

UNIVERSITY OF CALIFORNIA, SAN FRANCISCO

Investigations of Improper Activities by State Employees, February 2003 Through June 2003

**ALLEGATION I2000-715 (REPORT I2003-2),
SEPTEMBER 2003**

**University of California, San Francisco, response as of
September 2003**

Investigative Highlight . . .

***The University of California,
San Francisco, used proprietary
bidding specifications
that restricted fair
competition for a contract
totaling \$495,000.***

After investigating the allegation, we determined that the University of California, San Francisco (UCSF), used proprietary bidding specifications that restricted fair competition for several roofing projects under a contract totaling \$495,000 and thus may have violated state law and Regents' policies.¹ The specifications placed unnecessary requirements on potential bidders, which limited the number of contractors able to submit competitive bids for the projects. Further, the specifications unnecessarily forced contractors to use a specific manufacturer's products and limited their ability to use substitute products, even if the substitute products were less expensive and superior in quality. As part of our investigation, we hired a roofing consultant to evaluate the bidding specifications.

Finding: UCSF used specifications that restricted competitive bidding for roofing projects.

In conflict with state law and Regents' policies, UCSF used specifications for roofing projects that restricted competitive bidding. According to our roofing consultant, the language used in UCSF's specifications primarily limited competition in three ways.

¹ The Louisiana Office of State Purchasing defines a "proprietary specification" as a specification that cites brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others. Stephen M. Phillips, who serves as counsel for the National Roofing Contractors Association and the National Roofing Legal Resource Center defines a "proprietary specification" (also known as a closed or restrictive specification) as any specification that is restrictive to a specific product.

First, the specifications included certain contractor requirements that served no purpose other than to limit the number of contractors competing for the work. For example, the specifications required contractors to list three projects in which they employed a similar type of roof system within a 50-mile radius of the project location. While requiring documentation of previous experience is valid, according to our consultant, specifying a 50-mile limitation served only to restrict competition.

Second, portions of the specifications forced potential bidders to use specific brand products produced by a single manufacturer. For example, the specifications' requirements differed from applicable industry standards in regard to two of the necessary products, so that only one brand of product could meet the specifications. The specifications also listed physical properties for the entire roof membrane. According to our roofing consultant, the only reason to impose such a requirement would be to limit contractors to using membrane products made by a single manufacturer.

Third, the specifications limited contractors' ability to use substitute products regardless of whether those substitutes were equal to or better than those products called for. In one instance, the specifications limited contractors' ability to submit alternative products, even if the substitute products were less expensive and had adequate or superior performance properties. In two instances, the specifications limited bidders' ability to fully assess the time and cost ramifications of providing substitute materials; in another instance, the specifications dictated that the contractor incur additional costs associated with submitting substitute products, costs, according to our consultant, the contractor should not bear. While using proprietary products and not allowing substitutions is appropriate in some instances, our consultant concluded in this instance it was not justified.

UCSF Action: Partial corrective action taken.



UCSF reported that the contract in question contained detailed requirements that it believes are based on legitimate business needs to ensure contractor availability at the construction site, maintain the product warranty, and discourage substitutions of potentially inferior roofing products. UCSF agreed that the specifications relating to the

manufacturer's products were tightly written, but added that it was done so as to minimize any impact on patients in the buildings affected. However, UCSF reported that the bid specifications for more recent contracts have been prepared with assistance from independent roofing consultants to avoid any appearance of inappropriate proprietary specifications that would unduly limit competition.

