

**Thomas DiNapoli  
State Comptroller**



**Joseph Fisch  
Inspector General**



**Investigation of Fraud  
Against New York State  
By the Lin-Kim Company, Inc.**

**December 2010**

## SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General, in a joint investigation with the New York State Comptroller, and in consultation with the New York State Department of Labor and with substantial cooperation and input from the New York State Office of General Services, determined that the Lin-Kim Company, Inc. (Lin-Kim) of Lindenhurst, New York, and two of its officers, Kenneth Buddenhagen and Melissa Peters, submitted fraudulent bills and forged documents to OGS in an attempt to obtain over \$272,000 in unearned funds stemming from emergency contracts between the company and OGS for work at various state facilities from 2006 through 2008.

These findings have been provided to the New York State Attorney General for consideration of criminal prosecution or action for recovery of any amount overpaid by the state to Lin-Kim, plus costs as applicable.<sup>1</sup>

## ALLEGATION

On November 24, 2008, OGS reported to the Inspector General that Lin-Kim submitted a check to OGS in support of its claims for payment on a public work contract that was cashed by an entity other than the named payee on the face of the check. The check also appeared to be cashed for a different amount than what was written on the check. The check raised suspicions that Lin-Kim was over-billing the state on an OGS emergency construction project.

## SUMMARY OF INVESTIGATION

### **Background**

OGS annually awards contracts for hundreds of state-financed construction projects. The majority of these contracts are awarded at a fixed price which can be increased only under limited circumstances not relevant to this report. A smaller number of emergency contracts, however, are awarded on a cost-plus basis whereby the contractor bills OGS for its costs plus an agreed upon markup. The markup percentage applies to actual labor, material and equipment costs the contractor incurs in performing the emergency work. OGS offers emergency work on a rotational bid basis using a list of pre-screened contractors. Emergency contracts are awarded for work of short duration and requiring immediate response, such as repair of a ruptured sewer pipe or malfunctioning boiler.

Due to the reimbursement/payment method on these contracts, contractors on emergency projects are required to maintain a daily record of labor, material and equipment expenses, using forms provided by OGS. To receive payment, contractors must submit to OGS a Contractor Expense and Fee Summary which includes a summary of all reimbursable expenses and bears a notarized certification by a representative of the contracting firm.

---

<sup>1</sup> OGS has withheld payment of \$525,270 from Lin-Kim for work already performed.

Along with the expense and fee summary, the contractor is required to support its claim for labor costs by submitting a daily labor report, a labor rate work sheet for each labor classification employed on the project, and a payroll report. Daily labor reports must be completed and signed by the contractor's representative on the job site, and contain a description of the work completed for each day, the name of each employee, the time each employee started and ended work, and the trade classification applicable to that work (e.g., plumber). An OGS Engineer-In-Charge (EIC) is required to review the daily labor reports. The labor rate worksheet is generally completed by a bookkeeper to calculate the hourly cost for each applicable work classification listed on the daily labor report. The bookkeeper obtains from DOL hourly prevailing wage and benefit rates for each classification listed on the daily labor report and adds applicable taxes and insurance, including state and federal unemployment insurance and workers' compensation insurance, to determine the hourly wage cost. If necessary, this calculation will be completed for overtime hours. The payroll report applies the wage rate calculated on the labor rate worksheet and multiplies that amount by the hours worked on the daily labor report. Similar calculations and forms are required in support of contractor material and equipment costs and subcontractor expense.

### **Lin-Kim's Fraudulent Checks and Falsified Invoice**

Lin-Kim Company, Inc., a construction company based in Lindenhurst, was hired by OGS in late 2007 under an emergency contract to repair the sewage system at Otisville Correctional Facility, a New York State Department of Correctional Services facility located in Otisville. In performing the contract, Lin-Kim purchased piping materials from Rovanco Piping Systems, through Rovanco's sales representative, BRW Associates. Rovanco billed Lin-Kim in three invoices totaling \$20,370. Lin-Kim paid for the purchases by two checks issued to Rovanco — one check for \$19,385 for two of the invoices, and a separate check for \$985 for the third invoice.

Following the standard procedure described above, on January 15, 2008, Lin-Kim submitted to OGS an expense and fee summary purportedly for a portion of its work at Otisville Correctional Facility. Among other expenses incurred by Lin-Kim, the summary included the purchase of piping material. However, Lin-Kim failed to submit the Rovanco invoices as documentation of its expenditures; rather, Lin-Kim submitted two invoices ostensibly from BRW with the summary: one invoice for \$985 (later determined during the course of this investigation to match the Rovanco invoice of that amount); and another for \$27,700 (substantially higher than the two other combined genuine Rovanco invoices totaling \$19,385).

Lin-Kim's submission was reviewed by an OGS Principal Accounting Clerk, who approved payment to Lin-Kim. At the time, as Lin-Kim had withheld the original Rovanco invoices, the clerk had no reason to doubt the legitimacy of the purported BRW invoices submitted by Lin-Kim. According to the clerk, however, when she later re-reviewed the submitted documents, she became concerned by the fact that the \$27,700 invoice was billed as a lump sum even though it included multiple items. Acting on these concerns, the clerk telephoned BRW to obtain more information about the invoice.

According to the clerk, the BRW employee who answered her call refused to provide the requested information, reportedly stating, “No one is going to be getting this information unless he’s taken away in handcuffs.” Her concerns obviously heightened, the clerk then contacted Lin-Kim, requesting copies of the canceled checks for both purchases from BRW, as well as proof that Lin-Kim had solicited multiple bids or had obtained a bid waiver<sup>2</sup> for the \$27,700 purchase. No documentation of any bids or waiver was provided, although on October 22, 2008, Melissa Peters, Lin-Kim’s secretary and bookkeeper, faxed the clerk a copy of the front sides only of both checks — check 4801 purportedly issued to pay the \$27,700 invoice and another check used to pay the \$985 bill. After a follow-up call from the clerk, on November 3, 2008, Peters faxed copies of both sides of the checks.

A discrepancy was now apparent. Although the two checks were payable to BRW Associates, Inc., both were endorsed by Rovanco Piping Systems. In an attempt to explain the inconsistency, Peters claimed on the fax cover sheet she sent to the clerk, “BRW Associates also goes by the name Rovanco Piping Systems. That’s why the cancelled checks say Rovanco.” Peters’s claim is patently false. In fact, as noted, BRW is an entirely separate company which at the time served as Rovanco’s sales representative. Another significant discrepancy was further detected when the clerk, assisted by an OGS colleague, examined the copy of Lin-Kim’s check 4801. While the check’s (handwritten) payment amount was \$27,700, the negotiated amount, as indicated in the computer-generated numbers at the bottom right of the check, was \$19,385.

The evidence clearly indicated that check 4801 had been altered prior to its submission to OGS. The OGS clerk reported the discovery to her supervisors, and the matter was referred to the Inspector General, which commenced this investigation and contacted the State Comptroller’s Office. As part of the investigation, the Inspector General obtained by subpoena Lin-Kim’s relevant bank records. These records included a copy of the original check 4801. Both the original and altered version of the check are reproduced below.

---

<sup>2</sup> OGS requires that every state purchase from a vendor over \$15,000 requires three bids before purchase unless a waiver is granted.

Amount: \$19,385.00      Sequence Number: 4770693079  
 Account: [REDACTED]      Capture Date: 01/09/2008  
 Bank Number: 02100032      Check Number: 4801

---

LIN-KIM  
 697 CENTRE AVENUE  
 LINDENHURST, NY 11757  
 (631) 894-6360

DATE: 12/31/07

PAY TO THE ORDER OF: Romano Piping Systems \$19,385.00  
 THE SUM 19,385.00 DOLLARS

Bank of America

FOR: *Uniflexia Piping*

⑈004801⑈ ⑆021000322⑆ [REDACTED] ⑆0001938500⑆

01/09/2008 0007  
 02100032  
 2681094270

JAN - 8 09

2102 86323

BANK OF AMERICA N.A. RT  
 6100128 6836 AT POS  
 01/09/08  
 4770693079

HARRIS N.A. PAY TO THE ORDER OF  
 311 W. MONROE ST. 4TH FLOOR  
 CHICAGO, IL 60601  
 0300750975

PAY TO THE ORDER OF  
 HARRIS BANK JOLIET N.A.  
 JOLIET, ILLINOIS 60432  
 FOR DEPOSIT ONLY  
 ROMANCO PIPING SYSTEMS  
 066695

Computer-generated check amount

LIN-KIM  
 697 CENTRE AVENUE  
 LINDENHURST, NY 11757  
 (631) 894-6380

DATE: 12/31/07

PAY TO THE ORDER OF: BRW Associates, Inc. \$27,700.00  
 THE SUM 27,700.00 DOLLARS

Bank of America

FOR: *Uniflexia Piping*

⑈004801⑈ ⑆021000322⑆ [REDACTED] ⑆0001438500⑆

01/09/2008 0007  
 02100032  
 2681094270

JAN - 9 09

2302 86323

BANK OF AMERICA N.A. RT  
 6100128 6836 AT POS  
 01/09/08  
 4770693079

HARRIS N.A. PAY TO THE ORDER OF  
 311 W. MONROE ST. 4TH FLOOR  
 CHICAGO, IL 60601  
 0300750975

PAY TO THE ORDER OF  
 HARRIS BANK JOLIET N.A.  
 JOLIET, ILLINOIS 60432  
 FOR DEPOSIT ONLY  
 ROMANCO PIPING SYSTEMS  
 066695

Computer-generated check amount

As seen above, the two checks are the same except that on the altered check Rovanco has been replaced by BRW as payee and the payment amount of \$19,385 has been altered to \$27,700.

Investigators questioned Peters, Lin-Kim's secretary and bookkeeper, regarding check 4801. Asked if she had altered the check, Peters replied, "Maybe." When pressed, Peters admitted that Kenneth Buddenhagen, Lin-Kim's vice president and Peters's stepfather, had ordered her to alter the check by substituting BRW for Rovanco and replacing the price actually paid to Rovanco (\$19,385) with a false higher price purportedly paid to BRW (\$27,700). Peters said that she complied with Buddenhagen's direction. Notwithstanding this admission, Peters provided false information to investigators by claiming she only altered check 4801. In fact, she also altered the check that was issued to pay the \$985 invoice by substituting BRW for the actually payee, Rovanco. Further, Peters lied when she advised the OGS clerk in writing on the fax cover sheet that Rovanco and BRW were different names for the same company

In an interview, Buddenhagen readily admitted to directing Peters to alter check 4801. In an attempt to explain his action, Buddenhagen claimed that in addition to the \$19,385 payment to Rovanco for piping materials, as indicated in the original check, Lin-Kim had made a \$7,000 payment to BRW as a sales commission on the purchase, and that the check submitted to OGS was altered to reflect the total of these two payments (\$19,385 plus \$7,000). Aside from the obvious fact that the sum of these two amounts does not equal \$27,770, the evidence contradicts Buddenhagen's claim.

Investigators determined that while BRW did in fact earn a commission of \$1,820.80 on the Rovanco sale to Lin-Kim, the commission was paid by Rovanco, not Lin-Kim, and no record of a \$7,000 payment from Lin-Kim to BRW was found. As noted above, when the Inspector General contacted Neil Berko of BRW about Otisville Correctional Facility project records, Berko refused to provide any information and hung up the telephone. In response to a subpoena, however, BRW provided the Inspector General with relevant documents. The documents included a November 9, 2007 BRW invoice in the amount of \$6,700 purportedly for "Rovanco submittals / field service instruction, expediting." Rovanco officials advised investigators, however, that the invoice is fraudulent, and explained that only Rovanco may authorize field service instruction for the installation of piping it sells, and did not do so in this instance. Rovanco officials further reported that additional services listed on the invoice were not requested. The fraudulent invoice is reproduced below.



the illusory rebate claim, Buddenhagen argued that he directed Peters to falsify check 4801 because the state paid him too slowly. Remarkably, Buddenhagen reiterated this claim even after it was pointed out to him that he ordered Peters to alter the check *after* OGS had paid the January 15, 2008 invoice.

The fraudulent check and invoices resulted in a deliberate overcharge by Lin-Kim to the state of \$8,315. Adding on the emergency contract “cost-plus” factor of 17.5 percent, OGS paid Lin-Kim a total of \$9,770.13 for piping materials to which it was not entitled..

### **Lin-Kim Billed OGS for Hours Not Worked**

This investigation determined that Lin-Kim billed OGS for hours its employees did not work, including: (i) when its employees ceased working and had checked into a hotel or had logged out of a secure facility, (ii) when Buddenhagen inflated time ostensibly spent shopping for materials, and (iii) when Buddenhagen failed to deduct time for lunch or otherwise miscalculated working hours.<sup>4</sup>

Investigators uncovered multiple examples of Buddenhagen falsifying his time sheets. For example, on Sunday, January 22, 2006, Lin-Kim mobilized its equipment for a sewer project at the Wallkill Correctional Facility that entailed Buddenhagen and a co-worker obtaining overnight lodging near the facility.<sup>5</sup> According to the daily labor report completed and signed by Buddenhagen, Lin-Kim’s employees commenced work at 7 a.m. and ended at 3:30 p.m. However, a Days Inn hotel receipt for that day reveals that both men checked into the hotel at 12:32 p.m. When interviewed, Buddenhagen professed a lack of recall as to what he did the afternoon of January 22, 2006 and provided no receipts to show that he purchased supplies or engaged in any other mobilization activity during the afternoon. When confronted with the daily labor form and the hotel receipt, Buddenhagen admitted that he overcharged the state on that day for three hours of work for both him and his co-worker. In sum, on January 22, 2006, Lin-Kim overcharged the state \$1,012.30.

Many of Lin-Kim’s projects for OGS involve work within the security perimeter of state correctional facilities, requiring Lin-Kim employees to sign in and out on security log sheets. The investigation revealed that on 55 occasions from 2006 through 2008, Lin-Kim’s employee time sheets were inconsistent with log entries, even allowing for travel time. Buddenhagen provided no credible explanation for these discrepancies, which resulted in overcharges of \$6,133 to the state.

When Buddenhagen was questioned regarding numerous purported shopping trips where evidence indicates that he inflated charges to the state because, he claimed, either

---

<sup>4</sup> When auditing these arguably mathematical errors, credit was given on the audit for those instances where Lin-Kim underpaid its employees due to its error. This underpayment will be referred to DOL to investigate the failure to pay wages due.

<sup>5</sup> OGS will reimburse a contractor for overnight lodging and meal costs when the project site is at least two hours from the company facility. Hotel rooms and meals are not subject to the cost-plus multiplier.

he or his employees had “dedicated a day” to shopping. For example, Buddenhagen completed a daily labor form for March 19, 2008, charging seven hours to “pick up materials” for a project at Queensboro Correctional Facility. Buddenhagen provided OGS with receipts from three stores for supplies bought that day; all three stores were within a few miles of Buddenhagen’s home. Using MapQuest, the Inspector General calculated that Buddenhagen could drive to all three locations in approximately 51 minutes. Allowing time for delays, comparison shopping, check-out lines, and any other possible circumstance, examiners credited Buddenhagen with three hours of work time that day, rather than the seven hours he claimed. During the interview, Buddenhagen claimed that, “It was a day’s work for me to be obligated to the state to get these materials together.” He admitted that he had “down time” in between shopping trips, but that he felt he “was entitled” to the money. This single day resulted in an overbilling to the state of \$480. Compounding his fraud, Buddenhagen always billed himself as a working foreman, a supervisory position, which, according to Peters, carried a 10 percent premium. However, on March 19, 2008, Buddenhagen supervised no other employees.

Another example of overcharging OGS for time purportedly expended procuring materials occurred on April 8, 2008, when Buddenhagen dispatched two employees to New Jersey from Lin-Kim’s offices in Lindenhurst ostensibly for eight hours to pick up pumps. Buddenhagen asserted that he sent two employees on the errand because the pump supplier was located in an unsafe area. He also claimed that he did not know if a single man could load the truck because of the weight of the pumps. Buddenhagen conceded, however, that he never contacted the vendor to determine whether the area was safe or whether the vendor had a forklift, which it did. Regardless, as for the eight hours of work claimed for that day, according to MapQuest, the round trip to New Jersey took closer to four hours. Buddenhagen admitted that his claim of eight hours was “off by about two hours.” However, similar to his own shopping trip on March 19, 2008, Buddenhagen claimed that, “It’s just a day’s work for two men to go to Jersey . . . In my heart and in my feelings that it was a day’s work for two men to go to Jersey.” Buddenhagen exacerbated the day’s overcharge by assessing the state a plumber’s pay rate for the two employees sent to pick up the pumps, when in fact both employees should have been classified as teamsters, who earn a lower hourly rate. Given the additional charge of two hours per man, and applying the proper wage rate, Lin-Kim overcharged the state by \$666.

Buddenhagen was also examined regarding 49 days in 2006 through 2008 when he failed to deduct a half hour for lunch for his employees. Buddenhagen conceded that he was required by law to provide lunch, but suggested that there might have been an emergency situation that prevented employees from taking lunch on some days. However, Buddenhagen was unable to identify any entries on any of the documents he submitted to OGS that would support his assertion. Buddenhagen’s failure to properly deduct a lunch period resulted in an overbilling to OGS of \$2,318.

In total, Lin-Kim overcharged the state \$12,693 for time its employees were not working in 2006, 2007 and 2008.

## **Lin-Kim Overcharged the State for Unemployment Insurance Taxes**

Employers are required to pay unemployment taxes for their employees to both New York State and the federal government. The amount of the tax is a percentage of wages paid. In 2008, for instance, Lin-Kim paid to New York an unemployment tax of 7 percent of wages paid up to a maximum salary of \$8,500 for each worker.<sup>6</sup> For federal unemployment taxes, employers pay .8 percent of wages on a maximum of \$7,000 in wages per year or a maximum total tax of \$56 per employee per year. Unemployment insurance benefits are paid from these employer contributions. This investigation determined that Lin-Kim overcharged OGS in excess of \$70,000 for federal and state unemployment insurance taxes by requesting reimbursement for taxes which it did not pay on wages in excess of the state and federal wage caps.

Lin-Kim includes unemployment insurance tax payments on the labor rate worksheets it submits to OGS along with its expense and fee summaries. The taxes are subject to the percentage mark-up agreed upon by the contractor and the state. Peters, Lin-Kim's bookkeeper, usually completed and signed these forms, although Buddenhagen occasionally signed them as well.

The labor rate worksheet includes instructions for contractors regarding unemployment taxes. For federal unemployment taxes, the form notes that taxes are due "up to a maximum of \$56 per employee per year." For New York unemployment taxes, the form notes that the tax is applicable "up to the 1st \$8,500 of base salary paid per employee per year." Despite this direction, Lin-Kim billed OGS for unemployment tax reimbursement on every dollar of wages paid for the years 2006, 2007, and 2008. Lin-Kim, however, appropriately capped its unemployment tax payments to the state and federal governments consistent with the instructions on the labor rate worksheet and on the corresponding applicable tax forms. In other words, while Lin-Kim applied the cap when it paid unemployment taxes, it failed to apply the cap when it sought reimbursement from OGS, thereby receiving an unwarranted and improper financial windfall.

When interviewed, Peters admitted that the forms are "pretty self-explanatory," and that she was aware that state unemployment taxes applied to the first \$8,500 in wages per employee and that federal unemployment taxes were applied to the first \$7,000 in wages per employee. Notwithstanding her admission to the contrary, Peters stated that she always completed the labor rate worksheet including costs for unemployment taxes for every hour of wages paid by Lin-Kim. Peters maintained, "That's the way I was taught."

---

<sup>6</sup> State unemployment insurance taxes are "experience rated" and change yearly. The experience rating depends on the experienced amount of unemployment for the industry in the previous year. Lin-Kim paid unemployment taxes of 4.7 percent in 2006, 6.7 percent in 2007, and 7.0 percent in 2008. The tax rates have always been applied to the first \$8,500 in wages only. The federal unemployment tax rate has remained constant throughout the applicable period.

Peters exacerbated the situation with respect to federal unemployment taxes by often applying the wrong tax rate. Rather than bill the federal unemployment taxes at .8 percent, Peters periodically billed the rate at 1.4 percent. Initially in her interview, Peters claimed that she did not know why she applied 1.4 percent tax rate, but then she opined that she might have been instructed to do so by Lin-Kim's accountant, William Goodwin. When interviewed, however, Goodwin, a certified public accountant, stated he "never" would have told Peters that the federal rate was 1.4 percent because it was "always" .8 percent.

By billing unemployment taxes for every hour worked from 2006 through 2008, Lin-Kim overcharged the state \$60,132 in New York State unemployment insurance taxes and \$13,403 in federal unemployment insurance taxes, a total overbilling of \$73,535..

### **Lin-Kim Overcharged the State for Workers' Compensation Insurance**

New York State law requires employers to obtain workers' compensation insurance that provides cash benefits and/or medical care for workers who suffer a work related injury or illness. When an employer buys workers' compensation insurance, the insurer is assuming the employer's statutory obligation to pay medical, wage replacement and death benefits. Premiums reflect the employer's potential liability for claims based on individual experience, wages paid to employees, and the type of business in which the employer is engaged. OGS reimburses contractors on emergency contracts for the contractors' workers' compensation insurance premiums payable on the project. Investigators found that Lin-Kim overcharged OGS for its workers' compensation insurance.

All workers' compensation premiums are calculated by multiplying the insurance base rate for the particular industry by each \$100 of expected wages to be paid in the upcoming calendar year. After that calculation is made, the premium is adjusted for various credits or charges to the base rate including: experience credits or debits, territorial differentials,<sup>7</sup> construction classification premium credits, state fund discount, terrorism premiums, and assessments for administrative costs for the workers' compensation system. After all of these charges or credits have been applied to the base rate, a final adjusted rate is obtained. This rate, for Lin-Kim, was always lower than the base rate.

Lin-Kim continually charged an inflated rate to OGS for workers' compensation insurance reimbursement. Most of the time Lin-Kim charged OGS at a rate of 9 percent for workers' compensation costs. For a short period in 2008, Lin-Kim charged OGS the 2007-2008 base rate of 6.88 percent. Lin-Kim also charged the same rate regardless of the locality in which it worked. Lin-Kim's actual percentage rates for workers' compensation premium expense are included in the table below.

---

<sup>7</sup> Lin-Kim conducted work in three territories: Territory 1 covering the five boroughs of New York City; Territory 2 covering the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester; and Territory 3 covering the remainder of the state.

<b>Workers' Compensation Percentages</b>	<b>Territory 1</b>	<b>Territory 2</b>	<b>Territory 3</b>
<b>Oct. 8, 2005 – Oct. 8, 2006</b>	<b>4.87%</b>	<b>4.60%</b>	<b>4.30%</b>
<b>Oct. 8, 2006 – Oct. 8, 2007</b>	<b>4.90%</b>	<b>4.64%</b>	<b>4.33%</b>
<b>Oct. 8, 2007 – Oct. 8, 2008</b>	<b>4.42%</b>	<b>4.35%</b>	<b>4.24%</b>
<b>Oct. 8, 2008 – Oct. 8, 2009</b>	<b>3.78%</b>	<b>4.76%</b>	<b>3.73%</b>

Using the percentages listed in the above referenced table, during the 2006 to 2008 premium years, Lin-Kim overcharged the state a total of \$70,155.33.

### **Lin-Kim Misclassified Work to Reap More Profits**

It was further determined that in more than 500 instances between 2006 and 2008, Lin-Kim misclassified work on its OGS projects, resulting in overbilling to the state of nearly \$100,000. The classification of work on a public work project is critical because the rate of pay for each employee depends upon the classification of work performed. DOL issues the wage rates applicable in each locality in the state for every classification of work.<sup>8</sup> DOL enforces these rates as a minimum rate for each classification. Classification is significant on a cost-plus project to ensure that the contracting agency, in this case the state, is not overcharged for work performed.

On a cost-plus contract where a contractor is guaranteed a percentage mark-up on every dollar it spends, no economic incentive exists for the contractor to control costs. For every dollar in wages the contractor expends, it is guaranteed a mark-up; consequently, the more money the contractor pays in wages, the more money it earns.<sup>9</sup> In regard to classification, if an employer classifies work as requiring a high skilled trade, the wage rate and the corresponding benefits are higher than the wage rate and benefits applicable to a laborer. Laborer wages are almost always the lowest wage rates on a construction project.

Working with DOL's Bureau of Public Work, investigators uncovered hundreds of instances where Lin-Kim applied questionable classifications to work performed by its

---

<sup>8</sup> Wages rates are published in a prevailing wage rate schedule by DOL based on applicable collective bargaining agreements for the respective trades in each locality. For more information on public work wage rates and classification, please refer to DOL's Web site at <http://www.labor.ny.gov/workerprotection/publicwork/PWcontents.shtm> or see New York State Labor Law §220 *et seq.*

<sup>9</sup> Conversely, on a set price contract, contractors seek to cut costs to maximize their profits. Therefore, when DOL uncovers a classification error, the employer is usually classifying the work in a trade with a lower wage rate than is required by the labor law – the exact opposite of Lin-Kim's practice.

employees.<sup>10</sup> For example, Lin-Kim paid its employees at a plumber's wage rate when they drove trucks or performed yard work such as raking and seeding lawns. Incredibly, Lin-Kim's payrolls never included a single laborer.

When interviewed, both Buddenhagen and Peters made claims that strain credulity, asserting, for example, that they did not know which job classification is responsible for operating such commonly used equipment as a backhoe, or that teamsters are generally assigned to drive trucks. Buddenhagen's assertion is even more incredible in light of the fact that he has been involved in the construction industry for more than 25 years. Buddenhagen averred that he classified work the same way he had for years, claiming that OGS's on-site representative, or Engineer-in-Charge, who is responsible for reviewing the classifications, had never taken issue with his classifications. However, when shown daily labor reports that, in fact, conflicted with his classifications (see below), Buddenhagen offered no comment.

Peters explained that she used the daily labor report to prepare the payroll report to obtain payment from OGS. She stated that when she receives the daily labor reports, they contain the information written by Lin-Kim's on-site representative as well as the comments of the OGS Engineer-in-Charge, if any. Peters was shown several daily labor reports in which the OGS Engineer-in-Charge disagreed with Buddenhagen's classifications. For example, as seen in the June 20, 2008 daily labor report reproduced below, Lin-Kim claimed a plumber's rate for work consisting of "Back fill Holes, Resod and seed, Clean up area," [sic] none of which involved any actual plumbing work. As noted in the highlighted entries, the Engineer-in-Charge indicated his objection to this misclassification of work.

---

<sup>10</sup> DOL obtained certified payroll records from Lin-Kim and reviewed summaries submitted to OGS. Not only did DOL uncover misclassification, it determined that Lin-Kim habitually paid its employees four to six months late on every project. According to the labor law, manual workers must be paid on a weekly basis within seven days of the performance of the work. *See*, New York State Labor Law § 191. After DOL's investigation, the DOL Commissioner issued a "willful" violation against Lin-Kim for its failure to pay wages timely, and collected wages, interest and a penalty from Lin-Kim. When asked about his practice of making his employees wait for their wages, Buddenhagen again blamed the state for its slow payment process and claimed that he was ignorant of the labor law.



**OGS**  
Serving New York

**Design and Construction**  
AN ISO 9001:2000 CERTIFIED ORGANIZATION  
Division of Construction, 34<sup>th</sup> Floor, Corning Tower  
The Governor Nelson A. Rockefeller Empire State Plaza  
Albany, New York 12242  
Phone: (518) 474-0331 FAX: (518) 474-8201

*Base Reserved*

*ADJ*

**DAILY LABOR REPORT**

Contractor     Subcontractor

Project No. EA2966

NOTE: Three copies are required (see Distribution below). Submit original and two copies to the Engineer-in-Charge.

Contractor/Subcontractor Name: <b>Lin Kim Co., Inc.</b>		Change Order Control No.: (if applicable)	Work Date: <b>6-20-08</b>
Work Accomplished: <i>BACK FILL HOLES, REPAIR AND SEED, CLEAN UP AREA</i>			

Item No.	Social Security No.	Name	Labor Classification	Time Worked		Hours		EIC Comments
				IN	OUT	STRAIGHT	PREMIUM	
✓	4414	<i>Kenneth Buddenhagen</i>	<i>WORKING FOREMAN</i>	<i>6:00 AM</i>	<i>4:30 PM</i>	<i>7</i>	<i>3</i>	<i>Ground</i>
✓	6939	<i>MARGAL SCHWARTZ</i>	<i>Plumber</i>	<i>6:00 AM</i>	<i>4:30 PM</i>	<i>7</i>	<i>3</i>	<i>Restoration</i>
✓	8727	<i>JAMES JOFIS</i>	<i>Plumber</i>	<i>6:00 AM</i>	<i>4:30 PM</i>	<i>7</i>	<i>3</i>	<i>work only.</i>
✓	1549	<i>Din Gregorio</i>	<i>Plumber</i>	<i>6:00 AM</i>	<i>4:30 PM</i>	<i>7</i>	<i>3</i>	<i>No plumbing</i>
✓	1891	<i>MIKE CAMPANARO</i>	<i>Plumber</i>	<i>6:00 AM</i>	<i>4:30 PM</i>	<i>7</i>	<i>3</i>	<i>work done.</i>

Interviewers reminded Peters that the Engineer-in-Charge also commented on the form, “Ground restoration work only. No plumbing work done.” Acknowledging the comments, Peters admitted that she never corrected the information that was written on the daily labor reports by Buddenhagen or Lin-Kim staff. She also neglected to check the math. She maintained that she, “just did as I was told, or did what I was given, or did what I always did.”<sup>11</sup>

For the single day of misclassification shown above, Lin-Kim overcharged the state an additional \$22-plus for every hour worked – the difference between the plumber and laborer compensation packages. With the applicable mark-up, Lin-Kim’s overbilling of the state for June 20, 2008 amounted to \$1,997.

In total, the Inspector General identified more than 500 instances between 2006 and 2008 when Lin-Kim misclassified work on its projects for OGS, resulting in overbilling of at least \$99,574. The amount of overbilling might be significantly higher, as the calculation is based on documents submitted to OGS by Lin-Kim where either a work description by Lin-Kim or a comment by an Engineer-in-Charge provided evidence of misclassification. As Engineers-in-Charge do not visit every work site every day, additional instances of misclassification are likely but were not documented.

<sup>11</sup> Peters also claimed that the appropriate classifications for the work on Lin-Kim projects were listed on the cover of the prevailing wage schedule obtained from DOL. She promised to provide the wage schedules, but did not. The Inspector General obtained copies of numerous original wage schedules provided to Lin-Kim from DOL. Consistent with every wage schedule published by DOL in the last 20 years, the schedules included every trade classification in the locality – the schedules do not direct the contractor to any particular classification. Every wage schedule does, however, encourage contractors to contact DOL for assistance with classification. Both Buddenhagen and Peters admitted that they never made any such contact with DOL.

**Lin-Kim Double Billed the State for the Same Piece of Equipment**

Lin-Kim billed OGS twice and received additional money for its rental of one piece of equipment. On October 25, 2006, Lin-Kim submitted a material expense report for a project at the Arthur Kill Correctional Facility to OGS in which Lin-Kim claimed two charges from United Rentals, one for \$4,350.59 and another for \$3,217.02 for hydraulic pumping equipment. Both receipts were submitted with the claim for payment. Upon closer inspection, both receipts referred to the same contract number. The first receipt was obtained when Lin-Kim reserved the equipment and included an estimate of charges (similar to the use of a credit card to reserve a hotel room), and the second receipt was for the actual use of the equipment. The second receipt was clearly marked as an invoice showing a charge of \$3,217.02 being applied to the credit card on October 12, 2006. Lin-Kim filed both receipts, claiming reimbursement twice for the same rental.

When confronted with this evidence, Peters claimed that it “was a mistake.” Peters said that she received many receipts and that she did not always check to see if they were for actual payments. She indicated that Buddenhagen always reviewed her requests for payment to OGS to make sure they were accurate. When shown evidence of the double billing, Buddenhagen replied, “That’s a mistake, what can I tell you?”

This single fraudulent transaction resulted in an extra payment by OGS of \$5,394.36 (\$4,350.50 multiplied by the 24 percent cost-plus factor for the project) to Lin-Kim for the rental of one piece of equipment. A second duplicate billing on another project charged the state an additional \$1,755.34. Total duplicate billings amounted to \$7,149.70.

**FINDINGS AND RECOMMENDATIONS**

The New York State Inspector General, in a joint investigation with the New York State Comptroller, and in consultation with the New York State Department of Labor and with substantial cooperation and input from the New York State Office of General Services, determined that Lin-Kim Company engaged in multiple schemes to defraud the state of at least \$272,879.. Of that total, OGS paid \$225,040.72 to Lin-Kim before the fraud was uncovered.

<b>Summary of Lin-Kim’s Scheme to Defraud New York State</b>	
Forged Checks and Falsified Invoice	\$9,770.13
Billed for Hours Not Worked	\$12,693.02
Overcharged for Unemployment Insurance Taxes	\$73,536.37
Overcharged for Workers’ Compensation Insurance	\$70,155.33
Misclassified Work to Reap More Profits	\$99,574.84
Double Billed for the Same Piece of Equipment	\$7,149.70
	<b>Total = \$272,879.39</b>

Kenneth Buddenhagen and Melissa Peters further falsified a check and hundreds of requests for payment and submitted those documents to OGS in order to obtain payment from the state in excess of the amount that Lin-Kim was due. BRW Associates, at a minimum, was aware of the fraud perpetrated by Lin-Kim and attempted to conceal it.

These findings have been forwarded to the Office of the New York State Attorney General for review and consideration of criminal prosecution and an action for civil recovery.

The Inspector General recommends that OGS take the appropriate steps to find Lin-Kim non-responsible and that DOL move to debar Lin-Kim from future government contracts in New York State, should such action be permitted by law. OGS should also take any precautions available to ensure that its contractors do not engage BRW Associates.