



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
July 17, 2012

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General found that New York State Department of Transportation (DOT) employee Larry Selan repeatedly abused his authority as an Engineer-in-Charge on two DOT construction projects in Cortland County: the Hoxie Gorge Bridge project on State Route 81 and the repair and repaving of State Route 221 in the Village of Marathon.

The Inspector General's investigation revealed that Selan misappropriated DOT-owned guide rail valued in excess of \$11,000 from the Hoxie Gorge Bridge project that should have been transported to a DOT facility. Instead, Selan requested that a contractor sell it to a scrap yard, resulting in Selan receiving \$553 in cash proceeds. Further, Selan sought free installation of an oil and stone driveway at his home from the contractor on the Marathon project. Lastly, the investigation revealed that Selan improperly received two gifts from a contractor or its employees: (i) service, in the form of labor installing a concrete sidewalk at Selan's home, and (ii) merchandise, specifically a company jacket. At a minimum, Selan's conduct violated the Public Officers Law and DOT policy.

The Inspector General therefore recommended that DOT take appropriate disciplinary action against Selan. In response to this report, DOT advised that it is pursuing disciplinary action against Selan and taking other actions to increase construction staff's awareness of ethics and avoiding conflicts of interest.

In addition, the Inspector General referred this matter to the Office of the Attorney General for its consideration, and provided a copy of this to the Joint Commission on Public Ethics, which has jurisdiction over violations of the Public Officers Law.

ALLEGATION

In November 2009, DOT's investigation section referred a complaint to the Inspector General that Larry Selan attempted to solicit a bribe or a gratuity from a contractor he was overseeing on a DOT construction project. It was further reported to the Inspector General that Selan had a reputation for accepting goods or services from contractors he supervised to ensure that their projects proceeded smoothly. During the course of investigating these matters, the Inspector General also received a complaint

alleging that Selan had misappropriated DOT-owned guide rail from the Hoxie Gorge Bridge project site.

SUMMARY OF INVESTIGATION

Background

Larry Selan has worked for DOT since 1984. He has recently served as an Engineer-in-Charge (EIC) of DOT construction projects in Region 3, based in Syracuse. As an EIC, Selan is the highest ranking member of DOT on a construction site. The EIC is responsible for ensuring that DOT's construction plans are fulfilled by the private contractors who perform the actual construction. An EIC such as Selan oversees several inspectors who monitor and document contractors' operations in the field.

Selan served as EIC on two significant DOT construction projects in Cortland County. From approximately August 2005 through May 2008, Selan was the EIC for a project on State Route 81 that involved the dismantling of the old Hoxie Gorge Bridge and erection of a new viaduct. From approximately March 2008 through July 2009, Selan served as the EIC for a \$3.9 million project that included improved drainage, installation of new sidewalks, and the rebuilding and repaving of a section of State Route 221, or Main Street, in the Village of Marathon (the "Marathon Project").

DOT advised the Inspector General that it has issued final payments to contractors, or is in the processing of doing so, to close out both projects.

Selan Misappropriated Guide Rail from DOT on the Hoxie Gorge Bridge Project

As noted, from approximately August 2005 through May 2008, Selan served as EIC on a DOT project that involved the dismantling of the Hoxie Gorge Bridge and construction of a new viaduct. During the project, the general contractor regularly delivered and sold various scrap metal from the old bridge to regional scrap processors, including a local salvage yard named Robert's Scrap Processing. The contract between DOT and the general contractor specifically provided for the general contractor to remove and dispose of scrap metal and to retain the proceeds from these transactions. The contract also required that the general contractor disassemble 778 meters of box-beam guide rail which had been temporarily installed at the job site for traffic control.¹ DOT was responsible for transporting the disassembled guide rail from the project site to a DOT facility for storage and future re-use.

According to the general contractor's superintendent who managed the Hoxie Gorge project, Selan expressed his intent to misappropriate scrap metal or guide rail from the project site for his personal gain. The superintendent testified that Selan suggested that he should be given a portion of the proceeds from the sale of scrap metal that contractually belonged to the general contractor. However, the superintendent told the Inspector General, he made it clear to Selan that would not happen, stating: "I nipped it in

¹ Box-beam guide rail consists of a hollow six-inch square beam extending between posts to which it is attached.

the bud right then and there. I said, ‘Don’t even go there, Larry. This is the [general contractors’] money, it’s going to them, and I don’t want to hear no more about that.’”

While, according to the superintendent, Selan did not again mention that he wanted a share of the scrap metal transactions, Selan indicated to him that he planned to steal some of the DOT-owned guide rail intended for re-use. The superintendent stated that Selan told him that not all of the State owned guide rail was going to be returned. The superintendent said he responded to Selan, “That’s between you and the State of New York; I’m not getting into that.” Asked why Selan wanted the guide rail, the superintendent responded that Selan wanted to “turn it into dollars” for himself.

The investigation revealed that in or around mid-September 2007, Selan’s demands yielded action. As the superintendent testified:

I think he just badgered me and badgered me enough that I got sick of listening to it, and I told my truck driver to go throw that box beam on the truck and take it to Robert’s [Scrap Processing] and come back and give it to him, give the money to Selan.

Another employee of the general contractor on the Hoxie Gorge Bridge project confirmed to the Inspector General that one day during the project, the superintendent directed him to load a truck with sections of the guide rail that had been stacked and stored at the worksite for transport to a DOT facility. The employee said that he and a co-worker who possessed a Commercial Driver License, were instructed by the superintendent to take the guide rail to Robert’s Scrap Processing and sell it for Selan. That employee said that Selan had been “bugging” the project superintendent about the guide rail and that the superintendent “finally gave in” to Selan’s demands. The employee testified, “He [the superintendent] told me, when I take it over there, [Robert’s Scrap Processing] to make sure that Larry Selan’s name was on that receipt, because that [state-owned guide rail] had nothing to do with [the contractor].”

The contractor’s employee said he then loaded a flatbed truck with approximately 32 sections of what he believed were 30-foot lengths of guide rail from the pile of guide rail that had been used in the temporary detour and was awaiting transport to a DOT facility. He added that a second truck was loaded with scrap metal for sale as provided in the contract. The employee stated that when the trucks – one driven by him, the other by his co-worker – arrived at Robert’s Scrap Processing, he told his co-worker of the superintendent’s instruction that the receipt for the sale of the guide rail be in Selan’s name. The employee testified that after the trucks were weighed, he and his co-worker went into the scrap yard office to sign the weigh slips and to collect payment. The employee stated he was given two separate receipts and two separate amounts of cash from personnel at Robert’s Scrap Processing. As he requested, one receipt, for \$553, was written in Selan’s name, dated September 14, 2007; the other, reflecting the payment properly due the contractor, was in the name of the project superintendent.

The Robert’s Scrap Processing employee who issued the receipts confirmed to the Inspector General that at the request of a driver for the contractor, he wrote “Larry Selan” and the address “South Otselic” (the town in which Selan resides) on the receipt for the guide rail. The Robert’s worker stated that he does not know Selan. The receipt

The Inspector General examined the more than 100 receipts from the sale of scrap metal from the Hoxie Gorge project to Roberts and other area scrap processing firms. With the exception of the September 14, 2007, receipt shown above, all of the receipts are in the name of the contractor's project superintendent, who collected the proceeds on behalf of his employer. Many of the receipts, including the one in Selan's name, bear the initials "DC", denoting the contractor's employee who made the delivery, as depicted on the above receipt.

All of the contractor's employees who were questioned advised the Inspector General that after the sale of the guide rail at the scrap yard, much of the guide rail remaining at the project site was transported by DOT to the DOT maintenance facility in nearby Polkville. On October 5, 2007, a DOT contracted inspector under the direct supervision of Selan prepared a DOT Inspector's Daily Report in which he stated that all 778 meters of the disassembled guide rail had been delivered to the DOT facility: "Box beam and end sections were removed and stored @ NYSDOT off-site area, #606.63 – 778 m, #606.6920 – 6ea." A note on the report written by Selan also stated that all of the guide rail had been transported to Polkville: "This rail was picked up from project by NYSDOT and taken to Cort[land]/Tompkins Residency [Polkville] as per plan note."

That employee was unaware, however, that not all of the guide rail made it to the Polkville facility: some 232 meters of it had been sold to Robert's Scrap Processing. He informed the Inspector General that he did not actually measure the dismantled guide rail that was transported to Polkville, but rather assumed that it totaled 778 meters because the contract had specifically called for the removal from the project site of that length of guide rail used in temporary detours. Selan, on the other hand, who knew what had transpired, wrote on the report that all the guide rail had been transported to Polkville and signed off on the document. This inaccurate document was then filed with DOT and became part of the official record of the Hoxie Gorge Bridge project.

The Inspector General was unable to locate any documentation from DOT records indicating a specific date on which the guide rail was delivered to the maintenance yard, or on which DOT employees made the delivery.³

During an interview with the Inspector General, Selan denied any knowledge of the sale of DOT guide rail from the Hoxie Gorge Bridge project. When confronted with the Robert's receipt, Selan chuckled and stated, "No, I didn't get \$553.00, I mean." Despite the existence of the receipt bearing his name, Selan maintained:

[T]hat doesn't mean I got it. I didn't get it. If [the project superintendent] told you I got it. Maybe he's telling you that, but why, he might have forgot [sic] to give me the 500 bucks, and I didn't want the 500 bucks.

loaded 32 pieces of 30-foot-long guide rail, which equals 960 feet or 292 meters, approximately 60 meters more than indicated by the weight noted on the receipt. Based on the evidence obtained in this investigation, the Inspector General finds the most likely explanation for the discrepancy is the contractor's employee overestimating the amount of guide rail he loaded.

³ The box beam guide rail did not have any identifying markings indicate that it was from one job site or another; however, it appeared in good condition, which is consistent with the description of the box beam from the Hoxie Gorge project.

When asked if he knew why the superintendent had directed that Selan's name be placed on the receipt from Robert's, Selan replied he had no idea, but believed he was being "set up" by someone. Selan, however, could not identify anyone who would do any such thing. To the contrary, he described the superintendent as an "honest man."

Additionally, the guide rail that was sold for scrap had a much greater value than the \$553 that Selan received. Under the contract, DOT was to retain the guide rail, which was approximately a year old, so that it could be reused. Utilizing DOT's formula for depreciating the value of guide rail, the Inspector General calculated the value of the 232 meters of guide rail sold to Robert's Scrap Processing for Selan's benefit at \$11,400.

Selan Improperly Received Gifts from Contractor on Hoxie Gorge Bridge Project

Selan admitted to the Inspector General that he solicited and accepted gifts from the Hoxie Gorge Bridge project contractor during and immediately after he was the EIC on the project. Both DOT policy 4.15-1 and Public Officers Law §§ 73(5) and 74 prohibit the solicitation and acceptance of goods or services under circumstances where it may reasonably be inferred that the gift was intended to influence the public officer in the performance of his official duties.

During the course of the Hoxie Gorge project, three or four employees of the contractor, including the project superintendent, helped Selan install a concrete sidewalk at his house. They set the forms, poured the concrete and smoothed the concrete. Although the concrete was purchased by Selan and the labor was performed after the employees' regular work hours, Selan received the services of experienced construction workers at no charge. (Selan stated that he either fed them sandwiches or gave them beer.) According to the superintendent, "We went out there in friendship, giving him a hand after work." However, since Selan was the EIC overseeing the contractor for DOT, he clearly should not have accepted any free goods or services from the contractor or its staff.

The Inspector General, while reviewing DOT records regarding the Hoxie Gorge Bridge project, also discovered a fax coversheet from Selan sent to an employee of the contractor on or about November 18, 2008, regarding a final-cost estimation for the Hoxie Gorge project. Of interest, on the coversheet was a handwritten note containing Selan's initials which read, "Put us the X-MAS list!" When asked by the Inspector General to explain it, Selan said he wrote the note to the fax cover page indicating the project was finished just prior to Christmas 2008.

With respect to the request of being placed on a Christmas list, Selan explained that the contractor would give state employees who worked on its construction projects a sweatshirt or shirt, and the note was a request for such an item. Selan stated that he and other state employees worked three winters on the Hoxie Gorge project and that he believed that since the items were valued under \$25.00, he was allowed to receive them.

The Inspector General also confirmed through a representative of the contractor that Selan was given a jacket with the contractor's company logo embroidered on it. The jacket's estimated value is \$60. In addition, according to the contractor's superintendent

and others, Selan frequently asked company managers to give him a 30-pack of beer, something that became a joke among the contractor's crew on the Hoxie Gorge job site.

Regardless of the value of these items, Selan appears to have violated DOT's prohibition against the receipt of any gifts from contractors, and he ran afoul of the Public Officers Law ban on gifts of more than a "nominal value." Furthermore, Selan's solicitation and acceptance of a gift from a contractor that he supervised on a construction site appears to be a conflict of interest in violation of DOT policy and Public Officers Law § 74.

Selan Solicited Free Services from Another Construction Contractor on the Marathon Project

On June 23, 2008, while serving as the EIC and overseeing a contractor on the Marathon project, Selan telephoned the contractor's foreman who at the time was overseeing a paving project the firm was performing for the Town of South Otselic, where Selan resides. According to the foreman, Selan requested that the contractor have oil and stone applied to his private driveway. An "oil and stone" driveway, sometimes known as "tar and chip," looks like a gravel driveway, but provides a strong and durable surface. After the driveway base is prepared, a coat of oil is applied with a special sprayer attached to the oil truck. A layer of gravel is then distributed over the treated surface and compacted with a roller. This process is generally repeated to provide two coats of oil and stone. The contractor estimated the value of applying oil and stone to Selan's driveway to be \$800. The contractor's foreman memorialized this call in his diary as follows: "Received a call from Larry Selan asking for us to shoot his driveway when we are in S. Otselic. He said he could get the stone and that the source for stone was at the end of his road." Cell phone records examined by the Inspector General confirm the placement of a call from a cell phone in Selan's name to a cell phone assigned to the foreman. .

The foreman told the Inspector General that rather than immediately responding to Selan's request, he contacted his supervisor for advice. According to the foreman, the supervisor advised him to speak with the company's owner and president. In turn, the owner and president told the Inspector General that he instructed the foreman to tell Selan that he would like to help him out, but "it is just not worth the risk, with all due respect." In other words, according to the owner/president of the contractor, his company was unwilling to risk any negative consequences from succumbing to Selan's solicitation.

On June 26, 2008, the foreman stated, he called Selan and informed him that his company would not oil and stone Selan's driveway. Phone records confirm that on that date at 10:20 a.m. a call was placed from a cell phone assigned to the foreman to a cell phone in Selan's name. According to the foreman, Selan became "very defensive," and told him that the DOT project in Marathon "could go a lot easier" if his driveway was oil-and-stoned. According to the foreman, Selan also indicated that he was going to call the owner. The foreman said he then informed Selan that it was in fact the owner who had denied Selan's request because "we can't afford the risk." The foreman described the exchange in his diary as follows: "Called Larry Selan 10:20 AM to inform him that we would not be able to do his driveway. He became very defensive; he said things could go a lot easier in Marathon. He also said he was going to call [the owner]. I said he need not

bother him as this came from [the owner] not to do the driveway, we can't afford the risk." The foreman also wrote: "I feel it is unfortunate he feels this way but right is right wrong is wrong."

The foreman testified to the Inspector General that he felt threatened by Selan's remarks and that he took Selan's comments personally. When questioned further, he said Selan gave no indication he was willing or planning to pay the contractor's company for the requested work, particularly considering that Selan said that "things could go a lot easier" on the Marathon job as result. The foreman further indicated that he believed Selan expected the contractor to comply with his request because Selan was the EIC on the Marathon project. The foreman explained that a few years earlier, when Selan was the EIC on the construction of the Preble Rest Area on Interstate 81, Selan asked the contractor's company to apply oil and stone to his driveway and the company complied with his request.⁴ However, he added that times have changed since that gratuity was afforded to Selan and what might have been common practice years ago is not acceptable any longer.

The contractor's superintendent for the DOT Marathon project testified to the Inspector General that on June 26, 2008, he received a call on his cell phone from Selan. (Phone records obtained by the Inspector General verify that the call was placed as described.) The call evidently occurred just after Selan was informed by the contractor's foreman that the company would not oil and stone Selan's personal driveway as he had requested. According to the superintendent, Selan was angry and yelling and, before abruptly ending the call, told him that "things on the job were going to change" because the contractor's owner would not authorize his employees to oil and stone Selan's personal driveway. The superintendent further stated that he so upset by what he viewed as a threat by Selan, that he immediately memorialized the exchange in his project diary. In support of his testimony, the superintendent provided the Inspector General with a copy of his diary page for June 26, 2008, which contained the following entry: "Larry Selan called me about 12:00 somewhat hollering and upset. Said that things on the job were going to change because [the company owner and president] wouldn't let [the foreman] oil and stone his driveway."

The project superintendent said that when he arrived at the Marathon job site later that day, Selan was across the road and yelled to him, "Things aren't going to go as easy around here as you might want them." The superintendent said that he responded to Selan, "I never needed any help from anybody before on any job to make money, and I don't need any help from you." He also testified that after this incident, Selan's interactions with him became more formal, a stark contrast from the collegial working relationship they had previously enjoyed. Notably, the superintendent also recalled two subsequent actions which he and the project foreman viewed as retribution by Selan against their employer because of the driveway matter.

According to the superintendent, on June 27, 2008, the day after their heated exchange, Selan brought to his attention a revised DOT regulation requiring a

⁴ The foreman likely was referring to the May 2003 to October 2005 Preble Rest Area construction project, on which, according to DOT records, Selan was the assigned EIC.

modification to the bases of signs, including those utilized on the Marathon project.⁵ The superintendent's recollection is corroborated by Selan's Engineer's Daily Contract Diary, which includes a notation that on that day he sent a "warning letter" to the contractor about the required sign change. Interestingly, the need for sign modifications was known to Selan at the time of a DOT inspection a month prior (May 28, 2008), but he apparently didn't raise it with the project superintendent until the day after Selan learned of the contractor's refusal to work on his driveway. Records show that the contractor's employees promptly made the sign modifications following Selan's notice to the superintendent.

According to the superintendent, not long after his argument with Selan, a second incident occurred which he viewed as retaliatory. During the project, a truck delivering pipe to the worksite was directed by employees of the contractor to wait on a side road until it could be unloaded, but without flag personnel to assist in traffic control. The contractor stated that Selan apparently observed that the waiting truck lacked a flagger and issued the contractor a \$533 fine, and that amount subsequently was deducted from a contract payment. The Marathon project superintendent and foreman both told the Inspector General that the flag incident was a very minor violation for which they had never seen a citation issued in their many years of construction experience. Both individuals expressed the opinion that Selan's actions were retaliatory for their employer's refusal to work on Selan's driveway as he had requested.⁶

When questioned by the Inspector General, Selan attempted to minimize the driveway issue. Selan stated that approximately 10 to 15 years earlier,⁷ the Marathon project contractor was spreading oil and stone on roads in South Otselic near Selan's residence, and parked some of its equipment near his driveway. On this prior occasion, the contractor applied oil and stone to his driveway without charging him. Selan claimed that the materials used on his driveway were left over from the project and would have been discarded; because some of the materials had overlapped the entrance to his driveway while being applied to the road, the contractor's employees applied the materials to his entire driveway.

Selan further testified that while he was the EIC on the 2008 Marathon project, he was aware that the contractor was again applying oil and stone to public roads near his home as part of a different project. He said a company representative told him a work crew was going by his home and asked him if the contractor could do his driveway. Selan said he responded, "Oh yeah, go ahead." Selan claimed that he told the contractor's employees on the Marathon project that if the workers assigned to the other project had leftover oil and stone at the end of the day and were near his home, they were free to put the product on his driveway rather than discarding it. Selan said he could not

⁵ The revised regulation required that signs be supported by two vertical posts, rather than the single post previously required.

⁶ Interestingly, contrary to the recollections of both the project superintendent and Selan that the fine in fact related to the flagging matter, Selan, on August 1, 2008, made an entry in his Engineer's Daily Contract Diary indicating that the fine was for an alleged safety violation for equipment left out overnight in an area that should have been clear, but making no reference to the flagging issue. The diary entry might have been an attempt by Selan to disguise the flagging fine because of the relative insignificance of the alleged violation.

⁷ It appears that Selan was referring to the period 2003-2005, when, as noted, he was the EIC on the Preble Rest Area project.

remember with which of the contractor's employees he allegedly had these conversations. He also said that these conversations were not over the telephone, an assertion which is belied by the testimony of two of the contractor's employees and cell phone records obtained by the Inspector General. When asked by the Inspector General what the contractor's response was to his suggestion, Selan replied, "If we do, we do; if we don't, we don't, can't do it, whatever. I can't remember." Selan confirmed that the contractor did not apply oil and stone on this second occasion.

When questioned by the Inspector General if he believed that asking the contractor for a favor, whether or not it was granted, "could give somebody the wrong impression," given his duties as an EIC on a project with the contractor, Selan agreed that it could create such an impression. He added that he never directed the contractor to go to his residence, nor did he threaten them if they did not. Selan claimed that it was "a totally innocent deal" when he mentioned to the contractor's employees that the company could apply leftover paving product on his property. Selan denied threatening any employees of the contractor that the Marathon job would go more smoothly if they acceded to his request.

Selan acknowledged that he fined the contractor for what he recalled were "flagging violations." Selan added that as a result of the fine, the contractor's employees were not as friendly to him. Selan denied any connection between the fine he imposed on the contractor and the contractor's refusal to work on his driveway. Selan continued that the contractor did not apply any oil and stone product on his driveway and that he couldn't "care less" that they had not.

FINDINGS AND RECOMMENDATIONS

The Inspector General's investigation found that DOT employee Larry Selan repeatedly abused his authority as an EIC supervising two DOT construction projects in Cortland County: the Hoxie Gorge Bridge project on State Route 81 and the repair and repaving of State Route 221 in the Village of Marathon.

The Inspector General's investigation revealed that Selan misappropriated DOT-owned guide rail valued at \$11,400 from the Hoxie Gorge Bridge project that should have been transported to a DOT facility for reuse. Instead, at Selan's behest, the guide rail was sold by a contractor to a scrap yard, resulting in the payment to Selan of \$553. The Inspector General also determined that Selan improperly received gifts from a contractor or its employees, specifically: (i) service, in the form of labor installing a concrete sidewalk at Selan's home, and (ii) merchandise, a company jacket.⁸ Selan also had oil and stone applied to his driveway by the same contractor without charge during an earlier DOT job (2003-2005). In addition, the investigation revealed that Selan sought the free installation of an oil and stone driveway from the contractor on the Marathon project. At a minimum, Selan's conduct violated Public Officers Law §§ 73(5) and 74 and DOT policy 4.15-1.

⁸ In a separate report, the Inspector General recommended that DOT amend existing policy to address the issues which arise when DOT employees hire firms that conduct business with DOT.

The Inspector General therefore recommended that DOT take the appropriate disciplinary action against Selan. The Inspector General also provided a copy of this report to the Office of the Attorney General and the Joint Commission on Public Ethics.

Response of the Department of Transportation

In response to the recommendations of the Inspector General's report, DOT advised that it is pursuing disciplinary action against Selan. DOT also reported that it will discuss the expectations for all construction staff regarding ethics and avoiding conflicts of interest at the next construction managers meeting. Managers will be required to convey these expectations to their employees. Further, DOT noted that new Engineers-In-Charge receive training on ethical conduct and conflicts of interest.