



STATE OF NEW YORK  
OFFICE OF THE STATE INSPECTOR GENERAL  
**Final Report**  
**June 17, 2011**

## SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General and the New York State Comptroller in consultation with the New York State Office of General Services (OGS), found that David J. Darling, Chief Executive Officer and President of Pro Care Contracting, Inc. (Pro Care), improperly obtained payment from the state by submitting fraudulent reimbursement requests supported by altered and fabricated invoices. These expenses were purportedly incurred by Pro Care during 10 emergency contracts at state correctional facilities during the period 2006 to 2008, and included approximately \$41,000 in fraudulent billings as part of a scheme pursuant to which Pro Care claimed to have rented equipment it already owned.

The Inspector General and State Comptroller provided the results of this investigation to the Albany County District Attorney's Office. On November 3, 2008, Darling was arrested by New York State Police and charged with Grand Larceny in the Second Degree, Forgery in the Second Degree, Criminal Possession of a Forged Instrument in the Second Degree, and Offering a False Instrument for Filing in the First Degree. On April 22, 2009, Darling pleaded guilty to Grand Larceny in the Fourth Degree, and on June 24, 2009, he was sentenced to five years probation and paid restitution to New York State in the amount of \$40,904. OGS is also seeking to prevent payment to Pro Care for other improper billings which were not part of that disposition of the criminal charges.

## ALLEGATION

In January 2008, during a review of emergency contract documents submitted by Pro Care, OGS identified a number of documents requesting reimbursement that appeared suspicious. OGS reported its concerns to the Inspector General and State Comptroller's Investigations Unit for investigation.

# SUMMARY OF INVESTIGATION

## **Background**

Pro Care, a general building construction company located in Wyoming, New York, specialized in water, sewer and storm drain excavation and site work in the western counties of New York State. David J. Darling served as president and owner of the company.<sup>1</sup>

In 2004, Pro Care applied to OGS to be placed on its emergency contractor list. Emergency contracts are typically of short duration and are utilized by OGS to remedy an unforeseen occurrence, like a ruptured sewer pipe or a boiler malfunction at a state facility. OGS awards approximately 500 emergency contracts annually using a rapid bidding process and requiring immediate response and performance of work. OGS requires contractors to be capable of being onsite within four hours of a “Notice to Proceed,” and to have the necessary workforce, material and equipment at their disposal to alleviate the emergency condition. Bids are solicited by OGS from contractors on the emergency contract list on a rotational basis. The list contains the names of contractors interested in bidding on emergency work, their trade specialization(s), and the geographical area in which they are seeking to work. Contractors are required to provide OGS with a description of their ownership, experience, staffing resources, owned and long-term leased equipment, and licenses held, among other items. Of significance to this investigation, Pro Care reported to OGS that it owned equipment including a “Bobcat w/ attachments,” Caterpillar excavator, mini-excavator, backhoe, bulldozer, paver, two rollers and two dump trucks, among other items.

Emergency contracts are generally awarded on a “cost plus” basis: the contractor may seek reimbursement from OGS for labor, material and equipment costs actually incurred by the contractor during the course of the emergency work, plus a fixed or percentage markup fee as profit. As contractors receive reimbursement for actual costs incurred, contractors are required to keep a daily record of labor, material and equipment expenses incurred on projects, and OGS provides a number of forms on which to document these costs: Daily Labor Reports and Daily Material and Equipment Reports. Daily Labor Reports are to be completed each day by the contractor and list the employee name, labor classification (operator, plumber, laborer, etc.), and time worked, among other information. Similarly, Daily Material and Equipment Reports are completed by the contractor and list the equipment and quantity of material utilized each day on the project. All completed reports must be submitted to the OGS Engineer-in-Charge (EIC) on a daily basis for review and verification.

Contractors who utilize self-owned and rental equipment on state emergency contracts are also required to calculate the total equipment expenses using an OGS Equipment Expense Proposal form. For self-owned equipment, this calculation includes determining the type and “Blue Book” value of the owned equipment, as well as the hours onsite, the hourly billing rate, and the actual operating hours. If rental equipment has been used by the contractor for the emergency project, the total equipment cost that will be reimbursed by OGS is the actual rental cost, and the contractor must submit a

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<sup>1</sup> Pro Care was dissolved as a business entity on July 28, 2010.

copy of the rental invoice or quote signed by the OGS EIC. Minor equipment, including hand tools, are considered by OGS as overhead and their cost is not reimbursable. In most contracts, the rental reimbursement will greatly exceed the reimbursement for self-owned equipment.

In 2006, Pro Care was awarded its first OGS emergency contract at a state correctional facility. In late 2007, while reviewing contract expenditure documents submitted by Pro Care, the OGS Division of Contract Administration noted a questionable reimbursement request and reported the concern to the OGS Internal Audit Unit for consideration of a comprehensive audit. The Internal Audit Unit then reviewed invoices submitted by Pro Care for emergency contract labor, material and equipment reimbursement, uncovering a number of questionable invoices. The invoices at issue reflected Pro Care's purported "rental" of particular items of equipment that Pro Care had previously indicated as self-owned in documentation submitted to OGS. This disparity caught the auditors' attention as they recognized that by applying for rental cost reimbursement, as opposed to owned-equipment reimbursement, Pro Care could improperly inflate the "costs" reimbursed by the state.

In early 2008, OGS enlisted the assistance of independent auditors assigned to the OGS Division of Contract Administration and Internal Audit to review Pro Care's emergency contract documentation maintained by OGS, and to review records maintained by Pro Care and Bobcat of Buffalo, the equipment rental company that had purportedly issued the ostensible rental invoices in question. Upon interviewing Pro Care owner Darling and reviewing records related to the aforementioned contract, the auditors reported that Darling was unable to provide the original invoices reflecting the suspect rentals. The auditors also met with John Freundsuh, the owner of Bobcat of Buffalo, a Bobcat brand distributor which sells, services and rents small construction, landscaping and agricultural equipment. Freundsuh advised them that the invoices in question were not issued by his company and that Darling had previously purchased, not rented, such equipment from Bobcat of Buffalo. Upon learning of this apparent fraud, OGS suspended the audit and referred the matter to the Inspector General and the State Comptroller's Investigations Unit for investigation.

### **Investigation**

In January 2008, the Inspector General and the State Comptroller's Investigations Unit commenced a joint investigation of Pro Care's alleged fraudulent activities on OGS emergency construction projects at state correctional facilities during the period 2006 to 2008. The investigation team issued and served over 30 subpoenas, reviewed thousands of pages of project documentation and subpoena responses, visited state correctional facilities and observed project sites, and conducted interviews of OGS EICs and numerous vendors and suppliers of project materials and equipment. The investigation reviewed all of the OGS emergency contracts that had been awarded to Pro Care.

### ***Pro Care Overcharged OGS \$41,000 for "Rented" Equipment That It Already Owned***

The investigative team, following the receipt of relevant documents from Bobcat of Buffalo pursuant to a subpoena, commenced a comparison of the documents submitted by Pro Care to OGS that purportedly represented equipment rented by Pro Care from

Bobcat of Buffalo for use on OGS emergency contracts. Substantial discrepancies were immediately evident in the rental agreements and invoices. Of the five emergency contracts under review at this initial stage of the investigation, Darling had submitted rental agreements and invoices to OGS, ostensibly from Bobcat of Buffalo equipment rentals, on each and every one of the projects that were strikingly different from those obtained directly from Bobcat of Buffalo. Some appeared to have been completely fabricated, while others contained more subtle variations, such as invoice numbers out of sequence or with an incorrect number of digits.

The investigative team conducted a sworn and recorded interview of Freunds Schuh, the owner of Bobcat of Buffalo. He testified that he has had a business relationship with Darling and Pro Care since approximately 2004, in which he rented and sold small construction equipment to Darling. Freunds Schuh reviewed his account records for rentals and sales of equipment to Darling, and examined those records submitted by Darling to OGS that purportedly represented Bobcat of Buffalo equipment rentals. This comparison revealed numerous misrepresentations made by Darling and fraudulent documentation created by Darling to inflate the reimbursements he received from OGS. The following are several illustrative examples:

- A Bobcat of Buffalo invoice dated November 13, 2006, which described the sale of a new Bobcat “Skid-Steer,” a four-wheeled lifting and loading machine, and a new Bobcat “Excavator,” among other items, to Darling for a combined cost of over \$100,000. Freunds Schuh confirmed that the invoice was authentic. However, in December 2006, Darling submitted to OGS a rental agreement, for which he sought reimbursement from OGS for costs associated with an emergency contract at Attica Correctional Facility. It purported to reflect Darling’s \$4,590 rental of an Excavator bearing the same serial number as the one Freunds Schuh confirmed he had purchased a month prior. This unsigned rental agreement represented that the equipment was shipped to Attica on November 13, 2006, and returned on December 21, 2006. Freunds Schuh reported that this document neither reflected an actual equipment rental nor was \$4,590 in purported rental fees paid by Darling. Freunds Schuh also commented that it was illogical that Darling would simultaneously rent equipment that he had just purchased. Freunds Schuh too noted that rental payments are not sought by his company directly from rental agreements themselves, but rather from invoices generated from rental agreements. No such corresponding invoice existed.
- In addition, Freunds Schuh noted that a \$1,600 rental agreement submitted by Darling to OGS for reimbursement for costs allegedly associated with a subsequent week-long rental of that same Bobcat Skid-Steer in June 2007 and shipment to an emergency contract at Collins Correctional Facility was a fabrication. According to Freunds Schuh, he did not recognize the handwriting on the rental agreement and the rate supposedly charged was far in excess of the actual rate charged by his company. Indeed, Freunds Schuh’s documents reflected that this piece of equipment had been purchased by Darling almost seven months earlier.
- Freunds Schuh verified a March 2007 invoice for Darling’s purchase of a new compactor/tamper for \$7,030. However, regarding Darling’s supposed May 2007, three-week rental agreement and supporting invoice for the same compactor/tamper in the amount of \$3,050, Freunds Schuh informed investigators that both appeared

fabricated because Bobcat of Buffalo's account book contained no record of any such transaction, and the invoice contained a four-digit invoice number, while Bobcat of Buffalo utilized a five-digit number.

- A similar invoice number disparity exposed yet another apparently false document submitted by Darling. Freunds Schuh confirmed the authenticity of invoice number "27106" that reflected a June 2007, three-week rental by Darling of a Bobcat with attachments for \$2,890. Darling had submitted a rental agreement and supporting invoice to OGS for reimbursement of these "costs" which differed in many respects from the originals held by Bobcat of Buffalo. Namely, Darling's sham invoice number "2497" was one-digit short, and the total billing, \$4,100, was more than \$1,000 in excess of actual costs.
- A purported \$3,510, five-week rental agreement for "Pallet Forks" in October 2006, allegedly for an OGS emergency contract at Attica Correctional Facility, was similarly suspect. No corresponding invoice existed at Bobcat of Buffalo for this transaction and account records did not indicate any payment by Darling for any such transaction. In fact, Freunds Schuh stated, the rental agreement was "totally erroneous," and "nobody with more than a 40 IQ would ever pay me \$3,510 in rental for something that costs \$750."

Darling's scheme also included billing for fictional costs purportedly from other construction equipment rental companies, including Mucher's Grand Rental Station in Warsaw, New York. With regard to this rental company, Darling submitted documentation to OGS for equipment he claimed to have rented, which he had, in fact, purchased. Moreover, Darling once again created fraudulent rental invoices, some containing anomalous invoice numbers, for equipment which Mucher's Grand Rental Station declared had not been rented to Darling. With equipment rentals from two other companies, Darling exaggerated the rental periods, almost doubling them, and even claimed rentals exceeding the duration of the OGS construction project. Thus, for projects where Darling had only worked for approximately two weeks, he sought payment from the state for a one-month equipment rental.

In total, the investigative team uncovered more than \$56,000 in fraudulent rental agreements and invoices. In large part, Darling's alteration or creation of rental agreements were filed with the state despite his ownership of these same items in order to seek reimbursement from OGS for fraudulently exaggerated costs. Had Darling merely charged OGS for the value associated with the usage of his self-owned equipment, he would have received approximately \$15,000. By submitting the fraudulent documentation, Darling's scheme netted him nearly \$41,000 in improper reimbursements.

As a result of the investigation, on November 3, 2008, Darling was arrested by New York State Police and charged with Grand Larceny in the Second Degree, Forgery in the Second Degree, Criminal Possession of a Forged Instrument in the Second Degree, and Offering a False Instrument for Filing in the First Degree. On April 22, 2009, Darling pled guilty to Grand Larceny in the Fourth Degree, and on June 24, 2009, he was sentenced to five years probation and paid restitution to New York State of \$40,904.

### ***Pro Care Also Overbilled OGS in Labor, Material, Equipment and Subcontractors Costs***

Concurrent with the investigative steps described above, the investigative team undertook a comprehensive examination of all records related to OGS emergency projects awarded to Darling/Pro Care. The investigation expanded to cover 10 projects at state correctional facilities in which Pro Care was the prime contractor. Records acquired by subpoena for all material and equipment suppliers were compared to those furnished by Darling to OGS when seeking reimbursement. Additionally, other aspects of Darling's billing, particularly those associated with labor costs, were examined. The number of hours Darling claimed his employees had worked on emergency projects was scrutinized and evaluated against correctional facility logbooks, EIC notes and other sources in an effort to determine the accuracy of these records.

This record review revealed questionable billings by Darling to OGS for labor, materials, equipment, subcontractor charges and rental insurance, spanning 10 emergency projects and two years, and totaling over \$122,000. With respect to these apparently fraudulent billings, OGS has withheld payment to Pro Care in an amount exceeding \$122,000 while it challenges their propriety as part of its administrative review process.

Specifically, among other findings, Pro Care inflated labor costs by inappropriately charging lunch periods and travel times; using incorrect labor rates; certifying payrolls that reported employees had worked fewer hours than those charged by Darling to OGS in payment applications; and double-billing for employees who were represented as having worked simultaneously on two different projects. Similarly, costs associated with project materials were often miscalculated, including: charges for diesel fuel, gasoline and oil, which are reimbursed by OGS as part of the equipment operating rates; and double-billing for the same materials on two different projects. Labor and material cost billing by Darling to OGS contained over \$59,000 in incorrect submissions.

Darling's charges for equipment costs contained similar discrepancies. OGS was billed on several projects for non-billable items like small tools (e.g., a chisel and a light), extension cords, rubber boots and work gloves. Onsite and operating hours, which must be recorded for self-owned equipment, were absent for all items Darling falsely claimed to have rented, and thus could not be verified. In addition, onsite and operating hours, when recorded, were often in conflict with those reported by project inspectors in daily inspection reports. Indeed, instances existed where more operating hours were billed to OGS than were possible given the number of employees assigned to a project and the number of labor hours worked. Furthermore, a review of correctional facility logbooks – which record equipment that enters and leaves a facility – also revealed equipment that was logged in for durations shorter than those claimed by Darling in payment applications. Overbilling for the 10 contracts reviewed accounted for over \$54,000 in wrongfully claimed expenses.

An examination revealed billings for subcontractor charges which were, in several instances, inconsistent with the actual invoices submitted by the subcontractors. Darling also improperly charged OGS for rental insurance, yet another non-billable item. These inappropriate charges to OGS exceeded \$1,000. Lastly, the contractor's percentage

markup fee – the profit made on the project – also had to be administratively adjusted downward by over \$7,200 to account for Darling’s erroneous billing.

The Inspector General and the State Comptroller’s Investigations Unit sought to interview Darling under oath regarding these matters, but Darling, through his attorney, refused. The investigative team provided this information to OGS, which is in the process of seeking to recoup from Darling reimbursements paid to him that were based on improper billings.

## FINDINGS AND RECOMMENDATIONS

The Inspector General and the State Comptroller’s Investigations Unit in consultation with OGS found that David J. Darling, Chief Executive Officer and President of Pro Care, improperly sought and obtained reimbursements from OGS. These expenses, purportedly incurred by Pro Care during 10 emergency contracts at state correctional facilities during the period 2006 to 2008, included approximately \$41,000 in fraudulent billings as part of an equipment rental scheme.

The Inspector General and State Comptroller provided the results of this investigation to the Albany County District Attorney’s Office. On November 3, 2008, Darling was arrested by New York State Police and charged with Grand Larceny in the Second Degree, Forgery in the Second Degree, Criminal Possession of a Forged Instrument in the Second Degree, and Offering a False Instrument for Filing in the First Degree. On April 22, 2009, Darling pled guilty to Grand Larceny in the Fourth Degree, and on June 24, 2009, he was sentenced to five years probation and ordered to pay restitution to New York State of \$40,904. Further, based on the Inspector General’s and State Comptroller’s investigative findings, OGS is withholding approximately \$122,000 in payments pending administrative resolution of other improper billings by Pro Care.