



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
September 28, 2012

SUMMARY OF FINDINGS/RECOMMENDATIONS

The Inspector General found that the New York State Department of Transportation (DOT) lacks procedures to assess the propriety of employees who engage contractors or vendors which do business with DOT for personal projects. The Inspector General further found that, in the absence of such procedures, DOT Assistant Resident Engineer David Dingman received an improper benefit in the form of a discounted price when he hired a DOT paving contractor he regularly inspects to pave the driveway at his home. Notably, although Dingman disclosed his use of a DOT contractor to his supervisor, he provided only limited information, and due to a lack of procedures, no meaningful supervisory review occurred.

The Inspector General has conferred with the DOT Ethics Officer on this matter, and recommends that DOT amend existing policy to specifically address the issues which arise when DOT employees engage in personal business with firms that conduct business with DOT. DOT has agreed to amend its policy in response to the Inspector General's recommendation, instituting an absolute ban on hiring current DOT contractors or vendors for personal business and requiring the Commissioner's approval of requests to hire prior or potential future DOT contractors or vendors for personal business. As Dingman's receipt of an improper benefit appears to violate the Public Officers Law, the Inspector General will provide these findings to the New York State Joint Commission on Public Ethics for its review.¹

ALLEGATION

In June and October 2010, the Inspector General received complaints from two anonymous sources complaining that DOT Assistant Resident Engineer David Dingman had his residential driveway paved by a commercial paving company, Barrett Paving Materials, Inc. This residential paving work was alleged to have been done while Barrett was both under contract with DOT and working on state paving projects in Jefferson County that were overseen by Dingman. The complainants also reported that Dingman provided lunch for the paving crew.

SUMMARY OF INVESTIGATION

Background

DOT maintains approximately 1,000 "lane-miles" of roads in Jefferson County, and awards approximately \$3.5 million in paving contracts annually to maintain these roads. Several large commercial paving contractors bid on DOT projects in this region, including Barrett Paving Materials, Inc. ("Barrett"), a

¹ While Dingman's conduct also might violate DOT policy regarding conflict of interest, agency disciplinary action appears to be precluded by the fact that Dingman's conduct occurred in 2004, outside the time limit for such action. The Inspector General only received the allegation against Dingman in 2010.

multi-state highway construction company with a regional office in Watertown. In 2011, Barrett was awarded over \$17 million in New York State contracts, of which over \$7 million were DOT projects.

DOT has promulgated formal policy addressing conflicts of interest involving employees. This policy, which generally reflects similar provisions of the New York State Public Officers Law, prohibits employees from accepting any gift or private benefit from firms, individuals, or organizations which engage in business with DOT, and further states, in part, that employees “must not give reasonable basis for the impression that any person can improperly influence or unduly enjoy their favor in the performance of their official duties, or that the performance of their official duties may be affected by the kinship, rank, position or influence of any party or person.” However, DOT has not implemented procedures or provided specific direction to employees or supervisors to ensure that employees who engage in private transactions with DOT vendors or contractors do not receive an improper benefit in the form of a discounted price for goods or services.

David Dingman, a DOT employee since 1985, became the Assistant Resident Engineer at the Jefferson County Residency, DOT’s primary maintenance facility in the region, in 1999. As such, Dingman is responsible for the day-to-day oversight of approximately 80 employees assigned to maintenance crews at the Jefferson County Residency and two satellite facilities. In addition, Dingman is involved in various aspects of state paving contracts in Jefferson County that are awarded to paving contractors. His responsibilities include determining which roads will be paved, preparing cost estimates for paving projects, and directly overseeing contractors on project sites. Dingman summarized his supervision of DOT paving projects in testimony to the Inspector General as follows: “I’ll go out and I oversee the project from start to finish . . . I’m in charge of the project as far as paving, how they do their paving, making sure that they go through our specifications.” Dingman is not involved in the solicitation of contractors or the bidding or awarding of paving projects.

The Inspector General’s Investigation

In his testimony to the Inspector General, Dingman acknowledged that he hired Barrett in 2004 to pave his driveway. Dingman testified that in September 2004 he approached a manager for Barrett, which at the time was working on a non-state paving project at the Watertown Airport, and asked if Barrett would pave the driveway at his home, located near the airport. Dingman testified that Barrett was not working on any DOT project in Jefferson County at that time. Barrett’s regional construction manager testified that while Barrett primarily engages in commercial and public projects, and rarely does private residential work, it agreed to pave Dingman’s driveway because its employees had some idle time during the airport project. The construction manager stated that he has known Dingman in a professional capacity since approximately 2000, and that he and Dingman often interacted with each other on DOT paving contracts awarded to Barrett Paving which were inspected by Dingman.

Dingman testified that he requested and received approval for Barrett to pave his driveway from his immediate supervisor, then-Resident Engineer Gregory Grimshaw. In testimony to the Inspector General, Grimshaw, currently a DOT Regional Transportation Manager, confirmed approving Dingman’s request. Regarding his request to Grimshaw, Dingman stated, “I just wanted to make sure there wasn’t any conflict of interest.” According to Dingman, Grimshaw advised him, “It’s fine as long as we know ahead of time, basically.” Dingman provided the Inspector General with a copy of a September 22, 2004 letter he sent to Grimshaw concerning the paving of his driveway by Barrett. The letter reads:

I have contracted with Barrett Paving Materials to pave my driveway at [address deleted]. I have submitted my application for a highway work permit as required and will be doing the work in late September or early October. After the job is complete all receipts involving this work will be available upon request. If you have any further questions, please feel free to contact me.

Neither Dingman nor Grimshaw could locate any other documents relating to a discussion of this matter, and neither could state with certainty that any additional documents had been generated. Grimshaw stated that while he believed that Dingman had provided him with a letter indicating he had solicited quotes and that Barrett was the low bidder, he recalled that he did not analyze the cost of the project to determine if it was appropriate or review any of the quotes. In approving Dingman's request, Grimshaw did not consult with any superior officials at DOT. As noted, DOT policy does not require employees in such a situation to provide any particular information to supervisors, nor does it prescribe any particular review or other action to be taken by supervisors.

On September 30, 2004, Barrett workers transported paving equipment from the airport to Dingman's residence, and truckers working as Barrett subcontractors delivered the asphalt. Four Barrett employees, including a foreman, paver operator, roller operator, and laborer, completed paving Dingman's driveway in approximately two hours, according to Dingman and the Barrett construction manager. Dingman testified that no DOT employees assisted, and the Inspector General found no evidence to the contrary. Dingman further testified that he took the day off from work to supervise the job and that he used leave accruals for his absence.² The Barrett construction manager stated that Barrett employees performed no other work at Dingman's residence. At the conclusion of the job, according to the Barrett construction manager, Dingman provided lunch for the crew. Barrett charged \$1,517.79 for the paving job, which Dingman paid by personal check.³

In response to the Inspector General's request for a copy of Barrett's invoice for the driveway paving job, Dingman stated that he did not have one in his possession. He testified that he might have received an invoice, but disposed of it at a later date. The Inspector General obtained a copy of the invoice, dated October 2, 2004, from Barrett. The invoice is reproduced below.

Cash Invoice 20635													
1													
10/2/04													
69934													
Net 30 Days													
CASH SALE - WATERTOWN MIX													
PAYMENT ACCOUNT													
BARRETT PAVING MATLS													
WATERTOWN, NY 13601													
CASH SALE - DAVE DINGMAN													
Ticket	Date	P.O.	Order	Location	Product	Qty	Material Rate	Material Amount	Freight Rate	Freight Amount	Fee Amount	Tax Amount	Total
9146966	09/30/04		18110	181	403.1330 B	22.34	18.50	413.29	2.70	60.32	0.00	37.89	511.50
9146976	09/30/04		18110	181	403.1330 B	21.98	18.50	406.63	2.70	59.35	0.00	37.28	503.26
9146977	09/30/04		18110	181	403.1330 B	21.97	18.50	406.45	2.70	59.32	0.00	37.26	503.03
Subtotal						66.29	Ton	\$1226.37		\$178.99	\$0.00	\$112.43	\$1,517.79
Invoice Total						66.29		\$1226.37		\$178.99	\$0.00	\$112.43	\$1,517.79
												Total Invoice --- >	\$1,517.79

² Dingman provided the Inspector General with time and attendance records supporting his assertion.

³ Dingman stated, and Grimshaw confirmed, that Dingman provided Grimshaw with a copy of the check.

The invoice reflects that Dingman was charged \$1,226.37 for “Material,” \$178.99 for “Freight” and \$112.43 in taxes, for a total of \$1,517.79. In addition, the bill noted that the driveway required three loads of asphalt totaling 66.29 tons, at a cost of \$18.50 per ton. Of note, the invoice did not list labor or equipment charges.

To assess whether Dingman was properly charged for the driveway work, the Inspector General reviewed the invoice with Dingman and the Barrett construction manager, and consulted a construction engineer with knowledge of asphalt paving in New York State.

Although uncertain who at Barrett prepared the invoice, the Barrett construction manager stated that the total cost was based on the asphalt (“Material”) and transportation (“Freight”) costs. Regarding the \$18.50 per ton charge for the “recycled binder asphalt” used on Dingman’s driveway, the Barrett construction manager asserted that this price was reasonable. He acknowledged that the price Dingman paid was lower than what Barrett charged for asphalt on state projects, but that the difference was due to the higher standards that the asphalt used on state roads must meet as compared to that produced for residential purposes. The construction engineer consulted by the Inspector General noted that, as part of a contract with the New York State Office of General Services in 2004, Barrett offered what the engineer stated was a similar asphalt product for delivery in Jefferson County at \$31.75 per ton. At this price, Dingman would have paid \$2,104.71 for the 66.29 tons of asphalt used on his driveway, not the \$1,226.37 he was actually charged. Although not exact, the comparison suggests that Barrett provided asphalt to Dingman at a discounted price.⁴

The evidence indicates that Dingman also might have paid a discounted price for delivery of the asphalt to his residence. As noted, Barrett charged Dingman \$178.99 for transporting three truckloads of asphalt from its production facility to Dingman’s residence, a trip of approximately 10.5 miles one way. The construction engineer consulted by the Inspector General estimated the delivery cost at \$308.65, approximately \$130 more than Barrett actually charged Dingman. When the Inspector General questioned Dingman about the delivery costs, he claimed that he obtained the services of several independent truckers to transport the asphalt, and that he paid them in cash, although he could not recall the names of the truckers, nor did he have any record of their services. However, Dingman’s testimony is contradicted by the Barrett construction manager, who stated that the asphalt was delivered by Barrett subcontractors and that the charge on the invoice for “freight” represented the full cost of transporting the asphalt from the production site to Dingman’s residence. Customers do not pay a separate delivery fee directly to the truckers, the Barrett construction manager stated. When Dingman’s attention was directed to the “freight” charge item on the invoice, he inexplicably responded, “I thought they weren’t paying [the truckers] so I gave them money too.”

The Inspector General further determined that Barrett did not charge Dingman for the labor involved in paving his driveway. The Barrett construction manager acknowledged that no labor cost was charged, offering the following justification: “[Dingman] was going to make them a dinner and the crews were just going to go over there after they got done [with] work and anybody that wanted to could go there and do the work, kind of, you know, they work together every day and . . . so it’s just a volunteer, whoever wants to go there type of thing.” According to the Barrett construction manager, a foreman put the proposition to the crew, and the “volunteers” who chose to work on Dingman’s driveway received no pay from Barrett Paving for their work. When asked what Barrett would have charged for the labor on this project without a “volunteer” workforce, the construction manager estimated a total cost of \$500 to \$750.⁵ The construction engineer consulted by the Inspector General estimated equipment and labor costs (one roller and operator, one paver and operator, and a

⁴ The asphalt used on Dingman’s driveway, “403.1330 B,” is a binder – recycled asphalt product. Although unable to locate a 2004 pricing for this particular asphalt, a similar product, “403.138902M RAP” was used for the purpose of comparison.

⁵ The construction manager based his estimated on 2004 rates for a crew of three to five employees working two to three hours at a cost of \$200-\$250 per hour.

laborer) for a half-day at \$1,475.⁶ Thus, whether or not the Barrett workers were truly volunteers, Dingman received the labor component of the project without cost. When asked by the Inspector General about the omission of a labor charge on the invoice, Dingman again provided questionable testimony, claiming that the “Material” charge on the invoice might have represented “the rate for material and placing it.”⁷

In summary, the evidence supports that Barrett paved Dingman’s driveway at a substantially reduced price. As acknowledged by Barrett’s own construction manager, Dingman saved between \$500 and \$750 due to the fact he was not charged for labor. The construction engineer consulted by the Inspector General estimated a considerably higher labor and equipment cost savings to Dingman – possibly as much as \$1,475. The construction engineer also estimated that Dingman received a \$130 discount on the cost of transporting asphalt to his residence. Thus, based on the construction engineer’s estimates, Dingman should have been charged significantly more than the \$1,517.79 he actually paid.

When the Inspector General advised Dingman of these higher cost estimates, Dingman replied, “They might have given me a break on that. I don’t know. I didn’t ask for a break. I didn’t beg for a break.” Dingman acknowledged that such a “break” could be perceived as a gift meant to influence him in the performance of his official duties, stating, “I do see the potential [conflict of interest], yes I do.” However, Dingman testified that there was no improper agreement between Barrett and himself, and that he had never provided any favors to contractors working on State projects.

Considering the evidence described above, Dingman appears to have violated DOT policy when he accepted a private benefit from Barrett in the form of a discounted price for paving his driveway. Dingman’s conduct also appears to violate the Code of Ethics provisions of the New York State Public Officers Law, which DOT policy reflects.⁸

FINDINGS/RECOMMENDATIONS

The Inspector General found that the New York State Department of Transportation lacks procedures to assess the propriety of employees who engage contractors or vendors which do business with DOT for personal projects. The Inspector General further found that, in the absence of such procedures, DOT Assistant Resident Engineer David Dingman received an improper benefit in the form of a discounted price when he hired a DOT paving contractor he regularly inspects to pave the driveway at his home. Notably, although Dingman disclosed his use of a DOT contractor to his supervisor, he provided only limited information, and due to a lack of procedures, no meaningful supervisory review occurred.

The Inspector General has conferred with the DOT Ethics Officer on this matter, and recommends that DOT amend existing policy to specifically address the issues which arise when DOT employees hire firms that conduct business with DOT. In response, DOT has agreed to amend its policy, instituting an absolute ban on hiring current DOT contractors or vendors for personal business and requiring the Commissioner’s approval of

⁶ The Inspector General excluded costs associated with “mobilization,” the movement of equipment to a project site, as the project equipment was located nearby at the Watertown Airport.

⁷ Dingman also appeared to be less than fully forthcoming when asked about the size of his driveway. Initially, he described his driveway’s dimensions as approximately 12-14 feet wide and 100-150 feet long, equaling a total of, at most, approximately 2,100 square feet. Subsequently, when advised of the construction engineer’s observation that a driveway of that size would not require the 66.29 tons of asphalt used in the paving project, Dingman described his driveway at approximately 3,000 square feet. Based on a review of Google satellite imagery and surveillance photos of Dingman’s address, the Inspector General estimated the driveway to be approximately 3,677 square feet, and to consist of an approximately 13.5-foot-wide by approximately 102-foot-long driveway connected to an approximately 50-foot by 46 foot pad in front of his garage.

⁸ NYS POL § 73(5)(a).

requests to hire any individual or business that contracted with DOT in the prior five (5) years or could reasonably be expected to be hired by DOT in coming year. As Dingman's actions appear to violate the Public Officers Law, the Inspector General will provide these findings to the New York State Joint Commission on Public Ethics for its review. Disciplinary action by DOT against Dingman appears to be precluded by the fact that Dingman's conduct occurred in 2004, which is outside the time limit for such action.