 1997, the district's voters defeated measures to fund renovations so it was in a difficult position and anxious to get some of its worst roofs repaired. "Thus began a chain of events that would enmesh the Edison School District in a web of deceit and manipulation costing hundreds of thousands of unnecessary tax dollars and raising doubts about whether the district, even at an excessive premium, ultimately got what it thought it had paid for," the report said.

According to the report, a principal from Roof Spec/Design Inc., a roofing consultant firm in Mount Holly, N.J., approached the district after hearing of its roofing woes. He gave a demonstration on different roofing products and offered to review some of the district's roofs for free. Soon after, an unsolicited proposal was received from Roof Spec, which eventually won the contract for \$254,000 to oversee the district's roofing projects. However, the report unearthed information showing significant financial ties between principals of Roof Spec and W.P. Hickman Systems Inc. of Solon, Ohio, including payments of \$361,000 between 1995 and 1998 to "various phony or paper companies" maintained by Roof Spec principals. In all, the report alleges that principals of Roof Spec and the Hickman sales representative received \$764,000 for the Edison School District projects, over 11 percent of the total project.

Other concerns expressed by the report include lack of an involved registered architect on the Roof Spec staff as required by New Jersey law for firms overseeing roofing projects; restrictive pre-bid meetings, such as publishing the announcements the day of the 8 a.m. meeting; unauthorized substitution of materials, unauthorized use of subcontractors; and lack of inspection reports that were called for in the contracts. Principals of Roof Spec and area Sales representatives from Hickman declined to testify before the commission, citing their constitutional right against self-incrimination. Attempts to seek comment from W.P. Hickman company headquarters by *Roofing Contractor* for this article were unsuccessful. While the Edison School District was being courted by Hickman and its representatives,

Doug Wicks contacted district officials in 1997 about his concerns "as an interested taxpayer and citizen." In reality, Wicks was working for a roof consultant firm at the time; he currently works for the State of New Jersey Department of Corrections and oversees roofing projects statewide. Wicks also prides himself in being a whistle blower and had extensive contacts in the government, including, New Jersey Governor Christine Whitman. Wicks had come across closed bids in his roofing career, including efforts in the early 1980s when architects were locking out the new EPDM membranes by requiring five years of in-state service. He saw the abuses identified in the New Jersey Commission report as the most egregious. "The law isn't being enforced," says Wicks. "When you get \$3,000 a ton for asphalt, do you think that's competitive? Or \$75 for a roll of felt? What's happening is you're driving the good contractors out."

Wicks had difficulty in even getting copies of public bids for school roofing projects, but when he did, he found some projects costing \$12 per square foot for three-ply BURs with no tear-off. This is the same price he is currently charging for "bomb-proof" systems on prisons, which had tear-offs, extensive security requirements and redundant roofing membranes. Wicks even took his local school board to court over a closed spec, but lost. The project went ahead as planned except for the elimination of 550 squares of tapered insulation, for which the school district received only a \$5,000 deduction from the project.

Going Public

The potential for abuse may lie in the fact that there are scores of separate school districts in each of New Jersey's 31 counties, each with their own board, staff and infrastructure. Resources are limited and expertise is spread out so that it can be difficult to effectively manage the many complications that come with running a district. Still, with public bids, oversight by facility maintenance people, and extensive laws governing public projects in New Jersey, how can school districts get into this situation?

"Because they are governed by School boards who are lay people and are really led down the primrose path by extremely talented salesmen who confuse salesmanship with fraud," says Tim Barrett, president of Barrett Co., N.J., a provider of built-up roofing systems. "I guess that's capitalism in action, but when you unfairly exclude competition ... that's when it becomes objectionable."

Barrett, who's also a registered roof consultant, has come across numerous closed specs throughout the country in his career. He's even gone to court over a closed spec for a school board in 1991, when his bid was thrown out because the spec said that 22 percent of the asphalt used must contain an SEBS modifier. In reality, such a high percentage would not result in a high-performing system. He won the case, the specs were thrown out and the following year the now open bid project went to another BUR manufacturer. It was a \$30,000 exercise that Barrett has not repeated since then.

Even more troubling is one instance several years ago when Barrett says he tried to break into a school district that had had all of its roofing materials supplied by one manufacturer for 11 years. He submitted samples to a facility manager to prove his product's performance, but it didn't quite measure up to the competition. Within a month, he found out that his sample was either altered or switched, a matter he declined to pursue. Barrett acknowledges that the essence of architectural sales is to get a leg up on the competition.

"We have our successes. We have quite a few of them. There's a number of jobs that we help specify and work with the architects on," Barrett says. "But we also acknowledge that we have generic competition ... They refuse to acknowledge that and will hold onto it."

Around Again

The issue of closed specs has cropped up in other parts of the country. *The Dayton Daily News* published an article in 1996 about how officials at Wright State University in Ohio saved nearly \$150,000 on a single roofing project after an independent consultant exposed the proprietary specs. When L.B. Morris of Sellers & Marquis Roofing Co., Kansas City, Mo., was president of the Midwest Roofing Contractors Association in 1998, he used his president's message page in the association's monthly publication to express his concerns over proprietary specs.

Janet Campbell was a staff architect for the University of California-San Francisco from 1991 to 1999, before she says she was wrongfully terminated for exposing excessive roofing costs at her campus. Since 1982, she said the 110 buildings could only be reroofed with products from one manufacturer, but when she looked into the costs, they ranged from \$1,200 to \$5,500 per square. When she pointed out that nearby roofs were being successfully installed for a fraction of those amounts, she ran into a dead end.

For the 10 roofing projects she looked at, Campbell estimates that there was nearly a million dollars in unnecessary expenses. After continually pressing for changes, she was demoted to archives, then went on disability and then lost her job. She is suing the University Board of Regents and her boss in a whistle-blower lawsuit that she says promises to expose collusion on numerous roofing projects.

Perhaps much of this controversy would disappear if the roofing industry had done a better job at servicing the client's true needs and school districts weren't so desperate for solutions. On one end of the spectrum, there is a race to the bottom in order to win the project at any cost because of budget constraints or simply because the client is too cheap to pay for quality. On the other, there are proprietary specs where prices are excessive and quality questionable. Ask any roofing manufacturer and he'll tell you that his products are the best in the industry, but how far is it acceptable for him to go? Wicks recommends unyielding diligence when it comes to taxpayer money. "You don't quit, number one and the other thing is having contacts," he says about his philosophy. "I like to raise hell."

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